

**The Assassination of General Soleimani and
International Law:
Report of an IAUNS Expert Panel Discussion,
Tehran, 8 January 2020¹**

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In the early hours of 3 January 2020, the United States military carried out a drone attack to assassinate General Ghassem Soleimani, head of the Iranian Islamic Revolution Guard Corps-Quds Force, and his entourage at Baghdad International Airport in Iraq. The attack, which was ordered by US President Donald Trump, also killed nine others, including Abu Mahdi al-Muhandis, de facto leader of the Iraqi Popular Mobilisation Forces and founder of the Kata'ib Hezbollah militia.² Unsurprisingly, the assassination of General Soleimani soon turned into a hotly-debated issue on a global scale. The crux of the debate among politicians, international law experts and international relations analysts revolved around whether the US drone strike was permissible according to the relevant rules of international law.³

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² As to the facts of the case and state reactions, see Butchard, Patrick M, "Digest of state practice: 1 January–30 June 2020" (2020) *Journal on the Use of Force and International Law*, Vol. 7, at 380-392.

³ See the authors cited in Ferro, Luca, "Killing Qasem Soleimani: International Lawyers Divided and Conquered" (2021) *Case Western Reserve Journal of International Law*, Vol. 53, at 168-169, footnote 24. See also, Askary, Pouria and Hosseinejad, Katayoun, "Taking Territory of a Third State Seriously: Beginning of IAC and the Strike Against Major General Soleimani", *Opinio Juris*, 24 January 2020 < <http://opiniojuris.org/2020/01/24/taking-territory-of-a-third-state-seriously-beginning-of-iac-and-the-strike-against-major-general-soleimani-part-i/>>.

I. The Problematique

Five days after the United States assassinated General Soleimani in Iraq, the Iranian Association for United Nations Studies (IAUNS), in cooperation with a number of Iranian institutes active in the field, held a panel discussion, so as to explore the legality of the action. The Seminar was entitled “The Assassination of Martyr General Ghassem Soleimani and International Law.” The panelists in the panel discussion were: Mohammadreza Ziaei Bigdeli (Allameh Tabatataba’i University), Mohammad Habibi Mojandeh (Mofid University), Mohsen Abdollahi (Shahid Beheshti University) who also chaired the panel, Pouria Askary (Allameh Tabatataba’i University), and Amirsaeed Vakil (University of Tehran).

In her brief introductory words, President of the IAUNS, Nasrin Mosaffa (University of Tehran) referred to some articles recently published by the Association alongside discussion of events in so far as they related to international law. She also expressed the hope that the session would throw light on various aspects of the US action and serve the educational purposes of the Association and its interlocutors, in and outside of the Iranian academia.

Subsequently, the chair of the Panel opened the session with a review of events leading to the assassination of General Soleimani. On 27 December 2020, several rocket attacks hit a US military base in the Iraqi city of Kirkuk, killing one American contractor and injuring several Iraqi troops. The US accused Iran of supporting militias in carrying out the attacks, and on 29 December, bombarded Kata’ib Hezbollah positions in Iraq and Syria, to which the attacks were allegedly attributed. The attack left 45 dead and 51 wounded. On 31 December, Hashd el Sha’abi militants demonstrated against the attack, and entered the well-protected Green Zone in Baghdad, where the US embassy is located. The demonstrators managed to damage the outer walls of the

compound before dispersing and leaving the area. Interestingly, foreign news channels, including BBC, did not fail to catch the slogan written in Arabic on the wall of the embassy reading “Soleimani is our Leader”. In a subsequent tweet, President Trump threatened that Iran would pay a heavy price; 48 hours later, General Soleimani and his entourage were assassinated at Baghdad Airport.

The pronouncements made by American officials subsequent to the assassination would indicate that certain US authorities had intended to act forcefully against General Soleimani for years.⁴ A few hours after the American drone attack occurred, the US Department of Defense issued a brief statement, in which it equated the assassination of General Soleimani with “defensive action”.⁵ However, as Chair of the Panel rightly noted, this illegal act placed the US in a very weak position from the standpoint of the law on the use of force, international humanitarian law, international human rights law, as well as with respect to the question of international immunities as recognized in the Vienna Conventions.

