

The Use of Force under the UN Charter: Restrictions and Loopholes by Nico Schrijver, 2003

The ACUNS 2003 John W. Holmes Memorial Lecture

The Use of Force under the UN Charter: Restrictions and Loopholes

Nico Schrijver, Vrije Universiteit Amsterdam¹ and Past Chair Academic Council on the United Nations System

One of the most significant developments of the 20th century was the outlawing of the use of force as a legitimate instrument of national policy. For centuries, the right to resort to war, the *jus ad bellum*, had been considered the sovereign right of each State. But warfare deteriorated frequently into cruelties, as the Great War, which we now call the First World War, showed us: too cruel and too bloody for soldiers, too total and too dramatic for civilians.

Ever since the Middle Ages, attempts have been made to determine under what circumstances war could be just (the just war doctrine or *bellum justum*), and in which ways wars could be fought more humanely (*jus in bello* or now commonly known as international humanitarian law). Early, but still highly relevant reflections on this, can be found in the *magnum opus* of my compatriot Hugo Grotius, who in 1625 published his *De Iure Belli ac Pacis* ('On the Law of War and Peace').

This lecture is on the use of force under the UN Charter and serves to commemorate, and pay tribute to, the legacy of John W. Holmes, a senior member of the Canadian foreign service who served under the multilateralist Lester B. Pearson and assisted him in his numerous activities to expand the role of the United Nations, including the fields of peace keeping and development. Later on Holmes became an academic and published books on the history of Canadian diplomacy, including its ability to cope as a 'middle power' with the US as a superpower. He was one of the founders of ACUNS. In fact, the very first ACUNS publication was a lecture by him in 1988, entitled 'Looking Backwards and Forwards'.

In today's Holmes Lecture, I will also look backwards and forwards with respect to the use of force under the UN Charter and I will discuss its restrictions and loopholes. I will first review the long march towards a ban on war in the 20th century and then take a close look at Article 2 (4) of the UN Charter. Subsequently, I will review the Charter and extra-Charter exceptions on the prohibition to use force. Of course, looking forwards I cannot but say some words on the use of force in Iraq and I will wind up with some observations on the current reappraisal of the use of force in international relations.

The long march towards a ban on war

During The Hague Peace Conferences of 1899 and 1907 the first major diplomatic attempts were made to restrict warfare. In case of serious disagreement or dispute, the parties agreed to have recourse to the good offices or mediation of one or more friendly powers. However, from the use of qualifying phrases, such as "before an appeal to arms" and "as far as circumstances allow", we can infer that at the time warfare was still considered a common way to pursue policies.² In 1907, it was only agreed that war would never be launched for the collection of public debts, the so-called Drago-Porter Convention. Moreover, it was agreed that hostilities could only be initiated after a prior declaration of war (Hague Convention III relating to the Opening of Hostilities).

Furthermore, through the Hague Convention IV with Regulations Respecting the Laws and Customs of War on Land parties sought to reduce the cruelty of war by limiting the ways of warfare.

After the Great War, the League of Nations was established, the very first intergovernmental political organization in world history. This was one of the arrangements in the series of peace treaties concluded at Versailles and elsewhere during 1919-1920. One of the primary goals of the League was the maintenance of the status quo as it existed at the time, but based on a collective system that guaranteed peace and security. Article 10 of the League's Covenant provided: 'the members undertake and preserve as against external aggression the territorial integrity and existing political independence of all members of the League'. Moreover, Article 11 stated: 'any war, or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the peace of nations.'

A cornerstone of this collective system was what at first glance appeared to be a unique ban on war: the High Contracting Parties wanted to achieve international peace and security 'by the acceptance of obligations not to resort to war' (preamble, see also Art. 10). However, this ban on the use of war had been formulated in the League's Covenant rather loosely and certainly not in an absolute way. In essence, it amounted to a cooling-off period, a moratorium, of three months and an attempt to resolve disputes by peaceful methods, such as arbitration, a judicial process or through the League's Council. But if parties did not cool off, or chose to put aside arbitral or judicial decisions, then they still had the right 'to take such action as they shall consider necessary for the maintenance of right and justice' (Art. 15.7). Obviously, this loophole provided more than merely the right to self-defense. Hence, warfare under the Covenant of the League of Nations was only prohibited against a State that was prepared to observe judicial or arbitral decisions or a unanimously adopted report of the League's Council.

