

The Crisis Between Iran, Iraq and the United States in January 2020: What Does International Law Say? An analysis by Olivier Corten, Anne Lagerwall, Vaios Koutroulis and François Dubuisson

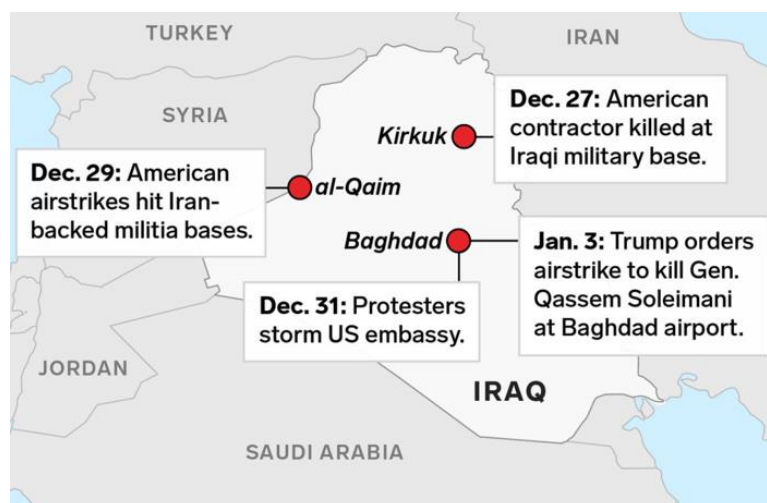
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Since 3 January, a decisive step has been taken in the latent conflict between the United States, Iran and Iraq, on whose territory military action is being stepped up in a context of internal crisis. The execution by the United States of Qassem Soleimani, one of the main Iranian leaders, was immediately perceived as setting a powder keg on fire. In response, Iran, as announced by its

authorities, launched an attack during the night of 7 to 8 January on two coalition military bases housing United States troops on Iraqi territory. Beyond the political aspects of this crisis, and the links it has with other events, whether they are remote in time if we think of the invasion and subsequent occupation of Iraq from 2003, the Iranian revolution of 1979 or even the overthrow of the Iranian Prime Minister in 1953, or more recent if we think of the withdrawal of the United States from the multilateral nuclear treaty with Iran in 2015, what does international law say about this?

On 2 January (local time), the United States Department of Defense issued the following [statement](#) to justify the drone strikes that killed Iranian General Qassem Soleimani, as well as an Iraqi national, Abu Mehdi al-Mouhandis, leader of the Kataeb Hezbollah, an Iranian-backed Iraqi Shiite militia, and several others:



“At the direction of the President, the U.S. military has taken decisive defensive action to protect U.S. personnel abroad by killing Qasem Soleimani, the head of the Islamic Revolutionary Guard Corps-Quds Force, a U.S.-designated Foreign Terrorist Organization. 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. He had orchestrated attacks on coalition bases in Iraq over the last several months – including the attack on December 27th – culminating in the death and wounding of additional American and Iraqi personnel. General Soleimani also approved the attacks on the U.S. Embassy in Baghdad that took place this week. This strike was aimed at deterring future Iranian attack plans. The United States will continue to take all necessary action to protect our people and our interests wherever they are around the world”.

On 8 January, a [letter](#) was sent to the Security Council in which the United States justified its strikes as follows:

“These actions were in response to an escalating series of armed attacks in recent months by the Republic Islamic of Iran and Iran-supported militias on U.S. forces and interests in the Middle East, in order to deter the Islamic Republic of Iran from conducting or supporting further attacks against the United States or U.S. interests, and to degrade the Islamic Republic of Iran and Islamic Revolutionary Guard Corps Quds Force-supported militias’ ability to conduct attacks [...]. The United States is prepared to take additional actions in the region as necessary to continue to protect U.S. personnel and interests”.

These strikes provoked contrasting reactions. Several NATO States have expressed their support for the United States, while [Iran](#), [Syria](#), Iraq, China and Russia have [described](#) this action as [illegal](#). Other states, such as [Mali](#), also appear to have expressed reservations with respect to the strikes. Many [other](#) have again called on the parties to exercise calm and restraint, fearing an escalation of violence in the region. (for references to States positions, see the “[Compilation of States’ reactions to U.S. and Iranian Uses of Force in Iraq in January 2020](#)”). International law scholars seem to consider US military action as illegal, especially with regard to the prohibition of the use of force (*jus contra bellum*), or even international humanitarian law (*jus in bello*) or human rights law. In this regard, we may mention [Mary Ellen O’Connell](#), University of Notre Dame, [Marko Milanovic](#), University of Nottingham, [Dapo Akande](#), University of Oxford and [Ralph Wilde](#), University College London, [Oona Hathaway](#), Yale Law School, [Agnès Callamard](#), Columbia University, UN Special Rapporteur on Extrajudicial Executions, [Alonso Gurmendi](#), Universidad del Pacifico Law School, Peru, [Adil Hamad Aque](#), Rutgers Law School, U.A.E., [Stéphane Rials](#), *Université Paris 2*, [Leila Sadat](#), University of Washington, and [Patryck I. Labuda](#) from the Flechter School of Law and Diplomacy.

However, as these comments do not cover all aspects of the legal issues raised by this crisis, it may be interesting to examine some of them in more detail starting from the different aspects of the United States’ arguments as they appear from the documents mentioned above. These documents refer to three arguments which will be analyzed in turn: the military action of 3 January would constitute both a response to an attack on the United States embassy on 31 December 2019 (1), to a series of previous attacks (2), and a preventive measure aimed at preventing future attacks (3). On the basis of the analysis of these three arguments put forth by the United States, it will then be discussed whether the Iranian military action carried out during the night of 7 to 8 January against the two military bases located on Iraqi territory is itself in

conformity with international law and, more specifically, if it can be justified under the right of self-defence invoked by Iran (4). Lastly, in addition to the rules on the use of force, which are at the center of our analysis, we will examine the modalities of the operations in question, determining whether they comply with the requirements of international humanitarian and human rights law (5). By analyzing each of these issues, we will consider not only the relations between the United States and Iran, the main protagonists in the conflict, but also the involvement of Iraq, whose territory was bombed and several of whose nationals died as a result of military actions decided upon by Washington and Tehran.

1. THE MILITARY OPERATION OF JANUARY 3, A RESPONSE TO AN “ATTACK” ON THE U.S. EMBASSY IN BAGHDAD?

On 31 December 2019, thousands of supporters of Hashd Al-Shaabi, a coalition of pro-Iranian Shiite militias, forced their way into the US embassy. Most of them were previously attending the funerals of their 25 brothers-in-arms killed in a previous United States military action against bases of Kataeb Hizbollah, an Iranian-backed Iraqi Shiite militia and member of Hashd Al-Shaabi, which has already been mentioned and will be discussed further below. According to several [AFP observers](#), Iraqi security forces did nothing to prevent the demonstrators from entering the secure "green zone" in Baghdad, where the U.S. embassy is located.

The protesters then stormed the vestibule, burned security installations, ripped off surveillance cameras, threw stones at the embassy guards' turrets and covered the armored windows with Hizbullah flags. Eventually, they retreated following the deployment of Iraqi security forces. The action caused [some material damage](#) and some protesters were hit by tear gas canisters thrown by US soldiers protecting the embassy, but no casualties were reported. President Trump accused Iran of orchestrating these incidents (Tweet of 31 December 2019). He then explicitly [threatened](#) the country by saying that: "Iran will pay a very big price!"

