

# The use of armed drones against State actors: The killing of General Soleimani in Iraq. El uso de drones armados contra actores estatales: El asesinato del General Soleimani en Irak

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## Resumen

*Este estudio analiza la legalidad del asesinato selectivo del general Qasem Soleimani en Irak por un avión no tripulado armado estadounidense el 2 de enero de 2020. Dado que los Estados Unidos de América alegaron diferentes justificaciones para el ataque contra Soleimani, este artículo evalúa la legalidad de los vehículos aéreos no tripulados y las justificaciones jurídicas del asesinato en virtud del ius in bello y el ius ad bellum: la existencia de un conflicto armado internacional en curso entre Estados Unidos e Irán que haría de Soleimani un objetivo militar legítimo; el posible consentimiento del Estado territorial a la acción militar, y la legalidad de la invocación del ejercicio de la legítima defensa por parte de Estados Unidos contra Irán debido a incidentes armados anteriores. Este caso pone de relieve los problemas que plantea la justificación de los asesinatos selectivos en virtud del Derecho Internacional, ya que su carácter extrajudicial suscita dudas sobre su legitimidad con arreglo al Derecho Internacional Humanitario y el derecho de legítima defensa resulta inservible cuando el Estado no puede demostrar la existencia de un ataque armado en curso o su inminencia.*

## Palabras Clave

*Asesinatos selectivos, Soleimani, ius in bello, ius ad bellum*

## Abstract

*This study analyses the lawfulness of the targeted killing of General Qasem Soleimani in Iraq by a U.S. armed drone on January 2, 2020. As the United States of America provided different justifications for the strike against Soleimani, this article assesses the lawfulness of unmanned aerial vehicles and the legal justifications for the killing under ius in bello and ius ad bellum: the existence of an ongoing international armed conflict between the United States and Iran that would make Soleimani a legitimate military target; the possible consent of the territorial State to the military action, and the lawfulness of the invocation of the exercise of self-defense by the United States against Iran due to previous armed incidents. This case highlights the challenges in justifying targeted killings under International Law as their extrajudicial nature raises concerns about their legitimacy under International Humanitarian Law and the right of self-defense is of no use when a State fails to demonstrate the existence of an ongoing armed attack or its imminence.*

## Keywords

*Targeted killing, Soleimani, ius in bello, ius ad bellum*

## I. INTRODUCTION

States' obsession with the search for more efficient and effective ways to inflict violence, while ensuring a prudent distance between combatants to protect their own troops, has been a constant in History. The use of drones for the commission of targeted extrajudicial killings has been relentless over the past decade. Since 2015, Saudi Arabia, the United Arab Emirates, the United States, Iraq, Iran, Israel, Nigeria, Pakistan, the United Kingdom, and Turkey have operated drones, and at least 20 non-state actors have been procured armed and unarmed drone systems. The Special Rapporteur on extrajudicial, summary and arbitrary executions conceptualized targeted killings as those killings committed by governments and their agents in times of peace as well as armed conflict, or by organized armed groups in armed conflict and for which the means or methods of killing may vary, and include, as it happened in the Soleimani case, the use of drones. A targeted killing entails that "lethal force is intentionally and deliberately used, with a degree of pre-meditation, against an individual or individuals specifically identified in advance by the perpetrator. In a targeted killing, the specific goal of the operation is to use lethal force." (Alston, 2010, para. 9)

However, States usually fail to meet their human rights and International Humanitarian Law obligations of transparency and accountability when ordering and carrying out extrajudicial killings (Alston, 2010). Their inability to articulate a convincing argument as to the legality of such operations is apparent, as it happened with the killing of General Qasem Soleimani, whether those strikes are done as a single action or in the context of international or non-international armed conflicts. As a reminder, when States began to use drones in the context of armed conflicts, the functions of such aircrafts were limited to surveillance purposes, and offensive use was ruled out due to the possible negative consequences: "Subsequent experience indicates that when technology that provides a perceived advantage over an adversary is available, the initial intentions are often cast aside" (Heyns, 2013, par. 29).

