



The use of “drones” and International Humanitarian Law: some issues

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Aspects to be considered

- ▶ Introduction
- ▶ The lawfulness of armed drones as such
- ▶ International Humanitarian Law and armed drones
- ▶ The extraterritorial use of drones and International Humanitarian Law
- ▶ Concluding remarks

Armed drones...

- ▶ Will be analyzed from the perspective of International Humanitarian Law (not domestic law)...as a means of warfare
- ▶ This research will focus on the legal implications of the use of drones in compliance with International Humanitarian Law (*jus in bello* or international law applicable in situations of armed conflicts)

The lawfulness of drones as such

- ▶ The use of armed drones is not prohibited as such by any international treaty
- ▶ Drones are not incapable of being used in a way that would comply with the customary rule of prohibition on using means or methods of warfare that are of a nature to cause unnecessary suffering.
- ▶ As a consequence, drones are not a weapon platform specifically prohibited by any international treaty or by customary law.
- ▶ With an exception: fire prohibited weapons from armed drones.

International Humanitarian Law and armed drones

- ▶ Drones strikes during armed conflict are regulated by International Humanitarian Law.
- ▶ These customary rules are:
 - ▶ Principle of distinction between lawful military objectives and civilian objects.
 - ▶ Proportionality Principle.
 - ▶ Precautions in attack.

These principles will be applied in armed conflicts and armed drones must comply with the aforementioned rules.

International Humanitarian Law and armed drones

- ▶ As pointed out by International Court of Justice in the “Advisory Opinion on The Legality of the Threat or Use of Nuclear Weapons” in 1996,
 - “these principles applies to all forms of warfare and to all kinds of weapons, those of the past, those of the present and those of the future”*
- ▶ These principles and rules will be applied in armed conflicts and to new weapons as armed drones
- ▶ Armed drones must comply with these rules

The extraterritorial use of drones and International Humanitarian Law

- ▶ Controversy concerning the lawfulness of the use of armed drones by States or non-State actors for the extraterritorial targeting of persons within an armed conflict.
- ▶ This question must be addressed from the perspective of the territorial scope of armed conflict (and therefore International Humanitarian Law) to this situation.
- ▶ This analysis requires for first step to determine that an armed conflict exists (assessment of the facts on the ground)
- ▶ Next step in our study: classification of this conflict
 - ▶ International armed conflict
 - ▶ Non-international armed conflict

The extraterritorial use of drones in an international armed conflict

- ▶ International Humanitarian Law applies to the entire territories of the States involved in such a conflict
- ▶ Military operations by armed drones may not be extended to the territory of neutral States (inviolability of their territory)
- ▶ Under the Law of Neutrality, targeting by armed drones members of the opposing side's armed forces in neutral's territory *does not allow*

The extraterritorial use of drones in an non-international armed conflict

► *First scenario:*

an armed conflict originating within the territory of a State, between government armed forces and one or more organized armed groups, which spills over into the territory of one or more neighbouring States

► Geographical extension of International Humanitarian Law to hostilities carry out by armed drones that spill over into the territory of the neighbouring State

The extraterritorial use of drones in an non-international armed conflict

► *Second scenario:*

an armed conflict in which the armed forces of one or more States (the “assisting” States) fight alongside te armed forces of a “host” State in its territory against one or more organized armed groups

► Drones strikes to persons located in the territory of the “assistant” States would penalized under rules of International Humanitarian Law

The extraterritorial use of drones in an non-international armed conflict

▶ *Third scenario:*

the use of drones against a person involved in an ongoing non-international armed conflict located inside the territory of a non-neighbouring and non-belligerent State (global battlefield)

▶ The use of drones would be unlawful and *is not allowed* according the International Humanitarian Law rules and principles



▶ CONCLUDING
REMARKS

▶ Questions?