

International Responsibility of Iraq and the United States in Relation to the Assassination of Martyr Qasem Soleimani

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ABSTRACT:

The present study aims to examine the international responsibility of Iraq and the United States in relation to the assassination of Martyr Qasem Soleimani. The research method is descriptive-analytical and is based on library sources. The findings indicate that the U.S. attack on General Soleimani's convoy violated the principle of respect for human rights, particularly the right to life, as, in addition to the killing of Soleimani and Abu Mahdi al-Muhandis, other innocent individuals with no accusations against them were also killed. Among the human rights norms relevant to this issue is Article 6(1) of the International Covenant on Civil and Political Rights concerning the right to life. Deprivation of the right to life is prohibited even during armed conflicts and is recognized as a fundamental human right. The recent U.S. action clearly contradicts two core principles of the United Nations Charter: the prohibition of the use of force and the principle of respect for state sovereignty. It is noteworthy that an armed attack against officials and state authorities of a country is considered an attack against that state's sovereignty, regardless of whether the individuals are military or civilian. Some may argue that the presence of U.S. forces in Iraq was based on an official invitation from the Iraqi government and thus included the element of consent; this issue will also be examined. In the assassination of Soleimani, Iran is the state of nationality of the victim and, from this perspective, cannot confer jurisdiction upon the Court. In contrast, Iraq may accept the jurisdiction of the Court and thereby facilitate its involvement in this incident.

Keywords: *Assassination of Qasem Soleimani, International Responsibility, Right to Life*

INTRODUCTION:

In the international environment, based on the principles of respect for national sovereignty and non-intervention, states are obligated to refrain from interference and the use of force in each other's internal affairs and to respect one another's sovereignty. The practice of the United Nations Security Council also confirms that the principle of respect for the territorial sovereignty of states is inviolable, and limitations may only be imposed temporarily and under strict conditions for the purpose of restoring international peace and security. Iraq, as an independent state and a member of the United Nations, possesses sovereignty like any other country. The U.S. aerial action in entering Iraqi airspace and carrying out the assassination constitutes a violation of the sovereignty of the Iraqi state and people. It should be emphasized that an armed attack against officials and state authorities of a country is regarded as an attack against that country's sovereignty, regardless of whether such individuals are military or civilian. Therefore, the U.S. attack on the vehicle carrying General Soleimani and his companions constitutes, in the first instance, a violation of the

principle of respect for Iraq's national sovereignty and, consequently, a breach of the principle of non-intervention. The action of U.S. forces in targeting military commanders of Iran and Iraq on Iraqi territory constitutes unlawful intervention and violations of the sovereignty of both Iraq and Iran (Dehghan, 2021). Nevertheless, it should be noted that the U.S. designation of the Islamic Revolutionary Guard Corps as a terrorist organization is entirely unreasonable and contrary to international regulations. The IRGC is part of the official structure of the Iranian state. Under Article 2 of the United Nations Convention on Jurisdictional Immunities of States and Their Property, it is not permissible for the United States to subject Iran to criminal proceedings through its domestic courts. Furthermore, under Article 5 of the same Convention, U.S. domestic courts cannot initiate judicial proceedings against the IRGC as an organ of the Iranian government or prosecute its members. Therefore, the classification of the IRGC as a terrorist organization as a justification for hostile actions lacks legal basis. Moreover, no international body, including the United Nations Security Council, has designated the IRGC as a

terrorist organization. Accordingly, the United States cannot unilaterally assign such a label and engage in hostilities on that basis. Additionally, the IRGC is a principal military institution of Iran, and the provisions of the four Geneva Conventions govern military forces and their organizational relations, precluding their classification as terrorist entities. Based on the above arguments, the January 3 attack must undoubtedly be characterized as an act involving the use of force contrary to the United Nations Charter and a clear violation of Iran's sovereignty (Aliari Tabari, 2022). The United States, by failing to provide any supporting evidence to support its claim that the presence of Martyr Soleimani in Iraq posed a threat to attack bases and nationals of this country in Iraq, revealed the violation of the use of force against Martyr Soleimani's convoy. This is because Martyr Soleimani's history of fighting against ISIS is not a secret to anyone, because he was personally present at the front lines of most operations, so the issue of Martyr Soleimani's absence will have its effects on the developments in the region over the next 10 years. In addition, according to the then Iraqi Prime Minister, Martyr Soleimani was the agent of a special message in response to the message of Saudi Arabian officials, with Iraq acting as a mediator between the two countries. In light of the above, the purpose of this study is to examine the international responsibility of the Iraqi and American governments for the assassination of Martyr Soleimani.