Despite the common use of drones for lethal military operations, the killing of General Qasem Soleimani, head of the Iranian Revolutionary Guards' al-Quds Force, on January 2, 2020, at Baghdad Airport (Iraq) was the first targeted assassination of a senior political or military official of a State by a U.S. remotely controlled drone. Without delving into the political consequences of the action – which have been already analysed by several authors (Binkaya, 2020; Frisch, *et al.*, 2020; Guedes de Oliveira and Santos da Cruz, 2024), the international responsibility of the United States of America, as well as the consequences regarding the violation of the sovereignty and the territorial integrity of Iraq, and the limited response to this action undertaken by Iran, raise several issues as to the legitimacy of extrajudicial killings by airstrikes.

## II. THE LAWFULNESS OF UNMANNED AERIAL VEHICLES

According to Article 36 of 1977 Additional Protocol to the 1949 Geneva Conventions, States shall determine the unlawful nature of a new weapon regarding any rule of International Law. In its commentary on the rule, the I.C.R.C. points out that "the determination is to be made based on normal use of the weapon as anticipated at the time of evaluation. If these measures are not taken, the State will be responsible in any case for any wrongful damage ensuing." (I.C.R.C., 1987). Although the use of drones remotely controlled leads to the automation of the battlefield in which the human operator plays an increasingly irrelevant role, aggravating the indiscriminate nature of combat, as the humans, located hundreds or thousands of kilometres away from the military action will conduct the operation entirely through computer screens and remote audio (Asaro, 2012), these weapons are not prohibited by International Law. Therefore, the existing link – although distant - between the human operator and the machine is deemed sufficient to ensure enough control for compliance with International Law. The idea that remotely controlled human-operated weapon systems can be used by the rules of engagement in a conflict is a peaceful one (Klammer, 2014). Thus, a system can be directed by the human operator towards

specific military targets, the human will force the machine to comply with the principle of distinction and not to carry out indiscriminate attacks and will also ensure compliance with the precautionary principle and other relevant rules.

Although unmanned aerial vehicles are not *per se* unlawful under International Law, their use when carrying out targeted killing raised doubts as to the accuracy of the weapon, its impersonal character that avoids remorse on the part of the human operator - and therefore an emotional disconnection that favors the aforementioned mentality of *murder by PlayStation* (due to great physical, emotional and psychological distance) - and, more than likely, the non-existence of an imminent threat on the part of the individual targeted thus ruling out the existence of an armed attack or the imminence of the armed attack and turning the response into an international wrongful act due to its preventive character. Likewise, the lawfulness of the action under International Humanitarian Law requires the precise identification of the target - a complex issue in changing scenarios in the case of the use of computer vision; the assessment of the feasibility of capture instead of inflicting death; the necessary precaution to avoid collateral victims, and the post-operation review process that is part of the operational procedure of the armed forces. All these factors have an impact on the requirements of necessity and proportionality of the armed action. Moreover, the use of drones implies that a human being - combatant or non-combatant - is confronted with a machine, which begs the question of where human dignity lies, beyond the possible violations of human rights that the threat or lethal use of the system will entail, such as the right to life or the right to be free from torture.

### III. THE LAWFULNESS OF THE KILLING OF QASEM SOLEIMANI BY A DRONE

Some U.S. authorities tried to argue that the killing of General Qasem Soleimani, head of the al-Quds Force - a branch of the Iranian Revolutionary Guard - and nine other individuals on January 2, 2020, at Baghdad airport by a U.S. drone in a military action ordered by the President of the United States, was part of the legitimate military actions that can be taken in the context of an existing international armed conflict between Iran and the United States due to repeated hostile actions by Iran against U.S. military bases in Iraq. The term “assassination” has been avoided by the U.S. authorities as assassinations are illegal under International Law, preferring the expression “targeted killing” that better reconciles the legal argument and the political justification for the military action.

As informed by the Prime Minister of Iraq, Soleimani was on an official visit to Iraq to meet with him as a facilitator of contacts between Iran and Saudi Arabia for a possible resumption of dialogue between the two states. Iraq characterized the killing as “an aggression against the State, Government and people of Iraq; a flagrant violation of the terms under which United States forces are present in the country; an alarming escalation that could ignite a devastating war in Iraq, the region and the world; and a grave threat to the societal security of the country.” (Iraq, 2020).

