

The “unwilling or unable” doctrine and the right of self-defence against non-state actors

ABSTRACT

For several decades, the fight against international terrorism has been a major challenge for the entire international community. States try to fight these non-state actors in various ways. One of them is trying to neutralize a non-state actor in the territory of the state in which this actor has settled and from which he is preparing and coordinating his attacks. States often invoke the right to self-defense in the case of such actions, stating that the state in whose territory the non-state entity is located is unable or unwilling to deal with it on its own. This paper is devoted to the right to self-defense against non-state actors and the emerging doctrine of "unwilling or unable".

The paper is divided into an introduction, four main chapters and a conclusion. The first chapter is devoted generally to the prohibition of the use of force and the threat of force. The second chapter deals with the right to self-defense. First, attention is paid to the right to self-defense in general, where an armed attack is discussed in more detail. Subsequently, a restrictive and extensive approach to the right to self-defense is presented. Attention is then paid more to the preemptive and preventive self-defense and the legality of preventive self-defense is assessed. This chapter also deals with the right to self-defense against non-state actors, and in this context, the development in the question of imputability of an armed attack to the state from whose territory the non-state actor operates is monitored.

The third chapter then deals directly with the doctrine of "unwilling or unable", which also assesses whether the doctrine has already become part of positive international law. At the same time, a test developed by Ashley Deeks is introduced to help states assess whether the host state is willing or able to deal with a non-state actor located on its territory.

The last chapter is then devoted to two case studies. The first examines whether the doctrine could be applied in the case of the Turkish invasion of Syria during the fight against the PKK / YPG. The second study examines the possibility of applying the doctrine on the case of killing Osama bin Laden by US troops in Pakistan.