



DEPARTMENT OF POLITICAL SCIENCE

BACHELOR'S DEGREE PROGRAM IN POLITICS, PHILOSOPHY
AND ECONOMICS

**THE LEGALITY OF QASEM SOLEIMANI'S
KILLING UNDER INTERNATIONAL LAW**

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To my beloved ones,

INTRODUCTION:

On the 3rd of January 2020, the United States of America (US) authorized a military operation using a Reaper drone which caused the killing of at least 9 persons, including Iranian Major General Qasem Soleimani and Abu Mehdi al Mouhandis, head of Kated Hezbollah (KH militias), in Baghdad. Soleimani was the leader of the Quds Force, a sector of Iran's powerful Islamic Revolutionary Guard Corps (IRGC), which retains high influence in the neighboring regions such as Iraq, Syria and Lebanon. In particular, his beliefs were transmitted on many Shiite militias that had fought and continue to fight US troops in those regions.

In the letter to the United Nations (UN) Security Council on January 8th, 2020 the US Ambassador to the UN, Kelly Craft, communicated the targeted killing of the Iranian leader Soleimani as an act of self-defense under Article 51 of the Charter. The US accused Iran of an «escalating series of armed attacks in the recent months» and conducted the strike «in order to deter the Islamic Republic of Iran from conducting or supporting further attacks against the US or the US interests, and to degrade the Islamic Republic of Iran and Islamic Revolutionary Guard Corps Quds Force supported militias' ability to conduct attacks»¹. Moreover, the US explained to be prepared to engage in any additional operation in the region if considered necessary to protect US personnel and interest².

Many times, the US justified its continued use of force in the name of self-defense. The American administrations have done so, over the years, during counter-terrorism operations which drastically increased after the September 11 attacks by the Islamic terrorist group al-Qaeda. However, many critiques have emerged with regard to the legality of this interpretation of the concept of self-defense. The US is a permanent member of the UN and, as any other State Party, it is obliged to uphold the principles of the Charter. Article 2(4) states as follows: «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»³.

¹ United Nations Security Council, *Letter Dated 8 January 2020 from the Permanent Representative of the United States of America to the United Nations Addressed to the President of the Security Council*, UN Doc S/2020/20 (Jan. 9, 2020), New York.

² *Ibidem*.

³ UNITED NATIONS, *Charters of the United Nations*, 24 October 1945, 1 UNTS XVI, available at: <https://www.ref-world.org/docid/3ae6b3939.html> (accessed 22 April 2020).

Nevertheless, determining whether a targeted killing is lawful or not is a very hard task. In 1986, in the *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. US of America)*⁴, the International Court of Justice (ICJ) underlined the fact that the US had resorted to ‘preemptive self-defense’ as anticipatory tool in order to prevent the escalation of an ‘imminent threat’ from the Nicaragua forces against the US. Since then, the state practice has moved forwards a broader interpretation of Article 51, although nothing in the Charter refers to this kind of anticipatory attack. The ICJ, in the *Nicaragua v. US of America*, specified that it would have been considered a legitimate self-defense only in the case in which there would have been an armed attack.

Two schools of thought emerged which support either a more restrictive interpretation of the Article 51 of the UN Charter, or a broader one. However, the Charter does not provide an official definition of an ‘armed attack’ or the possibility or not by State to resort to preemptive self-defense. Indeed, state practice has become highly controversial from a legal point of view, because the various States’ interpretations about the prohibition of the use of force, which is the focal aim of the establishment of the UN, substantially diverge.

In these pages I will refer to the assassination of Qasem Soleimani in order to evaluate its conformity with international law. To do so, in Chapter I, I will firstly trace the main events that characterized the tensions between the US and Iran over the years. Then, I will focus on the Trump’s Presidency, which constituted a turning point in the relations of the two parties. In Chapter II, I will analyze the foundations of the norms that States shall respect when conducting these military operations. Through the chapter I will delineate the reasons why Article 51 loses its applicability in this context; I will also support the hypothesis that the specific conduct of January 3rd drone strike on Iraqi soil represents a profound violation of its sovereignty; and then, I will analyze the features of the targeted killing under study. Finally, in Chapter III, I will refer to other American targeted killing operations during counterterrorism in order to delineate the analogies and incongruencies with the Soleimani’s case and support the thesis prompted in these pages.

⁴ INTERNATIONAL COURT OF JUSTICE, *Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. US of America)*; Merits, Judgement ICJ Reports 1988, para. 176.

1. CHAPTER I: CONTEXT'S ANALYSIS

The assassination of Soleimani is the result of series of events which characterized the relations between the US and Iran since long time. International law only permits the use of force when necessary to defend against an imminent, actual or ongoing unlawful armed attack. In order to be absolutely necessary, the attack suffered cannot be already concluded, otherwise the self-defense justification expires. Trump has argued that Iran was planning an imminent attack⁵. Thus, it could be said that he decided to anticipate Iranian actions in order to adopt a strategy of deterrence, which is an attempt to influence the decision-makers in Iran to desist from a particular course of actions. Nonetheless, Trump has rejected this idea, arguing that his scope was not to influence the Iranian government. Analysts explained that killing Soleimani was neither necessary nor sufficient to disrupt the operational progression of an imminent plot by Iran against the US. A deterrent rationale in this case is just unnecessary because the State acting in self-defense has no idea whether the deterrent action will actually be able to stop the imminent attack. The US should have proved that Soleimani was operationally involved, that Iran was committed to pursuing these attacks, that killing Soleimani would have disrupted these attacks, that it is was necessary and, specifically, that killing him in Iraq was necessary. As we know, any of the conditions have been satisfied and Trump continues to justify his decision by saying that he has done so to prevent further attacks that would have caused the insecurity of his citizens.

For this reason, it is important for my study to analyze the timeline of facts that have taken place during the last decades in order to have a clearer idea of the relations between the US and Iran. I will analyze in particular the period during Trump's Presidency because he has become a very strategic protagonist of the international community, being the President of the probably most powerful nation in the world. However, being such an influential leader, he has the power to shape American relations with the rest of the world in a significant way. The attacks between Iran and US represent a turning point in the history of the two nations but also in the history of the entire world. Nowadays, it is important to analyze the strategies adopted in the past by these two States also in order to predict their future actions.

This chapter will further the historical relations between the US and Iran in two different ways: before and after Trump. As showed before, Trump's Presidency led to

⁵ UNSC, *Letter*, 8 January 2020, cit. 1.

significant changes in the general international asset. His strategic plan is very different from the previous administrations and for this reason his Foreign Policy has been subject of the studies of many political sociologists. Analyzing the historical facts that took place over the years between the US and Iran, my goal is to give the reader a clear framework of nowadays' spectrum of the international community.

1.1 The relations between the US and Iran

Some scholars say that modern terrorism has been highly influenced by the Iranian Revolution in 1979⁶. It is said so, because the events that followed the Revolution led to significant changes in the American approach to counterterrorist strategies. Iran's leader, Ayatollah Ruhollah Khomeini, was considered the precursor of growing militant groups in the neighbor States such as Saudi Arabia, Iraq and Kuwait⁷. The conflicts between the Sunni subgroup of the population and the Shiite subgroup terribly increased during those years, with the Shiite community being the head of the Revolution itself. This 'Islamic Revolution' aimed also at neutralized any other influential doctrine present in the region, first of all the so-called 'American Islam'⁸ that spread a lot in Saudi Arabia. At the origins, the 'hostage crisis' marked one of the most significant diplomatic crisis between Iran and US: some Islamic students occupied the American embassy in Tehran, taking as hostages for 444 days the 52 American citizens who were working there.

Until the 1980s there were very few social or economic interactions between the US and Iran. The relations between Iran and the US were worsened much more after the 9/11 terrorist attack. After that event, Bush declared that Iran, Iraq and North Korea were the 'Axis of Evil'. In 2003, it followed the destitution of the Sunni regime of Saddam Hussein; and during that period Iraq was entertaining relations with both the US and Iran. Nevertheless, the Iranian influence on the Iraqi politics was notably increasing. During the Arab Springs, the Hezbollah group was very influential during the fight against ISIS next to the Iraqi and American forces; Major General Soleimani backed up Bashar-al-Assad regime in Syria enrolling numerous militants from other countries. These soldiers were grouped in many military bases either in Iran or directly in Syria, and they were trained by the Hezbollah group.

In 2006, the UN Security Council imposed sanctions on Iran for failure to halt uranium enrichment, unanimously through its Resolution 1737⁹. According to the Resolution, Iran is forced to stop the proliferation of its nuclear activities in order to ensure the end of

⁶ BYMAN D., *The Iranian Revolution and Its legacy of Terrorism* (January 4th, 2019) LAWFARE, available at: <https://www.lawfareblog.com/iranian-revolution-and-its-legacy-terrorism>

⁷ *Ibidem*.

⁸ *Ibidem*.

⁹ PRESS RELEASE UNITED NATIONS SECURITY COUNCIL, *Security Council Imposed Sanctions on Iran for Failure to Halt Uranium Enrichment, Unanimously through the Resolution 1737*, 23 December 2006, SC/8929, 5612th Meeting, Resolution 1737 (2006) available at: <https://www.un.org/press/en/2006/sc8928.doc.htm>.

its nuclear weapons program which was considered a threat to the international community. It is important to say that Iran is also a member of the Nuclear Non-Proliferation Treaty and it has never threatened to use force against any UN member¹⁰. Moreover, differently from the neighbor Israel, Iran has never promoted the development of nuclear weapons for strategic purposes, neither it has attacked any other Member States on the basis of its enrichment, research and development activity of uranium. However, the US has been the main promoter of this Resolution. This ‘illicit conduct’ has always been criticized by the international community but under the Trump administration the relations between Iran and the US deteriorated even more.

When, in July 2015, the two parties decided to sign the Joint Comprehensive Plan of Action (JCPOA) under the Obama administration, many scholars marked this event as a positive turning point. In that year, «Iran agreed a long-term deal on its nuclear programme with a group of world powers known as the P5+1 – the US, the U.K., France, China Russia and Germany»¹¹. It was signed in order to limit Iran’s nuclear activity which had been highly criticized by the neighboring States. According to it, Iran would have proceeded with the enrichment of uranium which would have been used in the construction of nuclear weapons; it also agreed that it «will keep the stockpile’s level of enrichment at 3.67»¹². Obama has repeatedly argued that the JCPOA would have been very useful for the security of the international community because it would have prevented Iran from building nuclear weapons secretly. On the other side, Iran agreed to be subject to various inspections promoted by the International Atomic Energy Agency (IAEA) who would have monitored Iran’s activity so that it would not be able to transgress the JCPOA’s restrictions. Nevertheless, since 2016 Iran has again been subject of many economic sanctions promoted by the US. On this regard, the American Congress passed a Resolution to renew the sanctions on trade, energy, security, and banking sectors for another ten years¹³, although President Obama refused to sign.

