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A Critical View Toward US Claim of Preemptive Self-Defense in the Assassination of General Qasem Soleimani

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ABSTRACT

The reason claimed by the Government of the United States (hereinafter the US) for the assassination of General Qasem Soleimani (General Soleimani) was to prevent imminent attacks. This allegation implicitly evokes the Doctrine of "Preemptive Self-Defense". This article evaluates the US claim in the attack of General Soleimani as a preemptive self-defense through a critical analysis. The US resort to the doctrine of preemptive self-defense for the assassination lacks legal validity and is especially contrary to the provisions of the UN Charter, particularly Article (51). This assassination can be considered the illegal use of force by the US. According to the principle of prohibition on the use of force in international law practice, any premeditated attack before the beginning of armed aggression is not considered self-defense. Moreover, the US evidence in proving an imminent strike from General Soleimani is inadequate and unjustifying.

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Table of Contents

Introduction

In a military operation on the morning of January 3, 2020, the US launched an air strike near Baghdad Airport in which General Soleimani[1] and his companions, including Abu Mahdi al-Mohandes[2] were killed. The US attributed its act of aggression to the explicit order of President Donald Trump. Trump had already made false accusations and baseless allegations against this senior military commander, stating that: "Qasem Soleimani has killed or severely wounded thousands of Americans in a long period of time and is plotting to kill countless Americans..."[3]. Hence, this claim was used as a pretext by the US to target a convoy of vehicles carrying General Soleimani and killing him. In fact, the US defense is based on the premise that General Soleimani was planning an attack on US forces abroad and the US action in the assassination of General Soleimani was taken as a precaution to prevent harm to American citizens in Iraq.

A statement issued by the Pentagon shortly after the announcement of the US terrorist attack without explicitly and expressively invoking the doctrine of "preemptive self-defense", has implicitly referred to this theory as a justification for their illegitimate action in the international arena; The reason for this cowardly assassination as stated in that statement is: "a strong defense in order to intimidate the Iranians for imminent attacks"[4], which refers to the background of the doctrine of "preemptive self-defense". The statement also described the January 3, 2020 attack on the IRGC's foreign border commander as: "a precautionary measure against the US and its allied forces in Iraq"[5] and citing US reference to the same doctrine in the attack. Other remarks by US officials after the assassination of General Soleimani also point to US reliance on the doctrine of "preemptive self-defense" in justifying their act of aggression. The tweets of then-president Trump[6], as well as the remarks by Secretary of State and Defense Secretary,

1. General Soleimani was the commander of the Quds Force of the Islamic Revolutionary Guard Corps (IRGC).
2. Abu Mahdi al-Mohandes was the deputy commander of the Iraqi Popular Mobilization
3. https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-killing-qasem-soleimani/
4. https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-killing-qasem-soleimani/
5. ibid.
6. https://twitter.com/donaldj.trump.

Mike Pompeo[1] and Mark Speer[2], are among the cases that seem to justify the US action as a kind of self-defense in the General Soleimani's assassination case.

The assassination of General Soleimani has caused numerous legal and international debates. Using a descriptive-analytical method, the present study aims at scrutinizing sources and documents in this regard to examine the legitimacy of the US in invoking the doctrine of "preemptive self-defense" in the international arena, by considering its foundations. Therefore, the primary question to contemplate is whether the US allegation in invoking to the doctrine of preemptive self-defense has the necessary legitimacy and validity. In so doing, the legitimacy of the doctrine among jurists will be discussed first, and then, the reasons of the US will be analyzed and evaluated.

1. Doctrine of preemptive self-defense

Classical self-defense is one of the well-stablished principles of world legal systems and international criminal law[3]; An inherent right that restricts the chances of disruption in international peace and security against the authority of states and the United Nations Security Council (UNSC). It is officially recognized as the only exception to the strategic principle of non-use of force against other states in Article 51 of the Charter of the United Nations (UN)[4]. Based on the history of the right to self-defense in international relations, its first form is the responsibility of the country under military attack of another country, which is realized either individually or collectively[5].

