

USE OF FORCE, ARMS CONTROL, AND NONPROLIFERATION

U.S. Drone Strike in Iraq Kills Iranian Military Leader Qasem Soleimani

doi:10.1017/ajil.2020.15

On January 3, 2020, the U.S. military conducted a drone strike near Baghdad International Airport that killed Qasem Soleimani, the leader within the Iranian military of the Quds Force of the Islamic Revolutionary Guard Corps (IRGC). The Trump administration initially appeared to justify the strike as an effort to deter imminent attacks on U.S. embassies and personnel, but later insisted that Iran's actions in the months leading up to the strike triggered the U.S. right to self-defense. Domestically, the Trump administration claimed the authority to carry out the strike based on both the president's inherent constitutional powers and the Authorization for Use of Military Force Against Iraq passed by Congress in 2002. In the aftermath of the strike, Iraq voted to expel U.S. troops from its territory, and Iran conducted a missile strike on American bases in Iraq. Iran also announced that it would cease to observe limits on its production of nuclear fuel—a core tenet of the Joint Comprehensive Plan of Action (JCPOA), from which the United States withdrew in 2018.

Over the last few months of 2019, Iranian-backed militias, including Kataib Hezbollah, launched multiple rocket attacks at U.S. military bases in Iraq.¹ One such attack, undertaken on December 27, killed a U.S. citizen who was working as a military contractor.² Shortly thereafter, the United States carried out airstrikes in Iraq and Syria against Kataib Hezbollah, reportedly resulting in over twenty deaths.³ Following these airstrikes, militia supporters tried unsuccessfully to storm the U.S. embassy in Baghdad.⁴ On December 31, President Trump tweeted that “Iran will be held fully responsible for lives lost, or damage incurred, at any of our facilities. They will pay a very BIG PRICE! This is not a Warning, it is a Threat. Happy New Year.”⁵

On January 2, 2020, Trump ordered the U.S. military to conduct a precision drone strike on two vehicles leaving the Baghdad International Airport in Iraq.⁶ The strike, carried out in the early hours of the following day, targeted and killed Soleimani, who led the IRGC's Quds

¹ Julian E. Barnes, *U.S. Launches Airstrikes on Iranian-Backed Forces in Iraq and Syria*, N.Y. TIMES (Dec. 30, 2019), at <https://www.nytimes.com/2019/12/29/world/middleeast/us-airstrikes-iran-iraq-syria.html>.

² *Id.*

³ *Id.* A U.S. State Department official explained that the strikes were “aimed at deterring Iran” and that “we are not going to let Iran get away with using a proxy force to an attack – to attack American interests.” U.S. Dep't of State Press Release, Press Briefing by Senior State Department Officials on U.S. Airstrikes in Iraq and Syria (Dec. 30, 2019), at <https://www.state.gov/senior-state-department-officials-on-u-s-airstrikes-in-iraq-and-syria> [perma.cc/K9GZ-7HTJ].

⁴ Ghassan Adnan & Isabel Coles, *Militia Supporters Retreat from U.S. Embassy Site in Iraq*, WALL ST. J. (Jan. 1, 2020), at <https://www.wsj.com/articles/protesters-retreat-from-u-s-embassy-site-in-iraq-11577891592>.

⁵ Donald J. Trump (@realDonaldTrump), TWITTER (Dec. 31, 2019, 4:19 PM), at <https://twitter.com/realdonaldtrump/status/1212121026072592384> [<https://perma.cc/XE3D-K3AE>].

⁶ Michael Crowley, Falih Hassan & Eric Schmitt, *U.S. Strike in Iraq Kills Qasim Suleimani, Commander of Iranian Forces*, N.Y. TIMES (Jan. 7, 2020), at <https://www.nytimes.com/2020/01/02/world/middleeast/qasem-soleimani-iraq-iran-attack.html>. The Trump administration apparently also attempted a drone strike in Yemen targeting senior IRGC official Abdul Reza Shahlai, although the strike ultimately failed. Eric Schmitt, Edward Wong & Julian Barnes, *U.S. Unsuccessfully Tried Killing a Second Iranian Military Official*, N.Y. TIMES (Jan. 10, 2020), at <https://www.nytimes.com/2020/01/10/world/middleeast/trump-iran-yemen.html>.

Force, a special operations branch that carries out covert and military activities.⁷ The United States has long deemed the Quds Force to be a supporter of terrorism, and, in April of 2017, the United States designated the IRGC itself as a foreign terrorist organization for purposes of a domestic statute, notwithstanding the IRGC's status as an arm of a state.⁸ Both the George W. Bush and Obama administrations reportedly considered, but ultimately rejected, attempts to eliminate Soleimani due to concerns about the potential repercussions.⁹ Several other individuals were killed in the January 3 strike, including Abu Mahdi al-Muhandis, an Iraqi who was a likely second intended target in light of his position as the leader of Kataib Hezbollah.¹⁰

The international legality of the strike turns on the scope of the right to self-defense provided for by international law.¹¹ Article 51 of the UN Charter allows states to exercise "the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security."¹² Under customary international law, imminent self-defense prior to an attack is widely recognized as permissible when the threat is "instant, overwhelming and leaving no choice and means, and leaves no moment for deliberation."¹³ The United States has previously articulated a more expansive view of imminence. During the Obama administration, for example, the legal adviser to the State Department identified multiple factors relevant to an imminence analysis and observed that, conditional on "a reasonable and objective basis for concluding that an armed attack is imminent," the "absence of specific evidence of where an attack will take place or the precise nature of an attack does not preclude a conclusion that an armed attack is imminent."¹⁴ The legal adviser also explained "the view of the United States [that] once a State has lawfully resorted to force in self-defense against a particular armed group following an actual or imminent attack by that group, it is not necessary as a matter of international law to reassess whether an armed attack is imminent prior to every subsequent action taken against that group."¹⁵

⁷ Crowley, Hassan & Schmitt, *supra* note 6.