¹⁰ *Ibidem*.

¹¹ BBC NEWS, *Iran Nuclear Deal*, (11th June 2019), available at <https://www.bbc.com/news/world-middle-east-33521655>

¹² *Ibidem*.

¹³ GAWDAT B., *US-Iran Relations under the Trump Administration*, Mediterranean Quarterly, Volume 28, Number 3, September 2017, pp.93-111.

1.2 Trump's Presidency

The domestic situation towards Iran is very unstable as the international one. Iran's geographic position is very close to two of US's strongest allies in that region: Saudi Arabia and Israel, who pleased Trump to increase the sanctions against Iran in order to prevent any economic growth of the nation. Iran's strength in the international spectrum is represented by its grand oil and hydrocarbon reserves; for this reason, Trump perceives it as an unstoppable threat. These sanctions tried over time to discourage any kind of investment in Iran and have actually reached this goal because many foreign companies decreased substantially their investments in the region after the adoption of these sanctions. It is important to say that, since 2016, Iran's economic conditions have significantly bettered mainly due to the improvements of the oil sector. The entry into force of the Nuclear Deal in 2016 represented a turning point in Iran's position because it achieved to almost fully recover from the drastic consequences of the previous economic sanctions. However, since Trump's election, the anti-Iran campaign remained a focal point of his administration. Unlike the European Union (EU), who evaluated this engagement with Iran as highly profitable, the US felt very threatened by Iran. This was mainly due to the fact that Trump recognized the importance of Iran in the Middle East and South Asia thanks to its involvement in major crises of the region – such as those in Lebanon, Syria, Yemen, Afghanistan and Iraq.

Before Trump, other administrations had already accused the IRGC of being involved in human rights violations and illegal nuclear programs which would have threatened the security of the whole international community. For example, back in 2007, the US Department of Treasury made a Press Release so-called 'Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism'¹⁴ where it accused the Quds Force of supporting terrorism. When in on the 13th October 2017 the Treasury Department recalled this Press Release, it was not surprising. Following these events, on May 2018, President Trump decided to withdraw from the JCPOA¹⁵ and restored the sanctions previously made against Iran. After this unilateral decision of the US, the Iranian President Rouhani announced that Iran would have suspended its engagement in the JCPOA and

¹⁴ US DEPARTMENT OF THE TREASURY, PRESS CENTER, *Fact Sheet: Designation of Iranian Entities and Individuals for Proliferation Activities and Support for Terrorism*, (October 25th, 2007) <https://www.treasury.gov/press-center/press-releases/pages/hp644.aspx>.

¹⁵ EL-GHOBASHY T., BIRNBAUM M., MORELLO C., *Iran Announces I will Stop Complying With Parts of Landmark Nuclear Deal*, (May 8th, 2019) Wash. Post.

would have not respected anymore the restriction imposed by the Nuclear Deal.¹⁶ In order to further weaken Iran's influence in the region, on the 8th of April 2019, Trump announced that his administration would have designated the IRGC as a foreign terrorist organization (FTO) under Section 219 of the Immigration and Nationality Act (INA)¹⁷. As a consequence, Major General Mohammad Ali Jafari, head of the IRGC, didn't miss the opportunity to warn the US about the possibility of losing its 'current status of ease and serenity'¹⁸ in the neighbor region of Iran. On the 10th of April 2019, Senator Rand Paul asked the Secretary of State Mike Pompeo to make some clarifications regarding Trump's statement. Pompeo had been asked whether the AUMF could have still be applied to the actual situation between Iran and the US and he argued that: « The legal question I will leave to counsel. The factual question with respect to Iran's connections to Al-Qaeda is very real. They have hosted Al-Qaeda. They have permitted Al-Qaeda to transit their country. There's no doubt there is a connection between the Islamic Republic of Iran and Al-Qaeda»¹⁹.

However, the answer of Iran's Supreme National Security Council arrived quickly by labeling the US Central Command as a terrorist organization on the 11th of April 2019. Trump also underlined that fact that, by labeling the IRGC as FTO, he discouraged any other nation to have any kind of engagement with it. He also offered a further explanations of the reasons that 'forced' him to take this decision: « This unprecedented step, led by the Department of State, recognizes the reality that Iran is not only a State sponsor of terrorism, but that the IRGC actively participates in, finances, and promotes terrorism as a tool of Statecraft. The IRGC is the Iranian government's primary means of directing and implementing its global terrorist campaign. This designation will be the first time that the US has ever named a part of another government as an FTO. It underscores the fact that Iran's actions are fundamentally different from those of other governments. This action will significantly expand the scope and scale of our maximum pressure on the Iranian regime. It makes crystal clear the risks of conducting business with, or providing support to, the IRGC. If you are doing business with the IRGC, you will be bankrolling terrorism. This action sends a clear message to Tehran that its support of terrorism has serious consequences. We will continue

¹⁶ *Ibidem*.

¹⁷ TRUMP D.J., *Statement of the US Designation of Iran's Islamic Revolutionary Guard Corps as a Foreign Terrorist Organization*, (2019) Daily Comp. Pres. Doc. No. 212 (April 8th).

¹⁸ FARS NEWS AGENCY, *Deputy FM: US Strategic Mistake Against IRGC to Change Iranian Forces' Behavior Towards Americans*, (April 9th, 2019).

¹⁹ AM. JOURN. INT. LAW, *Trump Administration's Iran Policies Raise Questions About the Executive's Authority to Use Force Against Iran*, (2019) *The Am. Journ. Int. Law*, 113(4), pp. 845-49.

to increase financial pressure and raise the costs on the Iranian regime for its support of terrorist activity until it abandons its malign and outlaw behavior»²⁰. These accuses were made on the basis of the State Department's Press Release of the 8th of April 2019 which additionally argued that Iran was held responsible for the assassination of the overall number of 603 American people serving in Iraq since 2003²¹.

In May 2019, Trump administration had already decided to take some preemptive actions in order to discourage Iran from conducting any attack toward the US. The White House announced that the US was sending an aircraft carrier strike and Air Force bombers to the Middle East because of «troubling and escalatory indications and warnings» related to Iran²². The National Security Adviser, John R. Bolton, released a report arguing that «the deployment was intended to send a clear and unmistakable message to the Iranian regime that any attack on the US interests or on those of our allies will be met with unrelenting force»²³. As a response to this undemocratic and unauthorized decision taken by the Trump Administration, a bipartisan group of senators accused it of trying to circumvent the Congress taking advantages of its emergency powers²⁴. The letter reads as follows: «Given that growing risk, we want to reiterate that, as of this date, Congress has not authorized war with Iran and no current statutory authority allows the US to conduct hostilities against the government of Iran. To that ends, we expect the administration to seek authorization prior to any deployment of forces into hostilities or areas where hostilities with Iran are imminent. Article One, Section 8 of the US Constitution provides Congress the exclusive power to declare war. It is critical that Congress fully retain and enforce this authority»²⁵. Few days after, Iran shot down an unmanned aerial vehicle of the US over the Strait of Hormuz. The American RQ-

²⁰ THE WHITE HOUSE, STATEMENTS AND RELEASES, *Statement from the President on the Designation of the Islamic Revolutionary Guard Corps as a Foreign Terrorist Organization*, (April 8th, 2019), available at: <https://www.whitehouse.gov/briefings-statements/statement-president-designation-islamic-revolutionary-guard-corps-foreign-terrorist-organization/>.

²¹ *The State Department Designates Iran's Islamic Revolutionary Guard Corps as a Foreign Terrorist Organization*. (2019). Am. Journ. Int. Law, 113(3), pp. 609-613.

²² WONG E., *Citing Iranian Threat, US sends Carrier Group and Bombers to Persian Gulf*, (May 5th, 2019) The New York Times, available at: <https://www.nytimes.com/2019/05/05/world/middleeast/us-iran-military-threat.html>.

²³ *Ibidem*.

²⁴ EDMONDSON C., *Senates Votes to Block Trump's Arms Sales to Gulf Nations in Bipartisan Rebuke* (June 20th, 2019) The New York Times, available at: <https://www.nytimes.com/2019/06/20/us/politics/saudi-arms-sales.html> and BARRETT T., FORAN C., *Senate passes Iran War Powers Resolution despite Trump's opposition* CNN Politics, (February 13th, 2020) available at: <https://edition.cnn.com/2020/02/13/politics/war-powers-Resolution-vote-senate-iran/index.html>.

²⁵ US DEPARTMENT OF DEFENSE PRESS RELEASE, *Statement from Acting Secretary of Defense Patrick Shanahan on Additional Forces to US Central Command* (June 17th, 2019).

4A had been considered a « massive surveillance platform in the sky ». Although the US confirmed the time and the general location of the attack, US Central Command argued that « the drone was flying in international airspace »²⁶. However, differently from the attacks conducted previously by the US, Iran decided to send a letter to the UN Security Council. According to the content of the letter, Trump administration was clearly conducting « spying operations» and thus, based on these evidences, Iran had shot down the drone backed of its inherent right of self-defense under Article 51 of the Charter.

In June 2019, Mary Elizabeth Taylor, the Assistant Secretary of the Bureau of Legislative Affairs of the US, sent a letter to Eliot L. Engel, the Chairman of the House of Commons on Foreign Affairs, declaring that Trump would have not interpreted AUMF 2001 or AUMF 2002 as an excuse for authorizing military force against Iran²⁷. AUMF 2001, in particular, authorizes the President of the US to « use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons»²⁸. While, AUMF 2002 authorizes the President of the US to use force to « (1) defend the national security of the US against the continuing threat posed by Iraq; and (2) enforce all relevant UN Security Council Resolutions regarding Iraq »²⁹. However, Mary Elizabeth Taylor adds that Trump would not have used AUMF 2001 and 2002 as an excuse for attacking Iran EXCEPT « as may be necessary to defend US or partner forces engaged in counter-terrorism operations or operations to establish a stable, democratic Iraq. »³⁰ This explains that, although Trump was not planning to use military force against Iran, he would have considered the idea in order to spread democratic values in the neighbor Iraq if the security of any ally was at stake.

²⁶ NEWMAN L.H., *The Drone Iran Shot Down Was a \$220M Surveillance Monster* (June 20th, 2019) Wired, available at: <https://www.wired.com/story/iran-global-hawk-drone-surveillance/>.

²⁷ TAYLOR M. E., ASSISTANT SEC'Y, BUREAU OF LEGISL. AFF., *Letter from Mary Elizabeth Taylor, Assistant Sec'y, Bureau of Legis. Aff., to Eliot L. Engel, Chairman H. Comm. on Foreign Aff.*, June 28th 2019, available at: <https://perma.cc/9YLU-59FL>.

