Part III The Prohibition of the Use of Force, Self-Defence, and Other Concepts, Ch.28 Self-Defence and Collective Security: Key Distinctions

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From: The Oxford Handbook of the Use of Force in International Law
Edited By: Marc Weller

Content type: Book content
Product: Oxford Scholarly Authorities on International Law [OSAIL]
Series: Oxford Handbooks in Law
Published in print: 01 January 2015
ISBN: 9780199673049

Subject(s):
Collective security — Self-defence

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Key Distinctions

I. Introduction

THERE is an elementary distinction between the two principal exceptions to the prohibition of the use of force in international law: the exercise of the right of self-defence (including collective self-defence), recognized by Article 51 of the UN Charter, and the taking of measures involving the use of force by or authorized by the UN Security Council under Chapter VII of the Charter.[1](p. 650) The latter are sometimes referred to as collective security measures.[2]

Dinstein summed up the distinction with characteristic pithiness:

> Collective security postulates the institutionalization of the lawful use of force in the international community…Collective security shares with collective self-defence the fundamental premise that recourse to force against aggression can (and perhaps must) be made by those who are not the immediate victims. But self-defence, either individual or collective, is exercised at the discretion of a single State or a group of States. Collective security operates on the strength of an authoritative decision made by a central organ of the international community.[3]

The present chapter aims to do no more than recall the distinction between collective self-defence and 'collective security', and their interrelations, and to do so principally by reference to an article by Bowett published in 1994.[4]

II. The Debate in 1990–1

It is worth briefly recalling earlier cases in which the distinction was discussed, since they may go some way towards explaining the academic debate and confusion in 1990–1. In particular, the controversy regarding the legal basis of the use of force over Korea in (p. 651) 1950 was no doubt at the back of people's minds on the later occasion.[5] Two days after the North Korean attack on 25 June 1950, the Security Council:

> Recommend[ed] that the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area.[6]

This does not look like an authorization to use force; in terms it is a recommendation to assist the Republic of Korea, that is, a recommendation to join in collective self-defence. On the other hand, the reference (which found an echo in 1990) to restoring international peace and security in the area, on its face goes beyond self-defence. And the fact that those acting in self-defence were under a Unified Command under the US,[7] with authorization to use the UN flag, may be seen to point to a collective security operation. These matters were much discussed at the time, but in reality the case had many special factors, not least the prior UN involvement in the situation in the Korean peninsula.[8] In fact, the only clear authorization to use force prior to 1990 was in 1966, when the Security Council 'call[ed] upon the United Kingdom to prevent, by the use force if necessary, the arrival at Beira' of the *Joanna V* and other vessels carrying oil for the illegal regime in Southern Rhodesia.[9]

Notwithstanding the ambiguous, 'hybrid' Korean precedent, it is hard to fathom why the distinction was ever regarded as unclear. But such appears to have been the case, particularly at the time of the operation to eject Iraq from Kuwait in 1991–2 (referred to by its American code name, 'Desert Storm'). In his 1994 article,[10] Bowett urged the need to distinguish between collective self-defence and collective measures under Chapter VII in the light of what he saw as ambiguous statements from, among others, the UK government, about Security Council resolution 678 (1990) of 29 November 1990.[11] In particular, Bowett expressed misgivings relating to 'the possibility of a future misuse of the precedent of the Gulf action, if the view that resolution 678 endorsed action in collective self-defence prevails'.[12] These are referred to further in Section IV.

