

Iran, The Targeted Killing of General Soleimani

The report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions addresses the issue of targeted killings, inter alia using armed drones, and examines the lawfulness of the killing of Iran's General Qasem Soleimani by a US armed drone from the perspective of IHL, International Human Rights Law, and jus ad bellum.

Acknowledgments

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. USE OF ARMED DRONES FOR TARGETED KILLINGS, ANNEX I.

[Source: Agnès Callamard (Special Rapporteur on extrajudicial, summary or arbitrary executions), Use of armed drones for targeted killings, A/HRC/44/38, 15 August 2020, Human Rights Council, references partially omitted, available at: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F44%2F38&Language=E&DeviceType=Desktop>]

The targeted killing of General Soleimani

1. This case study examines the targeted killing by US armed drone of Iran's General Qassem Soleimani in Iraq. It is based on legal and policy analyses of the facts as they are known to the Special Rapporteur.

The case in question

2. On 3 January 2020, a targeted drone strike in the vicinity of Baghdad International Airport killed Iranian General Qassem Soleimani, commander of the Quds Force unit of Iran's Islamic Revolutionary Guard Corps. Abu Mahdi al-Mohandes, deputy commander of Iraq's Popular Mobilization Forces (PMFs), four other members of the PMF (Muhammed Reza al-Jaberi, Hassan Abdu al-Hadi, Muhammad al-Shaybani, Haider Ali) and four members of Iran's Islamic Revolutionary Guard Corps (Hossein Pourjafari, Shahroud Mozafarinia, Hadi Taremi, Vahid Zamanian) were reportedly killed in the strike. It is unclear whether civilians were harmed or killed in the attack.

3. Arriving from Damascus reportedly on an official visit upon the invitation of the then Prime Minister of Iraq, General Soleimani landed at Bagdad airport around 1:00 am where he was met by Abu Mahdi al-Mohandes. Moments after leaving the airport, his convoy was hit by a drone strike, killing at least ten persons. [...]

4. Some hours after the strike, the US Department of Defense (DoD) claimed that the US military had taken this "decisive" action against General Soleimani at the direction of US President Trump.

[...]

6. Five days later, on January 8, Iran launched numerous pin-point precision ballistic strikes, against two Coalition force bases in Iraq, including the Ain al-Assad airbase from which the US drone strike against General Soleimani was launched. The strikes injured over 100 US servicemen, including 34 troops with traumatic brain injury.

7. Seventy-two hours after their attacks, the Iranian authorities also confirmed that an Iranian missile had struck down "by mistake" Ukraine International Airlines Flight 752 en route from Tehran to Kiev shortly after take-off. All 176 passengers and crew were killed, including 82 Iranians, 55 Canadian citizens and 30 Canadian permanent residents, 11 Ukrainians, 10 Swedes, 4 Afghans, and 3 British nationals. The authorities insisted that the strike was a "mistake" of missile operators who had confused the civilian aircraft for a US missile or a plane. A safety investigation, led by Iran, was initiated shortly after the strike, supported by accredited representatives and experts from the affected countries. The investigation has, however, experienced delays due to the Covid19 pandemic.

8. In the months before the events of January 2020, Iran, what the US deemed "Iran- supported militias", and the US had engaged in a series of attacks and counter-attacks. US "interests in the Middle East region" were allegedly targeted, to which the US had responded. In addition, on 27 December, a rocket attack reportedly by Kata'ib Hezbollah, occurred in Kirkuck. On 29 December, a US strike against five facilities in Iraq and the Syrian Arab Republic controlled by Kata'ib Hezbollah killed allegedly

24 people and wounded 50. Despite these incidents, it appeared both Iran and the US wished to avoid a “full-out conventional war.”

[...]

