

Index

- Afghanistan, 3, 46, 66–9, 144, 152, 221, 234
 African Union Non-Aggression and Common
 Defence Pact, 151
 aggression, 133
 definition, 131–3
 indirect, 131
 aiding or abetting, 86
 Al Harithi, Abu Ali, 222
 al-Awlaki, Anwar, 222, 223
 Albania, 193
 Algeria, 137
 Al-Qaeda, 46
 Aquinas, Thomas, 237–8, 244
 armed attack, 23, 28, 44, 49, 65–6, 72, 81, 84, 87,
 112–15, 139, 164, 169, 172, 199, 210, 215, 253
 definition, 54–61, 165
 French definition, 182
 ICJ, 195–6
 State support for, 162–3, 168
 threshold question, 91
 treaty law, 93
 armed bands, 141
 armed conflict zones, outside of, 213
 armed reprisals, as justification for
 response, 100
Articles on State Responsibility, 149
 Ashburton, Lord, 23, 45, 53, 240
 asymmetrical self-defence, 102–4, 134, 161
 case for recognising right of, 164
 claims of, 140
 harbouring, loss of control, 163
 number of claims, 147
 problem of, 97–8
 recognition of, 170
 risk of abuse, 169–71
 state supported attacks, 167
 attribution, requirement of, 87, 198, 200, 202,
 207, 211, 212, 213, 224, 232, 249, 253, 257, 275
 Augustine of Hippo, 237
 Ban Ki-Moon, 191
 Bellinger, John, 226
bellum iustum, 22
 Bernadotte, Count Folke, 205
 Bethlehem, Daniel, 213, 224–6, 250
 Bethlehem's Principles, 40–2, 69, 76, 82,
 105, 217
 Blair, Tony, 250
 Boko Haram, 18
 Buergenthal, Judge, 69, 157
 Bush Administration (2001), 217, 220, 221
 Cançado Trindade, Judge
 Antônio Augusto, 243
Caroline incident, 22, 44, 53
 Chad, 147
 Chatham House Principles, 5, 38, 39, 41, 42,
 62, 224
 civil war, 252, 255
 Clinton administration, 220
 collective security system, 28, 38, 80, 83, 165
 Colombia, 47, 146, 148, 150
 Conclusion on the Identification of Customary
 International Law, 51
 condemnations, 4, 67, 69, 150, 154, 193, 205, 275
 Congo, 58–9, 202
 consent, 202–5
 control of territory, 200
 countermeasures, to less than armed attack, 196
 counter-terrorism
 law enforcement measures, 175
 Cuban Missile Crisis, 208

