This book examines to what extent the right of self-defence, as laid down in Article 51 of the Charter of the United Nations, permits States to launch military operations against other States. In particular, it focuses on the occurrence of an ‘armed attack’ – the crucial trigger for the activation of this right. In light of the developments since 9/11, the author analyses relevant physical and verbal customary practice, ranging from the 1974 Definition of Aggression to recent incidents such as the 2001 US intervention in Afghanistan and the 2006 Israeli intervention in Lebanon. The notion of ‘armed attack’ is examined from a threefold perspective. What acts can be regarded as an ‘armed attack’? When can an ‘armed attack’ be considered to take place? And from whom must an ‘armed attack’ emanate? By way of conclusion, the different findings are brought together in a draft ‘Definition of Armed Attack’.

Dr Tom Ruys is a lawyer with Stibbe, Brussels, and a senior member of the Leuven Centre for Global Governance Studies. He also teaches Public International Law as a substitute lecturer at the Catholic University of Leuven.
‘ARMED ATTACK’ AND
ARTICLE 51 OF THE UN
CHARTER: EVOLUTIONS
IN CUSTOMARY LAW
AND PRACTICE

TOM RUYS
“POWER ALONE CANNOT PROTECT US, NOR DOES IT ENTITLE US TO DO AS WE PLEASE.”

Barack Obama, 44th President of the United States, Inaugural Speech, Washington DC, 20 January 2009
# TABLE OF CONTENTS

**Acknowledgment**  page x  
**Table of abbreviations and abbreviated citations**  xi  
**Selected case law, legislation and related documents**  xviii  

## Introduction  1  

### 1 The methodological debate and the quest for custom  6  

1.1 Treaty vs. custom  7  
1.1.1 The Charter and pre-existing custom  7  
1.1.2 The role of custom in treaty interpretation and modification  19  

1.2 State practice vs. *opinio iuris*  29  
1.2.1 Introduction: the methodological debate  29  
1.2.2 The evidentiary weight of words and deeds  31  
1.2.3 Observations concerning the density of customary practice  44  
1.2.4 Conclusion  51  

### 2 ‘Armed attack’ and other conditions of self-defence  53  

2.1 The ‘armed attack’ requirement as an integral part of Article 51 UN Charter  53  
2.1.1 Self-preservation and self-defence prior to 1945  53  
2.1.2 Article 51 UN Charter – primary means of interpretation  55  
2.1.3 The preparatory works of the UN Charter  60  

2.2 Other conditions of self-defence  68  
2.2.1 ‘Procedural’ obligations  68  
2.2.2 Necessity and proportionality  91
3 The ‘armed attack’ requirement ratione materiae 126

3.1 Armed attack and aggression 127
3.1.1 Two sides of the same coin 127
3.1.2 The negotiations within the Fourth Special Committee on the Question of Defining Aggression (1968–74) 129
3.1.3 Value of the Definition of Aggression 136

3.2 General factors determining the existence of an ‘armed attack’ 139
3.2.1 The ‘most grave’ forms of the use of force and the de minimis controversy 139
3.2.2 The ‘animus aggressionis’ and accumulation of events 158
3.2.3 Connecting the dots: the panoply of scenarios and the role of context 175

3.3 Small-scale incursions by land, sea or air 184

3.4 Attacks against external manifestations of the State 199
3.4.1 Military units and military installations abroad 199
3.4.2 Embassies and diplomatic envoys 201
3.4.3 Civilian aircraft and merchant vessels 204
3.4.4 Protection of nationals 213

4 The ‘armed attack’ requirement ratione temporis 250

4.1 Anticipatory self-defence: the never-ending saga (1945–2001) 255
4.1.1 The doctrinal debate – a brief appraisal 255
4.1.2 Customary precedents: evidence in concreto 267
4.1.3 Customary evidence in abstracto 294

4.2 The shockwaves of 9/11 305
4.2.1 The 2002 US National Security Strategy and the intervention in Iraq in 2003 305
4.2.2 Shifting positions of States and scholars: a defeat of preventive self-defence at the expense of an embrace of pre-emptive self-defence? 318

4.3 Exceptions and borderline cases 342
4.3.1 The prospective dimension of the necessity standard 342
4.3.2 Possible exceptions? 343
4.3.3 Interceptive self-defence at the tactical level: on-the-spot reaction 346
5 The ‘armed attack’ requirement ratione personae 368

5.1 Indirect military aggression in the decolonization era 369
5.1.1 Formulation of the problem 369
5.1.2 The debate on ‘indirect aggression’ within the Fourth Special Committee on the Question of Defining Aggression 382
5.1.3 State practice 394
5.1.4 Indirect aggression in the wake of the ICJ’s Nicaragua case 406

5.2 Self-defence against non-State actors in the age of international terrorism and State failure 419
5.2.1 Prelude to 9/11: shifting context, shifting practice? 419
5.2.2 9/11: awakening to a new security environment 433
5.2.3 Customary practice after 9/11 447
5.2.4 The response of the International Court of Justice 472
5.2.5 Conclusion: can non-State actors commit ‘armed attacks’? 485