II. The international legal framework applicable to a drone targeted killing

10. To be lawful, a targeted killing, including by way of a drone strike, must be legal under all applicable legal regimes. The relevant regimes are the *jus ad bellum*, the *jus in bello* and international human rights law:

(a) *Jus ad bellum* is laid out in the UN-Charter and encompasses the right to use force. However, as a general rule, Art. 2.4 UN Charter forbids the use of force (or the threat to use force) between UN members with the exception, laid out under Art. 51, that gives States an inherent right to self-defense against an armed attack, as derived from customary international law. Over the last few decades, some States and commentators have attempted to expand the notion of imminent attack by suggesting that imminence is no longer defined temporally.

(b) The second legal regime applicable in the case of a targeted killing, including by drone, is *jus in bello* or international humanitarian law. The legality of a war (the question of *jus ad bellum*) is not the focus of *jus in bello*, which is concerned instead with the protection of persons from the implications of warfare. The applicability of international humanitarian law is thus based on the existence of an international or non-international armed conflict. To be lawful under humanitarian law, targeted killings must be limited to combatants and guided by military necessity and proportionality, which requires avoidance of excessive civilian harm.

(c) The third legal regime applicable to targeted killings by drones is international human rights law. Under Art. 6 ICCPR, States are prohibited from arbitrary deprivations of life. The prohibition is a *jus cogens* norm, recognized under customary international law, and its respect is applicable extra-territorially [...]. As is well recognized, international human rights law continues to apply in armed conflict situations.

11. For the drone strike and targeted killing of General Soleimani and his companions to be lawful under international law, it must satisfy the legal requirements under all the applicable international legal regimes. Some drone strikes, but not all, raise difficulties as to their legal assessment, given that IHL and IHRL can sometimes provide diverging answers to the crucial question of when it is legally permissible to kill another person. The strike against General Soleimani is one such situation, raising genuine uncertainty as to how to interpret its lawfulness.

III. Context and Implications: An international armed conflict?

12. General Soleimani, his companions in the Islamic Revolutionary Guard Corps, and those of Iraq's PMF17 all had a military status, according to the information publicly available. Had the strike occurred within the setting of an armed conflict, under international humanitarian law they could have constituted legitimate military targets as combatants. IHL does not prohibit the killing of belligerents, but it does prohibit killings of civilians and persons hors de combat, as well as indiscriminate attacks and those resulting in an excessive loss of civilians. Whether and how this legal regime applies to all those killed, i.e. not only to General Soleimani but also to all his Iraqi and Iranian companions, is thus crucial to the determination of the lawfulness of the strike.

13. International humanitarian law (IHL) applies solely during international armed conflicts (IAC) and non-international armed conflicts (NIAC). Both will be examined in turn.

Non-International Armed Conflict?

14. The strike against General Soleimani was clearly a strike against the armed forces of another State, thus discarding the possibility that this was a non-international armed conflict, which is defined by internal armed hostilities. The Special Rapporteur emphasizes this point solely because of the unusual step taken by the US to label the IRGC a “terrorist organization”. This opens the possibility of the US presenting these killings as being a part of its NIAC against Al Qaeda and its affiliates (an anomalous assertion given Iran's leading contribution to fight against ISIL). While the ramifications of this US designation are unclear, one cannot eliminate the reality that any action taken by a State against General Soleimani is an action against a State official. The lawfulness of that action must be determined within that context.

An International Armed Conflict?

15. Did the strike either initiate an IAC between the US and Iran or take place as part of an ongoing IAC? The determination and classification of armed conflicts “depend on verifiable facts in accordance with objective criteria.” However, that determination of the matter is not without ambiguity or debate. One prominent doctrine as to what triggers an IAC is the so-called “first shot” doctrine, according to which humanitarian law ought to apply from the first moment of use of force by one State against another state: literally, just a single shot by one state against another. The 2016 and 2017 ICRC commentaries on the Geneva Conventions are clear that an international armed conflict arises when one State makes recourse to the use of force against another, regardless of their reasons for doing so or the intensity of the confrontation. In this perspective, it is not necessary for

the conflict to extend over time or to provoke a certain number of victims.

