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War, Aggression and Self-Defence

Yoram Dinstein's seminal textbook is an essential guide to the legal issues of war and peace, armed attack, self-defence and enforcement measures taken under the aegis of the Security Council. This fourth edition incorporates new material on the wars in Afghanistan and Iraq, response to armed attacks by terrorists, recent resolutions adopted by the Security Council and the latest pronouncements of the International Court of Justice. In addition, several new sections consider consent by States to the use of force (as expressed either *ad hoc* or by treaty); an armed attack by non-State actors; the various phases in the Gulf War up to the occupation of Iraq in 2003 and beyond; and immunities from jurisdiction. With many segments rewritten to reflect recent State practice, this book remains a comprehensive and highly readable introduction to the legal issues surrounding war and self-defence. An indispensable tool for students and practitioners.

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Introduction to the fourth edition

This is a completely updated edition of a book originally published in 1988 and last revised in the early part of 2001. In the short space of time since then, the international community has gone through the watershed date of 9 September 2001, the ensuing war in Afghanistan and the resumption of the Gulf War. These events have already left their mark on the way in which the *jus ad bellum* is perceived and practised. Moreover, several international legal phrases – like ‘material breach’ or so-called ‘preemptive’ self-defence – have percolated from the somewhat rarefied sphere of discourse by scholars and specialists to the public arena of political jousting. The result has been a lot of heat, but not necessarily much light.

The fourth edition examines the new developments in an effort to interpret correctly their proper meaning. As well, the new edition reflects recent judicial pronouncements of the International Court of Justice, relevant decisions adopted by the Security Council, the final Draft Articles on State responsibility as formulated by the International Law Commission and an unprecedented spate of legal literature on the subject of the use of inter-State force.

There are several new supplementary sections in the book. These relate mainly to consent by States to the use of force (as expressed either *ad hoc* or by treaty); an armed attack by non-State actors; the various phases in the Gulf War up to the occupation of Iraq in 2003 and beyond; and immunities from jurisdiction. Additionally, the views expressed in previous editions of the book on interceptive (as distinct from ‘preemptive’) self-defence and on response to terrorist attacks are further expounded. Other segments of the book have been entirely rewritten with a view to reflecting recent State practice.

From the introduction to the first edition

War has plagued *homo sapiens* since the dawn of recorded history and, at almost any particular moment in the annals of the species, it appears to be raging in at least a portion of the globe (frequently, in many places at one and the same time).

War has consistently been a, perhaps the, most brutal human endeavour. If for no other reason, the subject of war should be examined and reexamined continuously. There is a tendency today to avoid the use of the term ‘war’, regarding it as arcane and largely superseded by the phrase ‘international armed conflict’. However, apart from the fact that the expression ‘war’ – appearing as it does in many international instruments and constituting an integral part of a host of customary international legal norms – is far from outdated, a general reference to international armed conflicts ignores the important theoretical as well as practical distinctions existing between wars and other uses of inter-State force (‘short of war’).

This book is divided into three parts. The first part deals with questions like: What is war? When does it commence and terminate? Is there a twilight zone between war and peace? What is the difference between peace treaties, armistice agreements and cease-fires? Where can war be waged and what is the meaning of neutrality? These problems, with their numerous ramifications, seriously impact on the substance of international law.

The focus of the discussion in the second part is the contemporary prohibition of the use of force in international relations. The current state of the law is put in relief against the background of the past. The meaning of aggression, as defined by a consensus Resolution of the United Nations General Assembly in 1974, is explored. The construct of crimes against peace, which is part of the *Nuremberg* legacy, is set out. Some controversial implications of the illegality and criminality of wars of aggression are fathomed, with a view to establishing the true dimensions of the transformation undergone by modern international law in this domain.

The third part wrestles with the complex topics of self-defence and collective security. In the practice of States, most legal disputes concerning

the use of force hinge on the alleged exercise of the individual or collective right of self-defence. In fact, more often than not, self-defence is invoked by both antagonists simultaneously. The question when, and under what conditions, self-defence may legitimately take place is crucial. In this context, the scope of an armed attack – giving rise to self-defence – is investigated, and a differentiation is made between armed attacks from and by a State. The functions discharged by the Security Council in the evaluation of self-defence are probed. Other pertinent matters relate to the modality of self-defence, e.g., can armed reprisals or forcible measures for the protection of nationals abroad be harmonized with the law of the UN Charter? Collective self-defence comes under a special scrutiny, and the infrastructure of the various types of treaties in which it is usually embedded is analyzed.

Collective security, as an institutionalized use of force by the international community, is still an elusive concept in reality. The original mechanism devised by the Charter has yet to be activated, although some imperfect substitutes have evolved. An important subject of discourse is the relative powers – actual and potential – of the Security Council, the General Assembly and (in the light of the *Nicaragua* Judgment) even the International Court of Justice.

