CONTENTS

Acknowledgments xi

- 1. Introduction 1
 - A. Summary of the argument 3
 - B. Delineation of the topic: What is personal self-defense? 4
 - I. Self-defense distinguished from other concepts of self-help 4
 - II. Personal self-defense versus interstate self-defense 6
 - C. Methodology and sources 9
 - I. Reliance on universal and regional jurisprudence 9
 - II. Transposition of jurisprudence from other disciplines of international law 11
 - III. Consideration of arguments from domestic jurisprudence 14
- 2. The Right to Personal Self-Defense as a General Principle of Law 17
 - A. No treaty provisions establish a right to personal self-defense 17
 - B. No recognition under customary international law 18
 - C. General principles according to Article 38(1)(c) of the ICJ Statute 21
 - I. Formation of general principles 22
 - II. Functions of general principles 25
 - D. The right to self-defense as a principle of natural law 27
 - I. Personal self-defense: a shared principle across cultural and religious traditions 30
 - II. Inherent moral justification of self-defense 47
 - E. The right to self-defense as a general principle derived from domestic law 58
 - I. Common classification as a right and justification 59
 - II. Comparable requirements of application 63
 - F. Transposition of the personal self-defense principle into international law 67
 - I. International humanitarian law 68
 - II. International criminal law 70
 - III. The law of the sea 71
 - IV. The law of diplomatic relations 72
 - G. Conclusion: A universally recognized right, but no unlimited license for violence 73

viii Contents

3. A Human Right to Self-Defense? 75
A. Positions in the academic literature 76
B. Lack of state recognition of a human right to self-defense 78
I. No recognition of a human right in international
treaties or resolutions 78
II. Insufficient national practice supporting a human right 81
C. Conceptual differences between the right to self-defense
and human rights 84
I. Inalienable nature as a commonality 85
II. Auxiliary and relational nature of the right to self-defense 85
III. No specific aim of curbing state power and abuses 86
IV. Neutrality of the right to self-defense on the nature of the state 88
D. Conclusion: Right sui generis, not human right 89
4. Defensive Force by Law Enforcement Agents 91
A. Self-defense as a justified limitation of the rights
to life and physical security 92
I. Recognition in universal and regional human rights law 93
II. Defensive force as a state obligation 100
III. Self-defense as the sole peacetime justification of deliberately lethal
force 103
B. Formal requirement: Sufficient basis for the use
of force in domestic law 117
I. Minimum specifications 118
II. Publicity 121
III. Parliamentary prerogative to regulate lethal force 122
C. Substantive requirements for self-defense as a ground of
justification 124
I. Unlawful attack against protected individual interests 124
II. Immediacy of defensive action 139
III. Necessity of defensive action 143
IV. Organizational or precautionary duties 164
V. Proportionality of defensive action 170
VI. Absolutely prohibited means of self-defense: torture and
inhuman treatment 189
VII. Defensive intent 197
D. Burden of proof and evaluation of evidence 199
E. Post-action duties of care, accountability, and remedy 202
I. Medical care and psychosocial support 203
II. Duty to investigate incidents involving firearms and other force 20
III. Duty to prosecute perpetrators of excessive force 210
IV. Duties to provide compensation and make amends 213
F. Conclusion: A deep, but narrow, justification for the use

of force in law enforcement 215

Contents

- 5. Personal Self-Defense in Military-Led Operations 217
 - A. Exceptional relevance of the personal self-defense principle in armed conflict 218
 - I. Riots, violent demonstrations, and opportunistic banditry 221
 - II. Violent prisoners of war and interned fighters 223
 - III. Enforcement of naval blockades and ceasefire lines 224
 - B. Military involvement in peacetime law enforcement 225
 - C. "Naked self-defense"—a conflation of personal and interstate self-defense 230
 - D. Conclusion: Exceptional relevance of personal self-defense in military-led operations 233
- 6. Human Rights Standards for Self-Defense between Private Persons 235
 - A. Applicability of human rights standards to private self-defense 236
 - B. Duty to recognize a right to self-defense between private persons 239
 - C. Duty to regulate and reasonably circumscribe self-defense between private persons 242
 - I. Unlawful attack on a defensible interest 244
 - II. Immediate defense: An exception for victims of intra-family violence? 247
 - III. Necessity and proportionality 255
 - IV. Absolute prohibition of inhuman treatment 268
 - V. Special requirements regarding private security companies 270
 - D. Duty to investigate and prosecute excessive or unwarranted self-defense 274
 - I. Immunities from prosecution 275
 - II. Burden of proof 276
 - E. No general right to possess firearms and other means of self-defense 278
 - I. Negative impact of gun proliferation on the protection of life and physical security 280
 - II. No enhancement of women's right to self-defense 284
 - III. No effective means to pre-empt tyranny or atrocities 285
 - IV. The right to self-defense of unarmed citizens 288
 - F. Conclusion: Human rights circumscribe the ambit of private self-defense 289
- 7. Self-Defense Against the State—Resistance Against Human Rights Violations 293
 - A. Resistance against the state: a history of opposing views 294
 - I. Resistance as a legitimate defense against abusive governments 294
 - II. Unassailable authority based on divine mandate or constitutional supremacy 297
 - III. Rebellion as a threat to order and stability 298
 - IV. Balancing stability and vindication of the right to self-defense 299

Contents

В.	Personal self-defense against unlawful individual acts
	of law enforcement officials 301

- I. Resistance against extrajudicial killings, torture, and other police brutality 304
- II. No resistance against arbitrary arrest and detention if judicial remedies available 305
- III. Force to escape inhuman conditions of detention 307
- IV. General limits of the right to resist individual human rights violations 308
- C. Collective self-defense below the threshold of direct participation in armed conflict 312
 - I. Limits based on the right to self-defense 313
 - II. Distinction between civilian defense groups and organized armed groups 314
- D. Organized armed resistance against denials of the right to self-determination 316
 - I. Legal basis for a right to organized armed resistance 318
 - II. Limits of the right to organized armed resistance 320
 - III. Legal implications of the right to resistance 322
 - IV. No right to rebel against undemocratic governments 323
- E. Organized armed resistance against mass atrocities 325
 - I. No state recognition of a right of armed resistance against mass atrocities 326
 - II. The case for a right of armed struggle against mass atrocities 332
 - III. Limits of a right to resist mass atrocities 333
 - IV. Legal implications of a right to resist mass atrocities 338
 - V. No justification of unilateral humanitarian interventions 341
- F. Conclusion: A right to resistance only in exceptional circumstances 343
- 8. The Right to Personal Self-Defense in a Rechtsstaat—Final Reflections 345

Bibliography 349 Index 379