It is difficult, if not impossible, to justify the strikes launched on 3 January as an exercise of the right of self-defence in response to incidents targeting the embassy, since such incidents can in no way be qualified as an "armed attack", which alone allows for a reaction in self-defence within the meaning of Article 51 of the Charter of the United Nations.

The question arises differently depending on whether one views the attack as a response to an armed attack perpetrated by Iran or to an armed attack for which Iraq is responsible. In the first case, it should be shown that the demonstrators were *de facto* organs of the Iranian state, or acted under its "effective control", which seems rather problematic (see below, point 2). In the second case, it would be a matter of claiming that the Iraqi State did not fulfil its obligation to take all measures within its power to prevent damage to the US Embassy located on its territory: "we expect Iraq to use its forces to protect the Embassy, and so notified", as Donald Trump [tweeted](#) on the day of the events. Article 22 § 2 of the 1961 Vienna Convention on Diplomatic and Consular Relations clearly provides for such an obligation and the International Court of Justice had the opportunity to recall it in the case concerning the United States Diplomatic Staff in Tehran in 1980 when it held, *inter alia*, that Iran had failed to take appropriate measures to

protect the premises of the American Embassy against attack by student activists (*ICJ Reports 1980*, pp. 3-45). To reach a similar conclusion about Iraq in light of last December's incidents would still require to prove real failures on the part of that State, based on a careful assessment of the facts. While some Iraqi forces seem to have neglected to block the entrance to Baghdad's "green zone", additional forces were sent in, deployed rapidly and pushed back the demonstrators unceremoniously.



In a [tweet](#) published a few hours later, President Trump was pleased that the embassy had been secured and thanked the Iraqi President and his Prime Minister for their rapid response (Tweet of 31 December 2019). Since the obligation to protect is an obligation of means, and not of result, it is far from obvious that the Baghdad authorities can be considered as not having taken appropriate measures in this regard.

Even if it were possible to establish the responsibility of Iran or Iraq in these incidents, such events could not amount to an "armed attack" allowing for a reaction in self-defence within the meaning of Article 51 of the United Nations Charter. To do so, it would be necessary to show that the violence of this attack reached a double threshold:

- The first threshold of the use of force within the meaning of Article 2 § 4 of the United Nations Charter. It is more than doubtful that demonstrations or disturbances similar to the incidents of 31 December, even when they are violent, reach this threshold. In this respect, it is useful to recall the taking of hostages of United States diplomatic personnel in Tehran in 1979 – an incident far more serious than the events in Baghdad at the end of 2019 – that was followed by a failed military operation decided on by the Carter administration, officially justified by self-defence. In its 1980 judgment bearing essentially on diplomatic law, the International Court of Justice criticized this operation (*ICJ Reports 1980*, p. 43, para. 93).
- The second, more demanding, threshold of an "armed attack" within the meaning of Article 51 of the Charter, a concept which refers not only to the use of force, but to a use of force of a certain gravity which is distinct from other less brutal military actions, as the International Court of Justice has repeatedly established (*ICJ Reports 1980*, p. 43, para. 93; *Military Activities Case, ICJ Reports 1986*, p. 101, para. 191; *Oil Platforms Case, ICJ Reports 2003*, p. 187, para. 51, as well as pp. 191-192, para. 64). However flexible the latter criterion may be, it is self-evident that it cannot be considered to be met in the present case.

This is probably why the United States does not confine itself to the embassy episode as a basis for its action but refers more generally to earlier attacks which allegedly caused hundreds of victims.

2. THE MILITARY OPERATION OF JANUARY 3, A RESPONSE TO A PREVIOUS IRANIAN ARMED ATTACK?

In the words of the Defense Ministry [statement](#), General Qassem Soleimani “and his Quds Force were responsible for the deaths of hundreds of American and coalition service members and the wounding of thousands more. He had orchestrated attacks on coalition bases in Iraq over the last several months – including the attack on December 27th – culminating in the death and wounding of additional American and Iraqi personnel.” The letter sent to the Security Council refers to “a series of increasing armed attacks in recent months”. It is difficult to deny that, unlike the embassy incidents, this accusation relates to facts that may reach the double threshold mentioned above. The killing of hundreds of US soldiers and nationals and the wounding of thousands of others certainly constitute acts sufficiently grave to qualify as an armed attack. If such facts were established, then the United States would undeniably be the victim of such an armed attack by Iran, which would in turn justify the United States adopting measures of self-defence against that State.

However, two issues arise at this stage, one relating to Iran and the other to Iraq.

a) Self-defence against Iran?

Regarding Iran, the United States refers in its letter to the Security Council to several deadly Iranian attacks that could trigger the right to self-defence. A first series of events clearly does not seem to reach the threshold of an armed attack. The letter sent to the Security Council mentions as follows:

- A “threat to the amphibious ship USS BOXER on July 18, 2019”; however, a “threat” cannot be assimilated to a “use” of force, as is clearly indicated by a comparison of the terms of Article 2 § 4 of the Charter (which prohibits both) and Article 51 (which only gives a right of self-defence in case of an “armed attack” as defined above, and not a threat);
- An “armed attack on June 19, 2019, by an Iranian unmanned aerial system”, which in fact refers to the destruction of a US drone which, according to Iran, had intruded into its airspace; even supposing that this was not the case, it would be excessive to assimilate such an incident to one of the “most grave forms of the use of force (those constituting an armed attack)” (I.C.J., *Military Activities Case*, *ICJ Reports 1986*, p. 101, para. 191);
- Some “continuing armed attacks by the Islamic Republic of Iran that have endangered international peace and security, including attacks on commercial vessels ... [as well as

some] unmanned aircraft attacks on the territory of Saudi Arabia”, unspecified, but which in any event do not constitute actions against the United States; while the latter could implicitly refer to collective self-defence, it would then have to be able to avail itself of an invitation from the States whose vessels or territory have been affected (Military Activities case, *ICJ Reports 1986*, pp. 104-105, paras. 196-199; Oil Platforms case, *ICJ Reports 2003*, p. 27, para. 51), which is not the case.

For the rest, a general reference is made to a “series of attacks” by Iranian-backed militias, with only one specific attack, that of 27 December 2019, being identified. The latter was carried out



by Kataeb Hezbollah against a military base in Iraq, killing one US national and wounding four soldiers. Is this event sufficient to substantiate the argument of self-defence to justify the action of 3 January?

