

Analyzing the Compatibility of the Assassination of Qasem Soleimani with the Self-Defense Theory (both Restrictive and Anticipatory)

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Abstract

Purpose: Qasem Soleimani, one of the senior commanders of the Iranian Revolutionary Guard Corps, was killed on January 3, 2020, near Baghdad airport by an American drone authorized by the US president. US officials justified their actions on the basis of self-defense under Article 51 of the UN Charter and the anticipatory self-defense theory. The main purpose of this paper is to deconstruct the US legal arguments in accordance with international law, especially the rulings of the International Court of Justice (ICJ).

Method: In a deductive argument, this article first analyzes the standards of self-defense according to Article 51 of the United Nations Charter and the theory of anticipatory self-defense in customary international law. It then employs a desk study to confront the U.S. arguments with the realities on the ground.

Findings: Considering the fact that at the time of incident, Iran and the United States were not in a state of armed conflict, resorting to the law of war to justify the United States' decision in assassinating General Soleimani would be baseless. Furthermore, Soleimani was a diplomatic guest of the Iraqi government. Therefore the legal reasoning of the US is flawed.

Conclusion: It concludes that it is difficult to justify the US's actions based on the theory of self-defense, both in its restrictive and broad interpretations. This paper concludes that Soleimani's assassination was more a matter of revenge and deterrence rather than self-defense.


Keywords: Qasem Soleimani, Self-Defense, Law of War.

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1. Introduction

On the morning of Friday, 3 January 2020, an important story made the headlines in the global media: two vehicles carrying Gen. Qasem Soleimani, the leader of Iran's Quds Force within the Islamic Revolutionary Guard Corps, along with several others including Abu Mahdi al-Muhandis, the Iraqi commander of the Popular Mobilization Forces, were targeted and killed by American drones near a checkpoint located outside the Baghdad International Airport. The attack resulted in the deaths of all 10 individuals traveling in the two vehicles. Soleimani was on his way to Baghdad from Damascus, and the assassination, according to the former White House officials, was carried out upon the direct instruction of Donald Trump, the then President of the United States (Lee & Kube, 2020). The US Department of Defense announced that the strikes were endorsed by President Donald Trump. It was noted: "General Soleimani was actively developing plans to attack American diplomats and service members in Iraq and throughout the region. General Soleimani and his Quds Force were responsible for the deaths of hundreds of American and coalition service members and the wounding of thousands more" (US Department of Defense, 2020). By examining the statement released by the Department of Defense and considering subsequent documents, tweets, and interviews by Donald Trump and Secretary of State Mike Pompeo, it appears that the United States justified the killing of General Soleimani based on the self-defense theory outlined in Article 51 of the United Nations Charter. The interpretation of this theory was broad in nature, allowing for anticipatory self-defense (Chung, 2020). The US government further reinforced its position through official letters sent to the United Nations Security Council and the US Congress, emphasizing that the actions taken were in line with its inherent right to self-defense as outlined in Article 51 of the UN Charter, including anticipatory self-defense (Haque, 2020).

This paper aims to analyze the act of killing General Soleimani in relation to the self-defense theory, examining both restrictive and broad interpretations. However, it does not delve into the legal nature of Iran's response, specifically the missile strikes on the Ayn Al Asad Airbase. The methodology of current research is based on deductive reasoning, utilizing library and internet sources, as well as relevant legal documents. Deductive reasoning involves matching an event with the principles and rules of international law that are accepted by the international community. If the characteristics of that event are in relative agreement with those principles and rules, the legitimacy of the event is almost confirmed. If the incident does not comply with the principles and rules, the perpetrators of that incident have committed a violation of international law. As a result, they will be held legally responsible, and the victim or victims of the incident will have the legal competence to sue. In this article, the principle of self-defense, both classic according to the United Nations Charter and the principle of preemptive self-defense, is assumed as the governing legal principles and rules on self-defense. Consequently, the legal justifications of the United States regarding the killing of Qasem Soleimani are compared with these principles and rules.