#### A. State consent to the killing

*Jus ad bellum* rests on the prohibition of the threat or use of force against another State. However, a State may give its consent to the commission by another State of a use of armed force that would otherwise constitute a violation of the principle of prohibition of the use of force (*volenti non fit injuria*) provided that such consent is given by an authorized organ before or at the time of the use of force, is expressed in clear terms, and is valid (free from defect due to error, corruption or coercion) (Article 20 ARSIWA). The use of force by the foreign State must remain within the limits set by the consent, rejecting the circumstance excluding wrongfulness in case of overreaching in the action.

However, State consent does not preclude the assessment of the lawfulness of the action within the framework of the norms relating to human rights, particularly the right to life, and the norms of International Humanitarian Law. Thus, a consensual use of force may not involve a violation of Article 2(4) U.N. Charter and nonetheless constitute an internationally wrongful act due to the breach of the right to life of one or more individuals (including that of the ultimate

target of the attack and other victims of the attack) and the principles of distinction or proportionality.

The Government of the Republic of Iraq condemned without hesitation the attacks that led to the death of Soleimani. As mentioned above, those actions violated the sovereignty of Iraq and International Law, as the country remained fully committed to the duty to refrain from letting the Iraqi territory be used as a theatre of military operations against other States.

Regarding the existing agreements between the United States and Iraq authorizing U.S. military presence in the country, it emphasized that “any military mobilization or operations on Iraqi territory that take place without its approval and without prior coordination constitute provocative and hostile acts that violate the Charter of the United Nations, the relevant provisions of International Law and the premises set forth in the letter dated 25 June 2014 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General (S/2014/440) and the letter dated 20 September 2014 from the Permanent Representative of Iraq to the United Nations addressed to the President of the Security Council (S/2014/691). In those letters, Iraq stated that the provision of assistance in the areas of military training and the use of advanced technology and weapons necessary to combat the terrorist entity ISIL must take place in accordance with the relevant bilateral and multilateral agreements, in full respect for the national sovereignty and Constitution of Iraq, and in coordination with the Iraqi armed forces.” (Iraq, 2020b)

The 2008 Strategic Framework Agreement for a Relationship of Friendship and Cooperation between the United States of America and the Republic of Iraq states that the temporary presence of U.S. forces in Iraq is at the request and invitation of Iraq and with full respect for the sovereignty of the country. Moreover, Section II.4 precises that the United States shall not use Iraqi territory (land, sea, and air) as a launching or transit point for attacks against other countries (U.S.-Iraq, 2008).

In its 2014 request for assistance to the international community to fight the Islamic State in Iraq and the Levant (Iraq, 2014), full respect for Iraqi sovereignty was asked for. With regards to the specific support provided by the United States, Iraq stated that the preservation of its sovereignty and its ability to make decisions independently were of great importance (Iraq, 2014b).

Although the U.S. presence in Iraq was justified by 2003 U.N. Security Council resolution 1483 (Security Council, 2003) with the recognition of the specific authorities, responsibilities, and obligations of the United Kingdom and the United States of America as occupying power under unified command (also called “the Authority”), the scope of the resolution did not include uses of force against foreign States. The United States did not even demand Iraqi consent to the military action.

The “unable/unwilling” theory is of no application in this case either. First, Iraq was not unable nor unwilling to stop Iran from launching armed attacks against the United States from its territory. The existence of such attacks is excluded, even more, considering the U.S. presence in the country. In the event of a lack of Iraqi capacity to prevent such attacks, the United States – as the victim – should have prioritized obtaining the consent and cooperation of Iraq. In addition, it is essential to assess the nature of the threat posed by the third State (Iran) by considering the geographical scope and intensity of its actions, the level of sophistication of the attacks perpetrated, the number of officials, soldiers, or troops present in the territory, etc. Third, the U.S. shall have requested authorization from the territorial State (Iraq) to respond to the threat posed by Iran, propose a time frame for its action and the measures necessary to eliminate the threat, and assess the territorial State's capacity to successfully address the challenge.

### B. *Ius in bello*

The U.S. authorities refrained from using the word “assassination” when referring to the military action against Soleimani

as assassination is definitionally illegal under International Law (Molloy, 2021). The killing of Soleimani would have been lawful if it happened during an international armed conflict between the United States and Iran as the targeting of an Irani high-ranking official was, in principle, permitted under International Law if he could be defined as a combatant and the action against him was not done treacherously or with perfidy.

