Chapter 1-Introduction

The United Nations Collective Security System (hereinafter 'the UNCSS') and territorial disputes are two seemingly distinct topics within the system of modern international law:

The former refers to the forcible mechanism under the name of the United Nations, in which the member states act collectively to guarantee their harmonious internal order, and therefrom further maintaining international peace and security. Theoretically speaking, this mechanism not only enjoys the exclusive command of the UNSC and other organs of the United Nations, but also has the right to recruit the combined strength of all the member states to enforce an extensive range of sanctions (especially the centralized use of force). Unfortunately, due to the repeated failure of its past operating attempts, this mechanism is still being thoroughly criticized by those leading international legal scholars (for the details of this mechanism, see 4.1 below).[1]

The latter refers to the disagreement among multiple states over the sovereign ownership or control of a particular piece of territory. Practically speaking, according to its various different definitions, this dispute not only can involve plenty of core actors in the modern international relations, but also can cover most of the geographical spaces in which the human civilizations and activities are existing. Nevertheless, due to the rapid change of its background international situations, this dispute has been largely banished from the present Western world (for the details of this concept, see 3.1 below).[2]

At the beginning of this book, therefore, it is necessary to explain the interrelated importance of the UNCSS and territorial disputes from the perspective of modern international law, so as to show the practical significance and internal connection of this research topic. Naturally, this introductory chapter will also set out the basic structure of the book.

1.1 The significance of territorial disputes from the perspective of international law

International law, or the law of nations, as it is traditionally called, refers to 'the name for the body of customary and conventional rules which are considered legally binding by civilized states in their relation with each other.'[3] In other words, the modern international law, which originates from the era of the Peace

[1] Antonio Cassese, *International Law* (2nd edn, OUP 2005) 339; Gary Wilson, *The United Nations and Collective Security* (Routledge 2014) 5-8.
[2] See e.g. Alan Day & Judith Bell (eds), *Border and Territorial Disputes* (2nd edn, Cartermill International 1987) ch 1.
[3] Robert Y. Jennings & Arthur Watts (eds), *Oppenheim's International Law* (9th edn, Longman 1992) 4.

of Westphalia, exists and continues to develop on the basis of sovereign states and their need to regulate their mutual relationships.[4] In addition, it is clear that recent theories of international law have recognized other international political entities, such as inter-governmental organizations[5] or even individuals,[6] as the subjects of international law. However, at the moment, sovereign states are still the main focus and core subject of international law.[7]

Correspondingly, the element of territory also holds the primary position among the four basic pre-conditions listed in the Montevideo Convention that must be met for a state to be said to exist.[8] If an international political entity does not have a defined territory, then it cannot have a permanent population. If it does not have a permanent population, it also cannot form a stable human society, and accordingly there is no need to organize a government. If it does not have a government, and is therefore merely a group of scattered individuals, it can hardly enter into relations with other states.[9] Meanwhile, according to Morgenthau, territory and the various natural elements attached to it, provide the basic tangible prerequisites for the stable national strength and further development of sovereign states.[10] Territory is therefore one of the core national interests which must be safeguarded by states for the purpose of ensuring their competitive ability in international society.

Owing to this double-tiered relationship between territories and states and states and international law, the abnormal change of the sovereignty ownership of territories is definitely capable of creating serious international disputes. Thereby, this issue could actually further test the effectiveness of international law in the relevant practice:

For example, although many common states tend to adopt a forbearing stance in their diplomatic activities due to their relative weakness,[11] but sovereignty and territorial integrity are still uncompromisably necessary for keeping their basic national strength.[12] Similarly, even though the superpowers rarely have to face international disputes which directly relate to their own territories,[13] but

[4] Matthew Craven, 'Statehood, Self-Determination, and Recognition', in Malcolm Evans (ed), *International Law* (3rd edn, OUP 2010) 203 at 208-17.
[5] See e.g. *Reparation for Injuries Suffered in the Service of the United Nations* (Advisory Opinion) [1949] ICJ Rep 174.
[6] E.g. International criminal law, see Antonio Cassese, *International Law* (2nd edn, OUP 2005) 143-50.
[7] See Antonio Cassese, *International Law* (2nd edn, OUP 2005), 71-72.
[8] See Convention on the Rights and Duties of States (Montevideo Convention) (signed 26 December 1933) 165 LNTS 19, art 1.
[9] See e.g. Jan Klabbers, *International Law* (CUP 2013) 70-71.
[10] Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005) ch 9.
[11] See e.g. Andrew F. Cooper & Timothy M. Shaw (eds), *The Diplomacies of Small States: Between Vulnerability and Resilience* (Palgrave Macmillan 2009) pt 1.
[12] Hans J. Morgenthau (author), Kenneth W. Thompson & David Clinton (revised), *Politics among Nations: The Struggle for Peace and Power* (7th edn, McGraw-Hill 2005) 318-20.
[13] CIA, 'Transnational Issues > Disputes > International by country, All CIA World Factbooks