²⁸ 107TH CONGRESS OF THE UNITED NATIONS, *Authorization to the Use of Military Force*, Pub. L. 107-40, SJ Res. 23 (18 September 2001), available at: <https://www.congress.gov/bill/107th-congress/senate-joint-Resolution/23/text>.

²⁹ 107TH CONGRESS OF THE UNITED NATIONS, *Authorization for the Use of Military Force Against Iraq Resolution of 2002*, Puc. L. 107-243, H.J. Res. 114, (16 October 2002), available at: <https://www.congress.gov/bill/107th-congress/house-joint-Resolution/114>.

³⁰ *Ibidem*.

A month after the downing of the American drone, an action conducted by the American military forces destroyed an Iranian drone near the Strait of Hormuz. In order to justify this action, Trump argued that the drone of the Iranian government was approaching an American vessel and thus, since the various suggestions from the US to move away were ignored, it constituted a serious threat to American security. Even though Trump used self-defense as a justification, he did not send a letter, unlike Iran, to the UN Security Council calling upon Article 51 of the Charter. In July 2019, Iran sent an ultimatum to the EU. It was supposed to stop the plan proposed by the American President; however, it failed. As a consequence, Iran increased its enrichment of uranium from 3.75% to 5%³¹.

Finally, after having exceeded the limits of uranium enrichment set in the JCPOA, Iran was deemed responsible for the attack on Saudi Arabia oil production bases in September 2019. Although Iran refused to take these accusations, Secretary of State Mike Pompeo confirmed that the Trump Administration considered Iran responsible for the drone attack in Saudi Arabia. Many other attacks followed in October, November and December; the greatest one was launched on December 27th, 2019 when the organization Hezbollah was accused of launching dozens of rockets at the Iraqi base in Kirkuk « killing a US contractor and wounding four US services members »³². It followed that the American military forces attacked the Hezbollah group in their basements in Syria and Iraq.

As a response, on the 31st of December a group of pro-Iranian protesters attacked the US embassy in Baghdad as a response to the US aircrafts attacks against the Iran-backed militia in Iraq. US accused Iran's leader saying he would be held responsible and it also deployed 750 troops to protect the embassy. On the 3rd of January 2020 the head of the forces of popular mobilization – together with the Iranian and Iraqi militia mainly Shiite – was killed with Soleimani. On the 8th of January 2020 the Ukrainian Airlines 752 – flight between Tehran and Kiev – was shot down confirming the responsibility of the Iranian hand. Oona Hathaway, Professor of International Law at Yale and Legal Adviser to the Department of Defense during the Obama Administration, in her book *The Internationalists: How a*

³¹ WINTOUR P., *Iran's production of enriched uranium rises tenfold in two months* (November 4th, 2019), The Guardian, available at: <https://www.theguardian.com/world/2019/nov/04/irans-production-of-enriched-uranium-rises-tenfold-in-two-months>.

³² LEE E.C., KUBE C., *Trump authorized Soleimani's killing 7 months ago, with conditions*, (January 13th, 2020) NBC News, available at: <https://www.nbcnews.com/politics/national-security/trump-authorized-soleimani-s-killing-7-months-ago-conditions-n1113271>.

Radical Plan to Outlaw War Remade the World'³³ pointed out that many American Presidents, before Trump, adopted their powers during wartime in a very expansive way. Trump has been acting under the guidelines given by his lawyers, and the Congress still doesn't have the juridical capacity to adequately answer these excesses of executive's authority. An Official White House report was sent to the Congress justifying the attack on Soleimani, however, the 'imminent threat' requirement was absolutely absent from the report. On February 14th, 2020, the Chairman of the House Foreign Affairs accused Trump administration of bypassing the Congress during the assassination of Major General Soleimani. In response, he argued that the strike was «consistent with a longstanding interpretation of the President's authority» under Article 2 of the American Constitution and under the AUMF 2002³⁴. In February 2020 the Senate finally passed a 'Iran War Powers' Resolution which was approved although opposed by Trump³⁵. In this way, Trump could use his powers only after being authorized by a war declaration or specific authorization.

It has been said that Trump was planning to kill Soleimani much time before the real assassination, excluding then the possibility of self-defense against an 'imminent threat', because the Iranian Major General movements had been tracked for years. At the time when Trump came into office, Mike Pompeo was Trump's first CIA Director and he had already showed Trump his intention to take further and more aggressive approach to Soleimani's program. Back at the time of Bush's Presidency, the President had already signaled the Quds Force as a terrorist organization. Also, President Obama had imposed new sanctions on Soleimani. Thus, the tensions between Iran and the US have a long history but they have been overexaggerated during Trump's Presidency.

³³ BRADLEY A., *The Internationalists: How A Radical Plan to Outlaw War Remade the World* (2018), Am. Journ. Int. Law, 112(2), pp. 330-335.

³⁴ MANGAN D., *House Foreign Affairs Chairman blasts Trump administration for report on Soleimani Killing* (February 14th, 2020), CNBC available at: <https://www.cnn.com/2020/02/14/trump-administration-issues-report-on-soleimani-killing.html>.

³⁵

2. CHAPTER II: Analysis of the facts under international law

The assassination of General Soleimani represents a highly complex case if analyzed under the international obligations that States shall respect. Recalling the January 8th letter to the UN, the operational rationale adopted by the US was that «the United States has undertaken certain actions in the exercise of its inherent right of self-defense. These actions were in response to an escalating series of armed attacks in the recent months by the Islamic Republic of Iran and Iran-supported militias on United States forces and interests in the Middle East region, in order to deter the Islamic Republic of Iran from conducting or supporting further attacks against the United States or United States interests, and to degrade the Islamic Republic of Iran and Islamic Revolutionary Guard Corps Quds Force-supported militia's ability to conduct attacks.»³⁶.

The strike under study raised multiple questions with regard to the complexity of the operational decisions adopted by the US government. Multiple attacks were addressed to some US bases in Iraq over the months that preceded Soleimani's assassination; many of which posed a serious threat to the security of American structures and citizens. The US justification for the January 3rd strike was centered on the exercising of its inherent right of self-defense in accordance with Article 51 of the UN Charter³⁷, which is one of the exceptions to the *jus cogens* prohibition of the use of force³⁸. In particular, the Trump administration soon specified that the military operation was intentionally aimed at deterring future attacks on diplomatic bases and citizens from a State-actor – Soleimani – who was already labeled as the head of a terroristic association – the Quds Forces.

Differently from the previous 'targeted killings' conducted by the US, in this case, the target chosen was the Major General of a military branch of the National Guard Corps of Iran, accused of being the prosecutors of the many attacks against the American troops in the previous months. It distances a lot from the US state-practice since the declared 'war on terror' for the 9/11 attacks. During the years, the US military troops have frequently used the Unmanned Aerial Vehicles (UAVs) for military operations, although they usually focused

³⁶ UNSC, *Letter*, Doc S/2020/20, 9 January 2020, cit. 1.

³⁷ *Ibidem*.

³⁸ MARCHISIO, S., *Corso di diritto internazionale*, Second Edition, Torino (2017) p. 314.

on targets that were part of terrorist organizations such as Al-Qaeda³⁹. The use of drones for military purposes has been increasingly criticized with regard to its conformity with international obligations such as *jus ad bellum*, international humanitarian law (IHL), and international human rights law (IHRL)⁴⁰.

³⁹ BRECCIA P., *Legittima Difesa e Targeted Killings: gli Stati Uniti e il 'Caso Soleimani'* ISSN 2284-3531 *Ordine internazionale e dei diritti umani* (2020) p. 278.

⁴⁰ KRETZMER D., *Targeted Killing of Suspected Terrorists: Extra-Judicial Executions or Legitimate Means of Defense?*, *Eur. Journ. Int. Law*, 2005, pp.171-212.

2.1 The inherent right of self-defense

The case under study is a very complex one, which encompasses multiple spheres of international law. First of all, it is centered on the inherent right of States of resorting to the use of force when they suffer an armed attack – as the UN Charter suggests – but also when they are certain that an imminent attack is going to be launched against them⁴¹. The existence of an ‘aggression’ is the principal requirement for the application of any measure of self-defense, without it, the resort to the use of force is neither necessary nor proportionate. Although in the letter submitted to the UN, the US makes reference to the series of escalating attacks that preceded the January 3rd strike, it is still contested the fact that the State of Iran could be deemed responsible for those operations⁴². In addition, neither the attack on the American Embassy in Baghdad, nor the previous events that occurred in June and July 2019, can arguably amount to an armed attack by Iran or Iraq against the US in terms of scale and effects⁴³. On this regard, the ICJ in the *Nicaragua case* argued that it is necessary to make a distinction between «the most grave forms of the use of force – those constituting an armed attack – from other less grave forms»⁴⁴. This definition is crucial when triggering Article 51 since «in the case of individual self-defense, the exercise of this right is subject to the State concerned having been the victim of an armed attack.»⁴⁵ Although strongly criticized, it is still used as a threshold for the evaluation of the intensity of the use of force. This opinion is also backed by the 2005 Executive Committee of International Law Association (ILA), who approved a mandate for the Use of Force Committee to produce a report on the meaning of war or armed conflict in international law⁴⁶. It found two components of an armed conflict: the existence of organized armed groups and engaged in fighting of some intensity.

With regard to any definition – broader or stricter –, it was repeatedly affirmed that no ongoing armed conflict exists between the two parties. For the same reason, it seems unreasonable appealing to the AUMF 2001 and 2002 and on the ‘war on terror’ campaign promoted by the US as a justification for the use of lethal force. The ILA Committee on the

⁴¹ US SECRETARY OF STATE DANIEL WEBSTER, 24 April 1841, in *Caroline Case*, 29 British and Foreign State Papers (1841) pp.1137-1139.

⁴² O’CONNELL M.E., *The killing of Soleimani and International Law*, in EjiTalk, available at: <https://www.ejiltalk.org/the-killing-of-soleimani-and-international-law/>.

⁴³ *Ibidem*.

⁴⁴ ICJ, *Military*, Judgement, ICJ Reports 1986, par. 191, cit. 4.

⁴⁵ *Ibidem*, par. 195.

⁴⁶ COMMITTEE ON USE OF FORCE, *Final Report on the Meaning of Armed Conflict in International Law*, in *International Law Association*, (The Hague, 2010) pp. 1-2.

Use of Force argued that « an armed attack that is not part of intense armed fighting is not part of an [international] armed conflict»⁴⁷. Thus, any attack previous to January 3rd, 2020 would not be included in such a ‘intense armed fighting’ and the targeted killing of Soleimani is the only event that could be considered a ‘first shot’ in this crisis⁴⁸.

