



THE US-IRAN CONFLICT AND THE BREACH OF INTERNATIONAL LAW

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Abstract

The prohibition on use of force is one of the most paramount principles of international law and has been discussed widely in detail by scholars and eminent jurists. US's recent strike on Iran to kill General Soleimani and Iran's missile strikes on US military bases as a retaliation are the most recent use of force between two civilized nations and this paper attempts to undertake an extensive analysis of the conflict with respect to the breach of international law. Wars, belligerence, armed conflicts between nations have disrupted world peace and stability innumerable times since the dawn of civilisation and hence sanctioning any unwarranted use of force has always been the first prerogative of global bodies. There are various treaties and conventions which bind the States from refraining to use force against one another. However, in the first week of the new decade only, US carried out a strike on an Iranian convoy near Baghdad killing General Qassim Soleimani. Such a strike violates the principle of non-use of force as laid down by the UN Charter. The paper highlights the illegality of the killing under international law by presenting theorisations of jurists and scholars and analysing US's claims of the strike being done in anticipatory self-defence. Iran as a response to the killing of Soleimani attacked US military bases in Iran using missiles. Along with discussing the

legality of armed reprisals in international law, the paper also examines Iran's armed retaliation under the purview of right to self-defence and international law.

Historical Background:

The US and Iran have shared a turbulent history as the countries have found each other at loggerheads for a long period of time now. The seed of discord was sown between the country when the CIA pulled off a coup against Iran's elected Prime Minister Mohammad Mossadegh in 1953 putting Mohammad Reza Pahlavi, the last Shah of Iran, in power.¹ This coup resulted in discord and protests in Iran which ultimately culminated in the revolution of 1975 in which the monarchy was toppled and Khomeini came to power. The revolution involved Iranian students taking American nationals as hostage in the embassy at Tehran for over a year. Ever since, there have been numerous skirmishes between the US and Iran. However, in January 2020 the tensions escalated to an unprecedented level when US killed Iranian General Qassim Soleimani in a drone strike near the Baghdad Airport. In response, Iran launched ballistic missile attacks on US military bases in Iraq. In this essay, these two recent escalations will be examined from the perspectives of International Law and the possible breaches involved thereof.

Part I

Killing of General Soleimani by US

¹ *How The CIA Overthrew Iran's Democracy In 4 Days*, NATIONAL PUBLIC RADIO (Feb. 7, 2019, 12:00 AM),

<https://www.npr.org/2019/01/31/690363402/how-the-cia-overthrew-irans-democracy-in-four-days>.



General Qassim Soleimani was an Iranian major general and was considered as the second most powerful man in Iran after Ayotallah Khomeini. He was behind many clandestine military operations by Iran. He was the leader of the Quds Force and was quite famous for his role in fighting in Syria and Iraq. However in 2011, he was named by the US to have plotted to assassinate the Saudi Arabian ambassador to the US and for which he was designated as a terrorist by the then Obama Government.² Certain escalations and intelligence about the General actively developing plans to carry out attacks against the US led the Trump government to conduct an airstrike in Baghdad targeting an Iranian convoy and killing General Soleimani.

The US invoked pre-emptive self-defence to justify the strike and claimed that the strike was intended to deter future attack plans from Iran. Such a defence falls under the category of anticipatory self-defence in International Law and Hugo Grotius has written that for anticipatory self-defence to apply, the danger must be imminent.³ However it was the Caroline incident which brought anticipatory self-defence in prominence. Canadian forces burnt down the Caroline steamer of USA on December 29, 1837 which was justified by the Great Britain as a necessary act carried out by Canada to deal with a security threat. After a lot of negotiations, the US and Great

Britain although differing on the facts, decided on a test for self-defence. In 1841 the US Secretary of State, Daniel Webster stated that a state must show “a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation.”⁴ The metric set for self-defence to apply in the Caroline incident got recognised by a lot of scholars of that time.

