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International Law and the Legality of Pre-emptive Military Strikes: A Critical Analysis of the Recent US–Iran Conflict

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ABSTRACT

The pre-emptive military attack issue in modern international law continues to be the most controversial and far reaching disputable branch in international relations and the legal community. Against this background, the paper will critically address the legal provisions surrounding the use of force among the states, especially focusing on the current tensions and confrontations between the United States and the Islamic republic of Iran, using the armed forces of the states. This paper challenges the possibility of the concept of anticipatory self-defense to give a valid legal justification to a pre-emptive military action by relying on the United Nations Charter, customary international law, the Caroline doctrine, and the developing practice of states. Basing on the United Nations Charter, the customary international law, the Caroline doctrine and emerging state practice, the paper goes ahead to express the interrogative of the legal legitimacy of anticipatory self-defense. Specific attention is paid to the persisting tensions and military conflicts between the Islamic Republic of Iran and the United States which give an excellent basis on implementing these doctrines. This discussion highlights how the interaction between state practice and normative framework that is entrenched in the international legal texts influence the legal debate. The attempted assassination of the Iranian Major General Qasem Soleimani in January 2020 can be used as the main case study because it provides a possibility to conduct a strict assessment of the opposing legal arguments by the states and the reaction of the international community on it. Through the analysis of the factual context of the operation, as well as by looking at the applicable jurisprudence, the paper shows how the US has attempted to conceptualize its action as an act of anticipatory self-defense, and how this has been challenged by other states. The review indicates that there is a disturbing disconnect between the firm no-fly zone regulations within the UN Charter and the broad-brush dogma that is being used more and more by the influential countries in justification of unilateral military intervention. This detachment brings out a growing divide that is threatening to undermine the principles of the international legal order since states take advantage of unclear understandings of self-defense to implement pre-emptive attacks. Concluding the paper, it is possible to state that the international law provides limited opportunities to resort to self-defense, but these opportunities have been pushed to the extremes and the borders of legitimate use of self-defense become serious dangers to the pillars of the international legal order. This is why it is critical to conduct a reassessment of the doctrines and renew the prohibitive approach of the Charter to maintain the rule-based system that promotes global peace and security.

Keywords: *pre-emptive strikes, anticipatory self-defense, international law, US-Iran conflict, UN Charter, Caroline doctrine, use of force*

INTRODUCTION

It is hard to overestimate the importance of the question in the field of international law of when and whether a state is permitted to act by striking another state before an attack has manifested itself. The prohibition of the unilateral use of force was incorporated into the classical framework of international law it was developed to be based on the catastrophic experience of two World Wars. The Charter of the United Nations of 1945 marked the collective will of humanity to get rid of war as a tool of national policy and instead adopt a mechanism of collective security administered by multilateral bodies. However, decades-long state practice, the development of doctrine and the change of geopolitical conditions have opened some serious gaps in this structure.

The US-Iran relationship was marked, over many years, with a profound and long-standing strategic animosity, ideological incompatibility and recurring proxy wars, which were escalated to one of the most perilous points in early 2020 after the United States assassinated by a drone a high-ranking military leader, the commander of the Quds Force of the Islamic Revolutionary Guard Corps, Major General Qasem Soleimani. The Trump government defended this action as a precaution against itself since it said Soleimani was coming to attack American forces and interests in the short term. Iran in turn described the killing as a war crime and state terrorism and went ahead to attack American military bases in Iraq with ballistic missiles- bringing the two countries to the verge of an official war.

The episode summarized all the tensions that had always been present between the legal principle of non-aggression and the political one of great power competition. It also revived scholarly debate regarding the sufficiency of the current international legal norms to regulate contemporary security threats. The principle of pre-emptive self-defence, i.e. attacking the opponent before he attacks you, has long roots in the strategic thought but its legal validity in the modern international law is still unclear. Other scholars claim that the international law customary as manifested in the Caroline episode of 1837 already offers a legal foundation to the anticipatory action when a menace is too near and the magnitude thereof is too great. Those who argue that the textual ban on force in the Charter of the UN does not give any such exception, argue that allowing pre-emptive strikes would be like throwing the doors open to abuse by the powerful states to justify aggression.

The current debate on this topic is the topic of this paper as this paper gives a systematic and critical analysis of the legal framework of pre-emptive military action in the context of the US-Iran conflict. Section 2 follows back the history of the laws of the use of force, starting with the pre-Westphalian period, then the League of Nations Covenant to the UN Charter. Part 3 seeks to discuss the major legal provisions and doctrines under consideration, such as Article 2(4), Article 51, and the Caroline standard. Section 4 provides a case study of the Soleimani strike and the implications of it, in particular, legal. Section 5 examines Iranian reaction and wider regional reaction. Section 6 addresses the role of the United Nations Security Council and systemic weaknesses that it has been displaying. Section 7 will consider conflicting academic arguments and state case law. Part 8 deals with the consequences of the future of international legal order. Section 9 of the paper is the conclusion, and it presents a synthesis of findings and policy-oriented reflections.

The paper maintains a critical approach throughout, acknowledging the strengths of both rules of positivism of the law and the wisdom of legal realism by recognizing the fact that the international law does not exist in a vacuum, but exists within a highly politicized context where structural forces of power are used to generate interpretation and application of the law. The thesis that is developed here is that though the letter

of international law still outlaws pre-emptive strikes with few strictly circumscribed exceptions, the reality of powerful state practice has in fact redrawn boundaries to what is permissible to use in a manner that is disastrous to the collective security system which the UN Charter is said to have been created to enshrine.