6 What future for the ‘armed attack’ criterion? 511

6.1 The customary boundaries of self-defence 511
6.1.1 A word of caution 511
6.1.2 The correlation between Article 51 UN Charter and other primary or secondary rules, and the ‘pre-existing custom’ paradigm 514
6.1.3 Preconditions of individual self-defence other than the ‘armed attack’ requirement 517
6.1.4 Ratione materiae: the basic ingredients of an ‘armed attack’ 520
6.1.5 The ‘armed attack’ ratione temporis 524
6.1.6 Ratione personae: attacks by non-State actors and the right of self-defence 528
6.1.7 The slippery slope of self-defence 532

6.2 Towards a UNGA ‘Definition of Armed Attack’? 535
6.2.1 Resuming an ancient project 535
6.2.2 A blueprint 539
6.2.3 Post-scriptum: strengthening the compliance pull of the Ius ad Bellum 545

Index 551
ACKNOWLEDGMENT

The present volume is the product of several years of research at the Institute for International Law of the Catholic University of Leuven, culminating in the defence of a doctoral thesis in October 2009.

It has been made possible through the valued financial support of the Fund for Scientific Research Flanders (Fonds voor Wetenschappelijk Onderzoek Vlaanderen) as well as the even more valued moral support of my ever-energetic supervisor, Professor Jan Wouters. I thank my colleagues at the Institute for International Law and the Leuven Centre for Global Governance Studies for a very fruitful and most gratifying cooperation, in particular the former occupants of the ‘International House’ Dominic, Bruno, and Maarten, as well as Bart, Sten, Cedric, Fred and Viviane.

I also wish to specifically thank several persons, who, in various ways, supported or inspired me during the task ahead, notably Ambassador Johan Verbeke and his former team at the Belgian Permanent Representation at the United Nations in New York, Professor Michael Reisman of Yale Law School, Professors Christine Gray (Cambridge), Olivier Corten (Université Libre de Bruxelles) and Dino Kritsiotis (University of Nottingham), as well as the Leuven faculty members who, with Professor Wouters, granted me the honour of serving on my doctoral jury, Stephan Parmentier and Luc Reychler.

My warmest thanks to my parents for their unremitting support and for instilling in me sufficient perseverance to cope with prolonged sojourns in the dusty catacombs of the Leuven university library.

Last but not least, I express my gratitude to my wife, Isabelle, who was the first to read the present work in its entirety, and whose invaluable logistical and moral support always kept the ship on course. It is to her and our two wonderful boys, Mathias and Laurens, that I dedicate this work.
TABLE OF ABBREVIATIONS AND ABBREVIATED CITATIONS

1. Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADF</td>
<td>Allied Democratic Forces</td>
</tr>
<tr>
<td>ASIL</td>
<td>American Society of International Law</td>
</tr>
<tr>
<td>AU</td>
<td>African Union</td>
</tr>
<tr>
<td>CNA</td>
<td>Computer Network Attack</td>
</tr>
<tr>
<td>DASR</td>
<td>International Law Commission Draft Articles on State Responsibility (2001)</td>
</tr>
<tr>
<td>DRC</td>
<td>Democratic Republic of the Congo</td>
</tr>
<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
</tr>
<tr>
<td>ESS</td>
<td>European Security Strategy</td>
</tr>
<tr>
<td>ETA</td>
<td>Euskadi Ta Askatasuna</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>(ex-)FAR</td>
<td>Forces armées rwandaises</td>
</tr>
<tr>
<td>FARC</td>
<td>Revolutionary Armed Forces of Colombia</td>
