UNIVERSITÀ DEGLI STUDI DI PADOVA

DEPARTMENT OF POLITICAL SCIENCE, LAW,
AND INTERNATIONAL STUDIES

Master's degree in
Human Rights and Multi-level Governance

THE USE OF PRE-EMPTIVE FORCE AND ITS INFLUENCE ON THE CONSTITUTIONAL BACKGROUND OF SELF-DEFENSE RIGHTS IN THE UNITED STATES

Supervisor: PENNICINO SARA

Candidate: BÁRÁNY TAMÁS LÁSZLÓ

Matriculation No. 1216082

A.Y. 2021/2022

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Acronyms

BJS – Bureau of Justice Statistics
BLM – Black Lives Matter movement
BPUFF – Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
CD – Castle Doctrine
CDC – Centers for Disease Control and Prevention
CIA – Central Intelligence Agency
DA – District Attorney
DHS – U.S. Department of Homeland Security
DIY – do-it-yourself citizenship
DOJ – U.S. Department of Justice
DOS – U.S. Department of State
DTR – duty to retreat
FBI – Federal Bureau of Investigation
GOP – Grand Old Party
ICCPR – International Covenant on Civil and Political Rights
ICERD – International Convention on the Elimination of All forms of Racial Discrimination
IA – internal affairs
ICJ – International Court of Justice
NGO – non-governmental organization
NIBRS – National Incident-Based Reporting System
NRA – National Rifle Association
OHCHR – Office of the United Nations High Commissioner for Human Rights
RUDs – reservations, understandings, and declarations
SCOTUS – Supreme Court of the United States
SYG – stand-your-ground
UN – United Nations
UNCAT – Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UDHR – Universal Declaration of Human Rights
UNHRC – United Nations Human Rights Council
UNSC – United Nations Security Council
WMD – weapons of mass destruction

Introduction

Around a thousand people die every year by the hands of law enforcement in the United States. The past several years, it became far too common to learn about cases where the proportion and manner of lethal force being applied by police were under scrutiny by relevant authorities and the public. Last year at least 1017 people are known to be killed by U.S. law enforcement and as of October 31, 2022, 856 people were shot and killed by police departments (Washington Post 2022). Moreover since 2005, with the passing of the first stand-your-ground (SYG) laws promoting the use of excessive force in the clothing of self-defense, an 8% to 11% increase in monthly homicide rates on the national level is experienced (Degli Esposti et al 2022).

If I was to describe with a single sentence on what this thesis research is based on, I elaborated a theory which asserts that foreign policy can influence domestic legislation on the state level. To demonstrate how the use of pre-emptive and lethal force is applicable for U.S. law enforcement and everyday citizens to the phenomena that I can only classify as an ongoing human rights crisis, I drew relevance between two, at first seemingly very distant fields of study in the realms of legal and social sciences. The main subject of examination of this research is the individual's right to self-defense, particularly in a preventive or pre-emptive manner, closely related U.S. state laws that are to promote the use of excessive force in the name of self-defense. The second subject of examination is how the United States, as a sovereign country conducted its military operations, particularly preventive military interventions on the international level and how its foreign policy approach in the 21st Century has contributed indirectly to this ongoing human rights crisis on their national level.

To grasp the real meaning behind my theoretical assumption, I had to consider several different aspects. Therefore, I have elaborated three main arguments to connect the dots between the two subjects of my examination and to present this theory standing on a firm and thorough basis:

1. Focusing way back on historical roots and principles of the English common law system and legal framework of the early 1600s up until and after the ratification of the U.S. Constitution in 1789 that, besides 27 Amendments to it, remains intact for 243 years.
2. With a more recent and specific focus on the events of September 11, 2001, what changed when it comes to the history of U.S. military interventionism on the global

scene and how the post-9/11 foreign policy approach influenced state legislators to draft self-defense laws promoting the use of excessive pre-emptive force.

3. The last and most comprehensive argument is based on the everlasting theory of American exceptionalism and the rationalization of American exceptionalism today, that is ultimately responsible for the damaging outcomes of both subjects of my examination. Therefore, directly because of this theory's qualities, an ongoing human rights crisis in the U.S. remain uncontrolled by international law and norms.

To prove all three main arguments, I focused the research on a component of the Bush Doctrine, the pre-emptive strike and the statues proponing excessive self-defense rights called stand-your-ground laws which are also known as the 'no duty to retreat laws'. Specific focus on the American exceptionalism as a political ideology and its relevance in the 21st century through the U.S. government's relation to international human rights treaties allowed me to analytically explain and compare the pre-emptive strike carried out in Iraq in 2003, with cases where stand-your-ground laws were under national scrutiny by authorities and the public through the lens of the media. The comparison ultimately demonstrates that there is an ideological link between the practice of the pre-emptive war and the legislative concept of the stand-your-ground laws.

Besides the three main arguments, there are two 'developing arcs' displayed throughout my research that brings us closer to understand the connecting dots on these lines. Both developing arcs had a turning point where due to circumstantial events, the conventional approaches known up until then have drastically changed. First, how domestic lawmaking ended up drafting statutes promoting the use of pre-emptive force and self-defense rights in general. Here the turning point is 2005, when the first state stand-your-ground law (SYG) was enacted. Second, how the terrorist attacks of September 11, 2001, changed U.S. foreign policy and military interventionism. This post-9/11 U.S. foreign policy, particularly the Bush Doctrine and its pre-emptive war in Iraq commencing in 2003, shows that not only the United States was bending the rules of international law (and completely disregard its provisions and norms) to initiate the Iraqi conflict but in the light of these events state legislators were provided with the legal ideology and reasoning they just needed to draft the first SYG law in Florida in 2005.

My research incorporates international relations theory and has a social science-based overview, while it also maintains an interdisciplinary approach with legal analysis and case law. All this will be indispensable for the reader to understand the ideology behind my discovery, which I simply refer to as the 'shoot first, ask questions last pattern'. This pattern of

my discovery is not only evidently present in the SYG-type laws, including the Castle Doctrine, examined but also how the Bush Doctrine utilized its preventive strike against the Saddam Hussein-led Iraq in 2003. Throughout the high-profile cases analyzed in this thesis work, we will see how landmark rulings influenced future cases' outcomes. Furthermore, I examine customary international law, UN legal mechanisms, soft and hard international law instruments, and international norms that could provide a legal framework on the national level for prevention and control, therefore saving human lives. Collected data from secondary sources will also show how destructive was the creation of SYG type laws since 2005. The thesis research work carefully presents both a constitutional law and international law understanding of the phenomena examined, assuring that the two segments are not intertwined as they do not share legal jurisdiction and their legal mechanisms are very different. Although, I will touch upon the subjects of reform and possible solutions for prevention and control, the main goal of the thesis research work remains which is to present the 'shoot first, ask questions last pattern' and its theory on both the domestic and international level backed up by firm arguments.

Chapter I: The ‘shoot first, ask questions last’ pattern and two of the main arguments

1.1. The ‘shoot first, ask questions last’ pattern

This thesis research examines how the definition and understanding of self-defense rights were stretched throughout time in the United States. An ‘arc’ through the U.S. legal system and case law shows that legislation evolved from duty to retreat (DTR) to stand-your-ground (SYG) laws and promoted the excessive use of pre-emptive self-defense mechanisms, including the use of deadly force. The first argument is that the basic roots derived from the English common law system with the concept of do-it-yourself (DIY) citizenship when it comes to armed citizens defending their own livelihood, including their property. The second argument is that U.S. foreign policy with its doctrine of pre-emptive war in the light of the events of September 11, 2001, which terrorist attacks gave a basic rule of thought to influence domestic lawmakers with the rules pre-emptive self-defense in international law. My main assumption is that the preventive strike and the stand-your-ground laws share the same principle: countering potential threats posed by a sovereign state (which main subject of examination the military invasion of Iraq in 2003) or an individual (several cases subjected to the SYG type statutes) with the ‘shoot first, ask questions last’ pattern. The third argument to back this pattern that serves as my hypothesis of this research is how the theory of American exceptionalism and its qualities are largely responsible for an ongoing domestic phenomenon. Not only because this theory by itself is responsible on how the U.S. conducted its military operations following the terrorist attacks of 9/11, but also how it prevents international law and its norms to be implemented on the domestic level. The implementation of international law instruments possibly could be able to provide a supranational framework to either prevent or at least regulate this ongoing issue with the use of lethal force by police officers and individuals. Over a thousand people are killed by law enforcement officials and the emergence of SYG laws caused a slight but steady increase in homicide rates in those U.S. states where these types of statues were enacted.

When it comes how to the Bush Doctrine’s pre-emptive use of self-defense and SYG laws, I had to provide a clear analysis on the ideology behind both legal instruments. Over the course of this thesis work we will understand how the Bush Administration argued that the Iraqi regime was perceived as an “emerging threat before it is fully formed”. In many cases, law enforcement officials cited the same argument by implicating that the suspects were acting in a threatening manner, such as reached for a firearm before the law enforcement had to utilize lethal force against them (Balko 2016). Therefore, the suspects were considered as “emerging threats before they were fully formed” much like how the Saddam Hussein regime was also

perceived, which is a threat about to form with the acquisition of weapons of mass destruction (WMDs). Regarding the SYG laws and the general use of lethal force by law enforcement and civilians, I have chosen the state of Florida as one of the main subjects for my examination because of three main reasons. Florida was the cause with being the first state to enact a major statute promoting the use of lethal force in self-defense that was the infamous SYG law in 2005 (Ward 2015: 108), which then led to a series of other states to propose bills and enact them in similar fashion. Furthermore, it was signed by then-Florida Governor Jeb Bush, younger brother of President George W. Bush, which is a clear relation between the conservative, Republican agenda of that time, represented by both leaders. Moreover, two of the several practical cases I present below, one being the State of Florida v. George Zimmerman that happened in Sanford, Florida showing how non-law enforcement subjects can also apply lethal force legally backed by SYG laws. Then on the contrary the second case, State of Georgia v. Travis McMichael, where it was substantiated that the use of lethal force is not in line with the self-defense argument, if it was provoked in a pre-emptive fashion with no clear and imminent threat present (Fausset 2022).

The table below shows a breakdown of my main hypothesis and how the general structure of this thesis was organized. The structure of my thesis can be split into five main sections, although the written chapters do not follow the same structure. In the first section, I laid down the foundations for the three main reasoning arguments made in favor to substantiate my hypothesis which is that the pre-emptive war launched against Iraq in 2003 (part of the Bush Doctrine), principally influenced Florida state legislators to draft the SYG law. Since the legality of the U.S. invasion of Iraq was highly debated by the United Nations (UN) and the international community, it made sense for lawmakers on the state level to draft a statute with a similar legal concept to allow the use of lethal force in a pre-emptive manner and when it is enacted, its legality cannot be disputed. In the second section, two evolutionary ‘arc’ are presented that will allow the reader to understand how the beginnings of the eventual SYG law evolved from initial self-defense rights. The reader will understand through the first arc, that in the early days of the English common law system (which was “exported” by the first waves of arriving settlers to North America), already had some of the basics of individualist self-defense rights in the form of the Castle Doctrine (CD). According to my argument here, the turning point was 2005 with the Florida SYG law drafted. The second evolutionary arc is exclusively to present what changed in the manner of U.S. military led pre-emptive wars and the use of force on the international scene. Here my argument is that the turning point was the events of 9/11, and the U.S. went to extreme lengths to justify its Global War on Terrorism. The third section of my thesis can be categorized as the main hypothesis, which is the ‘shoot first and ask questions last’ pattern, which I believe is very much present in both phenomenon:

the U.S: invasion of Iraq in 2003 and the SYG law of Florida (and then its emulators in dozens of other states). The fourth section of my thesis is basically case law, once again related to both subjects of my examination that are pre-emptive self-defense rights with the use of excessive lethal force by individuals and pre-emptive military interventionism on the international level. For both subjects, I brought several case examples not only to see the linking aspects but also to provide an overview. The fifth and final section is basically the data I collected from secondary sources and is only directed at the self-defense rights subject. The goal with the collected data is to show that indeed those states with SYG type laws enacted have increased state-wide homicide rates, while data on the law enforcement aspect with a specific focus on race relations, both regarding policing procedures and accountability have much to leave for concern.

Subjects of examination	**Three main arguments**	**Evolution of both examined subjects**	**'Shoot first ask questions last'**	**Case law and legal aspects**	**The data and conclusion**
Self-defense rights and the use of excessive lethal force in the U.S. by both citizens and law enforcement (DTR, CD, SYG).	**English common law** system and principles since the 1600s, U.S. constitutional values.	How DIY citizenship evolved into SYG and how it works today with references to case law.	**Before 2005:** DTR, what law enforcement and citizens were allowed. **After 2005:** SYG and DT statues in effect.	Landmark cases that set precedent against and in favor to excessive and pre-emptive self-defense rights in the U.S.	Ongoing human rights crisis in the U.S. (people legally get away with murder, roughly 10% rise in homicide rates due to SYG and CD).
The right to preemptive self-defense and military interventionism through the lens of international law.	**9/11** and **American exceptionalism**, what effect it had on both the international and domestic level.	Recurring historical pattern: military operations conducted by the U.S. and the Bush Doctrine's pre-emptive war.	**What changed after 9/11.** Customary international law (Caroline test), soft-law instruments (BPUFF).	Joint resolutions of U.S. Congress and UNSC resolutions legitimizing war within the international community.	Focusing on UN legal mechanisms that could improve this crisis if the U.S. would comply with a supranational framework.

1.2. The English common law principles of self-defense rights

The first main argument to reason in favor for my hypothesis is largely based on the book of Caroline E. Light, university professor at Harvard University. Light substantiates that the existence of SYG laws can be traced back to the very foundations of the United States as a country. Furthermore, how the English common law system was the basis for U.S. Constitutional values and the evolution of self-defense rights. Although, I must make it crystal clear that I do agree with the argument that the reason of English common law and its constitutional values are largely because of the first settlers of North America, who exported their legal principles from the English common law system and that the adaptation to the English common law has influenced the evolution of self-defense rights over a few centuries. That is one of the reasons why I included it as the first of the three arguments backing my hypothesis, while since I had to reach back in history quite considerable, it made common sense to start with this one. However, as I reach to the second argument (what pre-emptive strikes mean in international law and how 9/11 and the Bush Doctrine changed everything with the invasion of Iraq) and to the third argument (which is explicitly focuses on the theory of American exceptionalism) it will present excessive self-defense laws with a more complex approach.

None can argue about the violent history of the birth of the United States. A land inhabited by the tribes of Native Americans were gradually taken away by European Colonialism and their original owners were subjected to genocide, forced displacement and deadly diseases brought from overseas. The early European settlers felt empowered by the preliminary and underlying thoughts of a ‘White Man’s Burden’ to teach the “uncivilized” peoples common values deriving from Christianity and through that maintain the colonialist supremacy (Light 2017: 30). While effectively carrying out the inherent goal of ‘Manifest Destiny’ (Light 2017: 12), along with the Westward Expansion they ended up taking over the whole continent of North America by violence. The American environment for colonialists was looked upon as a harsh and unforgiving one, where one must be able to protect himself on his own from outside threats, including the Native American tribes and the almost intact, but dangerous wildlife.

The evolution of American self-defense rights can be split up into three main stages. The first two were very coincident with the principles of duty-to-retreat and the Castle Doctrine. The third stage is the emergence of the infamous SYG laws that expanded scope of the use of deadly force in the name of self-defense, covering not only one’s home but practically anywhere outside someone’s property. One of the main purposes of my thesis is to paint a realistic picture on how devastating the existence of SYG laws are. While the liberal political

theory of individualism and individuals' rights above everything else, in good faith may not intended to cause a human rights crisis of this kind to happen up until our time but data and high-profile cases show that they lead to criminal homicide acts to be legally justified. Data also shows that since these laws in existence, the rise in violent homicides is evident and there is no domestic or supranational institution at this moment that could prevent or at least control the situation. The Castle Doctrine, which concept is to allow individuals to defend themselves at home with any level of force necessary (including lethal force), is an auxiliary element to the principle of duty-to-retreat and both originates from English common law (Cheng & Hoekstra 2013: 824). On how the Castle Doctrine originated from English common law, Light puts it:

"The chief exception to the English duty to retreat was the castle doctrine, which originated in a 1604 case involving an officer of the Crown who had forcibly entered the home of a man named Semayne. Delivering the opinion in "Semayne's Case," attorney general Sir Edward Coke established the principle that officers seeking entry into a private dwelling must first announce themselves before entering. According to Coke, "The house of every one is to him as his castle and fortress, as well for his defence against injury and violence as for his repose."6 This decision popularized the expression "A man's house is his castle." The home was thereafter treated as a safe space for a citizen against both the intrusions of the state and the dangers of the world outside. Under the castle doctrine, a man did not have to retreat before fighting back against an intrusion on his home." (Light 2017: 27-28).