⁸ Jean Galbraith, Contemporary Practice of the United States, 113 AJIL 609, 609–11 n. 17 (2019) (noting that the Department of Treasury had sanctioned the Quds Force as a terrorism supporter as far back as 2007).

⁹ Zeke Miller & Julie Pace, *US Long Watched Soleimani, but Feared Risks of a Strike*, AP NEWS (Jan. 4, 2020), at <https://apnews.com/57b4e6ffca604eb010b3dfd29aeed2b>.

¹⁰ Crowley, Hassan & Schmitt, *supra* note 6; Matthew S. Schwartz, *Who Was the Iraqi Commander Also Killed in the Baghdad Drone Strike?*, NPR (Jan. 4, 2020), at <https://www.npr.org/2020/01/04/793618490/who-was-the-iraqi-commander-also-killed-in-baghdad-drone-strike>.

¹¹ For a compilation of state reactions to the strike and its legality, see Mehrnusch Anssari & Benjamin Nußberger, *Compilation of States' Reactions to U.S. and Iranian Uses of Force in Iraq in January 2020*, JUST SECURITY (Jan. 22, 2020), at <https://www.justsecurity.org/68173/compilation-of-states-reactions-to-u-s-and-iranian-uses-of-force-in-iraq-in-january-2020> (also compiling reactions to a later strike carried out by Iran).

¹² UN Charter Art. 51.

¹³ See Letter from Daniel Webster to Lord Ashburton (July 27, 1842), in CORRESPONDENCE BETWEEN MR. WEBSTER AND LORD ASHBURTON 14 (1842) (articulating this test).

¹⁴ Brian Egan, Legal Adviser, Dep't of State, Remarks to the American Society of International Law (Apr. 1, 2016), at <https://2009-2017.state.gov/s/l/releases/remarks/255493.htm> [perma.cc/6BNY-URHH] [hereinafter Egan Remarks]; see also Kristina Daugirdas & Julian Davis Mortenson, Contemporary Practice of the United States, 110 AJIL 587, 592 (2016) (discussing the standard set forth by Egan and considering how it related to air strikes conducted against al-Shahaab).

¹⁵ Egan Remarks, *supra* note 14.

The Department of Defense's initial press release, published the night of the strike, justified the strike on the grounds that

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.¹⁶

In the days that followed, the administration began to use the language of imminence, suggesting that it sought to justify the strike as a preemptive measure in addition to—or perhaps instead of—self-defense in response to prior attacks. Trump stated: “Soleimani was plotting imminent and sinister attacks on American diplomats and military personnel, but we caught him in the act and terminated him. . . . We took action last night to stop a war. We did not take action to start a war.”¹⁷ Trump claimed that the administration had intelligence suggesting that Soleimani was planning to bomb four U.S. embassies, including one in Iraq.¹⁸

¹⁶ U.S. Dep't of Defense Press Release, Statement by the Department of Defense (Jan. 2, 2020), at <https://www.defense.gov/Newsroom/Releases/Release/Article/2049534/statement-by-the-department-of-defense> [perma.cc/2SUT-XK3V].

¹⁷ Donald J. Trump, Remarks on the Death of Islamic Revolutionary Guard Corps Major General and Quds Force Commander Qasem Soleimani of Iran, 2020 DAILY COMP. PRES. DOC. 005, at 1 (Jan. 3, 2020) (also stating that “the recent attacks on U.S. targets in Iraq . . . were carried out at the direction of Soleimani”). The following day, Trump tweeted that “if Iran strikes any Americans, or American assets, we have . . . targeted 52 Iranian sites . . . some at a very high level & important to Iran & the Iranian culture.” Donald J. Trump (@realDonaldTrump), TWITTER (Jan. 4, 2020, 5:52 PM), at <https://twitter.com/realDonaldTrump/status/1213593974679769093> [perma.cc/4NQJ-N2JE]. The secretary of defense later clarified that the United States would not target cultural sites, as that would be impermissible under the law of armed conflict. Peter Baker & Maggie Haberman, *Pentagon Rules Out Striking Iranian Cultural Sites, Contradicting Trump*, N.Y. TIMES (Jan. 7, 2020), at <https://www.nytimes.com/2020/01/06/us/politics/trump-esper-iran-cultural-sites.html>. Iran expressed outrage at Trump's tweet, stating that the “threat to target Iranian cultural sites is certainly a flagrant violation of the basic norms and principles of international law, and any attack against such sites would be a war crime.” Permanent Rep. of the Islamic Republic of Iran, Letter Dated 7 January 2020 to the United Nations Addressed to the Secretary-General and the President of the Security Council, UN Doc. S/2020/16 (Jan. 8, 2020), at <https://undocs.org/en/S/2020/16>.

