

The Legal Implications of the United States' Strike on General Soleimani, His Associates, and Iran's Response

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Foreword

The existing foundation of the international order is based on fundamental principles such as the sovereign power of States, political independence, territorial integrity, and the non-interference in the internal affairs of States, as well as the prohibition of the use of force or threat to resort to force. The maintenance of international peace and security, the promotion of justice, the advancement of respect for and observance of human rights, the commitment to the use of peaceful methods in the resolution of international disputes, and similar principles are recognized as imperatives for the stability and sustainability of the international order. In this regard, the international community has endeavored to minimize exceptions to the general rule of prohibiting the use of force and even the threat of resort to force in relations between States, and to regulate the application of force in the international arena.

Nonetheless, the reality is that the grounds for the use of force in the global community and international relations are dependent on a plethora of *non-legal* factors, in particular, the political ones. In such circumstances, it behooves the international law to strive for the establishment of mechanisms for preventing and restricting war and the use of force and violence on the one hand, and for pursuing and punishing unlawful resort to force on the other hand. In this regard, the United Nations Charter, while stipulating the prohibition of threats of and resort to force as a principle governing the United Nations in Article 2(4), provides for the regulations governing exceptions to this principle in the form of two institutions: legitimate self-defense and collective security. Accordingly, the United Nations and each individual State would only be authorized to use force within the framework of one of these two institutions.

However, several States, particularly the major powers, have adopted controversial approaches and interpretations in seeking to expand the scope and instances of the use of force and violence in the post-Cold War era. In this regard, they have resorted to broad interpretations of certain concepts such as *self-defense*, redefined the scope of certain concepts such as *armed attack*, or even introduced new concepts such as *targeted killing* in the international milieu. This has been met with serious concerns, criticisms, doubts, and denials from many States, international

institutions, as well as in international jurisprudence and prevailing legal doctrines. It is widely feared that these expansionist approaches and interpretations in extending the scope of the legitimate use of force may turn exceptions into norms and replace the rule of law with the rule of power.

What the world witnessed on January 3, 2020, and the justifications that followed from the perpetrators, are striking examples of the same controversial approaches to the issue of *resorting to force* in international law and relations. The tragedy that shocked the world on January 3, 2020, and inflicted wounds on the emotions of millions of people in various parts of the world, leading to unforgettable and self-generating popular demonstrations both within and outside of Iran,¹ once again ignited extensive debates derived from the same concern about the erosion of the rule of law in international relations.

From a legal perspective, the military invasion of armed forces of a State against a high-ranking military commander of another State in the territory of a third State, without an ongoing armed conflict between them, and especially under the direct order of the attacking State's President and its subsequent official declaration, evokes lawlessness.

The military drone strike by the United States in Iraq, ordered by then-President Donald Trump, targeting General Qassem Soleimani and Abu Mahdi al-Muhandis, the most influential commanders of the anti-terrorist front who played an unparalleled role in defeating the self-proclaimed and inhumane ISIS and serving a great purpose to the nations of the region and the world, deeply saddened the Iranian and many others in West Asia, the Islamic world, and some other parts of the world. Additionally, it caused significant political and security concerns among politicians and state officials worldwide, even within the United States.

In the aftermath of this tragedy, several intellectuals, academics, and institutions expressed their concerns and reactions, subjecting the issue to extensive discussions and analyses from diverse political, security, legal, and other perspectives. These reactions were driven by a sense of duty to confront the disruptive and exceptionalist conduct of the United States government, which seeks to undermine the existing international legal frameworks and the efforts of the international community in

¹ Following the armed attack by US forces on General Soleimani in Iraq, resulting in the martyrdom of him, Abu Mahdi al-Muhandis, and their companions, the Iranian and Iraqi people were deeply hurt and saddened. With an unprecedented presence of millions of people in the funeral processions in Iraq and over 25 million people in the funeral ceremonies in Iran, these people demonstrated their strong feelings for the commanders fighting against Takfiri terrorism (ISIS) and defending the independence and territorial integrity of their countries. Furthermore, they expressed their anger and deep disgust towards the perpetrators of this tragic action.

establishing peace and order, once again subordinating rights to power and using them merely as means for the interests of major powers.

The legal nature of the US action in the attack on General Soleimani should not be regarded merely as an extrajudicial killing and a violation of the right to life of an individual, or merely as a breach of certain contractual obligations. Rather, such actions reflect an approach that is extra-legal and unilateral in the practices and policies of the United States, which, figuratively speaking, can be described as the *Americanization of international law*. An approach in which the direct exercise of power takes precedence over the rule of law and undermines legal authority in favor of power.

As demonstrated in the articles included in this book, the military operation of the United States on Iraqi soil and the killing of a high-ranking Iranian commander have violated a set of important principles and rules of international law governing international order and security, the law on resort to force, treaty law, regulations of the US-Iraq Security Agreement, diplomatic agency law, international criminal law, and human rights law. Obviously, the inadequate and ineffective response of States to the unilateral and law-defying conduct of the United States would engender detrimental consequences and pose a worrying future for the international community. It was expected that the Iraqi government, in particular, which objected to Iran's retaliatory missile strike on the US Ain al-Assad base in Iraq on January 6, 2020, declaring it a violation of its sovereignty before the United Nations Security Council, would be aware that its failure to strongly protest against the United States, which, contrary to the established principles of international law and in violation of the Security Agreement, launched a military operation against General Soleimani, Abu Mahdi al-Muhandis, and their companions, resulting in their killing, and hence constituting an *act of aggression* against the States of Iran and Iraq, may engender adverse consequences in the future.

In this regard, the Iranian academic community, especially legal scholars, have engaged in the examination of the dimensions and aspects of the assassination of General Soleimani from legal perspectives, particularly international law milieu. Through scientific sessions, national and international conferences, as well as publishing books and articles, they have delved into the analysis of the legal dimensions of the issue. The present collection includes a number of articles published in the special issue of the *Comparative Study of Islamic and Western Law Journal*, summer 2020, and selected articles from the *International Conference on International Law and Armed Conflicts in the West Asia Region: Commemorating the Martyrdom of General Soleimani and Abu Mahdi al-Muhandis* (autumn 2021).

On the occasion of the fourth anniversary of the martyrdom of General Soleimani, this proceeding of articles is presented to the esteemed audience in English.

Within this collection, several prominent legal professors and researchers from Iran and other countries have gathered, addressing various legal aspects of the issue through different titles and subjects. Siamak Karamzadeh and Abdullah Abedini, in their article entitled *Legal Aspects of Martyrdom of General Soleimani by the United States in Iraq*, consider the US action as a flagrant violation of international law and an act of aggression that falls under the statutory jurisdiction of the International Criminal Court, in accordance with its Statute. Furthermore, they argue that this action by the United States is in violation of the Convention on the Prevention of Crimes against Internationally Protected Persons, Including Diplomatic Agents (1973), which is subject to the jurisdiction of the International Court of Justice.

Mahmoud Khalil Jafar and Duaa Jalil Hatam, in *The Legal Nature of the US Attack on General Soleimani and Abu Mahdi Al-Muhandis at Baghdad International Airport*, consider the US strike as a violation of Iraq's sovereignty and an act of aggression, deeming the justifications put forward by the United States unwarranted from an international legal perspective.

Mostafa Fazaeli, in his article entitled *The Assassination of General Soleimani: A Perspective on International Law and the Use of Force*, after reviewing the events leading to the assassination of General Soleimani, questions the description of the event, the concept and scope of exceptions to the prohibition of resorting to force, and does not find the justifications put forward by the United States legally admissible. Furthermore, he argues that the US action violates several multilateral and bilateral treaties, especially the US-Iraq Security Agreement, and constitutes a crime of aggression in accordance with the Convention on Definition of Aggression and Article 8bis of the Statute of the International Criminal Court, which not only leads to the international responsibility of the United States but also the criminal responsibility of the perpetrators and accomplices of this crime.

Heybatollah Najandimanesh, in *The Legal Feasibility of Characterizing the Assassination of General Soleimani as Crime Against Humanity*, discusses the feasibility of describing the US attack as a crime against humanity. He contends that considering the widespread and systematic sanctions imposed by the United States against the Iranian population, as well as the widespread and systematic exposure of civilians to harm, it can establish the conditions for the occurrence of a crime against humanity, and the assassination of General Soleimani is considered an example of a crime against humanity. However, the author considers the subject open to further discussion and examination.

Sattar Azizi, in *Targeted Killing from the Perspective of International Law and US Domestic Law: A Case Study of the Assassination of General*, examines the targeted killing from the perspective of international law and US domestic law, and argues that targeted killing and extrajudicial killing are prohibited according to Executive Order 12333 and US domestic law, and there was no authorization from the US Congress for military action against Iran. Therefore, the assassination of General Soleimani lacked legal justification according to US domestic laws. Moreover, since General Soleimani was a high-ranking military commander of Iran and there was no armed conflict between the two States, this targeted assassination is contrary to international laws and regulations, including violations of human rights law and principles of international humanitarian law.

In his article “”, Savalan Mohamadzadeh argues that the United States' UVA attack on General Soleimani is a violation of Iraqi airspace sovereignty and authority, contrary to international *jus cogens* and *erga omnes* obligations.

Seyyed Ghasem Zamani and Pouya Berlian, in *The Americanization of International Law and Challenges Facing the International Community: The Targeted Assassination of General Soleimani*, consider the targeted killing of General Soleimani as a unilateral act and an embodiment of the United States' efforts to Americanize international law. They emphasize the need for extensive and effective State responses to counter such actions.

Gholamali Ghasemi and Mohamad Setayeshpour, in *US International Responsibility in the Martyrdom of General Soleimani*, examine the legal implications of the US attack from the perspective of international responsibility law. They attribute the act to the US government based on the statement of the then US President regarding the issuance of the attack order. They consider the US action as a violation of treaty obligations and international customary law in the fields of resorting to force, human rights law and humanitarian law. Accordingly, they deem the US responsible for committing not to repeat such acts, compensating for damages, and holding accountable for other consequences of state responsibility.

Abolfath Khaleghi, in *Examining the Feasibility of Prosecuting Commanders Who Ordered the Assassination of General Soleimani as an Act of Terrorism*, examines the feasibility of prosecuting the perpetrators of General Soleimani's assassination and considers the unprecedented order and official announcement of the assassination of internationally protected persons as an alarming initiative, which could be imitated by other States, thereby severely threatening international peace and stability. The author addresses the challenges facing the international community in dealing with this wrongful act and emphasizes the need to employ alternative

jurisdictional principles, activate interstate cooperation, and develop new initiatives to address it.

Azam Amini and Vahid Bazzar in *Assessing the Feasibility of Prosecuting the Assassination of General Soleimani at the International Criminal Court and the International Court of Justice*, describe the US officials' justification for the use of force in self-defense in the case of General Soleimani's assassination as an internationally wrongful and criminal act that is subject to criminal and civil prosecution. However, the practical application of the jurisdiction of the International Criminal Court poses difficulties. Nevertheless, according to the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (1973), it is possible to pursue the Case before the International Court of Justice.

Sakr Saboh, in *The Assassination of General Soleimani and the Potential Prosecution of the Individuals Responsible before Domestic and International Courts*, also discusses the feasibility of pursuing US international crimes before the International Criminal Court and the International Court of Justice. He contends that the exercise of the jurisdiction of the International Criminal Court is conditional on persuading the Iraqi government to accept the jurisdiction of this Court regarding the case of the assassination of General Soleimani and Abu Mahdi al-Muhandis and their companions. Additionally, the filing of a claim against the US government with the International Court of Justice is possible in accordance with the New York Convention of 1973.

Mahnaz Rashidi and Ali Mashhadi, in *The Primary Legal Measures of the Islamic Republic of Iran in Responding to the Assassination of General Soleimani*, examine various legal and non-legal actions that Iran may undertake in response to the US attack on General Soleimani. They discuss options such as proportional retaliation, retaliatory measures, resorting to legitimate defense, filing criminal complaints before national courts, and initiating proceedings before the International Court of Justice.

Kamel Ismail, in *Repercussions of the Iranian Missile Attack on Ain al-Assad Base: Assessing Legitimacy*, explores the subject of Iran's retaliatory attack on the US Ain al-Assad base in Iraq, discusses the issue of its legitimacy, and argues for its justification as self-defense. Subsequently, he raises the issue of the feasibility of prosecuting the perpetrators of the US military attack on General Soleimani's convoy for further discussion.

Finally, in *the Iranian Military Attack on the U.S. Ain al-Asad Base in Iraq from the Perspective of the Use of Force in International Law*, Seyyed Yaser Ziaee considers Iran's response in the form of a missile attack on the US Ain al-Assad base

in Iraq to be in line with the principles and standards of international law. He describes it as forcible reprisal, use of force short of war, and legitimate continuous defense.

In conclusion, appreciating the researchers who have contributed their valuable works to this collection, it is urged that the academic community worldwide strive to expand the legal literature in this challenging arena. By exploring the various dimensions of the subject and highlighting the extraordinary sensitivity and dangers arising from exceptionalist approaches, law-defiance, and the weakening of the foundations of international order, the international community of States should strongly demand the assertion of rule of law and adherence to the principles of international law and friendly relations.

Let us hope for a future in which sustained peace and security based on justice, respect for human dignity and rights, and equal rights for all nations and individuals are realized.

“O Allah, we have only received blessings from You. There is no deity except You. We seek Your forgiveness and turn to You in repentance.”

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December 28, 2023

Table of Contents

Legal Aspects Of Martyrdom Of General Soleimani By The United States In Iraq.....	1
Siamak Karamzadeh\ Abdollah Abedini	
The Legal Nature Of The Us Attack On General Soleimani and Abu Mahdi Al-Muhandis At Baghdad International Airport	23
Mahmoud Khalil Jafar\ Doaa Jalil Hatam	
The Assassination Of General Soleimani: A Perspective On International Law And The Use Of Force	39
Mostafa Fazaeli	
The Legal Feasibility Of Characterizing The Assassination Of General Soleimani As Crime Against Humanity	67
Heybatollah Najandimanesh	
Targeted Killing From The Perspective Of International Law And Us Domestic Law: A Case Study Of The Assassination Of General Soleimani	91
Sattar Azizi	
Legal Regime Governing Unmanned Military Drones: A Law Of Armed Conflict Analysis With A Focus On The Assassination Of General Soleimani	113
Savalan Mohamadzadeh	
The Americanization of International Law and Challenges Facing the International Community: The Targeted Assassination of General Soleimani	129
Seyed Ghasem Zamani\ Pouya Berlian	
Us International Responsibility In The Martyrdom Of General Soleimani	155
Gholamali Ghasemi \ Mohamad Setayeshpur	
Examining The Feasibility Of Prosecuting Commanders Who Ordered The Assassination Of General Soleimani As An Act Of Terrorism	175
Abolfath Khaleghi	
Assessing The Feasibility Of Prosecuting The Assassination Of General Soleimani At The International Criminal Court And The International Court Of Justice	205
Azam Amini \ Vahid Bazzar	
The Assassination Of General Soleimani And The Potential Prosecution Of The Individuals Responsible Before Domestic And International Courts	225
Sakr Soboh	
The Primary Legal Measures of the Islamic Republic of Iran in Responding to the Assassination of General Soleimani	249
Mahnaz Rashidi \ Ali Mashhadi	
Repercussions Of The Iranian Missile Attack On Ain Al-Assad Base: Assessing Legitimacy	271
Kamel Ismail	
The Iranian Military Attack On The U.S. Ain Al-Asad Base In Iraq From The Perspective Of The Use Of Force In International Law	285
Seyyed Yaser Ziaee	

Legal Aspects of Martyrdom of General Soleimani by the United States in Iraq

Siamak Karamzadeh¹
Abdollah Abedini²

Abstract

During a military operation on January 3, 2020, the US martyred General Soleimani near the Baghdad Airport. The US State Department then announced that this was done on the orders of the then-President Donald Trump. This has provoked many reactions at the international level. Specifically, the Iraqi government announced its objection to the US action to the United Nations Security Council. The US action in martyring General Soleimani is a clear violation of international law. According to the Statute of the International Criminal Court, this action is considered an act of aggression and its perpetrators can be prosecuted in the International Criminal Court. In addition, the US wrongful act against General Soleimani violates the 1973 Convention on the Prevention and Punishment of Crimes Committed against Internationally Protected Persons, and the dispute regarding its implementation can be raised in the International Court of Justice. This article aims to investigate this incident from international legal perspectives. Finally, the illegality of the US wrongful act in martyring General Soleimani and his companions and available remedies for legal follow-ups will be discussed.

Keywords: Resort to Force, Self-Defense, International Criminal Court, International Court of Justice, the SOFA.

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Introduction

On Friday, January 3, 2020, the US carried out a drone strike near the Baghdad Airport, resulting in the martyrdom¹ of General Qassem Soleimani (hereinafter Gen. Soleimani). This action, deemed illegal by many, was announced by the US Department of State as being ordered by the then-President Donald Trump. The justification provided was that Gen. Soleimani had plans to attack US diplomats and personnel in Iraq and the region. The Quds Force, led by Gen. Soleimani, has been held responsible for numerous attacks resulting in the deaths and injuries of hundreds of US and coalition forces. Recent attacks on the coalition bases in Iraq, including the December 27, 2019 attack that caused casualties among US and Iraqi personnel, were attributed to Gen. Soleimani. He was also implicated in the attacks on the US embassy in Baghdad. In response, the United States asserted its commitment to protecting its citizens and interests worldwide (www.state.gov, 2020).

In defense of the attack, a senior official from the US Ministry of Defense stated that President Donald Trump had ordered the air strike, and the Ministry of Defense promptly carried it out that resulted in Gen. Soleimani's death. The official explained that Gen. Soleimani, the commander of the Quds Force, was responsible for the actions of Hezbollah's Kataib battalions in recent months. These groups have close ties to the Quds Force. The official claimed that Gen. Soleimani had actively plotted attacks against US nationals and personnel in Iraq and the region. The US attack aimed to minimize collateral damage. The official referred to the December 27, 2019 attack by Kataib, which involved launching 31 rockets and resulted in the death of a US contractor and the injury of four others. The official warned that any future harm to US personnel in Iraq would be attributed to Iran (www.defense.gov, 2020).

Following the operation, the United States increased its troop presence in Iraq by deploying soldiers from rapid reaction units. The United States characterized these forces as purely defensive. Defense officials labeled the recent attacks by Kataib as provocative and expressed readiness to respond to any future actions by the group. They stated that they were prepared to

¹ The word martyrdom is an Islamic equivalent for assassination where the assassinated is believed to have obtained the satisfaction of the Almighty Allah through his benevolent actions, words, and conduct.

legitimately defend themselves and attributed support and assistance to Kataib from Iran during times of emergency and danger (www.defense.gov, 2020).

As a result of the attack, the US Ministry of Foreign Affairs issued a warning advising US citizens against traveling to Iraq. The notification highlighted the risks of terrorism, kidnapping, and armed conflict in the country. It strongly discouraged travel to Iraq and suggested that those who choose to go should take precautions such as securing their belongings and making necessary legal arrangements (www.travel.state.gov, 2020).

In an interview, Mike Pompeo was asked why the decision was made to kill Gen. Soleimani in this particular situation, considering that similar situations had occurred in the past. Pompeo acknowledged that similar situations had indeed occurred during the Bush and Obama administrations as well as during the Trump administration. However, previous administrations had been hesitant to take such action. Pompeo explained that at the time of Soleimani's killing, they felt that delaying the action had allowed Iran to engage in destabilizing activities. Therefore, they deemed it necessary to take action (www.state.gov, 2020).

Following the incident, the Iranian government expressed its objection to the US wrongful act in a letter to the United Nations Security Council. Iran's permanent representative at the United Nations condemned the killing of Gen. Soleimani, considering it a violation of international law. The letter argued that the US declaring Iran's official military branch as a terrorist organization contravened well-established principles of international law, including the principle of equality among States. It also emphasized that Gen. Soleimani was engaged in counterterrorism efforts, in line with resolutions of the UN Security Council and with the consent of regional authorities. The letter also invoked Iran's right to self-defense under the UN Charter in response to the US wrongful act (www.undocs.org, 2020).

Furthermore, the Iraqi government, in a letter to the Security Council, protested the US action in killing Abu Mahdi al-Muhandis, deputy commander of the Iraqi Popular Mobilization Force (Hashd al-Shaabi), as well as the attack on Iraqi sites (Source: www.mofa.gov.iq, 2020). Additionally, the Iraqi Parliament passed a resolution on the withdrawal of US forces (farsi.euronews.com, 2020).

Some European States, including Britain, France, and Germany, expressed support for the US wrongful act (www.reuters.com, 2020). In response, Iran launched a missile attack on US base Ain al-Asad in al-Anbar, Iraq. Some legal scholars criticized Iran's response, arguing that it was neither necessary nor proportionate to the US attack (Milanovic, 2020: www.ejiltalk.org).

In summary, there are various legal issues regarding the martyrdom of Gen. Soleimani that warrant further discussion and investigation. To analyze the legal aspects of this tragic incident, several important analytical topics are being followed (www.ejiltalk.org).

1. US Act from the Perspective of the 2008 Iraq-US Status of Forces Agreement

Following the US-led international coalition's invasion of Iraq in 2003 and the subsequent overthrow of Saddam Hussein's regime, the United States assumed the role of occupying power until elections were held and a new government was formed. After the formation of the new government in Iraq, an agreement was reached on November 17, 2008, between the United States and the Iraqi government regarding the status of the US military presence in Iraq. To understand the legal foundations and the extent of the US freedom of action in Iraq, we need to refer to the provisions of this Agreement.

These types of agreements, which determine the legal status of military personnel in a receiving State, are commonly known as SOFA (Status of Forces Agreement). According to the definition of these agreements, they serve to "explain the legal status of a foreign military force located in the territory of a friendly State." It is important to note that these agreements themselves do not confer the right to be present in a foreign State or the right to engage in warfare. The authority to use force by these forces should be sought from other sources of international law. The underlying principle of these agreements is based on collective defense between two or more States, with bilateral examples found in the US practice with other States and multilateral examples within organizations like NATO. Currently, the United States has a significant number of soldiers and military facilities in over a hundred States, and similar agreements determining the legal status of its forces in receiving States have been concluded. One of the most significant

agreements of this kind was established with the new Iraqi government following Saddam Hussein's fall. Accordingly, a 30-article agreement between the United States and Iraq was ratified in November 2008. Several key articles of this Agreement, which are relevant to the killing of Gen. Soleimani, are outlined below.

According to Article 4 of this Agreement, all military operations conducted under its authority must have the consent of the Iraqi government. The second paragraph of this article emphasizes that such operations should be carried out only after full coordination with the Iraqi authorities. A Committee for Coordination of Joint Military Operations (JMOCC), established based on this Agreement, would oversee this matter. The fourth paragraph asserts that all operations must be conducted in full compliance with the Iraqi Constitution and relevant laws, and should not violate Iraqi sovereignty and national interests as defined by the Iraqi government. Additionally, US military forces in Iraq are required to abide by Iraqi laws, customs, traditions, and applicable international law.

The key point to note is that paragraph 5 of this article acknowledges the right to self-defense for both Iraq and the United States. The wording of this article states: "The Parties retain the right to self-defense within Iraq, as defined in applicable international law." Even if this provision were not explicitly stated in the Agreement, the right to self-defense would still exist for both Parties, as it is considered an inherent right of every State as described in Article 51 of the UN Charter. Therefore, this clause serves as a reaffirmation. However, it should be understood that this clause recognizes self-defense that is defined by international law and, consequently, is considered legal. The opposite interpretation of this statement would suggest that defense carried out without adherence to international law is not legal. This understanding appears to align with general international law, both in customary international law and in the Charter. Self-defense, in fact, involves elements such as the necessity to avert the risk of an imminent attack and the proportionality between the means used and the damage caused, which are discussed in detail in the subsequent section on the right to resort to force.

However, the most significant aspect throughout the 2008 Agreement is that any action undertaken by the United States within the territory of Iraqi

must be done with the knowledge and consent of the Iraqi government. This includes the movement of military equipment as well as the landing and flying of aircraft in Iraqi territory, which require prior notification to the Iraqi government. According to Article 7, the United States military forces may possess the necessary military tools and equipment in agreed-upon locations temporarily or permanently. The United States is obligated to inform the Iraqi government of the quantity and type of any weapons stockpiles. Additionally, as stated in Article 9, vehicles, ships, and aircrafts of the US military forces in Iraq may enter, exit, and move in order to implement the provisions of this Agreement. The Iraqi government shall grant the necessary permission for the landing and takeoff of US aircrafts annually to facilitate the implementation of this Agreement.

As mentioned at the beginning of Article 4, all military operations conducted under the authority of this Agreement must have obtained the consent of the Iraqi government and must be carried out in full coordination with the Iraqi authorities. Furthermore, these operations must be in full compliance with the Constitution and relevant laws of the Iraqi government, and should not infringe upon Iraqi sovereignty and national interests. These operations are also subject to Iraqi laws, customs, traditions, and applicable international law. In essence, if we read Article 4 in reverse, a comprehensive and clearer understanding of the possibility of self-defense and the limitations surrounding it emerges. The US possesses the right to self-defense and, accordingly, can undertake operations in this regard. However, as mentioned above, these operations are subject to two sets of regulations: firstly, the regulations of international law that govern self-defense in general, and secondly, the internal regulations of Iraq. This dual requirement means that even if the US actions align with the standards of international law, it cannot disregard the restrictions imposed by the Iraqi government on such operations. Thus, it is incumbent upon the US to conduct all operations in coordination with the Iraqi government. This requirement is separate from any other restrictions that may be imposed by Iraqi domestic law on such operations. Failure to coordinate with the Iraqi government, or in other words, the unilateral actions of the United States in conducting military operations under

the pretext of self-defense, would violate Iraqi sovereignty and the provisions of the 2008 Agreement.

Similarly, the Iraqi government lodged an official letter of protest with the UN Security Council regarding the violation of its sovereignty resulting from the aforementioned military operation conducted by the United States. The Iraqi government regarded this action as contravening the provisions of the 2008 Agreement, general international law, and the UN Charter. It is important to note that the Iraqi government suffered the loss of one of its military commanders in this attack, who held an official position within the State's military forces. This underscores the direct interest of the Iraqi government in protesting this action. Furthermore, the indirect interest of the country is implicated by the fact that the attack targeted a high-ranking military official who entered the country as a special guest, as evidenced by the involvement of Abu Mahdi al-Muhandis, Gen. Soleimani and his companions. Additionally, as a signatory to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons adopted in 1973 (hereinafter the 1973 Convention), the Iraqi government is obligated, in accordance with Article 3 of the Convention, to undertake the necessary measures to criminalize and prosecute individuals who have violated the obligations arising from this Convention.

Moreover, according to Article 12 of the Agreement, Iraq possesses primary jurisdiction over members of the US military forces and civilian personnel with regard to the serious intentional crimes outlined in the eighth paragraph of this Article, which occur outside the agreed-upon locations designated by the Parties. If the Iraqi government exercises jurisdiction in such cases, it must adhere to fair trial standards and protections that are consistent with the laws of both the United States and Iraq. The JMOCC established by this Agreement will identify and determine the serious intentional crimes and the relevant procedures. The provisions of this clause are also subject to review by the Parties every six months.

Article 21 represents one of the most significant provisions of this Agreement. Pursuant to this Article, with the exception of claims arising from contracts, each Party shall waive the right to claim compensation against the other Party for any damage, loss, or destruction of property, or compensation

for injuries or deaths that could happen to members of the force or civilian component of either Party arising out of the performance of their official duties in Iraq.

In accordance with Article 22, if US military personnel are arrested or detained under the provisions of this Agreement or Iraqi law, they must be handed over to the competent Iraqi authorities within 24 hours of their arrest or detention. Moreover, the Iraqi government has the option to request assistance from the US military in apprehending or detaining individuals wanted by Iraqi authorities. Furthermore, the US military forces are prohibited from searching residences or properties without a judicial order from the competent Iraqi authorities and in full coordination with the Iraqi government. An exception to this provision is made for actual combat operations carried out in accordance with Article 4 of the Agreement. As so far observed, any military operation conducted under the authority of Article 4 must be coordinated, pre-notified, and require the consent of the Iraqi government.

Article 27 contains an important provision stating that the land, water, and airspace of the Iraqi government shall not be used as a launching or transit point for attacks against other countries. It explicitly prohibits the use of Iraq's territory to launch attacks on third countries. However, the United States violated this provision when it assassinated Gen. Soleimani on January 3. Additionally, Article 28 states that the responsibility for protecting the Green Zone lies with the Iraqi government, but they can seek limited and temporary assistance from the US military if necessary.¹

¹ Below are some other provisions of this Agreement that may be relevant to the issue we are discussing. Article 5 states that all buildings, structures, and facilities connected to the territory of Iraq and used by Iraqi forces in the agreed areas belong to the Iraqi government. When US forces withdraw from Iraq, the places and areas used by US combat forces must be returned to the Iraqi government. Additionally, in addition to the POTUS claim for payment of funds related to US military bases by the Iraqi government, this article specifies that the US is responsible for the construction, alteration, and improvement of agreed sites and areas designated for special use. Unless the military forces of both governments use these sites jointly, the costs will be borne by both governments. According to Article 6, the Iraqi government grants authorization to the US military forces to exercise all necessary rights and powers to establish, use, maintain, and secure the agreed places and territories. Article 24 recognizes the Iraqi government's right to request US withdraw from the country at any time, and it also acknowledges the US right to withdraw from Iraq at any time. Furthermore, according to Article 27, if there is an internal or external threat or aggression against Iraq that violates its sovereignty, political independence, territorial integrity, water,

2. Analyzing the Attack on Gen. Soleimani's Convoy in Terms of the Right to Use Force

Another crucial aspect to consider in the analysis of the martyrdom of Gen. Soleimani's convoy is the question of the right to resort to force. According to a statement from the US Department of State, the then-President of the United States ordered the US military to take a precise defensive action by killing Gen. Soleimani, the commander of the Quds Force of the Islamic Revolutionary Guard Corps, which has been designated as a foreign terrorist organization under sanctions. The purpose of this action was allegedly to protect US nationals outside the country. The statement alleges that Gen. Soleimani had plans to attack US diplomats and personnel in Iraq and the region. It holds him and the Quds Force accountable for the deaths of hundreds of US and coalition forces, as well as the injuries sustained by many others. The statement further claims that Soleimani had carried out attacks on coalition bases in Iraq in recent months, including the one on December 27, 2019, that resulted in the deaths and injuries of US and Iraqi personnel. It also confirms his involvement in the recent attacks on the US embassy in Baghdad. These attacks were seen as a prelude to further anticipated attacks by Iran. The United States expressed its commitment to taking all necessary measures to protect its nationals and interests worldwide (www.defense.gov, 2020).

According to this statement, Gen. Soleimani had plans to attack US diplomats and employees in Iraq and the wider region. As a result, he had previously been responsible for the deaths of hundreds of US and coalition forces, and the injuries inflicted upon hundreds of others. Additionally, he

air, democratic system, or institutions resulting from elections, upon the request of the Iraqi government, strategic consultations must be conducted as soon as possible, and if both Parties agree, the United States should take necessary measures. It should be noted that this Article also makes any military action by the United States in Iraq subject to the prior request of the Iraqi government. Article 30 states that once this Agreement is concluded, it will take one year for the full implementation to take effect. In other words, the Agreement will become effective one year after one of the Parties announces it. Since the Iraqi parliament has also voted for the withdrawal of US military forces from Iraq after the terrorist attack, the Agreement on the presence of US military forces in Iraq will also be terminated, and this termination will be finalized in January of the following year.

played a significant role in the attack on the US Embassy on December 27, 2019. Based on these circumstances, it appears that the United States launched an attack on Gen. Soleimani's convoy as a preventive measure. Hence, the justification for this attack was to prevent the occurrence of alleged future malicious actions. This theory, known as preemptive or preventive self-defense, was previously put forward by the United States during the invasions of Afghanistan by the US-led coalition forces in 2001 and Iraq in 2003.

It is important to note that this theory has not gained widespread acceptance among jurists, governments, and international organizations. As a result, it does not hold a customary or treaty position among the sources of international law (Heller, 2012: www.opiniojuris.org). Therefore, according to some jurists, the justification for attacking Gen. Soleimani's convoy based on this theory is legally unfounded. Even if we assume that the theory of preemptive defense, rather than preventive defense, has some support from certain States, there must still be evidence that an attack is likely and imminent before taking action. The United States, however, has refused to present any evidence to domestic institutions and the international community, which raises doubts about the validity of their claims.

Furthermore, if the United States claimed that it was acting in self-defense against potential future attacks, it should have adhered to the elements of self-defense, such as necessity, urgency, and proportionality. If the US claim about planned attacks on US nationals and sites is true, they could have pursued other measures, such as arresting and detaining the individual in question through the Iraqi government, rather than resorting to the use of lethal force. There appears to be a lack of proportionality between the US use of deadly weapons and the alleged threat (Milanovic, 2020 (2): www.ejiltalk.org).

Some jurists argue that it is essentially impossible to evaluate the elements of necessity and proportionality in relation to an attack that has not yet occurred. They believe that self-defense can only be invoked between two governments and does not apply to individuals (O'Connell, 2020: www.ejiltalk.org). This view has been supported by the International Court of Justice (ICJ) in its 2004 advisory opinion on the Barrier Wall (Wall Advisory Opinion, 2004: www.icj-cij.org).

The existence of an armed attack is a fundamental requirement for self-defense. This term is a key concept in Article 51 of international law, which justifies the use of force. The clearer and more specific the definition of an armed attack, the harder it becomes for countries to justify the illegal use of force (Randelzhofer and Ntote, 2012: 1406). The government that claims self-defense has the authority to determine whether it has been subjected to such an attack. However, it is possible for that government to make mistakes in its calculations, interpret events with malicious intent, or consider the threshold for an armed attack to be too low. Ultimately, the validity of an armed attack is typically determined by a judicial or arbitral authority. The government invoking self-defense must provide evidence that the possibility reached the level of an armed attack.¹ The ICJ, for example, considers that an armed attack is "the gravest form of use of force" and examines the scale and effect of the attack (Oil Platforms, 2003: www.icj-cij.org). Therefore, a low-intensity armed attack, even if carried out by a State's military forces, does not serve as a justification for self-defense.

However, some States argue that the customary interpretation of self-defense extends beyond the provisions of Article 51 of the Charter. According to this interpretation, a State can take action to protect its nationals, property, and economic interests in another country. The US martyrdom of Gen. Soleimani appears to be an example of such action (Randelzhofer and Ntote, 2012: 1404). However, the practice of the ICJ does not support these cases and sets a high threshold for the criterion of necessity. Even the Eritrea-Ethiopia Claims Commission, in its partial decision on the use of force, concluded that a border conflict involving several border guard units and resulting in the death of several people does not qualify as an armed attack under the Charter (Eritrea-Ethiopia Claims Commission, 2006: 11).

¹ For a comprehensive examination of the ICJ procedures regarding the use of force, please refer to the following sources: Zamani (2009), pp. 65-86, and Tavasuli & Mohsenpour (2013), pp. 1-31.

3. Is Martyrdom of Gen. Soleimani an Act of Aggression, or a Crime of Aggression, or Both?

The term aggression in international law is used in two different senses. First, it refers to actions that may give rise to State responsibility, and second, it refers to an international crime that can lead to individual criminal responsibility. This distinction is based on the fifth paragraph of the UN General Assembly Resolution on the Definition of Aggression adopted in 1974 (hereinafter the Resolution).¹ In the first case, if an act of aggression occurs, the responsibility of a State is assessed based on general rules of international law, as outlined in the 2001 International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA). On the other hand, if an individual in an official position within a State engages in actions that fall within the definition of aggression, they can be prosecuted under international criminal law, as provided in Article 5 of the Statute of the International Criminal Court (the Rome Statute, ICC).²

According to Article 1 of the Resolution, "the use of armed force by a State against the sovereignty, territorial integrity, or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations," constitutes aggression. However, the Security Council may determine that certain acts do not fall within the definition of aggression due to specific circumstances and evidence, including the absence of severe consequences resulting from the act of aggression. Article 3 of the resolution provides illustrative examples to describe acts of aggression, but it is important to note that these examples were considered from the perspective of State responsibility by the drafters of the Resolution. In 2010, during the review conference of the ICC, the Member States of the Court used the same definition and illustrative list to establish the framework for the crime of aggression, which involves individual criminal responsibility. These acts include:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting

¹ UNGA, Res. 3314, Des. 1974. Art. 3(E)

² Article 8 bis of Rome Statute of the International Criminal Court: Crime of aggression.

from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

According to some jurists, the aforementioned examples were intended as a form of law at the time of the adoption of the Resolution. Over time, some of these examples have been cited by the ICJ, and Member States of the ICC expressed their support for these examples during the Kampala Review Conference in 2010. This was done to determine the criminal liability of the crime of aggression as one of the crimes falling under the jurisdiction of the Court. Therefore, it appears that these examples are considered part of customary international law, as they have been referenced in the practices of States as acts of aggression.

In the context of martyrdom of Gen. Soleimani, both the responsibility of the US and the criminal liability of the US officials can be examined. Since

the examples of aggression apply to both civil and criminal forms,¹ similar examples can be invoked to investigate the martyrdom.²

Among the acts mentioned above, d and e can be considered in our analysis. Based on act d, it can be argued that the US Air Force stationed in Iraq committed an act of aggression by targeting several Iranian military commanders. Additionally, as mentioned above (act e), the US action in attacking the convoy carrying Gen. Soleimani was contrary to the provisions of the Agreement between Iraq and the United States regarding the military presence of the US forces in Iraq (the 2008 SOFA). According to Article 4 of the Agreement, the US military forces were required to inform the Iraqi government of their actions before any military operation or action. Therefore, it appears that these two acts of aggression occurred either against Iran in the form of the US military attack on Iranian military forces, or against Iraq by violating the provisions of the Agreement. Consequently, the US bears civil liability, and the US officials who ordered the act are criminally liable.

In order to enforce the civil and criminal responsibilities mentioned above, Iran and Iraq have the option to hold the US accountable for its acts of aggression by issuing a statement. This statement can be submitted in the form of a letter to the UN Security Council or the Secretary-General, as well as through official correspondence with the US government. The initial step to establish State responsibility is to formally notify the responsible State of the violation that has occurred. The subsequent step involves the possibility of resorting to a competent authority, such as a judicial body designated to handle interstate disputes, provided that the Parties involved have previously given their consent to the jurisdiction of the court to resolve the dispute. It appears that Iran can present its case before the ICJ in this matter.

¹ The document by the International Criminal Court regarding the elements of crimes related to the crime of aggression states in paragraph 1 that the crime described in Article 8 of the Statute is considered an act of aggression. The document can be accessed at the following link: [Elements of Crimes](#).

² Furthermore, two scientific meetings were held in the Iran to discuss various issues, including the conditions under which resorting to force is justified and whether the mentioned act could be classified as aggressive. One of these meetings was the specialized meeting titled "The assassination of Lieutenant General Qassem Soleimani from the perspective of international law," which took place on January 5, 2020, in cooperation with the Ziyai Bigdeli International Law Foundation and the House of Humanities Thinkers. Another meeting on the same topic was held at the House of Humanities Thinkers on January 19, 2020. Both meetings can be accessed at the following link: [Meetings](#).

Specifically, Article 13 of the 1973 Convention is relevant in this context. According to this Article, if negotiations and arbitration fail to yield results, the disputing Parties can refer the matter to the ICJ.¹ The United States joined this Convention in 1976 and Iran became a Party 1978.² Gen. Soleimani can be considered an internationally protected person based on Article 1(b) of this Convention.³ Article 2 of the Convention encompasses intentional acts such as murder and any attack on a person or their freedom. Furthermore, the applicable laws in the proceedings of the court in this matter may include the UN Charter, the Aggression Resolution, the Convention on Special Missions⁴, the 1973 Convention⁵, and relevant customary regulations.

Additionally, each State should criminalize the aforementioned acts within its own jurisdiction. Iraq also became a Party to this Convention in 1978, and legally, according to Article 2 (2) of the Convention, it has the authority to prosecute these crimes. Importantly, based on the 2008 SOFA, Iraq also has jurisdiction over serious crimes committed by US forces outside US sites and bases in Iraq. The martyrdom of Gen. Soleimani occurred outside these designated areas. Moreover, Iraq has set a condition for resolving disputes under the 1973 Convention. However, it appears that Iraq can file a

1 Art. 13: Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2 To check the status of States that have ratified this Convention and any statements or declarations they may have made, visit the following

link: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg_no=XVIII-7&chapter=18&clang=_en

3 Any representative or official of a State or any official or other agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household.

4 Convention on Special Missions, 1969, at:

https://legal.un.org/ilc/texts/instruments/english/conventions/9_3_1969.pdf

5 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973, at:

https://legal.un.org/ilc/texts/instruments/english/conventions/9_4_1973.pdf

lawsuit against the United States for violating the provisions of this Convention by acting contrary to the stated condition or by waiving it.¹

Regarding the criminal aspect, it should be noted that, based on the elements of the crimes, the perpetrator is an individual who, holding an official position, effectively exercises control over the military action or political direction of a State that has committed an act of aggression. President Trump and other administrative and military officials involved in this incident fit the description outlined in this paragraph.

Even if we assume that this accident falls within the definition of the crime of aggression, practically speaking, since Iraq, Iran, and the United States are not Members to the Rome Statute, the only possible avenue to investigate or address this action is by referring the matter to the UN Security Council.² An example of the Security Council's involvement in a similar case is seen in the assassination of Rafic Hariri, the former Prime Minister of Lebanon in 2005, which led to the establishment of a Special Court in Lebanon to handle the crime of terrorism related to that particular incident. This Court was formed through cooperation between the States of Lebanon at the time and the Security Council.³ Therefore, there is a possibility for Iran and Iraq to make such a request, although the prevailing political conditions should also be taken into account when assessing the likelihood of success for this mechanism. Another approach for a criminal investigation of this matter could be for Iraq to submit a declaration to the ICC, requesting a case-specific and timeframed jurisdiction to address the martyrdom of Gen. Soleimani.⁴ A similar scenario happened in the Case of the Palestinian submission to the Court to address crimes committed by Israel in 2015.⁵

1 To read more, visit: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-7&chapter=18&clang=_en

2 A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations

3 To read on the background, founding document, governing regulations, and the functioning of this Court, visit: <https://www.stl-tsl.org/en>.

4 Article 12: Preconditions to the exercise of jurisdiction: (3) If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

5 <https://www.icc-cpi.int/palestine>

There is a final point to consider whether this act by the United States can be characterized as a crime against humanity. It should be noted that a crime against humanity, as per the definition provided in the Rome Statute, which represents international customary law, refers to acts committed as part of a widespread or systematic attack directed against any civilian population. Based on this definition, it appears that the US air strike on Gen. Soleimani's convoy lacks the characteristics of being widespread and systematic. In fact, the concept of policy mentioned in paragraph 2, Article 7 of the Rome Statute implies that a State or organization involves in multiple commission of acts resulting in the killing of the civilian population. The examples listed in Article 7 of the Rome Statute pertain to such acts. If we consider the direct attack on any civilian population, assuming that Gen. Soleimani and his companions were civilians at the time of the incident, as a series of committed acts, then it could potentially be seen as an example of a crime against humanity. However, due to the absence of such intent or policy on the part of the United States in the martyrdom of the Iranian military official, it seems unlikely to invoke such a concept. It is possible that the discussion on crimes against humanity by the United States holds greater relevance in relation to recent debates surrounding the adoption of a coherent policy regarding the imposed sanctions.

Conclusion

The tragic martyrdom of General Soleimani, the Iranian high-ranking military commander, and his companions, including Abu Mahdi al-Muhandis, the deputy commander of the Iraqi Popular Mobilization Force (Hashd al-Shaabi), has significant legal dimensions both domestically and internationally. This article specifically addressed several international aspects of the issue.

First, it is evident that the United States violated various obligations outlined in the 2008 Iraq-US Status of Forces Agreement. The United States initiated a lethal military operation in Iraq without prior coordination with the Iraqi government, thus breaching the Agreement.

Besides, from the standpoint of customary international law on acts of aggression, the United States violated the relevant obligations, including the

1970 United Nations General Assembly Resolution on the Definition of Aggression. Additionally, the possibility of raising the issue of war crimes, such as aggression, in the International Criminal Court exists, at least on the part of Iraq, based on the jurisdictional basis of the Court.

Moreover, the US failed to provide substantial evidence to support its claim that General Soleimani's presence in Iraq posed a threat of future attacks on US bases or nationals. This lack of evidence highlights the US wrongful act in resorting to force against General Soleimani's convoy. It is worth noting that General Soleimani played a significant role in combating ISIS, and his absence would likely impact the region's future terrorist developments.

Furthermore, according to the Iraqi Prime Minister, General Soleimani was on an official invitation carrying a special message in response to the Saudi authorities, indicating that Iraq was acting as a mediator between the two States. If this claim holds true, resorting to force against a military commander who is also a State diplomatic official, as per the 1973 Convention, entails the responsibility of the United States and Iraq to act in accordance with the Convention's provisions in prosecuting the wrongdoers. Failure to do so may lead to the possibility of claiming extradition of those involved on the part of Iran.

Finally, the issue of immunity enjoyed by the US officials involved in this Case may also arise in the domestic or international judicial reviews. However, immunity cannot be invoked in proceedings at the International Criminal Court according to Article 27 of the Court's Statute. Similarly, if the issue is raised in terms of a compensation request in the competent courts of Iran, immunity cannot be referred to as an obstacle to the proceedings, as per the 2013 Law on the Jurisdiction of the Iranian Courts to deal with Civil Lawsuits against Foreign States.

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The Legal Nature of the US Attack on General Soleimani and Abu Mahdi Al-Muhandis at Baghdad International Airport

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Abstract

On January 3, 2020, a convoy carrying General Soleimani, an Iranian military commander, and Abu Mahdi al-Muhandis, an Iraqi commander, was targeted by US drones at Baghdad International Airport. The evidence provided by the United States to justify the attack is illegitimate and unfounded, constituting an act of aggression and a blatant violation of Iraqi sovereignty.

Keywords: Use of Force, Legitimate Defense, Proactive Legitimate Defense, Aggression

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Introduction

The use of force in international law is a highly significant and contentious topic, particularly following the end of the Cold War and the subsequent collapse of global bipolarity. The international community has witnessed numerous instances of atrocious military actions by States, most notably the United States, who have employed various pretexts and arguments, including the fight against terrorism, to justify their use of force. This has resulted in a distorted and irregular landscape that undermines established legal principles and concepts, such as the prohibition of unilateral use of force by States. The US aggressive war against Iraq, its occupation, and the deliberate confusion between terrorism, resistance, and armed struggle have prompted a critical reassessment of the use of force in international law. It is crucial to scrutinize the arguments and pretexts employed by major powers to justify their unilateral use of force, which contravenes the provisions of the United Nations Charter.

The US drone attack on January 3, 2020, at Baghdad International Airport has become a highly controversial issue due to the lack of legal justifications for the use of force. In this study, we will examine the legal nature of this attack by focusing on the following aspects:

1. The US presence in Iraq Since 2003.
 - 1.1. The US presence from 2003 *Prior to the Issuance* of the United Nations Security Council Resolution.
 - 1.2. The US presence *after the Issuance* of the UNSC Resolution until the withdrawal from Iraq in 2011.
 - 1.3. The US Presence *after the Occupation* of Iraqi cities by the ISIS.
2. Justification of the use of force by the United States in Iraq based on Tacit Consent.
3. Justification of the use of force by the United States in Iraq based on the Right to legitimate defense.
4. The aggressive nature of the USA attack in violation of international law.

1. The US Presence in Iraq Since 2003

The US invasion of Iraq, also known as the Third Gulf War, occurred from March 19 to May 1, 2003. It resulted in the military occupation of Iraq by the United States, with support from coalition forces from other States such as Britain, and Australia. Consequently, the United States took control of Baghdad and remained there following the UNSC Resolution No. 1483 in August 2003. Before delving into the legitimacy of the US attack on General Soleimani (hereinafter Gen. Soleimani) and his companions, it is important to note that the US presence in Iraq since 2003 can be divided into three stages:

1.1. The US Presence from 2003 *Prior to the Issuance of the UNSC Resolution.*

The initial phase of the US presence in Iraq began in 2003 when US Armed Forces entered the country on April 9, 2003, following the launch of the war on March 19, 2003, without the approval of the United Nations. The evidence presented by the United States was the alleged presence of weapons of mass destruction in Iraq (Al-Shammari, 2019: 222). However, the lack of convincing evidence to support this claim was acknowledged by the US administration itself. Despite this, the international coalition forces waged war and occupied Iraq, establishing camps and taking control of Iraqi military bases before the dissolution of the Iraqi Army by the transitional government led by civilian governor Paul Bremer. The occupation was confirmed by UNSC Resolution No. 1483 on August 22, 2003, which recognized the United States and Britain as occupying states and described their military and civilian presence in Iraq as an occupying authority. The United States relied on this Resolution as a legal basis issued by an international authority, regardless of the underlying reasons for the occupation (Abdul Karim, 2007: 357).

1.2. The US Presence *After the Issuance of the UNSC Resolution until the Withdrawal from Iraq in 2011.*

Following the issuance of the UNSC Resolution that designated British and American forces as occupying forces in Iraq, this situation persisted until the withdrawal from Iraq in 2011. The withdrawal was based on a security agreement concluded on November 17, 2008, between Iraq and the United States (The Iraq-US Status of Forces Agreement or the SOFA, 2008). The then-US President Barack Obama announced that the departure of US forces from Iraq would occur by the end of 2011, and this was indeed realized.

During this period, the United States maintained its relations with Iraq, particularly in terms of organizing security cooperation between the two States and providing the Iraqi Army with military expertise, equipment, and weapons. The Security Cooperation Office, under the direction of the US ambassador to Iraq, worked to achieve coordination and security cooperation between the two States (Al-Shammari, 2019: 222). This was based on Iraqi Law No. 52, issued in 2008, known as the "Framework Agreement for a Relationship of Friendship and Cooperation between the United States of America and the Republic of Iraq."¹ The third section of this law addresses defense and security cooperation, emphasizing the goal of enhancing security and stability in Iraq, maintaining international peace and stability, and reinforcing Iraq's ability to deter threats to its sovereignty, security, and territorial integrity. The cooperation between the two parties takes place in the fields of security and defense, in accordance with the agreement between the two States regarding the withdrawal of US forces from Iraq and the organization of their activities during their temporary presence there.

1.3. The US Presence *after the Occupation* of Iraqi Cities by the ISIS.

Following the occupation of Iraqi cities by the terrorist organization known as ISIS, President Obama announced on September 10, 2014, the formation of a broad global coalition led by the United States. The objective of this coalition was to defeat ISIS, as the organization posed a threat to international peace and security, and was responsible for committing severe human rights violations.

As a result, Baghdad requested support from the United States to assist Iraqi forces on the ground, specifically through airstrikes against ISIS terrorist groups. When the extremist organization seized control of the city of Mosul in June 2014, Iraqi authorities officially requested assistance from the United States, including advice, support, and military training. At that time, President Obama authorized the return of approximately 275 US soldiers to Iraq (LaBuda, 2020: 2). However, currently, there is no precise number determining the presence of US forces on Iraqi soil

¹ Iraq- Federal Law No. 52. (2008, April 12). Iraqi Gazette, Issue No. 4102, December 24, 2008.

2. Justification of the Use of Force by the United States in Iraq Based on Tacit Consent.

Regarding the US actions in targeting Iraqi territory on the morning of January 3, 2020, some speculate that the United States might have two justifications for the use of force against Iraq. The first is the presumed consent of the Iraqi government, and the second is self-defense.

In the case of presumed consent, the US justification could be argued as follows: The current presence of US forces in Iraq is a part of the anti-ISIS coalition, which was established with an earlier approval of Iraq through the 2008 SOFA. This Agreement, ratified by Law No. 51 of 2008, pertains to the withdrawal of US forces from Iraq and the regulation of their activities during their temporary presence there. Therefore, the United States may argue that it is relying on this Agreement as a basis to justify its actions. However, we can refute this justification based on the text of Article 27 of the SOFA, which includes provisions related to deterring security risks. These provisions state the following:

"In order to strengthen security and stability in Iraq and to contribute to the maintenance of international peace and stability, the Parties shall work actively to strengthen the political and military capabilities of the Republic of Iraq to deter threats against its sovereignty, political independence, territorial integrity, and its constitutional federal democratic system. To that end, the Parties agree as follows:¹

I. In the event of any external or internal threat or aggression against Iraq that would violate its sovereignty, political independence, or territorial integrity, waters, airspace, its democratic system or its elected institutions, and upon request by the Government of Iraq, the Parties shall immediately initiate strategic deliberations and, as may be mutually agreed, the United States shall take appropriate measures, including diplomatic, economic, or military measures, or any other measure, to deter such a threat.²

¹ Iraqi-U.S. Status of Forces Agreement, Art. XXVII: Deterrence of Security Threats, November 17, 2008, Enforceable on January 1, 2009.

² *Supra* note 4, Art XXVII (I)

The truth is that the presence of Gen. Soleimani, the commander of the Islamic Revolutionary Guard Corps (IRGC-Quds Force) did not pose a threat to Iraqi territory because:

- a. His visit was at the official request of the Iraqi government, and he was accompanied by Abu Mahdi Al-Muhandis, the deputy commander of the Iraqi Popular Mobilization Forces (Hashd al-Shaabi) and 5 members of the Mobilization Forces, indicating that he was accompanied by members of the Iraqi Armed Force. An attack by US forces on these members of the Iraqi Armed Forces is equivalent to an attack on Iraq's sovereignty itself.
- b. Former Iraqi Prime Minister Adel Abdul Mahdi stated on January 5 that Gen. Soleimani came to Iraq seeking to mitigate tensions with the United States and asked the Iraqi government to mediate.
- c. The US strike violates the bilateral agreement on the mission of US forces in Iraq to help build the Iraqi forces fighting ISIS. (Agnes Callamard, 2020: 3)
- d. If we assume that Gen. Soleimani was received by senior officials in the Iraqi State, such as the Prime Minister, Commander of the Armed Forces, members of the Iraqi Parliament, or the President of the Republic, and the strike still took place, what would be the position of the US government in this case?

II. The Parties agree to continue close cooperation in strengthening and maintaining military and security institutions and democratic political institutions in Iraq, including, as may be mutually agreed, cooperation in training, equipping, and arming the Iraqi Security Forces, in order to combat domestic and international terrorism and outlaw groups, upon request by the Government of Iraq.¹

Therefore, the Iraqi-US Agreement stipulates two essential points:

- a. The US presence in Iraq after the withdrawal is limited to equipping, training, and arming the Iraqi security forces solely for the purpose of combating terrorism.

¹ Supra note 4, XXVII (II)

- b. The Iraqi government's request, based on the agreement between the two States, regulates issues related to training and equipment. The reality is that the United States' attack is an attack on the Iraqi security forces instead of assisting them, which entails international responsibility for the United States.

III. Iraqi land, sea, and air shall not be used as a launching or transit point for attacks against other countries.¹

Therefore, the United States launching missiles via drones into Iraqi territory is nothing but an act of aggression against its territorial integrity. This will be further detailed when discussing the aggressive nature of the US attack based on international law principles

3. Justification of the Use of Force by the United States in Iraq Based on the Right to Legitimate Defense.

One of the fundamental rights of States, established to ensure their survival, is the right to legitimately defend themselves when under attack. This right allows states to use any necessary means, including military force, to repel an attack, with the exception stated in Paragraph 4 of Article 2 of the UN Charter. This exception is enshrined in Article 51 of the Charter.

Article 51 states: "[n]othing in this Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations until the Security Council takes measures necessary to maintain international peace and security." Members exercising the right of self-defense must immediately report their actions to the UNSC, and these measures do not affect the Council's authority and responsibility to take actions to maintain or restore international peace and security.

Considering Article 51, it is evident that the Charter authorizes any State to take appropriate measures to repel an attack when it is under threat. Although the Charter does not specify the means of response, it implies that the use of military force is permissible. However, the exercise of this right is subject to certain conditions and controls, and it cannot be applied unrestrained. The key conditions include:

¹ Supra note 4, XXVII (III)

a. An armed attack must occur against a Member of the United Nations for the right to self-defense to be invoked. The use of force in self-defense is only permissible when faced with an actual armed attack, whether it is an air, land or naval attack.

b. The State under attack must exercise its right to self-defense until the UNSC takes necessary measures to maintain international peace and security.

c. The activities of legitimate defense are subject to the oversight of the UNSC. (Lounissi & Khalifi, 2019: 1650)

Additionally, the International Court of Justice added two other conditions, namely necessity and proportionality, in its ruling on the Nicaragua Case in 1986. These conditions aim to prevent the right to self-defense from being abused and turning into an act of aggression.¹

The right to self-defense is limited according to Article 51, which only applies to cases of armed aggression and excludes probable imminent aggression. The legal scholar, Brownlie, supports this view, stating that the right to self-defense can only be exercised in response to an armed attack (Al-Omari, 2011: 42). This interpretation was also affirmed by the International Court of Justice in the Nicaragua Case of 1986, emphasizing that legitimate defense can only be used in response to an actual armed attack. The Court highlighted the narrow scope of Article 51, linking the right of self-defense to the condition of armed aggression (Tobuash, 2013: 30).

Regarding its actions against Gen. Soleimani and his companions, the United States invoked the right to self-defense. The United States claimed that Iraq was either unable or unwilling to defend itself against non-State actors operating in its territory or lacked the military capabilities to address the emerging threat (La Buda, 2002: 4). However, this does not justify the US action. If the United States had evidence to support their claim that the Iranian delegation posed a threat to US forces in Iraq, they should have alerted the Iraqi government to take specific measures. In such a case, the appropriate response would be to share intelligence with Iraqi authorities, who would then be responsible for ensuring the safety of the Americans present in Iraq and

¹ For more information, see Summary of judgments, advisory opinions, and orders issued by the International Court of Justice 1948-1991. Retrieved from http://www.icj-cij.org/homepage/ar/files/sum_1948-1991.pdf, Accessed on 1/7/2021.

preventing any criminal acts. Iraq is obligated under human rights law to address any criminal conduct that may arise from the Iranian IRGC commander.

In a similar vein, the European Court of Human Rights has set the standard that authorities may use lethal force only when strictly necessary to defend against unlawful violence (Cunnell, 2020: 5). If the Iraqis failed to take appropriate measures, the United States could protect the security of its personnel by evacuating them from Iraq. Furthermore, the United States has used the argument that the strike was carried out in response to previous Iranian attacks.

On January 8, five days after the strike, the US Permanent Representative to the United Nations sent a letter to the UNSC stating that “the United States has taken certain measures in exercising its natural right to self-defense. These measures came in response to a series of escalating armed attacks in recent months by the Islamic Republic of Iran and Iranian-backed militias on US forces and interests in the Middle East region, in order to *deter* the Islamic Republic of Iran from launching or supporting further attacks against the interests of Iraq and the United States, and weaken the ability of the Islamic Republic of Iran and militias supported by the IRGC-Quds Force to launch attacks” (Cambridge Publishing House, 2020).

The US Department of Defense also claimed that the strike against Gen. Soleimani was carried out because he was developing plans to attack US diplomats and contractors in Iraq and the region. The Pentagon cited the deaths of hundreds of US and coalition service members, attacks on coalition bases, and attacks on the US Embassy in Baghdad as evidence for their decision, stating that the strike was intended to prevent future Iranian attack plans (Agnes Callamard, 2020: 1).

This indicates that the United States not only used the pretext of legitimate defense to justify the criminal act of murder and violation of sovereignty but also sought a broader justification for its actions, which is the right to preemptive legitimate defense. Preemptive legitimate defense refers to a measure aimed at preventing a shift in the balance of power and stopping the enemy from acquiring means that would enhance their strategic position. It may be launched even without evidence of a specific hostile plan, as its goal is often long-term, focused on maintaining military superiority and preventing

threats to the balance of power (Morsli, 2018: 264). The term is also defined as the use of military force by one State against another State to prevent the latter from using its military capabilities that pose a threat, essentially carrying out a preemptive and preventive attack to avert potential aggression. The US Secretary of State described preemptive legitimate defense or preventive measure as a situation where urgent necessity leaves no room for alternative means or negotiation (Al-Omari, 2011: 79).

It is important to note that if this attack was indeed carried out in preemptive legitimate self-defense, the United States should have promptly informed the UNSC, as mandated by Article 51 of the UN Charter. The failure to do so raises further questions about the legitimacy of the strike (Ford, 2020: 5).

Therefore, it is evident that preemptive or preventive attack is a policy introduced by the United States, not recognized or accounted for in contemporary international law. The UN Charter does not explicitly address the concept of preventive attack, and its provisions do not provide any justification for it. As a result, preventive attack cannot be considered legitimate defense but rather an aggressive act that may trigger legitimate defense by the opposing party. The use of force in legitimate defense is an exception to the general rule prohibiting the use of force in international relations, and this exception should not be expanded (Al-Omari, 2011: 80).

Moreover, it is difficult to justify the killing of five individuals who were traveling with the targeted individual at the time of the drone strike. These deaths can only be described as arbitrary deprivation of life under human rights law and should entail international responsibility and individual criminal liability. While international humanitarian law may allow for some degree of "collateral damage," this does not hold to the same extent under international human rights law, especially in this specific case.

The killing of these additional individuals clearly violates the United States' obligations under Article 6 of the International Covenant on Civil and Political Rights, which stipulates that States must take all reasonable measures to resolve international disputes through peaceful means and fulfill their positive obligation to protect the right to life. Given the presence of these five individuals, including Abu Mahdi Al-Muhandis, decisions should have been made to avoid proceeding with the targeted killing (Callamard, 2020: 4).

4. The Aggressive Nature of the US Attack in Violation of International Law.

The US attack in the Gen. Soleimani case can be interpreted as an act of aggression according to international law. This applies both to the decision made by President Trump and the nature of the attack itself.