Historical Development of the Law on the Use of Force

The Pre-Charter Era and the Just War Tradition

The issue of the legitimacy of states to use war is as ancient as the history of political philosophy itself. This tradition of just war was based on the works of Cicero, Saint Augustine and Thomas Aquinas to place moral limitations on the recourse to war by stating that war must meet some criteria: it must be a just cause, the intention must be lawful, the war must be proportional, the war must discriminate between combatants and non-combatants, and the war must be declared by a legitimate authority. Although this tradition was more of a theological and moral than of legal nature, it provided the intellectual foundation to future efforts to manage inter-state violence by law (Walzer, 2015).

The rise of the modern state system in the aftermath of the Peace of Westphalia in 1648 was accompanied by the idea of the sovereignty of a state as the principle of the structure of international relations. The sovereign states were considered to have the natural right to declare war (jus ad bellum) as the manifestation of their independence. Rules of war conduct (jus in bello) were first expounded by jurists like Hugo Grotius and Emmerich de Vattel, however the right to declare war was not much regulated legally. Pre-emptive action was highly acceptable as a lawful sovereign prerogative in a case where a state felt itself to be under threat (Brownlie, 1963).

The Caroline case of 1837 is a decisive turning point in the history of the customary international law of self-defense. British troops entered the American territory and wrecked the Caroline which was an American ship being used to supply the Canadian rebels. During the diplomatic negotiations that ensued, US Secretary of State Daniel Webster defined what would become the normative standard of self-defense: the necessity had to be immediate, massive and one that left no option of method, and no room for reflection. Besides, even there, the action to take cannot be unreasonable and excessive. Caroline formula set two major conditions, which remain central in the legal discussion of self-defense to date, necessity and proportionality (Alexandrov, 1996).

League of Nations and the Interwar Period.

The First World War showed the devastating outcome of a world where there are no viable legal bans on the recourse to force. The League of Nations Covenant of 1919 was the initial effort to build up a multilateral system of managing international security. Although the Covenant did not strictly disarm war, it had procedural conditions that states must have depleted arbitration or judicial settlement before the war, which in effect operated as a cooling-off period to avoid provocative moves. Nevertheless, the Covenant had a poor mechanism and its membership was defective (especially the United States) and its enforcement mechanisms were not functioning well (Kennedy, 2006).

This was followed up with the signing of the 1928 KelloggBriand Pact, which obliged its signatories to denounce war as a policy instrument. Even though this was declared as a historic shift in international law, the Pact itself had no enforcement mechanism and soon became obsolete because of the aggressive expansionism of Nazi Germany, Fascist Italy, and Imperial Japan of the 1930s. The inability of the interwar system to stop the Second World War not only proved the need but also the weakness of legal limitations on state violence, which gave the international community the urgent push to the more powerful system that would be formed in 1945 (Marrow, 2014).

The United Nations Charter Framework.

The United Nations Charter, which was signed at San Francisco on June 26, 1945, was a fundamental reconstitution of the international legal order in the post-war period after the most devastating war in the history of humanity. The main innovation of the Charter was to repose the right to authorize the application of force on the individual states and vested it in a common institution, the Security Council, unless it was a matter of individual or collective self-defense. Article 2(4) created the fundamental prohibition: The threat or use of force against the territorial integrity or political independence of any state, or in any other form, incompatible with the Purposes of the United Nations should not be employed by any Member of the United Nations.

The prohibition was put into perspective as one of the most basic norms of the international law- a jus cogens norm on which no derogation is allowed. The first and the only exception explicitly identified under Charter itself is in Article 51 which states that nothing contained in the present Charter shall interfere with the inherent right of individual or collective self-defence unless an armed attack has been made upon a Member of the United Nations, till the Security Council has taken the measures necessary to restore international peace and security. The fact that this is stated when the expression is: in case of an armed attack: it indicates that the principle of self-defense is activated not upon the threat of an attack but upon an actual one, an attack that is underway.

Another framework promoted in the Charter is a strong collective security system in Chapter VII whereby the Security Council was mandated to decide on threats to peace, use force, and issue binding decree against aggressor states. This collective security regime was, nevertheless, almost immediately bogged down by Cold War enmity between the United States and the Soviet Union which blocked effective collective action by both of them in most great conflicts due to their respective veto powers at the Security Council. The effect was that states had to set themselves on self-defense criteria - frequently widely construed - as the main legal rationale of their exercise of force, which would put massive strain on the slim exception fashioned by Article 51 (Gray, 2018).

The Legal Framework Governing Pre-emptive Military Action

Article 2(4) and the Prohibition on the Use of Force

The ban in Articles 2(4) of the UN Charter is generally considered to represent one of the most basic norms of international law, and is said to have attained the status of jus cogens, a peremptory norm in which case no derogation is possible. This status was ratified by the International Court of Justice (ICJ) in its judgment of 1986 in Nicaragua v. United States, in which it was held that the rule on the use of force is a rule of customary international law, and that it is applicable irrespective of whether or not a given state has accepted the jurisdiction of the Court (ICJ, 1986). The ban is also not limited to armed forces but also to the threat of armed forces and that is why a vast scope of coercive state actions is encompassed.

Article 2(4) has attracted a lot of scholarly argument concerning the implication of the term force. Although there is a clear understanding of the provision as covering traditional military operations, its applicability to other means of coercion, including economic sanctions, cyber activities, and encouragement of non-state armed formations, is disputed. The ICJ in the Nicaragua case, the arming and training of groups of armed people in a third state might be a use of force but not necessarily to the extent that it would qualify as an armed attack leading to the right of self-defense. It is a major practical implication, because it opens the gap of below-threshold level of coercive actions that can be permitted by the law despite being very harmful (Schmitt, 2017).

