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The Killing of Qassem Soleimani

Assassination or Lawful Military Strike?

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Did President Trump violate international law when he directed the strike on Soleimani? This article will examine three different theories for justifying the strike, and conclude that Soleimani was a lawful target.

This article relies on information reported in the public domain and not on any first-hand knowledge about the strike as such information would be classified. The opinions presented in this article are solely the author's and should in no way reflect upon the U.S. Department of Defense or the OIR Coalition.

In September 2020, Iranian officials promised additional retribution for what they described as the unlawful assassination of Qassem Soleimani (aka Suleimani) on 3 January 2020 outside of Baghdad International Airport (BIAP).[1] Just a few days after the Soleimani strike, Iran responded with a dramatic attack on Al Asad Air Base, notable not just for the destructive power of the ballistic missiles it launched into western Iraq but also for the undeniable attribution of the attack.[2] Iran is not alone in condemning the Soleimani strike. The United Nations special rapporteur on extrajudicial, summary, or arbitrary executions, wrote a

report branding the killing unlawful, which she presented to the UN Human Rights Council in July of 2020. Her report argued, “absent an actual imminent threat to life, the course of action taken by the United States was unlawful.”[3] However, many others joined Senator Lindsey Graham in praising President Trump’s decision as a righteous blow against a person directly tied to sponsoring terrorism with American blood on his hands.[4] Did President Trump violate international law when he directed the strike on Soleimani? This article will examine three different theories for justifying the strike, and conclude that Soleimani was a lawful target.

LEGAL THEORIES JUSTIFYING THE STRIKE

Unlike military strikes against high value targets such as Osama Bin Laden or Abu Bakr Al Baghdadi, press reports of the Soleimani strike frequently labeled it as an assassination, which implied that President Trump violated the U.S. domestic law banning political assassinations.[5] A couple of

weeks after the strike, two Army judge advocates assigned as faculty members at the U.S. Military Academy at West Point, Colonel Shane Reeves and Lieutenant Colonel Winston Williams, published an article on the Lawfare blog website entitled, “Was the Soleimani Killing an Assassination?” As COL Reeves and LTC Williams discuss in more depth, it is only accurate to label the killing of Soleimani an assassination if the strike violated international law.[6] The article briefly laid out three possible justifications under international law for the strike, without analyzing whether any of them justified the strike under the circumstances.[7] This article examines all three and concludes that each independently justifies the strike. First, if the strike took place during international armed conflict involving Iran, then targeting Soleimani as the commander of the Quds Force, an Iranian military unit, was lawful. Second, even if the United States was not engaged in international armed conflict with Iran, if Soleimani was an operational leader or military adviser to a Shia militia groups (SMG) which had been attacking U.S. Forces (USFOR) in Iraq, and the United States had a right of self-defense as to the SMG, then the Soleimani strike was lawful. Third, even outside of conflict with Iran or the SMGs, if Soleimani himself posed an imminent threat to the United States or its citizens then a self-defense strike was justified.

This article examines three possible justifications under international law for the strike.

1 International Armed Conflict with Iran

Congress never declared war against Iran and no President has notified Congress of hostilities in accordance with the requirements of U.S. Code Title 50 Section 1543, the War Powers Resolution. Despite this domestic law context, the reality is that armed conflict has existed between Iran and the United States. The threshold for international armed conflict is intentionally low and is not dependent on declarations under domestic law.[8] The low threshold ensures participants, particularly

individual lawful combatants, receive the full protections of international law. While Common Article 2(1) of the Geneva Convention does not define “other armed conflict” further, the definition used by the International Criminal Tribunal for Yugoslavia in Tadic has been widely accepted: “a resort to armed force between States.”[9] In early 2019, the State Department divulged that based on declassified U.S. reports the Iranian Revolutionary Guard Corps was responsible for killing 608 USFOR members in Iraq, separate and apart from those killed by Iranian proxies.[10] The State Department also insinuated the number represented deaths between 2003 and 2011, from the beginning of Operation IRAQI FREEDOM (OIF) until the withdrawal directed by President Obama.[11]

