
TABLE OF CONTENTS

| | |
|--|----|
| Introduction | V |
| Part I | 1 |
| Self-Defence as a General Principle of Law and its Relation to War | 3 |
| <i>Peter Haggemacher</i> | |
| 1. Self-Defence as ‘the Primary Law of Nature’ | 4 |
| 2. Self-Defence as an Institution of Positive Law | 7 |
| 3. The Caroline Case: Self-Defence, Self-Preservation, or Self-Help? | 10 |
| 4. Self-Defence and Defensive War | 13 |
| 5. Various Approaches to Self-Defence in Municipal Law | 15 |
| 6. The Roman Law Background of Our Theory of Self-Defence: The Medieval Glossators | 18 |
| 7. The Elements of the Theory Assembled: The Medieval Canonists | 21 |
| 8. Self-Defence as a Form of Just War: Raymond of Peñafort and William of Rennes | 23 |
| 9. Self-Defence as ‘Particular War’: John of Legnano and Sylvester de Prierio | 28 |
| 10. Defensive War in Sixteenth Century Thomism: Cajetan | 33 |
| 11. Gentili and Grotius on Self-Defence, Defensive War, and Prevention | 36 |
| 12. Self-Defence Distinguished from Defensive War: Pufendorff | 40 |
| 13. Self-Defence Identified with Defensive War: Wolff | 44 |
| Self-Defence and the Non-Use of Force: Some Random Thoughts | 49 |
| <i>Shabtai Rosenne</i> | |

| | |
|--|------------|
| Self-Defence and Terrorism | 67 |
| <i>Paul Cliteur</i> | |
| 1. Fukuyama and the End of History in 1989 | 70 |
| 2. Criticism of Fukuyama | 73 |
| 3. Does Political Islam Pose a Threat to the West? | 74 |
| 4. Rushdie's Death Sentence | 76 |
| 5. The Danish Cartoon Affair | 78 |
| 6. The Context of Globalisation Sharpens the Differences | 81 |
| 7. The Concept of Self-Defence | 82 |
| 8. Can the Americans Invoke Self-Defence in the War on Terror? | 85 |
| 9. Criticism and the New Policy in the USA | 91 |
| 10. Neutral Ground | 95 |
| 11. A Secular State Identity Based on Shared Values | 99 |
| | |
| Self-Defence, or the Meanderings of a Protean Principle | 103 |
| <i>Arthur Eyffinger</i> | |
| 1. The Sport of Opportunism | 103 |
| 2. The 'Catharina' | 106 |
| 3. A Distant Echo | 107 |
| 4. The Perfect Chameleon | 108 |
| 5. The Stoic Legacy | 109 |
| 6. The Other Cheek | 110 |
| 7. Medieval Just War Theory | 112 |
| 8. The Notion of Self-Defence | 114 |
| 9. Defensive War | 115 |
| 10. The Law of Nations | 117 |
| 11. The Affair of the 'Caroline' | 119 |
| 12. Internationalism on the Rise | 121 |
| 13. Interbellum Fallacies | 122 |
| 14. Kellogg vs. Briand | 124 |
| 15. Towards a Collective Security System | 126 |
| 16. The Heyday of Self-Defence | 127 |
| 17. War Bypassed | 130 |
| 18. Law Bypassed | 133 |

| | |
|---|-----|
| Part II | 139 |
| Self-Defence in Historical Context: A Bibliography | 141 |
| <i>Arthur Eyffinger</i> | |
| 1. Just War | 141 |
| 1.1 Sources | 141 |
| 1.2 History | 143 |
| 1.3 Theory | 148 |
| 2. Self-Defence | 150 |
| 2.1 Philosophy and History | 150 |
| 2.2 In Reports of the International Law Commission | 151 |
| 2.3 General | 152 |
| 2.4 Maritime Self-Defence | 157 |
| 3. Criticism of Necessity and Proportionality | 157 |
| 3.1 Necessity | 157 |
| 3.2 Proportionality | 158 |
| 4. Collective Self-Defence | 158 |
| 5. The Role of the UN | 159 |
| 5.1 United Nations | 159 |
| 5.2 UN Charter, Articles 2 (4) and Article 51 | 160 |
| 5.3 Security Council | 161 |
| 5.4 ICJ Case Law | 162 |
| 6. Non-State Entities | 164 |
| 6.1 Private Actors | 164 |
| 6.2 Terrorism | 164 |
| 6.3 Afghanistan | 170 |
| 6.4 Iraq | 171 |
| 7. Anticipatory Self-Defence | 174 |
| 7.1 Preemption | 174 |
| 7.2 Bush Doctrine | 179 |
| 8. Deprisal/Retaliation | 182 |
| 9. Humanitarian Intervention | 182 |
| 10. Fundamentalism and Clash of Cultures | 185 |