¹⁸ Phillip Ruckert, John Hudson, Shane Harris & Josh Dawsey, “Four Embassies”: *The Anatomy of Trump's Unfounded Claim About Iran*, WASH. POST (Jan. 13, 2020), at https://www.washingtonpost.com/politics/four-embassies-the-anatomy-of-trumps-unfounded-claim-about-iran/2020/01/13/2dcd6df0-3620-11ea-bf30-ad313e4ec754_story.html. Secretary of State Mike Pompeo similarly stated:

We had specific information on an imminent threat, and those threats included attacks on U.S. embassies . . . We don't know exactly which day it would've been executed. But it was very clear: Qasem Soleimani himself was plotting a broad, large-scale attack against American interests. And those attacks were imminent . . . [a]gainst American facilities, including American embassies, military bases [and] American facilities throughout the region.

Mike Pompeo, Sec'y of State Press Release, Press Briefing by Secretary of State Mike Pompeo and Secretary of the Treasury Steven Mnuchin on Iran Sanctions (Jan. 10, 2020), available at <https://www.whitehouse.gov/briefings-statements/press-briefing-secretary-state-mike-pompeo-secretary-treasury-steven-mnuchin-iran-sanctions> [perma.cc/P8UF-PJDD].

The United States did not discuss imminence, however, when notifying the UN Security Council of the strike pursuant to its obligations under Article 51 of the UN Charter.¹⁹ Instead, the United States defended the strike as a response to prior Iranian attacks. On January 8—five days after the strike—the U.S. permanent representative to the United Nations wrote to the Security Council that:

the United States has undertaken certain actions in the exercise of its inherent right of self-defence. These actions were in response to an escalating series of armed attacks in recent months by the Islamic Republic of Iran and Iran-supported militias on United States forces and interests in the Middle East region, in order to deter the Islamic Republic of Iran from conducting or supporting further attacks against the United States or United States interests, and to degrade the Islamic Republic of Iran and Islamic Revolutionary Guard Corps Qods Force-supported militias' ability to conduct attacks.²⁰

The letter referred specifically to Iran's destruction of a U.S. drone in June 2019, an Iranian drone threat presented to a U.S. military ship in July 2019, and the attacks aimed at U.S. military bases in Iraq by Kataib Hezbollah and other "Qods Force-backed militia groups in Iraq."²¹ The letter did not offer specific reasoning for its conclusion that the acts of the militia groups could be attributed to Iran. In a subsequent domestic communication, the administration similarly asserted that "[a]lthough the threat of further attack existed, recourse to the inherent right of self-defense was justified sufficiently by the series of attacks that preceded the January 2 strike."²²

In response to the strike, the Iranian government promised "severe revenge"²³ and condemned the strike as a violation of international law. Iran's permanent representative to the United Nations wrote:

Conducted "at the direction of the President" of the United States, the assassination of Major General Qasem Soleimani, by any measure, is an obvious example of State terrorism and, as a criminal act, constitutes a gross violation of the fundamental principles of international law, including, in particular, those stipulated in the Charter of the United Nations, and thus entails the international responsibility of the United States. . . .

The designation, by one State, of an official branch of the armed forces of other State(s) as

¹⁹ See Permanent Rep. of U.S. to the UN, Letter Dated 8 January 2020 from the Permanent Representative of the United States of America to the United Nations Addressed to the President of the Security Council, UN Doc S/2020/20 (Jan. 9, 2020), at <https://undocs.org/en/S/2020/20>.

²⁰ *Id.*

²¹ *Id.*; see also Jean Galbraith, Contemporary Practice of the United States, 113 AJIL 845, 847–48 (2019) (describing the two drone-related incidents from the summer of 2019). For a critique of the legal reasoning underlying this letter, see Adil Ahmad Haque, *U.S. Legal Defense of the Soleimani Strike at the United Nations: A Critical Assessment*, JUST SECURITY (Jan. 10, 2020), at <https://www.justsecurity.org/68008/u-s-legal-defense-of-the-soleimani-strike-at-the-united-nations-a-critical-assessment>.

²² White House, Notice on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations (2020), available at https://foreignaffairs.house.gov/_cache/files/4/3/4362ca46-3a7d-43e8-a3ec-be0245705722/6E1A0F30F9204E380A7AD0C84EC572EC.doc148.pdf [perma.cc/B5AQ-GXVQ] [hereinafter White House Notice].

²³ Louisa Loveluck, Adam Taylor & Michael Brice-Saddler, *Trump Says Iranian Military Leader Was Killed by Drone Strike "to Stop a War," Warns Iran Not to Retaliate*, WASH. POST (Jan. 3, 2020), at https://www.washingtonpost.com/world/iran-strike-live-updates/2020/01/03/3779f55c-2e33-11ea-bcb3-ac6482c4a92f_story.html.

a so-called “foreign terrorist organization” constitutes a breach of generally recognized principles of international law and of the Charter of the United Nations, including the principle of sovereign equality of States, and cannot, under any circumstances, justify any threat or use of force against them, including in the territory of other States.