In fact, self-defense in its traditional form is considered as a military response of a country to the imminent and effective attack of the aggressor state, which includes defensive operations by the armed forces of the attacked country. It should be noted that the concept of aggression is one of the most controversial and complex issues in the international community and much effort has been made over the years to achieve a common definition of aggression. Finally, in December 1974, the General Assembly passed 3314 resolution defining aggression, paving the way for a review of the draft statute of the International Criminal Court and the Law on Crimes for Human Peace and Security[6].

The definition of aggression in the resolution is still considered as one of the legal sources that can be cited in the field, which is also used in international judicial decisions[7]. Aggression in this resolution is defined as "the use of force by one state against the sovereignty, territorial integrity or political independence of another state or its use in other ways contrary to the Charter of the UN". Accordingly, aggression, including instances of invasion by one state's armed forces into another state's territory, temporary military occupation of part of another state's territory by force, use of any weapon by another state's counterinsurgency state, invasion of forces

1. https://twitter.com/secpompeo.
2. https://ir.voanews.com/a/us-iran/5315444.html.
3. Siamak Karamzadeh, 'Terrorism and self Defense in International Law', (2003), No. 28, Volume 7, Quarterly Journal of Teacher of Humanitie, 178.
4. Jamshid Mumtaz and Behzad Saberi Ansari, 'The effect of the next practice of governments on the principle of prohibition of threats and use of force', (2012), Strategy Quarterly, 196.
5. Hossein Taleghani and Peyman Namamian, 'Applying preemptive defense in the fight against terrorism; Denial or Proof of Legitimacy', (2013), No. 16, Volume 4, Quarterly Journal of International Police Studies, 97;
Rebeca Wallace, and Olga Ortega, International law, (University of Glasgow 2019), 183.
6. However, the definition of aggression was not mentioned in these two latter resolutions (Bishop, 2001, 112).
7. Yoram Dinstein, War, Aggression and Self-defense, (Cambridge University Press 2005), 76.

by one state's armed forces of another state and the presence of armed forces of one state will be contrary to the conditions agreed with another state. In addition, the definition of aggression provided in Article 8 of the Resolution of the Conference on the Review of the Statute of the International Criminal Court in Kampala (2010) is similar to the definition of aggression in the General Assembly[1]; The first paragraph of the article states: "The crime of aggression means the planning, preparation, initiation or execution of acts by individuals who, in an effective situation, exercise control or direct government political or military action. An act of aggression which, given its nature, severity and extent, is a clear violation of the Charter of the UN"[2].

After creating a new chapter in the movement of the international community towards an effective and decisive fight against terrorism, following the September 11, 2001 incident as the largest terrorist operation in history, the UNSC issued two important resolutions on countering terrorism[3]. In its resolution 1368 (on September 12, 2001), while expressing sympathy with the families of the victims of terrorist incidents in the United States of America, and strongly condemning terrorism as a threat to international peace and security, the UNSC emphasized the inherent right of self-defense for the victim government[4]. In the resolution 1373, which was approved 17 days later, the UNSC predicted extensive measures with legal effects to be a duty for all governments to fight terrorism. After that, the obligation of countries to cooperate and to help each other fight against the financing, non-direct and indirect support of, and criminalization and criminal prosecution of terrorism was implemented[5]. Therefore, The UNSC, despite the occurrence of a major terrorist incident, did not mention preemptive self-defense, but only emphasized self-defense in its classic form[6].