During the time of the League of Nations various attempts were made to close the loopholes in the new law. The most impressive attempt was the Kellogg-Briand Pact of August 1928, a joint initiative of the American Secretary of

State and his French colleague (good old days!). In their view, the time was ripe for a "frank renunciation of war as an instrument of national policy". The Parties declared solemnly that in the name of their populations they 'condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another' (Art. 1). Article 2 adds that a solution to disputes 'shall never be sought except by pacific means'. A widely recognized, albeit not explicitly formulated exception was the right to self-defence.³ While this Pact was not watertight, it excluded at least the so-called aggressive war. As such it gave expression to the increasing aversion to war. As early as July 25th 1929, this Pact entered into force and, quite interestingly, is still in effect today. During the post-1945 international criminal war tribunals, this Pact was invoked when accusing and convicting German and Japanese politicians of waging an aggressive war. Earlier Japan had called its invasion of Manchuria not a war but 'an incident' and Italy had called its annexation of Abyssinia/Ethiopia an 'expedition'. Obviously, opinions differed considerably as to what constituted war and aggression under Article 1 of the Pact.

Taking a close look at Article 2 (4) of the UN Charter

Obviously, for these reasons the 'founding fathers' of the United Nations opted in 1945 for the word 'force' as a more encompassing term. Let us have a closer look at it. After first having stipulated that all members of the new United Nations shall settle their international disputes peacefully, Article 2, paragraph 4 of the UN Charter unequivocally stipulates:

'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations'.

Hence, in principle every use of force became prohibited but solely in the relations among States. International law vests in principle each state with the monopoly of force over its own territory. From this provision in the UN Charter, it follows that the parties to the UN Charter, like the parties to the League Covenant, aimed at the maintenance of the *status quo*. The prohibition to use force was imposed to protect the territorial integrity and political independence of sovereign States. Existing boundaries would be inviolable. In rather broadly sketched terms, Article 2 (4) adds that no force may be used against the purposes of the United Nations. Similarly, ensures that 'armed force will not be used, save in the common interest'. Nevertheless, there can be no misunderstanding that, as the records of the San Francisco conference also show, the aim in 1945 was 'to state in the broadest terms an all-inclusive prohibition without loopholes.' In contrast to the Kellogg-Briand Pact, the use of force had now been embedded, at least in principle, in the Charter's collective security system that provided for the possibility of collective sanctions against an aggressor state. It may be noted that the composition and the right of veto in the Security Council make it unlikely that ever measures will be taken which are against the interests of the Permanent Five. Nonetheless, the principle of decision-making by a qualified majority, and in a Council with a limited number of members, contrasts sharply with the League where voting by unanimity was the rule and hence every member state had a veto right.

Article 2 (4) can be said to be *the* pivot of the UN Charter and serves as the backbone of the envisaged system of collective security and peaceful relations among states. It has been most notably confirmed and elaborated in the 1970 UN General Assembly Declaration on Principles of International Law Concerning Friendly Relations and the 1974 Definition of Aggression. Article 2(4) has also been the subject of many extensive and learned analyses as well as judicial scrutiny, including at the ICJ in the Nicaragua case, 1986; the Advisory Opinion on Legality of Nuclear Weapons rendered upon request of UNGA, 1996; ICJ, Yugoslavia v. NATO countries, 1999 onwards, Congo v. Uganda, 2000 onwards.⁵ Notwithstanding all of this, its interpretation is still not devoid of ambiguities. While there can be little doubt that the term "force" is meant to refer to 'armed force', the scope of the prohibition of "the threat of force" is not entirely clear and perhaps also not easy to capture in precise legal rules. For example, to what extent is an ultimatum announcing recourse to military measures if certain demands are not accepted or adhered to, lawful or unlawful under Article 2(4)? For example, NATO's activation order against Yugoslavia in November 1998.⁶ Moreover, who can provide us with the ultimate interpretation of what exactly is meant by its phrase "*or in any other manner inconsistent with the Purposes of the United Nations*"? (emphasis added)

Furthermore, in this multi-actor world one should note that the prohibition of Article 2(4) is incumbent on states only and merely applicable in '*international* relations'. Would there be a reason to seek its extension as well as that of international humanitarian law to other subjects of international law, most notably international organizations such as NATO, internationally recognized representatives of peoples with some *de facto* control in an area or even to multinational corporations? In my view, in all cases the answer should be affirmative.