2. US domestic legal justification

To confront those they consider as terrorists, Israel and the United States have devised the political term ‘targeted killing,’ and on multiple occasions killed individuals they deemed to be terrorists (Azizi, 2020; Senna & Troy, 2017; David, 2002). These governments believe they are in an active war with terrorists, and if they are unable to detain those who pose a threat to Israeli or American soldiers and citizens, they have a right to slay them. On the other hand, critics of this action, including prominent international lawyers, human rights experts, organizations such as Amnesty International and Human Rights Watch, as well as UN special rapporteurs on human rights, argue that it contradicts the principles of international humanitarian law. They have labeled it as an extrajudicial killing, implying that it was carried out without due process or legal justification. (Azizi, 2020).

A group of American lawyers believe there is a basis in the US domestic law to justify issuing the order of targeted killing by the President of the United States. For example, Curtis Bradley and Jack Goldsmith are of the opinion that if an imminent threat resulting from an armed attack on the US people by the terrorists looms, the president is permitted to deploy the Covert Action Statute (CAS), 50 U.S.C. §413b and Authorization for Use of Military Force of 2001 to confront that threat (Bradley & Goldsmith, 2011). In a report to the US Congress concerning the killing of Gen. Soleimani, the Trump administration cited the 2001 law on numerous instances as a rationale. Moreover, lawyers such as Eric Holder and John Brennan believe in addition to the aforementioned specific laws, Article Two of the United States Constitution vests the authority in the president to take any relevant action in protecting the American people against imminent threats connected to violent attacks. In an official report, the Trump administration invoked Article II and the 2001 Authorization for Use of Military Force against Iraq to justify the U.S. strike (Setzer, 2020). Also, in a 2010 memo, the White House considered it legal to resort to targeted killing to deter threats against the nationals of the United States (Trenta, 2018). The legal bases mentioned earlier primarily apply to the elimination of threats posed by non-state actors, such as commanders of organizations like ISIS, al-Qaeda, and the Taliban. These bases may not be directly applicable to high-ranking authorities and officials of other states. However, during armed conflicts, whether between states or between a state and non-state armed groups or individuals, international humanitarian law should be upheld. It is important to note that according to the concept of legal dualism and Hersch Lauterpacht's doctrine, international law takes precedence over domestic law. The domestic laws of the United States cannot unilaterally set the agenda for international law: “The self-evident principle of international law that a State cannot invoke its municipal law as the reason for the non-fulfillment of its international obligations.” (Lauterpacht, 1982)

The United States relies on the self-defense theory, including self-defense as outlined in Article 51 of the United Nations Charter, as its primary legal justification from an international law perspective. This justification will be the

focus of investigation in this paper, particularly in relation to anticipatory self-defense. In situations where the use of lethal force is necessary to save human life outside of armed conflicts, international law in restrictive situations allows for such action (ICRC Report, 2011). Specifically, the use of lethal force is considered lawful if the targeted individual poses an immediate and imminent threat to the lives of others, and alternative measures such as capture or non-lethal incapacitation are insufficient to address that threat. Given that the US officially substantiated its action in killing Soleimani as a self-defense measure, it should be analyzed within this framework.

3. Self-defense under Article 51 of the UN Charter

The then US President Donald Trump declared after the assassination of Iranian commander, “Soleimani was plotting imminent and sinister attacks on American diplomats and military personnel, but we caught him in the act and terminated him.” (Cameron & Cooper, 2020). Other US officials expressed similar views. Even though in the official report submitted to the US Congress, the Trump administration’s stance gave the impression that the US action in assassinating Gen. Soleimani was conducted based on legitimate self-defense under Article 51 of the Charter of the United Nations and as an act of anticipatory self-defense; On January 8, 2020, the United States in a letter to the United Nations Security Council justified the assassination of Soleimani on self-defense principle:

“These actions were in response to an escalating series of armed attacks in recent months [1] by the Islamic Republic of Iran and Iran-supported militias [2] on U.S. forces and interests in the Middle East region, in order to deter the Islamic Republic of Iran from conducting or supporting further attacks[3] against the United States or U.S. interests, and to degrade the Islamic Republic of Iran and Islamic Revolutionary Guard Corps Qods Force-supported militias’ ability to conduct attacks[4].” (Haque, 2020).