Theoretical Foundations of the Research:

Obligations and International Responsibility of States (International Community) in Combating Terrorism:

Terrorism is one of the phenomena of international relations that has undergone profound transformations since September 11, 2001, and in recent decades has emerged as an influential actor in the arena of international relations. In fact, terrorism is a tool employed by certain actors. In the postmodern era, terrorism has become one of the prominent political and legal concepts at the international level; postmodern terrorism (global terrorism), as a protest-oriented and pragmatic movement against the existing order, constitutes one of the contemporary security challenges and threats arising from postmodernity, increasing global insecurity, and posing serious dangers to international peace and security. The use of international law after September 11, 2001, represents one of the first examples in this regard.

According to the 2001 Articles of the International Law Commission on Responsibility of States for Internationally Wrongful Acts most of which have acquired the status of customary international law—the breach of a primary obligation gives rise to another obligation known as a secondary obligation, and the rules of international responsibility encompass such secondary obligations. Pursuant to Article 1 of the 2001 Articles, every internationally wrongful act entails the international responsibility of the state committing it.

Based on the provisions of the International Law Commission's Articles, which are derived from the practice of the international community, compensation primarily concerns material damage and is generally considered independently of moral damage. However, this should not be interpreted as meaning that the 2001 Articles disregard moral damages in the regulation (codification and progressive development) of the system of international responsibility of states. Nor should it be assumed that, under current conditions, moral damages arising from the martyrdom of General Soleimani and his companions cannot be claimed (Mousavi, 2020).

Invocation of international responsibility in relation to the martyrdom of Lieutenant General Soleimani and nine of his companions has been made not only by the injured states Iran and Iraq but also by non-injured states. Therefore, there is no room for any claim that the right to invoke responsibility has lapsed due to the passage of time. In general, delay in invocation does not lead to the extinction of the claim unless circumstances so require. In the case of Soleimani's martyrdom, since an invocation has been made through official protest by the Islamic Republic of Iran, there is no basis for considering the claim waived. Accordingly, the principle of non-waiver applies, and the question of loss of the right to invoke responsibility is irrelevant. Under Article 45 of the 2001 Articles, the right to invoke responsibility is extinguished only in two situations: first, where the injured state validly waives its claim explicitly; and second, where it implicitly acquiesces in the abandonment of the claim. In the case of Soleimani's martyrdom, neither of these conditions is fulfilled. Even in cases of doubt, the presumption must be against waiver. Thus, the absence of jurisdiction of international or domestic courts over the present matter cannot and should not be interpreted as a waiver or abandonment of the claim.

Human rights law condemns violations of the right to life, while international humanitarian law restricts permissible targets of attack through principles such as distinction and proportionality. Under international human rights law, particularly paragraphs 2 and 4 of Article 6 of the International Covenant on Civil and Political Rights, deprivation of life is not permissible except pursuant to a final judgment issued by a competent court in accordance with law and only for the most serious crimes, subject to fair trial guarantees. The use of lethal force by law enforcement authorities is permitted solely in cases of self-defense. Accordingly, the adoption of a mixed approach combining law enforcement and armed conflict paradigms indicates the illegitimacy of targeting General Soleimani. The United Nations Special Rapporteur has also emphasized this approach on extrajudicial executions (Mohammadi, 2023).

According to Article 2, paragraphs 1, 3 and 4 of the Charter of the United Nations, the Declaration of the United Nations General Assembly on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the

Charter of the United Nations (1970), the Declaration of Principles of the Helsinki Final Act (1975), the Final Act of the Conference on Cooperation and Security in Europe (Helsinki Conference 1988), the Paris Declaration for a New Europe (1990), the prohibition of interference in the national sovereignty of a country and respect for the national sovereignty of states have been emphasized, and based on this, states have committed to prohibiting interference in the national sovereignty of countries and prohibiting the use of threats and force in international relations. The procedure of the United Nations Security Council is also based on recognizing the principle of respect for the territorial sovereignty of states and their inviolability, except by prescribing the legal arrangements stipulated in the Charter of the United Nations (collective security system), to restore international peace and security, similar to the procedure of international courts of justice (Salahi, 2023).