However, after the drafting and signing of UN Charter, it became a point of debate among scholars whether the right to self-defence provided under the Charter included anticipatory self-defence or not. If one is to follow a textual interpretation of Article 51, the right to self-defence only applies ‘if an armed attack occurs’. Scholars like Ian Brownlie, Louis Henkin and Philip Jessup adhere to such a textual approach. Doyle reasoned that if a rule allowed a ‘state to use force in advance of an armed attack, it may lead states to pre-empt each other’s pre-emptive acts of self-defence.’⁵ This can lead to a vicious cycle of destruction among States internationally.

On the other hand, many scholars believe that international law allows states to use force in anticipatory self-defence.⁶ Under this school of thought, the international military tribunals at Nuremberg and Tokyo invoked the test laid in the

² *Treasury Sanctions Five Individuals Tied to Iranian Plot to Assassinate the Saudi Arabian Ambassador to the United States*, US DEPARTMENT OF TREASURY, (11 Oct., 2011), <https://www.treasury.gov/press-center/press-releases/pages/tg1320.aspx>

³ HUGO GROTIUS, *ON THE LAW OF WAR AND PEACE. DE JURE BELLI AC PACIS* (trans A. C. Campbell, London: 1814), Book II, ch 1, V

⁴ Letter from Mr. Webster to Lord Ashburton, Department of State, Washington, 6 Aug 1842.

⁵ Ashley Deeks, ‘*Taming the Doctrine of Pre-emption*’ in MARC WELLER, *THE OXFORD HANDBOOK ON THE USE OF FORCE IN INTERNATIONAL LAW* 661 (ed, OUP 2015); Michael Doyle, *Striking First: Preemption and Prevention in International Conflict* (Princeton, NJ: Princeton University Press, 2008), 26

⁶ DEREK W. BOWETT, *SELF-DEFENCE IN INTERNATIONAL LAW* (Manchester: Manchester University Press, 1958), 191–2.



Caroline incident.⁷ In several instances, states have justified the use of force as an anticipatory self-defence. Although, such an anticipatory self-defence can be invoked only in situations where the threatened armed attack is imminent and the use of force is the only means available to deflect the threat.⁸ Thus, anticipatory self-defence limits the right of a State to use force 'only to situations in which the forthcoming armed attack is both very close at hand and virtually certain.'⁹

In the present incident, the US cannot justify the killing of General Soleimani under the classic anticipatory self-defence as the situation fails to meet the Caroline test of imminence. The US has neither provided any evidence to prove an imminent attack being planned by General Soleimani nor has it shown that all other alternatives to counter these alleged threats were employed. Thus, although the use of force is permissible under customary international law of anticipatory self-defence, it cannot be used in the given instance and US's acts would violate international law.

However, with the increasing complexities in international relations, the states in practice sought to expand the requirement of imminence. This led to the inception of the concept of pre-emptive self-defence. Pre-emptive self-defence can be

defined as a lawful use of force by a state against an entity that has both the capacity and intent to carry out an armed attack. Thus, this school deems to include threats posed by the accumulation of WMDs (Weapons of Mass Destructions) for the intention of being transferred to terrorist groups.¹⁰ However, the relaxation of the criteria of imminence does not automatically write off the high level of certainty of the incoming attack required for pre-emptive self-defence to apply. Thus, the line distinguishing lawful and unlawful pre-emptive self-defence is very thin which is why the school has been subjected to scholarly criticism. In the end it becomes a question of the nature and accuracy of intelligence gathered by a state which it relies upon to launch a pre-emptive attack. As of today, heavy state practice and *opinio juris* shows that States recognise the right to self-defence to prevent grave dangers from materialising.¹¹

If one is to justify US's strike under the school of pre-emptive self-defence, the presence of concrete evidence showing that Iran was planning an attack on the US or its allies becomes imperative. According to the statement released by US Department of Defence, General Soleimani was "actively developing" plans to kill US diplomats and service members when he was killed in

⁷ 'Judgement, Part 18, The Invasion of Denmark and Norway: Conclusion' in Trial of the Major War Criminals before the International Military Tribunal. Vol I: Official Documents [Official text in the English language], Nuremberg: IMT, 1947, 206-9.