</tr>
<tr>
<td>G8</td>
<td>Group of Eight</td>
</tr>
<tr>
<td>IAEA</td>
<td>International Atomic Energy Agency</td>
</tr>
<tr>
<td>ICAO</td>
<td>International Civil Aviation Organization</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
</tr>
<tr>
<td>ICTY</td>
<td>International Criminal Tribunal for the former Yugoslavia</td>
</tr>
<tr>
<td>IDF</td>
<td>Israeli Defence Forces</td>
</tr>
<tr>
<td>IDI</td>
<td>Institut de Droit International</td>
</tr>
<tr>
<td>IGAD</td>
<td>Intergovernmental Authority on Development</td>
</tr>
<tr>
<td>IHL</td>
<td>International Humanitarian Law</td>
</tr>
<tr>
<td>ILA</td>
<td>International Law Association</td>
</tr>
<tr>
<td>ILC</td>
<td>International Law Commission</td>
</tr>
<tr>
<td>IO</td>
<td>International Organization</td>
</tr>
<tr>
<td>IRA</td>
<td>Irish Republican Army</td>
</tr>
<tr>
<td>ITLOS</td>
<td>International Tribunal for the Law of the Sea</td>
</tr>
<tr>
<td>KRG</td>
<td>Kurdistan Regional Government</td>
</tr>
</tbody>
</table>
### Abbreviations and Abbreviated Citations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>LRA</td>
<td>Lord’s Resistance Army</td>
</tr>
<tr>
<td>LTTE</td>
<td>Liberation Tigers of Tamil Eelam</td>
</tr>
<tr>
<td>MONUC</td>
<td>United Nations Organization Mission in the Democratic Republic of the Congo</td>
</tr>
<tr>
<td>NAFTA</td>
<td>North American Free Trade Agreement</td>
</tr>
<tr>
<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
</tr>
<tr>
<td>NEO</td>
<td>Non-Combatant Evacuation Operation</td>
</tr>
<tr>
<td>NSS</td>
<td>National Security Strategy of the United States</td>
</tr>
<tr>
<td>OAS</td>
<td>Organization of American States</td>
</tr>
<tr>
<td>OAU</td>
<td>Organization of African Unity (now African Union)</td>
</tr>
<tr>
<td>ODA</td>
<td>Official Development Assistance</td>
</tr>
<tr>
<td>OECS</td>
<td>Organization of Eastern Caribbean States</td>
</tr>
<tr>
<td>OPT</td>
<td>Occupied Palestinian Territories</td>
</tr>
<tr>
<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
</tr>
<tr>
<td>P-5</td>
<td>Permanent Members of the United Nations Security Council</td>
</tr>
<tr>
<td>PCA</td>
<td>Permanent Court of Arbitration</td>
</tr>
<tr>
<td>PCIJ</td>
<td>Permanent Court of International Justice</td>
</tr>
<tr>
<td>PKK</td>
<td>Kurdistan Workers’ Party</td>
</tr>
<tr>
<td>PLO</td>
<td>Palestine Liberation Organization</td>
</tr>
<tr>
<td>ROE</td>
<td>Rules of Engagement</td>
</tr>
<tr>
<td>SOFA</td>
<td>Status of Forces Agreement</td>
</tr>
<tr>
<td>SWAPO</td>
<td>South West Africa People’s Organization</td>
</tr>
<tr>
<td>TFG</td>
<td>Transitional Federal Government (Somalia)</td>
</tr>
<tr>
<td>UAR</td>
<td>United Arab Republic</td>
</tr>
<tr>
<td>UIC</td>
<td>Union of Islamic Courts</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNCIO</td>
<td>United Nations Conference on International Organization (San Francisco Conference)</td>
</tr>
<tr>
<td>UNEF</td>
<td>United Nations Emergency Force</td>
</tr>
<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
</tr>
<tr>
<td>UNMOVIC</td>
<td>United Nations Monitoring, Verification and Inspections Commission</td>
</tr>
<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
</tr>
<tr>
<td>UNSG</td>
<td>United Nations Secretary-General</td>
</tr>
<tr>
<td>UNTSO</td>
<td>United Nations Truce Supervision Organization</td>
</tr>
<tr>
<td>WMD</td>
<td>Weapons of Mass Destruction</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organization</td>
</tr>
</tbody>
</table>
## 2. Journals and related materials

