

## The Assassination of Iranian Major General Qasem Soleimani: A Case Study in The American Warfare Practice

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### *Abstract*

On the 3<sup>rd</sup> of January 2020, the United States of America (US) carried out a military operation in Baghdad using a Reaper drone that killed Iranian Major General Qasem Soleimani and Abu Mehdi al Mouhandis, head of the Kated Hezbollah (KH militias), along with 7 other individuals.<sup>1</sup> Soleimani was the leader of the Quds Force, one of the five branches of Iran's powerful Islamic Revolutionary Guards Corps (IRGC).<sup>2</sup> It is highly influential not only in Iran, but also in neighbouring countries including Iraq, Syria, and Lebanon. In particular, the Quds Force inspired many Shiite militias in their confrontation of US troops in the region. The attack was justified by the US in the name of self-defence, and it represented a crucial turning point in the US-Iran crisis.<sup>3</sup>

**Keywords:** US, Iran, Foreign Policy, Targeted Killing, War on Terror, IHL, International Law

### *Introduction*

In a letter to the United Nations (UN) Security Council on 8 January 2020, the US Ambassador to the UN, Kelly Craft, presented the targeted killing of the Iranian leader Soleimani as an act of self-defence under Article 51 of the UN Charter.<sup>4</sup> Article 51 reads:

*'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security'.<sup>5</sup>*

The US accused Iran of an 'escalating series of armed attacks in the recent months' arguing that they conducted the strike 'in order to deter the Islamic Republic of Iran from conducting or supporting further attacks against the US or the US interests, and to degrade the

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<sup>1</sup> Julian Borger, "US kills Iran general Qassem Soleimani in strike ordered by Trump", The Guardian, (3 Jan 2020).

<sup>2</sup> Mehran Kamrava, ed., "The Armed Forces in Post-revolutionary Iran", *Routledge Handbook of Persian Gulf Politics* (Routledge, 2020).

<sup>3</sup> United Nations Security Council, *Letter Dated 8 January 2020 from the Permanent Representative of the United States of America to the United Nations Addressed to the President of the Security Council*, UN Doc S/2020/20 (New York: 2020).

<sup>4</sup> UNSC, *Letter*.

<sup>5</sup> United Nations, *Charter of the United Nations*, (October 1945), Chapter VII – Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression: Article 51.

<https://legal.un.org/repertory/art49.shtml>

Islamic Republic of Iran and Islamic Revolutionary Guard Corps (IRGC) Quds Force-supported militias' ability to conduct attacks'.<sup>6</sup> Moreover, the US declared a readiness to engage in any additional operations in the region if considered necessary to protect US personnel and interests.<sup>7</sup>

Since the September 11 attacks, the US has conducted many counter-terrorism operations. These missions were part of the American 'War on Terror' against the terrorist group Al Qaeda, which was deemed responsible for the 9/11 attacks. However, as a permanent member of the UN, the US commits to 'refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the UN'.<sup>8</sup> Any operation conducted in self-defence must be in line with the principles of the Charter.

It remains very controversial to use the principle of self-defence as a justification for the use of force. Additionally, over the years, the US has broadened the interpretation of Article 51 of the UN Charter, allowing for a pre-emptive attack in case of an imminent threat. In 1986, in the *Nicaragua v. United States of America* case, the International Court of Justice (ICJ) provided a more comprehensive understanding of the prohibition of the use of force.<sup>9</sup> Indeed, it objected to a US pre-emptive attack, even when based on the right of self-defence.<sup>10</sup> The court specified that an act of self-defence was considered legitimate only as a response to an armed attack, thereby restricting any broader interpretation.<sup>11</sup>

As a consequence, two schools of thought have developed regarding interpretation of Article 51 of the UN Charter: those supporting a more restricted interpretation, and those advocating for a broader one.<sup>12</sup> The Charter does not specifically provide for the possibility of states to engage in pre-emptive self-defence. Moreover, member states' views on what constitutes legitimate use of force vary substantially, complicating determinations on whether use of force is justified under international law.