The long-established features of the right to self-defense arise from the *Caroline case*⁴⁹. In addition, the US Secretary of State Daniel Webster derived that States can invoke their right of preemptive self-defense when the « necessity of self-defense (is) instant, overwhelming, leaving no choice of means and no moment of deliberation»⁵⁰. This test is still accepted and applied by States, although international law has evolved over the years and the concept of ‘pre-emptive self-defense’ was not reported in any subsequent treaty – most importantly in the UN Charter. To the extent that the Charter states that an armed attack must occur before the victim State can resort to self-defense, it would exclude any possibility of using force in a preemptive way.

Nevertheless, the resort to Article 51 must be also evaluated with respect to the parameters of proportionality and necessity of the military action⁵¹. This would exclude any unnecessary use of lethal force in circumstances in which it cannot be proven the existence of a real imminent threat. When deciding how to act in case of an imminent attack, States must determine the aims and the scope of the force that will be used and the tools that will be adopted to achieve the preestablished objectives.⁵² The principle of proportionality is crucially important both in *jus ad bellum* that in *jus in bellum* because it involves the previous evaluation of whether the possible damages that civilians would suffer – in case of an attack – exceed the advantages that the acting State seeks to obtain⁵³. On the other hand, the principle of necessity is generally used to determine whether the force adopted was undoubtedly necessary to act on behalf of the inherent right of self-defense⁵⁴. The fact that the US continues to adopt a personal interpretation of the international obligations fears the

⁴⁷ *Ibidem*.

⁴⁸ ICJ, *Military*, Judgement, ICJ Reports 1986, par. 195, cit. 4.

⁴⁹ United States Supreme Court, *The Caroline v. United States*, 11 U.S. 496 (1813) available at: <https://supreme.justia.com/cases/federal/us/11/496/>.

⁵⁰ US SEC. OF ST. WEBSTER D., *Caroline*, cit. 42, pp.1137-1139.

⁵¹ MARCHISIO S., *Corso*, cit. 39, p. 316.

⁵² GARDAM J., *Proportionality and Force in International Law*, Volume 87, in Am. Journ. Int. Law, 1993, pp.391-413.

⁵³ International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12th August 1949, and relating to the Protection of Victims and International Armed Conflict (Protocol I)*, 8 June 1977, 1125 UNTS 3.

⁵⁴ *Ibidem*.

international community; if the whole world adopted these state-practices there would be serious consequences.

Some scholars argued that the American military operation should be not considered a breach of any international obligation while Iran should be deemed responsible for its unlawful reaction. Some argued that the precedent attack at the US Embassy in Baghdad and the other previous attacks made by Iran justify the American resort to self-defense⁵⁵. Others argued that the US had never made reference to the use of any kind of preemptive self-defense because it made no mention of an imminent armed attack⁵⁶. Others, instead, denounced the violation, by both parties, of the norms of international law that must apply in this specific case⁵⁷. However, the focal point of this diplomatic crisis remains on the US approach to counter-terrorist operations and the lawfulness of the CIA-operated reactions to future and already conducted attacks⁵⁸.

Going back to the American interpretation of preemptive self-defense, In *Understanding the Bush Doctrine* Robert Jervis wrote as follows: « The doctrine has four elements: a strong belief in the importance of a State's domestic regime in determining its foreign policy and the related judgement that this is an opportune time to transform international politics; the perception of great threats that can be defeated only by new and vigorous policies, most notable preventive war; a willingness to act unilaterally when necessary; and, as both a cause and a summary of these beliefs, an overriding sense that peace and stability require the US to assert its primacy in world politics »⁵⁹. This interpretation was firmly criticized over the years because it is doubtful whether it acts within the limits of the UN Charter. Distort and reshape the framework for the applicability of self-defense, weaken the requirements for the

⁵⁵ RONZITTI N., *Lo Scontro USA-Iran alla prova del diritto internazionale*, (Jan. 13th, 2020) available at: <https://www.affarinternazionali.it/2020/01/scontro-usa-iran-diritto-internazionale/>.

⁵⁶ TALMON S., HEIPERTS M., *The US killing of Iranian General Qasem Soleimani: of wrong trees and red herring, and why the killing may be lawful after all*, (23rd January 2020) in German Practice of International Law, available at: <https://gpil.jura.uni-bonn.de/2020/01/the-u-s-killing-of-iranian-general-qasem-soleimani-of-wrong-trees-and-red-herrings-and-why-the-killing-may-be-lawful-after-all/>.

⁵⁷ MILANOVIC M., *Iran Unlawfully Retaliates Against the United States, Violating Iraqi Sovereignty in the Process*, (Jan. 8th, 2020), in Eur. Journ. Int. L., available at: <https://www.ejiltalk.org/iran-unlawfully-retaliates-against-the-united-states-violating-iraqi-sovereignty-in-the-process/>.

⁵⁸ SHUKLA A., *The Killing of General Soleimani – A Blatant Violation of International Laws* (Jan. 14th, 2020) in Jurist, available at: <https://www.jurist.org/commentary/2020/04/archit-shukla-general-soleimani-international-law/>

⁵⁹ JERVIS R., *Understanding the Bush Doctrine*, (2003), in Political Science Quarterly, Vol. 118, N.3 pp.365-388

adoption of the use of force, will bend the very nature of the law of the Charter and the set of international norms that regulates it⁶⁰.

The same rationale was used during the drone strike that killed the Iranian Major General, after President Trump's authorization. It was previously announced by American intelligence services that future attacks had been planned against American diplomats on the region, although these assumptions have never been confirmed. The Pentagon itself did not cite the 'imminent threat' justifications in its initial Statement on the matter. Oona Hathaway told the Washington Post that Trump administration still has to demonstrate that an actual imminent threat was posed against American diplomats and diplomatic bases in the Middle East region⁶¹. In addition, there is profound miscalculation in Trump's decision to finally kill the Iranian Major General. The January 3rd strike was concluded in the elimination of the second most important State-actor of a sovereign State, on the territory of third sovereign State. The US has interpreted the international obligations that regulate the relations between States in a very broad way and have probably crossed the line of the lawfulness of its actions. It is a long-standing tradition in the practice of the US which has culminated in the assassination of an Iranian State-actor which can be hardly considered legitimate. The strike against Soleimani could arguably be lawful only if the US could establish that: 1) Soleimani was operationally involved in the planning of future attacks against US assets and personnel, 2) that Iran was committed to pursuing these attacks, 3) that killing Soleimani would in fact have disrupted those attacks, 4) that killing him was the only way of disrupting those attacks, 5) that killing him in Iraq was necessary to disrupt those attacks⁶².

⁶⁰ HENKIN L., HOFFMANN S., KIRKPATRICK J., GERSON A., ROGERS W., SCHEFFER D., *Right v. Might: International Law and the Use of Force*, Vol. 85, January 1991, pp. 201-204.

⁶¹ SHETH S., *There are 3 huge loopholes in Trump's justification for assassinating Iran's top general, Qassem Soleimani* (Jan. 6, 2020) Business Insider, available at: <https://it.businessinsider.com/loopholes-trump-justification-qassem-soleimani-assassination-imminent-threat-2020-1?r=US&IR=T>.

⁶² MILANOVIC M., *The Soleimani Strike and Self-Defence Against an Imminent Armed Attack*, Jan. 7 2020, Eur. Journ. Int. Law Talk, p. 6.

2.2 Breaching sovereignty of a third State

According to the evidences outlined in the previous paragraph, it was pointed out that the case under study does not follow the framework for a lawful resort to the use of force. When Article 51 loses its applicability – such as in this context – due to lack of requirements, the possible ways in which a targeted killing conducted on a foreign territory is legitimate are through the consent of the second State or if the ‘unwilling or unable’ condition applies – as it will be explained through this paragraph.

The International Law Commission (ILC) specified that there are some circumstances which would exclude the wrongfulness of an act that would otherwise be considered illegal. Among these circumstances precluding wrongfulness, is that of consent. It applies when a State is infringing the right of another State but the two engage in a contractual relation, granted by both parties, by which the illegality of the act is excluded⁶³. Article 20 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts (DARSIWA) states that: «valid consent by a State to the commission of a given act by another State precludes wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent»⁶⁴. The application of Article 20 will be crucial during the evaluation of January 3rd strike’s conformity with the international law obligations.

As said before, the resort to the use of force on the territory of another State is legitimate through the consent of the second State. It is the case of many CIA-operated drone attacks that killed numerous targets both in Yemen and in Pakistan under the Obama administration. Washington started conducting unmanned drone strikes in the tribal areas of Pakistan in 2004. The aim was to perform targeted killings of the terrorists and terrorist suspects hidden in the zone but strikes killed civilians too. The General David Petraeus, former head of the US Central Command, even stated that by conducting drone strikes, the US was actually helping Pakistan. At the same time, he added that the right of self-defence came to include also the right to act pre-emptively within the boundaries of another sovereign State as it was justified by the responsibility that the US has in fighting international terrorism. In other words, by targeting militants in Pakistan, Washington was acting as a

⁶³ MARCHISIO S., *Corso*, cit. 39, p. 313.

⁶⁴ INTERNATIONAL LAW COMMISSION, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No. 10 (A/56/10).

responsible great power. In 2013, the National Assembly of Pakistan approved a Resolution stating that unilateral drone attacks were not legal and had to be considered a violation of the UN Charter⁶⁵. Despite the fact that the Resolution was the outcome of more than eleven hours of discussion, the day after, a new American drone attack was conducted. But the majority of those were not authorized, such as the military operation conducted in January 2006 and aimed at the assassination of Bin Laden's deputy, Aiman al-Zawahiri⁶⁶.

With regard to the case under study, the US army has acquired the authorization to act on Iraqi soil since the months that followed the 9/11 attack. In May 2003 the US and the UK submitted a letter to the President of the Security Council «acknowledging their responsibilities as occupying powers under international law»⁶⁷. In the same month, the Security Council adopted the Resolution 1483 which recognized the US and UK as «occupying powers under unified command»⁶⁸. Since then, the presence of the US military troops in Iraq was justified by Iraqi consent for the purposes of the restorations of «Iraqi's sovereignty and territorial integrity, recognizing the right of the Iraqi people to establish a representative government based on the rule of law»⁶⁹.

Although the American troops' presence on the Iraqi soil was justified by Resolution 1483, it doesn't preclude the wrongfulness of the US conduct of a drone strike on the territory of Iraq. Neither it took under consideration the required consent – which was not even demanded – by the Iraqi government for the execution of an Iranian State-actor on its territory. By using force in Iraq on behalf of the self-defense rationale against Iran, the US has conducted a severe violation of Iraqi sovereignty. First of all, Iraqi Prime Minister underlined that the attack represented a «flagrant violation of the conditions authorizing the presence of US troops»⁷⁰. Later, the Iraqi Permanent Representative to the UN confirmed that Iraq had never given its consent for the conduct of such military operations and, absent the Iraqi

⁶⁵ For the complete text, see http://www.na.gov.pk/en/Resolution_detail.php?id=140, 10th December 2013 (last accessed June 2018).