⁸ High-Level Panel on Threats, Challenges and Change, 'A More Secure World' (2004), 63, para 188

⁹ Ashley Deeks, 'Taming the Doctrine of Pre-emption' in MARC WELLER, THE OXFORD HANDBOOK ON THE USE OF FORCE IN INTERNATIONAL LAW 661 (ed, OUP 2015)

¹⁰ Schmitt, Michael N., *Responding to Transnational Terrorism under the Jus Ad Bellum: A Normative Framework*, Naval L. R. Vol. 56, No. 1 (2008)

¹¹ 2002 US National Security Strategy, 15 (The US argued in favour of pre-emptive self-defence in cases where there is a threat of an attack by WMDs); *Japan Threatens Force Against North Korea*, BBC News, Feb 14, 2003 (Japan warned North Korea that it would launch a pre-emptive attack if it had evidence that North Korea was planning a missile attack)



Baghdad.¹² The President of US Donald Trump also stated, “Soleimani was plotting imminent and sinister attacks on American diplomats and military personnel but we caught him in the act and terminated him.”¹³ The UN special rapporteur on extra-judicial executions Agnes Callamard however said that the US had not provided any information about an imminent attack from Iran.

Thus, considering the absence of any detailed evidence or information presented by the US about any forthcoming and imminent attacks being planned by the killed General, the US strike is a flagrant violation of international law and cannot be justified as an exercise of right to self-defence by the US.

It is imperative to also discuss the incident under the purview of the much controversial concept of preventive self-defence. Preventive-self defence falls outside the scope of the UN Charter as it permits the States to use force in cases of threats that are remote in time but are probable ‘under the circumstances prevailing at the time’.¹⁴ The US has previously expressed a right to use force in situations where the perceived threats were uncertain with respect to the time and place of the attacks.¹⁵ UK’s Attorney General also recognised the right to preventive self-defence and stated that States

can act in self-defence where there is evidence of further imminent attacks, even if there is no specific evidence of where such an attack will take place of what will be the nature of such an attack.¹⁶ The reasoning provided to support this view is that a restrictive form of self-defence cripples the States’ ability to nip threats in the bud and rather provide more time and opportunity for terrorist groups to build momentum to carry out grave attacks. Preventive self-defence has been acknowledged to be legal by several scholars.¹⁷ However one must note that these scholars have went on to regard the UN Charter as anachronistic and defunct.

Thus, preventive self-defence relaxes the strict criteria of imminence under the concept of anticipatory self-defence. If one is to accept the existence of the doctrine of preventive self-defence, US’s strike that killed General Soleimani would be justified under International Law. However, it must be noted at the same time that although there is some state practice to reflect existence of such a preventive concept, there are not enough instances to make such a rule a customary international law. As the International Court of Justice stated in the Continental Shelf case: “It is of course axiomatic that the material of customary international law is to be looked for primarily

¹² Ryan Pickrell, *Pentagon says it killed top Iranian general Qasem Soleimani on Trump's order*, Business Inside (Jan. 3, 2020, 08:38 IST), <https://www.businessinsider.in/politics/news/pentagon-says-it-killed-top-iranian-general-qasem-soleimani-on-trumps-order/articleshow/73078205.cms>

¹³ Mark Hosenball, *Trump says Soleimani plotted 'imminent' attacks, but critics question just how soon*, Reuters, (Jan. 4, 2020, 4:26 AM), <https://www.reuters.com/article/us-iraq-security-blast-intelligence/trump-says-soleimani-plotted-imminent-attacks-but-critics-question-just-how-soon-idUSKBN1Z228N>

¹⁴T.D. Gill, ‘The Temporal Dimension of Self-Defence; Anticipation, Pre-emption, Prevention and Immediacy’, in M.N. Schmitt and J. Pejic (eds), *International Law and Armed Conflict: Exploring the Faultlines* (Leiden and Boston, Nijhoff, 2007)

¹⁵ 2002 US National Security Strategy, 15

¹⁶ UK Attorney General’s speech in the House of Lords, HL Deb, Apr. 21, 2004, vol 660 cols 369-72.