(p. 652) Bowett identified six differences between collective self-defence and collective measures under Chapter VII:

> (1) Collective self-defence needs no authorization from the Security Council. '[A] salient and fundamental difference between collective measures of the kind contemplated in Chapter VII , and collective self-defence, is that only the Security Council can authorise the former, but the latter needs no authorisation.' [13]
>
> (2) The circumstances which 'trigger' the Council's powers under Chapter VII (a threat to the peace, breach of the peace, or act of aggression under Article 39) are not identical to an 'armed attack' which is a precondition for the exercise of the right of self-defence as recognized in Article 51. 'Thus collective measures under Chapter VII could be taken when no possibility of collective self-defence existed.' [14]
>
> (3) '[I]n collective measures under Chapter VII it is for the Security Council to determine which Member State may participate.' In the case of collective self-defence 'it is essentially for the victim State to determine which States shall participate'. [15]
>
> (4) Measures in self-defence must be proportionate. The limitations on the choice of collective measures are quite different, and are governed by the aim of maintaining and restoring international peace and security. [16]
>
> (5) The aims of self-defence (the protection of the state) and collective security (maintenance and restoration of international peace and security) are very different, with the latter permitting measures of 'far greater scope'. [17]
>
> (6) The timing of the response differs, in that action in self-defence depends on proof of immediacy. [18]

Bowett goes on to consider in some detail whether the 1991 operation to eject Iraq from Kuwait (Desert Storm) was an action in self-defence or a collective security (p. 653) measure.[19] He gives an extensive list of objectives for which force was authorized, not only to ensure the withdrawal of Iraqi forces from Kuwait but all the other objectives set out in the Security Council resolutions passed before (and possibly after) resolution 678 (1990).[20] He submits that 'the aims for which force was authorised under resolution 678 exceeded the aims which were legitimate for self-defence.'[21] And he concludes, in general terms, that 'much more may be permitted in the interests of maintaining or restoring international peace and security than is permitted in self-defence.'[22]

III. A Clear Distinction

The rules of international law on the use of force are relatively easy to state. They are to be found in the Charter and in customary international law. The Charter contains, among the Principles of the United Nations, a prohibition of the threat or use of force under Article 2(4). The Charter refers to two not unrelated circumstances in which the prohibition does not apply. First, forcible measures may be taken or authorized by the Security Council, acting under Chapter VII of the Charter. Second, force may be used in the exercise of the

right of individual and collective self-defence, as recognized in Article 51 of the Charter. A further possible exception is the use of force to avert an overwhelming humanitarian catastrophe (sometimes referred to as 'humanitarian intervention'). It has limited support. It is not mentioned in the Charter, and so must be found, if at all, in customary international law.[23] A recent example of this argument being deployed is the UK government's legal advice in relation to a possible use of force against Syria in August 2013.[24]

(p. 654) Force used at the request or with the consent, duly given, of the government of the territorial state does not give rise to an issue under the *jus ad bellum*.[25] The use of force in retaliation (punishment, revenge, or reprisals) is illegal.[26]

While aspects of the right of self-defence remain controversial,[27] for present purposes the following propositions would seem to be generally accepted. The right of individual or collective self-defence is inherent. It is an exception to the general prohibition on the use of force set forth in Article 2(4) of the UN Charter.[28] As such it is recognized (but not granted) by Article 51 the Charter.[29] The exercise of the right of self-defence does not require authorization by the Security Council, though the Council may endorse such exercise. It may only be exercised 'if an armed attack occurs', and its purpose is to repel or reverse such attack; it does not have broader purposes. Action taken must be necessary and proportionate. The right to exercise self-defence lasts only 'until the Security Council has taken the measures necessary to maintain international peace and security.'

For the lawful exercise of collective self-defence[30] three conditions must be met. As with individual self-defence, there must be an armed attack. The state which is attacked must declare that it has been attacked. And that state must request the third state for assistance.[31]

Perhaps two related issues led to what Bowett saw as ambiguous statements by UK ministers (which were not in fact particularly ambiguous), and to what has been described as 'a considerable doctrinal debate'.[32] First, whether Security Council (p. 655) involvement was such that the right of self-defence had terminated because, in the words of Article 51, the Council has 'taken measures necessary to maintain international peace and security'. And second, whether a use of force may at one and the same time be both an exercise of the right of (collective) self-defence and a (collective security) measure under Chapter VII of the Charter.