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AASL</td>
<td>Annals of Air and Space Law</td>
</tr>
<tr>
<td>ABNYC Rec</td>
<td>Record of the Association of the Bar of the City of New York</td>
</tr>
<tr>
<td>ADI</td>
<td>Anuario de Derecho Internacional</td>
</tr>
<tr>
<td>Adv</td>
<td>Archiv des Völkerrechts</td>
</tr>
<tr>
<td>AFDI</td>
<td>Annuaire français de Droit International</td>
</tr>
<tr>
<td>AFP</td>
<td>Agence France Press</td>
</tr>
<tr>
<td>AFRelI</td>
<td>Annuaire Français de Relations Internationales</td>
</tr>
<tr>
<td>African YBIL</td>
<td>African Yearbook of International Law</td>
</tr>
<tr>
<td>Air Force L Rev</td>
<td>Air Force Law Review</td>
</tr>
<tr>
<td>AJIL</td>
<td>American Journal of International Law</td>
</tr>
<tr>
<td>Alberta L Rev</td>
<td>Alberta Law Review</td>
</tr>
<tr>
<td>American Un IL Rev</td>
<td>American University International Law Review</td>
</tr>
<tr>
<td>American Un JILP</td>
<td>American University Journal of International Law and Policy</td>
</tr>
<tr>
<td>American Un L Rev</td>
<td>American University Law Review</td>
</tr>
<tr>
<td>Ann IDI</td>
<td>Annuaire de l'Institut de Droit International</td>
</tr>
<tr>
<td>ARIEL</td>
<td>Austrian Review of International and European Law</td>
</tr>
<tr>
<td>Arizona JICL</td>
<td>Arizona Journal of International and Comparative Law</td>
</tr>
<tr>
<td>ASDI</td>
<td>Annuaire Suisse de Droit International</td>
</tr>
<tr>
<td>ASIL Proc</td>
<td>Proceedings of the American Society of International Law</td>
</tr>
<tr>
<td>Australian YBIL</td>
<td>Australian Yearbook of International Law</td>
</tr>
<tr>
<td>Baltic YBIL</td>
<td>Baltic Yearbook of International Law</td>
</tr>
<tr>
<td>Berkeley JIL</td>
<td>Berkeley Journal of International Law</td>
</tr>
<tr>
<td>BFSP</td>
<td>British and Foreign State Papers</td>
</tr>
<tr>
<td>Boston College ICL Rev</td>
<td>Boston College International and Comparative Law Review</td>
</tr>
<tr>
<td>Brooklyn JIL</td>
<td>Brooklyn Journal of International Law</td>
</tr>
<tr>
<td>BYBIL</td>
<td>British Yearbook of International Law</td>
</tr>
<tr>
<td>California Western ILJ</td>
<td>California Western International Law Journal</td>
</tr>
<tr>
<td>California Western L Rev</td>
<td>California Western Law Review</td>
</tr>
<tr>
<td>Cal L Rev</td>
<td>California Law Review</td>
</tr>
<tr>
<td>Cambridge LJ</td>
<td>Cambridge Law Journal</td>
</tr>
<tr>
<td>Cambridge Student L Rev</td>
<td>Cambridge Student Law Review</td>
</tr>
<tr>
<td>Can YBIL</td>
<td>Canadian Yearbook of International Law</td>
</tr>
<tr>
<td>Case Western JIL</td>
<td>Case Western Journal of International Law</td>
</tr>
</tbody>
</table>
# Abbreviations and Abbreviated Citations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinese JIL</td>
<td>Chinese Journal of International Law</td>
</tr>
<tr>
<td>Columbia JTL</td>
<td>Columbia Journal of Transnational Law</td>
</tr>
<tr>
<td>Col L Rev</td>
<td>Columbia Law Review</td>
</tr>
<tr>
<td>Cornell ILJ</td>
<td>Cornell International Law Journal</td>
</tr>
<tr>
<td>Cornell L Rev</td>
<td>Cornell Law Review</td>
</tr>
<tr>
<td>Denver JILP</td>
<td>Denver Journal of International Law and Policy</td>
</tr>
<tr>
<td>Denver LJ</td>
<td>Denver Law Journal</td>
</tr>
<tr>
<td>Dickinson L Rev</td>
<td>Dickinson Law Review</td>
</tr>
<tr>
<td>Duke JCIL</td>
<td>Duke Journal of Comparative and International Law</td>
</tr>
<tr>
<td>EJIL</td>
<td>European Journal of International Law</td>
</tr>
<tr>
<td>EJIRel</td>
<td>European Journal of International Relations</td>
</tr>
<tr>
<td>EPIL</td>
<td>Max Planck Encyclopaedia of Public International Law</td>
</tr>
<tr>
<td>EuGRZ</td>
<td>Europäische Grundrechte-Zeitschrift</td>
</tr>
<tr>
<td>Finnish YBIL</td>
<td>Finnish Yearbook of International Law</td>
</tr>
<tr>
<td>Georgia JICL</td>
<td>Georgia Journal of International and Comparative Law</td>
</tr>
<tr>
<td>Georgetown LJ</td>
<td>Georgetown Law Journal</td>
</tr>
<tr>
<td>German LJ</td>
<td>German Law Journal</td>
</tr>
<tr>
<td>GYBIL</td>
<td>German Yearbook of International Law</td>
</tr>
<tr>
<td>Hastings ICL Rev</td>
<td>Hastings International and Comparative Law Review</td>
</tr>
<tr>
<td>HJL Public Policy</td>
<td>Harvard Journal of Law and Public Policy</td>
</tr>
<tr>
<td>HILJ</td>
<td>Harvard International Law Journal</td>
</tr>
<tr>
<td>HL Rev</td>
<td>Harvard Law Review</td>
</tr>
<tr>
<td>ICJ Rep</td>
<td>ICJ Reports</td>
</tr>
<tr>
<td>ICLQ</td>
<td>International and Comparative Law Quarterly</td>
</tr>
<tr>
<td>ICL Rev</td>
<td>International Community Law Review</td>
</tr>
<tr>
<td>IHT</td>
<td>International Herald Tribune</td>
</tr>
<tr>
<td>ILF</td>
<td>International Law Forum</td>
</tr>
<tr>
<td>ILM</td>
<td>International Legal Materials</td>
</tr>
<tr>
<td>ILR</td>
<td>International Law Reports</td>
</tr>
<tr>
<td>ILSA JICL</td>
<td>ILSA Journal of International and Comparative Law</td>
</tr>
<tr>
<td>Indian JIL</td>
<td>Indian Journal of International Law</td>
</tr>
<tr>
<td>Indiana ICL Rev</td>
<td>Indiana International and Comparative Law Review</td>
</tr>
<tr>
<td>IO</td>
<td>International Organization</td>
</tr>
<tr>
<td>Iowa L Rev</td>
<td>Iowa Law Review</td>
</tr>
</tbody>
</table>
ABBREVIATIONS AND ABBREVIATED CITATIONS