Therefore, the U.S. military action cannot be justified under any of the recognized exceptions. The recent U.S. action clearly contradicts two fundamental principles of the Charter: the prohibition of the use of force and the principle of respect for state sovereignty.

Elaboration of the Legal Dimensions of the Assassination of Lieutenant General Qasem Soleimani:

The principal claim advanced by the United States regarding the assassination of Lieutenant General Soleimani also emphasized in its letter of January 8, 2020, to the United Nations Security Council is that the action was carried out in the exercise of self-defense. There is no doubt that the United States, even on Iraqi territory, possessed the right of self-defense; this reality was also recognized in the 2008 agreement concerning the U.S. military presence in Iraq. However, the United States cannot legally justify its military action within the framework of self-defense, because recourse to self-defense, as an exception to the prohibition of the use of force in international law, is subject to specific conditions that are now considered part of customary international law. Self-defense is conceivable only in response to an armed attack or an act of aggression, and it is necessary to distinguish between the most severe forms of the use of force those that qualify as armed attacks—and less severe forms. Before the U.S. military action, no armed attack had been carried out by Iran against the United States. Moreover, reliance on anticipatory or preemptive self-defense for the purpose of preventing a hypothetical imminent armed attack is not accepted under international law (Malekizadeh, 2023).

Another legal argument that the United States may raise is that Soleimani's name had been included in an annex to a European Union directive adopted in the context of combating terrorism, and that the Quds Force of the Islamic Republic of Iran, which he commanded, had been designated as a terrorist organization by the United States and Canada. Accordingly, given that United Nations Security Council Resolution 2001 recognizes

the right of self-defense in response to terrorist activities, the United States may argue that its action constituted self-defense against terrorism and was therefore lawful. In response, it must be noted that the United States cannot enforce European Union legal instruments globally against all actors in the international community. Such an argument might have been more plausible if Soleimani had been present within EU territory or if his name had been included in a United Nations Security Council resolution. However, under the present circumstances, this reasoning is not legally acceptable.

The Legal Nature of the Violated Principles and Rules:

Statements by U.S. officials following the assassination of the Iranian military commander indicate that there is no evidence demonstrating that Iran had carried out attacks against U.S. military or diplomatic personnel. Iran and the United States were not engaged in an armed conflict; therefore, attempts by U.S. authorities to frame the attack within the context of international humanitarian law lack a valid legal basis. Official reports of the U.S. Congress focused instead on the claim of an imminent threat and moved away from reliance on the law of armed conflict. Assertions such as “if Iran attacks again, we will respond more forcefully” appear to be attempts to invoke concepts from international humanitarian law. However, the International Court of Justice has consistently held in numerous cases that the exercise of the right of self-defense is contingent upon the claimant state being the victim of an armed attack. There is no doubt that the United States was not the victim of an attack directly carried out or directed by Iran. Although U.S. officials have made such attributions in their statements, they have never provided convincing evidence, nor have such claims been substantiated before any international tribunal (Abedini, 2022).

In the case of Soleimani's assassination, such justifications are unfounded, and the United States lacks credible evidence. Iran's advisory activities in Iraq were, first, conducted at the official request of the Iraqi government. Second, actions by groups such as the Popular Mobilization Forces (Hashd al-Shaabi), even if the claims of U.S. officials were accepted, cannot be attributed to Iran. The Hashd al-Shaabi is legally integrated into Iraq's armed forces under legislation approved by the Iraqi Parliament on November 26. Furthermore, actions by the Hashd al-Shaabi are attributable to the Iraqi state, and its officials have never formally accepted responsibility for rocket attacks against U.S. military facilities. Third, the U.S. attack on Hashd al-Shaabi forces who were engaged in combat with terrorist groups along the Iraq-Syria border constituted a disproportionate retaliatory action, resulting in casualties among their members. The siege of the U.S. Embassy in Iraq also lacked any systematic connection to Iran, and the Iranian government never endorsed such actions. The U.S. response, culminating in the assassination of a senior Iranian military

commander, does not meet the requirements of proportionality inherent in self-defense. Under the United Nations Charter, states are obligated to resolve their disputes through peaceful means. Consequently, the U.S. airstrike against Soleimani not only contravened Article 51 of the Charter but is also unjustifiable under customary international law, as affirmed by the International Court of Justice (Ziaee Bigdeli, 2022).