The critics have claimed that the interpretations of Article 2(4) have grown more permissive in the past years as states attempted to justify military interventions based on various grounds such as humanitarian intervention, nationals protection in foreign countries. Such mechanisms by great powers especially have pushed the definition of the use of force that may be deemed permissible, even by going as far as to unilaterally redefine the Charter provisions in a manner that undermines the collective security system. This is dynamic more so in the case of the so-called War on Terror, which has witnessed the rise of broad legal conception that undermine the architecture of the Charter (Franck, 2002).

Article 51 and the Right of Self-Defense

The legal foundation of unilateral state action in the case of armed attack is found in article 51 of the UN Charter. This is a deception of a provision which is extremely simple in words, but is in its interpretation and application vastly complicated. There are three main questions that have eclipsed the academic and state practice: First, what makes an armed attack of sufficient gravity to invoke the right of self-defense? Second, is the attack to be continued or is it permitted to respond to past attacks? Third, may states make preemptive self-defence against attacks not yet made?

The ICJ in Nicaragua v. answered the question of what an armed attack is. United States, in which the Court made a distinction between the most severe types of the use of force, which it considered as armed attacks, and less severe types of intervention, which, although unlawful, fall short of the category of the most severe types, justifying self-defense. The Court further held that not all non-state group violence would automatically amount to an armed attack to be attributed to the state in which the individual is operating; there must be a degree of state interference, which is said to be effectively controlling the activity in question (ICJ, 1986). It has, however, been challenged by states and certain scholars who believe that the standard should be the overall control test which was employed by the International Criminal Tribunal for the former Yugoslavia as a better attribution standard in contemporary conflicts.

The temporal aspect of self-defense, the question whether a state ought to wait in receiving a first-strike, so as to be able to act before, has been one of the most controversial on the question of pre-emptive action. A straightforward interpretation of Article 51 as a text, with an eye on the conditional aspect of the same 51 which states that the right of self-defense is triggered when armed attack already has materialized, appears to imply that the right of self-defense only comes into play after an armed attack has already become a reality. This interceptive understanding would allow the use of defensive action to counteract an attack that was underway, or to counteract an attack that was already underway, but not an attack that was still at the planning or preparation phase. The other interpretation, that is based on the Caroline doctrine and common law of international law, is that the right of self-defense extends to the instance of imminent threat, when an assault is impending and there is no other way of its prevention (Dinstein, 2017).

Anticipatory Self-Defense: The Caroline Doctrine in the Modern Case.

The Caroline doctrine, as expressed by Daniel Webster in 1842, has become a customary part of international law, and remains the principal basis of the legal assessment of a claim of anticipatory self-defence. The doctrine stipulates that the need to self-defense must be instant, overwhelming, and leave no option of the means and no time to pause and deliberate and that the response must be equal to the threat encountered. The necessity and proportionality are the two principles that stand together and alone as the pillars of any assertion of self-defense whether the assault is already committed or is simply predicted.

The challenge is to implement these standards to the complicated and fast-changing threat environment in the twenty-first century. The spread of weapons of mass destruction, the emergence of non-state armed formations, the creation of cyber means and capabilities has all posed a challenge to the hoary head that

threats can be easily recognized and evaluated in advance to become actual assaults. According to advocates of the wider reading of anticipatory self-defense, the Caroline formula applies to modern circumstances should permit taking the initiative earlier in situations where the character of the expected danger is devastating and where the window of opportunity in which to prevent the danger is short-lived. The so-called Bush Doctrine of 2002 US National Security Strategy brought this logic to its extreme end by saying that they had the right to take pre-emptive-even preventive-action before the risks had solidified into imminent threats (National Security Council, 2002).

The difference between anticipatory self-defense, pre-emptive self-defense and preventive war is analytically important but it is frequently washed together in practice and political rhetoric. The traditional understanding of anticipatory self-defense is the one that is performed as a reaction to a threat that is imminent, i.e., specific, concrete, and has a tendency to become a reality. The term commonly used is pre-emptive action, which is normally the initiation of the attack in the case when an attack is thought to be imminent. Preventive war on the other hand is launched against threats which may come to pass at some point in future but which are still at the stage of imminence. The first has been tolerated, the second has been ambivalent, and the third has been explicitly forbidden by the international law, at least in the regime of the UN Charter (Bothe, 2003).

The Necessity and Proportionality Requirements.

Even in cases when a state is able to prove that it was under an imminent military assault, the response must meet the two criteria of necessity and proportionality to be lawful. The necessity demands that the force shall be the sole recourse of averting the attack--that every other recourse of peace shall have been tried or rendered useless. Proportionality stipulates that the proportion of force applied must have a reasonable relationship with the purpose of averting or retaliating the attack; it does not allow the application of force as a form of punishment, deterrence or destruction of the military capability of the adversary on a wholesale basis in excess of that necessary to overcome the immediate threat.

These are requirements that are not easy to perform. The requirement of necessity is specially problematic in the context of anticipatory self-defense since it involves the states in making probabilistic estimates of how things will be coming, whether there are other ways of preventing the threat, and whether the lapse of time will eliminate the chance of an effective intervention. The proportionality requirement is also based on evaluations regarding the size of the projected threat, which can be highly uncertain and erroneous in intelligence. Its risk is that states will use the necessity and proportionality as rhetoric defense mechanisms when they deploy force that is well beyond anything that such principles would actually allow (Greenwood, 2003).

The US-Iran War: History, Trends and Policies.

Foundations and Structural Level of US-Iran Antagonism.