The concept of the right to self-defense in international law has evolved over time and can be categorized into two main forms: after armed-attack and before armed-attack. The latter category includes four subcategories: interceptive, anticipatory, preemptive, and preventive self-defense. According to DeWeese, interceptive self-defense refers to situations where a threat has already begun or sporadic conflict is underway, while preventive self-defense relates to potential threats that are distant. Anticipatory and preemptive self-defense fall between these two, requiring the threat to be imminent (DeWeese, 2003). Gill and Ducheine argue that anticipatory and preemptive self-defense are essentially the same (Gill & Ducheine, 2013). Additionally, Rebecca Wallace categorizes self-defense into after armed-attack, as governed by Article 51 of the UN Charter, and anticipatory self-defense under customary international law (Wallace, 2002).

Following the killing of Soleimani, the US legal justifications indicate a reliance on both conventional and anticipatory or interceptive self-defense. The conventional self-defense is based on the provisions of Article 51 of the UN Charter: “Nothing in the present Charter shall impair the inherent right of collective or individual self-defense if an armed attack occurs against a member

of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security...”

Therefore in the conventional or restrictive narrative, the most important condition required for the actualization of self-defense is the incidence of armed attack. The term armed attack is a key concept in Article 51 of the Charter of the United Nations, and the kind of interpretation of this term justifies recourse to force. According to the International Court of Justice ruling in the Oil Platforms Case, the authority deciding this matter is principally the state that supposes it is subject to such an attack. The state that cites the notion of self-defense must be able to demonstrate that the attacks were of such an intensity that amount to an armed attack. In its verdict concerning the Oil Platforms Case, while noting that every resort to force does not meet the right to self-defense, the Court affirmed that an attack that involves a considerable amount of force (not slight forms of the resort to force) would constitute the permission of recourse to self-defense: “that an attack involving the use of deadly force by a State's regular armed forces on civilian or military targets is not an ‘armed attack’ triggering the right of self-defense unless the attack reaches some unspecified level of gravity.” (Taft, 2004) Going forward, it states in paragraph 51 of the said verdict that the United States, in order to be able to seek recourse to the right to self-defense embedded in Article 51, in order to launch attacks on Iran’s oil platforms between 1987 and 1988, should have demonstrated that it has been the victim of an armed attack on behalf of the Islamic Republic of Iran. Here, the ICJ emphasizes the importance of proper attributability (ICJ, Oil Platforms, 2003).

The Court, when illustrating the seriousness of an armed attack, references its previous ruling in the Nicaragua Case (1986). In that judgment, the Court made a distinction between the most severe instances of the use of force that qualify as an armed attack and other less severe forms. In the Nicaragua Case, the Court clarified that an "armed attack" encompasses not only actions carried out by regular armed forces crossing an international border, but also “the sending by a State of armed bands on to the territory of another State, if such an operation, because of its scale and effects, would have been classified as an armed attack had it been carried out by regular armed forces” (ICJ. 1986, Nicaragua v. United States of America.: P. 165). It means that the Court take into account indirect uses of force even through proxy groups as armed attack, if meeting certain conditions. However, ICJ emphasized that the mere shipment of weapons and provision of logistical support alone don’t mean armed attack and cannot serve as legal rationalization of self-defense (ICJ. 1986, Nicaragua v. United States of America.: P. 165).

