

## Readings for the Week of January 18-19, 2021

### **Unit 1 - Introduction; Nature of International Law**

*Is international law “law”? Where does it come from?*

*What makes it binding? How is it enforced?*

#### **Monday, Jan. 18**

No class

#### **Tuesday, Jan. 19**

##### Casebook

- International Law as Binding Law
  - Introduction: 1-2
  - Henkin, *International Law: Politics and Values*: 2
  - Henkin, *How Nations Behave*: 2-3
  - Austin, *The Province of Jurisprudence Determined*: 3-4
  - Hart, *The Concept of Law* & notes 1-3: 4-7
- Compliance with International Law
  - Introduction: 7-8
  - Henkin, *How Nations Behave*, 8-11
  - Koh, *Why Do Nations Obey International Law?* & notes 1-3, 5, 7: 11-16
- Enforcement in International Law
  - Introduction: 16-17
  - Damrosch, *Enforcing International Law Through Non-Forcible Measures* & notes 1-2, 4: 17-20
- Consent and Coherence in International Law
  - Introduction: 20
  - *Legality of the Threat or Use of Nuclear Weapons* (ICJ) & notes: 20-23
  - *Accordance with International Law of the Unilateral Declaration of Independent in Respect of Kosovo* (ICJ): 23-24

##### Non-Casebook Material

Robin Wright, *The Killing of Qassem Suleimani Is Tantamount to an Act of War*, THE NEW YORKER (Jan 3, 2020)

## OUR COLUMNISTS

# THE KILLING OF QASSEM SULEIMANI IS TANTAMOUNT TO AN ACT OF WAR

**By Robin Wright**

January 3, 2020



*The death of Qassem Suleimani capped a week of hostilities between the United States and Iran which escalated with lightning speed.* Photograph from Iranian Supreme Leader Press Office / Getty

On orders from President Trump, the United States killed Major General Qassem Suleimani, the leader of Iran's elite Quds Force and the mastermind of its military operations across the Middle East, in an overnight air strike at Baghdad's International Airport. The assassination was the boldest U.S. act in confronting Iran since the 1979 revolution, tantamount to an act of war. A brief statement from the Pentagon described it as a "decisive defensive action" designed to protect U.S. personnel abroad. But the strike represented a stunning escalation between Washington and Tehran, and it may well have the reverse effect. Iran almost certainly will want to respond in some lethal form, whether directly or through its powerful network of proxies in the region. U.S. embassies and military bases—and

thousands of American personnel across the Middle East and South Asia, and potentially beyond—were instantly vulnerable. On Friday, the State Department ordered all Americans to leave Iraq.

On Friday, Iran's Supreme Leader, Ayatollah Ali Khamenei, declared three days of public mourning and warned that "harsh vengeance awaits those criminals behind martyrdom of General Suleimani." He moved quickly to name Brigadier General Esmail Gha'ani, who had worked closely with Suleimani, as the new Quds Force commander. Mohammad Javad Zarif, Iran's U.S.-educated Foreign Minister, who spent two years negotiating the 2015 nuclear deal with the United States, called the American air strike an act of international terrorism. "The US bears responsibility for all consequences of its rogue adventurism," he tweeted. Iran's state-controlled television characterized the assassination as the U.S.'s "biggest miscalculation" since the Second World War. "The people of the region will no longer allow Americans to stay," it said.

Iran's revolutionary regime often makes boastful threats, but the murder of Suleimani alarmed veteran U.S. military and diplomatic officials who have served in the Middle East. "It is almost impossible to overstate the importance of this," the retired general David Petraeus, who led U.S. forces in Iraq and later served as the director of the C.I.A., told me. Suleimani was Petraeus's nemesis during the eight-year U.S. war in Iraq. "Iran has to be in shock right now. Its version of the National Security Council will be on overdrive," he said. "But there's a whole universe of possibilities now, everything from proxy retaliation, kidnappings of American citizens, actions against coalition partners, even an attempt to do something in the U.S. We certainly have large force concentrations in the region, too."

Was the U.S. attack an act of war? Douglas Silliman, who was the U.S. Ambassador to Iraq until last winter and is now the president of the Arab Gulf States Institute in Washington, told me that the death of Suleimani was the equivalent of Iran killing the commander of U.S. military operations in the Middle East and South Asia. "If Iran had killed the commander of U.S. Central Command, what would we consider it to be?" he said. John Limbert, one of fifty-two Americans who were taken hostage in Iran in 1979, told me that he was happy Suleimani was gone, but quickly added, "This is not going to end well."