Following the Chair’s introductory presentation of the problematique, the Panel discussed the lawfulness of the January drone attack in the context of the law governing the use of armed force, international humanitarian law and international human rights law.

In light of the main probelamtique, the following questions were specifically raised by the Chairperson:

⁴ Iranian commander Soleimani had been in Pompeo's sights for years, Reuters, 3 January 2020, <<https://www.reuters.com/article/us-iraq-security-blast-target-idUSKBN1Z21UT>>.

⁵ Statement by the Department of Defense, 2 January 2020, <<https://www.defense.gov/Newsroom/Releases/Release/Article/2049534/statement-by-the-department-of-defense/>>.

- 1- What was the significance of the January 3rd military action with regard to the applicability of the peacetime human rights or international humanitarian law vis-à-vis state policy and political exigencies?
- 2- Could the action be justified as an instance of anticipatory self-defense?
- 3- Could the action be warranted as being undertaken in accordance with Article 51 of the United Nations Charter, which is the formal source of the right of self-defense in international law?
- 4- Were President Donald Trump's tweets threatening American attacks on 52 major Iranian targets, including cultural sites, contravening international humanitarian law? and
- 5- Once framing the January drone attack within the framework of international human rights law, how could the killing of an Iranian citizen in the territory of a third state be characterized?

II. The Main Discussion

The gist of the presentations by the four panelists, prominent international law scholars from some well-respected Iranian universities, can be captured under the following headings.

a) Did the Incident Take Place as Part of an Armed Conflict?

The January drone strike may not be seen as part of an armed conflict, because no international conflict existed between Iran and the US prior to the strike. Moreover, contrary to President Trump's assertion that "[General] Soleimani was plotting imminent and sinister attacks on

American diplomats and military personnel”,⁶ it was obvious that neither US troops nor American diplomatic personnel were facing imminent armed attacks, whether in Iraq or elsewhere.⁷ For this reason, the US could not arguably rely on *jus ad bellum* self-defense to justify the assassination of General Soleimani. In this sense, it seems clear that the justifications advanced by US officials do not fall under the purview of Article 51 of the UN Charter. Likewise, the US cannot be said to have acted in accordance with the provisions of UN General Assembly resolution 3314 on the Definition of ‘Aggression’, since there was no aggression against the territory of the United States.

⁶ Remarks on the Death of Islamic Revolutionary Guard Corps Major General and Quds Force Commander Qasem Soleimani of Iran in Palm Beach, Florida <<https://www.govinfo.gov/content/pkg/DCPD-202000005/html/DCPD-202000005.htm>>. It must be noted that, on 8 January 2020, the US submitted a letter to the Security Council to justify its action as self-defense (In accordance with Article 51 of the Charter of the United Nations...the United States has undertaken certain actions in the exercise of its inherent right of self-defence. These actions were in response to an escalating series of armed attacks in recent months by the Islamic Republic of Iran and Iran supported militias on United States forces and interests in the Middle East region, in order to deter the Islamic Republic of Iran from conducting or supporting further attacks against the United States or United States interests, and to degrade the Islamic Republic of Iran and Islamic Revolutionary Guard Corps Quds Force-supported militias’ ability to conduct attacks. These actions include an operation on 2 January 2020 against leadership elements of Iran’s Islamic Revolutionary Guard Corps Quds Force on the territory of Iraq. The United States is prepared to take additional actions in the region as necessary to continue to protect United States personnel and interests). See 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 (9 January 2020).

⁷ As Agnes Callamard, the then-UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, has put it, “No evidence has been provided that General Soleimani specifically was planning an imminent attack against US interests, particularly in Iraq, for which immediate action was necessary and would have been justified”. See: Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Agnes Callamard – Annex: The Targeted Killing of General Soleimani, U.N. Doc. A/HRC/44/38 (29 June 2020).