Exceptions in the Charter

The Charter itself provides for a few exceptions to the prohibition to use force. The most important one is the right to self-defense. This is called an 'inherent right', in the French text '*droit naturel*', thus reflecting that it emanates from customary international law. However, the Charter qualifies the right to self-defense in a considerable way. First, it only applies 'upon an armed attack'. Secondly, States are under a duty to report to the Security Council when exercising their right to self-defense, a requirement that always has been taken rather lightly by both the States concerned and the Council itself. Thirdly, the right to self-defense will be suspended as soon as the Security Council has taken measures 'as it deems necessary in order to maintain or restore international peace and security'. This has to do with the second main exception, an order or - as is more common in the practice of the UN - an authorization to use force under Article 42, following a determination under Article 39 that a threat to peace, breach of peace or act of aggression has occurred. Following the end of the Cold War, the Security Council made use of this competence on a number of occasions, mainly through authorization resolutions. These cases include Somalia, East Timor and Afghanistan.⁷

Extra-Charter exceptions as difficult issues: new directions or deviations?

As stated earlier, the intention in 1945 was to formulate the prohibition to use force in as absolute terms as possible. Yet, in life we are not always entirely sound in the faith. A number of what we could perhaps call Charter-related and a number of extra-Charter exceptions arose.

As to the first category of *Charter-related* exceptions, I will discuss three. First, a central issue has been whether, next to the Charter, some customary international law could be said to survive. Does Article 51 incorporate the full law of self-defense? Yes, in case of contradictions Charter law takes priority (see Art. 103 UN Charter), but does not Article 51 itself refer to '*Nothing* in the Charter shall impair the *inherent* right...' (emphasis added)? This issue is still important, for example with respect to the concept of pre-emption. In my view a right of anticipatory self-defense can still be said to exist as long as it meets the Webster criteria formulated on the occasion of the *Niagara* incident in 1838, that is 'a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation'. Israel called on this during the Six-Day War in 1967. This aspect of the law of self-defense may also still have relevance in a contemporary context when we are faced with serious and imminent threats of international terrorism or weapons of mass destruction. Of course, this right can easily be subject to abuse, and a mere presumption that an attack might take place is insufficient. However, it is better to recognize and if possible qualify the operation of a right to anticipatory self-defense rather than simply deny its existence, as some prefer to do.

Furthermore, in the practice of the United Nations - I am not quite sure whether I can say in the law of the United Nations - two further exceptions emerged. First, the Uniting for Peace Resolution, enabling the General Assembly in case of a breach of peace or act of aggression to recommend even military action should the Security Council be paralyzed due to a lack of agreement. There has been a full fledged and interesting doctrinarian battle on the issue of whether or not Uniting for Peace can be viewed as to be in accordance with the Charter. Is it 'Disuniting for War' rather than 'Uniting for Peace', as the Soviet Union claimed it to be? - I must say some good legal arguments have been made.⁸ It is notable that the Uniting for Peace-procedure has not often been invoked in the practice of the United Nations, despite frequent speculations. And especially the aspect of the use of force with which we are concerned today does not appear to be on a firm footing.

A second claimed exception, equally controversial, is the right of National Liberation Movements to use force in their legitimate struggle against colonialism, racist regimes or foreign occupation. Such a right, advocated especially during the 1970s at the level of the General Assembly, was always controversial.⁹ With the disappearance, fortunately, of the last remnants of colonialism and the apartheid regime, and with the gradual but steady recognition of the right of the Palestinian people, this claimed exception might no longer be relevant.

More relevant are two *extra-Charter* exceptions. Thus, it has convincingly been argued that the right of a State to rescue its nationals, if necessary by military coercion, is unaffected by the UN Charter. Well-known examples include the Entebbe Operation in Uganda in 1976, the failed US attempt to liberate the American hostages in Tehran in 1980

and a British military action to rescue peacekeepers in Sierra Leone in 2002. Such actions raised little protest.¹⁰ Practice and an absence of protest, together with a widely held conviction that a State has a right, if not a duty to protect the life of its nationals, may be another exception to Article 2.4 which cannot comfortably be placed under the scope of self-defense.

The doctrine of 'humanitarian intervention' is also quoted as an extra-Charter exception. At stake here is not the protection of a State's own nationals but rather the nationals of third States. This doctrine seeks to legitimize the use of force in case of flagrant violations of human rights, without the consent of the Government of the state in which the intervention takes place and in some cases without prior authorization of the UN Security Council. A rather genuine and successful example is *Operation Provide Comfort* relating to the Kurdish people and Shi'ites in Northern Iraq in April 1991. A more complicated example is the NATO action in Kosovo in Spring 1999, in response to the suppression of the Albanian minority in Kosovo by the Serbs in power. My personal opinion is that there was a necessity to act militarily, but I am not quite sure whether the NATO bombing campaign can stand the test of proportionality, observance of international humanitarian law and effectiveness. Obviously, the issue of humanitarian intervention touches the very core of contemporary international law. There is a tension, if not a clash among the key principles.

