The collective security system and the use of force in the international arena
Rules on the use of force

• ius ad bellum- rules governing the resort to armed conflict

• ius in bello- rules governing the actual conduct of armed conflict
Use of force in the UN Charter

• Article 2(4) members shall refrain in their international relations from the threat of use of force against the territorial integrity or political independence of any state
• War has a technical sense in international law;
• States often engage in hostilities while denying that they are technically in a state of war. Such hostilities can range from minor border incidents to exclusive military operations
General rule under the UN

• The general principle is to ban the use of armed forces except in cases where:
  • there is collective action-pursued to maintain or even enforce peace (Articles 24, 25, and Chapter VII);
  • Article 51: “Nothing in the present Charter shall impair the inherent right to individual or collective self-defense if an armed attack occurs against a state."
Chapter VII of UN Charter

• “Action with respect to threats to the peace, breaches of the peace, and acts of aggression”

• Vs.... Chapter VI of UN Charter

• «Pacific settlement of disputes»
Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.
Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may 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 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.
Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action.
Collective action

The **UN Security Council** is mandated to identify the existence any **threat to peace and security**. Initially it had been envisaged by the creators of the UN Charter that the organisation would have its own forces. However, today the UN has no army but the “**blue helmets**” are soldiers from the member States. Today, other means are preferred to the use of force.
Self-defence - Article 51

Nothing in the Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence 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.
Features of self-defense

1. Force used in self defence must be **necessary, immediate and proportional** to seriousness of the armed attack

2. Immediacy requires that the attack of self-defence must be taken **immediately subsequent** to the armed attack.
Humanitarian intervention

• In modern times where terrorism has really increased, several countries are beginning to advocate for the right of humanitarian intervention without the UN’s Security Council.

• Humanitarian intervention involves the threat and use of military forces as a central feature

• It is an intervention in the sense that it entails interfering in the internal affairs of a state by sending military forces into the territory or airspace of a sovereign state that has not committed an act of aggression against another state.

• The intervention is in response to situations that do not necessarily pose direct threats to states' strategic interests, but instead is motivated by humanitarian objectives.

• In most cases the motive is enforcing the respect for human rights.

• It must be authorized by the UN Security Council

BUT
Example: the Kosovo case

• After the Kosovo’s crisis in 1999, countries like the UK cited the importance of the use of military force to avert such catastrophes in the future.

• When **NATO flexed its military muscle** in Yugoslavia, **it had not acquired the UN Security Council’s permission**.

• On the contrary this action **was not condemned** since the intervention was necessary on humanitarian grounds.

• **Many states oppose such unauthorized intervention** on legal grounds while others cite practicality-stronger nations (military wise) could misuse or overuse such powers.
Responsibility to Protect (R2P or RtoP)

- Global political commitment which was endorsed by all member states of the United Nations at the 2005 World Summit in order to address its four key concerns to prevent genocide, war crimes, ethnic cleansing and crimes against humanity.

- The principle is based upon the underlying premise that sovereignty entails a responsibility to protect all populations from mass atrocity crimes and human rights violations.

- The Spiderman principle...?
The dilemma in Kofi Annan’s words

• “...[T]here cannot be real peace without justice. Yet the relentless pursuit of justice may sometimes be an obstacle to peace. If we insist, at all times, and in all places, on punishing those who are guilty of extreme violations of human rights, it may be difficult, or even impossible, to stop the bloodshed and save innocent civilians. If we always and everywhere insist on uncompromising standards of justice, a delicate peace may not survive.

• But equally, if we ignore the demands of justice simply to secure agreement, the foundations of that agreement will be fragile, and we will set bad precedents.” (Kofi Annan, 25.09.2003).