Characterization of the Unlawful Act:

Various interpretations have been offered regarding the unlawful nature of the U.S. action, most of which characterize it as an act of terrorism; even senior Iranian officials initially described it as a terrorist act and an instance of state terrorism. In light of Article 2(4) of the United Nations Charter, the Definition of Aggression, and Article 8 bis of the Rome Statute of the International Criminal Court, the use of armed force against the sovereignty, territorial integrity, or political independence of a state or in any manner inconsistent with the purposes of the United Nations constitutes an act of aggression. The U.S. armed attack of January 3, 2020, while constituting an unlawful targeted killing and an act of state terrorism, may also be regarded as an act of aggression against both Iraq and the Islamic Republic of Iran.

Judicial and Security Measures, Challenges, and Obstacles to the Enforcement of International Responsibility:

According to Article 3(e) of United Nations General Assembly Resolution 3314 (1974) on the Definition of Aggression, if a state that is present in the territory of another state by agreement uses armed force in contravention of the conditions stipulated in that agreement, such action shall be considered an act of aggression, regardless of whether war has been declared. Given the lack of consent by the Iraqi government to the attack on Soleimani's convoy and the official condemnation of the act by Iraqi authorities, the incident may be classified as an act of aggression under international law, thereby giving rise to Iraq's right of self-defense. However, considering Iraq's relations with the United States, it appears unlikely that Iraq would invoke this right; nevertheless, it may serve as a basis for terminating the presence of U.S. forces in Iraq. On the other hand, since the use of armed force by the United States in the assassination of Soleimani is clearly inconsistent with the United Nations Charter, it may be regarded as an act of aggression, unless it is argued that the level of intensity was insufficient. It might also be argued that the U.S. military action was not directed against Iran as a state, since it did not target Iran's territorial integrity or political independence. However, as previously noted, an attack against a state is not limited to incursions into its territory; attacks against its military forces may also constitute acts of aggression. The Definition of Aggression, in Article 3(d), explicitly considers attacks by the armed forces of one state against the land, naval, or air forces of another

state as acts of aggression. Similarly, the Rome Statute of the International Criminal Court, drawing upon this definition, recognizes armed attacks against a state's military forces as constituting aggression (Article 8 bis, paragraph 2(d)).

Accordingly, it can be stated that, firstly, the assassination of Commander Soleimani constitutes a military attack against Iran; secondly, as demonstrated in the previous discussion, this attack involved the initial use of armed force and was neither preceded by any prior attack by Iran nor could it be attributed to an imminent and certain armed attack by Iran. The only doubt that may be raised regarding the qualification of the American attack as aggression relates to the requirement of sufficient gravity. In this regard, although the text of the Definition of Aggression and, consequently, the Rome Statute do not condition the occurrence of an act of aggression on the requirement of sufficient gravity, it appears that the practice of the International Court of Justice supports the necessity of such a condition. However, the Court, despite its strict approach particularly in its interpretation of Article 51 and the customary rules concerning the exception of the use of force in self-defense stated in the *Oil Platforms* case that the mining of a warship may constitute an armed attack giving rise to the right of self-defense. It is true that in the *Nicaragua* case and the *Advisory Opinion on Nuclear Weapons*, the Court set a high threshold for the notion of armed attack, and, for instance, regarded sporadic and isolated border attacks as lacking the necessary gravity to qualify as armed attacks under Article 51 due to the absence of scale and continuity. However, the Court's criterion of gravity is not limited solely to spatial and temporal extent; rather, the quality and intensity of the attack may also be considered as relevant criteria. Accordingly, according to the Court, the mining of a warship, although lacking spatial and temporal extent and continuity, may nevertheless, due to its significance, constitute an armed attack justifying a military counterattack as an exercise of the right of self-defense.

Article 8 of the Islamic Penal Code also states: whenever a non-Iranian person commits a crime outside Iran against an Iranian person or against the State of Iran, other than the crimes mentioned in previous articles, and is found in Iran or extradited to Iran, the perpetrator shall be prosecuted in accordance with the laws of the Islamic Republic of Iran.