16. However, others express a different view. For instance, the ILA Committee on The Use of Force draws distinction between an armed attack (invoking the rights under Art. 51 of the UN Charter) and an international armed conflict. In its view “an armed attack that is not part of intense armed fighting is not part of an armed conflict.” The Venice Commission also supports the application of an intensity threshold, arguing that an armed conflict “refers to protracted armed violence between States”. More typically, however, commentators and States suggest that it takes at least a minimum, albeit undefined, threshold, beyond an isolated strike, to constitute an IAC.

17. The Special Rapporteur believes that the determination of the existence of an international armed conflict, given its grave implications for the societies involved, should not rely exclusively on the laws of war, but also consider and integrate analyses and case law in relation to human rights conventions and their derogations.

18. When applied to the targeted killing by drone of General Soleimani, the “first shot” theory presents a number of challenges:

19. Firstly, in the months preceding the strike, there were a number of incidents that each on their own may have qualified as “first strikes”. In other words, the January 3, 2020 strike may have taken place as part of an ongoing IAC. Alternatively, it itself may have triggered an IAC. There might have been dozens of IACs between Iran and the US, triggered over a six month period, or there may have been none, or, alternatively, a single on-going IAC that began either in June or in December 2019.

20. On 17 December 2019, the Geneva Academy determined that in June 2019 the US and Iran were engaged in an IAC of low intensity by virtue of Iran’s shooting down of a US military drone and the alleged counter cyber-attack by the US. For this determination, the Academy relied on the “first strike” theory, noting that “IHL is indisputably applicable in an IAC regardless of the level of violence which might occur in the use of force between the parties to the conflict.” They found in particular that Iran’s action of shooting down an unarmed military drone, assumed by the US to be an accident, was enough to trigger the application of IHL. Published less than 3 weeks before the Soleimani strike, this analysis concludes that given the absence of further hostilities after June 2019, it was reasonable to conclude at the time of publication that this IAC was over. The Geneva Academy did not review the aforementioned incidents of the end of December 2019 to consider whether they, together or singularly, could have triggered an IAC.

21. However, in the aftermath of the Soleimani strike, some legal researchers observed that the killings of 3 January 2020 did not start an IAC between Iran and the United States, as an IAC had begun much earlier with the attacks by Iran and its “proxies” on US forces in Iraq in November and December 2019. Their analysis concludes that the strike against Soleimani -- referred to as an “enemy combatant” -- was thus part of an on-going IAC and, as such, his killing was legitimate with the loss of nine other lives “considered proportionate collateral damage of a precision drone strike to eliminate the mastermind behind the ongoing series of attacks against the United States.” Their analysis does not factor in the implications of fact that the strike and those before it took place on the territory of a third State – that of Iraq.

[...]

23. Secondly, the majority of scholars who have analysed the various incidents in 2019 or the drone strike against Soleimani have stopped short of concluding that these events triggered an IAC. [...] As the Congressional Research Service warned in a report prepared for members of the Congress and Committees on January 6, 2020, “The U.S.-Iran tensions have the potential to escalate into all-out conflict in the wake of Soleimani’s killing”. The report refers to “heightened tensions” in the six months preceding the strike against General Soleimani, including the December 2019 incidents with the strike itself described as an “escalation.” The report stops short of deeming these to be or to have triggered an IAC. [...]

24. Third, in the months preceding the strike, neither the US nor Iran spoke of their being in armed conflict with the other, preferring instead to speak of, or warn against, escalation. Following the Soleimani strike, the US administration officially declared that the “United States is not currently engaged in any use of force against Iran,” and that following the strike and Iran’s response, “there have been no further uses of force between Iran and the United States”. Iran’s foreign minister declared the strike an “act of terrorism,” and Iran promised revenge. [...]