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While it appears that the United States and Iran met the low threshold for international armed conflict during OIF, that armed conflict ostensibly ended with the United States withdrawal in 2011. When USFOR returned to Iraq in 2014 for Operation INHERENT RESOLVE (OIR), the relationship with Iran was dramatically different given the threat against the Shia population in Iraq from Daesh, also commonly referred to as ISIS or the Islamic State.[12] The United States and Iran engaged in parallel and complimentary campaigns to defeat Daesh.[13] Some would argue that while the Daesh campaign was active, some semblance of a truce existed between the United States and Iran.[14]

The honeymoon ended abruptly after the fall of Baghouz marked the end of the Daesh caliphate on 23 March 2019. Rocket attacks against coalition force locations across Iraq increased in May 2019.[15] Although targeting coalition bases, the attacks primarily took the lives of Iraqi citizens. U.S. intelligence connected the attacks to Iran or its proxies.[16]

In addition to rocket attacks, Iran shot down a U.S. remotely piloted unmanned aerial system (UAS) in mid-June.^[17] Disagreement ensued about the rationale for the attack, with the Iranians claiming the UAS violated its sovereignty and the United States denying that claim, but it was unquestionably a use of force by Iran against U.S. military equipment. Then, in September came the massively destructive attack against the Aramco oil fields of the U.S. ally, Saudi Arabia.^[18] Again, attribution was an issue, with Tehran continually denying involvement. However, Reuters reported in late November 2019 that Ayatollah Khamenei approved of the attack as a way to respond to the crippling sanctions imposed by the United States after President Trump's decision to withdraw from the Joint Comprehensive Plan of Action.^[19] The commander of the Islamic Revolutionary Guard Corps (IRGC) is credited with describing the attack as an opportunity to "take out our swords and teach [the U.S.] a lesson."^[20] The attack on Aramco clearly amounted to armed conflict; but perhaps did not independently establish an international armed conflict with the United States.

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The proxy war in Iraq escalated as 2019 waned with an increase in the frequency and intensity of IDF attacks. U.S. reports credited Kata'ib Hezbollah (KH), a Shia Militia Group (SMG), for many of the attacks on USFOR in 2019. On 27 December 2019, KH launched 30 rockets at K-1, a small base outside of Kirkuk in northern Iraq.^[21] The strike injured U.S. and Iraqi military personnel and killed an American interpreter assigned to a SOJTF-OIR subordinate unit, Nawres Waleed Hamid. In response, USFOR launched a massive attack against KH installations on the Iraq-Syria border, reportedly killing an estimated 24 KH personnel, and wounding an additional 50.^[22]

KH made the next move, a demonstration in front of the Baghdad Embassy Compound (BEC) that escalated to the point of protesters breaching the embassy's outer perimeter and setting fire to an exterior guard structure.^[23] The head of KH at the time, Abu Mahdi al-Muhandis, was present at the protest, the most likely explanation for why the mob was allowed to enter the closed road in front of the BEC.^[24] In addition to leading KH, al-Muhandis had a role in the Iraqi government as the deputy commander of the Popular Mobilization Forces.^[25] President Trump responded forcefully by issuing "not a warning" but a "threat" that Iran would be held fully responsible for the attack on the embassy.^[26]

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A few days later, Soleimani arrived at the Baghdad International Airport (BIAP) and shortly thereafter was dead. Al-Muhandis was accompanying Soleimani at the time of the strike and shared his fate.^[27] If immediately prior to that 3 January 2020, strike Iran and the United States were engaged in armed conflict, then the strike is the justifiable killing of a military leader. Iranian proxies had engaged in armed conflict with the United States and vice versa, with respect to the 27 December 2019 strike. Under international law, if one state exercises effective or overall control of a proxy group, such as Iran held over KH, then the state is held responsible for the actions of the proxy.^[28] KH is an SMG with a strong alignment and responsiveness to Iran. In fact, according to Westpoint's Combating Terrorism Center, KH was formed by the IRGC Quds Force.^[29] National Public Radio (NPR) described al-Muhandis as "having the backing of Suleimani," and cited sources supporting the proposition that if he had survived the Suleimani strike, he would have taken on the role of advancing Iranian interests in Iraq.^[30] Iran provides KH with weapons and funding and the operational guidance on how to use them.^[31]

The evidence justified striking Soleimani as a military target of an international armed conflict. The U.S. Secretary of State issued a statement shortly after the strike saying

What we did is take a decisive response that makes clear what President Trump has said for months and months and months.... [We] will not stand for the Islamic Republic of Iran to take actions that put American men and women in jeopardy.[32]

The President, the Secretary of Defense, and the Secretary of State had all warned that Iran would pay the price for what they described as proxy attacks on USFOR.[33] Soleimani's life was that price.