In the Oil Platforms Case, the International Court of Justice (ICJ) asserts that the determination of whether an armed attack has taken place must be made on a case-by-case basis, taking into account the overall circumstances prevailing at the time. It is the responsibility of the victim state to demonstrate the occurrence of an armed attack since, by its very nature, an "armed attack" requires the victim state to assess the threat to its security and the necessary defensive actions to be taken (ICJ, 2003, Oil Platforms, para. 57). However, the Court specifically

emphasizes two components of self-defense in the Oil Platforms Case: proportionality and necessity. These elements play a crucial role in evaluating the legitimacy of a state's self-defense measures. "The submission of the exercise of the right of self-defense to the conditions of necessity and proportionality is a rule of customary international law" (ICJ., 2003, Oil Platforms: P. 26, Para. 76).

Obviously, the United States has not been the victim of an armed attack directly launched by Iran or occurring on Iran's command, and the US authorities have never produced evidence testifying to this. Of course, in some of the tweets posted by the former US President Donald Trump and his Secretary of State Mike Pompeo, in explaining the assertion that Iran has attacked the US and the United States has retaliated, a rocket raid on the American base near Kirkuk (K.1) and the siege of the US Embassy in Baghdad have been attributed to Iran (Moore & Rampton, 2020). Here, paragraph E of Article 3 of the United Nations General Assembly Resolution 3314 is being alluded to by the American authorities. It notes: "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." Concerning the attacks by non-state armed groups, the procedure of the International Court of Justice in the 1986 Nicaragua v. United States case and the 2005 Democratic Republic of the Congo v. Uganda case confirms that the said attacks lay the groundwork for legitimate self-defense in favor of the victim state only if it is able to demonstrate its attribution to another state with compelling reasons and evidence. Therefore, the mere occurrence of an armed attack by an armed group does not justify the self-defense of the victim state against another state (ICJ. 1986. Nicaragua v. United States of America. Para.237; & ICJ. 2005. Democratic Republic of the Congo v. Uganda. Para. 139).

When it comes to the killing of Gen. Soleimani, the arguments of the Americans are flawed, because firstly, the Iraqi Popular Mobilization Forces is part of the official and legal services of the Iraqi government, and by virtue of a legislation passed by the parliament of Iraq on 26 November 2016, it is regarded as a constituent of the armed forces of Iraq and placed under the auspices of the Iraqi military. Prior to this enactment, the then Iraqi Prime Minister Haider al-Abadi announced in September 2015 that Popular Mobilization Forces constituted parts of the Iraqi government forces (Reuters, 2018). Therefore, the responsibility for their actions would be assumed by the Iraqi government. The Islamic Republic of Iran's cooperation with this entity falls under the advisory military assistance underway with the request and coordination of the Iraqi government. Secondly, the said rocket attack was a covert raid, and neither the Popular Mobilization Forces, nor the Hezbollah battalions under their supervision ever admitted responsibility for the operation. Thirdly, even assuming that the Trump administration's claims were true, the US armed forces unleashed a very violent and unconventional retribution by launching heavy and disproportionate attacks on the Popular Mobilization Forces engaged in fighting with terrorists on the Iraq-Syria border, killing 25 and injuring 51 of them (BBC News, 2019). Subjecting

an entity to double jeopardy goes against the principle of "non bis in idem," which is widely recognized in numerous legal systems. This principle ensures that individuals cannot be prosecuted twice for the same offense. In the United States, this protection is enshrined in the Fifth Amendment of the Constitution, which prohibits the prosecution of someone for substantially the same crime.