25. It is well established that a formal declaration of war is not necessary for an IAC to be in effect. It is equally established that an IAC may be triggered notwithstanding the positions to the contrary of the parties to the conflict. Nevertheless, it is reasonable to expect, at the very least, some debates of the issue in the countries concerned and/or internationally. It is somewhat unreasonable to argue retroactively that an IAC between Iran and the United States had been waged for several days, weeks or months prior to the killing in question.

26. One would have also expected inter-governmental bodies and other UN Member States to warn against an IAC or the risks of an IAC, or to have been informed that incidents had reached the level of an IAC. There are indications that a number of governments and the Secretary-General were alarmed at the deterioration of the US-Iran relations, and by the risks of escalation [...]. But to the Special Rapporteur’s knowledge there was no mention that an IAC had occurred or was underway.

[...]

28. Fourthly, if the strike against General Soleimani was itself a “first strike” triggering an IAC - against whom was that international armed conflict initiated: Iran? Iraq? Both? Applying a “first strike” theory would mean that the car carrying General Soleimani and his companions would be considered a conflict zone, but that everywhere else in the immediate surrounds of the convoy – as far as the Iraqi government and people were aware – was a non- conflict zone. It is understood that IHL may be applied to an act rather than spatially. Nevertheless, when the “first strike” theory is operationalized, its result may be the existence of an IAC limited to the vehicle in which General Soleimani was travelling and inevitably the asphalt within its immediate proximity. [...]

29. Fifthly, the Special Rapporteur notes that there may be valid reasons to assert that the US strike against General Soleimani did trigger an IAC and thus should be bound by IHL.

30. The strike was against a high-level State official, making it qualitatively different from the other drone strikes analysed by Special Rapporteurs, which were launched against non- State actors. [...] It is hard to imagine that a similar strike against a Western military leader would not be considered as an act of war, potentially leading to intense action, political, military and otherwise, against the State launching the strike. Indeed, this seems precisely the type of strike that the “first shot” doctrine is designed to capture if one is to follow the doctrine. However, the reactions amongst governments in the aftermath of the strike provide evidence of the fear of a full- blown conflict between the two countries, and possibly further beyond.

31. The determination that the strike prompted an IAC would imply that the parties are bound by their obligations under the Geneva Convention. According to the Geneva Academy, the conclusion that the shooting down of a military drone triggers an IAC is “the only way to fulfil the goals of IHL ... Even if the armed forces of one state attack one military target in the territory of another state, it is crucial to apply this principle in order to protect civilians in that territory.” Under this approach, the strike against Soleimani, in continuing or triggering an IAC, imposed obligations upon the striking State to protect civilians, among other requirements. [...] Indeed, humanitarian law principles of distinction and proportionality are reflected in the 2016 Report on the legal and policy frameworks guiding the United States’ use of military force and the 2019 Presidential Policy Guidance. In contrast however, the US has continuously insisted that its human rights obligations do not apply extraterritorially, thereby potentially leaving a black hole with no legal standards, should IHL not apply.

32. Yet, while it may be principled and somehow pragmatic, in order to protect Iraqi civilians, to conclude that the Soleimani strike constituted an IAC, it presents several limitations.

33. The identity of States involved in specific incidents, their relations, and the domestic legal frameworks within which they operate, ought to be considered when conducting a technical assessment of the determination of an international or non-international armed conflict, but these factors cannot solely be determining. Such an approach in particular ignores the complementary of IHL and IHRL in armed conflict situations, confirmed by international jurisprudence and the text of human rights treaties, including derogations. Further, by rejecting its human rights obligations extraterritorially, the US is an outlier, particularly as it relates to the obligation to abide by *jus cogens* norms, such as the prohibition against arbitrary killings.

34. A far more straightforward and, in the Special Rapporteur’s view, reasonable and logical way of protecting potential targets as well as civilians in situations where the nature of the armed conflict is difficult to ascertain, would be to apply human rights law to their protections.