2 **Soleimani as Part of KH**

Even if one is unwilling to accept that Iran exercised a sufficient level of control over KH to be held accountable for its actions and considered a party to international armed conflict, Soleimani would still be a legitimate target if he was part of an armed group attacking USFOR in Iraq. Secretary of Defense Mark Esper discussed the strike at a 7 January 2020 press conference and relayed that Soleimani “was clearly on the battlefield...conducting, preparing, orchestrating military [operations]. He was a legitimate target and his time was due.”[34]

As previously mentioned, just a few days before the strike, USFOR launched a major attack against KH. Although Iraq expressed outrage that they did not authorize a strike against KH within their sovereign nation, no serious questions have been raised about whether the KH strike was legal.[35] KH was an armed group that had consistently attacked coalition forces and presented an ongoing threat to USFOR.[36] The only question is whether Soleimani was in fact part of KH. Soleimani's presence in Iraq shortly after the attack on the BEC, at a time of significant tension between KH and USFOR, indicates some level of influence or cooperation. The fact that al-Muhandis, the leader of KH, was at BIAP to meet and escort Soleimani reflected Soleimani's influence over KH. A report for PBS NewsHour described al-Muhandis as “Soleimani's man in Iraq.”[37] Chairman of the Joint Chiefs of Staff General Mark Milley was “100

percent” confident that Soleimani cleared the KH attack on K-1 that killed Hamid.[38] Similar to the first legal basis—international armed conflict with Iran—a strong justification exists to consider Soleimani a de facto leader of KH, which justified the strike against him.

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3 **Self-Defense Strike**

An unresolved legal issue for both of the first two approaches stems from U.S. domestic law. In May of 2020, the President vetoed a joint congressional resolution “To direct the removal of United States Armed Forces from hostilities against the Islamic Republic of Iran that have not been authorized by Congress.”[39] The resolution affirmed Congress' view that neither the 2001 nor the 2002 Authorization for the Use of Military Force (AUMF) authorized force against Iran. The President's veto statement argued the strike on Soleimani was authorized by the 2002 AUMF and Article II of the Constitution.[40] The President also objected that by carving out self-defense from its restriction on using force against Iran, Congress limited the exception to responding to a threat of imminent attack. He expounded the “Constitution recognizes that the President must be able to anticipate our adversaries' next moves and take swift and decisive action in response.”[41] The focus of this article is on the international law considerations, not domestic ones, but the difficulty of finding a solid authorization for using force against Iran or KH may help explain why the President and his administration have primarily justified the strike on Soleimani in terms of self-defense.

The Commander in Chief, and every commander subordinate to him down to the lowest level, has the responsibility and authority to exercise self-defense. The President immedi-

ately owned the decision to strike and described it as killing “the number-one terrorist anywhere in the world.”^[42] The President’s statement emphasized the message the strike sent as a broad principle of self-defense of “diplomats, service members, all Americans, and our allies.”^[43] The statement then provided the following justification: “Soleimani was plotting imminent and sinister attacks on American diplomats and military personnel, but we caught him in the act and terminated him.”^[44]

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The administration’s legal justification for striking Soleimani was the inherent right to act in self-defense, consistent with Article 51 of the Charter of the United Nations and customary international law.^[45] The Secretary of Defense echoed the President’s self-defense rationale and expanded upon it, saying in a press conference on 7 January 2020,

over the last few months [Soleimani] planned, orchestrated and/or resourced attacks against the United States that resulted in the killing of Americans and the siege of our embassy in Baghdad, and was in Baghdad to coordinate additional attacks.^[46]

