

LEGAL BASIS FOR THE USE OF FORCE

I. OBJECTIVES

- A. Understand the international legal prohibition against the threat or use of force as found in Article 2(4) of the United Nations (UN) Charter (the “rule”).
- B. Understand enforcement action taken by the UN Security Council pursuant to Chapter VII of the UN Charter (“exception #1”).
- C. Understand the “inherent right of self-defense” as found in Article 51 of the UN Charter (“exception #2”).

II. INTRODUCTION

- A. General. In both customary and treaty law, there are a variety of internationally-recognized legal bases for the use of force in relations between States. Generally speaking, however, **modern jus ad bellum** (the law governing a State’s resort to force) is reflected in the United Nations (UN) Charter. The UN Charter provides two bases for a State’s choice to resort to the use of force: Chapter VII enforcement actions under the auspices of the UN Security Council, and self-defense pursuant to Article 51 (which governs acts of both individual and collective self-defense).
- B. Policy and Legal Considerations.
 - 1. Before committing U.S. military force abroad, decision makers must make a number of fundamental policy determinations. The President and the national civilian leadership must be sensitive to the legal, political, diplomatic, and economic factors inherent in a decision to further national objectives through the use of force. The legal aspects of such a decision, both international and domestic, are of primary concern in this determination. **Any decision to employ force must rest upon the existence of a viable legal basis in international law as well as in domestic law** (including application of the 1973 War Powers Resolution (WPR), Public Law 93-148, 50 U.S.C. §§ 1541-1548). This chapter will focus exclusively on the international legal basis for the use of force.
 - 2. Though these issues will normally be resolved at the national political level, Judge Advocates (JAs) must understand the basic concepts involved in a determination to use force abroad. Using the mission statement provided by higher authority, JAs must become familiar with the legal justification for the mission and, in coordination with higher headquarters, be prepared to brief all local commanders on that legal justification. This will enable commanders to

better plan their missions, structure public statements, and conform the conduct of military operations to U.S. national policy. It will also assist commanders in drafting and understanding mission specific Rules of Engagement (ROE), which authorize the use of force consistent with national security and policy objectives.

3. The JA must be aware that the success of any military mission abroad will likely depend upon the degree of domestic support demonstrated during the initial deployment and sustained operations of U.S. forces. A clear, well-conceived, effective, and timely articulation of the *legal* basis for a particular mission is essential to sustaining support at home and gaining acceptance abroad.

C. Article 2(4): The General Prohibition Against the Use of Force.

1. The UN Charter mandates that all member States resolve their international disputes peacefully;¹ it also requires that States refrain in their international relations from the *threat or use of force* against the territorial integrity or political independence of any State.² This ban on aggression, taken from Article 2(4) of the UN Charter, is regarded as the heart of the UN Charter and the basic rule of contemporary public international law.³ An integral aspect of Article 2(4) is the principle of non-intervention, which provides that States must refrain from interference in other States' internal affairs.⁴ Put simply, non-intervention stands for the proposition that States must respect each other's *sovereignty*.
2. American policy statements have frequently affirmed the principle of non-intervention, which itself has been made an integral part of U.S. law through the ratification of the Charters of the United Nations and the Organization of American States (OAS),⁵ as well as other multilateral international agreements

¹ UN Charter, Article 2(3): "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered." The UN Charter is reprinted in full in various compendia, including the International and Operational Law Department's Law of Armed Conflict Documentary Supplement, and is also available at <http://www.un.org/aboutun/charter/index.html>.

² UN Charter, Article 2(4): "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."

³ See 1 THE CHARTER OF THE UNITED NATIONS: A COMMENTARY 116–117 (Bruno Simma ed., Oxford Univ. Press 2nd ed., 2002).

⁴ UN Charter, Article 2(7): "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."