However, in recent decades, self-defense has undergone a conceptual evolution, and with a broad interpretation of it, the concept of "preemptive" has been introduced into self-defense, which is called "preemptive self-defense"[7]. Of course, it is sometimes called "preventive self-defense." In the preemptive self-defense hypothesis, the attacking country is allowed to respond militarily to impending attacks from another country[8]. While in concept of "preventive self-defense", the existence of conclusive evidence of an attack by another country is considered as a definitive attack. According to the doctrine of preventive self-defense, the victim state's armed response to an attack in the course of its imposition or the planning of an attack following an at-

1. Matthias Schuster, 'The Rome statute, crime of aggression, a gordian knot in search of sword', (2003), 21.
2. Michael Glennon, The Blank Prose Crime of Aggression, (Yale International Law 2010), 98.
3. James Fry, 'Terrorism as a crime against humanity and genocide: the back door to universal jurisdiction', (2003), UCLA Journal of International Law and Foreign Affairs, 34.
4. UNSC Resolution 1368, adopted unanimously on 12 September 2001. after expressing its determination to combat threats to international peace and security caused by acts of terrorism and recognizing the right of individual and collective self-defense, the Council condemned the September 11 attacks in the United States. The Security Counc il strongly condemned the attacks in New York City, Washington D.C. and Pennsylvania and regarded the incidents as a threat to international peace and security. It expressed sympathy and condolence to the victims and their families and the United States government. Resolution 1368 concluded with the Council expressing its readiness to take steps to respond to the attacks and combat all forms of terrorism in accordance with the United Nations Charter.
5. UNSC Resolution 1373, adopted unanimously on 28 September 2001, is a counterterrorism measure passed following the 11 September terrorist attacks on the United States. The resolution was adopted under Chapter VII of the United Nations Charter, and is therefore binding on all UN member states.
6. Eric Rosand, 'Security Council Resolution 1373, the Counter - Terrorism Committee, and the Fight against Terrorism', (2003), Vol. 97, the American Journal of International Law, 335.
7. Elham Rasooli Sanieabadi, Introduction to the most important concepts and terms of international relations, (1st ed, Tehran, Tisa Publication 2014), 196.
8. Sean Murphy, 'Terrorism and the concept of armed attack in article 51 of the UN charter', (2005), No. 43, Harvard International Law, 703.

tack or military attacks by another state is permitted[1]. Therefore, generally two options for this type of defense are considered: First; there is conclusive evidences that an attack is imminent, not merely based on a potential threat; and second; the victim government has been attacked in the past and now there are obvious and compelling reasons for re-attack in the future[2]. Thus, the doctrine of preventive self-defense differs from the doctrine of preemptive self-defense; In the latter case, the defense is not against imminent attacks, but merely in a state of danger, a permission to combat a potential threat is issued[3], which has of course been legally rejected[4]. Because preemptive self-defense is primarily linked to any possibility of a future attack by a state's repressive action, it is named preemptive warfare[5].

The basis of preemptive self-defense is based on the urgency of another state's armed attack, explaining that destroying enemy forces before they get the opportunity of attack is the best form of defense[6]. Hence, the exercise of the right to preemptive self-defense is one of the emerging concepts that is used by some countries to justify their armed actions. It is perhaps the manifest example of exercising the right to self-defense to have occurred after the event of September 11, 2001, which set the basis for military actions by the US in Afghanistan[7]. U.S military actions against Iraq over concerns about the ownership and possession of weapons of mass destruction by the Iraqi government and its alleged links to specific terrorist organizations and the transfer of such weapons to terrorists is another example of the using the doctrine of "preemptive self-defense". Subsequently, the Strategic National Security Document of the United States in 2002 clearly sought to develop a traditional concept of self-defense and a forward-looking view of it, supporting any preemptive use of force[8]. The issuance of UNSC Resolutions 1989[9] and 1994[10] in relation to US military operations in Afghanistan also confirms the same conceptual development of Article 51 of the UN Charter[11]. Also, in paragraph (124) of the report of March 21, 2005, the Secretary General of the UN mentions the inclusion of the inherent right of countries to defend imminent attacks alongside the happened attacks[12].