The Honorable Paul Ney, the DoD General Counsel, spoke at Brigham Young University Law School and offered the following justification a couple of months after the strike:

to protect U.S. personnel; to deter Iran from conducting or supporting further attacks on U.S. forces and interests; to degrade Iran’s and Qods Force-backed militias’ ability to conduct attacks; and to end Iran’s strategic escalation of attacks on U.S. interests.^[47]

Democratic leaders in Congress questioned the administration’s self-defense justification, specifically whether there was sufficient imminence of any pending attack. Congressman Adam Schiff said that in the briefings for the defense and intelligence committee chairmen he did not recall a specific plan to bomb the BEC.^[48] He admitted that Secretary Pompeo described threats against U.S. personnel but did not know the precise time or location of specific targets. Similarly, Senator Tim Kaine said he was not “happy” with the administration’s justification because imminence requires more than a plan, and in fact requires some affirmative step toward executing that plan.^[49]

In discussing the Soleimani strike, Ney argued that in light of the previous attacks from Iran and the expectation that Iran would attack in the future, imminence was not a necessary condition of a self-defense strike.^[50] Ney’s position arguably blends the rationale of ongoing international armed conflict with self-defense. If the United States and Iran are engaged in international armed conflict, then there is no requirement for the threat of an imminent attack, and the use of force is not limited to self-defense.

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However, Ney’s point highlights that the analysis of self-defense should consider all the relevant facts and circumstances. If person A is met on the street by person B, the fact that person B has attacked person A on multiple occasions in the past is certainly a factor in considering whether person A reasonably perceives person B an imminent threat. Even if Iran and the United States are not currently engaged in international armed conflict, a pattern of attacks by Iranian proxies on U.S. personnel must be considered in weighing

what threat Soleimani, and his presence in Baghdad, posed to U.S. personnel in Iraq.

Determining whether an attack is imminent involves weighing multiple factors including whether the attack is part of a concerted pattern of continuing armed activity, the likelihood of opportunities to undertake effective actions of self-defense, and modern-day capabilities and techniques of terrorist organizations.

The former Deputy Judge Advocate General of the Air Force, Major General (Ret.) Charles Dunlap, also delved into the question of an imminent threat surrounding the Soleimani strike.[51] He highlighted the standards of imminence discussed in the Obama Administration’s report on the legal framework for use of military force.[52] The United States has adopted the understanding of international law that determining whether an attack is imminent involves weighing multiple factors including whether the attack is part of a concerted pattern of continuing armed activity, the likelihood of opportunities to undertake effective actions of self-defense, and modern-day capabilities and techniques of terrorist organizations. It is worth noting that the United States designated Soleimani a terrorist over a decade ago.[53]

Finally, the U.S. position explicitly does not require “specific evidence of where an attack will take place or of the precise nature of an attack,” to determine such an attack is imminent.[54]

The aforementioned members of Congress complained that the intelligence failed to identify a specific time or place of attack. Such precise intelligence was not required to strike Soleimani out of self-defense under the United States understanding of customary international law and the circumstances. The Iranian proxy force he exerted control

over had just attacked the American Embassy in Baghdad. Soleimani arrived in Baghdad to meet with the leader of that proxy force. Intelligence indicating additional attacks were being planned on that Embassy or other American interests was more credible and imminent given the past behaviors of Soleimani and surrounding circumstances. Perceiving Soleimani as a threat, and concluding he was likely to imminently be involved in an attack on American personnel, was reasonable and the strike on him was therefore lawful.

CONCLUSION

In conclusion, three theories provide a justification for striking Soleimani in accordance with international law. The Trump administration focused on the self-defense rationale, likely because of the lack of a declaration of war under domestic law. However, even if one concludes there was a lack of imminence sufficient to justify the strike under self-defense, the relationship between Soleimani and the attacks of Iranian proxies on U.S. personnel provides sufficient justification for the strike either in international armed conflict against Iran, or against Soleimani as a part of KH. Soleimani’s direct involvement in attacks against U.S. service members coupled with his intent to continue threatening U.S. service members justify taking his life as a legitimate military target.