Categorically rejecting all reasoning and references made by the officials of the United States for justifying the criminal assassination of Martyr Major General Qasem Soleimani, and condemning this heinous crime in the strongest possible terms, the Islamic Republic of Iran reserves all of its rights under international law to take necessary measures in this regard, in particular in exercising its inherent right to self-defence.²⁴

In a subsequent communication, Iran’s permanent representative “categorically reject[ed] the attribution to Iran” of attacks carried out by militias and disputed U.S. claims that the drone-related incidents over the summer of 2019 could serve as international legal justifications for the U.S. strike.²⁵

Because the U.S. airstrike occurred on the territory of Iraq, a further international legal issue is whether the United States violated its legal duty to “refrain . . . from the threat or use of force against the territorial integrity or political independence” of Iraq.²⁶ The government of Iraq did not indicate that it had given consent to the strike, instead swiftly denouncing it as a violation of international law. The Iraqi permanent representative to the United Nations wrote:

The Government of the Republic of Iraq condemns in the strongest possible terms these American attacks, which violate the sovereignty of Iraq and the principles of international law. It stresses that it is fully committed to the provisions of the Iraqi Constitution and, in particular, the provision that Iraqi territory shall not be used as a theatre of operations against neighbouring States. It is committed to ensuring that foreign forces active in Iraq at its request do not come under attack. It emphasizes that any military mobilization or operations on Iraqi territory that take place without its approval and without prior coordination constitute provocative and hostile acts that violate the Charter of the United Nations²⁷

²⁴ Permanent Rep. of the Islamic Republic of Iran to the UN, Letter Dated 3 January 2020 from the Permanent Representative of the Islamic Republic of Iran to the United Nations Addressed to the Secretary-General and the President of the Security Council, UN Doc. S/2020/13 (Jan. 3, 2020), at <https://undocs.org/S/2020/13> (footnote omitted). Iran’s Foreign Minister claimed the strike

violated territorial integrity and sovereignty of Iraq This was an act of aggression, an armed attack, albeit a cowardly armed attack, against an Iranian official in foreign territory. It amounts to war, and we will respond according to our own timing and choice [I]n exercising our right to self-defense, we are only bound by international law, unlike the United States, which is not bound by international law.

Transcript: NPR’s Full Interview with Iran’s Foreign Minister, NPR (Jan. 7, 2020), at <https://www.npr.org/2020/01/07/794175782/transcript-nprs-full-interview-with-iran-s-foreign-minister?t=1578520157145>.

²⁵ Permanent Rep. of the Islamic Republic of Iran to the UN, Letter Dated 29 January 2020 from the Permanent Representative of the Islamic Republic of Iran to the United Nations Addressed to the Secretary-General and the President of the Security Council, UN Doc. S/2020/81 (Jan. 30, 2020), at <https://undocs.org/pdf/symbol=en/S/2020/81> [perma.cc/E7ZB-6K8Q].

²⁶ See UN Charter Art. 2(4).

²⁷ Permanent Rep. of Iraq to the UN, Identical Letters Dated 6 January 2020 from the Permanent Representative of Iraq to the United Nations Addressed to the President of the Security Council, UN Doc. S/2020/15 (Jan. 6, 2020),

The United States has previously taken the position that, in acting in self-defense under Article 51, it may use force against a nonstate actor on the territory of a state whose government does not consent to the use of force, provided that this state is “unwilling or unable” to prevent the actual or imminent threat posed by the nonstate actor.²⁸ To date, the Trump administration has not explicitly invoked the “unwilling or unable” argument—which would need to be expanded to include uses of force against the agents of *foreign states*—as justifying its decision to carry out the strike on Iraqi territory. Discussing the attacks by Iran-backed militias in a press briefing shortly before the Soleimani strike, State Department officials observed that “we do not make a distinction between the Iranian regime and any of its proxies that they organize, train, and equip,” and that the “the Iraqi Government needs to ensure the safety of American forces [in Iraq], and there’s just been too many attacks, attempted attacks against American and Iraqi forces.”²⁹

Domestically, the executive branch reportedly did not notify Congress of the strike beforehand, but did submit a report on the strike on January 4.³⁰ The report was fully classified and the briefing was held behind closed doors, rather than the usual procedure of sending an unclassified report with a classified annex.³¹ On February 14, the administration released a document summarizing its legal justifications for the strike, consistent with the National Defense Authorization Act for Fiscal Year 2018 as amended, which requires notification of changes to legal and policy frameworks for uses of force.³²

at <https://undocs.org/en/S/2020/15>; accord Government of Iraq - العراقية لحكومة (@IraqiGovt), TWITTER (Jan. 3, 2020, 5:11 AM), at <https://twitter.com/IraqiGovt/status/1213040106115866626> [perma.cc/TWZ2-KWP4] (quoting Iraqi Prime Minister Adil Abdul-Mahdi as stating: “We condemn in the strongest terms the assassination by US forces of Iraqi and Iranian figures who were symbols of the victory against Daesh”).

²⁸ E.g., Egan Remarks, *supra* note 14 (stating that this “unable or unwilling standard” applies “only in those exceptional circumstances in which a State cannot or will not take effective measures to confront a non-State actor that is using its territory as a base for attacks and related operations against other States”); Permanent Rep. of U.S. to the UN, Letter Dated 23 September 2014 from the Permanent Representative of the United States of America to the United Nations Addressed to the Secretary-General, UN Doc. S/2014/695 (Sept. 23, 2014), available at securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_695.pdf (using an “unwilling or unable” argument in 2014 to justify airstrikes in Syria targeting ISIL).

²⁹ Press Briefing by Senior State Department Officials, *supra* note 3. One official referenced a 2018 statement by the White House condemning Iran for “not act[ing] to stop [certain] attacks by its proxies in Iraq, which it has supported with funding, training, and weapons” and stating that the “United States will hold the regime in Tehran accountable for any attack that results in injury to our personnel or damage to United States Government facilities.” White House Press Release, Statement by the Press Secretary (Sept. 11, 2018), at <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-33> [https://perma.cc/PKC9-FU48]; see also Press Briefing by Senior State Department Officials, *supra* note 3 (referencing this statement).

