

*United Nations and
Collective Security System*



On the use of armed force

- Customary international law – jus cogens
- The United Nations Charter

1945 United Nations Charter

- A new beginning: “to save succeeding generations from the scourge of war”
- Charter establishes a system of collective security and forbids unilateral resort to force
- However, it preserves the right of self-defence

Use of armed force (UN Charter)

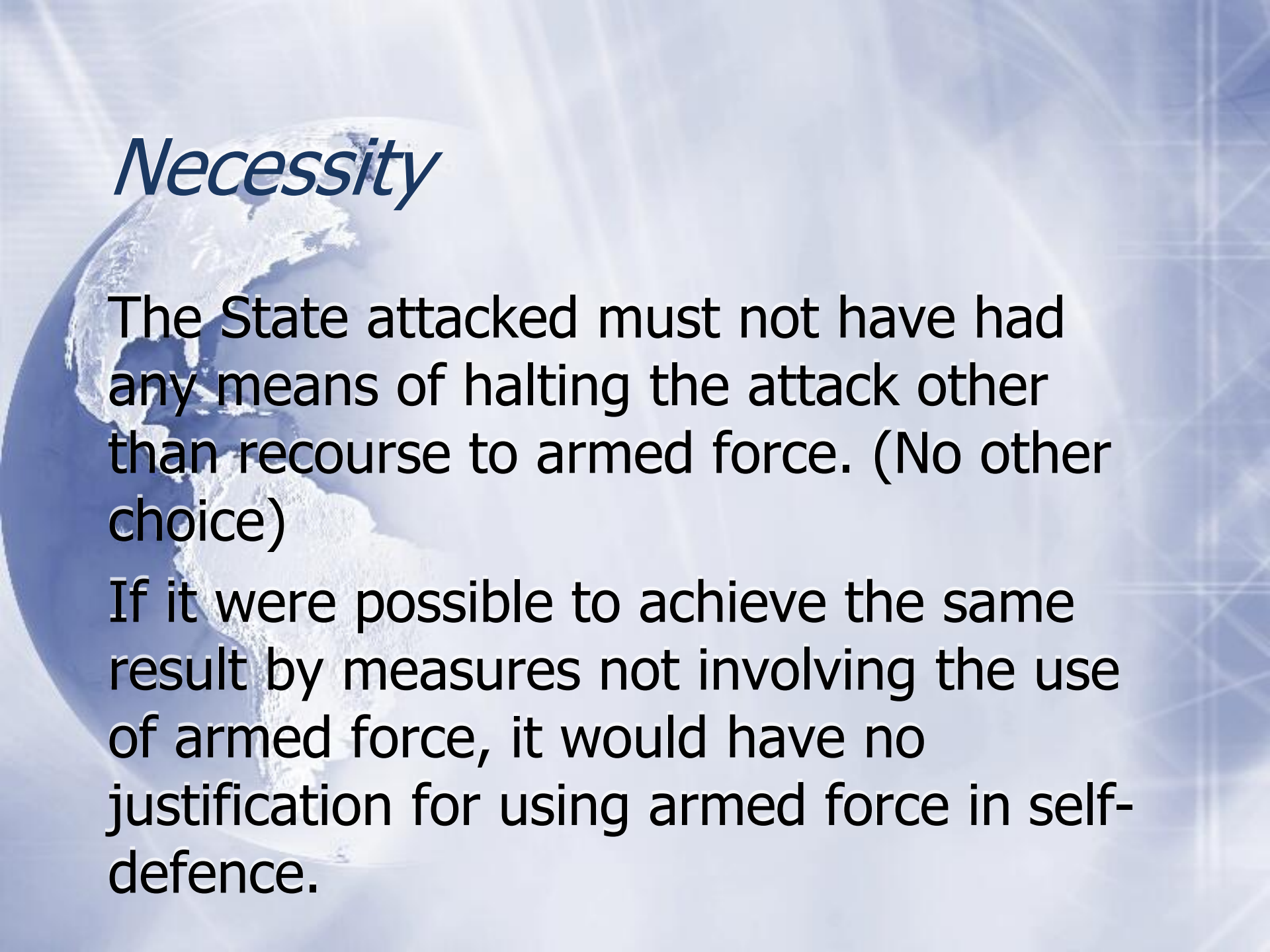
- Three pillars:
 - Prohibition of use of force (art. 2(4))
 - Reservation of the right of individual and collective self-defense until Security Council can act effectively (art. 51)
 - Powers of the Security Council to deal with breaches of the peace or threats to peace (artt. 39-42)