The currently in effect SYG laws are basically the extended versions of the Castle Doctrine. In the third chapter of this research with the example of Florida SYG law, I provide an analysis on each segment of its provisions and in certain parts there, the remains of the Castle Doctrine are clearly visible to this day. There were also two pivotal cases in the 1870s, that challenged the idea of duty-to-retreat and further embodied the idea of do-it-yourself (DIY) citizenship. Duty-to-retreat derived from English common law and was inherently "un-American" according to the court rulings in these two cases (Light 2017: 21). First was the Erwin v. State case from Ohio 1876, where an argument over the ownership of farm crops led to the father killing his son in self-defense. After the father, James M. Erwin appealed his second-degree murder conviction at the Ohio Supreme Court, the court overturned the decision and basically set the precedent for the rightful acts of a "true-man" and his liberty to decide in confronting a perpetrator driven by criminal acts with lethal force (Light 2017: 59). The other case was the Runyan v. State from Indiana a year later that had a very similar process of appealing a guilty verdict on manslaughter charges. John Runyan was sentenced to eight years in prison after he shot and killed Charles Presnall, but then the verdict was challenged at the Indiana

Supreme Court. The retrial concluded that John Runyan acted in self-defense and his acts did not call for duty-to-retreat as the court ruling reasoned that a “true-man” should not back up if he gets threatened by someone and has the right to defend himself even with lethal force (Light 2017: 60).

Along with the passage of the Florida SYG statue, there were several new concepts brought compared to what the Castle Doctrine did not have before. The most obvious concept is that the excessive use of force in self-defense now stretched out to not only the individuals’ home (which is her/his castle) but anywhere else as well. Furthermore, the use of lethal force is now also permitted, if someone tries to commit a forcible felony against another and in case the use of lethal force was justifiable under the provisions of this statute, immunity can be applied preventing civil and criminal prosecution of the individual acting in self-defense (Light 2017: 143). Furthermore, Light rightly points out one of the main legal requirements of the SYG laws that individuals must meet when they deliberate the use of lethal force and that is *reasonableness* (Light 2017: 138). During my breakdown of the Florida SYG statute in the third chapter, it will become obvious that the text of its provisions has two main concepts that practically legitimize the use of deadly force in self-defense. Both concepts based mainly on the perception of the individual acting in self-defense. One of the concepts is, if the individual gets threatened, depending on how that threat is perceived by him or her, can act back with deadly force. The other concept is, if one witnesses a forcible felony being committed by another individual, therefore can resort to the use of deadly force. What forcible felonies are according to this Florida statute is a wide range of criminal acts from a burglary, that can be non-violent, to murder.

1.3. The American exceptionalism and universal human rights

The main argument to substantiate what my hypothesis assumes, is due to the presence of American exceptionalism in modern-day U.S. foreign policy, which exhibits a behavior towards international human rights treaties that has a two-layered consequence. One consequence is how pre-emptive U.S. military operations were conducted the past few decades, sometimes with little care to what the UN legal framework allowed when it comes to the use of force and in a pre-emptive manner against other states of the international community. The second consequence is more direct to my main subject of examination and that is the excessive self-defense rights framework of dozens of states through SYG laws. Later in my thesis, I also present how other tools such as soft-law instruments and perhaps customary international law could potentially provide a supranational legal framework to prevent and control the use of deadly force in self-defense, however mainly due to the ideological qualities of American exceptionalism, this goal is far beyond reachable.

In this sub-chapter, I provide a theoretical overview on the theory of American exceptionalism and its correlation to universal human rights and treaties. Then, I focus on some of the generic aspects such as the institutional challenges in signing and ratifying some of the UN's binding human rights instruments. I found it evident that nowadays the pragmatic U.S. foreign policy approach is under negative influence due to the ideological setting provided by this theory. While also it is largely responsible for the neglective attitude of the U.S. towards UN human rights conventions that results in the inapplicability of generally accepted international human rights concepts such as the elimination of capital punishment. Similarly, to how the origins of excessive self-defense rights derived from English common law, the theory of American exceptionalism traces back to the birth of the United States as a country. This ideology is a powerfully influential one, that has provided an ideological framework shaping the Founding Fathers' approach in the draft of documents such as the Declaration of Independence in 1776 and the U.S. Constitution in 1787. French political thinker, Alexis de Tocqueville first used the definition 'American exceptionalism' in the 1830s and defined the U.S. as an original New World state. Since being the first to possess unique qualities such as how it reached independence from a power that was looked upon more tyrannical and distant as time passed by, it is inherently different from the rest of the international community (Koh 2003: 1481). Along the basic principles imbued with the underlying thoughts of the Enlightenment, the Declaration of Independence already had some aspects that we can consider as forerunners of today's inalienable human rights concepts such as equality by birth (Bradley 2010: 322). Although, equality was not applicable universally to everyone, unless the subjects were white men. Another major event was the Constitutional Convention in Philadelphia in 1787 that

resulted in the draft of the U.S. Constitution which is one of the oldest codified constitutions of a sovereign state in effect to this day. Practically this is the second document serving as a national framing document for government. Soon the Founding Fathers realized that even though they laid down the basis of a human rights-based approach in the newly created Constitution, further grinding was necessary and that resulted in the Bill of Rights of 1791. Concluding in the first ten Constitutional Amendments, that includes the protection of the individual's right to freedom of speech, right to a fair trial, freedom of religion and so on (basically freedoms that nowadays we take granted in liberal democracies), the then finished document was one of the major influencing mechanisms behind the creation of the international human rights framework, after the end of World War II (Goldsmith 2005: 311). Before I drift to the third core argument of this research, I present some examples on American exceptionalism and its presence in U.S. foreign policy since the 1790s until nowadays. President George Washington had already displayed the character of U.S. exceptionalism in his farewell address:

"Europe has a set of primary interests, which to us have none, or a very remote relation. Hence, she (Europe) must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence therefore it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics, or the ordinary combinations & collisions of her friendships, or enmities. Our detached & distant situation invites and enables us to pursue a different course." (George Washington's Farewell Address 1796).

Even though Washington's statement partially refers to isolationism and to the later established Monroe Doctrine, we can acknowledge the use of words relating to the idea of a nation and its people (the United States) being able to pursue a different course which also implicates being exceptional compared to others (Europe). 213 years later the ideology still has a profound presence in U.S. foreign policy. In the State Department's 2009 Agency Fiscal Report, the mission statement is:

"Advance freedom for the benefit of the American people and the international community by helping to build and sustain a more democratic, secure, and prosperous world composed of well-governed states that respond to the needs of their people, reduce widespread poverty, and act responsibly within the international system." (U.S. State Department Agency Financial Report 2009: 5).

This text produced by the U.S. Department of State (DOS) refers to U.S. involvement in global

affairs such as the Iraqi intervention of 2003, given the fact that this mission statement was done deep into the conflict after the invasion of Iraq and roughly 2 years before the first major withdrawal of U.S. troops from the area. It is remarkable how the mission statement places the word *American people* ahead of *international community*, implying that any military intervention carried out is primarily necessary because of the interest of American people and only then the rest of the world's citizens. Democracy promotion (or the export of it) as a responsibility also appears; more democratic and well-governed states are in for the interest for the United States and for all member states of the international community to prevent further conflict. Very similarly the 2014 report from the DOS highlights global challenges and the U.S. involvement in a consistent manner:

"The Department's mission is to shape and sustain a peaceful, prosperous, just, and democratic world and foster conditions for stability and progress for the benefit of the American people and people everywhere. This mission is shared with the USAID, ensuring we have a common path forward in partnership as we invest in the shared security and prosperity that will ultimately better prepare us for the challenges of tomorrow." (U.S. State Department Agency Financial Report 2014: 5).

The United States, considered to be as one the most outstanding advocates of universal human rights, has a long history of negligence towards international human rights treaties. Some international law scholars argue that this carelessness origins from the theory of American exceptionalism and the double-standard policy applied by the U.S. towards international human rights treaties (Goldsmith 1998: 365). However, my concern is not to examine merely its essentials cultivated by political thinkers such as Alexis de Tocqueville. I tend to approach the theory of American exceptionalism from a different aspect to draw conclusions to the idea of my hypothesis. In fact, I would rather substantiate that some of the qualities deriving from American exceptionalism are present both in the construction of foreign policy and the domestic lawmaking of the U.S., establishing vivid connections between the two fields. The American exceptionalism's approach to foreign affairs is even more significant when it comes to signing and ratifying UN international human rights treaties. According to the OHCHR, the U.S. has signed 9, and ratified only 5 out of the 18 major UN international human rights conventions and protocols as of today (OHCHR Dashboard 2022). This number is extremely low, especially when we consider the U.S. as one of the most prominent advocates of universal human rights in the international community. In comparison with states known for not promoting the importance of human rights protection progressively due to their currently dysfunctional governments, the now conflict-ridden Libya and Yemen both ratified 12 and 10 respectively (OHCHR Dashboard 2022). Even when the U.S. Senate occasionally ratifies

treaties of this kind, usually reservations, understandings, and declarations (RUDs) are applied as well. The International Covenant on Civil and Political Rights (ICCPR), which is basically an internationally assured “Bill of Rights” granting the citizens of the world with the most underlying and inalienable civil rights and liberties, was signed, and ratified by the U.S. but not without reservations. The table below shows the UN human rights treaties signed and ratified by the U.S. until now (OHCHR Dashboard, 2022).

United Nations human rights conventions and protocols[1]	Signature	Ratification
International Convention on the Elimination of All forms of Racial Discrimination (ICERD)	1966	1994
International Covenant on Civil and Political Rights (ICCPR)	1977	1992
Optional Protocol to the International Covenant on Civil and Political Rights	not signed	not ratified
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	not signed	not ratified
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1977	not ratified
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	not signed	not ratified
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	1980	not ratified
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	not signed	not ratified
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)	1988	1994
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	not signed	not ratified
Convention on the Rights of the Child (CRC)	1995	not ratified
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC)	2000	2002
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	2000	2002
Optional Protocol to the Convention on the Rights of the Child on a communications procedure	not signed	not ratified
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	not signed	not ratified
International Convention for the Protection of all Persons from Enforced Disappearance	not signed	not ratified
Convention on the Rights of Persons with Disabilities (CRPD)	2009	not ratified
Optional Protocol to the Convention on the Rights of Persons with Disabilities	not signed	not ratified

The application of RUDs is a major concern, since even if a legally binding international treaty gets signed and ratified, in many cases the U.S. Senate imposes elements that restrict the treaty to take complete legal effect. These RUDs are legal tools that include reservations on certain parts or provisions of a treaty, different interpretation of the law by states and simple declarations on why a certain provision is looked upon as unapplicable for a powerful state, even if the subjects of such document are inalienable and basic human rights (Goldsmith 2005: 311). In the past the U.S. government had a skeptical approach to international human rights treaties, and it was even more striking as time passed by. In the early 1950s, during the tenure of John Foster Dulles, who was serving as Secretary of State under Dwight D. Eisenhower's presidency, Dulles had already cast doubts over accepting future UN international human rights treaties (Bradley 1998: 428). Mainly owing to the efforts of President Jimmy Carter, who generally had a human right based governing approach and sent several UN treaties signed for ratification to the Senate, still decades had to pass, up until the late-1980s towards the end of Reagan Administration, when the U.S. Senate started the ratification processes of UN human rights instruments (Bradley 2010: 337). According to Curtis A. Bradley, international law professor at the University of Chicago, RUDs applied by the Senate can be split into six categories:

1. Targeting specific provisions in treaties, like Article 20 of the ICCPR on the usage of free speech in war propaganda, finding them not aligned to the U.S. constitutional setting
2. Making contradicting understandings on terms and definitions, Bradley takes examples from the Genocide Convention and the ICCPR once again
3. Adding an extra layer of legal mechanism in law harmonization, making international treaties in their original form impossible to be enforced by domestic courts based on their own interpretation, leaving U.S. Congress to draft implementing laws for the treaties
4. "Federalism Understanding" are applied, this generally means that provisions of a human rights treaty must be aligned to the Federal and State level jurisdictions and cannot "federalize" matters that belong to State jurisdiction[2]
5. Certain "ICJ clauses" are applied as well, requiring a "specific consent from the U.S. government to take disputes with other sovereign states in front of the International Court of Justice"

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[1] The dashboard of indicators of the UN OHCHR is available here for further review: htttps://indicators.ohchr.org.

[2] This is going to be very important later down in my research, where I examine the issue of non-binding human rights instruments like the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF).

6. Declining to consent to specific provisions of an international human rights treaty, like against Article 6 of the ICCPR concerning capital punishment for underaged persons (Bradley 2010: 339-340).

By the 1990s, major UN human rights treaties were finally ratified by the U.S., including the ICCPR, the ICERD and the UNCAT however, the Senate has applied RUDs to all three of them upon ratification (Bradley 2010: 337). A simple and interesting connection as well to the one half of the subject of my research (use of lethal force in the name of self-defense), as highlighted above, is that the U.S. Senate had RUDs against the ICCPRs provisions on death penalty (Goldsmith 2005: 312). The institution of capital punishment is strictly a jurisdiction of the States, just as the statutes regulating the use of lethal force. The Constitutional legality for this legal mechanism is due to the Tenth Amendment of the U.S. Constitution, that writes "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people" (Bradley 1998: 392). Contemporary U.S. foreign policy is heavily influenced by American exceptionalism, proof there to it is previously examined ratification process of the ICCPR. Harvard Law School professor, Jack Goldsmith in his publication on international human rights treaties and RUDs argues that the U.S. is not the only country following this type of attitude (Goldsmith 2005: 313). One prime example is the United Kingdom's approach to the acceptance of the ICCPR. The U.S. has applied only the second highest number of RUDs to the ICCPR, 12 in total which is 4 behind the United Kingdom's overall number of reservations (Goldsmith 2005: 314): Other Western liberal democracies, like Belgium and Denmark has also applied RUDs to the ICCPR, 6 and 5 respectively (Goldsmith 2005: 314).

„…like the United States, take reservations to important human rights treaties, decline to make these treaties domestically enforceable, and generally show a preference for local and regional human rights norms and institutions over international ones…" (Goldsmith 2015: 312).

What are the institutional limits of the implementing processes of international treaties on the domestic level? The answer lies behind the system of checks and balances and the U.S. form of government; it is a constitutional federal republic (Bradley 2010: 329-330). During the 1787 Constitutional Convention in Philadelphia, the Founding Fathers argued about the ways of states' representation on the national level. Out of the two proposed plans (the Virginia Plan favored larger states and the New Jersey Plan favored smaller states) came the Connecticut Compromise, which served for the establishment of a bicameral legislative body on the federal level. One house of the U.S. Congress, the Senate represents all states with an equal amount

of two senators, which means that all 50 states' interests are represented equally, regardless of their size and population. Senators' votes will reflect the interest of their constituents whom they represent, therefore the voting on the ratification process is conducted in a quite disintegrated manner (Bradley, 2010: 327). The system of checks and balances is also a very influential element; Article II of the Constitution gives the right to the President of the United States to sign international treaties, but the ratification requires a two-third majority vote conducted by the U.S. Senate (Bradley, 2000: 399). The whole mechanism is even more complex when it comes to the President's right to veto (Unger et al, 2016: 28-29). In case any international treaty or agreement eventually passes the Senate and subjected for ratification, the last word is the President's, who can impose a veto and therefore put an end to the implementation of binding international law instruments.

To conclude this chapter on RUDs and the American exceptionalism, I must highlight a Constitutional Amendment proposed by the late U.S. Senator John W. Bricker in the 1950s. The proposal made by his Bricker Amendment called for the control of the U.S. federal government and its powers related to international treaties. Republican Senators at the time, including Bricker, thought that international human rights treaties of the UN would interfere with the U.S. Constitution and legal framework, and with the implementation of such, the rights of the African American community would automatically expand (Unger et al 2016: 36). Let us not forget that this was the first half of the 1950s, before the start of the Civil Rights Movement and a decade before the acceptance of Civil Rights Act of 1964. The Bricker Amendment's goal was obviously to place obstacles against civil rights reforms that would have given more civil liberties to African American citizens, such as the right to vote in U.S. elections (Unger et al 2016: 37). Later in my thesis research, we will see how the work conducted by U.S. law enforcement also has a racial aspect, including the Black Americans being targeted disproportionately by police encounters where excessive use of force was applied.