territories remain the original basis on which all the superpowers compete with each other. Meanwhile, territories are an accurate indicator of the rise and fall of the national strength of those superpowers as well.[14] Besides, even in regions where processes of integration have served to weaken the significance of sovereignty, the status of territories is also highly praised by local states. Accordingly, territorial disputes may still have a potentially negative impact on the peace, international co-operation and rule of law over there.[15]

Under the above circumstances, territorial disputes among the sovereign states have certainly formed one of the main international disputes that are both most regularly seen and most likely to directly threaten international peace and security (with regard to the working definition of territorial disputes in the context of this book, see chapter 3 below).[16] Consequently, this type of dispute has become a crucial long-term issue within the framework of modern international legal system:

Actually, among those international armed conflicts which both brought about casualties and occurred between 1816 and 2001, approximately half contained some elements of territorial dispute.[17] Besides, those conflicts caused by territorial disputes are also the most bloody and long-lasting conflicts among all types of international armed conflicts.[18] In addition, among all the total interstate wars which took place between 1648 and 1989, more than three quarters contained territorial disputes.[19] As a direct result of this prevalence of territorial disputes, and the risk they pose, just during the period from 1946 to 2002, the ICJ had already judged 16 cases related to land or maritime delimitations. Fortunately, many of which have established authoritative precedents for the future application of international law in territorial disputes.[20]

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18 December 2003 to 18 December 2008' (*NationMaster.com*) <http://www.nationmaster.com/graph/gov_tra_iss_dis_int-government-transnational-issues-disputes-international> accessed 7 January 2014.

[14] E.g. A series of new-born territorial disputes within the borders of the former socialist republics in Eastern Europe, after the collapse of the Soviet Bloc. See CIA, 'Transnational Issues > Disputes > International by country, All CIA World Factbooks 18 December 2003 to 18 December 2008' (*NationMaster.com*) <http://www.nationmaster.com/graph/gov_tra_iss_dis_int-government-transnational-issues-disputes-international> accessed 7 January 2014.

[15] E.g. The issue of Gibraltar within the frontier of the EU. See Keith Azopardi, *Sovereignty and the Stateless Nation: Gibraltar in the Modern Legal Context* (Hart Publishing 2009); Nigel White, *Democracy Goes to War: British Military Deployments under International Law* (OUP 2009) 174.

[16] For an in-depth explanation of the complex definition of modern territorial disputes, see Paul Huth, *Standing your ground: Territorial Disputes and International Conflicts* (University of Michigan Press 1998) 4-5 & 19-26; with regard to the dangerousness of territorial disputes, see also John A. Vasquez, *The War Puzzle Revisited* (CUP 2009) 135-36.

[17] John A. Vasquez, *What do we know about War* (Roman & Littlefield 2012) ch 1 table 1.3.

[18] Hein E. Goemans & Kenneth A. Schultz, 'The Politics of Territorial Disputes: A Geospatial Approach Applied to Africa' (Draft) (2016) 71 (1) International Organizations 31 at 31.

[19] Kalevi J. Holsti, *Peace and War: Armed Conflicts and International Order, 1648-1991* (CUP 1991) 307-10; John A. Vasquez, *What do we know about War* (Roman & Littlefield 2012) ch 1 table 1.3.

[20] Nie Hongyi, 'A Review of the Function and Dilemma of International Law in Settling Territorial

In summary, as sovereign states are still the core focus of modern international law and states have a core interest in their territory, there is no doubt that territorial disputes should be seriously concerned by the international legal academia. In addition, while the modern international legal system has pledged to defend 'international peace and security', territorial disputes have been threatening its duty for centuries, and they have even enhanced the related experience of the ICJ. Thus, this issue is a worthy subject-matter for academic study, just like it is a regular object-matter for judicial institutions.[21]

1.2 The significance of the UNCSS from the perspective of territorial disputes

Since the end of the WWII, the prohibition of the use of force in international relations has become a worldwide norm of international law.[22] Therefore, the processes of settling contemporary international disputes, including territorial disputes, have gradually shifted to peaceful methods.[23] These peaceful forms of dispute settlement, however, are not perfect, nor can they guarantee their effectiveness in any particular international dispute.[24] Meanwhile, comparing to common international disputes, territorial disputes are relatively complex, and compromise is harder to achieve since they involve the core interest of states,[25] which means that they are less likely to be gently resolved (these arguments will be discussed further in chapter 3).[26] Under the pressure of such a dilemma and due to the following reasons, as a substitute method for the traditional use of force by states, the UNCSS is indeed quite meaningful to territorial disputes settlement:[27]

Firstly, the UNCSS is a key method for legally handling contemporary international disputes by the use of force.

