

TABLE OF CONTENTS

<i>Acknowledgment</i>	page x
<i>Table of abbreviations and abbreviated citations</i>	xi
<i>Selected case law, legislation and related documents</i>	xviii
Introduction	1
1 The methodological debate and the quest for custom	6
1.1 Treaty vs. custom	7
1.1.1 The Charter and pre-existing custom	7
1.1.2 The role of custom in treaty interpretation and modification	19
1.2 State practice vs. <i>opinio iuris</i>	29
1.2.1 Introduction: the methodological debate	29
1.2.2 The evidentiary weight of words and deeds	31
1.2.3 Observations concerning the density of customary practice	44
1.2.4 Conclusion	51
2 ‘Armed attack’ and other conditions of self-defence	53
2.1 The ‘armed attack’ requirement as an integral part of Article 51 UN Charter	53
2.1.1 Self-preservation and self-defence prior to 1945	53
2.1.2 Article 51 UN Charter – primary means of interpretation	55
2.1.3 The preparatory works of the UN Charter	60
2.2 Other conditions of self-defence	68
2.2.1 ‘Procedural’ obligations	68
2.2.2 Necessity and proportionality	91

3	The 'armed attack' requirement <i>ratione materiae</i>	126
3.1	Armed attack and aggression	127
3.1.1	Two sides of the same coin	127
3.1.2	The negotiations within the Fourth Special Committee on the Question of Defining Aggression (1968–74)	129
3.1.3	Value of the Definition of Aggression	136
3.2	General factors determining the existence of an 'armed attack'	139
3.2.1	The 'most grave' forms of the use of force and the <i>de minimis</i> controversy	139
3.2.2	The ' <i>animus aggressionis</i> ' and accumulation of events	158
3.2.3	Connecting the dots: the panoply of scenarios and the role of context	175
3.3	Small-scale incursions by land, sea or air	184
3.4	Attacks against external manifestations of the State	199
3.4.1	Military units and military installations abroad	199
3.4.2	Embassies and diplomatic envoys	201
3.4.3	Civilian aircraft and merchant vessels	204
3.4.4	Protection of nationals	213
4	The 'armed attack' requirement <i>ratione temporis</i>	250
4.1	Anticipatory self-defence: the never-ending saga (1945–2001)	255
4.1.1	The doctrinal debate – a brief appraisal	255
4.1.2	Customary precedents: evidence <i>in concreto</i>	267
4.1.3	Customary evidence <i>in abstracto</i>	294
4.2	The shockwaves of 9/11	305
4.2.1	The 2002 US National Security Strategy and the intervention in Iraq in 2003	305
4.2.2	Shifting positions of States and scholars: a defeat of <i>preventive</i> self-defence at the expense of an embrace of <i>pre-emptive</i> self-defence?	318
4.3	Exceptions and borderline cases	342
4.3.1	The prospective dimension of the necessity standard	342
4.3.2	Possible exceptions?	343
4.3.3	Interceptive self-defence at the tactical level: on-the-spot reaction	346

5	The ‘armed attack’ requirement <i>ratione personae</i>	368
5.1	Indirect military aggression in the decolonization era	369
5.1.1	Formulation of the problem	369
5.1.2	The debate on ‘indirect aggression’ within the Fourth Special Committee on the Question of Defining Aggression	382
5.1.3	State practice	394
5.1.4	Indirect aggression in the wake of the ICJ’s <i>Nicaragua</i> case	406
5.2	Self-defence against non-State actors in the age of international terrorism and State failure	419
5.2.1	Prelude to 9/11: shifting context, shifting practice?	419
5.2.2	9/11: awakening to a new security environment	433
5.2.3	Customary practice after 9/11	447
5.2.4	The response of the International Court of Justice	472
5.2.5	Conclusion: can non-State actors commit ‘armed attacks’?	485
6	What future for the ‘armed attack’ criterion?	511
6.1	The customary boundaries of self-defence	511
6.1.1	A word of caution	511
6.1.2	The correlation between Article 51 UN Charter and other primary or secondary rules, and the ‘pre-existing custom’ paradigm	514
6.1.3	Preconditions of individual self-defence other than the ‘armed attack’ requirement	517
6.1.4	<i>Ratione materiae</i> : the basic ingredients of an ‘armed attack’	520
6.1.5	The ‘armed attack’ <i>ratione temporis</i>	524
6.1.6	<i>Ratione personae</i> : attacks by non-State actors and the right of self-defence	528
6.1.7	The slippery slope of self-defence	532
6.2	Towards a UNGA ‘Definition of Armed Attack’?	535
6.2.1	Resuming an ancient project	535
6.2.2	A blueprint	539
6.2.3	Post-scriptum: strengthening the compliance pull of the <i>Ius ad Bellum</i>	545
	<i>Index</i>	551