1.4. Pragmatic examples in international law cases

In the last sub-chapter of Chapter I and to conclude this section, I examine two practical examples through case law, that helps us to understand how direct the effects can be the presence of American exceptionalism. Further issue is from the viewpoints of the American federal system and its constitutional background is that certain international treaties are ratified and then its provisions are nullified. What is truly remarkable is that international human rights treaties targeted at specific type of human rights, which in some cases may belong to the sole jurisdiction of U.S. states, even with the full compliance and ratification of that international treaty may not take effect, even though the provisions deriving from binding international law instruments must supersede both federal and state laws. In this case, the two subjects in human rights are capital punishment and the consular representation of foreign nationals abroad. First, the LaGrand case perfectly illustrates these previously dissected issues in a pragmatic manner and gives us an answer on how it looks like when the U.S. fails to comply with international law provisions targeted at areas, they consider untouchable by international human rights instruments. The other case I selected has a direct relevance to the second reasoning argument of my theory, since it is closely related to the events of September 11, 2001. Therefore, I also examine the legality of the Guantanamo Bay detention camp in Cuba.

The LaGrand case is a prime example of, due to the federal setting, the fact that certain jurisdictions belonging to the state level concludes in a disastrous enforcement of the ideological qualities of American exceptionalism. This case is mainly centered around the 1963 Vienna Convention on Consular Relations, an international treaty that the U.S. is a state party to and involves the issue of not allowing consular assistance to foreign nationals during criminal proceedings abroad. If the U.S. would have complied, with the ICCPR provisions addressing capital punishment without any RUDs, the outcome of the case could have been very different (Ash 2005: 6-7). The state of Arizona executed two German foreign nationals after the pair robbed a bank on January 7, 1982, that resulted in the death of a bank teller and several others suffered serious injuries. Both brothers, who were born in Germany, grew up in the United States but never acquired U.S. citizenship through their American stepparents. By December 1984, the criminal case trial concluded with the sentenced death penalties of both brothers at the Arizona Supreme Court (ICJ 2001: 1076). The state of Arizona made the sentencing and carried out the death penalty while they forbid German consular staff to provide consular assistance and representation for both of their citizens in custody – something that was not in line with several provisions from Article 36(1) Vienna Convention on Consular Relations such as:

"(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;

"(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action." (Harvard Law Review 2003: 2656).

The case ended up in front of the International Court of Justice (ICJ) where Germany argued that authorities of the state of Arizona were aware that both brothers are foreign nationals and the fact that they have not notified the German diplomatic representation in the U.S. violated Article 36 of the Convention (ICJ 2001: 1077). As described earlier in my previous sub-chapter, the U.S. carried out the death penalties and made the argument that criminal proceedings were on the state level and the existence of capital punishment are state jurisdictions (unless the subjects are charged with federal crimes) and therefore the Vienna Convention on Consular Relations' provisions are nullified in this case (Unger et al 2016: 34). From their viewpoint based through Arizona state law the capital punishment was a legitimized penalty. On the day of the second brother's execution, the governor of Arizona approved the death penalty while the day after the ICJ ruled that until the end of the hearings at their court, Arizona should postpone carrying out the sentence (ICJ 2001: 1079). Although it would not have changed the fact that carelessly the executions would have been carried out anyway, however it is truly remarkable how much disregard the U.S. exhibited and practically executed two foreign nationals based on their crimes committed on U.S. soil. The ICJ eventually ruled the U.S. did not comply with Article 36, paragraph 1(b), and paragraph 3 of the Vienna Convention on Consular Relations.[3]

[3] The full ICJ judgment of the LaGrand Case can be found here: (https://www.icj-cij.org/public/files/case-related/104/7738.pdf).

In these examined cases, it did not even matter whether the U.S. Senate ratified an international treaty or not, as we see from these two examples that even binding international treaties can have no effect on legal procedures and regulations of the U.S. government. Therefore, in the LaGrand case, it was made clear by the ICJ ruling that the U.S. did not comply with a binding international law instrument (the Vienna Convention on Consular Relations from 1963), to which they have legally subjected themselves to with its ratification prior the case occurred.

The existence of the Guantanamo Bay detention camp is slightly more special with regards to my thesis research, since it is a direct outcome of proceedings of the U.S. government's Global War on Terror. And while once again the argument can be made that the ideology of American exceptionalism is clearly present when it comes to the U.S. ran detention camp in Cuba and the "above the international law" nature. In 2002, under the George W. Bush Administration the War on Terror started and during its reprisals hundreds of individuals, suspected of committing or planned committing terrorist acts were transferred to the newly created detention camp in Guantanamo Bay, Cuba. The U.S. Congress reflecting on the attacks of 9/11 passed the bill of Authorization of Use of Military Force against Terrorist which statute provided a legal authorization for the U.S. President to use the military forces to track down and eliminate individuals suspected with the involvement of terrorist organizations like Al-Qaeda (Gill & Sliedregt 2005: 39). In practice, this detention camp is not above the U.S. federal law system and during several prisoners who were detained there launched lawsuits that resulted in the Supreme Court of the United States (SCOTUS) ruling them in their favor, granting them rights that would have been applied them if the camp was located somewhere on the contiguous United States (Finn 2009). It does not change the fact though that the goal with creating such facility was to extract information from detained individuals by the Central Intelligence Agency (CIA) with the fastest and some of the most drastic, inhumane ways to then fight terrorism in countries where the U.S. has already or was about to send military troops at the time. The Bush Administration set up institutions to execute this activity and that included military commissions that were responsible for prosecuting defendants charged with war crimes (Gill & Sliedregt 2005: 39). In the constitutional history of the U.S. there have been a long set precedent on the utilization of similar, non-civil prosecution commissions. Alike the military commissions in Guantanamo Bay, war criminals (of other armed conflicts the U.S. government was involved in throughout history) were also prosecuted by military commissions (Gonzales 2001). These military commissions were subjected to heavy criticism from American civil right advocate groups, public defenders and attorneys practicing in laws of war. According to these collective pressure groups the simple existence of such institution does not comply with the U.S. Constitution and assurances deriving from international human rights

treaties (Gill & Sliedregt 2005: 39). There is no legal assurance that these types of military commissions and their activities align to the framework granting basic human rights by the Universal Declaration of Human Rights (UDHR) (Gill & Sliedregt 2005: 39). Article 5 and 10 of the UDHR specifically addresses the universal applicability of everyone by "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." and that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." (Article 10, Universal Declaration of Human Rights). Furthermore, torture itself and cruel, inhumane, or degrading treatment, or punishment is prohibited in all states pursuing democratic practices with functional liberal constitutions granting the most basic human rights and civil liberties, while international assurances are also provided by the ICCPR and the UNCAT (as analyzed in my previous chapters, the United States is a state party to both UN Conventions). What is even more relevant that none of the detainees at Guantanamo Bay should be falling out of the scope of rights granted by the Geneva Conventions to all prisoners of war (Gill & Sliedregt 2005: 52-53).

During the Obama Administration, there have been several attempts for the closure of the Guantanamo Bay detention camp or at least decrease its inmate population. Right after Barack Obama was elected, there were 242 detainees in Guantanamo and during his double-term as POTUS he decreased this number to 179 (Lamothe 2017). However, the camp's closure did not happen until he reached end of his second presidential term as per the initial promise and neither his successor, President Donald Trump did not make any significant efforts to push towards the camp's closure. Rather, Trump argued about the financial cost per inmate ration and was the real driving force behind the potential closure of the prison, that eventually still did not happen (Baker 2019). When it comes to shutting down the facility, one of the main issues is convincing Congress (Unger et al 2016: 31), where regardless of a Republican or Democrat majority in both houses, the chances are very small due to budgetary reasons, since re-locating Guantanamo Bay's inmate population would cost an enormous amount of money (Boyer 2015).

Chapter II: Legal framework of the right to self-defense in the international system and the third main argument

2.1. International legal framework for the use of force in self-defense

In this chapter, I provide a general overview on what and how international law allows states to use force against each other. Another reason why I think that the existence of American exceptionalism in U.S. foreign policy is so instrumental is because it not only halts the advancement of universal human rights but also enables the U.S. to act and in some cases, where they seem to be above international law and therefore the rest of the states in the international community. The moral question deriving from this exceptional approach also might rise: in case one of the main (if not the number one) driving engines behind the advancement of universal human rights after World War II, pulls itself out from most of its international legal obligations and then conducts military operations as only the world's most powerful country is able to do, what type of example it sets for the rest of the international community?

"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary to maintain or restore international peace and security." (Article 51, UN Charter).

International law as per the UN Charter's Article 51 allows UN member states to legally use force against one another, if at least one of the following three criteria were met:

1. response to aggression,
2. self-defense,
3. or a resolution issued by the UN Security Council (Koh 2003: 1515).

The interpretation of Article 51 of the UN Charter has two conventional baselines. One interpretation argues that the self-defense cannot occur in case the argument for self-defense is unclear. For example, if there was no aggression, or any other military attack involved beforehand. This approach also the so-called 'restrictionism' which effectively forbids the use of force in self-defense unless a verified armed attack happened prior to the state wanting to

act in self-defense (Arend 2003: 92). The other interpretation that are the so-called 'counter-restrictionism' argues as:

"…the intent of the charter was not to restrict the preexisting customary right of anticipatory self-defense. Although the arguments of specific counter-restrictionists vary, a typical counter-restrictionist claim would be that the reference in Article 51 to an "inherent right" indicates that the charter's framers intended for a continuation of the broad pre–UN Charter customary right of anticipatory self-defense. The occurrence of an "armed attack" was just one circumstance that would empower the aggrieved state to act in self-defense. As the U.S. judge on the International Court of Justice (ICJ), Stephen Schwebel, noted in his dissent in Nicaragua v. U.S., Article 51 does not say "if, and only if, an armed attack the criteria for permissible self-defense has been necessity and proportionality occurs". It does not explicitly limit the exercise of self-defense to only the circumstance in which an armed attack has occurred." (Arend 2003: 92-93).

Moreover, there are debates on the interpretation of the provisions of Article 51 of the UN Charter in general. In French Article 51 refers to the term of "armed attack" as an "armed aggression" instead, which term is not as specific and can be easily interpreted other than an actual military attack on another state (Pierson 2004: 158). Unfortunately, the UN Charter generally does not specify either, what an "armed attack" exactly means and if we look at the use of force strictly in the name of self-defense, normally there must be always a UN Security Council resolution approving those acts. What constitutes as self-defense is also not clear and the logic that a state should first allow itself to be attacked, and then respond is slightly contradictory, since what if that initial attack was so powerful that the suffering state will have no means left to act in self-defense? That is why the ICJ did not explicitly rule out "anticipatory self-defense" in the 1986 case of Nicaragua v. United States (Gupta 2008: 185).

Customary international law also has a concept that allows pre-emptive self-defense but only if two specific criteria are met, each with a legal principle underlying. This customary international law instrument is the so-called Caroline Test which is to allow the use of pre-emptive force: "for the principle of self-defence, it has long been accepted that, for it to be invoked or justified, the necessity for action must be instant, overwhelming and leaving no choice of means and no moment for deliberation." (Arend 2003: 95). Therefore, the first requirement is *necessity* that practically means that all other peaceful methods were exhausted, and the state had to resort to the last option which is the use of military force. The other legal requirement is *proportionality* that is to not overcome with the proportion of force used in answer to the initial level posed by a threat (Arend 2003: 91). One of the main

questions is, if solely the possession of WMDs by a rogue state would legitimize an anticipatory military action in self-defense? According to customary international law and the Caroline Test yes, if there are no other peaceful solutions left and there is no moment for deliberation (Pierson 2004: 174). Although that is not the case, if we look at the institution of customary international law a bit more closely. The question whether customary international law has a binding aspect has been debated for a very long time by legal scholars and the international community. In the high-profile Nicaragua v. United States from 1986, the ICJ ruled that without a UN Security Council approval, there could be never a pre-emptive military action launched and for purposes of removing a foreign leader in another state, military intervention is strictly prohibited (Gupta 2008: 187).

For my analysis, both the response to an aggression (which translates to the 'imminent threat' clause in the SYG laws) and the self-defense criteria the most relevant to the Bush Doctrine, because that essentially draws a comparison to the SYG laws. The approval in the form of a resolution issued by the UN Security Council is practically replaced by the individual's own perception, who is involved in a threatening situation, more details regarding this can be found in the chapter where I did the analysis of the Florida SYG law. According to a White House issued statement, the U.S. invaded Iraq because it was perceived as "common sense and self-defense, America will act against such emerging threats before they are fully formed" (Gupta 2008: 182). It is important to notice that the Bush Doctrine's preventive strike was not legitimate by normative international law and standards, as it did not deplete any of the criteria set out by the U.N. Security Council (Bakirciouglu 2009: 1306-1307). The nature of preemptive wars/preventive strikes is characterized as an action taken when no other choice was left for a government**;** "a necessity of self-defence, instant overwhelming, leaving no choice of means, and no moment for deliberation." (Sofaer 2010: 111).

2.2. U.S. pre-emptive interventionism before 9/11

In this sub-chapter, I examine two major conflicts the U.S. was involved in before September 11, 2001. In both cases examined (the Vietnam War and the Gulf War), I carefully looked if there were any signs of reasoning behind the use of force in these conflicts conducted as pre-emptive military interventions and generally if the U.S. tried to justify it in the name of self-defense. Carrying out military preventive strikes and pre-emptive wars are not new U.S. foreign policy tools. During the first half of the 1800s, the Monroe Doctrine became the prominent influencing driving force in international politics of the U.S., which doctrine had called for European nations to not interfere in the Western Hemisphere, essentially laid down the basics for them to evolve into a hegemonical superpower. During the era of the Cold War there were instances when the U.S. utilized its armed forces for strictly pre-emptive measures – sometimes with only preparation and placing troops standby such as in the Cuban Missile Crisis of 1962 and in cases where the involvement in an actual armed conflict was imminent and led to the Vietnam-like quagmire, leading into a decade long U.S. military action (Gupta 2008: 182).

U.S. involvement in the Vietnam War is not only a matter of importance because for how long the conflict turned out to be and how costly it became for all sides involved. Due to the circumstances of the Cold War, where the idea that the opposing faction, the Soviet Union, and Communism was inherently against American values and posed a danger with the USSR spreading its economic-political system to surrounding countries the military interference in Vietnam had to be made. At that time the U.S. foreign policy approach was that if one state adopts Communist economic and political values, soon the neighboring states will follow suit and like a domino effect, will take over the whole world ultimately. The threat Vietnam posed globally and to the U.S. was not actually imminent and the self-defense claims were not made clearly. The Joint Resolution to Promote the Maintenance of International Peace and Security in Southeast Asia that gave authorization to the President to send U.S. armed forces to Vietnam, makes little effort in arguing that this military action will be necessary because Vietnam has been continuously attacking U.S. naval forces deployed in international waters. Rather, it argues that the northern portion of the state of Vietnam has been threatening the international peace and security of the region and the action is to defend its surrounding area and people:

“Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly

attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace; and

Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom; and

Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United Southeast Asia. States of America in Congress assembled, That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression." (H.J.Res.1145 - 88th Congress 1963-1964).

The second and third part of this Joint Resolution explicitly points out that the U.S. military involvement's goal is to assist the Southeast Asia Collective Defense Treaty who were previously requesting help from the international community. Interestingly, lawmakers of the House of Representatives who drafted this legal document did not argue that the U.S. will step in the Vietnam conflict because of its vessels were attacked by the North Vietnamese and therefore they must act in self-defense:

"SEC. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

SEC. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of Congress" (H.J.Res.1145 - 88th Congress 1963-1964).

The case with the rather short Gulf War in the early 1990s, is another great example for U.S. pre-emptive military interventions before the post-9/11 era. President George W. Bush's father, President George H. W. Bush utilized two military operations (Operation Desert Shield and Operation Desert Storm) against the Saddam Hussein-led Iraqi invasion in Kuwait. The justification behind the launch of this pre-emptive war was not clear by the Bush Administration at the time, therefore during the span of few months, the justifying reasons made for convincing the American public ranged from humanitarian intervention to pure national strategic interests (Levy 2008: 14). The first part of the Joint Resolution of the Authorization for Use of Military Force Against Iraq Resolution of 1991, immediately refers to the UN Security Council Resolution 678 legitimizing the U.S.-led coalition to counter Iraq in Kuwait by military force:

"To authorize the use of United States Armed Forces pursuant to United Nations Security Council Resolution 678.

Whereas the Government of Iraq without provocation invaded and occupied the territory of Kuwait on August 2, 1990;

Whereas both the House of Representatives (in H.J. Res. 658 of the 101st Congress) and the Senate (in S. Con. Res. 147 of the 101st Congress) have condemned Iraq's invasion of Kuwait and declared their support for international action to reserve Iraq's aggression;

Whereas, Iraq's conventional, chemical, biological, and nuclear weapons and ballistic missile programs and its demonstrated willingness to use weapons of mass destruction pose a grave threat to world peace;

…

Whereas the United Nations Security Council repeatedly affirmed the inherent right of individual and collective self-defense in response to the armed attack by Iraq against Kuwait in accordance with Article 51 of the United Nations Charter;" (H.J.Res.77 - 102nd Congress 1991-1992).