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Abbreviations

AC	Appeal Cases
AD	Annual Digest and Reports of Public International Law Cases
AFDI	Annuaire Français de Droit International
AIDI	Annuaire de l'Institut de Droit International
AJICL	Arizona Journal of International and Comparative Law
AJIL	American Journal of International Law
ALR	Alberta Law Review
APSR	American Political Science Review
ARIEL	Austrian Review of International and European Law
ASJG	Acta Scandinavica Juris Gentium
AUILR	American University International Law Review
AUJILP	American University Journal of International Law and Policy
AYBIL	Australian Year Book of International Law
All ER	All England Law Reports
Amer.ULR	American University Law Review
Ar.V.	Archiv des Völkerrechts
Auck.ULR	Auckland University Law Review
BFSP	British and Foreign State Papers
BJIL	Brooklyn Journal of International Law
BYBIL	British Year Book of International Law
CJTL	Columbia Journal of Transnational Law
CLP	Current Legal Problems
CTS	Consolidated Treaty Series
CWILJ	California Western International Law Journal
CWRJIL	Case Western Reserve Journal of International Law
CYIL	Canadian Yearbook of International Law
Cam.LJ	Cambridge Law Journal
Col.LR	Columbia Law Review
Cor.LR	Cornell Law Review

List of abbreviations

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DJCIL	Duke Journal of Comparative and International Law
DJILP	Denver Journal of International Law and Policy
DLJ	Denver Law Journal
DSB	Department of State Bulletin
EJIL	European Journal of International Law
EPIL	<i>Encyclopedia of Public International Law</i> (R. Bernhardt ed., 1992–2000).
F.	Federal
For.Aff.	Foreign Affairs
GJICL	Georgia Journal of International and Comparative Law
GYIL	German Yearbook of International Law
HICLR	Hastings International and Comparative Law Review
HILJ	Harvard International Law Journal
HJIL	Houston Journal of International Law
Hague Conventions	<i>The Hague Conventions and Declarations of 1899 and 1907</i> (J. B. Scott ed., 3rd ed., 1918)
Har.LR	Harvard Law Review
Hof.LR	Hofstra Law Review
HJLPP	Harvard Journal of Law and Public Policy
ICJ Rep.	Reports of the International Court of Justice
ICLQ	International and Comparative Law Quarterly
IJIL	Indian Journal of International Law
ILC Ybk	Yearbook of the International Law Commission
ILM	International Legal Materials
ILQ	International Law Quarterly
ILR	International Law Reports
ILS	International Law Studies
IMT	Trial of Major War Criminals before the International Military Tribunal
IRRC	International Review of the Red Cross
IYHR	Israel Yearbook on Human Rights
IYIL	Italian Yearbook of International Law
Int.Aff.	International Affairs
Int.Con.	International Conciliation
Int.Law.	International Lawyer
Int.Leg.	<i>International Legislation: A Collection of the Texts of Multipartite International Instruments of General Interest</i> (M. O. Hudson ed., 1931–50)
Int.Rel.	International Relations
Io.LR	Iowa Law Review
Is.LR	Israel Law Review
JCSL	Journal of Conflict and Security Law

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JILE	Journal of International Law and Economics
JPP	Journal of Political Philosophy
JYIL	Jewish Yearbook of International Law
Jur.R.	Juridical Review
Ken.LJ	Kentucky Law Journal
LCP	Law and Contemporary Problems
LJIL	Leiden Journal of International Law
LNTS	League of Nations Treaty Series
LQR	Law Quarterly Review
LRTWC	Law Reports of Trials of War Criminals
MPYUNL	Max Planck Yearbook of United Nations Law
Mar.JILT	Maryland Journal of International Law and Trade
Mer.LR	Mercer Law Review
Mich.JIL	Michigan Journal of International Law
Mich.LR	Michigan Law Review
Mil.LR	Military Law Review
Mod.LR	Modern Law Review
NCLR	North Carolina Law Review
NDLR	Notre Dame Law Review
NILR	Netherlands International Law Review
NJIL	Nordic Journal of International Law
NMT	Trials of War Criminals before the Nuernberg Military Tribunals under Control Council Law No. 10
NWCR.	Naval War College Review
NYIL	Netherlands Yearbook of International Law
NYLSJICL	New York Law School Journal of International and Comparative Law
NYUJILP	New York University Journal of International Law and Politics
PASIL	Proceedings of the American Society of International Law
PSQ	Political Science Quarterly
PYIL	Pace Yearbook of International Law
Peace Treaties	<i>Major Peace Treaties of Modern History 1648–1967</i> (F. L. Israel ed., 1967)
RBDI	Revue Belge de Droit International
RCADI	Recueil des Cours de l'Académie de Droit International
RDSC	Resolutions and Decisions of the Security Council
REDI	Revue Egyptienne de Droit International
RGAs	Resolutions Adopted by the General Assembly
RGDIP	Revue Générale de Droit International Public

List of abbreviations

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RIAA	Reports of International Arbitral Awards
RIDP	Revue Internationale de Droit Pénal
RSIDMDG	Recueils de la Société Internationale de Droit Militaire et de Droit de la Guerre
SDILJ	San Diego International Law Journal
SDLR	San Diego Law Review
SIULJ	Southern Illinois University Law Journal
SJIL	Stanford Journal of International Law
SJILC	Syracuse Journal of International Law and Commerce
SJLR	St. John's Law Review
Sp.	Special
Supp.	Supplement
TGS	Transactions of the Grotius Society
TICLJ	Temple International and Comparative Law Journal
TILJ	Texas International Law Journal
Tul.LR	Tulane Law Review
UCLR	University of Chicago Law Review
ULR	Utah Law Review
UNJY	United Nations Juridical Yearbook
UNTS	United Nations Treaty Series
UTLR	University of Toledo Law Review
VJIL	Virginia Journal of International Law
VJTL	Vanderbilt Journal of Transnational Law
Vill.LR	Villanova Law Review
Vir.LR	Virginia Law Review
WCR	<i>World Court Reports</i> (M. O. Hudson ed., 1934–43)
WILJ	Wisconsin International Law Journal
WLLR	Washington and Lee Law Review
WVLR	West Virginia Law Review
YBWA	Year Book of World Affairs
YJIL	Yale Journal of International Law
YLJ	Yale Law Journal
ZAORV	Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht