



Generaladvokaten

Soldiers right to self-defence: No future conflict without it?

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Outline

1. Soldiers
2. Conflicts
3. The 'nature' of self-defence
4. Self-defence and the use of force under int'law
5. The scope of self-defence

'Soldiers'

- Those acting on behalf of a state
- Those who are not – but take a direct part in hostilities
- When/how this distinction matters

Armed conflicts and other situations

- Self-defence has a less prominent role in armed conflict than outside situations of armed conflict
 - And even lesser role in IACs than in NIACs
- Self-defence belongs to the law-enforcement sphere?

Self-defence and use of force under int'law

- I speak about the individual right
- No link between the individual right to self-defence and the State's right to self-defence under *jus ad bellum*?

The 'nature' of self-defence

- National law or international law?
- Provided national law:
 - A criminal defence... *i.e.* reactive?
 - Renders an otherwise unlawful act, lawful?
 - The use of force against imminent or ongoing unlawful attacks?
- Self-defence vs. law enforcement and conduct of hostilities

The scope and modalities of self-defence

- On behalf of:
 - Oneself
 - One's unit
 - Third person
 - Property
- Must be:
 - Necessary and 'justifiable'
 - Not the same as military necessity
- Lawful acts of war cannot be met with self-defence
- Norway:
 - Unlawful public authority cannot be met with self-defence unless exercised with intent or gross negligence

No future conflict without it?

- No
- But it is unsuited to be used as a replacement for LOAC