While this pre-emptive war was approved by the UN Security Council, further justification was pointed out in the Joint Resolution with a direct referral to the Article 51 of the UN Charter and its provision on what instances can constitute to be individual and collective self-defense. Therefore, it is very much clear that lawmakers of the U.S. Congress considered the pre-emptive military intervention in Kuwait as a matter of self-defense in the case of the Gulf War.

Although, it must be mentioned as well that the U.S. has not been the only state utilizing military forces in a pre-emptive manner. There were many examples throughout the past decades, two of them being Israel's pre-emptive attack against Egypt in 1967 and its preventive strike on Iraqi nuclear reactors in 1981. Both Israeli military interventions were conducted in a pre-emptive manner and while the one against Egypt in 1967 was approved by the UN Security Council and General Assembly, the preventive strike against Iraq in 1981 was cited as a direct violation of the UN Charter according to the UN Security Council (Gupta 2008: 183).

2.3. U.S. pre-emptive interventionism after 9/11

The attacks on September 11, 2001, was in direct correlation with the eventual invasions of Afghanistan and Iraq. The threat of international terrorism in the aftermath of 9/11 was enough to convince the American public opinion by the U.S. government to lead both military interventions. Even though, Article 51 of the UN Charter with its provisions on self-defense and while its general interpretation is highly debated, one fact is that unlike the invasion of Afghanistan, the invasion of Iraq was not followed by an imminent threat posed against the U.S. in the first place. Therefore, it was not a response to aggression, nor it was done in self-defense due to the absence of a preliminary attack, while there was also no clear UN Security Council Resolution that would have legitimized the Bush Administration to launch an invasion against Iraq (Gupta 2008: 187).

The war in Afghanistan, that eventually became the longest military conflict the U.S. was ever involved in, was not really a military intervention against a state itself nor a pre-emptive war launched against it. The events of 9/11 brought an unconventional approach to military warfare, where the targets were now members of a group, such as the terrorist organization of Al-Qaeda. As the Joint Resolution for the Authorization for Use of Military Force of 2001 described it:

“Whereas, on September 11, 2001, acts of treacherous violence were committed against the United States and its citizens; and

Whereas, such acts render it both necessary and appropriate that the United States exercise its rights to self-defense and to protect United States citizens both at home and abroad; and
Whereas, in light of the threat to the national security and foreign policy of the United States posed by these grave acts of violence; and

Whereas, such acts continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States; and

Whereas, the President has authority under the Constitution to take action to deter and prevent acts of international terrorism against the United States: Now, therefore, be it” (S.J.Res.23 - 107th Congress 2001-2002).

Now, the case with the later invasion of Iraq is a completely different other topic because it does not exhaust what international law allows when it comes to the use of military force in

self-defense and the Bush Doctrine's pre-emptive war concept is what I believe to have appeared in the domestic legislation of SYG laws (more on this later in my next chapter). After the terrorist attacks of September 11, 2001, the Bush Administration has initiated several enormous reforms. Reforms included the creation of the U.S. Department of Homeland Security (DHS), intelligence and anti-crime units, tightening the immigration system, a larger scope of surveillance capabilities of federal law enforcement and most importantly "asserting a novel right under international law to forced disarmament of any country that poses a gathering, through strategies of preemptive self-defense if necessary" (Koh, 2003: 1497). Fundamentally, international law would not specifically allow for any state to carry out a preventive strike or start a pre-emptive war on foreign lands. The International Court of Justice in The Hague and the UN Charter strictly prohibits preventive military operations carried out without a resolution issued by the UN Security Council (Soafer 2010: 110). In 2003, when the invasion of Iraq was started by the Bush Administration, one of the main arguments was to locate and eliminate the threat of potential weapons of mass destruction (WMDs) (Jervis 2003: 371), in the of the War on Terror. Ultimately, no WMDs were found in Iraq nor in the Hussein regime's possession (Bakircioglu 2009: 1297) and even though the legitimacy of the pre-emptive war came into question, the conflict continued for 8 years with debatable success. However, the conflict has also certainly resulted in a power vacuum and the country of Iraq was left in shambles from which they are yet to recover still. At the beginning, the idea of the preventive strike (a main component of the Bush Doctrine) was to fight global terrorism through military interventions in states that were "hosting" terrorist organizations. In the case of the Iraqi intervention the Bush Administration's argument on terrorist groups acquiring WMDs was indeed a very serious threat, especially in the light of the events of 9/11 (Bakircioglu 2009: 1305). Similarly, in 1981 Israel also carried out a preventive strike against a nuclear reactor in Iraq, where the Saddam Hussein regime was supposedly in progress of producing nuclear weapons (Jervis 2003: 370). Not only it is also clear how American exceptionalism was instrumental in launching a pre-emptive war against Iraq, but the military intervention also left chaos behind in the form of a power vacuum just as Sanja Gupta put it:

"…the remedy of unilateral pre-emptive attack holds grave con sequences for international peace and security. The UN Charter affords nations opportunities to defend themselves and to take unilateral action in self-defense under Article 51, but the Bush doctrine seeks to bypass this provision and respond to geopolitical threats from outside of the UN framework. In this, the doctrine raises US exceptionalism and unilateralism to unprecedented heights and in the process reinforces the interventionist, hegemonistic, and imperialistic tendencies of US power. In having attacked Iraq unilaterally, the USA has opened afresh the doors for future wars. Under the doctrine, if the USA has its way with other states it has identified as threats, it is

bound to plunge various regions of the world further into anarchy. Any radical deviation from internationally laid down principles would invite unbound troubles that would prove difficult to control, even for the USA.” (Gupta 2008: 193)

The preventive strike was carried out by the Bush administration, while only suspecting the Saddam Hussein regime to possess or even step on the pathway that leads to the acquisition of WMDs. The Joint Resolution to the Authorization for Use of Military Force Against Iraq Resolution of 2002, that legitimized the military intervention against Iraq specifically writes “Iraq's capability and willingness to use weapons of mass destruction against other nations and its own people.” (H.J.Res.114 - 107th Congress 2001-2002).

“Whereas in Public Law 105-235 (August 14, 1998), Congress concluded that Iraq's continuing weapons of mass destruction programs threatened vital United States interests and international peace and security, declared Iraq to be in “material and unacceptable breach of its international obligations” and urged the President to take appropriate action, in accordance with the Constitution and relevant laws of the United States, to bring Iraq into compliance with its international obligations;

…

Whereas Iraq's demonstrated capability and willingness to use weapons of mass destruction, the risk that the current Iraqi regime will either employ those weapons to launch a surprise attack against the United States or its Armed Forces or provide them to international terrorists who would do so, and the extreme magnitude of harm that would result to the United States and its citizens from such an attack, combine to justify action by the United States to defend itself;

…

Whereas Iraq both poses a continuing threat to the national security of the United States and international peace and security in the Persian Gulf region and remains in material and unacceptable breach of its international obligations by, among other things, continuing to possess and develop a significant chemical and biological weapons capability, actively seeking a nuclear weapons capability, and supporting and harboring terrorist organizations;” (H.J.Res.114 - 107th Congress 2001-2002).

Since one of the primary motivations for the invasion of Iraq was based upon the fear that the Saddam Hussein regime was on the way to acquire WMDs and that turned out to be a false assumption early on into the conflict, did not change the fact that U.S. armed forces remained in Iraq up until 2011. The U.S. invasion of Iraq was not different from any previous conflicts in the sense, that it was also driven to intervene by pure interests of national security. In the case

of the invasion of Iraq, those driving factors were the potential utilization of WMDs, which posed a collective security threat to the U.S. and the rest of the world.

What state legislators had in mind with drafting the SYG laws is to provide legality for the pre-emptive use of lethal force for civilians and law enforcement officials. While self-defense laws had a gradual evolution as I described at the beginning of this thesis research, U.S. military interventionism have reached a turning point with the invasion of Iraq in 2003. In the next chapter, it will become obvious that the SYG laws in practice follow the same pattern. A pattern that serves as a basis for my research discovery; 'shoot first and ask questions last'. The results of executing preventive strikes and implementing SYG laws can be damaging with analogous outcomes. The preventive strike against Iraq was damaging in the way, as we know how negative the outcome of the invasion was: the interference created a power vacuum in Iraq, leaving chaos behind and another Vietnam-like quagmire for the U.S. public and establishment. The parallel disapproval of both the Vietnam War and the invasion of Iraq was acknowledged by John Mueller, by calling the Iraqi intervention as "Iraq Syndrome" (Mueller 2005: 52-54). By the end of the next chapter, we will also learn how destructive the results of the ominous SYG laws are.

Furthermore, the American-led intervention against Iraq was a prime example for the fulfillment of American exceptionalism in modern U.S. foreign policy. For the third and most comprehensive argument I used for my hypothesis in this research is this theory. As international law scholar, Okan Bakiciouglu put it; "The preventive war doctrine attempts to institutionalize the state of American exceptionalism, which simply means exception from the rule of international law." (Bakiciouglu 2009: 1312). One of the main objectives of the military intervention against Iraq was to cease the capability of Saddam Hussein's regime to use weapons of mass destruction (Sofaer 2010: 110). However, ultimately this allegation proved to be incorrect, and the self-defense argument of the Bush Doctrine did not legitimize military interference (Bakiciouglu 2009: 1299). The U.S. intelligence under the Bush administration simply could not or did not want to conduct a comprehensive investigation to determine the legitimacy of the claim that Iraq already possessed WMDs. An Al Jazeera article even went as far to say that the Bush administration never cared about the claim of the Hussein regime acquiring WMDs. More importantly Bush wanted to re-establish the country's hegemonical status globally after September 11, by making a powerful and deterring example in the Middle East (Butt 2019).

Chapter III: Legal framework of the right of self-defense in the U.S.

3.1. The Florida example: analysis of the SYG and CD legal framework

Since most of my thesis research is based around one single statute from Florida, I believe it is important to carefully examine each if its general chapters and provisions. Because there is no legal regulation on the use of lethal force on the federal level (Inter-American Commission on Human Rights 2016: 103), it belongs solely to state jurisdiction. I handpicked to examine and analyze the provisions of the Florida SYG law that was passed in 2005 and which was followed by dozens of states in similar fashion (Light 207: 138). After each chapter of the Florida SYG law, I did a written follow-up including some referrals to case law and made arguments behind their legal concepts. From certain parts, it will become evidently clear that the Castle Doctrine and its provisions remain, which was the forerunner of this statute. The first section shows the main provisions of the Florida SYG statute from the Florida law Title XLVI and Chapter 776 on the Justifiable Use of Force.

“CHAPTER 776
JUSTIFIABLE USE OF FORCE
776.012 Use or threatened use of force in defense of person.
776.013 Home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm.
776.031 Use or threatened use of force in defense of property.
776.032 Immunity from criminal prosecution and civil action for justifiable use or threatened use of force.
776.041 Use or threatened use of force by aggressor.
776.05 Law enforcement officers; use of force in making an arrest.
776.051 Use or threatened use of force in resisting arrest or making an arrest or in the execution of a legal duty: prohibition.
776.06 Deadly force by a law enforcement or correctional officer.
776.07 Use of force to prevent escape.
776.08 Forcible felony.
776.085 Defense to civil action for damages; party convicted of forcible or attempted forcible felony.
776.09 Retention of records pertaining to persons found to be acting in lawful self-defense; expunction of criminal history records.” (Fla. Stat. §§ 776)

“776.012 Use or threatened use of force in defense of person. —

(1) A person is justified in using or threatening to use force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other’s imminent use of unlawful force. A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force.

(2) A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.” (Fla. Stat. §§ 776.012).

Paragraph (1) of Chapter 776.012 points out the most important provision that is established for individuals’ self-defense and practically forbids the use of deadly force but then very vaguely describes that the use of force to counter to potential threat is allowed. Paragraph (2) of the same chapter points out the rules for using lethal force and that is basically up to the person’s perception of the threat targeted against him or her. The name for the law ‘stand-your-ground’ comes from this section and explicitly refers to no duty to retreat. This can be interpreted as if someone was being threatened without a deadly weapon in possession, while the person who is threatened happen to have a firearm on himself or herself, using that weapon can be justified, even though the level of the posed threat does not meet in equivalency in what the other can use for self-defense. This is very important; we will see further down in the chapter how the State of Florida v. George Zimmerman case ended up with a not-guilty verdict. If one gets punched and ensues a physical scuffle, the person who has a deadly weapon can use it justified.

“776.013 Home protection; use or threatened use of deadly force; presumption of fear of death or great bodily harm. —

(1) A person who is in a dwelling or residence in which the person has a right to be has no duty to retreat and has the right to stand his or her ground and use or threaten to use:

(a) Nondeadly force against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other’s imminent use of unlawful force; or

(b) Deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony.

(2) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using or threatening to use defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used or threatened was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses or threatens to use defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(3) The presumption set forth in subsection (2) does not apply if:

(a) The person against whom the defensive force is used or threatened has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(b) The person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used or threatened; or

(c) The person who uses or threatens to use defensive force is engaged in a criminal activity or is using the dwelling, residence, or occupied vehicle to further a criminal activity; or

(d) The person against whom the defensive force is used or threatened is a law enforcement officer, as defined in s. 943.10(14), who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

(4) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(5) As used in this section, the term:

(a) "Dwelling" means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

(b) “Residence” means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.
(c) “Vehicle” means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.” (Fla. Stat. §§ 776.013).

This is essentially the so-called castle doctrine, that allows residents to protect themselves with any means necessary at places where they have a legally justified place to be, including their homes and vehicles. Paragraph (1), section (b) of this chapter allows the use of deadly force once again based upon the perception of the individual acting in self-defense, much like as if the subjects involved were outside.

“776.031 Use or threatened use of force in defense of property. —
(1) A person is justified in using or threatening to use force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other’s trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force.
(2) A person is justified in using or threatening to use deadly force only if he or she reasonably believes that such conduct is necessary to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.” (Fla. Stat. §§ 776.031).

This chapter essentially covers the use of lethal and non-lethal force against one another in defense of owned property. One of the better written chapters, where the lawmakers did not use vague language and specifically points out the rights in case of trespassing someone’s property or in case of break-ins. However, once again according to the provision in Section (2), lethal force is only allowed if the person acting in self-defense reasonable believes that the use of deadly force is necessary to prevent a forcible felony, or the counterpart is threatening to use deadly force, which is entirely based upon the perception of the individual acting in self-defense.

“776.032 Immunity from criminal prosecution and civil action for justifiable use or threatened use of force. —

(1) A person who uses or threatens to use force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in such conduct and is immune from criminal prosecution and civil action for the use or threatened use of such force by the person, personal representative, or heirs of the person against whom the force was used or threatened, unless the person against whom force was used or threatened is a law enforcement officer, as defined in s. 943.10(14), who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using or threatening to use force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, the term “criminal prosecution” includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) A law enforcement agency may use standard procedures for investigating the use or threatened use of force as described in subsection (1), but the agency may not arrest the person for using or threatening to use force unless it determines that there is probable cause that the force that was used or threatened was unlawful.

(3) The court shall award reasonable attorney’s fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).

(4) In a criminal prosecution, once a prima facie claim of self-defense immunity from criminal prosecution has been raised by the defendant at a pretrial immunity hearing, the burden of proof by clear and convincing evidence is on the party seeking to overcome the immunity from criminal prosecution provided in subsection (1).” (Fla. Stat. §§ 776.032).

This chapter of the SYG statute is particularly interesting because it states that anyone who uses or threatens to use force that is justified under the provisions, may be able to acquire legal immunity from criminal or civil prosecution, except if the force was applied against law enforcement officials with two exceptions. If a law enforcement officer either was not acting within professional procedures or does not remain unannounced while carrying out law enforcement activities, the use of force is prohibited against police officers. Earlier, in my sub-chapter 1.2. through Light’s text I referred to Semayne’s Case from the early 1600s, while discovering this statue’s origin in English common law.

“776.041 Use or threatened use of force by aggressor. —The justification described in the preceding sections of this chapter is not available to a person who:

(1) Is attempting to commit, committing, or escaping after the commission of, a forcible felony; or

(2) Initially provokes the use or threatened use of force against himself or herself, unless:

(a) Such force or threat of force is so great that the person reasonably believes that he or she is in imminent danger of death or great bodily harm and that he or she has exhausted every reasonable means to escape such danger other than the use or threatened use of force which is likely to cause death or great bodily harm to the assailant; or

(b) In good faith, the person withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use or threatened use of force, but the assailant continues or resumes the use or threatened use of force." (Fla. Stat. §§ 776.041).