1. Malcom Shaw, International Law, (Cambridge University Press 2008), 1104.
2. Seyed Fazlollah Mousavi and Mahdi Hatami, 'Preliminary Self-Defense in International Law', (2006), No. 72, Journal of the Faculty of Law and Political Science, University of Tehran, 305-310.
3. Robert Delahunty and John Yoo, 'The Bush Doctrine: Can Preventive War Be Justified', (2009), 32 Harv. J. L. & Pub. Pol'y, 67.
4. Mahmood Jalali and Reza Zabib, 'Evaluation of preventive defense against terrorism', (2019), No. 82, Volume 23, Quarterly Journal of Judicial Legal Perspectives, 55.
5. Christine Gray, International Law and Use of Force, (Oxford University Press 2000), 91.
6. Hossein Sharifi Tarazkoohi and Viktor Chaharbakhsh, 'Legitimate Deterrent Defense in the 21st Century', (2013), Year 15, Issue 40, Quarterly Journal of Public Law Research, 12.
7. Hossein Taleghani and Peyman Namamian, 'Applying preemptive defense in the fight against terrorism; Denial or Proof of Legitimacy', (2013), No. 16, Volume 4, Quarterly Journal of International Police Studies, 99.
8. https://georgewbush-whitehouse.archives.gov/nsc/nss/2002/.
9. UNSC Resolution 1989, adopted unanimously on June 17, 2011, after recalling resolutions on terrorism and the threat to Afghanistan, the Council imposed separate sanctions regimes on Al-Qaeda and the Taliban. Resolution 1989 dealt with sanctions relating to Al-Qaeda, while Resolution 1988 (2011) addressed sanctions against the Taliban. Until the passing of both the resolutions, sanctions on the Taliban and Al-Qaeda had been handled by the same committee.
10. During discussions, some Council members expressed concern that recent violence along Israel's border with Syria had been instigated by the Syrian government in an attempt to divert attention away from a domestic uprising as part of the Arab Spring; however, other Council members said the issues should not be interlinked, nor were on the Council's agenda. UNSC 1994, adopted unanimously on 30 June 2011, after considering a report by the Secretary-General Ban Ki-moon regarding the United Nations Disengagement Observer Force (UNDOF), the Council extended its mandate for a further six months until 31 December 2011. The Security Council called for the implementation of Resolution 338 (1973) which demanded that negotiations take place between the parties for a peaceful settlement of the situation in the Middle East. It called for all parties to respect the 1974 ceasefire agreement, which had been placed in "jeopardy" due to recent violence.
11. Hossein Sharifi Tarazkoohi and Viktor Chaharbakhsh, 'Legitimate Deterrent Defense in the 21st Century', (2013), Year 15, Issue 40, Quarterly Journal of Public Law Research, 12.
12. Mohammad Reza Ziai bigdeli, International Public Law, (Ganje Danesh Publication 2019), 267.

Ultimately, the exercise of the right of preemptive self-defense is subject to the necessity and proportionality of armed attacks that have reached the threshold of intensity. Contrary to the objective interpretation of Article 51 of the Charter of the United Nations, a potential attack also justifies the defense of the interests of the country and does not seem necessary for the attacks to be effective (Bowett, 1958, 192). The concept of preemptive self-defense is a description of one country's self-defense against an immediate attack of another country, and therefore, the pillar of this type of self-defense is the urgency and seriousness of the attack. In any case, the discussion of preemptive self-defense is based on the existence of convincing evidence that the attack is imminent.

2. Legitimacy of the doctrine of preemptive self-defense

The text of Article 51 of the Charter of the UN has been drafted in such a way that leaves no room for any doubt in its interpretation[1]. Broad interpretation is used in cases where there are general and extensible expressions, but the aforementioned article has been formulated in such a way that it leaves no room for a misunderstanding of its expressions and what the supporters of preemptive self-defense express in the argument of this theory is a reason other than the one stated in the article[2]. What is more, the notion of self-defense in the above-cited article relates to the category of armed attack. On the other hand, the rule of "prohibition on the use of force" in international law also prevents the unfounded expansion of the scope of self-defense. In fact, self-defense is an exception to this rule and cannot be extended to other cases[3]; for this reason, the doctrine of preemptive self-defense has not been accepted by the majority of international law scholars[4]. Therefore, the only self-defense formally recognized in Article 51 of the Charter of the UN is the defense against armed attack, and any other defense under this article, including preemptive defense, is not acceptable. The special provision of the Charter on the legal issue of self-defense explicitly states its limitations and narrows the exercise of this right to an imminent attack and denies the wider scope of defense to preemptive action[5]. Otherwise, the likelihood of abuse of the rules of self-defense increases and the use of force is easily facilitated.