35. Such a position should certainly apply to extraterritorial targeted strikes in non- belligerent States: these strikes occur outside the territories of the States engaged in hostilities and thus cannot be considered part of an armed conflict subject to IHL. Arguing otherwise will potentially subject non-belligerent civilians and civilian objects to “proportional” harm simply because “an individual sought by another State is in their midst”. For this reason, the ICRC has argued, at least in the context of NIACs, that targeted strikes in non-belligerent States against personnel purportedly engaged in a conflict should be governed by IHRL, not IHL. Just as the ICRC finds these non-belligerent circumstances determinative for targeted strikes in a NIAC, should they not be found determinative in an attack against a State official on the territory of a third State as well?

36. Finally, even if, for the sake of arguments, one was to conclude that this one strike against General Soleimani triggered an IAC, and that it must be assessed against IHL, one may interrogate whether IHL standards are the best “fit,” for lack of a better word, to assess the act and the situation – a single strike, one or two cars targeted, 10 individuals killed, in a non-belligerent country, surrounded by people unaware of and unprepared for an international armed conflict. This is far from the battlefields that IHL was designed to regulate or the urban warfare which the international community is increasingly confronting.

37. As highlighted in her thematic report, the Special Rapporteur would recommend that other sources of law, besides IHL, be considered, in the first place IHRL, and that a systemic integration and purposive interpretation ought to be adopted. Such a method, in her view, will end up playing down the combatant status of the target(s), focusing instead on issues in relation to military necessity, proportionality and humanity.

38. By failing to consider systemic integration and purposive interpretation along with the specificities of the context, the application of a “first shot” theory to the targeted killing of a State actor translates into the real possibility that ALL soldiers, anywhere in the world, could constitute a legitimate target. [...]

39. A first strike approach by a drone strike against a State actor in a third, non-belligerent, State, raises more questions than it

solves. In the context of the strike against General Soleimani, it is the opinion of the Special Rapporteur that international human rights law remains the applicable framework. The US and Iran had not been and have not been considered to be involved in an IAC before or after the strike and the strike occurred in a civilian setting in an area outside of active hostilities and in a non-belligerent State.

IV. The Lawfulness of the Strike under International Human Rights Law

40. The Human Rights Committee (HRC) in its General Comment No. 36 (GC36), clarifies that “[T]he guarantees against arbitrary deprivation of life contained in article 6 continue to apply in all circumstances, including in situations of armed conflict and other public emergencies. The right to life must be protected and no arbitrary deprivations of life is allowed.

41. The right to life must also be respected extraterritorially. The International Court of Justice, the Human Rights Committee, the Inter-American Commission on Human Rights and the European Court of Human Rights have all confirmed that human rights treaty obligations apply in principle to the conduct of a State outside its territory.

42. With regard to the right to life, the HRC has emphasised the functional dimension of extraterritorial human rights obligations and jurisdiction, one that derives from a State’s (uniquely located) capacities to respect or protect human rights, including the right to life, of people over which they have some degree of control: a State “has an obligation to respect and to ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control”. [...]

43. Using a drone to target an individual anywhere he or she may be, including at home, is “indeed the ultimate exercise of physical power and control over the individual who was shot and killed.” To argue otherwise is an anachronism when the physical presence of a State official was necessary to assert control. A targeted drone killing requires monitoring, tracking, surveillance and a specific decision to kill a particular person – all exercises of power over that person. As the reach of a State’s power expands, so too do its responsibilities.

[...]

45. The Special Rapporteur recognizes that context and situation matter in determining whether a State killing is arbitrary. Reacting to threats is not an exact science, and governments understandably should want to err on the side of caution, proportionality and protection. Indeed, Article 6, ICCPR, “imposes a positive obligation on the State to protect life, including by taking effective preventive measures against a real and immediate risk to life from a terrorist attack.” The “existence and nature of a public emergency which threatens the life of the nation may ... be relevant to a determination of whether a particular act or omission leading to deprivation of life is arbitrary and to a determination of the scope of the positive measures that States parties must undertake.”