On the one hand, there is the classical international law of State sovereignty, non-intervention and the cardinal principle of the prohibition to use force. On the other hand, there is the modern international law of respect for universally accepted human rights and the organization of the world as an international community, meaning more than just a 'world of States'. We can note that the Security Council has identified increasingly serious violations of human rights, humanitarian disasters and breaches of international humanitarian law as threats to peace. Yet, often the Security Council is divided. Does this mean that one can then conclude that States should take matters into their own hands? Preferably not, but in genuine humanitarian emergencies one cannot and should not exclude it, as a lack of protest, or acquiescence, shows in e.g. *Operation Comfort*, and as also recent normative developments reflect, such as the new African Union Treaty.¹¹

The prohibition to use force after Iraq

The recent crisis in the United Nations regarding Iraq could lead to a thorough reappraisal of fundamental notions regarding peace and security, such as the ban on force and the notion of collective security. Contrary to what President Bush, Prime Minister Blair and also the Dutch government would have had us believe, the UN Security Council resolutions passed since 1990 did not offer a sufficient legal basis for military intervention in Iraq. Resolution 1441 of 8 November 2002 did recognize a 'material breach' in Iraq's responsibility to disarm and threatens 'serious consequences' (i.e., military action), but it specifically stipulated that the Council will reconvene and deliberate immediately about such consequences should Iraq not cooperate with the weapon inspectors. Neither could the

resolutions from the previous Gulf war serve as the basis for the use of force. The 'with all necessary means' Resolution 678 (1990) of the Security Council, passed on November 29th 1990, specifically dealt with the termination of the illegal occupation of Kuwait. The phrase 'to restore international peace and security in the area', as often referred to, had nothing to do with the obligatory disarmament of Iraq. These words were added to Resolution 678 with a view toward the security of other Gulf region states (especially Saudi Arabia) and the Palestinian problem. Besides, the mandate in 678 referred to "Member States co-operating with the Government of Kuwait".

President Bush also relied on Resolution 687, which was passed on April 3rd 1991 after Operation Desert Storm and the liberation of Kuwait. This resolution encompassed a far-reaching package of compulsory peace steps, including the deployment of UN observers, compulsory boundary demarcation, a continued scheme of economic and financial sanctions, inspection of all nuclear materials in Iraq and destruction of all nuclear, biological and chemical and long range weapons. To keep pressure on Iraq, the Security Council announced that all previous resolutions remained valid. The possibility of further use of force was not raised in Resolution 687.

Reliance on a continuous mandate for the use of force on the combined effect of all Gulf resolutions of the previous 12 years is a rather weak legal and political basis for diverging from the cardinal principle of the prohibition to use force in the UN Charter.

The draft Security Council resolution, circulated by the Americans in cooperation with the British and the Spanish, but eventually not tabled, was very unclear. On the one hand, it wanted to establish that Iraq was guilty of 'serious breaches' of Resolution 1441, but on the other hand it did not specifically call for the use of military force although it was obvious that that was the underlying wish. However, the phrase 'with all necessary means' was the formula used by the Security Council in earlier resolutions that dealt with Somalia, Haiti, East Timor and Afghanistan. The draft resolution also never mentioned its goal. One simply had to assume that the disarmament of Iraq was still the goal even though it was an open secret that America wanted to effect a regime change.

The shuffling with resolution texts in order to read into them politically what cannot be read into them legally, threatens to emerge as another method to circumvent the prohibition on the use of force under the UN Charter. My fear is that the unilateral use of force to achieve the enforcement of resolutions or other goals, for example regime change in another country, could destroy the fragile but indispensable system of collective security.

The challenge now is how to adapt and strengthen this system to the new reality of life after the terrorist attacks of 11 September instead of weakening it. This demands foremost a thorough appreciation of non-military means to achieve internationally agreed goals, such as more effective ('smart') sanctions, early deployment of UN troops with a robust mandate, weapon inspections, demobilization and disarmament. In the last few years, encouraging progress has been made on all these points, despite occasional setbacks.