The use of force against General Soleimani thus seems to fall short of meeting the criteria for lawful self-defense: necessity, imminence, and proportionality. Importantly, President Trump’s tweet, in which he explicitly threatened to target 52 Iranian cultural monuments and sites, not only disregards *jus in bello* proportionality but also implies that US future forcible actions against Iran may include the targeting of both military and civilian bases. Apart from these weaknesses in the US justificatory ex-poste facto claims, it must be recalled that the concepts of “anticipatory self-defense” and “preventive self-defense” are contested in the legal literature and do not receive support from the majority of states.

b) Was the Assassination a Blatant Violation of International Law?

As discussed, there is no doubt that the assassination of General Soleimani amounts to a violation of fundamental principles of international law; there was no armed conflict between Iran and the US, while the drone attack on General Soleimani contravened the prohibition of the unilateral resort to force, mainly because the US was facing no imminent armed attacks on the part of Iran.

The right of self-defense constitutes an exception to the prohibition on the use of force set forth in Article 2(4) of the UN Charter.⁸ According to Article 51 of the UN Charter, force can be used in self-defense when “an armed attack occurs against a Member of the United Nations”. Thus, “the language of Article 51 is clear and that it permits self-defence only against attacks that have actually occurred”.⁹

⁸ The United Nations Charter, Art (2)4.

⁹ O’Connell, Mary Ellen, “The Killing of Soleimani and International Law”, 6 January 2020, <<https://www.ejiltalk.org/the-killing-of-soleimani-and-international-law/>>. Importantly, the position of the Non-Aligned Movement in February 2005 (when the

However, even if one admits the lawfulness under international law of resorting to ‘anticipatory self-defense’, the claiming state must demonstrate that the armed forces of one state were in a state of full alert and about to act forcibly against it – in other words, it must be established that the attack was imminent. Needless to say, the Iranian armed forces have not been on high alert to take imminent military action against American territory or its external manifestations overseas.

c) *The Assassination and International Human Rights*

The right to life is widely regarded as one of the most fundamental principles of international human rights law. It is enshrined as a matter of treaty law in Article 6 of the International Covenant of Civil and Political Rights; according to this article, the right to life “shall be protected by law. No one shall be arbitrarily deprived of his life.” Indeed, the right to life must be respected in all circumstances, including when a forcible incident occurs as part of an armed conflict or outside of it. The well-planned-executed nature of the assassination of General Soeimani would suggest that its was predetermined on the part of the US government, and represents a clear violation of the right to life.¹⁰ Moreover, by using lethal force against a foreign national

organisation had 117 member states) may be taken as rejecting the legality of anticipatory self-defence under customary international law:

Article 51...is restrictive and recognizes ‘the inherent right of individual or collective self-defence

if an armed attack occurs against a Member of the United Nations’. This Article should not be rewritten or re-interpreted. This is supported by the practice of the UN.... The Non-Aligned Movement stresses its deep concern over the intention of a group of states to re-interpret or re-draft the existing legal instruments in accordance with their own views and interests.

¹⁰ Agnes Callamard, the then-Special Rapporteur of the Human Rights Council, has written in her report to the Council that “A targeted drone killing requires monitoring, tracking, surveillance and a specific decision to kill a particular person...” (para. 43, Annex to the report – A/HRC/44/38, p. 30).

(General Soleimani) in the territory of a third state (Iraq), it is clear that the US has also breached its human rights obligations outside American territory. Adherence to various provisions of universally recognized instruments in the field of human rights means that the US government must be held accountable for this unlawful act. In fact, under the Trump administration, the US has become increasingly willing to disregard its international obligations, as illustrated by its withdrawal from the Human Rights Council and the United Nations Educational, Scientific and Cultural Organization.

d) The Assassination in the Context of the Broader US Policy Towards Iran

In light of the illegality of the American action under international law, the initial resort to force could therefore be viewed in the broader context of the on-going US policy of maximum pressure against the Islamic Republic of Iran. Various pronouncements made by high-level US authorities since the event, coupled with President Trump's tweets and comments, leave little doubt as to the peculiarly political nature of the US decision to take action against the life of General Soleimani. It is worth bearing in mind that General Soleimani was assassinated when he was visiting Iraq as an official guest of the Iraqi government.¹¹ As the discussion below shows, the claim that the targeting of General Soleimani was made in accordance with the provisions of the bilateral security agreement between Iraq and the US, allowing the Americans to engage in self-defense measures, proves unfounded.

