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978-0-521-76664-7 - 'Armed Attack' and Article 51 of the UN Charter: Evolutions in
Customary Law and Practice
Tom Ruys
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'ARMED ATTACK' AND ARTICLE 51 OF THE UN CHARTER

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 RUYIS 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.

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‘ARMED ATTACK’ AND
ARTICLE 51 OF THE UN
CHARTER: EVOLUTIONS
IN CUSTOMARY LAW
AND PRACTICE

TOM RUYS



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“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

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TABLE OF ABBREVIATIONS AND ABBREVIATED CITATIONS

1. Abbreviations

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

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ABBREVIATIONS AND ABBREVIATED CITATIONS

LRA	Lord's Resistance Army
LTTE	Liberation Tigers of Tamil Eelam
MONUC	United Nations Organization Mission in the Democratic Republic of the Congo
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NEO	Non-Combatant Evacuation Operation
NSS	National Security Strategy of the United States
OAS	Organization of American States
OAU	Organization of African Unity (now African Union)
ODA	Official Development Assistance
OECS	Organization of Eastern Caribbean States
OPT	Occupied Palestinian Territories
OSCE	Organization for Security and Cooperation in Europe
P-5	Permanent Members of the United Nations Security Council
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
PKK	Kurdistan Workers' Party
PLO	Palestine Liberation Organization
ROE	Rules of Engagement
SOFA	Status of Forces Agreement
SWAPO	South West Africa People's Organization
TFG	Transitional Federal Government (Somalia)
UAR	United Arab Republic
UIC	Union of Islamic Courts
UN	United Nations
UNCIO	United Nations Conference on International Organization (San Francisco Conference)
UNCLOS	United Nations Convention on the Law of the Sea
UNEF	United Nations Emergency Force
UNGA	United Nations General Assembly
UNMOVIC	United Nations Monitoring, Verification and Inspections Commission
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UNTSO	United Nations Truce Supervision Organization
VCLT	Vienna Convention on the Law of Treaties (1969)
WMD	Weapons of Mass Destruction
WTO	World Trade Organization

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2. Journals and related materials

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

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ABBREVIATIONS AND ABBREVIATED CITATIONS

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

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IRRC	International Review of the Red Cross
Israeli L Rev	Israeli Law Review
Israeli YBHR	Israeli Yearbook of Human Rights
Italian YBIL	Italian Yearbook of International Law
JACL	Journal of Armed Conflict Law
JALC	Journal of Air Law and Commerce
Japanese Annual IL	Japanese Annual of International Law
JCSL	Journal of Conflict and Security Law
JICJ	Journal of International Criminal Justice
J Int'l L & Economics	Journal of International Law and Economics
JTLP	Journal of Transnational Law and Policy
Keesing's	Keesing's Contemporary Archives/Keesing's Record of World Events
LNTS	League of Nations Treaty series
Leiden JIL	Leiden Journal of International Law
Melbourne JIL	Melbourne Journal of International Law
Mercer L Rev	Mercer Law Review
Michigan JIL	Michigan Journal of International Law
Michigan L Rev	Michigan Law Review
Modern L Rev	Modern Law Review
MPYBUNL	Max Planck Yearbook of United Nations Law
Naval L Rev	Naval Law Review
NILR	Netherlands International Law Review
North Carolina JIL Comm Reg.	North Carolina Journal of International Law and Commercial Regulation
Northwestern UNL Rev	Northwestern University Law Review
NYBIL	Netherlands Yearbook of International Law
NYL School JICL	New York Law School Journal of International and Comparative Law
NY Times	New York Times
NYUJILP	New York University Journal of International Law and Politics
OJ	Official Journal of the European Union
Ottawa L Rev	Ottawa Law Review
Pace IL Rev	Pace International Law Review
Penn State IL Rev	Penn State International Law Review
RBDI	Revue Belge de Droit International
RdC	Recueil des Cours
RDMDG	Revue de Droit Militaire et de Droit de la Guerre
REDI	Revista Española de Derecho Internacional
Regent JIL	Regent Journal of International Law

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

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ABBREVIATIONS AND ABBREVIATED CITATIONS

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YBIHC	Yearbook of International Human Rights Law
YBILC	Yearbook of the International Law Commission
YJIL	Yale Journal of International Law
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht
ZöR	Zeitschrift für öffentliches Recht

SELECTED CASE LAW, LEGISLATION AND
 RELATED DOCUMENTS

1. International Case Law (ordered chronologically)

ICJ

ICJ, *Corfu Channel (United Kingdom v. Albania)*, Judgment of 9 April 1949, (1949) ICJ Rep 4–38

ICJ, *Case concerning United States diplomatic and consular staff in Tehran (United States of America v. Islamic Republic of Iran)*, Judgment of 24 May 1980, (1980) ICJ Rep 3–46

ICJ, *Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America) (Admissibility)*, Judgment of 26 November 1984 on the jurisdiction of the Court, (1984) ICJ Rep 392

ICJ, *Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua v. United States of America) (Merits)*, Judgment of 27 June 1986, (1986) ICJ Rep 14–150

ICJ, *Legality of the threat or use of nuclear weapons*, Advisory opinion of 8 July 1996, (1996) ICJ Rep 226–67

ICJ, *Case concerning the aerial incident of 10 August 1999 (Pakistan v. India)*, Judgment of 21 June 2000, (2000) ICJ Rep 12–35

ICJ, *Case concerning the land and maritime boundary between Cameroon and Nigeria (Cameroon v. Nigeria; Equatorial Guinea intervening)*, Judgment of 10 October 2002, (2002) ICJ Rep 303–458

ICJ, *Case concerning oil platforms (Islamic Republic of Iran v. United States of America)*, Judgment of 6 November 2003, (2003) ICJ Rep 161–219

ICJ, *Legal consequences of the construction of a wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, (2004) ICJ Rep 163

ICJ, *Case concerning armed activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment of 19 December 2005, (2005) ICJ Rep 116–220

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ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, reprinted in (2007) 46 ILM 188–310

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

Ethiopia–Eritrea Claims Commission, Partial Award *Jus ad Bellum*, Ethiopia Claims 1–8, 19 December 2005, reprinted in (2006) 45 ILM 430

Guyana v. Suriname, Arbitral award of 17 September 2007, available at www.pca-cpa.org/upload/files/Guyana-Suriname%20Award.pdf

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)

ICTY Appeals Chamber, *Prosecutor v. Dusko Tadić*, Decision on the defence motion for interlocutory appeal on jurisdiction, 2 October 1995, reprinted in (1996) 35 ILM 32

ICTY Appeals Chamber, *Prosecutor v. Dusko Tadić*, Case No. IT-94-1-A, Judgment of 15 July 1999

ICTY Trial Chamber, *Prosecutor v. Furundžija*, Judgment of 10 December 1998, reprinted in (1999) 38 ILM 349

ITLOS, *The M/V 'Saiga' Case (No.2) (Saint Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, (1999) 38 ILM 1323–64

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)

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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. 280 (1970) of 12 May 1970 (Israel)
 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)

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