⁵ OAS Charter, Article 18: "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against

which specifically incorporate nonintervention as a basis for mutual cooperation. The emerging concept of **humanitarian intervention (also referred to as the Responsibility to Protect)**, though it may have gained some initial momentum as an exception to non-intervention, is currently not an internationally recognized exception to article 2(4) of the Charter. Rather, some internationally recognized humanitarian crises, in particular, genocide, war crimes, ethnic cleansing, and crimes against humanity may form a basis for intervention under Chapter VII of the Charter.⁶

III. THE LAWFUL USE OF FORCE

- A. General. Despite the UN Charter's broad legal prohibitions against the use of force and other forms of intervention, specific exceptions exist to justify a State's recourse to the use of force or armed intervention. While States have made numerous claims, using a wide variety of legal bases to justify the use of force, it is generally agreed that there are only two exceptions to the Article 2(4) ban on the threat or use of force: (1) actions authorized by the UN Security Council under Chapter VII of the UN Charter, and (2) actions that constitute a legitimate act of individual or collective self-defense pursuant to Article 51 of the UN Charter and/or customary international law (CIL). Additionally, states often conduct operations within the sovereign territory of other states, with the receiving state's consent. Consent is not a separate exception to Article 2(4). If a State is using force with the consent of a host State, then there is no violation of the host State's territorial integrity or political independence; thus, there is no need for an exception because the rule is not being violated.⁷

its political, economic and cultural elements." *See also* Inter-American Treaty of Reciprocal Assistance (Rio Treaty), Art. I: ". . . Parties formally condemn war and undertake in their international relations not to resort to the threat or the use of force in any manner inconsistent with the provisions of the Charter of the United Nations or this Treaty."

⁶ *See* A/60/L.1, United Nations General Assembly, 2005 World Summit Outcome (15 Sept. 2005), at para. 138-140. For further reading on the emerging concept of the Responsibility to Protect, see, Report of the International Commission on Intervention and State Sovereignty, December 2001 ("Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect."). The United States does not accept humanitarian intervention as a separate basis for the use of force; however, the United Kingdom has expressed support for it. *See* Minister's Office, *Guidance: Chemical weapon use by Syrian regime: UK government legal position*, Aug. 29, 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>.

⁷ As stated above, a minority of States would include humanitarian intervention as a separate exception to the rule of Article 2(4). Additionally, state's often conduct operations within the sovereign territory of other states, with the receiving state's consent. Consent is not a separate exception to Article 2(4) because there is no violation of the article where there is bona fide consent. If a State is using force with the consent of a host State, then there is no violation of the host State's territorial integrity or political independence; thus, there is no need for an exception because the rule is not being violated.

B. UN Enforcement Action (Chapter VII).

1. The UN Security Council. The UN Charter gives the UN Security Council both a powerful role in determining the existence of an illegal threat or use of force and wide discretion in mandating or authorizing a response to such a threat or use of force (enforcement). The unique role is grounded primarily in Chapter VII of the UN Charter, which demonstrates **the Charter's strong preference for collective responses to the illegal use of force over unilateral actions in self-defense**. Chapter V of the UN Charter establishes the composition and powers of the Security Council. The Security Council includes **five permanent members** (China, France, Russia, the United Kingdom, and the United States) and ten non-permanent, elected members. Article 24 states that UN members "confer on the Security Council primary responsibility for the maintenance of international peace and security" and, in Article 25, members "agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

2. **Chapter VII of the UN Charter**, entitled "Action With Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression," gives the UN Security Council authority to label as illegal threats and uses of force, and then to determine what measures should be employed to address the illegal behavior. Before acting, **the Security Council must first, in accordance with Article 39, determine the existence of a threat to the peace, a breach of the peace, or an act of aggression**. Provided the Security Council makes such a determination, the UN Charter gives three courses of action to the Security Council: 1) make recommendations pursuant to Article 39; 2) mandate non-military measures (i.e., diplomatic and economic sanctions) pursuant to Article 41; or 3) mandate military enforcement measures ("action by air, land, or sea forces") pursuant to Article 42.
 - a. **Article 39**, the same article through which the Security Council performs its "labeling" function, allows the Council to make non-binding recommendations to maintain or restore international peace and security. Because Article 42 has not operated as intended (*see infra*), some have grounded UN Security Council "authorizations" to use military force in Article 39 (as non-binding permissive authorizations) vice Article 42 (as binding mandates).