The confrontational nature between the United States and the Islamic Republic of Iran is one of the most notable characteristics of the Middle Eastern geopolitics and has determined the dynamics of international security over the last 50 years. It traces its origin to the Islamic Revolution in 1979 that overthrew the pro-American Shah Mohammad Reza Pahlavi and installed in place a revolutionary Islamist government led by Ayatollah Ruhollah Khomeini which was ideologically determined to challenge American imperialism and Zionism as structural evils of the international order. The coup of the US Embassy in Tehran and the detention of the fifty-two American diplomatic officers as hostages between 1979 and 1981 not only caused a gulf in the bilateral relations that has remained unsealed but also created a profound and lasting split between the two countries (Kinzer, 2003).

The two states in the following decades created more or less duplicating and overlapping strategies of confrontation that were mostly conducted via proxies, economic pressure, and covert action instead of military involvement. The United States had assisted Iraq in the Iran-Iraq War of 1980-1988, had inflicted wide-range economic sanctions that have done immense economic harm to the Iranian economy, and had a significant presence of military presence in the Persian Gulf region that Iran considered to be a direct threat to its security. Iran, in its turn, had developed a reliable system of partner armed forces throughout the Middle East, such as Hezbollah in Lebanon, Hamas in the Palestinian territories, the Houthis in Yemen, and other Shia militia forces in Iraq, that it would rely on in order to project power and pressure American interests and allies in the region.

There was one more and especially unsafe aspect of the bilateral relation that was introduced by the nuclear question. The ability of Iran to enrich uranium that it reportedly retained, though on peaceful purposes, created a growing pressure among countries and ultimately a total regime of international sanctions overseen by the UN Security Council. Another major diplomatic accomplishment of 2015, the Joint Comprehensive Plan of Action (JCPOA), backed by the Obama administration, placed severe restraints on Iran in its nuclear program in exchange with a lifting of sanctions. But when the Trump administration unilaterally withdrew its participation in the JCPOA in May 2018 and imposed comprehensive sanctions in a strategy of maximum pressure, these tensions were abnormally fueled and laid the groundwork to the episodes of 2019 and 2020 (Adebahr, 2017).

Escalation Dynamics: 2019-2020

The affairs between May 2018 (when the United States pulled out of the JCPOA) and January 2020 (when the Soleimani strike happened) were also characterized by a fast and very dangerous increase in tensions between the United States and Iran. The US campaign of maximum pressure, which also featured the condition of the Islamic Revolutionary Guard Corps (IRGC) as a Foreign Terrorist Organization, a step that had never been made against an official military institution of a state, increased the stakes of the confrontation considerably. Iran reacted by family of provocative incidents: oil tankers in the gulf of Oman were attacked, the US Navy surveillance drone was shot down, bases with US personnel were attacked by rockets by Iraqi militias backed by Iran, and finally, the American contractor was killed in December 2019.

The assassination of the American contractor by a Kataib Hezbollah, an Iranian-backed Iraqi militia, resulted in a major American military retaliatory strike: airstrikes on militia bases in Iraq and Syria that killed about twenty-five militants. This in effect triggered the militia supporters and members to storm and break into the US Embassy compound in Baghdad on December 31, 2019--an act that merely reminded many of the 1979 Tehran hostage crisis and one that, according to the Trump administration, had been orchestrated and encouraged straight by Iranian command and political will. It is under this banner of increasingly growing confrontation and rising American anxiety regarding the Iranian intentions that the decision was arrived at to kill Soleimani, a figure whom US officials termed out as the architect and operational commander of the regional military approach by Iran (Filkins, 2020).

The Soleimani Strike: Law Review.

The Killing and Immediate Situation.

January 3, 2020 a United States military drone fired a missile into a convoy near Baghdad International Airport, killing Major General Qasem Soleimani, the commander of the IRGC Quds Force, and Abu Mahdi al-Muhandis, the deputy commander of the Popular Mobilization Forces, among other people. Soleimani was arguably the one most influential military leader in the Iranian state following Supreme Leader Ali Khamenei, and had been the main creator of Iranian policy of keeping an influence and making a statement

in the Middle East by relationships of supportive non-state actors. President Donald Trump approved the strike, which was explained in official words as a defensive act aimed at preempting the imminent attacks on American citizens and the US interests.

The legal grounds of the strike on the part of Trump administration were based on a number of grounds. The main point was that the strike was a way of self-defense by the provisions of Article 51 of the UN Charter because Soleimani was organizing attacks against American workers, which were about to occur. The administration officials, such as the Secretary of State Mike Pompeo and the Secretary of Defense Mark Esper, coded the threat as imminent and indicated that attacks were within days. The administration further cited the 2002 Authorization of Use of Military Force (AUMF), passed shortly after the September 11 attacks, as a source of domestic legal authority of the strike though this was largely criticized to be a massive overextension of the intended scope of the AUMF, which has been targeted at al-Qaeda and its affiliates, not countries.

Imminence Claim: Evaluation.

The initial legal issue brought about by the Soleimani strike is whether the threat presented by Soleimani was critical enough to qualify as imminent to warrant the self-defense in anticipation of the international law. Caroline doctrine states that the need to take action must be sudden, crushing and that it must have no alternative of means. The United States had given enough public evidence to support its imminence claim, and later publicity cast considerable doubt on whether the threat was really imminent in the usual meaning of the term, that is, specific, concrete, about to occur within a very brief time.

The United States seemed to be acting within the framework of a refurbished sense of imminence that had been maturing in the legal practice of the United States since 9/11. A white paper on targeted killings by the Department of Justice in 2013, released as a result of drone attacks on American nationals suspected of terrorism, said that imminence did not mean that a particular attack must be determined as literally imminent. Instead, it claimed, the imminence would be determined by reference to the general trend of behavior, the inability to arrest the person, and the threat that the individual still poses. This broad understanding of imminence crashes down the line between pre-emptive and preventive action where states can attack based on the general ability and inclination to cause harm at some time in the future as opposed to particular, recorded intentions to attack imminently (Chesney, 2012).