However, attributing the action of a group of supporters from the Popular Mobilization Forces who besieged the US Embassy in Baghdad solely to the Islamic Republic of Iran lacks a solid foundation and justifiable reasoning. Firstly, this attack was not officially endorsed by Iran. Additionally, the siege ended after a few days without causing any harm to American diplomats. Therefore, it is not logical to solely hold Iran responsible for an act that was not officially sanctioned by them and did not result in harm to individuals involved. Therefore, attributing this action to Iran lacks any proof and evidence (Fazaeli, 2020). That said, the US military response by targeting Gen. Soleimani with a drone strike was by no means compatible with the principles of necessity and proportionality, which according to the International Court of Justice ruling in the Oil Platform Case, is considered to be a definitive principle of customary international law on legitimate self-defense. In addition, according to the UN Charter, States are bound to settle their disputes through peaceful means. The besiegement of a country's embassy by a group of people for a period of a few days cannot in any way justify the use of force by that country in self-defense (Karamzadeh & Abedini, 2020). This is while even if the US embassy sustained damages as a result of the protest, the responsibility would lie with the Iraqi government as the host country to act in accordance with the article 4 of agreement pertaining to the presence of US troops in Iraq signed in 2008, and the country owning the embassy would not be permitted to take autonomous action directly without the consent of the host nation (Agreement Between the United States of America and the Republic of Iraq, 2008).

Therefore, according to Article 51 of the United Nations Charter and the procedure of the International Court of Justice, self-defense must be in response to an armed attack. In other words, resorting to force is allowed if: 1- The attack on American forces and facilities in Iraq had reached a scale and intensity that could be considered in accordance with Article 51 of the charter of an armed attack against the United States, 2- An armed attack can be legally attributed to Iran, 3- at the time of the assassination of Gen. Soleimani, the armed attack has been continuing and 4- the elements of necessity and proportionality of self-defense have been realized; While the aforementioned conditions to justify self-defense by the United States have not been fulfilled. Iran argues that the burden of proving the existence of an armed attack attributable to Iran that can justify the self-defense of the United States is on Washington. This is an accepted legal rule that the party who claims must bear the burden of proving it.

4. Anticipatory Self-Defense

In justifying the decision to kill General Soleimani, American authorities made an argument based on the allegation of an "imminent attack," portraying their

military action as an act of anticipatory self-defense. While Article 51 of the United Nations Charter requires an armed attack to have occurred for self-defense to be legitimate, some scholars argue that governments' practices suggest that self-defense has been deemed permissible in response to an imminent attack (Swart, 2020, as cited by Heller). It is important to note that the International Court of Justice (ICJ) did not explicitly address the legitimacy of anticipatory self-defense in its judgment on the Nicaragua case, as the concept was not directly raised in that particular case (Sandin, 2021). However, Judge Stephen Schwebel, in his dissenting opinion, expressed that the logic or concept of Article 51 of the UN Charter does not exclude the right to anticipatory self-defense under customary international law, nor does it restrict it solely to the conditions mentioned in the text of the article. Therefore, while there may be differing interpretations and arguments regarding the legitimacy of anticipatory self-defense, it remains a complex and debated issue within the realm of international law (ICJ, 1987, "Dissenting Opinion of Judge Schwebel", P. 347). At the same time, after the September 11, 2001 attacks and the rise of the level of terrorist threats, countries' preemption in line with customary international law to deter imminent threats has become an acceptable practice (Fazaeli, 2020).

The logic of anticipatory self-defense is deterring an imminent armed attack. As it was formalized in the Caroline test, it will be necessitated if the threat is immediate and certain and there are no other alternatives, and there is also no possibility to negotiate (Shaw, 1998; Kretzmer, 2013). In other words, it will be authorized if a military reaction is needed at that moment, otherwise, it will be too late and the victim state will incur substantial losses. The UN Security Council resolutions 1368 and 1373 on recognizing the nations' inherent right to self-defense implicitly reiterate the anticipatory self-defense (Byers, 2002). For this reason, preemptive self-defense to confront immediate threats in the framework of the broad interpretation of Article 51 of the Charter of the United Nations has been debated by lawyers extensively. Myres S. McDougal, one of the distinguished proponents of the anticipatory self-defense theory, deems it to be inappropriate to impose a state of passive suspense on countries in preparing their response to imminent armed attacks (Mcdougal, 1963). This approach has been upheld by some lawyers. But indeed, anticipatory self-defense should be in response to a certain and imminent attack, and cannot be deployed in response to a threat about a future attack about which there is usually a lack of precise information, evidence, and proof, and is also referred to as preventive self-defense. As said by Eliav Lieblich, associate professor of law at Tel Aviv University, "preventive self-defense is quite clearly unlawful." (Swart, 2020). Therefore, the United States allegation that Gen. Soleimani had been plotting and planning attacks on the United States lacks legal sufficiency as long as there is no evidence confirming the certainty and imminence of such attacks. According to Prof. Heller, preemptive self-defense is valid only when it qualifies for the criteria of the Caroline test including circumstances such as the imminence of the attack, necessity, instantness, and proportionality between the possible imminent attack and defense (Swart, 2020). In the 1997 Gabcikovo-Nagymaros case, the