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ENDNOTES

- [1] Al-Monitor Staff, *Zarif Says Retaliation for Soleimani Killing Still to Come*, AL-MONITOR.COM (Sept. 22, 2020), <https://www.al-monitor.com/pulse/originals/2020/09/iran-zarif-soleimani-killing-irgc-revenge.html>.
- [2] The ballistic missile attack shockingly took no life, but over 100 service members suffered traumatic brain injuries from the massive explosions that destroyed several buildings and military equipment. Alissa J. Rubin, *'It Was Like a Scene From an Action Movie'* N.Y. TIMES (Jan. 13, 2020), <https://www.nytimes.com/2020/01/13/world/middleeast/iran-missile-attack-american-base.html>; Oriana Pawlyk, *'Emotions and Chaos': Air Force Releases Eyewitness Accounts of Al Asad Missile Attack*, MILITARY.COM (Apr. 22, 2020), <https://www.military.com/daily-news/2020/04/22/emotions-and-chaos-air-force-releases-eyewitness-accounts-al-asad-missile-attack.html>. Nick Givas & Jennifer Griffin, *US troops say they braved Iranian missile attack despite being warned hours earlier*, FOX NEWS (Apr. 21, 2020), <https://www.foxnews.com/world/dod-firsthand-accounts-us-troops-iranian-ballistic-missile-attack> (recounting the destruction and severity of the 7 Jan. 20 attack). To provide some context for the 100 casualties, according to a DoD report updated as of Sept. 21, 2020, a total of 224 American troops have been wounded in action in Operation INHERENT RESOLVE, which started in 2014. DoD, *Immediate Release: Casualty Status*, <https://www.defense.gov/casualty.pdf> (last visited Sept. 23, 2020). Iran also launched missiles towards Erbil, Iraq, which hosts a significant presence of coalition forces, but there have not been reports of any casualties or damage to military infrastructure there. Hamdi Alkhshali, *Two ballistic missiles hit Erbil*, CNN (Jan. 7, 2020), https://www.cnn.com/middleeast/live-news/us-iran-soleimani-tensions-intl-01-07-20/h_c633b7ccb8e78db079f9e3079f989870.
- [3] Stephanie Nebehay, *U.N. expert deems U.S. drone strike on Iran's Soleimani an 'unlawful' killing*, REUTERS (July 6, 2020), https://www.reuters.com/article/us-usa-iran-un-rights-idUSKBN2472TW?utm_campaign=trueAnthem%3A+Trending+Content&utm_medium=trueAnthem&utm_source=facebook.
- [4] Jennifer Doherty, *Lindsey Graham Defends Trump after Soleimani Killing: Iranian General 'Signed his own Death Warrant'*, NEWSWEEK (Jan. 4, 2020) <https://www.newsweek.com/graham-defends-trump-soleimani-signed-his-own-death-warrant-1480408> (quoting Senator Lindsay Graham's Jan. 4, 2020 tweet, "Soleimani was one of the leaders of Iran, the largest state sponsor of terrorism. He was actively involved in planning attacks against American military and diplomatic personnel. He has American blood on his hands.").