In this paper I consider the assassination of Major General Qasem Soleimani in order to evaluate the conformity of this action with international law. To do so, I firstly trace the main events that characterized the tensions between the US and Iran since the Nuclear Deal in 2016. Then, I analyse the foundations of the norms that characterize legitimate military operations and I delineate the reasons why Article 51 is not applicable in this context. I also support the hypothesis that the specific conduct of the 3 January 2020 drone strike on Iraqi soil represents a profound violation of its sovereignty.

### ***Context Analysis: the Deterioration of US-Iran Relations During the Trump Administration***

Since 2016, innovations in the oil sector have significantly improved Iran's economic situation. In particular, the adoption of the Joint Comprehensive Plan of Action – also known as the Nuclear Deal of Iran – in 2016 helped Iran fully recover from previously enforced economic sanctions.<sup>13</sup> However, as soon as Trump was elected President of the US, he strongly

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<sup>6</sup> UNSC, *Letter*.

<sup>7</sup> UNSC, *Letter*.

<sup>8</sup> United Nations, *Charter of the United Nations*, (October 1945), 1 UNTS XVI.

<sup>9</sup> International Court of Justice, *Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. the United States of America)*, Merits, Judgement ICJ Reports 1988, para. 176.

<sup>10</sup> ICJ, *Nicaragua v. the United States of America*.

<sup>11</sup> Francesco Chiappini, "Nicaragua vs. Stati Uniti: una storia da ricordare", *Lo Spiegone*, (March 2017).

<sup>12</sup> Leo Van den hole, "Anticipatory Self-Defense Under International Law", *American University International Law Review* 19, (2003) 70-106.

<sup>13</sup> Kelsey Davenport, "Timeline of Nuclear Diplomacy with Iran", *Arms Control Association*, (November 2020).

focused on perpetrating an anti-Iran campaign. While the US felt threatened by the influential role played by Iran, the European Union (EU) considered Iran to be a highly profitable partner for international cooperation. At the same time, Iran kept gaining influence in the region – in particular exerting power on some major crises, including those in Syria, Yemen, and Iraq.

In May 2019, as part of an ostensibly pre-emptive approach, the Trump Administration announced that the US was sending an aircraft carrier strike and Air Force bomber to the Middle East due to ‘troubling and escalatory indications and warnings’ related to Iran.<sup>14</sup> In June 2019, Iran shot down an American RQ-4A, an unmanned aerial vehicle, over the Strait of Hormuz. Although the US confirmed the time and the general location of the attack, US Central Command argued that ‘the drone was flying in international airspace’.<sup>15</sup> Diverging from its previous stances following such incidents, Iran then sent a letter to the UN Security Council justifying its actions under Article 51 of the Charter and accusing the Trump Administration of conducting ‘spying operations’ that necessitated a response in self-defence.<sup>16</sup>

A month after the downing of the American drone, an action conducted by American military forces destroyed an Iranian drone near the Strait of Hormuz.<sup>17</sup> The Trump Administration justified this retaliatory strike by arguing that the drone was approaching an American vessel and ignoring its calls to move away, thereby constituting a serious threat to American security. Many other attacks followed in October, November, and December. On 27 December 2019, Hezbollah, with presumed Iranian support, was accused of launching dozens of rockets at the Iraqi base in Kirkuk, ‘killing a US contractor and wounding four US service members.’<sup>18</sup> Finally, on 31 December 2019, a group of pro-Iranian protesters attacked the US embassy in Baghdad.<sup>19</sup> The Iranian Major General Qasem Soleimani was accused of being responsible for the attack and he was killed on 3 January 2020.