⁶⁶ BLUM G., HEYMANN P., *Law and Policy of Targeted Killing*, Vol. 1, Harv. Nat'l Sec. J. 145 (2010).

⁶⁷ MURPHY E., *Security Council Recognition of US Postwar Role in Iraq*, in Am. Journ. Int. L., Vol. 97, (July 2003) pp. 681-683. available at: <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/security-council-recognition-of-u-s-postwar-role-in-iraq/BE11F58C13ABF9CD4FD1BD7B1DBD87B3>.

⁶⁸ UNSC, Resolution 1483, May 22nd 2003, S/RES/1483, paras. 4-5.

⁶⁹ MURPHY E., *Security*, cit. 68, pp.681-683.

⁷⁰ COMAR D.I., *The United States' Assassination of Iranian Military Leader Violates International Law*, (Jan. 3rd, 2020) in Human Rights Pulse, available at: <https://www.humanrightspulse.com/mastercontentblog/the-united-states-assassination-of-iranian-military-leader-violates-international-law>.

authorization, the US' decision to employ the use of lethal force on Iraqi soil represented a serious breach of international norms found in the UN Charter⁷¹.

Another circumstance precluding the wrongfulness of the violation of a State's territorial sovereignty is if the « second State is unwilling or unable to stop armed attacks against the first State launched from its territory»⁷². In the present case, Iraq has suffered a profound attack although it demonstrated that it was not «implicated in any imminent attacks against the US»⁷³. Before conducting the operation on Iraqi soil, the US should have proved that Iraq was not able to protect its diplomats and diplomatic bases from the 'imminent threat' posed by Soleimani – specifically on Iraq's territory– and thus, these extreme circumstances required an immediate reaction by the US to compensate Iraq's 'unwillingness or inability' to act. However, with regard to the case under study, President Trump has never resorted to the 'unwilling or unable' rationale.

Based on the evidences that the 'consent' requirement was not respected, and the 'unwilling/unable' rationale was excluded, it seems clear that the present drone strike should be amounted as an armed attack against the Iraqi State. Eventually, the assassination of an Iranian Major General on the territory of a third sovereign State by the US army was defined as the « intentional intervention in or against another State without that State's consent or subsequent acquiescence, which is not legally justified»⁷⁴. Among the many interpretations of the phenomenon of 'armed attack', the ICJ's distinction between «the most grave forms of the use of force» and the «other less grave forms»⁷⁵ remains one of the most used in order to determine the intensity of an attack. The UN General Assembly gave further guidance in order to decipher which events could be amounted as such. Article 1 of the Resolution 3314 reports as follows: «Aggression if the use of armed force by a State against the sovereignty, territorial integrity and political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition».⁷⁶ Always in

⁷¹ United Nations Security Council, *Identical Letters dated 6 January 2020 from the Permanent Representative of Iraq to the United Nations Addressed to the President of the Security Council*, S/2020/15, January 6 2020, UN Doc. S/2020/15, New York.

⁷² ALSTON, P., *The CIA and Targeted Killings Beyond Borders*, New York University Public Law and Legal Theory Working Papers, Paper 303.

⁷³ MILANOVIC M., *The Soleimani*, p. 2, cit. 62.

⁷⁴ WILMHURST E., *Principles of International Law on the Use of Force by States in Self-Defense*, (2005), Chatman House, p.6.

⁷⁵ ICJ, *Military*, para 191, cit. 4.

⁷⁶ United Nations General Assembly, Resolution 3314 (XXIX), 14 December 1974, A/RES/3314, New York.

accordance with the definition reported in the Resolution 3314, the case under study would also represent a form of aggression as «(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»⁷⁷.

⁷⁷ *Ibidem*.

2.3 Targeted killings

Based on the evidences that Article 51 could arguably be triggered in the case under study, I will now analyze the legitimacy of the targeted killing of General Soleimani. The use of drones in targeted killing operations are not intrinsically unlawful; in particular, these military tools are employed in counter-terrorism operations in order to avoid the risks of taking action on the field. General Soleimani was already labeled as the head of a terroristic organization who was deemed responsible for the attacks suffered by the US in the preceding months. However, the use of drones for targeted killings has risen – over the years – multiple doubts regarding the conformity of these operations with the international law system.

In order to eradicate all the inconsistencies found in the conduct drone strikes and other forms of targeted killings⁷⁸, in 2013, the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Ben Emmerson, issued a Report⁷⁹. His work was combined with the UN Report⁸⁰ by the UN Special Rapporteur on Extrajudicial Executions, Christof Heyns, and based on the antecedent Special Rapporteur Philip Alston⁸¹. Emmerson recognized that « In the United States, the involvement of CIA in lethal counter-terrorism operations in Pakistan and Yemen has created an almost insurmountable obstacle to transparency. This is because, just as all secret services, it operates on the basis of neither confirming nor denying its operations. Similarly, the conduct of covert targeting operations by United States special forces under the auspices of the Joint Special Operations Command is almost invariably classified. In June 2012, the President of the United States, Barack Obama, declassified the fact that the United States was engaged in conducting covert anti-terrorism operations in Somalia and Yemen, although no information about individual operations was released at that time. Nevertheless, even the existence of the CIA programme in Pakistan remains technically classified. This stance has become increasingly difficult to justify, especially because remotely piloted aircraft operations in Pakistan have been publicly acknowledged by the President and the Secretary of State»⁸².

⁷⁸ KNUCKEY S., *Key Findings in New UN Special Rapporteur Report on Drones*, in Just Security (March 2014) available at: <https://www.justsecurity.org/7819/key-findings-special-rapporteur-report-drones/>.

⁷⁹ United Nations General Assembly, *Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, Emmerson B., A/68/389, 18 September 2013, New York, available at: <https://digitallibrary.un.org/record/759181?ln=en>

⁸⁰ United Nations General Assembly, *Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, Heyns C., A/68/382, 13 September 2013, New York, available at: <https://undocs.org/A/68/382>

⁸¹ United Nations Human Rights Council, *Special Rapporteur on Extrajudicial Summary or Arbitrary Executions*, Alston P., A/HRC/17/28/Add.2, 9 May 2011, Geneva, available at: <https://digitallibrary.un.org/record/705553?ln=en>.

⁸² UNHRC, *Special Rapporteur*, A/71/384, cit. 80.

Mr. Emmerson noted that the conduct adopted by the US has, over the years, increased the doubts regarding its conformity with the principles of international law such as the resort to self-defense, and the duty towards IHL and IHRL norms, in particular the right to life of every citizen⁸³.

Then, the General Assembly adopted the Resolution 68/178⁸⁴ on the protection of human rights and fundamental freedoms while countering terrorism. In paragraph 6 (f) States are urged to « ensure that any measure taken or means employed to counter terrorism, including the use of remotely piloted aircraft, comply with their obligations under international law, including the Charter of the United Nations, human rights and international humanitarian law, in particular the principles of distinction and proportionality»⁸⁵. In particular, during the 27th and 28th Meetings of the Third Committee of the United Nations 68th General Assembly, the topic of drone strikes was scrutinized. The introductory remarks were held by Christof Heyns, who underlined that the use of drones is not illegal, but the core question is related to law, policy and practice of their use. In other terms, he emphasized that drone attacks should comply with the existing frameworks, in particular with regard to IHL and IHRL. He added that to make the two sets of norms meet is a priority of the whole international community, which should always bear in mind the necessity to protect human life.

Based both on the doctrine and on the evidences acquired from the analysis of these practices, it seems that with specific reference to UAVs, targeted killing should meet these conditions to be legal:

- a) existence of an armed conflict,
- b) the targeted should be a legitimate military one,
- c) the targeted killing has to be planned and performed so to avoid erroneous casualties,
- d) it should comply with the prohibition to use some weapons, which can cause unnecessary suffering,
- e) military necessity and proportionality shall be evaluated.

⁸³ UNITED NATIONS GENERAL ASSEMBLY, *Universal Declaration of Human Rights*, UN Doc. A/RES/217 (III)A, December 10, 1948.

⁸⁴ United Nations General Assembly, Resolution 68/178, 18 December 2018, A/RES/68/178 available at: <https://digitallibrary.un.org/record/764419?ln=en>.

⁸⁵ *Ibidem*.

In the framework of an armed conflict IHL and IHRL apply, both on the legality of the conduct of the killing and on the measures adopted. Thus, the acting State is not allowed to use these killings as a deterrent or a punishment and it must also be proven that the operation is necessary and proportionate⁸⁶. Most importantly, it shall be ensured that all the alternative measures were exhausted before resorting to the use of lethal force, thus discouraging any kind of preemptive attack⁸⁷. Not very different are the requirements that legitimate the conduct of targeted killings during peacetime. Outside the context of an armed conflict, the proportionality and necessity requirements continue to apply, thus implying that the operation must be proven to be necessary in order to protect the life of other individuals and proportionate with regard to the use of force adopted.

The drone strike of January 3rd did not kill a legitimate military target because the attack consisted in the voluntary and premeditated use of lethal force by one State against a targeted person who was not accused of a crime for which a death penalty was allowed in the territory of the State where the assassination was conducted. The role played by General Soleimani further complicates the analysis of the legitimacy of the strike. Being an Iranian Major General, Soleimani was considered the key actor in directing Iranian operations – and also directing other regions’ decisions, due to the increasing influence of Iran in Middle East. The urgency to kill Qasem Soleimani was justified by the US on the basis of the attacks that took place in the previous months, and on the administration’s certainty that the Major General was planning further attacks. However, in order to conduct a legitimate targeted killing, the US should have proven that Soleimani represented a serious threat to the lives of other American citizens and, thus, killing him was the only possibility available. Even if the inherent right of preemptive self-defense was deemed lawful – such as in the case of a confirmed imminent threat planned from Qasem Soleimani against the US –«it is inconsistent with self-defense to single out one military commander. The right is for a State to defend itself from another State»⁸⁸.

The military operation did not even avoid erroneous casualties, since among the many violations of human rights standards, the January 3rd drone strike caused the death of other people that were travelling with Qasem Soleimani. These arbitrary deprivations of life

⁸⁶ United Nations Human Rights Committee, *Concluding Observations of the Human Rights Committee: Israel, 15*, UN Doc. CCPR/GO/78/ISR, August 21st, 2003.

⁸⁷ *Ibidem*.

⁸⁸ O’CONNELL M.E., *The killing*, cit. 42.

constituted absolutely unnecessary losses of civilians falling outside the requirements of necessity and proportionality. Even in cases of armed conflict, the assassination of non-combatants individuals represents a profound violation of States' duty to respect and ensure the right to life of the civilians⁸⁹.