In order for this to be the case, we must first ensure that Iran is responsible for the action taken by

this Iraqi militia. According to several sources, [Kataeb Hezbollah](#) is ‘totally subservient’ to Tehran, [depending](#) directly on the official Iranian al-Quds forces led by General Soleimani. During the raid on 3 January, it is significant that its leader Abu Mehdi al-Mouhandis was in the company of Soleimani, which seems to show very close structural coordination between the two men and the forces which they respectively lead. If this were true, this irregular force could be considered to be acting in fact under the “total dependence” of Iran. Under international law, this would mean that Kataeb Hezbollah should be considered an organ of Iran and all its actions would be attributable to that state. It should be recalled that the International Court of Justice has made it clear that irregular forces must be devoid of any real autonomy and must be totally dependent on a State in order to be considered organs of that State. This led the Court, in view of the factual elements at hand, to refuse to consider the *contras* as organs of the United States despite the substantial financial and operational support provided to them by that State (I.C.J., Military Activities Case, *ICJ Reports 1986*, p. 62, para. 109). Similarly, the Court refused to consider the officers of the Serb Army of Bosnia and Herzegovina as *de facto* organs of the Federal Republic of Yugoslavia, notwithstanding the close links which those officers had with that State (I.C.J., Case Concerning the Application of the Genocide Convention, *ICJ Reports 2007*, p. 205, para. 392). Only a further analysis of the links between Kataeb Hezbollah and Iran could lead to a definitive conclusion. In this regard, it should also be noted that, if “total dependence” cannot be established, one could, again subject to verification of the facts, attempt to show that the attack of 27 December was carried out under the “effective control” of the Iranian authorities (I.C.J., Military Activities Case, *ICJ Reports 1986*, p. 65, para. 115). In this case too, the attack would be attributable to Iran, which should assume responsibility under international law.

Assuming that the attack of 27 December can be attributed to Iran, it must be of sufficient gravity to justify the use of military force in response. While the threshold for the use of force appears to have been reached, with one casualty and four wounded as a result of rocket fire, it is more difficult to argue that the attack had the gravity of an “armed attack”. Even the United States, as we have seen, does not clearly claim that this action as such, isolated from other attacks on its soldiers, would be sufficient to trigger its right to self-defence. Rather, by generally invoking a number of actions that caused hundreds of deaths and thousands of injuries, the United States appears to view the events of 27 December in a broader context.

It is generally accepted that a series of limited attacks, taken in isolation, can amount to an armed attack when considered as a whole. In the *Military Activities case*, the Court considered the use of force by the United States against Nicaragua, including support for the *contras*, not as a succession of a multitude of isolated acts but as a conduct taken as a whole (*ICJ Reports 1986*, p. 146, para. 3). The same logic seems to have been followed in the case concerning *Armed Activities on the Territory of the Congo*, the Court asking itself incidentally whether certain attacks “could be regarded as having a cumulative character” (*ICJ Reports 2005*, p. 223, para. 146). In the *Oil Platforms case*, the Court referred to the possibility of taking into account “a series of attacks”, without singling out each of them (*ICJ Reports 2003*, p. 191, para. 64). Finally, in the *Legality of Use of Force case*, the Court found that there was a general dispute, which concerned the bombings “taken as a whole” (I.C.J., Order of 2 June 1999, *ICJ Reports 1999*, p. 134, para. 28), and further found that “the use of force in Yugoslavia” – again considered in general terms – raises very serious problems of international law (*ibid.*, p. 132, para. 17). However, a comparison of the precedents discussed here with the case of Iran is edifying: Iran has never behaved in a similar way, even by far, to a bombing campaign such as that of NATO against Yugoslavia, or to the United States military intervention in Nicaragua, or to Uganda’s armed operations in the Democratic Republic of the Congo, which led to the occupation of part of DRC territory for several years. The elements mentioned in the Ministry of Defence statement or in the letter sent to the Security Council seem to refer more to a series of varied and separate incidents, sometimes several months apart and, as we have seen, involving different States. We are therefore in a situation more comparable to that which was judged by the Court in the *Oil Platforms case*, pitting Iran against the United States precisely for events of the same type as some of the events referred to here. Referring to a series of armed incidents in the Gulf, the Court concludes that:

“Even taken cumulatively, and reserving, as already noted, the question of Iranian responsibility, these incidents do not seem to the Court to constitute an armed attack on the United States, of the kind that the Court, in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, qualified as a “most grave” form of the use of force (see paragraph 51 above)” (*ICJ Reports 2003*, p. 192, para. 64).

In connection with these considerations, it may be asked whether the action of 3 January met the condition of necessity of self-defence, a condition which, according to the Court, is “rigorous and objective, and leaves no room for “a certain freedom of appreciation” (*ibid.*, p. 196, para. 73). In this regard, it should be noted that the United States had already responded

to the events of 27 December 2019 before the execution of General Soleimani. On 29 December 2019, United States military action hit five Kataeb Hezbollah sites, three in Iraq and two in Syria. These [raids](#) caused about 20 deaths. In fact, it was precisely on the occasion of the victims' funerals, which took place two days later, that the situation degenerated and the US embassy in Baghdad was targeted. The sequence of factual events is not without legal consequences: since the United States had already retaliated on 29 December to the action of 27 December, can it avail itself a second time of the argument of self-defence to carry out a murderous raid on 3 January? There is reason to doubt it, which is probably why the United States also referred to the embassy incident and other earlier acts... with all the limitations just mentioned. To that extent, it seems quite delicate to accept that the military operation may have been carried out by the United States in self-defence against Iran.

b) Self-defence against Iraq?

Even more problematic is the issue of the lawfulness of US military actions with regard to Iraqi sovereignty, which is not even mentioned in the letter sent to the Security Council. For self-defence to justify the bombing of Iraqi territory and the execution of several of its nationals, it must be established that Iraq – and not Iran – is itself responsible for an armed attack against the United States. The government in Baghdad has been cooperating with the government in Washington for years, be it after the overthrow of Saddam Hussein's regime when the new Iraqi government consented to the stationing of US troops on its soil following their invasion in 2003, or more recently in the fight against the Islamic state, especially since summer 2014. Returning to the current crisis, the US authorities have certainly [accused](#) Iraq of not having taken the necessary measures to protect the coalition forces, especially after the attack of 27 December 2019. A senior U.S. official [told](#) the press:

“We have warned the Iraqi government many times, and we've shared information with them to try to work with them to try to carry out their responsibility to protect us as their invited guests...They have not taken the appropriate steps”.

In this context, can the acts perpetrated by this irregular group be considered attributable to Iraq? The criteria of “total dependence” or “effective control” would be very hard to apply in this case, given the difficulties of the Iraqi High Command in ensuring their authority over these militias. However, if the latter were to be considered as official organs of the Iraqi State, in particular because of a decree adopted on 1 July 2019 in view of integrating these militias into the Iraqi armed forces, it would become possible to attribute the military action of 27 December to that State, and by repercussion give the United States a decisive argument for the exercise of a right of self-defence. Similar reasoning would require a more detailed analysis of the terms of the decree, of which only certain excerpts, translated into English, have been [published](#) in the press: “Mobilisation Forces are to operate as an indivisible part of the armed forces and be subject to the same regulations” (emphasis added). In view of these terms, which should be placed in the more general framework of Iraqi law, it is possible that this legal act does not mark an immediate formal incorporation of the militias into the Iraqi army, but a willingness to integrate them in the near future. This willingness has apparently [not been followed up](#) so far.

In this last hypothesis, the said militias would not, for the moment, be assimilated to organs of the Iraqi State...