 - b. **Article 40** serves essentially a preliminary injunction function. The Security Council may call upon the parties to cease action or take some action with respect to the dispute, but the parties compliance with those provisions will not prejudice the claims of the state in later dispute resolution proceedings. Failure to comply with Article 40 measures may have deleterious effects for later claims. The purpose of this Article is to

prevent the aggravation of the situation that is causing a threat to international peace and security.

- c. **Article 41** lists several non-military enforcement measures designed to restore international peace and security. These include “complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.” **Article 41 measures are stated as a mandate, binding on all UN members.** Article 42 implies that Article 41 measures must be attempted (or at least considered) before the Security Council adopts any of the military measures available to it.
 - d. **Article 42** contemplated that the Security Council would be able to mandate military action by forces made available to it under special agreements with UN member States. However, because no Article 43 special agreement has ever been made, Article 42 has not operated as envisioned. This means that the Security Council is unable to mandate military enforcement action in response to illegal threats or uses of force. Consequently, **military measures taken pursuant to Chapter VII are fundamentally permissive and phrased by the Security Council in the form of an authorization rather than a mandate.**
3. UN Peacekeeping and Peace Enforcement Operations. In the absence of special agreements between member States and the Security Council, UN peacekeeping operations enable the Security Council to carry out limited enforcement actions through member States on an ad hoc, voluntary basis. While these operations were traditionally grounded in Chapter VI of the UN Charter, which deals with peaceful means of settling disputes, today more peace operations are considered peace enforcement operations and carry with them a Chapter VII authorization from the Security Council. The authorization that accompanies these operations is usually narrowly worded to accomplish the specific objective of the peace operation. For example, UN Security Council Resolution (UNSCR) 794 (1992) authorized member States to use “all necessary means to establish, as soon as possible, a secure environment for humanitarian relief operations in Somalia.”
 4. Regional Organization Enforcement Actions. Chapter VIII of the UN Charter recognizes the existence of regional arrangements among States that deal with such matters relating to the maintenance of international peace and security, as are appropriate for regional actions (Article 52). Regional organizations, such as the OAS, the African Union, and the Arab League, attempt to resolve regional disputes peacefully, before referral to the UN Security Council. Regional organizations do not, however, have the ability to unilaterally authorize the use of force (Article 53). Rather, the Security Council may utilize the regional organization to carry out Security Council enforcement actions. In

other words, regional organizations are subject to the same limitation on the use of force as are individual States, with the same two exceptions to the general prohibition against the use of force (i.e., enforcement actions under Chapter VII, and actions in individual or collective self-defense under Article 51 of the UN Charter or CIL).

IV. SELF-DEFENSE

A. Generally.

1. The right of all nations to defend themselves was well-established in CIL prior to adoption of the UN Charter. Article 51 of the Charter provides: “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 UN until the Security Council has taken measures necessary to maintain international peace and security.”
2. The questions that inevitably arise in conjunction with the UN Charter’s “codified” right of self-defense involve the scope of authority found therein. Does this right, as the language of Article 51 suggests, exist only *after* a State has suffered an “armed attack⁸,” and then only *until* the Security Council takes effective action? Did the UN Charter thus limit the customary right of self-defense in such a way that eliminated the customary concept of *anticipatory self-defense* (*see infra*) and extinguished a State’s authority to act independently of the Security Council in the exercise of self-defense?
3. Those in the international community who advocate a **restrictive approach** in the interpretation of the UN Charter—and in the exercise of self-defense—argue that reliance upon customary concepts of self-defense, to include anticipatory self-defense, is inconsistent with the clear language of Article 51 and counterproductive to the UN goal of peaceful resolution of disputes and protection of international order.
4. In contrast, some States, including the United States, argue that an **expansive** interpretation of the UN Charter is more appropriate, contending that the customary law right of self-defense (including anticipatory self-defense) is an inherent right of a sovereign State that was not “negotiated” away under the Charter. Arguing that contemporary experience has demonstrated the inability of the Security Council to deal effectively with acts and threats of aggression,

⁸ The use of the term “armed attack” leads some to interpret article 51 as requiring a state to first suffer a completed attack before responding in self-defense. This is likely the cause of much of the debate between the restrictive approach and the expansive approach. However, the French version of the Charter uses the term *aggression armee*, which translates to “armed aggression” and is amenable to a broader interpretation in terms of authorizing anticipatory self-defense.

these States argue that, rather than artificially limiting a State's right of self-defense, it is better to conform to historically accepted criteria for the lawful use of force, including circumstances which exist outside the "four corners" of the Charter.