Suleimani, a flamboyant former construction worker and bodybuilder with snowy white hair, a dapper beard, and arching salt-and-pepper eyebrows, gained notice during the eight-year war with Iraq, in the nineteen eighties. He rose through the Revolutionary Guard to become head of the Quds Force—an Iranian unit of commandos comparable to the U.S. SEALs, Delta Force, and Rangers combined—in 1998. He was the most feared and most admired military leader in the region. He famously rallied followers with flowery jihadi rhetoric about the glories of martyrdom. "The war front is mankind's lost paradise," Suleimani was quoted as saying, in 2009. "One type of paradise that is portrayed for mankind is streams, beautiful nymphs and greeneries. But there is another kind of paradise." The front, he said, was "the lost paradise of the human beings." Thousands of followers died under his leadership.

Over more than two decades, Suleimani, a Shiite, had more impact than the leaders of either Al Qaeda or ISIS, which are both Sunni movements, in shaping the face of the Middle East. To counter U.S. influence in Iraq between 2003

and 2011, he provided Iraqi militants with rockets, bombs, and explosively formed projectiles that could slice through the armor of an American M1 tank. “He has the blood of hundreds of Americans on his hands,” Petraeus said. The United States designated the Quds Force as a supporter of terrorism, in 2007, and Suleimani was personally sanctioned for complicity in a plot to kill the Saudi Ambassador to the United States, in 2011. That same year, he spearheaded a campaign, now in its ninth year, to save President Bashar al-Assad’s regime after civil war erupted in Syria. Suleimani also channelled arms and aid to Hezbollah in Lebanon, orchestrating its franchise operations in other Middle Eastern countries, and aided Houthi rebels in Yemen. He cultivated militia proxies in Pakistan and Afghanistan, thousands of whose members were deployed to fight in Syria. Suleimani gained fame for taking selfies—later posted on social media—on the front lines of regional conflicts where his Quds Force and their allies were deployed. Many went viral.

“I think people in the region saw him as untouchable,” Petraeus said. The only person more powerful in Iran was the Supreme Leader. And, in the Shiite region of the Middle East, there may have been no one more powerful than Suleimani when it came to tangible impact.

“The US just killed Iran’s Patton,” Ian Bremmer, the president of the Eurasia Group, tweeted shortly after the Pentagon issued its statement. Silliman said that Suleimani led a “huge and largely successful strategic advance by Iran through Iraq and Syria and Lebanon.”

After initially operating in the shadows, Suleimani grew rhetorically audacious in the past decade. In 2008, as the U.S. and Iran competed for influence in Iraq, the Iranian general relayed a verbal message to Petraeus through the then Iraqi President, Jalal Talabani, which said, “Dear General Petraeus, you should know that I, Qassem Suleimani, control the policy for Iran with respect to Iraq, Lebanon, Gaza and Afghanistan.” Suleimani’s point, Petraeus told me, was that the Americans had to deal with him—everywhere.

In 2018, Suleimani famously responded to the warning that Trump issued to the Iranian President, Hassan Rouhani. Trump, after a weekend at his golf resort in Bedminster, New Jersey, tweeted, “NEVER, EVER THREATEN THE UNITED STATES AGAIN OR YOU WILL SUFFER CONSEQUENCES THE LIKES OF WHICH FEW THROUGHOUT HISTORY HAVE EVER SUFFERED BEFORE. WE ARE NO LONGER A COUNTRY THAT WILL STAND FOR YOUR DEMENTED WORDS OF VIOLENCE & DEATH.” Suleimani belittled Trump. “It is beneath the dignity of our President to respond to you,” he said, in a speech. “We are near you, where you can’t even imagine. We are ready. We are the man of this arena.”

When Suleimani was killed, Trump was at his Mar-a-Lago resort, in Palm Beach. Displaying rare restraint, he merely posted an American flag on his Twitter account.

In its statement, the Pentagon charged that Suleimani had, in recent months, orchestrated attacks on bases used by U.S. and allied nations as part of an international coalition fighting ISIS. He “was actively developing plans to attack American diplomats and service members in Iraq and throughout the region,” the Pentagon said.

Suleimani's death capped a week of hostilities that escalated with lightning speed after a U.S. military contractor was killed in a rocket attack by Kata'ib Hezbollah, one of the most powerful Iranian-backed militias in Iraq, on December 27th. The attack was the group's eleventh in recent weeks, the U.S. claimed. On December 29th, the Pentagon responded with five air strikes—three in Iraq and two in Syria—on Kata'ib Hezbollah's bases. The group's supporters responded by attacking the U.S. Embassy in Baghdad, which is the largest and most fortified diplomatic mission in the world.