The prohibition – 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”.

Self-defense

- Article 51
 - “Nothing in the present 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....”



Necessity

The State attacked must not have had any means of halting the attack other than recourse to armed force. (No other choice)

If it were possible to achieve the same result by measures not involving the use of armed force, it would have no justification for using armed force in self-defence.

Proportionality

✧ Under a general principle of law, the defensive action must be commensurate with and in proportion to the armed attack which gave rise to the exercise of the right of self-defence.

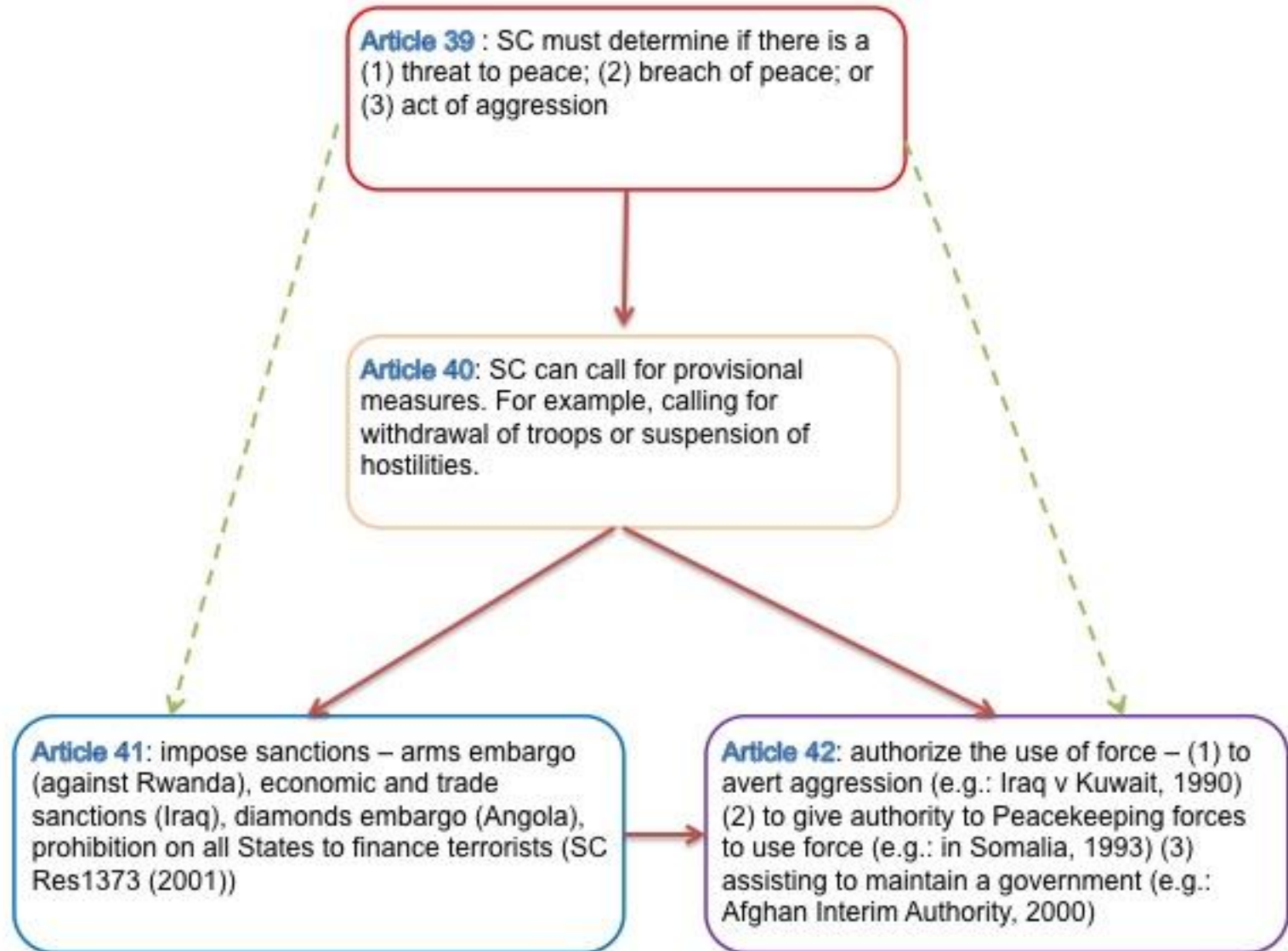
Imminence