B. Self-Defense Criteria: Necessity and Proportionality.

1. It is well-accepted that the UN Charter provides the essential framework of authority for the use of force, effectively defining the foundations for a modern *jus ad bellum*. Inherent in modern *jus ad bellum* is the customary requirement that all uses of force satisfy both the *necessity* and *proportionality*⁹ criteria.¹⁰
2. To comply with the necessity criterion, States must consider the exhaustion or ineffectiveness of peaceful means of resolution, the nature of coercion applied by the aggressor State, the objectives of each party, and the likelihood of effective community intervention. In other words, force should be viewed as a "last resort."
3. To comply with the proportionality criterion, States must limit the magnitude, scope, and duration of any use of force to that level of force which is reasonably necessary to counter a threat or attack.

C. Types of Self-Defense.

1. Individual Self-Defense. Within the bounds of both the UN Charter and customary practice, the inherent right of self-defense has primarily found expression in three recurring areas: 1) protection of a nation's *territorial integrity*; 2) protection of a nation's *political independence*; and 3) protection of *nationals* and their property located abroad. Judge Advocates must be familiar with these foundational issues, as well as basic concepts of self-defense, as they relate to overseas deployments and operations, such as the Chairman of the Joint Chiefs of Staff (CJCS) Standing Rules of Engagement (SROE).

⁹ The term *Proportionality* in *jus ad bellum* should not be confused with the same term in the *jus in bello* or targeting context. The proportionality analysis in targeting is a balancing test to ensure that the civilian loss is not excessive in relation to the concrete and direct military advantage anticipated. This is not the test for a *proportionate response* in the *jus ad bellum* context.

¹⁰ YORAM DINSTEIN, WAR, AGGRESSION AND SELF-DEFENCE 234-41 (5th ed. 2011). Yoram Dinstein would include a third criterion called immediacy. *Id.* at 241. "War may not be undertaken in self-defence long after an isolated armed attack." *Id.* In other words, the timeliness of the action in self-defense matters because a delay in response to an attack or the threat of attack attenuates the immediacy of the threat and the necessity to use force in self-defense. It should be noted that necessity and proportionality mean different things in *jus ad bellum* and *jus in bello*. *Jus ad bellum* defines these terms for purposes of using force, whereas *jus in bello* (law of war) defines these terms for purposes of targeting analysis. *See infra*, Chapter 2, Law of War.

- a. Protection of Territorial Integrity. States possess an inherent right to protect their national borders, airspace, and territorial seas. No nation has the right to violate another nation's territorial integrity, and force may be used to preserve that integrity consistent with the Article 51 (and customary) right of self-defense.
 - b. Protection of Political Independence. A State's political independence is a direct attribute of sovereignty, and includes the right to select a particular form of government and its officers, the right to enter into treaties, and the right to maintain diplomatic relations with the world community. The rights of sovereignty or political independence also include the freedom to engage in trade and other economic activity. Consistent with the principles of the UN Charter and CIL, each State has the duty to respect the political independence of every other State. Accordingly, force may be used to protect a State's political independence when it is threatened and all other avenues of peaceful redress have been exhausted.
 - c. Protection of Nationals. Customarily, a State has been afforded the right to protect its citizens abroad if their lives are placed in jeopardy and the host State is either unable or unwilling to protect them. This right is cited as the justification for non-combatant evacuation operations (NEO), discussed in greater detail in the Operational Law Handbook.
 - i. The protection of U.S. nationals was identified as one of the legal bases justifying U.S. military intervention in both Grenada and Panama. In each case, however, the United States emphasized that protection of U.S. nationals, standing alone, did not necessarily provide the legal basis for the full range of U.S. activities undertaken in those countries. Thus, while intervention for the purpose of protecting nationals is a valid and essential element in certain uses of force, it cannot serve as an independent basis for continued U.S. military presence in another country after the mission of safeguarding U.S. nationals has been accomplished.
 - ii. The right to use force to protect citizens abroad also extends to those situations in which a host State is an active participant in the activities posing a threat to another State's citizens (e.g. the government of Iran's participation in the hostage-taking of U.S. embassy personnel in that country in 1979-81; and Ugandan President Idi Amin's support of terrorists who kidnapped Israeli nationals and held them at the airport in Entebbe in 1976).
2. Collective Self-Defense. Also referred to in Article 51, the inherent right of collective self-defense allows victim States to receive assistance from other States in responding to and repelling an armed attack. To constitute a legitimate