"General Suleimani also approved the attacks on the U.S. Embassy in Baghdad that took place this week," and the attacks on coalition bases in recent months, the Pentagon said, in its statement. It said that the assassination was aimed at deterring future Iranian assaults, noting pointedly, "The United States will continue to take all necessary action to protect our people and our interests wherever they are around the world."

Kata'ib Hezbollah has been an increasingly important militia since it emerged, under Iranian tutelage, in 2004. After ISIS swept through Iraq, in 2014, it merged with dozens of other Shiite militias in the Popular Mobilization Forces to fight the Islamic State caliphate—with Iranian aid, arms, and Suleimani's strategic advice. ISIS was the one issue on which Iran and the U.S. had common cause. Along with the rest of the P.M.F., Kata'ib Hezbollah was incorporated into the Iraqi military, in 2019, yet it continued to carry out its own operations—in defiance of the government and to the frustration of the United States. The militia has also been deployed in Syria as part of Iran's support for the Assad regime.

The Pentagon provided no initial details on how the attack played out, but the Iranian media reported that Suleimani had just arrived at the Baghdad airport from Lebanon. The U.S. strike also killed Abu Mahdi al-Muhandis, the leader of Kata'ib Hezbollah and deputy chief of the P.M.F. He was "by far the most important P.M.F. leader tied to Iran," Silliman told me. Iranian news agencies said that Suleimani and Muhandis were leaving the airport in separate cars when both were attacked by rockets fired from a U.S. helicopter. The Tasnim news agency, which has been tied to the Revolutionary Guard in the past, tweeted a photo of a bloodied hand wearing a large ring with an oval red stone, which Suleimani was often photographed wearing. The ring was how his body was identified, Iraqi officials said.

The timing was particularly awkward for the Iraqi government, which has long attempted a delicate balancing act between neighboring Iran and the United States. Since October 1st, protests have swept across the country demanding the ouster of the Prime Minister and the entire political class, and an end to corruption and economic inequality. The protests have also been noteworthy because of their unprecedented demonstrations against Iran's influence in Iraq. In November, protesters set fire to Iranian diplomatic missions in the Shiite holy cities of Najaf and Karbala.

The U.S. killing of Suleimani and the air strikes on Kata'ib Hezbollah over the weekend are an embarrassment to Iraqi leaders and a challenge to Iraqi sovereignty. They come at a time when Baghdad is gripped by the deepest political crisis since the U.S. invasion ousted Saddam Hussein, in 2003. The Prime Minister, Adel Abdul-Mahdi, a Shiite who spent years in exile in Iran, stepped down and is now playing only a caretaker role. There are already calls for the Iraqi

parliament to demand the withdrawal of some five thousand U.S. troops—and hundreds more from more than a dozen coalition neighbors—that are still waging a campaign against ISIS insurgents. In a tweet, in Arabic, Mahdi called the assassination of Suleimani an act of aggression against the “Iraqi state, its government, and its people.” In an ominous signal to Washington, he said the killing was a “breach of the conditions for the presence of U.S. forces in Iraq.” The Iraqi Parliament is due to debate the U.S. military presence and vote on whether it should continue when it reconvenes, but the Prime Minister has the ultimate say as Commander-in-Chief, Silliman said.

The reaction in Washington played out largely along party lines. Senator Tom Cotton, a Republican of Arkansas and staunch Trump supporter and military veteran, tweeted that Suleimani “got what he richly deserved, and all those American soldiers who died by his hand also got what they deserved: justice.” But top Democrats warned of the fallout—and future cost in American lives. The House Speaker, Nancy Pelosi, of California, said that the assassination “risks provoking further dangerous escalation of violence. America—and the world—cannot afford to have tensions escalate to the point of no return.” She and other Democrats charged that Trump attacked a high-level Iranian official without congressional authorization for the use of military force. Tom Udall, a Democrat from New Mexico and a member of the Senate Foreign Relations Committee, warned, “Such a reckless escalation of hostilities is likely a violation of Congress’s war-making authority—as well as our basing agreement with Iraq—putting U.S. forces and citizens in danger and very possibly sinking us into another disastrous war in the Middle East that the American people are not asking for and do not support.”

Ironically, Suleimani died in just the kind of covert operation that he orchestrated against the United States so often over so many years, with such deadly success. Yet, in his statement on the general’s death, Iran’s supreme leader warned, “His departure to God does not end his path or his mission.”



*Robin Wright has been a contributing writer to The New Yorker since 1988. She is the author of “Rock the Casbah: Rage and Rebellion Across the Islamic World.”*

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