Even in the context of an armed conflict «the general principle of necessity requires that the defensive military response be a last resort and one that is likely to succeed in accomplishing the lawful objective of defense»⁹⁰. Since the drone strike was conducted during an apparent peacetime period, the US should have resorted to all other possible measures which would have been more proportionate in response to the attacks suffered in precedence. The existence of alternative measures confirms that the assassination of General Soleimani was deliberate and planned without any respect to international law's requirements. Proved that there was not an imminent threat, nor an ongoing armed conflict between the parties, the assassination of Qasem Soleimani was considered an operation neither necessary nor proportionate.

Due to the crucial inconsistencies between international obligations and the state-practice, the US should be incentivized to promote the establishment of a stricter system of law which would significantly limit the parameters for the execution of specific targets in the absence of consent of the second State. Supposing that the US fervently believes it is respecting the framework of international obligations, it is obliged to prove it with consistent demonstrations⁹¹. As the facts confirmed after January 3rd, the targeted killing of the Iranian Major General had totally opposite consequences. The drone strike did not put an end to the ongoing crisis between Iran and the US, neither it has enhanced the international relations between the US and Iraq but, rather, it led to profound instabilities in the international asset.

⁸⁹ ALSTON P., *The CIA*, cit. 72.

⁹⁰ O'CONNELL M.E., *The killing*, cit. 42.

⁹¹ ALSTON P., *The CIA*, cit. 72.

3. CHAPTER III: Comparing case studies

For the features of Soleimani's assassination that I analyzed in the preceding chapter, it becomes increasingly useful for the purpose of my study to bring to the attention of the reader other similar cases which have as protagonists again the US. The main reference is to the operations conducted in self-defense against terrorist 'attacks' since 1998, until the assassination of the fundamentalist Muslim Osama bin Laden – accused of the terrorist attacks of the 11th September 2001. In general, in all cases considered there are many divergent points of view on the conformity of these 'targeted killings' with the international norms of *jus ad bellum*, international human rights law and international humanitarian law – as there are for the case Soleimani. However, many scholars agree on the idea that the US widely resort to the use of force in circumstances in which it resulted unnecessary and disproportionate⁹².

Already in 1998, bin Laden's terrorist group Al-Qaeda was considered «particularly dangerous because of its great resources and multinational following»⁹³. Although the US tried for years to lessen its threat, its power and its influence around the world had continued to increase. For years, the many American administrations underlined the fact that the US was in an armed conflict with Al-Qaeda and that the specific conflict has no territorial limitations⁹⁴. The US' approach to this kind of military actions has been controversial over the years. In general terms, the ban on the assassination of other human beings was codified by the US domestic judicial system in the Executive Order 12333⁹⁵ signed by President Ronald Reagan in 1981. It still provides that «No person employed by or acting on behalf of the American government shall engage in, or conspire to engage in, assassination». However, it seems clear that this ban on assassination has been little respected since the US continued to «use military force to kill individuals whose peacetime actions constitute a direct threat to US

⁹² See: PAUST J., *Self-defense targeting of non-State actors and permissibility of US drone in Pakistan*, (December 2009), in *Journ. of Trans. Law & Policy*, Vol. 19, n.2, p.237. ; and GELLMAN B., PRIEST D., *US Strikes Terrorist-Linked Sites in Afghanistan, Factory in Sudan*, (Aug. 21st, 1998), p. 1; and O'CONNELL M.E., *Unlawful Killing with Combat Drones – A Case Study on Pakistan 2004-2009*, (July 2010) University of Notre Dame, The Law School, Legal Studies Research Paper No. 09-43.

⁹³ COM. APPEAL., *French Says Threat of Terrorist Retaliation Is Stronger Than Ever* (Sept. 4th, 1998) at A5, available in 1998 WL 13975508.

⁹⁴ APV ROGERS, MCGOLDRICK D., *Assassination and Targeted Killing – The killing of Osama Bin Laden*, (July 2011) in *The International and Comparative Law Quarterly* Vol. 60, No. 3 (2011), pp. 778-788.

⁹⁵ Presidential Documents of the United States of America, *Executive Order 12333 – United States intelligence activities*, 4th December 1981, available at: <https://www.archives.gov/federal-register/codification/executive-order/12333.html>.

citizens or US national security»⁹⁶. President Bill Clinton was the first one who initiated the long military campaign against Al-Qaeda by resorting to the use of force in self-defense in Afghanistan⁹⁷. Then, also President George Bush decided to take action on self-defense to answer the 9/11 attacks⁹⁸; and President Barack Obama adopted the same rationale for the assassination of the terrorist leader Osama Bin Laden⁹⁹. Finally, President Trump resorted to the use of force of behalf of the same inherent right during January 3rd strike¹⁰⁰. My goal in this chapter is to delineate how those mechanisms behind these assassinations resemble a constant practice by the US.

⁹⁶ W. HAYS PARKS, SPECIAL ASSISTANT TO THE JUDGE ADVOCATE GEN. OF THE ARMY FOR LAW OF WAR MATTERS, *Memorandum of Law: Executive Order 12333 and Assassination*, The Army Lawyer (December 1989).

⁹⁷ KESSLER G., *Bill Clinton and the missed opportunities to kill Osama bin Laden*, (Feb. 13th, 2016) in The Washington Post, available at: <https://www.washingtonpost.com/news/fact-checker/wp/2016/02/16/bill-clinton-and-the-missed-opportunities-to-kill-osama-bin-laden/>.

⁹⁸ DALEY S., *After the Attacks: The Alliance, For First Time, NATO Invokes Joint Defense Pact With U.S.*, (Sept. 13th, 2001), in The New York Times, available at: <https://www.nytimes.com/2001/09/13/us/after-attacks-alliance-for-first-time-nato-invokes-joint-defense-pact-with-us.html>.

⁹⁹ HERNANDEZ G., *Obama's Counter-Terrorism Speech: A Turning Point or More of the Same?*, (May 27th, 2013), in Eur. Jour. of Int. Law, available at: <https://www.ejiltalk.org/obamas-counter-terrorism-speech-a-turning-point-or-more-of-the-same/>.

¹⁰⁰ CHUNG A., *U.S. 'self-defense' argument for killing Soleimani meets skepticism*, (Jan. 4th, 2020) in Reuters, available at: <https://www.reuters.com/article/us-iraq-security-blast-legal-analysis/u-s-self-defense-argument-for-killing-soleimani-meets-skepticism-idUSKBN1Z301R>.

3.1 US state-practice in targeted killing operations

US state-practice in targeted killing operations has drastically increased over the last twenty years, since the beginning of the so-called “War on terror” in the aftermath of the 9/11 attacks. It was repeatedly pointed out that these American killings – often conducted on the basis of the self-defense justification – are increasingly losing legitimacy¹⁰¹. In the majority of times, the US has failed to provide «relevant information in a systematic manner»¹⁰². Although that, there are also some circumstances in which terrorist organizations undoubtedly represented a serious threat for the security of US diplomats and diplomatic bases.

Differently from the case under study, the majority of targeted killing operations conducted by the US for counter-terrorism purposes were directed at non-state actors. After the 11th September 2001, the UN Security Council approved the Resolution 1368 which accused and condemned the attacks at the World Trade Center and the Pentagon as terrorist acts and a threat for the international peace and security¹⁰³. It also recalled the individual and collective right of States of self-defense in order to stop these attacks and prevent future ones¹⁰⁴. The Resolution 1373 of the UN General Assembly invited the States to engage in a broader counter-terrorism campaign allowing them to adopt any possible measure – including the resort to the use of force. After 9/11 the interpretation of Article 51 was amplified and, as a consequence, it was generally accepted that armed attacks conducted by non-state actors would eventually trigger Article 51¹⁰⁵. This wide application of the right of self-defense led to conduct of military operations that raised multiple questions regarding their conformity with international law obligations analyzed in the previous chapter.

Already before 2001 the interpretation of Article 51 was stretched to include also non-state actors. It was the case when President Clinton authorized ‘Operation Infinite Reach’ through cruise missile strikes against Osama Bin Laden and al-Qaeda bases in Afghanistan on August 20, 1998¹⁰⁶. The attack was justified by the US Ambassador Richardson

¹⁰¹ UN *Special Rapporteur Initiates Investigation into Drone Strikes and Other Targeted Killings*, in Int. Jus. Res. Cent., (Febr. 4th, 2013) available at: <https://ijrcenter.org/2013/02/04/un-special-rapporteur-initiates-investigation-into-drone-strikes-and-other-targeted-killings/>

¹⁰² ALSTON, *The CIA*, cit. 72, p. 29.

¹⁰³ MARCHISIO S., *Le Nazioni Unite, il diritto e il terrore*, in Affari Esteri, 2002, pp. 133-162.

¹⁰⁴ United Nations Security Council, Res. 1368, UN Doc. S/RES/1368 (Sept. 12th, 2001) New York.

¹⁰⁵ PAUST J., *Self-defense*, cit. 94, p.237.

¹⁰⁶ GELLMAN B., PRIEST D., *US Strikes*, cit.94, p. 1.

in the letter to the UN on behalf of the US right of self-defense¹⁰⁷. Of course, back in 1998 the Clinton administration could not argue that an ongoing armed conflict was taking place between the US and al-Qaeda, but that context did not impede the adoption of lawful measures «in response to prior attacks and to prevent these attacks from continuing»¹⁰⁸.

There are significant differences between August 20th, 1998 attack and January 3rd, 2020. The US action in 1998 was authorized by President Clinton in response to a bomb attack by al-Qaeda that hit the American embassies in Dar es Salaam and Nairobi and killed more than 250 people, including American citizens and injured more than 5500 people¹⁰⁹. The intensity of the raid suffered by the American diplomatic bases would amount to the ICJ comprehension of ‘armed attack’ defined in the *Nicaragua case*, thus, creating the foundation for a lawful resort to the use of force. Moreover, the strike conducted on the Afghan territory was not considered a violation of its sovereignty, since the targets were actually found in training camps in Afghanistan¹¹⁰. This situation considerably differs from the illegitimate attack suffered by Iraq on January 3rd. Finally, differently from the events that preceded Soleimani’s assassination, the bomb strikes at the US diplomatic bases that took place in August 1998 were firmly attributed to al-Qaeda militants. In 2001, the Old Federal Court-house sentenced to life in prison four terrorists affiliated to al-Qaeda because accused of being responsible for the 1998 attacks¹¹¹. On the other hand, the US accused the Quds forces for the strikes conducted in June and July 2019 but no significant proves were disclosed¹¹². The American military operation of August 20th, 1998 – that was conducted in self-defense – can be considered a lawful resort to the use of force in accordance with the UN Special Rapporteur, Chris Heyns’ opinion. He noted that «acts of terrorism are the antithesis of human rights, in particular the right to life. In certain exceptional cases, use of deadly force

¹⁰⁷ United Nations Security Council, *Letter dated 98/08/20 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council*, (20 August 1998) S/1998/780, New York, available at: <https://digitallibrary.un.org/record/258713?ln=en>

¹⁰⁸ PAUST, *Self-Defense*, cit. 94, p. 247.