The use of force can never be excluded as a final resort. This has been proven by the Security Council's decisions in the cases of Somalia, Haiti, East Timor and Afghanistan. In these cases, the 'old' international law of sovereignty and non-intervention had to give way to the 'new' international law aimed at preventing genocide, crimes against humanity, international terrorism, and the use of weapons of mass destruction.

Final observations:

Article 2 (4) UN Charter, still a straitjacket or are the fences coming down?

The 20th century did bring a considerable curtailing of the right to use force in international relations, ranging from the institutionalized procedures for international dispute settlement of the Hague Peace Conferences, through a qualified ban on war during the League period (albeit with many loopholes), to the rather strict prohibition to use or even threat to use force under the UN Charter. I dealt with its evolution at some length at the beginning of my lecture, in order to show that this has been a long march that evolved only painstakingly. Obviously, these rules have been violated many times but they did not fade away. There are repeatedly signs that States consider the prohibition to use force under Article 2 (4) to be a straitjacket. Hence all of the attempts to unravel the strings. These attempts have taken various forms and range from stretched interpretations of the Charter concepts of 'armed attack' and 'self-defense', through claims of emerging new UN law under the Uniting for Peace-procedure and claims with respect to the legitimacy of the struggle of national liberation movements, through a revival of old doctrines such as 'humanitarian intervention' and 'pre-emptive strikes' for whatever noble motives. These motives include promoting respect for human rights, regime change, democracy, anti-terrorism and disarmament of weapons of mass destruction. Ultimately, President Bush demanded a right to pre-emptive strikes against the 'axis of evil' (Iraq, Iran and North Korea) in his 2002 State of the Union speech and national security strategy.

Was Hedley Bull right when he wrote in 1995 that warfare is still 'a basic determinant of the shape of the system' and 'a means of effecting just change'? Is Michael Glennon right in his claim, in his comment on the Iraq question in the recent issue of *Foreign Affairs*: 'With the dramatic rupture of the UN Security Council, it became clear that the grand attempt to subject the use of force to the rule of law had failed?' Should we indeed in international law cross out Article 2 (4) from the list of principles with the status of *jus cogens*, i.e. peremptory norm of general international law accepted and recognized by the international community of States as a whole from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character' (Art. 53 Vienna Convention on the Law of Treaties)? These views are too harsh and too premature. While I do not subscribe to the opposite view that the use of force ought to become completely obsolete in international relations, I do believe that the current reappraisal of the use of force is a dangerous one. It can easily lead to replacing the law of the Charter by the right of the mighty, however kind hearted the gunmen may be. But it can never be the case that new rules are made by a few militarily powerful states and their allies and then forced down the throats of other

nations. Acceptance demands negotiations and final decision-making in the political nerve centre of the UN, imperfect as that may be. *International law should not be through the barrel of a gun*. If we are not careful, we may face a dangerous appreciation of the unilateral use of force in a world that already is suffering from great discrepancies between rich and poor countries, civilizations and religions.

In sum, we should not overestimate the role of the use of force in international relations and underestimate what can be achieved by non-forcible measures. We should not neglect, let alone belittle, the notable progress in the latter field, through strengthened human rights monitoring, smart sanctions regimes, international inspection, weapon destruction, conflict prevention and pro-democratic action. Development assistance and human rights policy can play an important role in the maintenance or restoration of peace and security, either preventive or after a conflict. This demands more than the willingness to use the UN *à la carte* for aid to refugees or humanitarian assistance after a conflict. I believe the ACUNS community has here a particular role to play, in advocating a clear vision on the interplay between peace and security, sustainable development and human rights and on the alternative of respecting the prohibition to use force under the Charter.

Note of thanks

At the end of my lecture, Mr Chairperson, distinguished fellow-ACUNS members, I would like to add a few personal notes, if you allow me. Throughout the years, ACUNS has meant a lot to me, both professionally and personally. In my career I benefited a lot from my scholarly contacts with my ACUNS colleagues. I have fond memories of the enthusiastic support and wise advice Johan Kaufmann (who kindly introduced me to ACUNS shortly after its establishment) and I received from people like Gene Lyons, Lee Gordenker, Ben Rivlin, Jim Sutterlin and Chad Alger when we wrote two ACUNS annual reports in the early 1990s. Indeed, I was fortunate to be selected as a workshop participant in 1993 and become part of what Gene Lyons so aptly called the 'invisible college'. Through ACUNS I got to know well the energetic and always stimulating Professor Tom Weiss, a former ACUNS Director and now a fine friend with whom I have the privilege to co-operate with in various projects, including the board of Global Governance which is one of the two crown jewels of ACUNS, the other being the workshops.