Very important here is Paragraph (2) with subsection (a) that clearly states that if a person initially provokes someone and then tries to use force against that individual then that is not justified. However, there are several exceptions in subsection (a), where it allows the use of force in case of imminent danger of death or great bodily harm and along the remaining options to counter the unspecified threat exhausted, the last resort allowed which is the use of potentially lethal force. Once again, this up to the perception of the individuals involved and we will see further down in Chapter IV, where I describe the State of Florida v. George Zimmerman case. Even though circumstantial evidence showed that Mr. Zimmerman was acting against the 911 dispatchers' instructions to not follow and engage Mr. Martin, he still did and in due course caused the death of Mr. Martin, later arguing that he felt his life in immediate danger or great bodily harm during his attempt to stop Mr. Martin from a perceived criminal activity.

"776.05 Law enforcement officers; use of force in making an arrest. —

A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. The officer is justified in the use of any force:

(1) Which he or she reasonably believes to be necessary to defend himself or herself or another from bodily harm while making the arrest;

(2) When necessarily committed in retaking felons who have escaped; or

(3) When necessarily committed in arresting felons fleeing from justice. However, this subsection shall not constitute a defense in any civil action for damages brought for the wrongful use of deadly force unless the use of deadly force was necessary to prevent the arrest from being defeated by such flight and, when feasible, some warning had been given, and:

(a) The officer reasonably believes that the fleeing felon poses a threat of death or serious physical harm to the officer or others; or
(b) The officer reasonably believes that the fleeing felon has committed a crime involving the infliction or threatened infliction of serious physical harm to another person." (Fla. Stat. §§ 776.05).

This chapter is based entirely on the work of law enforcement officials and their possibilities on the use of force while making an arrest. What I must highlight here, is the fact that is suggested by the statute which is an acting police officer can even ask for the help of a bystander during an arrest and that includes cooperating with law enforcement if he or she agrees to.

"776.051 Use or threatened use of force in resisting arrest or making an arrest or in the execution of a legal duty; prohibition. —
(1) A person is not justified in the use or threatened use of force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.
(2) A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in the use of force if the arrest or execution of a legal duty is unlawful and known by him or her to be unlawful." (Fla. Stat. §§ 776.051).

This short chapter describes the very basis of police officers carrying out legal duties: an individual under arrest cannot resort to the use of force against the law enforcement officials involved.

"776.06 Deadly force by a law enforcement or correctional officer. —
(1) As applied to a law enforcement officer or correctional officer acting in the performance of his or her official duties, the term "deadly force" means force that is likely to cause death or great bodily harm and includes, but is not limited to:
(a) The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and
(b) The firing of a firearm at a vehicle in which the person to be arrested is riding.
(2)(a) The term "deadly force" does not include the discharge of a firearm by a law enforcement officer or correctional officer during and within the scope of his or her official duties which is loaded with a less-lethal munition. As used in this subsection, the term "less-

lethal munition" means a projectile that is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person's body.
(b) A law enforcement officer or a correctional officer is not liable in any civil or criminal action arising out of the use of any less-lethal munition in good faith during and within the scope of his or her official duties." (Fla. Stat. §§ 776.06).

The use of deadly force by law enforcement officials is solely focused on this chapter and includes several tools that are not designed to cause deadly harm, rather than to incapacitate with its projectiles. These include tasers and pepper ball guns that are usually categorized as "less-lethal" since they are not designed to kill but it may lead to the death of an individual.

"776.07 Use of force to prevent escape. —
(1) A law enforcement officer or other person who has an arrested person in his or her custody is justified in the use of any force which he or she reasonably believes to be necessary to prevent the escape of the arrested person from custody.
(2) A correctional officer or other law enforcement officer is justified in the use of force, including deadly force, which he or she reasonably believes to be necessary to prevent the escape from a penal institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense." (Fla. Stat. §§ 776.07).

Another very interesting remark of this provision, where it clearly states that the use of any kind of force, including lethal, when a law enforcement official reasonably believe that it is necessary to prevent a felon or a suspect to escape. In Chapter IV where I examine case law related to the use of deadly force and how their landmark rulings have changed the evolution of the use of deadly force, we see that in the case Tennessee v. Garner this was first struck down by the Supreme Court of the United States in the mid-1980s.

"776.08 Forcible felony. —
"Forcible felony" means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual." (Fla. Stat. §§ 776.08).

This short chapter describes what the Florida SYG law means under forcible felony, listing all the crimes categorized under its definition. The combination of an existing forcible felony and

its perception of the individuals who claim self-defense is in direct correlation with one another. In the previously addressed State of Florida v. George Zimmerman case, Mr. Zimmerman was suspecting Mr. Martin to commit a burglary, which is forcible felony under Florida state law.

“776.085 Defense to civil action for damages; party convicted of forcible or attempted forcible felony. —

(1) It shall be a defense to any action for damages for personal injury or wrongful death, or for injury to property, that such action arose from injury sustained by a participant during the commission or attempted commission of a forcible felony. The defense authorized by this section shall be established by evidence that the participant has been convicted of such forcible felony or attempted forcible felony, or by proof of the commission of such crime or attempted crime by a preponderance of the evidence.

(2) For the purposes of this section, the term “forcible felony” shall have the same meaning as in s. 776.08.

(3) Any civil action in which the defense recognized by this section is raised shall be stayed by the court on the motion of the civil defendant during the pendency of any criminal action which forms the basis for the defense, unless the court finds that a conviction in the criminal action would not form a valid defense under this section.

(4) In any civil action where a party prevails based on the defense created by this section:

(a) The losing party, if convicted of and incarcerated for the crime or attempted crime, shall, as determined by the court, lose any privileges provided by the correctional facility, including, but not limited to:

1. Canteen purchases;
2. Telephone access;
3. Outdoor exercise;
4. Use of the library; and
5. Visitation.

(b) The court shall award a reasonable attorney’s fee to be paid to the prevailing party in equal amounts by the losing party and the losing party’s attorney; however, the losing party’s attorney is not personally responsible if he or she has acted in good faith, based on the representations of his or her client. If the losing party is incarcerated for the crime or attempted crime and has insufficient assets to cover payment of the costs of the action and the award of fees pursuant to this paragraph, the party shall, as determined by the court, be required to pay by deduction from any payments the prisoner receives while incarcerated.

(c) If the losing party is incarcerated for the crime or attempted crime, the court shall issue a written order containing its findings and ruling pursuant to paragraphs (a) and (b) and shall

direct that a certified copy be forwarded to the appropriate correctional institution or facility." (Fla. Stat. §§ 776.085).

"776.09 Retention of records pertaining to persons found to be acting in lawful self-defense; expunction of criminal history records. —
(1) Whenever the state attorney or statewide prosecutor dismisses an information, indictment, or other charging document, or decides not to file an information, indictment, or other charging document because of a finding that the person accused acted in lawful self-defense pursuant to the provisions related to the justifiable use of force in this chapter, that finding shall be documented in writing and retained in the files of the state attorney or statewide prosecutor.
(2) Whenever a court dismisses an information, indictment, or other charging document because of a finding that the person accused acted in lawful self-defense pursuant to the provisions related to the justifiable use of force in this chapter, that finding shall be recorded in an order or memorandum, which shall be retained in the court's records.
(3) Under either condition described in subsection (1) or subsection (2), the person accused may apply for a certificate of eligibility to expunge the associated criminal history record, pursuant to s. 943.0578, notwithstanding the eligibility requirements prescribed in s. 943.0585(1) or (2)." (Fla. Stat. §§ 776.09).

I took the analysis of the last two chapters of the Florida SYG law altogether, since they all make a reference to Chapter 776.08, which is the define what a forcible felony is. The last two chapters outline civil and criminal court proceedings and more importantly entitles state attorneys and statewide prosecutors to immediately dismiss an indictment, if based on all available evidence, they found an individual lawfully acting in self-defense while that individual applied potentially deadly force. The obsolete jury indictment system and its remarkable outcomes are analyzed further down in Chapter 5.3 of my thesis.

This was the first pro self-defense SYG law, which was enacted in 2005 and was signed by then-Florida governor Jeb Bush, the younger brother of President George W. Bush, which was the newest addition to Florida's at the time already wide range of legal allowances when it comes to the individuals' right to self-defense (Chuck 2013). The SYG laws have a different variation which is the so-called Castle Doctrine. This was one of the earlier statues, like the currently in effect SYG laws, this statute had its limitations, only allowing Florida residents to defend themselves against an outstanding threat on their property such as their homes inside their vehicles or anywhere they had the reasonable right to remain (Goodnough 2005). Further down in my work I show that certain U.S. states only have the CD type of self-defense laws to

this day. Effectively the SYG law erases the principles of duty-to-retreat that in practice calls for the individuals' responsibility to withdraw from a potential confrontation, whether that confrontation bears the threat of serious harm or injury. This also means that individuals could only resort to the use of pre-emptive force when there were no other means for fleeing left (Garrett 2017). The SYG-type laws also allow individuals to not only respond with equal counterforce but whatever means necessary, even if the self-defense method outweighs the initial threat. Usually, this is the main reason why these excessive self-defense laws are highly debated in cases involving the argument of self-defense. Perfect example for this is State of Florida v. George Zimmerman case, where a 17-year-old, unarmed Trayvon Martin was shot and killed during a physical scuffle between the two. The defense and Mr. Zimmerman himself argued that during this physical confrontation he felt his own life in danger (Alvarez & Williams 2012) – something that the SYG law in Florida specifically highlights and that is the statue's allowance on the perception of threat which is solely up to the individuals involved. The Chief of the Miami Police Department, John F. Timoney has previously expressed his concerns over the Florida SYG law's draft and its eventual acceptance by Florida lawmakers. During his tenure as Police Chief, he has prioritized the limitation of the use of lethal force within his own police department (Goodnough 2005). As seen above, the Florida SYG statute clearly states at the beginning:

"A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony." (Fla. Stat. §§ 776.012 (1)).

This part of the statute's text suggests that the amount of threat is based on the perception of the person attacked or involved in an altercation. Therefore, even a fistfight could be interpreted by someone that could cause "imminent death or great bodily harm to himself or herself or another" and that eventually justifies the use of deadly force. This was the main defense argument used by Mr. Zimmerman in his second-degree murder trial, after he shot and killed the 17-year-old Trayvon Martin (Ward 2015: 108-110). While George Zimmerman was a civilian, acting as a volunteer member of the local neighborhood watch, the next case involved a police officer. Another similar situation like the Trayvon Martin's case, was the one where police officer Darren Wilson got into a physical altercation with Michael Brown. Officer Wilson then shot 12 times towards the unarmed Mr. Brown, from around 50 meters in Ferguson, Missouri. Six of these shots struck the victim, killing him at the scene (Buchanan et al, 2015). The grand jury, made up of 9 white and 3 black people did not indict Wilson on murder charges (Buchanan et al 2015), who "reasonable believed" to be acting in self-

defense, because the 18-year-old, unarmed high school student posed a threat that could cause “imminent death or great bodily harm” to anybody from more than a hundred feet (Ward 2015: 116). The element of institutional racism was argued in both highly publicized cases, same way as statistics prove that racism is a key factor in police conducted killings. According to the Centers for Disease Control and Prevention (CDC) 27.6% of the victims killed by law enforcement from 1999 to 2013 were black, even though they represent around 13% of the U.S. population (Amnesty International 2015: 4). In 2019, the Florida Supreme Court ruled that its stand-your-ground law is applicable for law enforcement officers in the same exact way as it is for civilians, verifying that this statute grants the same self-defense rights for everyone (Light 2019).

Chapter IV: Data and case law

4.1. Data on SYG laws – how destructive they are?

According to the Centers of Disease Control (CDC), after the Florida SYG law was enacted in 2005, the number of homicides has increased. Before the passage of this law, between January 1999 and October 2005 there was on average 82 homicides a month state-wide, after October 2005 until 2014 this number was 99 on average, which is a 21% increase (Mohney 2016). The regulation on the use of lethal force (or any degree of force to that extent) is an exclusive jurisdiction on the state level, therefore there can be differences between states and even between different police departments and their regulations (Amnesty International 2015: 17). Since U.S. states do not have a comprehensive reporting system (in a later chapter I further examine the issue of reporting and the absence of a centralized system with federal guidelines), neither does the federal government (Amnesty International 2015: 21), therefore most of the data had to be concluded from media conglomerates and their collected data from direct sources based through media reporting. A study between 2000 and 2010 also concluded that the existence of Castle Doctrine statutes not only did not deter crime (what purpose partly they were ought to serve) but also increased homicide rates by around 8% in the examined states (Cheng & Hoekstra 2013: 849).

In this chapter along with the presentation of collected data from secondary sources, I have also examined several high-profile cases and their rulings. In these cases, the applicability of self-defense and the use of lethal force was thoroughly examined, all of them met serious national media coverage along with scrutiny by the relevant authorities and legal institutions.

It is clear how negative the outcome of the Iraqi intervention was for all sides involved. The stand-your-ground laws also have a seemingly uncontrollable, destructive result. These statutes are proven to escalate the numbers and rates of state-wide homicides on an annual basis. Data distracted from the CDC statistics had shown a 21% rise in Florida homicides, after the Florida SYG law was enacted (Mohney 2016). Moreover, states with pro self-defense statutes tend to have a higher firearm mortality rate (CDC 2022). The tables below show the top 10 states with the highest firearm mortality rates; all these states have SYG laws in effect. Data will also show that the top 10 states with the lowest firearm homicide rates have mixed legal backgrounds, ranging from the duty-to-retreat principle, which does not allow individuals to use deadly force in self-defense (Chuck 2013), to the Castle Doctrine. The Amnesty International also targeted criticism against the federal and state governments for the lack of institutions set up to adequately track cases related to unarmed citizens being shot and killed

by the police (Amnesty International 2015: 4). Since there is no official centralized data collected by the federal government nor state governments, journalists have started to gather and track cases from the field, where law enforcement used excessive and lethal force. First, I reviewed data from the CDC, based on their data recorded in 2005. That is the earliest year the CDC has official data from and that is also the same year when the first SYG law was passed in Florida. I wanted to see if states where SYG laws and similar statues promoting excessive self-defense rights in effect, had seen any increase or decrease in the number of firearms caused deaths compared to other states where DTR is present or no SGY laws were enacted at all. Although there could be other relevant aspects on why certain U.S. states have a higher percentage of violent firearm caused deaths, such as poverty levels and firearm ownership, but the main goal here is to see the legal background of individuals' self-defense. The first table shows the top 10 states with the highest rates of firearm mortality in the year of 2015 (CDC Firearm Mortality by State 2022):

	U.S. State and firearm mortality in 2005	**Per 100,000 residents**	**Number of deaths**	**Legal background**
1.	Louisiana	18.5 / 100,000	858	Castle Doctrine[4]
2.	Alaska	17.5 / 100,000	116	Castle Doctrine[5]
3.	Montana	16.9 / 100,000	161	Castle Doctrine[6]
4.	Nevada	16.1 / 100,000	390	Castle Doctrine[7]
5.	Arizona	16.1 / 100,000	934	Castle Doctrine[8]
6.	Tennessee	16.0 / 100,000	976	Castle Doctrine[9]
7.	Mississippi	16.0 / 100,000	455	Castle Doctrine[10]
8.	Alabama	16.0 / 100,000	736	Castle Doctrine[11]
9.	Arkansas	15.7 / 100,000	439	Castle Doctrine[12]
10.	Idaho	14.1 / 100,000	195	Castle Doctrine[13]

The table below shows the top 10 most dangerous states when it comes to firearm mortality per 100,000 residents in the year 2015 (CDC Firearm Mortality by State 2022):

[4] La. Rev. Stat. Ann. § 14:19(C), (D); 14:20(C), (D).
[5] Ala. Code § 13A-3-23(b)
[6] Mont. Code. Ann. § 45-3-110.
[7] Nev. Rev. Stat. Ann. § 200.120(2).
[8] Ariz. Rev. Stat. §§ 13-405(B); 13-411(B); 13-418(B).
[9] Tenn. Code Ann. § 39-11-611(b)(2).
[10] Miss. Code. Ann. § 97-3-15(4).
[11] Ala. Code § 13A-3-23(b).
[12] 2021 AR SB 24, amending Arkansas Code § 5-2-607.
[13] Idaho Code § 19-202A(3).

	U.S. State and firearm mortality in 2015	Per 100,000 residents	Number of deaths	Legal background
1.	Alaska	23.4 / 100,000	177	Stand-your-ground[14]
2.	Louisiana	20.4 / 100,000	952	Stand-your-ground[15]
3.	Alabama	19.6 / 100,000	958	Stand-your-ground[16]
4.	Mississippi	19.6 / 100,000	589	Stand-your-ground[17]
5.	Wyoming	19.6 / 100,000	113	Stand-your-ground[18]
6.	Montana	19.2 / 100,000	205	Stand-your-ground[19]
7.	New Mexico	18.6 / 100,000	390	Stand-your-ground [20]
8.	Missouri	18.1 / 100,000	1,094	Stand-your-ground[21]
9.	Oklahoma	18.0 / 100,000	706	Stand-your-ground[22]
10.	South Carolina	17.3 / 100,000	850	Stand-your-ground[23]

Except for New Mexico, the top nine states have stand-your-ground laws in effect (Giffords 2022). Since the CD is a restricted version of SYG laws in scope of applicability, we can safely conclude that the ten most dangerous states by firearm mortality are ones where the legal background is a lot more lenient when it comes to the use of lethal force. While Alaska had the highest rate of firearm mortality rate in 2015, it is striking that both Louisiana and Alabama with similar population had very similar, close to a thousand deaths in the year or subject.