IRRC  
Israeli L Rev  
Israeli YBHR  
Italian YBIL  
JACL  
JALC  
Japanese Annual IL  
JCSL  
JICJ  
J Int'l L & Economics  
JTLP  
Keesing’s  

LNTS  
Leiden JIL  
Melbourne JIL  
Mercer L Rev  
Michigan JIL  
Michigan L Rev  
Modern L Rev  
MPYB/UNL  
Naval L Rev  
NILR  
North Carolina JIL Comm Reg.  

Northwestern UNL Rev  
NYBIL  
NYL School JICL  
NY Times  
NYUJILP  

OJ  
Ottawa L Rev  
Pace IL Rev  
Penn State IL Rev  
RBDI  
RDC  
RDMDG  
REDI  
Regent JIL  

International Review of the Red Cross  
Israeli Law Review  
Israeli Yearbook of Human Rights  
Italian Yearbook of International Law  
Journal of Armed Conflict Law  
Journal of Air Law and Commerce  
Japanese Annual of International Law  
Journal of Conflict and Security Law  
Journal of International Criminal Justice  
Journal of International Law and Economics  
Journal of Transnational Law and Policy  
Keesing’s Contemporary Archives/Keesing’s Record of World Events  
League of Nations Treaty series  
Leiden Journal of International Law  
Melbourne Journal of International Law  
Mercer Law Review  
Michigan Journal of International Law  
Michigan Law Review  
Modern Law Review  
Max Planck Yearbook of United Nations Law  
Naval Law Review  
Netherlands International Law Review  
North Carolina Journal of International Law and Commercial Regulation  
Northwestern University Law Review  
Netherlands Yearbook of International Law  
New York Law School Journal of International and Comparative Law  
New York Times  
New York University Journal of International Law and Politics  
Official Journal of the European Union  
Ottawa Law Review  
Pace International Law Review  
Penn State International Law Review  
Revue Belge de Droit International  
Recueil des Cours  
Revue de Droit Militaire et de Droit de la Guerre  
Revista Española de Derecho Internacional  
Regent Journal of International Law
### Abbreviations and Abbreviated Citations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>RGDIP</td>
<td>Revue Générale de Droit International Public</td>
</tr>
<tr>
<td>RHDI</td>
<td>Revue Hellénique de Droit International</td>
</tr>
<tr>
<td>RIAA</td>
<td>Reports of International Arbitral Awards</td>
</tr>
<tr>
<td>RQDI</td>
<td>Revue québécoise de Droit International</td>
</tr>
<tr>
<td>RSDI</td>
<td>Revue Suisse de Droit International</td>
</tr>
<tr>
<td>San Diego ILJ</td>
<td>San Diego International Law Journal</td>
</tr>
<tr>
<td>San Diego L Rev</td>
<td>San Diego Law Review</td>
</tr>
<tr>
<td>Singapore YBIL</td>
<td>Singapore Yearbook of International Law</td>
</tr>
<tr>
<td>South African LJ</td>
<td>South African Law Journal</td>
</tr>
<tr>
<td>South African YBIL</td>
<td>South African Yearbook of International Law</td>
</tr>
<tr>
<td>Stanford JIL</td>
<td>Stanford Journal of International Law</td>
</tr>
<tr>
<td>Stanford L Rev</td>
<td>Stanford Law Review</td>
</tr>
<tr>
<td>Stat</td>
<td>United States Statutes at Large</td>
</tr>
<tr>
<td>Syracuse L Rev</td>
<td>Syracuse Law Review</td>
</tr>
<tr>
<td>SZIER</td>
<td>Schweizerisches Zeitschrift für internationales und europäisches Recht</td>
</tr>
<tr>
<td>Temple ICLJ</td>
<td>Temple International and Comparative Law Journal</td>
</tr>
<tr>
<td>Texas JIL</td>
<td>Texas Journal of International Law</td>
</tr>
<tr>
<td>Texas L Rev</td>
<td>Texas Law Review</td>
</tr>
<tr>
<td>Tilburg Foreign L Rev</td>
<td>Tilburg Foreign Law Review</td>
</tr>
<tr>
<td>UCLA JILFA</td>
<td>UCLA Journal of International Law and Foreign Affairs</td>
</tr>
<tr>
<td>Un Chicago L Rev</td>
<td>University of Chicago Law Review</td>
</tr>
<tr>
<td>UNCIO</td>
<td>United Nations Conference on International Organization</td>
</tr>
<tr>
<td>Un Pittsburgh L Rev</td>
<td>University of Pittsburgh Law Review</td>
</tr>
<tr>
<td>UNTS</td>
<td>United Nations Treaty Series</td>
</tr>
<tr>
<td>UNYB</td>
<td>United Nations Yearbook</td>
</tr>
<tr>
<td>UST</td>
<td>United States Treaties and Other International Agreements</td>
</tr>
<tr>
<td>Valparaiso Un L Rev</td>
<td>Valparaiso University Law Review</td>
</tr>
<tr>
<td>Vanderbilt L Rev</td>
<td>Vanderbilt Law Review</td>
</tr>
<tr>
<td>Vanderbilt JTL</td>
<td>Vanderbilt Journal of Transnational Law</td>
</tr>
<tr>
<td>Villanova L Rev</td>
<td>Villanova Law Review</td>
</tr>
<tr>
<td>Virginia JIL</td>
<td>Virginia Journal of International Law</td>
</tr>
<tr>
<td>Washington L Rev</td>
<td>Washington Law Review</td>
</tr>
<tr>
<td>West Virginia L Rev</td>
<td>West Virginia Law Review</td>
</tr>
<tr>
<td>Whittier L Rev</td>
<td>Whittier Law Review</td>
</tr>
<tr>
<td>Yale HRDev LJ</td>
<td>Yale Human Rights and Development Law Journal</td>
</tr>
<tr>
<td>Yale LJ</td>
<td>Yale Law Journal</td>
</tr>
</tbody>
</table>
### Abbreviations and Abbreviated Citations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>YBIHC</td>
<td>Yearbook of International Human Rights Law</td>
</tr>
<tr>
<td>YBILC</td>
<td>Yearbook of the International Law Commission</td>
</tr>
<tr>
<td>YJIL</td>
<td>Yale Journal of International Law</td>
</tr>
<tr>
<td>ZaöRV</td>
<td>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</td>
</tr>
<tr>
<td>ZöR</td>
<td>Zeitschrift für öffentliches Recht</td>
</tr>
</tbody>
</table>
SELECTED CASE LAW, LEGISLATION AND RELATED DOCUMENTS