Greenwood considered whether resolution 678 (1990) authorized the use of force as a collective security measure or merely gave Security Council approval to action by way of collective self-defence. While admitting that 'It is difficult to escape the conclusion that there was a degree of deliberate ambiguity' he regarded the resolution 'as providing for enforcement action rather than giving a blessing (of political, not legal, significance) to an action in self-defence which could lawfully have been mounted without the authorisation of the Council.'[33]

Berman has also addressed the relationship between collective self-defence and collective security in connection with resolution 678 (1990).[34] He noted that 'the proper characterization of this resolution is still not wholly resolved', and explained:

> One school holds that Resolution 678 was essentially an endorsement of the right of collective self-defense with the legitimate government of Kuwait. The other holds the resolution to have been an exercise of the powers reserved to the Security Council under the Charter, albeit in an innovative form not expressly foreseen in the Charter.[35]

Berman convincingly demonstrates nevertheless that:

> the self-defense thesis offers a poor explanation of what the Security Council conceived itself to be doing in Resolution 678. The basis implicitly underlying the thesis is that self-defence and collective security are mutually exclusive, but is this in fact the case?…There is no reason in principle why…the relationship between self-defence and collective security should not also have a dynamic element—as long as the continuing claim to self-defence is, and remains, in support of the Council's objectives and measures. The crux is surely that, under the last sentence of Article 51, the Council has the unfettered right to assume control.[36]

In the course of his argument, Berman states the following:

> when the Council authorized the collective use of force under Resolution 678, this must surely be construed under Article 51 as 'measures necessary to maintain international peace and security,' which therefore displaced the right to use force in self-defence.[37]

(p. 656) This may well be the better interpretation of resolution 678 (1990), but it is not the only one. As Randolzhofer and Nolte write:

> The wording and the purpose of [Article 51] suggest that the answer depends on a proper interpretation of the resolution concerned, in particular on whether there are indications that the SC considered the measures it took as being sufficient to deal with the situation and as implying a full or partial limitation of the exercise of the right to self-defence.[38]

The question of determining whether 'the Security Council has taken the measures necessary to maintain international peace and security' is fact-specific and depends on the circumstances of the particular case. It 'can only be taken to refer to measures which are actually effective to bring about the stated objective'.[39] As Matheson has written:

> self-defence is suspended only when the Council has taken actions that effectively restore and maintain international peace and security, or that are inconsistent with separate national military action. For example, where the Council authorises major military operations under unified command, it would be reasonable to conclude that States may not conduct separate military operations that would interfere with or compromise those directed by the Council.[40]

It follows that states must take the greatest care when drafting Security Council resolutions authorizing forcible measures (and indeed any measures) under Chapter VII if they wish to preserve unaffected their right to use force in exercise of individual or collective self-defence.

There is no reason in principle why a state using force may not be doing so with a double or multiple legal basis. Of course, the aims will differ, and as Bowett explained the Security Council basis is likely to be broader than the self-defence one. The former may mask the latter, but that does not mean that the latter may not subsist in parallel. And the continuance of the right of self-defence may well be regarded as of vital importance for the victim state. Therefore, the need to ensure that action by the Security Council does not terminate that right is paramount.

There may be many reasons for seeking action by the Security Council, even including authorization, when the circumstances are such that the right to self-defence exists. Matheson refers to the political benefit of authorization by the international community, the fact that such authorization may override contrary legal obligations, and assist in

overcoming concerns about neutrality and special treaty provisions (such as those governing passage though international canals and rivers).[41]

(p. 657) Nevertheless, in the past most uses of force have had one basis or the other, self-defence or Security Council authorization. Thus the UK's use of force to recover the Falkland Islands after the Argentine invasion of 2 April 1982 was carried out exclusively in exercise of the right of self-defence. The Security Council was involved, but care was taken to ensure that such involvement, and in particular resolutions 502 (1982) of 3 April 1982 and 505 (1982) of 26 May 1982, did not affect the right of self-defence. While there was some discussion as to whether the measures taken by the Council in resolution 502 (1982) were such as to terminate the UK's right of self-defence,[42] this was not a serious issue; indeed, resolution 502 (1982) was seen to give important political support to the UK's action in self-defence.

