

The targeted killing of Qassem Soleimani – a short recapitulation

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A lot has been said, written and tweeted about the targeted killing of Qassem Soleimani and the aftermath since his death on January 3. This post aims to organize the jumble and point to remaining open questions in international law. The incident may not only shape the near future of state relations in the Middle East, it will also get its place in history through the legal assessment, because the targeted killing of a high-ranking military individual in a third state has never occurred in this shape or form before.

Qassem Soleimani was killed by a targeted drone strike in the proximity of the Baghdad airport in Iraq by US forces. The involvement of three sovereign nations, US, Iran and Iraq, opens the door to multiple international law related questions. In addition to questions concerning the US Constitution (which are addressed [here](#), [here](#) and [here](#)), they can be divided into three realms: the jus ad bellum, the jus in bello and the international human rights law (IHRL). These are all interwoven and presuppose each other in some way or the other: international humanitarian law (IHL), the jus in bello, applies to every international armed conflict (IAC), regardless if the conflict is legal or justified under the rules of jus ad bellum. The rules of the jus ad bellum can influence the assessment of particular requirements during the determination, if a hostile act was lawful under IHL. The application of IHRL and IHL do not exclude each other, in fact they complement each other. IHL must be read into IHRL, not as a deprivation, but as a “built-in boundary”. Hence, an isolated analysis of any of these categories must fall short.

The first layer is the jus ad bellum, the questions regarding the lawfulness of an attack against another state. The UN-Charter is clear: aggression is forbidden and only actions in self-defense are permissible, Art. 2(4) and 51. While the US did not use this term itself, the [first statement](#) hints to a justification of the attack on this ground. Apart from ongoing armed attacks, self-defense can just be invoked if there is an imminent threat of unlawful violence, which requires the use of force. [Retaliation is not a ground for self-defense](#), a concept, it seems, the [twitter feed](#) of POTUS as well as the [statements by Iran](#) could not grapple (any more – Iran argued this in the [Oil Platforms](#) case). In addition, Art. 51 asks for an immediate report to the Security Council (SC), which the US adhered to on January 8. The [letter](#) refers to the exercise of self-defense “in response” to past violent attacks, not a viable justification for the exercise of Art. 51. Iran referred to the attack as “aggression”, a word in itself repudiating the idea of self-defense and, at the same time, triggering the responsibility of the SC under chapter VII of the UN-Charter. Because there was no ongoing attack from Iran against the US, it boils down to the [question of imminence](#). So far, many statements have been made that no threat seemed imminent and the Department of Defense (DoD) did not prove otherwise. [Without an imminent threat](#), the [targeted killing was unlawful under the rules of jus](#)

[ad bellum](#). In addition, because Iraq never consented to a drone strike on their soil, the action also violated the state's territorial sovereignty.

To protect persons from the ramifications of war, IHL's applicability is not based on the legality of a war, but on the existence of an IAC. But when does an IAC begin? Doctrinal interpretations [differ](#). Some, like the [ICRC](#), argue that the first shot between nations makes them belligerents. It makes sense to open up the protective umbrella of IHL even for the first affected. [Others argue](#) that an IAC needs some kind of intensity, like in a non-international conflict (and vice versa, that the [first-shot theory should apply to NIAC](#)). Attacks which are not part of intense armed fighting do not amount to an IAC. There have been violent skirmishes before between the US and Iran, but [no one argued they would amount to an IAC](#). [Can the high-profile target of this attack change the previous perception](#)? If one does not follow the first-shot theory, is the [attack from Iran](#) of the Ain al-Asad base in Anbar able to change the assessment regarding an IAC retrospectively?

A third opinion focuses on the relationship between self-defense and IAC. A theory advocating so called "[naked self-defense](#)" is of the view that a targeted attack like a drone strike, an insulated event of self-defense against a terrorist, does not trigger an IAC. This theory points the finger to an underdeveloped and under-researched area of international law: is there room for something "not-yet-war" but more than law-enforcement after a targeted killing against a state actor? The question gained attention in regard to [non-state actors](#), but gets a new turn here. To further complicate things: Besides Iran and the US as state actors, Iraq is also involved. Applying the "naked-self-defense theory" here could lead to the quite absurd outcome that the US entered into an IAC only with Iraq, not Iran, when they killed the Iranian military commander. A well thought out analysis is needed in this area.

If IHL applies, most scholars agree that Soleimani [most likely was a lawful target](#). But there are issues to be discussed. Targeted killings of combatants must be guided by military necessity and proportionality. Proportionality means the balancing of antagonistic values. The interest in carrying out the military action itself is restrained by military necessity. This could lead to the following argument: If there was not imminent threat to the US by Soleimani, there was no military necessity to kill him, hence there was no proportionality in the targeted killing which led to the death of 7 people. This line of argument reads the requirements of jus ad bellum into jus in bello, Art. 51 UN-Charter into IHL. IHL applies irrespectively of the legality of an IAC, but the two realms shouldn't be viewed as absolutely separated. Facts and arguments bolstering or defying self-defense are simultaneously facts and arguments to military necessity and proportionality. It seems not just unlogic, but also unlawful to apply some aspects in one world, but not in the other.

IHL applies regardless of IAC, but is modified if IHL governs the situation. No arbitrary deprivation of life is acceptable, but IHL determines what is arbitrary. Legal actions under IHL are not arbitrary deprivations of life, if IHL applies to the situation. The right to life, Art. 6 ICCPR must be protected extra-territorially in all instances in which the state [exercises power or effective control](#) over the right to life (although the US is not following this well-established view). This basis leaves no room for

non-application of the right to life, because the taking of one's life is the outmost form of controlling it. This would go hand in hand with the purpose of Art. 6 ICCPR: protecting the right to life. [IHRL asks for absolute necessity](#) to end a life to protect from an imminent threat to life of others. Again, there is no proof of imminence of any threats against anyone through Soleimani.

Imminence is the word of the day, and probably weeks. It is relevant in regard to the determination if self-defense could justify the strike, if IHL applies and if the targeted killing was lawful under IHRL. Many other loose strands are in the bundle of assertions, analysis and justifications. The case is a prime example of the interwoven nature of sub-categories of international law and the need for more research and discussion. IHL, state security and military actions come along with secrecy and a big lack of information and, hence, a lot of uncertainty. Nevertheless, they must not come along without legal analysis and opinions.

Let's end this post with something certain: actions taken like proposed by [Trump's recent tweets](#) about targeting the Iranian population and [world heritage sites](#) would amount to clear violations of Art. 51 (2) API and customary international law ("[Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited](#)"). [Hopefully](#), it will not come to this other massive breach of international law.

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