1. International Case Law (ordered chronologically)

   **ICJ**


**Arbitration (ordered chronologically)**

*I’m Alone case (Canada v. United States of America)*, (1935) 3 RIAA 1609

*Red Crusader case (Commission of Enquiry, Denmark v. United Kingdom)*, (1962) 35 ICR 485


**Other (ordered chronologically)**

Judgment of the International Military Tribunal at Nuremberg, (1946) 1 *Trial of German Major War Criminals before the International Military Tribunal*, 208 (1947)


2. **Selected practice of the UN bodies**

**Security Council (ordered chronologically)**

SC Res. 38 (1948) of 17 January 1948 (India–Pakistan)

SC Res. 39 (1948) of 20 January 1948 (India–Pakistan)

SC Res. 47 (1948) of 21 April 1948 (India–Pakistan)

SC Res. 51 (1948) of 3 June 1948 (India–Pakistan)

SC Res. 82 (1950) of 25 June 1950 (Korean War)

SC Res. 83 (1950) of 27 June 1950 (Korean War)
XX  SELECTED CASE LAW, LEGISLATION AND DOCUMENTS

SC Res. 84 (1950) of 7 July 1950 (Korean War)
SC Res. 95 (1951) of 1 September 1951 (Israel–Egypt)
SC Res. 101 (1953) of 24 November 1953 (Middle East)
SC Res. 111 (1956) of 19 January 1956 (Lake Tiberias incident)
SC Res. 128 (1958) of 11 June 1958 (Lebanon)
SC Res. 129 (1958) of 7 August 1958 (Middle East)
SC Res. 143 (1960) of 13 July 1960 (Congo)
SC Res. 145 (1960) of 22 July 1960 (Congo)
SC Res. 178 (1963) of 24 April 1963 (Portugal)
SC Res. 188 (1964) of 9 April 1964 (Harib Fort; UK–Yemen)
SC Res. 204 (1965) of 19 May 1965 (Portugal)
SC Res. 233 (1967) of 6 June 1967 (Six Day War)
SC Res. 234 (1967) of 7 June 1967 (Six Day War)
SC Res. 235 (1967) of 9 June 1967 (Six Day War)
SC Res. 236 (1967) of 11 June 1967 (Six Day War)
SC Res. 239 (1967) of 10 July 1967 (Democratic Republic of the Congo)
SC Res. 241 (1967) of 15 November 1967 (Democratic Republic of the Congo)
SC Res. 242 (1967) of 22 November 1967 (Middle East)
SC Res. 248 (1968) of 23 March 1968 (Israel)
SC Res. 252 (1968) of 21 May 1968 (Middle East)
SC Res. 256 (1968) of 16 August 1968 (Israel)
SC Res. 262 (1968) of 31 December 1968 (Israel)
SC Res. 267 (1969) of 3 July 1969 (Middle East)
SC Res. 268 (1969) of 28 July 1969 (Portugal)
SC Res. 273 (1969) of 9 December 1969 (Portugal)
SC Res. 275 (1969) of 22 December 1969 (Portugal)
SC Res. 316 (1972) of 26 June 1972 (Israel)
SC Res. 332 (1973) of 19 April 1973 (Israel)
SC Res. 360 (1974) of 16 August 1974 (Turkey–Cyprus)
SC Res. 393 (1976) of 30 July 1976 (South Africa–Zambia)
SC Res. 403 (1977) of 14 January 1977 (Botswana–Southern Rhodesia)
SC Res. 405 (1977) of 14 April 1977 (Mercenary attacks against Benin)
SC Res. 418 (1977) of 4 November 1977 (South Africa–neighbouring States)
SC Res. 419 (1977) of 24 November 1977 (Benin)
SC Res. 447 (1979) of 28 March 1979 (Angola–South Africa)
SC Res. 450 (1979) of 14 June 1979 (Israel)
SC Res. 454 (1979) of 2 November 1979 (Angola–South Africa)
SC Res. 455 (1979) of 23 November 1979 (Southern Rhodesia–Zambia)
SC Res. 466 (1980) of 11 April 1980 (South Africa–Zambia)
SC Res. 467 (1980) of 24 April 1980 (Israel)
SC Res. 479 (1980) of 28 September 1980 (Iran–Iraq War)
SC Res. 496 (1981) of 15 December 1981 (Seychelles)
SC Res. 502 (1982) of 3 April 1982 (Falklands War)
SC Res. 507 (1982) of 28 May 1982 (Seychelles)
SC Res. 568 (1985) of 21 June 1985 (South Africa–neighbouring States)
SC Res. 572 (1985) of 30 September 1985 (Botswana–South Africa)
SC Res. 573 (1985) of 4 October 1985 (Israel)
SC. Res. 574 (1985) of 7 October 1985 (Angola–South Africa)
SC Res. 577 (1985) of 6 December 1985 (Angola–South Africa)
SC Res. 580 (1985) of 30 December 1985 (Lesotho–South Africa)
SC Res. 581 (1986) of 13 February 1986 (South Africa)
SC Res. 660 (1990) of 2 August 1990 (Iraq–Kuwait)
SC Res. 661 (1990) of 6 August 1990 (Iraq–Kuwait)
SC Res. 662 (1990) of 9 August 1990 (Iraq–Kuwait)
SC Res. 664 (1990) of 18 August 1990 (Iraq–Kuwait)
SC Res. 665 (1990) of 25 August 1990 (Iraq–Kuwait)
SC Res. 670 (1990) of 25 September 1990 (Iraq–Kuwait)
SC Res. 678 (1990) of 29 November 1990 (Iraq–Kuwait)
SC Res. 1234 (1999) of 9 April 1999 (DRC)
SC Res. 1267 (1999) of 15 October 1999 (Afghanistan)
xxii  SELECTED CASE LAW, LEGISLATION AND DOCUMENTS