In terms of President Trump's order, it falls within the Definition of the Crime of Aggression as stated in Article 8 bis of the 2010 Amended Statute of the International Criminal Court (ICC). According to this statute, the crime of aggression refers to the act of a person who has the authority to control a State's political and military actions, or to direct such actions by planning, preparing, initiating, or executing an aggressive act that clearly violates the UN Charter. This is also reflected in UNGA Resolution No. 3314 of December 14, 1974, which distinguishes between aggression, which incurs international responsibility, and aggressive attack, which constitutes an infringement of international peace. The Resolution defines the crime of aggression as the action of a person in a position that enables them to control a State's political and military actions, or to direct such actions in planning, preparing, initiating, or carrying out an aggressive act that constitutes a clear violation of the UN Charter (Ebadi, 2018: 17). Therefore, based on these definitions, the airstrike on Baghdad Airport in Iraqi territory can be considered a crime of aggression, particularly as it was carried out without the approval of the US Congress.

President Trump justified the attack by citing Article II, Section 2, Paragraph 1 of the US Constitution, which designates the President as the Commander-in-Chief of the Armed Forces. He argued that this authority, along with the 2002 US Congressional Authorization for the Use of Military Force against Iraq (2002 AUMF), allowed him to direct the use of military forces for the defense of the United States and its national interests against the continuing threat posed by Iraq (Cambridge Publishing, 2020: 313). However, it is worth noting that the primary focus of the 2002 AUMF was the threat posed by Saddam Hussein's regime, and yet the United States has used it as a basis for any use of force against Iraq.

Another piece of evidence pointing to Iraq's condemnation of the US attack is the vote by the Iraqi parliament on January 5, 2020, to pass a law calling for the expulsion of US forces from Iraq. This action further demonstrates Iraq's denunciation of the attack. If we assume that Iraq, as claimed by President

Trump, expressed satisfaction with the attack, the Iraqi parliament would not have voted to expel US forces just two days after the attack occurred.

Regarding the nature of the attack itself, it can also be classified as a crime of aggression.¹ According to paragraph 2 of Article 8 of the aforementioned ICC Statute, an act of aggression refers to the use of armed force by one State against the sovereignty, territorial integrity, or political independence of another State, or in any manner inconsistent with the UN Charter. The definition of aggression applies to various acts, whether or not a declaration of war is made. This includes, among other things, the use of armed forces by one State within the territory of another State with the consent of the host State, but in a manner inconsistent with the conditions stipulated in the agreement or by extending their presence beyond the agreed-upon timeframe.²

In fact, the presence of US forces in Iraq, though initially invited, was primarily intended to be focused on combating terrorism, particularly the threat posed by ISIS. It was not intended for the purpose of targeting and killing commanders who played a significant role in fighting against ISIS and freeing the region from their control. Hence, the US action in the Gen. Soleimani case contradicts the original goal of the US forces' presence on Iraqi territory.

The provisions established at the Kampala conference grant the United States and its allies the opportunity to influence the policies of the ICC by giving the UNSC the authority to determine whether an act of aggression has occurred as a procedural prerequisite for the Court to proceed with addressing the crime. This effectively makes the Court subservient to the Security Council. Additionally, the Security Council has the power to delay the proceedings of the ICC concerning the crime, even if the Court has the jurisdiction to initiate its procedures, without the requirement of the Security Council determining the occurrence of aggression. This situation arises when the Security Council fails to establish the occurrence of aggression within six

1 International Criminal Court. (2010). Rome Statute Review Conference, Conference Room Paper on the Crime of Aggression, Kampala, p. 3.

2 Subparagraph E of Paragraph 2 of Article 8 bis of the Statute of the International Criminal Court, in accordance with United Nations General Assembly Resolution 3314 (XXIX) of December 14, 1974.

months after the Prosecutor has informed the UN Secretary-General about the situation before the ICC.

Conclusion

Upon conducting a comprehensive analysis of the legal nature of the US attack on General Soleimani, Abu Mahdi Al-Muhandis, and their companions at Baghdad International Airport, we have arrived at several conclusions and recommendations, which are outlined as follows:

First: Conclusions

1. The missile strike launched by the United States of America using drones on Iraqi territory constitutes an act of aggression.
2. The use of force in cases of legitimate defense is an exception to the general prohibition on the use of force in international relations. However, this exception should not be expanded beyond its intended scope.
3. Preemptive or preventive attack is a policy that has been introduced by the United States. However, contemporary international law does not explicitly recognize the concept of preventive attack, as it is not included in the United Nations Charter.

Second: Recommendations

1. We recommend that the Iraqi government take a firm legal stance against the attack conducted by the United States on the sovereignty of Iraq, and pursue the US international responsibility in this matter.
2. It is essential for the United Nations to actively fulfill its role in maintaining international peace and security in the region, ensuring that it does not compromise its objectives by yielding to the interests of major powers.

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The Assassination of General Soleimani: A Perspective on International Law and the Use of Force

Mostafa Fazaeli¹

Abstract:

On January 3, 2020, a shocking and unexpected event unfolded, causing deep shock, sadness, and concern among the Iranian nation, as well as many people in the region. The assassination of General Soleimani, a highly influential commander in the fight against Takfiri terrorism (ISIS), by US military forces in Iraq, under the direct command of the then-President of the United States, sparked widespread discussions among legal experts. This study aims to analyze the international legal implications of the assassination, particularly in relation to the use of force and in light of the fact that it happened outside of a battlefield in the context of an official mission of a diplomatic nature aimed at engaging in dialogue with the authorities of the receiving State to mitigate regional tensions. Questions arise regarding the characterization of the event in accordance with international law, as well as the validity of the alleged justifications provided by the United States. Additionally, the study explores the potential legal consequences of the US attack. By examining the facts of the case and evaluating the US justifications, particularly those centered around self-defense, in light of established rules and regulations on the use of force, it becomes evident that the US act lacks legal justification. It stands as a clear example of an illegal use of force, in violation of the United Nations Charter. Moreover, this act has also breached the US-Iraq bilateral agreements, including the Status of Forces Agreement (SOFA). In accordance with the Resolution on the Definition of Aggression and the Rome Statute of the International Criminal Court, the assassination can be considered an act of aggression, potentially leading to international responsibility for the US government and criminal responsibility for those involved in the commission of this illegitimate act.

Keywords: Terrorism, General Soleimani, International Law, Use of Force, Self-Defense, Trump.

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Introduction

The United Nations was established to maintain international peace and security to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples; to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without any distinction. To achieve these goals, the United Nations has established a collection of norms and institutions. Two crucial principles for achieving these goals are the prohibition of the use of force and the necessity of peaceful means to resolve international disputes. However, since these principles are not absolute and face exceptions, a significant challenge lies in interpreting and determining the scope of these exceptions.

One particularly contentious issue in this field is the interpretation of the right to self-defense as a fundamental and exceptionally important right to counter the use or threat of force. In recent decades, certain major powers, notably the United States, have sought to expand the concept of self-defense beyond the provisions of Article 51 of the UN Charter. This expansion includes the notion of pre-emptive self-defense, which involves using force against an imminent definite attack, and even preventive defense, which involves using force against a possible future attack. The justifications provided by the US authorities for the assassination of General Qassem Soleimani (hereinafter Gen. Soleimani) exemplify this broad approach to the exception of legitimate self-defense, effectively diluting the principle of the prohibition of the use of force. With the dangerous act of assassinating Iran's high-ranking military commander, who was a key figure in the fight against terrorism in the West Asian region, the Trump administration escalated tensions and raised concerns about the possibility of a full-scale war.¹

¹ The tensions between the United States and Iran have deep historical roots spanning approximately seventy years of relations between the two countries. Throughout this period, the US has consistently sought to exert influence over Iran's political system and enforce policies aligned with its own interests. This has involved interference in Iran's internal affairs. A significant turning point in US interventions in Iran occurred in 1953 when the US orchestrated the overthrow of the democratically elected government of Mossadegh. The US role in this coup has been widely acknowledged, including by official authorities of the United States themselves. Declassified documents released by the National Security Archive in 2013 provide evidence of the US and Britain's involvement in overthrowing Mossadegh administration

The unprecedented US drone attack on January 3, 2020, ordered directly by the then-President of the United States, resulted in the assassination of Gen. Soleimani and his companions in Iraq. This act surprised and alarmed many, prompting questions from various perspectives, including the legal standpoint. Scholars and researchers in international law are particularly interested in understanding the nature of this action by the US government and its legal consequences. The US authorities attempted to justify their actions using legal concepts such as self-defense, preemptive defense, and preventive defense. However, these justifications have been met with serious doubts and criticisms.

The international legal system allows for an examination of this incident and related events using various legal concepts and categories, as well as an assessment of the potential consequences. While opinions and viewpoints have been expressed by numerous domestic and foreign experts and jurists, there is still a need for more comprehensive and in-depth investigations into the various aspects of the issue. This article aims to address this need, albeit in a limited scope, by utilizing library sources and available data. It begins by providing an overview of the events and issues surrounding the case.

(for further information, refer to Mrk J. Gasioroski and Malcom Byrne, "Mohammad Mosaddeq and the 1953 Coup in Iran; CIA Confirms Role in 1953 Iran Coup" Syracuse University Press, May 1, 2004). Following the victory of the Iranian Islamic Revolution, a new phase of tension-filled relations between the two countries began. Naturally, one of the goals of the Iranian people in this revolution was to achieve political independence and reduce the influence of foreign powers, particularly the United States. The Iranian nation aimed to end the master-subject relationship that existed between the two countries. However, the United States was unwilling to accept this change (for more insight into the perception of the master-subject relationship between the United States and Iran during the era of Mohammad Reza Shah, refer to Md. Abul Kalam Azad, "Iran-US Relations Since 1945," Doctoral Thesis, pp. 43-57, [www.Researchgate.net/publication/331148828_Iran_US\(United States of America\)](http://www.Researchgate.net/publication/331148828_Iran_US(United_States_of_America)); Kermit Roosevelt, "Counter coup: the Struggle for the Control of Iran," McGraw-Hill, New York, 1979). During the four decades of the Islamic Republic of Iran's existence, successive US administrations, regardless of political affiliation, have pursued a policy of containment, regime change, or policy change in Iran. To achieve this, they have consistently relied on economic sanctions and political pressure, continuously escalating these measures and endeavoring to rally other countries and international organizations to join their efforts (see Mussavian, "Opinion on Road Map, Iran and US avoid all out of war," Feb 27, 2020, at www.middleasteye.net/opinion/road-map-iran-and-us-avoid-all-out-war, accessed on Feb 30, 2020). The signing of the Joint Comprehensive Plan of Action (JCPOA), commonly known as the nuclear agreement, marked a turning point in Iran's relations with the United States and the five permanent members of the United Nations Security Council, along with Germany (P5+1). Security Council Resolution 2231 was adopted, signaling a positive trajectory towards tension reduction and improved relations. However, with the inauguration of the Trump administration in the United States, its decision to withdraw from the JCPOA and pursue a policy of maximum pressure, including economic, political, and security warfare against Iran, dashed hopes for de-escalation. The extreme unilateralism of the US government has increased security risks and threats to peace, both in the region and globally.

Subsequently, it evaluates the reasons and justifications presented by the US authorities, focusing primarily on the use of force in the context of self-defense. Based on the legal standards established by the opinions of prominent international jurists and international jurisprudence on the use of force, the nature and legal characterization of these events are examined, and the research findings are presented.

1. Events Related to the Assassination of Gen. Soleimani

1.1. Occupation of Iraq

To understand the background of the tragic assassination of Gen. Soleimani, it is important to consider the history of the US military presence in the region, particularly in Iraq. After the Iraqi Ba'athist army, under Saddam Hussein's regime, occupied Kuwait on August 2, 1990, the UN Security Council condemned this action as a violation of international peace and security (Resolution 660, August 2, 1990). Consequently, the Council confirmed Iraq's aggression towards Kuwait and imposed wide-ranging financial, economic, and arms sanctions on Iraq (Resolution 661, August 6, 1990). Additional naval and air sanctions were added on September 25, 1990 (Resolution 670).

On November 29, the Security Council set a deadline of January 15, 1991, for the Iraqi government to comply with its resolutions. It also authorized countries cooperating with Kuwait to use all means necessary to implement the Council's decisions (Resolution 678, November 29, 1990). As a result, a military invasion led by the United States began on January 16, 1991, lasting for six weeks. The Saddam regime eventually complied with the resolutions, and on February 28, the Security Council announced the end of military operations (Resolution 686). Subsequently, Resolution 687 was issued on April 3, 1991, which outlined Iraq's obligations to control its behavior on the Kuwaiti borders, compensate for damages, and destroy weapons of mass destruction (Johustone, 1994: 9).

The commitments outlined in Resolution 687 became the pretext for the United States and its allies to invade Iraq after September 11, 2001 (Hill, 2003:

10).¹ On September 13, 2001, then US President Bush announced in the UN General Assembly that Saddam Hussein had violated the requirements of Resolution 687. The Security Council, through Resolution 1441 (November 2002), called on Iraq to comply with its disarmament obligations, as well as its obligations regarding human rights and the fight against terrorism. Saddam Hussein accepted this resolution, and UN inspectors began their mission in Iraq. The inspectors stated that Iraq had increased its cooperation, and they needed more time to verify the behavior of the Iraqi government and had not yet prepared a report on the matter. Despite this, due to evidence indicating an imminent attack on Iraq, on March 19, 2003, the UN inspectors left Iraq (Carty, 2005: 143-151). On the same day, the military attack on Iraq began, and after 20 days of aerial bombardment, the country was occupied. On May 1, 2003, the dictatorial government of Saddam Hussein, which lacked popular support, was overthrown (Salahi, 2013: 158).

After the fall of Saddam Hussein's Baathist regime, Jay Garner, a retired lieutenant general of the US Army, was appointed as the director of the Office of Reconstruction and Humanitarian Aid in Iraq. This office was tasked with governing the country until the formation of the Iraqi People's Government. However, the office was dissolved, and in 2003, an interim coalition government was formed, with Garner initially serving as its chief executive. However, he was replaced by Paul Bremer after three weeks. The government operated from a heavily fortified area in Baghdad known as the Green Zone, which was surrounded by concrete walls.

Under Bremer's leadership, a government council was established to represent Iraq to the United Nations and draft an emergency constitution or transitional government law. In June 2004, the United States approved the interim government headed by Ayad Allawi. Subsequently, on January 30, 2005, the Transitional National Council elections took place, with approximately 8 million people participating. In April 2005, Jalal Talabani

1 In the initial phase of the invasion and occupation, a total of 148,000 American troops, 45,000 British troops, 2,000 Australian troops, and 194 Polish troops were involved. However, as the operation progressed, several other countries also contributed. This information can be found in an article from CNN dated February 18, 2003, and retrieved on October 29, 2011. The article can be accessed at <http://fas.org/sgp/natsec/Rs21405.pdf>.

was elected as the president by the Iraqi National Council, and Ibrahim al-Jafari was introduced as the prime minister.

Surprisingly, in January 2007, following a new strategy implemented by the Bush administration, a large number of additional US troops were deployed to Iraq. In November 2008, the Iraqi parliament accepted a security agreement between Iraq and the United States, which stipulated that US troops would leave Iraq by the end of 2011. This agreement marked the beginning of the process to end the illegal occupation of Iraq by US military forces. The initial justification for the occupation was the belief that Iraq possessed weapons of mass destruction, which were never found, as acknowledged by Richard Butler and widely known.

With the conclusion of the bilateral security agreement, known as the Status of Forces Agreement (SOFA)¹, between Iraq and the United States regarding the withdrawal of US forces from Iraq and the regulation of their activities during their temporary presence, the more than 5-year-long occupation of Iraq is coming to an end.

1.2. Important Provisions of the SOFA

The SOFA includes several significant provisions. First, it stipulates that US military forces should withdraw from Iraqi cities by June 30, 2009, and from the country entirely by December 31, 2011.² However, the agreement allows for the continuation of the US presence in Iraq with the consent of the Iraqi government.

¹ The term SOFA refers to the Status of Forces Agreement. It is an agreement that establishes the framework for the operation of armed forces in a foreign country. In January 2009, Iraq assumed control of Baghdad's Green Zone, and Nouri Maliki, who was the prime minister at the time, declared it as a symbol of Iraq's sovereignty. On November 27, 2008, after months of negotiations, the United States Ambassador, Ryan Crocker, and Iraqi Foreign Minister Hoshair Zibari signed two documents. The first document is the Strategic Framework Agreement for Friendly Relations and Cooperation between the United States and Iraq. The second document is the agreement between the United States and the Republic of Iraq regarding the withdrawal of US forces from Iraq and the organization of their activities during their temporary presence in Iraq. The second agreement is considered a part of the first agreement. Please refer to Section III of the Strategic Framework Agreement for a Relationship of Friendship and Cooperation between the United States of America and the Republic of Iraq, dated November 17, 2008, for more details.

² Unlike most similar agreements that the United States has concluded with other countries regarding the status of its forces, the agreement with Iraq has a specific expiration date of December 31, 2011. This information can be found in a report by R. Chuck Mason, a Legislative Attorney, titled "U.S.-Iraq Withdrawal/Status of Forces Agreement: Issues for Congressional Oversight," dated July 13, 2009. The report can be accessed at www.crs.gov/R40011/CRS-Report-for-congress.

Under Article 4(1) of the Agreement, Iraq requests US assistance in maintaining security and stability by supporting Iraqi forces. This includes cooperation in conducting operations against al-Qaeda, other terrorist groups, illegal organizations, and remnants of the previous regime. It is important to note that any military operation must have the approval of the Iraqi government and be fully coordinated with Iraqi forces, as specified in Paragraph.²

The Agreement also establishes a joint military operations coordination committee responsible for overseeing the coordination of military operations (Paragraph 2, Article 4). Furthermore, it emphasizes that any military operation should not violate Iraq's sovereignty and national interests, as determined by the Iraqi government. US forces are expected to uphold Iraq's laws, customs, and traditions, as stated in Paragraph 3, Article 4.

Article 27(1) of the Agreement highlights the need for strategic cooperation between the US and Iraq in addressing internal or external threats or aggression against Iraq. The United States is obligated to take appropriate measures, whether diplomatic, economic, or military, to repel such threats.¹ However, the Agreement explicitly prohibits the use of Iraq's territory to launch attacks on any other country. Additionally, the right of self-defense is acknowledged for both parties, as reserved in Article 4(5).

Lastly, according to Paragraph 4, Article 24, the United States recognizes the sovereignty of Iraq to request the withdrawal of US forces from the country at any time. The Agreement respects the US right to withdraw its forces from Iraq as it deems necessary. It is worth noting that, typically, status of forces agreements are considered treaty-contracts and can be terminated by either Party.²

1 Some reports submitted to the US Congress suggest that this agreement goes beyond the scope of a typical Status of Forces Agreement (SOFA) and therefore requires the approval of Congress. For further investigation on this matter, please refer to the publication "United States and Iraq" by Michael John Garcia, R. Chuck Mason, and Jennifer K. Elsea.

2 Additional information on this topic can be found in R. Chuck Mason's report titled "U.S.-Iraq Withdrawal/Status of Forces Agreement: Issues for Congressional Oversight," specifically on pages 9-11.

1.3. Events Leading to the Assassination of Gen. Soleimani

In late 2019, Iraq experienced widespread protests driven by demands for economic improvement, better livelihoods, employment opportunities, and an end to corruption. Some of these protests, influenced by foreign intervention and provocations, took on an anti-Iranian sentiment. This led to attacks on Iranian consulates in Karbala and Najaf on November 4 and 27, 2019.

President Trump, who aimed to fuel the *Iranophobia* project, addressed the Iraqi people on January 10, 2018, claiming that millions of Iraqis were seeking freedom from Iran's influence and control, saying, "Now it's your turn!"¹ Concurrently, anti-US protests were taking place at the US embassy in Baghdad. These protests were in response to US airstrikes targeting the Iraqi Hashd al-Shaabi forces, with demonstrators demanding the cancellation of the SOFA and the withdrawal of US forces from Iraq.²

On December 27, 2019, an unidentified rocket attack struck a US base near the Iraqi city of Kirkuk, known as K-1, resulting in the death of a US contractor. The United States accused the Hezbollah battalions affiliated with Hashd al-Shaabi of carrying out the attack, although the group never claimed responsibility for it.

On December 29, 2019, US military planes carried out multiple attacks on Hezbollah and Hashd al-Shaabi battalions along the Iraq-Syria border, resulting in the death of 28 individuals and injuring 51 others.³ Following the funerals of the martyrs, hundreds of Hashd al-Shaabi supporters surrounded the US embassy in Baghdad to protest the US attacks and demand the withdrawal of US forces from Iraq. The protest concluded peacefully after a few days without any harm to US diplomats.⁴ President Trump attributed the incident to Iran, although Iran denied any involvement. Trump stated, "Iran is responsible for any accident or damage in any of our places. They will pay a heavy price. This is not a warning, but a threat!"⁵

Finally, on January 3, 2020, missiles fired from US drones targeted two vehicles carrying Gen. Soleimani and Abu Mahdi Al-Muhandis, deputy

1 Twitter.com>(@realDonaldTrump), 31 December, 2019).

2 <https://www.mehrnews.com/news/4812799/F/> (accessed on 15/2.2020).

3 www.aa.com>tr/fa/1687151/29.12.2019 (accessed on 28/2/2020).

4 www.iswnews.com/29307/30.12.2019 (accessed on 28/2/2020).

5 Twitter .com>(@realDonaldTrump, 01/01/2020.

commanders of the Iraqi Popular Mobilization Forces (Hashd al-Shaabi), and their companions as they departed Baghdad International Airport.¹ This attack resulted in the deaths of all passengers.

Providing the background and recounting the events leading to the martyrdom of Gen. Soleimani and his companions is necessary because US authorities attempted to justify their extreme and atrocious actions based on their interpretations of these events. In the following section, the legal nature of the incident will be examined from the perspective of international law on the use of force. This analysis will include an evaluation of the positions and justifications presented by the US government.

2. The Legal Nature of the Assassination of Gen. Soleimani

Given that the US military's action to launch an attack on Iraqi territory and assassinate Gen. Soleimani and his companions involves multiple areas of international law and regulations, it is important to discuss its legal nature within the relevant legal frameworks. This article will specifically focus on examining the incident from the standpoint of the laws governing the use of force.

To begin, a brief examination of the fundamental principles and rules governing the use of force in international law is necessary. This will help determine the circumstances in which the use of force and military action in the international arena are considered permissible or legitimate. The alleged justifications presented by the Trump administration for the military attack carried out by the United States against Iran should be assessed and weighted against these standards.

2.1. The Principle of Non-Use of Force

Article 2(4) of the UN Charter, which outlines the principles governing the United Nations and its Member States, stipulates: "All members shall 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." The Charter allows for only two exceptions to this principle. In order for a state to legally and legitimately

¹ <https://aftabnews.ir/fa/news/630594> (accessed on 15/01/2020)

use force against another state, it must satisfy one of these two exceptions as prescribed in the United Nations Charter.

The first exception is detailed in Article 42 of the Charter, which grants the Security Council the authority to decide, in the event that measures outlined in Article 41 are deemed insufficient, to use military forces to maintain or restore international peace and security, as necessary to fulfill its mandate. The second exception, outlined in Article 51, allows for the use of force in individual or collective self-defense as an inherent right in response to an armed attack against a UN Member State.

It is evident that regarding the attack on January 3rd and the assassination of Gen. Soleimani, resorting to the collective security system outlined in the seventh chapter of the UN Charter was not possible. The Security Council has never adopted a decision that could serve as documentation for this military attack. Therefore, the only avenue for the United States to justify its actions was to claim self-defense. US officials attempted to justify the assassination of Gen. Soleimani as an act of self-defense through unconventional interpretations. However, these statements and claims are highly contentious and lack justification under international law. Most international jurists who have commented on this issue have categorically rejected them or expressed serious doubts. In the following section, some of the statements and claims made by US officials will be presented and evaluated against international legal rules and standards.

2.2. Claims and Justifications of US Authorities

In the aftermath of the military attack on January 3, 2020, and the martyrdom of Gen. Soleimani and his companions, the US authorities put forth claims and statements to justify this unlawful military operation. The White House, in a released statement, explicitly took responsibility for the attack and deemed it "decisive self-defense aimed at deterring future Iranian attacks." The Department of Defense of the United States issued a statement asserting that this was "a decisive action ordered by Trump to prevent future Iranian attacks." They claimed that Gen. Soleimani was responsible for the deaths of hundreds of US and coalition forces, as well as the injuries of thousands, including the rocket attack on December 27, 2019, near the US

base in the Iraqi city of Kirkuk (K-1), and the siege of the US embassy in Baghdad.¹

On January 1, 2020, Trump held Iran accountable for the attack on the US embassy in Baghdad without providing any justifications and stated, "Iran will be held responsible for any loss of life or damage to our facilities. They will pay a very high price. This is not a warning, it is a threat. Happy New Year!" Following the military attack and the killing of Gen. Soleimani, Trump made several statements about the attack through repeated tweets. He once declared that he ordered the attack to "prevent a war" and also made references to self-defense. According to Trump, "Soleimani was planning an imminent and specific operation against American diplomats and military personnel, but we disrupted and halted his plan!" Trump's subsequent tweets further confirmed the US prior intention and insistence on removing Gen. Soleimani. In one of his recent statements on the matter, while holding Gen. Soleimani responsible for the deaths of US soldiers and millions of innocent people, he wrote, "He should have been eliminated years ago."²

However, the statements and claims made by Trump administration have faced significant challenges and doubts in the official report submitted to the US Congress.³ The report explicitly states that "government officials have asserted that Soleimani was planning an imminent and specific attack that would endanger American lives, but secret documents and evidence provided by several members of Congress explicitly and officially refute this fact."⁴ Another section of the report states that "Trump stated in an interview on January 10, 2020, that he believed Soleimani was planning large-scale attacks on four US embassies, while the Secretary of Defense, on January 12, claimed that he had not seen any specific report indicating such a threat" (Clayton, 2020: 2).

1 Claypool, Vicki Hesli, Is the killing of Qasem Soleimani Morally Acceptable?", CT, January, 7, 2020. www.press-Citizen.com/contributers/gust-editorials/2020/01/07

2 Ibid

3 Clayton, Thomas, "US Killing of Qasem Soleimani, Frequently Asked Questions", Congressional Research Service (CRS), January 13, 2020, at <https://cresreports.congress.gov/R46148>.

4 Cohen, Zachary, "Skepticism Mounts over evidence of 'imminent' threat that Trump says justified Soleimani killing", January 6, 2020, at www.edition.cnn.com/middleeast/live-new/us-iran-soleimani-tenntions-intl-01-20/index.html. CNN, January 6, 2020

Continuing with the mentioned report, it further states that the Trump administration also claimed that the attack on Gen. Soleimani was carried out to prevent future aggression from Iran. However, the attack on Gen. Soleimani was much more severe compared to previous US responses, such as deploying more troops with the stated intention of deterring Iran. Despite these measures, they were unable to create a deterrent effect (taking into account the rocket attack on "K-1" and the siege of the US Embassy in Baghdad). Therefore, it has been suggested that the killing of Soleimani may have been an attempt to alter the calculations of Iran's decision-makers (Clayton, 2020: 2).¹

Overall, the justifications put forth by the Trump administration are not considered acceptable even according to the laws and regulations of the United States, according to many members of Congress and US experts. While examining the issue from the perspective of US domestic law requires independent research, it is important to note that resorting to domestic law cannot justify behavior that contradicts international law and obligations. The purpose of this article is to analyze the issue from the standpoint of international law governing the use of force. Therefore, the article will continue to scrutinize US claims regarding the attribution of certain actions against the United States to Iran, or the assertion of an imminent attack by Iran on US forces and facilities. It will also examine the conditions for resorting to force as a self-defense and the issue of the legitimacy of preemptive or preventive defense based on international legal standards governing the use of force.

2.3. Evaluating the Justifications of the Trump Administration in Claiming Legitimate Defense

As mentioned earlier and evident from the statements quoted from US officials, the primary claim made by the Trump administration is self-defense, which needs to be examined in light of the standards of international law governing the use of force or the traditional notion of *Jus ad bellum*. Although the use of force in the capacity of self-defense is recognized as an inherent right under these standards, it is considered an exception to the principle of

¹ To find additional information, see Missy Ryan, Josh Dawsey, Dan Lamothe, & John Hudson, "How Trump decided to kill a top Iranian general", Washington Post, January 3, 2020.

prohibiting the use or threat of force. Additionally, it is subject to certain conditions that must be present and fulfilled for it to be regarded as legitimate and necessary. Otherwise, there is a high risk of abuse. Now, we need to assess how the US military action relates to the conditions for resorting to force as a self-defense.

Article 51 of the UN Charter grants the exception of using force as an inherent right in self-defense, but it is contingent upon the occurrence of an armed attack. Therefore, a government claiming to have used force in self-defense against another country must have been the victim of an armed attack by that country or attributable to it. The main question here is whether the United States was the victim of an armed attack attributed to Iran. The fact that Trump administration has provided inconsistent interpretations in an attempt to justify the military attack on Iran's high-ranking commander indicates that their military action is illegal and an act of aggression as long as they cannot provide sufficient documents and evidence to support their claim. Another fact that this action by the US government indicates is that there is no armed conflict between Iran and the US. Despite the unfriendly relations and escalating tensions between the two countries during the Trump administration, both parties have often expressed their desire to avoid war with each other. Therefore, US attack should not be analyzed in terms of the Laws of Armed Conflicts or International Humanitarian Law.

Although the initial statements of US officials claimed, "they attacked us and we responded. If they attack again, which we strongly recommend they do not do, we will respond more strongly..."¹, after a few days and in the official report to Congress, they shifted their focus to the claim of an "imminent attack," invoking the concept of preemptive attack. As we will examine further, neither of these claims by the US government is in line with international laws and regulations regarding the use of force.

As mentioned earlier, Article 51 of the UN Charter permits the use of force as an inherent right of self-defense only in the case of an armed attack.² As emphasized by the International Court of Justice (ICJ) in various cases, the

¹ <http://t.co/qi5RfwsSCH>; (@realDonaldTrump) January 5, 2020.

² Military and Para-Military Case, *Nicaragua v. United States*, (ICJ, Reports 1986, p. 101&103, paras. 191&195).

exercise of the right to self-defense depends on the State claiming to have been the victim of an armed attack. In the case of Oil Platforms, the Court reiterated the position it had expressed in the Nicaragua Case and stated that "to establish the legal validity of the attack on Iran's oil platforms in the exercise of the right to self-defense, the United States of America must prove that the attacks against Iran were indeed carried out by Iran and that the intensity of the attack can be classified as an armed attack according to the interpretation of Article 51 and customary laws governing the use of force."¹

It is clear that the United States has not been the victim of an armed attack directly or under the control of Iran, and US officials have never provided any reasons or evidence to support such a claim. While Trump and his foreign minister mentioned in some tweets that Iran attacked them and the United States responded, they referred to the rocket attack on the US base near Kirkuk (K-1) and the siege of the US embassy in Baghdad. However, as will be discussed, no evidence has been presented, except for the general assertion by US authorities that the Islamic Republic of Iran is responsible for the actions carried out by groups they believe are influenced by or affiliated with Iran. In the specific cases discussed, such justification and excuse are not applicable. Firstly, Hashd al-Shaabi is part of the official and legal military forces of the Iraqi government.² It was considered as such under a law passed on December 6, 2015, approved by the Iraqi Parliament on November 26, 2016. Before the approval of this law, in September 2015, Iraqi Prime Minister Haider al-Abadi declared that Hashd al-Shaabi groups are part of the Iraqi government forces. Therefore, the responsibility for their actions lies with the Iraqi government. The cooperation between the Islamic Republic of Iran and this force was part

¹ Oil Platforms Case, (Iran v. United States), ICJ Reports 2003, para. 51.

² Hashd al-Shaabi forces are armed groups composed of Iraqi people. They were formed in response to the occupation of Iraq by ISIS. The religious authority of Iraq recommended their establishment, and on February 24, 2015, the Iraqi government issued Order No. 91, authorizing their formation. The purpose of these forces is to assist the Iraqi army in combating ISIS and other Takfiri terrorist groups. They have played a crucial role in eliminating the threat posed by ISIS and defending Iraq's people and territory. It's important to note that these forces comprise not only Shiites but also a significant number of Sunnis, totaling between 25,000 and 30,000 individuals. The Iraqi parliament, with broad support from Shia, Sunni, and Kurdish representatives, approved a law that integrates Hashd al-Shaabi into the Iraqi armed forces under the unified command of the armed forces. This approval was granted with a majority vote, including 208 positive votes from representatives of different religious and ethnic backgrounds. For more information, you can visit the following sources: [Tasnimnews.com/fa/news/1395/09/08/1252673](https://tasnimnews.com/fa/news/1395/09/08/1252673); [Ettelaat.com/mobile/?p=13916&device=phone](https://ettelaat.com/mobile/?p=13916&device=phone); [Fa.wikipedia.org/wiki/hashdshabi#cite_note-11](https://fa.wikipedia.org/wiki/hashdshabi#cite_note-11).

of military advisory assistance carried out with the request and coordination of the Iraqi government. Secondly, the rocket attack in question was of unknown origin, and Hashd al-Shaabi and the Hezbollah battalions under its command have never claimed responsibility for it. Thirdly, even if we assume the truth of the Trump administration's claim, the US military forces conducted a highly violent and unconventional retaliatory action with heavy and disproportionate attacks on the Hashd al-Shaabi forces, who were involved with terrorists on the Iraq-Syria border, resulting in the deaths of 28 people and the injury of 51.¹

Attributing the collective action of Hashd al-Shaabi supporters in the siege of the US embassy in Baghdad to Iran, which was carried out as a protest against the brutal US airstrikes against Hashd al-Shaabi forces, also lacks any basis and justified logic, because first of all, this action was never approved by Iran, and according to some reports, the Islamic Republic of Iran and Gen. Soleimani personally tried to end the riot as soon as possible and, as mentioned before, the siege of the US embassy ended after a few days without any harm to the US diplomats. Therefore, the attribution of the mentioned action to Iran lacks any documents and proofs. Also, US military response to the air attack on Gen. Soleimani and his companions is not compatible with the principles of necessity and proportionality, which are considered the indisputable principles of customary international law regarding self-defense, according to the ICJ.² In addition, according to the United Nations Charter, governments are committed to resolving their disputes using peaceful means. The siege of a country's embassy by a group of people for a few days and the end of it, cannot in any way justify resorting to force as a self-defense. It is the case that even if the US Embassy has been damaged as a result of this action, its responsibility lies with the Iraqi government as the receiving country, and the

1 When analyzing the legal requirements of self-defense, particularly in the context of the Caroline Case, one of the factors that determines the legitimacy of defense is adherence to the principle of proportionality. According to this principle, the military response undertaken in self-defense must be proportional to the extent and nature of the enemy's attack. In other words, the response should be in proportion to the magnitude and level of threat posed by the attacker.

2 Military and Para-Military Case, *Nicaragua v. United States* (ICJ, Reports 1986, p. 101&103, paras. 191&195)

embassy's government is not allowed to take arbitrary action without the consent of the host country.

Based on the above, it is clear and certain that the US air attack on Gen. Soleimani was not justified under the title of self-defense as stipulated in Article 51 of the UN Charter as well as customary international law as determined by the ICJ, because the US authorities have not provided any documents and evidence that the US was the victim of a previous armed attack attributable to Iran and "the events related to killing Gen. Soleimani do not have the legal elements of self-defense".¹ For this reason, the US authorities continued their claims by claiming *imminent attack* and tried to justify their military attack in the form of *preemptive self-defense*.

2.4. Preemptive Self-Defense Claim

2.4.1. Legitimacy of Preemptive Self-Defense

While Article 51 of the UN Charter makes self-defense dependent on the occurrence of an armed attack, as Professor Heller² of Amsterdam University stated, the practice of governments indicates that defense in response to an imminent attack is also allowed (Swart, 2020: 26). Although the ICJ in the case of Nicaragua has refused to comment on this issue due to the lack of raising the issue of the legitimacy of the response to the imminent threat of an armed attack in this case. However, Judge Schaubel has stated in his dissenting opinion on this case that in his opinion that Article 51 did not exclude the right to defense in customary international law or limited its general scope to the conditions specified in the text of the Article.³ This approach is also approved by some jurists (Den Hole, 2003: 94-96), but certainly, pre-emptive self-defense must be in response to a certain and imminent attack and cannot be carried out against the threat of future attack, which often lacks information and documents. And the documentation is accurate and it can be interpreted as preventive self-defense. As Professor Eliav Liebllich of Tel Aviv University said: "Preventive defense is completely illegal" (Swart, 2020: 26). Therefore,

¹ O'Connell, Mary Ellen, " the Killing of Soleimani and International Law", European Journal International Law, Published on 6 January 2020. Available at www.ejiltalk.org.

² Kevin Jon Heller

³ See, *Military and Paramilitary Activities, 1986 ICJ at 347 (Judge Schwebel dissenting)* (stating that the **ICJ** "observes that the issue of the lawfulness of a response to the imminent threat of armed attack has not been raised in this case, and that the Court accordingly expresses no view on that issue")...

design and planning are not enough as long as there is no proof of certainty and imminence. According to Professor Heller, the preemptive self-defense is only valid if it meets the Carolina standards.

2.4.2. Conditions for Preemptive Defense in the Carolina Case

The Carolina Case refers to an incident that occurred in 1837 involving the United States of America, Canada, and the United Kingdom. It pertains to the British military attack on a US ship called the *Caroline*. Diplomatic actions and subsequent arbitration were undertaken to resolve the dispute arising from this incident, and certain criteria known as *Caroline Scale* were established. According to the standards outlined in this Case, legitimate preemptive defense must meet the following conditions (Shaw, 1998:1140-1142):

- i. The attack that the defense is carried out against must be certain and imminent.
- ii. Self-defense must be necessary, leaving no other options available.
- iii. Self-defense must be urgent, leaving no opportunity for caution or hesitation.

These conditions indicate that in order for the use of force under the pretext of preemptive self-defense to be considered conventionally legitimate, there must be evidence indicating an immediate, definite, and severe attack. The use of extraterritorial force should always be viewed as an exception (Swart, 2020: 27). Therefore, the concept of preventive self-defense, despite its position in the doctrine of international relations and the views of some jurists, does not hold a position in international law regarding the use of force and lacks support from interpretative theories, judicial procedures, and the practical approaches of most governments and relevant international organizations.¹

Hence, governments should refrain from resorting to force preemptively against future threats of attack. Lieblich argues that it is challenging to reconcile the US objective of deterring Iran's future attack plans with the conventional understanding of preemptive defense. He further asserts that lowering the threshold of imminence increases the risk of errors and abuse (Swart, 2020: 28). "By simplifying the condition of imminence, the use of

¹ For further reading on this subject, you can refer to Jalali, M. & Zabib, R. (2017) "Evaluation of Preventive Self-Defense Against Terrorism", *Judicial Legal Perspectives Quarterly*. 23(82), Pp. 53-82.

force shifts from being the exception to becoming the rule!" (Swart, 2020: 28). Therefore, even if the Trump administration could provide compelling evidence of its claim regarding planned future attacks, it would not be justified in using force to prevent them.¹

Moreover, the claim that Gen. Soleimani was involved in designing and planning a severe military attack against US forces is entirely unfounded. This fact is evident in the reactions of the US Congress to the White House report and in the statements of Iraqi government officials. Gen. Soleimani was actually working to reduce tensions in the region and was invited by the Iraqi government during his trip to Iraq on January 3rd, when he was attacked and killed by the US military forces. He had a diplomatic mission, including meetings with Iraqi officials, including the then-Prime Minister, and his trip served to convey messages of de-escalation in the region (Zeidabadi, January 6, 2020).²

Therefore, the armed attack carried out by the US military forces on January 3rd and the resulting martyrdom of Gen. Soleimani and his companions cannot be justified or defended in any way under the international laws governing the use of force. It is unequivocally an unlawful and arbitrary use of force. Should the US government's particularistic and law-defying behavior be allowed, as conservative commentator Robert Kagan has sadly warned about the US withdrawal from international law implementation, "anarchy

¹ The United States government considers its rules of military engagement during peacetime to be grounded in the natural right of self-defense. It asserts the right to use force not only in response to hostile actions but also when there is a presence of hostile intent. This stance has been consistently emphasized by the White House, as evident in the US Defense Secretary's report to Congress on security arrangements in the Persian Gulf on January 15, 1987. For further details regarding this matter, you can refer to Ganovi, A. & Roneriti, N. (1998). *The Iran-Iraq War (1980-1988) and the Law of Naval War* (H. R. Malek Mohammadi, M. Nouri, et al., Trans.). Tehran: Office of Political and International Studies, Ministry of Foreign Affairs. Pp. 205-207.

² Adel Abdul Mahdi, the former prime minister of Iraq, made statements in the country's parliament during the debates that led to the parliamentary decision to withdraw foreign forces, predominantly US, from Iraq. His statements clearly indicate that Gen. Soleimani was working towards reducing tensions and carrying Iran's response to the invitation from the Saudis. This evidence strongly suggests that Trump's claim is entirely unfounded. For more information, refer to Ahmad Zeidabadi's article titled "The Importance of Adel Abdul Mahdi's Remarks on the Purpose of Sardar Soleimani's Trip to Baghdad" available at www.makhterltakfir.com/fa/Article/view/8919/1398.10.16.

will become the norm in the world, and the jungle law will be restored" (Dorsey, January 7, 2020).¹

3. US Military Attack as an Act of Aggression

Various perspectives have been expressed regarding the characterization of US wrongful act, with many considering it a terrorist act, including senior Iranian officials who initially referred to it as such and as state terrorism. Marie O'Connell, an expert in international law and laws of war at the University of Notre Dame, asserts that the targeted killing of a high-ranking Iranian military official in an unexpected and unconventional attack is undoubtedly a terrorist act (O'Connell, January 6, 2020). However, it appears that US arbitrary action, while deemed terrorist, can also be regarded as an example of other wrongful acts. In accordance with Article 2(4) of the UN Charter and taking into account the Resolution on the Definition of Aggression (hereinafter the Aggression Resolution) and Article 8 of the Rome Statute of the International Criminal Court (hereinafter the Rome Statute), it can be stated that the use of armed or military force against the sovereignty, territorial integrity, or political independence of a State, or in any manner inconsistent with the purposes of the UN Charter, constitutes an act of aggression. The US armed attack on January 3, 2020, while involving a targeted and unlawful killing and amounting to state terrorism, can also be seen as an act of aggression against both the Iraqi government and the Islamic Republic of Iran.²

1 According to numerous experts, including those within the United States, the assassination of Gen. Soleimani not only violated international law but also hindered the prospects of achieving peace. An example highlighting this perspective is Phyllis Bennis' article titled "Soleimani's Assassination Violates International Law and Puts Peace Further out of Reach," published by the Institute for Policy Studies on January 6, 2020. The article can be accessed at www.ips-dc.org/soleimani's-assassination-violates-international-law-and-puts-peace-further-out-of-reach.

2 For further reading in this field, I recommend Robert Kagan's book, *The Jungle Grows Back: America and Our Impressed World* (published by Knopf Doubleday, 2018). The concept of targeted killing outside borders is highly ambiguous within international law, as it does not exist as a defined concept. Originally, the term was used by a human rights organization to differentiate El Salvador's lethal assassination squads from indiscriminate mass killings of citizens. Both actions were considered human rights violations and contrary to the laws of war. In the 1980s and 1990s, the United States, in agreement with US Watch, condemned politically motivated targeted assassinations carried out by its ally, Israel, as illegal. However, in recent times, the term targeted killing has gained political and public attention to justify the use of such tactics by the United States. Nevertheless, this practice, which violates human rights and the laws of war, has been limited to extrajudicial punishment of non-state political enemies, specifically by the US

3.1. Aggression against Iraq

Following the US occupation of Iraq in 2003, the presence of US forces continued due to a bilateral security agreement between the two countries, stipulating that the US military forces must withdraw from Iraqi territory by the end of 2011 (paragraph 1 of Article 24), unless their presence is extended with the consent of the Iraqi government. According to this Agreement, the US government is only authorized to use force in cases of internal or external threats against Iraq upon Iraq's request. Furthermore, the US is explicitly prohibited from utilizing Iraqi territory to launch attacks on third countries. On the other hand, in response to the escalation of ISIS military operations in Iraq since 2013, the Iraqi government has called for international intervention and assistance to combat ISIS through coordinated airstrikes with the Iraqi army, in compliance with the principles of international law, without endangering civilian lives and while respecting Iraq's sovereignty and territorial integrity (Ramezani Qavamabadi & Piri, 2018: 222-223). The Iraqi government, reiterating its request during UN Security Council meetings, emphasized that the primary responsibility for combating ISIS and other terrorist groups in Iraq lies with its own forces, but they also seek air support

government. Political assassinations have long been prohibited by the laws of war and explicitly banned by the Hague Conventions of 1907, which establish fundamental rules for the behavior of belligerents. According to the Rome Statute of 1998, political assassination is considered a war crime and falls under the jurisdiction of the International Criminal Court (Article 8). Human rights experts assert that any extrajudicial killing during peacetime violates the right to life, unless there is an immediate threat that makes it impossible to apprehend the perpetrator, such as when law enforcement shoots a hostage-taker. However, even in such cases, targets should not be predetermined or part of a kill list. Law enforcement agencies aim to arrest suspects and ensure they receive a fair trial. Therefore, organizations like Human Rights Watch, Amnesty International, and the Office of the Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions have declared that targeted killing violates international human rights (Human Rights Watch, 2011). In summary, the United States' interpretation of targeted killing as a form of counterterrorism, both in peacetime and wartime, is generally unacceptable. While terrorism itself is not explicitly defined in international conventions, it is prohibited by the Hague Conventions under the category of "treasonably killing or injuring people belonging to a hostile nation or army." This rule has long been interpreted as a prohibition on assassination in military history, with some variations among different countries (see Ahani, M., & Zarif, M. J. (2013)). Targeted killing, conflicting foundations in international law, with an emphasis on the targeted killing operations of the United States of America. Comparative Law Research, 16(4)). Many believe that the Trump administration has gone beyond this immoral and illegal approach and has embraced preventive assassination (Koh, 2020). Some statements by US officials regarding the killing of Gen. Soleimani further support this approach, such as Trump's remark that "he should have been removed years ago" or John Bolton's statement that "the United States has planned the assassination of Gen. Soleimani a long time ago" (Hongju Koh, 2020).

from other governments while maintaining Iraq's independence and sovereignty (Tabatabaei Lotfi & Shareq, 2015: 180).

Therefore, based on the SOFA and in accordance with the request for assistance in dealing with ISIS, the US forces were not authorized to conduct military operations in Iraq without the consent and coordination of the Iraqi government. Furthermore, any military operation could only be permitted for the purpose of defending Iraq against internal or external threats, as exemplified by Iraq's request to confront ISIS. In other words, US presence in Iraq after the occupation period was intended to repel ISIS and not to wage war against Iran. Therefore, Iraq's military attack on Gen. Soleimani and Abu Mahdi al-Muhandis can be considered a violation of Iraq's sovereignty and political independence. Additionally, according to Article 3(E) of the Aggression Resolution¹ and the Use of Armed Forces against an agreement, regardless of the declaration of war, such actions are recognized as examples of aggression. These provisions are also reiterated in Article 8bis(E) of the Rome Statute². According to this Statute, one example of an act of aggression is: "the use of armed forces by a country present in the territory of another country pursuant to an agreement between the two countries, contrary to the conditions stipulated in that agreement or any extension of the presence in the territory beyond the period provided for in the agreement." Therefore, the US military attack can be regarded as an instance of the crime of aggression against Iraq, which is considered a *supreme international crime* according to the interpretation of the Statute of the International Military Tribunal at Nuremberg. Accordingly, the Prime Minister of Iraq, Adel Abdul Mahdi, denounced the US attack as an act of terrorism and aggression, a violation of Iraqi sovereignty, and warned that it could lead to war in Iraq. He also stated that the US attack violates the agreement regarding the presence of US forces

1 UNGA, Res. 3314, Des. 1974. Art. 3(E)

2 Art. 8 bis. 2. ... Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression: (E) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement".

in Iraq, and appropriate measures must be taken by the Legislature to safeguard Iraq's security and sovereignty.¹

3.2. Aggression against Iran

The US military operation in Iraq, without the agreement and coordination of the Iraqi government, constitutes a breach of the SOFA and goes against Iraq's request for assistance in countering and repelling the ISIS terrorist group. Moreover, and according to the provisions of the Aggression Resolution and the Rome Statute, it is considered an example of the crime of aggression against the Iraqi government. However, whether it can also be regarded as an act of aggression against the Iranian government is a matter for contemplation. In line with the provisions of the Aggression Resolution, the ICJ procedure, and in accordance with the US approach on similar matters, the US attack on Gen. Soleimani can be seen as an instance of aggression against Iran.

It is evident that the US military attack did not take place on Iranian soil, and it is not deemed a violation of Iran's territorial integrity. However, does aggression against a State reside solely in the military attack on its territory, or can an armed attack against the military forces of a State outside its territory also be recognized as an act of aggression against that State? Considering the provisions of the Aggression Resolution, one can argue that since the armed forces symbolize the sovereignty of a State, an initial armed attack on the military forces, if it possesses sufficient intensity, will be considered an attack against the respective State. Article 1 of the Resolution defines aggression as follows: "aggression is the use of armed force by a State against the sovereignty, territorial integrity, or political independence of another State, or in any other manner inconsistent with the Charter of the UN, as set out in this Resolution." Additionally, in Article 2, it states that "the first use of armed force by a government in contravention of the Charter shall constitute prima facie evidence of an act of aggression, although the Security Council may, in conformity with the Charter, conclude that a determination that an act of aggression has occurred would not be justified in light of other relevant circumstances, including the fact that the acts concerned or their consequences

¹ <https://www.straitstimes.com/world/europe/iraqi-pm-condemns-us-killing-of-irans-soleimani>

are insufficiently substantial." Therefore, it can be concluded that, according to the provisions of the Resolution, any initial use of armed force in violation of the UN Charter, if the operation or its consequences are sufficiently severe, constitutes an example of aggression.

Since the US use of armed forces in the assassination of Gen. Soleimani was found to be inconsistent with the UN Charter, it is generally considered an act of aggression, unless it is argued that it was not of sufficient severity. It may also be argued that the US military attack was not directed at the Iranian government because it did not violate Iran's territorial integrity or sovereignty. However, it should be noted that an attack on a government is not limited to attacks on its territory, but can also include attacks on its bases elsewhere. The Aggression Resolution, which outlines examples of aggression, states that an attack by a State's armed forces on the land, sea, air, or naval and air fleets of another State is considered aggression. The Rome Statute, also considers an armed attack on a state's military forces as aggression (Art. 8bis). Therefore, it can be argued that the assassination of Gen. Soleimani was a military attack against Iran. Additionally, as discussed above, this attack was the initial use of armed forces and was not in response to an imminent and definitive attack by Iran. The only question regarding the authenticity of the aggression in the US attack is whether it had sufficient intensity.

While the Aggression Resolution and the Rome Statute do not explicitly require sufficient severity for an act of aggression, the ICJ has established a need for such a condition. The Court, in earlier cases, has recognized that the laying of mines on a military ship can be considered an armed attack that justifies a self-defense.¹ Although the Court has set a high threshold for the concept of armed attack, the criterion of severity is not solely based on spatial and temporal scope but also considers the quality and depth of the attack. Therefore, according to the Court's opinion, the US military attack in the assassination of Gen. Soleimani can be seen as comparable to the laying of mines on a warship, if not more severe. While not every armed attack is necessarily an act of aggression, according to the provisions of the Aggression Resolution and the Rome Statute, the military operation that resulted in the

¹ Oil Platforms Case, Iran (I.R.I) v. United States, ICJ reports, 2003, p. 195.

assassination of Gen. Soleimani appears to meet the criteria for aggression, as it constitutes an initial use of armed forces and has significant repercussions.

Conclusion

One of the significant challenges in International Law regarding the use of force is how to interpret and apply exceptional cases that are allowed alongside the principle of prohibiting the use or threat of force. This challenge has become more prominent, particularly in relation to self-defense, where governments have the initiative and discretion. Some major powers, including the United States, have attempted to broaden the scope of this exception by interpreting the concept of self-defense broadly. They justify the use of force not only in response to a previous armed attack but also in the case of an imminent and definite attack or even the possibility or prediction of a future military attack. The justifications provided by the United States in the assassination of General Soleimani exemplify this expansive approach to the exception of resorting to force in self-defense or legitimate defense.

The US military operation on January 3, 2020, which took place near Baghdad Airport and resulted in the assassination of General Soleimani and Abu Mahdi Al-Muhandis, lacked legitimacy in various ways and led to international and criminal responsibility for the US government and those involved in the operation. From the perspective of international law governing the use of force, this attack is considered illegal and illegitimate for several reasons. Firstly, it violates the principle of prohibition of resorting to force as stipulated in the UN Charter, and it cannot be justified based on any of the exceptions recognized in the Charter. The military attack was not authorized by any decision of the UN Security Council, and no US official made such a claim. Additionally, the US military attack did not meet the necessary conditions to be described as self-defense. The United States had to prove that it was a victim of a previous attack attributed to Iran or faced an imminent and definite attack from Iran. However, it has been demonstrated that the US was not subject to a previous military attack attributable to Iran, and the claim of a definite and imminent attack by Iran against the United States has not been substantiated to justify preemptive self-defense. Moreover, the claim of the possibility of a future military attack plan to justify preventive self-defense is

not supported by the rules of international law, international judicial precedence, or legal doctrines.

Regarding the legal nature of this type of illegitimate use of force, the argument presented in this article is that it should not be reduced to extrajudicial killing or violation of the right to life of individuals, or merely considered a violation of contractual obligations. Based on the references and arguments provided in this article, the US military attack can be considered an example of the crime of aggression against the Iraqi government. The use of armed force violated the conditions stipulated in the Status of Forces Agreement, as outlined in the Resolution on the Definition of Aggression and the Rome Statute of the International Criminal Court. This viewpoint has also been acknowledged by Iraqi officials. Furthermore, the characterization of the US military attack in the assassination of General Soleimani as an aggression against Iran is well established. According to statements from US authorities, the action of the US forces constituted an attack on Iran. According to the provisions of the Resolution on the Definition of Aggression and Article 8bis of the Rome Statute of the International Criminal Court, an attack on a State's military forces can be considered aggression if it has sufficient intensity. The criterion of intensity is not solely based on the spatial and temporal dimensions of the attack but can also be assessed in terms of its consequences. If the severity is deemed sufficient, the assertion of aggression against Iran is not far from legal reasoning. However, there is still room for discussion on this matter.

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The Legal Feasibility of Characterizing the Assassination of General Soleimani as Crime Against Humanity

Heybatollah Najandimanesh¹

Abstract

On January 3, 2020, a United States drone strike targeted and killed a prominent Iranian military official and several of his colleagues at Baghdad airport. This article explores the question of whether the killing of General Soleimani and his colleagues can be categorized under crimes against humanity. The author analyzes the issue by examining international documents and relevant legal procedures. Findings suggest that if it can be demonstrated that the US ongoing and illegitimate sanctions against Iran constitute a widespread or systematic attack against the civilian population, including patients, as part of the State's policy, and if the killing of General Soleimani and his colleagues can be seen as components of this attack, then it can be considered a crime against humanity. The article recommends the gathering of incontrovertible proofs to establish that the US government is engaged in a systematic and widespread attack against the Iranian population. Furthermore, it emphasizes the need for further research on this topic, particularly regarding the discussion of US sanctions against Iran and their impact on the civilian population.

Keywords: Crimes against Humanity, General Soleimani, United States of America, International Human Rights Law, International Criminal Court.

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Introduction

The United States government, as the "most fundamentalist government" (Chomsky, 2016), has always tried to force other nations to follow its policies in various ways. To achieve this goal, sometimes it has used aggressive methods such as war, and sometimes it has used seemingly soft methods such as sanctions. The actions of the United States against the Iranian population in different periods show that US fundamentalism is far more detrimental than ISIS or any other terrorist group.

The United States, sometimes individually and sometimes by forcing other states to impose sanctions, and sometimes by coaxing and threatening global consensus in the United Nations Security Council against the Iranian population, has constantly tried to put Iranians in hardship, to be precise in suffering, so that it can implement its policies.

Human life, both in private and public spheres, is inevitably a mixture of coercion and cooperation (Farer, 1985:115). Therefore, it is not inconclusive to say that in international public sphere, *coercion* is part of the system that governs the course of actions. For this reason, in every legal system, including international law, coercion is considered as a catalyst to implement rules or guarantee implementation. Sanctions- in the current international law system- are considered as an instrument in forcing states to comply with international law.¹

Using sanctions as a foreign policy instrument is not wrongful in itself. Sanctions have always been used throughout history (Carter, 1987:1168). In practice, States have frequently imposed sanctions to achieve their political goals either unilaterally or collectively or in the form of an international organization. Even if the international law has allowed the imposition of sanctions, we must keep in mind that this permission does not mean ignoring human rights and mandatory rules. According to a general legal principle, "no one can make the exercise of his right a means of harming others". The use of economic sanctions should not be used as a violent form of coercion against civilians (Stalls, 2003:117). Even assuming that a State has the right to impose sanctions, it cannot employ this instrument to harm people's lives and health. Similarly, even when international law allows States to use armed force, it is subject to requirements. Nowadays, an important part of international law is the control of war tools and the way of fighting, as well as the protection of civilians.

Sanctions, are essentially imposed as a guarantee of the implementation of international laws and in response to the violation of these rights. Therefore,

¹ For instance, Article 41 of the UN Charter acknowledges the possibility of severing economic relations with the offending State(s), although it does not specifically mention sanctions.

if they themselves lead to the violation of international rights- especially international human rights- they lack international legal legitimacy. In addition to imposing sanctions against the Iranian population, the US government has assassinated General Qassem Soleimani (hereinafter Gen. Soleimani) and several other colleagues in an uncivilized, cruel and wrongful manner.¹ On January 3, 2020, the then-POTUS Trump announced that he had ordered a drone strike to kill Gen. Soleimani at Baghdad Airport in Iraq. As a result of this attack, Gen. Soleimani, a prominent Iranian military commander and his colleagues including Abu Mahdi al-Muhandis, a senior Iraqi military commander, were assassinated. According to then-President Trump, Gen. Soleimani was preparing imminent attacks against US diplomats and military personnel.² This attack took place at a time when there was no armed conflict between Iran and the United States in Iraq. According to what was later published in the media (ISNA news agency, 2020), Gen. Soleimani was invited by the Iraqi government to discuss some diplomatic issues.

This article delves into the question of whether sanctions can be regarded as a widespread or systematic attack targeting the civilian population in Iran. The focus is on exploring the requirements that constitute crimes against humanity and analyzing their applicability to this Case. The article concludes by presenting its findings.

1. Explaining the Requirements for Crimes against Humanity

According to Article 7(1) of the Rome Statute of the International Criminal Court (the Rome Statute)³, crimes against humanity encompass acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.⁴ This section examines the legal elements and notions associated with crimes against humanity.

¹ It is important to note that this Article solely focuses on the assassination of Gen. Soleimani and his Iranian colleagues.

² This claim has been made by President Trump, but as of today, March 21, 2020, the US government has not presented any legally compelling rationale for this wrongful act. The assassination of Gen. Soleimani can be examined and analyzed from various perspectives within different branches of international law. In this Article, the author will specifically discuss and analyze this issue within the framework of international criminal law, particularly in relation to crimes against humanity.

³ Ratified in Rome on July 17, 1998, United Nations, Treaty Series, vol. 2187, No. 38544, Depositary: Secretary-General of the United Nations, available at: <http://treaties.un.org> (accessed on March 21, 2020).

⁴ According to the Article provisions, these acts encompass various offenses such as murder, extermination, enslavement, deportation or forcible transfer of the population.

1.1. Widespread or Systematic Attack

A crucial requirement for establishing a crime against humanity is the presence of widespread and systematic attack. This subsection discusses the concepts of *attack*, *widespread*, and *systematic*.

1.1.1. Attack

During the Rome Conference, the inclusion of *attack* in the definition of crimes against humanity was a deliberate choice. This inclusion aimed to delineate the scope of Article 7 (Hwang, 1998: 497-501). According to Article 7(2)(a) of the Rome Statute, *attack* refers to a series of acts mentioned in Article 7(1) committed "according to a State or organizational policy or in furtherance of it." The term *attack* within the context of crimes against humanity encompasses a broad range of acts, including military armed attacks, although being *armed* is not a prerequisite.¹ The Pre-Trial Chamber of the ICC in the Katanga Case stated that "*attack* does not need to be solely military and can encompass any form of violence against the civilian population" (Katanga, 2014: 1101). Similarly, the Pre-Trial Chamber II of the ICC in the Kenya Case defined *attack* as an *act* or *operation* carried out against the civilian population, not limited to *military operations* (Pre-Trial Chamber II, 2010:80). Additionally, the Pre-Trial Chamber of the International Criminal Tribunal for Rwanda (hereinafter the Rwandan Tribunal), in the Akayesu Case, defined *attack* as follows:

The concept of *attack* can be defined as a wrongful act falling under the categories listed in Sections A to I of Article 3 of the Statute, such as murder, extermination, enslavement, and so on. *Attack* can also take a non-violent form, such as the imposition of the apartheid system, which is recognized as a crime against humanity in Article 1 of the 1973 Apartheid Convention. Additionally, exerting coercion on the population to act in a certain way can be considered *attack* if it occurs on a widespread scale or is systematic (Akayesu, 1998: 581).

¹ More specifically, an attack within the framework of crimes against humanity does not necessarily have to involve the use of weapons, namely, be armed. Due to this reason, the author has chosen to use the broader term attack.

The subsequent judicial procedures generally accepted the same definition.¹ The definitions adopted in these procedures commonly acknowledge that *attack* involves multiple criminal acts, such as murder and torture. Furthermore, *attack* is not necessarily characterized by violence, as seen in the case of the Apartheid System. The acts constituting an *attack* do not have to be of the same type; they can vary. To put it simply, an *attack* is an occurrence in which the listed crimes are committed. Also, in a single *attack*, there can be murder, rape, forced displacement, etc. altogether (Kayishema & Ruzindana, 1999: 122). In addition, these "acts can be part of a widespread or systematic commission (Kupreškić et al., 2000: 544). Therefore, it is evident that there is a broad interpretation of *attack* in judicial procedures. At the very least, an *attack* shall involve multiple acts and be driven by the policies of a State or organization, or play a role in those policies.