¹⁰⁹ *Ibidem*.

¹¹⁰ PAUST, *Self-Defense*, cit. 94, p. 247.

¹¹¹ WEISER B., *A Nation Challenged: The Courts; 4 Are Sentenced to Life in Prison in 1998 US Embassy Bombing*, (Oct. 19th, 2001), in *The New York Times*, available at: <https://www.nytimes.com/2001/10/19/nyregion/nation-challenged-courts-4-are-sentenced-life-prison-1998-us-embassy-bombings.html>

¹¹² O’CONNELL, *The killing*, cit. 42.

may be permissible as a measure of last resort in accordance with international standards of the use of force, in order to protect life, including in operations against terrorists»¹¹³.

Nevertheless, US state-practice in conducting counter-terrorism military operations obviously increased after the 9/11 attacks suffered. The US aimed at disrupting Al-Qaeda through drone attacks because they were – and still are – considered very precise tools. The first drone launched by the US can be dated back to October 2001 in the Afghan city of Jalalabad¹¹⁴. However, the inconsistencies found in the US state-practice during targeted killing operations also drastically increased after 9/11. This brought the UN Special Rapporteur on Counterterrorism and Human Rights, Ben Emmerson initiated the investigation in 2013¹¹⁵. The principal aim was to determine whether those killings were conducted in conformity with international norms or if they represented extrajudicial executions. On January 24, 2013 Emmerson announced that « In June of last year, at the Human Rights Council in Geneva, a group of States, including two permanent members of the Security Council, as well as Pakistan and a number of other concerned States, made a joint Statement asking me to carry out an investigation, within the framework of this mandate, into the use of drones in the context of counter-terrorism operations»¹¹⁶. In particular, the investigation focused on 33 CIA-operated drone attacks mainly in Pakistan, Yemen and Somalia and underlined the Special Rapporteur's suspicions on the illegality of these attacks¹¹⁷. It was mainly criticized that the US has failed to respect the transparency and accountability requirements for the conduct of such strikes and failed to provide the «legal basis justifying the killings»¹¹⁸.

¹¹³ C HEYNS AND M SCHEININ, *Osama Bin Laden: Statement by the UN Special Rapporteurs on Summary Executions and on Human Rights and Counter-terrorism*, (May 6th, 2011) Office of the High Commissioner of Human Rights.

¹¹⁴ O'CONNELL M.E., *Unlawful*, cit. 92.

¹¹⁵ UNGA, A/68/389, 18 September 2013, cit. 80.

¹¹⁶ *Statement of the UN Special Rapporteur on Counter-terrorism and Human Rights*, available at: <https://www.ohchr.org/Documents/Issues/Terrorism/SRCTBenEmmersonQC.24January12.pdf>

¹¹⁷ KNUCKEY S., *Key Findings*, cit. 79.

¹¹⁸ ALSTON, *The CIA*, cit. 72, p. 50.

3.2 Osama bin Laden's assassination

As the UN Special Rapporteur specified on his report, the targeted killing campaigns conducted by the US lacked in transparency and accountability, together with some clear examples of breaches of international norms.

The Muslim fundamentalist terrorist leader Osama bin Laden was killed by the American Special Forces – Navy Seals – in Abbottabad, Pakistan, the 2nd of May 2011. He was caught in a house and shot multiple times by the US agents. The operation that killed him put an end to a search for the terrorist leader that lasted more than 10 years. The US had intensively looked for him since he was accused of being the prosecutor of the attacks at the World Trade Center and the Pentagon. According to the American position, since 9/11 the US is in an ongoing armed conflict with al-Qaeda, whose bin Laden was considered the leader¹¹⁹.

However, it is still debatable that the US was, specifically when bin Laden was killed, in an ongoing armed conflict with al-Qaeda¹²⁰. According to Article 2 of the Geneva Convention «an armed conflict exists whenever there is resort to armed force between States»¹²¹. Since al-Qaeda is not qualifiable as a State, there cannot be an armed conflict between it and the US. But, as said before, the 2005 Executive Committee of the ILA approved a mandate for the Use of Force Committee to produce a report on the meaning of armed conflict in international law and it found two components:

- a) the existence of organized armed groups
- b) engage in fighting of some intensity

In order to be considered an ‘organized armed groups’ al-Qaeda should, nevertheless, demonstrate «a minimum degree of collectivity and central organization, be organized in a

¹¹⁹ BAKER P., COOPER H., MAZZETTI M., *Bin Laden Is Dead, Obama Says*, (May 1st, 2011), in New York Times, available at: <https://www.nytimes.com/2011/05/02/world/asia/osama-bin-laden-is-killed.html>.

¹²⁰ AMBOS K., ALKATOUT J., *Has 'Justice Been Done'? The Legality of Bin Laden's Killing Under International Law*, in Israel Law Review Vol. 45(2), 2012, pp. 341-366.

¹²¹ International Committee of the Red Cross, *Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, Geneva, 12 August 1949.

hierarchical manner»¹²². These requirements are not found in its decentralized structure that acts on various countries in the world although in a barely interconnected way¹²³.

Thus, it is generally accepted that no armed conflict existed between the two parties at the time when bin Laden was killed. And if an armed attack against the US did not occur, the US should have demonstrated that bin Laden was – in the moment when the US administration authorized his assassination – planning imminent attacks against US civilians and posing a serious threat to their security. Since this possibility was never fully proved, the military operation indirectly violated the principles of necessity and proportionality. Based on these evidences, one could argue that bin Laden assassination resulted in an unlawful extrajudicial execution under international law, but also a violation of US ban on assassination found in the Executive Order 12333¹²⁴.

Moreover, even if one accepted that the US was acting in self-defense in accordance with Article 51 of the UN Charter, it can arguably be accepted that the US has acted in conformity with the principle of States' sovereignty. As it was noted, in order to be lawful «the military action taken would be based on the argument that (i) Pakistan either knew or should have known of Bin Laden's presence and was unable or unwilling to capture him; (ii) that he continued to pose an imminent threat to the US, and (iii) that armed force was necessary and proportionate in addressing that threat»¹²⁵. If point (ii) and (iii) have been already proved not applicable to the present case, it remains to demonstrate whether Pakistan has given consent to the US military operation or was either unwilling/unable to capture bin Laden. As it was also confirmed by the Pakistani government, the unilateral military action conducted by the US resulted in a serious violation of Pakistani sovereignty¹²⁶. On the other hand, many scholars argued that – not informing the Pakistani government – the US has possibly relied on the assumption that informing it would have seriously compromised the conclusion of the military operation¹²⁷.

¹²² AMBOS K., ALKATOUT J., *Has Justice*, cit. 120.

¹²³ PAUST, *Self-defense*, cit. 92.

¹²⁴ Presidential Documents, *Executive Order 12333*, 4th December 1981, cit. 97.

¹²⁵ ROGERS APV, MCGOLDRICK D., *Assassination*, cit. 94, pp. 787-788.

¹²⁶ BRULLIARD K., DEYOUNG K., *Pakistani military, government warn U.S. against future raids*, (May 6, 2011) in The Washington Post available at: https://www.washingtonpost.com/world/pakistan-questions-legality-of-us-operation-that-killed-bin-laden/2011/05/05/AFM2l0wF_story.html .

¹²⁷ LEDERMAN M., *The US Perspective on the Legal basis for the Bin Laden Operation*, (May 24, 2011) in OpinioJuris available at: <http://opiniojuris.org/2011/05/24/the-us-perspective-on-the-legal-basis-for-the-bin-laden-operation/> .

Finally, it should have been demonstrated that bin Laden was a lawful target. The US should have given evidences of « (b) whether Bin Laden should be classified as a combatant or as a civilian taking part in hostilities on the basis that he was the leader of an organized group, and, if so (c) whether he indicated an intention to surrender»¹²⁸. Since it was already asserted that al-Qaeda could not be classified – in the period when bin Laden was killed – as an ‘organized armed group’, then, his assassination could not be justified for such a reason. Thus, if we considered him to be a ‘civilian’ he would enjoy the protection for his status «unless and for such time as (he) takes part in hostilities»¹²⁹. However, as he was found «isolated and hidden in his Pakistani refuge»¹³⁰, it is very debatable that bin Laden was continuously acting as head of the terrorist organization and thus was directly taking part in the hostilities.

All these arguments, although being very controversial, seem to trace a constant path in US strategy during targeted killings in counter-terrorism operations. The lack of precious information about the decision-making process adopted by the American intelligence prevents even more an objective analysis of the facts. However, based on the data available, it would not be mistaking to conclude that there are a lot of analogies between the case study analyzed above and the assassination of the Iranian Major General Soleimani. In both cases, there are substantial evidences of the fact that the requirements for a lawful resort to the use of force were missing. In addition, the conduct of these operations on third States raises doubts about their conformity with the principle of States’ sovereignty. Also, before depriving a human being of his/her right to life – no matter if the person is a terrorist or not, the executor should guarantee that the obligations arising from international law and domestic law are respected.

¹²⁸ ROGERS, MCGOLDRICK, *Assassination*, cit. 94, p. 783.

¹²⁹ International Committee of the Red Cross, *Additional Protocol to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=5E5142B6BA102B45C12563CD00434741> .

¹³⁰ AMBOS K., ALKATOUT J., *Has Justive*, cit. 120, p. 358.

CONCLUSIONS

As it was pointed out in the preceding chapters, the terroristic attacks of September 11th, 2001 represented a crucial turning point in the asset of the international community. Since then, States have favored a broader interpretation of the concept of self-defense provided in the Chapter of the UN. As it is common in its practice, in order to justify Soleimani's assassination, the US has acted in self-defense¹³¹. In accordance with the obligations arising from international law, in order to resort to self-defense, it should have been proved that an armed conflict was taking place between Iran and US and that the military action followed the parameters of proportionality and necessity. In addition, the US should have demonstrated that the government of Iraq had given consent to the execution of an Iranian state-actor on its soil. And finally, the targeted killing operation should have followed the requirements provided by the doctrine and the evidences acquired from the analysis of these military practices. On the contrary, it was not only affirmed that Article 51 lost its applicability, but also that – always in accordance with the definition provided in Resolution 3314 – the assassination of Qasem Soleimani constituted a clear form of armed attack against the State of Iraq. In other words, the assassination of Major General Soleimani appears to fall in the long list of US arbitrary military operations which continues to fear the international community. It still seems valid what Anne-Marie Slaughter observed after Bin Laden's assassination: « having a list of leaders that you are going to take out is very troubling morally, legally and in terms of precedent. If other countries decide to apply that principle to us, we're in trouble. »¹³². It can ultimately be described as an extrajudicial execution of one of the most strategic State-actors of a sovereign State on the territory of a third sovereign State without complying with any international norm. When a targeted killing does not fall within the law enforcement operations – thus, when the use of force is intentional and deliberate, with a degree of pre-meditation, against a subject already classified as a future target by the killing State – the practice loses its legitimacy¹³³.

