Contents

Ser	s Editor's Preface	V
For	word by Bruno Simma	vii
Acl	owledgments	xi
Tal	es of Cases	xvii
Int	duction	1
1 /	Choice of Method	4
I	The Terms of the Methodological Debate on the Non-Use of Force: the Extensive Versus the Restrictive Approach	5
	A. The Extensive Approach to the Customary Prohibition of the Use of ForceB. The Restrictive Approach to the Customary Prohibition of	6
	the Use of Force	15
П	Methodological Approach of this Book	27
	A. Reliance on a Novel Right	29
	B. The Acceptance of the Modification of the Legal Rule by the International Community of States as a Whole	34
2 1	hat do 'Use of Force' and 'Threat of Force' mean?	50
ı	What does 'Force' mean?	51
	A. The Boundary between Military Force and Police Measures B. Determining the Threshold: 'Force' within the Meaning of	52
	Article 2(4) of the Charter	66
П	What does 'Threat of Force' mean?	92
	A. The Restrictive Meaning of 'Threat' under Article 2(4) of the Charter	93
	B. The Scope of the Prohibition of Threat: the Absence of any Specific Regime for the Contemplated Use of Force	111

xiv Contents

	Do the Prohibition of the Use of Force and Self-defence Apply to n-State Actors?	126
I	Exclusion of Non-State Political Entities from the Rule's Scope of Application	127
	A. Inapplicability of the Rule Prohibiting the Use of Force to Civil WarsB. Inapplicability of the Rule to National Liberation Struggles	127 135
	C. The Case of Territories with Entities of Controversial Legal Status	149
II	Exclusion of Private Groups from the Rule's Scope of Application	160
	A. Maintaining 'International Relations' as Relations among States: the Letter and Spirit of the Rule	162
	B. Maintaining 'International Relations' as Relations between States: the Interpretation of Texts in PracticeC. Maintaining 'International Relations' as Relations between	174
	States: the Works of the International Law Commission and of the International Court of Justice	186
	Can Circumstances Precluding Unlawfulness be Invoked to Justify Ise of Force?	198
1	Inadmissibility in Principle	199
	A. The Peremptory Character of the Rule in Article 2(4) of the Charter	200
	B. Inadmissibility of Circumstances Precluding Unlawfulness Not Provided for by the Charter	213
П	I Inadmissibility Confirmed in Practice	225
	A. Precedents Attesting to States' General Reluctance to Invoke Circumstances Precluding Unlawfulness	225
	B. Precedents Attesting Unequivocal Condemnation of Armed Reprisals	234
	C. The Rare Precedents where Circumstances Precluding Unlawfulness have been Invoked to Justify the Use of Force	236
5 I	Intervention by Invitation	249
I	The General Legal Regime of Military Intervention by Invitation	250
	A. The Possibility of Consenting to Armed Intervention within the Limits of Peremptory Law (Jus Cogens)	250

Contents xv

		B. The Requirement for Consent of the State's Highest Authorities C. The Existence of 'Validly Given' Consent	259266
	II	The Legal Regime of Military Intervention by Invitation in an Internal Conflict	276
		A. The Problem of Concurrent GovernmentsB. The Problem of the Purpose of the Intervention by Invitation	277 288
6	In	tervention Authorised by the UN Security Council	311
	I	The General Legal Regime of Authorised Military Intervention	312
		A. The Lawfulness of Military Intervention Authorised by the Security CouncilB. The Unlawfulness of Military Intervention 'Authorised' by	312
		Another UN Body or by Another Subject of International Law	329
	II	The Problem of Presumed Authorisation	348
		A. The Absence of Recognition of Presumed Authorisation in Practice	349
		B. Refusals and Obstacles of Principle to Recognition of a Presumed Authorisation	390
7	Se	elf-Defence	401
	I	'Armed Attack' According to Article 51 of the Charter	402
		A. 'Preventive Self-Defence' TheoriesB. The Question of 'Inclinect Aggression'	406 443
	П	Necessity and Proportionality	470
		A. The Limit of Necessary Measures Adopted by the Security Council	472
		B. The General Meaning of Conditions of Necessity and Proportionality	479
8	A	Right of Humanitarian Intervention?	495
	I	Non-Recognition in Legal Texts	497
		A. The Dismissal of the Right of Humanitarian Intervention in Classical Legal Texts	498
		B. The Persistent Refusal to Accept a 'Right of Humanitarian Intervention'	511
	II	The Non-Existence of Decisive Precedents	526
		A. The Absence of Consecration of a Right of Humanitarian Intervention before 1990	527

xvi Contents

B. The Absence of Consecration of a Right of Humanitarian	
Intervention since 1990	537
Conclusion	
Selected Reading	555
Index	559