### *The Inherent Right of Self-Defence*

The case under study is a very complex one, which encompasses multiple spheres of international law. First of all, it is centred on the inherent right of States to resort to the use of force when they suffer an armed attack – as the UN Charter suggests – but also when they are certain that an imminent attack is going to be launched against them.<sup>20</sup> The existence of an act of ‘aggression’ is the principal requirement for the application of any measure of self-defence; without it, resorting to the use of force is neither necessary nor proportionate.<sup>21</sup> Although in the letter submitted to the UN, the US makes reference to the series of escalating attacks that preceded the 3 January strike, it is still contested whether the State of Iran could be deemed

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<sup>14</sup> Edward Wong, “Citing Iranian Threat, U.S. Sends Carrier Group and Bombers to Persian Gulf”, *The New York Times*, (May 2019).

<sup>15</sup> Lily Hay Newman, “The Drone Iran Shot Down Was a \$220M Surveillance Monster”, *Wired*, (June 2019).

<sup>16</sup> <https://www.un.org/press/en/2019/bio5200.doc.htm>

<sup>17</sup> Darlene Superville, Robert Burns, “American warship destroys Iranian drone in Strait of Hormuz”, *Associated Press*, (July 2019).

<sup>18</sup> Carol E. Lee, Courtney Kube, “Trump authorized Soleimani’s killing 7 months ago, with conditions”, *NBC News* (January 2020),

<sup>19</sup> Luke Harding, “Trump accuses Iran over storming of US embassy compound in Baghdad”, *The Guardian*, (December 2019).

<sup>20</sup> Daniel Webster, United States Secretary of State, *Caroline Case*, 29 *British and Foreign State Papers* (1841) 1137-1139.

<sup>21</sup> Lin Fu-Shun, *Self-Defense – A Permissible Use of Force under the U.N. Charter*, 13 *DePaul Library* 43, (1963).

responsible for those operations.<sup>22</sup> In addition, neither the attack on the American Embassy in Baghdad, nor the previous events that occurred in June and July 2019, can arguably amount to an armed attack by Iran or Iraq against the US in terms of scale and effects.<sup>23</sup> In this regard, the ICJ in the *Nicaragua case* argued that it is necessary to make a distinction between ‘the most grave forms of the use of force – those constituting an armed attack – from other less grave forms’.<sup>24</sup> This definition is crucial when triggering Article 51 since ‘in the case of individual self-defence, the exercise of this right is subject to the State concerned having been the victim of an armed attack’.<sup>25</sup> Indeed, the threshold maintained by the court is still used for the evaluation of the intensity of the use of force. This opinion is also backed by the 2005 Executive Committee of International Law Association (ILA), which approved a mandate for the Use of Force Committee to produce a report on the meaning of war or armed conflict in international law.<sup>26</sup> It found two components of an armed conflict: the existence of organized armed groups and engagement in fighting at some intensity.

With regard to any definition – broader or stricter – it was repeatedly affirmed that the parties are not in ongoing armed conflict. For the same reason, it seems unreasonable to appeal to the Authorization for Use of Military Force (AUMF) 2001 and 2002 and on the ‘War on Terror’ campaign promoted by the US as a justification for the use of lethal force.<sup>27</sup> Nevertheless, there are two main requirements for the application of Article 51: the parameters of proportionality and necessity of the military action.<sup>28</sup> This would exclude any ‘unnecessary’ use of lethal force as in those circumstances where the existence of a real imminent threat cannot be proven. When deciding how to act in case of an imminent attack, States must determine the aims and the scope of the force that will be used and the tools that will be adopted to achieve the preestablished objectives.<sup>29</sup>

Going back to the American interpretation of pre-emptive self-defence, In *Understanding the Bush Doctrine* Robert Jervis writes:

*‘The doctrine has four elements: a strong belief in the importance of a State’s domestic regime in determining its foreign policy and the related judgment that this is an opportune time to transform international politics; the perception of great threats that can be defeated only by new and vigorous policies, most notably preventive war; a willingness to act unilaterally when necessary; and, as both a cause and a summary of these beliefs, an overriding sense that peace and stability require the US to assert its primacy in world politics’.*<sup>30</sup>

However, it could be argued that this interpretation may not act within the limits and scope of the UN Charter. Nevertheless, this rationale was used during the drone strike that killed Soleimani – although the Pentagon itself never provided evidence of an ‘imminent threat’.