The acts committed by the accused do not need to be of the same type as the other acts carried out during the *attack*. For instance, if a group commits killings and an individual engages in sexual violence during the execution of those killings, that person can be convicted of a crime against humanity (sexual violence). It is immaterial whether the State or organization encouraged the sexual violence, as the necessary contextual requirement for the targeted killing *attack* was already present (Cryer et al., 2014: 244).

Although *attack* necessitates multiple criminal acts, it does not necessarily require multiple perpetrators. Additionally, it is not essential for a single perpetrator to have acted at different times (Chesterman, 2000: 316). For instance, if a perpetrator poisons the water supply of a large population, he has committed multiple murders through a single act. The September 11, 2001 attack on the United States can serve as an example. The hijacking of an airplane and its subsequent collision with a skyscraper constitute an *attack* resulting from a single act that gives rise to several criminal acts, such as murder, assault, etc. These acts can be considered an *attack* or invasion (Kupreškić et al., 2000: 712). Therefore, it can be stated that "a single act can be the source of one or more crimes" (Elements of Crimes, 2011: 9).

¹ Some examples include the following: Prosecutor v Nahimana et al., 2007, No. ICTR-99-52-A, para. 918; Prosecutor v Rutaganda, 1999, No. ICTR-96-3-T, para. 70; Prosecutor v Karemera et al., 2012, No. ICTR-98-44-T, para. 1674 and Prosecutor v Lukić and Lukić, 2009, No. IT-98-32/1-T, para. 873.

1.1.2. Widespread or Systematic Attack

The primary requirement for crimes against humanity is that the acts must be part of a *widespread* or *systematic* attack. The *widespread or systematic* requirement is crucial in distinguishing crimes against humanity from ordinary crimes. Although this requirement was first mentioned in the Statute of the Rwandan Tribunal, some decisions of the International Criminal Tribunal for the Former Yugoslavia (hereinafter the Yugoslavia Tribunal) suggested that this requirement was implicitly present in the Statute of that Tribunal as well (Blaškić, 2000: 202; Tadić, 1997: 648).

1.1.2.1. Widespread Attack

Regarding the spread of the attack, the judicial procedures of the International Criminal Tribunals (hereinafter the Tribunals) primarily focused on the magnitude of the attack or the number of casualties. Therefore, the Pre-Trial Chamber of the Yugoslavia Tribunal in the Tadić Case- following the proposal of the International Law Commission (ILC) in 1996- considered *widespread* attack as an attack that results in a large number of casualties (Tadić, 1997: 648). The Pre-Trial Chamber of the Rwandan Tribunal also believed that *widespread* attack must be directed against a large number of population (Kayishema & Ruzindana, 1999: 123). *Widespread* can also have a geographical aspect. In the Bemba Case, the Pre-Trial Chamber stated that there was sufficient evidence to establish the *widespread* nature of the attack based on reports of attacks in various locations across wide geographic areas, including evidence of thousands of rapes, mass graves, and numerous victims (Bemba, 2016: 688–689).

According to the decision of the Pre-Trial Chamber II of the ICC, the requirement for being *widespread* is determined on a case-by-case basis, considering the specific circumstances of each specific case (Pre-Trial Chamber II, 2010: 95). Therefore, the requirement for being *widespread* includes but is not limited to geographical factors as it can also include a large number of casualties within a small area. As a result, this requirement shall be assessed on a case-by-case basis.

1.1.2.2. Systematic Attack

An attack is considered *systematic* if it is based on a policy or an action plan that directs the perpetrators towards the target of the attack, namely the

civilian population. According to the judgement of the Pre-Trial Chamber in the Tadić Case, *systematic* attack requires the existence of a *systematic plan or pattern* (Tadić, 1997: 648). In the Akayesu Case and some similar cases¹, *systematic* attack is defined as follows: "Thoroughly *systematic* and following a regular pattern based on a common policy that involves public or private financial resources" (Akayesu, 1998: 580). According to the Akayesu Case, the *systematicity* of the attack must be thorough, and financial resources must be utilized. It should also be noted that "a *systematic* attack is one that has been executed according to a premeditated plan or policy" (Kayishema & Ruzindana, 1999: 123). There is a pre-established connection. The notion of *systematicity* indicates the organized nature of the acts and that their commission is not accidental (Pre-Trial Chamber II, 2010: 96). Therefore, *systematic* implies that a criminal act occurs on a regular basis and is not random.

The aforementioned decisions are based on the Plan approved by the ILC in 1996. According to Article 18 of this Plan, *systematic* or organized attack is defined as "in accordance with a premeditated plan or policy" (ILC, 1996). Therefore, the requirements mentioned in the Akayesu Case (thorough systematicity, regular pattern, and utilization of resources) can be seen as describing the typical *systematic* attack, rather than being considered the requirements.

Taking into account the above, it can be concluded that the common denominator in different definitions of a *systematic* attack is that such an attack must be carried out according to a pre-meditated policy or plan. Specifically, the *systematicity* of the attack lies in the guidance given to the perpetrators regarding the specific target of the attack, namely the civilian population.

1.2. Civilian Population

1.2.1. Population

Widespread or systematic attack must be directed against the civilian *population*. The *population* refers to "a large group of people with distinctive

¹ Reference can be made to the following cases: Rutaganda, 1999, No. ICTR-96-3-T, para. 69; Musema, 2000, No. ICTR-96-13-T, para. 204 (January 27, 2000), and Prosecutor v. Seromba, No. ICTR-2001-66-I, Trial Chamber Judgment, para. 356 (December 13, 2006).

characteristics that make them targets of attack" (Mettraux, 2002: 25). Put differently, the population represents a large group of people with distinguishing characteristics compared to the perpetrators.

According to the opinion of the Appellate Division of the Yugoslavia Tribunal in the Kunarac Case, the term *population* does not imply that the entire population of the geographical area where the attack occurred must be targeted. It is enough to demonstrate that a sufficient number of people were targeted or attacked in a manner that convinces the Tribunal that the attack was indeed directed against the civilian *population*, rather than a limited or selected number of individuals (Kunarac et al., 2002: 424). The *population* requirement excludes individual or random acts from the scope of crimes against humanity (Kunarac et al., 2002: 422). It is enough that there is a group of victims, and it is not necessary for them to fit into the picture because of their membership in a specific group (DeGuzman, 2000: 362; Pégrier, 2013: 118). Additionally, the *population* requirement describes the target group only as civilians, which will be further discussed.

1.2.2. Civilian

The important question in this section is: Who is included in the definition of a *civilian*? It should be noted that the *civilian* requirement is a reminder of the origins of crimes against humanity in the laws of war. Its inclusion in the plans of the ILC is largely based on the connection between the Common Article 3 of Geneva Conventions (1949) and the laws on crimes against humanity. If the scope of crimes against humanity were limited to the protection of civilian victims of war, it would no longer be relevant. Currently, the focus is on the protection of the human rights of civilians in general. However, not only the human rights of civilians, but the human rights of military personnel can also be violated.

The term *civilian* as defined by the Common Article 3 of Geneva Conventions, encompasses persons who do not take active part in the hostilities or no longer do so. This includes members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause. The interpretation of *civilian* should be broad (Kupreškić et al., 2000; Akayesu, 1998: 582; Rutaganda, 1999: 72). The Tribunals have referred to the Barbie Case, which recognizes that the

resistance fighters can be victims of crimes against humanity (Cour de Cassation, 1984: 78). Based on this, these Tribunals have adopted a broad definition of *civilian*. According to their procedures, former resistance fighters who have disarmed and are currently ill can be considered victims of crimes against humanity (Mrkšić et al., 1996: 32).

Therefore, it can be concluded that crimes against humanity are not limited to acts committed against *civilians* in the narrow sense of the term but also encompass crimes against two groups of persons: first, those who were members of the resistance movement, and second, former combatants, whether or not they were wearing uniforms. However, at the time the crimes were committed, they no longer took part in the hostilities because they had either disarmed, ceased carrying weapons, or were unable to fight. Additionally, when verifying the existence of a *civilian* population, the Tribunals must consider the special status of the victims at the time the crime was committed, rather than their official status. Based on this, Gen. Soleimani held a *civilian* status at the time of his assassination and, according to the existing evidence, was a diplomatic guest.

During peacetime, the prohibition of crimes against humanity, along with the prohibition of genocide, applies to protect human rights. Therefore, in this context, the term *civilian* should be interpreted even more broadly than during times of armed conflicts. Consequently, the term *civilian* carries a dual meaning: firstly, it is equivalent to the definition in international humanitarian law, protecting non-combatants and those who have ceased to be combatants; secondly, it should encompass all individuals not protected by human rights, particularly in peacetime. Finally, any person who renounces their official status as a member of the armed forces should be considered a *civilian*, unless those forces are engaged in an armed conflict with the enemy, or the individual has not laid down their weapon or cannot be considered *hors de combat*.

1.3. Policy Requirement

Article 7(2(a)) of the Rome Statute has expressly recognized the element of policy (Robinson, 1999: 47-51). The phrase *policy element*¹ was officially

¹ In this regard, see the following: Claus Kress, On the Outer Limits of Crimes against Humanity: The Concept of Organization within the Policy Requirement: Some Reflections on the March 2010 ICC Kenya Decision, 23 Leiden Journal of International Law, p. 861 (2010); William Schabas, State Policy

presented by the judicial procedure of the Tribunals. In this regard, several important questions should be discussed: Is this element a requirement at all according to international law or not? What should be the content of the *policy*? How should the form of this *policy* be? Finally, what is the relationship between this element and the basic acts of crimes against humanity? In the following, these issues will be examined.

1.3.1. Necessity of the Policy Requirement and Involvement

There is disagreement as to whether there is a requirement in customary international law that crimes against humanity must be committed in accordance with or in furtherance of a *policy*.¹ No international legal document ratified before or after the Rome Statute has included such a provision. In any case, the elimination of the element of *policy* in the law of international or mixed criminal tribunals does not mean that this element cannot be extracted from attack, or at least from its systematic form (Ambos, 2014: 67-76). The review of literature and legal developments in this regard shows the movement from the requirement of connection with war to a State or organizational authority.

The first specific opinion of the Tribunals about the element of *policy* was the decision based on Article 61 of the procedure in the Nikolić Case, 1995. In this decision, it was stated that "although these crimes are not necessarily related to the *policy* set at the State level, they cannot be the work of individuals alone (Nikolić, 1995: 26)." In the Tadić Case, the Pre-Trial Chamber adopted a theory based on which the reason that crimes against humanity hurt the conscience of humanity and require the intervention of the international community is that they are deliberately committed against a civilian population. Traditionally, this requirement meant that there must be some kind of *policy* to commit these acts (Tadić, 1997:653). The element of *policy* was discussed in several cases in the ICC (Ntaganda, 2012: 24). According to the Court's Pre-Trial Devision, *policy* requirement is not synonymous with *systematic* (Katanga 2014: 1111-1112). The *policy*

as an Element of International Crimes, 98 J. CRIM. L.&CRIMINOLOGY 953 (2008) and also Christopher Roberts, On the Definition of Crimes Against Humanity and other Widespread or Systematic Human Rights Violations, Univ. of Pennsylvania Journal of Law and Social Change, Vol. 20. 1, 2017.

¹ In this regard, see the following: M. Cherif Bassiouni, Crimes Against Humanity in International Criminal Law, Martinus Nijhoff Publishers (1999) p. 243.

requirement is that acts are related to a State or organization (Gbagbo, 2014: 217). It is plausible to characterize the presence of the element of *policy* as the distinguishing feature of crimes against humanity from ordinary crimes. The national judicial procedure emphasizes that crimes against humanity are usually the crystallization of the State's criminal *policy* (Finta, 1994: 733). And his powers are potential sources of harm. In general, it can be said that *attack* requires some kind of relationship with a State or a de facto power that follows a certain *policy*. Another important issue to be brought under spotlight is the form and content of this *policy*?

1.3.2. The form and content of the policy

There are no significant differences regarding the form of *policy*. According to the Tribunal practices, it is not necessary for a *policy* to be officially adopted as State policy.¹ Additionally, there is no requirement for the *policy* to be officially announced or expressly stated. Therefore, the existence of an implicit or *de facto policy* is sufficient. This approach has been approved by the ICC as well (Katanga & Ngudjolo Chui, 2008: 396).

Nevertheless, content of the *policy* is more complex. The *policy* must reside in the commission of crimes against humanity, specifically the criminal acts mentioned in Article 7(1) of the Rome Statute, carried out in a systematic or widespread manner against the civilian population. However, the provisions of this Article do not specify the exact content of this *policy*. According to judicial procedures, the State's approval, support, tolerance, or inaction towards the commission of such crimes serve as evidence of the State's *policy*. The crimes in question may receive support from the State or be part of its *policy*, or they may be associated with an entity that *de facto* exercises authority over a particular territory (Kupreškić et al., 2000: 552).

As a result, the content of *policy* depends on the extent of the systematic or widespread attack. In a systematic attack, the *policy* provides some guidelines regarding the victims to coordinate the acts of individual perpetrators. Thus, systematic attack requires active involvement of the entity behind the *policy*, without necessarily leading to widespread or frequent

¹ See for instance: Akayesu, 1998, para. 580; also Tadić, 1997, No. IT-94-I-T, para. 653; Rutaganda, No. ICTR-96-3-T, para. 69; Musema, 2000, No. ICTR-96-13-T, para. 204; Kupreškić et al., 2000, No. IT-95-16-T, para. 551; Blaškić, 2000, No. IT-95-14-T, para. 204.

actions. The key factor is whether such involvement is sufficient to initiate and direct the attack. For instance, if the authorities identify potential victims and declare (either explicitly or implicitly) impunity for the perpetrators of crimes against this group, would it be considered sufficient?

A widespread attack that is not systematic lacks direction or organization. The *policy* behind such attack can be characterized by inaction, tolerance, or deliberate tacit consent. In some cases, the perpetrators of the attack may not hold official positions but may be private individuals whose actions are approved by the State. In such cases, it is necessary for the crimes to align with the State's *policy*. Therefore, this type of *policy* requires the entity in question to have legal obligations and the capacity to intervene.

1.3.3. The Existence of the Policy Agent

Although Article 7, by mentioning *State or organizational policy*, clarifies that the entity behind the *policy* does not have to be the State in the traditional sense of international law, there is a dispute regarding which non-State entities fall under this concept and what criteria they should meet. In its 1996 Drafts on crimes, the ILC took the position that the entity committing crimes against humanity must be a State or any organization or group (ILC, 1996). Similarly, the Yugoslavia Tribunal stated that *policy* does not have to be the State's policy (Tadić, 1997: 655), it does not have to be formulated at the highest level in the State or organization (Blaškić, 2000: 205), and the entity must also have *de facto* authority over territory (Kupreškić et al., 2000: 552). According to the ICC, the concept of organization is based on the group's capacity to carry out actions that violate fundamental human values, regardless of the official nature or organizational level of the group (Pre-Trial Chamber II, 2010). Therefore, on a case-by-case basis, it must be determined whether a specific group falls within the interpretive framework implied by Article 7(2) of the Rome Statute.

2. Murder as a Crime against Humanity

According to Article 7(1) of the Rome Statute, murder (also used and known as wilful killing) can be considered a crime against humanity. The Trial Chamber of the Yugoslavia Tribunal in the Kordić Case stated that the constituent elements of murder as a crime against humanity do not appear to

be controversial (Kordić & Cerkez, 2004: 113). As a crime against humanity, it requires that the victim be deceased and that the death be caused by the wilful and illegal act or omission of the accused or his subordinate (Akayesu, 1998: 589). However, the customary judicial procedure also maintains that the existence of a wilful intent is not a necessary requirement for the murder to be recognized as a war crime or a crime against humanity (Đorđević, 2014: 548). As acknowledged in the judicial procedures of the ICC, for murder to be established, the victim must be deceased, and the death must be caused by the actions of the perpetrator, which can be through an act or omission (Krnjelac, 2002: 324). There is no requirement to find or identify the body in order to prove the victim's death. Undoubtedly, the killing of Gen. Soleimani and his colleagues can be considered a murder. Since there was no armed conflict at the time of the incident, it cannot be classified as a war crime. Furthermore, they had not been sentenced to death by any competent Court, so there was no judicial or legal justification for taking their lives. Therefore, their killings constitute a violation of international human rights and, consequently, a murder.

3. The Ongoing and Illegitimate US Sanctions Against the Iranian People as Widespread or Systematic Attack

The continuous and illegitimate imposition of sanctions by the United States on the Iranian people exhibits two significant characteristics. Firstly, their continuity signifies that these sanctions have posed a threat to the lives and well-being of Iranians for at least four decades. Secondly, their illegitimacy stems from the fact that these sanctions blatantly contravene principles of humanity and human rights standards, violating fundamental rights of individuals in Iran, including the right to life, the right to health, and the right to self-determination. This section addresses the question of whether these sanctions can be regarded as a widespread or systematic attack against the civilian population.

3.1. The Continuous and Illegitimate US Sanctions against the Iranian People as Attack

To determine whether the killing of General Soleimani can be classified as a crime against humanity, it is essential to examine whether this act was

committed within the context of a widespread or systematic attack in accordance with the policy of the US government or to further the objectives of said State's policy. Therefore, the first step is to assess the nature of sanctions as a form of attack.

3.1.1. Sanctions as Attack

Can sanctions be considered as *attack* within the realm of crimes against humanity? As stated above, attack is not solely confined to military actions; it encompasses a series of acts that involve the commission of multiple criminal acts in accordance with a State or organizational policy, or to further the objectives of such a policy. Without a doubt, the sanctions imposed by the United States on Iran over the past four decades encompass a range of acts that include, at the very least, causing harm and depriving individuals of their fundamental rights. These sanctions align with the policy of the US government and serve to further that policy¹, which has been explicitly and officially declared on numerous occasions. Moreover, these sanctions have a negative impact on the right of Iranians to self-determination. The imposed sanctions are indiscriminate, akin to the phenomenon of terrorism, and affect various segments of the civilian population, including children, the elderly, the young, and the sick. The US government is well aware of these consequences. Considering the components associated with *attack* outlined in the preceding section of this article, it can be concluded that the sanctions constitute an act of attack against the civilian population in Iran. The question of whether these sanctions can be categorized as a widespread or systematic attack is discussed below.

3.1.2. Ongoing and Illegitimate US Sanctions: A Widespread or A Systematic Attack?

As previously mentioned, when considering the scale of an attack, the procedures of the Tribunals primarily focus on the magnitude of the attack or the number of victims. However, the scale of an attack is generally assessed based on the specific circumstances of each case (Pre-Trial Chamber II, 2010: 95). Therefore, it is necessary to determine whether the sanctions can be deemed widespread, beyond the issues examined in the procedures of the

¹ Refer to Article 7 of the Rome Statute.

Tribunals. Undoubtedly, the impact of the sanctions is so significant that it extends not only to Iran but also to the entire region. Today, there is no Iranian who is not affected by these sanctions. Particularly during these times when people are grappling with the Covid-19, the effects of sanctions on the civilian population are even more apparent. Hence, there is no doubt that the sanctions are widespread. Although it is sufficient from a legal standpoint to establish their broad nature, it is advisable to also assess the systematicity criterion in the case of sanctions.

An attack is considered systematic when it is based on a policy that directs the perpetrators towards the target of the attack, namely, the civilian population. Undoubtedly, the sanctions are implemented according to a premeditated policy by the US government. Furthermore, the US government, through the establishment of extraterritorial laws, compels other States and entities to enforce these sanctions. The enforcers are well aware that the explicit purpose of these sanctions is to impact the civilian population. Therefore, it is claimed that the sanctions, as an attack on the civilian population, are both widespread and systematic.

3.1.3. Sanctions as a Widespread and Systematic Attack on the Civilian Population

As outlined in the definition of crimes against humanity, the attack must be *against the civilian population*. In the previous discussions, the concept of a *civilian* was clarified. Essentially, anyone who is not a military personnel at the time of committing a crime or does not employ a weapon for any reason is considered a civilian. There is no doubt that the majority of the victims of sanctions are civilians. However, a question arises as to whether the civilian population is the primary and principal target of the sanctions. According to the judicial procedures of the Tribunals, the civilian population shall be the primary target of the attack, rather than a secondary target (Blaškić, 2004: 106). To determine whether an attack is directed against the civilian population, several factors shall be taken into consideration: the means and methods employed during the attack, the status of the victims, and the number of victims (Kunarac et al., 2002:91).

The means and methods utilized in the imposition and enforcement of sanctions, as well as the status of the victims, clearly indicate that- despite

claims that the civilian population is not the primary target of sanctions- the essence of the sanctions, especially in the Iranian context, is to exert maximum pressure on the people in order to incite them against their government. Consequently, it can be argued that the targets of the sanctions include ordinary individuals, and the sanctions align with the policy of the US government, serving its furtherance. Economic sanctions "adversely affect the country's economy, which, in turn, harms the human rights of all individuals, particularly the marginalized and vulnerable segments of the population" (United Nations General Assembly, paras. 31-33). The recent US economic sanctions against Iran have impacted tens of millions of ordinary Iranians, impeding their access to employment, food, and medical care (Jazairy, 2019: 295). Therefore, in practice, the primary target of the sanctions is the civilian population, including patients, children, youth, and other vulnerable segments of society.

Another aspect to consider is that the drafters and enforcers of the sanctions- based on the readily available data- are well aware that the practical and ultimate victims of the sanctions are the civilian population. When the United States reinstituted economic sanctions against Iran in 2018, the State's Foreign Minister proudly stated that Iran would *struggle to keep its economy alive* following the new wave of sanctions (Pompeo, 2018). Hence, it is evident that, from the perspective of US officials, the widespread and inseparable impact of these sanctions on Iran's economy and population- including civilians- is practically the intended consequence of the sanctions regime (Background Briefing on President Trump's Decision to Withdraw from the JCPOA, 2018). However, the Trump administration makes contradictory claims that the sanctions are not intended to harm civilians (Pilkington, 2018). Furthermore, if we narrowly apply the primary goal to the sanctions, we would be acting in direct opposition to the purpose and objective of prohibiting crimes against humanity, as the fundamental rights of individuals- including the right to life- are violated while the perpetrators go unpunished.

3.2. The Negative Impact of Sanctions on the Civilian Population

Some legal experts argue that economic sanctions imposed during an armed conflict can potentially be classified as war crimes under specific conditions.

They contend that sanctions or blockades that deny civilians access to essential resources for their survival and well-being should be prohibited according to Article 8(2)(25) of the Rome Statute, provided these measures are implemented within the context of the armed conflict and meet the necessary *mens reas*, except in cases where exceptions apply. When a blockade or sanctions regime in an armed conflict leads to the starvation of the civilian population, there is an obligation to ensure that necessary supplies reach the civilians. It should be emphasized that the purpose of a blockade is to deprive the warring Party of materials needed for hostilities, not to cause starvation among civilians (Sandoz et al., 1987: para, 2095). Accordingly, the UN Security Council includes provisions for *humanitarian exceptions* in economic sanctions related to armed conflicts.¹ While international law regarding economic coercion outside the context of armed conflict is not well-developed and remains in its early stages (Jazairy, 2019: 291), this does not imply a prohibition on the matter. The reason for this is that powerful States primarily impose economic sanctions during peacetime, which hinders the development of legal frameworks in this field.

International Humanitarian Law aims to protect civilians during armed conflicts as well as in peacetime. The question arises as to why civilians are considered victims of war crimes if they are subjected to economic sanctions and blockades during armed conflicts, preventing them from accessing necessary resources for survival, while the same civilians, if denied access during peacetime and deprived of essential resources, are not considered victims. For instance, patients with specific medical conditions who require medication and medical equipments to survive should be considered victims if they are unable to access necessary medical supplies due to sanctions, putting their lives at risk.

The US government has imposed sanctions on the Islamic Republic of Iran since 1979. These sanctions were initially implemented in 1979 through executive orders issued by then-President Jimmy Carter to freeze Iranian

¹ See for instance: UN Doc. S/Res/661 (6 Aug. 1990), para. 3 (c); UN Doc. S/Res/687 (3 Apr. 1991), paras. 20 et seq.; UN Doc. S/Res/757 (30 March 1992), paras. 4(c), 5 and 7; UN Doc. S/Res/820 (17 April 1993), para. 22 (a) and (b); UN Doc. S/Res/942 (23 Sep. 1994), paras. 7 (b) and (13 (b)); UN Doc. S/Res/967 (14 Dec. 1994); UN Doc. S/Res/1302 (8 June 2000).

assets in the United States (Katzman, 2016: 1). The scope of sanctions expanded significantly, particularly since 2011 during the presidency of Barack Obama.¹

The ongoing and illegitimate sanctions imposed by the United States, particularly in recent years, have caused significant hardships for specific groups within the civilian population of Iran.² These sanctions can be particularly observed in four areas: healthcare and well-being, agriculture, aviation, and food (Islamic Republic of Iran v. United States of America, 2018). Undoubtedly, these sanctions can be seen as a longstanding and extensive pattern imposed on the Iranian people for at least four decades as part of the US government's *policy*. The US government has consistently claimed that these sanctions are imposed with the intention of pressuring the Iranian government and altering its conduct (Katzman, 2016: 2). However, the reality is that the most affected by these sanctions have been the civilian population, especially individuals with specific medical conditions. Research on the human consequences of economic coercion indicates the negative effects of sanctions, including increased poverty, high unemployment rates, and deteriorating health conditions (Weiss et al., 1997; Weiss, 1999: 499-510; Cortright et al., 2001; Cortright et al., 2000: 11-24).

In addition to being a direct violation of fundamental rights, the imposition of sanctions can "prompt rebellion, chaos, and political violence, and intensify repressive measures" (Poe, 1994: 853-872; Poe et al., 1999). As a result of the sanctions, the right to life and health of patients, children, pregnant women, and the elderly has been endangered (Ameli & Mohseni Ahuyi, 2018: 43). The sanctions have also caused additional economic hardships, making it difficult

1 For more information on the various types of US sanctions against Iran, refer to the following sources: Delavarpour Aghdam, M. (2013). Analysis of US sanctions against the Islamic Republic of Iran in the form of discourse analysis. Political Office, Research Center of the Islamic Parliamentary Council, Serial Number 10918; Ghamami, S. M. M. (2013). A discourse analysis of US anti-legal sanctions against the Iranian government. *Islamic Human Rights Studies Quarterly*, 2(4).

2 Certain US sanctions target military institutions, which are not the focus of this article, although they can be addressed and analyzed separately. The subject of discussion in this article is the sanctions that directly impact the civilian population or result in violations of their fundamental rights. Within this latter category, one example is the financial sanctions imposed on the government, which prevent even the citizens from affording essential medicines.

to purchase and transport medical equipment and materials within the country's healthcare system. Ample research evidence suggest that the sanctions have directly affected a population of over six million patients with conditions such as hemophilia, multiple sclerosis, thalassemia, epilepsy, various immunological disorders, kidney transplants, dialysis, and cancer (Gorji, 2013: 314). Additionally, the scarcity of anesthetics and other disposable devices necessary for surgeries has put the lives of many patients at risk. Several medical reports confirm deaths resulting from the lack of medicine or medical equipment in Iran.¹

Furthermore, US sanctions on the aviation industry of the Islamic Republic of Iran since 1995 have resulted in the deaths of nearly 1,700 passengers (Katzman, 2016: 58). Without a doubt, the United States, by preventing Iranian airlines from renewing outdated equipments, acquiring spare parts and necessary equipments and services, training pilots to international standards, or utilizing foreign airline services, has jeopardized the lives of Iranian passengers and crews as well as foreign customers of Iranian airlines (Islamic Republic of Iran v. United States of America, 2018: 81). It is evident that continuous unilateral sanctions have numerous negative consequences on all human rights (UNGA, 2015), including the right to life (UNGA, 2015: 18-23), the right to health (UNGA, 2015: 38-44), the right to education, and the right to a dignified life encompassing aspects such as food, clothing, housing, and medical care (UNGA, 2015:34-37). All in all, sanctions in various forms are part of the US government's policy, and the assassination of Gen. Soleimani can be interpreted within the framework of this policy, as it cannot be detached from the policies of the US government.

Conclusion

This article raises the question of whether the assassination of General Soleimani and his Iranian colleagues should be considered a crime against humanity. It is clear that these killings alone cannot be classified as crimes against humanity. To establish them as such, it is necessary to prove the

1 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4419179/pdf/IIPH-43-381.pdf> (accessed on March 25, 2020)

requirements outlined in Article 7 of the Rome Statute of the International Criminal Court. These requirements include situations where killings occur as part of a widespread or systematic attack on the civilian population. In this context, the author analyzes the issue beyond the assassination of Gen. Soleimani by examining the conduct of the US government in imposing ongoing and illegitimate sanctions on the Iranian civilian population. According to the laws on crimes against humanity in the Rome Statute, as well as judicial practice, a *chain of conduct* necessitates multiple actions, indicating a pattern of behavior that is consciously designed and committed as part of a policy. Planning, direction, or organization by the US government is also required. The study shows that the sanctions, as part of the US government's policy, have been systematic and widespread against the civilian population in Iran for over 40 years. While further documentation is needed for a more detailed analysis, the effects of crippling sanctions published so far provide certainty in raising this issue. It is crucial to document the impact of sanctions and the relationship between violations of fundamental human rights and sanctions.

The killing of Gen. Soleimani and his colleagues cannot be analyzed separately from this chain of US conduct and its connection to sanctions. It is not necessary for these wilful killings to be systematic or widespread, but it is sufficient to demonstrate that they are part of the sanctions-based policy as a widespread or systematic attack against the civilian population. A significant question in this regard is as to when an act(s) can be considered part of an attack against the civilian population. There must be a sufficient relationship or connection between the wrongful acts of the accused and the attack. Depending on the specifics of each case, this connection can be established in various ways, including considering the nature of the events, temporal and spatial proximity of the defendant's actions to the attack, and the defendant's knowledge of the attack when committing their acts. An important factor is how the defendant's acts relate to the attack or the furtherance of the policy behind it. Undoubtedly, the killing of General Soleimani cannot be unrelated to the US government's policy of imposing sanctions. Specifically, this murder complements and relates to the sanctions. While further documentation and

legal assessments are required, the current article serves as a starting point in this field.

The killing of General Soleimani, as an apparently isolated event, is part of a coherent system and a series of frequent actions imposed by the United States against the Iranian population for political reasons. Ultimately, the key point is that the US sanctions against the Iranian people constitute a widespread and systematic attack and the killing of General Soleimani is a part of this attack which could be classified as a crime against humanity if, the other necessary requirements are met.

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Targeted Killing from the Perspective of International Law and US Domestic Law: A Case Study of the Assassination of General Soleimani

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Abstract

The assassination of General Soleimani, ordered by the then-President of the United States, has prompted discussions regarding its legality within the framework of international law and the US domestic legal system. The Israeli and US governments have employed the concept of "Targeted Killing" to justify their actions, claiming to combat terrorism by eliminating individuals they deemed to be terrorists. This article conducts a comparative study to analyze the practice of targeted killing from the perspectives of international law and US domestic law. Under US domestic law, assassination is prohibited by Executive Order 12333. Over the past two decades, targeted killings of members affiliated with al-Qaeda and the Taliban have been carried out under specific congressional rules. However, the assassination of General Soleimani was not authorized by Congress to use force against Iran. Additionally, since General Soleimani was a military commander of the Iranian government and there was no armed conflict between Iran and the United States, this targeted assassination violates international law, including international human rights law and international humanitarian law.

Keywords: General Soleimani, Targeted Killing, Terrorism, Right to Life.

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Introduction

In the early morning of Friday, January 3, 2020, General Qassem Soleimani (hereinafter Gen. Soleimani), the commander of the Quds Force of the Islamic Republic of Iran, and several of his companions, including Abu Mahdi al-Muhandis, deputy commander of the Iraqi Popular Mobilization Forces (Hashd al-Shaabi), were traveling near a checkpoint outside Baghdad International Airport when they were targeted and killed in a US drone attack. Gen. Soleimani was en route from Damascus to Baghdad, and according to the official announcement from the White House, this assassination operation was carried out on the personal order of the then-President of the United States, Donald Trump.

It is important to note that the Israeli regime and the US government have created a political concept known as *terrorist targeting* under the pretext of fighting terrorism. They have conducted assassinations of individuals they perceive as terrorists and who oppose their interests. These governments argue that if they are unable to apprehend individuals considered a threat to Israeli or US soldiers and citizens, they have the right to assassinate them (David, 2002: 1). Typically, these targeted individuals are attacked and killed by drones, aircraft, or rockets fired from Apache helicopters while they are at home, work, or in their cars. Some Israeli and US lawyers refer to this political act as "targeted killing" (Reuter, 2004: 14).

Opponents of these policies, including human rights experts, organizations such as Amnesty International and Human Rights Watch, and independent human rights reporters, argue that these actions violate international human rights standards. They characterize this policy as *terrorism* or *extrajudicial execution* (Amnesty International, 2003; Human Rights Watch, 2002; Stein, 2003: 127-8; Patten, 2002). Examples of the policy of terrorism and extrajudicial execution by the Israeli regime and the US government include:

- On the afternoon of April 9, 2000, four Israeli Apache helicopters flew over the Palestinian city of *Bishahor* in the West Bank of the Jordan River. Their objective was to kill Hossein Abayt, a high-ranking official of the Fath organization. One of the helicopters fired two missiles, at least one of

which hit the car carrying Abayt, resulting in his death. Israel claimed that Abayt was responsible for the killings of several Israeli civilians and soldiers, and therefore, he was on the joint assassination list of the Israeli Ministry of Defense and the country's intelligence agency (Shin Bet) (Plaw, 2008: 1).

- On November 3, 2002, several US drones targeted a car with a missile a hundred miles east of Sana'a, the capital of Yemen. US officials and the Yemeni government announced that all six occupants of the car, who were claimed to be affiliated with the terrorist organization Al-Qaeda, were killed. The aim of the attack was to kill Qaid Salim Sinan al-Harethi, a high-ranking official of Al-Qaeda (Calhoun, 2003: 11–209).

According to a report by the human rights organization *B'Tselem*, the Israeli regime has targeted 218 individuals described as terrorists under this policy during the second intifadha. As a result of these attacks, 149 innocent people near the targeted areas were killed or injured (B'Tselem, 2007: 16). It is important to note that Israel has employed the policy of targeted killing since its declaration of independence in 1948, and resorting to such actions is not new (Plaw, 2008: 91). One of the most notable cases of targeted killing is the operation that resulted in the killing of Osama Bin Laden, the leader of Al-Qaeda, by US Navy Special Forces in Pakistan.¹

Despite the United States and Israel labeling this policy as "targeted killing" to suggest that only individuals who have previously harmed US or Israeli civilians or soldiers are killed in these operations, investigations have shown that many innocent civilians, including women and children, have been killed or injured as a result of their proximity to these attacks. One of the recent instances of resorting to targeted killing was the assassination of Gen. Soleimani along with his companions, including the deputy commander of Hashd al-Shaabi, Abu Mehdi Al-Muhandis. Considering the fact that targeted killing takes place during a surprise operation and is actually considered a form of terrorism, therefore, in this article, after defining targeted killing, the issue and its legitimacy are examined from the perspectives of international law regulations and US domestic laws

¹ www.bbc.co.uk/persian/world/2011/05/110430_u03_osama_dead.shtml

1. Targeted Killing: Definition and Scope

Targeted killing refers to the deliberate and pre-planned use of lethal force against a person who has not been tried before (Melzer, 2008: 5). In a more precise and broad sense, targeted killing refers to an operation in which "people are killed intentionally by government forces, and a specific person cannot be brought to trial for committing this act" (Ahani Amine and Zarif, 2014: 2). Targeted killing is considered a type of assassination as the victim is killed by surprise. It also refers to the use of force to kill a person who is considered a significant and immediate threat to a State and there is no other way to stop him from carrying out this threat. The governments of Israel and the United States have generally used this policy in cases where the targeted person has already killed nationals and citizens of the said government (whether military or civilian) or has participated in harming them in some way, and is highly probable source of further harms. In order to clarify the discussion, it is necessary to analyze the elements of this definition:

A: The victim is a terrorist who has harmed or may soon harm the lives of nationals and citizens of a State.

B: In order to eliminate this threat, no other solution such as arrest and detention is available or feasible, and to eliminate the threat, force is used and the terrorist in question is killed.

Therefore, it is necessary to distinguish the cases of "targeted killing" policy from cases such as the use of force by the police to arrest a criminal or the use of force by the military on the war fronts against enemy soldiers (Plaw, 2008: 4). We know that the police in emergency cases and where the lives of citizens or police officers are in jeopardy by an evil person, by following the regulations governing the use of weapons, they can kill the evil person as a last resort. It is obvious that giving this authority to the police can only be justified in acute and emergency cases, and it can be considered justified in the context of legitimate defense of one's life or that of another.

Soldiers also have the right to use force against enemy soldiers only within the framework of International Humanitarian Law and do not have the right to use force against civilians. In addition, there is no right to resort to force against those enemy soldiers who are considered disabled for some reason (such as captivity, injury, or illness). The main difference between

"targeted killing" and the cases of the use of force by the police and soldiers is that in the case of targeted killing, the targeted person is already identified as target by high-ranking political or military officials of the State, while evil people or enemy soldiers are targeted and killed anonymously and according to the emergency situation or presence on the battlefield.

2. Legitimacy of Targeted Killing and Justification for the Killing of Gen. Soleimani in the US Domestic Legal System

The legality of the assassination of Gen. Soleimani in the domestic legal system of the United States can be discussed from several aspect. The first aspect to consider is whether the operation to kill Gen. Soleimani can be deemed illegitimate based on a former executive order issued by US Presidency which prohibits the assassination of opponents of the ,US .government The second aspect revolves around the claim that Gen. Soleimani posed an imminent and immediate threat to the lives of US soldiers .in Iraq. It questions whether his assassination can be justified Lastly, the third aspect pertains to whether the assassination of Gen. Soleimani contradicts recognized human rights principles such as the right to a fair trial and the prohibition of extrajudicial killing, which are also upheld within the US .domestic legal system

2.1. Assessing the Disparity between the Assassination of Gen. Soleimani and the Prohibition of Assassination in Former Presidential Executive Order

An important issue in this context is to examine whether the action taken by the United States in killing Gen. Soleimani should be considered an act of terrorism. In a letter dated January 3, 2020, the Islamic Republic of Iran referred to the US action as an act of terrorism. A review of the US actions reveals the repeated use of drones to target the State's enemies. Following the 9/11, the United States has employed drones to carry out targeted killings of individuals believed to be terrorists on several occasions.

The first executive order banning assassination was issued by President Gerald Ford in 1976 as part of reforms to the programs of US intelligence agencies. This prohibition is currently outlined in the second part of Executive

Order No. 12333.¹ The executive order was prompted by the scandals that emerged from the disclosure of unsuccessful attempts on the lives of opposition leaders in foreign countries, including Fidel Castro, by the CIA from the 1950s to the 1970s (Crasmann, 2012: 669). According to this executive order, the United States is prohibited from assassinating individuals, although the exact definition of assassination is not provided in the document. Furthermore, the incumbent and subsequent Presidents have the authority to cancel or modify executive orders. However, in most cases, political considerations prevent the cancellation or alteration of executive orders. The existence of this order has prompted subsequent US presidents to exercise caution when issuing orders to assassinate opponents of the country. For instance, during the Clinton Administration, a report prepared in 2000 emphasized that any potential killing of Bin Laden should not be regarded as a political assassination (Ahani, 2011: 12-13). It stated that "during an armed conflict, the killing of a person who poses an immediate threat to the United States will be considered as legitimate defense and not a political assassination" (The National Commission on Terrorist Attacks Upon the United States, the 9/11 Commission Report, 2004:132).

It appears that the assassination of Gen. Soleimani was carried out in violation of Executive Orders No. 11905 and 12333. These executive orders were implemented by US Presidents to prohibit intelligence and military organizations from assassinating officials and leaders of other States. Given that Gen. Soleimani was a high-ranking Iranian military official, his assassination falls under this prohibition.

2.2. Justification of the Assassination of Gen. Soleimani Based on the Immediate and Imminent threat to the Lives of US Soldiers

Some US lawyers argue that there is another legal basis within the domestic law of the United States to justify the issuance of a targeted killing

¹ Executive Order No. 11905 was issued by Gerald Ford during a time when the United States faced accusations of plotting the assassination of certain political opposition leaders in other countries, such as Fidel Castro. This led to a loss of credibility for the US intelligence agency (CIA) and prompted the then-president of the United States to issue an executive order prohibiting such assassination attempts, as well as avoiding any political repercussions on the US foreign policy apparatus. On December 4, 1981, Donald Reagan repeated this order with Executive Order No. 12333, which aimed to regulate the relationship between US intelligence agencies. In American legal literature, Executive Order No. 12333 is often cited as the legal basis for the prohibition of acts of terrorism (Crasmann, 2012: 669).

order by the President. For example, Bradley and Goldsmith contend that if there is an imminent threat of an armed attack against the United States by terrorists, the President can utilize the Covert Action Statute (CAS) to address that threat (Bradley and Goldsmith, 2011:115). Additionally, individuals like Eric Holder and John Brennan believe that, apart from the aforementioned special laws, the Constitution of the United States grants the President the authority to protect the American people from any form of imminent threat related to violent attacks and take necessary measures.

It appears that the aforementioned authority is specifically intended to counter non-state actors such as Al-Qaeda and Taliban commanders, and it is prohibited to assassinate high-ranking political or military officials of other States. Assassinating such officials, including Gen. Soleimani, could be viewed as an act of aggression by the Iranian government and could trigger a military response. This raises the question of whether President Trump had the necessary authority to issue the order, which could have potentially led to a war with Iran, and whether it was effective or not.

It's important to note that according to Article 1(8) of the US Constitution, the power to declare war resides with Congress. In the conventional international law system, wars were typically initiated through a formal declaration of war. The Kellogg-Briand Pact of 1928, the agreement between the US and France that later became a global agreement, was the first international document to outrightly prohibit war as a tool of foreign policy for governments (Ziaee Bigdeli, 2006: 536). Some governments, like Japan and Italy, engaged in wars against China and Ethiopia, respectively, without declaring war. These aggressor governments argued that they did not violate the Kellogg-Briand Pact since there was no formal declaration of war (Malek Mohammadi Nouri, 1994:6). Similarly, US presidents, especially during the Cold War, circumvented Congress and engaged in conflicts without declaring war. During the Korean and Vietnam Wars, the US armed forces were deployed without a formal declaration of war, under the authority of the President as the commander-in-chief (Elsea & Weed, 2014:26). The President claimed that protecting US vital interests compelled the use of military force. In essence, the President waged war on a country without a formal declaration, bypassing Congress and asserting that the use of force was solely aimed at

achieving specific goals for national security. This led Congress to restrict the President's powers in resorting to force (Elsea, 2014:26).¹

On November 7, 1973, during President Nixon's tenure, both the House of Representatives and the Senate passed the War Powers Act through a joint resolution, with a two-thirds majority vote (to prevent the President's veto). According to this Act, the President does not have the authority to initiate a conflict unless authorized by a specific law (Elsea & Weed, 2014:26). Under this law, following an emergency attack, the President is obligated to inform Congress of the details and reasons for the attack within a maximum of 48 hours. To date, over 130 reports have been provided by the Presidents to Congress. Therefore, the President can only engage in war if Congress authorizes the use of force through a specific law. For example, in 1991, Congress issued the Authorization for the Use of Military Force (AUMF) law to expel Iraq from Kuwait, and it was stated that this law was approved in accordance with the War Powers Act of 1973 (Elsea & Weed, 2014:26).

After the 9/11, two special laws were established. On September 14, 2001, Congress granted authorization to the President to use force against al-Qaeda or any terrorist group associated with the 9/11 attacks. Subsequently, both the Obama and Trump Administrations utilized this law to justify the use of force against ISIS in Iraq and Syria, considering them to be affiliated with al-Qaeda. It is worth noting that in July 2019, the Pentagon spokesperson stated that the 2001 law could not be applied to Iran. Another law, AUMF was also enacted in 2002, granting the President the authority to employ force against ongoing threats from Iraq. From 2003 to 2011, during the period when Obama withdrew a significant portion of US forces from Iraq, the United States relied on the same law to respond militarily to attacks by Iraqi opposition groups, which were sometimes claimed to have affiliations with Iran. In 2017, the legal adviser of the US Department of Defense declared that the 2002 law served two purposes: facilitating the establishment of a stable and democratic Iraq, and providing an appropriate military response to

¹ لازم به توضیح است که تمامی مصوبات در کنگره آمریکا (مجلس نمایندگان یا سنا) در ایالات متحده آمریکا به دو شکل « طرح » (Bill) و یا « قطعنامه » (Resolution) به تصویب می‌رسد. تصمیم کنگره به شکل طرح به قانون لازم الاجرا تبدیل می‌شود. قطعنامه اگر به شکل مشترک (joint Resolution) ارائه شود نیز به قانون تبدیل می‌شود مشروط بر آنکه به تایید هر دو مجلس نمایندگان و سنا برسد.

terrorist threats in the country. Notably, the Trump Administration cited the same 2002 law to justify the assassination of Gen. Soleimani. In their report to the US Congress, the Trump Administration stated that Gen. Soleimani's assassination was justified under the 2002 law due to his past actions that had harmed stability and peace in Iraq, endangering the lives of Americans.¹

Nevertheless, some US law scholars argue that the assassination of Gen. Soleimani cannot be justified by the special laws enacted in 2001 and 2002, as well as the CAS, as these laws were context-specific and targeted specific groups, and cannot be applied to Iran. According to these scholars and the majority of Congress representatives, the assassination of Gen. Soleimani required explicit authorization from Congress, and the President did not have the authority to unilaterally provoke the United States into a potential war with Iran. The chairman of the congressional foreign policy commission also stated that the content of the White House report to Congress contradicts the President's initial claim, as there is no proven evidence of an imminent threat from Gen. Soleimani endangering the lives of US soldiers.

2.3. Assassination of Gen. Soleimani: A Perspective on Observing the Right to a Fair Trial and Prohibition of Extrajudicial Killings

Some US law scholars, including Richard Murphy and Afshin John Radsan, argue that the government's targeted killing program infringes upon the provisions of the American Constitution. They contend that this program, in particular, violates the principle of a fair trial (Murphy and Radsan, 2009: 405). Similarly, proponents like Mike Dreyfuss assert that if the US government fails to provide prior warning before assassinating individuals, it violates the principle of fair procedure (Dreyfuss, 2012: 249). Judge Thomas also highlighted the violation of this principle in his dissenting opinion in the *Hamdi v. Rumsfeld Case* (Hamdi v. Rumsfeld, 542 U.S. 507, 597; 2004). Murphy and Radsan argue that there should be some form of *post-event judicial review* of executive orders regarding targeted killings.

On the other hand, US Attorney General Eric Holder asserts that the US targeted killing program does not infringe upon the principle of fair trial.

¹ <https://www.nytimes.com/2020/02/14/us/politics/white-house-memo-suleimani-strike.html>.

Scholars like Bradley and Goldsmith also view the examination of the legality of targeted killings as a *political issue*. In the *Aulaqi v. Obama Case*, Judge Bates declared that the plaintiff's lawsuit concerning the assassination of his son by the US government, based on the *Political Question Doctrine*, is not subject to judicial review (*Aulaqi v. Obama*, D.D.C. 2010). It should be noted that the victim was a US citizen who had joined the extremist group Al-Qaeda. The White House claimed that the killing of this individual, who held a commander in Al-Qaeda and was targeted outside the battlefield, did not violate the principle of a fair trial. In a statement released by the White House, it was argued that targeted killings of enemies of the United States, including its nationals, are permissible under the following conditions:

A: When a high-ranking US government official determines that the targeted individual is attempting to carry out a violent attack against the United States and poses an imminent threat.

B: When it is not feasible to arrest the accused.

C: When the targeted killing operation is conducted in compliance with the principles and rules of the law of war, such as the prohibition of killing innocent civilians.

Judge Bates believed that the investigation of this case necessitates the examination of complex issues, such as whether the alleged terrorist actions of Aulaqi posed an imminent threat to the lives and physical safety of Americans. It also raises questions about whether the US government could have eliminated these threats to national security by employing non-lethal measures. These matters cannot be reviewed by a judicial court.

Considering that customary provisions of international law, including those regarding human rights, are part of the legal system of the United States, we will explore in the following discussion that targeted killings fundamentally contradict the principle of a fair trial and the prohibition of extrajudicial killings. In general, it can be concluded that the special laws enacted in 2001 and 2002 were approved to combat terrorist entities in Afghanistan and Iraq that posed a threat to the lives of US troops. These laws prohibit targeting military officials affiliated with governments. The assassination of a high-ranking military official requires special authorization from Congress therefore, the order from the then-President Donald Trump to

assassinate Gen. Soleimani constitutes a violation of Executive Order 12333 and is contrary to congressional laws.

3. Targeted Killing of Gen. Soleimani : A Perspective on International Law Provisions

First, it is necessary to examine the perspectives of proponents and opponents of targeted killing operations within the framework of International Law regulations, and then assess the legitimacy of the assassination of Gen. Soleimani within the international legal system.

The US government and the Israeli regime claim to be in a State of war against terrorism and justify the use of force against terrorists based on provisions of International Humanitarian Law (Plaw, 2008: 124). However, a significant number of governments and many legal experts disagree with such interpretation. They argue that counterterrorism policies and measures do not fall under the framework of rules applicable in times of war, and instead, criminal law mechanisms should be utilized to combat terrorism, as was done by the United States in the case of the 1993 bombing of the World Trade Center.

Moreover, opponents of the legitimacy of *targeted killing* argue that even if we consider the fight against terrorists as a war, the provisions of international human rights regarding the treatment of terrorists will still take precedence. These legal experts argue that regardless of the application of rules of war, the targeted killing of terrorists is considered an *act of terrorism*, which is illegal both during peacetime and wartime (Stein, 2003: 11; Gross, 2003: 351). In fact, it is claimed that "targeted killings generally violate the right to life and the legal framework and requirements of the law, as they involve killing a person without a fair trial and due judicial process, which is prohibited by human rights documents" (Hatami, 2017: 99). Obviously, the right to life is an inherent right that must be respected in all circumstances, including emergency situations. The International Court of Justice (ICJ), in its advisory opinions on "The Barrier Wall" (Advisory Case, 2004: 106) and "The Legitimacy of the Threat and Use of Nuclear Weapons" (Advisory Case, 1996: 239), has stated that the protections of the International Covenant on Civil and Political Rights (the Covenant), including the right to life, continue to apply during armed conflicts. The right to life cannot be arbitrarily

disregarded, and the right to life of every individual must be respected during armed conflicts. These opinions leave no doubt that human and humanitarian rights can be upheld simultaneously (Qorban Nia, 2009: 350).

Based on this, Philip Alston, the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions, claimed that killing terrorists without a fair trial in a court of law is a violation of the *right to life* and the principle of a *fair trial* (UNCHR, 2004: 15). The rapporteur on the Gen. Soleimani Case, Agnes Callamard, holds the same position, stating specifically that "the killing of Gen. Soleimani and Abu Mahdi al-Muhandis is most likely illegal and violates international human rights provisions."¹ Therefore, targeted killing is considered a form of *extrajudicial execution* and is contrary to the provisions of international human rights. It was on this basis that the former foreign minister of Sweden, Anna Lind, considered the assassination of Qaid Salim Sinan al-Harethi in Yemen to be in violation of international law. According to Lind, the actions of the United States should be regarded as arbitrary executions and contrary to human rights regulations. Lind further argued that if such actions by the United States were deemed legitimate, it would grant governments the permission to kill individuals as terrorists whenever they see fit (Machon, 2006: 2-3).

Nonetheless, proponents of *targeted killing* disagree with this analysis. According to them, the prohibition on extrajudicial executions has been established to protect citizens, especially political opponents of the governments, and prevent their forced disappearance and eventual murder. In the case of targeted killing, terrorists are targeted outside the State's territory in situations where it is impossible or very difficult to arrest them (Kendall, 2002: 1071). Additionally, targeted killing is often carried out not only in response to past crimes or as a means of revenge, but also as a preventive measure to thwart future terrorist acts (Guiora, 2004: 329–30; Kendall, 2002: 1071–3).

Kretzmer argues that the legality of a targeted killing should be determined based on the rules of International Humanitarian Law when it occurs within the context of an armed conflict between a terrorist organization

1 www.bbc.com/news/world-middle-east-51548734

and a government that is being targeted by the its attacks. If the deprivation of life is deemed legal under the provisions of Humanitarian Law, then it would not be considered an arbitrary violation of the right to life or a violation of Article 6 of the the Covenant and similar conventions. To support this claim, these legal experts refer to two documents related to International Humanitarian Law: the first document pertains to paragraph (b) of Article 23 of the Second Hague Convention of 1899, which prohibits "killing or treacherously wounding the enemy." Additionally, according to Article 37 of the First Additional Protocol of 1977, it is forbidden to "kill, injure, or capture the enemy treacherously." Treachery is defined in this article as actions that deceive the enemy by causing them to believe they are entitled to protection under international law applicable to armed conflicts, or that they are obliged to provide protection, with the intent to betray this trust. Examples of treacherous acts include pretending to negotiate under a white flag or posing as a civilian. The International Committee of the Red Cross also prohibits killing, injuring, or capturing the opposing Party through treachery, as stated in Rule 65, which applies to both international and domestic conflicts (Henkertz and Duswaldbek, 2007: 352-346).

These legal experts believe that as long as targeted killings are not carried out in a treacherous manner, they do not constitute prohibited assassinations under the law of armed conflicts. For example, the assassination attempt on the life of Khalid Meshaal, one of the leaders of Hamas, on September 25, 1997, in Amman, Jordan, was deemed treacherous as Mossad agents gained Meshaal's trust and administered poison (Plaw, 2008: 126).¹

There are also scholars who do not consider the targeted killing of terrorists as "terrorism" in the sense of International Law (David, 2002: 112-113; Statman, 2004: 180). These scholars, referring to the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected

¹ During Meshaal's presence in Jordan, 2 Mossad agents entered the Country using Canadian passports under the orders of Benjamin Netanyahu, the former Prime Minister of Israel. When Meshaal left his residence, they sprayed a highly toxic substance into his ear. The agents failed to escape the scene and were apprehended by Meshaal's bodyguards and the Jordanian police forces. King Hussein of Jordan issued a threat to Netanyahu, stating that if Meshaal died in the hospital, he would sever his country's relations with the Israeli regime and the 2 Mossad agents would be executed. As a result, Netanyahu was compelled to provide the antidote for the lethal poison to Jordan, acknowledging the execution of this assassination plot. Consequently, Khalid Meshaal was saved from this assassination attempt.

Persons," states that within the international legal system, only *political terrorism* targeting officials listed in that Convention, who are high-ranking government or inter-state officials, is prohibited. In contrast, targeted killings are carried out against individuals who lead non-state actor groups (Schmitt, 1992: 618; Beres, 1995). Therefore, it is certain that governments do not have the right to target officials of other governments, especially high-ranking military officials, under the concept of *targeted killing*. Consequently, the assassination of Gen. Soleimani is not considered legitimate within the framework of the concept of *targeted killing*.

Another justification given by proponents of *targeted killing* for legitimizing this practice is the citation of the customary right of self-defense. Some argue that even if the fight against terrorists cannot be encompassed within the framework of the law of armed conflicts, and thus the killing of terrorists as Parties to the conflict be considered legitimate, every State still has the right to defend itself against terrorist attacks (Schmitt, 1992: 644).

Some scholars argue that, according to the second article of the American Constitution, the President, as commander-in-chief, possesses significant war powers. In the event of an attack on the US armed forces, the President has the authority to issue a defense order directly. US Secretary of State Pompeo stated that they possess documents indicating that Gen. Soleimani was planning a new attack against US forces during a meeting with commanders of the Popular Mobilization Forces (Hashd al-Shaabi). Due to the serious and imminent danger posed to the lives of US forces, killing Gen. Soleimani was deemed the only reasonable means and solution to prevent those attacks and protect US forces, thereby justifying this action.

The US government brought to the attention of Congress and the American people the events that transpired in the months leading up to the assassination of Gen. Soleimani. In late 2019, protests erupted in Iraq, expressing dissatisfaction with the inefficiency and corruption of government officials in several Iraqi cities. During these protests, some individuals attacked Iranian consulates in Karbala and Najaf. On December 27, 2019, an unidentified group launched a rocket attack on the K1 US military base near the city of Kirkuk in northern Iraq, resulting in injuries to several US soldiers and the death of a US civilian contractor. The US government named the

Kataib Hezbollah group, which has close ties to Iran, as responsible for the incident. On December 29, the United States carried out airstrikes on several Hezbollah battalion headquarters affiliated with the Iraqi Hashd al-Shaabi organization near the Syrian border. Al-Hashd al-Shaabi sources reported that at least 28 individuals from their forces, including one commander, two deputies, and the deputy commander of the brigade's resources, were martyred in this air attack, with 51 others sustaining injuries. Following this attack, on December 31, some enraged members and supporters of Hashd al-Shaabi, after the funeral of the martyrs from the US attacks, marched towards the American embassy in Baghdad's green zone and set fire to parts of its external wall. They subsequently entered the embassy building and occupied it. The primary demand of the protesters was the expulsion of the United States from Iraq. According to the US perspective, during the recent protests in Iraq, the demonstrators were unable to breach the green zone. However, they were afforded the opportunity to attack the US embassy, indicating the significant influence of groups aligned with Iran and Gen. Soleimani in Iraq. As such, they posed a threat to the lives of many Americans in subsequent stages. Gen. Soleimani's visit to Iraq on January 2 was also connected to this situation, and his killing was carried out to prevent and safeguard the lives of US soldiers. The United States also asserts that Gen. Soleimani was responsible for the deaths of US soldiers due to roadside bombs, as he supplied Iraqi groups opposed to the occupation of the country in the 2000s. From this perspective, the United States considers its action in killing him as legitimate. This argument by the United States contradicts provisions of international law from two perspectives:

- Firstly, the United States government acknowledges that the killing of Gen. Soleimani was not carried out as a preventive measure against future threats, but rather as an act of revenge. Contemporary International Law and the UN Charter do not permit the use of *Armed Reprisal* as a valid recourse (Gill, 2006: 368). The ICJ procedures and the prevailing theory among legal scholars do not recognize preventive legitimate defense, but instead accept the legitimacy of self-defense when it is conducted in response to an immediate armed attack and meets the requirements of necessity and proportionality (Ruys, 2010:91). Some advocates of

preemptive legitimate defense argue for its use solely against non-state actors, but even in this context, they acknowledge that the practice of the ICJ does not support this theory (Ronzitti, 2006: 357).

- Secondly, Gen. Soleimani was a high-ranking military commander in Iran, and the alleged actions by the United States were carried out within the framework of the Iranian government's policies. According to Article 4 of the International Responsibility of States draft adopted in 2001, the responsibility for the illegal acts committed by government officials rests with the respective government of those officials. If the act in question is considered a criminal offense, such as a war crime, the perpetrator also bears individual criminal responsibility, which should be addressed in a competent domestic or international criminal court. In any case, the US government does not have the authority to unilaterally administer criminal justice and execute military commanders of other governments based on past military actions, especially against US soldiers.

It appears that targeted killing, if permissible under certain conditions, can only be applied to individuals associated with internationally recognized terrorist groups, i.e., groups that enjoy consensus within the international community. Examples include individuals affiliated with Al-Qaeda, ISIS, and Jabhat al-Nusra. Therefore, no government has the right to assassinate individuals solely based on their unilateral designation. For instance, Hezbollah is labeled a terrorist group according to the Israeli regime and some of its allied States like the United States and the United Kingdom, but many governments worldwide do not share this designation. Similarly, the Turkish government unilaterally designates the Kurdish Party governing Northeastern Syria (the YPG group) as a terrorist organization, while numerous countries, including European governments, consider this group as playing a crucial role in the fight against ISIS and religious fundamentalist groups in Syria and have praised their efforts.

Governments, as well as legal professionals supporting the concept of targeted killing, generally agree on a critical aspect of its definition: only individuals affiliated with terrorist groups can be targeted. In other words, this concept applies solely to non-state actors who cannot be apprehended and prosecuted, and whose terrorist activities pose significant and objective risks

to the government in question. Therefore, this concept and practice cannot be employed to target government officials and agents. Gen. Soleimani, as the commander of the Quds Force, is recognized as a high-ranking military commander within the Iranian government. Consequently, the concept of targeted killing cannot be considered legitimate in his case, as no government has the authority to unilaterally label or declare another government's military personnel as terrorist.

It is important to note that there has been no armed conflict between Iran and the United States in terms of humanitarian rights. Essentially, "targeted killing is deemed legitimate when there is an ongoing international or non-international armed conflict; without such a conflict, the targeted killing of individuals, whether terrorist or non-terrorist, would be considered political assassination" (Ahani & Zarif, 2013: 6). In response to the letter from the UN rapporteur on arbitrary and extrajudicial executions, who deemed the killing of a leader of al-Qaeda in Yemen to be a violation of international human rights provisions, the United States stated that the incident should be analyzed based on the provisions of International Humanitarian Law, as al-Qaeda is engaged in an armed war with the United States. However, there has been no such war situation between Iran and the United States.

It is also worth noting that the only judicial ruling on the legal legitimacy of targeted killing was issued by the Supreme Court of Israel. While there are criticisms of this ruling, considering that Israel is the primary proponent and practitioner of targeted killing and that United States has emulated Israeli approach in this method of killing, the provisions of this ruling can be interpreted as indicating the illegality of the assassination of Gen. Soleimani. Many legal experts consider this decision to be highly significant and view it as an important legal precedent for determining applicable rights in the context of targeted killing (Eichensehr, 2007: 1874).

The Supreme Court of Israel rendered this decision in response to a complaint filed by the General Committee for the Prohibition of Torture in Israel against the Israeli government. The Committee asserted that the institution of targeted killing is illegal within the international legal system. The Israeli regime, on the other hand, argued that it is in a state of war against certain Palestinian groups and can exercise legitimate defense in accordance

with the provisions of International Law (including Article 51 of the UN Charter) (Kadkhodaei et al, 2017:141). The Supreme Court of Israel considered the institution of targeted killing to be legally permissible under specific conditions, taking into account the viewpoints of legal scholars who support this practice. These conditions include the following:

A: Targeting the forces of an armed (terrorist) group is only permissible when there exists a state of war between that group and the Israeli government.

