Foreword

The concept of self-defence is beyond any doubt one of the most controversial issues in international law. In particular, the question whether the use of force in anticipation of armed action by the other party is permissible as falling within the concept of self-defence is hotly disputed. Some courage therefore is needed to entertain a new analysis of this problem and to offer new solutions to the seemingly elusive issue of the temporal dimension of self-defence. The author of the present book has shown this courage and in my view she has succeeded in offering new vistas.

She presents a thorough analysis of the concept of self-defence as it developed in the Western approach of law throughout the ages, right from the days of Greek and Roman civilisation until the adoption of the Charter of the United Nations which formally recognises the inherent right of self-defence. By focussing on two main research questions (1. is anticipatory action in self-defence part of customary international law? and 2. if so, what are its limits?), she succeeds in an admirable way to keep this analysis of virtually inexhaustible material both succinct and pertinent.

The method of research chosen by the author is lucid and transparent. The codification of the right of self-defence in Article 51 of the United Nations Charter is seen as a key moment. In order to ascertain what the drafters of Article 51 had in mind, it was necessary to examine what the content of the pre-Charter customary right of self-defence was and this is done according to the method of legal-historical research. The material on which this part of the study is based is rich and varied, consisting both of elements of legal doctrine as it developed in the relevant intellectual, political and religious context in its subsequent manifestations, and on various examples of state practice.

This enquiry leads to the conclusion that the customary rule of self-defence always had an intrinsic anticipatory aspect, which was limited by the requirements of necessity and proportionality, and must be sharply distinguished from so-called preventive self-defence.

At the time of the adoption of the Charter, the customary rule of self-defence thus had a clear and intrinsic anticipatory dimension and the second part of the

research is therefore focussed on the question whether any new rule affecting the status of anticipatory action has emerged since 1945. This part of the study is based on comparative case studies. In this respect, the author deals with anticipatory action in 'conventional' state-to-state conflicts, in situations where weapons of mass destruction are involved, and in cases of armed action against non-state actors where the 'accumulation of events' theory plays a preponderant role. And again her conclusion is that if a perceived threat of an armed attack creates a present and inevitable need to use force in order to stop the attack from taking place (the requirement of necessity) and if the force used is proportionate, anticipatory action in self-defence may be deemed lawful.

It is not to be expected that all controversies about the anticipatory element of self-defence will be solved on the basis of the findings in this book. But the author's final recommendation, viz. that more attention should be given by judicial and other law-related bodies as well as by legal doctrine to the analysis of the manner in which the three key elements she has identified in her study (conditionality of an armed attack, immediacy and proportionality) and which can be discerned both in pre- and post-Charter customary law, seems strikingly apposite in a world where the risks which endanger society have become ever more disparate and ominous.

April 2011

Pieter H. Kooijmans
Former Judge in the International Court of Justice