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<sup>22</sup> Mary Ellen O’Connell, “The Killing of Soleimani and International Law”, *European Journal of International Law*, (January 2020).

<sup>23</sup> O’Connell, “The Killing”.

<sup>24</sup> ICJ, *Military*.

<sup>25</sup> ICJ, *Military*.

<sup>26</sup> Committee on Use of Force, “Final Report on the Meaning of Armed Conflict in International Law”, *International Law Association*, (The Hague, 2010) 1-2.

<sup>27</sup> United States 107th Congress, *Joint Resolution, Public Law 107-40*, (September 2001).

<sup>28</sup> Sergio Marchisio, *Corso di Diritto Internazionale*, (Giappichelli: 2017), 316.

<sup>29</sup> Judith Gail Gardam, “Proportionality and Force in International Law”, *The American Journal of International Law* 87, (1993),391-413.

<sup>30</sup> Robert Jervis, “Understanding the Bush Doctrine”, *Political Science Quarterly* 118, (2003), 365-388.

The 3 January strike eliminated one of the most influential officials of a sovereign State, on the territory of third-party sovereign State. It appears that the US has interpreted the international obligations of the UN Charter in a very broad way to argue for the lawfulness of its actions. The strike against Soleimani could arguably be lawful only if the US could establish that killing him would in fact have disrupted those attacks and, moreover, that it was the only way of disrupting those attacks.<sup>31</sup>

### ***Breaching Sovereignty of a Third State***

Based on the evidence outlined in the previous paragraph, the case under study does not follow the framework for a lawful resort to the use of force. When Article 51 loses its applicability – as it (arguably) does in this context – a targeted killing conducted in a third sovereign state can only be legitimate through the consent of the third state or if the ‘unwilling or unable’ condition applies, as will be explained below.

With regard to the case under study, the US army acquired the authorization to act on Iraqi soil in the months that followed the 9/11 attacks. In May 2003, the US and the UK submitted a letter to the President of the Security Council ‘acknowledging their responsibilities as occupying powers under international law’.<sup>32</sup> In the same month, the UN Security Council adopted the Resolution 1483 which recognized the US and UK as ‘occupying powers under unified command’.<sup>33</sup> Since then, the presence of US military troops in Iraq was justified by Iraqi consent for the purposes of the restorations of ‘Iraqi’s sovereignty and territorial integrity, recognizing the right of the Iraqi people to establish a representative government based on the rule of law’.<sup>34</sup> Although the American troops’ presence on the Iraqi soil was justified by Resolution 1483, it doesn’t preclude the wrongfulness of a US drone strike on Iraqi territory. Furthermore, it seems that US did not acquire consent by the Iraqi government for the execution of an Iranian official on its territory. Therefore, by using force in Iraq on behalf of the self-defence rationale against Iran, it could be argued that the US conducted a violation of Iraqi sovereignty.

In the *Nicaragua case*, the ICJ accounted for those circumstances in which using force on the territory of a sovereign state can be considered legal: if ‘the State is unwilling or unable to stop armed attacks against the first State launched from its territory’.<sup>35</sup> In the present case, Iraq suffered a large attack, although it demonstrated that it was not ‘implicated in any imminent attacks against the US’.<sup>36</sup> Prior to the attack, the US should have demonstrated through clear evidence that Iraq was not able to protect its diplomats and diplomatic bases. It should have also proved why the ‘imminent threat’ posed by Soleimani – specifically on Iraq’s territory – required an immediate reaction by the US to compensate for Iraq’s ‘unwillingness or inability’ to act.