The Iraqi government, despite possessing greater legal and international capacities compared to Iran in this case—given the occurrence of the crime within its territorial jurisdiction and sovereignty, the use of force and violation of its national sovereignty, and interference in its domestic jurisdiction, as well as its authority to revoke the security agreement with the United States, request the withdrawal of that country's military forces from Iraq, exercise the right of self-defense, refer the matter to the Security Council, and claim compensation for damages by submitting the case to the International Court of Justice, and the approval and implementation of the withdrawal of US forces by

the Iraqi Parliament as a countermeasure—may, like domestic judicial authorities in Iran, initiate judicial proceedings in its own domestic courts under Iraqi law. According to paragraph 6 of Section Two of the Iraqi Penal Code, which recognizes the principle of territorial jurisdiction over crimes and punishments, and given that the place of the crime was within Iraqi territory, Iraqi courts have jurisdiction. However, filing a complaint before Iraqi courts faces several significant obstacles. Considering the 2009 agreement between Iraq and the United States (Article 4, paragraph 5), and Article 27(1), which explicitly prohibits the United States from using Iraqi territory to attack third countries, Iraq could, by relying on the 1974 UN General Assembly Definition of Aggression—which has largely acquired customary status—interpret the recent US action targeting the Popular Mobilization Forces (al-Hashd al-Shaabi) and Iranian commanders as a clear act of aggression and a violation of prior agreements, and take responsive measures accordingly.

CONCLUSION:

The US military operation on 3 January 2020, which occurred near Baghdad International Airport and resulted in the assassination of Commander Qasem Soleimani, the senior commander of the Quds Force of the Islamic Republic of Iran, and Abu Mahdi al-Muhandis, one of the commanders of Iraq's Popular Mobilization Forces, as well as their companions, lacked legitimacy from various perspectives and entails the international responsibility of the United States and the criminal responsibility of those involved in the operation. This attack, under the rules governing the use of force in international law, is regarded as unlawful and illegitimate for multiple reasons. The reaction of the Iraqi government to the assassination of General Qasem Soleimani indicates that, at least at first glance, these conditions were not met. The killing of several Iraqi nationals in this military action further reinforces this conclusion. In any case, whether the violation of the terms of the agreement in conducting military operations can transform the nature of the US military action into an act of aggression remains a matter of debate. In order to establish an act of aggression and its instances, United Nations General Assembly Resolution 3314 of 1974, whose customary nature is still subject to debate today, must be taken into account. By examining the definition and instances of acts of aggression, it becomes clear that in the case of the assassination of General Soleimani, only aggression against Iraq not Iran can be discussed. Among the seven instances set out in this definition, the fifth case, namely the presence of one state's military forces in the territory of another state, corresponds to the situation in which the US military action against General Soleimani took place.

The US aggression in attacking the convoy of Commander Soleimani also violates the principle of respect for human rights and the right to life, since, in addition to the martyrdom of Soleimani and Abu Mahdi al-Muhandis, the lives of other innocent individuals

who had no charges against them were also taken in this attack. Among the human rights rules that may be examined in this regard is Article 6(1) of the International Covenant on Civil and Political Rights concerning the right to life. Deprivation of the right to life is prohibited even during armed conflicts and is recognized as a fundamental human right.

In the assassination of Martyr Soleimani, Iran is the victim's state of nationality and, from this perspective, cannot grant jurisdiction to the Court. In contrast, the Iraqi government may accept the jurisdiction of the Court and thereby facilitate its involvement in this incident.

The Iranian government, in addition to benefiting from and utilizing the aforementioned international capacities like the Iraqi government (despite certain differences in the legal and international status of the two countries in benefiting from them)—may, pursuant to Articles 5, 8, and 9 of the Islamic Penal Code and other relevant special laws, including the Law on Intensifying Countermeasures against Terrorist Actions by the United States of America (1989), the Law on the Jurisdiction of the Judiciary of the Islamic Republic of Iran to Hear Civil Claims against Foreign Governments (2011), the Law on the Obligation of the Government to Pursue Compensation for Damages Arising from the Actions and Crimes of the United States against Iran and Iranian Nationals (2016), and the Law on Reciprocal Action against the designation of the IRGC as a terrorist organization (2019) and its amendment, pursue legal proceedings against the perpetrators of the targeted assassination of Commander Soleimani and his companions in domestic courts for crimes against national security and offenses committed against Iranian nationals abroad.

Given the current situation regarding the responsibility of the United States as the perpetrator of an internationally wrongful act in the assassination of Commander Soleimani and his nine companions, the statements of official authorities and the people of the Islamic Republic of Iran and Iraq, as well as the parliamentary resolution of Iraq—both of which were more affected by this incident than others the complete withdrawal of US forces from the region, particularly from Iraq, may be considered as a convincing guarantee against the recurrence of similar internationally wrongful acts by the United States in the future.

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