Could the United States consider that Iraq has neither the capacity nor the intention to put an end to the activities of these militias – by referring to the “unwilling or unable” doctrine that has sometimes been invoked by some states, mainly Western ones, to justify their military interventions on the territory of states that do not fulfil their obligations? According to this theory, such inaction would make it necessary to take action in self-defence on Iraqi territory, even without its consent. Such an argumentation would be more than questionable (O. Corten, “The ‘unwilling or unable’ Theory: has it Been, and Could it Be, Accepted?”, *Leiden Journal of International Law*, 2016, pp. 777-799). The position that a State could be attacked merely because it fails to prevent unlawful acts from being committed on its territory against other States is far from being accepted in international law. On the one hand, it would call into question its very foundations by allowing military intervention in multiple situations. Many States would thus be turned into battlefields perpetually subject to foreign intervention. On the other hand, and more specifically, it is incompatible both with existing legal instruments (no text allows such a possibility) and with the consistent case-law of the International Court of Justice, which systematically refers to the “total dependence” and “effective control” tests already mentioned.

Coming back to [Iraq](#), it [condemned](#) the US military actions of 29 December and 3 January as totally illegal, and [called for a review of cooperation](#) between the two countries. The parliament thus [called](#) on the government in Baghdad, which has been in office since the last elections, to withdraw its consent to the presence of US troops in the country. If such a decision were to be taken, the United States would have to repatriate its troops. A failure to do so would make the United States guilty of an occupation incompatible with international law and, more specifically, of an armed attack against Iraq that would allow the latter to conduct military operations in self-defence.

In conclusion on this point, the argument of self-defence by the United States is proving to be a very fragile argument to justify the military action of 3 January. As far as Iran is concerned, the events referred to, whether the incidents in the embassy on 31 December or the rocket launches on 27 December, taken as such, are too weak to constitute an armed attack. In the second case, they could only be relevant if they were linked to other attacks, which would require precise identification and evidence that is currently lacking. As for the violation of Iraqi sovereignty, it simply seems unjustifiable under international law. This leaves us with the argument of preventive action, also put forward by the United States authorities.

3. THE MILITARY ACTION OF 3 JANUARY, A PREVENTIVE SELF-DEFENCE?

The Ministry of Defense statement justifying the execution of Soleimani mentions that “this strike was aimed at deterring future Iranian attack plans. The United States will continue to take all necessary action to protect our people and our interests wherever they are around the world.” That preventive aspect was also emphasized by [President Trump](#), as well as by his [Secretary of](#)

[State](#), who insisted on the existence of an [imminent attack](#). However, several international law experts have taken the view that international law does not permit preventive action in self-defence. Two elements have rightly been put forward.

First of all, and on a purely factual basis, the United States has in no way shown that an imminent attack was planned by General Soleimani. [According to them](#), the latter was preparing military action against the United States, but [some sources](#) contradict this claim:

“... some officials voiced private skepticism about the rationale for a strike on General Suleimani, who was responsible for the deaths of hundreds of American troops over the years. According to one United States official, the new intelligence indicated ‘a normal Monday in the Middle East’ — Dec. 30 — and General Suleimani’s travels amounted to ‘business as usual’. That official described the intelligence as thin and said that General Suleimani’s attack was not imminent because of communications the United States had between Iran’s supreme leader, Ayatollah Ali Khamenei, and General Suleimani showing that the ayatollah had not yet approved any plans by the general for an attack. The ayatollah, according to the communications, had asked General Suleimani to come to Tehran for further discussions at least a week before his death”.

Other sources even [mention](#) a diplomatic trip by General Soleimani, aimed at promoting peace in the region, and we will discuss this element below (see point 5).

It is difficult to assess the veracity of this information; here again, there are [limits to the evidence available](#). The fact that the Ministry of Defence has combined the preventive aspect with a more traditional aspect of retaliation is perhaps indicative of a certain lack of conviction or discomfort with the validity of this argument on the part of the United States itself.

Secondly, on a legal basis, Article 51 of the United Nations Charter provides for a right of self-defence “if an armed attack occurs”, and not in the case of a “threat of armed attack”, even though the latter is prohibited by Article 2 § 4 of the Charter and gives the Security Council competence to decide on possible coercive measures (Chapter VII of the United Nations Charter). No customary agreement of the international community to relax this textual condition can be established. On the few occasions when preventive self-defence has been invoked, the argument has been strongly criticized, and has in any case never been unanimously accepted. Thus, Israel’s invocation of preventive self-defence in order to justify military action in Iraq against the Osirak nuclear reactor in 1981 was rejected. Similarly, when the United States resorted to a preventive war by proclaiming the so-called “Bush doctrine” (which allowed for military action against mere threats) or when they invoked more specifically preventive self-defence to legitimize certain strikes in Syria from 2014 onwards, their argument was criticized. In 2005, the UN Secretary-General had thought he could bring about a compromise by suggesting to admit preventive self-defence only under very strict conditions, in the case of an “imminent threat”. Again, this proposal was met with a stubborn rejection by the majority of UN member states (references in O. Corten, *The Law against War*, Hart, 2011 pp. 426-435), who preferred to stick to the classic definition of Article 51 of the Charter, which does

require the existence of “armed attack”. Indeed, no international court or tribunal has ever endorsed the argument of preventive self-defence.

The only possibility for the United States would therefore be to show not only that General Soleimani was planning an imminent attack against the United States, but that the attack had already begun (possibly without having yet caused any effects). As has been seen, no evidence that could support such a theory has so far been made public.

4. IRAN’S ATTACK ON TWO MILITARY BASES IN IRAQ, A PROPORTIONATE ACTION TAKEN IN SELF-DEFENCE?

During the night of 7 to 8 January 2020 at 1:30 a.m. local time, Iran reacted to the US attack by launching *Operation Martyr Soleimani*, which consisted of firing some 15 missiles against two coalition bases housing several hundred of the 5,000 US troops currently deployed on Iraqi soil. The first target was the Ain al-Assad base, located 160 kilometers West of Baghdad, which is one of the most important military bases for the United States in Iraq. The [second target](#) was the [Erbil base](#) in [Northern Iraq](#). The missile launches appear to have caused no casualties, no serious injuries and limited property damage. While [some Iranian news agencies](#) immediately

reported 80 casualties among US soldiers and damage to US military drones and helicopters, [this information has not been confirmed](#) so far by the United States, Iraq or other foreign States present on the ground such as Australia, [Canada](#), [Denmark](#), Finland, France, Lithuania, Norway, [Poland](#) or the [United Kingdom](#), all of which [have stated](#)



that there were [no casualties](#). President Trump made it clear in his [speech](#) at the White House the day after the attack that “no Americans were harmed in last night’s attack by the Iranian regime. We suffered no casualties, all of our soldiers are safe, and only minimal damage was sustained at our military bases”. This information was nuanced a week later as the [press](#) reported that 11 soldiers had been injured in the strikes and are being treated or screened for concussion symptoms from the blast.

The military operation was justified by Iran in a [letter](#) to the Security Council as follows:

“I would like to inform you that on 8 January 2020, in the early morning hours of Tehran time, in exercising our inherent right to self-defense in accordance with Article 51 of the United Nations Charter, the armed forces of the Islamic Republic of Iran took and concluded a measured and proportionate military response targeting an American air base in Iraq from which the cowardly armed attack against Martyr Soleimani was launched. The operation was precise and targeted military objectives thus leaving no collateral damage to civilians and civilian assets in the area (...) Seriously warning about

any further military adventurism against it, Iran declares that it is determined to continue to, vigorously and in accordance with applicable international law, defend its people, sovereignty and territorial integrity against any aggression”.