However, President Trump has never applied the ‘unwilling or unable’ rationale. Additionally, if there is no evidence of Iraq giving consent to the US, it could be argued that the strike amounted to an armed attack against the Iraqi State. Indeed, the assassination of an Iranian official on Iraqi soil could be considered as an ‘intentional intervention in or against

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<sup>31</sup> Marco Milanovic, “The Soleimani Strike and Self-Defence Against an Imminent Armed Attack”, *European Journal of International Law* (January 2020), 6.

<sup>32</sup> Sean D. Murphy, “Security Council Recognition of US Postwar Role in Iraq”, *American Journal of International Law* 97, (2003), 681-683.

<sup>33</sup> United Nations Security Council, *The Situation Between Iraq and Kuwait, Resolution 1483*, (2003), S/RES/1483, paras. 4-5.

<sup>34</sup> Murphy, “Security”, 681-683.

<sup>35</sup> Paul Alston, “The CIA and Targeted Killings Beyond Borders”, *Public Law and Legal Theory Working Papers* 303, (New York: 2011),

<sup>36</sup> Milanovic, “The Soleimani”, 2.

another State without that State’s consent or subsequent acquiescence, which is not legally justified’.<sup>37</sup>

### ***Targeted Killings***

In the course of the article, it was demonstrated that Article 51 could arguably be triggered in the case under study. At the same time, the article argues that the US has resorted to disproportionate and unnecessary use of force with an unprovoked armed attack carried out on the territory of a third sovereign state without the latter’s consent. These findings urge for an analysis of the legitimacy of the targeted killing of General Soleimani. In its statement of 2 January 2020, the Department of Defence had already communicated that Qasem Soleimani was targeted for being ‘the head of [...] a US-designated Foreign Terrorist Organisation’.<sup>38</sup> The use of drones in targeted killing operations are not intrinsically unlawful; in particular, these military tools are employed in counter-terrorism operations in order to avoid the risks of taking action in the field. However, the use of drones for targeted killings should always be conducted in conformity with the international legal system.

The topic of drone strikes was scrutinized during the 27<sup>th</sup> and 28<sup>th</sup> Meetings of the Third Committee of the United Nations 68<sup>th</sup> General Assembly.<sup>39</sup> The introductory remarks were held by the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions, Christof Heyns, who underlined that the use of drones is not illegal, but the core question is related to law, policy and practice of their use.<sup>40</sup> In other terms, he emphasized that drone attacks should comply with the existing frameworks, in particular with regard to IHL and IHRL. He concluded saying that it is a priority for the whole international community to comply with these norms – whose main objective is to protect human life.

Based both on the doctrine and on the evidence acquired from the analysis of these practices, it could be argued that – with specific reference to unmanned aerial vehicles (UAVs) – targeted killing should meet these conditions to be legal:

- a) existence of a recognized armed conflict,<sup>41</sup>
- b) the target should be a legitimate military target,
- c) the targeted killing has to be planned and performed so to avoid collateral damage and casualties,
- d) it should comply with the prohibition to use weapons that can cause unnecessary suffering,
- e) military necessity and proportionality shall be evaluated.

Both IHL and IHRL apply in the framework of an armed conflict when considering the legality of actions and of the measures adopted. The acting State is not allowed to use assassinations as a deterrent or a punishment, and it must also be proven that the operation is necessary and proportionate.<sup>42</sup> Most importantly, it should be ensured that all non-violent

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<sup>37</sup> Elizabeth Wilmhurst, “Principles of International Law on the Use of Force by States in Self-Defense”, *Chatman House*, (2005), 6.

<sup>38</sup> United States Department of Defense, *Statement by the Department of Defense*, (January 2020), <https://www.defense.gov/Newsroom/Releases/Release/Article/2049534/statement-by-the-department-of-defense/>.

<sup>39</sup> United Nations General Assembly, *Deadly Use of Drone Technology*, GA/SHC/4078, (New York: 2013).

<sup>40</sup> United Nations General Assembly, *Note by the Secretary-General on Extrajudicial, summary or arbitrary executions*, A/68/382, (New York: 2013).

<sup>41</sup> United Nations General Assembly, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Christof Heyns, A/HRC/26/36, (New York: 2014).