¹⁷ Sean D. Murphy, *The Doctrine of Preemptive Self-Defense*, 50 Vill. L. Rev. 699, 717-19 (2005) (see also Michael Glennon and Anthony Clark Arend).



in the actual practice and opinio juris of States.”¹⁸

In conclusion, the US’s strike to kill Iranian General Qassim Soleimani in Baghdad violates the existing international law as it is violates Article 2(4) of the UN Charter which reads as, “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”¹⁹

Part II

Iran’s missile attack on US bases in Iraq

On 8th January, 2020 Iran launched more than a dozen ballistic missiles attacking the two US air bases in Irbil and Al Asad in Iraq. The attack happened just a few hours after the burial of the Iranian general Qassim Soleimani who was killed by the US in a targeted strike. Iran claimed that 80 US soldiers were killed in the attack. However, both Iraq and the US denied any casualties in their military. It was later reported and also confirmed from Pentagon that more than 100 soldiers suffered traumatic brain injury in the Iranian missile attack.²⁰

Days before the attack, Iranian Foreign Minister Mohammad Javad Zarif, said in a news interview that Iran would retaliate for the killing of General Soleimani in a proportional way and attack on legitimate target sites.²¹ After the attack, he again reiterated his stance by saying Iran ‘took and concluded proportionate measures in self-defence.’ He also said that Iran did not seek any ‘escalation or war’ and their airstrike was allowed under article 51 of UN Charter.²²

To discuss this incident in light of international law, one ought to begin with the concepts of retaliation and reprisal. Reprisals are measures of self-help employed that consist of a violation of international law ‘in response to a prior violation of international law and undertaken for the purpose of enforcing compliance.’²³ Antonio Cassese has defined reprisals as, ‘unlawful acts that become lawful in that they constitute a reaction to a delinquency by another State.’²⁴ In 1934, Institut de Droit International passed a resolution stating, “Reprisals are measures of coercion, derogating from the ordinary rules of international law, decided and taken by a State, in response to wrongful acts committed against it, by another State, and intended to impose on it, by pressure exerted

¹⁸ ICJ, *Continental Shelf case (Libyan Arab Jamahiriya v. Malta)*, Judgment, 3 June 1985, ICJ Reports 1985, pp. 29–30, § 27.

¹⁹ United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI (UN Charter), art 2(4).

²⁰ *More than 100 US troops suffered traumatic brain injury in Iran strike, military say*, The Guardian (Feb. 10, 2020, 17:18 GMT),

<https://www.theguardian.com/us-news/2020/feb/10/us-troops-brain-injury-iran-strike-military-to-report>

²¹ Tucker Reals, *Iran says retaliation will be proportionate and "against legitimate targets"* (Jan. 7,

2020, 5:15 PM) <https://www.cbsnews.com/news/iran-news-zarif-cbs-news-retaliation-qassem-soleimani-killing-proportionate-legitimate-targets-today-2020-01-07/>

²² *Iran 'Concludes' Attacks, Foreign Minister Says*, New York Times, (Jan. 8, 2020), <https://www.nytimes.com/2020/01/07/world/middleeast/trump-iran.html>.