46. A situation such as the killing of General Soleimani demands contextual and situational analysis, the reference to other sources of law and purposive interpretation. The European Court for Human Rights (ECtHR) has introduced flexibility in its assessment of necessity and proportionality on the basis of the context. It recognizes that the standard of absolute necessity may be simply impossible “where the authorities had to act under tremendous time pressure and where their control of the situation was minimal ... The Court is acutely conscious of the difficulties faced by States in protecting their populations from terrorist violence, and recognises the complexity of this problem.”

[...]

48. The targeted killing of General Soleimani raises however three issues at least, which are difficult if not impossible to reconcile with the aforementioned standards guiding the use of force: (i) the planning inherent to a drone strike indicating premeditation and the absence of considering alternative options (except calling off the strike); (ii) the absence of evidence that the target presented an imminent or even actual threat to life: even when incorporating the secrecy inherent to intelligence work, the information provided by the US authorities are remarkably vague and inconsequential as far as a possible imminent threat is concerned; (iii) the killing of 9 other persons in addition to that of General Soleimani, who individually have not been identified and assessed as presenting imminent threats. Five of these were civilians of Iraq, a US partner.

[...]

50. The Special Rapporteur appreciates the need for careful analysis and consideration in protecting the public against threats. However, striking well before an attack is imminent – on the grounds that this is the best shot – makes the actual existence of the threat difficult to evaluate after the fact and increases the likelihood that alternatives – such as capture and detention – are never really considered. A threat to life is not imminent if it has “not yet crystallized” but “might materialize at some time in the future”. Otherwise, one excludes “any possibility of an ex post facto judgment of lawfulness by the very fact that it aims to deal in advance with threats that have not yet materialized”.

51. The right to life imposes procedural obligations as well. The “use of lethal force by the state must be effectively regulated by a clear legal framework and the planning and control of any particular operation must be such as to minimize the risk of loss of life”. In addition, “there must be an effective independent investigation capable of leading to accountability for any unlawful

deprivation of life”.

52. Attention to procedural obligations would help alleviate concerns about substantive violations. If the US, or other States, were more transparent as to the evidence on which their determinations were made, and allowed those determinations to be investigated and challenged, then concerns about potential unlawful killings could be addressed. Moreover, these procedures would aid in developing more robust standards for imminence, necessity and proportionality by giving facts and substance to the decisions made.

53. The Special Rapporteur is mindful of the variety of sanctions and designations attached to General Soleimani [...]. The IRGC were reportedly involved in shooting Iranian protestors in 2019 while the al-Qads forces were implicated in the ground- offensive to besiege eastern Aleppo city. The Special rapporteur is also aware of the extent to which he appeared to be revered in Iran. Meeting the procedural obligations of IHRL would have allowed evidence to be presented regarding the human rights violations he may have been responsible for, incited or permitted. The proper course was to join forces with others to bring him and others associated with him to justice in the appropriate international forum. [...]

V. Lawfulness of the killing under *jus ad bellum*

[...]

62. The US administration reiterated its reliance on past attacks in correspondence to the US Congress in which it argued that regardless of the threat of further attacks, the “series of attacks that preceded the January 2 strike” justified sufficiently the conduct of self-defense. Such argument appears in effect to suggest that retaliation after an armed attack has occurred is permissible – without any need to prevent further imminent attack.

63. This argument weakens the distinction between *jus ad bellum* and *jus in bello*: the use of force under Art. 51 is narrowly constructed to be an exception from the general prohibition of the use of force under Art. 2(4). The existence of previous attacks could be a legal argument for the legality of the use of force under international humanitarian law – if an international armed conflict between the states existed prior to the strike. However, the strike itself cannot be justified on the basis of retaliation/reprisal/degrading forces under *jus ad bellum*. Were the blurring of these lines to be allowed, states could cherry-pick rationalizations from the different legal frameworks to justify acts of aggression. A clear distinction between *jus ad bellum* and *jus in bello*, as well as between self-defense and retaliation/international armed conflict, must be maintained to secure the safeguards of each system and their complementary function.