- customary international law, 49, 51, 52–4, 106,
 274–7
 dynamic nature of, 54
 formation of, 50
 relationship to treaty law, 106
 right to self-defence, 44, 53
 cyber operations, 265
- Daesh. *See* ISIS
- de lege ferenda* proposals, 5
- Deeks, Ashley, 225
- Definition of Aggression*, 135
- Denmark, 154
- Dispute Settlement Body, 272
- Draft Conclusions on the Identification of
 Customary International Law, 50
- Egan, Brian, 225, 227, 256
- El Salvador, 196
- Ethiopia, 147, 152
- framework-theory, xxii–xxiii
- France, 124, 130, 137, 140, *See also* Suez Crisis
- Friendly Relations Declaration*, 131
- Georgia, 47, 73
- German Federal Constitutional Court
 on self-defence against ISIS, 150–1
- Germany, 186, 230
- Goldsmith, Attorney General (UK), 215
- Greece, 130
- Greenwood, Judge, 212
- Grotius, Hugo, 238–9, 243
- Guatemala, 141
- Hague Lectures, 55
- harbouring of non-State actors, 138, 141,
 147–8, 168
- Hezbollah, 153–4
- Higgins, Judge, 55, 114, 157, 200
- hot pursuit
 as justification for response, 100
 asymmetry as part of, 102
- Hussain, Junaid, 175, 199, 256
- ICJ (International Court of Justice), 24, 25, 52,
 67, 68, 70, 81, 84, 85, 86, 109, 133, 135,
 156–8, 161, 166, 192–205, 255, 276
 attacks attributable to States, 1
 consent, 203
ius cogens, 230, 231
- necessity and proportionality, 233
- sources relied on for self-defence rulings,
 204
 Statute, 266
 treaty interpretation, 271
- IHL (International Humanitarian Law), 204,
 247, 252
- imminence, 222
- indeterminacy, 264–9
- India, 137, 140, 146
- international law, xii
 English language scholarship, xxiv
 sources, 266, 274
 universalisation, xx
 universalism, xvi
- International Law and the Use of Force by
 States*, 214
- International Law Commission, 53, 111, 126,
 128, 159–61, 167, 193, 230, 251
- Interpol, 255
- inter-State understanding of self-defence, 62,
 64, 103, 129–35, 137, 138, 142, 156, 159, 258
 UN Charter, 61, 97, 119, 128, 129–33
- intervention by invitation, 151, 202–5
- Iran, 146, 152
- Iraq, 47, 70–1, 73, 152, 153, 189, 234
- ISIS, 73–7, 150–1, 279
 German Federal Constitutional Court on
 self-defence against, 150–1
- Islamic State. *See* ISIS
- Israel, 47, 130, 138, 144, 153–4, 156, 157, 200, 216,
See also Suez Crisis
- ius cogens*, 229–32
 doctrine of, 246
 ICJ, 230, 231
 prohibition on the use of force, 25–7, 48,
 178
- Japan, 186
- Jennings, Judge, 133
- Just War Doctrine, 236–40
 rejection of, 241
- justifications for use of force against non-State
 actors, 245
- Kashmir, 137
- Kellogg–Briand Pact, 183–4
- Kelsen, Hans, 241–2
- Khan, Reyaad, 174–5, 199, 227, 255
- Kooijmans, Judge, 58, 67, 157, 201
- Korea, 205–6

- Koroma, Judge, 60
 Kurdistan Workers Party, 47
 Kuwait, 234
- Larger Freedom, In*, 65, 121, 155
 Lauterpacht, Hersch, 243
 law enforcement, 255
 Law Enforcement Officials, 204
 law, source of, 254
 Lebanon, 47, 71–2, 153–4
 Leiden Recommendations, 5, 6, 38, 39–40, 41, 42
 Liberia, 147
 Libya, 218–19, 235
 loss of effective control, 148–9, 168
 Luban, David, 242
- mercenaries, 141
 Morocco, 138, 140
- national security, 245–6
 nationals, rescue of, 225
 natural law, 12, 228, 236, 237, 238, 240, 243, 244
 necessity
 as justification for response, 99
 asymmetry as part of, 102
 principle of, 198–9
 necessity and proportionality, 233
 Nicaragua, 55, 194–7
 Nigeria, 18
 9/11, 3, 46, 220–1
 effect of, 159
 Non-Aligned Movement, 154, 155, 162
 non-consenting third States, 5, 10, 21, 42, 43, 46, 47, 48, 49, 54, 57, 63, 69, 74, 79, 81, 258, 269, 274
 non-intervention, principle of, 197, 198, 202
 North Korea, 236
- Obama administration, 216, 217, 222–3
 occupation law, 201
 Occupied Palestinian Territories, 57
opinio iuris, 51
 Oppenheim, Lassa, 240
 Osirak, Iraq, 209
- Pakistan, 137
 perspectivism, xv
 pirates, 1
 Portugal, 137, 141
- positive law, 237, 240–1
 post truth age, xviii
 proportionality, principle of, 198–9
- Reagan administration, 219
 requirement to report, 36
 responsibility, 149
 right to respond to armed attacks that could be attributed to another State, 134
 Rio Treaty Organization, 185
 Russia, 47, 72, 73, 74, 75, 146, 148
 Rwanda, 146, 150
- Scelle, George, xix
 Schwebel, Judge, 55, 59, 68
 self-defence
 alternative justifications, 99
 as exception, 100–1
 conditions of, 101
 legitimacy, 100
 source of, 105
 UN Charter, 62
Self-Defence in International Law, 214
 Senegal, 146, 152
 Shultz doctrine, 138
 Simma, Judge, 58, 67, 157, 201
 Sofaer, Judge Abraham, 219–20
 Somalia, 152
 sources, for self-defence, 165
 South Africa, 100, 137, 139, 140, 175
 South Korea, 236
 Soviet Union, 124, 205–6
 State attack, 104, 115, 120, 122, 124, 142, 154, 156, 157, 161, 164, 185, 278
 definition, 103
State nexus, 104, 113, 115, 142, 156
 State-centric view of self-defence, 96, 97, 98, 111, 114, 116, 119, 120, 122, 125, 129, 131, 156
 changes, 161–4, 165
 States
 definition of state attack, 103
 duty of toleration, 103
 responsibility, 134
 unable/unwilling, 212, 224–8, 250, 252, 254, 256, 257
 Sudan, 47, 73, 147, 152
 Suez Crisis, 206–8, 214, 250
 Syria, 7–8, 73–7
 system of collective security
 effectiveness and unilateral use of force, 34