[14] Ala. Code § 13A-3-23(b)
[15] La. Rev. Stat. Ann. § 14:19(C), (D); 14:20(C), (D).
[16] Ala. Code § 13A-3-23(b).
[17] Miss. Code. Ann. § 97-3-15(4).
[18] Wyo. Stat. Ann.§ 6-2-602(a), (e), (f).
[19] Mont. Code. Ann. § 45-3-110.
[20] State v. Horton, 57 N.M. 257, 261 (1953).
[21] Mo. Rev. Stat. § 563.031.3(3).
[22] Okla. Stat. Ann. tit. 21, § 1289.25(D).
[23] S.C. Code § 16-11-440(C).

Very similar data from 2019, before the pandemic began with a slight rise in homicide rates four years later (CDC Firearm Mortality by State 2022). Another interesting note is that the state of Arkansas since 2019 have enacted a SYG law but at the time in 2019 for which the CDC collected data for they only had SYG by Court Decision (State v. Horton, 57 N.M. 257, 261 (1953)).

	U.S. State and firearm mortality in 2019	**Per 100,000 residents**	**Number of deaths**	**Legal background**
1.	Alaska	24.4 / 100,000	179	Stand-your-ground[24]
2.	Mississippi	24.2 / 100,000	710	Stand-your-ground[25]
3.	Wyoming	22.3 / 100,000	133	Stand-your-ground[26]
4.	New Mexico	22.3 / 100,000	471	Stand-your-ground[27]
5.	Alabama	22.2 / 100,000	1,076	Stand-your-ground[28]
6.	Louisiana	22.1 / 100,000	1,013	Stand-your-ground[29]
7.	Missouri	20.6 / 100,000	1,252	Stand-your-ground[30]
8.	South Carolina	19.9 / 100,000	1,012	Stand-your-ground[31]
9.	Arkansas	19.3 / 100,000	580	Castle Doctrine[32]
10.	Montana	19.0 / 100,000	209	Stand-your-ground[33]

[24] Ala. Code § 13A-3-23(b)
[25] Miss. Code. Ann. § 97-3-15(4).
[26] Wyo. Stat. Ann.§ 6-2-602(a), (e), (f).
[27] State v. Horton, 57 N.M. 257, 261 (1953).
[28] Ala. Code § 13A-3-23(b).
[29] La. Rev. Stat. Ann. § 14:19(C), (D); 14:20(C), (D).
[30] Mo. Rev. Stat. § 563.031.3(3).
[31] S.C. Code § 16-11-440(C).
[32] 2021 AR SB 24, amending Arkansas Code § 5-2-607.
[33] Mont. Code. Ann. § 45-3-110.

The last table shows the top 10 states with the least amount of firearm deaths per 100,000 residents. The legal background of these states is slightly mixed, because for example California and Vermont do not have a statutory SYG law enacted but customary case law established the principle of no duty-to-retreat in public through rulings in landmark cases, while Iowa has a statutory SYG law enacted (Giffords 2022).

	U.S. State and firearm mortality in 2019	**Per 100,000 residents**	**Number of deaths**	**Legal background**
1.	Massachusetts	3.4 / 100,000	247	Duty to retreat[34]
2.	New York	3.9 / 100,000	804	Duty to retreat [35]
3.	New Jersey	4.1 / 100,000	368	Duty to retreat[36]
4.	Hawaii	4.4 / 100,000	62	Duty to retreat [37]
5.	Rhode Island	4.6 / 100,000	48	Duty to retreat [38]
6.	Connecticut	5.3 / 100,000	190	Duty to retreat[39]
7.	California	7.2 / 100,000	2,945	Stand-your-ground[40]
8.	Minnesota	8.1 / 100,000	465	Duty to retreat [41]
9.	Iowa	9.1 / 100,000	294	Stand-your-ground[42]
10.	Vermont	9.3 / 100,000	67	Stand-your-ground[43]

[34] No SYG statute enacted
[35] No SYG statute enacted
[36] No SYG statute enacted
[37] No SYG statute enacted
[38] No SYG statute enacted
[39] No SYG statute enacted
[40] See e.g. People v. Ye Park, 62 Cal. 204 (1882); People v. Collins, 189 Cal. App. 2d 575 (1961); People v. Hughes, 107 Cal. App. 2d 487 (1951); People v. Hatchett, 56 Cal. App. 2d 20 (1942)
[41] No SYG statute enacted
[42] Iowa Code § 704.1(3).
[43] State v. Hatcher, 167 Vt. 338, 348 (1997).

4.2. Specific focus on the issue law enforcement and race

This sub-chapter is based on the work of law enforcement and its circumstantial racial aspect. According to the data from the CDC and to the findings of an Amnesty International study from 2015 suggest that African Americans disproportionally fall victims of law enforcement procedures and police use of lethal force. While around 13% of the American population are African Americans, between 1999 and 2013, 27.6% of the people killed by law enforcement were black and that meant 6,338 African American individuals (Amnesty International 2015: 10). Just in 2014, around 1,1149 people were shot by the authorities, and this meant 304 African Americans while in 2015, based on The Guardian's collected data 1,139 people were killed, 307 of them were African Americans and a record, 223 of those who were killed in this year were unarmed, 75 of them were blacks (Inter-American Commission on Human Rights 2016: 6). These numbers suggest that racial profiling as a factor most likely played a part in police activities. According to the Florida-based Tampa Bay Times media source, they have examined 237 court cases that included the argument of self-defense on the legal basis of the Florida SYG law in the resulted in the killings of African Americans. 73% of those cases concluded with no indictments compared to 59% of those of the same case profile where the victims where non-African Americans (Martin et al 2012). According to the Washington Post since 2015, 7,867 people were killed by the police and 1,718 were black (Washington Post 2022).

Race of victims	**Number of deaths since January 1, 2015, until October 31, 2022 (7,867 in total)**	**Percentage of the deceased per race for the period in subject**
White	3,239	41.17%
African American	1,718	21.83%
Hispanic	1,141	14.50%
Other	261	3.31%
Unknown	1,508	19.16%

4.3. Tennessee v. Garner

The first case I selected to examine brought a landmark ruling, where the law enforcement use of deadly force came under national scrutiny. It involves a burglary from 1974 in Memphis, Tennessee, where the arriving police officers on scene found a 15-year-old suspect, Edward Garner trying to escape them. While fleeing, the unarmed Garner was fatally shot from behind by one of the pursuing officers. The victim's father filed a civil lawsuit which case eventually ended up in front of the Supreme Court of the United States (SCOTUS) and in its ruling concluded with the principle of "reasonableness" based on the U.S. Constitution's Fourth Amendment (Inter-American Commission on Human Rights 2016: 103). Based on this landmark federal ruling, authorities were no longer allowed to use deadly force against a fleeing individual unless the individual poses an imminent and serious threat or bodily harm to the police officers and others involved (Amnesty International 2015: 17). Since the U.S. Constitution does not differentiate or categorize the use of lethal force, the jurisdiction here belongs to the states and that is why the emergence of the SYG laws are so concerning. The SCOTUS in its ruling argued that with the law enforcement officers' use of lethal force was clearly against the principle of reasonableness:

"The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, non dangerous suspect by shooting him dead. The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against such fleeing suspects." (Amnesty International 2015: 58).

With another remark made by the Inter-American Commission on Human Rights, in the SCOTUS ruling based on the protected rights of the Fourth Amendment of the U.S. Constitution, the SYG type laws can be placed in clear contrast to what the SCOTUS concluded:

"Tennessee v. Garner, 471 U.S. 1 (1985), is a civil case in which the Supreme Court of the United States held that, under the Fourth Amendment, when a law enforcement officer is pursuing a fleeing suspect, the officer may not use deadly force to prevent escape unless "the officer has probable cause to believe that the suspect poses a significant threat of death or

serious physical injury to the officer or others." It was found that use of deadly force to prevent escape is an unreasonable seizure under the Fourth Amendment, in the absence of probable cause that the fleeing suspect posed a physical danger." (Inter-American Commission on Human Rights 2016: 40).

While the SCOTUS ruled that it is prohibited to use deadly force against a fleeing felon and only a reasonable amount of force is allowed to prevent him or her from escape, even if that person is someone who may have committed a forcible felony. In the upcoming cases in this chapter, we see the clear justification for the use of deadly force under the provisions of the current SYG statues. These new generational statutes promoting the excessive and pre-emptive use of lethal force overlook the principle of reasonableness and replaces it with complete liberty of personal perception that is legally supported by the SYG type laws. This legal support is partly due to the vagueness of the SYG laws' texts, and the individual perception practically replaces the legal principle of reasonableness.

4.5. Trayvon Martin

To incorporate the legal analysis into practical examples, one of the most adequate cases is the highly publicized State of Florida v. George Zimmerman trial and its criminal proceedings that concluded with Mr. Zimmerman's eventual acquittal. One of the main reasons why I also find this case to be one of the most important ones for my research is because it involves no law enforcement aspect when it comes to the use of force in self-defense. The presented data earlier in this chapter already showed that the presence of SYG laws has a universal effect and does have negative outcomes when it comes to violent firearms use. Due to the surrounding details of the case, the infamous SYG law in Florida became the highlight of news coverage and sparked national debates on its legality and necessity. As the Florida SYG law states:

"A person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be." (Fla. Stat. §§ 776.013).

This chapter of the statute was enough alone to convince the jury that Mr. Zimmerman has acted in self-defense when he caused the death of the 17-year-old Trayvon Martin. During the trial Mr. Zimmerman and his defense team corroborated the provisions of the Florida state statute on the use of lethal force in self-defense successfully (Ward 2015: 90-94). Based on his own perception he felt his life in immediate danger during the physical scuffle that ensued after, according to Mr. Zimmerman, Mr. Martin tried to reach for his handgun (Alvarez & Williams 2012). It all started when Mr. Zimmerman, a volunteer of the local neighborhood watch group during his volunteering shift came across Mr. Martin, whom he found suspiciously acting and according to him, reasonably believed that Mr. Martin was about in course of committing a forcible felony, a burglary (Herald 2012). Zimmerman's suspicion may have been biased and racially profiled Martin, this is semi-substantiated in a bad quality emergency call (Muir & Katrandijan 2012), he made on the emergency line. Racist remarks can be heard during the 911 call, but it ultimately it could not be proved that it was targeted against Martin (Botelho & Yan 2013). Lead detective Chris Serino challenged Mr. Zimmerman on his racist remarks (Alvarez & Williams 2012) and the relatively minor injuries suffered by both individuals, besides the gunshot wound that killed Mr. Martin. According to court documents,

Mr. Zimmerman has been also suffering from an attention deficit disorder and for that he was taking medication (Alvarez & Williams 2012). For a guilty verdict on Mr. Zimmerman's second-degree murder charge a jury made up of six people would have had to agree, while proving that the murder Mr. Zimmerman committed was "done from ill will, hatred, spite or an evil intent" and would be "of such a nature that the act itself indicates an indifference to human life" however on these grounds he was acquitted (Botelho & Yan, 2013). The jury during its deliberation closely examined the Florida SYG law and its provisions which ultimately entitled Mr. Zimmerman with excessive self-defense lines that covered his actions (Kessler 2014).

4.6. Tamir Rice

No other case can present the phenomena of the use of lethal force by law enforcement in a pre-emptive manner better, which I could argue that was also done with gross recklessness. Unfortunately, the fact of human error can always play part in situations where law enforcement must act in the matter of split seconds and unclear communication can lead to fatal outcomes. The 12-year-old Tamir Rice was out in a playground in Cleveland, Ohio playing with a firearm looking object. The emergency line dispatcher did not specify the caller's description to the dispatched police unit, however the person who called in specified that most likely the firearm looking object was a "plastic toy handgun" (Izadi & Holley 2014). The public surveillance video footage of the area shows the arriving patrol officers, one of them who was still a rookie accompanied by his training officer, opening fire without hesitation while exiting their car almost like in a drive-by shooting fashion. For unspecified reasons both police officers failed their duty to render medical aid to the boy in a considerable amount of time (Shaila & Oppel 2015). This is against the Cleveland Police Department's internal policies on the use of deadly force, Section V., Paragraph A and B that both state:

"A. Immediately following any use of force and when the scene is secure, officers, and upon their arrival, supervisors, shall inspect and observe subject(s) for injury or complaints of pain resulting directly or indirectly from the use of force.

B. If needed, officers and supervisors shall immediately obtain any necessary medical care while providing emergency first aid until professional medical care providers arrive." (General Police Order 2018).[44]

These procedures are also against the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF). This document is a soft-law instrument of the Office of the United Nations High Commissioner for Human Rights (OHCHR), therefore due to its nature it is a non-binding legal document but does have general guidelines on the use of lethal force by law enforcement that each UN member state should follow. General Provision 5, Paragraph (c) calls for law enforcement officials to "Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment". The grand jury ultimately did not charge neither of the officers, after the Cleveland Police Department's internal investigation concluded that from the surveillance camera and from the incomplete

[44] The full text of this order is available at:
https://www.clevelandohio.gov/sites/default/files/forms_publications/01.10.2018General.pdf?id=12398

information the officers received upon dispatch was not sufficient for a criminal indictment of any kind. The police officers prior arriving to the scene had no knowledge on whether Tamir Rice was in possession of a lethal firearm and therefore emerge as a potential threat to anyone (Bacon 2015). The approach tactic used by the two police officers involved was also under heavy scrutiny, since they drove up their patrol vehicle right by where the child was standing, and then immediate shots followed. The whole procedural execution goes against the very basic rules, widely used by U.S. law enforcement, of the so-called ‘three Cs’ that is an abbreviation for cover, concealment, and comfort. In practice this means that while approaching an armed suspect, law enforcement officials should always try to communicate with the individual first from cover, use de-escalation techniques and do not disregard the lives of anyone, the armed individual included (Lee 2015).

4.7. Michael Brown

This section of my thesis would not be complete without mentioning the case of Michael Brown. It is one of the most high-profile cases of the past several years, similarly to Trayvon Martin's, it had a huge social backlash and media coverage. In contrast to the George Zimmerman case, the central element was not only questions regarding the legitimacy of a stand-your-ground law but also the doubts over the amount of lethal forced being used and if what was applied was necessary or not (Amnesty International 2015: 14). Article 4 of the BPUFF non-binding international law instrument states the following:

"Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result." (Article 4, UN BPUFF).

While Article 5, Paragraph (b) states:

"(b) Minimize damage and injury, and respect and preserve human life;" (Article 5, Paragraph (b) UN BPUFF).

Furthermore Article 9 states:

"Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life." (Article 9, UN BPUFF).

Based on the three quoted provisions of the BPUFF above, Officer Darren Wilson's acts are completely incompatible with international law standards: the unarmed, 18-year-old Michael Brown was shot at least 6 times from the distance of around forty-six to fifty-four meters (Buchanan et al 2014). Ballistics experts and investigators' findings proved that the police officer shot at least two times from his car while a physical scuffle ensued and at least on three different occasions he discharged his service weapon (Kohler 2014). According to the medical examiner's autopsy results, the fatal shots occurred from a distance of at least forty-six meters

(Buchanan et al 2014). There was also an audio recording made be a resident who lived nearby the scene and that also proved that after a series of six shots, another four followed in rapid succession (Yan 2014). Considering all these details, Officer Wilson's compliance to the provisions of Article 4 and 5 of the BPUFF is seriously questionable. Regarding Article 9 of the BPUFF, the situation is a bit more complicated. Witness accounts were quite distinctive from one another, some claimed that at the time of the fatal shots, Mr. Brown stopped and put his hands up, while some claimed that he charged once again at the officer's car (Kohler 2014). However, the question remains: did an unarmed, 18-year-old Michael Brown pose a serious and imminent threat from around forty-six meters, even if the distance was decreasing while he started running towards an armed officer with his firearm drawn? In November 2014 the 12-member Grand Jury ultimately did not indict Officer Wilson (Buchanan et al 2014) because there was not enough evidence that the threat of serious bodily harm or death was avoidable (Kohler 2014). After the Grand Jury's decision on the indictment, a social unrest ensued in the city of Ferguson and ultimately, Missouri Governor Jay Nixon had to deploy the State National Guard to stabilize the situation (Davey & Fernandez 2014).