This strategy was supported by other American legal experts who claimed that the long record of Soleimani leading attacks on US personnel coupled with open operational participation in the coordination of militia operations in Iraq gave him adequate grounds to expectant action. In this view, the United States could not have ample time to take necessary actions before it was too late to act since they might be awaiting definite proof on the impending attack and the United States would have lost lives of Americans who could have been avoided. However, critics also claimed that this argument is basically justification of a preventive war in the name of self-defense and, in effect, the rejection of the prohibition on the unilateral use of force in relations with foreign officials, which is the basis of the international legal order (O'Connell, 2020).

The Dimension of the Targeted Killing.

The Soleimani strike also cast deep concerns over the legality of targeted killing with regard to international law, and separate to the question of jus ad bellum of whether the strike was legal. Although one agrees with the argument that the United States was in an armed conflict with Iran and /or groups supported by Iran that would make the military targeting of Soleimani lawful under the laws of armed conflict, there are still important legal questions. In his capacity as a high military official of the armed forces of a known state,

Soleimani could have otherwise gotten some protection under the international humanitarian law, especially when the strike was not part of an established theater of active hostilities.

Killing Soleimani on the territory of Iraq without the consent of the Iraq state created even more legal headaches connected with state sovereignty. The United States had not been given the right by Iraq to strike against the Iranian military personnel in its territory and the Iraqi government was quick to denounce the killing and to insist on the removal of the US forces in Iraq. A non-binding resolution by the Iraqi parliament requesting the expulsion of the foreign troops was later passed and this move illustrated just how much diplomatic harm the strike would cause to a relationship which the United States had invested such vast resources in developing. An attack on the sovereign of a third state on its territory without its agreement is a major breach of the principle of sovereignty, through which the international legal order is created (Cassese, 2008).

Proportionality Assessment- This is the evaluation of the proportionate relationship between the numerical value and the strength of a relationship between the two variables (Crowder 2000).

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This is the test of the proportionate relationship between the numerical value and the strength of a relationship between the two variables (Crowder 2000).

The Soleimani strike has to pass the proportionality test even in the case where the imminence threshold was considered to have been met. The issue is whether the assassination of a high-ranking Iranian military leader a very high-symbolic and strategic cost but the threat of attacks that were imminent and the US said it was preventing them was of that nature. The proportionality here demands that the action taken must have a reasonable proportion to the threat which is being countered and must not be a punitive or strategic action which exceeds the need to counter the particular defensive end.

There are a number of complications concerning the proportionality analysis. To begin with, the assassination of Soleimani was not only a strategic strike against the military command hierarchy of a state but a decapitation assault on a high-ranking military official, which bears more resemblance to an act of war than a targeted defensive action. Second, it was the strike with predictably devastating effects on the stability in the region, effectively leading to the border attack of the United States and Iran, and the resultant Iranian missile attacks on US military installations in Iraq. Third, the clarifications of the US government afterward implied that the strategic targets of the strike extended past the aversion of the particular imminent assaults that were asserted to have been the reason behind it- the government officials of that time talked about the killing as a deterrent message and a wider strategic strike against the ambitions of Iran in the area. The call to justify the need to be in self-defense on the basis of a greater good is an issue of concern regarding whether the proportionality of the requirement was indeed met (Schmitt, 2020).

Iranian Revenge and the World Reaction.

Strikes by Iranian Ballistic Missiles.

The reaction of Iran to the assassination of Soleimani occurred on January 8, 2020, when the IRGC fired around sixteen ballistic missiles at two Iraqi military bases occupied by US forces Ain al-Assad Airbase in western Iraq and a basing in Kurdistan Region near the city of Erbil. The attacks did not immediately kill any American but left many American service members with traumatic brain conditions due to the explosions. Iran officially announced it had caused the strikes and announced them as a disproportional act

of self-defence or revenge over the killing of Soleimani-and referred to its action as within the confines of international law even as US authorities described the Iranian strikes as an act of aggression.

The legal defence of Iranian missiles strikes is educative in itself. Using the discourse of self-defense, at least in its official addresses, Iran implicitly conformed to the normative context of international law, as it sought to liberalise it, without necessarily squaring its acts within its traditional category of practices. Article 51 of self-defense stipulates that there should be a continuing or threat of armed attack; it does not encompass the response to a strike that has been made. The missile attacks by Iran took place some days following the killing of Soleimani and were more of a retaliatory than of a defensive nature in the looser meaning of the term. This does not imply they lacked legal meaning, the previous killing of Soleimani itself could qualify as an armed attack thus necessitating the use of force as a form of self-defense, however the articulation of retaliation as self-defense exemplifies the more general trend where states use the language of law even when they are acting beyond its provisions (Ruys, 2010).

Response of the International Community.

The reaction of the international community in reaction to the Soleimani strike and subsequent events indicated the profound divisions which typify the international society in respect to matters of force usage. The NATO allies of the United States showed different levels of concern and unease about the strike with some of the leading governments of Europe, such as France, Germany, and the United Kingdom, issuing statements that did not go as far as to accept the legal justification of the US but instead called upon de-escalation. The strike was bitterly opposed by both Russia and China who described it as a form of infringement of international law and Iraqi sovereignty. The UN Secretary-General urged all the sides to be ultra-vires.

The UN Security Council convened an emergency meeting to deliberate on the crisis, but, expectedly, the main powers could not agree on any joint action, or even form a formal condemnation, due to the presence of the permanent members. The United States blocked any resolution that would have condemned the strike and Russia and China had expressed a firm disagreement with the US. This relationship was the one mode of expression of the structural defectiveness of the collective security system in the Charter, at its most obvious in:--the same states on whose military strength it is most likely to be exercised are the states whose military strength is at the same time the veto power to block collective condemnation of their actions. It has led to a system where very strong states have little institutional responsibility to their applications of force, whether those applications are lawful under the Charter or not (Hurd, 2017).

Position in Iraq and the Question of the Third-State Sovereignty.

The most legally essential response to the Soleimani strike was an Iraqi one, which it is in the territory of this state that the murder was carried out and the Iranian missile attacks that followed it were launched. The Prime Minister of Iraq Adel Abdul-Mahdi described the US strike as the great infringement of the Iraqi sovereignty and terms of the presence of American forces in Iraq, and stated that he had known about the operation only after its accomplishment. The next resolution of the Iraqi parliament requesting the withdrawal of the foreign troops, along with the overall Iraqi government stance that the strike was against the terms under which the US forces were allowed to perform their duties in Iraq posed core questions on the legal grounds of the presence of the US military personnel and the circumstances in which the United States might invoke the right of self defence on the Iraqi land.

The issue of the consent and territorial sovereignty has a legal importance as it lays on the principle of non-intervention and the legal ground of the existence of the foreign forces on the state territory. US troops were stationed in Iraq under a Status of Forces Agreement and other schemes which allowed their stay on the

ground to carry out certain functions- mainly training of Iraqi security forces and combating the Islamic state. The question of the extension of these arrangements to authorizing the United States to strike offensive attacks on the Iranian military personnel in Iraqi soil is one on which the US and Iraqi governments differed sharply, and the fact that the Iraqi government strongly protested indicates that the Iraqi government, on its side, felt the strike was far beyond what its authorization had allowed (Mahmoud, 2020).

Critical Analysis The Controversy on the Legality of pre-emptive strikes.

The Restrictionist Position.

The restrictionist view, which includes scholars like Ian Brownlie, Mary Ellen O'Connell and Christine Gray, is that the prohibition on the use of force in the Charter of the UN does not acknowledge an exception, other than the limited right of the state to self-defense clearly spelled out in Article 51, and on a strict interpretation this right of self-defense must be preceded by an actual armed attack in order to justify the use of defensive force. In this perspective, the Charter was a conscious and radical shift in the tradition of the previous customary international law, including the Caroline doctrine, which was found insufficient to avert the repetition of the destructive interstate conflicts. Article 51 of the Charter was meant to be interpreted very strictly, as a very narrow exception to the overall prohibition on the use of force, and not as the restatement of all the pre-Charter customary rights to self-defence (Brownlie, 2008).

In this regard, it is evident that the Soleimani strike was unlawful irrespective of Soleimani intending to launch attacks on US staff. At the time of the strike, the United States had not been the target of an armed attack, which is a certain direct military intervention of a high-level. The above trend of confrontations between the United States and other Iranian-backed forces, on the present analysis, did not qualify as an evolving armed attack that would allow the continued defensive reaction. Besides, the reality that the strike was waged on the land of the third state, Iraq, without the consent of this state provided the additional illegality of the violation of the Iraqi sovereignty. The restrictionist school would also object to the broadened understanding of imminence by the US government as being against the text and the spirit of the Charter framework.

The Expansionist and Counter-Restrictionist Positions.

There is a counter-restrictionist/expansionist viewpoint; espoused by Yoram Dinstein and Michael Schmitt and even Abraham Sofaer, that the Charter did not annul the already existing customary right of anticipatory self-defense but simply codified a minimum limit to its exercise. In this sense, the mentioning, in Article 51, of the right to self-defense being inherent (in French, droit naturel), suggests that the right does not override the customary right, that includes anticipatory action whereby the threat is so imminent. According to these scholars, the restrictionist interpretation would in practice yield absurd poor outcomes, would necessitate states to take in a first strike in order to defend themselves even when the character of the expected attack (a nuclear or chemical weapons attack) would render any post-attack defence useless.

Expansionist stance has been enjoying a lot of success in the American legal and policy circles especially after the events of the September 11 attacks. The National Security Strategy of 2002 expressed the doctrine of pre-emptive action by the United States to stem out emerging threats before they really became a reality, specifically ruling out the conventional model of anticipatory self-defense as insufficient to threats of terrorism and weapons of mass destruction. This doctrine was a drastic departure of the accepted international legal norms, and was heavily criticized by the international community and most legal experts, but it was a real-world strategic analysis of how current threats are perceived and the usefulness of current legal regimes in managing them (Yoo, 2003).

The Abuse Problem and Law Norm Vacuation.

Among the strongest reasons that can be given to prevent the use of expansive assertions of anticipatory self-defense is the danger of abuse. When the states are allowed to attack first on the pretext of intelligence testing concerning the possible future attacks, the legal ban on the use of force is actually rendered meaningless. Any strong state has the capacity to produce intelligence, either real or fake, to claim that there is a threat in the offing, and utilize this as a legal precedent to carry out aggressive action that will allow it to achieve other strategic objectives. The history of the 2003 invasion of Iraq which was justified in part according to intelligence about the weapons of mass destruction which were either erroneous or manipulated gives a vivid example of this threat (Roth, 2004).

The same was the case with the Soleimani strike. Although the US officials insisted that they had intelligence indicating that Soleimani was about to launch attacks on American personnel, this intelligence had never been provided in full disclosure to the Congress and to the masses, and it was later reported that the intelligence was not as clear-cut as the administration had made it seem. The threat claim that cannot be independently measured due to its classified character establishes a huge accountability gap: states will be free to justify pre-emptive actions using the intelligence that cannot be externally checked, which makes the proper evaluation of the validity of the legal rationale provided practically impossible by the international community or domestic oversight agencies.

Non-State Actors and the Evolving Nature of Threat.

Another aspect of the discussion of law is how the norms of self-defense apply to a threat posed by or via non-state actors. The large part of the confrontation between the United States and Iran has occurred via Iranian-sponsored non-state armed formations -the Popular Mobilization Forces, Kataib Hezbollah and others which exist in a grey zone between state and independent action. When the attacks by such groups can be blamed on Iran, thus provoking a US right of self-defense of Iranian territory or nationals is one of the most disputed problems of contemporary international law.

The effective control test developed by the ICJ on Nicaragua has been heavily challenged as being excessively restrictive because it demands the state issue certain orders to the operation in question. The ICTY test of overall control that issued the role of the state is merely to organize and coordinate armed groups without necessarily controlling a particular operation, has been more liberal but has not been universal in jus ad bellum situations. The United States has been inclined to act on the authority of an even permissive attribution criterion, and to characterize the Iranian general direction and material encouragement of an organization of militia groups as sufficient to effect a finding of Iranian responsibility as to such actions of the groups- a posture that would, in case adopted, considerably extend the number of circumstances in which the United States may invoke the right of self-defence against Iran (Tams, 2009).

The United Nations Security Council and Its Functions.

Weaknesses of the Collective Security System Structure.

The collective security system under the UN Charter as envisaged in Chapter VII has endeavored to give the responsibility of upholding international peace and security to the Security Council. The Council has the authority to decide whether or not there is a threat to the peace, the violation of the peace or the act of aggression and to authorize the collective action-including the use of force-to deal with such situations. Technically, such a system should make unilateral self help intervention redundant in all but the most urgent emergencies; in reality, the great power veto has made the Security Council incapable of performing the role of drafters of the Charter in matters of the fundamental security interests of the permanent members.

The dysfunction of the Security Council was total and expected in the case of the confrontation between the US and Iran. The US being a permanent member with veto powers could never have permitted the Security Council to approve actions against it. The disposition of Russia and China to side with Iran in any formal action of the Security Council was because they had their own strategic interests and wanted to keep the American power in check. This outcome had the effect of immobilizing the Council--neither to sanction the American action, nor to find any one to answer to it--and of leaving the lawsuits between the parties and one another to remain, on the multilateral level, wholly unresolved. Such a paralysis turns out to be not only a structural failure of the procedure, but also the inherent flaw of the Charter collective security framework that entrusted the custodianship of the international peace with the very states that were most likely to jeopardize it (Voeten, 2001).

The Alternative Accountability Mechanisms and the General Assembly.

Without the Security Council activity, some focus has been shifted to the UN General Assembly as the other platform to deal with illegal uses of force. Through the Uniting for Peace resolution that was adopted in 1950, the General Assembly may hold an emergency special session when the Security Council is paralyzed and may adopt resolutions denouncing the violation of international peace. Such resolutions are not legally binding, and are, however, of great normative weight as manifestations of international opinion. The capacity of the General Assembly to intervene in the case of the Soleimani strike and the overall US-Iran conflict was limited, however, by the unwillingness of most states to make an enemy of the United States or Iran and no significant General Assembly initiative on the legal matters was imminent.

The other systems of accountability are international tribunals and courts. The International Court of Justice has the power to hear inter-state disputes, but neither the United States nor Iran has assumed or accepted the mandatory jurisdiction of the Court which narrows the opportunities of form of judicial review of the areas of law that the confrontation raises. The Soleimani killing was investigated by the UN Human Rights Council at the Special Rapporteur under the framework of extrajudicial executions and targeted killings; the followers of the investigation came to the conclusion that the killing was an arbitrary deprivation of life and that it was in violation of international law (Special Rapporteur, Agnes Callamard). Nevertheless, these reports have moral and reputational instead of strictly legal implications, and their influence on the actions of states is unpredictable (Callamard, 2020).

Future International Law Order Implications.

The Threat of Normative Erosion.

The loss of the international legal standards of the use of force is perhaps the most important long-term impact of the trends in state practice as illustrated by the Soleimani strike. Unlike domestic law, international law does not have a central enforcement structure and highly relies on the willingness of states to comply; and the social costs of non-compliance in the form of reputational costs. The coercive force of the norms that are broken by them is gradually undermined by the fact that powerful states can invoke broad and challenged legal grounds to justify their aggressive military acts, and with impunity. The states noticing such patterns might come to the conclusion that the legal prohibitions of the use of force are only valid to those weaker states which cannot possess the political and military power to lift themselves above the shackles and basically weaken the universality upon which the international law rests.

This is not only a theoretical issue. The Trump administration style of international law, characterized by abrogating multilateral accords, unilateralism, disregard of the international institutions, reflected and speeded up this trend. It would be erroneous, however, to point the blame of normative erosion at the Trump administration or American policy during this time. These trends of conduct which have strained the legal

system of control of the exercise of force have been cultivated during several administrations and in many states and are indicative of underlying structural stress that are generated by the imbalance between the grand vision of collective security as envisioned by the Charter and the political constraints of a multipolar world where each state still has powerful incentives to follow strategies of unilateral security.

A Reformation of the Legal Framework.

The failures of the existing legal system have led to numerous reform suggestions, including minor modifications to the system and much deeper conceptual revisions. Others have suggested more specific and elaborate standards to anticipatory self-defense such as those suggested in case of humanitarian intervention which would give a more practical guideline to states and still keep substantial limits on unilateral action. These standards may incorporate conditions of that which is truly imminent (which is more tightly defined than in the practice today), that which is utterly depleted of every other means, notification to the Security Council, post-hoc accountability. The problem with this method is that it recognizes the fact that states might occasionally have to take action before an attack actually transpires, and thus attempts to avoid the fact that this recognition does not degenerate into an unconditional license to preventive war.

Bigger plans have included proposals to radically reform the UN Security Council - specifically to abolish or put a maximum on the veto power - as a condition to rehabilitate the collective security system to functional serviceability. Although such reform faces insurmountable political barriers, its rationale lies in the irresistible fact that a system evincely fragranced to guard against great power war has proven structurally incapable of regulating great power aggression, thus offering exactly the type of impunity against which the creators of the Charter were in fact intended to be protective. Other procedural innovations, such as a so-called veto override system where a large supermajority of General Assembly members would need to vote so as to override the veto, could offer some accountability, but such systems would not require a Charter amendment.

The Iranian Nuclear Programme Peculiarity.

The US-Iran conflict continues to develop following the Soleimani assassination as the nuclear aspect of the conflict is still one of the key points of tension. The consistent development of the Iranian nuclear program through enrichment of uranium to approaching weapons-grade has greatly decreased the process of obtaining enough fissile material to make a nuclear device. This has led to a debate whether Israel and/or the United States could think of pre-emptive military force against Iranian nuclear facilities, an eventuality that the two nations have denied the opportunity to rule out. The international community would be exposed to, in case such a strike did happen, arguably the most severe possible challenge to the principles that dictate pre-emptive action: the act of seeking to prevent, as opposed to responding to a particular forthcoming attack.

The law of such possible strikes explains the tensions that have been discussed in this paper. On the one hand, a state that has made no secret of its aggression against a prospective enemy and one which is actively establishing the means of nuclear armament poses a structurally different type of threat than the traditional military provocations, where the inaction of the state in the course of the establishment of the possibilities can entail disastrous and irreparable consequences. Conversely, allowing pre-emptive attacks on the states simply because they have developed a nuclear capability would only serve to entrench a situation in which nuclear-armed states would permanently obstruct non-nuclear states into obtaining such weapons through use of force- a situation that is not only legally untenable but also unsustainable in a world that is full of imbalance of power (Schachter, 1991).

CONCLUSION

The following paper has provided a critical and systematic analysis of the international legal framework on pre-emptive military strikes and evaluated it according to the case of Soleimani killing and the US-Iran conflict in January 2020. Some of the key inferences that are obtained through the analysis are found to have implications on the legal discourse as well as the overall issue of whether the international legal order is sufficient to address modern security issues.

To begin with, the use of force as prohibited in the Charter of the UN is the primary norm of the international legal order, and the right of self-defense as provided in Article 51 is an exception to the prohibition to be construed narrowly and within the context of the necessity and proportionality provided in Caroline doctrine. The broad interpretations of the imminence and self-defense promoted by the United States and other influential states during the post-9/11 period and that have been used to defend the Soleimani killing expand these conditions way beyond their traditional legal interpretation and essentially obliterate the distinction between preventive and defensive actions.

Second, the Soleimani killing creates severe and unsolved questions regarding whether it is in line with international law. The argument on the imminence of attacks that the US government offers to justify the strike is based on classified intelligence, which was never independently proven, and the broad notion of imminence of the US authorities is not consistent with the existing practice enshrined in the customary international law. The strike also cast serious doubts regarding the issue of breach of Iraqi sovereigns and legality of targeted killing operations undertaken outside the existence theaters of armed conflict.

Third, the inability of the United Nations Security Council to actually respond meaningfully to the crisis is indicative of structural vices within the collective security system that the Charter created. The great power veto, which was designed to make sure that the great powers would not be disinvested in the system of collective security, has in practice evolved to become a tool of protecting the great powers against responsibility in how they used their forces. Unless there is any significant reform of the Security Council or the creation of alternative avenues of accountability, this disparity between the ambitious norm of the Charter and the political reality of state practice will only be further expanded.

Fourth, the tendencies of state action as portrayed by the US-Iran confrontation are a grave long-term danger to the normative system on the exercise of force. The bans on the use of force are increasingly violated in the event that the strong states unhealthily invoke broad and disputed legal rationales in the course of their military operations and are not answerable to any significant extent. The norm erosion, which follows in the wake of any bilateral conflict, has not only a bilateral conflict implication: it is weakening the restraint on force application on the international scene and providing an incentive to weaker states and non-state actors to advance asymmetric capabilities in place of weapons of mass destruction as a hedge against coercive efforts by their stronger counterparts.

Lastly, the paper has also suggested that the failure of the existing legal framework requires not only a clarification of the doctrine but also institutional reform. More specific legal criteria of anticipatory self-defense, worked out on a multilateral basis and not on a unilateral one, might assist in the harmonization of legitimate security interests of states and the initial prohibition of the use of force. The reforms, institutional, which would make the Security Council less vulnerable to deadlock among the great powers, should be utilized to establish the ability of the collective security system to handle the threats to the peace to which Charter was intended to address. Without such reforms, the paradoxical aspect in the international legal order includes the fact that the states that are most able to exercise force, are the ones that are least constrained by the meaningful use of legal control over the use of force.

The US-Iran case is neither a historical curiosity nor an open frontier but an issue that is ever changing and legal whose legal aspects will see the emergence and will influence the evolution of international law over the coming years. Knowing the legal stakes well, and demanding their significance even when confronted by strong forces toward expedient illegality is an intellectual and moral obligation not only to international lawyers, but also to scholars and policy-makers.

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