True, US forces are currently stationed in Iraq, acting in the collective self-defense of Iraq against IS militants, based on Iraq's

¹¹ See, eg., Iraqi prime minister says Qassem Soleimani was in Iraq to 'discuss de-escalating tensions between Iran and Saudis' when he was killed - and claims Trump had asked for help mediating talks after embassy attack, Daily Mail, 6 January 2020, <<https://www.dailymail.co.uk/news/article-7854971/Soleimani-Iraq-discuss-escalating-tensions-Saudis-killed-PM-says.html>>.

consent. However, this consent may not be construed to have extended to the drone strike that targeted General Soleimani in Iraqi territory. This can be demonstrated by the fact that, on 5 January, Iraqi lawmakers voted to expel American forces, while five days later, the Iraqi prime minister formally requested the US to prepare plans for the pull-out of US forces. Finally, the American assertion cannot be justified on the grounds of the “unwilling or unable” test, which remains highly contested in both legal scholarship and state practice.¹²

III. Post Script

In early July 2020, Agnes Callamard, the then-UN Special Rapporteur on Extrajudicial, Summary or Arbitrary executions, presented a new report to the Human Rights Council in Geneva.¹³ The Report assessed, among other things, the lawfulness of the January drone attack that targeted General Soleimani and his entourage in Iraq.

Paragraph 82 of the Annex to the report contains the main findings of the Special Rapporteur on the case at hand:

Accordingly, in light of the evidence that the US has provided to date, the targeting of General Soleimani, and the deaths of those accompanying him, constitute an arbitrary killing for which, under IHRL, the US is responsible. The strike was in violation of Art. 2(4) of the UN Charter with insufficient evidence provided of an ongoing or imminent attack. No evidence has been provided that General Soleimani specifically was planning an imminent attack against US interests, particularly in Iraq, for which immediate action was necessary and would have been justified. No evidence has been provided that a drone strike in a third country was necessary or that

¹² Heller, Kevin Jon, “The Absence of Practice Supporting the “Unwilling or Unable” Test”, *Opinio Juris*, 17 February 2015, <<http://opiniojuris.org/2015/02/17/unable-unwilling-test-unstoppable-scholarly-imagination/>>; Corten, Olivier, “The ‘Unwilling or Unable’ Test: Has it been, and could it be, accepted?” (2016) *Leiden Journal of International Law*, Vol. 29.

¹³ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Agnes Callamard – Annex: The Targeted Killing of General Soleimani, U.N. Doc. A/HRC/44/38 (29 June 2020).

the harm caused to that country was proportionate to the harm allegedly averted. While there is information suggesting that the US requested, at least in December 2019, that Iraq take action against Kata'ib Hezbollah, no evidence has been provided that Iraq was consulted on how to alleviate any threats posed to the US arising from the visit of General Soleimani, such that Iraq should bear the burden of addressing those threats. No evidence has been produced that there was no time for the US to seek aid from the international community, including the UNSC, in addressing the alleged imminent threats. Major General Soleimani was in charge of Iran military strategy, and actions, in Syria and Iraq. But absent an actual imminent threat to life, the course of action taken by the US was unlawful.¹⁴

Note: The Annex to the report, entitled “**The Targeted Killing of General Soleimani**,” consists of the following sections and a total of 85 paragraphs (pages 22-39 of the Report).

Annex

I – The Targeted Killing of General Soleimani (para. 1)

The case in question (paras. 1-9)

II - The international legal framework applicable to a drone targeted killing (paras. 10-11)

III - Context and Implications: An international armed conflict? (Paras. 12-13)

Non-International Armed Conflict? (14)

An International Armed Conflict? (15-39)

IV - The Lawfulness of the Strike under International Human Rights Law (paras. 40-53)

V – Lawfulness of the killing under *jus ad bellum* (paras. 54-67)

VI – Involvement of a third state in the drone strike (paras. 68-81)

¹⁴ Ibid, para. 82.

VII – In conclusion (paras. 82-85)