The peaceful settlement of international disputes is both the basic requirement of contemporary international law and a common expectation of the international

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Disputes' (2009) 2009 (2) Heilongjiang Chronicles 137 at 139.

[21] Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, UNGA Res 2625 (XXV) (24 October 1970) UN Doc A/RES/25/2625, see especially the first two principles of the seven principles listed by this declaration.

[22] Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 2 (4).

[23] Nie Hongyi, 'A Review of the Function and Dilemma of International Law in Settling Territorial Disputes' (2009) 2009 (2) Heilongjiang Chronicles 137 at 138.

[24] See e.g. J.G.Merrills, *International Dispute Settlement* (5th edn, CUP 2011) 21-25, 37-40; *Advisory Opinion on Western Sahara* (Advisory Opinion) [1975] ICJ Rep 12.

[25] Yang Mian, 'The Peaceful Approaches and Methods of Settling Territorial and Boundary Disputes' (2009) 31 (1) Socialism Studies 109 at 109-10; regarding the general characters of territorial disputes, see below.

[26] Nie Hongyi, 'A Review of the Function and Dilemma of International Law in Settling Territorial Disputes' (2009) 2009 (2) Heilongjiang Chronicles 137 at 140.

[27] Malcolm Shaw, *International Law* (6th edn, CUP 2008) 1121-22, 1146-47, ch22s3.

community.[28] However, once an international dispute cannot be settled by peaceful methods, the related parties are likely to be forced to consider the option of resorting to coercive measures, or even their armed forces. In this situation, and especially in the latter case, the UNCSS is the appropriate route to the legal use of force. In contrast, although the right of self-defence is also a legitimate reason for the use of armed forces, this is only a provisional method which is expected to be supervised of the UNSC, before the situation is eventually transferred back to the UNCSS.[29] In addition, being the only universal collective security system in the contemporary international community, the UNCSS is backed by a global inter-governmental organization that includes almost all states on Earth. Needless to say, there is no other measure or institution for the settlement of international disputes which involve the use of force can compare to this character.[30] Furthermore, a few past cases have shown that states can greatly benefit from conducting their relevant practice via the platform of the UNCSS:

In terms of those small or weak states, the UNCSS could help them to offset their disparities in national strength, this has been proved by the liberation of Kuwait in 1991 (it is noteworthy that the original design of the UNCSS institutionalised the dominance of the P5 over smaller or weaker states. Thus, the superpowers always keep a conservative attitude towards the expansion of the authority of this mechanism, see below[31]).[32] To larger states or the global powers, the UNCSS could be used by them as an excuse to avoid the negative legal consequences of unilateral actions, this has been proved by the invasion of Iraq in 2003.[33]

Secondly, the UNCSS has plenty of opportunities to be widely applied in territorial disputes.

As past cases have shown, once a dispute has been intensified to the point at which it cannot be peacefully settled and has been determined by the UNSC to be a threat to international peace and security, then the UNCSS might be activated (e.g. the Gulf War, on the inherent limitations of peaceful measures, see 3.2 below).[34] Likewise, if the parties to a territorial dispute cannot settle the

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[28] Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 2 (3) (4).

[29] Charter of the United Nations (signed 24 October 1945) 1 UNTS XVI, art 51; Christine Gray, *International Law and the Use of Force* (3rd edn, OUP 2008) 124-25.

[30] See e.g. The United Nations, 'Member States of the United Nations' <http://www.un.org/en/members/> accessed 12 January 2013.

[31] In regard to a typical expression of the common attitude of small states on the power/reform of the authoritative institutions of the UNCSS，see e.g. Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland Draft Resolution on Improving the Working Methods of the Security Council (17 March 2006) UN Doc. A/60/L.49.

[32] E.g. The Liberation of Kuwait during the Gulf War, see William Thomas Allison, *The Gulf War, 1990-91* (Palgrave 2012) chs 7-8.