- Tajikistan, 146, 148, 152
 Tanaka, Judge, 243
 targeted killing, 174–7, 213, 218, 234–5
 terrorism, 18, 215, 217, 218–24, 246, 247, 250
 as criminal act, 205
 terrorist organizations, 1
 terrorism, 246
 Thailand, 146, 152
 threshold question, 94
 Tomka, Judge, 158
 treaty interpretation, 261
 triggering attack, 101, 182, 199, 256
 Tunisia, 137
 Turkey, 70–1, 138, 144, 148, 152

 Uganda, 57, 58–9, 146, 156, 157
 unable or unwilling test, 9, 90, 149, 212, 224–8,
 250, 252, 253, 254, 256, 257
 unilateralism, 88, 89
 United Kingdom, 124, 174, 175–6, 177–8, 234–5,
 250. *See also* Suez Crisis
 United Nations, 155
 Article 51, 280
 collective security system, 125
 United Nations Charter, 2, 4, 14, 22, 23–4,
 165–6, 179–80, 190–1
 Article 2(4), 64, 65, 95, 115–16, 181, 184–5,
 188
 Article 2(4), as *ius cogens* norm, 249
 Article 3(g), 159
 Article 39, 64
 Article 42, 64
 Article 51, 36, 48–9, 52, 76–8, 84, 104, 105,
 106, 124, 128, 129, 166, 168, 182–3, 185, 186,
 266–7
 Article 51, context, 109–12
 Article 51, reliance on, 146
 Chapter VII, 119
 inter-State reading of, 61, 62, 64, 97, 119, 128,
 129–33
 purpose of, 120–5
 self defence, 30–6
 travaux préparatoires, 123–4
 use of force, 20
 United Nations General Assembly, 31–4, 131,
 135, 166, 187–92, 205
 United Nations Secretary General, 189–91

 United Nations Security Council, 30, 32, 33,
 34, 69, 74, 84–5, 87, 141, 162, 205–12, 215,
 235, 247
 international terrorism, 85
 ISIS, 150
 non-State actors, 118
 on 9/11 self-defence, 46
 on attacks by non-State actors, 140
 political restraints, 85
 right to self-defence, 4
 Syria, 7
 United States, 124, 138, 144, 175, 176–7, 183–5,
 194–7, 205–6, 218–24, 234–5, 250, 275,
 See also Suez Crisis
 Iraq, 189, 234
 Syria, 76
 war in Afghanistan, 66–9, 152, 163
 universality
 as mode of power, xxi
 use of force
 collective, 15
 customary international law, 11, 18, 25, 43, 44,
 52–4, 72, 95, 100, 107, 193, 197, 199, 202,
 214, 231, 233
 in self defence, 54
 less grave forms, 24
 prohibition of, 22–8
 UN Charter, 20
 unilateral, 15
 USS Cole, 220

 Vattel, Emer de, 239
 VCLT (Vienna Convention on the Law of
 Treaties), 49, 51–2, 61–6, 77, 81, 108, 125,
 126, 231, 262, 264, 273, 279
 Articles 31–33, 110
 ius cogens, 229

 war, elimination of, 247
 World Trade Center 1993, 220
 Wright, Attorney General Jeremy (UK), 212,
 216, 217

 Yemen, 220, 221, 222

 Zaire, 141
 Zimbabwe, 137, 139