- [5] See Peter Baker *et al.*, *Bin Laden Is Dead, Obama Says*, N.Y. TIMES (May 2, 2011), at A1 (Americans rightfully celebrated the killing of Osama Bin Laden as did the media), Courtney Kube *et al.*, *ISIS leader Abu Bakr al-Baghdadi killed in U.S. raid in Syria, Trump confirms*, NBC NEWS (Oct. 27, 2019), <https://www.nbcnews.com/news/world/abu-bakr-al-baghdadi-leader-isis-targeted-u-s-raid-n1072506> (favorably describing the killing of the "world's most wanted terrorist"); *contra* Colonel Shane Reeves & Lieutenant Colonel Winston Williams, *Was the Soleimani Killing an Assassination?* (Jan. 17, 2020), <https://www.lawfareblog.com/was-soleimani-killing-assassination> (discussing the decision by NPR and other media sources to label Soleimani's killing an assassination).
- [6] Executive Order 12333, paragraph 2.11, entitled "Prohibition on Assassination," says no U.S. agent "shall engage in or conspire to engage in assassination." Part two of the executive order where this prohibition resides is entitled "Conduct of Intelligence Activities." While assassination is not defined in the Executive Order Merriam Webster defines it as "murder (a usually prominent person) by sudden or secret attack often for political reasons."
- [7] Reeves & Williams, *supra* note 9.
- [8] The Rule of Law in Armed Conflicts project (RULAC) of the Geneva Academy of International Humanitarian Law and Human Rights, Classification, International armed conflict, <http://www.rulac.org/classification/international-armed-conflict#collapse1accord> (last visited Sept. 15, 2020).
- [9] ICTY, Tadić Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (1995), para. 70.
- [10] Special Representative for Iran and Senior Advisor to the Secretary of State Brian Hook, U.S. Dep't of State Press Briefing (Apr. 2, 2019), <https://www.state.gov/briefings/department-press-briefing-april-2-2019>.
- [11] *Id.*
- [12] *About CJTF-OIR*, OPERATION INHERENT RESOLVE, <https://www.inherentresolve.mil/About-CJTF-OIR> (last visited Sept. 5, 2020) (the coalition prefers the term Daesh as it removes any connection between the terrorist organization and the religion of Islam). Although the OIR mission remains focused on Daesh, force protection is always of primary concern and Daesh was not the only, or even the main, threat to coalition forces in the field. While the fight against Daesh has always been a global coalition this article focuses on legal justifications in the context of USFOR, primarily because the response to Soleimani specifically, and Iranian aggression generally, was typically an American action outside of the scope of the OIR coalition.
- [13] Murtaza Hussain, *THE INTERCEPT* (Nov. 17, 2019), <https://theintercept.com/2019/11/18/iran-isis-iraq-kurds>.
- [14] See Julian E. Barnes, *U.S. Launches Airstrikes on Iranian-Backed Forces in Iraq and Syria: The strikes were a response to a rocket attack that killed an American contractor*, N.Y. TIMES (Dec. 29, 2019), <https://www.nytimes.com/2019/12/29/world/middleeast/us-airstrikes-iran-iraq-syria.html> ("Since the United States military returned to Iraq in 2014, Iranian-backed forces and American forces have refrained from attacking each other because of a common enemy: the Islamic State.").
- [15] Shawn Snow, *Rocket attack hits near US Embassy in Baghdad's Green Zone*, MILITARY TIMES (Sept. 23, 2019), <https://www.militarytimes.com/news/pentagon-congress/2019/09/24/rocket-attack-hits-near-us-embassy-in-baghdads-green-zone>.