B: There must be compelling and substantial evidence that the individuals in question have directly engaged in terrorist activities.

C: Only individuals who currently pose a threat to Israel can be targeted, not those who have participated in past conflicts and wars.

D: The attack should only be carried out when alternative measures that cause less harm are not feasible. Therefore, if it is possible to apprehend, detain, and prosecute the terrorist involved in the operations, those methods should be utilized.

E: If the intended terrorist attack would result in disproportionate harm to innocent people present in the area, the attack should not be carried out. Precautions should be taken to prevent harm to innocent individuals, and if the harm to innocents outweighs the security benefits of eliminating the terrorist, the operation should be canceled.

F: Prior to any attack, a thorough investigation into the identity of the target individual and the manner in which the operation will be conducted should take place. This investigation must be conducted by an independent commission. The Commission may consist of experts or judges, as long as they are impartial and separate from the government. This Commission should also have the authority to assess the proportionality of the attack considering the potential harm to innocent individuals, as outlined in the previous condition.

G: Targeting a terrorist should not involve violations of other provisions of International Law, including the prohibition of assassination. For example, treacherous methods and agents should not be employed, and individuals affiliated with international organizations or agents of other governments should not be targeted (unless they are military officials and

a state of war exists between the Parties). This condition is particularly relevant to our discussion as the US government assassinated a high-ranking General of the Iranian government without the existence of an armed conflict between the two parties.

H: If a government employs the policy of targeted killing, it should openly declare and take responsibility for its operations after they have been carried out.

The aforementioned conditions are general and must all be considered and adhered to. Failure to meet these conditions renders targeted killing illegal, even according to the ruling of the Supreme Court of Israel. The assassination of Gen. Soleimani violated condition G mentioned above, as he was a high-ranking military official of the Iranian government and his assassination occurred in the absence of a war between Iran and the United States.

Conclusion

This article discusses the legitimacy of targeted killing within the framework of International Law and the domestic laws of the United States, with a focus on the General Soleimani assassination case. It appears that this assassination contradicts the standards set by US domestic law. According to Executive Order No. 12333, all forms of assassination are prohibited. US Presidents have justified the targeted killing of leaders and commanders affiliated with terrorist groups based on laws passed by Congress in 2001 and 2002, which authorize the use of force against terrorist groups in Afghanistan and Iraq. However, these laws cannot justify the use of force against General Soleimani, who was a high-ranking military commanders of the Iranian government. Furthermore, the assassination of General Soleimani violates the principle of fair trial and the prohibition of extrajudicial killing, which goes against the provisions of the US Constitution.

From the perspective of International Law, the targeted killing of General Soleimani is illegal. The practices of Israel and the United States, as pioneers of targeted killing operations, demonstrate that the victims of these operations are typically individuals affiliated with non-state actors. The assassinations of political leaders from groups such as Hamas and Islamic Jihad by Israel, as

well as the leaders and commanders of organizations like the Taliban, al-Qaeda, and ISIS by the United States, all occurred within the context of armed conflicts. After all, there are significant doubts regarding the legitimacy of targeted killings even against non-state actors, as they infringe upon the right to life and can be seen as extrajudicial executions.

In summary, it can be argued that military commanders of a government should not be assassinated, even if they have engaged in hostile acts against other States. In such cases, the responsible government should be held accountable internationally, and the claimant State does not have the authority to administer justice on behalf of the victim. Otherwise, international relations would become chaotic, and the risk of instability and war would increase in interstate relations.

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Legal Regime Governing Unmanned Military Drones: A Law of Armed Conflict Analysis with a Focus on the Assassination of General Soleimani

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Abstract

Unmanned military drones have gained significant importance for countries due to their temporal and spatial superiority, asymmetric impact, cost-effectiveness, and feasibility to minimize human casualties in conflict zones. These advantages have made them valuable assets in military operations. In this context, the United States employed drone technology to carry out the assassination of General Soleimani at the Baghdad International Airport. However, the US government exceeded legal justifications by providing undocumented statements, claiming self-defense against an imminent armed attack by General Soleimani against US forces. Additionally, the US conducted the drone attack in Iraqi territory without any prior consent of the Iraqi government, resulting in the assassination of a foreign state official. This article aims to explore the legal framework governing military drones under international law and assess the legitimacy of the US attack on General Soleimani's convoy. Through a descriptive-analytical approach, the research findings reveal that states are not authorized to violate another state's sovereign airspace and assassinate foreign officials without official authorization. The US action of employing a drone in the assassination of General Soleimani explicitly violates the United Nations Charter, the Chicago Convention on International Civil Aviation, the 2009 Security Agreement between the United States and Iraq, customary international law, and the principles of jus cogens.

Keywords: Military Drone, General Soleimani, United Nations Charter, the United States, Legitimate Self-Defense

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Introduction

The exercise of state sovereignty, as the supreme and superior authority in enacting domestic laws, has influenced airspace law, which is in conflict with the international dimension of aviation. This implies that states establish relevant regulations within the scope of domestic law by exercising their sovereignty. However, aircrafts, due to their high speed, traverse borders and enter the airspace and territorial sovereignty of other countries, thereby engaging with international aspects. Evidently, the use of military drones necessitates an assessment from the perspective of international law, considering political and military factors. When referring to drones, we are describing aircrafts that are either remotely controlled by human operators or operate based on pre-programmed systems.

The primary international instrument governing aviation activities is the Chicago Convention on International Civil Aviation (the Chicago Convention), drafted in 1944 and enforced in 1947. This treaty strongly emphasizes the complete and exclusive sovereignty of each state over its airspace. Furthermore, each state has the right to restrict or prohibit the flight of aircraft from other states within a portion of its airspace for military or security reasons. Article 3(b) of the Chicago Convention provides an illustrative list of state aircraft, including military, customs, and police aircraft, as well as aircraft used for mapping, diplomatic, medical, and rescue purposes. Although the Convention does not offer a specific definition of military aircraft, the characteristics of such aircraft can be described based on their design, technical specifications, registration markings, type of operations and nature of flights, flight plans, and whether the flight is public or covert. It can be asserted that a state aircraft is one that is under the control of its sovereign state and is used exclusively for state purposes.

The act of assassination, also known as targeted killing, clearly violates the UN Charter and gives rise to international responsibility for the offending state. Accordingly, the legal implications of using drones in the territory of another state for the purpose of assassinating an official of a third state deserves scrutiny.

Military aircraft are considered as part of the armed forces of their respective states. Indeed, unmanned aircraft used for military reconnaissance

and offensive attacks also fall within the category of state aircraft and, therefore, are not subject to the provisions of the Chicago Convention. However, the legal status of military and state aircraft has not been clearly defined by international law. States have been hesitant to subject their military aircraft, which are seen as symbols of their sovereignty, to international regulations (Tank & Tekin, 2019: 39), despite the fact that aviation has always been intertwined with military activities (Moradi, 2016: 1-2). Consequently, the use of drones against officials of a third state lacks legal justification and, in addition to being a clear violation of the explicit provisions of the UN Charter, specifically paragraphs 4 and 7 of Article 2, it also contravenes Article 8 of the Chicago Convention and the 2008 Security Agreement between Iraq and the United States. Moreover, it constitutes a violation of Iraq's airspace and sovereignty without the official permission of the Iraqi government.

Therefore, after providing a definition and historical background of unmanned aircraft and discussing the approach taken by the United States in this regard, the use of unmanned aircraft in peacetime and in light of the principle of state sovereignty will be examined. Subsequently, the analysis will focus on unmanned aircraft from the perspective of the laws of armed conflict, which govern the resort to force, and their connection to human rights, particularly in relation to the use of military unmanned aircraft. Within this context, the attack by a US drone on the convoy of General Soleimani (hereinafter Gen. Soleimani) will be discussed to clarify its legal aspects.

1. Definition and Historical Background

Unmanned Aerial Vehicles (UAV), commonly referred to as drones, serve dual purposes, being utilized by governments for both military and non-military applications. The military use of these aircraft emerged following the events of September 11 and the subsequent commencement of what is known as the "war on terrorism" in US officials' discourse (Mokhtari, 2008: 181).

In the international legal framework, military drones are classified as war weapons. This category of drones raises concerns regarding the transportation or deployment of chemical and biological warheads or cluster bombs, which fall under the purview of the Chemical Weapons Convention of 1993 and the

Missile Technology Control Regime (MTCR) of 1987 (Pejic, 2015: 27). The MTCR, in conjunction with international cooperation in national aerospace programs, has not been designed to curtail programs that could aid in the delivery of weapons of mass destruction (Sajadi et al., 2020: 36). Specifically, the use of drones has significant implications for the principles of sovereignty, equality among states, the use of force, and compliance with humanitarian laws. The principle of sovereignty and equality among states, recognized by nations in the international arena, has been embraced as an approach under the leadership of the United Nations to ensure that each state is fully respected and its system is safeguarded against legal violations (Tank & Tekin, 2019: 49).

Consequently, wars, which always pose a threat to the international system, are prohibited or restricted in terms of employing force against a nation. The UN Charter explicitly specifies that states may resort to unilateral force in circumstances that can be defined as legitimate defense. While conflicts and operations persist worldwide, drones have continued to evolve and be employed as primary military weapons systems, becoming instrumental in the US new military strategies. During these years, the United States departed from the policy of containment and deterrence employed during the Cold War with the Former Soviet Union and its allied countries. Taking into account the asymmetric and evolving nature of new threats, the United States revised its national security strategy in 2002, incorporating the controversial concepts of preventive intervention into its National Security Strategy document and taking the initiative (Ibid: 50).

The advantages that have led Western governments to increasingly favor the use of drones include their cost-effectiveness, reduced risks to human life, and remote-control capabilities. The United States Department of Defense provides a definition of a UAV as "an aerial vehicle that can take off from the ground and fly in the sky without the presence of a human being, utilizing aerodynamic forces and capable of remote control (United States Department of Defense, 2009: 571)." Similarly, other countries have also presented their own definitions of UAV. However, there is currently no universally accepted definition for this type of aircraft.

2. The Use of Unmanned Aircraft during Peacetime in Light of the Principle of State Sovereignty

The principle of state sovereignty grants each country the authority to establish laws governing the use and operation of drones within its territory according to its own discretion. Article 2, paragraph 1 of the UN Charter emphasizes the principle of respect for state sovereignty (Zul'ein, 2011: 217). In accordance with this principle, the use of drones within a state's territory, within the framework of state sovereignty, falls within the jurisdiction of that state. For example, the use of drones for the purpose of maintaining public order, protecting the environment, or controlling borders is within the authority of the government, rooted in the sovereignty of that state (Hosseini et al., 2020: 292).

In contemporary international law, every state enjoys absolute sovereignty over its airspace. The Chicago Convention, which governs national aircraft, addresses this issue. Article 1 of this Convention emphasizes the complete and exclusive sovereignty of each state over its airspace, and each country has the jurisdiction to make decisions regarding foreign aircraft within its territory (Ellen, 2010). Furthermore, Article 8 of the Convention stipulates that "no aircraft without a pilot may fly over the territory of a contracting state without authorization from that state, and it must comply with the conditions laid down by that authorization."

The use of unmanned aircraft with non-military functions in the airspace of another country is subject to the consent of the territorial state and prior notification to it (Casey-Maslen, 2012: 600). Granting authorization to unmanned aircraft to enter the airspace of a country does not imply freedom of action for these aircraft to carry out military operations. This is because any type of military operation by one state within the territory of another state is illegitimate under international law (i.e., resorting to the use of force is prohibited), and undoubtedly, it would violate the provisions of Article 2, paragraph 4 of the UN Charter, unless such actions are accepted with the consent of the government of that territory. However, it should be noted that the consent cannot serve as a basis for its legality. Moreover, according to customary law, such actions are prohibited. In fact, the legal basis for the use of unmanned military aircraft over the airspace of any country is to obtain the

consent of the territorial state, and in this case, the actions of unmanned aircraft must comply with the provisions of Article 8 of the Chicago Convention (Talaie & Zarengar, 2017: 42-43). Undoubtedly, attacks by unmanned aircraft, especially without the consent of the target country, are considered a violation of the sovereignty of that country (Hosseini et al., 2020: 294).

In fact, the attack by a drone on the territory of a country, even in a state of peace between them, constitutes a violation of its airspace and consequently a violation of its sovereignty (ibid: 295). Since there was no armed conflict between the Islamic Republic of Iran, the United States, and Iraq at the time of the assassination of Gen. Soleimani (Amini & Bazzar, 2021: 12), the American drone attack can be considered a violation of Iraqi airspace and consequently a violation of the sovereignty of Iraq.

The measures that a sovereign state can take in the event of a violation of its airspace and territorial sovereignty by foreign aircraft under international law are not fully clear. Nonetheless, it appears that the interception of a non-compliant foreign military aircraft is permissible, as it poses a risk to national security (Talaie & Zarnegar, 2017: 41-42). So far, in numerous cases, most countries in the Middle East region have considered the aerial attacks by drones of extra-regional states such as the United States as violations of their sovereignty and have expressed their objection to this matter. Regarding the US drone strike against Gen. Soleimani's convoy, Iraqi authorities have also expressed their objection to the violation of their sovereignty (Rashidi, 2020).

3. Unmanned Aircraft, the Law of Armed Conflict, and Resort to Force

Article 2(4) of the UN Charter prohibits the use of force. Moreover, this principle also has customary law status. However, the prohibition on the threat or use of force has exceptions, including Chapter VII of the Charter (collective security system), Article 51 of the Charter (right to self-defense), Article 53 of the Charter (regional organizations' enforcement measures), and other collective provisions (Articles 106 and 107 of the Charter, which have been repealed thus far) (Cassese, 2017: 199). Furthermore, a state may engage in military operations in another state's territory at the latter's request or may consent to defensive operations on its own territory by a foreign state

(Vincent, 2011: 71), as exemplified by the US unmanned aircraft military operations against the terrorist group ISIS, which were conducted with the request and consent of the Iraqi government and on Iraqi soil. Therefore, the use of force is prohibited, except in exceptional cases recognized by contemporary international law (Wallace, 2005: 312). However, it should be noted that the violation of a *jus cogens* norm, even if done by agreement between two countries, renders the act itself inherently void and, from a legal standpoint, holds the offending state accountable for infringing on the common interests of the international community (Zamani, 2020: 321-322).

Consequently, to give a legal framework for the use of force by states through the use of unmanned aircraft, their actions must be examined within the framework of the aforementioned exceptions. In this regard, concerning the US drone strikes in various cases, especially regarding the case of Gen. Soleimani, the exceptions of "self-defense" and "consent or request of another state" are subject to scrutiny, while other exceptions are beyond the scope of our discussion.

Regarding self-defense and its requirements, this paper suffices to refer to one of its essential conditions, which is "that only an armed attack triggers the right to self-defense, and not under any other circumstances" (Shaw, 2010: 413). Almost all international law scholars agree on this matter, that it is only an armed attack that triggers the right to self-defense (Dinstein, 2005: 184). The International Court of Justice also emphasized this in the *Nicaragua v. United States* case: "The exercise of the right of self-defense is subject to the condition that the state claiming the right has been the victim of an armed attack" (*Nicaragua v. United States*, 1989: 101 & 103).

Most often, the United States justifies its actions based on the principles of *jus ad bellum* (legitimate self-defense) even in cases where there exists no armed conflict with another country (Ellen, 2010: 3). Regarding the use of drones against Gen. Soleimani, the same justification holds true. Evidently, the United States has not been the victim of an armed attack directly or under the control of Iran, and the US authorities have never provided any evidence or justification for such a claim (Fazaeli, 2021: 169).

In the case of Gen. Soleimani and the exception of "request or consent of another state," the importance of the 2008 Agreement between the United

States and Iraq proves noteworthy. Although the US activities in Iraq are based on this bilateral agreement, it does not authorize Washington to freely attack the authorities of other countries on Iraqi soil. The agreement contains significant provisions. For example, according to Article 4 of this agreement, all military operations conducted by the United States must be in agreement with the Iraqi government, and the second paragraph of this Article further states that such operations must be carried out after full coordination with Iraqi authorities (Montazeran & Jafari, 2021: 24 & 27). Furthermore, Article 27 of the Agreement explicitly states that any form of attack through the Iraqi jurisdiction to third countries is prohibited, precisely opposing the actions taken by the United States in the assassination of Gen. Soleimani on January 3rd (Karamzadeh & Abedini, 2021: 228).

4. International Humanitarian Law and the Use of Unmanned Military Aircraft

If an armed conflict involves conventional aerial attacks by a fighter aircraft, it will be subject to the laws and conventions of the Geneva Conventions. Therefore, it seems that armed attacks by UAVs during an armed conflict should also be subject to these laws (Moradi, 2016: 46). To assess the legality of the use of weapons, one must refer to the fundamental principles and rules of International Humanitarian Law (IHL). It is self-evident that if the belligerent parties are parties to a treaty prohibiting the use of the weapon in question, they must adhere to that treaty, otherwise, customary international law will apply. If this source of international law lacks a rule regarding the prohibition of using the weapon, the fundamental principles of IHL should be referred to (Mamdouh & Shayegan, 2014: 100). Aerial bombardment through drones is considered a novel method of warfare that can be controlled from thousands of miles away (Casey-Maslen, 2012: 200).

Some opponents of the use of unmanned aircraft claim that these drones inherently operate blindly (Ajili et al., 2020: 26), hence, the use of such weapons is prohibited under the principles of the IHL. However, by examining the types of weapons that have been recognized as indiscriminate so far, it can be acknowledged that UAVs do not inherently fall into this category. Philip Alston, the Special Rapporteur of the United Nations, also confirms this opinion. According to him, unmanned aircraft do not pose any specific legal

challenges, and the key issue in this regard is the case-specific examination, taking into account the overall circumstances and conditions prevailing at the time of the attack (Alston, 2010).

Generally, the use of UAVs in armed conflicts, like any other launching systems, is a legitimate act in the field of lawful combat. However, the nature of the weapons carried by these aircraft is of crucial importance. In fact, some missiles and bombs carried by UAVs are considered prohibited weapons under international law. The use of lethal and destructive force and the employment of such weapons with high firepower have been significantly limited within the framework of the conduct of hostilities and through principles of humanitarian law, especially the limitation on the deprivation of life, which restricts a state's resort to the use of lethal force (Ellen, 2010: 3). Therefore, the use of UAVs in armed conflict is not permissible if the launched munitions include prohibited weapons stated in international law, such as chemical, biological, and laser weapons (Hosseini et al., 2020: 302). Some argue that the regulations governing the use of UAVs in armed conflicts are the same as those governing military aircraft (Program on Humanitarian Policy, 2013: 100), but this belief does not imply uniformity between military aircraft and UAVs (Lewis, 2012: 295).

It should be noted that initially UAVs were designed as reconnaissance aircraft, and in this regard, discussions of humanitarian and human rights were less explored and examined. However, after the United States added the AGM-114 Hellfire missile to UAV systems in 2002, leading to operations and attacks in Afghanistan and Pakistan (Wuschka, 2011: 893), discussions on humanitarian issues became more serious, questioning the legitimacy of employing such tools for military purposes and raise numerous questions from researchers and legal experts concerning the examination of the humanitarian implications of these technologies, including UAVs, and the position of international law, particularly the IHL, in the face of the use of modern technologies. The United States argues that, since it is a "war on terrorism," the use of armed UAVs is justifiable. However, many international law experts have rejected this justification (Groof, 2016: 138).

Furthermore, unmanned aircraft can comply with the principles of the IHL and are not always subject to abuse (Završnik, 2016: 11). The term "UAV"

does not strictly refer to a weapon, but primarily to a weapon delivery system. Therefore, UAVs are not inherently a threat to the violation of international laws, such as humanitarian law, but rather the misuse or improper use of this new technology creates unlawful conditions for its use. UAVs are not illegal weapons systems; on the contrary, some researchers argue that UAVs are fully capable of meeting the requirements of human rights principles and humanitarian principles of international law, such as the principles of necessity, distinction, proportionality, precaution, and the prohibition of unnecessary suffering (Groof, 2016: 136). According to the laws governing warfare and armed conflicts, killing is legally justified only if the four principles of *necessity*, *distinction*, *proportionality*, and *humanity* are present (Abeyratne, 2015: 76).

As mentioned earlier, it appears that the use of UAVs in the IHL does not inherently prohibit their use, and this matter is more dependent on the type of weapons and the operational conditions. Therefore, their use should be examined on a case-specific basis, considering the circumstances and operational legitimacy. Therefore, with regard to the case of Gen. Soleimani's assassination, it is appropriate to act in the same manner, namely by examining the extent to which the US drone observed the principles of humanitarian law and addressing the question of whether the US drone had the capability to uphold these principles or not. Nonetheless, there was no conflict between Iran and the United States, as well as the Iraqi government. Since human rights are applicable during armed conflicts, in general, it is not feasible to discuss human rights, their violation, or observance in this context. Therefore, regarding the Gen. Soleimani's case, the status of the United States drone should be examined outside the framework of the legal system governing armed conflicts.

Conclusion

The US drone attack on General Soleimani can be analyzed from several perspectives: national sovereignty of Iraq, the laws of armed conflict governing resort to force, and International Humanitarian Law (IHL). Within the context of Iraq's national sovereignty, it should be noted that General Soleimani was present in Iraq at the invitation of the Iraqi government and in

an official capacity as a representative of a foreign country. Obviously, the attack on an official representative of a third country contradicts the national sovereignty of Iraq and constitutes interference in its internal affairs, thereby violating its independence. Furthermore, the violation of a country's airspace by foreign aircraft constitutes a fundamental violation of international law, which leads to conflicts between countries. Therefore, the unauthorized entry of such aircraft into the airspace of a country constitutes an act of aggression and entails international responsibility.

Given that surveillance drones can be considered as a particular type of military aircraft, part of their rights fall outside the scope of laws of war, namely the Chicago Convention on International Civil Aviation, which prohibits the attack on the official representatives of a country by drones, especially without the knowledge of the Iraqi government. This violates certain provisions of the Chicago Convention, contravenes the principle of non-intervention in internal affairs, and violates the principle of territorial sovereignty of the Iraqi government. Additionally, since there was no official and overt conflict between Iraq, the United States, and Iran, and this attack was without any prior knowledge of the Iraqi government, it can be considered a violation of Iraqi airspace. According to Article 4 of the 2008 Security Agreement between Iraq and the United States, any military operation on Iraqi soil should be conducted with the consent of the Iraqi government, which was never fulfilled in this case.

From an international law perspective, according to Article 51 of the United Nations Charter, resorting to legitimate self-defense is only applicable in the case of an "armed attack" as one of the forms of aggression. Article 51 of the UN Charter also stipulates that until the UN Security Council takes necessary measures to maintain peace and international security, none of the provisions of the Charter will affect the inherent right of self-defense. Therefore, it should be noted that in a state of peace, the attack by a drone can be considered as a form of initiating armed violence and to be legitimate, it must fall within the framework of one of the exceptions to the prohibition of the use of force. In this regard, considering the preceding discussions, it is evident that the US drone attack in the case of General Soleimani does not fall

within these exceptions and, consequently, constitutes a violation of the principle of non-use of force.

Furthermore, in order to legitimize the use of drones during an armed conflict, it is necessary to consider their use on a case-specific basis, taking into account the prevailing circumstances, and examine whether they have been able to uphold the principles of human rights. In the General Soleimani case, it is evident that since this sudden attack took place without the existence of an armed conflict, it is not possible to discuss the observance or violation of the IHL, as these rights are applicable during armed conflicts. It should be noted that by using drones to assassinate official individuals (who were present in Iraq at the invitation of the Iraqi government) through the territory of a neighboring country, the United States not only violated the national sovereignty of Iraq but also undermined the principles of the UN Charter and the spirit of international law. Such actions should not become a practicing norm of the powerful nations.

The sum up, in this regard, the use of military drones within the territory of another country to attack official representatives without the permission and consent of the respective government, especially when they are present in that territory at the invitation of the official government, is contrary to international law. Military drones are considered as part of the country in which they are registered. Hence, their flight over Iraqi territory should have been with the permission of the Iraqi government, and obtaining another permission from the Iraqi government would have been necessary for any military action against General Soleimani's convoy. However, considering that the United States authorities were aware of the Iraqi government's opposition to any such an operation, they indeed violated the national sovereignty and territorial integrity of Iraq by carrying out the assassination of General Soleimani.

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:The Americanization of International Law and Challenges Facing the International Community The Targeted Assassination of General Soleimani

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Abstract :

The Americanization of International Law by the United States poses a significant threat to modern international law. The process involves the imposition of US government hegemonic sovereignty over the legal rules, procedures, and operations of international organizations. It undermines the solidarity of international law advocates and the globalization process, prioritizing the interests and national security of powerful nations over legal principles. This trend has intensified during the presidency of Donald Trump, characterized by blatant disregard for international laws and accusations of contradictory foreign policy measures. A prominent example of this Americanization effort is the targeted assassination of General Soleimani and his companions on January 2020, ordered by Donald Trump. Recruiting a descriptive-analytical method, this article aims at analyzing the Americanization of International Law and the challenges faced by the international community by utilizing library sources, as well as international legal documents.

Keywords: Unilateralism, Americanization of International Law, International Law, Targeted Assassination, General Soleimani

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Introduction

The historical backdrop of the two world wars in the 20th century gradually led the global consciousness to recognize the necessity of curbing the destructive phenomenon of war in order to establish peace and security worldwide. In pursuit of this noble objective, efforts were made to limit the use of force and achieve this goal through the establishment of a new system under the United Nations framework. However, the Cold War between the Western and Eastern superpowers soon emerged, casting a shadow of threats and resorting to force, raising concerns once again. This process persisted even after the collapse of the Eastern Bloc and gained momentum in the early 21st century.

With the dissolution of the Soviet Union, discussions of a new world order emerged, suggesting an alternative system to the United Nations and the principles of globalization. In this regard, the United States of America sought to distinguish its own values and norms from those of the international community, aiming to protect its interests in various areas and cases. This approach aimed to exempt itself from the rules and principles of international law. In practice, this particularism views the international order as a product of States' will, and if the UN system, as the cornerstone of the international community, fails to respond adequately to this destructive process, international cooperation and solidarity will suffer irreparable damage.

The Trump Administration in the United States has played a decisive role in accelerating this destructive trend. The Trump era in world history reminds us of a concerning period marked by a series of actions that disregard the international public order, which lies at the heart of the UN, and seeks to impose the dominance and supremacy of its own political structure globally, assuming the role of a teacher to the international community. This trend has often persisted in Republican administrations in the United States, particularly since the presidency of Ronald Reagan.

The targeted assassination of General Qassem Soleimani (hereinafter Gen. Soleimani) on January 3, 2020, exemplifies American unilateralism. This action, directly ordered by the then-President of the United States and premeditated under the pretext of fighting terrorism, can be analyzed from various perspectives. The United States, which has long sought to impose its

definition of terrorism on the international community and position itself as a leader in the fight against terrorism, unilaterally interprets and applies the rules of international law in a manner that prioritizes its own interests over those of the international community. In this context, we aim to examine the process of Americanization of international law, the particularistic approach of this State towards the international community, and the consequences it has on modern international law and the UN system.

1. The Trump Administration's Approach to International Law: Accelerating the Process of Americanizing International Law

While it is desirable and crucial for the implementation of international law to be consistent for all actors in order to promote international cooperation, solidarity, and ensure global peace and security, powerful States often prioritize their own domestic laws and norms over international law when it contradicts their interests. They seek to exempt themselves from international norms and impose their own rules.

The history of the United States demonstrates its tendency to consider the uniform implementation of international law on all subjects of the international community as unjust. In several cases, the United States has tried to establish exceptional and special rules for itself (Hoffmann, 2011:84). The US government presents itself as the teacher and leader of the international community, relying on cultural factors, legal traditions, and its political, economic, and military capabilities to exert influence on global affairs. While both major political parties in the United States (Democrats and Republicans) support American hegemony, this phenomenon tends to intensify during Republican administrations (Nolte, & Aust, 2013: 409). The imposition of American hegemony on the international community, which became apparent during the presidency of Ronald Reagan and especially before the collapse of the Soviet Union, is often associated with the concept of a new world order (Schweitzer, 2013: 23).

In the years 2017 to 2020, under the leadership of the 45th President of the United States, Donald Trump, the imposition of American hegemony on the international community took on a new form. Trump's approach was reckless and disregarded US international obligations. He displayed a destructive

attitude towards international documents, treaties, and organizations, whether they were regional or global in nature. Examples of the unilateral policies of the United States during Trump Administration include the violation of international obligations towards immigrants and refugees, withdrawal from the Joint Comprehensive Plan of Action (JCPOA) and the North American Free Trade Agreement (NAFTA), and undermining the value and effectiveness of international organizations such as the United Nations and even the International Criminal Court (ICC). The United States also imposed its own interpretation of legitimate defense, using it as an exception to the principle of the prohibition of the use of force under the pretext of fighting terrorism.

The process of Americanizing international law involves legal particularism (i.e., exceptionalism), where the characteristics and norms derived from the US domestic legal system seek to dominate over the international legal system. This stands in opposition to legal generalism, where entities subject to international law strive to adhere to the general rules of international law, even if they contradict their own values and norms. The US government, in this case, seeks to exclude or reinterpret international legal rules to align them with its own interests and values (Bradford & E. A. Posner, 2011: 8). Unfortunately, this emphasis on extreme nationalism by the United States will only weaken the process of globalization and erode global integration and solidarity. The US legal system acts as if the dominance of the American sovereignty paradigm is universally accepted by all actors in the international community, undermining the progress towards a modern world centered on international law. This process risks reviving the outdated Westphalian system, which was shattered by the experiences of the First and Second World Wars, and it undermines the efforts to establish international law based on principles beyond the sole sovereignty and will of States.

2. The Trump Administration's Approach towards International Documents and Treaties

The Trump Administration pursued a strategy of freeing the United States from international law obligations, particularly in relation to international treaties, in order to safeguard its own national interests. This involved exploiting the right to impose extensive conditions during negotiations and

drafting international documents and treaties, such as the Statute of the ICC, the Kyoto Protocol, and the Paris Climate Change Agreement of 2015. The Administration often cited contradictions with its domestic laws as a justification for its actions. The following are some of the key approaches taken by the Administration regarding its international treaty obligations:

2.1. Joint Comprehensive Plan of Action (JCPOA)

The Joint Comprehensive Plan of Action (JCPOA), as an appendix to UN Security Council Resolution 2231, pertains to the entire international community. According to the terms of the JCPOA, by implementing comprehensive measures to ensure transparency and verification of Iran's nuclear program, all sanctions imposed by the Security Council and other multilateral and national sanctions related to Iran's nuclear program would be lifted.

The JCPOA and Security Council Resolution 2231 are two separate but interrelated documents with legal dependencies. The Security Council, which had been examining Iran's nuclear program for over 12 years, was supposed to clarify its position on the agreement between Iran and the P5+1 (the United States, China, Russia, France, the United Kingdom and Germany) and the lifting of all Security Council sanctions. In approving Resolution 2231, the Security Council emphasized that the JCPOA was an integral part of the resolution, and therefore derived its validity from it. As per Article 25 of the UN Charter, Security Council resolutions are binding on all States. While the JCPOA and Resolution 2231 are independent, violating the resolution does not necessarily constitute a violation of the JCPOA. However, a violation of the JCPOA provisions could be seen as a violation of the resolution itself, as the JCPOA served as the basis for its issuance (Joyner, 2016: 229).

On May 8, 2018, President Trump officially announced the US withdrawal from the JCPOA and the reinstatement of sanctions. Legal advisors at the US State Department had constantly contended that the JCPOA was a non-binding legal commitment, and former President Barack Obama did not secure approval for the agreement from Congress or the Senate.

Therefore, there were no legal obstacles for Trump Administration to unilaterally violate the agreement.¹

It should be noted that the JCPOA and Resolution 2231 constitute a self-contained system within the framework of the Security Council. This system defines commitments and the corresponding reactions. Even if the assumption that the US government has withdrawn from the agreement is accepted, it must be emphasized that, due to the Security Council's approval of the JCPOA under Resolution 2231, the government cannot withdraw from the resolution system. Violating the resolution undoubtedly constitutes a violation of the UN Security Council resolution.²

2.2. North American Free Trade Agreement (NAFTA)

The North American Free Trade Agreement was signed in 1994 among the United States of America, Mexico, and Canada. According to the NAFTA, trade and investment restrictions between Canada, Mexico, and the United States would be gradually eliminated over a period of 15 years. A significant number of trade tariffs on agricultural products between the United States and Mexico were quickly abolished, and the 6% tariff on agricultural products (including corn, sugar, and some fruits and vegetables) was phased out within 15 years. Tariffs on food and textiles were supposed to be eliminated in the three States within ten years.³

In 2015, the Congressional Research Service concluded that the overall impact of NAFTA on the US economy seemed to be relatively balanced, as trade between Canada, Mexico, and the United States accounted for a small percentage of US GDP. The US Chamber of Commerce attributed the increase in US trade with Canada and Mexico in goods and services from \$337 billion in 1993 to \$1.2 trillion in 2011, while the American Federation of Labor blamed the agreement for displacing 700,000 American manufacturing jobs to Mexico (Caliendo, 2015: 40).

¹ <http://opiniojuris.org/2016/11/09/why-president-obama-gave-president-elect-trump-the-power-to-undo-the-iran-deal-and-paris-agreement/> (Last visited Jan 2020).

² Chalk, Jimmy. "Can President-Elect Trump Dismantle the JCPOA? It's Complicated", Available at: <https://lawfareblog.com/can-president-elect-trump-dismantle-jcpoa> (last visited Jan 2020).

³ <https://www.nafta-sec-alena.org/Home/Welcome>(last visited Jan.2020).

During his campaign, Trump strongly criticized the agreement and referred to it as the worst trade deal. He promised to withdraw from NAFTA and negotiate a new agreement. According to Trump, NAFTA did not serve the national interests of the United States and provided a basis for the exploitation of the US market by economic partners without offering similar opportunities for the US economy. In 2018, Trump pressured Mexico and Canada to reach a new trade agreement, and the revised agreements were reached with Mexico in August and Canada in October of that year.

2.3. A Perspective on US Commitments to Immigrants and Refugees

The rights of refugees have become increasingly significant in the modern world. One of the earliest efforts in this area is the 1951 Convention on the Status of Refugees. Given the challenges of the refugee situation since the mid-1950s, collective efforts and international cooperation have aimed to address the refugee problem while emphasizing the principle of non-refoulement. This principle is of particular importance as a general principle that should be respected by all countries, not only the Members of the 1951 Convention or the 1967 Protocol.¹

On September 19, 2016, world leaders gathered at the UN headquarters in New York to seek a fundamental solution to reduce migration, the number of displaced people, and to improve their conditions. The 2016 New York Declaration aimed to standardize the response to the conditions of asylum seekers, provide better educational opportunities for their children, and improve the conditions of refugees who have been living abroad for approximately 20 years.²

On the other hand, since the beginning of his election campaign in 2016, Donald Trump consistently criticized US policies regarding the acceptance of asylum seekers. He emphasized that many of these immigrants were criminals and referred to their movement towards the American border as an "invasion for occupation." After assuming the presidency, on November 9, 2017, he

¹ Although the United States is not a Member of the 1951 Convention on the Status of Refugees, it has joined the 1967 Protocol on the Status of Refugees and must adhere to its international obligations.

² Available at: <https://www.france24.com/en/20171203-usa-pulls-out-un-migrant-refugee-pact-trump-haley> (last visited Jan 2020).

issued an executive order stating that anyone seeking asylum in the United States of America must enter the country through official entry points, or else their asylum request would not be processed. This is despite the fact that, according to US laws, asylum requests from immigrants claiming to have fled their countries to escape violence must be processed, regardless of how they entered the United States. In 2017, the Trump Administration implemented a travel ban that suspended the entry of citizens from several Muslim-majority countries into the United States through an executive order.¹ Initially, the order affected citizens of Iran, Libya, Somalia, Syria, Yemen, Iraq, Chad, and Sudan, but later Iraq, Chad, and Sudan cooperated in issuing US visas to their citizens and were exempted from the order. North Korea and Venezuela were added to the scope of the order.

The San Francisco District Court, under Judge Jon Tigar, responded to a lawsuit filed by the American Civil Liberties Union, the Southern Poverty Law Center, and the Center for the Defense of Constitutional Rights. The lawsuit argued that Trump's executive order was not legally valid. The court ordered the suspension of the presidential executive order after hearing arguments from civil rights groups. As a result of this ruling, any foreigner entering the United States, regardless of the specific border routes or other means of entry, might request asylum in the country.² In response to Trump's order, the UN High Commissioner for Refugees announced that the United States had violated the 1967 Protocol on the Status of Refugees by refusing to accept asylum seekers. Human Rights Watch criticized Trump's order and condemned it as another attempt to infringe upon the rights of individuals who have fled from discrimination and violence.³

¹ 2 Available at: <https://www.theguardian.com/us-news/2017/oct/24/trump-refugee-ban-end-immigration-executive-order> (last visited Jan 2020).

² Available at: <https://sanfrancisco.cbslocal.com/2018/12/19/judge-blocks-trump-administration-partial-ban-asylum-seekers/> (last visited Jan 2020).

³ Available at: <https://www.hrw.org/news/2018/09/18/trump-slashes-number-refugees-resettled-us> (last visited Jan 2020).

3. Americanization of the International Law of Armed Conflicts:

3.1. The US Approach to the Principle of the Prohibition of the Use of Force and Self-Defense:

The international legal system embraces and emphasizes the rule of not resorting to force. In contemporary international law, this principle is based on the maintenance of international peace and security. According to the President of the International Court of Justice (ICJ)¹, refraining from threats or the use of force is fundamental to humanity's efforts to maintain peace in a world full of conflicts.² Article 2(4) of the UN Charter establishes an absolute and unconditional prohibition on the use of force. This provision does not differentiate conceptually between various types of force, such as armed attack, aggression, invasion, or war. Rather, it is a complete and total prohibition on any use of force that violates a State's sovereignty, territorial integrity, or political independence (Alder, 2013: 73). One exception to this prohibition is the inherent right of legitimate defense.

Legitimate defense can be exercised in response to an attack, as a preemptive response to an imminent attack, or as preventive defense based solely on the perceptions of a State facing an armed threat. In the case of preemptive defense, a State that perceives an imminent attack is allowed to respond militarily. The legality of self-defense in the face of an imminent threat is limited to preemptive legitimate defense, which can be applied when there is an imminent threat or use of force. However, in the case of preventive defense, if no threat or action has been taken by the attacking country, no State has the right to take military action under the pretext of legitimate preventive defense simply due to a perceived feeling of danger or the threat of military action.

Despite this, the United States has adopted a different and challenging approach. The actions and policies of the United States indicate a belief in recognizing exceptions to international law, such as humanitarian intervention and the war on terrorism. Additionally, the US interpretation of Article 51 of the UN Charter introduces new ideas and concepts that expand the concept of

¹ Nagendra Singh

² Case of Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), ICJ Judgment of 27 June 1986, Separate opinion of President Nagendra Singh, p. 153

legitimate defense to include preventive and preemptive forms. The United States considers these forms of defense as justified under the inherent right of legitimate defense provided by Article 51. According to Article 51, there are four basic conditions for the prescription of legitimate defense: a) an armed attack has occurred; b) the response is directed against the Party that launched the armed attack; c) the purpose of the response is to prevent future attacks; and d) the response is necessary to remove the threat and is proportionate to the situation (Najhandi Manesh, 2008: 91).

In terms of Article 51 of the Charter and the inherent right of legitimate defense, the United States has a sense of exceptionalism, where it seems to recognize its own rules and principles. This mindset was further propagated in the field of international law during the Reagan Administration and was evident in Bill Clinton's executive policies concerning the North Atlantic Treaty Organization. The approach of exceptionalism, particularly regarding the use of force and legitimate defense, is clearly seen among advocates of the plan to invade Iraq. The Bush Administration declined to address the position taken by other States that viewed any invasion of Iraqi territory without Security Council authorization as an act of aggression.

The United States certainly had concerns about States possessing weapons of mass destruction, such as Iraq. However, the mere possession of such weapons cannot be considered an act that justifies an armed attack. Permission to initiate an attack cannot be granted as long as these weapons have not been used or threatened to be used. The ICJ, in its advisory opinion in the Nuclear Weapons Case, stated that the use of nuclear weapons is only permissible in extreme circumstances of legitimate defense. However, the Court did not rule on whether the threat of using nuclear weapons is legal or not.¹ Nevertheless, the mere possession of a weapon, without any threat of use, cannot be prohibited under general international law. As for the other conditions of legitimate defense, namely necessity and proportionality, it can be argued that a large-scale invasion of Iraq would have difficulty meeting these conditions. In the case of Iraq, achieving the stated goal of disarming the Iraqi government of weapons of mass destruction could have been better

¹ Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. 226 at para. 105.

pursued through targeted sanctions, while also ensuring the preservation of civilian lives (O'Connell, 2002: 49).

In justifying the attack on Iraq, the United States contended that the necessary authorization for a military attack against Iraq already existed within the UN, as it aimed to implement the UN request to disarm the Iraqi government, and therefore, no new authorization was required. The legal basis for this contention lies in Resolutions 678 and 687 from 1990 and 1991.¹ According to George W. Bush, these resolutions were still applicable. Furthermore, he argued that Security Council Resolution 1441, issued on November 8, 2002, revived the previous resolutions, thereby providing increased support for the use of coercive measures. Resolution 678 granted authorization to use force to expel Iraq from Kuwait, restore Kuwait's sovereignty, and maintain peace and stability in the region through any means necessary. Resolution 687 suspended the authorization granted by Resolution 678 but did not terminate it. It also imposed several obligations on Iraq, primarily centered around complete disarmament in order to restore international peace and security to the region. The United States claimed that Iraq's material violation of Resolution 687 caused the authorization granted by Resolution 678 to be reinstated, and that Resolution 1441 declared Iraq's material breach of all its obligations under previous Security Council resolutions. Additionally, it stated that Iraq had been given a final opportunity to comply with these obligations and had been informed of the serious consequences of non-compliance.

Following the events of September 11th, the Bush Administration developed a new model of national security. According to this model, they believed they had the right to address terrorist threats before they fully materialized.² The 2003 Iraq war marked the first application of Bush's Doctrine of Preemption. The Doctrine asserted the State's right to self-defense, rooted in international law and Article 51 of the UN Charter, and argued that it could be employed against another country in foreseeable cases of force. However, the Doctrine clearly contradicts international law, as

1 S.C. Res. 678, U.N. SCOR, 2963d mtg., U.N. Doc. S/RES/678 (1990); S.C. Res. 687, U.N. SCOR 2981st mtg., U.N. Doc. S/RES/687 (1991)

2 Available at: <https://www.state.gov/documents/organization/63562.pdf> (last visited Jan 2020).

legitimate defense can only be invoked in situations where an armed attack has occurred and cannot be justified under any other circumstances (Shaw, 2004: 1025). The United States, as a proponent of this Doctrine, believes in a broader interpretation of the UN Charter regarding legitimate defense. The US interpretation of Article 51 of the Charter allows for preemptive legitimate defense, even without an actual armed attack. However, this perspective is not widely accepted by other States and international institutions, as evidenced by their reactions to US actions in various countries, including in Iran (the Tabas Desert, The Oils Platforms, the Airbus Case), Grenada, Cuba, Nicaragua, Libya and Iraq.

3.2. United States and Targeted Use of Force

3.2.1. The Assassination of General Soleimani and His Companions

Since the US military occupation of Iraq in 2003, the region has experienced ongoing unrest, political difficulties, the emergence of terrorist groups al-Qaeda and ISIS, and violations of human rights and humanitarian norms. In November 2019, political unrest erupted in Iraq, accompanied by economic demands. In this context, a significant event occurred on January 3, 2020, when Gen. Soleimani, an Iranian military commander, was killed in a US drone strike at the Baghdad Airport. The United States defended this operation as an act of legitimate defense against imminent attacks from Iran. However, this justification does not align with international law, as there was no prior armed attack against the United States. Furthermore, the U.S. operation in Iraqi territory cannot be justified under the 2008 US-Iraq Status of Forces Agreement (SOFA). The Agreement allows for legitimate defense by the United States in Iraq, but it requires the Iraqi government's consent for any operation on its soil (the SOFA, 2008, art. 24(4)). Additionally, the operation violated international law by targeting an official and foreign guest in a third country.

Gen. Soleimani, a prominent military commander of Iran, was killed in a US drone attack at the Baghdad Airport on early Friday, January 3, 2020. The attack also resulted in the deaths of Abu Mahdi al-Muhandis, a commander of the Iraqi Popular Mobilization Group (Hashd al-Shaabi), and 10 others. The United States Department of Defense confirmed that the airstrike was ordered

by the then-President and Commander-In-Chief, Donald Trump. Prior to this event, there were incidents such as attacks on the Iranian consulate in Najaf and Karbala in November 2019, along with damage to Iranian diplomatic facilities. These incidents were accompanied by Trump's supporting tweets encouraging Iraqi protesters to confront Iran.¹ The United States justified the operation as a legitimate defense against what it claimed were imminent attacks by Iran on its forces in Iraq. However, the operation on January 3rd was a preventive measure based on the mere possibility of an attack from Iran, which is not supported by international law. The United States had not claimed to be a victim of an armed attack before January 3, 2020, so it does not align with the classic interpretation of Article 51 of the UN Charter. The US claim was made after the assassination of Gen. Soleimani, indicating an imminent attack.² However, the then Iraqi Prime Minister, Adel Abdul Mahdi, clearly stated that Gen. Soleimani was engaged in a political and diplomatic mission between Iran, Iraq, and Saudi Arabia.³ This action of targeting an official and foreign guest in a third country is a clear violation of international law.

Furthermore, the January 3rd operation cannot be justified as legitimate defense within Iraqi territory, even under the 2008 US-Iraq Status of Forces Agreement (SOFA).⁴ While this strategic security agreement mentions the possibility of legitimate defense by the United States in Iraq (the SOFA, art. 4(2)), it is not unlimited, and Iraq's consent is required for any operation on its soil. Additionally, the Agreement states that no operation should be carried out from Iraqi territory against another country.

1 Scott R. Anderson, The Law and Consequences of the Recent Airstrikes in Iraq, available at: <https://www.lawfareblog.com/law-and-consequences-recent-airstrikes-iraq> (last visited Jan. 2020).

2 Scott R. Anderson, Did the President Have the Domestic Legal Authority to Kill Qassem Soleimani?, available at: <https://www.lawfareblog.com/did-president-have-domestic-legal-authority-kill-qassem-soleimani> (last visited Jan 2020).; On January 23, 2020, Brian Hook, the US special envoy for Iran affairs, announced in a conversation with Al-Sharq Al-Awsat newspaper that "If Ismail Qaani, the new commander of the Quds Force and the successor of General Soleimani, wants to continue his path, he will face the same consequences." This threat by the US authorities indicates that the US government is moving in the same direction that the Zionist regime of Israel has been following for years. The institutionalization of state terrorism is a very dangerous tactic that must be dealt with immediately, especially through international organizations.

3 Iraqi Prime Minister was scheduled to meet Soleimani the morning he was killed, available at: https://edition.cnn.com/middleeast/live-news/us-iran-soleimani-tensions-live-intl-01-05-20/h_7c821d1eb7c75ce4b103f0e8020a35e1 (last visited Jan. 2020).

4 Agreement Between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities During their Temporary Presence in Iraq.

Even Obama's doctrine¹, which allowed for the use of force in cases where a government was unable or unwilling to prevent an attack, does not apply to the January 3rd operation. The doctrine pertains to non-State entities, not governments, and the US action violated international law standards.² While the assassination of Gen. Soleimani and his companions by the United States is considered a wrongful act and a blatant violation of international law, the Islamic Republic of Iran may invoke the right to legitimate defense under Article 51 of the UN Charter and the fulfillment of attack as implied in Article 2(4) of the Charter. Besides, recent developments suggest that if US military forces do not withdraw within the specified period, Iraq has the right to legitimate defense against the US actions, and the Iraqi government may request Iranian intervention for collective legitimate defense.

It is important to note that none of the States involved are Members to the Statute of the ICC, and given the US position in the Security Council, the possibility of the Case being referred to the ICC is unlikely. The Iranian government has the right to take countermeasures, including diplomatic channels such as the UN General Assembly and the Human Rights Council, to address the issue.

3.2.2. The Practice of Targeted Killings and Its Implications for Supporters and Opponents

The assassination of Gen. Soleimani is part of a series of targeted actions conducted by the United States and Israel since the beginning of the Third Millennium. Targeted killings have been a subject of controversy. This operation, which is an example of extrajudicial killing, involves the planned killing of an individual accused of terrorist activities by a government or its agents. Over the past two decades, it has become a contentious issue within the context of armed conflicts and struggles against terrorism. Engaging in a military operation sponsored or controlled by a foreign State, during peacetime and within the territory of another State, without the latter's knowledge and consent, with the intention of assassinating a political or

¹ A general term to refer to the basic principles of foreign policy of the Obama Administration

² Black, D. Roberts, ISIS Air Strikes: Obama's Plan Condemned by Syria, Russia and Iran, available at: www.theguardian.com/world/2014/sep/11/assad-moscowtehran-condemn-obama-isis-air-strike-plan (last visited Jan. 2020).

military figure, is considered a violation of international norms and an act of aggression. Since the 1990s, Israel has targeted and killed military and political leaders affiliated with Hamas and Hezbollah, citing the fight against terrorism (Alston, 2011:283). In a broader sense, targeted killings can be defined as the intentional and premeditated use of lethal force, attributed to a function of international law, to kill a specific individual who has not been apprehended (Melzer, 2008: 3).

The US practice, particularly after the 9/11 event, indicates that targeted killings are employed to eliminate specific targets in countries where ground operations are challenging. Through airstrikes and the use of drones, the United States has carried out numerous targeted assassinations in Iraq, Afghanistan, Pakistan, and Yemen. These operations have raised significant concerns, as drone attacks in these countries have violated their territorial sovereignty, resulted in the deaths of numerous civilians, and caused destruction to public places. Such attacks are seen as illegitimate and clear violations of international law and the UN Charter.

The use of drones in targeted killings was first highlighted in Yemen in November 2003, following the killing of Salim al-Sanan, a leader of al-Qaeda, along with several others suspected of targeting the interests of the United States. Published documents and reports reveal that from early 2002 to July 2013, approximately 71 drone operations were conducted in Yemen, resulting in the deaths of up to 800 people, including around 70 children.¹ Similar cases and reports have been documented in Pakistan. In many of these instances, humanitarian rights standards have not been observed, leading to humanitarian crises (Anderson, 2009: 41).

The killing of the leader of the Pakistani Taliban in his home in North Waziristan, Pakistan, through two missile strikes from a drone, the killing of Osama bin Laden on May 2, 2011, by a six-member team of the United States Navy in Abbottabad, Pakistan, and the killing of some members of al-Qaeda in Yemen exemplify the US use of targeted killings. This approach has elicited different reactions, including the killing of Anwar al-Awlaki, a US citizen and

¹ Legality of Targeted Killing Program under International Law, available at: <https://www.lawfareblog.com/legality-targeted-killing-program-under-international-law> (last visited Jan. 2020).

leader of al-Qaeda in Yemen, along with three other US citizens on September 30, 2011. Following this incident, the United States faced legal and judicial opposition, with emphasis on the prohibition of extrajudicial executions of its citizens (Chesney, 2011: 17).

Those who argue for the legitimacy of targeted killings often refer to the existence of an armed conflict between themselves and terrorist groups (Solis, 2007: 132). They may discuss the concept of a new type of comprehensive war against terrorism. In other words, supporters of targeted killings view them as a means to combat terrorism, based on the inherent right of self-defense, which is considered an exception to the principle of prohibiting the use of force by the State suffering from terrorist attacks (Weibe, 2003: 363). According to this perspective, every terrorist attack should be recognized as an "armed attack," thereby invoking the application of Article 51 of the UN Charter, even if the attacking Party is not a State aggressor.

However, what is concerning is the broad interpretation of exceptions to the prohibition of the use of force under the pretext of fighting terrorism, as it can entail destructive consequences. The right to self-defense has certain conditions, such as necessity, urgency, and proportionality. It can be argued that these conditions may not be met in the case of targeted killings, unless one accepts the concept of preventive defense (Zarif and Ahani, 2013: 50). Nevertheless, the legality and legitimacy of such preventive operations are highly disputed within international law.

On the other hand, opponents of targeted killings contend that these operations, in most cases, lead to violations of fundamental principles of humanitarian rights during conflict situations and human rights during times of peace (such as the right to life). Consequently, they argue that the destructive and inhumane aspects of these operations cannot be overlooked by the international community (Blum & Heymann, 2010: 57).

3.2.2.1. A Humanitarian Law Perspective

3.2.2.1.1. Violation of the Principle of Distinction

Opponents argue that the principle of distinction is violated in targeted killing operations. They argue that under the guise of targeting specific individuals, many civilians are also killed or injured. Notable examples of such cases can

be seen in the actions of the United States in Afghanistan, Pakistan, and Yemen as well as Israel in Palestine and Lebanon. For instance, a school is attacked and many civilians are harmed under the pretext of targeting al-Qaeda leaders (Stein, 2003: 128). According to the Article 51(3) of the additional protocol to Geneva Conventions of 1949, a civilian can only be directly attacked if they directly participate in hostilities, and such attacks are only permissible during times of armed conflict (Siah Rostami et al., 2011: 361). Experts hold differing opinions on who the targets of US and Israeli operations are. Many targeted assassinations involve individuals who are not members of the military forces, leading to questions about whether these individuals, who face accusations of terrorism, are considered civilians and enjoy the protections afforded to civilians. Article 4 of the Third Geneva Convention defines membership in the armed forces as the criterion for being considered a soldier, and irregular or guerrilla forces can also be considered part of the military if they openly carry their weapons (in addition to meeting the clear criteria of command and identification). Irregular forces have distinct characteristics and differ from regular military forces in their methods. While they are clearly distinguishable from civilians participating in the conflict, if captured by enemy forces, they are also entitled to the protections of the Third Geneva Convention.

Supporters of targeted killing operations argue that since "terrorists" often acknowledge that they are soldiers and engage in military activities, they should be treated as such during a conflict (Byman, 2006: 103). However, according to Article 5 of the Third Geneva Convention of 1949, the presumption is that individuals are civilians. It is stated that civilians are immune from attack during armed conflict unless and until they directly participate in the conflict. Two theories have been put forth regarding the determination of direct participation in hostilities:

1. Theory of the nature of the action: The action undertaken by civilians must cause harm to the enemy to confirm their direct and unlawful involvement in the course of hostilities.
2. Theory of membership: Mere membership in military groups engaged in terrorist activities is sufficient to confirm an individual's direct participation in the course of the conflict. Supporters of targeted killing policies consider

this theory practical, especially citing the decision of the Israeli Supreme Court on December 11, 2005. The first theory aligns more realistically with the interpretation and guidance of the International Committee of the Red Cross, while the second theory opens the door to various actions that violate international norms (Byman, 2006: 104). The International Committee of the Red Cross employs three indicators in assessing direct and unlawful military participation, which have been clearly defined:

- Damage assessment: The measurement of damage and destructive effects on the enemy's military capabilities.
- Direct causation: Establishing a direct link between the military action and the resulting injuries.
- Hostile relationship: Supporting one side while weakening the power of the other side (David, 2003:141).

In fact, the interpretation of the International Committee of the Red Cross, based on the nature of the action, examines the category of direct civilian participation. It is also important to consider the timing and location of the attack on a civilian involved in the conflict. According to the viewpoint of supporters of targeted killing operations, if a civilian directly participates in hostilities, they can be targeted at any time and place (Byman, 2006: 97). The time of war engagement and returning from the battlefield to the civilian's place of residence are also considered direct participation in the conflict. Civilians before and after their direct participation in the conflict are still regarded as civilians and enjoy the rights and protections afforded to civilians under the Third Geneva Convention (Stein, 2003: 129).

3.2.2.1.2. Violation of the Principle of Proportionality

Attacks on military targets should not cause more damage and injuries than necessary in relation to the direct and definite military advantages gained from the attack. Many cases indicate a failure to uphold this principle, as such actions often harm more people than the intended target. Examples include attempts to assassinate political-military figures of the Islamic Jihad group by Israel, or actions by the United States in Afghanistan and Pakistan aimed at

eliminating leaders of al-Qaeda, which have resulted in harm to innocent individuals as well.¹

3.2.2.2. An International Human Rights Perspective

Targeted assassinations carried out without due judicial process are extrajudicial and violate the right to life. According to human rights standards, taking a person's life is only permissible and lawful in a few exceptional cases. In this context, the fundamental challenge to targeted killing operations is the right to life. From the standpoint of contemporary international law, human rights also apply during armed conflicts, although certain rules (Humanitarian Law) may replace some of its principles. This notion has been endorsed by the ICJ in advisory opinions regarding the construction of barrier walls and the use of nuclear weapons. In the advisory opinion on nuclear weapons², the ICJ, while emphasizing the fundamental and non-derogable nature of the right to life, states that killings violating humanitarian rights in situations where they can be applied would constitute a violation of human rights (Zamani, 2018: 14).

It appears that targeted killing, in any form, violates human rights. This argument has been put forth by Philip Alston, the UN special rapporteur on extrajudicial executions. According to his perspective, even if the fight against terrorism is considered an armed conflict, it remains subject to human rights obligations. He believes that targeted killing operations infringe upon the right to life through extrajudicial means and violate international human rights standards, including Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights (Plaw, 2008: 127).

Conclusion

The US approach to international law during the Trump presidency has highlighted the ongoing lack of stability and vulnerability in the international community, even after more than seven decades since the establishment of the

1 Curtis Doebbler, The Illegal Killing of Osama Bin Laden, *Jurist* (May 5, 2011). Available at: <https://www.jurist.org/commentary/2011/05/curtis-doebbler-illegal-killing-obl/> (Last Visited: Jan 2020)

2 Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J.

UN system. The competition between law and power is more evident than ever before. While it is necessary to acknowledge this reality, it is not acceptable to surrender to a completely anarchic situation where political considerations override legal principles. The UN system emerged as a result of the collapse of the Westphalian system following two devastating world wars, and it continues to evolve in the era of globalization. In this globalized world, the realist model of international relations, which prioritizes power and politics, has long been abandoned. The importance of mandatory rules, general obligations, and customary international law, which should be binding on all governments and applicable to everyone, is increasingly evident. Given this context, it is not far-fetched to consider the development and establishment of a framework, based on a constitution for the international community, that includes general and binding rules for all governments and subjects of international law.

In the current situation, the US particularistic (exceptionalist) approach, which seeks to exempt itself from the general rules of international law when its national interests dictate so, is in line with the process of globalization, but it is not acceptable. The most effective strategy to address this challenge to modern international law may lie in strengthening regionalism while upholding the universality of international law, safeguarding the process of globalization, and promoting multilateralism. By establishing international federalism, it is possible to counteract the rapid Americanization of international law and prevent the decline and weakening of the international community. The use of power instead of upholding rights only leads to rebellion and a display of power, and if it supplants the rule of law, it will hinder the progress of the international community and undermine the achievements of many years of effort. The fact that the United States assumes responsibility for the world order while simultaneously disregarding international law, whether it pertains to human rights violations in one country or the presence of terrorist bases in another, is a contradiction. The killing and assassination of prominent political and military figures from other States will sideline international law and allow power to dominate international relations.

The tragic event of the martyrdom of General Soleimani, a prominent military commander of the Islamic Republic of Iran, serves as a clear example

of the US flagrant disregard for international law and the international community. The Islamic Republic of Iran and other governments should take note that the lack of an effective response to the assassination of General Soleimani, who played a crucial role in combating terrorism in Iraq and Syria for years, could have dangerous consequences. General Soleimani, who commanded the Quds Force as part of Iran's Islamic Revolutionary Guard Corps, was killed in Iraq on the direct orders of US then-President Donald Trump. His martyrdom exemplifies state terrorism, an act that was not only carried out with the protection but under the supervision of a government. Specifically, the Iraqi government, which protested Iran's retaliatory missile attacks on the Ain al-Assad base on January 6, 2020, must recognize that failing to address the seriousness of the assassination of General Soleimani within its sovereign territory will have severe repercussions for both the government and the international community in the future.

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US International Responsibility in the Martyrdom of General Soleimani

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Abstract

A drone attack in Iraq resulted in the martyrdom of General Soleimani and nine of his companions. Recruiting library resources, this article aims to address the legal status of US actions in the martyrdom of General Soleimani from the perspective of international responsibility and violation of human rights obligations. According to the then-President of the United States, the martyrdom of General Soleimani and his companions was a result of his direct order. Therefore, in accordance with Article 4 of the 2001 International law commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), the responsibility for this act is attributed to the United States, which violated the State's treaty and customary obligations in the realm of international law, affecting the international community. As both the elements of attribution and violation of international obligations have been fulfilled, the United States bears international responsibility under Articles 1 and 2 of the 2001 ARSIWA. As the offending State, the US is required to provide a valid and convincing guarantee of non-repetition (Article 30 (b) of the 2001 ARSIWA), as well as compensate and seek satisfaction (Articles 36 and 37 of the 2001 ARSIWA). The satisfaction and guarantee of non-repetition must be genuine and concrete, and in this case, it would involve the complete withdrawal of US forces from the region, particularly Iraq.

Keywords: General Soleimani, United States of America, Trump Administration, Violation of International Obligations, Internationally Wrongful Act, International Responsibility, ARSIWA.

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Introduction

In the early morning of Friday, January 13, 2020, General Qassem Soleimani (hereinafter Gen. Soleimani), a high-ranking Iranian military commander, and nine of his companions, including Abu Mahdi al-Muhandis, deputy commander of the Iraqi Popular Mobilization Group (*Hashd al-Shaabi*), were martyred in a drone attack at Baghdad Airport. Gen. Soleimani played a prominent role in defending Islam and Iran against enemies and provided significant assistance to countries in the region in combating extremism, foreign occupation, and terrorism. His martyrdom had a profound impact on people around the world who value freedom.¹

The legal and political communities of various countries quickly reacted against his assassination. This tragedy can be examined from the perspectives of various fields of international law, such as international human rights law, the law regarding the resort to force, and international responsibility law. Analyzing his assassination through the lens of international responsibility law is particularly important, as it intersects with many other areas of international law. International responsibility law encompasses secondary obligations (Ebrahim Gol, 2013: 13), meaning obligations that arise after the violation of the initial obligation, regardless of their basis or origin (ARSIWA, 2001: arts. 54 & 55; Seifi, 1997: 259-260). This branch of international law focuses on the legal responsibility of governments and international organizations, distinct from the criminal responsibility of individuals.