- ✧ The use of force in self-defence is legitimate only in case of an actual attack against a Member State

anticipatory self-defence - issues

Preventive self-defense seeks to halt the development of a future threat, often without having precise information about where or when the attack might occur; this is why it is mostly not accepted as a legitimate use of force.

UN Collective security system



Powers of the Security Council

- 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.”

Powers of the Security Council

- 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.”

Powers of the Security Council

- 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.”

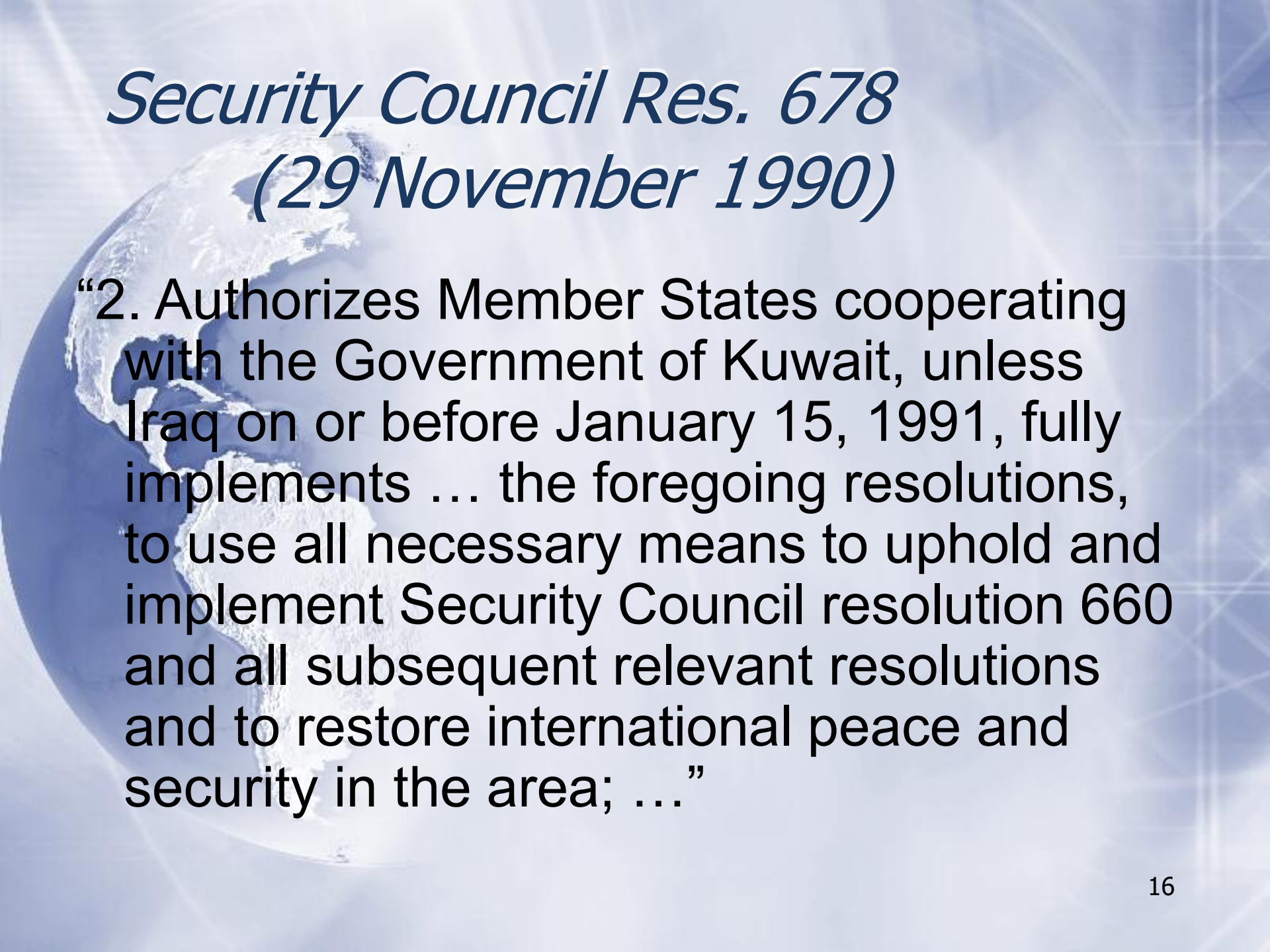
Permanent agreements (art. 43)