International Court of Justice equated imminence with the terms proximity and immediacy (ICJ. 1997, Gabčíkovo-Nagymaros Project).

One of the arguments of the United States is that Gen. Soleimani had been involved in a number of organized killings of the nationals of the United States. From this perspective, killing him should entail no international responsibility for the United States. But laying emphasis on Soleimani's past actions to justify his assassination in itself indicates that the operation to kill him was a retributive action rather than being preemptive self-defense, because the elements of necessity and immediacy which are among the most important components in anticipatory self-defense cannot be justified in the operation leading to his death (Cumberbatch, 2021). All the same, the then US Secretary of State Mike Pompeo had stated that Gen. Soleimani posed an imminent threat to the United States and arrived in the region at a sensitive time to conduct broad-ranging malign acts that would result in the killing of several Americans (Forgey, 2020). On the other hand, it is an accepted principle that a person's involvement in so-called acts of terrorism in the past does not constitute sufficient criterion for the extrajudicial killing or even legal elimination of that person at the present time (Carpenter, 2020).

This is while the claims that Gen. Soleimani had been plotting and planning for an imminent military attack on the US troops are totally unfounded and this conviction is reflected in the response by the US Congress to the White House report (Edmondson, 2020). The statements of the US authorities at the time are contrary to even the preemptive defense. The American president, Trump, has clearly stated that Soleimani should have been removed years ago (spectrumlocalnews, 2020). John Bolton, the national security adviser of the United States at the time, also announced in a tweet that the United States had planned the assassination of Soleimani for a long time (France 24, 2022). With these statements, the American government can hardly justify the attack on General Soleimani as a preemptive defense against an immediate and imminent attack by him. Also, it was in the statements by the officials of the Iraqi government that Gen. Soleimani was in the region to diffuse tensions, and in his trip to Baghdad in January 2020 when he was targeted by the US drone he had actually been visiting the country upon an invitation by the government of Iraq, carrying a message on détente in the region, and had plans for meetings and talks with Iraqi officials, including the country's prime minister (Button, 2020). In fact, his trip was a diplomatic mission. Essentially, the killing of the military officials of other countries during armistice and under circumstances not giving rise to self-defense is forbidden according to The Hague Conventions of 1899 and 1907 and the Geneva Conventions of 1949 and their Additional Protocols. Here, it is helpful to cite specifically Article 13 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents. According to this article, the parties to the convention can seek advice from the ICJ in The Hague in case a dispute arises in interpreting and enforcing the terms of the treaty. Iran ratified the convention in 1978 and the United States ratified it in 1976. Based on paragraph b of the Article 1 of this

convention, Gen. Soleimani can be considered an internationally protected person. According to Article 2 of this document, the deliberate commission of the murder of these persons is considered to be a crime, and countries are obliged to criminalize it in their domestic laws. The government of Iraq also ratified this convention in 1978, and in legal terms, is entitled to prosecute these crimes based on the paragraph 2 of Article 2 of the convention, particularly given that in accordance with the US-Iraq Status of Forces Agreement of 2008, the Iraqi government retains the right to enforce its jurisdiction about the extreme crimes committed by US troops outside the American-run premises and bases in Iraq. The assassination of Gen. Soleimani has taken place outside these places.