An example, albeit highly controversial, of action that, according to those involved, was based exclusively on Security Council authorization was the intervention in Iraq in 2003. As the UK Attorney General's now public advice of 7 March 2003 indicates, for the UK, the legality of the invasion turned solely on whether it had been authorized by the Security Council. It is clear that the Security Council may authorize the use of force. The only question was: had it done so? That turned on the interpretation of a series of Security Council resolutions. The present writer's own views have been given to the Chilcot Inquiry:

> 20. …The series of resolutions at issue in relation to the use of force against Iraq in 2003 were complex. Their interpretation was not straightforward. I agreed with most of what was said in the Attorney General's advice of 7 March 2003.…
>
> 21. …Where I had a different view was on whether a 'reasonable case' could be made for saying that, by adopting SCR 1441, the Security Council had already made a finding of material breach which had the effect of reviving the authorization in SCR 678 for some future use of force, without the need for a further decision by the Council. In other words, I did not consider that the Council, by adopting SCR 1441, had left to individual States the decision whether at some point in the future a material breach had occurred sufficient to revive the authorization to use force. I reached this conclusion after considering the wording of SCR 1441, its negotiating history, the circumstances of its adoption, subsequent developments in the Council, and the Council's practice.
>
> …
>
> 23. My reading was that the Council had decided in paragraph 12 to convene upon a certain event (the submission of a report) for the purpose of considering certain matters (the situation and the need for full compliance with all relevant SCRs). Paragraph 4 spoke of a material breach being referred to the Council 'for assessment'. In my view, the ordinary meaning to be given to the terms of these provisions in their context was that the Council would consider the situation, and assess the nature of any breach. Paragraph 12 made no express mention of subsequent Council action. But neither did it clearly indicate that no such action was needed before the Council's authorization of the use of force revived. In my view, the natural reading of the provisions in question, in context, was that the purpose of (p. 658) Council consideration and assessment was for the Council to decide what measures were needed in the light of the circumstances at the time. Among such circumstances, as it turned out, was the ongoing work of UNMOVIC [the United Nations Monitoring, Verification and Inspection Commission] and the view strongly held by many that the inspectors should be given more time. A strong hint of what might come was given in paragraph 13. This reading of the text was not, in my view, contradicted by anything in the preparatory work of the resolution. If anything it was reinforced by the preparatory work. And many statements made

> in connection with the adoption of SCR 1441 pointed towards this view set out in the present paragraph.[43]

The action over Libya in 2011 is another recent example of a use of force based exclusively on Security Council authorization under Chapter VII.[44] That was viewed, by some, as an example of Council implementation of the 'responsibility to protect', sometimes referred to, obscurely, as 'an emerging norm'. Security Council resolution 1973 (2011) of 17 March 2011 authorized states to use force with two principal objectives: to protect civilians and civilian-populated areas, and to enforce compliance with a no-fly zone. The resolution is noteworthy for the clarity of its drafting, relative clarity at any rate. Gareth Evans wrote a few days after its adoption, in the *Sydney Morning Herald*, that 'a hugely important precedent has been set'. Even if the text of Resolution 1973 might have appeared to be a model for 'responsibility to protect', as envisaged by the UN General Assembly in 2005, the question has been raised as to whether, in the words of the headline to the Gareth Evans' article, the intervening states have 'stuck to the UN script'.[45]

IV. An Important Distinction

The distinction between collective self-defence and collective security, while elementary, is undoubtedly important for the reasons given by Bowett (Section II above). In addition to the six reasons listed by him there is the fact that the right to act in self-defence, including in collective self-defence, is subject to a possible temporal limitation under Article 51, by reference to the operation of the 'collective security' system under the UN Charter. And the reporting requirements, which are increasingly seen as important for 'accountability' to the Council, may well (p. 659) differ significantly. They are likely to be more precise, and more onerous, in the case of authorization, at least if the Security Council is doing its job properly.