³⁰ Maggie Haberman & Catie Edmondson, *White House Notifies Congress of Suleimani Strike Under War Powers Act*, N.Y. TIMES (Jan. 6, 2020), at <https://www.nytimes.com/2020/01/04/us/politics/white-house-war-powers-resolution.html>. The War Powers Resolution requires the president to notify Congress within forty-eight hours of the introduction of U.S. military forces into hostilities. 50 U.S.C. § 1543 (2018).

³¹ John B. Bellinger III, *Does the U.S. Strike on Soleimani Break Legal Norms?*, COUNCIL ON FOREIGN REL. (Jan. 6, 2020), at <https://www.cfr.org/in-brief/does-us-strike-soleimani-break-legal-norms>; see also Letter from Senators Charles E. Schumer and Robert Menendez to President Donald Trump (Jan. 5, 2020), available at <https://www.foreign.senate.gov/imo/media/doc/010520cMenendez%20Shcumer%20Letter%20War%20Powers.pdf> [perma.cc/73NV-3M8X] (asking the president to declassify the War Powers notification because “[a]n entirely classified notification is simply not appropriate in a democratic society, and there appears to be no legitimate justification for classifying this notification”).

³² Pub. L. No. 115-91, § 1264, 131 Stat. 1689-90 (2017), amended by Pub. L. No. 116-92, § 1261 (2019); White House Notice, *supra* note 22.

This notice invoked two separate domestic legal bases for the strike. First, it relied on the president's constitutional power as commander in chief under Article II of the Constitution. Second, it claimed statutory authorization for the strike based on the 2002 congressional statute that had authorized the Second Gulf War in Iraq. The notice provided a brief explanation of the reasoning underlying these claims. It stated:

Article II of the United States Constitution empowers the President, as Commander in Chief, to direct the use of military forces to protect the Nation from an attack or threat of imminent attack and to protect important national interests. Article II thus authorized the President to use force against forces of Iran, a state responsible for conducting and directing attacks against United States forces in the region. In addition, under the 2002 Authorization for Use of Military Force Against Iraq (2002 AUMF) "the President is authorized to use the Armed Forces of the United States as he determines to be necessary and appropriate in order to defend the national security of the United States against the continuing threat posed by Iraq." Although the threat posed by Saddam Hussein's regime was the initial focus of the statute, the United States has long relied upon the 2002 AUMF to authorize the use of force for the purpose of establishing a stable, democratic Iraq and addressing terrorist threats emanating from Iraq. Such uses of force need not address threats from the Iraqi Government apparatus only, but may address threats to the United States posed by militias, terrorist groups, or other armed groups in Iraq.

The airstrike against Soleimani in Iraq is consistent with this longstanding interpretation of the President's authority under Article II and the 2002 AUMF. Iran's past and recent activities, coupled with intelligence at the time of the air strike, indicated that Iran's Qods Force posed a threat to the United States in Iraq, and the air strike against Soleimani was intended to protect United States personnel and deter future Iranian attack plans against United States forces and interests in Iraq and threats emanating from Iraq. The use of military force against Iranian Armed Forces was tailored narrowly to the identified Qods Force target's presence in Iraq and support to, including in some cases direction of, Iraqi militias that attacked United States personnel.³³

While the Obama administration had taken the position that the 2002 AUMF applied to U.S. military actions against the Islamic State of Iraq and Levant (ISIL), at least within Iraq,³⁴ the Trump administration's extension of the interpretation of the 2002 AUMF to encompass military actions against Iran is notable. Anticipating such an extension and concerned about its legal validity, members of Congress inquired during the summer of 2019 whether the administration considered itself to have statutory authority to use force against Iran based on the 2002 AUMF or the Authorization for Use of Military Force passed in 2001 (2001 AUMF), which authorized the use of force in response to the terrorist attacks of

³³ White House Notice, *supra* note 22 (footnotes omitted). For criticism of the legal reasoning underlying the notice, see Ryan Goodman, *White House "1264 Notice" and Novel Legal Claims for Military Action Against Iran*, JUST SECURITY (Feb. 14, 2020), at <https://www.justsecurity.org/68594/white-house-1264-notice-and-novel-legal-claims-for-military-action-against-iran>.

³⁴ See President Barack Obama, Letter to the Speaker of the House of Representatives and the President Pro Tempore of the Senate (Sept. 23, 2014), at <https://obamawhitehouse.archives.gov/the-press-office/2014/09/23/letter-president-war-powers-resolution-regarding-iraq> [<https://perma.cc/6JFQ-69LX>].

September 11, 2001.³⁵ In response, the State Department represented that “the Administration’s goal is to find a diplomatic solution to Iran’s activities, not to engage in conflict with Iran” and that “the Administration has not, to date, interpreted either AUMF as authorizing military force against Iran, except as may be necessary to defend U.S. or partner forces engaged in counterterrorism operations or operations to establish a stable, democratic Iraq.”³⁶ In concluding that the 2002 AUMF authorized the strike against Soleimani, the Trump administration signaled a capacious understanding of the self-defense that it interpreted the 2002 AUMF to authorize.

