

# Was Killing Suleimani Justified?

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*Project Syndicate*, Jan 6, 2020

*At a press conference following the US drone strike that killed Iran's top military commander and several others, a senior State Department official blurted out: "Jesus, do we have to explain why we do these things?" In fact, the international rule of law depends on it.*

MELBOURNE – On January 3, the United States assassinated Qassem Suleimani, a top Iranian military commander, while he was leaving Baghdad International Airport in a car with Abu Mahdi al-Muhandis, an Iraqi leader of Kata'ib Hezbollah, an Iran-backed militia. All the occupants of the car were killed.

The next day, at a special press briefing, an unnamed senior US State Department official said that Suleimani had been, for 20 years, "the major architect" of Iran's terrorist attacks and had "killed 608 Americans in Iraq alone." He added that Suleimani and Muhandis had been designated as terrorists by the United Nations, and that "both of these guys are the real deal in terms of bad guys."

In 2003, US intelligence about Iraq's supposed possession of weapons of mass destruction was completely wrong. Those errors led to the invasion of Iraq, which cleared the way for the involvement of Iran and Suleimani in the country. But let's assume that this time the facts are as the US administration says they are. Was the double assassination ethically defensible?

We can begin with the presumption that it is wrong to take human life. President Donald Trump won't deny that. A year ago, for example, he said: "I will always defend the first right in our Declaration of Independence, the right to life." Trump was addressing his remarks to anti-abortion campaigners, but a right to life that applies to fetuses must also apply to older humans.<sup>2</sup>

Is there an exception for "bad guys," though? Again, to keep the argument as straightforward as possible, let's assume that the right to life protects only innocent humans. Who is to judge innocence? If we favor, as Americans often say they do, "a government of laws, not of men" there must be a legal process for deciding guilt. Since 2002, the International Criminal Court has sought to apply that process globally. The ICC has had some notable successes in prosecuting perpetrators of war crimes and crimes against humanity, but the court's scope is limited, and its reach has not been helped by the refusal of the US to join the 122 other countries that have accepted its jurisdiction.

In the wake of Suleimani's assassination, Agnès Callamard, a Special Rapporteur on extrajudicial, summary, or arbitrary executions at the Office of the UN High Commissioner for Human Rights, noted that there is no oversight of targeted killings carried out beyond a country's borders. The Executive simply decides, without any legal due process or approval by any other branch of government, who is to be killed. Accepting such an action makes it difficult to find any principled objection to similar killings planned or carried out by other countries. That includes the 2011 "Cafe Milano Plot," supposedly masterminded by Suleimani himself, in which Iranian agents planned to kill the Saudi ambassador to the US while he lunched at a well-known restaurant in Washington, DC.

The only thing the US can say in defense of its assassinations is that it targets really bad guys, and the Saudi ambassador was not such a bad guy. That puts the rule of men above the rule of law.

The other justification that the Pentagon offered for the killing referred vaguely to “detering future Iranian attack plans.” As Callamard pointed out, this is not the same as the “imminent” attack required to justify acting in self-defense under international law. She also noted that others were killed in the attack – reportedly, a total of seven people died – and suggested that these other deaths were clearly illegal killings.

A careful reading of the transcript of the January 3 press briefing, held by three unidentified senior State Department officials, reveals the Trump administration’s real thinking. In response to repeated questions about the justification of the assassination, one official compared it to the 1943 downing of a plane carrying Japanese Admiral Isoroku Yamamoto, who was visiting Japanese troops in the Pacific – an incident that occurred in the midst of war, more than a year after the Japanese attacked Pearl Harbor. Another official said: “When I hear these questions it’s like you’re describing Belgium for the last 40 years. It’s the Iranian regime. We’ve got 40 years of acts of war that this regime has committed against countries in five continents.” At one point, the official who had compared the assassination to the killing of Yamamoto blurted out: “Jesus, do we have to explain why we do these things?”<sup>5</sup>

If senior State Department officials believe that the US is engaged in a just war with Iran, as it was with Japan in 1943, the killing of Suleimani makes sense. According to standard just war theory, you may kill your enemies whenever you have the chance to do so, as long as the importance of the target outweighs the so-called collateral damage of harm to innocents.

But the US is not at war with Iran. The US Constitution gives Congress the sole authority to declare war, and it has never declared war on Iran. Speaker of the House Nancy Pelosi suggested that congressional leaders should have been consulted on the plan to kill Suleimani. If it was an act of war, she is right.

If, on the other hand, the killing was not an act of war, then, as an extrajudicial assassination that was not necessary to prevent an imminent attack, it was both illegal and unethical. It risks severe negative consequences, not only in terms of escalating tit-for-tat retaliation in the Middle East, but also by contributing to a further decline in the international rule of law.