In the realm of international law, the concept of international responsibility refers to legal accountability at the international level, excluding criminal liability. This form of responsibility applies to governments and international organizations (Ziai Bigdeli, 2013: 5). On the other hand, international criminal responsibility pertains to individuals (Shaw, 2014: 89). It is important to emphasize that international responsibility, in its own right, serves as an overseer of non-criminal international accountability. Therefore, it has been suggested that the term "international responsibility" typically denotes non-criminal responsibility unless explicitly specified otherwise (Ziai Bigdeli, 2013 :9).

¹ <https://www.presstv.com/Detail/2020/01/03/615247/Qassem-Soleimani> (accessed on 03.05.2020).

This article aims to explore the implications of Gen. Soleimani's martyrdom in terms of human rights obligations and international responsibility law. It addresses both primary and secondary obligations, highlighting the fact that a local secondary obligation is only valid if the primary obligation has been violated. The criminal responsibility of the perpetrators of the Baghdad Airport attack on January 3, 2020, as well as the countermeasures taken by the Islamic Republic of Iran, are beyond the scope of this single article and require further investigation.

To examine the issue at hand, this article relies on the 2001 ARSIWA. Although these articles are still in draft form and have not been transformed into a treaty, they are often referenced by various actors in the international community and international courts, underscoring their importance. Therefore, in addition to legal books and articles, this article directly cites the ARSIWA to address the issue of international responsibility. The discussion follows an organized structure, first exploring the establishment of responsibility for the violation of human rights obligations, then addressing the consequences of the responsibility, and finally discussing the attribution of responsibility

1. Incurring International Responsibility

According to the 2001 ARSIWA, which are considered as customary international law, a violation of a primary obligation gives rise to a secondary obligation. The rules of international responsibility encompass these secondary obligations (Bordin, 2014: 562-564; UNGA, 2016: 2). Article 1 of the ARSIWA states that every internationally wrongful act entails the international responsibility of the government responsible (ARSIWA, 2001: Art. 1). In this context, the term *government* refers to the State itself (ARSIWA, 2001: 32, paras. 1 & 4). The word *entails* in the Commission's interpretation implies that as soon as a State commits an internationally wrongful act, its international legal responsibility is established automatically (ARSIWA, 2001: 32, para. 2). This means that international responsibility follows the commission of an internationally wrongful act without requiring any additional action from the victim or any other natural or legal entity. Therefore, the occurrence of an internationally wrongful act automatically

creates the international responsibility of the perpetrator. It is crucial to consider what actions are considered as international violations. To establish the occurrence of an internationally wrongful act and the resulting international responsibility of the State, two elements must be established: attribution and breach of obligation.

1.1. Attribution

Firstly, it must be determined to whom the international wrongful act is attributed, considering that a State, as a legal entity and an active participant in the international community, encompasses various natural and legal entities. In other words, it is necessary to determine whose behavior should be attributed to the State's legal entity (Zamani and Mirzadeh, 2013: 116; Álvarez Ortega, 2015: 3). The United Nations International Law Commission, as a scientific institution responsible for the codification and progressive development of international law, addresses these matters in articles 4 through 11 of the ARSIWA. Each case of attribution establishes that the relevant behavior is attributed to the State, making it the conduct of that State (Fry, 2014: 116). Among these Articles, even one is sufficient to attribute the mentioned action to the legal entity of the United States. Articles 4 and 11, both before and after the ARSIWA, have been recognized and applied in judicial and arbitral proceedings, as well as in state practice (ARSIWA, 2001: pp. 40 & 41, paras. 6 & pp. 52 & 53, paras. 4 & 5). These Articles provide clear support for attributing the action in question to the United States.

Article 4 of the ARSIWA states that the conduct of any State entity is considered an act of that State under international law. This applies regardless of whether the entity has a legislative, judicial, executive, or any other functional role, and it is irrelevant whether the entity is part of the central government or a local government unit in federal legal systems. According to paragraph 2 of article 4, *entity* includes any natural or legal person who, according to the internal laws of the State, performs legislative, judicial, executive, or other functions.

According to paragraphs 1 and 2 of article 4 of the ARSIWA, the president of a federal State is considered a representative of the State. Therefore, based on the principles of international responsibility outlined in the ARSIWA, the

then-President Donald Trump represents the United States of America, and his actions are attributed to the legal entity of the State according to article 4(1) (ARSIWA, 2001: 41, para. 9). This means that the actions of any governing body, regardless of its function, are attributed to the legal entity of the State.

Similarly, in addition to Article (4), Article (11) can be referenced, stating that a conduct is considered approved by a State and attributable to it to the extent that its government has endorsed it. Nevertheless, in the case of Gen. Soleimani's martyrdom, attributing the conduct to the United States needs no further reference to Article (11) since there is already clear attribution based on Article (4). Even without subsequent confirmation, then-President Trump's explicit and unfortunate endorsement of the action implies its attribution to the United States. The events clearly demonstrate that the action was attributed to the United States from the very outset.

Therefore, considering that Donald Trump has proudly declared the United States as the perpetrator of the martyrdom, there is no doubt that this act is attributed to the United States, as per Article (4) (ARSIWA, 2001: Art. 4). Consequently, according to Article (2) of the ARSIWA, the focus should now be on establishing the violation of the primary obligation in the current situation (ARSIWA, 2001: Art. 2).

1.2. Breach of Obligation

Both Israel and the United States are prominent in the field of drone killings. The Israeli government has conducted numerous targeted killings in Palestine, particularly in the Gaza Strip under the control of Palestinian resistance forces. These killings have targeted various groups such as Fath, Hamas, and Islamic Jihad, which Israel alleges are involved in planning and carrying out attacks against Israeli civilians. A study by the UN Human Rights Council has indicated that between 2002 and May 2008, at least 387 Palestinians were martyred as a result of this tactic (UNHRC, 2010: para. 14). Similarly, the United States has employed drone strikes in Afghanistan, Iraq, and Pakistan following the events of September 11, 2001. Evidence suggests that the United States conducted experimental drone killings in Nevada prior to September

11, 2001.¹ The first reported drone killing by the CIA occurred on November 3, 2002, when a US drone in Yemen targeted and killed six individuals, including al-Qaeda high-ranking commander Sunyan al-Harithi.²

After the 9/11, the United States, in collaboration with Yemeni government, utilized its drones on November 3, 2002, to target Ali Sunyan al-Harithi, a senior member of al-Qaeda in Yemen. The joint operation between the United States and Yemen proved successful as, using a drone, they managed to eliminate al-Harithi. This operation holds significance because, similar to the Gen. Soleimani case, both the United States and Yemen had exerted considerable efforts to apprehend al-Harithi, but all attempts had reached a dead end (Alaqeband Hussein & Yazdannejat, 2013: 210).

Regarding the matter, it is worth noting that terrorism encompasses various definitions, and a universally accepted definition has not yet been established (High Commissioner for Human Rights, 2008: 5-7). Therefore, it is appropriate to first examine the US claim that Gen. Soleimani was a known terrorist. Here, the dispute revolves around the notion of the right to life. In the absence of a universally accepted definition of terrorism among nations worldwide, it is unquestionable that no country can label an individual or group as terrorists without providing evidence and substantiating the terrorist act or nature of the person or group. This principle is rooted in international law and is considered a requirement of justice and fairness. As no competent international authority has confirmed Gen. Soleimani's actions as acts of terrorism, US claim holds no validity. If any State, driven by its own desires and objectives and based on its own criteria, can designate any person as a terrorist and initiate hostile actions against them, the right to life, which is a fundamental right in the realm of human rights, loses its significance in international law. The lack of a universally accepted definition further complicates this issue. Every human being possesses the inherent right to life, and this right is considered inalienable and non-derogable that cannot be granted but is inherently possessed and enjoyed by every individual.

1 <https://www.theguardian.com/world/2015/nov/18/life-as-a-drone-pilot-creech-air-force-base-nevada> (accessed on 19.05.2020)

2 <https://www.nytimes.com/2020/01/31/world/middleeast/qaeda-yemen-alrimi.html> (accessed on 31.05.2020)

According to Article 6 of the International Covenant on Civil and Political Rights, States are obligated to preserve this right and must not arbitrarily infringe upon or deprive individuals of it (ICCPR, 1966: Art. 6). This is also explicitly stated in Article 3 of the Universal Declaration of Human Rights (UDHR, 1948: Art. 3) and finds its roots in customary international law (Hannum, 1996: 320). Arbitrary deprivation of the right to life without due process is impermissible (Human Rights Committee, 2018: paras. 2 & 7). Considering that the prohibition of arbitrary deprivation of the right to life is recognized in customary international law in addition to the International Bill of Rights (Hannum, 1996: 317-335), it is evident that the United States is obligated to respect this right. Consequently, the act of depriving ten individuals, namely Gen. Soleimani and nine of his companions, of their rights to life during the attack is a violation of US commitment. Both elements of an internationally wrongful act have been fulfilled and, according to Article 1 of the ARSIWA, the United States bears responsibility under international law (ARSIWA, 2001: Art. 1).

Having discussed the establishment of international responsibility for the United States, it is appropriate to address the nature and consequences of this responsibility.

2. Consequences of the International Responsibility

From a legal perspective, the establishment of responsibility is distinct from the consequences and content of that responsibility (Crawford, 2013: 460). International responsibility can lead to various consequences, examining all of which is beyond the scope of the present article. In this section, we will focus on the content of the US responsibility according to international law, in line with the objectives outlined in the article.

2.1 Guarantee of Non-Repetition

The guarantee of non-repetition implies that a country held responsible under international law must provide assurances that it will not repeat the same unlawful act in the future (Crawford, 2013: 469). Sometimes, this guarantee is also referred to as a commitment (Zahraei, 2013: 215). In the context of international responsibility, it is often discussed in terms of ceasing the

wrongful act and ensuring non-repetition (ARSIWA, 2001: Art. 30). However, the notion of cessation is applicable when the relevant unlawful act is continuous, meaning it persists over a period of time. For instance, hostage-taking exemplifies a continuous criminal act as it requires continuity within a short timeframe (Kolb, 2017: 150-151). Therefore, if an act is repeated multiple times, it should not be considered a continuation of the internationally wrongful act.

While it is true that the United States and the Zionist regime have engaged in such actions on numerous occasions through different means, it does not necessarily imply the continuity of the aforementioned wrongful act. Rather, it indicates the repetition of the act. Their illegal presence in the Middle East region, particularly in Iraq, serves as a clear example of a continuous wrongful act that must be halted. In the case of the recent action by the United States in the killing of Gen. Soleimani and several others, it does not qualify as a continuous wrongful act, but rather it necessitates a guarantee of non-repetition. The requirement of a guarantee of non-repetition is explicitly mentioned in the procedures of international courts, including the International Court of Justice (ICJ), as seen in the *Corfu Strait Case* (ICJ, 1949: 4 & 35).

The history of the US activities demonstrates that the country has repeatedly carried out mass killings and targeted assassinations worldwide, particularly in the Middle East, utilizing drones and other means. The killings in Yemen, Iraq, Afghanistan, and Pakistan are just a few examples (Lesani & Monfared, 2016: 246; Kramer, 2011: 378). In light of this, the United States must first guarantee that it will certainly refrain from repeating such past wrongful acts. Furthermore, the United States has employed drones in various parts of the world, including Afghanistan, Pakistan, Yemen, Libya, and Somalia. For instance, during a four-year period (2004-2008), it had conducted 42 drone operations across different regions (Pugliese, 2011: 932). The aim of guaranteeing non-repetition is to prevent the perpetrator from committing similar violations in the future. Therefore, in providing this guarantee, it is crucial that the form and manner of the guarantee effectively serve as a deterrent. Otherwise, the guarantee of non-repetition would deviate from its original purpose and remain merely a theoretical concept.

The ICJ, in the *Lagrand Case*, ensured non-repetition, where the United States was involved as a Party to the lawsuit (ICJ, 2001: paras. 12 & 48). In this Case, Germany filed a lawsuit against the United States, claiming that it had committed an internationally wrongful act by violating the 1963 Vienna Convention on Consular Relations. Germany argued that the United States must provide a guarantee that it will not repeat such a violation. The ICJ supported Germany's claim and clarified that the form and manner of the guarantee should be tailored to each specific case.

Although there is no universal procedure regarding the manner and form of guarantee (Zahraei, 2003: 220), it should be convincing and at the discretion of the State involved (ICJ, 2001, para 12). In this case, the Islamic Republic of Iran, as the victim of the US violation, deserves a suitable guarantee of non-repetition. According to international liability regulations, when a State violates its obligations and a loss is entailed, the offending State is considered the wrongdoer. In the *Trail Smelter* arbitration case, which also involved the United States, the issue of guaranteeing non-repetition was discussed. The injured government requested specific measures to ensure its rights would be respected in the future and not violated by similar internationally wrongful acts (UNRIAA, 1938, 1941: 1905).

Considering the current situation regarding the responsibility of the United States for the internationally wrongful act of the killing of General Soleimani and his companions, the statements from officials and people of the Islamic Republic of Iran and Iraq, as well as the resolution of the Iraqi Parliament¹, emphasize the complete withdrawal of US forces from the region, particularly Iraq, as a convincing guarantee of non-repetition. The guarantee of non-repetition as a consequence of international responsibility should be genuine, objective, and substantive. Iraq strongly opposes the presence of US forces on its territory, which violates the principle of territorial integrity. Therefore, the withdrawal of US forces from Iraq is necessary under international law. As for the withdrawal of US forces from other countries in the region, it cannot be compelled to take specific actions against its will. The United States is

¹ Ar.parliament.iq/2020/01/05/ (accessed on 05.05.2020). See also the Iraqi Prime Minister's statements in this regard at <https://pmlink.ir/x04w4> (accessed on 05/05/2020)

obligated to guarantee non-repetition but is not obliged to perform specific actions. However, the US right to choose how to provide a guarantee of non-repetition should not allow it to refuse its obligation to provide the guarantee. In this regard, the injured States can propose ways, but the proposed ways are not legally binding.

2.2. Compensation

The ARSIWA includes compensation as part of responsibility. It states that full compensation caused by the wrongful act should take the form of restitution, compensation, and satisfaction, either individually or collectively (ARSIWA, 2001: Art. 34). Article 34 of the ARSIWA emphasizes that compensation should cover both material and non-material damages. Therefore, in the current Case where the United States is responsible for the drone strike that resulted in the killing of Gen. Soleimani and his companions, it is appropriate to consider both material and non-material damages in the compensation.¹ Although it may not be possible to fully compensate for the non-material damages, efforts should be made to provide compensation in accordance with Article 34 of the ARSIWA.

Compensation, as a crucial aspect of international responsibility, can be achieved through various means, with a certain order of priority among these forms. This implies that there is a hierarchy among them. However, the existence of a priority does not preclude the possibility of pursuing multiple forms of compensation simultaneously. Some wrongful acts have multidimensional consequences, necessitating comprehensive compensation through various avenues. Restitution is considered the ideal form of compensation (Crawford, 2013: 459), but practical constraints often make it impossible or unreasonable to achieve. As a result, alternative forms of compensation have been proposed (Amiri, 2013: 43-45). In the case of the martyrdom of Gen. Soleimani and his companions in the US drone attack, restitution, including bringing back the lives lost, is regrettably unattainable. Therefore, other means of compensation must be considered.

¹ This has been stipulated about the responsibility of international organizations (ARIO, 2011: Art. 34).

When restitution is not feasible or logical, compensation becomes the primary recourse, as it is the most commonly used form of redress. In this Case, the United States, as the responsible Party for the wrongful act, is obligated to provide compensation for the damages caused by its actions (ARSIWA, 2001: Art. 36(1)). This implies that restoring the status quo is the primary solution, and if that is not viable, other avenues should be pursued. It is important to note that the hierarchy of priority among the forms of compensation implies that some are considered superior to others.

According to the provisions of ARSIWA, compensation is primarily focused on material losses and does not explicitly address non-material losses. However, this does not mean that the 2001 plan of the International Law Commission, which aims to codify and progressively develop the system of international responsibility of States, ignores non-material damages. It simply means that in the current framework, non-material damages resulting from the martyrdom of Gen. Soleimani and his companions may not be subject to legal claims. Non-material damages, which are inherently difficult to address in worldly affairs, cannot be fully compensated. Nevertheless, to the extent possible, this category of damages can be demanded, and an official apology from the United States is one such possibility. According to Article 37 of the aforementioned set of Articles, the responsible State, in cases where the damage caused by its actions cannot be compensated by restitution or through financial compensation, is required to seek the consent of the injured State and provide satisfaction (ARSIWA, 2001: Art. 37(1)). The means through which satisfaction is obtained can vary, but it is crucial to ensure that the injured Party's satisfaction is realized. This can include acknowledging the violation, expressing regret, issuing a formal apology, or employing any other appropriate methods, individually or collectively. Importantly, this should not lead to the humiliation of the responsible State, and the principle of proportionality must be observed.

Therefore, in the present case of the martyrdom of Gen. Soleimani, both forms of compensation can be demanded from the United States, and the United States can be compelled to issue an official apology. Furthermore, according to the ARISWA, obtaining consent can be achieved through various

means, with the requirement that the consent of the victim is obtained and an official apology is issued (ARSIWA, 2001: 106).

3. Invoking Responsibility

Invoking responsibility is a relatively formal practice that does not necessarily need to involve international legal authorities, whether judicial or arbitral, but can be pursued through diplomatic mechanisms (Vermer-Kunzil, 2014: 257). Regarding courts, it is important to note that jurisdiction is a fundamental requirement. The ICJ, as the principal judicial organ of the United Nations, has the authority to adjudicate disputes between States. However, membership alone is insufficient; States must accept or consent to the Court's jurisdiction in some way. In this particular Case, since the Parties to the dispute have not accepted the jurisdiction of the ICJ, filing a lawsuit in that Court is practically ruled out, unless the Islamic Republic of Iran initiates a lawsuit and the United States explicitly or implicitly accepts the Court's jurisdiction. Nevertheless, the likelihood of the United States accepting such jurisdiction is very low. In recent cases where the Islamic Republic of Iran has filed lawsuits against the United States before the ICJ, the 1955 Treaty of Amity, Economic Relations, and Consular Rights (in short, the Amity Treaty) has been cited. However, since the Amity Treaty was terminated by the United States a few years ago, it is no longer applicable to this matter. The Iran-US Claims Tribunal also lacks jurisdiction over this lawsuit, both in terms of timing and subject matter. While an independent arbitration could potentially be established to address this issue, the possibility of the United States agreeing to such a solution is unlikely.

Therefore, in the absence of a competent court, it would be appropriate to pursue diplomatic means, including engaging the United Nations. However, considering the US permanent membership and veto power in the Security Council, raising this issue in that forum may not yield favorable results. Instead, it may be more effective to leverage the capacities of the G77 and Member States of the Non-Aligned Movement in the UN General Assembly. According to the law of international responsibility, such action constitutes an internationally wrongful act. Therefore, it should not be assumed that invoking responsibility can only be pursued through judicial authorities or

international arbitral venues. Even in the absence of jurisdiction by any court, invoking international responsibility is still a valid course of action.

The decision of the ICJ in the *Nauru v. Australia* Case concerning certain phosphate lands in Nauru established that the respondent State was made aware of the claims by the claimant State, even if it was through press reports, speeches, and meetings. Such awareness itself is considered an invocation (ICJ, 1992: Paras. 33 & 34; Satkauskas, 2003: 91 & 92). In this regard, the Supreme Leader and high-ranking officials of the Islamic Republic of Iran, including the heads of the judiciary, executive, and legislative branches, have officially expressed regret and held the United States responsible. Additionally, the Islamic Republic of Iran, through its Permanent Representative to the United Nations, sent an official letter addressed to the President of the Security Council and the Secretary-General of the United Nations, denouncing the martyrdom of Gen. Soleimani and his companions as an act of aggression.¹ In this letter, it was officially and explicitly stated that the Islamic Republic of Iran holds the United States accountable for this action.² Undoubtedly, this action by the Islamic Republic of Iran constitutes the invocation of the international responsibility of the United States, as stated in Article 42 of the ARSIWA (ARSIWA, 2001: Art. 42).

Similarly, the Iraqi representative at the United Nations has officially stated in two letters addressed to the Security Council and the Secretary-General of the United Nations that the US air strike on Baghdad Airport, acknowledged by the United States itself, constituted an arbitrary and indiscriminate killing. Iraq demanded that the international community condemn this wrongful act against Gen. Soleimani, Abu Mahdi al-Muhandis, and their companions. Additionally, Iraq regarded the unauthorized entry of a US drone into its territory as a violation of Article 2(7) of the UN Charter, which is rooted in customary international law. Iraq asserted that the attack infringed upon its sovereignty.³

¹ <https://www.yjc.ir/00UC2K> (accessed on 04.05.2020)

² <https://en.irma.ir/news/83619559/Envoy-terms-IRGC-commander-s-terror-as-terrorist-criminal-act> (accessed on 04.05.2020)

³ <https://www.yjc.ir/00UCz1> (accessed on 04.05.2020)

Consequently, as the injured State, Iraq has sought to invoke responsibility, which needs to be taken into consideration. One may argue that Iran's missile attack against the US military base, Ain al-Asad, in Iraq hinders Iran from invoking US responsibility and the resulting consequences. However, it should be noted that this action can be seen as a satisfactory response in itself. Even if the United States were to initiate a lawsuit or counter-suit regarding this missile attack, the competent authority would examine the relevant merits. This does not impede Iran from invoking the international responsibility of the United States and its consequences. This can be deduced from Articles 42 and 48 of the ARSIWA.

It is worth mentioning that according to the legal framework of international responsibility, a State other than the injured State can invoke international responsibility (Mohebbi & Bazzar, 2017: 211). Article 48 of the ARSIWA stipulates that a State other than the injured State has the authority to invoke international responsibility, and collective action by these States is not necessary (ARSIWA, 2001: 126, para. 4). Therefore, in the current Case, the condemnation of the US action by other States, including France, China, and Russia,¹ as well as the opposition expressed by China and Russia as Permanent Members of the UN Security Council, can be considered as invoking international responsibility (ARSIWA, 2001: 126, paras. 5 & 6; Panda, 2020: 1).

Formal protest and opposition are considered valid forms of invoking responsibility. The UN International Law Commission clarifies that invoking responsibility is a relatively formal action that does not require judicial or arbitral proceedings (ARSIWA, 2001: 117, Para. 2). Given that Iran's opposition to the US action was official, it can be regarded as a form of invocation.

Thus, international responsibility regarding the martyrdom of Gen. Soleimani and his companions has been invoked not only by the injured States, Iran and Iraq, but also by uninjured ones. The passage of time does not invalidate the right to invoke responsibility unless specific circumstances demand it (ICJ, 2001: paras. 53-57). In the case of Gen. Soleimani's

¹ <https://www.timesofisrael.com/france-russia-and-china-condemn-slaying-of-soleimani-as-a-destabilizing-act/> (accessed on 05.05.2020)

martyrdom, the official protest by the Islamic Republic of Iran serves as a valid invocation, and there is no reason to deny the right. The right remains valid, and the notion of losing the right to invoke responsibility does not apply. According to Article 45 of the ARSIWA, the right to invoke responsibility is only lost in two circumstances (ARSIWA, 2001: 121, para. 1): when the injured State explicitly and genuinely withdraws its claim (ARSIWA, 2001: 121, para. 2), or when the injured State implicitly and genuinely agrees to drop the claim (ARSIWA, 2001: 121, para. 3). Neither of these situations applies in the Case of Gen. Soleimani's martyrdom. Even in cases of doubt, the right should be upheld, and the absence of indications supports the validity of the claim (Sobhani, 2016: 140). Therefore, in the absence of jurisdiction for international and national courts to address this Case, it cannot and should not be regarded as a dismissal or abandonment of the lawsuit.

Conclusion:

The US drone strike resulting in the martyrdom of General Soleimani, the high-ranking anti-ISIS military commander, and nine of his companions has had an agonizing impact on people worldwide, regardless of their diverse views and religions. The then-President of the United States, Donald Trump, openly admitted that he ordered the attack, leaving no doubt about the attribution of responsibility to the United States, as stated in Article 4 of the 2001 International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA).

This action by the United States violates the right to life under the international human rights system, as it contravenes Article 6 of the Covenant on Civil and Political Rights and Article 3 of the Universal Declaration of Human Rights. These provisions not only represent treaty obligations but also have customary international law status. Thus, there is no question regarding the violation of the US international commitment to human rights.

According to International Law, the United States has committed a wrongful act and bears international responsibility, as outlined in Article 1 of the 2001 ARSIWA. Once a State engages in an internationally wrongful act, it incurs international responsibility. Therefore, under international law, the

United States is undeniably responsible for the drone attack in Iraq that resulted in the martyrdom of Gen. Soleimani and his companions.

With the establishment of the US international responsibility, it is crucial to consider the consequences. First and foremost, as a State that has committed an internationally wrongful act, the United States must provide a valid and convincing assurance that such an act will not be repeated. The realization of international responsibility is essential for this guarantee to hold any significance. Currently, as the no competent authority has confirmed the recognition of this wrongful act and the United States maintains the claim that the act is not wrongful, let alone guaranteeing non-repetition, it raises doubts. The United States has a track record, including in Yemen and Pakistan, of engaging in aerial killings, particularly through the use of drones. This history underscores the need for the United States to provide a guarantee of non-repetition.

Compensation is another consequence of international responsibility. Article 34 of the 2001 ARSIWA outlines three forms of compensation: restitution, compensation, and satisfaction. Given that the restitution is impractical and impossible, as it would require bringing back the lives lost, compensation becomes primarily focused on the non-material dimension of the damage caused. As the offending State, the United States should provide compensation and seek authentic ways to obtain satisfaction of the injured States.

Obtaining satisfaction and guaranteeing non-repetition, as rightly stated by the Islamic Republic of Iran and Iraq, the States directly affected by the US wrongful act, can be achieved through the complete withdrawal of US forces from the region. In practice, obtaining satisfaction and guaranteeing non-repetition are closely interconnected, and they can be considered as a single action.

The actions taken by the officials of the Islamic Republic of Iran in the international arena, including the official letters sent to the United Nations through the Permanent Representative of Iran and the Iraqi representative, opposing the wrongful act of the United States, can be considered as invoking responsibility, as stated in Article 42 of the 2001 ARSIWA. These actions signify the international status of the United States, without waiving the right to hold them accountable.

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Examining the Feasibility of Prosecuting Commanders Who Ordered the Assassination of General Soleimani as an Act of Terrorism

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Abstract:

The lenient treatment of terrorists, particularly in cases involving newly-established and State-related crimes, has had a detrimental impact on the frequency of such terrorist acts. This leniency has also contributed to the proliferation of inhumane practices at both regional and global levels. An example of this is the unprecedented order by the US then-president, Donald Trump, targeting internationally protected individuals, including the Iranian commander General Soleimani. This act constitutes a violation of international treaties, customary rules, and legal principles, and represents a new form of terrorism. The concern is that other State leaders may imitate such actions, posing a threat to international peace and stability. In instances where terrorist acts occur in foreign territories with the involvement of foreign nationals aiding and abetting the perpetrators, the victim's country faces challenges in prosecuting the responsible commanders and perpetrators. In this case, the act was committed outside the territory of the Islamic Republic of Iran, rendering the principle of territorial jurisdiction, which forms the basis for determining competent courts and applicable laws, unenforceable. Overcoming this fundamental obstacle and finding legal solutions to establish governing rules and competent authority requires exploration of the jurisdictional aspects of international institutions. This article addresses this challenge through a descriptive-analytical study, proposing strategies such as applying the principles of substitute competence, leveraging the cooperation of relevant States, and developing legal capacities based on successful measures implemented in the global community. These approaches offer feasible responses to address the problem at hand.

Keywords: Terrorism, Prosecution, Jurisdiction, General Soleimani, Quds Force

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Introduction

Ensuring the independence and territorial integrity of any nation relies on various factors, one of which is the possession of a robust and capable military force. This factor has been relevant not only in present-day societies but also throughout history, where the security and independence of nations have depended on strong measures, armed forces' strength, and their preparedness. The use of military power, with the objective of deterring adversaries from engaging in actions involving the use of force that are deemed unacceptable by the international community, such as reciprocal threats, acts of aggression, or the use of armed force against peaceful objectives, is condemned and renounced. In line with this, Article 2, Clause 4 of the United Nations Charter states: "All Members shall 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 United Nations" (UN Charter, 1945: Article 2).

Consequently, countries have pursued various approaches to preserve and safeguard their collective security and independence. Alongside establishing and organizing national military forces, enhancing combat readiness, and procuring advanced equipment, nations have formed collective regional, multilateral, or bilateral agreements to bolster their defense capabilities and achieve comprehensive synergy in terms of weaponry. In times of crisis or military emergencies characterized by ongoing threats or unlawful use of force, cooperation between armed forces of different countries, if aimed at averting danger and eliminating threats, is not legally prohibited. In this regard, Article 51 of the United Nations Charter states: "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" (UN Charter, 1945: Article 51).

The precondition for invoking the right to self-defense, which ensures peace, security, and the repulsion of threats or immediate use of force, is the acceptance of military power to establish and maintain defense readiness through armed forces. This force will not only deter threats to peace and

security but will also take collective or individual armed measures to counter such threats. The Islamic Republic of Iran, as a member of the international community, exercises and implements measures to defend itself and its allies¹, and to maintain peace and security. This includes the formation of military forces, equipment procurement and production, weapon acquisition, training, readiness maintenance, and cooperation with the armed forces of other nations. As per the Constitution of the Islamic Republic of Iran, the armed forces² are organized into the Army, the Islamic Revolutionary Guard Corps (IRGC), and the law enforcement forces³. The responsibilities and jurisdictions of these armed forces, along with cooperation and coordination among them, are defined by law, including employment regulations (<https://article.tebyan.net>, rezaei: 1997). Article 150 of the Constitution of the Islamic Republic of Iran states: "The Islamic Revolutionary Guard Corps, which was formed in the early days of the victory of the Revolution, will remain in place to fulfill its duties of safeguarding the Revolution and its achievements. The limits of the duties and scope of responsibility of this Corps, in relation to other armed forces, shall be determined by law with an emphasis on their cooperation and coordination.

The Statute of the Islamic Revolutionary Guard Corps (IRGC) was approved by the Islamic Parliamentary Council in 1982 as part of implementing the Articles of the Constitution. The first chapter of the Statute outlines the following: The IRGC is an institution under the command of the supreme leadership. Its purpose is to safeguard the Islamic Revolution of Iran and its achievements, strive to realize divine ideals, expand the rule of God's law based on the laws of the Islamic Republic of Iran, and strengthen the defense capabilities of the country through cooperation with other armed forces, military training, and organizing non-military popular forces. Article 2 of the Statute defines the mission of the IRGC as the legal fight against

1 Clause H, Article 6 of the Law of the Islamic Republic of Iran Army outlines the following principle: Defensiveness: The armed forces utilize their full power to prevent enemy attacks and defend against any aggression or aggressors. They take action against those who seek to harm them and, while upholding the principle of non-aggression, they provide assistance to Muslim nations or oppressed nations that do not oppose Islam in defending themselves.

2 Article 143 of the Iranian Constitution states that the Army of the Islamic Republic of Iran has the duty of safeguarding the country's independence, territorial integrity, and maintaining the order of the Islamic Republic.

3 According to Article 2 of the IRGC Employment Law, the armed forces include the Islamic Revolutionary Guard Corps (IRGC), the army, and the police force of the Islamic Republic of Iran.

bodies and movements that seek to sabotage or undermine the Islamic Republic system or act against the Islamic Revolution of Iran.

According to Article 34 of the Statute, a person who becomes a member of the IRGC with the intention of engaging in a total and comprehensive struggle for the sake of God, safeguarding the Islamic Revolution and its achievements, and fulfilling religious duties under specific legal conditions is called a Revolutionary Guard. Additionally, according to Article 8 of the Revolutionary Guards Employment Law, official Guardsmen are personnel employed by the IRGC for the purpose of engaging in jihad for the sake of God, safeguarding and defending the Islamic Revolution and its achievements, and the system of the Islamic Republic of Iran. They undergo training and wear military uniforms and insignia after completing the required courses.

The organizational structure of the IRGC, as determined by Article 3 of the Employment Law, includes the General Staff, the Representative Organ of the Supreme Leader, the Information Protection Organization, ground, air, and sea forces, the Basij Resistance, and the Quds Force, along with its affiliated organizations. The Quds Force is one of the official units of the IRGC. Its commanders and members, like those of other armed forces, are considered the armed forces of the Islamic Republic of Iran. These forces have the responsibility to maintain peace and security and take necessary actions, in line with domestic and international regulations, to prevent threats and the use of force, both through collective agreements and in response to individual actions that jeopardize peace and security.

One of the actions carried out by the Iranian armed forces, particularly through the Quds Force under the umbrella of the IRGC, is their participation in a collective and regional security plan to counter the threat and danger of terrorism caused by ISIS¹. This plan was initiated at the request of Iraq and Syria to prevent terrorism that violated peace and security. Between 2003-2018 and especially in 2010, ISIS, which controlled significant areas in Iraq

¹ Article 17 of the Law of Fight against Human Rights Violations and US Aggressive and Terrorist Actions in the Region (approved and enacted in 2017) states that "the Ministry of Intelligence and the Quds Force of the Islamic Revolutionary Guard Corps have an obligation to respect the chain of command and engage in consultations and information sharing with independent countries and resistance forces in the region. This is done with the aim of monitoring the terrorist activities and aggressive actions carried out by the United States.

and Syria, perpetrated various crimes and anti-human acts including massacres, sexual violence, looting, intimidation, hostage-taking, and the destruction of historical, cultural, and religious sites. These actions created terror in the region and globally.

In order to secure the country's borders, establish peace, security, and counter the threat of ISIS terrorist acts, particularly targeting sacred religious sites such as the Ahl al-Bayt Shrines, and to prevent the spread of ISIS threats to other regions, the competent Iranian commander, General Qassem Soleimani (hereinafter Gen. Soleimani), along with advisory forces, was assigned to participate in collective defense measures in coordination with the States of Iraq and Syria. Through the use of his strategic military tactics and the support of popular non-military and volunteer forces from Islamic countries, including Iraq, Syria, Lebanon, Afghanistan, and Iran, the expansion and influence of ISIS were successfully halted. In 2017, the official defeat and end of ISIS were announced (Iran Official News Agency, November 21, 2017).

1. Violation of Legal Obligations in the Assassination of the Anti-ISIS Commander

On the early morning of January 3, 2020, Iranian commander, Gen. Soleimani, who was leading the anti-ISIS operation, was assassinated in a US drone attack near Baghdad airport (Iran's official News Agency, 04/01/2020). Alongside Gen. Soleimani, Abu Mahdi al-Muhandis, a commander of the Iraqi militia group Hashd al-Shaabi, and 10 others were also martyred. The United States Department of Defense stated that the order for this airstrike was issued by the then-President and Commander-in-Chief of the Armed Forces of the United States (Donald Trump)¹. The attack targeted unarmed individuals in a civilian vehicle within the urban area of Baghdad. These individuals had legally entered the country outside of war conditions through a passenger plane at the invitation of the established and host government. Human rights groups have condemned and criticized this act as unacceptable. Taking someone's life without legal justification or due process is considered

¹ Statement by the Department of Defense, Jan. 2, 2020: At the direction of the President, the U.S. military has taken decisive defensive action to protect U.S. personnel abroad by killing Qasem Soleimani, the head of the Islamic Revolutionary Guard Corps-Quds Force,

a violation of internationally accepted norms and standards, such as the right to life and the right to a fair trial. Therefore, the act clearly violates international legal norms pertaining to military operations against civilian targets.

Agnes Callamard, the United Nations Special Rapporteur on extrajudicial executions, stated that the assassination of Gen. Soleimani by the American military represents a violation of international norms concerning cross-border military operations. The targeted killing of Gen. Soleimani disregarded the rules relating to the use of force by States. This action sets a dangerous precedent that will likely lead to further disasters¹. According to the UN Charter, every effort should be made to avoid military conflicts, and the use of force should be limited to specific scenarios. The assassination of Gen. Soleimani, as the legitimate commander of a country, differs from the assassination of commanders of terrorist groups like Al-Qaeda and ISIS. The US characterization of him as a terrorist, as a pretext for his removal, lacks a legal basis. The unilateral assassination of Gen. Soleimani opens the door for other States to assassinate defense ministers and military commanders (khabaronline.ir/news: 1354285). Targeting Gen. Soleimani and Abu Mahdi Al-Muhandis is almost certainly illegal and violates international human rights law. Using drones or other means to kill individuals outside the context of hostilities and active confrontation is never legal (fa.alalamtv.net/news:4653681).

The UN Charter requires all Member States to resolve their differences through diplomacy and peaceful means. No State shall use military force against another State unless it is in self-defense or with the approval of the UN Security Council. In the case of the killing of Gen. Soleimani, the US cannot claim self-defense as Iran did not launch an armed attack, and the UN Security Council did not give the permission. Additionally, according to the Caroline case (Charles Pierson, 2004: 33)², self-defense is contingent upon the

1 [https://www.salon.com/un/rapporteur on extrajudicial executions wants official probe of Soleimani killing](https://www.salon.com/un/rapporteur%20on%20extrajudicial%20executions%20wants%20official%20probe%20of%20Soleimani%20killing), 2020/01/08.

2 The Caroline Case pertains to Daniel Webster's theory regarding Britain's assault on the Caroline Ship, which was transporting Canadian independence fighters, in the 19th century. Webster's theory argues that the attack can be justified as a preventive defense. According to Webster's theory, necessity and proportionality were established as significant principles in the context of preventive defense.

operation being "immediate and comprehensive", leaving no time for thoughtful response. There was no evidence of an imminent attack by Iran on the United States or its military, thus the killing of Gen. Soleimani did not meet the requirements of the Caroline case. Therefore, it was deemed illegal under international law (Marjorie Cohn, 2020: 6). It is widely recognized among legal commentators that the decision by Donald Trump to order the illegal assassination of the Iranian Gen. Soleimani and the Iraqi military commander Abu Mahdi Al-Muhandis not only constitutes aggression towards Iraq but also violates the UN Charter and the United States War Powers Resolution (uscode.house.gov, chap. 33: para. c)¹. Furthermore, it violates the 2008 US-Iraq Status of Forces Agreement.

The terrorist act carried out by the US clearly violates paragraph (1) of the Anti-Terrorism Resolution 1269². The Resolution condemns all acts, methods, and procedures of terrorism that violate international peace and security, regardless of their motivation or where and by whom they are carried out. It also contradicts the provisions of Resolution 1373³, which emphasizes the condemnation of terrorist acts that violate international peace and security. Knowingly financing, planning, and inciting terrorist acts are against the goals and principles of the United Nations, as outlined in paragraph (5) of Resolution 1373. In addition to international agreements, the assassination of the senior anti-ISIS commander also violates the 2008 Status of Forces Agreement between Iraq and the United States. Article 27, paragraph 3 of the Agreement states that Iraq's territory should not be used to attack other countries⁴. The attack on the official representative and guest of the Iraqi government with modern military weapons is equivalent to an attack on a third country, which is prohibited in the Agreement and thus constitutes a violation.

1 Chapter 33: US War Powers Resolution (c) Presidential executive power as Commander-in-Chief; limitation: The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

2 Anti-Terrorism Resolution 1269, the UN Security Council, Approved on October 19, 1999 (S/RES/1269:1999).

3 Resolution 1373, the UN Security Council, Approved on September 28, 2001 (S/RES/1373: 2001).

4 Iraqi land, sea, and air shall not be used as a launching or transit point for attacks against other countries.

Considering the incident resulting in the martyrdom of the Quds Force commander and his companions, who were citizens of the Islamic Republic of Iran, it can be seen as an act of terrorism. The definition of terrorism includes three important conditions: the commission of criminal acts such as murder or kidnapping, the intention to spread fear or force authorities to take action, and the presence of a cross-border element (Friedrichs Jörg, 2006: 75; Scharf Michael, 2011: 2). These conditions are evident in the terrorist incident, at least in terms of its *actus reus*. Therefore, the aforementioned terrorist behavior is considered a criminal act according to international regulations, including international treaties governing terrorism (S/RES/72-123: 2017)¹. As a result, the individuals involved in the wrongful act can be prosecuted by the Iranian government. The attribution of this wrongful act, as described in the statement from the US Ministry of Defense, is directed towards the US government, specifically the president, who openly acknowledged issuing the order to carry out terrorist operations and stated that military officers executed the order. In order to investigate and prosecute the accused individuals, it is crucial to have a competent judicial authority and remove obstacles to criminal prosecution.

One of the significant obstacles to criminal prosecution in the international community is the immunity granted to heads of States based on the principle of non-interference in internal affairs and the assumption of their equality. However, in the present case, the obstacle may not be of great importance. The principle of immunity for leaders has gradually evolved within the international community, with a reduction in its application. International practice and procedure in this field have been influenced by binding documents such as the founding document of the International Criminal Court (ICC), which takes a relative approach to immunity or its absence. According to the principle of relative immunity, leaders or political officials can be subject to criminal prosecution once their term of responsibility ends. Article 27 of the Statute of the ICC specifies that leaders cannot invoke assumed

¹ Measures to eliminate international terrorism, Resolution adopted by the General Assembly on December 7, 2017: on the report of the Sixth Committee (A/72/467, 72/123) Strongly condemns all acts, methods and practices of terrorism in all its forms and manifestations as criminal and unjustifiable, wherever and by whomsoever committed.

immunity, whether based on domestic or international regulations, before the Court. Some international practices support this change in approach, such as summoning the then-presidents of Sudan, Serbia, and Liberia.

While there have been instances where immunity has been invoked, such as the appointment of the foreign minister of the Democratic Republic of Congo by the Belgian court with the advisory opinion of the International Court of Justice (ICJ Judgment, February 14, 2002), and cases where national courts issued arrest warrants for former political officials based on significant judicial errors and violations (such as bribery) that undermined the principles of fairness and due process, these actions were subsequently overturned by relevant international authorities (www.interpol.int)¹. In any case, in the present matter, relative immunity would not pose an obstacle to criminal prosecution once the responsible individuals are no longer in office, particularly considering the violation of internal regulations related to war powers. Every individual, regardless of their official or administrative position, must be morally and legally accountable for their actions, as criminal law focuses on the crimes committed rather than the status of the accused. Assuming that the obstacle of immunity is overcome, the fundamental question is which national or international judicial authorities would have jurisdiction to address the matter.

2. National Judicial Strategies

The jurisdiction of national judicial authorities primarily lies with criminal matters within their respective territories. This means that each State's criminal judicial authority has exclusive competence to investigate and prosecute crimes that occur within its territory. The sovereign territory of a State encompasses all spaces, including land, coastal waters, territorial seas, airspace, registered ships, and aircraft, where the State exercises sovereignty. However, in special cases, and in order to prevent the unjustified impunity of criminals, the jurisdiction of judicial authorities may extend beyond the

¹ <https://www.interpol.int>, Argentinean Red Notices for Iranian officials cancelled, September 27, 2005. Lyon, France— Delegates at the 74th Interpol General Assembly have upheld the unanimous decision by Interpol's Executive Committee to cancel Red Notices issued by an Argentinean judge accused of corruption.

territorial boundaries. One such exceptional case is the expansion of jurisdiction to crimes committed against a State's nationals outside its territory. This type of jurisdiction is known as the principle of personal jurisdiction based on the nationality of the victim or the principle of passive personal jurisdiction. Another type of jurisdictional expansion is related to cases that pose significant risks to internal and external security, the credibility of high-ranking political, judicial, or economic officials, and may require extensive measures. This type of jurisdictional expansion is known as the principle of actual or supportive jurisdiction.

Article 4 of the Law on Countering US Human Rights Violations, Aggressive and Terrorist actions in the Region, under Section IV titled "US Support of Terrorism," stipulates that certain individuals are subject to the penalties listed in Section VI of the law. Among the individuals identified in paragraph 3 of the same article are US individuals who are actively involved in organizing, financing, directing, or committing terrorist acts against the interests of the State or citizens of the Islamic Republic of Iran. Additionally, in line with the execution of the sentence prescribed in articles 8 and 9 of the Islamic Penal Code (2013), and to combat terrorism, the Judiciary Assembly is obligated, as stipulated in note 2 of article 4 of the aforementioned law, to establish specialized branches of criminal courts and appoint prosecutors to handle terrorist crimes that fall under the provisions of Article 1 of the Law on Countering the Financing of Terrorism (2018), which are openly or covertly supported by terrorist individuals and organizations in the United States or other countries hostile to Iran. Any cooperation with the US government, military, or intelligence forces in terrorist crimes is subject to the punishment prescribed in Article 508 of the Islamic Penal Code¹.

Paragraph A of Article 1 of the Law on Countering the Financing of Terrorism states that committing or threatening to commit any violent act, such as murder, attempted assassination, acts resulting in severe physical injury where the *diyyah* (monetary compensation) exceeds one-third of the total *diyyah* (blood money), illegal seizure, taking hostages, or knowingly

¹ Article 508 of the Islamic Penal Code stipulates that any individual or group who engages in any form of cooperation with hostile foreign countries against the Islamic Republic of Iran will be subject to imprisonment ranging from one to ten years, unless they are recognized as belligerents. (1996, Book V)

engaging in violent acts against individuals and endangering their lives or freedom with the intention of influencing the policy, decisions, and actions of the government of the Islamic Republic of Iran, other States, or international organizations, constitutes acts of terrorism. However, the determination of whether the acts listed in Article 1 are considered terrorism is deferred to the opinion of the Supreme National Security Council. The Council has issued a statement declaring that "the assassination of Gen. Soleimani is certainly a retaliatory act by the ISIS, carried out by the United States, against one of the prominent commanders in fighting terrorism in Iraq and Syria (www.asriran.com/fa/)". With this description, the specialized branches of judicial authorities are authorized to exercise jurisdiction in prosecuting the commanders and officials involved in the terrorist incident resulting in the martyrdom of Gen. Soleimani and his companions, in accordance with the articles of the Islamic Penal Code, including articles 5, 8, and 9.

2.1. Personal Jurisdiction Based on the Victim's Nationality

The concept of personal jurisdiction based on the victim's nationality, also known as passive personal jurisdiction, refers to the application of a country's legal, judicial, and executive regulations to protect its citizens from crimes committed against them outside the country's territory. The principle of personal jurisdiction is based on the need to safeguard the nationals of a country beyond its borders. This principle comes into play when the territorial jurisdiction is not applicable. It is commonly applied in cases involving terrorist crimes, organized attacks against a country's nationals, or the assassination of political representatives and diplomats.

According to Article 8 of the Islamic Penal Code, if a non-Iranian person commits a crime outside Iran against an Iranian individual or the State itself, except for crimes mentioned in previous articles, and is found in Iran or returns to Iran, they will be subject to criminal proceedings in the Islamic Republic of Iran. However, certain conditions must be met: a) the accused has not been acquitted or received a partial or full punishment in the jurisdiction where the crime occurred, and b) the behavior that led to the crime is considered a crime under Iranian law and the law of the place where the crime occurred. These conditions specifically apply to crimes of discretionary punishment (*Ta'zīrī*),

but it is likely that they extend to all crimes. The principle of personal jurisdiction, in relation to prosecuting crimes against individuals and crimes against the State, has a broader scope than the principle of actual jurisdiction stated in Article 5 of the Islamic Penal Code. Therefore, if a foreign citizen commits a *non-ta'zīrī* crime outside the jurisdiction of the Islamic Republic of Iran, such as crimes requiring *hadd* (Islamic legal punishment), *qisās* (retribution), or *diyah* (monetary compensation), the prosecution of these charges will be based on the principle of personal jurisdiction according to Iran's regulations. Regardless of the mutual criminality of the accused behavior, they will be subject to Iran's criminal laws (Hojjati, 2016: 102).

In the case of an armed attack resulting in the intentional murder of an Iranian citizen outside the country's territory, the act is considered a crime under the Islamic Penal Code, and according to the provisions of the Law on Countering US Human Rights Violations, Aggressive and Terrorist Actions in the Region. Therefore, the perpetrator, charged with committing a terrorist act leading to intentional murder, can be prosecuted and deserves punishment. Both the commanding officer and the agent involved in this crime shall be held accountable. It is worth noting that paragraph 2 of Article 15 of the International Covenant on Civil and Political Rights states that nothing in the article prevents the prosecution or punishment of individuals whose actions, at the time of commission, are considered a crime based on general legal principles recognized by the international community.

Another important aspect related to the application of personal jurisdiction based on the victim's nationality, as described in Article 8 of the Islamic Penal Code, is the requirement for a face-to-face trial. It is stated that for Article 8 to be implemented and for the courts to exercise jurisdiction, the accused must be found. Therefore, until the accused is located within Iran, it is not possible to conduct a trial. However, in addition to the term "found," the phrase "or be returned to Iran" is also mentioned in the article. The term "returned" implies that there are no legal obstacles to filing a case, requesting the extradition of the accused, and pursuing their prosecution. Therefore, in the case of prosecuting the commanders involved in the assassination of Gen. Soleimani, although a trial in absentia is not legally permissible, it is legally acceptable to file a case and lodge a complaint to establish grounds for the extradition of

the defendant(s) in order to proceed with their prosecution, trial, and punishment.

An additional requirement for the application of personal jurisdiction is the well-established principle of criminal law known as double jeopardy. This principle prohibits the accused from being prosecuted or punished multiple times for the same wrongful act. Therefore, if the accused has already been tried and punished in the jurisdiction where the crime occurred, their prosecution in Iranian courts does not meet the legal requirements. Paragraph A of Article 8 of the Islamic Penal Code establishes this condition specifically for *Ta'zīrī* crimes and applies it only to such crimes. However, certain types of terrorism may also fall under the conditions of *muhāribah* (enmity against God), and if they do not meet the legal criteria for *muhāribah*, they can be prosecuted as *Ta'zīrī* crimes. According to the Law on Intensification of Countering the US Terrorist Actions, nationals, agents, and States cooperating with the US government in kidnapping and conspiring against the lives of Iranian nationals and the interests of Iran shall be tried in domestic courts based on Islamic law. However, if the terrorist act against the commander of the Quds Force is considered an act falling under the category of *muhāribah*, it is outside the scope of Article 8 and subject to the prohibition of double jeopardy. It is important to note that so far no prosecution, trial, or punishment has been carried out against the individuals who ordered the assassination of these martyrs in any national or international court to prevent them from being prosecuted or tried again.

The severity and importance of the committed crime is a crucial factor in determining the validity of applying personal jurisdiction based on the victim's citizenship. This means that jurisdiction is not accepted for minor crimes. Prosecuting crimes committed against citizens outside the territory is costly and time-consuming, so it is necessary to prioritize the most significant crimes. Although it would be ideal to pursue and prosecute all crimes, it is not logically feasible to handle every single one, so choosing the most important ones is a rational choice. The severity of the punishment or the serious harmful effects of the crimes can be used as criteria for determining the importance of the crime. The type and degree of the crime committed can also be factors in assessing its importance. In French law, the severity of the crime is determined

based on the type of crime and the associated punishment. Misdemeanor crimes punishable by imprisonment and any felony-type crimes are considered important and subject to the principle of personal jurisdiction in France¹. However, Article 8 of the Islamic Penal Code does not accept this condition. Therefore, all crimes committed against Iranian citizens outside of Iran are subject to the principle of personal jurisdiction based on the victim's nationality. The assassination of Gen. Soleimani and his companions fall within the scope of Article 8 and can be prosecuted accordingly. The individuals responsible for this crime can be prosecuted in the criminal courts of the Islamic Republic of Iran.

2.2. Universal Jurisdiction

Throughout the history of criminal law, different States have consistently responded to crimes that pose a threat to their vital interests, even if these crimes were committed outside their territorial jurisdiction by foreign nationals (Cedric, 2015: 97). Safeguarding the security and protection of a State's essential interests has led States to extend their jurisdiction beyond their borders (Pourbafrani, 2013: 121). The principle of territorial jurisdiction refers to a State's legislative and judicial authority over crimes that occur outside its territory but harm its fundamental and vital interests (Pourbafrani, 2013: 76). In this principle, the nature and severity of the crime committed against the exercising State's fundamental interests are the sole criteria for establishing jurisdiction. It should be noted that the principle of territorial jurisdiction is an exception to the general principle, and it may raise concerns about encroaching on the sovereignty of other countries. Therefore, specific and significant crimes that directly impact the best interests of the exercising State are the ones subject to this principle (Ahmadi, 2018: 20).

The hideousness and atrocity of crimes are agreed upon by different States, but the reason for disagreement among them regarding the acceptance of the principle of universal jurisdiction lies in determining specific examples of such crimes. Most eligible examples are crimes that fall under the category of

¹ France Penal Code Article 113-7: French Criminal law is applicable to any felony, as well as to any misdemeanor punished by imprisonment, committed by a French or foreign national outside the territory of the French Republic, where the victim is a French national at the time the offence took place

public welfare and target State security. These crimes ultimately affect these two groups. States make efforts to determine examples by including general terms and broadly interpretable concepts that encompass crimes posing serious risks to political life, internal and external security, economic interests, or the reputation of high-ranking officials. According to this principle, each country determines the "affected" interests of its courts in dealing with crimes. States usually prioritize crimes against their own interests and seek to support and protect their own basic interests rather than those of other States. For this reason, this principle is also referred to as the protective or protective principle (Mir Mohammad Sadeghi, 2013, 6).

Due to the increasing importance and severe dangers associated with crimes falling under the principle of universal jurisdiction, legislators have imposed fewer conditions to make this principle operational and enforceable compared to other jurisdictional principles apart from territorial jurisdiction. When applying universal jurisdiction, conditions related to factors such as personal confrontation with the criminal, in-person proceedings, plaintiff's complaint, obstacles to prosecution (like amnesty and pardon), prohibition of double prosecution or retrial, nationality of the criminal, and the territory where the crime occurred are disregarded. The unconditional application of the principle of universal jurisdiction is influenced by the importance of protecting the internal and external security of the State and ensuring the socio-economic well-being of citizens in each society. The criminal policy of the Islamic Republic of Iran, in order to protect the public welfare of its citizens and safeguard the internal and external security of the country, has accepted the principle of universal jurisdiction and established regulations that leverage the maximum potentials and capacities of this principle.

Article 5 of the Islamic Penal Code, while accepting the principle of universal jurisdiction, states that any Iranian or non-Iranian person who commits certain crimes outside Iran's territorial sovereignty, as prescribed in this code and other special laws, shall be tried and punished according to the laws of the Islamic Republic of Iran. If an investigation into these crimes outside of Iran leads to a conviction and its execution, the Iranian court will take that sentence into account when determining the punishment. One example of such crimes listed in Article 5 is actions against the system,

internal or external security, territorial integrity, or independence of the Islamic Republic of Iran. The terrorist attack on an official of the Islamic Republic of Iran, who was on a mission to establish peace and stabilize security in the region with the official invitation of the government of the Republic of Iraq, falls under the category of action against national security, both internal and external. Therefore, it is considered one of the examples of crimes mentioned in paragraph A of Article 5 of the Islamic Penal Code. Given the criminal nature of this action, the perpetrators of this terrorist incident can be prosecuted using the principle of universal jurisdiction.

In addition to the Islamic Penal Code, the Law of Intensification of Countering the US Terrorist Actions states that nationals, agents, and States cooperating with the United States in kidnapping and conspiring against the lives of Iranian nationals and the interests of the Islamic Republic of Iran shall be tried in domestic courts based on Islamic law. Therefore, based on these legal documents, there are no obstacles to prosecuting the committed crime using the principle of universal jurisdiction. The mentioned note in question aligns with the stipulation in Article 5 of the Islamic Penal Code, which states that crimes prescribed in special laws are subject to the principle of universal jurisdiction. When applying the principle of universal jurisdiction, no conditions are provided in the laws, except for considering the possibility of a prior conviction. The application of universal jurisdiction for the prosecution of significant crimes is considered unconditional and does not require attending court proceedings, prohibition of retrial, or the necessity of mutual guilt.

3. Regional Judicial Strategy

The principle of territorial jurisdiction establishes that the criminal courts of the country where a crime takes place have the authority to handle all crimes committed within its territory, regardless of the nationality of the perpetrator or victim. According to this principle, the judicial authorities of the State in control of the territory implement the national criminal law and are responsible for dealing with crimes committed within their jurisdiction. Therefore, individuals who commit a crime within a State's territory, whether on land, in the air, or at sea, are prosecuted and punished according to the

criminal laws of that country in the courts where the crime occurred. While there may be exceptions to this principle that address its limitations, it generally applies.

The principle of territorial jurisdiction is reflected in the criminal laws of every country, including the Republic of Iraq. The territorial jurisdiction and the enforcement of law within the territory of Iraq are stipulated in Article 6 of the country's Penal Code. According to this law, crimes committed in Iraq are subject to its provisions. A crime is considered to have occurred in Iraq if the wrongful act takes place within its territory, if the result of the act is realized in Iraq, or if it is intended to be realized there. In all these cases, the provisions of the law are applied to all individuals involved in the crime, even if only part of the crime takes place in Iraq. This applies regardless of whether the person involved is the main perpetrator or not (Iraqi Penal Code, 1969, Article 111).

The terrorist incident that resulted in the martyrdom of Iranian nationals, including the commander of the Quds Force, occurred near the Baghdad airport, which is within the territory of the Republic of Iraq. According to the rules governing the acceptance of the principle of territorial jurisdiction in Iraq, as stipulated in paragraph 6 of the Iraqi Penal Code, the State of Iraq, as the governing authority of the territory where the crime took place, has the right to prosecute the defendant(s) due to the commission of a terrorist act within its jurisdiction (Iraqi Penal Code, 1969, Article 111: Sub-Section Two). Therefore, by invoking the principle of territorial jurisdiction and obtaining the cooperation and consent of the Iraqi government, measures can be taken to prosecute the perpetrators of this terrorist incident. This approach is crucial in order to prevent impunity for those responsible for this act of terrorism. Additionally, in this incident, besides Iranian nationals, several Iraqi nationals, including the deputy prime minister of the country, who were present to welcome the Iranian delegation, were also killed.

4. Transregional Judicial Strategy

One possible approach to ensure justice and prosecute the perpetrators and officials involved in the terrorist incident is to activate extra-regional judicial capacities. The principle of universal jurisdiction reflects the collective

determination of the international community to combat crimes that have global implications and affect Member States. It grants each State the authority to prosecute individuals who have committed certain crimes, even if the prosecuting State has no direct connection to the crime, the perpetrator, or the victim (Ahmadi, 2018: 24). The Princeton principles also highlight this aspect of universal jurisdiction, emphasizing that actions should be taken based on the nature of the crime, regardless of the nationality of the criminal, the nationality of the victim, or any other relationship with the governing authority, particularly where the crime was committed (www.globalpolicy.org/component/content/article/163/29391.html). Article 9 of the Islamic Penal Code states that if a person is found in any country and is wanted for crimes under a specific law or international treaties, they will be tried in that country. If the accused is found in Iran, they will be tried and punished according to the criminal laws of the Islamic Republic of Iran. This article outlines three conditions for the application of the principle of universal jurisdiction: the existence of a specific law or international treaty that allows for jurisdiction, the presence of the accused in Iran for a face-to-face trial, and the general condition of criminalizing the behavior in question based on internal regulations.

The acceptance of the principle of universal jurisdiction is based on the argument that significant international crimes impact the conscience of the civilized world and all nations, necessitating the trial and punishment of the perpetrators (Kaminga, 2013: 114). It aims to establish that there is no safe haven for criminals anywhere in the world. However, not all international crimes fall under universal jurisdiction. The crimes covered by this principle include inherent international crimes, such as genocide, crimes against humanity, war crimes, and crimes of aggression, which are also within the jurisdiction of the ICC. Additionally, various international conventional crimes are encompassed, including terrorism, torture, organized crimes like hijacking, money laundering, racial discrimination, piracy, and human and drug trafficking. To prevent impunity for international criminals, the principle of universal jurisdiction employs a "try or extradite"¹ rule, where the accused

¹ Aut dedere aut judicare

must be tried in the prosecuting country or extradited to another competent country for trial (Bassiouni, 1995: 15). The legitimacy of international jurisdiction in domestic courts is derived from international customary law or treaties, which are reflected in domestic laws. Some argue that national courts can exercise universal jurisdiction even without a specific treaty, as international law does not prohibit such actions (Foroughi, 2018: 24). Nevertheless, except for the Tokyo Convention, all treaties related to terrorism accept mandatory universal jurisdiction. Based on the 12 terrorism conventions, it appears that the application of universal jurisdiction concerning terrorism has become customary international law (Ziaee and Hakimiha, 2015: 98).

If, for any reason, the Islamic Republic cannot rely on other jurisdictional principles, pursuing the issue through the application of universal jurisdiction with the assistance of peace-keeping and humanitarian States willing to address terrorist acts and international crimes is a viable option. Since the severity and gravity of the crimes committed are typically the criteria for invoking universal jurisdiction, terrorism, especially in its modern form, which poses an international threat and destroys vital infrastructures in many countries, falls within the scope of universal jurisdiction (Razavi Fard & Namamiyan, 2014: 47). International documents governing terrorist acts, such as Article 3 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons¹, highlight the international responsibility of States in dealing with terrorism and provide a potential framework for suppressing such acts. Terrorism is one of the crimes that international documents include under the principle of universal jurisdiction (Bassiouni, 2004: 46).

Some countries have demonstrated success in implementing the principle of universal jurisdiction to prosecute individuals accused of committing crimes against humanity (Razavi Fard & Namamian, 2014: 37). Consulting and seeking cooperation from these countries would likely lead the way in

¹ Article 3: Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set forth in article 2 in the following cases: (c) When the crime is committed against an internationally protected person as defined in article 1 who enjoys his status as such by virtue of functions which he exercises on behalf of that State.

pursuing judicial actions. This capacity is not limited to a few nations but is available to all Member States of the global community. It is possible to raise the issue and engage in judicial consultations with numerous countries, including regional States, Member States of the Organization of Islamic Cooperation, or States that actively support the international community in addressing terrorism and violent and inhumane practices. While this approach may not be straightforward, it possesses significant potential for implementation.