Relying on international custom in justifying preemptive self-defense is also not actually valid; claiming the formation of customary rule in preemptive self-defense is not considered as a legal obligation due to its non-repetition in the international arena. Even if there is an international custom in this regard, the customary law of the time of the drafting of the UN Charter should be taken into account[6]. Description of the "Caroline Case"[7] as an example of preemptive

1. Mohammad Reza Ziai bigdeli, International Public Law, (Ganje Danesh Publication 2019), 269.
2. Mostafa Fazaeli, 'The Assassination of General Soleimani from the Perspective of International Law on the Use of Force', (2021), Year 7, Issue 2, Quarterly Journal of Comparative Research in Islamic and Western Law, 172.
3. Hossein Sharifi Tarazkoohi and Viktor Chaharbakhsh, 'Legitimate Deterrent Defense in the 21st Century', (2013), Year 15, Issue 40, Quarterly Journal of Public Law Research, 16.
4. Antonio Cassese, International Law in a Divided World, Translated by Morteza Kalantarian, (Office of International Law Services of the Islamic Republic of Iran 1991), 268;
Aiden Warren and Ingvild Bode, Governing the Use of Force in International Relations, (Springer Nature Switzerland AG 2021), 47.
5. Ian Brownlie, International Law and the Use of the Force by States, (Oxford, Clarendon Press 1963), 273.
6. Ibid.
7. During the Canadian Rebellion of 1837 against the British colonial rule, some New Yorkers voluntarily joined the insurgency in the American part of the Niagara River and then opened fire on a British military base on Canadian splatfor. During the day, a Canadian ship belonging to Canada anchored on New Island, which had previously been occupied by American volunteers, and its ammunition was transported to the island; In response to repeated insurgent attacks and the occupation of British territory, British

self-defense is a misunderstanding; because there was no preemptive action against the Caroline ship. It could be considered as the conventional example of self-defense in its classical sense[1]. Hence, the argument for preemptive self-defense is more than a legal concept, it is a political justification for resorting to force[2]. All in all, taking into account preemptive self-defense in the form of a customary rule does not seem plausible. Ultimately, international custom does not accept the precedence of states in the early exercise of self-defense; In fact, the negative reaction and objection of other countries against the military action of one country with the legal justification of self-defense is a precondition for the non-fulfillment of international custom regarding this type of self-defense.

Another stand in preemptive self-defense doctrine is that the complexity of discovering and deciding the decision of one country to take up arms against another country in the age of missiles and nuclear weapons will lead to the destruction of that country and it will no longer be able to exercise its right of self-defense after an attack on that country. Thus, imposing a state of passive expectation on countries in the face of an impending armed attack is not considered correct[3]. It should also be noted that making such an argument to legitimize preemptive self-defense is subject to a violation of international peace and security by simply relying on this legal issue; For example, at the beginning of the imposed war on Iran, the Iraqi government invoked the right of preemptive self-defense in advance and in a statement of September 22, 1980 stated that Iran's military actions have created the immediate need for Iraq to take deterrent blows to Iran in order to maintain its security and interests[4]. In other words, the draft doctrine of preemptive self-defense creates problems in international relations and does not have a proper legal status. This doctrine is based on a military necessity according to which the best defense is considered the initial attack before the enemy has a chance to invade. According to this statement, waiting in the era of nuclear weapons and advanced missile systems is considered a kind of suicide[5]. In the same way that the International Court of Justice (ICJ) in its advisory opinion regarding "legality of the threat or use of nuclear weapons" has been decisively unable to determine the legitimacy or illegitimacy of the threat to use or use nuclear weapons in very acute situations of legitimate defense in which the survival of the state is at risk[6].