²³ S. Darcy, *Retaliation and Reprisal*, <https://opil.ouplaw.com/view/10.1093/law/9780199673049.001.0001/law-9780199673049-chapter-41>

²⁴ ANTONIO CASSESE, *INTERNATIONAL LAW* (2nd edn, Oxford: Oxford University Press, 2005), 299.



through injury, the return to legality.”²⁵ Armed reprisals are acts involving use of force in a peace time against a State which has committed an internationally wrongful act. The legitimacy of the concept of armed reprisals has been questioned several times even in the earlier stages of its evolution.

The earliest and most prominent instance of the judicial applicability of armed reprisals can be found in the Naulilaa Arbitration between Germany and Portugal. The Tribunal set certain standards to govern the resort to reprisals that involved use of force which were, “Reprisals are illegal if they are not preceded by a request to remedy the alleged wrong. There is no justification for using force except in cases of necessity....Reprisals which are altogether out of proportion with the act that prompted them are excessive and therefore illegal. This is so even if it is not admitted that international law requires that reprisals should be approximately of the same degree as the injury to which they are meant to answer.”²⁶ This was the only time when the legality of proportionate armed reprisals was supposedly upheld by an international judicial body in necessary circumstances.

However, the international position on the legality of armed reprisals became

more and more restrictive in post second-world war era. The most key international treaty that deemed armed reprisals to be prohibited was the UN Charter which has enshrined the prohibition of use of force in Article 2(4) which reads as, ‘All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.’²⁷ The only exceptions to such a prohibition as stated in the Charter itself are Article 43, providing for Security Council authorised force, and Article 51 providing for member States’ right to self-defence. Further, the 1948 Commentary on the UN Charter on Article 2(3) states that ‘It is obvious that this rules out recourse to certain measures short of war which involve the use of force, such as armed reprisals.’²⁸ From a scholarly point of view, one can easily conclude that all eminent jurists are of the opinion that armed reprisals are prohibited under the UN Charter. Ian Brownlie opined that the ‘Unambiguous prohibition of forcible reprisals was finally accomplished by the Charter of the United Nations.’²⁹ Other academicians that have held armed reprisals to be violative of UN Charter include Brierly³⁰, Antonio Cassese³¹, and Georg Schwarzenberger³². Practice of

²⁵ Institut de Droit International, Session de Paris 1934, *Régime de représailles en temps de paix*, Article 1 (author’s translation).

²⁶ *Portugal v. Germany (The Naulilaa Case)*, Special Arbitral Tribunal, 31 July 1928 (1927–8) *Annual Digest of Public International Law Cases* 527

²⁷ UN Charter, art 2(4)

²⁸ LELAND M. GOODRICH AND EDVARD HAMBRO, CHARTER OF THE UNITED NATIONS; COMMENTARY AND DOCUMENTS (Boston, MA: World Peace Foundation, 1946), 67

²⁹ BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES, 223; IAN

BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW (7th ed, Oxford: Oxford University Press, 2008), 466

³⁰ BRIERLY, THE LAW OF NATIONS, (7th ed., Oxford: Oxford University Press, 2012), 415.

³¹ Antonio Cassese, ‘Return to Westphalia? Considerations on the Gradual Erosion of the Charter System’ in Cassese, *The Current Legal Regulation of the Use of Force*, 514

³² Georg Schwarzenberger, *International Law as Applied by International Courts and Tribunals*-Stevens & sons limited, London, 1968, 881 p. - Volume 51 Issue 606 - C. P, 51.



international organisations also seems to conform with a similar interpretation of the UN Charter. The UN Security Council adopted a resolution in 1964 condemning reprisals as ‘incompatible with the purposes and principles of the United Nations.’³³ The 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States clearly stated that, ‘States have a duty to refrain from acts of reprisals involving the use of force.’³⁴