5. International Judicial Strategies

One possible approach to prosecute the perpetrators of the discussed terrorist incident is to employ international legal mechanisms and institutions. Competent international bodies can use their jurisdiction, as outlined in their founding documents, to investigate and prosecute serious international crimes. International regulations and procedures can establish competent judicial authorities to handle such cases, provided that the necessary capacity exists.

5.1. Jurisdiction of the ICC

The ICC exercises jurisdiction over international crimes through inherent or subject jurisdiction. Currently, according to Article 5 of its Statute, the ICC has exclusive jurisdiction over four serious international crimes: genocide, crimes against humanity, war crimes, and crime of aggression. However, terrorism is not explicitly listed as an inherent jurisdiction of the court. Therefore, the court lacks subject-matter jurisdiction to independently address terrorism as a crime. The principle of legality of crime and punishment, which is accepted in the ICC's statute, prevents the court from applying its jurisdiction to terrorism. However, if certain forms of terrorism fall under the examples of crimes listed in Article 5, the court may indirectly exercise jurisdiction over them (Namamian, 2013: 68).

If we consider the terrorist act discussed as a specific category of crime falling under the court's jurisdiction, significant obstacles remain. The statute grants the court jurisdiction in three cases. First, when crimes within the court's inherent jurisdiction are committed within the territory of a Member State or by nationals of that State. In these situations, the State of the territory

or the State to which the offender belongs, by virtue of their membership, allows the court to exercise jurisdiction. Second, when crimes within the court's inherent jurisdiction are committed within the territory of a non-Member State, or by nationals of a non-Member State that subsequently accepts the court's jurisdiction by submitting a declaration according to Article 54(9) of the Statute (Momeni, 2017: 160). Third, when crimes within the court's inherent jurisdiction occur regardless of the territory or nationality, and the Security Council refers the case to the court under Article 59(b). Therefore, the admissibility of the crime in question depends on fulfilling at least one of these conditions. Since neither the governments of Iraq nor the United States are Party to the ICC's statute, the first scenario is not applicable. However, the remaining two can be pursued if one of the countries accepts the case and refers it to the Security Council.

Requesting jurisdiction from the government of Iraq on a case-by-case basis seems more feasible. The likelihood of a referral from the Security Council or a request from the United States is very low, especially considering the official statements of the US Ministry of Defence (Pentagon) and the then-President open confession to the act. Referring the matter to the Security Council is also not a viable solution due to the possibility of veto power being used, even if there is collective support from other nations. However, the existence of collective will within the Security Council to refer the case is doubtful based on the evidence available. Consequently, the only viable pathway to the ICC would be to persuade the government of Iraq to request and accept the court's jurisdiction on a case-by-case basis, with the understanding that the court's prosecutor would consider the terrorist incident indirectly as one of the crimes falling within the court's jurisdiction. If the government of Iraq agrees, the court's preliminary division can issue an investigation and prosecution license to the prosecutor.

Even if, based on constitutional amendments regarding expanding the court's jurisdiction to cover terrorism, it falls within the court's jurisdiction, the court will generally lack jurisdiction over terrorism cases unless they are committed by nationals of Member States or within their territories. Only Member States that have accepted the amendment to the court's jurisdiction will be bound by it (Namamian, 2013: 78). Nonetheless, prosecuting the

perpetrators of the terrorist incident through the ICC's jurisdiction may face obstacles due to the lack of immunity from criminal prosecution for leaders and government officials, as stipulated in the court's statute.

5.2. Jurisdiction of the Criminal Court of Ad Hoc

One of the approaches available within the international system to prosecute terrorist crimes is the utilization of international institutions to establish courts of Ad Hoc. Since the ICC does not have direct jurisdiction over terrorist crimes, the formation of special courts with an international character is a possible approach to prosecute individuals and agents involved in ordering or carrying out terrorist operations. An example of such a court is the Special Court for the assassination of former prime minister Rafic Hariri in Lebanon, which was established through the participation of the international community and the Lebanese State.

The Special Court of Lebanon is a unique international mixed court dedicated to terrorism, with inherent and subject matter jurisdiction. Its establishment marked the beginning of prosecuting terrorism under the international criminal law system. This court provides an objective platform to address the issue of impunity in terrorism. It was created through Resolution 1757 following the assassination of Lebanese Prime Minister Rafic Hariri on March 14, 2005. The experience of the Lebanese Court is significant until terrorism is included as a crime within the jurisdiction of the ICC (Salimi Turkmani, 2018: 194).

Pursuing the establishment of a similar court with the involvement of the States of Iran and Iraq, under the supervision and cooperation of the United Nations, would represent a new model of collective will to address terrorist acts. Implementing this idea is not simple and poses challenges, as any international collective action does. Its success depends not only on the agreement of the governments of Iran and Iraq as victims of terrorism but also on the independent international will, free from political partisanship resulting from regional or extra-regional blockades. This approach should be solely based on anti-terrorism and peace treaties, enabling it to overcome the veto power of certain permanent members of the Security Council. The ultimate

goal is to achieve justice and sustainable peace for all members of human society, rather than a selected few.

Conclusion

State terrorism fundamentally contradicts the mission of States to maintain peace, ensure collective security, and disrupts the peaceful coexistence of nations. International treaties aim to prevent any actions that violate peace, security, stability, and order within the international community. These treaties explicitly condemn various forms of terrorism and require Member States to take legal measures to prevent and punish perpetrators. When a State not only fails to prevent terrorist acts in violation of international obligations but also openly and officially orders their commission, they must face the consequences of this atrocious and illegal behavior.

Responding judicially to treaty-violating actions requires identifying the competent authority and the applicable laws. In the case of the terrorist incident against internationally supported officials, three legal capacities, namely national, regional, and international, may be utilized to prevent impunity for the perpetrators and discourage similar acts in the future. The Islamic Republic of Iran's national criminal system has jurisdiction based on the principle of personal jurisdiction, considering the citizenship of the victim as well as universal jurisdiction in this case. The cooperation and participation of the government of the Republic of Iraq shall be sought to apply the principle of territorial jurisdiction or to make a case-specific request to the International Criminal Court, which would involve accepting the court's jurisdiction for a specific case. These regional strategies aim to combat impunity in terrorist crimes.

Another potential approach is to establish a special criminal court with the cooperation and assistance of the international community, similar to previous cases where terrorists were prosecuted. Alternatively, the United Nations Security Council can be engaged to refer the case, not solely as an independent terrorist crime, but as one form of international crime, utilizing the provisions of international law to prevent impunity for those responsible for the terrorist incident.

Post Scripts

UN Charter, Article 2(4): All States Parties shall 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 United Nations.

UN Charter, Article 51: 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.

According to Article 143 of the Iranian Constitution, the Army of the Islamic Republic of Iran has the duty of safeguarding the country's independence, territorial integrity, and maintaining the order of the Islamic Republic.

During the establishment of the Iranian Assembly of Experts, the Islamic Revolutionary Guard Corps (IRGC) wrote a letter to the Chairman of the Assembly, requesting that the mission of the IRGC be included in the Constitution. The request was welcomed by several members of the assembly including martyrs Diyaleme and Ayat.

ISIS, a Salafi group, emerged in Iraq after the fall of Saddam's regime in 2003. They gained significant momentum in 2010 under new leadership and expanded their terrorist activities. They occupied parts of Northern and Western Iraq and declared a caliphate in 2014, with Mosul as its capital. They also took control of Raqqa in Syria. The group's advance in Syria was aided by exploiting popular protests and receiving support from rebel groups against the government. In Iraq, they captured Tikrit, the capital of Salah al-Din province, and advanced towards Baghdad, putting the Iraqi capital in a vulnerable position. The Iraqi government, with international assistance and particularly the support of Iran, declared jihad against ISIS. They armed popular forces and formed a group called Hashd al-Shaabi or the Popular Mobilization Forces to counter the terrorist group. In order to legitimize the military activities of Hashd al-Shaabi, the Iraqi government passed a law stating that it is part of the Iraqi armed forces under the command of the commander-in-chief.

General Qassem Soleimani, born on March 11, 1957, in the Soleimani tribe in Rabor city of Kerman province, Iran, played a significant role during the

Iranian Islamic 1979-Revolution. He joined revolutionary fighters at a young age and became an active participant in marches and strikes in Kerman. After the Revolution, he became a member of the Islamic Revolutionary Guard Corps (IRGC) and was involved in training and deploying volunteer forces. He commanded important operations during the Iran-Iraq War and later took responsibility for combating drug trafficking on the Iran-Afghanistan border. In 1998, he was appointed as the commander of the Quds Force and later played a crucial role in fighting against ISIS in Iraq and Syria. He was assassinated by the United States military in Baghdad on January 3, 2020.

As ISIS approached Iran's western borders, the Iranian government on the request of the Iraqi government engaged to defend the Kurdistan region against ISIS attacks. Iran also sent advisory and military forces to Syria and Iraq to protect holy sites and combat the terrorist actions of ISIS. These military actions were centered around the Quds Force and led by Gen. Soleimani. Among his strategic tactics were the formation of Hashd al-Shaabi forces in Iraq and the integration of Afghan fighters in Syria, known as the Fatemiyoun and Zainabiyun armies which played a significant role in defeating and expelling ISIS from Iraq.

On November 21, 2017, Gen. Soleimani declared the end of ISIS domination in a letter to the Iranian Commander-in-Chief after the operation to liberate Abu Kamal, the last stronghold of ISIS in Syria.

According to Iranian official reports, on January 2, 2020, a civilian plane carrying Gen. Soleimani, owned by "Ajnaha Al-Sham" company, was flying from Syria to Iraq. The plane arrived in Baghdad one hour later than scheduled and stopped at gate number 21 of Baghdad International Airport. Gen. Soleimani was welcomed by Deputy Prime Minister of Iraq (Deputy Commander of Hashd al-Shaabi) Abu Mehdi Al-Muhandis and they left the airport in separate cars. A US MQ-9 Reaper drone flew over Baghdad without permission and fired missiles at the vehicles, resulting in the assassination of Gen. Soleimani, Al-Muhandis, and their accompanying bodyguards.

Statement by the Department of Defense, January 4, 2020: At the direction of the President, the US military has taken decisive defensive action to protect US personnel abroad by killing Qassem Soleimani, the head of the Islamic Revolutionary Guard Corps-Quds Force,

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UN rapporteur on extrajudicial executions wants official probe of Soleimani killing 2020/01/08.

The Caroline case pertains to Daniel Webster's theory regarding Britain's assault on the Caroline Ship, which was transporting Canadian independence fighters, in the 19th century. Webster's theory argues that the attack can be justified as a preventive defense. According to Webster's theory, necessity and proportionality were established as significant principles in the context of preventive defense.

Chapter 33: War Powers Resolution (c) Presidential executive power as Commander-in-Chief; limitation: The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

Unequivocally condemns all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed, in particular those which could threaten international peace and security

United Nations S/RES/1368 Security Council, September 12, 2001, Resolution 1368 (2001)... and regards such acts, like any act of international terrorism, as a threat to international peace and security

Declares that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations.

US-Iraq Status of Forces Agreement: Iraqi land, sea, and air shall not be used as a launching or transit point for attacks against other countries.

Measures to eliminate international terrorism, Resolution adopted by the Gen. Assembly on December 7, 2017: on the report of the Sixth Committee (A/72/467, 72/123). Strongly condemns all acts, methods and practices of terrorism in all its forms and manifestations as criminal and unjustifiable, wherever and by whosoever committed.

Statute of the International Criminal Court: Article 27 - Equality in Application Regardless of Official Position

1. This statute applies to all individuals without discrimination, regardless of whether they hold an official position. Holding positions such as head of State or government, government or parliamentary member, elected representative, or government official does not provide immunity from criminal responsibility. Additionally, the mere existence of these positions does not warrant a reduction in punishment.
2. Immunities or special procedural provisions granted under national laws or international regulations due to holding an official position shall not hinder the Court from exercising its jurisdiction over such individuals.

International Court of Justice, Reports of Judgments, Advisory opinions and orders, Case concerning the Arrest Warrant of April 11, 2000, (Democratic Republic of the Congo V. Belgium), Judgment of February 14, 2002 finds that the issue against Mr. Abdulaye Yerodia Ndombasi of the arrest warrant of April 11, 2000, and its international circulation, constituted violations of a legal obligation of the Kingdom of Belgium towards the Democratic Republic of the Congo, in that they failed to respect the immunity from criminal jurisdiction and the inviolability which the incumbent Minister for Foreign Affairs of the Democratic Republic of the Congo enjoyed under international law.

Argentinean Red Notices for Iranian officials cancelled, 27 September 2005. Lyon, France— Delegates at the 74th Interpol Gen. Assembly have upheld the unanimous decision by Interpol's Executive Committee to cancel Red Notices issued by an Argentinean judge accused of corruption.

France Penal Code, Article 113-7: French Criminal law is applicable to any felony, as well as to any misdemeanor punished by imprisonment, committed

by a French or foreign national outside the territory of the French Republic, where the victim is a French national at the time the offence took place.

Iraq Penal Code, 1969, Article 111, Sub-Section Two: Application of the law in respect of place- 1: Territorial jurisdiction: Paragraph 6- The provisions of this Code are enforceable in respect of offences committed in Iraq. An offence is considered to have been committed in Iraq if a criminal act is committed there or if the consequence of that act is realised or is intended to be realised there. In all circumstances, the law applies to all parties to the offence of which all or part occurs in Iraq even though any of those parties are abroad at the time and regardless of whether he is a principal or accessory to the offence.

The principle of universal jurisdiction is based on the notion that certain crimes are so harmful to international interests that States are entitled- and even obliged- to bring proceedings against the perpetrator, regardless of the location of the crime or the nationality of the perpetrator or victim.

Article 3: Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set forth in article 2 in the following cases: (c) When the crime is committed against an internationally protected person as defined in article 1 who enjoys his status as such by virtue of functions which he exercises on behalf of that State.

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Assessing the Feasibility of Prosecuting the Assassination of General Soleimani at the International Criminal Court and the International Court of Justice

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Abstract:

The aim of this article is to evaluate the potential for prosecuting the criminal and civil responsibilities arising from the assassination of General Soleimani at the International Criminal Court and the International Court of Justice. Despite neither Iran nor the US being Parties to the Statute of the International Criminal Court, Iran may establish the possibility of the Court's jurisdiction by inviting Iraq to accept the Court's ad hoc jurisdiction over the case. However, even under these circumstances, the assassination of General Soleimani cannot be pursued within the framework of the court's four crimes under its jurisdiction. Alternatively, the US civil responsibility for this wrongful act can be pursued by referring to the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons which both Iran and the US have ratified. This convention, which prohibits certain crimes, including murder, committed against internationally protected persons, provides a dispute settlement mechanism that may ultimately result in the involvement of the International Court of Justice.

Keywords: General Soleimani, International Criminal Court, International Court of Justice, Self-Defense, Internationally Protected Persons.

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Introduction

On the early morning of January 3, 2020, a US MQ-9 Reaper drone carried out an attack on two moving vehicles near the Baghdad Airport. These vehicles were carrying General Qassem Soleimani (hereinafter Gen. Soleimani) and his companions. The drone fired three anti-tank laser missiles, resulting in the death of Gen. Soleimani and eight of his companions¹. The United States took responsibility for the attack shortly after. Despite the strong condemnation of this action within Iran, the international community responded passively. Some countries, such as Syria, Nicaragua, and Cuba, condemned the attack, while the European Union, Germany, Great Britain, and China urged Iran and the United States to exercise restraint². It is important to note that these reactions do not diminish the significant position held by Gen. Soleimani within Iran's military structure. In fact, some authors have even drawn parallels between the assassination of Gen. Soleimani and the assassination of Franz Ferdinand, which triggered the First World War (Bowser and Lev, 2020).

The assassination of one of the highest-ranking military officials of a country by another country, especially when ordered by the president, within the territory of a third country, is a rare and unprecedented occurrence. The legal pursuit of the individuals responsible for the assassination of Gen. Soleimani is a crucial aspect to consider in this case. While it is possible to pursue the case through international and national authorities such as the Human Rights Council³, the General Assembly or the Security Council⁴ of the

1 www.irna.ir/news/83618275; www.irna.ir/news/83620416.

2 www.irna.ir/news/83620265; www.irna.ir/news/83619440; www.irna.ir/news/83618459; www.irna.ir/news/83618994; www.irna.ir/news/83618736; www.irna.ir/news/83618483.

3 Procedure 1503, which serves as the primary complaint mechanism in the Human Rights Council, can be considered as one of the avenues for addressing human rights violations in the case of the assassination of Gen. Soleimani. Procedure 1503 applies to all states, regardless of their membership in human rights conventions or their stance on Resolution 1503 (Economic and Social Council (ECOSOC) Resolution 1503 (XLVIII) of 27 May 1970). The procedure operates in the following manner, as demonstrated in previous cases involving countries such as Kyrgyzstan (2006), Uzbekistan and Iran (2007), Maldives (2008), Guinea (2009), Tajikistan (2011), Eritrea (2012), Iraq (2012), Congo (2012), Turkmenistan (2012), and Cameroon (2014): The "Working Group on Communications" reviews the complaint, assesses its admissibility, and subsequently informs the relevant state about the alleged violations. After examining the contents of the complaint and the state's response, the "Working Group on Situations" presents recommendations in the form of a report to the Human Rights Council. The Council may request additional information from the state in question and continue to address the issue by appointing an independent expert to conduct further investigations and submit a report to the Council. Alternatively, the Council may advise the Office of the High Commissioner for Human Rights to provide assistance to the concerned state (Askari, Bazzar, & Khoshlesan, 2016: 122). It is important to highlight that the most fundamental human right violated by the US military action is the right to life, which is an inviolable right even during peacetime, regardless of any perceived "necessity" (International Covenant on Civil and Political Rights 1966, Art. 4(2)).

4 Any attempt by Iran or Iraq to address the issue of the assassination of Gen. Soleimani through the United Nations Security Council would inevitably face a veto from the United States and ultimately fail.

United Nations, or the courts of Iran or Iraq¹, this article focuses exclusively on the judicial pursuit of the issue in the International Criminal Court and the International Court of Justice.

1. Legal Aspects of the Assassination of Gen. Soleimani

One of the primary questions surrounding the US military action in the assassination of Gen. Soleimani is whether the action can be classified as an act of aggression. To determine the nature of the action, we must refer to the provisions outlined in the 2008 US-Iraq Status of Forces Agreement (Also known as the SOFA), which addresses the US military presence in Iraq and the conditions governing it. According to Article (3) of the SOFA, the United States is permitted to conduct military operations in Iraqi territory as long as they comply with the laws, customs, and conventions of the Iraqi government, and these operations should not contradict the spirit of the Agreement. The initial reaction from the Iraqi government regarding the assassination of Gen. Soleimani suggests that, at least at first glance, these conditions have not been met. Furthermore, the fact that some Iraqi nationals were also killed in this military action strengthens this conclusion (Labuda, 2020). To determine whether an act of aggression has occurred and to consider relevant examples, we should take into account United Nations General Assembly Resolution

However, from a practical standpoint, the American government can raise the matter of the Iranian missile strikes on the US military base in Iraq within the Security Council. The Council can then take appropriate action by clarifying the various aspects of the case, such as establishing a fact-finding committee. Nevertheless, if such an issue is brought up in the Security Council, it is likely that the assassination of Gen. Soleimani, which is directly related to it, will also be discussed. Given that the United States initiated this escalation, there may be criticisms even within the United States regarding its military action against a high-ranking official of another country on the territory of a third country. Consequently, the United States may prefer not to raise the issue in the Council. This explains why the United States has chosen to limit its involvement to sending a letter to the 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).

¹ According to the Judicial Laws of the Islamic Republic of Iran (2014), individuals and legal entities have the right to seek compensation for damages caused by actions and activities of foreign governments, both within and outside of Iran, that contravene international law and result in the death, physical or mental injury, or financial loss of individuals. They can file a lawsuit in the Tehran courts (Article 1(a)). In the case of the assassination of Gen. Soleimani, his heirs as individuals and the IRGC as a legal entity can bring a complaint against the US government for its actions, which violated international law by disregarding the immunity of a foreign official. It is noteworthy to mention that this law allows for the possibility of imposing punitive damages on the US government as a retaliatory measure. Furthermore, under Article 7 of the aforementioned law, the prospect of filing a lawsuit against US officials in Iranian courts is also conceivable.

3314, adopted in 1974, which outlines customary international law on acts of aggression¹.

Upon examining the definition and examples of acts of aggression provided in the Resolution, it becomes clear that in the case of the assassination of Gen. Soleimani, we can only consider it as aggression against Iraq, not Iran. The fifth example in this definition, which pertains to the military presence of one State in the territory of another State, aligns with the circumstances surrounding the US military action against Gen. Soleimani. According to this paragraph, the use of military force by a government present in another State's territory, if it contradicts the provisions of an agreement, is deemed aggression. Therefore, in order to categorize the American military action as aggression against Iraq, it must be proven that the terms of the agreement between the United States and Iraq were violated by this military action. This task does not appear to be difficult considering the evidence in this case. However, following the approval of the Iraqi parliament for the withdrawal of US troops from the country's territory, it is evident that the presence of US troops in Iraq lacks a legal basis. Even the Agreement that permitted the presence of US troops in Iraq can no longer be cited.

The main claim of the United States in the case of the assassination of Gen. Soleimani, which was also emphasized in the letter of the US government to the United Nations Security Council on January 8, 2020, is that it carried out this action in line with legitimate self-defense². There is no doubt that the United States, like any other State, has the right to legitimate self-defense even in Iraq, and this fact was emphasized even in the 2008 US-Iraq

¹ Resolution 3314 has even been considered in the definition of the crime of aggression in the Rome Statute of the International Criminal Court (Rome Statute of the ICC, art. 8 bis)

² In its letter to the Security Council, the United States referenced several military actions attributed to Iran. These include the June 19, 2019, incident involving the downing of a US MQ4 drone, as well as recent military actions in the region that the United States associates with Iran. These actions consist of attacks on commercial ships in Fujairah port and the Gulf of Oman, missile and drone strikes on Saudi Arabia (specifically the attack on Saudi Aramco oil facilities), the December 27, 2019, attack resulting in the death of a US contractor and injuries to four US service personnel in Iraq, and the December 31 attack on the US embassy in Baghdad carried out by Kataib Hezbollah and others. The United States cites these events as the justification for its military action in the assassination of Gen. Soleimani (Letter dated January 8, 2020, from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council).

SOFA regarding the US military presence in Iraq¹. However, the United States cannot legally justify its military action in the form of legitimate defense, because resorting to legitimate defense as one of the exceptions to the principle of not resorting to force in international law has conditions, currently considered customary international law (ICJ Reports 1996, para. 41). With the exception of legitimate defense against the principle of not resorting to force, they should be interpreted narrowly. In order to consider an action as legitimate defense, the action must be "proportionate" to the armed attack that has been carried out in advance, must be "necessary"² to respond to the attack, and must be carried out against a "legitimate military target" - not a civilian target. (ICJ Reports 1986, paras. 176,194; ICJ Reports 2003, paras. 51,74).

Also, legitimate defense against an armed attack or an act of aggression is conceivable, and it is necessary to distinguish armed attack as the most severe form of use of force from other less severe forms. (ICJ Reports 1986, para. 191; ICJ Reports 2003, para. 51). This is despite the fact that no armed attack was carried out by Iran against the United States before the US military action, and the reference to preventive or preemptive legitimate defense in order to prevent an imminent armed attack is also in international law is not acceptable. The ICJ in the case of "Oil Platforms" states that in order to prove the legality of the US attack on Iran's oil platforms with the claim of legitimate defense, the US must show that attacks in the sense of an armed attack contained in Article (51) of the Charter by Iran has been done to the United States (ICJ Reports 2003, para. 51). In fact, the lack of an initial military attack by Iran makes the examination of the conditions of legitimate defense, including the proportionality of the US action with the initial attack and the necessity of responding to it, invalid. Another objection that is raised regarding the US claim about resorting to legitimate defense is that legitimate defense is raised in the relations between two States and the assassination of the military commander of a State that has not started any conflict on this basis seems in contradiction with the principles of legitimate defense (O'Connell,

1 Agreement Between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq 2008, art 4(5).

2 The principle of necessity serves as a stringent requirement for engaging in lawful self-defense, stipulating that a defensive military response should only be employed as a last resort (O'Connell, 2020).

2020). Furthermore, even if we accept the possibility of legitimate defense against an imminent attack, defensive military action must be against the means and arms of the imminent attack, including corps, tanks, or the drones that the attack is supposed to be carried out by, while Gen. Soleimani, as a high-ranking strategist commander, has only participated in military decision-makings, but not conducting alleged military operations (Milanovic, 2020).

Another noteworthy point is Iran's right to legitimate defense against US military action. The US military action has been against Iraq, and in fact, legally, it is inconceivable to consider the assassination of an official of a State in a third State as a legitimate defense. It is indeed more of an armed attack and the right to self-defense remains legitimate for the Iraqi government. Of course, this negative conclusion does not mean that in the possible exercise of the right of collective legitimate defense by the Iraqi government, other States, including Iran, will accompany it. However, regardless of the lack of right of legitimate defense for Iran, Iran can take advantage of "countermeasures" as one of the prominent manifestations of "self-help" in international law. Although taking some measures, including blocking the Strait of Hormuz, is mentioned as a viable countermeasure against the US military action, Iran should try to comply with its strict conditions, including non-use of force, in resorting to countermeasures. (ILC, 2001, arts. 49-53).

Another claim that may be made by the United States from a legal point of view is that the name of Gen. Soleimani was included in the annex of the directive of the European Union which was approved in the fight against terrorism (EU, No. 542/2012) and the Quds Force of the Islamic Republic of Iran which he commanded was also sanctioned as a terrorist group in the United States of America and Canada. Therefore, since the United Nations Security Council Resolution 1368 (2001) prescribes legitimate defense against terrorist activities (S/RES/1368 (2001)) and the United States attempt to assassinate Gen. Soleimani was in line with legitimate defense and it has acted against terrorist activities. In response, it should be said that the United States cannot enforce its laws extraterritorially and against others, and the requirements of the European Union directive can only be invoked within the borders of this Union and cannot be applied everywhere in the world and against all actors of the international community. Perhaps if Gen. Soleimani

was present at the borders of the European Union or his name was included in the annex of one of the resolutions of the Security Council of the United Organization, a different conclusion would be acceptable. But, in this situation, the argument is not cogent.

2. Judicial Investigation of the Assassination of Gen. Soleimani in the ICC

Regarding the issue of the assassination of Gen. Soleimani in the ICC, it should be said that Iran, Iraq, and the United States are not Parties to the Statute of the Court. Therefore, this issue cannot be brought up in the Court by these States, and action through the UN Security Council will definitely face the US veto. The only way for the Court to deal with the assassination of Gen. Soleimani is to accept the case jurisdiction of the court according to Article 12(3) of the Court's Statute, which, of course, has its own limitations. Issuing a declaration of acceptance of the case-by-case jurisdiction of the Court can bring potential risks for Iranian or Iraqi authorities. In fact, although the State's accepting the case jurisdiction of the Court can limit the scope of the Court's jurisdiction in terms of time, the court determines what crimes or issues to deal with within the time frame mentioned in the declaration¹. The odd point about the State issuing the declaration accepting the case jurisdiction of the Court in the case of the assassination of Gen. Soleimani is that due to the non-"victim-centered" jurisdiction of the Court, the issuance of such a declaration by Iran will not create jurisdiction for the Court over the case of Gen. Soleimani (Zakir Hossein, 2018). Because in this case, the Court will only be able to exercise jurisdiction over the crimes committed on the territory of Iran or on the aircraft and ships registered there, or over the alleged Iranian defendants. Therefore, the issuance of such a declaration should be pursued by the Iraqi government in order to establish the Court's jurisdiction over the

¹ The final conclusion of the Third Pre-Trial Division of the ICC regarding the situation in Ivory Coast states that while states may consent to the Court's jurisdiction through case-by-case declarations, the extent of such declarations is determined by the Court's legal framework and procedural rules (Rule 44). These rules explicitly limit the states' discretion in defining the scope of situations falling under the Court's jurisdiction. The Court, through Rule 44, aims to prevent states that have chosen not to be Party to the Statute from using the Court opportunistically as a political tool, and these states cannot restrict the scope of proceedings by setting their own parameters. The Court should establish a situation encompassing all relevant crimes in this regard, as highlighted in paragraphs 55 and 59 of the Rome Statute defense filed for President Gbagbo (ICC-02/11-01/11-129, paras. 59-60).

case of the assassination of Gen. Soleimani, and this can reduce to some extent the potential risks related to the actions of Iranian authorities being raised in the Court. Of course, even if Iraq limits the jurisdiction of the court to actions after January 3, 2020, some of the actions of the Iranian authorities on Iraqi territory, including the firing of missiles at the US military base, which took place after the date, will be under the court's scrutiny.

Another question raised regarding the case of the assassination of Gen. Soleimani in the Court is: considering the fact that it is not possible to proceed in absentia in the Court, is there a legal and practical possibility for the presence and trial of the US defendants in the Court? First of all, it should be said that the US cannot prevent the Court from examining the matter by focusing on the direct issuance of the order to assassinate Gen. Soleimani by the US then-President raising his immunity. Because the jurisdiction of the Court is applied to all people without any discrimination based on official position (ICC, art. 27). Even if the Court issues an arrest warrant for some US persons in the event that this issue is brought up in the Court, each of the States Party to the Court's Statute, in whose territory the alleged accused is present, must arrest the person and hand him over to the Court for trial (ICC, art. 89(1)). Moreover, based on the recent procedure of the Court in the case of the non-handover of "Omar al-Bashir" by the Jordanian government, according to Article 98(1) of the Court's Statute and as a pre-condition, the State in whose territory the person is found is obliged to hand him over to the Court regardless of his State's objections on the grounds of immunity¹. Nonetheless, the numerous agreements that the United States has concluded with the States Parties to the Court's Statute regarding the non-extradition of US citizens to the Court, will be considered a serious obstacle to the delivery of US citizens to the Court².

1 In its judgment dated May 6, 2019, the Appellate Division of the ICC clarifies that Article 27 of the Statute serves a dual purpose. It not only removes immunity from the Court's jurisdiction but also excludes immunity from arrest. As there is no official capacity-based immunity concerning proceedings before the Court, Article 98(1), which addresses the issue of potential immunity regarding the arrest and surrender of individuals to the Court, does not conflict with the application of Article 27 of the Statute. Consequently, there is no need to raise objections to immunity based on Article 98(1) (Prosecutor v. Omar Hassan Ahmad Al-Bashir, Case No. ICC-02/05-01/09 OA2, Judgment in the Jordan Referral re Al-Bashir, Appeal Chamber, para 48).

2 When it comes to applying the jurisdiction of the ICC to individuals from non-Member States, there is a tension between the principle of relativity of treaties and the necessity for a restricted interpretation of

Nevertheless the main issue with how the Court shall handle the Gen Soleimani case is that, based on the circumstances of the case and the jurisdictional grounds of the Court, the US military action in the assassination does not fall under any of the four crimes within the Court's jurisdiction. Since there was no armed conflict between Iran, the United States, or Iraq at the time of the assassination, the possibility of war crime commission is ruled out.¹ Also, crimes against humanity can only be perpetrated against civilians. Moreover, the crime of genocide, which requires the specific intent to destroy a national, racial, religious, or ethnic group, is not applicable in this case.

Therefore, the only possible crime remaining is act of aggression. To definitively determine whether the US actions can be classified as aggression it is necessary to examine the elements and dimensions of this crime and how the Court's jurisdiction applies to it.

It is important to note that the Court's jurisdiction over the act of aggression differs from that of other crimes under its jurisdiction. When its Statute was implemented in 2002, the Court did not initially have jurisdiction over act of aggression. It was decided that the definition of aggression and the conditions for the Court's jurisdiction over it would be determined during a conference to review the Statute. The definition and jurisdiction over the act of aggression were established at the Kampala Review Conference in 2010. After fulfilling the conditions related to the court's jurisdiction over acts of aggression, the Assembly of States Parties to the Statute of the Court announced in December 15, 2017, that the Court could exercise jurisdiction over the crime starting from July 17, 2018 (Najhandi Manesh and Bazzar, 2017: 209).

the jurisdictional provisions outlined in the Statute. This tension arises due to the competing considerations of upholding the ideals of criminal justice and respecting the values of the international community. Beigzadeh and Abdullahi (2017: 13-14) discuss this balance and emphasize the importance of carefully considering these factors when determining the scope of the Court's jurisdiction.

¹ Contrary to certain comments suggesting a breach of International Humanitarian Law in this case, it appears more appropriate to focus on the violation of International Human Rights, given the absence of an armed conflict between Iran and the United States at the time of the assassination of Gen. Soleimani. It is important to examine the specifics of the case. Additionally, when considering the application of Humanitarian Law, one of the prerequisites is the occurrence of hostilities within the territory of a belligerent Party. Therefore, in a situation where military action occurs in the territory of a third state (Iraq), Humanitarian Law cannot be invoked (Askary & Hosseinejad, 2020).

Another distinction between the act of aggression and other crimes under the Court's jurisdiction is related to the nature of the crime itself, which can impact the Court's jurisdiction over it. While the Court deals with the actions of individuals, the act of aggression is defined as "the use of force by a State against the sovereignty, territorial integrity, and political independence of another State." Unlike other crimes under the Court's jurisdiction, the act of aggression cannot be committed by an individual without State involvement. Therefore, the prosecutor's initiation of a preliminary investigation into the act of aggression, unlike other crimes, requires the prior confirmation of the act occurrence by the UN Security Council. After a six-month investigation period by the Security Council, the prosecutor can seek permission from the Court's Pre-Trial Division to begin investigations into the alleged act of aggression (ICC, art. 15 bis (6), (8). art. 27). However, if the Security Council expresses dissatisfaction with the Court's examination of the matter, it can suspend the case for twelve months, with the possibility of indefinite renewals by the Council (ICC, art. 16).

Despite these limitations, there is a strict condition for the Court's jurisdiction over the act of aggression, as stated in Article 15(5) of the Statute. This condition explicitly excludes the Court from dealing with the case of Gen. Soleimani as a crime of aggression. According to this condition, the State of the accused person must be a Party to the Statute of the Court in order for the Court to exercise jurisdiction over the crime of aggression committed by its citizens. However, neither Iraq nor the United States are Parties to the Statute of the Court. Therefore, even if the Court's jurisdiction were accepted, the court would be unable to address the crime of aggression committed by US authorities in Iraq.

3. Judicial Investigation of the Assassination of Gen. Soleimani in the ICJ

The only agreement between the governments of Iran and the United States that would allow for the referral of disputes to the ICJ was the 1955 Treaty of Amity, Economic Relations, and Consular Rights. However, the United States withdrew from this agreement after the court issued a temporary order on October 3, 2019, in the case of "Alleged violations of the Treaty of Amity."

Since both States have not accepted the Court's compulsory jurisdiction, it is unlikely that Iran's petition to the United States¹ to accept the Court's jurisdiction will succeed. Therefore, the only option to bring the case to the Court is to find a relevant convention that both Parties have accepted, which includes provisions for referring disputes arising from the obligations contained in the convention to the Court. In the case of the assassination of Gen. Soleimani, the 1973 New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons is worth noting. This comprehensive international convention encompasses 180 Member States, including Iran, Iraq, and the United States.

According to this Convention, when a crime is committed against a government's employee or representative in an official place, personal residence, or vehicle, they are entitled to special protection under international law, ensuring their freedom and dignity². The focus of this convention is generally on the characteristics of the victim or the internationally protected person (Barker, 2011:120), and it does not specifically address the nature of the perpetrator. Therefore, intentionally committing crimes such as murder and kidnapping, which are covered by the Convention, would constitute a violation of its obligations. The statements made by US officials leave little room for doubt regarding the intentional killing of Gen. Soleimani. The only matter under discussion is whether Gen. Soleimani, as an internationally protected person, falls under the special protections of the Convention.

The first article of the Convention provides a comprehensive definition of protected persons. In addition to heads of States and foreign ministers, it includes representatives and employees of the government. Therefore, the use of the term "diplomatic representatives" in the Convention's title is metaphorical, and the Framers did not intend to exclusively focus on diplomats or high-ranking officials. In fact, the protections offered by this convention go beyond those provided in other treaties such as the Convention on Diplomatic Relations (1961) and the Convention on Consular Relations (1963), which specifically apply to diplomats and consuls. The concept of

¹ Forum Prorogatum

² Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents 1973, art. 1(1)(b).

"internationally protected persons" and the related protections should be understood as broader than the previous limited protections granted to certain individuals in international law. The convention itself reinforces this conclusion by not specifying a particular group and consistently using the term "internationally protected persons."

This interpretation is supported by state practices as well. For instance, in a case where an employee of the Iranian consulate was allegedly attacked, an Australian court considered the matter under the Crimes Against Internationally Protected Persons Act (1976), which incorporated the New York Convention into Australia's domestic law (*R v. Donyadideh* 114 FLR 43 (1993)). The International Law Commission's commentary on Article 1(b) of the Convention, which deals with the definition of internationally protected persons, also strengthens this argument. According to paragraph 6 of the Commission's commentary, a government employee is considered a person under international protection if, at the time and place of the crime, they are entitled to protection due to the performance of their official functions. For example, a diplomatic employee on vacation in a country other than the host or receiving country would not naturally be entitled to special protections.

It is evident that Gen. Soleimani was carrying out an official duty when he was killed, and it was confirmed by the Iraqi Prime Minister that he was carrying a message from the Iranian government to the Saudi government. The Commission's commentary also emphasizes the need for broad personal jurisdiction in cases of terrorist incidents. It states that when enacting domestic legislation to implement the Convention, States should consider adopting expansive personal jurisdiction to provide special protection to foreign officials against terrorist activities¹.

Furthermore, the US government, as the perpetrator of the assassination of Gen. Soleimani, cannot narrow the interpretation of the term "internationally protected persons" to absolve itself of responsibility for violating the obligations arising from the 1973 New York Convention. This is because in US domestic law, a broad interpretation of the term "internationally protected persons" has been accepted. While US law provides examples of

¹ Ibid, Commentary 9 of Article 1.

internationally protected persons, it also emphasizes that the phrase is not limited to those examples and that most foreign officials are entitled to protection as internationally protected persons¹. Therefore, the US government is bound by its own interpretation in domestic law regarding internationally protected persons.

Article 13 of the New York Convention establishes a three-stage dispute settlement mechanism for resolving disputes related to the interpretation or implementation of the Convention. These stages occur concurrently. According to this provision, any dispute between the Parties to the Convention must first be resolved through negotiation. If the Parties are unable to reach an agreement through negotiation, either Party may request arbitration. If the Parties fail to agree on the arbitration structure within six months of the arbitration request, either Party can refer the dispute to the ICJ². One question that arises regarding this mechanism is whether the negotiation phase, unlike the second phase, has no time limit, which could potentially prolong the process and make it practically impossible to bring the case to the ICJ. While the negotiation process is indeed necessary, it's important to note that the Court's opinion on the obligation to negotiate in the case of "alleged violations of the Amity Treaty" cannot be applied as a criterion here.

In the Court hearing regarding the request for a temporary order in the case of "alleged violations of the Amity Treaty," which involved Iran and the United States, the United States argued that the precondition of resorting to negotiation before going to court had not been fulfilled. However, the court clarified that resorting to negotiation is not a prerequisite for approaching the court. The Court's final decision rejected the US claim and stated that the second paragraph of Article 21 of the Amity Treaty, like similar provisions in other treaties, does not explicitly require negotiation as a condition before

1 Furthermore, within the US legal system, the safeguarding of internationally protected individuals falls under the extraterritorial criminal jurisdiction of American courts. This means that U.S. courts have the authority to prosecute offenses committed against these individuals regardless of the location in which the crimes occurred. This jurisdiction is established by statutes such as 18 U.S.C. §112, 878, 970, 1116, 1117, 1201, 1617, and 1618, which pertain to extraterritorial criminal jurisdiction and provide definitions for relevant terms.

2 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents 1973, art. 13(1).

approaching the court¹. The Court explained that in this treaty, the reference to diplomatic methods before resorting to the Court has a descriptive nature. Once it becomes clear that the dispute has not been resolved satisfactorily through diplomacy, it is sufficient for the Court's jurisdiction. It does not matter whether negotiations were officially conducted or not, or whether either Party's behavior hindered diplomatic resolution of the dispute (ICJ Reports 2018: para 50).

Given the difficult relations between Iran and the United States, it is challenging to envision negotiations between the two States. However, it may be possible to obtain permission to negotiate with the US side, as seen in the case of the "downing of Iran's Airbus by the United States." Thus, Iran could make negotiations with the United States feasible by emphasizing the need for judicial follow-up on the assassination of Gen. Soleimani and obtaining case-specific permission from the Iranian Supreme National Security Council and the Supreme Leader. With Iran's proposal for negotiation, even if the US side holds an opposing opinion, the precondition of negotiation mentioned in Article 13 would still be fulfilled, and the first stage of the mechanism would be considered completed.

There is no doubt that the actions of US officials and military forces in the assassination of Gen. Soleimani are attributed to the US government. In this case, the behavior of the perpetrators, who are considered government agents, is seen as the behavior of the government itself (ILC 2001, art. 4). An objection may arise that the ICJ, being a legal court, cannot address the responsibility for crimes committed by a State, considering the criminal nature of the US action as murder. However, it should be noted that the Court can indeed address the international responsibility of a government for committing a crime. It has done so previously in two cases related to the crime of

1 The contrast in language between Article 13 of the New York Convention and Article 21(2) of the Iran-US Amity Agreement serves as a clear illustration of the point emphasized by the Court: Article 21(2): "Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice". Article 13: " Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court".

"genocide" brought by the governments of Bosnia and Herzegovina and Croatia against Serbia. Currently, the Court is also addressing the crimes committed by the Myanmar government against the Rohingya Muslims (the crime of genocide) in the case of Gambia against Myanmar. The Court has even ruled on the issue of dual responsibility in the case of Bosnia and Herzegovina v. Serbia, stating that a State will not be absolved of international responsibility for an internationally wrongful act by prosecuting and punishing its officials who committed that act. This principle is enshrined in Article 25(4) of the Statute of the ICC and Article 54 of the Draft Articles on the Responsibility of States (ICJ Reports 2007).

Another obligation outlined in Article 7 of the New York Convention for Member States is their duty to prosecute their nationals who commit crimes listed in the Convention against internationally protected persons. Alternatively, they should extradite these individuals¹. Therefore, the failure to prosecute the perpetrators of the assassination of Gen. Soleimani in the domestic legal system of the United States constitutes a violation of the treaty by the US government and leads to its international responsibility. Iran could also bring a lawsuit against Iraq for violating its obligations under the New York Convention. According to the Convention, Iraq is obligated to prevent crimes listed in the convention from being committed against internationally protected persons on its territory (Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents 1973). Additionally, Iraq has violated the principle of the prohibition of the harmful use of territory (Vakil, 2018). This principle, first clarified in the "Corfu Channel" case in the ICJ and declared as a rule of customary international law, states that States must not allow individuals to use their territory to knowingly carry out actions that violate the rights of other

¹ Aut dedere aut judicare.

governments (ICJ Reports 1949)¹. The basis of this rule is the general legal principle that "one's rights should not harm the rights of others."²

The final point discussed in this section pertains to the impact of Iran's military action, specifically the firing of missiles at the US military base in Iraq, on a potential lawsuit brought by Iran against the United States in the ICJ. The United States could present Iran's action as a counterclaim in the Court. Even if the US side does not raise this issue, the court will undoubtedly consider Iran's military action, taking into account its previous condemnation of the American military action in the Tabas Desert of Iran in the case of "US diplomatic and consular employees in Iran."³ However, it is important to note that even in the most optimistic scenario, if the Court, after the hearing and in its final conclusion, determines that the US action was an international violation and that Iran's action was a legitimate act of defense, as stated in Iran's letter to the Security Council and clarified by the United Nations, the Court's conclusion regarding Iran's action will not absolve or excuse the characterization of the US action as a violation (ILC, 2001). It should be noted that removing the characterization of the US wrongful action does not impact the matter of compensation for the material damages caused by this wrongful action (ILC, 2001).

¹ The International Environmental Law widely recognizes the responsibility of governments to prohibit the detrimental use of their land. The Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, formulated by the International Law Commission in 2001, stipulates that governments must take all necessary measures to prevent environmental damage that may cross borders (Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, 2001, article 3). In accordance with this principle, the International Court of Justice asserts that every government is obligated to utilize all available means to prevent activities conducted within its territory or under its jurisdiction that cause harm (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996, paragraph 29; Pulp Mills on the River Uruguay (Argentina v. Uruguay), ICJ Reports 2010, paragraph 102).

² *Sic utere tuo ut alienum non laedas*.

³ In the case concerning "US diplomatic and consular employees in Iran," (also known as the Hostage Crisis) Iran did not appear in Court and consequently did not present any evidence or objections regarding the military operations carried out by the United States on April 24 and 25, 1980, in the Tabas Desert of Iran. However, contrary to the US request and the subject matter of the lawsuit, the Court proceeds to address this issue and expresses its concerns about the US aggression against Iran. Nevertheless, the Court clarifies that it was not tasked with making a decision on the legality of the US military operation or the resulting responsibility. It further asserts that the said operation had no bearing on the Court's conclusion in this case. The case in question is *Diplomatic and Consular Staff in Tehran* (United States of America v. Iran), ICJ Reports 1980, paragraphs 23, 93-94. The Court's opinion was likely influenced, in part, by the failure of the US military operation.

Conclusion

Given that the governments of Iran, Iraq, and the United States are not Parties to the Statute of the International Criminal Court, they cannot refer the assassination of General Soleimani to the court or initiate a preliminary investigation by the Court's prosecutor. The action of the United Nations Security Council will undoubtedly be vetoed by the United States. Therefore, the only possible scenario to establish the Court's jurisdiction in this matter is if the Iraqi government accepts the Court's ad hoc jurisdiction. However, even in this case, the circumstances of the Case do not fall within the Court's jurisdiction, as none of the four crimes apply. Nonetheless, Iran can pursue the civil responsibility of the US government by invoking the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (1973). This Convention, which prohibits crimes against internationally protected persons, includes a three-stage dispute resolution mechanism among its Parties. If the dispute cannot be resolved through negotiation, it proceeds to arbitration. If no agreement on the arbitration structure is reached within six months, each Party to the dispute has the right to refer the matter to the International Court of justice. Therefore, Iran can initiate this mechanism by proposing negotiations to the United States. Even if the United States does not cooperate and rejects the negotiation proposal, and if no agreement is reached regarding the establishment of an arbitration authority, Iran can bring the issue to the International Court of justice.

Based on the judicial procedure of the International Court of justice, it is unlikely that the justifications and arguments put forth by the United States regarding the assassination of General Soleimani be accepted by the Court. The United States claims that the action was carried out in legitimate defense. However, the Court has consistently emphasized that self-defense is only applicable in response to an armed attack that has already occurred, and that the response must be proportionate to the initial attack. Additionally, the response must be directed only at legitimate military targets. Moreover, most of the US claims in this matter pertain to Iran's material and logistical support of military groups such as Kataib Hezbollah and Hashd al-Shaabi. The Court has previously stated in several cases including the US military and para-

military actions against Nicaragua that the actions of these groups can only be attributed to the controlling State if it has effective control over them. The Court has adopted a narrow definition regarding the attribution of actions to the State, making it highly unlikely that Iran will be held responsible for the actions of these groups. However, Iran should consider the potential repercussions, including the issue of Iranian missile strikes on US military base, when deciding whether to refer the case to the International Court of Justice.

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The Assassination of General Soleimani and the Potential Prosecution of the Individuals Responsible before Domestic and International Courts

Sakr Soboh¹

Abstract

On January 3, 2020, General Soleimani, was assassinated by a United States drone attack at Baghdad Airport. This attack also resulted in the martyrdom of Abu Mahdi al-Muhandis, a commander of the Iraqi Popular Mobilization Forces, and ten other individuals. The US Department of Defense confirmed that this attack was ordered by then-President Donald Trump, who served as the Commander-in-Chief of the US Armed Forces. The assassination of such high-ranking military figures from Iran and Iraq is considered a clear act of State terrorism, which violates fundamental principles of international law, including the right to life, the prohibition of the use of force, respect for national sovereignty, and non-interference in the internal affairs of other States. Moreover, by carrying out this action "without coordination with the Senate," the Trump administration violated US domestic laws. In this article, I will explore the legal avenues that can be pursued to hold the perpetrators of this criminal act accountable and ensure that they face proportionate punishment. Through analysis, I will identify the feasibility of seeking justice through domestic courts (Iranian, Iraqi, American) as well as international courts. However, each of these legal avenues presents its own obstacles and challenges, which will be discussed in detail.

Keywords: Targeted Killing, General Soleimani, Domestic Courts, International Courts, United States.

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Introduction

The assassination of General Qassem Soleimani (hereinafter Gen. Soleimani), a commander of the Islamic Revolutionary Guard Corps (IRGC-Quds Force), along with his companions, including Abu Mahdi al-Muhandis, deputy commander of the Iraqi Popular Mobilization Forces (Hashd Al-Shaabi), on January 3, 2020, within Iraqi territory, by a US drone, has emerged as a significant issue in the international arena.

The United States invoked the right to *preemptive* defense to justify its action, but from a legal perspective, defense is typically employed to counter aggression based on three principles: proportionality, necessity, and immediacy (in line with Article 51 of the United Nations Charter). The current situation between Iran and the United States does not constitute an actual state of war, which renders the utilization of the laws of war to justify the US action against Gen. Soleimani and his companions illegitimate.

Given that the US armed forces make an integral component of the United States, and President Trump explicitly stated that they operated under his order, this crime can be attributed to the US government, thereby incurring state responsibility for this Internationally Wrongful Act (as stipulated in Article 4 of the 2001 ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts- the ARSIWA).

In his annual speech before Congress, President Trump defended the assassination of Gen. Soleimani, as he directed his words against the Islamic Republic of Iran. He claimed, Qassem Soleimani is responsible for many killings. He is the most powerful executioner in Iran, having killed thousands of American soldiers in Iraq. He is the world's biggest terrorist, the mastermind behind the killings of men, women, and children. He has planned and led numerous military operations against the American armed forces in Iraq, including the December attack, and is plotting further terrorist operations. Therefore, under my command and by my personal order, the American forces launched a precise and targeted attack last month, killing Soleimani and putting an end to the era of evil forever.

The statements made by the US Secretary of State also indicate the US government's confirmation and endorsement of this terrorist act. On January 3rd, the US Secretary of State Mike Pompeo claimed that Qassem Soleimani,

a commander of the IRGC, intended to launch an attack on US forces. He asserted that if Soleimani had not been assassinated, significant damage and losses would have been inflicted upon the United States. Pompeo confirmed to CNN that the American people were aware that the decision by the President to eliminate Gen. Soleimani saved the lives of many Americans. He further emphasized that the drone strike was conducted to prevent Iran from targeting US interests in the future.

Therefore, in light of these explicit statements from the POTUS and Secretary of State, there is no room for doubt regarding the responsibility of the US government for this wrongful act (as stated in Article 2(A) of the ARSIWA). Based on this, and after establishing US responsibility for the assassination of Gen. Soleimani and his companions, I will elucidate the legal principles that the United States violated through this action. Subsequently, I will outline the legal avenues that can be pursued to prosecute those responsible for the perpetration of this crime.

1. The United States Violates the Rules and Principles of International Law.

Upon careful examination of this assassination, it becomes evident that the United States has violated numerous rules of international law¹, including:

1.1. Violation of the Principle of Non-Use of Force

When examining the attack, it becomes apparent that the attack contravenes the UN Charter provisions and customary international law. Article 2(4) of the Charter explicitly prohibits the use of force against national sovereignty, territorial integrity, or political independence, as well as any actions inconsistent with the Charter's objectives. Not only did this use of force violate the sovereignty of Iraq but it also targeted Iranian officials (Dehnavi, Taqizadeh Ansari, & Rahimi, 2020: 147; Abu Al-Wafa, Ahmed, 2016: 151). The United States entered Iraq in 2003 without the authorization of the UN Security Council, and it continues to maintain its unlawful presence in Iraq up

¹ The assassination of Gen. Soleimani represents a clear violation of Clause (1) of Resolution 1269, issued on October 19, 1999, against terrorism (S/RES/1269:2001), as well as UN Security Council Resolution 1368, issued in 2001 (S/RES/1368:2001), and Clause 5 of the Resolution 1373 (S/RES/B73:2001). Disregarding these resolutions constitutes a grave threat to regional and international peace and security (Khaleghi, 2020: 35; Benjamin, 2014: 8).

to this day, under various justifications such as the Iraq-US Status of Forces Agreement signed in 2008 (the 2008 SOFA). According to this Agreement, US forces were supposed to leave Iraq in 2011, but they have remained under the justification of combating terrorism, specifically ISIS, at the request of the Iraqi government.

As per the terms of the Agreement, the United States is obligated to coordinate with the Iraqi government regarding military movements. However, contrary to the provisions of the Agreement, the United States launched attacks on areas where the Popular Mobilization Forces were stationed, thereby violating Iraqi sovereignty (in breach of Article 27(1) of the SOFA).

The US violation of the provisions of this Agreement through their attacks on the Popular Mobilization Forces, which are an integral part of the Iraqi Armed Forces and operate under the command of the Commander-in-Chief of the Iraqi Army and Armed Forces, also constitutes a violation of the principle of non-use of force. This principle is recognized as one of the peremptory rules in international law (Zamani & Berlian, 2020: 102-103; Nimah Abdullah, 1990, 184-187).

The UN Charter specifies three exceptions to the prohibition on the use of force:

1. Military action based on the collective security system (Article 42).
2. Legitimate self-defense (Article 51).
3. Consent to the threat or use of force (Najandi Manesh, 2007: 91).

Since the US attack on Gen. Soleimani, Abu Mahdi al-Muhandis, and their companions cannot be justified under the aforementioned exceptions, it contradicts the principle of non-use of force. This principle is considered significant under the UN Charter and affirmed by the rules of international law. Moreover, it constitutes a violation of the US War Powers Resolution.¹

¹ CHAPTER 33—WAR POWERS RESOLUTION §1541. Purpose and policy: (c) Presidential executive power as Commander-in-Chief; limitation: The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces. (Pub. L. 93–148, §2, Nov. 7, 1973, 87 Stat. 555.), retrieved from <https://uscode.house.gov/view.xhtml?path=/prelim@title50/chapter33&edition=prelim#:~:text=It%20is%20the%20purpose%20of,situations%20where%20imminent%20involvement%20in,> accessed on 20/05/2020.

Furthermore, considering that the ongoing situation between Iran and the United States does not meet the criteria for an actual armed conflict, it is not appropriate to invoke the rules and laws of war to justify this action. Therefore, carrying out such acts during peacetime clearly violates Article 2(4) of the UN Charter and goes against the provisions of the 2008 SOFA. This Agreement explicitly states that it is not permissible to use Iraqi land, sea, or air to launch or support attacks on other States (Coracini, 2021: 44).

1.2. Violating the Principles of Respecting the National Sovereignty of States and Non-Interference in Their Internal Affairs

In accordance with the principles of respecting the national sovereignty of States and non-interference, States commit to refrain from interfering in the affairs of other States or using force against them, while respecting their sovereignty. An examination of the jurisprudence of the UN Security Council reveals that the principles of respecting national sovereignty and non-interference are fundamental and shall not be violated, except in rare cases where international peace and security need to be restored, albeit temporarily. Only under such circumstances can these principles be overridden (Rattan, 2019: 4).

Following the assassination, Iraqi Prime Minister Adel Abdul Mahdi declared that this act constituted a manifest violation of Iraqi sovereignty. The attack on Gen. Soleimani and his companions represents an aggression against Iraq's territorial sovereignty (Vakil, 2020: cited from <http://www.isng.ir/news/98101410436/>; Abu Al-Wafa, 2016: 171-177). It is crucial to emphasize that an armed attack on officials of a State amounts to an attack on the sovereignty of that State, regardless of whether those officials are military personnel or civilian. Hence, the US attack on the convoy carrying Gen. Soleimani and his companions not only violates the principle of Iraqi national sovereignty, but also infringes upon the principle of non-interference. Furthermore, it constitutes a violation of Iranian sovereignty as well (<http://css.ir/fa/content/115001>).

Nevertheless, it should be noted that the classification of the IRGC as a terrorist organization by the United States contradicts the provisions and norms of international law, as it is officially a part of the Iranian State.¹

Therefore, Gen. Soleimani holding an official position as an envoy of the Islamic Republic of Iran, traveling to Iraq at the official invitation of the Iraqi government, is regarded an internationally protected person (Khaleghi, 2020: 29-31). As such, he is entitled to the safeguards provided by the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (Article 1(1) Clause (b), Article 2(1) Clause (b)) (hereinafter the Protection Convention).

According to Article 2 of the UN Convention on Jurisdictional Immunities of States and Their Property, the United States does not have the authority to criminally prosecute the Iranian State in its domestic courts. Furthermore, in line with the provisions of Article 5 of this Convention, US domestic courts are prohibited from taking legal actions against the IRGC, which is an integral part of the Iranian State. Therefore, the assertion that the IRGC is a terrorist organization, used to justify the act of terrorism against Gen. Soleimani, is unfounded. No international body, including the UN Security Council, has designated the IRGC as a terrorist organization. Evidently, the United States cannot unilaterally claim that the IRGC is a terrorist organization and wage war against it.

Since the IRGC is an official military entity within the Iranian State, it is bound by the provisions of the laws and regulations set forth in the four Geneva Conventions issued in 1949. Consequently, it cannot be classified as a terrorist organization.

Therefore, based on the aforementioned facts, the attack on Gen. Soleimani and his companions constitutes an act of terrorism, which is in violation of the UN Charter and a manifest infringement upon both Iranian and Iraqi sovereignty (Zamani & Berlian, 2020: 108-109).

¹ The Islamic Revolutionary Guard Corps (IRGC) is part of the Iranian Armed Forces and was established in 1979 (Khaleghi, 2020: 29-31).

1.3. The Attack Provides Evidence of the Crime of Aggression

According to Article 3(e) of UN General Assembly 1974 Resolution No. 3314¹, the US action contradicts the provisions of the 2008 SOFA and can be considered an act of aggression. The Iraqi government has the right to exercise its legitimate defense in response to this aggression. However, given the state of Iraq-US relations, it is unlikely that this right will be exercised, although it could potentially serve as a step towards ending the US presence in Iraq.

1.4. State Terrorism

The targeted assassination of Gen. Soleimani and his companions by the US government can be seen as an act of State terrorism. This justification is similarly employed by Israel to justify its wrongful acts (Alston, 2011: 123). While there are legal scholars who challenge the prohibition on targeted killing (Zamani, Berlin, 2020, 112) and view it as a political act, it is important to note that systematic killing is generally unacceptable under international law. However, if this theory were to be accepted, it would pertain to targeted killings of non-State individuals, rather than the killing of an official who is part of the armed forces of an independent State during a time that is not governed by the rules of international armed conflicts (Schmit, 1992: 618; Salam, 2018: 28).

Agnes Callamard, the UN Special Rapporteur on extrajudicial executions, stated that the US killing of Gen. Soleimani violated international law regarding military operations outside of borders. The systematic killing of Gen. Soleimani disregarded all standards related to the use of force by States. The US action represents a dangerous precedent in the international arena, posing a threat to international peace and security, and increasing the likelihood of further crimes.² The killing of Gen. Soleimani has opened the door for the killing of defense ministers and military commanders by other States (Khaleghi, 2020: 33).

States can justify their actions involving systematic killing in two cases. First, when no alternative solution exists other than assassination. Second,

1 "No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful."

2 <https://www.salon.com/2020/01/08/un-rapporteur-on-extrajudicial-executions-wants-official-probe-of-soleimani-killing/>, accessed on 20/05/2020.

within the framework of the principle of military necessity. Additionally, International Humanitarian Law requires consideration of the principles of proportionality and necessary precautions (Dehnavi, Taqizadeh Ansari & Rahimi, 2020: 151; Salem Al-Juwaili, 1993: 83; Al-Sayegh, 2007: 179-183, 196-211). However, since these conditions are not present in this attack, it lacks legal justification. The assassination of Gen. Soleimani, Abu Mahdi Al-Muhandis, and their companions represents a clear example of State terrorism. As this targeting did not occur during a war between the United States and Iran, the deliberate and intentional assassination of Gen. Soleimani, who holds an official position within Iran, can be characterized as a terrorist act (Zamani & Berlian, 2020: 112-116).

1.5. Violation of Human Rights Principles

The US attack on the convoy of Gen. Soleimani is a flagrant violation of the principle of respect for human rights and the right to life. In addition to the martyrdom of Gen. Soleimani and Abu Mahdi Al-Muhandis, other civilians were also killed without any accusations against them.

According to human rights principles, the use of lethal force is only permissible when an individual poses an imminent threat to the lives of others. Therefore, since it cannot be proven that Gen. Soleimani posed such a threat, the US resort to this claim is unfounded. Consequently, depriving Gen. Soleimani and his companions of their right to life is illegal, illegitimate, and a violation of the right to life, which is considered one of the non-derogable right of the human (Zamani, 2020: 14).

The US action represents a tyrannical violation of the right to life. Even if the American claim regarding the assassination of Gen. Soleimani is true, the aforementioned assassination would still be an "unlawful execution" because killing military commanders of any State during peacetime, is illegitimate and illegal unless under the conditions prescribed by law (such as issuing the death penalty after a fair trial, or police using lethal force to legitimately defend oneself or the community), (Dehnavi, Taqizadeh Ansari & Rahimi, 2020: 151).

Philip Alston, the UN Special Rapporteur on extrajudicial executions, asserts that systematic executions represent a manifest violation of the right to

life. Specifically, carrying out executions without a fair trial constitutes a clear infringement of human rights standards, including Article 3 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Civil and Political Rights (hereinafter the Covenant) (Plaw, 2008: 127).

There are potential legal venues for pursuing this case through domestic courts in Iran, Iraq, and the United States, despite the challenges each of these courts might face. Additionally, resorting to certain international courts could also be considered (Plaw, 2008: 127).