Understood assassination as an intended deprivation of life by an extra-judicial attack for political reasons, the long-standing rule that states its prohibition has been established in Article 101 of the Lieber Code, Article 13b of the Brussels Declaration, Article 23b of the Hague Regulations and Article 37.1 of the Additional Protocol to the Geneva Conventions. The 1998 Rome Statute defines the killing or wounding treacherously of individuals belonging to the hostile nation or army as a war crime (Article 8b(xi)). According to Rule 65 on perfidy, “killing, injuring or capturing by resort to perfidy is illegal under customary International Law but [...] only acts that result in serious bodily injury, namely killing or injuring, would constitute a war crime.” (I.C.R.C., 2025). The assessment of an assassination is context-specific: there is an ongoing armed conflict and a treacherous or perfidy killing.

Common Article 2 of the four 1949 Geneva Conventions defines an international armed conflict as 1) a declared war or any other conflict which may arise between two or more States, even if one of them does not recognize the state of war, 2) in cases of partial or total occupation of the territory of one State by another, and 3) in case of wars of national liberation. Following the I.C.R.C., when the armed forces of two States are involved, as it happened in the Soleimani case, it suffices for one shot to be fired in conformity with government instructions for International Humanitarian Law to apply (I.C.R.C., 2025b). The International Tribunal for the Former Yugoslavia stated in the *Tadic* case that for an international armed conflict to exist a resort to armed force between States was sufficient. International Humanitarian Law applies “from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached” (I.C.T.Y., 1995). Therefore, was there an ongoing international armed conflict before the killing of Soleimani?

Neither Iran nor the United States declared war against each other. Neither have international organizations or other States been informed of incidents that reached the level of an international armed conflict. Some authors argue that Soleimani was a legitimate military target due to the ongoing international armed conflict since 2003 because of the alleged responsibility of the Iranian Revolutionary Guards Corps for the killing of more than 600 members of the U.S. Forces in Afghanistan (Hodges, 2020) and Soleimani’s leading of Iranian-backed terror groups responsible for attacks against the United States (Jackson, 2022).

Several armed incidents happened since 2019: the destruction of a U.S. drone in the Strait of Hormuz or the capture of a British tanker by the Islamic Revolutionary Guard Corps were some of the events that gradually increased the tension between both States. According to Fornari (2020), the lack of *animus bellandi* entails the non-existence of an international armed conflict between the U.S. and Iran. Moreover, even in the aftermath of the killing of Qasem Soleimani, none of the two countries made any statement acknowledging the existence of an armed conflict that would have started with the death of the General, despite the “first strike” theory, that will be assessed below.

Even in the case of ongoing armed conflict between Iran and the United States, the attack against Soleimani would not have respected the fundamental principles of International Humanitarian Law. Under the distinction principle (Article 48 Additional Protocol), the United States, as a party to the conflict, should have distinguished between civilians and combatants (as Soleimani would have been if an armed conflict existed) and between civilian objects and military objectives and direct the military operation only against military objectives. This implies the consideration of several contextual elements, such as 1) the possibility of a civilian target becoming a military target due to its strategic value; 2) the actual contribution to military action; 3) the appropriate level of destruction according to the circumstances; 4) the specific conditions at the time of the action, and 5) the defined military advantage (Akerson, 2013).

The application of the principle of proportionality implies not only assessing the expected military advantage of an action but also estimating the potential damage to the civilian population or civilian objects and determining whether such damage is excessive about the expected military advantage. In relation to the precautions in attack principle (Article 57 Protocol I), it requires for the State to adopt all feasible and possible precautions to avoid civilian casualties and damage to civilian objects considering the prevailing circumstances and information from all sources available at the time of the strike.

The strike against Soleimani did not respect those principles. Not only did the attack target Iranian officials but also Iraqi citizens among the ten individuals killed, including the deputy leader and four other members of the Popular Mobilization Forces. Those persons were not taking direct part in the hostilities. The strike also happened in a civilian airport that had to suspend all flights due to the strike.