[...]

VI. Involvement of a third state in the drone strike

[...]

VII. In conclusion

82. Accordingly, in light of the evidence that the US has provided to date, the targeting of General Soleimani, and the deaths of those accompanying him, constitute an arbitrary killing for which, under IHRL, the US is responsible. [...] Major General Soleimani was in charge of Iran military strategy, and actions, in Iraq and the Syrian Arab Republic. But absent an actual imminent threat to life, the course of action taken by the US was unlawful.

[...]

84. The strikes against General Soleimani and the US bases in Iraq resulted in far more casualties than their direct targets alone. 176 passengers lost their lives when an Iranian missile struck their plane, by “mistake” according to Iran, in the midst of escalating tensions. UN Special Procedures also alleged that Iranians protesting the authorities’ lack of transparency over the incident were killed, while Iraqi protesters continued to be targeted, killed or disappeared.

[...]

Discussion

I. Classification of the situation and applicable law

1. (Paras 12-15, 30-31) How would you classify the situation described in the report? What are the arguments/pointers for applying IHL to the Soleimani strike? ([GC I-IV, Common Art. 2; P I, Art. 1](#))

2. (Para. 17) Do you believe that “given its grave implications for the societies involved”, the existence of an IAC should not rely exclusively on the laws of war?

3. (Para. 14) Do you agree that the classification of the situation as a NIAC should be directly discarded? Do you agree that a

NIAC is “defined by internal armed hostilities”?

4. (Paras 15-17) What are the different approaches to the threshold of violence to be reached for a situation to become an IAC identified by the Special Rapporteur?

5. (Paras 15, 18-31)

1. If there was no preexistent armed conflict, did the strike against General Soleimani trigger one? Of what kind? Why/why not? Did it matter for the classification that the strike happened on a territory of a third State?
2. What is the first shot doctrine? Do you think that it should be abandoned because it sometimes presents a number of challenges? What do you think about interpretations that tend to introduce an intensity and/or protraction criterion?

6. (Paras 14, 20-21) How did the Geneva Academy classify the situation prior to the Soleimani strike? Could the Soleimani strike have been a part of an ongoing armed conflict? What is the view of the ILA Committee on The Use of Force? And the Venice Commission?

7. (Paras 8, 24-26) How did the States concerned classify the situation? Does their opinion matter? Why/why not? [GC I-IV, Common Art. 2](#)

II. Law Applicable to Targeted Killings

8. (Paras 10-11) How many legal regimes to consider the legality of targeted killings are mentioned by the Special Rapporteur? What are their respective conditions for targeted killings to be lawful?

9. (Para. 63) If the strike was justified on the basis of self-defence, as interpreted by the US, does it mean it was lawful under IHL? Does a justification of an attack based on events that occurred prior to an attack mix up *jus ad bellum* and *jus in bello*? If so why? What danger does the Special Rapporteur point out when it comes to confusing arguments of *jus in bello* and *jus as bellum*?

10. (Paras 37-39)

1. What is the *lex specialis* doctrine? What is its relevance in the context of the applicability of IHL and IHRL?
2. (Para. 37) What is the “*systemic integration and purposive interpretation*” with regards to *lex specialis* that the Special Rapporteur suggests applying? Where does it stem from? What are the arguments for adopting this approach?