The main issues raised by this argument are twofold: one is whether Iran is entitled to act in self-defence in response to the U.S. military operation against General Soleimani, and the other is whether Iran is entitled to act in self-defence on Iraqi territory.

a- An Iranian attack in self-defence against the United States?

In order for Iran to invoke its right to self-defence under Article 51 of the Charter of the United Nations, expressly referred to in [its letter](#) to the Security Council, it must establish, first, that such action was intended to respond – and put an end – to an “armed attack” against Iran and, second, that it was necessary and proportionate to that objective.

It seems quite clear that the military operation launched by the United States to eliminate General Qassem Soleimani can be regarded as a use of force within the meaning of Article 2 § 4 of the UN Charter. But is the operation serious enough to qualify as an “armed attack” within the meaning of Article 51 of the UN Charter, as [Iran claims](#)? It is true that it is a relatively targeted action. But that does not prevent it from being considered as an armed attack, if we recall that, in the *Oil Platforms case* already opposing the United States and Iran, the Court did “not rule out the possibility that the mining of a single warship may be sufficient to justify the use of the ‘inherent right of self-defence’”. (*ICJ Reports 2003*, pp. 195-196, para. 72). In the latter case, the Court had rejected the characterization of armed attack in the absence of conclusive evidence to attribute the mining of the vessel to Iran, but would the same be true in a case such as the 3 January operation? In view of its *modus operandi*, its target and the context in which it took place, perhaps the conclusion would be different. The operation consisted of firing three missiles that totally destroyed two vehicles and caused about ten deaths, including General Qassem Soleimani. Soleimani was considered to be one of Iran’s most senior military officials, if not one of the regime’s most influent high-level executives. In this respect, the military action of 3 January is distinct from border incidents or limited operations such as those that were at stake in the *Oil Platforms case*. Imagine, for example, that Iran launched a drone strike killing General Mark A. Milley, Chief of Staff of the United States Armed Forces, while the latter was on an official visit to Mexico. Would it be possible to claim that such a strike would not constitute an armed attack and that the United States would be prevented from invoking its right of self-defence and attack Iranian military bases, established, for the sake of this example, in Mexico? Clearly, a military operation of this nature does seem to reach the threshold triggering a right of self-defence within the meaning of Article 51 of the UN Charter. It is significant that, although many – and mostly Western – States condemned Iran’s use of force as unacceptable, called for restraint and hoped for the de-escalation of violence (Bulgaria, Canada, Estonia; European Union, Finland, France, Germany, Guatemala, Greece, Italy, Latvia referring to an ‘aggressive action’, Lithuania, NATO, the Netherlands, Norway, Slovenia, Saudi-Arabia), none of them explicitly considered that Iran could not act in self-defence against the United States but rather stressed the need to respect Iraqi sovereignty and territorial integrity

(for references to States positions, see the “[‘Compilation of States’ reactions to U.S. and Iranian Uses of Force in Iraq in January 2020](#)”). Since the other States remained rather neutral or silent on the matter, with the exception of Syria endorsing the Iranian attack, it seems difficult to prove that the international community rejected the idea that Iran was exercising its right to self-defence against the United States.

But even if we admit that Iran was the object of an armed attack by the United States, and thus entitled to react in self-defence, another important point needs to be addressed and relates to the choice of reactions that Iran could adopt. This choice is not unlimited. As the International Court of Justice has recalled (references above, point 2), only “necessary and proportionate” actions can be taken. For some commentators, the Iranian attack of 8 January was no longer necessary since the US attack to which Iran intended to respond to had ended five days earlier. In their view, this circumstance shows that Iran’s aim was not to stop the attack, but to take punitive or retaliatory action against the United States, which is not permitted under international law (e.g.: [Mary Ellen O’Connell](#), [Marko Milanovic](#), and [Adil Ahmad Haque](#)). It is true that some public statements by Iranian officials, as for example [Ayatollah Khamenei’s remarks](#) on 6 January, suggest this. However, the [letter](#) sent by Iran to the Security Council, which specifies the objective of the attack, does not include this aspect. The objective of the attack was to adopt “a measured and proportionate military response targeting an American air base in Iraq from which the cowardly armed attack against Martyr Soleimani was launched” and “seriously warning about any further military adventurism against it”; recalling that Iran is “determined to continue to defend, vigorously and in accordance with applicable international law, its people, sovereignty and territorial integrity against any aggression”. For Iran, the attack is both a response to the United States aggressive conduct and a signal that Iran stands ready to respond again should another attack be decided. Assessing what is “necessary” to put an end to an armed attack is always a delicate matter. In this case, it depends on what constituted the armed attack at the time. If the armed attack was composed only of the drone strike killing Soleimani, it was completed within a few minutes and only on-the-spot responses could be deemed ‘necessary’ to put an end to it. If the armed attack started with the drone strike but was likely to include more strikes or other types of military operations, the armed attack could be considered to be ongoing and a reaction a few days after it began could still be considered ‘necessary’. Only a careful assessment of the facts and a thorough analysis of all information available – including information from the intelligence services -, could help us reach a definitive answer to this question. But it might be useful, in any case, to understand Iran’s position in light of the multiple events occurring in the beginning of the year. These events show, at the very least, that the drone strike was not an isolated and exceptional event, but prompted or was part of a broader stance by the United States with respect to Iran.



The United States decided on 3 January to send [3,000 additional troops](#) to the region. President Trump [said](#) on 5 January on Twitter that “(...) should Iran strike any U.S. person or target, the United States will quickly & fully strike back, & perhaps in a disproportionate manner”. On the same day, the Iraqi parliament approved a [bill](#) according to which “the Iraqi government has an

obligation to end the presence of all foreign forces on Iraqi soil and prevent them from using Iraqi lands, waters, and airspace for any reason”. The following day, the Pentagon affirmed that a US general’s letter informing Iraq’s Defense Ministry that US led coalition troops would leave Iraq “was a mistake” and General Mark Milley told reporters: “That is not what’s happening”.

In view of these elements, it seems imprudent to rule out the possibility that the Iranian operation targeting two military bases housing American soldiers was still a “necessary and proportionate” measure of self-defence at the time it was carried out. More generally, to assess what is “necessary and proportionate” in order to put an end to an armed attack by isolating certain acts from others could result in preventing States from reacting to armed attack composed by multiple military actions, as is often the case with the use of UAVs, and depriving them of defensive means whose deterrent effect is undeniable, as this case seems to confirm.

b- Iranian action in self-defence against Iraq?

But the most problematic issue is the question of the lawfulness of the Iranian attack with regard to the territorial integrity of Iraq which has sent a [formal protest](#) to the Security Council denouncing the attack as a “violation of its sovereignty”. In order for self-defence to justify the firing of missiles on Iraqi territory, it should be shown that this state is responsible for an armed attack against Iran. Yet nothing indicates – and no one has even claimed – that Iraq can be held responsible in any way for the operation targeting Soleimani, which, it should be underlined, also caused the death of five Iraqi members of the group Kataeb Hezbollah or other units of the Popular Mobilization Units, which, as we have seen, Iraq wished to integrate into its security forces by the decree of 1 July 2019. Moreover, reacting to the attack by the United States, the Iraqi Prime Minister [stated](#) that: “The assassination of an Iraqi military commander holding an official position is an act of aggression against Iraq, and the Iraqi people”.