Following the strike, a majority of both houses of Congress signaled strong concern about unconstrained executive-branch uses of force against Iran. On January 13, 2020, by a vote of 224–194, the House of Representatives passed a resolution finding that “Congress has not authorized the President to use military force against Iran.”³⁷ The resolution “direct[ed] the President to terminate the use of United States Armed Forces to engage in hostilities in or against Iran or any part of its government or military” in the absence of specific congressional authorization or the need to defend “against an imminent armed attack upon the United States . . . or its Armed Forces.”³⁸ One month later, on February 13, the Senate passed a similar resolution calling for the cessation of hostilities by a vote of 55–45.³⁹ Though the Senate resolution is expected to pass the House as well, Trump is likely to veto it.⁴⁰ Based on the roll call for the House and Senate resolutions, Congress does not have the two-thirds supermajority needed to override a veto.

The strike on Soleimani prompted a strong reaction in Iraq. Most notably, on January 5, 2020, two days after the strike, the Iraqi parliament voted to expel U.S. troops from Iraq.⁴¹ But despite this vote, the United States has remained in Iraq, and it is unclear what steps, if any, the Iraqi government will take to trigger U.S. withdrawal.

Iran responded to the strike with several significant actions. On January 5, Iran announced that it was abandoning the limitations on its production of nuclear fuel contained in the JCPOA.⁴²

³⁵ Galbraith, *supra* note 21, at 845–48 (describing these inquiries).

³⁶ Letter from Mary Elizabeth Taylor, Assistant Sec’y, Bureau of Legis. Aff., to Eliot L. Engel, Chairman, H. Comm. on Foreign Aff. (June 28, 2019), available at <https://perma.cc/9YLU-59FL>.

³⁷ H.R. Con. Res. 83, 116th Cong. (2020); 166 CONG. REC. H115 (daily ed. Jan. 9, 2020) (Roll No. 7).

³⁸ H.R. Con. Res. 83, 116th Cong. (2020).

³⁹ See S.J. Res. 68, 116th Cong. (2020) (stating that, subject to an exception for defense against imminent attacks aimed at the United States, “Congress hereby directs the President to terminate the use of United States Armed Forces for hostilities against the Islamic Republic of Iran or any part of its government or military, unless explicitly authorized by a declaration of war or specific authorization for use of military force against Iran”); 166 CONG. REC. S1061 (daily ed. Feb. 13, 2020) (Vote No. 52). Because the War Powers Resolution set up a fast-track process for the consideration of such resolutions, this resolution progressed in the Senate without being subject to the filibuster and, like the parallel resolution in the House, benefited from other expedited procedures. See 50 U.S.C. § 1546 (2018).

⁴⁰ Catie Edmondson, *In Bipartisan Bid to Restrain Trump, Senate Passes Iran War Powers Resolution*, N.Y. TIMES (Feb. 13, 2020), at <https://www.nytimes.com/2020/02/13/us/politics/iran-war-powers-trump.html>; see Exec. Office of the President, Statement of Administration Policy (2020), available at https://www.whitehouse.gov/wp-content/uploads/2020/02/SAP_SJ-RES-68.pdf [perma.cc/S9WQ-VA5L] (“If S.J. Res. 68 were presented to the President, his advisors would recommend that he veto the joint resolution.”).

⁴¹ Arwa Ibrahim, *Iraqi Parliament Calls for Expulsion of Foreign Troops*, AL JAZEERA (Jan. 5, 2020), at <https://www.aljazeera.com/news/2020/01/iraqi-parliament-calls-expulsion-foreign-troops-200105150709628.html>.

⁴² Laurel Wamsley & Emily Kwong, *Iran Abandons Nuclear Deal Limitations in Wake of Soleimani Killing*, NPR (Jan. 5, 2020), at <https://www.npr.org/2020/01/05/793814276/iran-abandons-nuclear-deal-limitations-in-wake-of-soleimani-killing>.

Since the United States withdrew from the JCPOA in 2018,⁴³ Iran had been moving away from full compliance with its terms, but this development was a significant additional step. In response to Iran's announcement, Britain, France, and Germany triggered the dispute resolution provision of the JCPOA, causing Iran to threaten withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons should this dispute settlement process lead to a referral to the UN Security Council.⁴⁴ Separate from the announcement related to the JCPOA, the Iranian parliament expressed fury at the U.S. strike, passing a bill on January 7 that designated U.S. military members as terrorists.⁴⁵

The government of Iran also took military action against the United States in response to the strike. On January 8, the IRGC launched sixteen ballistic missiles at U.S. military bases in Iraq, though claiming that the missiles were "not intend[ed] to kill."⁴⁶ The Iranian strike caused some damage to the bases but killed no one.⁴⁷ In the weeks that followed, however, the Pentagon announced that over one hundred U.S. troops had suffered brain injuries from the strike.⁴⁸ Though the missile strike came after Iran repeatedly promised "revenge" for Soleimani's death,⁴⁹ Iran stated in its Article 51 notification to the UN Security Council that

in the early morning hours (Tehran time), in exercising our inherent right to self-defence in accordance with Article 51 of the Charter of the United Nations, 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

⁴³ Jean Galbraith, *Contemporary Practice of the United States*, 112 AJIL 514 (2018) (discussing the U.S. withdrawal in 2018 from the JCPOA).