4.8. Ahmaud Arbery

The last case examined in this chapter is a more recent but arguably one of the most important cases for my thesis research when it comes to its criminal trial and the arguments on the legality of self-defense rights in the state of Georgia. It not only put the SYG law and the so-called ‘citizen’s arrest’ law of Georgia in spotlight, but legal experts made the argument that in this case, the Georgia SYG law provisions would have favored the victim and not the initial aggressors, just as it happened so many times before. As legal scholar, David A. French argued:

“It's a crime under Georgia law to point a gun (loaded or unloaded) without legal justification. When Arbery was confronted by armed men who moved directly to block him from leaving, demanding to "talk" then Arbery was entitled to defend himself. Georgia's 'stand your ground law' arguably benefits Arbery, not those who were attempting to falsely imprison him at gunpoint.” (French 2020).

In February 2020, Ahmaud Arbery, was jogging casually in Satilla Shores, Georgia, when three white men started profiling him, while they realized, he was the same person they had seen several times before in the neighborhood, trespassing on private construction sites (The New York Times 2020). After all, three of them, the father and son McMichaels and a neighbor started to pursue Arbery with two vehicles, they eventually reach him, and a physical scuffle ensued. The elder McMichaels shot several warning shots from his handgun, while standing on the back of his pick-up truck, and his son shot Arbery from close range with a shotgun, who died several minutes later at the scene (The New York Times 2020). During the criminal court proceedings at the Glynn County Superior Court, the defense tried to argue that the three men acted in self-defense and under Georgia’s citizen’s arrest law, however since the crime the three men suspected Arbery of committing was not in their ‘immediate knowledge’ and neither there was ‘reasonable and probable grounds for suspicion’ of Arbery committing a felony, the provisions of the Georgia citizen’s arrest law (that actually traces its roots back to the time of the Civil War) was not sufficient enough (Robles 2020). After jury deliberations all three men were found guilty on murder charges and then were charged with federal hate crimes as well (Fausset 2022). Furthermore, the prosecution argued that self-defense is not equal to provoked self-defense, since right before the McMichaels tracked down and murdered Arbery, he was just trying to run away from them, not posing any threat until he tried to defend himself (French 2020).

The Ahmaud Arbery case can be placed in sharp contrast, while there are also striking similarities with the Trayvon Martin case analyzed previously. In both cases, two young African American males were profiled and then chased by vigilante citizens, who thought their “suspect” was committing or was about to commit a burglary. The available evidence showed in both cases, that Ahmaud Arbery and Trayvon Martin were just trying to mind their own business, but they were eventually murdered in circumstances that could have been only a racially motivated misunderstanding. As I analyzed earlier, based on his self-defense arguments legally supported the Florida SYG statute, George Zimmerman was acquitted at the end of his trial. In the criminal trial in the death of Ahmaud Arbery, the defense’s arguments were not enough to back the actions of the McMichaels by the legal allowances of Georgia’s citizen’s arrest law and more importantly, unlike in the State of Florida v. Zimmerman case, the prosecution could convince the jury that provocative self-defense is not equal to actual self-defense (French 2020).

Chapter V: Political objectives of lawmaking and social backlash

5.1. Domestic lawmaking – SYG through the lens of the GOP

The next part of my examination is to see what the political composition of the responsible legislative body was when the first SYG law was passed and what type of political agenda was behind its draft. My initial assumption was that the enacted SYG type laws (including the Castle Doctrine), by statute or by jury instruction are generally in 'Red States' where there is a common trend in the state legislative and executive branches to have a Republican majority, representing more conservative values in their lawmaking processes. Then there was also the personal family connection between President Bush, whose Bush Doctrine had included the pre-emptive war principle as its main element and launched an invasion against Iraq in 2003, and his younger brother, Jeb Bush who served as the governor of Florida between 1999 and 2007. Broadly speaking, the fact that under the tenure of Republican Governor Jeb Bush the first SYG law was drafted, and he signed it for serving state affirms the assumption that a hardcore Grand Old Party (GOP) leader oversaw the whole process and gave his support to it. The Florida State Legislature (that is just like its federal cousin is a bicameral body with a House of Representatives and a Senate on state level), passed the SYG bill in both houses: in the Florida Senate all 39 present Florida State Senators voted in favor of passing the bill, this included 26 Republicans and 13 Democrats, and one Senator of the Democratic Party was late from the voting (Martosko 2012). In the Florida House of Representatives, the bill did not gain such an overwhelming support but still 92 out of the 120 representatives voted for the passage of the bill, 80 of them were Republicans and 12 Democrats voting in favor (Martosko 2012). So how come back in 2005, this bill enjoyed an almost bipartisan support? The answer is partly the National Rifle Association (NRA), which organization is one of the main lobbyists, promoting firearms sales and excessive self-defense rights (Goodnough 2005). Then we must also consider the political climate of Florida, as Light put it:

"Opposing the SYG bill may have "seemed like political suicide in Florida," yet some expressed vocal opposition.14 Miami's former police chief, John Timoney, forecasted that the law would encourage the use of deadly force among civilians. Gun control groups similarly warned that expanding the boundaries of lethal self-defense would actually contribute to, rather than reduce, violent crime. Those resisting the bill emphasized its likely effects on public safety, but those in favor enjoyed the support of the NRA and the American Legislative Exchange Council (ALEC), a conservative political action organization funded primarily by corporations.16 Against this powerful and wellfunded consortium, the voices of reason and general safety had little chance. The Florida House of Representatives voted in favor of SB 436, 92–20, before

the Senate voted for the bill unanimously. On October 1, 2005, Governor Jeb Bush signed Florida's stand-your-ground law, the nation's first, praising it as "a good, common-sense, anticrime issue."" (Light 2017: 142-143).

It is no secret that the goal of the NRA at the time of the Florida SYG law's passage that in a domino effect manner, other states will be drafting and enacting similar type of statues (Goodnough 2005). New York Times editor Goodnough's idea is, if the legal background allows individuals are legally allowed to counter potential threats with the immediate and lethal response in self-defense, just like a security dilemma, the demand for firearms will rise and gun purchases soar. However, a recent study found no evidence that the presence of SYG laws have a direct effect on gun sales (Schell 2020). Louisiana and West Virginia both passed SYG laws in 2006 and 2008 respectively and both state legislatures had Democratic majorities – this alone refutes my initial assumption that GOP lawmakers favor these categories of laws.

5.2. Policing in the U.S.

A combination of legal and political framework allows law enforcement officers to be protected from consequences related to the questionable use of excessive and lethal force. This includes:

- the way police officers being trained by local police departments,
- the militarized equipment they use,
- reckless allowances that lead little respect to human life such as no-knock warrants.

In the next sub-chapter, I will dissect in more detail on why I think that the U.S. law enforcement system with its correlating legal institutions work very much like an authoritarian regime. But before I drift to the theoretical part, hereby I will present the above-mentioned policing framework system that is generally present nationwide.

Starting with the police training, in the U.S. police officers may receive one of the best quality trainings in the world but the manner of how they are being trained and for what is strictly related to the use of excessive and lethal force. Police officers are being taught to always stay on their guards, while this due to the circumstances might be necessary. The Second Amendment of the U.S. Constitution states:

“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” (Second Amendment, U.S. Constitution)

To this day, there have been debates on what exactly this means but the most widespread interpretation of it is that every U.S. citizen has the right to access and possess firearms. Due to this type of environment, a police officer’s work will never be too simple, even at a routine traffic stop they must expect the subject potentially be in possession of a lethal weapon and the worst and that the subject may end up using that. Police officers are trained to always expect of the worst, because if they are not, anyone can take advantage of their inattention. Therefore, the environment leads to instantaneous acts that are required by law enforcement in a preventive manner, instead of reacting to something that is fully formed. As I described earlier, SYG laws are exactly written under the influence of this type of thought. The Florida SYG statute for example does not outline it clearly what is a serious threat that could put someone(s) in grave danger – it leaves it completely up to the perception of the person acting in self-defense. Data from the Police Executive Research Forum’s research show that police departments in their recruit trainings spend on an average 58 hours on firearms use and both 8 hours on de-escalation techniques and crisis intervention that mainly involves policing

procedures people with mental health conditions (Police Executive Research Forum 2015: 11). Which is an astonishingly more than six times difference between the two courses of training. Further remarkable data shows that only 65% of those police departments that have use of force in service training teach de-escalation techniques and only 69% do crisis intervention (Police Executive Research Forum 2015: 11). These fear-based approaches in police trainings also perfectly align to the idea of DIY citizenship, which ultimately asserts that everything will be dependent on the individual when duty calls for using force in self-defense.

Another issue is the militarization of law enforcement. This phenomenon traces back to the Ronald Reagan Presidency and his War on Drugs in the 1980s. After crime rates have surged U.S. Congress passed legislation such as the Military Cooperation with Law Enforcement Act, the National Guard Drug Law Enforcement Assistance Act, and the National Defense Authorization Act. However, this latter is also known as the '1033 Program' allowed military forces to transfer all out of service used military-style equipment to police departments nationwide. During the Presidency of Barack Obama, priorities included domestic police reform and the reform of the criminal justice system. Along with Attorney General Loretta A. Lynch they both agreed that they must initiate reforms, especially when racial tensions due to disputed police killings were at the height between 2014 and 2016, nearing Obama's second presidential term (Obama 2017: 863). One of the executive actions the Obama Administration proposed is the re-affirmation of the National Incident-Based Reporting System (NIBRS), where only around 30% of police departments nationwide sent their collected data to the FBI (Obama 2017: 862). U.S. Congress was able to pass the Death in Custody Reporting Act of 2013 bill as well that mandates states to send data on deceased people in custody (including name, gender, ethnicity, age, place of death and time) directly to the Attorney General (H.R.1447 - 113th Congress 2013-2014). In 2014 Obama announced that they will spend 263 million dollars for a body-worn camera program (Sink 2014) for all law enforcement units, which goal was a more transparent accountability system and in case of contra dictionary and circumstantial evidence, the video footage of these cameras can prove decisive. The first fatal shooting captured by a police-worn body camera was with the Muskogee Police Department in Oklahoma in January 2015, at that time 50 officers out of the 88 stationed there already had their body cameras assigned (Sanchez 2015). Another major move from the Obama Administration was the Executive Order 13688 that prohibited the use of military-style weapons and equipment for local law enforcement (Fabian 2015). Although the demilitarization agenda was always a high priority for the Obama Administration, they waited until the city-wide protest and riot series in Ferguson, Missouri that occurred after Michael Brown's death (Liptak 2014). There were policies brought by the Trump Administration as well that are more counterproductive when it comes to the proposed reforms by his predecessor.

During the 2016 Presidential Election, Trump claimed numerous times that the existence of the Black Lives Matter (BLM) movement (which practically was born as a form of backlash after several high-profile cases where unarmed Black citizens were killed by law enforcement), increases violent crimes committed against law enforcement (Diamond 2016). In line with the 'Blue Lives Matter' ideology, the first law was passed by the Louisiana State Legislature that punishes crimes committed against law enforcement more severely (Pilkington 2016).

According to the New York Times, police raids and the serving of no-knock warrants have increased since Obama's executive order on demilitarization (Sack 2017). No knock-warrants have become recently under severe scrutiny and caused public outrage in the Breonna Taylor case. This judge-issued warrant practically allows law enforcement to enter a person's home the warrant was issued for. It is generally used for U.S. law enforcement's work against criminal organizations and illegal drug distributors (Sack 2017). In Louisville, Kentucky while carrying out a no-knock warrant against Breonna Taylor's boyfriend who, without knowingly law enforcement entered their home, shot at the police officers and after a shootout ensued, Breonna Taylor who was sleeping her bed at the time and woke up to the noise, was found deceased on the scene with multiple gunshot wounds (Oppel et al 2020). In the following chapter, I provide an analysis on how legal institutions such as the juries, grand juries, district attorneys and state attorney generals have a very unhealthy relationship to law enforcement agencies, which relationship basically leads to the almost complete unaccountability. The Breonna Taylor case is an exception on this sense, because even though the Kentucky Attorney General claimed that the use of lethal force was justified while serving the no-knock warrant the assembled grand jury concluded otherwise (Li & Stelloh 2020). After the grand jury decision, four of the involved police officers were federally charged with unlawful conspiracies, unconstitutional use of force and obstruction and the case proceedings are still underway (McLaughlin et al 2022).

5.3. Lack of accountability on state and federal level

Based on three general arguments, the way U.S. law enforcement conducts, and its related legal institutions' procedures resemble to an authoritarian state's organizational qualities.

1. The existence of policing institutions described in the previous sub-chapter such as qualified immunity and the militarization of law enforcement.
2. The difficulty of not only prosecuting but to indict police officers in cases where the use of lethal force is questioned.
3. Federalism and the negligence of enforcing international law principles

Before I drift towards the difficulties of prosecuting and the general lack of accountability, I must outline the basics on how an autocratic state works to back my statement. Through the lens of political science, arbitrariness or autocracy happens when a single person or a small group of individuals practice absolute power on their own (Burnell 2006: 546). This way of governing leads to the practice of absolute power to no boundaries, which is practically the absence of no control over what an autocratic state can do. Although, in today's globalized world and interdependency in the international community, boundaries can be set from their peer pressure and Peter Burnell brings the example of Cuba and the decades-long economic sanctions against its Communist ruling party (Burnell 2006: 547). After Zimmerman's acquittal in the Trayvon Martin case, there were nationwide protests that gave birth to the BLM movement, which main goal is to call attention to police brutality against African Americans (Fisher et al 2014). Trayvon Martin's death had major coverage by media outlets and cased public outrage that led the U.S. Department of Justice (DOJ) through the Federal Bureau Investigation (FBI) to conduct a thorough investigation but found no cause for a federal criminal trial to commence against Zimmerman (Berman & Horwitz 2015).

The Amnesty International also shed lights on the fact that in many cases the process of prosecuting of law enforcement officials have two major obstacles. One of these obstacles is that usually, when lethal force was used and therefore a case gets scrutinized, the investigation is always almost completely done by the internal affairs (IA) division of every police department, and they are the ones then transferring the case to the public prosecutor's office for review (Amnesty International 2015: 2), where then it will be decided whether or not a case will go in front of a Grand Jury for possible indictments. This is what went down in the no indictment case of Officer Darren Wilson who shot and killed Michael Brown in Ferguson, Missouri. This also means that local police departments do not allow any neutral or 'outsider' agencies to interfere with their investigation either. The public prosecutor's office can decide

on its own as well for indictment depending on the state statues in effect. In most state and local jurisdictions, it is allowed to public prosecutors to have a preliminary hearing in front of a judge and without assembling a jury, they can decide on the indictment (Casselman 2014). On how the juries being assembled and operate in the current U.S. legal system leaves behind a lot to consider. When Officer Darren Wilson was up for indictment by a Grand Jury in the city of Ferguson, the jury's 12 members had 9 white and 3 African Americans. For indictment, at least 9 jury members would have had to agree. At the time, the city of Ferguson had 21,203 residents and data from the 2010 Census population data showed that it was inhabited by 67.4% of African Americans and only 29.3% white Americans (Buchanan et al 2015). If we look at the racial proportionality of Ferguson's population, then the local Grand Jury's ethnic complexity simply does not reflect its constituents. If we look at the racial distribution of St. Louis County's population, based on the 2010 Census, the county had 998,954 residents, 70.3% of them were white and 23.3% were African Americans (U.S. Census Bureau 2022). In these racially divisive cases, it would be ideal for juries to reflect the populational qualities of the local or county jurisdiction they ought to represent, however a lot of other aspects could also make a difference, enough to consider the households' incomes or level of education, which can also influence juries in their decision-making processes. It is more likely that the problem lies with the obsolete institution of juries and grand juries. As the ex-Chief Judge of the New York Court of Appeals, Sol Wachtler once famously stated that district attorneys (DAs) could get grand juries even to 'indict a ham sandwich' (Casselman 2014). This practically means that since the possession of evidence and how that evidence is being presented to the grand jury solely depends on the DA. An experienced DA could practice remarkably large influence on a grand jury, even leading them to no indictment just as Tamir Rice's parents claimed in their son's case, where they believed that the District Attorney spent several months to manipulate the selected grand jury in their decision-making process for indictment (Bacon 2015).

Furthermore, according to data from the Bureau of Justice Statistics (BJS) from 2010, there were around 162,000 federal case proceedings and only in 11 of those federal cases there were no grand jury indictments, involving police officers. Casselman mentions that this data is only for federal cases, not including state and local ones only federal (Casselman 2014). Since on the state and local level courts, the district attorneys can indict without the call for a jury means that the whole process more resembles pretty much like a formality. In contrast there is a strikingly low number of indictments against police officers on the federal level. The Houston Chronicle collected data and according to their study, in the city of Dallas, Texas between 2008 and 2012 no police officers were indicted in those 81 cases that involved a 175 police officers overall (Pinkerton 2013). In Harris County, Texas between 2004 and 2012 there

were only three police officers who were indicted, which is extremely low considering that generally there were more than 200,000 indictments in the span of 8 years, as per the table below (Pinkerton 2013).