For years I have been in weekly, if not daily contact with my predecessor Dr Charlotte Ku, a soft-spoken and gentle but always firm lady who is a monument of integrity and dedication to ACUNS and ASIL. On the Board we had always frank, but pleasant discussions. People commented that obviously I sometimes enjoyed using the gavel, but as a matter of fact I believe we always operated on the basis of consensus and I cannot recall any voting in Board meetings. People such as Beatrice Pouligny, Isidro Morales, Gillian Sorenson, Jacques Fomerand, Ian Johnstone, Takeo Uchida and others always convinced me. I had complete peace of mind, when we managed to convince Craig Murphy to take over the ACUNS helm, knowing his reputation as a scholar and his deep commitment to ACUNS.

Last but not least, I would like to mention two very nice ladies with whom I have also been in very regular contact: our tireless and always enthusiastic Executive Director Jean Krasno and the Program Coordinator Karen Ellis.¹² By now I have been on the board of quite a few organizations, in the Netherlands and elsewhere. Honestly, none is so efficiently run and with so much enthusiasm, despite all concerns on financing ACUNS. That is mainly due to Jean and Karen. It must have not always been easy to have a Chair so far away from HQ, or is this the formula for success? Anyhow, I owe you deep thanks and how can a Dutchman better express this appreciation than with some tulips?

¹ Nico Schrijver currently (2006) holds the position of Chair in International Public Law, Faculty of Law, at Leiden University.

² Inis Claude notes "The Hague concepts were not revolutionary; they pointed toward encouragement of avoidance of war and mitigation of the evils and barbarities of warfare rather than recision of the legal right of states to make war..." See Inis L. Claude, Jr., *Swords into Ploughshares: The Problems and Progress of International Organization* Fourth Edition (New York: Random House, 1971), p. 30.

³ As noted for instance in Rebecca M.M. Wallace, *International Law* Second Edition (London: Sweet & Maxwell, 1992), p. 242; and A. LeRoy Bennet, *International Organizations: Principles and Issues* Fifth Edition (New Jersey: Prentice Hall, 1991), p. 36.

⁵ Several of these cases, and others, are discussed in the report of the International Commission on Intervention and State Sovereignty, *The Responsibility to Protect*, Supplementary Volume (Ottawa: IDRC, 2001), chapters 4-5; Wallace, *International Law*, chapter 11; and the Independent International Commission on Kosovo, *Kosovo Report: Conflict, International Response, Lessons Learned* (Oxford: Oxford University Press, 2000), chapter 6.

⁶ A brief but useful discussion is provided in Jose E. Alvarez, "Constitutional interpretation in international organizations", in Jean-Marc Coicaud and Veijo Heiskanen (eds.), *The Legitimacy of International Organizations* (Tokyo: United Nations University Press, 2001), pp. 125-136.

⁷ See ICISS, *Responsibility to Protect*, chapter 5; and also David M. Malone (ed.), *The UN Security Council: From the Cold War to the 21st Century* (Boulder: Lynne Rienner Publishers, 2004), especially chapters 9-10, 30 and 34-35.

⁸ A useful discussion of the role and powers of the Security Council is found in Georg Nolte, "The Limits of the Security Council's Powers and its Functions in the International Legal System: Some Reflections", in Michael Byers

(ed.), *The Role of Law in International Politics: Essays in International Relations and International Law* (Oxford: Oxford University Press, 2000), pp. 315-26.

⁹ For example, Michael Akehurst *A Modern Introduction to International Law* Fifth Edition (London: George Allen and Unwin, 1984), pp. 255-59.

¹⁰ Rebecca Wallace notes that while "the legitimacy of intervention to afford such protection is not firmly established in international law", intervention to protect or rescue one's nationals "can be reconciled with self-defense." Wallace, *International Law*, p. 249. The debates over the justification of US interventions in Grenada (1983) and Panama (1989) are summarized in ICISS, *Responsibility to Protect*, pp. 64-68.

¹¹ Political, legal, historical and normative developments in this debate are well illustrated by the ICISS, *Responsibility to Protect* report and the Kosovo Commission, *Kosovo Report*. Also of interest is Nicholas J. Wheeler, *Saving Strangers: Humanitarian Intervention in International Society* (Oxford: Oxford University Press, 2002), pp. 242-84.

¹² The ACUNS Secretariat moved in July 2003 to its current location at Wilfrid Laurier University, Waterloo, Canada and these positions have been filled by new personnel.