| | |
|--|-----|
| Part III – Documents and References | 189 |
| A. Excerpts from International Conventions, Agreements, and Laws | 191 |
| 1. The Briand Kellog Pact of 1928 | 191 |
| 2. UN Charter (signed on 26.6.1945) | 194 |
| 3. Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the protection of Victims of International Armed Conflicts (Protocol 1), adopted on 8.6.1977 | 195 |
| 4. Article 31 of The Rome Statute of the International Criminal Court | 196 |
| 5. Article 41 Dutch Criminal Code, Translation of Louise Rayar and Stafford Wadsworth, The American series of foreign codes, Colorado 1997 | 196 |
| 6. European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 with Protocol Nos. 1, 4, 6, 7, 12 and 13 | 197 |
| B. ICJ Decisions | 197 |
| 1. Case concerning Armed Activities in the Territory of the Congo (<i>Democratic Republic of the Congo v. Uganda</i>) 19.12.2005 | 197 |
| 2. Case concerning Military and Paramilitary Activities in and against Nicaragua (<i>Nicaragua v. United States of America</i>) 27.6.1986 (Merits) | 207 |
| 3. Oil Platforms (<i>Islamic Republic of Iran v. United States of America</i>) 16.11.2003 (Merits) | 207 |
| 4. Legal Consequences of the Construction of a wall in the Occupied Palestinian Territory Advisory Opinion 9.7.2004 | 209 |
| 5. Legality of the threat or Use of Nuclear Weapons (Advisory Opinion 8.7.1996) | 213 |
| 6. Certain Expenses of the United Nations (Advisory Opinion 20.7.1962) | 215 |

| | | |
|-----------|---|-----|
| C. | Other Court Decisions | 216 |
| 1. | Permanent Court of Arbitration – Ethiopia-Eritrea Claims Commission – Partial Award for claims 1-8 (jus ad bellum), 19.12.05 | 216 |
| 2. | Naulilaa Incident Arbitration (<i>Portugal v. Germany</i>) – 2 RIAA 1001 (1928) | 216 |
| 3. | <i>Oneryildiz v. Turkey</i> – ECHR Decision of 30.11.04 | 217 |
| D. | Reports of International Commissions | 217 |
| 1. | International Law Commission – Report for 2001, 56 th Session – Official Records Supplementary 10 (A/56/10) Chapter V | 217 |
| 2. | International Law Commission – 53 rd session, 2001 – Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries | 222 |
| E. | UN General Assembly Resolutions | 225 |
| 1. | Resolution 56/83 (28.1.2002) | 225 |
| 2. | Resolution 59/35 (16.12.2004) | 235 |
| 3. | The Effect of Armed Conflict on Treaties: an Examination of Practice and Doctrine – Memorandum by the Secretariat A/CN.4/550 + A/CN.4/550/Corr/1 | 236 |
| 4. | Resolution 2625 (XXV); 24.10.1970 – Declaration on Principles of International Law Concerning Friendly Relations and Cooperations amongst States in Accordance with the Charter of the United Kingdom | 236 |
| 5. | Resolution 3314 (XXIX); 14.12.1974 – Definition of Aggression | 244 |
| 6. | Resolution 27 A (III); 10.12.1948 – Universal Declaration of Human Rights | 248 |
| 7. | Resolution 39/11 (12.11.1984) – Declaration on the Right of Peoples to Peace | 248 |
| F. | UN Security Council Resolutions | 249 |
| 1. | Resolution 1373 (2001); 28.9.2001 | 249 |
| 2. | How the SC Dealt with the Entebbe Situation | 251 |

| | | |
|----|-------------------------------------|-----|
| G. | Classical Sources | 252 |
| 1. | CICERO | 252 |
| H. | Hebrew Sources | 252 |
| 1. | Babylonian Talmud – Sanhedrin 72A | 252 |
| 2. | Maimonides | 252 |
| 3. | The Mishna (Ethics of the Fathers) | 254 |
| I. | Arabic Sources | 255 |
| 1. | Islamic Quran – Surat al-Shura (42) | 255 |
| J. | Early Modern Sources | 255 |
| 1. | Balthazar Ayala | 255 |
| 2. | Alberico Gentili | 256 |
| 3. | Hugo Grotius | 257 |
| 4. | Francisco Suárez | 269 |
| 5. | Franciscus De Victoria | 270 |