War, Aggression and Self-Defence

Yoram Dinstein's influential textbook is an indispensable guide to the legal issues of war and peace, armed attack, self-defence and enforcement measures taken under the aegis of the Security Council. The sixth edition follows the latest developments in international law, analyzes recent armed conflicts and reexamines contemporary doctrinal debates. Many segments of the book have been completely rewritten to reflect up-to-date State practice. The text remains a wide-ranging and highly readable introduction to the legal dimensions of war, aggression and self-defence.

YORAM DINSTEIN is Professor Emeritus at Tel-Aviv University. He is a former President of the University, as well as former Rector and former Dean of the Faculty of Law. He served twice as the Charles H. Stockton Professor of International Law at the US Naval War College in Newport, Rhode Island. He was also a Humboldt Fellow at the Max Planck Institute of International Law in Heidelberg, Germany, a Meltzer Visiting Professor of Law at New York University and a Visiting Professor of Law at the University of Toronto. He is a Member of the Institute of International Law.

War, Aggression and Self-Defence

Sixth Edition

YORAM DINSTEIN
Tel-Aviv University

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Introduction to the Sixth Edition

This is a new and updated version of a book originally published in 1988 and last revised in 2010. In the few years that have elapsed since the fifth edition was issued, world events have led to the sharpening of debates over several of the relevant topics. It is necessary to dissect the latest practice of States, as well as the most recent instruments – especially, resolutions of the Security Council – and case law. Contemporary inter-State hostilities, and cross-border uses of force against non-State actors, have enhanced the need for a fresh look at several aspects of the *jus ad bellum*. There is also a need to address ever-growing dissensions in the legal literature concerning the scope of an armed attack, preemptive self-defence, foreign interventions in non-international armed conflicts, the definition of the crime of aggression, the extent of the powers and responsibilities of the Security Council, and manifold related subjects.

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 re-examined continuously. There is a tendency today to avoid the use of the term 'war', with some commentators regarding it as arcane and largely superseded by the phrase 'international armed conflict'. However, 'international armed conflicts' are not restricted to outright states of 'war': they also cover less serious violent incidents that are 'short of war'. Besides, the expression 'war' still appears in both international and domestic texts (some of fresh vintage), and it constitutes an integral part of a host of customary international legal norms.

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 treaties of peace, 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 current prohibition of the use of force in international relations. The present-day incarnation 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 and as incorporated in 2010 (in the Kampala Review Conference) into the Statute of the International Criminal Court, is explored. Certain controversial implications of the illegality and criminality of aggression are fathomed, with a view to establishing the true dimensions of the transformation undergone by modern international law in this domain.

The fulcrum of the book is to be found in the third part, which 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. A number of scholars, presumably motivated by pacifist motivations, would like to drastically curtail the relative freedom of action of States in the exercise of self-defence, introducing artificial limitations that are detached from reality. This is counterproductive, in that all too often self-defence is the sole effective bulwark against aggression. The powers vested in the Security Council do not divest self-defence of its predominant standing in the *jus ad bellum*.

The *condicio sine qua non* of self-defence is that it comes as a response to an armed attack. This calls for an in-depth analysis of what an armed attack amounts to. It also raises the question of a preemptive versus interceptive invocation of self-defence. Other pertinent matters relate to recourse to 'defensive armed reprisals' and forcible measures for the protection of nationals abroad.

A bifurcation is made between armed attacks carried out by States (acting through *de jure* or *de facto* organs) and those carried out by non-State actors. A mode of counter-action that has burgeoned in recent State practice is 'extra-territorial law enforcement', namely, the exercise of self-defence against non-State actors within the territory of a State that has been unable or unwilling to take the necessary steps against them.

Collective self-defence (which may come about either spontaneously or as a result of various types of prospective treaties) must be distinguished from collective security. The former is reflected in the combined operations of several States in the face of an armed attack. The latter is an institutionalized use of force by the international community, and it is still a somewhat elusive concept. The original process devised by the Charter of the United Nations for activating the system has failed. Yet, the Security Council has come up with substitutes that have proved successful in more than a few instances. In particular, since the end of the 'Cold War', the Council has repeatedly authorized the use of 'all necessary means' (*viz.* the use of force) by regional organizations or 'coalitions of the willing' in response to 'threats to the peace'.

The central place of the Security Council in any form (however imperfect) of collective security must be posited. All the same, the discourse must also assess the separate powers of the General Assembly and the International Court of Justice.

Consideration of the themes of the *jus in bello*, the law of non-international armed conflicts and belligerent occupation – where they are relevant to the burden of this book – has been pared to a minimum, inasmuch as they are now covered in detail in three companion volumes published by Cambridge University Press: *The Conduct of Hostilities under the Law of International Armed Conflict* (3rd edn, 2016); *Non-International Armed Conflicts in International Law* (2014); and *The International Law of Belligerent Occupation* (2009).

To facilitate syntax, generic pronouns relating to individuals (especially in the settings of prosecution and immunities) are usually drawn in masculine form. This must not be viewed as gender-specific.

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