

The illegality of targeted drone use: the legal analysis of the Soleimani killing

Reflection Paper

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POLC38: International Law

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December 5, 2024

Introduction

On January 3, 2020, a U.S. drone strike near Baghdad International Airport killed Major General Qassem Soleimani, a prominent Iranian military leader, along with 9 others. At the time, Soleimani was reportedly on route to meet Iraq's Prime Minister Adil Abdul-Mahdi to discuss a potential diplomatic rapprochement between Iran and Saudi Arabia. The U.S. justified the strike under the premise of self-defense, claiming Soleimani was planning "imminent" attacks on American diplomats and personnel. Secretary of State Mike Pompeo further stated the U.S. stood with the Iranian people in their calls for "freedom and justice" (Pompeo, 2020). However, many nations and international law experts criticized the action, labeling it an assassination, a violation of state sovereignty, and a breach of international legal standards. This paper argues that the U.S. drone strike on Soleimani was illegal under international law, violating Article 2 of the United Nations Charter and failing the tests of proportionality and necessity, and will explore the legal and ethical challenges of using drones for targeted killings outside active war zones.

Legal Framework

Before proceeding with the analysis, it is essential to distinguish between assassination and targeted killing. Targeted killing refers to the intentional killing of specific individuals, often using military force, while assassinations are typically politically motivated actions aimed at removing individuals from positions of power. Although overlaps exist, the distinction lies primarily in the type of force and the operational context (Cortright, 2017, p. 63). *Jus ad bellum*, Latin for "the right to war," has become a less commonly cited principle since the codification of the Kellogg-Briand Pact in 1928, which aimed to reject war as the singular means of resolving international disputes. However, there are exceptions to this general principle, most notably

through Article 51 of the United Nations Charter, which allows for self-defense if the state is the first victim of an armed attack. Article 2(4) of the Charter also prohibits the use of force that infringes on another state's sovereignty, except in cases of self-defense (as defined by the charter) or with Security Council authorization. The Soleimani case involves these fundamental principles of *jus ad bellum* and requires consideration of their application under both international laws as codified in the United Nations Charter and international humanitarian law (IHL), particularly the principles of necessity and proportionality which are used to validate if an action is truly self-defense.

The principle of necessity is critical to assessing the legality of the U.S. strike. There are two types of necessity to consider in self-defense: (1) necessity as justified when a state has first been subject to an armed attack, as per Article 51 of the UN Charter; and (2) necessity as defined under the responsibility of states for internationally wrongful acts (specifically, Article 21), which allows for wider justification in cases of "grave and imminent peril" (O'Meara, 2021, p.26). However, invoking Article 21 is problematic, as it is only valid in extreme cases and cannot justify actions that violate absolute norms like the prohibition on infringing state sovereignty under Article 2(4).

Given these constraints, the U.S. action in targeting General Qasem Soleimani can be seen as problematic under international law, leading to negative implications for global security (O'Meara, 2021, p. 29). While the U.S. might argue that its strike was necessary for self-defense, critics point out that such actions could set a dangerous precedent for unilateral use of force, potentially undermining the security and stability of the international community. In the context of international humanitarian law (IHL), the necessity principle relates to military necessity, which dictates that force should only be used to defeat an enemy as fast as possible with minimal

loss of resources and life, which is further balanced by the principal of humanity such that even in armed conflict unnecessary harm and suffering should be avoided. The killing of General Soleimani, along with 9 others, raises questions about whether the strike adhered to these principles, as the deaths of people not on the 'kill list' challenge the claim of necessity in the strictest legal and ethical sense.

At its foundation *jus ad bellum* proportionality is a relatively simple concept for it means "Prohibition on excess", meaning its role is to prevent "permitted harm done to others". Unlike necessity, proportionality is about ensuring that harm caused using defensive force is not excessive relative to the goal of self-defense (O'Meara, 2021, p. 97). Furthermore, this principle further limits a state's response to an armed attack, ensuring that the means of defense remain within acceptable bounds. While the wording is simple, in practice defining proportionality is often considered fluid to what the United Nations or states claim and often based on a 'gut feeling' when something is 'over the top' (O'Meara, 2021, p. 97). Within international humanitarian law (IHL), proportionality focuses on minimizing harm to civilians and non-combatants during armed conflict. Whereas *jus ad bellum* proportionality examines the broader justification for defensive actions, assessing whether the overall harm inflicted aligns with the necessity of self-defense.

Principles for Legal Drone Use

The use of drones by itself is not illegal, what may make it is the use of the technology. The use of drones contextual to counterterrorism in warfare can be divided into two: Individualized warfare and material warfare. Individualized warfare focuses on surveillance on certain people with the main principal being threat detection. In contrast, material warfare

involves the action of observed hostility. With this structure drone strikes can be either signature strikes or targeted killing, targeted killing is associated with the “deliberate use of force” whereas signature strikes “consist of drone operators firing on people whose identities they do not know based evidence of suspicious behavior” (Mignot-Mahdavi, 2023, p. 11). The vagueness presents ethical and legal implication to what constitutes suspicious behavior and is further subjective and changed by perspective. Furthermore, the strike on General Qassem Soleimani, which resulted in the deaths of nine others, can be viewed as a signature strike instead of a targeted killing due to its broader collateral impact with respect to the 9 others who died. Signature strikes. Signature strikes emphasize the issues of anticipatory violence, such as accountability for civilian casualties and the lack of uniform standards, revealing a recurring grey area in international law that hinders efforts to control drone warfare. Additionally, drone use associated with a hegemon sets a negative precedent to other nations, which in the long term will destabilize the purpose of international order due to the lack of appropriate guidelines associated with drone use.

Counterargument

Due to the absence of clear international guidelines addressing the legality of drone use in self-defense, and the trend of creating laws to support material warfare, the United States has crafted policies to justify such actions. These policies are often framed under the premise of self-defense, as illustrated in the U.S. Department of State's legal arguments regarding the killing of Iranian General Qassem Soleimani. The U.S. justified the strike by citing the concept of an "imminent threat," aligning with principles of necessity and proportionality (O'Meara, 2021, pp.59).

From a proportionality perspective, the use of drones is often defended as being "cheap and posing less risk than alternatives," as argued in *Drones and the Future of Armed Conflict* by

David Cortright et al. Drones are non-labor intensive, financially efficient, and reduce the risk to military personnel while achieving comparable impacts to on ground operations (Cortright, 2017, p. 135). This practicality strengthens their appeal in modern combat. Contextual to the use of drones outside of active warzones the United States has cited Article 51 United States Charter arguing that it allows these strikes to be conducted based on self-defence (Cortright, 2017, p. 211). In terms of this argument, America failed to first report to the United Nations Security Council, which further undermine the UNSC ability to maintain international order. As mentioned previously, such action from a hegemon places a negative precedence for the international order which can ultimately lead to increased distrust in the international system.

The United States has justified the use of drones outside active warzones by invoking Article 51 of the UN Charter, which permits acts of self-defense in response to an armed attack. The United States' argument for the drone strike on General Qassem Soleimani, based on Article 51 of the UN Charter, faces scrutiny for its apparent incorrect use. Article 51 allows for self-defence only in the event of an actual armed attack, not only the suspicion or expectation of one. The action was carried out based on claims of an "imminent threat," yet the language of Article 51 clearly links self-defence to an attack that already has happened. This discrepancy calls into question the legality of the United States' justification. Moreover, Article 51 requires states to immediately report defensive actions to the United Nations Security Council (UNSC) to ensure accountability and maintain international peace and security. The U.S. failed to fulfill this requirement promptly after the strike, undermining the UNSC's authority and the broader international legal framework. This omission reflects a broader pattern where hegemons ignore international mechanisms that further set a dangerous precedent for the global order.

Conclusion

The US drone strike on General Qassem Soleimani highlights the difficulties and concerns surrounding the use of force under international law, particularly in incidents involving targeted killings outside active conflict zones. The US drone strike on General Qassem Soleimani highlights the difficulties and concerns surrounding the use of force under international law, particularly in incidents involving targeted killings outside active conflict zones. While the United States justified the action based on the principles of self-defence established in Article 51 of the UN Charter, this rationale falls short of meeting the strict legal requirements of necessity and proportionality. Soleimani's killing was neither in response to an armed attack nor clearly linked to an immediate threat, as required under the Charter's language. Furthermore, the refusal to swiftly announce the strike to the UN Security Council harmed the values of transparency and accountability, weakening trust in the global order. The ethical and legal issues surrounding drone warfare get worse in this case. The strike not only caused collateral damage, raising questions about its necessity and proportionality, but it also established a worrying precedent for hegemons to act unilaterally. Such acts could disrupt the international system, as other countries may follow suit, reducing weaker governments sovereignty and undermining the UN Security Council's legitimacy.

In conclusion, the Soleimani case highlights the critical need for clear international standards governing the use of drones in counterterrorism operations. To ensure that international law principles are followed, legal structures must be strengthened and accountability mechanisms enhanced. Without these precautions, the unrestricted use of drone technology would continue to pose serious threats to global peace and security.

References

- Cortright, D. (2017). Drones and the Future of Armed Conflict: Ethical, Legal, and Strategic Implications. University of Chicago Press.
- Mignot-Mahdavi, R. (2023). Drones and international law: A techno-legal machinery. Cambridge University Press.
- O'Meara, C. (2021). Necessity and Proportionality and the Right of Self-Defense in International Law. Oxford University Press.
- Secretary of State, & Pompeo, M. R., The Restoration of Deterrence: The Iranian Example (2020). Retrieved November 2024, from <https://2017-2021.state.gov/the-restoration-of-deterrence-the-iranian-example/>.
- United Nations. (n.d.-a). Chapter I: Purposes and principles (articles 1-2). United Nations. <https://www.un.org/en/about-us/un-charter/chapter-1>
- United Nations. (n.d.-b). Chapter VII: Action with respect to threats to the peace, breaches of the peace, and acts of aggression (articles 39-51). United Nations. <https://www.un.org/en/about-us/un-charter/chapter-7>