The International Court of Justice in the Nuclear Weapons advisory opinion observed that, ‘Certain States asserted that the use of nuclear weapons in the conduct of reprisals would be lawful. The Court does not have to examine, in this context, the question of armed reprisals in time of peace, which are considered to be unlawful.’³⁵ It must be noted that India among many other states asserted reprisals to be lawful. India in its submission to the Court stated, ‘when a State commits such a wrongful act or delict, the use of force by way of reprisal would have to be proportionate.’³⁶ However such limited opinio juris does not mandate the legality of reprisals as the presence of contrary practice

as demonstrated above shows that armed reprisals are prohibited under the UN Charter. The International Law Commission while deliberating on non-armed reprisals or countermeasures and self-defence observed, ‘The contrary trend, aimed at justifying the noted practice of circumventing the prohibition by qualifying resort to armed reprisals as self-defence, does not find any plausible legal justification and is considered unacceptable by the Commission. Indeed, armed reprisals do not present those requirements of immediacy and necessity which would only justify a plea of self-defence.’³⁷ Further, it was presented to the Commission that the prohibition of armed reprisals had ‘acquired the status of a customary rule of international law.’³⁸

However, some scholars have attempted to make a case for the revival of armed reprisals claiming that the UN Charter does not ‘absolutely prohibit’³⁹ armed reprisals.⁴⁰ Armed reprisals have been termed as a ‘necessary evil’⁴¹ because UN is considered to be incapable of protecting its

³³ SC Res 188, S/RES/188 (9 Apr 1964).

³⁴ GA Res 2625 (XXV) (24 Oct 1970).

³⁵ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, General List No 95, para 46.

³⁶ Letter dated 20 June 1995 from the Ambassador of India, together with Written Statement of Government of India, 2.

³⁷ ILC, Summary Record of the 2424th Meeting, 21 July 1995, Yearbook of the International Law Commission, 1995, vol I, 297 (footnotes omitted).

³⁸ ILC, Summary Record of the 2424th Meeting, 21 July 1995, Yearbook of International Law Commission, 1995, vol I, 297; ILC, Draft Articles on Responsibility of States for Internationally Wrongfully Acts with commentaries, Yearbook of the International Law Commission, 2001, vol II (2), 132.

³⁹ Shane Darcy, *Retaliation and Reprisals*, OXFORD PUBLIC INTERNATIONAL LAW, (Jan. 1, 2015), <https://opil.ouplaw.com/view/10.1093/law/9780199673049.001.0001/law-9780199673049-chapter-41?rskey=tFuqcV&result=1&prd=OPIL>.

⁴⁰ Speyer Colbert, *Retaliation in International Law*, 200; Barry Levenfeld, *Israel's Counter-Fedayeen Tactics in Lebanon: Self-Defense and Reprisal under Modern International Law*, 21 Colum. J. Transnat'l L. 1 (1982-3) 21.; Alberto R. Coll, ‘Legal and Moral Adequacy of Military Responses to Terrorism’ (1987) 81 American Society of International Law Proceedings 297, 302-3; O’Brien, ‘Reprisals, Deterrence and Self-defence in Counter-Terror Operations’, 470; Arend Clark and Beck, *International Law and the Use of Force*, 186.

⁴¹ Partsch, ‘Reprisals’, 201.



members against the illegal use of force.⁴² As has been observed by the ILC, a few scholars have argued that armed reprisals fall under the lawful umbrella of self-defence.⁴³ Yoram Dinstein introduced the concept of defensive armed reprisals which are undertaken as a response to armed attacks and satisfy the requirements of necessity, proportionality and immediacy which are also the requisites of valid self-defence.⁴⁴ He contended that defensive armed reprisals are justified under Article 51 of UN Charter and customary international law.⁴⁵

To justify his stance, Dinstein invoked the *Nauliaa* Arbitration case in which armed reprisals were considered to be lawful if they met the requirements of necessity and proportionality. But such a position has not been accepted by States or international organisations.

To sum it up, armed reprisals are unlawful and prohibited under International Law and Iran's strike is violative of Article 2(4) of the UN if it is to be characterised as an armed reprisal.