- ✧ All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a **special agreement or agreements, armed forces, assistance, and facilities**, including rights of passage, necessary for the purpose of maintaining international peace and security.

UN Practice

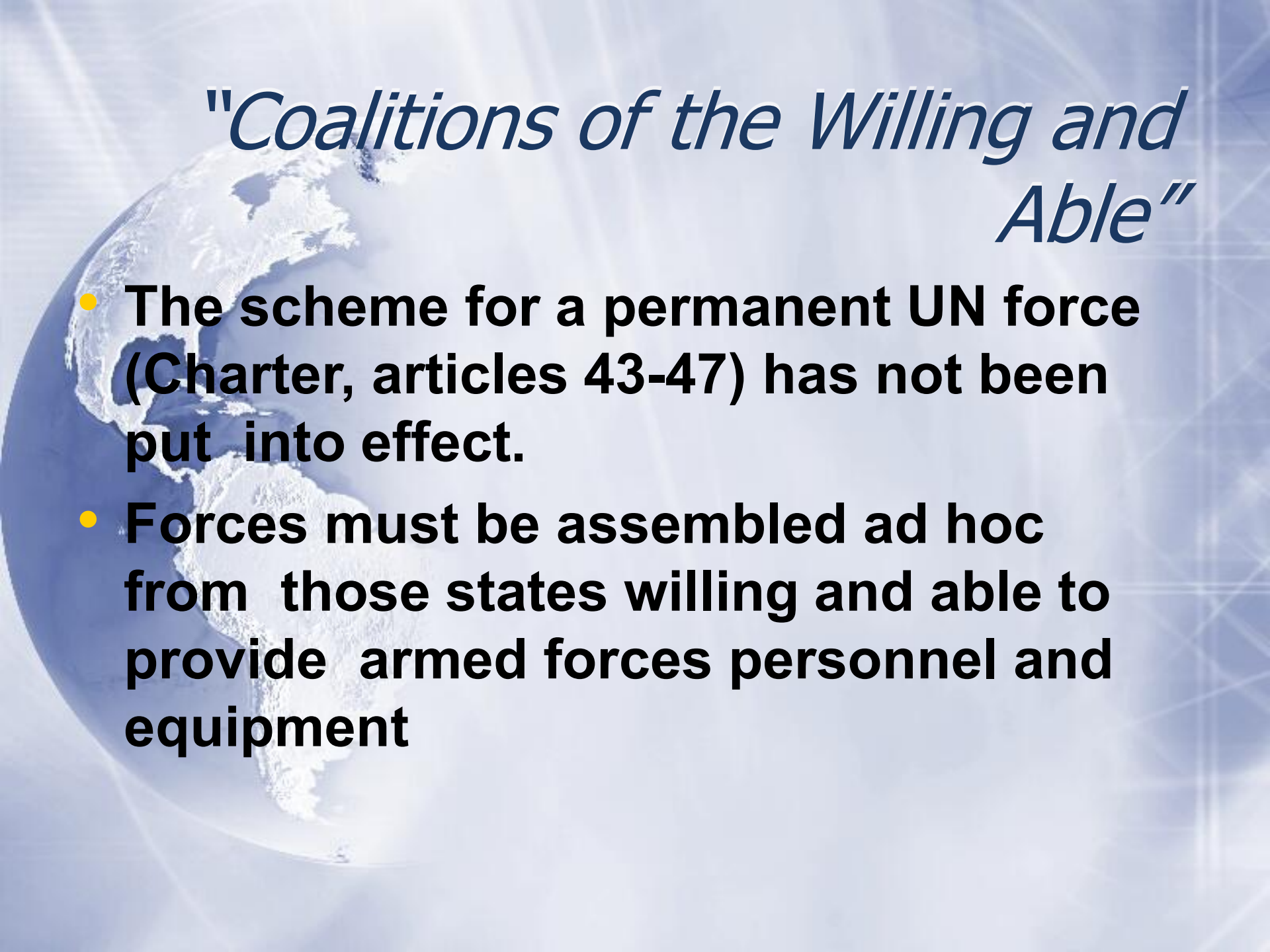
✧ Security Council resolution which authorise the use of force:

- a. States and coalitions of states
- b. Regional organisations



Security Council Res. 678 (29 November 1990)

“2. Authorizes Member States cooperating with the Government of Kuwait, unless Iraq on or before January 15, 1991, fully implements ... the foregoing resolutions, to use all necessary means to uphold and implement Security Council resolution 660 and all subsequent relevant resolutions and to restore international peace and security in the area; ...”



"Coalitions of the Willing and Able"

- **The scheme for a permanent UN force (Charter, articles 43-47) has not been put into effect.**
- **Forces must be assembled ad hoc from those states willing and able to provide armed forces personnel and equipment**

The invasion of Iraq 2003

- An action against the prohibition of the use of force?
 - Article 2(4) of the Charter;
 - No prior Iraqi attack justifying immediate self-defence;
 - No authorization by the UN Security Council.

Iraq 2003

(cont'd)

- US justification as an act of pre-emptive self-defence against the feared future use by Iraq of WMDs.
- British justification: authorized by the Security Council by implication from the wording of previous resolutions.

Veto Power in the SC: is it possible to change it?

- ✧ Idea of veto power of each of the P5 members of the U.N. Security Council contested throughout the process of negotiating the U.N. Charter
- ✧ Yet, it was included and it is very improbable that a reform be approved (art. 108 and 109 Charter amendment procedures both need 2/3 of GA and 9 votes in SC, including the P5)
- ✧ Non-amendment reform going on? (see article Mills/Millermann 2025)

Ukraine 2022

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- ✧ 1950 (paralysis in the Security Council over the war in Korea): UNGA adopts the «Uniting for Peace» Resolution:
 - ✧ After Russia vetoed the Security Council resolution condemning its assault on Ukraine, States used the Uniting for Peace Resolution to call for an emergency special session of the General Assembly and



Uniting for peace: [I]f the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General, including in the case of a breach of the peace or act of aggression, shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including the use of armed force when necessary, to maintain or restore international peace and security.

Veto initiative: the General Assembly has a **standing mandate to convene** within 10 working days of a veto being cast in the Council (A/RES/76/262)

HENCE: focus shifts to the UNGA