The introduction of such unacceptable arguments is the attempt of a minority of countries, led by the US, to find a way to use force against other countries in the international arena, which is not only incompatible with international law but it is also considered as an emerging and dangerous innovation[7]. In other words, the doctrine of preemptive self-defense is an ex-

forces boarded the deck of the Caroline and, after firing, led it down Niagara Falls, killing two Americans (Jennings, 1938, 84).

1. Yoram Dinstein, War, Aggression and Self-defense, (Cambridge University Press 2005), 184.
2. Hossein Sharifi Tarazkoohi and Viktor Chaharbakhsh, 'Legitimate Deterrent Defense in the 21st Century', (2013), Year 15, Issue 40, Quarterly Journal of Public Law Research, 16.
3. Antonio Cassese, International Law in a Divided World, Translated by Morteza Kalantarian, (Office of International Law Services of the Islamic Republic of Iran 1991), 268.
4. Seyed Fazlollah Mousavi and Mahdi Hatami, 'Preliminary Self-Defense in International Law', (2006), No. 72, Journal of the Faculty of Law and Political Science, University of Tehran, 308;
Nicola Frizli, Edition du moude Arab; the Iran-Iraq conflict, Institute of Studies and Research, (Paris 1981), 112.
5. Hossein Sharifi Tarazkoohi and Viktor Chaharbakhsh, 'Legitimate Deterrent Defense in the 21st Century', (2013), Year 15, Issue 40, Quarterly Journal of Public Law Research, 16.
6. ICJ Reports, 1996, Pp: 226, 245.
7. Hossein Taleghani and Peyman Namamian, 'Applying preemptive defense in the fight against terrorism; Denial or Proof of Legitimacy', (2013), No. 16, Volume 4, Quarterly Journal of International Police Studies, 103.

cuse to pursue the illegal policies of powerful countries to justify military intervention in other countries[1]. Preemptive self-defense against a military threat of another country in a world full of unimaginable potential threats poses dangers that can alter or damage international order and security. Finally, by weighing the justifications for the legitimacy of the doctrine of preemptive self-defense against the negative consequences and impacts it ensues in the international arena, one can obviously conclude that the application of this theory is dangerous and the conditions included could beget a multifaceted war.

The ICJ has repeatedly stated that self-defense depends on the claimant government being the victim of an armed attack. For example, in the case of the US military attack platforms of the Islamic Republic of Iran, the court acknowledged that the legal validity of this attack in the exercise of its right of defense depends on proving an armed attack on the US[2]. Or similarly, in the case of US military and paramilitary activities in Nicaragua in April 1984, the Court stated that the existence of an armed attack is necessary for the other side to invoke self-defense[3]. Also, in the case of the Republic of Congo against Uganda, the Court referring to the case of Nicaragua reminded the conditions for self-defense that the defense must be against certain attack[4]. Hence, the doctrine of preemptive self-defense does not have the legal status and is considered as an example of the use of force and intimidation in the international arena to justify the illegitimate military intervention against another country. The exercise of the right of self-defense is an instrument for powerful states to legitimize their military actions against other states and it pinpoints the scope of defense to the point where a state is on the threshold of an attack.

3. evaluation of the US invoking the doctrine of self-defense in the assassination of General Soleimani

The various statements made by the US officials regarding the grounds for the assassination of General Soleimani do not explicitly refer to the doctrine of "preemptive self-defense". But, they implicitly seek to incite the claim that General Soleimani, in addition to being involved in military attacks on US military bases and the attack on the US Embassy in Iraq in December 2019, was planning more attacks against US forces in Iraq, in order to prove the necessity of his assassination by resorting to the doctrine of preemptive self-defense. In fact, the basis of the US claims is self-defense, which must be analyzed in the light of international rules and regulations governing the use of force. The reason for this act against the Iranian senior military commander in the statement issued by the White House was: "a strong defense to intimidate the Iranians for imminent attacks"[5].