⁴⁴ Babak Dehghanpisheh, *Iran Says It Will Quit Global Nuclear Treaty If Case Goes to UN*, REUTERS (Jan. 20, 2020), at <https://uk.reuters.com/article/uk-iran-nuclear/iran-says-it-will-quit-global-nuclear-treaty-if-case-goes-to-u-n-idUKKBN1ZJ0L5>. The United States also imposed a new round of sanctions against Iran in response to Iran's announcement. Mike Pompeo, Sec'y of State Press Release, *Designation of the Atomic Energy Organization of Iran, Its Head Ali Akbar Salehi and Renewing Nuclear Restrictions* (Jan. 31, 2020), at <https://www.state.gov/designation-of-the-atomic-energy-organization-of-iran-its-head-ali-akbar-salehi-and-renewing-nuclear-restrictions> [perma.cc/9UPR-MUGS].

⁴⁵ *Iran's Parliament Designates All US Forces As "Terrorists"*, AL JAZEERA (Jan. 7, 2020), at <https://www.aljazeera.com/news/2020/01/iran-parliament-designates-forces-terrorists-200107081230324.html>.

⁴⁶ Kareem Fahim & Sarah Dadouch, *"We Did Not Intend to Kill," Iranian Commander Says of Missile Strike on U.S. Targets*, WASH. POST (Jan. 9, 2020), at https://www.washingtonpost.com/world/middle_east/missile-strike-on-us-bases-did-not-intend-to-kill-says-iranian-commander/2020/01/09/c5c2295c-3260-11ea-971b-43bec3ff9860_story.html; Shane Harris, Josh Dawsey, Dan Lamothe & Missy Ryan, *"Launch, Launch, Launch": Inside the Trump Administration as the Iranian Missiles Began to Fall*, WASH. POST (Jan. 8, 2020), at https://www.washingtonpost.com/national-security/us-officials-knew-iranian-missiles-were-coming-hours-in-advance/2020/01/08/b6297b4c-3235-11ea-a053-dc6d944ba776_story.html. The same day as launching the missile strikes on U.S. bases, Iran shot down a Ukrainian passenger flight that was allegedly misidentified as a cruise missile, killing all 176 people on board. *Plane Shot Down Because of Human Error, Iran Says*, N.Y. TIMES (Jan. 11, 2020), at <https://www.nytimes.com/2020/01/11/world/middleeast/plane-crash.html>. The Iranian government claimed that "[h]uman error at time of crisis caused by US adventurism led to disaster." Javad Zarif (@JZarif), TWITTER (Jan. 10, 2020, 8:05 PM), at <https://twitter.com/JZarif/status/1215847283381755914> [perma.cc/YF8T-5Z9G].

⁴⁷ Harris, Dawsey, Lamothe & Ryan, *supra* note 46.

⁴⁸ Lolita C. Baldor, *Pentagon: 109 Troops Suffer Brain Injuries from Iran Strike*, AP NEWS (Feb. 10, 2020), at <https://apnews.com/eabf6766d717a2dd518a3c6319bb2430> (noting that "nearly 70 percent of those diagnosed [had] return[ed] to duty").

⁴⁹ *E.g.*, Loveluck, Taylor & Brice-Saddler, *supra* note 23.

military objectives, thus leaving no collateral damage to civilians and civilian assets in the area.⁵⁰

The letter “reiterate[d] the full respect of the Islamic Republic of Iran for the independence, sovereignty, unity and territorial integrity of the Republic of Iran.”⁵¹ The letter did not detail how the Iranian strikes would deter against future attacks, as distinct from amounting to a reprisal, and nor did it explain how these strikes were consistent with Iran’s international legal obligations toward Iraq.

Iraq protested the Iranian strike as a violation of international law:

For Iraqi territory to be bombarded by the Islamic Republic of Iran on the pretext of self-defence under Article 51 of the Charter of the United Nations is unacceptable and constitutes a breach of the sovereignty of Iraq and a violation of the principles of good-neighbourliness, the Charter of the United Nations and international law.⁵²

In response to the Iranian missiles, Trump authorized additional sanctions on Iran,⁵³ and the administration imposed sanctions against eight senior Iranian officials⁵⁴ and added seventeen sanctions targeting the metals industry in Iran.⁵⁵ But Trump seemed to reject further military action:

Iran appears to be standing down, which is a good thing for all parties concerned and a very good thing for the world. . . . The fact that we have this great military and equipment, however, does not mean we have to use it. We do not want to use it. American strength, both military and economic, is the best deterrent. . . . [T]o the people and leaders of Iran: We want you to have a future and a great future – one that you deserve, one of prosperity at home, and harmony with the nations of the world. The United States is ready to embrace peace with all who seek it.⁵⁶

Although neither the United States nor Iran have engaged in overt strikes against each other in the immediate aftermath of Iran’s January 8 strike, tensions between the two countries remain high throughout the region.⁵⁷ In mid-January, the U.S. Maritime

⁵⁰ Permanent Rep. of the Islamic Republic of Iran to the UN, Letter Dated 8 January 2020 from the Permanent Representative of the Islamic Republic of Iran to the United Nations Addressed to the Secretary-General and the President of the Security Council, UN Doc. S/2020/19 (Jan. 8, 2020), at <https://undocs.org/en/S/2020/19>.

⁵¹ *Id.*

⁵² Permanent Rep. of the Republic of Iraq to the UN, Identical Letters Dated 9 January 2020 from the Permanent Representative of the Republic of Iraq to the United Nations Addressed to the Secretary-General and the President of the Security Council, UN Doc. S/2020/26 (Jan. 9, 2020), at <https://undocs.org/S/2020/26> [perma.cc/A3RR-TLQC]. For analysis of international reactions and the legality of the Iranian strike, see Ansari & Nußberger, *supra* note 11.