- [16] See Rebecca Kheel, *Top general: Iran-backed militia in Iraq 'only group known' to have carried out type of attack that killed two US troops*, THE HILL (Mar. 12, 2020), <https://thehill.com/policy/defense/487202-top-general-iran-backed-militia-in-iraq-only-group-known-to-have-carried-out> (“While we are still investigating the attack, I will note that the Iranian proxy group Kataib Hezbollah is the only group known to have previously conducted an indirect fire attack of this scale against coalition forces in Iraq,” [U.S. Central Command commander Gen. Frank McKenzie] added.”).
- [17] Joshua Berlinger et al., *Iran shoots down US drone aircraft, raising tensions further in Strait of Hormuz*, CNN (June 20, 2019), <https://www.cnn.com/2019/06/20/middleeast/iran-drone-claim-hnk-intl/index.html>.
- [18] Hon. Paul C. Ney, Jr., Gen. Counsel of the Dep’t of Def., *Legal Considerations Related to the U.S. Air Strike Against Qassem Soleimani*, presented at BYU Law Sch., (Mar. 4, 2020), at 5, <https://www.defense.gov/Newsroom/Speeches/Speech/Article/2181868/dod-general-counsel-remarks-at-byu-law-school/2/11>, (“In June 2019, an Iranian surface-to-air missile destroyed an unmanned U.S. Navy surveillance aircraft while it was on a routine mission in international airspace monitoring the Strait of Hormuz.... Moreover, on September 14, 2019, Iran launched a devastating air attack on a gas plant and an oil refinery in Saudi Arabia.”).
- [19] Michael Georgy, *Special Report: 'Time to take out our swords' - Inside Iran's plot to attack Saudi Arabia*, REUTERS, REUTERS (Nov. 25, 2019), <https://www.reuters.com/article/us-saudi-aramco-attacks-iran-special-rep/special-report-time-to-take-out-our-swords-inside-irans-plot-to-attack-saudi-arabia-idUSKBN1XZ16H>.
- [20] *Id.*
- [21] Barnes, *supra* note 18 (“Kataib Hezbollah launched more than 30 rockets against the base, which is near Kirkuk and is known as K1. The rocket attacks killed the American contractor and wounded four American service members and two members of the Iraqi security forces, Mr. Hoffman said. That attack was one of the two largest over the last two months and the only one to kill an American citizen, the American official said.”).
- [22] *Id.* (“Sayyid Jaafar Al-Husseini, the Hezbollah military spokesman in Iraq, claimed that 24 were killed and more than 50 wounded.”).
- [23] Alissa J. Rubin, *Iraq Raids Iranian-Backed Militia Accused of Attacking U.S. Forces*, N.Y. TIMES (June 26, 2020), <https://www.nytimes.com/2020/06/26/world/middleeast/iraq-militia-iran-hezbollah.html>.
- [24] Arwa Damon et al., *Trump threatens Iran after protesters attack US embassy in Baghdad*, CNN (Dec. 31, 2019), <https://www.cnn.com/2019/12/31/middleeast/iraq-protests-us-embassy-intl/index.html> (Al-Muhandis is also known as Jamal al-Ibrahimi).
- [25] PMF is the name given to all of the SMGs collectively in their semi-legitimate role established by Prime Minister Maliki in 2014 after the fall of Mosul. See Matthew S. Schwartz, *Who Was The Iraqi Commander Also Killed In The Baghdad Drone Strike?*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793618490/who-was-the-iraqi-commander-also-killed-in-baghdad-drone-strike> (describing al-Muhandis as deputy commander of PMF); Renad Mansour, *More than Militias: Iraq's Popular Mobilization Forces are Here to Stay*, WAR ON THE ROCKS (Apr. 3, 2018), <https://warontherocks.com/2018/04/more-than-militias-iraqs-popular-mobilization-forces-are-here-to-stay/> (describing the establishment and nature of the PMF).
- [26] Damon, *supra* note 29.
- [27] Some question whether al-Muhandis was collateral damage or deliberately targeted, but no doubt exists whether or not the United States intended to kill Suleimani. Schwartz, *supra* note 30.
- [28] “The notion of control necessary to establish the link between an armed group and a state has been debated. Two different standards have been proposed: effective control and overall control. The International Court of Justice adopted the test of effective control for the purposes of determining state responsibility in Military and Paramilitary Activities in and against Nicaragua (Nicaragua v the United States of America), Judgment (Merits), 27 June 1986, § 115; and Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment (Merits), 26 February 2007, §§ 392 ff; whereas in the context of conflict classification, the International Criminal Tribunal for the Former Yugoslavia adopted the test of overall control in The Prosecutor v Duško Tadić, Appeals Chamber, Judgment, IT-94-1-A, 15 July 1999, § 131. The overall control test has since been adopted by the International Criminal Court, The Prosecutor v Thomas Lubanga Dyilo, Pre-Trial Chamber, Decision on the Confirmation of Charges, ICC-01/04-01/06, 29 January 2007, § 211 and The Prosecutor v Thomas Lubanga Dyilo, Trial Chamber, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06-2842, 14 March 2012, § 541. The International Committee of the Red Cross considers the overall control test to be more suitable, see T. Ferraro and L. Cameron, ‘Article 2: Application of the Convention’, ICRC, Commentary on the First Geneva Convention, 2016, § 271f; L. Cameron, B. Demeyere, J.-M. Henckaerts, E. La Haye, I. Müller, with contributions by C. Droege, R. Geiss and L. Gisel, ‘Article 3: Conflicts Not of an International Character’, ICRC, Commentary on the First Geneva Convention, 2016, § 409ff. In any event, even the International Court of Justice admits that the overall control test is suitable for the purpose of conflict classification, see ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment (Merits), 26 February 2007, § 404. It is therefore the test to be used for the purposes of RULAC.” RULAC, *supra* note 12.
- [29] Michael Knights, *The Evolution of Iran's Special Groups in Iraq*, CTC SENTINEL, Vol. 3, Issue 11-12 (Nov. 2010), <https://ctc.usma.edu/the-evolution-of-irans-special-groups-in-iraq>.
- [30] Schwartz, *supra* note 30.