Even more, whether an international armed conflict existed at the time of the strike, States are prohibited from arbitrary deprivations of life under Article 6 1966 International Covenant on Civil and Political Rights. In the same vein, Articles 1 and 2 of the 1973 Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents, determines that any representative or official of a State is protected against the intentional commission of a murder or other attack upon the person or the means of transport of the person. As the United States acted with premeditation, did not consider alternative options, did not present evidence that Soleimani represented an imminent or actual threat to life, and the killing also took the lives of nine other individuals, the U.S. did not comply with their international obligations.

From a spatial scope of analysis, which was the conflict zone? The strike took place in Iraq, a non-conflict zone. Therefore, as Callamard (2020, para. 28) points out “the existence of an IAC [international armed conflict was] limited to the vehicle in which General Soleimani was traveling and inevitably the asphalt within its immediate proximity. But as limited as these are spatially, they nevertheless are located on Iraq’s sovereign territory.”

The allegation of Soleimani being the *de facto* leader of the Shia militia Kata’ib Hezbollah that launched several armed attacks against the U.S. Forces in Iraq made him a legitimate military target (Hodges, 2020) is not in accordance with International Law. For Iran to be internationally responsible for the actions of an armed group, instructions, direction or effective control shall be proven (I.C.J., 1986) as it is a general principle that the conduct of private parties, armed groups included, is not attributable to a State unless there is proof of a specific factual relationship that goes way beyond a general situation of dependence.

Therefore, the assassination of Soleimani raised specific questions as it was the first targeted assassination of a senior political or military official of another State outside the context of an armed conflict (*jus in bello*). Soleimani was not a legitimate combatant who could be taken as a military target in the context of an armed conflict, but was on an official visit to Iraq, the State on whose territory the attack took place and whose authorities stated from the outset that they had not authorized it.

### C. *Self-defense*

The right of self-defense is one of the exceptions to the prohibition of the threat or use of force. Although self-defense did not appear in the proposals made during the 1944 Dumbarton Oaks Conference, the issue was addressed by China in the context of the powers to be granted to the future United Nations Security Council, requesting the right of self-defense not to be excluded from the Charter and the use of force in self-defense not to be considered incompatible with the purposes of the new international organization. The discussions focused on the need of authorization of the U.N. Security Council for the exercise of self-defense. That proposal was deemed unacceptable by most of small States, which understood that their defense rights against an armed attack could not be made to depend exclusively on the operability of the new global

security system, mostly considering the veto power granted to the most powerful States in the Security Council.

Article 51 U.N. Charter illustrates that will of independence when acting in self-defense: any State can defend itself if an armed attack occurs, if the attack is attributable to another State, and once it informed the U.N. Security Council of the measures decided in self-defense. In addition, the armed response in self-defense shall be necessary, proportional, immediate and temporary.

However, the self-defense concept is narrow. Firstly, because Article 51 U.N. Charter is an exception to the fundamental principle of International Law stated in Article 2.4. Secondly, the requirements are cumulative; thus, the lack of compliance with one of them excludes the possibility of the action to be justified under International Law. Thirdly, not any use of force is an armed attack in the sense of Article 51. The International Court of Justice determined that only the gravest forms of use of force constitute an armed attack, excluding other less grave forms (I.C.J., 1986 and 2003).

Previous experience concerning the use of drones in the exercise of an alleged right of self-defense shows the difficulties of correctly articulating such use within the existing rules of International Law. Indeed, although the concept of “armed attack” has been broadened to include acts of non-State actors which by their intensity and gravity would qualify as armed attacks had they been committed by the regular army of a State (I.C.J., 1986), the attribution of such acts to a State is highly doubtful as the current rules of international responsibility determine the attribution of a breach of an international obligation by persons or groups of persons when these followed the instructions or carried out the action under the effective control of the responsible State (Article 8 ARSIWA), a circumstance that, due to the very nature of non-State armed groups, does not usually occur.

Regarding the United States, as O’Connell (2023) mentions, the justification for drone strikes beyond armed conflict locations has been based on four approaches: secrecy with refusal to acknowledge responsibility; declaring “war” to terrorism as an undetermined concept; extend beyond what is reasonable the interpretation of Article 51 U.N. Charter to include any military operation, and claiming a right to attack exists when the territorial State is unwilling or unable to control its territory.