[33] E.g. The legal justification of the UK for the invasion of Iraq in 2003, see United Kingdom Foreign and Commonwealth Office Memorandum (17 March 2003) 52 ICLQ 812.

[34] E.g. The Iraqi invasion of Kuwait before the Gulf War. See Brian Frederking, *The United States and the Security Council: Collective Security since the Cold War* (Routledge 2007) 78-82.

dispute themselves, they may refer the case to the UNCSS for winning the mutual confrontation.[35] Thirdly, under the shadow of superpower politics, if any ally of a superpower is in disadvantageous position in a territorial disputes, that superpower may also intervene as a third party by quoting the UNCSS (e.g. the US intervention in the Korean War). Thereby, the superpowers may 'legally' change the result of the relevant territorial disputes through non-peaceful methods, or they may at least force the other side not to act too aggressively.[36]

Thirdly, the application of the UNCSS in territorial disputes has initiated certain controversies.

As aforementioned, territorial disputes are a particular type of international disputes in which the direct parties can hardly express their consent or make any significant concession.[37] Therefore, right from when the UNCSS was first established as a legal alternative to the unilateral resort to force by states, there have been controversies related to its application in territorial disputes.[38] Even the Gulf War, which is usually seen as a successful model of the application of the UNCSS, also raises questions.[39] More seriously, in some cases such as the Korean War, the application of the UNCSS in territorial disputes has further increased the tensions between the related parties, and led to intensified conflict or war.[40] For their own reasons, however, scholarship on international law, especially in the Western academia,[41] lacks comprehensive and detailed research on the application of the UNCSS in the settlement of territorial disputes (see literature review). Hence, the related actions of the international community cannot be legally and properly regulated, and the maintenance of the international peace and security may be negatively affected as well.

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[35] E.g. The request for external assistance sent by the government of South Korea to the UNSC on the outbreak of the Korean War, and the request for external assistance sent by the internationally recognized authority of Cambodia to the UNSC on the issue of the occupation of Cambodia by Vietnam & the deployment of the subsequent United Nations peacekeeping operations, see e.g. David L. Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (OUP 2009); Benny Widyono, 'United Nations Transitional Authority in Cambodia (UNTAC)', in Joachim A. Koops, Norrie MacQueen, Thierry Tardy & Paul D. Williams (eds), *The Oxford Handbook of United Nations Peacekeeping Operations* (OUP 2015) 395 at 395-407.

[36] E.g. The military reinforcement offered by the USA towards the government of the Republic of Korea under the name of the 'UN Forces' during the Korean War, see UNSC Res 82 (25 June 1950) UN Doc S/RES/82; UNSC Res 83 (27 June 1950) UN Doc S/RES/83; UNSC Res 84 (7 July 1950) UN Doc S/RES/84; David Harris, *Cases and Materials on International Law* (7th edn, Sweet & Maxwell 2010) 806-808.

[37] Yang Mian, 'The Peaceful Approaches and Methods of Settling Territorial and Boundary Disputes' (2009) 31 (1) Socialism Studies 109 at 109-10; Nie Hongyi, 'A Review of the Function and Dilemma of International Law in Settling Territorial Disputes' (2009) 2009 (2) Heilongjiang Chronicles 137 at 140.

[38] E.g. The Korean War, David Harris, *Cases and Materials on International Law* (7th edn, Sweet & Maxwell 2010) 806-808.

[39] Thomas Frank, 'What Happens Now? The United Nations after Iraq' (2003) 97 AJIL 607; E. Rostow, 'Until What? Enforcement Action or Collective Self-Defense' (1991) 85 AJIL 506.

[40] See David Harris, *Cases and Materials on International Law* (7thedn, Sweet & Maxwell 2010) 806-808.

[41] Basically due to the political advantages and cultural commonalities, see Malcolm Shaw, *International Law* (6th edn, CUP 2008) 13-42.

In summary, being the major method of legally using armed forces after the WWII, the UNCSS is a qualified coercive supplementary method to the peaceful measures in the field of settling territorial disputes. Additionally, concerning the related past practice, there is no lack of chance for the application of the UNCSS in territorial disputes, and they have caused definite controversies. Therefore, it is clearly necessary to conduct research on this issue within the system of contemporary international law.