⁵³ Exec. Order 13,902, 85 Fed. Reg. 2003 (Jan. 14, 2020).

⁵⁴ Mike Pompeo, Sec’y of State Press Release, Intensified Sanctions on Iran (Jan. 10, 2020), at <https://www.state.gov/intensified-sanctions-on-iran> [perma.cc/A6D4-5L42].

⁵⁵ U.S. Dep’t of the Treasury Press Release, Treasury Targets Iran’s Billion Dollar Metals Industry and Senior Regime Officials (Jan. 10, 2020), at <https://home.treasury.gov/news/press-releases/sm870> [perma.cc/B4KC-JXVX].

⁵⁶ White House Press Release, President Donald Trump, Remarks by President Trump on Iran (Jan. 8, 2020), at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-iran> [perma.cc/94PF-DGSL].

⁵⁷ In mid-March of 2020, the United States carried out further strikes against Kataib Hezbollah, following the death of two U.S. service-members from rockets attributed to Iranian-backed militias. Louisa Loveluck,

Administration warned of continuing “serious threats to commercial vessels” by Iran and its proxies in the Strait of Hormuz and the Arabian Sea,⁵⁸ causing increased patrols by countries whose industries rely on passage through the strait.⁵⁹ On February 9, while patrolling the area, the United States intercepted Iranian-made weapons destined for the Houthi rebels in Yemen,⁶⁰ who have been fighting a Saudi-led and U.S.-backed coalition since 2015.⁶¹ In Syria, Iran has continued to back the Syrian government forces, who have engaged in a months-long offensive to retake Idlib, which sits on the Syrian-Turkish border and has been the last rebel-held area.⁶² The United States has condemned the “unjustifiable, and ruthless assaults on the people of Idlib” and reiterated that it “stand[s] by [its] NATO Ally Turkey.”⁶³

United States Creates the U.S. Space Command and the U.S. Space Force to Strengthen Military Capabilities in Space

doi:10.1017/ajil.2020.13

President Trump first announced his plans for increasing U.S. military capabilities in space in 2018. In August 2019, his administration created the United States Space Command. With the passage in December 2019 of the 2020 National Defense Authorization Act, the United States established the United States Space Force as a new branch of the armed forces.

Dan Lamothe & Mustafa Salim, *U.S. Counters Iraq’s Condemnation of Airstrikes on Iran-Backed Militia Facilities*, WASH. POST (Mar. 13, 2020), at https://www.washingtonpost.com/world/iraq-condemns-us-strikes-on-iran-backed-militias-say-they-killed-soldiers-and-a-civilian/2020/03/13/33650322-6519-11ea-8a8e-5c5336b32760_story.html.

⁵⁸ 2020-001-Persian Gulf, Strait of Hormuz, Gulf of Oman, Arabian Sea, Red Sea, Gulf of Aden, and Indian Ocean-Threats to Commercial Vessels by Iran and its Proxies, MARAD (Jan. 13, 2020), at <https://maritime.dot.gov/content/2020-001-persian-gulf-strait-hormuz-gulf-oman-arabian-sea-red-sea-gulf-aden-and-indian-ocean> [perma.cc/G8RS-3S3Z].

⁵⁹ Tim Kelly, *Japanese Warship Departs for Gulf to Patrol Oil Lifeline*, REUTERS (Feb. 1, 2020), at <https://www.reuters.com/article/us-mideast-iran-japan/japanese-warship-departs-for-gulf-to-patrol-oil-lifeline-idUSKBN1ZW02D>.

⁶⁰ See U.S. Central Command Press Release, *US Navy Seizes Illegal Weapons in Arabian Sea* (Feb. 13, 2020), at <https://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/2083824/us-navy-seizes-illegal-weapons-in-arabian-sea> [perma.cc/6JNF-L6HU] (describing the seizure of weapons resembling those made by Iran); Mike Pompeo (@SecPompeo), TWITTER (Feb. 14, 2020), at <https://twitter.com/SecPompeo/status/1228285173936140290> [perma.cc/S5MG-54M3] (“The U.S. Navy interdicted 358 Iranian-made missiles + other weapons components on their way to the Houthis in Yemen”); see generally Panel of Experts on Yemen, *Final Report of the Panel of Experts on Yemen*, Transmitted Letter Dated 27 January 2020 from the Panel of Experts on Yemen Addressed to the President of the Security Council, UN Doc. S/2020/70 (Jan. 27, 2020), at <https://undocs.org/s/2020/70> (discussing Iranian support for the Houthis, including potentially illicitly providing weapons).

⁶¹ Claire Parker & Rick Noack, *Iran Has Invested in Allies and Proxies Across the Middle East. Here’s Where They Stand After Soleimani’s Death*, WASH. POST (Jan. 3, 2020), at <https://www.washingtonpost.com/world/2020/01/03/iran-has-invested-allies-proxies-across-middle-east-heres-where-they-stand-after-soleimanis-death>.

⁶² *Id.*; Adam Taylor, *The Idlib Crisis Is a Reminder that the Syrian War Is Not Over*, WASH. POST (Feb. 6, 2020), at <https://www.washingtonpost.com/world/2020/02/06/idlib-crisis-is-reminder-that-syrian-war-is-not-over>.

⁶³ Mike Pompeo, Sec’y of State Press Release, *Escalation of Violence in Idlib* (Feb. 4, 2020), at <https://www.state.gov/escalation-of-violence-in-idlib> [perma.cc/UZ49-JXMB].