PART I

LAW ENFORCEMENT—
A PSO TASK?
CHAPTER 1

THE TRANSPPOSITION OF INTER-STATE SELF-DEFENSE AND USE OF FORCE ONTO OPERATIONAL MANDATES FOR PEACE SUPPORT OPERATIONS

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A. INTRODUCTION

Inter-state self-defense within international law has given rise to controversies as to its limitations. Inter-state self-defense may be described as a pre-existing right of a customary nature that legally entitles a state, subjected to an armed attack, to resort to force.¹ The key question is not whether self-defense for states exists, but rather at what momentum in the course of events this right may be invoked. Although the International Court of Justice (ICJ) in its advisory opinion on the Legality of the Threat or Use of Nuclear Weapons held that every state has the fundamental right to “survival” and thus to resort to self-defense pursuant to Article 51 of the UN Charter,² “the exercise of self-defence [by states] is by no means confined to such catastrophic scenarios.”³ This counts especially for situations during contemporary military crisis-management missions, in which peacekeepers are called to operate.⁴ Similar to states, “the reality of self-defence in inter-state relations [and also for peacekeepers] is much

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¹ See Yoram Dinstein, War, Aggression and Self-Defense 178–82 (2005); see also the ICJ judgment in the Nicaragua case, infra note 48.

² Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 1996 ICJ 226, 263; the ICJ opined that such survival would be only at stake in an extreme circumstance of self-defense.

³ Dinstein, supra note 1, at 175 (2005).

⁴ The term “peacekeepers” or “peacekeeping operations” in this chapter includes both peacekeepers and peace enforcement operations; the term peace support operations (PSOs) covers both of these types of operations.