In 1994, Bowett saw the importance of upholding the distinction in the following terms:

> There is a slight risk that Member States might see in resolution 678 a justification for extending U.N. control over self-defence, in the sense that, if prior 'authorisation' was sought on that occasion, it should be sought on future occasions.
>
> Far more serious is the risk that States exercising the right of self-defence will argue for a very extensive interpretation of self-defence, using 'Desert Storm' as a precedent.[46]

Neither of these perceived risks has in fact materialized. States generally have not had doubts about the distinction between self-defence (including collective self-defence, and measures authorized by the Security Council under Chapter VII), either in theory or in practice. In relation to the second, 'far more serious' risk, Bowett posits a series of ways in which resolution 678 (1990) might set a dangerous precedent for self-defence,[47] but no one else seems to have imagined any such precedent.

In practice, what matters most, in this author's view, is that those using force, and states and commentators more generally, should be clear as to legal basis for the use of force. They should be clear in their own minds, and the general public should be clear, whether they are acting in exercise of the right of collective self-defence or under a Security Council authorization. There is no longer the excuse that the law of the Charter is new, untested, and unclear. Any temptation to 'fudge' the legal issue, which sometimes seems to amount to little more than putting forward an 'accumulation of bad arguments', should be resisted. To do so is usually to signal a weak legal case.

V. Conclusion

Some surprise was expressed at the beginning of this chapter that the distinction between collective security and collective self-defence was ever regarded as unclear. The fact that both concepts include the word ‘collective’ can hardly be an explanation. More plausible, perhaps, is the fact—now hard to recall—that, with the end (p. 660) of the Cold War and the revival of the Security Council, circumstances in 1990–1 were quite novel. Questions were raised about concepts (such as Security Council authorization) that had lain largely dormant for decades. In this as in other fields, new thinking was required, and required instantly. These new circumstances arose in 1990–1 in a situation in which different bases for the use of force were successively in play (first self-defence, then Security Council authorization). This perhaps explains the confused thinking at the time, even if it does not excuse it. But it hardly explains the continuing confusion that we find in some writings, though not, it is submitted, on the part of states. The practice since 1990–1 seems clear enough.

Footnotes:

1 Hans Kelsen, ‘Collective Security and Collective Self-Defence under the Charter of the United Nations’ (1948) 41 *American Journal of International Law* 783; Eugene V. Rostow, ‘Until What? Enforcement Action or Collective Self-Defence?’ (1991) 85 *American Journal of International Law* 506; Burns H. Weston, ‘Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy’ (1991) 85 *American Journal of International Law* 516; Christopher Greenwood, ‘New World Order or Old? The Invasion of Iraq and the Rule of Law’ (1992) 55 *Modern Law Review* 153, reproduced in Christopher Greenwood, *Essays on War in International Law* (London: Cameron May, 2006), 517; Derek W. Bowett, ‘Collective Security and Collective Self-Defence: The Errors and Risks of Identification’ in Manuel Rama Montaldo (ed), *El derecho internacional en un mundo en transformación: liber amicorum en homenaje al profesor Eduardo Jiménez de Aréchaga*, vol I (Montevideo: Fundación de Cultura Universitaria, 1994), 425; Terry D. Gill, ‘Legal and Some Political Limitations on the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter’ (1995) XXVI *Netherlands Yearbook of International Law* 90; Nico Krisch, *Selbstverteidigung und kollektive Sicherheit* (Berlin: Springer, 2001); Frank Berman, ‘The Authorization Model: Resolution 678 and Its Effects’ in David Malone (ed), *The UN Security Council. From the Cold War to the 21st Century* (Boulder, CO: Lynne Rienner, 2004), 153; Alexander Orakhelashvili, *Collective Security* (Oxford: Oxford University Press, 2010), 277–87; Marc Weller, *Iraq and the Use of Force in International Law* (Oxford: Oxford University Press, 2010), 34–40; Yoram Dinstein, *War, Aggression and Self-Defence* (5th edn, Cambridge: Cambridge University Press, 2011), 287–350.

