



FROM JUST WAR TO PERMANENT SELF-DEFENCE: THE USE OF DRONES IN COUNTERTERRORISM AND ITS QUESTIONABLE CONSISTENCY WITH INTERNATIONAL LAW STANDARDS

The increasing use of aerial drones (UAVs) in conducting military operations has become relevant both in armed conflicts and in law enforcement missions. The practice shows, however, the need to assess the legality of such a use in the framework of the international law of armed conflict and of international human rights law.

Actually, it is difficult to determine *a priori* which set of rules should be considered applicable for drone strikes. This can be easier in the context of a declared war or a conflict authorised by the UN Security Council, since no special rule has been created yet to govern the deploy of unmanned vehicles. By contrast, according to human rights law, the resort to lethal force is unlawful in principle, given the prohibition of the arbitrary deprivation of life. Apparently, in the specific context of the “war on terror”, the use of drones for the so-called “targeted killings” fails to strictly comply with international human rights law standards, as far as the violation of the victims’ right to life is affected (without considering the accidental loss of civilian lives). Nor does it seem that this practice falls within the meaning of article 51 of the UN Charter. The doctrine of pre-emptive self-defence could justify the killing of terrorists, but only in the exceptional circumstances occurring where an armed attack is imminent. Despite these theoretical problems, the legal consequences of the drone strikes on terrorists cannot be ignored. This practice, in fact, could contribute to relevant changes in fundamental international rules concerning the *jus in bello*. Namely, the possibility of persecuting non-State actors in a state of “permanent war”, even within the territory of a foreign State and even without its specific consent (under a tacit agreement, inferable from *facta concludentia*). This study aims to investigate the legality of the use of drones in the international practice by considering its implications on the development of the law of armed conflict.