Chapter 4

The Meaning of Armed Conflict and the *Jus ad Bellum*

*Jutta Brunnée*

At the center of the legal framework governing the use of force under the UN Charter is a sweeping prohibition of threat or use of inter-state force (Article 2(4)). This prohibition must be understood against the background of two devastating world wars and the Charter’s ambition to protect succeeding generations from the scourge of war (Preamble). As is well-known, under the Charter individual states may resort to military force only in self-defense. In all other cases, recourse to military means is legal only if authorized by the UN Security Council pursuant to Chapter VII of the UN Charter.

This background paper is concerned with the triggers of a state’s *jus ad bellum*,1 the geographical scope of that right, and its duration. For the purposes of this text, it is assumed that the trigger, geographical scope and termination of UN authorized military action under Chapter VII are determined by relevant Security Council resolution(s). With respect to “humanitarian intervention,” it is assumed that no *jus ad bellum* for individual states currently exists at international law. Any protective intervention would have to be authorized by the Security Council under Chapter VII, with the abovementioned consequences for trigger, geographical scope and duration. Therefore, this paper focuses only on unilateral resort to force in pursuit of the right to self-defense. It approaches the topic by considering several inter-related concepts that must be carefully distinguished.

1. Intervention

International law prohibits intervention in the affairs of a sovereign state. Illegal intervention can take a number of forms and, in extreme cases, can involve mili-

---

1 The *jus ad bellum* is “the law governing the initial resort to force between two states”. See Eritrea Ethiopia Claims Commission, Partial Award, *Jus Ad Bellum*, Ethiopia’s Claims 1-8 (December 19, 2005), footnote 1. And see, generally, Robert Kolb, “Origin of the Twin Terms of *Jus ad Bellum* and *Jus in Bello*,” (1997) 320 *International Review of the Red Cross* 553.
tary intervention. It is important to bear in mind that, for present purposes, intervention constitutes an umbrella term. Specifically, even where a given military action does not constitute an “armed attack” (see below) that would entitle a state to take self-defense measures, and even in cases in which a de minimus military action may not violate Article 2(4), it may still amount to illegal intervention in the affairs of a state. The victim of that intervention would be entitled to invoke the responsibility of the intervening state and demand cessation, reparation, etc., and may be entitled to take countermeasures (short of military measures).

2. Use of Force

Article 2(4) prohibits the threat or use of force between states. Today, it is generally accepted that “force” for the purposes of Article 2(4) means military force. Other coercive actions by one state against another (e.g. economic or political pressure) may violate the non-intervention principle but do not constitute force within the meaning of Article 2(4). The reference to “territorial integrity or political independence” of states in Article 2(4) was intended by the drafters to strengthen the prohibition, rather than allow for the subsequently made argument that use of force does not violate the provision unless it is aimed at undermining these two aspects of sovereignty.

Article 2(4) is violated where pressure is exerted through a threat of military force (including, potentially, a declaration of war), so long as the threatened force is not de minimus or would be justified as self-defense. Such a threat would trigger the law of state responsibility and may entitle the victim state to resort to countermeasures (again short of military action). Only an illegal use of force that constitutes an “armed attack” (see below) entitles the victim to take military action in self-defense.

In the Charter scheme, all uses of force are prohibited unless explicitly permitted by the Charter. However, it appears that military action must rise to a certain threshold to transgress Article 2(4), and that de minimus actions do not violate the provision. O’Connell observes that “numerous examples of states using armed force can be found that are not treated as violations of Article 2(4)” (providing example of “Red Crusader” incident between UK and Denmark; see also Corfu Channel case).

5 Dinstein, *supra*, note 2, at 87.