2 ‘It is true that “collective security” is not a term of art’: Bowett, ‘Collective Security and Collective Self-Defence’ in Rama Montaldo, *El derecho internacional*, 427. The term does not have a clear legal meaning, and is more popular in the discourse of international relations than of law. It is often used to refer to enforcement measures under the UN Charter, but the term is not used in the Charter and it is sometimes doubted—though nothing turns on it—whether the UN system is properly to be described as a collective security system: see Erika de Wet and Michael Wood, ‘Collective Security’ in Rüdiger Wolfrum (ed), *The Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, updated July 2013); Vaughan Lowe et al, *The United Nations Security Council and War: The Evolution of Thought and Practice Since 1945* (Oxford: Oxford University Press, 2008); Dinstein, *War, Aggression and Self-Defence*, 303–50.

3 Dinstein, *War, Aggression and Self-Defence*, 303, para 806. There are two minor changes from the first (1988) edition cited by Bowett's article: omission of 'and direct' from the phrase 'not the immediate and direct victims', and use of the term 'a central organ' instead of simply 'an organ'.

4 Bowett, 'Collective Security and Collective Self-Defence' in Rama Montaldo, *El derecho internacional*.

5 William Stueck, 'The United Nations, the Security Council, and the Korean War' in Lowe et al, *The United Nations Security Council and War*, 265–79.

6 SC Res 83 (1950) of 27 June 1950.

7 SC Res 84 (1950) of 7 July 1950.

8 See Dana Constantin, 'Korean War (1950–53)' in Wolfrum, *The Max Planck Encyclopedia of Public International Law* (2012), with bibliography; Weller, *Iraq and the Use of Force in International Law*, 35–7.

9 SC Res 221 (1966) of 9 April 1966.

10 Bowett, 'Collective Security and Collective Self-Defence' in Rama Montaldo, *El derecho internacional*.

11 In para 2 of SC Res 678 (1990), the Security Council '*Authorizes* Member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in paragraph 1 above, the foregoing resolutions, to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area.'

12 Bowett, 'Collective Security and Collective Self-Defence' in Rama Montaldo, *El derecho internacional*, 427.

13 Bowett, 'Collective Security and Collective Self-Defence' in Rama Montaldo, *El derecho internacional*, 427–8.

14 Bowett, 'Collective Security and Collective Self-Defence' in Rama Montaldo, *El derecho internacional*, 428–9.

15 Bowett, 'Collective Security and Collective Self-Defence' in Rama Montaldo, *El derecho internacional*, 429. Bowett may have included the word 'essentially' because of his regret (see his fn 9) that the International Court of Justice (ICJ) had effectively said it was up to the victim state to determine who participates. It is not clear why Bowett thought this inevitably blurred the borderline between collective self-defence and collective security.

16 Bowett, 'Collective Security and Collective Self-Defence' in Rama Montaldo, *El derecho internacional*, 429–30.

17 Bowett, 'Collective Security and Collective Self-Defence' in Rama Montaldo, *El derecho internacional*, 430.

18 Bowett, 'Collective Security and Collective Self-Defence' in Rama Montaldo, *El derecho internacional*, 430. Weller gives a similar, though not identical, list: *Iraq and the Use of Force in International Law*, 35.

19 Bowett, 'Collective Security and Collective Self-Defence' in Rama Montaldo, *El derecho internacional*, 430–5.

20 Interestingly, in view of the emphasis placed on it years later in connection with the 2003 invasion of Iraq, Bowett does not list the aim 'to restore peace and security in the area', though he does mention it later in the article (at 438).

21 Bowett, ‘Collective Security and Collective Self-Defence’ in Rama Montaldo, *El derecho internacional*, 432.

22 Bowett, ‘Collective Security and Collective Self-Defence’ in Rama Montaldo, *El derecho internacional*, 438.

23 For the present author’s view, see ‘The Law on the Use of Force: Current Challenges’ (2007) 11 *Singapore Year Book of International Law* 1, 11: ‘it may be best to view the claims made in 1991 and 1999 [relating to the safe havens in northern Iraq and over Kosovo] as based on some exceptional defence or justification of necessity, such as is found in domestic legal systems, rather than on a positive rule of law’.