The attack on Soleimani was undoubtedly made possible by the United States military presence in Iraq, a presence to which Iraq consented in 2004 and until [very recently](#), as we have seen. However, such an acceptance is not sufficient to consider Iraq as being responsible for this attack and, therefore, liable in return to suffer Iran’s reaction. To do so, it would have to be shown that Iraq would have accepted that its territory, placed at the disposal of the United

States, could be used by the United States to carry out an act of aggression against Iran, as set out in article 3 (f) of the definition of aggression annexed to General Assembly resolution 3314 (XXIX). No State has made such claim. In light of these elements, Iran was therefore not justified in carrying out an attack on Iraqi territory.

This analysis is not called into question by the fact that the Iranian attack caused no victims – and, in particular, no Iraqi victims – and that it did not target any Iraqi military bases or infrastructure. It took place on Iraqi territory without Iraqi consent. In doing so, Iran has violated the sovereignty of Iraq and the principle prohibiting the use of force set out in the United Nations Charter. Both Iraqi President Barham Salih and Speaker of Parliament Mohamed al-Halbousi have [stated](#) that the Iranian attack ‘violated Iraqi sovereignty’. The fact that [Iran](#) warned Iraq a few minutes before the attack that its territory would be hit by missiles, assuring it that only bases in which American soldiers were present would be targeted, does not alter the analysis. Only a clear and precise consent by Iraq allowing Iran’s targeting on Iraqi soil could have ruled out the possibility that the Iranian attack would constitute a violation of international law against Iraq. Nor is such assessment affected by the formal statement in Iran’s [letter](#) to the Security Council according to which Iran recalls its “full respect for the independence, sovereignty, unity and territorial integrity of the Republic of Iraq”. The Iranian military attack on the territory of Iraq objectively violates its sovereignty and territorial integrity, even if that was not Iran’s intention. The criterion of intent has no impact. If it were the case, States could just refute any hostile intent in order to evade their responsibilities. In sum, neither the United States nor Iran can use Iraq as a battlefield on which to conduct military operations without the consent of the Baghdad authorities.

5. ARE THE MODALITIES OF THE MILITARY OPERATIONS OF THE UNITED STATES AND IRAN CONSISTENT WITH OTHER RULES OF INTERNATIONAL LAW PRESCRIBED BY INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW?



Beyond the lawfulness of the above-mentioned facts with regard to *jus contra bellum*, equally important questions, although less developed so far, arise concerning the conformity of the strikes of 3 January 2020 with the rules of the law of armed conflict and human rights. Agnès Callamard, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, [has](#)

[considered](#) that the targeted killings of 3 January 2020 “are most likely unlawful and violate international human right law: outside the context of active hostilities, the use of drones or other means for targeted killings is almost never likely to be legal”. Few experts have looked into the

question of whether Soleimani's death could be justified under the law of armed conflict as an attack on a combatant. This question depends on the applicability of the law of armed conflict to the strikes of 3 January. It is therefore necessary to consider first the qualification of the situation under the law of armed conflict (a). On this basis, we will identify the law applicable to the military operations in question and their conformity with it (b).

a- The existence of an international armed conflict between Iran and the United States ... and Iraq?

Unlike in the case of non-international armed conflicts, where it must be proved that the hostilities have reached a certain threshold of intensity (see among many sources, ICTY, Boskoski and Tarculovski judgment, 10 July 2008, §177), a single attack is sufficient to trigger an international armed conflict. This is confirmed by the updated commentary of the First Geneva Convention published by the ICRC in 2016, which states that:

“For international armed conflict, there is no requirement that the use of armed force between the parties reach a certain level of intensity before it can be said that an armed conflict exists. Article 2(1) itself contains no mention of any threshold for the intensity or duration of hostilities. (...) Even minor skirmishes between the armed forces (...) would spark an international armed conflict and lead to the applicability of humanitarian law.” (§§236, 237)

In the [letter](#) sent to the Security Council on January 8, 2020, the United States claims to have taken action “in response to a series of escalating armed attacks in recent months by the Islamic Republic of Iran and Iranian-backed militias against U.S. forces and interests in the Middle East”. If one follows this assertion and considers that all the actions taken against the US armed forces are indeed attributable to Iran (which, as noted above, must be supported by sufficient evidence), it can be concluded that an international armed conflict between Iran and the United States already existed prior to the strikes of 3 January, as a result of pre-existing hostilities between the two sides, such as, for example, the 27 December attack by Kataeb Hezbollah against a military base in Iraq and the 29 December attack by the United States against Kataeb Hezbollah bases (see above, under 2).

Alternatively, in view of the above-mentioned lack of a threshold of intensity for international armed conflict, it is not difficult to conclude that a military operation against one of the main leaders of the Islamic Revolutionary Guard Corps and [four other senior members of that corps](#) (Brigadier General Hossein Pourjafari, Colonel Shahroud Mozafarinia, Major Hadi Taremi, Captain Vahid Zamanian), in itself triggers an international conflict between the United States and Iran. In both cases, the result is the same: the strikes of 3 January are governed by the rules of the law of armed conflict and their lawfulness will have to be assessed not only with regard to the rules of *jus contra bellum* but also with regard to those of *jus in bello*. In this regard, it is hard to agree with the position expressed by several experts (Alonso Gurmendi, [Agnès Callamard](#), [Sarah Katarina Stein](#) of Albert-Ludwigs-Universität Freiburg) that the *first* attack in an international armed conflict – the one that triggers the armed conflict – would be excluded

from the scope of application of international humanitarian law. This thesis would lead to absurd or unreasonable results under international humanitarian law, such as the impossibility of prosecuting as a war crime the person responsible for a massive first strike against civilians. Rather, the law of armed conflict should be considered to apply from the outset of the first attack, i.e. from the moment when its execution begins: in this case, the law of armed conflict applies as soon as its effects are felt, with the result that the protection afforded to the potential victims of its violation is guaranteed.

But a question arises: what about Iraq? Both the attacks of 27 and 29 December 2019, the strikes of 3 January 2020, as well as those of Iran against the bases of the international coalition on 8 January were carried out on Iraqi territory. Could it be considered that Iraq is also involved in an international armed conflict and, if so, against whom?