Having addressed the first issue of armed reprisals, it is imperative to analyse Iran's attacks as a measure of self-defence under Article 51 of the UN Charter as Iran's foreign minister himself described the attacks as so. Article 51 of the Charter states that, 'Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the

Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.' On a simple reading of the provision, it is clear that the right to self-defence only gets operational if an armed attack occurs against the State. It was held by the International Court of Justice in the *Case Concerning Oil Platforms* case that the State justifying the use of force as an exercise of self-defence has a burden of proving the existence of an armed attack being carried against it.⁴⁶

Iran cannot claim or invoke the right to self-defence under Article 51 of the UN Charter for primarily two reasons:

A. US's strike does not amount to an armed attack for the right to self-defence to apply

B. Even if the US's strike is to be considered as an armed attack, the right to self-defence is only available till the attack is underway

Armed attacks have not been defined by the UN Charter or any other treaties but they have been deliberated a lot upon by the International Court of Justice. In the *Military and Paramilitary Activities in and against*

⁴² Coll, 'Legal and Moral Adequacy of Military Responses to Terrorism' 302-3

⁴³ Franck, *Recourse to Force*, 65-8; O'Brien, 'Reprisals, Deterrence and Self-defence in Counter-Terror Operations', 470.

⁴⁴ Dinstein, *War, Aggression and Self-Defence*, 245, 247.

⁴⁵ Dinstein, *War, Aggression and Self-Defence*, 245, 250.

⁴⁶ *Case Concerning Oil Platforms (Iran v. U.S.)* (—Oil Platforms), 2003 I.C.J. (Nov. 6), 42 I.L.M. 1334, 1356.



Nicaragua (Nicaragua v United States of America), the Court confirmed in the latter part of its judgment that there appeared to be a consensus on the nature of acts that can be treated as constituting an armed attack.⁴⁷ The Court further held in the same case that armed attacks were grave acts of violence and should necessarily be distinguished from isolated incidents. In the Oil Platforms Case, the Court did not consider a series of minor attacks to qualify as an armed attack against which the right to self-defence can be employed.⁴⁸ In the same case, the Court also held that an attack of a smaller scale even if mounted by a State did not warrant the use of force as an exercise of self-defence.⁴⁹ Constantinou has aptly summarised these points in concise definition for armed attacks as, ‘armed attack implies an act or the beginning of a series of acts of armed force of considerable magnitude and intensity (i.e. scale) which have as their consequence (i.e. effects) the infliction of substantial destruction upon important elements of the target State namely, upon its people, economic and security infrastructure, destruction of aspects of its governmental authority, i.e. its political independence, as well as damage to or deprivation of its physical element namely, its territory.’ Further, she adds the ‘use of force which is aimed at a State’s main industrial and

economic resource and which results in the substantial impairment of its economy...’⁵⁰

It can be inferred from this definition that for an attack to qualify as an armed attack under Article 51 of the UN Charter, the intensity, magnitude and destruction caused should be high. Thus, as per customary international law and opinion of scholars the killing of Suleimani is an isolated incident of violence and is not intense enough to be termed as an armed attack. In conclusion, US did not carry out an armed attack against Iran and hence Iran does not have a right to self-defence against the US under Article 51 of the UN Charter. The missile strike by Iran on the US military bases in Iran was an armed reprisal which is unlawful and prohibited under Article 2(4) of the UN Charter.

Moving on, it is also important to discuss the scenario if US’s strike to kill Soleimani is considered as an armed attack. It is a logical to infer that the armed attack by US ended after the strike in Baghdad. The International Court of Justice has made it clear in various judgments⁵¹ that the once an armed attack is concluded, the attacked State cannot indulge in a retaliatory use of force and justify it as an exercise of self-defence. This can be reasoned to be situated in the Caroline paradigm which holds necessity and immediacy to be the key elements for the invocation of self-defence.⁵² However, it is

⁴⁷ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Merits) [1986] ICJ Rep 14, para 195