24 ‘Chemical weapons use by Syrian regime—UK Government legal advice’, 29 Aug 2013, available at <https://www.gov.uk/government/publications/chemical-weapon-use-by-syrian-regime-uk-government-legal-position/chemical-weapon-use-by-syrian-regime-uk-government-legal-position- html-version>.

25 (2011) 74 *Yearbook of the Institute of International Law, Rhodes Session* 181 (report by Gerhard Hafner).

26 See art 50(1)(a) of the 2001 Articles on the Responsibility of States for Internationally Wrongful Acts: James Crawford, *State Responsibility: The General Part* (Cambridge: Cambridge University Press, 2013), 690–1.

27 Christopher Greenwood, ‘Self-Defence’ in Wolfrum, *The Max Planck Encyclopedia of Public International* (2012); James Crawford, *Brownlie’s Principles of Public International Law* (8th edn, Oxford: Oxford University Press, 2012), 747–57.

28 Art 2(4) reads: ‘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.’

29 Art 51 reads: ‘Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense 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 in order to maintain or restore international peace and security.’ (The original signed version of the Charter has the American spelling ‘self-defense’, though in later publications the UN, as is its practice, uses English spelling—‘self-defence’.)

30 Greenwood, ‘Self-Defence’ in Wolfrum, *The Max Planck Encyclopedia of Public International Law* (2012), paras 35–40; Dinstein, *War, Aggression and Self-Defence*, 278–302.

31 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. US)*, Merits, Judgment, ICJ Rep 1986, 14, 102–5, paras 193–200. Dinstein, *War, Aggression and Self-Defence*, 278–302; Greenwood, ‘Self-Defence’ in Wolfrum, *The Max Planck Encyclopedia of Public International Law* (2012), paras 35–40.

32 Orakhelashvili, *Collective Security*, 281.

33 Greenwood, *Essays on War in International Law*, 541.

34 Berman, ‘The Authorization Model’ in Malone, *The UN Security Council*.

35 Berman, ‘The Authorization Model’ in Malone, *The UN Security Council*, 154.

36 Berman, ‘The Authorization Model’ in Malone, *The UN Security Council*, 154–5. It has to be noted that Dinstein asserts at some length, unconvincingly, and without actually examining the text of resolution 678 (1990), that Operation Desert Storm was an exercise of collective self-defence, not collective security: Dinstein, *War, Aggression and Self-Defence*, paras 796–805.

37 Berman, ‘The Authorization Model’ in Malone, *The UN Security Council*, 154.

38 Albrecht Randolzhofer and Georg Nolte, ‘Article 51’ in Bruno Simma et al (eds), *The Charter of the United Nations: A Commentary* (3rd edn, Oxford: Oxford University Press, 2012), 1428.

39 United Kingdom letter to the President of the Security Council, 30 April 1982, S/15016, reproduced in (1982) 53 *British Yearbook of International Law* 544.

40 Michael Matheson, *Council Unbound. The Growth of UN Decision Making on Conflict and Postconflict Issues after the Cold War* (Washington DC: United States Institute of Peace Press, 2006), 133.

41 Matheson, *Council Unbound*, 137.

42 S/PV.3260, S/PV/3262; United Kingdom letter to the President of the Security Council, 30 April 1982, S/15016, reproduced in (1982) 53 *British Yearbook of International Law* 544–5.

43 Iraq Inquiry: (First) Statement by Sir Michael Wood, 15 Jan 2010, available at <http://www.iraqinquiry.org.uk/>.

44 Christian Henderson, ‘International Measures for the Protection of Civilians in Libya and Côte d’Ivoire’ (2011) 60 *International and Comparative Law Quarterly* 767.

45 Gareth Evans, ‘When intervening in a conflict, stick to UN script’, *Sydney Morning Herald*, 24 Mar 2011.

46 Bowett, ‘Collective Security and Collective Self-Defence’ in Rama Montaldo, *El derecho internacional*, 438.

47 Bowett, ‘Collective Security and Collective Self-Defence’ in Rama Montaldo, *El derecho internacional*, 438–40.