If we refer to the [letters](#) sent by the United States and Iran to the Security Council mentioned above, the strikes on Iraqi territory were not directed against Iraq. However, Iraq did suffer material damage during these operations which also caused victims amongst Iraqi nationals. In this respect, the decisive factor in determining whether Iraq is involved in an armed conflict refers to the consent of the Iraqi Government to the operations mentioned. As stated in the new ICRC commentary cited above: “Any unconsented-to military operations by one State in the territory of another State should be interpreted as an armed interference in the latter’s sphere of sovereignty and thus may be an international armed conflict under Article 2(1)” (para. 237). There are several precedents in which States have conducted military operations against non-state armed groups in the territory of third States without their consent, such as the intervention of the Western and Arab States coalition against the “Islamic State” or of Turkey against Kurdish rebels in the territory of Iraq or Syria. In both cases, there was an international armed conflict between the intervening States and Syria (or Iraq), despite the assertion by the intervening states that their operations were not directed against Syria (for the coalition intervention in Syria, see [Vaios Koutroulis](#)), “The fight against the Islamic State and *jus in bello*”, L.J.I.L., vol. 29, 2016, pp. 834-842; for the qualification of the Turkish operation against the Kurds in Syria in October 2019, see [Beth Van Schaack](#), Stanford Law School, [Julia Brooks](#), NYU School of Law, and [Vito Todeschini](#), International Commission of Jurists). Therefore, in parallel to the international armed conflict between the United States and Iran, the strikes of 29 December 2019 also triggered an international armed conflict between Iraq and the United States, given [their condemnation by Iraq](#) as a violation of Iraqi sovereignty. The Iraqi Prime Minister’s [reaction](#) to the January 3 strikes only confirms the existence of this armed conflict. Similarly, the strikes carried out on Iraqi territory by Iran also triggered an international armed conflict, since Iraq did not consent to them, and even considered, as we have seen, that this was a “violation of its sovereignty” (see *supra*, 4).

However, this qualification is mostly theoretical at this stage. Indeed, the military actions of both the United States and Iran are already governed by the law of armed conflict by virtue of the existence of an international conflict directly opposing them, so that the superposition of the international conflict with Iraq does not, for the moment, add anything to the applicable

law. What remains to be decided, in this context, is the lawfulness of the military operations in question.

a- The conformity of the military operations of the United States and Iran with the law of armed conflict and human rights

The existence of an international armed conflict between Iran and the United States implies that their military operations must comply with the law of armed conflict. This does not mean that the law of armed conflict is the only law applicable to the operations in question. It is clearly established that human rights rules continue to apply in situations of armed conflict, including military activities outside the territory of the States concerned (see I.C.J., *Nuclear Weapons Case*, ICJ Reports 1996, p. 240, para. 25; *The Wall Case*, ICJ Reports 2004, pp. 107-108, paras. 105-106; *Armed Activities on the Territory of the Congo Case*, ICJ Reports 2005, pp. 242-243, para. 216). For example, the International Covenant on Civil and Political Rights, ratified by both Iran (24 June 1975) and the United States (8 June 1992), applies to attacks that these States have carried out or will carry out in Iraq. It is therefore in the light of these two sets of rules that the lawfulness of these operations is to be analyzed.

First, the question of the lawfulness of the attack of 3 January must be discussed. Some States (Iran, Iraq, Russia, Cuba and Venezuela) have [qualified](#) this attack as an “assassination”. Similarly, as noted above, the UN Special Rapporteur has described General Soleimani’s targeted strike as a violation of international human rights law. Are these positions consistent with international law, or does the attack rather constitute a lawful act of war? In our view, while the death of General Soleimani and other persons accompanying him may at first glance appear to be a lawful act of war, after further analysis this is not the case.

A priori, it is clear that General Soleimani can be considered as a combatant. The “Islamic Revolutionary Guard Corps”, a component of which he commanded (the “Al-Quds” force), indeed corresponds to the definition of armed forces of a party to the conflict as set out in Rule 4 of the ICRC study on customary international humanitarian law. Therefore, Soleimani constituted a legitimate military target within the meaning of the law of armed conflict. To this extent, the attack on Soleimani was conducted in accordance with the principle of distinction as set out in rule 1 of the ICRC study on customary international humanitarian law. A similar reasoning can be applied to other members of the Islamic Revolutionary Guard Corps killed in this strike. The other five people killed were either members of Kataeb Hezbollah (like Abu Mehdi al-Mouhandis) or belonged more generally to the Popular Mobilization Units (PMU), a paramilitary coalition of militias also [supported](#) by Iran but also affiliated to the Iraqi [armed forces](#). It is difficult to establish with certainty the status of PMU members *vis-à-vis* the Iraqi military structure. As we have seen above, the message published on January 3 on Twitter by the Iraqi government speaks of aggression due to the assassination of an “Iraqi military commander holding an official position” but remains vague about the status of the other people killed, described only as “Iraqi figures”. On 4 January, the Iraqi Prime Minister [proclaimed](#) 3 days of national mourning to honor those murdered by the United States in Iraq. In any case, the death of these people seems justified in the light of the rules of the law of armed conflict:

- either because they are associated with the armed conflict with Iran as members of militias belonging to Iran (which is the case of Kataeb Hezbollah according to the United States position);
- or, given the difficulties mentioned above in establishing the links between Kataeb Hezbollah and Iran, because the United States is involved in a non-international armed conflict with Kataeb Hezbollah (provided that the conditions for the existence of such conflict can be established) and it is therefore within the framework of that conflict that it can direct an attack against members of that armed group;
- or, in the framework of the international armed conflict with Iraq, because the persons targeted belong to the Iraqi military structure (which is certainly the case of the Iraqi military commander whose assassination is qualified as an aggression by the Iraqi government and potentially also the case of the other “Iraqi figures” mentioned in the government's message);
- or, finally, in the case of persons whose link with parties to existing armed conflicts cannot be established, as collateral damage under the principle of proportionality (rule 14 of the ICRC study on customary international humanitarian law).

However, while it seems clear that a combatant may be subject to attack during an armed conflict, it does not follow that combatants may be executed at any time. It is generally recognized that “[t]he right of belligerents to adopt means of injuring the enemy is not unlimited” (Article 22 of the 1907 Hague Regulations). This has been interpreted as implying that, before resorting to lethal force, a State must ensure that non-lethal means cannot be used (ICRC Interpretative Guide to the Concept of “Direct Participation in Hostilities”, 2009, pp. 80-84; Eric David, *Principles of the Law of Armed Conflict*, 6th ed, Bruylant, Brussels, 2019, pp. 314 et seq.; Human Rights Committee, Observation No. 36 on the right to life, 3 September 2019, CCPR/C/GC/36, para. 64). This condition is obviously difficult to interpret, and some conclude that it cannot reduce the margin of appreciation of States (see the strong criticism of the interpretative guide on the notion of direct participation in hostilities by [Michael Schmitt](#) and [Hays Parks](#)). But what is generally accepted is that military necessity cannot justify an act of “perfidy”. More specifically, one thinks here of the prohibition to kill or wound by treachery individuals belonging to the enemy nation or army (Rule 65 of the ICRC study on customary international law and Article 8 (2) (b) (xi) of the Statute of the International Criminal Court). According to the [commentary of rule 65](#), this prohibition covers the act of making treacherous attempts on the life of an enemy which, as several military manuals indicate, includes assassination. But what is meant by “assassination” in an armed conflict? And how does one distinguish between assassination and a lawful lethal strike in war? It is on this point that opinions diverge. According to some States, such as the United States, Australia and Canada, the concept of “assassination” is limited to individuals who are not combatants:

“Assassination is the sudden or secret killing by treacherous means of an individual who is not a combatant, by premeditated assault, for political or religious reasons. (...) The prohibition against assassination is not to be confused with attacks on individual

members of the enemy's armed forces as those persons are combatants and are legitimate military targets” (Australia, Law of Armed Conflict Handbook, 2006).