SC Res. 1368 (2001) of 12 September 2001 (9/11 attacks)
SC Res. 1373 (2001) of 28 September 2001 (9/11 attacks and international terrorism)
SC Res. 1440 (2002) of 24 October 2002 (terrorist attacks)
SC Res. 1441 (2002) of 8 November 2002 (Iraq)
SC Res. 1450 (2002) of 13 December 2002 (Terrorist attacks)
SC Res. 1465 (2003) of 13 February 2003 (Terrorist attacks)
SC Res. 1540 (2004) of 28 April 2004 (WMD proliferation)
SC Res. 1566 (2004) of 8 October 2004 (Terrorist attacks)
SC Res. 1559 (2004) of 2 September 2004 (Lebanon)
SC Res. 1583 (2005) of 28 January 2005 (Lebanon)
SC Res. 1614 (2005) of 29 July 2005 (Lebanon)
SC Res. 1674 (2006) of 28 April 2006 (Referring to R2P)
SC Res. 1706 (2006) of 31 August 2006 (Darfur)
SC Res. 1737 (2006) of 23 December 2006 (Iran)
SC Res. 1747 (2007) of 24 March 2007 (Iran)
SC Res. 1803 (2008) of 3 March 2008 (Iran)
SC Res. 1874 (2009) of 12 June 2009 (North Korea)
SC Res. 1887 (2009) of 24 September 2009 (Nuclear non-proliferation)

General Assembly (ordered chronologically)

GA Res. 377 (V) of 3 November 1950 (Uniting for Peace)
GA Res. 498 (V) of 1 February 1951 (Korean War)
GA Res. 500 (V) of 18 May 1951 (Korean War)
GA Res. 1125 (XI) of 2 February 1957 (UNEF I)
GA Res. 1237 (ES-III) of 21 August 1958 (Middle East)
GA Res. 1514 (XV) of 14 December 1960 (Declaration on the Granting of Independence to Colonial Countries and Peoples)
GA Res. 2131 (XX) of 21 December 1965 (Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty)
GA Res. 2625 (XXV) of 24 October 1970 (Friendly Relations Declaration)
GA Res. 2734 (XXV) of 16 December 1970 (Declaration on the Strengthening of International Security)
Selected Case Law, Legislation and Documents

GA Res. 3070 (XXVIII) of 30 November 1973 (Self-determination)
GA Res. 3246 (XXIX) of 29 November 1974 (Self-determination)
GA Res. 3314 (XXIX) of 14 December 1974 (Definition of Aggression)
GA Res. 3382 (XXX) of 10 November 1975 (Self-determination)
GA Res. 31/34 of 30 November 1976 (Self-determination)
GA Res. 36/27 of 13 November 1981 (Osiraq raid)
GA Res. 36/103 of 9 December 1981 (Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States)
GA Res. 36/172 of 17 December 1981 (South Africa)
GA Res. 37/101 of 14 December 1982 (South Africa–Lesotho)
GA Res. 37/233 of 20 December 1982 (Question of Namibia)
GA Res. 38/7 of 2 November 1983 (US–Grenada)
GA Res. 41/38 of 20 November 1986 (US–Libya)
GA Res. 42/22 of 18 November 1987 (Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations)
GA Res. 44/240 of 29 December 1989 (US–Panama)
GA Res. 46/87 of 16 December 1991 (Self-determination)
GA Res. 47/82 of 16 December 1992 (Self-determination)
GA Res. 48/94 of 20 December 1993 (Self-determination)
GA Res. 49/60 of 9 December 1994 (Declaration on Measures to Eliminate Terrorism)
GA Res. 49/151 of 23 December 1994 (Self-determination)
GA Res. A/RES/ES-10/14 of 8 December 2003 (Palestinian Wall)
GA Res. 60/1 of 16 September 2005 (World Summit Outcome)
GA Res. 60/147 of 16 December 2005 (Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law)

International Law Commission (ordered chronologically)

3. Treaties (ordered chronologically)

Hague Convention (I) for the Pacific Settlement of International Disputes, 29 July 1899, 91 BFSP 970; revised 18 October 1907, (1971) UKTS No. 6 (Cmnd. 4575)

Hague Convention (II) Respecting the Limitation of the Employment of Force for the Recovery of Contract Debts, 18 October 1907, (1910) UKTS No. 7 (Cmnd. 5028)

Covenant of the League of Nations, (1919) UKTS No. 4 (Cmnd. 153)