According to the US, General Soleimani has been preparing for another attack on US bases and forces[6]. This statement based on the prevention of possible future Iranian attacks, seeks to justify the assassination under the right of self-defense. Meanwhile, the US President, in his tweets regarding the assassination of General Soleimani, blamed the General for the at-

1. Marry Ellen O'Connell, The Myth of Preemptive Self-Defense, (ASIL Publication 2002), 27.
2. ICJ Reports, 2003, P: 161.
3. ICJ Reports, 1986, Pp: 14 - 94 - 76.
4. ICJ Reports, 2005, P: 179.
5. https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-killing-qasem-soleimani/
6. https://twitter.com/donald j. trump.

tack on American diplomats and soldiers in Iraq and said that his intention was to prevent a war followed by General Soleimani's plan for an imminent and decisive operation. Certainly, preemptive defense is a response to a definite and imminent attack, and it cannot be interpreted as a preemptive defense against the threat of a future attack, which often lacks information and evidence. Planning cannot be considered as the basis for justifying preemptive self-defense, as this does not imply the existence of a severe and immediate attack. Therefore, it is said that the practice of governments implies the permission to defend a definite and imminent attack and is not plausible in anticipation of a threat for which there is a lack of evidence[1]. Thus, merely planning an action for an attack does not indicate that it is definite and imminent.

Regardless of the objections to the legitimacy of the doctrine of "preemptive self-defense", it can be seen that the US reliance on this theory in the assassination of General Soleimani is not valid. Assuming that this doctrine is considered valid in the field of international law, the US resort to preemptive self-defense is based solely on a mere claim. Indeed, the lack of positive evidence for an imminent and decisive attack on US interests under the command of General Soleimani clearly challenges the invocation of the doctrine of preemptive self-defense. Furthermore, if the US deemed it necessary to attack General Soleimani in order to thwart a threat to its forces by resorting to self-defense, then there ought to be plausible evidence that he actually intended to do so. The fact is that the US does not have sufficient and convincing evidence to prove the existence of an immediate and definitive attack.

In conclusion, the attack on General Soleimani cannot be justified legally on the basis of the doctrine of "preemptive self-defense" and the accusations made against General Soleimani are in no way qualified. These allegations were even vehemently denied by the US Congress members and there has been no specific report that such a threat is real[2]. Hence, the basis of the doctrine of "preemptive self-defense" which is to ward off the future aggression of another country, seems distorted in this case in view of the US uncorroborated evidence in proving an imminent and inevitable attack[3]. There is also no convincing reason for attributing the rocket attack to the US military base in Kirkuk[4] or the site of the US embassy in Baghdad to General Soleimani. Obviously, the allegations that General Soleimani planned a major military strike against US forces were completely baseless. It is worth noting that the January-3rd visit of the high-ranking Iranian military commander was by the invitation of the Iraqi government and he was on a diplomatic mission to help de-escalating the tensions in the region[5].

Failing to provide sufficient evidence to substantiate its allegations against General Soleimani, the US is held accountable for this act of aggression and an illegal use of force. A threat form General Soleimani was unrealistic and a lack of evidence was enough to disqualify a

1. Mostafa Fazaeli, 'The Assassination of General Soleimani from the Perspective of International Law on the Use of Force', (2021), Year 7, Issue 2, Quarterly Journal of Comparative Research in Islamic and Western Law, 172 - 173.
2. Thomas Clayton, 'Killing of Qasem Soleimani; Frequently Asked Questions', (2020), Congressional Research Service (CRS), 2.
3. Mostafa Fazaeli, 'The Assassination of General Soleimani from the Perspective of International Law on the Use of Force', (2021), Year 7, Issue 2, Quarterly Journal of Comparative Research in Islamic and Western Law, 170.
4. The K-1 Air Base attack (2019 K-1 Air Base attack) was a missile attack that took place on December 27, 2019 in Kirkuk province, Iraq. An American civilian contractor was killed in this Katyusha attack.
5. Iraq's Foreign Minister told the Washington Post that General Soleimani was supposed to meet with him on the day he was martyred and that he had come to Iraq to convey a message from Iran to him in response to Saudi Arabia's message to Iran (http://www.washingtonpost.com).