11. (Paras 30, 34-39)

1. Which legal framework does the Special Rapporteur suggest as the most appropriate for the Soleimani strike? Why? Which approach do you see as the most suitable?
2. (Para. 36) What do you think of the argument that situations like the one analysed differ substantially *from the battlefields that IHL was designed to regulate*”? Do you consider IHL the *best fit*” to regulate targeted drone strikes? Must persons affected by an IAC be aware that it exists for IHL to apply?
3. (Para. 35) The ICRC argued for the applicability of IHRL to targeted strikes in non-belligerent States in NIACs. Do you think the situation should be different in IACs? Is nexus with the armed conflict required in IACs? Is it not the case that killing a member of governmental armed forces will always fulfil the nexus requirement in the context of an IAC?
4. (Para. 30) Do you agree with the assessment that targeting a high-level State official differs qualitatively from the other drone strikes analysed by Special Rapporteurs? Does this mean that some lives are more important than others? That killing a general triggers an IAC while killing a soldier may not? Is the difference with other drone strikes not simply that they have to be analysed under IHL of NIACs while the killing of General Soleimani must be analysed under IHL of IACs?
5. (Para. 38) Should IHL and the first shot theory be applied, why would it be a problem that *ALL*” soldiers, anywhere in the world, could constitute a legitimate target? Under IHL, are all soldiers legitimate targets if a State decides to attack their country?

12. (Paras 31-33, 40-46)

1. What does extraterritoriality mean in the context of IHRL? What are the arguments raised by the Special Rapporteur in favour of the extraterritorial application of IHRL to targeted killings? Is the US bound by its IHRL obligations extraterritorially? ([ICCPR, Art. 2](#))
2. (Document B, para. 43) Do you agree that targeting an individual is “*indeed the ultimate exercise of physical power and control over the individual who was shot and killed*”? Is it sufficient to trigger the applicability of IHRL? Or do you think that the physical presence of a State official is necessary to assert control over an individual?

13. (Paras 48-53) Which issues does the Soleimani strike raise under IHRL? Was the strike prohibited as arbitrary deprivation of life? ([ICCPR, Art. 6](#))

14. (Para. 53) Does it matter for the legality of attacking someone under IHL or IHRL whether he or she violated IHL or IHRL?

III. Targeted Killings under IHL rules on the conduct of hostilities

15. (Para. 10)

1. If IHL was applicable, under what general conditions would the strike be lawful? What particular rules of IHL are at risk of being violated due to the practice of targeted killings? ([P I, Arts 35-36; 48, 50, 51](#) and [57](#); [CIHL, Rules 1-21](#))
2. Do you think that “to be lawful under humanitarian law, targeted killings must be limited to combatants”? Does this mean that civilians directly participating in hostilities may never be targeted? That incidental civilian deaths are always inadmissible?

16. (Para. 28)

1. What role does the geographical element play in determining the applicability of IHL? Is the nexus with an ongoing armed conflict additional or alternative to considerations of the geographical applicability of IHL? Do drone strikes pose any unusual problems with regard to the geographical element?
2. Do you think it is “understood that IHL may be applied to an act rather than spatially”?
3. If the killing of General Soleimani occurred in an IAC or triggered an IAC, did IHL only apply to the vehicle in which General Soleimani was travelling and inevitably the asphalt within its immediate proximity”? Everywhere in Iran and the US? In Iraq? Worldwide between the parties?

17. What rules become easier to comply with when drones are used? Is it easier or more difficult to respect precautions in attacks prescribed by IHL when drones are used? ([P I, Arts 48, 51\(2\) and \(5\)\(b\), 52 \(2\), 57](#) and [58](#); [CIHL, Rules 1, 7, 14-16, 21](#) and [22](#))

18. Does the Special rapporteur consider IHL rather as a framework restricting the conduct of belligerents or as a framework of authorization of belligerent action? What is it in your view, mainly or exclusively?

19. (Paras 2-4, 12) Was General Soleimani necessarily a lawful target of an attack? What was the status of other people killed? Were they lawful targets? ([P I, Art. 44](#); [CIHL, Rule 3](#))

IV. Capture or kill

20. (Paras 2-4, 12)

1. If General Soleimani indeed was a lawful target, could there be an obligation under IHL to arrest him instead of killing him? What is the opinion of the Special Rapporteur?
2. What is the opinion of the ICRC? Is there an obligation to capture rather than kill? Under which circumstances should not lethal force be used? Do you agree?