1.3 An outline of the book structure

Given the limitations in time and words inherent in this book it will not be possible to examine all the controversial issues related to the application of the UNCSS in territorial disputes. The book will, however, creatively and profoundly reflect the unique features of the application of the UNCSS in territorial disputes. Additionally, according to Strong, an academic paper in law should contain at least four elements, namely 'Claim-Law-Evaluation-Outcome (CLEO)' in respect to the research topic of this book. This means that the author should answer at least four research questions related to the application of the UNCSS in territorial disputes, namely 'necessity (Claim), rules (Law), performance and prospect (Evaluation and Outcome)'.[42] For these purposes, the author would like to set the basic structure of the main body of this book as follows:

Firstly, the author will review the research basis of the application of the UNCSS in territorial disputes settlement.

This chapter will entail a review of the existing international legal literature on the UNCSS and territorial disputes, alongside related academic materials from the field of international relations. This review will serve to demonstrate the originality of the detailed content of the subsequent chapters. This will be followed by the systematic illustration of the methodology that the author wishes to apply, so as to show the distinctiveness of the abstract methods adopted in the subsequent chapters.

Next, the author will discuss the background of the application of the UNCSS in territorial disputes settlement.

This chapter will entail a discussion of the working concept of territorial disputes, and the characters of the issue of territorial disputes from the perspective of modern international law. This process will help to define the parameters for the selection of the case studies in the book and to illustrate the main challenges that the UNCSS might face in this field. Then the book will discuss the various peaceful measures for settling territorial disputes, summarizing their inherent disadvantages, so as to highlight the need to apply the UNCSS in territorial

[42] S. I. Strong, *How to Write Law Essays & Exams* (4th edn, OUP 2014) 4-6 & 119-128.

disputes. In short, this part mainly answers such an afore-mentioned research question in relation to 'necessity'-why the settlement of territorial disputes should be resorted to the UNCSS?

Next, the author will explain the framework of the application of the UNCSS in territorial disputes settlement.

This chapter will specify the authoritative institutions, operating mechanisms and predetermined purposes that might be activated/pursued by the UNCSS in the face of territorial disputes. Accordingly, it will collate the process of the UNCSS when this mechanism is participating in the resolution of such disputes, together with its aims. Afterward, this chapter will try to specify the mutual relationship between the UNCSS and other surrounding measures, mechanisms or organizations in the face of territorial disputes. Accordingly, it will clarify the partners of the UNCSS when this mechanism is participating in the resolution of such disputes, together with their interactions. In short, this part mainly answers such an afore-mentioned research question-what are the general 'rules' governing the application of the UNCSS in territorial disputes settlement?

Next, the author will analyse the practice of application of the UNCSS in territorial disputes settlement.

This chapter will analyse the different measures under the framework of the UNCSS by using representative cases, so as to explore the practical performance of this international security mechanism in territorial disputes. Afterwards, the book will try to analyse the fatal drawbacks of the various measures under the framework of the UNCSS while they are being applied in territorial disputes, so as to inform the subsequent chapter of the book. In short, this part mainly answers such an afore-mentioned research question-how is the specific 'performance' of the application of the UNCSS in territorial disputes settlement?

Finally, the author will provide a reform proposal for the application of the UNCSS in territorial disputes settlement.

This chapter will focus on enforceable self-reform of the UNCSS, generalizing the guiding thoughts and thus offering the practicable recommendations. Meanwhile, this book will also assess the potential effect of these reforms by studying a selected recent case of territorial disputes. Afterwards, following the set order of the research questions, as listed in the present section, the author will summarise his research findings and thereupon conclude the entire doctorate project. In short, this part mainly answers such an afore-mentioned research question in relation to 'prospect'-what can be improved for the future application of the UNCSS in territorial disputes settlement?

Chapter 2-The research basis for assessing the application of the UNCSS in territorial disputes settlement

As territorial disputes have always threatened the peace, security and stability of the international community, this issue is certainly an important one for international legal scholars. Similarly, as the mechanism allowing the use of force within the only universal inter-governmental organization of the modern international community, the theoretical status of the UNCSS is also unquestionable. Moreover, since it was founded in 1945, this mechanism is also a relatively longstanding one.[43] It is unsurprising, therefore, that there has been a lot of research into territorial disputes or the UNCSS within both the scholarship on international law and that on international relations.[44] In order to identify gaps in this research, and thus justify the originality of this book, this chapter systematically assesses the current literature, so as to situate the book within the scholarship. Besides, it should be seen that different scholars would certainly interpret territorial disputes and the UNCSS in different ways. Therefore, two articles/monographs that both put 'territorial disputes' or 'the UNCSS' into their titles might not have the same detailed content (for example, while they are studying territorial disputes, some scholars may choose not to incorporate boundary disputes, see below). For original research and convenient writing, the author will soon state his personal opinions on the various details of the two key words of his research topic. Nevertheless, for impartially reflecting the related research progress, the author will not ignore any representative material by claiming his disagreement in opinions, provided the material has clearly specified that '(territorial (disputes)' or '(United Nations) collective security' is its key word.

