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’l law
5. The scope of self-defence
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?
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