Other States, such as New Zealand and Israel, seem to conceive that a combatant can be executed in a manner that is inconsistent with the laws of armed conflict. For example, Israel's military manual provides the following example of perfidy:

“an attempt on the lives of enemy leaders (civilian or military) is forbidden. As a rule, it is forbidden to single out a specific person on the adversary's side and request his death (whether by dispatching an assassin or by offering an award for his liquidation)” (emphasis added).

This second view reflects the idea that there are limits to how one can kill a combatant in an armed conflict. In this case, the actions of the United States seem to fit the definition of “assassination” in Israel's military manual, except that the killing was conducted by a drone rather than by an assassin sent to carry out the execution. It is important to recall that, as the [The New York Times](#) reported, the last time the United States executed a high-ranking foreign military leader was during the Second World War. Since then, no similar act of execution has taken place. This abstention by States to target foreign civilian and military leaders supports the interpretation that such an attack is viewed as problematic under the rules of the law of armed conflict. It is in this context that [several scholars](#) have [denounced](#) the execution of General Soleimani as an “assassination”.

The possibility that this attack took place while Soleimani was travelling in Iraq on a diplomatic mission is likely to accentuate the problematic nature of the strike. Indeed, the Iraqi Prime Minister [stated](#) that Soleimani's visit to Iraq was part of the negotiations with Saudi Arabia conducted with Iraqi mediation. Iran's foreign minister also [confirmed](#) that Soleimani was in Iraq on a diplomatic mission. This information was quickly denied by the United States, with Secretary of State Mike Pompeo [stating](#) January 7 that the United States “knows this is not true” and [accusing](#) the Iranian Foreign Minister of being a “propagandist of the first order”.

As noted above, it is difficult to assess the veracity of this information. In any case, persons involved in negotiations for the resolution of a conflict cannot be considered legitimate military targets during the negotiations, even if they are members of the armed forces. This idea can be found in the very old rule stipulating the inviolability of parlementaires, already set out in the Hague Regulations of 1907 (Article 32 and Rule 67 of the ICRC study on customary international humanitarian law). The spirit of the rule implies that such inviolability should be *erga omnes*, in other words that it should be understood not only in relation to the State party to the conflict but also in relation to third States. Otherwise, any military leader (a concept which includes politicians acting as heads of the armed forces, such as, for example, the President of the United States) could be killed at any time by a State with which his or her country is at war, even when he or she is participating in a diplomatic summit. Again, the absence of any such practice seems to confirm the conviction of States that this would be proscribed by international law. The reaction of the US Secretary of State regarding the diplomatic mission of Soleimani is indicative in this context: the United States did not assert

that - because of its status as a combatant - Soleimani remained a legitimate military target even while on a diplomatic mission; nor did it allege that this supposed mission was informal, related to another conflict or was not communicated to them. They denied the existence of such a mission. This confirms that - assuming that Soleimani was travelling as part of a diplomatic mission to Iraq - the strikes of 3 January do indeed appear to be contrary to the rules of the law of armed conflict.

If these strikes are contrary to international humanitarian law, they will also constitute a violation of human rights rules, including the right to life. As noted above, the International Covenant on Civil and Political Rights remains applicable in times of armed conflict and, as noted in a large body of doctrine, should be respected by States parties even when they carry out so-called “targeted killings” (see, e.g., Nils Melzer, *Targeted Killing in International Law*, Oxford, O.U.P., 2008, pp. 124 et seq.; Christof Heyns, Special Rapporteur on judicial, summary or arbitrary executions, A/68/382, 13 September 2013, p. 12, para. 51). Article 6 of the Covenant prohibits “arbitrary” deprivation of life. On this point, in application of the principle of conciliatory interpretation stated in Article 31 § 3(c) of the 1969 Vienna Convention on the Law of Treaties, human rights rules must be interpreted in the light of what is provided for in international humanitarian law. In a context of armed conflict, it is essentially humanitarian law that will determine what constitutes an arbitrary deprivation of life (Human Rights Committee, General Comment No. 36 of the Human Rights Committee, cited above, para. 64). Therefore, if one considers that the strikes of 3 January are contrary to the law of armed conflict, then the strikes in question also constitute an “arbitrary” deprivation of life contrary to article 6 of the Covenant on Civil and Political Rights.

CONCLUSION

According to certain sources, on Thursday, January 9, the Iraqi Prime Minister called US Secretary of State Mike Pompeo to begin preparations for the withdrawal of his country's forces from Iraqi territory. This [request](#) was abruptly rejected by Washington. If this refusal to withdraw were to be maintained, the United States would, whatever the controversies that may concern the legality of its military actions of 29 December 2019 and 3 January 2020 with regard to Iraqi sovereignty, be responsible for an act of aggression, and even for a full-scale occupation (article 3 (a) and (e) of the definition of aggression annexed to United Nations General Assembly resolution 3314 (XXIX)). Such a situation might at first glance support the claim about “[the death of international law](#)” after the 3 January strikes. However, while the current crisis undeniably marks a challenge to international law, especially since two states (the United States and Iran) believe that they can use a third (Iraq) as a battlefield, this may not be such an exceptional precedent. One needs only to think of the conflict between Rwanda and Uganda on the territory of the Democratic Republic of the Congo in 2000, for example, or more recently (although the situation is different), of the military interventions by states from the coalition as well as Turkey in Syria, not to mention the countless cases in which military actions have been carried out in clear violation of the prohibition on the use of force (Yugoslavia in 1999, Iraq in 2003, Ukraine in 2014, ...). In this context, it would probably be excessive to point to 3 January

2020 as a decisive date, not to mention that proclaiming the "death" of international law would presuppose some sort of consensus on this subject on the part of states, which is far from being the case at present. On 9 January, the members of the Security Council adopted a declaration recognizing “the crucial importance of the Charter in the maintenance of international peace and security and the development of international law, including the principles governing relations among States to help prevent the scourge of war”, and [adding](#) that “all States and all international, regional and other organizations must respect [the Charter]”. On paper, but we know that in law words count as much, if not sometimes more, than actions, no one, including the Trump administration, questions the Charter of the United Nations in general and the prohibition of the use of force in particular.

Some aspects of the crisis might even show some hope for international law going beyond just words, as evidenced by President Trump's comments reversing his announcement to order the destruction of cultural property in Iran. Such destruction would of course have been totally contrary to international law (see Rules 38 et seq. of the ICRC Customary I.H.D. Study and Articles 8(2)(b)(ix) and 8(2)(e)(iv) of the Statute of the International Criminal Court), as several scholars and policy makers have pointed out (v. e.g., [Heloise Goodley](#), Army Chief of General Staff Research, Chatham House; [John Bellinger](#), Former Legal Adviser to the Department of State, [Mark T. Esper](#), US Secretary of Defense). Noting these warnings, Donald Trump [stated](#) that:

“We are, according to various laws, supposed to be very careful with their cultural heritage ... And you know what? If that's what the law is, I like to obey the law” (CNN, January 7, 2020).

To our knowledge, no President of the United States has ever dared to make such a declaration of love for international law. One should never despair of the human race, even when one has the impression that some of its representatives are leading it to its doom, directly, sometimes taking the risk of a potentially apocalyptic war escalation, or indirectly, by failing to tackle by peaceful means problems such as climate change or growing inequalities in the world...

Olivier Corten, Anne Lagerwall, Vaios Koutroulis and François Dubuisson.