The statements of the Department of Justice, the Department of Defense, and the U.S. President himself justified the attack against Soleimani as an exercise of pre-emptive self-defense, in the face of an armed attack for which neither material preparatory acts exist nor have materialized, which rules out the argument of an attack against a legitimate combatant in the context of an armed conflict:

“General Soleimani was actively developing plans to attack American diplomats and service members in Iraq and throughout the region. General Soleimani and his Quds Force were responsible for the deaths of hundreds of American and coalition service members and the wounding of thousands more. He had orchestrated attacks on coalition bases in Iraq over the last several months – including the attack on December 27th – culminating in the death and wounding of additional American and Iraqi personnel. General Soleimani also approved the attacks on the U.S. Embassy in Baghdad that took place this week. This strike was aimed at deterring future Iranian attack plans.” (United States, 2020) On his part, the U.S. President stated that “Soleimani was plotting imminent and sinister attacks on American diplomats and military personnel, but we caught him in the act and terminated him. [...] We took action last night to stop a war. We did not take action to start a war.” (United States, 2020b)

However, some argue that, according to the “first strike” theory, the U.S. attack on Soleimani was the first strike that initiated an armed conflict between Iran and the United States of America, and that the first strike was itself governed by International Humanitarian Law, which made Soleimani a legitimate military target and, therefore, a combatant, excluding the possibility of the killing to be characterized as an assassination (Molloy, 2021). However, many armed incidents occurred

in the previous months that could have been qualified as first strikes and, thus, initiated an armed conflict. In fact, as the Special Rapporteur (2020) points out, it has been argued that an international armed conflict of low intensity was ongoing in June 2019 due to Iran's shooting of a U.S. drone and an alleged cyber-attack by the U.S. in response. However, that armed conflict did not exist in January 2020 due to the absence of further hostilities between both States. In the same sense, neither the States involved, as mentioned before, nor international organizations or other States acknowledged the existence of an armed conflict in the aftermath of Soleimani's killing.

In its letter of January 8, 2020, to the United Nations Security Council, the U.S. invoked Article 51 U.N. Charter to justify the undertaking of actions "in response to an escalating series of armed attacks in recent months by the Islamic Republic of Iran and Iran-supported militias on U.S. forces and interest in the Middle East region, in order to deter the Islamic Republic of Iran from conducting or supporting further attacks against the United States or U.S. interests, and to degrade the Islamic Republic of Iran and Islamic Revolutionary Guard Corps Qods Force-supported militia's ability to conduct attacks". As the U.S. acknowledge, these actions included "an operation on January 2, 2020, against leadership elements of Iran's Islamic Revolutionary Guard Corps Qods Force on the territory of Iraq." (United States, 2020c)

That letter was sent six days after the military operation against Soleimani, in contrast to Iran's letter to the Security Council on January 3, 2020, in which Iran defined the killing of Soleimani as an assassination resulting from a terrorist attack attributed to the United States and advanced that measures in self-defense would be undertaken in response (Iran, 2020). On January 7, Iran already warned that, due to the threats formulated by the U.S. President against 52 Iranian sites, it would take all necessary and proportionate measures against any new threat or use of force (Iran, 2020b). On January 8, 2020, Iran informed the U.N. Security Council that its "measured, proportionate [and] precise military response targeted the U.S. air base in Iraq from which the strike against Soleimani was launched". (Iran, 2020c) On the verge of an escalation between both States, Iraq considered unacceptable for Iran to bomb camps housing Iraqi and international coalition forces on the pretext of self-defense (Iraq, 2020b).

The legality of the killing of Soleimani was based on the argument that an escalating series of armed attacks against the U.S. that took place over recent months before the strike. As Kondocho (2020) emphasises, those incidents were not significant uses of force. Therefore, they did not reach the level of gravity required by the I.C.J. Furthermore, an ongoing series of attacks is not an ongoing attack or an imminent attack against which the use of force in self-defense would be in accordance with the armed attack requirement of Article 51 U.N. Charter.