Essentially, anticipatory attack takes place to deter imminent threats. The US action in killing Soleimani was not only aimed at deterring an imminent threat but resulted in the generation of an imminent threat against the United States, which was Iran's missile raid on the Ayn Al Assad Airbase. Moreover, after the killing of Soleimani, Iran and the United States were pushed to the brink of a full-scale war (Ostovar, 2020). Is an action that brings two countries with poor relations to the precipice of an all-out war consistent with the logic of preemptive defense? The response is certainly negative. Therefore, by killing Gen. Soleimani, the United States hasn't deterred an imminent attack, but has set the stage for such an impending attack, which is self-contradicting. Even it was the case that rocket attacks on US bases increased after the killing of Gen. Soleimani. Assuming that the Popular Mobilization Forces triggered attacks on US bases, it continued its existence after the killing of Soleimani untouched. After Soleimani, Esmail Qaani immediately replaced him and oversees the extraterritorial missions of the IRGC. Even if we assume the US claims over Soleimani's presumptive plots and conspiracy to launch plans to imminently attack American nationals and places were true, when it is possible to attempt to detain him through the Iraqi government, or in a worst-case scenario at the hands of US forces, why should lethal arm be deployed to confront the possible threat? In effect, there was no urgency or necessity to murder him and the cohort escorting him. Besides, the killing of other individuals accompanying Gen. Soleimani raises the serious question if the United States' assumption of preemptive self-defense has been enforced proportionately. American officials have made no official statements on the other individuals killed alongside Soleimani, even though it has happened quite a number of drone attacks that such killings have been justified as 'collateral damage,' which is not legally and morally acceptable (Dewyn, 2001).

5. Conclusion

Considering the legal arguments presented, the armed attack by the US military forces against Gen. Soleimani and his colleagues on January 3, 2020, is not justifiable and defensible within the framework of international law principles and international judiciary verdicts governing self-defence, and certainly constitutes an example of the illegal and arbitrary use of force. This sort of precedent set by the US government, if expanded, will result in disorder becoming the world's common norm, and let "the jungle grows back" as warned by the

American critic Robert Kagan (Kagan, 2018). From the perspective of customary international law, as long as an attack hasn't taken place, it is impossible to examine and assess the elements of necessity and proportionality in relation to that attack. In addition, the notion of self-defence is exclusively applicable to two states or more broadly between a state and a group of dangerous terrorists, and it is impossible to institute self-defence by the armed forces of a state against an official of another country, while there is no state of war between the two governments in legal terms.

In order for the use of force under anticipatory self-defence to be customarily legitimate, signs and evidence signifying an immediate, certain, and severe attack should exist, and the arguments in this paper showed that in the case of the killing of Gen. Soleimani, such proof wasn't produced. In attributing the previous attacks against US troops stationed in Iraq to Iran, the United States was neither able to produce compelling evidence and reasons, nor could it convince the international community in demonstrating the possibility of an imminent attack on behalf of Iran. For this reason, no state, except Israel, supported the US act. Therefore, as an Iranian international law scholar, Reza Nasri, maintains, the United States' reference to self-defence according to Article 51 of the UN Charter is not relevant here because Iran and the United States were not in a state of war (armed conflict) with each other. Therefore, the laws of war, which in some circumstances justify targeting the military of the other side, do not apply between them. On Iran's part, there was no armed attack that would have justified the reference to Article 51 of the United Nations Charter. Additionally, an "imminent" attack by General Soleimani would not have taken place to substantiate America's claim that "necessity" required it. Moreover, within the framework of international law, America's "designation" of the official armed forces of a country as a "terrorist organization" is legally baseless, and therefore, its members cannot be considered "legitimate targets." At best, the United States can argue that taking action to kill Soleimani was an instance of preventive self-defence or reprisal, which is a discussion separate from the scope of the present paper.

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