2. Prosecution in Domestic Courts

Jurisdiction is a manifestation of sovereignty. Given that the assassination of Gen. Soleimani and his companions is connected to Iraq, Iran, and the United States, the courts in these respective countries, can handle this case, conduct prosecutions, and impose punishments in accordance with the principles governing jurisdiction in both domestic and international law, (Plaw, 2008: 127).

2.1. Prosecution before the Iranian Courts

The armed attack and assassination of Gen. Soleimani occurred beyond the territorial jurisdiction of the Islamic Republic of Iran. This attack is deemed a terrorist act and constitutes evidence of premeditated murder. Consequently, in accordance with the provisions of the Iranian Islamic Penal Code (2013), the perpetrators of this act can be charged with committing a terrorist act resulting in murder, prosecuted and punished. Furthermore, Article 15(2) of the Covenant confirms that nothing within the Article prohibits the prosecution and punishment of individuals who have committed acts classified as internationally wrongful (Khaleghi, 2020: 41).

Crimes committed outside a State's territory, grant the State the right to respond if they pose a threat to the vital and core interests of it. Even if these crimes are committed beyond their territorial jurisdiction and by foreign individuals, States maintain the authority to take action. The preservation of security and protection of a State's fundamental interests provides justification for the State to extend the reach of their jurisdiction beyond their own borders

(Pourbafrani, 2013: 76; Ahmadi & Taqizadeh Ansari, 2016, 20; Mir Muhammad Sadeghi & Izadyar, 2013: 6).

According to Article 1 of the Judiciary Jurisdiction Law on Civil Lawsuits against Foreign States (amended in 2011)¹, and with the aim of countering violations of laws and international law provisions, both individuals and legal entities can initiate lawsuits in the courts located in Tehran against actions carried out by foreign States that violate the judicial immunity of the Iranian State or Iranian officials. In such cases, the court must consider these lawsuits and issue appropriate judgments. The assassination of Gen. Soleimani and his companions by the United States falls under Article 1(a) of this law, which states: "[h]arm resulting from any action or activity of a foreign State inside or outside Iran that violates international law and leads to death, physical or psychological harm, or financial damage to individuals" (Abdullahian, 2019).

Furthermore, according to Article 7 of this law, it is possible to file a lawsuit against agents, officials, or agencies associated with a foreign state or operating under its authority, while adhering to the principle of reciprocity, for prosecution and follow-up, provided that the damages resulting from these actions fall within the provisions of this law. It is also possible to file a lawsuit against the US government. By invoking this law, a claim can be made against the US President, Donald Trump, as he is a US official and the cause of this harm.

Some individuals may argue that enforcing judgments against the US government is difficult since there is limited US assets within Iran, and perhaps filing a case against Trump personally could be more effective, given his substantial assets in Iran's neighboring States (Abdullahian, 2019).

Enforcing the freezing of US government's and Trump's assets located outside Iran necessitates the political will of the States in which those assets reside to implement the judgments issued by Iranian courts. This requires diplomatic and political follow-ups, especially considering that these assets are situated in States that do not maintain close and friendly relations with Iran, and thus may choose not to enforce Iranian court rulings. While

¹ This law was enacted in response to the hostile action by the United States and the implementation of its 1996 Foreign Sovereign Immunities Act. The latter law is seen as a means of undermining the immunity of Iranian government's assets in the US courts.

adherence to this law and the prosecution of those responsible for this crime is important and necessary, in practice, it may have little effect. It is evident that legally pursuing this case within Iranian courts is possible, irrespective of the feasibility of implementing the judgments. However, such a course of action may face the challenge of reducing this matter from a national and regional issue to a civil lawsuit within Iranian courts. Is it reasonable to pursue this approach? That is the question at hand.

Regarding criminal prosecution and the implementation of the judicial jurisdiction of Iranian courts, which is based on the principle of personal jurisdiction, it should be noted that courts in any State have personal jurisdiction over actions that occur outside their territory involving their citizens or committed against their citizens. This jurisdiction can be categorized as follows:

1. Exercising personal jurisdiction based on the nationality of the offender, known as positive personal jurisdiction.
2. Exercising jurisdiction based on the nationality of the victim, known as passive personal jurisdiction. The general approach of international law is to recognize the personal jurisdiction of courts in relation to terrorist acts (Ismaili, 2016: 56-58).

Article 8 of the Iranian Penal Code stipulates the principle of jurisdiction based on the nationality of the victim under specific conditions.¹ This means that Iranian courts can exercise jurisdiction based on the nationality of the victim for crimes that require prosecution in the place where the crime was committed, particularly when the perpetrator is acquitted, not tried, or when the punishment is not fully or partially implemented. Since the feasibility of prosecuting crimes committed against individuals or the State is more encompassing than the principle of territorial jurisdiction mentioned in Article 5 of the Iranian Penal Code, the prosecution of charges against foreign citizens who commit crimes requiring punishment or retribution will be based on the

¹ According to Article 8 of the Iranian Islamic Penal Code (2013), any non-Iranian individual who commits a crime against an Iranian person or against the Islamic Republic of Iran, excluding the crimes specified in preceding Articles, and is apprehended within Iran or extradited, will be subject to trial in accordance with the laws of the Islamic Republic of Iran.

principle of personal jurisdiction in accordance with decisions and laws in Iran and within the jurisdiction of national judicial authorities (Hojjati, 2016: 102).

Given that terrorist acts are universally recognized as crimes, and UN Resolution No. 1373 obligates all States to criminalize terrorism (Security Council, 2001: para. 1), the requirement of mutual criminality for terrorist actions is fulfilled in the Gen. Soleimani's Case. In other words, if the State where the crime took place (Iraq) fails to prosecute and bring the perpetrators of this crime to justice, Iranian courts have the right to handle the case in accordance with the Iranian Penal Code. Although there is no specific terrorism law within Iranian Penal Code, those responsible for this crime can be charged with offenses such as premeditated murder, atrocity, and spreading corruption on the Earth (Habizadeh; Hakimi Ha, 2007, 47-71).

Furthermore, in 2017, the Iranian Islamic Parliamentary Council passed the Law on Countering US Human Rights Violations, Aggressive and Terrorist Actions in the Region (hereinafter the Violation-Countering Law). According to Article 4(3) of this law, US citizens involved in organizing, providing financial support for, leading, or committing terrorist operations against the interests of the Islamic Republic of Iran or its citizens are subject to the penalties specified in Section Six of this law.

Although the establishment and approval of such laws are important and beneficial in combating US terrorist acts, they might not be sufficient in this particular case. Punishing the assassination of Gen. Soleimani and his companions solely based on the penalties specified in this law is inadequate. Additionally, since the United States and its officials do not possess assets or bank accounts within Iran, the judgments issued by Iranian courts is practically unenforceable, unless there are judicial cooperation treaties between Iran and other States. The extradition of US officials or the freezing of their assets by neighboring States is unlikely and perhaps unfeasible.

Nevertheless, the crucial point regarding the acceptance of jurisdiction by Iranian courts in the criminal aspect is the absence of judicial and executive immunity for US officials. Furthermore, Article 4(b) of the the Violation-Countering Law, which aims to prosecute terrorism and implement the rulings stipulated in Articles 8 and 9 of the Iranian Penal Code, mandates the judicial authority to allocate a division within the Public Prosecution and the relevant

criminal courts to examine terrorist acts falling under the scope of the Law on Combating the Financing of Terrorism issued in 2015.

2.2. Prosecution before the Iraqi Courts

In line with paragraph 6 of the second section of the Iraqi Penal Code¹, which recognizes the principle of territoriality of crime and punishment, and since the crime took place within Iraqi territory, the Iraqi domestic courts have jurisdiction to handle this case. However, pursuing prosecution before the Iraqi judicial authorities may encounter several challenges.

Articles 4(5) and 27(1) of the 2008 SOFA expressly state that Iraqi territory cannot be used to attack other States. With deference to the UN 1974 Resolution on the Definition of Aggression (hereinafter the Aggression Resolution), the US action of targeting the Iraqi and Iranian commanders can be seen as an endorsement of aggression and in contradiction with the provisions of the SOFA.

Iraqi law also includes an Anti-Terrorism Act No. 13, enacted in 2005. This Act can be invoked to file a lawsuit on behalf of the victims' families before the Iraqi courts. Although there is a unified definition of terrorism in international law, Article (1) of this law defines terrorism as "any criminal act committed by an individual or an organized group against individuals, groups, State, and non-State entities."

The contentious issue with prosecution before the Iraqi domestic courts is that this Act does not explicitly address the prosecution of State officials who commit terrorist acts. Since this attack was directly ordered by President Trump, and those who carried out the attack were the US Armed Forces, filing a lawsuit against them could potentially be met with official immunity (Khalghi, 2020: 37).

While immunity is a customary rule in international law, there are several exceptions to it, including "commercial acts" and "quasi-crimes," the latter of which includes acts carried out by a foreign State within the territory of the State where the court is located, resulting in harm to individuals. Today, quasi-

¹ According to Article 6 of the Regional Jurisdiction within Iraqi Penal Code No. 111 of 1969, this law is applicable to all crimes committed within Iraq. A crime is deemed to have occurred in Iraq if any of its constituent acts took place there, or if its result was achieved or intended to be achieved within the country. Regardless of whether an individual's involvement as a perpetrator or accomplice occurred domestically or abroad, the law applies to anyone who participates in a crime that took place partially or entirely in Iraq.

crimes encompass both non-sovereign and quasi-sovereign acts (Abdullahi, 2017: 14-15).

The US assassination of Gen. Soleimani and his companions serves as a prominent example of a quasi-crime committed by US officials. However, Article (12) of the SOFA grants judicial immunity to US officials. The Iraqi government can only rely on the US use of force beyond the Agreement's scope, which constitutes a breach of Article (3) of the Agreement. Consequently, the Iraqi government can invoke the 1969 Vienna Convention on the Law of Treaties to cancel or suspend the entire or certain provisions included in the Agreement. The response to this aggression could be based on the principle of legitimate defense and the use of force and retaliatory measures, such as a request for the swift withdrawal of US forces from Iraq (as the Iraqi parliament has already passed a law to remove US forces from Iraq).

2.3. Prosecution before US Domestic Courts

Due to the federal nature of the legal system in the United States, the judicial system and courts jurisdiction have become complex. (Rashidi, 2020: 121) The US judicial system consists of state courts and federal courts, with the majority of lawsuits being filed in state courts (Schbb & Schbb, 2004: 67).

According to official rules and procedures, jurisdiction over lawsuits involving American and non-American citizens falls under the jurisdiction of subordinate federal courts.¹ The criminal jurisdiction of these federal courts includes crimes committed against federal laws, which encompass violations of international law and US domestic laws (Allan, 2010: 47).

The "Authorizing the Use of Military Force Against Terrorists (AUMF)" law allowed the US President to employ necessary force against individuals, organizations, or persons proven to have planned the terrorist events of September 11. Some believe that since the United States has designated the IRGC as a terrorist group based on US domestic laws, this action is not considered a crime but an implementation and interpretation of the

1 Moring Crowell, the AB of Cross-Border Litigation in the United States(n.d) (2008).p.11, <https://www.crowell.com>, accessed on 20/05/2020.

aforementioned law, granting the President judicial immunity (Benjamin, 2014: 133-135). However, this law required the President to obtain approval from the Congress when conducting military operations lest those operations have consequences for the United States. President Trump did not obtain such approval for the assassination of Gen. Soleimani, and there has been no proven connection between Gen. Soleimani and the September 11 terrorist events. Consequently, some US lawmakers view the assassination of Gen. Soleimani as a violation of the War Powers Act, which was issued in 2001 and grants the President the authority to use force. (Cohen, 2020, adopted from <https://www.habilian.ir/Fa>)

Based on the above, the families of the victims or the Islamic Republic of Iran may file a lawsuit against the US government, as well as officials involved in this attack, for the crime of murder and violation of the right to life. (Rashidi, 2020: 122.) However, it is uncertain whether US courts would hold the President and military commanders accountable for this terrorist act and issue a judgement in favor of Iran.

It is worth noting that while obtaining a judgement from US courts may not be feasible, the Iranian judiciary can issue a letter of request, asking the US judiciary to prosecute those responsible for this crime. Of course, this would demonstrate the lack of independence and the failure of the US judiciary in upholding justice and expose its defense of terrorist acts committed by US officials.

3. Prosecution before International Courts

The purpose of pursuing prosecution before international courts, as discussed in this article, is to focus on binding judicial methods for prosecuting criminals and ensuring they face trial and receive proportionate punishment for their wrongful acts. While political measures such as resorting to the UN Security Council or Human Rights Council are possible venues for addressing this issue, this article will primarily examine the judicial methods available for prosecuting and punishing criminals.

3.1. Prosecution before the International Court of Justice

The International Court of Justice (ICJ) is considered the most significant international judicial body for resolving disputes between States. However,

for the Court to have jurisdiction over dispute cases, States must submit to its jurisdiction. In other words, it is the consent of the States involved that grants the Court the authority to hear the case. (Mir Abbasi & Sadat Meidani, 2009: 47)

There is a disagreement among Iranian jurists regarding the referral of the Gen. Soleimani case to the ICJ. Some believe that the Court lacks jurisdiction to hear the case since both Iran and the United States have not accepted the Court's jurisdiction. The Court's jurisdiction is based on the agreement of the disputing parties to refer the Case to the Court, and with the US withdrawal from the 1955 Treaty of Amity, Economic Relations and Consular Rights (hereinafter the Treaty of Amity), there is no consensual basis for submitting the Case to the ICJ (Article 36 of the Court's Statute).

On the other hand, some argue that jurisdiction can be established based on the 1973 Convention¹. Article 13(1) states, "[a]ny dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court."

Since Iran, Iraq², and the United States are Parties to this treaty, and in the absence of an agreement on the methods mentioned in Article 13(1), any of these States can invoke the Court's compulsory jurisdiction and refer the Case to the ICJ. However, most Iranian jurists believe that the only legal instrument to establish the Court's compulsory jurisdiction is the Treaty of Amity, from which the United States has withdrawn, rendering it unreliable. (Dehnavi, Taqizadeh Ansari & Rahimi, 2020: 155.)

¹ Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agent (1973)

² Iraq did not accept the Article on the court's jurisdiction.

3.2. Prosecution before the International Criminal Court

The International Criminal Court (ICC) is widely regarded as the primary international forum for addressing international crimes, including crimes against humanity, war crimes, genocide, and aggression.¹ It is important to note that immunity enjoyed by State officials within their own countries does not prevent investigation, judgment, and punishment by the ICC.

Upon examining the assassination of Gen. Soleimani and referring back to the definitions of the aforementioned crimes (as outlined in Articles 6, 7, and 8), it becomes apparent that this particular crime cannot be categorized under those crimes due to the lack of necessary conditions for such categorization. The remaining possibility is to consider this attack as evidence of the crime of aggression against Iraqi sovereignty.

During the Review Conference of the ICC Statute (aka the Rome Statute) in 2010 in Kampala, Uganda, Resolution 3314 was recognized as the foundational basis for the crime of aggression (Musazadeh & Foroughi Nia, 2013: 141). This Resolution confirms that the crime of aggression involves the planning and preparation by an individual who possesses effective and influential power, enabling them to influence the political or military actions of a State, thereby leading to the commission of the crime of aggression.² This action constitutes a manifest violation of the UN Charter. Additionally, the second paragraph of this Resolution states that the crime of aggression involves the use of armed force by one State against the sovereignty, political independence, or territorial integrity of another State, in violation of the UN Charter. One form of aggression mentioned in Resolution 3314 is the use of armed force by a State present within the territory of another State, in violation of the conditions stipulated in the agreement between the two parties.

Based on this analysis, the assassination of Gen. Soleimani by the US government is contrary to the content and conditions of the 2008 SOFA signed between the US and Iraq. This can be seen as a significant confirmation of the crime of aggression and an infringement upon Iraqi sovereignty, falling within the substantive jurisdiction of the ICC.

¹ Rome Statute of the International Criminal Court 1998, Art 5.

² Rome Statute of the International Criminal Court 1998, Art 8 bis (1)

It is important to note that neither the United States, Iran, nor Iraq are Parties to the Rome Statute. Therefore, for this matter to be examined in the Court and for the perpetrators to be tried, one option would be for Iraq (the location where the crime took place) to accept the Court's case-specific jurisdiction (Article 12 of the Rome Statute). However, there are obstacles to the implementation of this option (Zakir Hussein, 2020). Another option would be to refer the case to the ICC through the UN Security Council. However, this is also a challenging process as it requires the acceptance of all Five Permanent Members (P5) of the Security Council to refer the case, and since the United States is a Party to the Case, it is unlikely to consent to its referral to the Court. Therefore, the possibility of legal prosecution before the ICC is not as straightforward as some may believe.

3.3. Prosecution before Competent International Courts

Before the establishment of the ICC, several international tribunals were established with the purpose of prosecuting criminals and preventing the occurrence and recurrence of such crimes.¹

Regarding the specific case of the assassination of Gen. Soleimani, the UN Security Council has the authority to establish an international criminal tribunal to address it. However, the United States may hinder the issuance of such a decision by wielding its veto power.

3.4. Prosecution before a Hybrid Tribunal

Hybrid tribunals are comprised of both domestic and international judges, formed through the participation of the relevant countries and by entering into an agreement with the United Nations or an international/regional organization. These tribunals are established in situations where there are obstacles to prosecuting criminals, such as the inability of the national judicial system to handle the case, the immunity enjoyed by leaders of a State, or when the case does not fall under the jurisdiction of the ICC. Additionally, the lack of political consensus to refer the case to a competent court through the UN Security Council can also be a factor. In such cases, hybrid tribunals are

¹ Such as the Nuremberg Trials, the International Criminal Tribunal for the former Yugoslavia (ICTY), the Tokyo War Crimes Tribunal, and the International Criminal Tribunal for Rwanda (ICTR).

established through agreements with international organizations, particularly the United Nations (Mir Mohamad Sadeghi & Rahmati, 2019: 302-318).

Given that Iraq and the United States are not Parties to ICC Statute, and considering the immunity enjoyed by US officials within Iraqi courts, the most viable option for achieving justice would be to establish a hybrid tribunal to address this case. However, as mentioned earlier, the establishment of such tribunals requires the approval of the UN Security Council, which consists of the States. This obstacle can be overcome by reaching an agreement between Iraq (where the crime occurred) and an international or regional organization. An example of this is the tribunal in Senegal, which was established through an agreement between the Senegalese government and the African Union (Mir Mohamad Sadeghi & Rahmati, 2018: 317).

Therefore, establishing a hybrid tribunal to address this issue can be achieved through effective diplomacy with the Iraqi government and by submitting a request to the UN General Assembly to establish such a tribunal. Alternatively, an understanding agreement can be reached with the Organization of Islamic Cooperation to establish an international hybrid tribunal within Iraqi territory, with the aim of achieving justice.

4. Trans-Regional Judicial Strategy

One approach to hold accountable those responsible for this terrorist act is to activate international legal mechanisms. The principle of universal jurisdiction signifies the collective will of the international community to confront crimes that have global repercussions. Under this principle, every State has the right to prosecute and try any criminal who has committed one of the crimes outlined in Article 5 of the Rome Statute, even in cases where there is no direct connection between the pursuing State and the crime, the location of the crime, or the victim.

Acceptance of the principle of universal jurisdiction is based on the understanding that international crimes, such as genocide, crimes against humanity, war crimes, and the crime of aggression, have a profound impact on the conscience of the civilized world and the general public. Hence, it is in the interest of all States that the perpetrators of these crimes face punishment. The principle of universal jurisdiction aims to establish that there is no safe

haven for these criminals, leading to the maxim "try or extradite the criminal."¹ Accordingly, if a State apprehends a criminal, it is obligated to either prosecute them or surrender them to the competent State.

The legitimacy of domestic courts exercising universal jurisdiction is derived from customary international law or treaties that are incorporated into domestic law. Some argue that domestic courts possess universal jurisdiction even in the absence of specific treaty provisions, as international law does not prohibit such an exercise.

With the exception of the Tokyo Tribunal, all tribunals pertaining to terrorism recognize the binding nature of universal jurisdiction. Based on these twelve terrorism-related tribunals, it can be inferred that the application of universal jurisdiction over terrorism has attained the status of customary international law.

Considering the aforementioned points, if the Islamic Republic of Iran encounters challenges in utilizing other legal venues to prosecute and punish the criminals, it can invoke the principle of universal jurisdiction with the support of peace-loving nations to address acts of US terrorism. States with a history of implementing universal jurisdiction and prosecuting individuals accused of committing crimes against humanity can be consulted for legal follow-ups. It is important to note that this matter is not limited to a select few States; all nations worldwide, including those in the region (member States of the Organization of Islamic Cooperation) or States that actively combat terrorism and acts deemed anti-humanity, possess this jurisdiction. While this approach is not without its complexities, it represents a viable solution that can be pursued.

Conclusion

The US act of terrorism, which involved the assassination of Iranian and Iraqi military commanders, not only serves as a clear demonstration of the use of illegal force but also provides both the Islamic Republic of Iran and Iraq with the grounds for legitimate self-defense or reciprocal action. Furthermore, it

¹ Aut dedere aut judicare

grants these two States the right to pursue legal venues in domestic and certain international courts.

It is important to note that prosecution before international courts necessitates the consent of the disputing States to the jurisdiction of these courts. Since Iran and the United States are not Parties to the International Criminal Court's Statute, and there is no legal instrument accepting the compulsory jurisdiction of the International Court of Justice following US withdrawal from the 1955 Treaty of Amity, Economic Relations, and Consular Rights, alternative approaches are proposed to hold the criminals accountable:

1. Enhancing judicial cooperation between Iran and Iraq.
2. Advocating for this issue at national and global levels by presenting allegations from the victims' families and the Iraqi and Iranian governments within Iraq, Iran, and the United States.
3. Optimizing the application of the principle of universal jurisdiction.
4. Attempting to establish a hybrid tribunal between Iraq and Iran to investigate this crime.
5. Raising the matter before the United Nations General Assembly and Human Rights Council.
6. Employing a robust diplomacy of resistance and utilizing available non-military capabilities, in conjunction with the concept of self-help, by implementing applicable laws to strengthen the position of the Islamic Revolutionary Guard Corps against the United States. This includes the ability to respond in a fitting and lawful manner to US aggressions.

By pursuing these measures, it is aimed to ensure that the criminals face proportionate consequences for their actions.

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The Primary Legal Measures of the Islamic Republic of Iran in Responding to the Assassination of General Soleimani

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Abstract:

Following the assassination of General Soleimani by the US in January 2020, one of the key concerns for Iranian and international jurists was the legal response of the Government of the Islamic Republic of Iran to this accident. The pivotal question that emerged was what legal measures should or could be taken in response to the unlawful act committed by the United States? In response to this question, various opinions and guidelines were proposed by national and international jurists. These included filing complaints with international judicial bodies, establishing the criminal responsibility of the perpetrators, invoking self-defense, reprisal and countermeasures, presenting the international responsibility of the US before the International Court of Justice, filing complaints before national courts, and utilizing human rights mechanisms to denounce the US actions. This paper aims to analyze these legal responses within the framework of existing international law and the national legal systems of Iran and Iraq. The underlying assumption of this paper, in addressing the main question, is that among the available legal remedies, filing a complaint with the International Court of Justice appears to be the most suitable course of action.

Keywords: General Soleimani, Human Rights, Self-Defense International Terrorism, International Court of Justice.

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Introduction

In the early morning of January 3, 2020, a drone attack near the Baghdad Airport resulted in the martyrdom of General Qassem Soleimani (hereinafter Gen. Soleimani), one of the highest-ranking military officials of the Islamic Republic of Iran, who served as the Commander of IRGC-Quds Force. Also killed in the attack were Abu Mahdi al-Muhandis, Deputy Commander of the Hashd al-Shaabi forces, and eight other Iranian companions. Several Iraqis also lost their lives in this tragic accident. Shortly after the attack, the US Department of Defense claimed responsibility and stated that the action was carried out under the personal order of the then-President of the United States, Donald Trump. The justification provided for the attack was an unsubstantiated claim that Gen. Soleimani was planning to target US diplomats in Iraq and the region (U.S Department of Defense, 2020).

By making this statement, the US authorities sought to legitimize the action based on their self-created doctrine of preventive and preemptive self-defense (Weckel, 2005). However, it is important to note that this US doctrine contradicts the text of Article 51 of the UN Charter, which requires the occurrence of an armed attack as a prerequisite for the exercise of the right to self-defense (DeWees, 2016). Notably, Gen. Soleimani was not involved in previous attacks on US diplomatic and consular facilities in Baghdad.

The attack, carried out without coordination with Iraqi authorities and within the territory of Iraq, constitutes a clear violation of Iraq's territorial integrity and sovereignty. It also violates the rule of law, which prohibits the use of military force, and is considered an act of aggression. Furthermore, the killing of citizens of other countries without a fair trial violates their fundamental right to life (Vakil, 2018).

This article aims to discuss and analyze the possible responses to the illegal action of the US. The main hypothesis is that both the international legal system and domestic legal systems provide effective and appropriate solutions to hold accountable the individuals responsible for this deadly act of terrorism. The governments of Iran and Iraq as well as the families of the victims can seek justice through these legal avenues. The authors of this article employ a descriptive-analytical method, utilizing library sources, international and domestic documents, and laws, in order to identify available legal solutions

that can fulfill the rights of the Iranian people and provide recourse for the aggrieved families of the victims.

Following this incident, lawyers have proposed several significant solutions, including: (1) claiming self-defence, (2) implementing countermeasures, (3) filing complaints with the International Criminal Court (ICC), (4) engaging human rights institutions, (5) filing complaints with the International Court of Justice (ICJ), (6) and prosecuting and trying the perpetrators in domestic courts.

1. Legitimate Defense and Retaliatory Action

Self-defence refers to the lawful use of force by a country in response to an armed attack against it. It should be noted that the concept of self-defence existed prior to the formation of the United Nations Charter, and Article 51 of the Charter, which recognizes the right to self-defence, merely codifies an existing customary rule (Sierpinski, 2006: 76). The UN Charter introduced additional conditions for self-defence, such as the requirement of an "armed attack" and the obligation to notify the Security Council, which serves as the endpoint for self-defence. Given the exceptional nature of self-defence, international law has established certain conditions for its legality. These conditions include verifying the occurrence of an armed attack and ensuring compliance with the principles of urgency, proportionality, and necessity.

In the context of the use of force, the concept of retaliatory action is also relevant. Retaliatory action refers to an act that is generally illegal, carried out in response to a prior unlawful act committed by another state (Shaw, 2008: 1129). Resolution 2625 of the UN General Assembly prohibits the use of military force as a form of retaliation (UN General Assembly, 1970: 1). However, non-military retaliatory actions, often referred to as countermeasures, are justified under international law. The use of military force in retaliatory action is considered legal only when it is a response to a previous armed attack and meets the criteria of necessity, proportionality, and urgency. Some jurists, like Professor Shaw, argue that forceful retaliatory action is only justified within the framework of self-defence (Shaw, 2008: 1129-1130). However, some distinguish between self-defence and armed retaliatory action, suggesting that the purpose of self-defence is to repel an

attack and safeguard the defending state's security, while the purpose of retaliatory action, which becomes legitimate in response to a prior armed attack, is to punish the aggressor (Alexandrov, 1996: 166). In both cases, the occurrence of an armed attack needs to be confirmed, and other conditions must be met. Thus, the primary requirement for both self-defence and legal retaliatory action is the existence of an armed attack. The ICJ has consistently recognized armed attack as a prerequisite for self-defence, as exemplified in the Nicaragua case where the Court explicitly stated that the occurrence of an armed attack is a necessary condition for resorting to self-defence (Case Concerning Military and Paramilitary Activities in and Against Nicaragua, 1986: 196).

Therefore, the key issue in the case of the assassination of Gen. Soleimani and his companions (hereinafter the Gen. Soleimani Case) is whether the action taken by the United States can be regarded as an armed attack that would warrant self-defence or retaliatory action. The lack of clarity in the charter regarding the conditions of an armed attack has led the ICJ to provide various opinions on this matter. For instance, in the case of Oil Platforms, the Court addressed crucial questions about armed attacks, which are of significant importance. When asked about the definition and characteristics of an armed attack, the Court ruled that it is necessary to distinguish the most severe form of the use of force, which constitutes an armed attack, from less severe forms (Case Concerning Oil Platforms, 2003: 51). In this case, the Court further concluded that even if the attacks could be attributed to Iran, they did not meet the threshold of an armed attack as they were not the most extreme form of force (Case Concerning Oil Platforms, 2003: 64). The Court also stated that for the target country to exercise its right to self-defence, the attack must reach a certain level of intensity.

The Eritrea-Ethiopia Claims Commission similarly emphasized the criterion of severity in relation to military activities by regular armed forces and stated that local skirmishes between small infantry units, even if they result in casualties, would not be considered an armed attack under the Charter's concept (Eritrea Ethiopia Claims Commission, 2005: 11-12). Another significant aspect established by the Court's decision in the case of Oil Platforms is that the occurrence of an armed attack necessitates the

intention of the attacking country to target a specific objective. The Court stated that the CIL City Ship, which was attacked while in Kuwaiti waters, was hit by a Silkworm missile fired from a distance of over 100 kilometers, and it could not have been deliberately aimed at that ship. Instead, the missile was planned and launched to hit an unidentified target in Kuwaiti waters. There is no evidence to suggest that the alleged mine-laying by the Iranian ship Ajr during Iran's war with Iraq was specifically intended to hit the US ship, nor has it been proven that the mine that struck the Bridgeton ship was intended to target that vessel or other US ships (Case Concerning Oil Platforms, 2003: 64).

Similarly, in verifying an armed attack, the intensity of the attack and its specific intention towards a particular target are crucial, both of which are evident in the Gen. Soleimani Case. Severity is not solely determined by the number of casualties; rather, the significance of the targeted individual or location is the criterion for sovereignty. Additionally, the United States had the intention to harm a specific target, namely the Commander of Iran's Quds Force. Therefore, it appears that the attack on Gen. Soleimani's vehicle qualifies as an armed attack, allowing for legitimate retaliation or defense. Considering that the Iran's objective in attacking the Ain al-Assad base was not solely punitive but also a defensive measure, this action can be considered a legitimate armed retaliation or even defense.

After establishing the occurrence of an armed attack, another essential requirement for justifying legitimate retaliatory action and defense is the urgency of such action. There should not be an excessively long and unreasonable period of time between the previous armed attack and the response to it (Dinstein, 2011: 233). This condition was met in the missile attack on the Ain al-Assad base, as the attack took place only a few days after the assassination. Other fundamental characteristics are proportionality and necessity. Proportionality demands that the defensive action align with the limits and scale of the previous armed attack in terms of magnitude and intensity. In the IRGC missile attack, only the US air base, which served as a military headquarters, was targeted. The element of proportionality was clearly taken into account. Besides, the element of necessity was duly

observed in here as the destabilizing measures of the US had to be halted, and the situation warranted a genuine sense of danger.

2. Retaliatory Action

Countermeasures refers to a unilateral response by an aggrieved state to the violation of its rights resulting from the unlawful actions of another State, with the aim of compelling the offending State to cease its actions or provide compensation for the damage caused. countermeasures can only be taken in response to an unlawful act (Paddeu, 2018: 71). Considering that the United States' action in the Gen. Soleimani Case was a clear violation of its international obligations towards Iran and Iraq, both of these states have the right to resort to countermeasures. According to Article 50, Clause 1(a) of the Draft Articles of the International Law Commission on the International Responsibility of States, countermeasures must not violate the prohibition against the use of force. This means that states should not and cannot employ military force in their countermeasures. Furthermore, the countermeasure should be proportionate to the severity of the initial unlawful act and necessary to compel the offending state to fulfill its international obligations and cease its violations. The Iraqi parliament's approval of the legislation regarding the withdrawal of US troops from Iraq can be seen as a form of countermeasure against the unlawful actions of the US, which were carried out under the guise of combating terrorism.

3. Complaint at the International Criminal Court

The primary responsibility of the ICC, as the most significant international judicial authority, is to address major international crimes, including crimes against humanity, war crimes, genocide, and aggression. State officials who have committed any of these serious international crimes are not immune from the ICC proceedings. Regarding the immunity of officials from non-Member States of the Court, most legal experts believe that if the Security Council refers a case to the Court, officials from the respondent country will not enjoy immunity (Mettraux et al., 2018: 603). However, it is important to note that the ICC only has jurisdiction over crimes that fall within its subject matter jurisdiction and are committed within the territories of its Member States or

by nationals of its Member States. In other cases, a non-Member State can accept the Court's jurisdiction over crimes committed within its territory or by its nationals and request the prosecutor to investigate, or the matter can be referred to the Court by the UN Security Council (ICC, n.d.: 17).

The Gen. Soleimani Case does not fall under the jurisdiction of the ICC unless this attack can be considered part of the definition of the act of aggression against Iraq. Another important factor is that none of the states involved in this case, namely Iran, Iraq, and the United States, are Members of the ICC. The possible course of action would be for Iraq, as the country where the crime took place, to accept the ad hoc jurisdiction of the ICC for this particular case under Article 12 of the Court's Statute. However, there are obstacles in this direction. The first obstacle is that, due to the sensitivity of the governments involved, both the territorial state (Iraq) and the state whose nationals committed the crime (United States) must agree to bring the case before the Court (Zakir Hossein, 2018), and obtaining consent from the United States is unlikely. The second obstacle is the level of political will within the Iraqi government to accept the jurisdiction of the ICC, as demonstrated by their refusal to accept jurisdiction in the case of ISIS. Consequently, pursuing this matter in the ICC is essentially impossible from a legal standpoint.

4. Human Rights Institutions

The initial responses to the assassination of Gen. Soleimani came from various human rights institutions, which viewed this act as a violation of the right to life and personal security. Agnes Callamard, the special rapporteur of the UN Human Rights Council, considered the US action a breach of international law. The incident highlights a gross violation of the most fundamental human right—the right to life. The UN Charter, which assigns promoting and respecting human rights as one of its primary responsibilities, has established institutions to monitor states' implementation of human rights in order to achieve this objective. One of the most significant institutions is the Human Rights Council, which replaced the Human Rights Commission in 2006 through General Assembly Resolution 251/60. The Human Rights Council employs various mechanisms to ensure states' adherence to human rights and their monitoring. One such mechanism is the direct complaint system,

allowing individuals, nationals of countries, victims, local and international non-governmental organizations to submit complaints or notifications of human rights violations (Taghizadeh Ansari, 2008: 132; Zani, 2008:433-452; Godet, 2008: 91-100). In this case, the families of the victims of the incident can submit their complaints to the Human Rights Council. It is important to note that filing a complaint with the Council requires exhausting domestic legal remedies first, and the complaint should provide details on why internal mechanisms have been ineffective or excessively delayed (Human Right Complaint Procedure, n.d.).

After reviewing the complaints through its working groups on communications and situations, the Human Rights Council will address situations deemed as serious violations and issue public resolutions. The Council's decisions primarily take the form of recommendations to the High Commissioner for Human Rights, who provides guidance and assistance to the state under review. Alternatively, the Council may employ other monitoring methods, such as requesting reports from the state or appointing a special rapporteur for a specific country (Hüfner, 2010: 38). Due to the lengthy nature of this process and the lack of strong enforcement guarantees, filing a complaint with the Council is considered the last resort in the case of Gen. Soleimani.

Another avenue that could aid the Human Rights Council in addressing the i the Gen. Soleimani Case is the use of special thematic rapporteurs. For example, the Council has appointed Agnes Callamard as a special rapporteur on extrajudicial killings. Shortly after the assassination, Callamard stated in a tweet that the incident was illegal and violated international human rights, as it occurred outside an active conflict zone and the use of drones and other targeted killing methods has never been lawful (Callamard, 2020). Special thematic rapporteurs are responsible for monitoring human rights violations worldwide and prepare reports based on information gathered from country visits or other means of communication (Office of the High Commissioner on Human Rights, 2008: 16). These rapporteurs submit their reports annually to the Council or, in more extensive cases, to the General Assembly, and these bodies issue necessary recommendations in cases of violations.

Furthermore, another legal avenue to pursue this issue is by filing a complaint with the Human Rights Committee regarding the violation of the right to life by the US. The Human Rights Committee is an independent body of experts responsible for monitoring the implementation of the 1966 International Covenant on Civil and Political Rights (hereinafter the Covenant) by Member States. Given that Iran, Iraq, and the United States are all Parties to the Covenant, there is a mechanism in place for governments to submit reports to the committee. Additionally, the first additional protocol to the Covenant allows for individual complaints against Member States by victims of human rights violations to be raised before the committee. However, since the United States has not ratified this protocol, the families of the victims cannot file individual complaints, and only the governments of Iran and Iraq are able to do so. According to Articles 41 and 42 of the Covenant, a complaint can be filed against a government that has accepted the committee's jurisdiction in this matter, as stipulated in paragraph 1 of Article 41 (Buerghenthal, 2001: 364).

Iran, having unconditionally accepted the Covenant in 1969, appears to be satisfied with the application of this monitoring method and has the capacity to issue a declaration under Article 41 to file a complaint against the United States. The acceptance of this jurisdiction by the Human Rights Committee is also indicated in the US Senate's report upon the ratification of the Covenant in 1992 (US Senate, 1992). Although no State has utilized this method thus far due to political considerations, this approach, which could eventually lead to the establishment of a conciliation committee by the Human Rights Committee, could be beneficial for Iran in the the Gen. Soleimani Case, providing a legal avenue for further action. However, it is important to note that resorting to this method also requires prior recourse to domestic courts (Monfared and Tabatabai, 2016: 64), and the process involved is lengthy and the outcome may not be sufficiently binding. Therefore, it has not been pursued by the States, nor is it recommended.

5. Complaint at the International Court of Justice

The ICJ is widely regarded as the principal international judicial institution for resolving interstate disputes. However, the Court's statute stipulates that

the resolution of international disputes is contingent upon the consent of the involved States to submit their disputes to this international judicial authority. In other words, it is the consent of the Parties involved that grants jurisdiction to the Court (Mir Abbasi and Sadat Meidani, 2008: 47). States must go through two stages to express their acceptance of the Court's jurisdiction. First, they must accept the Court's statute, and second, each State must independently consent to the adjudication of the specific dispute (Alexandrov, 2006: 29-30). According to the statute of the ICJ, this consent can be obtained through the conclusion of a special agreement before or after the dispute, the issuance of an optional declaration by the Court, the reference to the Court under a treaty, or the tacit acceptance of the Court's jurisdiction through participation and substantive response to the lawsuit (Statute of the ICJ, 1945: 36).

The only treaty in which both the United States and Iran have accepted jurisdiction, and where the Gen. Soleimani Case can be addressed, is the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973. This Convention is aimed at internationally protected persons, including political agents, and has been recognized as a customary rule in the history of international relations since ancient times (Jacomy-Millette, 1975: 103). According to Article 1(b) of the Convention, individuals who are representatives or employees with official capacity of any State, or employees and agents of international and interstate organizations, are considered "internationally protection persons." They are entitled to special protection of their life, freedom, and dignity, as well as their family members living with them, when crimes are committed against them, their official premises, personal residence, or vehicles, in accordance with international law (Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973: Art.1(1)(b)).

Based on this, Gen. Soleimani, as an official of Iran and an envoy of the State, who was present in Iraq with the permission and invitation of the Iraqi authorities, qualifies as an internationally protected person under this

convention, as evident in Article 2 of the Convention, which includes crimes of murder and violent attacks against his vehicle.

Article 13(1) of the Convention states that if disputes among the Members concerning the interpretation and implementation of the Convention cannot be resolved through negotiation, they may be referred to arbitration at the request of one of the Parties. If, after six months from the date of the arbitration request, the Parties fail to agree on the choice of arbitrators, either Party can submit the case to the ICJ. Therefore, since both Iran and the United States are Parties to this Convention, they have accepted the jurisdiction of the ICJ under this article. If the steps outlined in Article 13 do not resolve the dispute, the matter can be brought before the ICJ.

However, objections and criticisms may arise regarding the applicability of the 1973 Convention in this case. It may be argued that the circumstances at the time of the Convention's conclusion indicate that its purpose is to condemn the actions of non-state terrorist groups and individuals against protected persons. The Convention establishes an obligation for States to criminalize these terrorist acts in their domestic laws, punish the perpetrators, extradite the accused, or cooperate with each other. The assassination of Gen. Soleimani and his companions, however, was not carried out by non-governmental terrorist groups; rather, it was perpetrated by government officials of one of the Member States. Since the text of the convention does not explicitly address the characteristics of perpetrators or suspects based on their state or non-state status, this is one of the interpretative issues that may arise.

6. Prosecution and Trial of the Perpetrators in Domestic Courts

Each State involved in the Gen. Soleimani Case has the authority, according to their domestic laws and recognized jurisdiction, to prosecute and try the individuals responsible for the crimes committed in this terrorist incident. The specific provisions in the domestic laws of these States govern the possibility of legal action.

6.1. Iraqi Courts

In 2005, Iraq enacted a law called "Anti-Terrorism Law No. 13," which provides the opportunity to bring a lawsuit in Iraqi courts on behalf of the victim's family. Article 1 of this law defines terrorism as any criminal act committed by an individual or organized group that targets individuals, groups, or formal and informal institutions, causing damage to public or private property with the intention of disrupting peace, stability, and national integrity with the aim of creating panic and fear among people and chaos in order to achieve terrorist objectives (Anti-Terrorism Law, 2005: Art. 1). According to Article 2(5), an act committed with a terrorist motive that involves attacking army and police departments, volunteer centers, security departments, military personnel, or their support, communication lines, or camps and bases is considered a terrorist act. Furthermore, according to Article 2(1), any act with terrorist motives that threatens national integrity, stability, and the security of the State and weakens the ability of security services to defend and protect citizens, property, State borders, and institutions, even if it deviates from the freedom of expression guaranteed by law, is considered a terrorist act (Anti-Terrorism Law, 2005: Art. 2(1), 2(5)).

Considering that some of the victims in this incident were military and official personnel of the Iraqi government, and that Iranian official forces were present in Iraq at the invitation of the incumbent government, this action can be considered as falling under Article 1 of the law. The deployment of official individuals and groups is seen as an action that threatens the security and stability of Iraq and constitutes an attack on the military forces of the Iraqi State. However, the crucial element in these two provisions is the terrorist motive, which is not explicitly defined in the law. Nevertheless, based on Article 1, the disruption of peace, stability, and integrity, and the creation of panic and fear among the people, can be considered as underlying motives.

Considering the baselessness and lack of legal justification for the US claim of self-defence in the attack on Gen. Soleimani, the terrorist intent and motive of the act can be established. Additionally, although US military forces are present in Iraq with the agreement of the Iraqi government, their use of force outside the framework of the host government's agreement and the unjustified targeting of Iraqi and Iranian officials, which disturbed the peace

and stability of Iraq, constitute a terrorist act. One potential obstacle to utilizing this law to prosecute US officials and commanders involved in the Gen. Soleimani Case is that the law excludes the term "organized individuals and groups." Article 1 suggests that the law was intended to address only the terrorist actions of individuals and non-governmental groups. While this limitation may be subject to objection, it is possible to interpret the broadness of the terms to extend the application of the law to government officials and groups as well.

Since the attack was ordered by the then-President of the United States and carried out by the US military forces, filing a lawsuit may face the obstacle of State immunity. State immunity, which is a rule with a historical background in international law, explicates that a State is exempt from responsibility for damages caused by its sovereign acts, though it may compensate the victims out of mercy yet without any obligations (Abdullahi & Shafe, 2017: 5). Nowadays, state immunity is no longer absolute, and there are exceptions to it, such as "commercial acts" and "quasi-crimes," the latter of which pertains to terrorism. Quasi-crimes include cases where a foreign State causes damage to individuals within the territory of another State where the court is located. Quasi-crimes encompass not only non-sovereign but also sovereign acts (Abdullahi, 2017: 5). For example, in the Luthulieh Case in 1977, a US domestic court recognized sovereign quasi-crimes as examples of quasi-crimes that exempt state immunity (Isabel Morel De Letelier, et al v. The Republic of Chile, et al, Defendants, 1980). However, in the Germany v. Italy Case presented at the ICJ, the Court avoided addressing this issue and stated that the referred crimes were "quasi-crimes committed by the German armed forces", which are undoubtedly sovereign. The crime remains in place, of course (Jurisdictional Immunities of the State, 2012: 66-68). Interestingly, the United States has continuously contended that Article 12 of the UN Convention on the Immunity of States (2004) does not include sovereign quasi-crimes, while within its own territory, it relies on sovereignty quasi-crimes laws, including the issue of state terrorism, as exceptions that violate the judicial and executive immunity of States. This is because the United States fears that accepting this exception would open the door to lawsuits against its citizens in other States (Abdullahi, 2017: 16).

Regarding the actions of the US forces in the Gen. Soleimani Case, it appears to be a clear example of a quasi-crime carried out under the order of the highest sovereign official in the United States. However, it is important to note that according to Article 12 of the 2008 Status of Forces Agreement between the United States and Iraq (also known as the SOFA), US military forces and officials in Iraq have judicial immunity. Although the US actions in attacking Iranian and Iraqi commanders on Iraq territory can be considered an act of aggression against Iraq's territorial integrity and an illegal action that violates Article 3 of the SOFA, the other Party (Iraq) can only invoke this action as a basis for terminating or suspending some or all of the obligations contained in the Agreement due to the fundamental violation of the Agreement by the United States (Vienna Convention on the Law of Treaties, 1969: Art. 60(1)). In response to the assassination of Iranian and Iraqi commanders on its territory by the United States, Iraq approved the withdrawal of US soldiers through its parliament. Therefore, the existence of the rule of immunity in international law and its inclusion in the SOFA present a significant obstacle to the possibility of filing a lawsuit against US officials or commanders.

6.2. Iranian Courts

One of the most viable methods of legally pursuing the Gen. Soleimani case is to file a lawsuit against the families of the victims in the domestic courts of Iran. Therefore, it is necessary to evaluate the feasibility of this matter from both legal and criminal perspectives. In the legal aspect, after the US hostile action in approving the "Amendment of the Law of Immunities of Foreign States in 1996," which provided a basis for violating the immunity of Iranian State property in the US courts, Iran responded by approving the Judiciary Jurisdiction Law on Civil Lawsuits against Foreign States in November 1, 2000. This law allows for civil claims against foreign States and has been amended several times since then, with the latest amendment approved on March 07, 2012. According to Article 1 of this law, individuals and legal entities can take legal action against foreign States that violate the judicial immunity of the States of the Islamic Republic of Iran or its officials in order to counter and prevent violations of international laws and regulations. In this case, the appellate court is obligated to handle these lawsuits as a

countermeasure and issue appropriate decisions according to the law. The action of the US in the the Gen. Soleimani Case falls within the scope of this law, as stated in paragraph A of Article 1, which covers damages caused by any actions and activities of foreign State inside or outside of Iran that contravene international law and result in death, physical or mental injuries, or financial losses for the Iranian individuals.

Furthermore, Article 7 of the above law states that lawsuits against representatives, officials, or affiliated institutions under the control of a foreign State can be pursued in accordance with the principle of reciprocity if the damages are caused by actions covered by this law. Therefore, it is possible to file a lawsuit against the US under this law, as well as against a US official like the then-President Trump. While this law facilitates legal prosecution of the individuals involved in this incident, the main practical challenge is that the US or Trump himself do not possess identifiable and substantial assets in Iran that can be seized to enforce a court's decision. To address this issue, the Iranian Parliament, in Article 3 of the Law on Obligation of the Government to Pursue Compensation for Damages Resulting from the Actions and Crimes of the United States against Iran and Iranian Nationals, approved in May 17, 2016, mandates the government to pursue the implementation of decisions made by competent authorities in favor of the Islamic Republic of Iran in third countries where US assets exist. Therefore, with the cooperation of other States that have treaties with Iran and are committed to recognizing and enforcing judgments issued by Iranian courts, it becomes possible to seize the assets of the US government or US officials. However, the practical implementation of this provision by other States also requires active diplomacy by Iran and the political will of those States.

In terms of the criminal aspect of addressing this incident, the jurisdiction of Iranian courts can be established based on the principle of personal jurisdiction. Personal jurisdiction refers to a State's courts having jurisdiction over acts committed outside its territorial jurisdiction by or against its nationals. There are two types of personal jurisdiction: active personal jurisdiction, which is based on the nationality of the perpetrator, and passive personal jurisdiction, which is based on the nationality of the victim. It is the

duty of every State to protect its nationals, which is typically achieved through various political and consular means. At times, this protection takes a legal form, and governments assume responsibility for crimes committed against their nationals outside their territory. International law generally recognizes this jurisdiction in the case of terrorist crimes (Esmaeili, 2015: 56-58). In Article 8 of the Islamic Penal Code, the Iranian legislature conditionally accepts the principle of jurisdiction based on the nationality of the victim. This means that Iranian courts can exercise jurisdiction based on the nationality of the victim if the accused has not been acquitted or prosecuted for crimes causing harm at the place where the crime occurred, and if the punishment has not been fully or partially executed, and if the conduct is considered a crime under Iranian law and the law of the place where the crime occurred (Islamic Penal Code, Islamic Republic of Iran, 2013: Article 8).

Considering that terrorist acts are recognized as crimes worldwide and Security Council Resolution 1373 requires all States to criminalize terrorism (Security Council, 2001: 1), the condition of mutual criminality in the context of terrorist acts, including the Gen. Soleimani Case, has been met. Therefore, if the country where the crime took place, in this case, Iraq, does not take action to pursue and prosecute the perpetrators of this crime, Iranian courts will have jurisdiction to address the case based on Iranian criminal laws. Although Iranian criminal law does not contain a separate offense for terrorism, this act by the United States can be punished under other criminal charges such as intentional murder, aggression, and corruption on Earth (Habibzadeh & Hakimihah, 2007: 47-71).

Additionally, on March 12, 2018, the Islamic Council approved a law titled "The Law on Countering US Human Rights Violations, Aggressive and Terrorist Actions in the Region." According to Article 4(3) and 6-8 of this law, US individuals who actively participate in organizing, financing, directing, or committing terrorist acts against the interests of the government or citizens of the Islamic Republic of Iran are subject to punishments outlined in the sixth section of the law. These punishments include the prohibition of entry visas to Iran, confiscation of property and assets within Iran's jurisdiction, cessation of financial transactions, and freezing of bank accounts. While this law is a useful measure to counter the US terrorist actions and US individuals'

involvement, it may not have the desired impact on punishing US officials and commanders responsible for the assassination Gen. Soleimani due to their lack of property in Iran. Typically, the executive jurisdiction, especially in criminal court judgments, is confined within a country's borders, and extradition or asset seizure through neighboring countries is unlikely without relevant treaties.

The acceptance of the jurisdiction of Iranian courts in the criminal aspect faces an obstacle in the form of judicial and executive immunity of US officials. To address this issue, it is possible to argue against the legality of the US action in the Gen. Soleimani Case, highlighting gross human rights violations and violating the immunity of US officials and their property as a countermeasure. Furthermore, Note 2 of Article 4 of the Law on Countering US Human Rights Violations, Aggressive and Terrorist Actions in the Region mandates Iran's Judiciary to designate a branch or division of competent criminal courts to handle terrorist crimes, aiming at combating terrorism and implementing the sentences stipulated in Articles 8 and 9 of the Islamic Penal Code of 2013.

6.3. US Courts

The United States judicial system consists of two types: state courts and federal courts. State courts handle the majority of lawsuits, accounting for over 90% of criminal cases (Schbb & Schbb II, 2004: 67). Each State has its own structure and constitution, resulting in variations in the details of these courts (Fransworth, 2010: 44). State courts typically include a trial court and at least one court of appeals, with some having courts with general jurisdiction and others with limited jurisdiction for specific matters (Schbb & Schbb II, 2004: 67).

According to the US Constitution, the authority to establish federal courts lies with Congress. Federal courts comprise district courts, appeals courts, and the Supreme Court (Fransworth, 2010: 45). Federal courts are considered courts of limited jurisdiction as they only handle specific and limited claims (Crowell Moring, 2008: 11). The competences of federal courts include cases related to the constitution, federal laws and treaties, ambassadors, maritime issues, disputes involving the United States as a litigant, disputes between

States, disputes between a State or its citizens with foreign countries or their nationals and citizens (Crowell Moring, 2008: 11). Federal district courts have criminal jurisdiction over all violations of federal laws, including crimes that violate international and national laws (Fransworth, 2010: 47).

According to some US lawyers, the assassination of Gen. Soleimani violated the US War Powers Act (1973). This law states that the President of the United States can only take military action after a declaration of war by Congress or in a national emergency resulting from an attack on the United States, its territories or possessions, or its armed forces or prospects of an imminent attack. Alternatively, the President can act upon the issuance of a special legal authorization (US War Powers Act, 1973: §. 1541). Nevertheless, none of these circumstances were present in the Gen. Soleimani Case. Additionally, since Gen. Soleimani had no connection to the events of September 11th, it is not possible to justify the act based on the "authorization to use military force" approved in 2001, which allows the President to take action against those involved in the planning and execution of the 9/11 attacks (Authorization for the Use of Military Force, 2001: Sec. 2; Cohen, 2017).

Conclusion

The action taken by the United States in assassinating several Iranian and Iraqi military officials, including General Soleimani, is a clear violation of international law and can be considered an act of terrorism. Both the international and the domestic legal systems of States provide a platform to hold the US and its officials accountable for their involvement in this incident. Iran and Iraq have utilized strategies such as self-defence and countermeasures to respond to these actions, including the missile attack on the Ain al-Assad base and the Iraqi parliament approval of the withdrawal of US troops from Iraq. Iran also has the option to file a lawsuit in the International Court of Justice based on the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including political officials. UN Human Rights Council and Human Rights Commission jurisdiction in interstate disputes as a monitoring body on the International Covenant on Civil and Political Rights could also be resorted.

At the domestic level, it is unlikely that the Case will be heard in Iraqi courts due to the Status of Forces Agreement between Iraq and the United States in 2008, which recognizes the immunity of US soldiers and officials in Iraq. However, it is possible to file a lawsuit in the courts of the United States and Iran based on domestic legal and criminal laws. The families of the victims and the public prosecutor can file a lawsuit in the domestic courts of Iran, although the implementation of judgments may face challenges due to the limited assets of the United States and its authorities outside the country. Therefore, under the current circumstances, the most viable solution appears to be filing a lawsuit in the International Court of Justice.

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B) English

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Repercussions of the Iranian Missile Attack on Ain al-Assad Base: Assessing Legitimacy

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Abstract

According to Article 51 of the United Nations Charter, States possess the right to engage in legitimate self-defense. This right is both inherent and subjective, allowing an aggrieved State to respond proportionately to acts of aggression. The assassination of General Soleimani and Abu Mahdi al-Muhandis by the United States is widely regarded as a crime that violates international laws, norms, and humanitarian principles. In response, Iran launched a missile attack on the Ain al-Assad base, resulting in significant material damage, casualties, and injuries. This article aims to address the question of whether the Iranian missile attack on Ain al-Assad base falls within the realm of legitimate self-defense. Additionally, it explores potential scenarios for prosecuting the United States in the International Criminal Court.

Keywords: Iranian Missile Attack, Ain al-Assad Base, Legitimate Self-Defense, Assassination of General Soleimani

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Introduction

The morning of January 8, 2020, marked a significant event in the four-decade-long conflict between the Islamic Republic of Iran and the United States of America. In response to the assassination of General Qassem Soleimani (hereinafter Gen. Soleimani), the Islamic Republic of Iran launched a missile strike on the Ain al-Assad base in Iraq which housed a substantial number of US forces. This retaliatory action not only resulted in losses for the United States but also had broader implications for the political and security dynamics in the West Asia region.¹

1. Iranian Missile Attack on Ain al-Assad Base: Dimensions and Consequences

1-1. Significance of Ain al-Assad Base

Ain al-Assad Air Base, formerly known as *al-Qadisiyah*, was constructed in the late 1970s and early 1980s. Situated in al-Anbar Governorate, approximately 160 kilometers from the city of Hit and 8 kilometers from Khan al-Baghdadi village, this base spans an estimated area of 50 square kilometers. It stands as the largest US base in Iraq and plays a crucial role in the operations of the US Armed Forces in the country.

Ain al-Assad Base boasts extensive facilities, including well-equipped warehouses, fortified structures, cinema, swimming pool, restaurant, and bus lines. It serves as a station for approximately 1,500 US and coalition forces. Effectively, the base functions as the US military headquarters, serving as a strategic hub for their activities in Iraq and the wider region. Some refer to it as the US capital in Iraq. Following the 2003 US invasion of Iraq, Ain al-Assad became the largest US base until its withdrawal in 2009, at which point it was handed over to Iraqi forces. However, with the US reentering Iraq in 2014 to combat ISIS, the base was reclaimed and reconstructed with stringent security measures.

In December 2018, President Donald Trump visited the troops stationed at the base and delivered a speech acknowledging their significant role in

¹ Iranian missile attack on Ain al-Assad base <https://www.isna.ir/news/1400033023103/>.

defeating ISIS in Iraq and Syria.¹ In 2018, the Vice President of the United States also visited the base on the occasion of Thanksgiving.²

1.2. Details of the Missile Attack and Potential Losses

In the morning of Wednesday, January 8, 2020, the Islamic Revolutionary Guard Corps (IRGC) launched a ballistic missile attack on Ain al-Assad base in response to the attack on Baghdad International Airport, where Gen. Soleimani, the commander of the IRGC Quds Force, and several leaders of the Iraqi Popular Mobilization Forces (Hashd al-Shaabi) were killed.³ Due to the base's distance from Iran's western borders, the attack utilized Fateh 313 and Qiam missiles known for their high precision and destructive power. Iran also showcased its proficiency in electronic warfare during the operation. Roughly 15 minutes after the primary attack, a major electronic warfare operation disrupted US control over drones flying over the Ain al-Asad area and destroyed their communication systems.⁴

Satellite imagery revealed material damage to the base and another base near Erbil Airport. Several aircraft hangars at Ain al-Asad Air Base were damaged, although they appeared to be empty. The US Department of Defense officially stated that Iran launched over 12 missiles at the two bases, while Fox News quoted an official who claimed the number reached 15 missiles.

Immediate reports from local media indicated a significant number of US soldiers killed or injured in the attack. The exact casualty count was unclear, but estimations suggested around 200 US forces were either killed or wounded. The United States initially reported no casualties from the IRGC airstrike. President Trump stated that no one was killed and the bases sustained only minor damage, assuring their safety. However, despite initial denials, the US military confirmed about a week later that 11 US military personnel had

1 Ramadan, Ahmed (December 26, 2018). "Trump visits Iraq with his soldiers without the knowledge of the Baghdad government." *Al-Umma Electronic Newspaper*. Retrieved from the original on April 10, 2019. Accessed on January 27, 2020.

2 BBC News. (2020, January 8). The Iranian missile attack: What do we know about the American bases that were targeted by Iran? Retrieved from <https://www.bbc.com/persian/world-51035161>. Accessed on January 27, 2020.

3 "TV report: US forces' base in Iraq bombed again." (2020, January 28). Retrieved from the original on January 28, 2020. Accessed on January 28, 2020.

4 "The Pentagon identifies the origin of the attacks on Ain al-Assad." (2020, January 28). Retrieved from the original on January 28, 2020. Accessed on January 28, 2020.

received treatment for concussions following the Iranian missile attack. Satellite images from Planet Lab showed the destruction of at least five buildings at Ain Al-Assad base.¹ Western experts noted that some images indicated direct missile hits on the center of the structures.²

In the initial days following the attack, journalists were not permitted on the base. However, three days later, CNN international correspondent Areva Damon filmed a documentary in the ruins of the once well-equipped US military base, showcasing the extensive damage inflicted by the Iranian missiles. The correspondent described the missile onslaught as leaving "almost nothing left" of the base.³

2. The Conduct of the Islamic Republic of Iran and International Legal Standards

2.1. Assessing the Legitimacy of the Iranian Response in the Attack on Ain al-Assad Base

Following the IRGC missile attack on two US military bases in Iraq, a crucial question emerged in both local and international legal circles: Does this action carried out by the Islamic Republic of Iran align with international law? This question can be examined from three perspectives:

The first perspective argues that since an attack by one State on a high-ranking official of another State is an unprecedented act in international law, and considering that Gen. Soleimani, held a prominent position as a military and political figure within Iran, the US military operation targeting his convoy in Iraq can be seen as an armed attack on the State of the Islamic Republic of Iran. Therefore, it falls within the framework of the use of force and legitimate defense, in accordance with Article 51 of the United Nations Charter. The Iranian Ministry of Foreign Affairs, in its letter to the UN Security Council, has also stated that Iran reserves its right to legitimate defense. Consequently, there is no doubt that Iran's action in targeting the US base does not violate international law.⁴

1 Tasnim Agency. (2019, October 19). Major General Hajizadeh: The destruction of the American command center in Ain al-Assad. Retrieved from Tasnim Agency - Article.

2 [Archived Source]. (2020, January 28). Satellite images of the effects of the Iranian strike on Ain al-Assad [Photographs]. The original source is no longer available, but the archived version can be accessed here.

3 CNN. (2020, January 10). Pictures of Ain al-Assad Base [Photographs]. CNN. Retrieved from: CNN - Pictures of Ain al-Assad Base.

4 Maqami, A. (2020, January 9). Interview with Dr. Amir Maqami [Interview transcript]. Tabnak. Retrieved from: Tabnak - Interview with Dr. Amir Maqami. Last visited 05/07/2020.

The second perspective to consider in this context is that the US wrongful act on January 3, 2020, cannot be characterized as an armed attack on the sovereignty of the Islamic Republic of Iran, even though it may have been an act of aggression against Iraq, as per the UN General Assembly resolution in 1974. Consequently, Iran does not possess the right to invoke legitimate defense under international law. However, since the US act is undoubtedly an international violation, Iran can resort to the principle of reciprocity based on the 2001 International Law Commission's Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA). A significant portion of ARSIWA content has become customary international law. One of the conditions for resorting to reciprocity is the observance of the principle of proportionality, the avoidance of violating peremptory international norms, and prompt notification to the UN Security Council. While customary international law recognizes that reciprocal action should not be coercive, considering that the United States has justified the use of retaliatory measures involving force through its attacks on al-Qaeda after the September 11 event, it can be argued that, at the very least, similar wrongful act can be invoked against the United States itself.