Anticipatory self-defense implies that, although an armed attack has not yet started, the preparatory acts for it have already begun, so that the State that is going to suffer such an attack can, in the certainty that it is going to occur, take defensive measures to protect itself. There must be certainty about the development of the events and their imminence, and proof shall be given of the imminence of the attack and the preparatory acts aimed at it. The burden of proof of the imminence of the attack (or its existence) rests on the State claiming to be acting in self-defense. If these conditions are met, it would be possible to accept that the requirements of necessity and immediacy are fulfilled. The imminence of an armed attack has not been argued nor proven in the Soleimani case.

As Haque (2020) indicates, "if one attack is clearly over, the legal clock resets." Preventive self-defense is prohibited under International Law. Understood as "an armed action in reaction to a potential threat, [preventive self-defense] is different from pre-emptive self-defense (also known as anticipatory self-defense) which instead is the use of force in reaction to an imminent threat" (Bellier, 2006). Indeed, there is a fundamental difference between the preparatory acts of an attack that is known to occur and the (always subjective) assessment of the mere existence of a remote possibility that one day such an attack will take place (as was the U.S. argument in the Soleimani case). Here, judgments of intent are always made. Thus, there is no armed attack, nor preparatory acts for it, but something that the State claiming to defend itself considers to be



a sufficient threat to trigger a response in self-defense. It is not a question of facts, but of assessments, always favoring the State that argues self-defense. This interpretation is contrary to the wording of Article 51 of the Charter and its customary content.

Moreover, any of those attacks, if they triggered a right of self-defense due to their intensity, had to be attributed to Iran, which requires organs of the State to have committed those acts or, in the case of the so-called “Iran supported militias”, for Iran to have instructed or exercised direction or effective control over the persons or groups of persons that have committed them. As stated by the International Court of Justice in the *Nicaragua* case, mere assistance or logistical support is not sufficient for attribution (I.C.J., 1986). So, Iranian financing or logistical support for militias could likely be a violation of the principle of non-intervention (Article 2.7 U.N. Charter) but, in the absence of attribution, the acts of the militias cannot justify the use of force against Iran (Molloy, 2021).

Regarding the principle of necessity, it requires for the use of force in self-defense to be the *ultima ratio*, a measure of last resort that has a defensive purpose. As O’Connell (2012) points out, “the drafters of the Charter inherited an understanding that lawful and moral resort to force is restricted to true situations of necessity, where the use of military force will accomplish a lawful military objective”. As for proportionality, it should be respected in its two aspects: proportionality in the means and proportionality in the ends. The action in self-defense must be proportionate to the nature and intensity of the attack suffered and sufficient to deactivate it. However, proportionality in the results must also be assessed. Regarding the Soleimani strike, since the attacks allegedly planned by Soleimani had not yet occurred, it is impossible to assess the necessity and proportionality requirements of a self-defense response (O’Connell, 2020; Kelemen and Kiss, 2022; Kleczkowska, 2023).

Furthermore, the U.S. reference to its intention to deter Iran from conducting or supporting further attacks and to degrade Iran and Iran-supported militias’ ability to conduct attacks shows that, for the United State, the killing of Soleimani was an armed reprisal (Haque, 2020), and thus an unlawful use of force under International Law.

#### IV. CONCLUSION

The Soleimani strike highlights the challenges in justifying targeted killing under International Law, particularly when they occur outside an armed conflict. The strike violated Iraq’s sovereignty and territorial integrity, as it was conducted without the consent of the territorial State. The U.S. failed to demonstrate the existence of an ongoing international armed conflict with Iran, even though the lack of compliance with fundamental principles of International Humanitarian Law makes the operation unlawful even in case of armed conflict.

The extrajudicial nature of the killing raises concerns about its legitimacy and resembles more of an assassination, which is unlawful under International Law. The self-defense argument is not backed up by the demonstration by the United States of the imminence of an armed attack from Iran, and the invocation of preventive self-defense converts the armed action into a reprisal, which reinforces its unlawfulness.

Despite the criticisms that can be levied against the Iranian response to the assassination, particularly the violation of Iraq’s sovereignty, following Callamard’s reflection (2020, para. 30), “it is hard to imagine that a similar strike against a Western military leader would not be considered as an act of war, potentially leading to intense action, political, military and otherwise, against the State launching the strike”.

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