<sup>42</sup> United Nations Human Rights Committee, *Concluding Observations of the Human Rights Committee: Israel*, 15, CCPR/GO/78/ISR, (Geneva: 2003).

measures were exhausted before resorting to the use of lethal force, thereby discouraging any kind of pre-emptive attack.<sup>43</sup> The requirements that legitimate targeted killings during peacetime are not very different: outside the context of an armed conflict, the proportionality and necessity requirements continue to apply, thus implying that the operation must be proven to be necessary in order to protect the life of other individuals and proportionate with regard to the use of force adopted.

The role played by General Soleimani further complicates the analysis of the legitimacy of the strike. Being an Iranian Major General, Soleimani was considered the key actor in directing Iranian operations – and also directing other regions' decisions, due to the involvement of Iran in various operations in the Middle East. Apart from breaches of international obligations, the military operation did not avoid unnecessary casualties as the drone strike killed other people travelling with Qasem Soleimani.

Indeed, the US should be incentivized to restrict its interpretation of existing international laws in order to significantly limit the parameters the execution of specific targets' killing. As it emerged that the US has not respected the framework of international obligations, it should provide consistent justifications for its military decisions.<sup>44</sup> Indeed, the Trump Administration should have proved to be in an ongoing conflict with Iran, it should have demonstrated that Soleimani was a lawful target and that it was forced to kill him exactly where and when it did. As the facts confirmed after 3 January, the targeted killing of the Iranian Major General had unintended consequences: rather than putting an end to the ongoing crisis between Iran and the US, the drone strike created profound and irreversible instabilities in the Iran-US relationship.

### ***Conclusion***

As discussed in the preceding sections, the terrorist attacks of 11 September 2001 represented a crucial turning point in the stability of the whole international community. Since then, some States have favoured a broader interpretation of the concept of self-defence provided in Article 51 of the UN Charter. In accordance with the obligations arising from international law, in order to resort to self-defence, the US should have proven that an armed conflict was taking place between Iran and US and that the military action followed the parameters of proportionality and necessity. In addition, the US should have demonstrated that the government of Iraq had given consent to the execution of an Iranian official on its soil. Lastly, the targeted killing operation should have been conducted in line with the parameters described above.

However, in July 2020, Agnes Callamard, UN Special Rapporteur on extrajudicial executions confirmed that the US was not in an ongoing conflict with Iran and, thus, Article 51 could not be applied.<sup>45</sup> Indeed, it was proven that the US had not acted in conformity with the norms of international law. Additionally, it could be argued that – in accordance with the definition provided in Resolution 3314 – the assassination of Qasem Soleimani constituted a form of armed attack against the State of Iraq.<sup>46</sup> Indeed, Anne-Marie Slaughter's observation following Osama Bin Laden's assassination also seems to apply here: 'having a list of leaders that you are going to take out is very troubling morally, legally and in terms of precedent. If other countries decide to apply that principle to us, we're in trouble'.<sup>47</sup> The assassination of

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<sup>43</sup> UNHRC, *Concluding Observations*.

<sup>44</sup> Alston, "The CIA".

<sup>45</sup> Elliot Setzer, "U.N. Special Rapporteur Release Report on Soleimani Killing", *Lawfare* (July, 2020).

<sup>46</sup> United Nations General Assembly, *Definition of Aggression, Resolution 3314*, (New York: 1974).

<sup>47</sup> Anne Marie Slaughter, "The UN should issue death warrants against dangerous dictators", *CNN World*, (May 2011).

Soleimani can ultimately be described as an extrajudicial execution of one of the most critical actors of a sovereign State on the territory of a third sovereign State without compliance with international norms. When a targeted killing does not fall within the law enforcement operations – thus, when the use of force is intentional and deliberate, with a degree of pre-meditation, against a subject already classified as a future target by the killing State – the practice loses its legitimacy.<sup>48</sup>

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<sup>48</sup> Alston, “The CIA”.