The third perspective is less embraced by legal scholars. Although there is no unanimous definition of armed conflict in international law, and considering the three fundamental criteria of intensity, duration, and organization of the conflicting parties, the current situation between Iran and the United States can be described as an armed conflict or a military conflict that emerged following the assassination of Gen. Soleimani. In the aftermath of this state of war, Iran conducted a series of military attacks on US sites. Therefore, since these actions align with the principles of distinguishing between military and civilian targets and adhering to the principle of necessity, they fall within the scope of International Humanitarian Law.

2.2. Analysis of Article 51 of the United Nations Charter

Certain conditions must be fulfilled for the right to respond to an act of aggression to be regarded as a legitimate defense. There must be an ongoing armed aggression that is severe, grave, and unlawful (Al-Anani, 1997: 89). Legitimate defense, in its legal sense, involves responding to internationally

wrongful acts and using armed force. The objective of legitimate defense is to repel a serious threat and work towards its cessation to safeguard the security and fundamental rights of a State (Al-Juwaili, 1993: 83). Hence, this right is universally recognized across various legal systems as an inherent and natural right that nullifies the offense, leaving no criminal or civil liabilities.

Article 51 of the UN Charter stipulates: "[n]othing in this Charter shall impair the inherent right of individual or collective self-defense 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."

It is essential to consider the time elapsed between the US attack and the Iranian response and the significance of prompt action in legitimate defense under international law. Several days have passed since that terrorist incident, so the element of immediate response was not available in the Iranian retaliatory military act. Therefore, other legal arguments must be invoked to justify the legitimate defense in relation to the missile attack on US sites (Shafiei, 1996).

In any case, the legitimacy of the Iranian response can be substantiated by citing the conduct of the United States. The United States initially designated the IRGC as a terrorist organization, which is a violation of international law, prompting Iran to declare the US military as a terrorist organization in return. The United States has, in fact, violated international law, while Iran has breached an imperative rule of international law. Consequently, the United States cannot deem Iran's conduct as a violation of international law for a simple reason: when you regard a certain conduct as legitimate, and then others reciprocate the same to you, it is unreasonable to expect their actions to be considered illegitimate (Shafiei, *ibid*). Certain conditions must be fulfilled for the right to respond to an act of aggression to be regarded as a legitimate defense. There must be an ongoing armed aggression that is severe, grave, and unlawful (Al-Anani, 1997: 89). Legitimate defense, in its legal sense, involves responding to internationally wrongful acts and using armed force. The objective of legitimate defense is to repel a serious threat and work towards its cessation to safeguard the security and fundamental rights of a State (Al-Juwaili, 1993: 83). Hence, this right is universally recognized across various

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3. Diplomatic, Legal, and Criminal Prosecution Regarding the Assassination of General Soleimani

The targeted killing carried out by the United States, namely the assassination of the high-ranking military officials of Iran and Iraq, Gen. Soleimani and Abu Mahdi al-Muhandis, clearly violates crucial principles of international law. These principles include the right to life, the prohibition of the use of force, respect for State sovereignty, and non-interference in the internal affairs of other States. The question arises: What are the potential

mechanisms for holding the United States accountable through diplomatic, legal, and criminal means?

3.1. Diplomatic Prosecution in the United Nations Security Council and General Assembly

The UN Security Council is a vital organ responsible for maintaining international peace and security, as outlined in Article 7 of the UN Charter. The Security Council holds legal authority over Member States, and its decisions are binding. However, recent events in the Middle East, particularly the situation between Palestine and Israel, demonstrate that the Council is far from impartial and cannot be relied upon to secure justice when matters involve the interests of major States like the United States.

Resolutions presented for review in the Security Council are subject to the voting of the Members, with each Member having one vote. Therefore, there is a semblance of equality among Security Council Members, although the weight of a vote may vary depending on whether the issue at hand is substantive or procedural. The Council also collaborates with the General Assembly in suspending or reinstating membership of a Member State based on preventive or punitive measures, as per Article 5 of the Charter. It can also recommend the expulsion of a Member obstructing membership, which goes against the Charter provisions. Additionally, the Security Council possesses the authority to impose collective security measures on UN Members within its jurisdiction concerning international peace and security.

Engaging in diplomacy within the Security Council and General Assembly can contribute to reinforcing customary norms against targeted killings. However, Security Council resolutions under Chapter VII often face the possibility of a veto by one of the Five Permanent Members (P5), unless the General Assembly takes measure to form a peace alliance. Nonetheless, the likelihood of such an alliance is scant due to the dominance of the United States and Britain within the Security Council.¹

¹ Bahmani, M. A. (2020, January 12). Study of the Legal Follow-Up Aspects of the Assassination of General Soleimani [Interview transcript]. ISNA Agency. Retrieved from <https://www.isna.ir/news/99091914997/>

3.2. Filing a Case in the International Criminal Court

The International Criminal Court (ICC) holds significant importance as an international authority responsible for investigating major international crimes. It is important to note that immunity enjoyed by senior officials of Member States does not hinder the Court from conducting investigations, issuing judgments, and imposing punishments.

While legal scholars generally agree that officials from non-Member States lose their immunity if the Security Council refers a case to the Court, ICC has, in some of its rulings, suggested disregarding customary international law regarding immunity for perpetrators of crimes falling within its jurisdiction.¹ Nevertheless, the crucial points to consider are whether the Court can address crimes falling within its subject matter jurisdiction and whether the crimes were committed on the territory of or by the citizens of a Member State. Alternatively, a non-Member State may accept the Court's jurisdiction by initiating a case concerning crimes committed on its territory or by its citizens, requesting the Public Prosecutor to initiate investigations, or the Court may initiate an investigation subsequent to the case referral by the Security Council.² Therefore, the first step is to determine whether the assassination of Gen. Soleimani and his companions falls within the jurisdiction of the ICC.

Under Article 7 of the ICC Statute, crimes against humanity include specific offenses such as murder, torture, slavery, enforced disappearance, and others that are part of a systematic or widespread attack targeting civilians. The key characteristic of such crimes is its collective nature, rather than actions directed against a limited number of individuals. In other words, crimes against humanity are crimes against the broader interests of the international community. Given the limited number of victims in the Gen. Soleimani case, this act cannot be considered a crime against humanity. Genocide, on the other hand, requires a specific intent to eliminate a national, ethnic, or religious group, and such intent must involve a significant number

¹ ICC Malawi Decision: Corrigendum to the Decision Pursuant to Article 87(7) of the Rome Statute on the Failure of the Republic of Malawi to Comply with the Cooperation Requests Issued by the court with Respect of the arrest and surrender of Omar Hassan Ahmad Al-Basheir, ICC-02/05-01/09-139-Corr (ICC 2011) paras. 34, 36; ICC Chad Decision, 2011, paras. 13-14.

² Worleh, K. (n.d.). Crimes against Humanity in Contemporary International Law (A. S. Vakil, Trans.). *Journal of International Law*, 25(39).

of people (Abdi, 2018: 193). Consequently, the assassination of Gen. Soleimani cannot be classified as genocide.

War crimes also fall within the jurisdiction of the ICC, and the determining factor for their occurrence is that they take place during international or domestic armed conflicts. As such, the assassination of Gen. Soleimani did not occur during an armed conflict between the United States and Iran or between the United States and Iraq. Therefore, this act cannot be classified as a war crime.

The only remaining possibility is to consider this incident as falling within the definition of the crime of aggression against Iraq. According to Article 8 bis of the ICC Statute, the crime of aggression is a specific type of offense in which an individual plans or carries out an aggressive act using a State's armed forces in violation of the UN Charter. This aggressive act is deemed a serious violation of the right to peace in terms of its gravity and scale (Mousazadeh & Foroughi Nia, 2011: 131).

It is certain that the assassination of Gen. Soleimani and Abu Mahdi al-Muhandis represents a blatant violation of Iraqi and Iranian sovereignty. The former is due to the use of their territories, while the latter is because Gen. Soleimani was considered a key figure within the State, a standing affirmed by multiple resolutions, including Resolution 2734 (December 16, 1970) on strengthening international security, Resolution 155/32/A/RES (December 19, 1977) on the consolidation of international détente, and Resolution 103/39/RES A (December 9, 1981) on the inadmissibility of interference in the internal affairs of States. The Montevideo Convention of 1933 also reinforces the principle of non-interference in the affairs of States in its 8th article, stipulating that "[n]o State has the right to interfere in the internal or external affairs of any other State." Similarly, Article 2, paragraph 4, of the UN Charter states that "[a]ll members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State in a manner inconsistent with the purposes of the United Nations."

Moreover, Article 2, paragraph 4, explicitly highlights the obligation to refrain from using force or threatening to use force against a State's sovereignty in any manner inconsistent with the UN objectives of maintaining

international peace and security. The assassination constituted an unlawful use of force that violates international law.¹

Considering the aforementioned factors, it is not feasible to bring the Case to the ICC due to Iraq's non-membership (the State in which the act of aggression occurred) and the US non-membership (the State that carried out the act of aggression). While there may be hesitation in establishing the crime of aggression, Iraq, as the concerned party in this Case, could issue a declaration in accordance with Article 12 of the ICC Statute, officially recognizing the Court's jurisdiction to assess the situation. However, this alone is insufficient to initiate an investigation. Furthermore, the Court's case selection policy may also hinder the exercise of its jurisdiction. Therefore, it is advisable to become a Member to the Court's Statute to avail oneself of its benefits.

Conclusion

In light of the situation, the act of the United States in targeting senior Iranian and Iraqi commanders flagrantly violates international law and humanitarian principles. This constitutes an illegal use of force and justifies a reciprocal response from Iran or Iraq as self-defense. The assassination of General Soleimani can be prosecuted in international or domestic courts as a serious crime, including State-sponsored terrorism, violation of the principle of States equality in international law, organized crime, and murder. Thus, it represents a violation of fundamental human rights and diplomatic immunity, given that Soleimani was an official guest in Iraq and enjoyed diplomatic immunity.

Regarding filing a lawsuit in international courts, it is necessary for the States initiating the lawsuit to accept the jurisdiction of those courts. However, Iraq and Iran have not achieved this recognition and acceptance of the International Criminal Court's jurisdiction. Although the incident strongly indicates the crime of aggression against Iraq and may fall under the Court's jurisdiction, the delicate situation of Iraq and its sensitive relationship with the United States hinder such action. Moreover, it is well-known that the United

¹ Al-Mayadeen Net. (2020, July 9). UN report: The assassination of General Soleimani and his companions is an arbitrary killing for which the United States bears responsibility.

States currently does not intend to join the Court's Statute, making it practically impossible to file a lawsuit there. Nonetheless, objections can still be raised, and submitting a complaint to the United Nations Security Council in this regard can strengthen customary norms against targeted killings and assassinations.

Based on the findings of this research article, the followings are recommended:

1. It is necessary to file lawsuits against the United States in the domestic courts of Iraq and Iran, as this would be morally and politically beneficial.
2. It is important to activate the role of regional organizations in monitoring and condemning such crimes, particularly the Organization of Islamic Cooperation.
3. Iraqi courts should file a lawsuit against this crime based on the 2008 Iraqi-US Status of Forces Agreement concerning crimes occurring outside US facilities and bases.
4. Encouraging human rights and civil rights activists in the United States to file a lawsuit against President Trump and the perpetrators of this crime would be preferable to direct lawsuits by the victims' families in US courts.
5. Filing a lawsuit in the UN Human Rights Council would be useful and necessary, as it would strengthen international customary law and be beneficial from a legal diplomacy perspective.

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The Iranian Military Attack on the U.S. Ain al-Asad Base in Iraq from the Perspective of the Use of Force in International Law

Seyyed Yaser Ziaee¹

Abstract

On the early morning of January 3, 2020, General Qassem Soleimani, together with Abu Mahdi al-Muhandis and several of his companions, was hit by a U.S. drone missile at Baghdad International Airport in Iraq. The responsibility for this operation was acknowledged by the then-President of the United States, Donald Trump. Five days later, on January 8, 2020, the Islamic Revolutionary Guard Corps (IRGC) of Iran bombarded the Ain al-Asad military base, located in al-Anbar Province, Iraq, with the launch of dozens of ballistic missiles. Regardless of military and security analysis, the act of use of force is subject to examination from a legal standpoint. The question arises as to what extent Iran's military attack on the US Ain al-Asad base in Iraq can be justified as use of force. The hypothesis was that Iran's action, within the framework of traditional and modern exceptions to the right of use of force, could be defensible. To answer this question, it was necessary to first describe the legal basis for the US attack on General Soleimani and his companions. If we consider General Soleimani's military status at the time of the attack, the US action can be characterized as use of force, aggression, armed attack, and a crime against internationally protected persons. In the assumption of General Soleimani's non-military status, the US action constitutes use of force, aggression, a crime against internationally protected persons, state terrorism, and extrajudicial assassination. In response to the armed attack, there is a possibility to invoke individual and collective self-defense. In response to use of force and transgression beyond armed attack, it may be possible to refer to modern theories such as Forcible Reprisals and continuous self-defense. In response to the act of assassination, it is possible to rely on the fight against terrorism, countermeasures involving resort to force, and continuous self-defense.

Keywords: Attack on Ain al-Asad Military Base, General Soleimani, Resort to Force, Aggression, Armed Attack, Self-defense.

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Introduction

On January 3, 2020, global news media reported a horrible event that took place in the early morning, capturing worldwide attention. An influential and prominent Iranian military commander involved in counterterrorism efforts within the region was unexpectedly assassinated by unmanned aerial vehicles (UAVs) operated by the United States. Subsequently, the then-President of the United States, Donald Trump, openly acknowledged his direct authorization of this attack. In response, on January 8, 2020, at precisely 1:20 a.m., coinciding with the time of martyrdom of General Soleimani, the Islamic Revolutionary Guard Corps (IRGC) of Iran launched a barrage of ballistic missiles targeting the "Ain al-Asad" military base situated in al-Anbar Province, Iraq. This marked the first instance, since World War II, of an official attack by a nation on a US military base. Prior to this retaliation, President Trump had issued a threat to target 52 significant sites if Iran were to take action. Iran executed a military response, while the United States did not follow through on its threat. According to some US officials, no military personnel were killed in the attack on Ain al-Asad; however, several individuals sustained injuries.¹

General Soleimani, the commander of the Quds Force of the IRGC, was present in Iraq during the incident in his capacity as an envoy representing Iran, with the objective of conveying a message to Saudi Arabia.² Accompanying him were the deputy commander of the Iraqi Popular Mobilization Forces (Hashd al-Shaabi), Abu Mahdi Al-Muhandis, and several other Iranian military personnel, named Hussein Pourjafari, Hadi Taremi, Shahroud Mozafari-Nia, and Vahid Zamanian.

Under Saddam Hussein's regime, the Ain al-Asad military base was referred to as al-Qadisiyah and ranks as the second-largest air base in Iraq. It came under the control of US forces in 2003, located 108 kilometers west of Ramadi. This study aims to evaluate the military attack by Iran on the Ain al-

¹ "We suffered no casualties — all of our soldiers are safe — and only minimal damage was sustained at our military bases," Trump said in a statement from the White House. Available at: <https://www.defense.gov/News/News-Stories/Article/Article/2052632/trump-no-casualties-in-iranian-missile-attack-us-wont-allow-nuclear-iran/>

² Islamic Republic News Agency, Abdol-Mahdi: Soleimani was carrying the Iran's message to Saudi Arabia. Retrieved from: <http://www.en.mehrnews.com/news/155279/>.

Asad military base from the standpoint of the use of force in international law. To address this question, the study will first examine the US action in the attack on General Soleimani, followed by an analysis of Iran's action in the attack on the Ain al-Asad base, considering armed and non-armed conflict scenarios.

1. Legal Analysis of the US Attack on General Soleimani and his Companions

Assessing the legality of the military attack on the Ain al-Asad military base necessitates an examination of the legal aspects surrounding the US action in the targeted killing of General Soleimani, given that the latter attack is presented as a response to the former.¹ To evaluate the lawfulness of this action, I will explore the accusations leveled against the United States and the corresponding defenses.

1.1. International Accusations against the United States

These accusations are based on specific obligations that the United States holds towards Iran, as enshrined in various international treaties, customary international law, general principles of law, and rules of *jus cogens*. Violations of these obligations by a state constitute an internationally wrongful act.

1.1.1. Use of Force

In Article 2, Paragraph 4 of the United Nations Charter, the use of force against the *territorial integrity, political independence of states, and other manners inconsistent with the purposes of the UN Charter* is prohibited.² This paragraph consists of two main components: "use of force" and "other manners inconsistent with the purpose of the United Nations Charter." The

1 In a portion of the statement issued by the Islamic Revolutionary Guard Corps (IRGC) regarding this operation, the following is stated: "In response to the criminal and terrorist acts of the invading American forces and in retaliation for the cowardly assassination and martyrdom of the heroic and selfless commander of the Quds Force of the Islamic Revolutionary Guard Corps, the esteemed General and martyr, Hajj Qassem Soleimani, and his companions, the brave fighters of the IRGC Aerospace Force successfully carried out an operation codenamed 'Operation Shahid Soleimani' with the sacred motto of Ya Zahra, by launching dozens of ground-to-ground missiles, pulverizing the occupied airbase of the terrorist and invading US Army, known as 'Ain al-Asad'..."

2 United Nations Charter, Article 2(4): "All Members shall 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 United Nations."

subject of the *manners* consists of "territorial integrity" and "political independence." The preamble to the Charter specifies that the use of armed force should not be employed,¹ and preliminary negotiations leading to the adoption of the Charter indicate that what is prohibited by the Charter is the use of *military* force. However, some argue that the use of force against political independence is equivalent to political and economic pressure.² Furthermore, some consider *physical non-armed* force, such as diverting a river's course by an upstream State, causing floods in downstream cities, and the spreading of fire across a frontier, to have the same effects as a use of military force, and therefore fall within the scope of the use of force under the UN Charter.³ The phrase "other manners inconsistent with the purpose of the UN Charter" also encompasses the same point. Therefore, the concept of *use of force* in Article 2(4) includes both military and non-military forms, such as political, economic, cyber, biological, social, etc.⁴

Regarding the concept of *territorial integrity*, it also includes manifestations of sovereignty outside the territory. In the state practices of and international jurisprudence, there are cases where attacks on individuals, private ships, and civil aircraft have been considered violations of territorial integrity through the use of force. In the case of the KAL007 aircraft, the Security Council condemned Cuba for attacking a civil aircraft, although it did not refer to Article 2(4).⁵ In the case of the attack on the Iranian Airbus aircraft by the

1 Para. 7 of the Preamble to the Charter states as one of the goals of the United Nations 'that armed force shall not be used, save in the common interest'.

2 See Soviet Union's 1954 declaration on economic aggression, U.N. Doc. A/C.61.332/Rev. 1 (1954).; James A. Delanis, "Force" under Art. under Article 2(4) of the United Nations Charter: The Question of Economic and Political Coercion, *Vanderbilt Journal of Transnational Law*, Volume 12, Issue 1, 1979, p. 111.

3 Derpa RM, *Das Gewaltverbot der Satzung der Vereinten Nationen und die Anwendung nichtmilitärischer Gewalt* (Athenäum 1970) quoted from Simma, B., Daniel-Erasmus, K., Nolte, G., & Paulus, A. (2012). Wessendorf Nikolai, *The Charter of the United Nations*, a commentary, p. 485.

4 Some international instruments such as UNGA Resolution 2625 prohibit all forms of use of force: "[...] the duty of States to refrain in their international relations from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State." Also, the Additional Protocol to the Vienna Convention on the Law of Treaties of 1969 and multiple United Nations resolutions deem economic coercion as an unlawful act.

5 The Security Council, paraphrasing Article 3 bis(a), eventually found that Cuba had "violated the principle that States must refrain from the use of weapons against civil aircraft in flight and that, when intercepting civil aircraft, the lives of persons on board and the safety of the aircraft must not be endangered."278 No reference was made to UN Charter Article 2(4) either in the resolution or in the preceding debates.

USS Vincennes in 1988, Iran declared it a violation of Article 2(4), while the United States considered it a self-defense, which implies acceptance of the use of force.¹ In the case of the seizure of the Mayaguez ship in 1975, the United States claimed that Cambodia's action was a use of force,² and in the case of the seizure of three Mexican shrimp fishing boats by Guatemala in 1959, Mexico called it an act of use of force.³ In addition, in the case of the Fisheries Jurisdiction dispute in 1974, Germany claimed that Iceland had violated Article 2(4) by cutting the fishing nets of German fishing boats and firing warning shots.⁴ In the 1998 Fisheries Jurisdiction case, Spain alleged that Canada had violated Article 2(4) of the Charter and resorted to force by passing a law protecting coastal fishing and seizing the Spanish boat Estai.⁵ The arbitration between Guyana and Suriname stated that Suriname's ultimatum and order to leave the drilling ship from a maritime area constituted an act of use of force, and even a partial military action against a commercial vessel would violate Article 2(4) of the Charter.⁶

Obviously, aside from territorial jurisdiction, the use of force against private and state vessels and aircraft is also considered a violation of Article 2(4) of the Charter and therefore constitutes an act of use of force. However, whether attacks on individuals can also be considered as instances of the use of force is a matter of contention.⁷ Even if the citizens of a State are not considered part of territorial integrity and attacks against them are not considered a violation of territorial integrity and an act of use of force, it is difficult to accept that diplomats and officials of a State in a foreign land would not be considered *so*. While in international practice, private boats and

1 Letter Dated 6 July 1988 from the Acting Permanent Representative of the United States of America to the United Nations Addressed to the President of the Security Council, UN Doc. S/19989 (1988).

2 Letter Dated 14 May 1975 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/11689 (May 15, 1975)

3 Ruys, T. (2014). The Meaning of "Force" and the Boundaries of the Jus Ad Bellum: Are "Minimal" Uses of Force Excluded from UN Charter Article 2 (4)? *American Journal of International Law*, 108(2), 159-210, p. 204.

4 Germany asserted that the Icelandic coastguard had violated UN Charter Article 2(4) by cutting the German fish boats' nets, 282 firing warning shots, and even firing live rounds (without, however, causing casualties).

5 Fisheries Jurisdiction (Spain v. Canada) 1998 I.C.J. at 78.

6 Guyana v. Suriname, Award, para. 441-445.

7 Some believe that a military attack on diplomatic property in another country does not constitute an act of use of force against the receiving State of that property. *Ibid*, p. 489.

ships are considered manifestations of territorial integrity, how would the officials of a State in a foreign land not be considered as manifestations of territorial integrity? In any case, an attack on the military forces of a State outside its borders constitutes a use of force, as United Nations General Assembly Resolution 3314 (Definition of Aggression) considers attacks on land, air, and sea forces as instances of aggression. Therefore, a priori, an attack against these individuals is considered an act of use of force. Therefore, whether General Soleimani is considered as a senior commander of Iran's armed forces, or any special Iranian diplomatic officer, the US attack on him would be deemed a violation of Article 2(4) and a use of military force against the Iranian State.

1.1.2. Act of Aggression

Article 1 of UNGA Resolution 3314,¹ provides a definition of aggression as the use of armed force by a State against the sovereignty, territorial integrity, or political independence of another State.² Furthermore, according to Article 3(d) of the Resolution, an armed attack against the land, sea, or air forces of another State constitutes an act of aggression.³

If General Soleimani is considered a military commander of Iran during the US attack, the attack on him would be regarded as the use of armed forces against the military forces of Iran (including the Quds Force, which encompasses land, sea, and air forces). Even if he is not considered a military personnel, the attack on him would still be considered the use of armed forces against the sovereignty of Iran. In fact, General Soleimani is referred to as a representative of Iran's sovereignty as one of its senior commanders, given that the State is represented through its officials,⁴ provided that the official is *in capacity*. This perspective is in line with Article 4(2) of Draft Articles on the Responsibility of States for Internationally Wrongful Acts of 2001 (the

1 Definition of Aggression, UNGA Resolution 3314 (XXIX), adopted in 1974.

2 Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

3 UNGA Resolution 3314, Art. 3(d): An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State.

4 Abbasi, B. (2007). Examining the Legal Features of the State. *Journal of Law and Political Science Research*, 2(5).

ARSIWA), which stipulates that "[a]n organ includes any person or entity which has that status in accordance with the internal law of the State." Similarly, Article 5 provides that the acts of these individuals are considered acts of the State;¹ in other words, the acts of the State are represented through the acts of such individuals while in capacity. Hence, it is evident that the US action constituted an act of aggression against the State of Iran.

In examining the relationship between Iraq and the United States, it is imperative to consider the Security Agreement that exists between these two nations. In November 2008, the Security Agreement, known as the Status of Forces Agreement (SOFA), was ratified by the Iraqi Council, stipulating the withdrawal of American troops from Iraq by 2011. Pursuant to the provisions outlined in the SOFA, the US military forces were mandated to depart Iraq by December 31, 2011. Additionally, the Agreement allowed for the United States to remain in Iraq with the approval of the Iraqi government.² Article 4(2) of the Agreement explicitly states that any military actions must be undertaken with the prior consent of the Iraqi government and in full coordination with Iraqi forces.³ Furthermore, Article 4, Paragraph 3 emphasizes that US forces must refrain from causing harm to the sovereignty and national interests of Iraq,⁴ and Article 27(3) explicitly prohibits the exploitation of Iraq as a launching pad for attacks on other countries.⁵

The SOFA reached its termination in 2011, leading to the withdrawal of the majority of US military personnel from Iraq. However, in response to the emergence of ISIS and Iraq's subsequent request for continued US presence

1 The ARSIWA, Art. 5: "The conduct of a person or entity which is not an organ of the State under article but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance."

2 The United States has entered into numerous similar agreements regarding the status of its forces with various other countries, most of which have been devoid of an expiration date. However, in the Status of Forces Agreement (SOFA) concluded with Iraq, December 31, 2011, has been designated as the expiration date. See Mason, R. C. (2010). US-Iraq withdrawal/Status of forces agreement: Issues for congressional oversight. DIANE Publishing, www.crs.gov/R40011/CRS-Reportfor-congress.

3 The 2008 SOFA, Art. 4, Para. 2: All such military operations that are carried out pursuant to this Agreement shall be conducted with the agreement of the Government of Iraq. Such operations shall be fully coordinated with Iraqi authorities.

4 Supra note 25, Para. 3: Execution of such operations shall not infringe upon the sovereignty of Iraq and its national interests, as defined by the Government of Iraq.

5 Supra note 25, Art. 27, Para. 3: Iraqi land, sea, and air shall not be used as a launching or transit point for attacks against other countries.

in the country in 2019, US military personnel returned to Iraq. Article 3(e) of the UNGA Resolution 3314, which defines aggression, asserts that "[t]he use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement," shall be considered an act of aggression. The conditions governing US presence in Iraq can be inferred from the principle of sovereignty and the previous practice established by the SOFA. In accordance with the principle of sovereignty, the consent of the receiving State is indispensable. Furthermore, based on the past practices delineated in the SOFA, the United States was constrained to refrain from aggression against other States from within Iraqi territory. Following the US attack on General Soleimani and his companions, the Prime Minister of Iraq expressed that the assault on the Baghdad Airport constitutes an act of aggression against Iraq and a breach of its sovereignty.¹ Consequently, the military actions undertaken by the United States on Iraqi soil, in contravention of the agreement with the receiving State, constitute *an act of aggression* against the State of Iraq.

1.1.3. Armed Attack

Article 51 of the UN Charter expounds on "armed attack against a State." However, the Charter does not provide a specific definition of *armed attack*, so it is unclear whether the term "State" refers only to the elements mentioned in Article 2(4) (territorial integrity and political independence), or if it includes other aspects such as sovereignty. UNGA Resolution 3314 provides criteria for the definition of aggression, including examples of armed attack. Article 3 in the UNGA Resolution defines aggression as "[a]n attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State."² Therefore, it is evident that an attack on the military forces of a country constitutes armed aggression.

1 The Straits Times. (2020, January 3). Iraqi PM condemns US killing of Iran's Soleimani. Retrieved December 11, 2023, from <https://www.straitstimes.com/world/europe/iraqi-pm-condemns-us-killing-of-irans-soleimani>

2 UNGA Resolution 3314, Art. 3(a): "The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack,

It is acknowledged that not every use of force constitutes armed attack. The International Court of Justice (ICJ), in the Nicaragua case concerning military and paramilitary activities, refers to the criterion of *gravity*, which includes "scale and effects" of any particular hostile action, and states that "mere frontier incident" does not rise to the level of an armed attack.¹ Moreover, according to the Court, military support to insurgent groups does not constitute armed attack.² Similarly, the Claims Commission of Ethiopia and Eritrea considers that "[g]eographically limited clashes... along a remote, unmarked, and disputed border... were not of a magnitude to constitute an armed attack" and "[l]ocalized border encounters between small infantry units, even those involving the loss of life, do not constitute an armed attack for purposes of the [Article 51 of the UN] Charter."³ On the other hand, the ICJ, in the Nicaragua case, has determined that the organization and dispatch of regular armed forces and the attack on a simple military vessel constitute an armed attack. In general, it appears that the criterion for determining armed attack is not solely based on the nature of hostile action but also on the gravity of the resulting deaths, injury, or destruction.⁴

The gravity of the injury caused by the US attack on General Soleimani is no less than the intensity resulting from an attack on a simple military vessel. Therefore, the US action constitutes armed attack against the State of Iran. In the US attack on General Soleimani, Abu Mahdi al-Muhandis, the commander of the Popular Mobilization Forces in Iraq, was also present. Considering that al-Muhandis was also a senior military figure in Iraq, the attack on him is also considered *armed attack* against the military forces of Iraq.

It should be noted that according to the US Commander's Handbook on the Law of Naval Operations, any unlawful violence against vessels and aircraft with US flags, US nationals (whether embarked in US- or foreign-

or any annexation by the use of force of the territory of another State or part thereof."; Art 3(d): "An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State."

1 Nicaragua v. U.S., 1986 I.C.J. at 195.

2 Blank, L. R. (2020). Irreconcilable Differences: The Thresholds for Armed Attack and International Armed Conflict. Notre Dame L. Rev., 96, 249. at 254.

3 Ethiopia's Claims 1–8 (Eth. v. Eri.), Partial Award, 26 R.I.A.A. 457, 465–66 (Eri.-Eth. Claims Comm'n 2005).

4 Supra note 30, p. 255.

flagged vessels or aircraft), and their property, provides grounds for self-defense.¹ Therefore, from the perspective of the United States, an attack on a vessel, aircraft, and the private property and nationals of the United States constitutes armed attack. Thus, according to the domestic law in the United States, any attack on foreign nationals constitutes armed attack, regardless of whether the targeted individual has military status or not.

1.1.4. State Terrorism

According to Article 2(1) of the International Convention for the Suppression of Terrorist Bombings (1997), one form of terrorism involves the use of deadly weapons against public property and government facilities with the intention to cause death or serious bodily harm.² Similarly, Article 2(1) of the International Convention for the Suppression of the Financing of Terrorism (1999) outlines the definition of terrorist acts, which encompasses actions that result in the killing or bodily harm of non-combatants, individuals who do not participate in armed conflict, with the aim of intimidating a population or coercing a government or international organization into a specific action or abstention.³ These definitions have also received endorsement through United Nations Security Council Resolution 1566 (October 2004).⁴ The Resolution identifies criminal acts such as killing or harming civilians, hostage-taking to provoke a State, assassinations of public figures or groups, and the intimidation of a population to exert pressure on a

1 3.10.1 Protection of U.S.-flagged Vessels and Aircraft, U.S. Nationals, and Property: International law, embodied in the doctrines of self-defense and protection of nationals, provides authority for the use of proportionate force by U.S. warships and military aircraft when necessary for the protection of U.S.-flagged vessels and aircraft, U.S. nationals (whether embarked in U.S.- or foreign-flagged vessels or aircraft), and their property against unlawful violence in and over international waters.

2 United Nations, Convention for the Suppression of Terrorist Bombings (1997), Art. 2, Para. 1: "Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility."

3 United Nations, International Convention for the Suppression of the Financing of Terrorism (1999), Art. 2, Para. 1: "Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act."

4 S/RES/1566 (2004)

government or international organization as constituting terrorism.¹ If such acts are committed by a State, it is referred to as *State terrorism*, while a *State-sponsored terrorism* is a state that provides support to the terrorist acts of a non-governmental group.

If General Soleimani were considered a non-combatant at the time of the attack by the United States, their actions would be regarded as *State terrorism* against Iran.²

1.1.5. Crime against Internationally Protected Persons

According to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973) (hereinafter the 1973 Convention), the following acts constitute a crime if committed against a representative or official of a State in a foreign country: murder, kidnapping, or other attack against the person or liberty of an internationally protected person; violent attack against the official premises, the private communication or the means of transport of an internationally protected person, etc. The crime against internationally protected persons is considered one of the manifestations of international terrorism.

Both Iran and the United States are members to this Convention. According to Iranian authorities, General Soleimani was carrying a message from Iran to a foreign State during his presence in Iraq.³ In that case, he would be considered a representative or official of Iran. Even if he is not considered

1 "Criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature"; See Alizadeh, M., & Zarafshan, S. (2017). Expanding the Scope of the Secretary-General's Functions and the Exclusive Competences of States: Safeguarding the Boundaries of Article 2(7) of the United Nations Charter after Seventy Years. *Public Law Research*, 19(55), 4.

2 The Permanent Representative of Iran to the United Nations characterized the United States' action in assassinating General Soleimani and his companions as a terrorist and criminal act, which incurs international responsibility for the United States. Ambassador Takht-Ravanchi emphasized that this terrorist act was carried out under the direct orders of the President of the United States, stating that it constitutes a heinous criminal act and a clear example of state terrorism, flagrantly violating fundamental principles of international law, particularly those enshrined in the United Nations Charter. Consequently, the United States bears international responsibility.

3 Supra note 3.

a military personnel, he would be deemed to be on a mission. Therefore, the attack on him would constitute a crime against an internationally protected person.

1.1.6. Extrajudicial Assassination¹

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states that “[e]very human being has the inherent right to life. This right shall be protected by law, and no one shall be arbitrarily deprived of their right to life.” Extrajudicial assassination, according to the report of the Special Rapporteur of ECOSOC on this subject, refers to “killings committed outside the judicial or legal process, and at the same time, illegal under relevant national and international laws refers to acts that are outside the legal or judicial process and are unlawful under domestic or international law.”² The Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions³ adds the term “by public officials” to the definition. According to the report of the Commission on Human Rights, extrajudicial killings are often carried out with the alleged purpose of safeguarding dignity but commonly target peace and human rights activists as victims.⁴

If General Soleimani is considered a non-combatant at the time of the attack, his killing would constitute an extrajudicial killing, creating international responsibility for the United States towards General Soleimani, his family, and the Iran as his sending State. It is noteworthy, as mentioned in the report of the Commission on Human Rights, that such actions often target peace and human rights activists, General Soleimani was one of the key figures in promoting peace and combating terrorism in the Western Asian region, and to a large extent, the elimination of the organized terrorist group ISIS in the region owes to his actions.

¹ extra-judicial or extra-legal or summary or arbitrary assassination/execution

² The Economic and Social Council (ECOSOC) Resolution 1982/35

³ ECOSOC res. 1989/65, para. 1

⁴ In its resolution 2000/31 the Commission “notes with concern the large number of cases in various parts of the world of killings committed in the name of passion or in the name of honour, persons killed because of their sexual orientation and persons killed for reasons related to their peaceful activities as human rights defenders or as journalists.

1.2. Justifications Put Forth by the United States in the Attack on General Soleimani and his Companions

Critiques have been raised regarding the aforementioned allegations, including concerns over targeted killing and preemptive self-defense as means to avoid violations of international law such as resort to force, aggression and terrorism, put forth by the United States.

1.2.1. Targeted Killing

Targeted killing, also referred to as targeted assassination, pertains to the deliberate killing of a military or State figure outside the context of armed conflict. Such actions are commonly accompanied by allegations of the targeted individual's involvement in terrorist activities.¹ If the targeted individual is a State figure (non-combatant) at the time of killing, it would be considered an assassination and an act of use of force and aggression against a State. Conversely, if act of the targeted individual is a member of a State's military forces, it would not be categorized as an assassination, but rather as an act of use of force, aggression, and armed attack against the State. Nonetheless, in situations where armed conflict exists, the killing of military personnel is not considered as the initiation of use of force, aggression and armed attack, as the killing of combatants is permissible within the context of war. Therefore, targeted killing, from the standpoint of international law, is only deemed permissible in specific circumstances, namely the killing of military personnel during an armed conflict. "Without the existence of armed conflict, the deliberate killing of individuals of a nation, whether by terrorists or otherwise, will be considered a political assassination."²

Although the situation between Iran and the United States has been characterized by hostility since the 1979 Islamic Revolution, and at times they have resorted to force against each other, the relationship between these two States has not been one of hostility to the extent that General Soleimani, as a combatant, becomes a target. While the situation escalated into hostility

1 Zamani, S. G., & Berlian, P. (2021). The Americanization of International Law and Challenges Facing the International Community: The Targeted Assassination of General Soleimani. *Comparative Research Journal of Islamic and Western Law* (Special Issue), 7(2), 91-122.

2 Solis, G. (2007). Targeted Killing and the Law of Armed Conflict. *Naval War College Review*, 60(Spring), 127-135.

following Iran's missile attack on the Ain al-Asad military base in response to the US attack, there was no preexisting state of hostility at the outset of the US action.

Moreover, targeted killing, under the pretext of combating terrorism, has not been universally accepted in international law. Additionally, the US action can ultimately be seen as based on the identification of the IRGC as a "terrorist group" under US domestic law, while the criteria for defining terrorism in international instruments refer to "terrorist acts," and it is not possible to unilaterally label an entire group as terrorists without due process.¹

Therefore, if the United States' action in targeting General Soleimani is deemed to be directed at a non-combatant, it would be regarded as *an extrajudicial assassination and an act of aggression against the State of Iran*. Conversely, if General Soleimani is considered a military figure, it would constitute *an act of use of force, aggression, and armed attack against the State of Iran*.

1.2.2. Preemptive Defense

Preemptive defense is among the justifications invoked by the United States. Preemptive defense is a controversial exception to the prohibition on the use of force. While Judge Schwebel, in his individual opinion in the Nicaragua case, argues that Article 51 of the UN Charter does not limit the scope of the right to self-defense in customary international law,² the Caroline case between the United States, Canada, and England in 1842 outlined the conditions for self-defense, which include an imminent or actual armed attack, necessity, and urgency.³ Therefore, It necessitates a response to an imminent and certain attack and cannot be invoked against a future threat of attack. However, the validity of General Soleimani's alleged military attack on US military forces remains unverified. It is reflected in the reaction of the US Congress to the White House report and the statements made by Iraqi

1 Groups such as the Afghan Taliban (Afghanistan), the East Turkestan Islamic Movement (Pakistan), Tehreek-e-Taliban Pakistan (Pakistan), Hizb al-Tahrir al-Islami (Kuwait), East Indonesia Mujahideen (Indonesia), the Movement for Unity and Jihad in West Africa (Maghreb), Lashkar Tayyiba (Pakistan), Jund al-Aqsa (Syria), Jabhat al-Nusra (Syria), Al-Qaeda, and others have been identified by the Security Council as terrorist groups within the framework of determining a threat to peace or a breach of peace.

2 See, *Military and Paramilitary Activities*, 1986 I.C.J. at 347 (Judge Schwebel dissenting)

3 *Caroline Case*, 29 British and Foreign State Papers (1841) 1137–1138,

officials.¹ Consequently, the US cannot substantiate its military action through preemptive defense.

Table 1. Description of military actions

No.	Military Action	Description	Assuming a Military Target	Assuming a non-Military Target
1	Use of force	Against the territorial integrity and political independence	*	*2
2	Act of Aggression	Against the territorial integrity, political independence, and sovereignty	*	*
3	Armed Attack	Gravity in scale and effects (deaths, injury, or destruction)	*	
4	State Terrorism	Against non-combatants under a political guise		*
5	Crime against Internationally Protected Persons	Against State officials in a foreign country	*	*
6	Extrajudicial Assassination	Against non-combatants or combatants outside of hostility		*

2. Legal Description of the Iranian Attack on Ain al-Asad Military Base

After describing the legal aspects of the United States' action in attacking General Soleimani and his companions, it is feasible to examine the legal implications of Iran's actions from the perspective of international law.

2.1. Individual Self-Defense

When General Soleimani is considered a military personnel at the time of the attack, the attack on him would be considered use of military force and aggression against the State of Iran, as well as an armed attack. In this case, the response that the government can provide would fall within the framework of self-defense. Article 51 of the Charter states, " 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."³ The case known as *the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* reflected the limits and conditions of self-defense as reflected in Article 51 of the Charter.

¹ Fazaeli, M. (2021). The Assassination of General Soleimani: A Perspective on International Law and the Use of Force. *Comparative Research Journal of Islamic and Western Law (Special Issue)*, 7(2), 175.

² Assuming the target as an official person

³ United Nations Charter, Article 51.

The ICJ stated that if a country is under armed attack and initiates self-defense, it must adhere to the principles of proportionality and necessity.¹ This point has been emphasized in other cases heard by the Court, including notably the 2005 case concerning *the Democratic Republic of the Congo*.² In addition to these two conditions, other conditions such as *instantaneity*³ and respect for humanitarian law and notification to the Security Council have been raised for self-defense. As already discussed in the Caroline Case, *instant* implies that there is no opportunity for detailed examination.⁴ *Instant* also refers to immediate action following an armed attack.⁵

Iran's action as a victim of an armed attack on its military forces has taken place while adhering to the requirements of self-defense. This defense was *necessary* as there was no other solution to create military balance. This defense was *proportionate* as the loss resulting from the absence of General Soleimani exceeded the loss of a single unit or military brigade.⁶ The defense was *instant* as there was no opportunity for negotiation and detailed examination.⁷ The defense was conducted with respect to humanitarian law as the target, Ain al-Asad military base, was a legitimate military target, and it was carried out with prior notification.⁸

2.2. Collective Self-Defense

Even if one does not consider General Soleimani as military personnel at the time of the US attack, it presents an opportunity for Iran's self-defense. Taking into account the US attack on Abu Mahdi al-Muhandis, it can be regarded as an armed assault on Iraq's sovereignty, thereby establishing a

1 ICJ Rep. (1986). Para. 176.

2 ICJ Rep. 2005, 147.

3 Immediacy, as raised in the context of anticipatory defense, is distinct and refers to the imminent and proximate nature of the opposing State's attack.

4 Caroline formula (1842), according to which self-defense can only be exercised in situations where the need to respond is instant, leaving no moment for deliberation. Caroline Case, 29 British and Foreign State Papers (1841) 1137–1138. Retrieved from http://avalon.law.yale.edu/19th_century/br-1842d.asp

5 Knauf, S. R. (1996). Proposed guidelines for measuring the propriety of armed state responses to terrorist attacks. *Hastings International Comparative Law Review*, 19, 773.

6 This matter relates to the scope and impact of the operations led by General Soleimani, specifically regarding the successful elimination of ISIS in the region. Additionally, it encompasses statements made by select Iranian officials.

7 Reuters. (2020, January 13). Hours of forewarning saved U.S., Iraqi lives from Iran's missile attack. Retrieved from <https://www.reuters.com/article/idUSKBN1ZC219/>, accessed on December 11, 2023.

8 Ibid.

legitimate right to self-defense for the Iraqi State. In such circumstances, other nations may collectively exercise the right. It is crucial to acknowledge that an armed attack against a State's sovereignty contradicts the peremptory norm of non-aggression (*jus cogens*). Peremptory norms encompass *erga omnes obligations*, as outlined in Article 41(2) of the ARSIWA. Consequently, all states are obligated not to recognize situations resulting from the breach of *erga omnes obligations* arising from a peremptory norm, and they must refrain from providing assistance or support in such situations.¹ The ICJ, in the Wall Advisory Opinion, imposes an additional obligation on states, which requires them to eliminate any hindrance to the fulfillment of *erga omnes obligations*.² Thus, employing this approach, it seems feasible to undertake collective action aimed at restoring the observance of *erga omnes obligations*, specifically non-aggression, even without the consent of the victim state. In this case, Iran's response can be characterized as a legitimate form of collective defense or an *actio popularis*.

2.3. Use of Force Short of War

The attack on General Soleimani, whether deemed military or non-military, is considered an act of aggression. If a State's aggression does not reach the threshold of armed attack, the question arises as to what action the victim State can take in response. Some scholars have distinguished between unlawful use of force and use of force short of war, also known as just war,³ which is more predictable and smaller in scale, severely curtails the risk of civilian casualties, and entails a lower economic and military burden.⁴ What is deemed permissible under the UN Charter by the Security Council in self-defense is use of force, while what is prohibited is war. Therefore, it is believed that use of force itself is not prohibited, and what is prohibited is the principle of non-aggression. Use of force short of war aligns with the logic of

¹ The ARSIWA, Art. 41, Para. 2: "No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation."

² It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end.

³ Jus ad Vim – Moral Use of Force - Just use of force

⁴ Brunstetter, D., & Braun, M. (2013). From Jus Ad Bellum to Jus Ad Vim: Recalibrating our understanding of the moral use of force. *Ethics & International Affairs*, 27(1), 87-106.

the responsibility to protect, which aims to prevent further atrocities.¹ Some argue that use of force short of war is appropriate for maintaining rule of law or as an alternative to igniting a full-scale war. However, it is essential to adhere to the conditions of necessity and proportionality. The states practice in supporting this doctrine is prominent. For example, the United States has employed its drones in Pakistan and Yemen with the same perspective.² Additionally, use of force in response to cyber attacks that do not amount to armed attack has been endorsed by NATO.³ In the case of the downing of military drones, the states practice has not exhibited significant objections in instances of aggression.⁴

Regardless of Iran's identification of the United States Central Command (CENTCOM) as a terrorist element in the region, the United States' action in attacking the convoy of General Soleimani and his companions constitutes use to force and aggression, which led to use of force short of war by Iran. This attack was foreseeable by the United States and resulted in no human casualties.

2.4. Engaging in Forcible Reprisals

Some argue that even in cases of terrorist acts where there is no clear evidence of an armed attack, forcible reprisals may be a viable option. In contrast to belligerent reprisals, which are discussed in the context of humanitarian law during times of war, forcible reprisals occur when a State engages in a wrongful act and the opposing state responds with the use of force. While a retaliatory action is undertaken without use of force, a reprisal involves the use of force.

Forcible reprisal has typically been justified based on counterterrorism efforts, which has been exemplified in States practice. For example, States such as

1 Jai, G. (2022). *Force Short of War in Modern Conflict*. Edinburgh University Press, p. 64.

2 Ibid, p. 90.

3 In the Brussels Summit Communiqué 2021, Allies recognised that the impact of significant malicious cumulative cyber activities might in certain circumstances be considered an armed attack that could lead the North Atlantic Council to invoke Article 5 of the North Atlantic Treaty, on a case-by-case basis. Retrieved from https://www.nato.int/cps/en/natohq/topics_78170.htm.

4 For example, the downing of a Turkish drone by the US in the no-fly zone in Iraq, the downing of an American drone by Iran in the Persian Gulf region, and the downing of several Israeli drones by Hezbollah in the airspace of Lebanon, can be mentioned. Retrieved from <https://lieber.westpoint.edu/us-turkish-drone-shootdown-syria-jus-ad-bellum/>.

France, Belgium, the United States, the United Kingdom, and Australia have submitted letters to the Security Council in accordance with Resolution 2249, emphasizing their engagement in the fight against ISIS in Syria and Iraq based on Article 51 of the UN Charter, use of force.

It appears that this doctrine is in line with the commitment to counterterrorism, which is referenced in certain international treaties and may serve as an exception to the principle of non-resort to force. The adoption of this approach has also been accepted by the United States in its fight against terrorism. For instance, following the attacks on the Iranian Airbus by the United States on July 3, 1988, the US Presidential Commission expressed that the United States must ensure that all national resources are prepared for proactive or retaliatory measures [forcible reprisal], either directly or covertly, against States that support terrorism.¹

As General Soleimani is considered a non-combatant at the time of the attack against him, we are confronted with a terrorist act perpetrated by the United States. Additionally, following the designation of the IRGC by the United States as a terrorist group, the Supreme National Security Council of the Islamic Republic of Iran also declared CENTCOM as a terrorist entity. Iran's attack on the US military base in Iraq under CENTCOM's command can be considered a forcible reprisal against terrorism.

As mentioned above, the difference between the United States' reliance on targeted killing and Iran's potential recourse to forcible reprisal lies in the former being based on the assumption of the "terrorist nature of a group," while the latter is predicated on the actual occurrence of a "terrorist act," which can serve as a basis for responding to it.

2.5. Combatting Terrorism

Since General Soleimani is considered a non-combatant at the time of the attack against him, there is not a case of an armed attack. However, Iran's

¹ President's Commission on Aviation Security and Terrorism, Report to The President 125 (1990). The President's Commission included these recommendations: (1) "state sponsors of terrorism should be made to pay a price for their actions;" (2) that "active measures are needed to counter more effectively the terrorist threat;" and (3) that "[t]he United States should ensure that all government resources are prepared for active measures – preemptive or retaliatory, direct or covert – against a series of targets in countries well-known to have engaged in state-sponsored terrorism.

attack on the Ain al-Asad military base operated by the United States can be examined within the framework of combating terrorism. The United States' doctrine has been based on unilateralism in determining the criteria for terrorism. Based on the same doctrine, the Islamic Republic of Iran has identified CENTCOM as a terrorist entity. The 1973 Convention asserts that the provisions of the Convention shall “in no way derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person.”

In such circumstances, there is a commitment to combat terrorism on the one hand and a commitment not to resort to force on the other. It is possible to reconcile these two commitments by conducting an attack against terrorism with the intention and will to suppress terrorism rather than violating the territorial integrity and political independence of the receiving State. In this case, not only is military action permissible, but it is also in line with the international commitment to combat terrorism. This interpretation is in line with the teleological interpretation of the UN Charter.

Although *jus cogens* norms take precedence over other international obligations, it should not be forgotten that what constitutes a *jus cogens* norm is the prohibition of aggression, not the prohibition of the use of force. Not only is there no mention of the non-use of force in any regional or international documents,¹ but today the prohibition of aggression has become closer to the nature of *jus cogens* than the prohibition of the use of force.² As the Special Rapporteur of the International Law Commission states in its fourth report on the *jus cogens* norm, it presents a non-exhaustive list of rules identified by the International Law Commission, the nature of which is considered peremptory, and in this report, the prohibition of aggression is perceived as the *jus cogens* norm, not the prohibition of the use of force.³ Therefore, there is the possibility of the primacy of the commitment to combat terrorism over the commitment

1 Green, J. A. (2011). Questioning the Peremptory Status of the Prohibition of the Use of Force. *Michigan Journal of International Law*, 32(2), 242.

2 Abdollahi, M., & Behzadi, K. (2017). Obstacles to the Peremptory Nature of the Prohibition of the Use of Force. *International Legal Journal*, 36(Issue), 184.

3 Tladi, D., Special Rapporteur. (2019). Fourth Report on Peremptory Norms of General International Law (*jus cogens*). International Law Commission, 71st Session, U.N. Doc. A/CN.4/727, p. 26, para. 60.

not to resort to force against a foreign State, provided that it does not constitute an act of aggression.

In the past, numerous military operations have been carried out by States against terrorism in other States without the intention of violating territorial integrity, political independence, and national sovereignty, without facing condemnation from the international community. Iran has also carried out actions against terrorism in Iraq, including the attack on terrorist group headquarters in 1996, the attack on ISIS in Iraq in 2011, the attack on the Democratic Party of Iranian Kurdistan in the Kurdistan region of Iraq on 09/09/2022, the attack on a terrorist organization in Erbil, Iraq on 12/03/2022, and the attack on the positions of the Kurdistan Freedom Party (PAK), the Democratic Party of Iranian Kurdistan (HDK), the Komala Party, in the provinces of Sulaymaniyah and Erbil on 28/09/2022. In this regard, Iran's action against the US military base in Iraq is described as combating terrorism from Iran's perspective.

2.6. Continuous Self-Defence

This is a self-defense in response to an armed attack and remains in effect as long as the hostilities persist. Once the hostilities have ceased, reliance on self-defense cannot be invoked. In US military doctrine, the definition of an imminent threat that could warrant the use of force is not limited to a tangible threat that materializes at a specific time and place but encompasses a continuous threat that exists at any time. Therefore, the US military is authorized to design a continuous armed response to continuous threats without the need for gathering documents and evidence, which can be referred to as *continuous self-defense* or *continuous pursuit*.¹ This action, derived from *hot pursuit* in maritime zones, implies that defense continues until a guarantee against its recurrence is provided.

Article 2(3) of the 1973 Convention states that the provisions of this Convention shall not preclude the adoption of proportionate measures under international law to prevent attacks against the person, liberty, or dignity of internationally protected persons. If the intention to initiate war by the United

¹ Badalić, V. (2021). The war against vague threats: The redefinitions of imminent threat and anticipatory use of force. *Security dialogue*, 52(2), 174-191.

States is not realized, Iran's action within the framework of continuous pursuit is justifiable. Given the identification of a portion of Iran's armed forces as terrorists by the United States, the possibility of the United States committing similar acts again is conceivable. Therefore, if the conditions for self-defense are not met, there is the possibility of Iran taking action in terms of continuous pursuit until a guarantee against the commission of similar acts by the United States is provided.

Concluding Remarks

General Soleimani, as a senior military commander of Iran and a legendary figure for Iranians, known as the "Commander of Hearts" in Iran, was assassinated by the order of President Trump outside the battlefield. He was murdered at a time he had achieved the honor of defeating ISIS in the West Asia region. He was killed when he was outside the war zone. He was killed while carrying a diplomatic message. He was killed along with the deputy commander of the Iraqi Popular Mobilization Force and several other innocent individuals who were with him. The Islamic Republic of Iran suffered severe damage from this catastrophe, and the attack on the US Ain al-Asad military base in Iraq was merely interpreted by Iran's supreme leader as a slap in the face.

In the legal description of Iran's action in attacking the Ain al-Asad military base, it is necessary to first analyze the legal action of the United States. The US military action against General Soleimani renders two scenarios: 1) General Soleimani is considered a military commander at the time of the attack, and 2) General Soleimani is not considered a military commander at the time of the armed attack. In the first scenario, the US action constitutes use of force against the State of Iran, act of aggression against the State of Iran, act of aggression against the State of Iraq, and armed attack against the State of Iran. In the second scenario, the US action constitutes act of aggression against the State of Iran, an act of aggression against the State of Iraq, state terrorism against Iran, and extrajudicial killing against him, his family and the State of Iran.

It appears that officials holding high-ranking State positions, such as the President, Prime Minister, ministers, and senior commanders, are consistently

regarded as official figures in public capacity (*actes de fonction*). Interpretation 8 of Article 7 of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts of 2001 also stipulates that the criterion for official capacity is that an individual is "purportedly or apparently carrying out their official functions." Obviously, a senior military commander possesses the authority to issue necessary orders at any time and place, thus consistently assuming an official capacity. Consequently, the US attack on General Soleimani would be subject to the crimes mentioned in the first scenario, namely use of military force against the State of Iran, act of aggression against the State of Iran, act of aggression against the State of Iraq, and armed attack against the State of Iran.

Iran's action in attacking the Ain al-Asad military base, assuming the military status of General Soleimani, is justified within the framework of individual and collective self-defense, use of force short of war, and continuous self-defense. Iran's action, assuming the non-military status of General Soleimani, is also justifiable within the framework of forcible reprisal, use of force short of war, continuous self-defense, and counterterrorism. Iran's response to the US action, without infringing upon *the prohibition of the use of force*, represents a step in the development and evolution of the law on use to force. The origin of these events, occurring predominantly by unilateralist States such as the United States, necessitates the reconsideration and consolidation of new theories of the law on use of force for achieving greater justice.

Table 2: Characterization and compartmentalizing the military action

	Description of the US Drone Strike on General Soleimani and His Companions	Description of Iran's Missile Strike on US Ain al-Assad Military Base
1	Armed Attack against Iran	Individual Self-Defense
2	Armed Attack against Iraq	Collective Self-Defense
3	Resort to Force & Act of Aggression	Use of Force Short of War
4	Resort to Force, Act of Aggression & Terrorism	Forcible Reprisal
5	Resort to Force, Act of Aggression & Terrorism	Continuous Self-Defense
6	Terrorism	Counter-terrorism Measures

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II. Documents

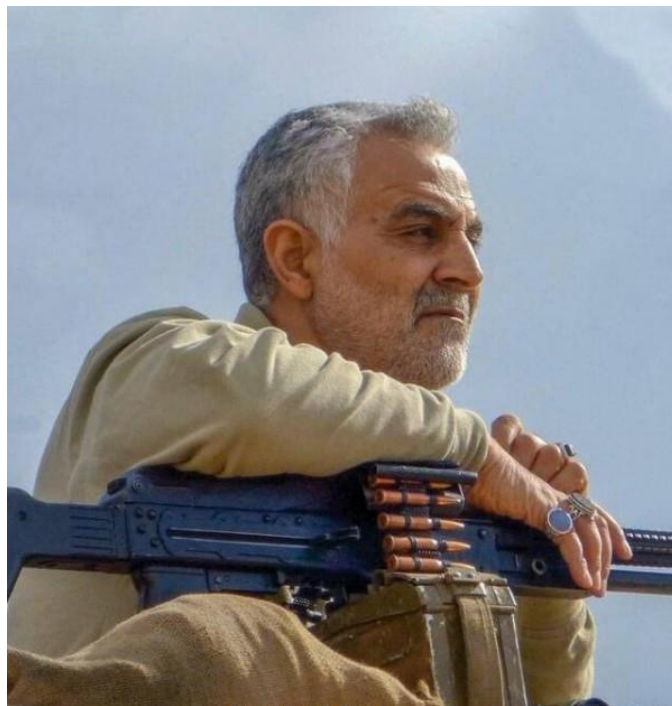
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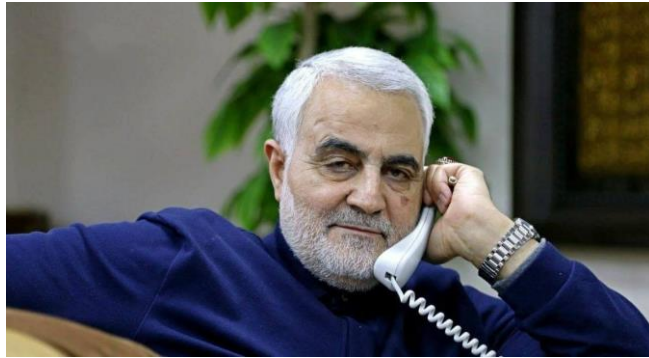
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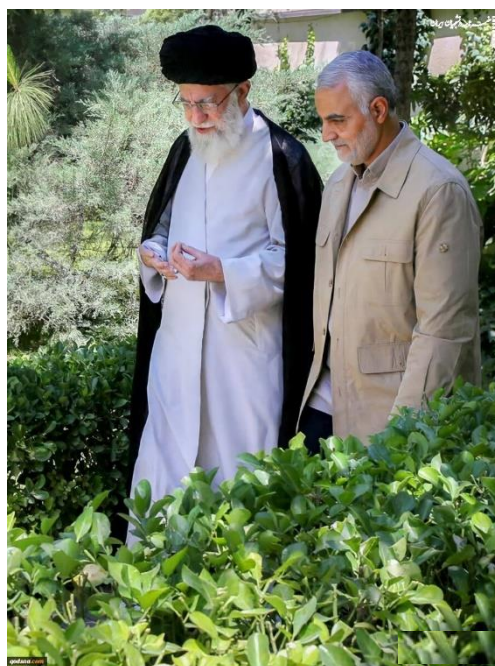
General Soleimani: An IRGC Combatant during the 1980-1988 Iran-Iraq War



General Soleimani: Commander of IRGC-Quds Force
in the Anti-Terrorist Fight against ISIS



General Soleimani: Visiting Iran's Supreme Leader in IRGC Uniform





The Convoy of General Soleimani: Targeted by a US Drone, Resulting in His and His Associates Martyrdom (2020)





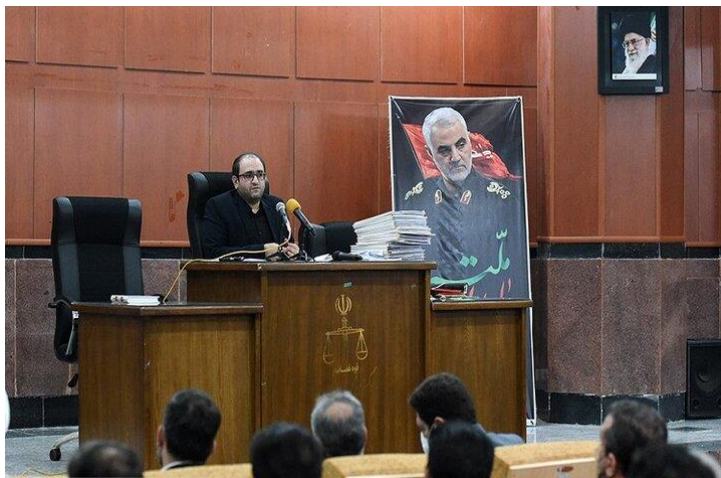
The Vast Gathering of Mourners Attending the Funeral Ceremony of the 'General of Hearts



Congregational Prayer Held on General Soleimani's Corpse,
Attended by Several Iranian Heads of State and IRGC Commanders



Special Court Established by the Iranian Judiciary to Investigate the Targeted Assassination of General Soleimani.





The US Ain al-Asad Military Base after the Iranian Retaliatory Missile Strike



Iranian President Ebrahim Raisi Holding a Picture of General Soleimani during his Speech at the UNGA (2022)



The assassination of martyr Qassem Soleimani was a reward for ISIS, which, according to former US officials, was their own creation. Therefore, instead of honouring that brave commander, they assassinated him. But the Islamic Republic of Iran will not stop using all the tools and capacities to execute justice and prosecute the perpetrators and managers of this state terrorism until a definite result is achieved; The blood of the oppressed will not be trampled and it will hunt the oppressor.

President of the Islamic Republic of Iran

Ayatollah Dr. Ebrahim Raisi

United Nations

September 21, 2022



University of Qom