General Treaty for the Renunciation of War, 27 August 1928, 94 LNTS 57

Inter-American Reciprocal Assistance and Solidarity (Act of Chapultepec), Mexico, 6 March 1945, 60 Stat 1831

United Nations Charter and Statute of the International Court of Justice, San Francisco, 26 June 1945, 1 UNTS xvi

Treaty of Friendship and Mutual Assistance between Yugoslavia and Albania, Tirana, 9 July 1946, 1 UNTS No. 15

Inter-American Treaty of Reciprocal Assistance, Rio de Janeiro, 1947, 21 UNTS 77

Charter of the Organization of American States, Bogotá, 30 April 1948 2 UST 2394

North Atlantic Treaty, Washington DC, 4 April 1949, 34 UNTS 243

Australia, New Zealand, United States Security Treaty 1951 (ANZUS), 131 UNTS 83

Treaty of Peace with Japan, San Francisco, 8 September 1951, 136 UNTS No. 1832

Mutual Defence Treaty between the United States and the Republic of China 1954, 248 UNTS 213

Warsaw Security Pact, Warsaw, 14 May 1955, 219 UNTS 25

Treaty of Guarantee, signed between Cyprus, Greece, Turkey and the UK (1960) 382 LNTS 5475

International Covenant on Civil and Political Rights (1966) 999 UNTS 171

International Covenant on Economic, Social and Cultural Rights (1966) 993 UNTS 3

Treaty on the Non-Proliferation of Nuclear Weapons, New York, 1 July 1968, 729 UNTS 161

Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, 1155 UNTS 331
Conference on Security and Cooperation in Europe, Helsinki Final Act, Helsinki, 1 August 1975 (1975) 14 ILM 1292
International Convention against the Taking of Hostages, 17 December 1979, GA Res. 34/146 (adopted by consensus), 1316 UNTS 205
UN Convention on the Law of the Sea, Montego Bay, 10 December 1982, 1833 UNTS 31363
Constitutive Act of the African Union, Lome, 11 July 2000, 2158 UNTS I-37733

4. National case-law (ordered chronologically)

Germany


Israel

– Israeli Supreme Court, sitting as High Court of Justice, Beit Sourik Village Council v. Israel, Judgment of 30 June 2004, HCJ 2056/04
– Israeli Supreme Court, sitting as High Court of Justice, Mara’abe v. Prime Minister of Israel, Judgment of 15 September 2005, HCJ 7957/04
– Israeli Supreme Court, sitting as High Court of Justice, Bassiouni v. Prime Minister, Judgment of 30 January 2008, HCJ 9132/07

United Kingdom

xxvi  selected case law, legislation and documents

United States


5. Selected regional and national materials (ordered chronologically)

African Union

- Solemn Declaration on a Common African Defence and Security Policy, 2nd Extraordinary Session of the African Union, Sirte, 28 February 2004

Australia


Canada


European Union


France

Selected Case Law, Legislation and Documents xxvii

– French Ministry of Defense, Secrétariat Général pour l’administration, 
  Manuel de droit des conflits armés (undated), available at www.defense.gouv.fr/defense/enjeux_defense/defense_et_droit/droit_des_conflicts_armes/manuel_de_droit_des_conflicts_armes,%20at%2045.

Germany

– German Bundestag, ‘Gesetz über die parlamentarische Beteiligung bei der Entscheidung bewaffneter Streitkräfte im Ausland’, (2005) 1 Bundesgesetzblatt 775

Italy

– Chief of the Italian Defence Staff Strategic Concept, April 2005

Japan


The Netherlands

– Dutch Ministry of Defence, Netherlands Defence Doctrine, 1 September 2005

North Atlantic Treaty Organization

– Secretary-General Lord Robertson, Statement of 2 October 2001, reprinted in (2001) 41 ILM 1267

Organization of American States

xxviii Selected Case Law, Legislation and Documents

- OAS Permanent Council, Convocation of the Meeting of Consultation of Ministers of Foreign Affairs and Appointment of a Commission, 5 March 2008, Doc. OEA/Ser.G, CP.RES.930 (1632/08)

Organization for Security and Cooperation in Europe

- OSCE Ministerial Council, OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century, Maastricht, 1–2 December 2003

Russia

- Russian Foreign Ministry, ‘Information and press department commentary regarding a Russian media question concerning possible preventive strikes at terrorists’ bases’, 3 February 2005

Turkey

- Note verbale from the Permanent Mission of Turkey to the Human Rights Council, 26 March 2008, UN Doc. A/HRC/7/G/15

United Kingdom

- UK Ministry of Defence, Joint Warfare Publication 3–51, August 2000

United States

- US Senate and House of Representatives, Joint Resolution to Authorize the Use of United States Armed Forces against those Responsible for the Recent Attacks launched against the United States, 18 September 2001, reprinted in (2002) 40 ILM 1282
- US House of Representatives, Draft Resolution expressing the Unequivocal Support of the House of Representatives for Israel’s Right to Self-defense in the Face of an Imminent Nuclear or Military Threat from Syria, introduced by Mr Wexler and referred to the
Committee on Foreign Affairs, 24 September 2007, 110th Congress, 1st Session, H. Res. 674

6. Other materials (ordered chronologically)

- Adviesraad International Vraagstukken/Advisory Council on International Affairs (AIV), Pre-emptive action, Advisory Report No. 36, July 2004, 33 pages