danger threshold for an attack by the US. Moreover, the US response to the assassination of General Soleimani is inconsistent with the rule of necessity and proportionality in the theory of preemptive self-defense; Because according to the provisions of Article 51 of the Charter of the UN and the numerous rulings of the ICJ on self-defense, the existence of elements of necessity and proportionality in justification is the only exception to the principle of prohibition on the use of force. While the absence of these two elements is evident in the assassination of General Soleimani[1], this US military attack is more intense than other attacks by this government and does not in any way justify the necessity of such an action against General Soleimani. Assuming that the attribution of responsibility for earlier attacks on US forces in Iraq was correct, there is not a congruence between the attack on these people and the assassination of General Soleimani. Therefore, in no way the US armed attack on General Soleimani seem defensible within the framework of international law governing the use of force and the elements of the doctrine of self-defense in this attack lacks objectivity. Eventually, it can be considered as an example of resorting to force.

1. Mostafa Fazaeli, 'The Assassination of General Soleimani from the Perspective of International Law on the Use of Force', (2021), Year 7, Issue 2, Quarterly Journal of Comparative Research in Islamic and Western Law, 171.

Conclusion

The tragedy of the assassination of General Soleimani, as justified by the US under the doctrine of preemptive self-defense, is examined in the light of the international law governing the use of force or in its classical term, the war law. The US extremist approach to extending the exception to the principle of non-use of force has developed to the point that the legal justification for the assassination of General Soleimani has repeatedly and implicitly invoked the doctrine of "preemptive self-defense"; a kind of predictability based on which a definite and imminent attack on the citizens of that country has been mentioned with a planning by General Soleimani. On the one hand, no word in the Charter of the UN on the permissible use of force, especially in Article 51 on the issue of self-defense permits the possibility of an anticipation in the pursuit of self-defense and the UN practice also denies this doctrine. This extension of self-defense against illegitimate potential threats disrupts international peace and security.

Certainly, invoking the theory of preemptive self-defense, instead of being able to help maintain international peace and security for the benefit of human societies, is a threat itself. Resorting to this theory is currently limited to some countries- including the US and Israel, based on the available evidence, and is considered merely the subject of aggressive military action. Therefore, the theory of preemptive self-defense is illegitimate; In a way, from a legal point of view, there is no place for this doctrine in the international law and its role can only be considered as a tool for politicians who legitimize their military aggression against other states. From a military point of view, due to the complexity of military affairs, the real criterion for assessing an imminent attack of one country on the positions of another country could not be presented, and therefore, the certainty of the decision to launch a military attack by one country and be exposed to aggression by another country is not possible. It is because the evidence for a military strike will never be conclusive. In this way, the rationale for the doctrine of preemptive self- defense is rejected, both legally and militarily, and in general, the legitimacy of this doctrine is seriously questioned.

In other words, the doctrine of "preemptive self-defense" not only lacks a proper legal status, but it also is an innovation that undermines the international relations of countries. Even in case of assuming the legal legitimacy of this doctrine established, the US reliance on this doctrine in the case of the assassination of General Soleimani suffers from a lack of evidence. In fact, the US claim that General Soleimani planned a military attack on its citizens does not imply the existence of an immediate and definitive attack in order to advance the defense. Therefore, the claim that another country is on the verge of a military attack does not constitute a right of defense for the country under attack, and yet the US military operation on January 3, 2020 in the assassination of General Soleimani lacks the necessary elements and convincing documents for that doctrine. What can be deduced as a result of this critical analysis on the legitimacy of the military attack on General Soleimani is the deliberate and premeditated action of the U.S government in the assassination of Iranian senior military commander, which is an example of illegal actions in the international arena and considered as a violation of international law.

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