act of collective self-defense, all conditions for the exercise of an individual State's right of self-defense must be met, along with the additional requirement that **assistance must be requested by the victim State**. There is no recognized right of a third-party State to unilaterally intervene in internal conflicts where the issue in question is one of a group's right to self-determination and there is no request by the *de jure* government for assistance.

- a. Collective Defense Treaties and Bilateral Military Assistance Agreements.
 - i. Collective defense treaties, such as that of the North Atlantic Treaty Organization (NATO), the Inter-American Treaty of Reciprocal Assistance (the Rio Treaty), the Security Treaty Between Australia, New Zealand, and the United States (ANZUS), and other similar agreements, do not provide an international legal basis for the use of U.S. force abroad, *per se*. Such agreements simply establish a commitment among the parties to engage in "collective self-defense" as required by specified situations, and provide the framework through which such measures are to be taken. From an international law perspective, a legal basis for engaging in measures involving the use of military force abroad must still be established from other sources of international law extrinsic to these collective defense treaties (i.e., there still must be a justifiable need for collective self-defense or a UN Security Council authorization to use force).
 - ii. The United States has entered into *bilateral military assistance agreements* with numerous countries around the world. These are not defense agreements, and thus impose no commitment on the part of the United States to come to the defense of the other signatory State in any given situation. Moreover, such agreements, like collective defense treaties, also provide no intrinsic legal basis for the use of military force.
3. Anticipatory Self-Defense. As discussed above, some States embrace an interpretation of the UN Charter that extends beyond the black letter language of Article 51, under the CIL principle of anticipatory self-defense. Anticipatory self-defense justifies using force in anticipation of an imminent armed attack. Under this concept, a State is not required to absorb the first hit before it can resort to the use of force in self-defense to repel an imminent attack.
 - a. Anticipatory self-defense finds its roots in the 1837 Caroline case and subsequent correspondence between then-U.S. Secretary of State Daniel Webster and his British Foreign Office counterpart Lord Ashburton. Secretary Webster posited that a State need not suffer an actual armed attack before taking defensive action, but may engage in anticipatory self-defense if the circumstances leading to the use of force are "instantaneous,

overwhelming, and leaving no choice of means and no moment for deliberation.” As with any form of self-defense, the principles of necessity and proportionality serve to bind the actions of the offended State.

- b. Because the invocation of anticipatory self-defense is fact-specific in nature, and therefore appears to lack defined standards of application, it remains controversial in the international community. Concerns over extension of anticipatory self-defense as a pretext for reprisal or preventive actions (i.e., the use of force before the coalescence of an actual threat) have not been allayed by contemporary use. It is important to note, however, that **anticipatory self-defense serves as a foundational element in the CJCS SROE, as embodied in the concept of hostile intent**, which makes it clear to commanders that they do not, and should not, have to absorb the first hit before their right and obligation to exercise self-defense arises.¹¹

- c. Preemptive Use of Force. In the 2002 National Security Strategy (NSS), the U.S. Government took a step toward what some view as a significant expansion of use of force doctrine from anticipatory self-defense to preemption.¹² This position was reinforced in the 2006 NSS, which reaffirmed the doctrine of preemptive self-defense against “rogue states and terrorists” who pose a threat to the United States based on their expressed desire to acquire and use weapons of mass destruction.¹³ The “Bush Doctrine” of preemption re-casted the right of anticipatory self-defense based on a different understanding of imminence. Thus, the NSS stated, “We must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries.” It concluded: “The greater the threat, the greater is the risk of inaction – and the more compelling the case for taking action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack.”¹⁴ The 2010 NSS, however, suggests a possible movement away from the Bush Doctrine, as the Obama Administration declares in the NSS that, “while the use of force is sometimes necessary, [the United States] will exhaust other options before war whenever [it] can, and [will] carefully weigh the costs and risks of action versus the costs and risks of inaction.”¹⁵ Moreover, according to the 2010 NSS, “when force is necessary . . . [the United States] will seek