2.1 The literature review

2.1.1 Legal and international relations scholarship on territorial disputes

1. Prior to the establishment of the United Nations.

Legal scholarship on territorial disputes has an early start. In the first *magnum opus* of the 20th century, Oppenheim already discussed several traditional norms

[43] With regard to the basic status of the United Nations and the UNCSS, see Antonio Cassese, *International Law* (2nd edn, OUP 2005) 317-20 & 339-40.

[44] International law and international relations can be seen as like the two sides of one coin, the former primarily studies the issue of how to maintain the normal order of international affairs, and the latter primarily studies the issue of how to explain the contradictions emerging within international affairs: the former treats the latter as its parallel subject, whilst the latter treats the former as its subordinate subject, but in any case, these two subjects are supplementary to each other, and it is very hard to forcibly divide or separate them, see e.g. Michael Byers, 'International Law', in Christian Reus-Smit & Duncan Snidal (eds), *The Oxford Handbook of International Relations* (OUP 2010) 612 at 612-34.

of international law related to territorial disputes in a general manner.[45] Indeed, notwithstanding some fundamental differences between traditional international law and contemporary international law, some of Oppenheim's views are still not outdated (e.g. Oppenheim's list of various methods of acquiring territories).[46] Additionally, in the subsequent development of this masterpiece, Lauterpacht, Jennings and other editors further perfected the theories Oppenheim by re-editing his old-fashioned contents and adding more modern perspectives in the relevant fields (e.g. the abandonment of the second volume of Oppenheim's International Law by Lauterpacht, and the differentiation of territorial disputes and boundary disputes emphasized by Jennings/Watts).[47]

Simultaneously, certain other international legal scholars who were active in early 20th century also discussed territories, and gradually developed new thoughts on these issues which have come to form the basis for contemporary international law. For example, Kelson and Brierley criticised the use of force by states in international disputes and several traditional methods of acquiring territories, including conquest and forced cession[48]. In the relevant academic research before the birth of the UN, however, scholars still mainly focused on general issues, such as the legal meaning of territories or the various ways of acquiring territories. Furthermore, they did not completely get rid of the negative impact of traditional international law as well (for example, Brierley was critical of the issue of conquest, but he was quite pessimistic about the ability to regulate illegal conquest within international law, so he never clearly denied the legality of conquest).[49] Under the threat of war, states usually preferred to use their forces directly for the purpose of settling territorial disputes, and thus there only was very limited space for the application and development of international law.[50]

2. After the establishment of the United Nations.

Into the second half of the 20th century, war as an instrument of national policy was abolished,[51] and the unilateral resort to force by states in their international

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[45] Lassa Oppenheim, *International Law, A treatise* (2nd edn, Longmans & Green 1912) Pt2ch1.
[46] See Lassa Oppenheim, *International Law, A treatise* (2nd edn, Longmans & Green 1912) Pt2ch1Sxi.
[47] See Hersch Lauterpacht (ed), *Oppenheim's International Law* (7th & 8th edns, Longmans & Green 1948, 1952 & 1958) (Note: the 8th edn formally abandoned Volume 2); Robert Y. Jennings & Arthur Watts (eds), *Oppenheim's International Law* (9th edn, Longman 1992) 668-69.
[48] Hans Kelson, *General Theory of Law and State* (Anders Wedberg tr, Harvard University Press 1945) 207-18; James Leslie Brierly (author), Andrew Clapham (ed), *Brierly's Law of Nations: An Introduction to the Role of International Law in International Relations* (7th edn, OUP 2012) ch 5.
[49] See James Leslie Brierly (author), Humphrey Waldock (ed), *The Law of Nations: An Introduction to the Role of International Law in International Relations* (6th edn, Clarendon Press 1963) 317-19.
[50] Kalevi J. Holsti, *Peace and War: Armed Conflicts and International Order, 1648-1991* (CUP 1991)217-23.
[51] See Treaty Between the United States and Other Powers Providing for the Renunciation of War as an Instrument of National Policy (Pact of Paris) (adopted 27 August 1928, entry into force 24 July 1929) 94 LNTS 57, art 1.