- [31] Press Release, U.S. Dep’t of Treas., *Treasury Designates Vast Network of IRGC-QF Officials and Front Companies in Iraq, Iran* (Mar. 26, 2020), <https://home.treasury.gov/news/press-releases/sm957> (identifying KH as a terrorist organization funded by Iran); Barnes, *supra* note 18 (“Iran also provides broad direction on what kind of attacks the groups make and how often they target American or allied forces.”).
- [32] Barnes, *supra* note 18.
- [33] *Id.*
- [34] Brian W. Everstine, *Esper: Soleimani ‘Days’ Away From Attack on Americans When Killed*, AIR FORCE MAG. (Jan. 7, 2020), <https://www.airforcemag.com/esper-soleimani-days-away-from-attack-on-americans-when-killed>.
- [35] Alissa J. Rubin et al., *Outrage in Iran After Killing of Suleimani: Here’s What You Need to Know*, N.Y. TIMES (Jan. 5, 2020), <https://www.nytimes.com/2020/01/05/world/middleeast/Iran-us-trump.html>.
- [36] *See, e.g.*, Kheel *supra* note 21 (CDR USCENTCOM referencing KH as source of multiple large scale IDF attacks), and Rubin *supra* note 28 (referencing multiple attacks on US and coalition forces from KH).
- [37] Ali Fathollah-Nejad, *What the killing of Qassem Soleimani could mean*, PBS NEWS HOUR (Jan. 3, 2020), <https://www.pbs.org/newshour/world/column-what-the-killing-of-qassem-soleimani-could-mean-for-iran>.
- [38] Elizabeth McLaughlin, *Soleimani approved attack on Iraqi military base that killed American: Top US general*, ABC NEWS (Jan. 3, 2020), <https://abcnews.go.com/Politics/soleimani-approved-attack-iraqi-military-base-killed-american/story?id=68056126>.
- [39] S.J. Res. 68, 116th Cong. (2020).
- [40] Statement from the President Regarding Veto of S.J. Res. 68 (May 6, 2020), <https://www.whitehouse.gov/briefings-statements/statement-president-regarding-veto-s-j-res-68/>.
- [41] *Id.*
- [42] Remarks by President Trump on the Killing of Qasem Soleimani (Jan. 3, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-killing-qasem-soleimani>.
- [43] *Id.*
- [44] *Id.*
- [45] Ney, *supra* note 23, at 2.
- [46] Press Briefing, Dr. Mark T. Esper, Sec. of Def. (Jan. 7, 2020), <https://www.defense.gov/Newsroom/Transcripts/Transcript/Article/2052367/press-briefing-by-secretary-of-defense-mark-t-esper>.
- [47] Ney, *supra* note 23, at 1.
- [48] CBS News “Face the Nation,” Full Transcript on Jan. 12, 2020, <https://www.cbsnews.com/news/full-transcript-of-face-the-nation-on-january-12-2020>.
- [49] *Id.*
- [50] Ney, *supra* note 23, at 7.
- [51] Major General (Ret.) Charles J. Dunlap, Jr., *The killing of General Soleimani was lawful self-defense, not “assassination,”* LAWFIRE (Jan. 3, 2020), <https://sites.duke.edu/lawfire/2020/01/03/the-killing-of-general-soleimani-was-lawful-self-defense-not-assassination>.
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- [53] Treasury and State Department Iran Designations Identifier Information Pursuant to E.O. 13224 (Terrorism) and E.O. 13382 (WMD) (Oct. 25, 2007), <https://www.treasury.gov/press-center/press-releases/Documents/hp644report.pdf> (last visited Sept. 24, 2020).
- [54] The White House, *supra* note 54, at 9.