Year	Cases per year	Indictments per year	Indictments dismissed	Indictments against police officers per year
2004	21857	21142	715	1
2005	21681	21049	632	0
2006	23526	22841	685	1
2007	23360	22616	744	0
2008	28609	27810	799	0
2009	28481	27350	1131	1
2010	27241	25983	1258	0
2011	27186	25977	1209	0
2012	28948	27684	1264	0

Between 2008 and 2012 this study highlights the fact that there were at least six cases in Harris County, where unarmed residents had deceased during law enforcement procedures. None of these six cases saw indictments and criminal case proceedings official started against the involved law enforcement officials (Pinkerton 2013).

John T. Barnes was shot and killed during a domestic dispute in his own home by Officer R. Gardiner, at the time off-duty officer, after Barnes allegedly tried to acquire his taser gun and therefore the officer he felt his own life in immediate danger (Thomas 2011).

Omar Ventura was also shot and killed by another off-duty Officer Jose Coronado, during a parking lot dispute. According to Officer Coronado's testimony, Ventura verbally threatened to shoot him and then reached for his waist at the time of the shooting. Later investigators concluded that Ventura was unarmed (Pinkerton 2013) and Officer Coronado was ultimately not indicted (George 2012).

Three assailants tried to break into the home of Police Officer Donald Hamilton, who then opened fire, killing one of them – Hamilton was not indicted (George 2012).

On the day of Christmas, Chris Hampton was shot and killed by Officer Blake Plate during a traffic stop check, after Officer Plate felt his threatened and shot in self-defense. According to

eyewitnesses present at the scene, the police officer overreacted the non-compliance during the detaining process of Hampton, who was left on the side of the road after the shooting. Officer Hampton was eventually not indicted (Stamps 2012).

Rufino Lara called for police assistance for himself, after four unknown persons tried to rob him during his work shift. When the dispatched police officers arrived, Lara pulled a can of beer from his waistband, which one of the officers mistook for a firearm and then immediate shots followed, later causing the death of Lara (Pinkerton 2016). The approaching police officers' actions draw resemblance to the previously examined Tamir Rice case, where police officers seemed to act without hesitation and used lethal force. In both the Rufino Lara and Tamir Rice cases there were video recordings of the incident. Furthermore, it took 3 years for court proceedings to finish, and while not considering those eyewitness accounts stating that Lara had both of his hands up at the time the fatal shots were fired, the officers were not indicted (Pinkerton 2016). Similarly, in the Tamir Rice case, it took 13 months to decide whether the shooting officers will be held accountable for their actions, however that case also ended without indictments (William & Smith 2015).

The sixth and last case in this examination between 2008 and 2012 in Harris County, Texas once again highlights the issue of unaccountability. After the 38-year-old mentally ill and unarmed Kenneth Releford was shot and killed by the police, his father Audry Releford filed a civil rights lawsuit against the Houston Police Department (Olsen 2016). Mr. Releford stated that the Houston Police Departments' IA division conducted its internal investigation secretly, which was not the first time in the HPD's history, and the IA is generally a lot more overindulgent when it comes to the use of lethal force against Houston residents, which city has seen at least 150 similar cases between 2010 and 2015 (Olsen 2016). Direct reference was made by the Amnesty International in its study on the use of deadly force to Mr. Releford's lawsuit, calling for local authorities to allow the possibility for independent bodies or organizations to conduct transparent investigations separately to the IAs procedures (Amnesty International 2015: 2).

Rufino Lara's case furthermore substantiates the assumption that local and state authorities have a closely tied correlation with the District Attorneys and prosecutors, and pretty much resembles to the functional operations of an authoritarian state. There could be other reasons as well why juries almost never indict police officers. One of them is the interdependency between institutions capable of issuing indictments and the overall institutions of law enforcement divisions, without law enforcement there would little work for District Attorneys to do and high-profile cases can have extremely severe backlash directed at them by the public

and the media (Casselman 2014). Under pressure, they most certainly can also present cases to the jury that has missing evidence, or the presentation of the available evidence is altered on purpose (Casselman 2014). There was a slightly unusual situation during the grand jury hearings in the Michael Brown case: Officer Darren Wilson took the stand for a testimony in front of the grand jury without the presence of his attorneys, therefore effectuate personal pressure on the jury and their deliberation process (Eckholm & Bosman 2014).

The other large deficiency regarding the accountability and the ineffective prosecution processes of law enforcement officials is the complete negligence of the federal government (Amnesty International 2015: 2) when it comes to centralized public databases on cases where the use of force by the police was under scrutiny. It shows perfectly how decentralized the U.S. federal system is that they have currently around 18,000 functioning local police departments nationwide (Inter-American Commission on Human Rights 2016: 10). Therefore NGOs, like the Amnesty International has called upon the federal government to act and create a coordinated effort on gathering data on this issue. It is not known how many people die each year during the work of law enforcement, due to the lack of official data. The Amnesty International believes that the number can be anywhere between 400 to 1,000 victims a year (Amnesty International 2015: 4), however we saw from earlier data of media sources that this number is around 1,000 on average per year. Moreover, based on numbers from statisticians at FiveThirtyEight and their analysis, data from the CDC and the Washington Post, it is certainly more than 400 victims per year (Fischer-Baum 2014). One article from The Guardian points out that the U.S. Congress has already passed a bill in 1994 called Violent Crime Control and Law Enforcement Act, which goal (among others) was to create a thorough database regarding the use of lethal force by law enforcement (Robinson 2015). Another bill passed in 2000, the Death in Custody Reporting Act, was enacted to account for all those who were taken into custody and died in course of the detainment (Robinson 2015). Generally, it would be indispensable and one of the very basic acts the federal government should take is to keep a comprehensive database for analysis and accountability, until then no one will ever know the exact numbers and how vital this crisis is. The problem, however, does not originate in the negligence of the federal government, rather than on the state and local level: most police departments are not transparent enough when it comes to disclosing the number of cases per year where lethal force was applied (McCarthy 2015).

To maneuver back to my metaphor that U.S. law enforcement and its surrounding legal institutions work much like an authoritarian state, there are three further underlying reasons. First, the federal government does not enforce the binding provisions of the ICCPR and ICERD international human rights treaties on the states' level. Not to mention that non-binding soft-

law instruments and norms, like the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF), are not harmonized by neither the federal government, nor the states' governments into their legislative setting.

Chapter VI: International and domestic remedies

6.1. International level: UN and NGO recommendations

The never-ending presence of the American exceptionalism is extremely influential, when it comes to the international law instruments that could regulate the use of deadly force by law enforcement officials. The U.S. fails to comply with international law standards (Amnesty International 2015: 13-16), when it comes to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF). In the first main chapter I described how the U.S. rarely ratifies any major UN human rights treaties and their optional protocols. The BPUFF is a soft-law instrument, that has no binding force at all, therefore the regulations set out are ineffectual. International law only would allow law enforcement officials to use lethal force if there is no other option left, and if their own and others' lives are in immediate danger (Amnesty International 2015: 1), this is in line with what the examined Florida SYG law states too. However, the ICCPR (event though with RUDs imposed by the U.S. Senate upon its ratification) is a binding legal document and with Article 6, Paragraph 1, it specifically calls for the individuals' right to life:

"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." (Article 6, Paragraph 1, ICCPR)

While Article 9 Paragraph 1 calls for the protection of every individual's personal security:

"Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." (Article 9, Paragraph 1, ICCPR)

Therefore, these inalienable rights should never be infringed. Article 5, Paragraph (b) the ICERD obliges its state parties to protect the individuals' rights on:

"(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;" (Article 5, Paragraph (b), ICERD)

Closely connected, Article 6 of the ICERD generally weighs in on the elimination of racial discrimination in the legal justice system:

“States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.” (Article 6, ICERD)

The Amnesty International has done several suggestions on what and how the federal government and state governments should comply with international policing standards in their study “Police Use of Lethal Force in the United States”. One of the NGO’s main suggestions is to improve the situation is that all legislation regulating the use of lethal force by law enforcement must comply with the provisions of the BPUFF, since in most cases neither the federal government nor state level legislation currently follows its standards (Amnesty International 2015: 5). Moreover, the federal district of Washington D.C. and 9 U.S. states there is simply no legal regulation on the use of lethal force and further 13 U.S. states do not meet the U.S. Constitution’s provisions (Amnesty International 2015: 2). This is due to the federal system with the absence of a strong central regulation by the federal government. Both the Violent Crime Control and Law Enforcement Act and Death in Custody Act providing a legal obligation for accountability. However, the Police Reporting of Information, Data and Evidence Act introduced by Barbara Boxer and Cory Booker in the Senate but during its committee hearings the bill died (Swaine & Laughland 2015), which bill would have provided a centralized framework on mandatory data collecting. Further problem is that due to federalism and the American exceptionalism’s approach to international law and norms, the provisions of the UN Human Rights Council’s (UNHRC) UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are not compellable from the federal and state governments (Inter-American Commission on Human Rights 2016: 7).

6.2. A domestic reform through customary international law?

In the last sub-chapter of my thesis research, I conclude with my idea that there could be a further legal mechanism that may reform the excessive legal background of U.S. policing and the use of deadly force by law enforcement. As recommended by NGOs and the UN, there could be dozens of legal institutions and mechanisms implemented by the federal government and state governments to improve this ongoing human rights crisis on the domestic level. Because of several reasons examined during this research, this may not happen soon. The U.S. constitutional background and its constitutional DNA related to self-defense rights rests on a historical and well-founded basis originating in English common law for the past several hundred years. Similarly, the ideology of American exception is a deeply rooted American value that has shaped U.S. foreign policy for more than two hundred years. Furthermore, an enormous event like 9/11 was influential enough to re-shape the foreign policy approach of the U.S., it would be rather trivial for myself to think that this can be a potential solution. However, if I only focus on the pragmatic legal applicability and skim over these circumstances listed above, it makes perfect sense to utilize a similar legal mechanism.

As I referred to it earlier, there is the so-called Caroline Test in customary international law. The Caroline Test, originating in the early 19th Century, has two requirements *necessity* and *proportionality* and ideally, a state applies both before it would act in pre-emptive self-defense. Prior Article 51 of the UN Charter, this was an unwritten rule for engaging in preventive self-defense action and as Charles Pierson put it:

“The right of self-defense is set out in customary international law in the Caroline doctrine. In 1837 a portion of Canada was in rebellion against the British Crown. The vessel Caroline was owned by a group of Americans who in 1837 were using her to ferry men and supplies to rebels on an island on the Canadian side of the Niagara River. To cut off assistance to the rebels, British troops crossed into U.S. territory on December 29, 1837, loosed the Caroline from her moorings on the New York side of the river, set fire to the ship, and sent her over the Falls. The resulting legal issue was whether the British had acted legitimately in self-defense. In an exchange of diplomatic correspondence with Lord Ashburton of Great Britain, Secretary of State Daniel Webster set forth the conditions of necessity and proportionality which came to be accepted as the customary law requirements for the exercise of self defense (the "Caroline doctrine"). Necessity requires imminent "overwhelming" danger and exhaustion, unavailability, or futility of peaceful means to avert attack. The force employed must be proportional to the danger sought to be averted. The British accepted Webster's criteria and agreed that the British attack had failed to meet them. Under Caroline, an actual armed attack

was not required as the precondition for the use of force in self-defense. Thus, the Caroline criteria permit both reactive and anticipatory self-defense so long as necessity and proportionality are observed." (Pierson 2004: 155-156).

On the other hand, as I dissected it in the third chapter, SYG laws only have *reasonableness* as a legal requirement if someone wants to utilize force, that can be lethal, during acts of self-defense. This in practice means, that the statute completely leaves it up to the perception of the individual acting in self-defense. As we saw the arguments made in the State of Florida v. George Zimmerman case and Officer Darren Wilson's argument on why he used lethal force against Michael Brown: they both feared for their lives when they ended up in a physical altercation with unarmed African American teenagers, even though both were armed with handguns. Since, neither case had actual hard proof to counter their arguments, the juries had to follow the vaguely written self-defense statutes of both Florida and Missouri. Even if the SYG laws cannot be ever repealed due to the cultural, political values and legal setting of states, then at least legislators should adopt the two principles from the customary international law doctrine of the Caroline Test. The legal requirement of necessity may question the use of lethal force and that may not be looked upon as last resort in these two cases Moreover, the legal requirement of proportionality closely intertwines with necessity: one could always wonder if there were no other less lethal choices left for Mr. Zimmerman and Officer Wilson, but to fatally shoot two unarmed teenagers.

Conclusion

With all aspects considered the assumption is well substantiated that the way U.S. foreign policy is conducted in the 21st Century, it could influence state legislatures through the example of the ideological connection between the Bush Doctrine's pre-emptive war against Iraq and the stand-your ground laws. The conventional wisdom is that national lawmaking processes and domestic policies shape the way a state is driven in the world of foreign affairs (Kissinger 1966). Over the course of this research, I shed light on one unique example, where foreign policy had influenced domestic lawmaking. Theoretically, the Bush Doctrine and its military intervention in Iraq indeed influenced domestic legislators and gave birth to a new generation of self-defense rights with the ominous SYG laws drafted.

At the beginning of my thesis research, I focused on my hypothesis which is that the 'shoot first and ask questions last' pattern was present in both the Bush Doctrine and the eventual draft of the first SYG law in Florida. The first two out of three arguments closely followed this assumption and further substantiated that this hypothesis has well-founded grounds in English common law principles, which are some of the most influential driving forces behind the birth of the U.S. Constitution and legal system. Then drifted onto the concepts of American exceptionalism and draw conclusions on why this theory is so influential in almost every aspect of U.S. foreign policy, with a specific focus on international human rights treaties. The third and final argument to support my hypothesis was the breaking point of the 9/11 terrorist attacks on U.S. soil. It has completely re-shaped U.S. military interventionism and to bolster this argument, I provided a comprehensive analysis on three major military conflicts the U.S. was involved in: the Vietnam War, the Gulf War and in the post 9/11 era, the invasion of Iraq.

To compare the legal framework for two, completely distinct fields of law, I closely scrutinized the use of force under Article 51 of the UN Charter, with a specific focus on pre-emptive self-defense in international law. I also provided a thorough analysis on the Florida SYG and Castle Doctrine statutes to fully discover the domestic legal framework of a U.S. state. Provisions of these national statutes were then used to examine some related high-profile cases and the landmark ruling of Tennessee v. Garner, that set a limit on the use of lethal force by law enforcement, until the emergence of SYG laws. Collected data based on secondary sources were also presented to argue, the birth of SYG laws is extremely destructive and caused a significant increase in the annual homicide rates in states where these types of statutes exist. I have also included the racial aspect, with the examination of law enforcement use of deadly force and the data showed that African Americans fall victim unproportionally to policing measures.

In the final portion of my thesis research, I provided a short overview how the first SYG law in Florida was enacted and concluded that even though, one might assume that it is a highly favored topic on the agenda of the Republican Party, it turned out that legislators of the Democratic Party were almost equally interested in passing the bill. Furthermore, I took a closer look on outdated legal institutions and the broken policing system that allows almost zero accountability in the prosecution of police officers who were under scrutiny for using lethal force. In the ultimate chapter, I reviewed what the Amnesty International, a prominent NGO recommends the federal and state governments to improve, and what reforms they must initiate, so international norms can be implemented to provide a supranational framework for the use of lethal force by law enforcement officials. In the last sub-chapter, I came up with a rather unconventional idea that the SYG laws should apply the principles of necessity and proportionality from a customary international law doctrine, the Caroline Test.

Lastly, in this thesis research it has become evident that both the examined issues are deeply rooted in American exceptionalism. This ideology is largely responsive for the American attitude towards UN human rights treaties, partly for the military intervention against Iraq in the form of a pre-emptive war and the practice of the double standard policy in international law. The idea of pre-emptive self-defense clearly appeared in domestic legislative concepts, ultimately serving as basis for the draft and enactment of stand-your-ground laws. In the case of the pre-emptive war against Iraq, the U.S. aimed to dismantle a dictatorship of a sovereign state by ‘shooting first’ without knowing the fact that the Iraqi regime never had WMDs. From the Trayvon Martin and Michael Brown cases we learnt that the SYG laws can provide enough legality to use justified deadly force against unarmed individuals. It does not matter, whether the subjects had a firearm or any other weapon that is equally capable to cause imminent death or great bodily harm. In the two, at first glance seemingly distant phenomena, both the U.S. government and law enforcement officers shot first and asked questions last. Moreover, the U.S. continuously fails to comply with international law and its norms, both in the case of the preventive strike and the use of deadly force allowed by SYG laws. Regarding the ongoing human rights crisis in the United States; either a federal regulation or a legally binding international law framework must be installed to prevent police brutality, reform the excessive SYG laws and therefore save human lives.

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