¹¹ See CHAIRMAN OF THE JOINT CHIEFS OF STAFF, INSTR. 3121.01B, STANDING RULES OF ENGAGEMENT/STANDING RULES FOR THE USE OF FORCE FOR U.S. FORCES, (13 June 2005). A new version of the CJCSI is due for publication in 2014. As of this publishing the new SROE was not available.

¹² THE WHITE HOUSE, *THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA*, (2002).

¹³ THE WHITE HOUSE, *THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA*, (2006).

¹⁴ *Id.* at 15.

¹⁵ THE WHITE HOUSE, *THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA* 22 (2010).

broad international support, working with such institutions as NATO and the U.N. Security Council.”¹⁶ Nevertheless, the Obama Administration maintains that “the United States must reserve the right to act unilaterally if necessary to defend our nation, yet we will also seek to adhere to standards that govern the use of force.”¹⁷

- d. A modern-day legal test for imminence, consistent with the above, was perhaps best articulated by Professor Michael Schmitt in 2003. He stated that States may legally employ force in advance of an attack, at the point when (1) evidence shows that an aggressor has committed itself to an armed attack, and (2) delaying a response would hinder the defender’s ability to mount a meaningful defense.¹⁸
- e. Anticipatory self-defense, whether labeled anticipatory or preemptive, must be distinguished from preventive self-defense. **Preventive self-defense—employed to counter non-imminent threats—is illegal under international law.**

D. Self-Defense Against Non-State Actors. Up to now, this handbook has discussed armed attacks launched *by* a State. Today, however, States have more reasons to fear armed attacks launched by non-state actors *from* a State. The law is still grappling with this reality. While the answer to this question may depend on complicated questions of state responsibility, **many scholars base the legality of cross border attacks against non-state actors on whether the host State is unwilling or unable to deal with the non-state actors who are launching armed attacks from within its territory**.¹⁹ Some scholars have posited that a cross border response into a host State requires the victim State to meet a higher burden of proof in demonstrating the criteria that establish the legality of a State’s use of force in self-defense.²⁰

E. Operation Enduring Freedom (OEF). In the wake of the attacks on the World Trade Center on 11 September 2001 (9/11), the UN Security Council passed, on the very next day, UNSCR 1368. This resolution explicitly recognized the United States’ inherent right of individual or collective self-defense pursuant to Article 51 of the UN Charter against the terrorist actors who perpetrated the 9/11 attacks. The basis for the United States’ use of force in OEF is, therefore, the Article 51 right of individual or collective self-defense. United States forces involved in the North Atlantic Treaty

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Michael Schmitt, *Preemptive Strategies in International Law*, 24 MICH. J. INT’L L. 513, 534 (2003).

¹⁹ See YORAM DINSTEIN, *WAR, AGGRESSION AND SELF-DEFENCE* 226 (5th ed. 2011); Ashley Deeks, ‘*Unwilling or Unable*’: *Toward a Normative Framework for Extra-Territorial Self-Defense*, 52 VA. J. INT’L L. 483 (2012).

²⁰ See Michael Schmitt, *Responding to Transnational Terrorism Under the Jus Ad Bellum: A Normative Framework*, 56 NAVAL L. REV. 1 (2009).

Organization (NATO) International Security Assistance Force (ISAF) mission must also, however, be aware of current UNSCRs, the most recent of which is UNSCR 2069 (dated 9 October 2012), which “[a]uthorizes the Member States participating in ISAF to take all necessary measures to fulfill its mandate.” The mandate of ISAF per the UNSCR is to assist the Afghan Government in improving “the security situation and build its own security capabilities.” Thus, forces operating within the ISAF mission do so legally on the basis of a Security Council resolution, whereas forces operating within the OEF mission do so legally on a self-defense basis.