¹³¹ UNSC, *Letter*, 8 January 2020, cit. 1.

¹³² SLAUGHTER A.M., *The UN should issue death warrants against dangerous dictators*, (May 13th, 2011) CNN World, available at: <http://globalpublicsquare.blogs.cnn.com/2011/05/13/the-un-should-issue-death-warrants-against-dangerous-dictators/>.

¹³³ ALSTON P., *The CIA*, cit. 72.

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ABSTRACT

Il 3 gennaio 2020, gli Stati Uniti d'America (USA) hanno autorizzato un'operazione militare tramite drone Reaper che ha causato la morte di almeno 9 persone, tra cui il Generale Iraniano Qasem Soleimani a Bagdad. Egli è stato il capo delle Forze Quds, Corpo delle Guardie della Rivoluzione Islamica (CGRI), fortemente influente nelle regioni circostanti come l'Iraq, la Siria e il Libano. Nella lettera inviata al Consiglio di Sicurezza delle Nazioni Unite (ONU), l'ambasciatore degli USA comunicò l'effettuato 'omicidio mirato' del Generale come atto di legittima difesa ai sensi dell'Articolo 51 della Carta dell'ONU. Gli USA sono altamente conosciuti per aver utilizzato la forza durante la loro campagna contro il terrorismo; in particolar modo in seguito agli attentati dell'11 Settembre 2001. Nonostante ciò, numerose critiche sono state sollevate riguardo la conformità di queste pratiche con le obbligazioni internazionali derivanti dal *jus ad bellum*, diritto internazionale umanitario e diritti umani. In merito all'interpretazione del diritto di legittima difesa sono emerse due diverse correnti di pensiero: una più rigida – sostenuta dalla posizione della Corte Internazionale di Giustizia (CIG) e dalla Carta dell'ONU – e una più ampia – sviluppata tramite le singole pratiche degli Stati Membri. In queste pagine ho trattato l'assassinio di Soleimani descrivendo inizialmente le tensioni storiche tra gli USA e l'Iran; poi, analizzando le norme giuridiche che gli Stati sono invitati a rispettare quando ricorrono all'uso della forza armata; e infine, comparando tale caso con altre operazioni militari simili al fine di delinearne le analogie e le incongruenze.

L'attacco del 3 gennaio rappresenta il culmine di una lunga serie di controversie che hanno da sempre caratterizzato le relazioni tra gli USA e l'Iran. Quando, nel maggio 2018, Trump decise di ritirare gli USA dall'accordo nucleare con l'Iran – Joint Comprehensive Plan of Action (JCPOA) – le tensioni aumentarono notevolmente. Ne seguì che l'Iran si rifiutò di rispettare le obbligazioni derivanti dall'accordo e aumentò l'arricchimento dell'uranio dal 3.75% al 5%. Inoltre, nell'aprile del 2019, Trump annunciò che avrebbe designato il CGRI come 'organizzazione terroristica straniera'. Il 31 dicembre 2019, un gruppo di ribelli iraniani fu accusato dagli USA per aver attaccato l'ambasciata americana a Bagdad, rappresentando il decisivo punto di rottura di questa crisi internazionale che culminò nell'assassinio di Soleimani, il 3 gennaio 2020. Il diritto internazionale permette l'utilizzo della forza solo quando risulta essere necessario al fine di impedire un imminente attacco armato. Trump ha sostenuto che il Generale iraniano stesse pianificando degli attacchi mirati nei confronti delle basi diplomatiche americane presenti sul territorio e, pertanto, si è ritenuto forzato ad agire.

Per tali ragioni, la giustificazione adottata dal governo americano in seguito all' 'omicidio mirato' si è centrata sul diritto naturale di legittima difesa – una delle eccezioni alla proibizione *jus cogens* dell'uso della forza – ai sensi dell'Articolo 51. Nonostante ciò, è risultato evidente che tale operazione militare non abbia seguito nessun obbligo derivante dalle norme internazionali. In primo luogo, l'esistenza di un attacco armato risulta essere il requisito principale per l'applicazione di misure di legittima difesa, al fine di evitare risposte sproporzionate e non necessarie. A tal proposito, risulta chiaro che Trump non avrebbe potuto fare riferimento agli attacchi subiti nel giugno e nel luglio 2019 poiché non raggiunsero mai un'intensità tale da potersi considerare 'attacchi armati'. Tale posizione verrebbe supportata anche dalla CGI che nel *Nicaragua case* ha sottolineato la necessità di distinguere tra «the most grave forms of the use of force – those constituting an armed attack – from other less grave forms». In generale, è stato ripetutamente affermato che non esistesse un conflitto armato tra le due parti e, pertanto, l'utilizzo della forza in nome della legittima difesa non seguisse i parametri di necessità e proporzionalità. Il Pentagono stesso non citò mai la possibilità di un 'attacco imminente' pianificato da parte del Generale iraniano contro gli USA, né tantomeno fu confermata l'attribuzione all'Iran degli attacchi antecedenti l'uccisione di Soleimani.

Non potendosi applicare il diritto naturale di legittima difesa, esistono solo due modi per effettuare un 'omicidio mirato' sul territorio di uno stato terzo che sia conforme alla legge. Di fatto, lo stato che intende rispondere a degli attacchi armati su un territorio straniero deve aver ricevuto il consenso di tale stato o dimostrare che lo stato terzo non sia intenzionato (*unwilling*) o capace (*unable*) di porre fine agli attacchi. In tal maniera si escluderebbe l'illiceità dell'atto che, diversamente, verrebbe considerato illegale. In riferimento all'uccisione del Generale Soleimani, la presenza degli USA sul territorio iracheno era stata autorizzata dalla Risoluzione 1483 del Consiglio di Sicurezza in seguito agli attacchi terroristici dell'11 Settembre. Ciò non preclude che, non avendo mai ricevuto il consenso specifico da parte del governo iracheno, la condotta degli USA di un attacco armato mirato all'uccisione di un Generale di stato iraniano violi enormemente la sovranità dello stato stesso. Poiché Trump non ha mai fatto riferimento al paradigma di 'unwilling/unable', tale operazione militare si può pertanto definire una forma di 'aggressione' – in accordo con la Risoluzione 3314 dell'Assemblea Generale dell'ONU – come «the use of armed force by a State against the sovereignty, territorial integrity and political independence of another State, or in any manner inconsistent with the Charter of the United Nations, as set out in this Definition».

Di conseguenza, per agire in conformità alle leggi internazionali, si sarebbe dovuto assicurare che: a) vi fosse l'esistenza di un attacco armato; b) il target prescelto fosse legittimo militarmente; c) l'omicidio fosse pianificato ed eseguito in modo da evitare casualità erronee; d) l'omicidio non causasse danni non necessari; e) che fossero rispettati i principi di necessità e proporzionalità. Sia durante un attacco armato sia fuori da tale contesto, bisogna assicurarsi di aver esaurito qualsiasi possibile alternativa prima di procedere con un'uccisione mirata. Inoltre, il Generale iraniano non si poteva ritenere un target legittimo poiché non fu mai dimostrato il suo coinvolgimento nella pianificazione di attacchi imminenti diretti alle basi diplomatiche americane né fu mai spiegato in quali maniere la sua figura potesse rappresentare un rischio per la vita dei cittadini americani. In aggiunta, anche nel caso di un conflitto armato, l'assassinio di individui non ritenuti 'combattenti' rappresenta una profonda violazione dell'obbligo degli stati di rispettare e assicurare il diritto alla vita dei civili.

Al fine di fornire un'analisi più completa, ho deciso di confrontare il caso in esame con delle azioni militari simili che hanno visto come protagonisti ancora una volta gli USA. In particolar modo, ho analizzato le operazioni condotte in nome della legittima difesa contro attacchi terroristici dal 1998 fino all'assassinio del fondamentalista islamico Osama bin Laden. Il Presidente Clinton autorizzò l'operazione 'Infinite Reach' contro le basi di al-Qaeda in Afghanistan il 20 agosto 1998 in seguito agli attacchi mirati alle ambasciate americane di Dar es Salaam e Nairobi da parte dell'organizzazione terroristica. Tra le varie motivazioni che resero legittimo l'utilizzo della forza ai sensi dell'Articolo 51 vi fu che, a differenza degli eventi che precedettero l'uccisione di Soleimani, il raid subito dagli americani nel 1998 fu considerato di intensità sufficiente per potersi definire un 'attacco armato' – secondo la posizione della CGI. Ciò non si poté dire invece in seguito all'uccisione di bin Laden, poiché fu largamente affermato che gli USA non si trovassero – in quel determinato momento – in un conflitto armato con al-Qaeda. Essa aveva già perso la propria struttura centralizzata e, pertanto, risulterebbe erraneo considerare bin Laden un target legittimo. Non fu nemmeno confermato che egli stesse pianificando degli attacchi imminenti contro gli USA o che rappresentasse un serio pericolo per la sicurezza dei cittadini americani nel periodo in cui fu ucciso. Per di più, fu contestato il fatto che gli USA avessero ricevuto il consenso ad agire da parte del Pakistan e che l'azione militare fosse necessaria e proporzionata. Com'è stato sottolineato dall'indagine di Ben Emmerson, Relatore Speciale dell'ONU sulla lotta al terrorismo e i diritti umani, nella maggior parte dei casi gli 'omicidi mirati' americani non sono conformi alle

norme internazionali. In particolare, egli critica il fatto che gli USA non abbiano spesso rispettato i requisiti di ‘transparency’ e ‘accountability’ mancando di fornire una base legale adeguata al fine di giustificare tali pratiche.

In altre parole, l’uccisione di Soleimani sembra aggiungersi alla lunga lista di operazioni militari arbitrarie condotte dagli USA che continua ad intimorire la comunità internazionale. Quando un ‘omicidio mirato’ non rientra nelle operazioni di ‘law enforcement’ – quindi quando l’uso della forza è intenzionale e deliberato, con un certo grado di premeditazione, contro un soggetto già classificato come target – la pratica perde la propria legittimità. In conclusione, l’uccisione del Generale iraniano Soleimani può essere considerata un’esecuzione extra-giudiziale non conforme alle leggi internazionali.