⁴⁸ Oil Platforms (Islamic Republic of Iran v United States of America) [2003] ICJ Rep 161, para 64

⁴⁹ Oil Platforms (Islamic Republic of Iran v United States of America) [2003] ICJ Rep 161, para 51

⁵⁰ The Right of Self-Defence under Customary International Law and Article 51 of the UN Charter by Constantinou, Avra (2000)

⁵¹ See Military and Paramilitary Activities (Nicar. v. U.S.) (—Nicaragual), 1986 I.C.J. 14, 82

(June 27); see also Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion (—Nuclear Weapons), 1996 I.C.J. 226, 246 (July 8) (—[a]rmed reprisals in time of peace . . . are considered to be unlawfull)

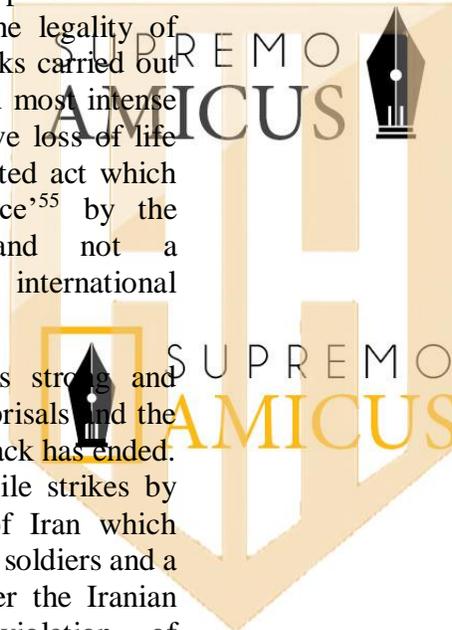
⁵² Sikander Ahmed Shah, *War on Terrorism: Self Defense, Operation Enduring Freedom, and the Legality of*



important to consider the fact that contrary state practice has been prevalent where force has been by used State actors in response to perceived past attacks.⁵³ Such acts increased after US's operation enduring freedom against the Taliban which it conducted in retaliation for the September 11, 2001 attacks. Ironically, the States although supporting the idea of retaliatory self-defence by the US, has otherwise unanimously condemned other instances of armed reprisals.⁵⁴ The acceptance given to US's retaliation to the 2001 attacks by the international community should not be mistaken as an evidence of the presence of a customary norm upholding the legality of reprisals as the nature of attacks carried out in US were of the gravest and most intense nature resulting in an excessive loss of life and resources. It was an isolated act which got a 'non-legal acquiescence'⁵⁵ by the international community and not a recognition of legality under international law.

The law still remains strong and intact in prohibiting armed reprisals and the use of force once an armed attack has ended. Thus, in conclusion, the missile strikes by Iran on the military bases of Iran which caused substantial injury to US soldiers and a significant loss of lives as per the Iranian narrative is a flagrant violation of international law and should be strongly

condemned by the international community of civilized nations.



U.S. Drone Attacks in Pakistan, 9 WASH. U. GLOBAL STUD. L. REV. 77 (2010),

https://openscholarship.wustl.edu/law_globalstudies/vol9/iss1/4, 92

⁵³ U.S. attacks for past attacks and to deter future attacks on Tripoli in 1986; U.S. attacks on Afghanistan and

Sudan in response to the attacks on U.S. embassies in Kenya and Ethiopia in 1999.

⁵⁴ S.C. Res. 262 (XXIII), U.N. Doc. S/RES/262 (Dec. 31, 1968) (condemnation of Israel over Beirut airport

attack in 1968); CHRISTIAN GRAY, *INTERNATIONAL LAW AND THE USE OF FORCE* 195-96 (3d ed. 2008)

⁵⁵ Sikander Ahmed Shah, *War on Terrorism: Self Defense, Operation Enduring Freedom, and the Legality of*

U.S. Drone Attacks in Pakistan, 9 WASH. U. GLOBAL STUD. L. REV. 77 (2010),

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