

*RSIS Commentary is a platform to provide timely and, where appropriate, policy-relevant commentary and analysis of topical and contemporary issues. The authors' views are their own and do not represent the official position of the S. Rajaratnam School of International Studies, NTU. These commentaries may be reproduced with prior permission from RSIS and due recognition to the author(s) and RSIS. Please email to Mr Yang Razali Kassim, Editor RSIS Commentary at RSISPublications@ntu.edu.sg.*

---

*The US Assassination of Gen Soleimani & Its Aftermath*

## **Proxies and Drones: Can International Law Handle “Invisible Threats”?**

*By Joel Ng*

### **Synopsis:**

*The debate over the legality of Qassem Soleimani's assassination misses an essential point: international law is not upheld by moral adherence, but by enlightened self-interest. However, current international law is not working for states given the diffusion of new threats such as drones and non-state proxies and needs rethinking.*

### **Commentary**

DEBATE OVER the US assassination of Iranian general Qassem Soleimani dominated the start of 2020. While talk of war is premature, there are clear challenges to international law (IL) that are at a confluence of new technologies, the diffusion of threats, and age-old principles like sovereignty.

Debating the legality of the killing misses an essential point: IL is not upheld by moral imperative but enlightened self-interest. Problems arise when states do not feel that following IL is in their self-interests, despite the stigma associated with defying it. If enough states feel this way, systemic problems emerge but reform is needed, rather than pleading about the moral imperative to obey.

### **“Invisible Threats” and International Law**

In 2012, Harvard law professor Gabriella Blum speculated about the emergence of “invisible threats”. In her description, she postulated a “drone assassin spider” capable of lethally poisoning a target then self-destructing, leaving no trace of the remote assassin.

The idea was that “minidrones”, as she called them, could someday pose a new threat that existing security, legal, and political structures were incapable of regulating. As she noted, “the democratisation of threat makes it harder to connect attacks to their sources. Without such ability, no retaliatory, punitive, or even preventive action can be taken effectively, and must result in affecting too few potential perpetrators and too many innocent people”.

The threat had already developed with transnational terrorism, but the “democratisation of threat” had already started using (technically) non-state actor proxies. Moreover, Iran’s capabilities may now be expanding with drone technology, demonstrated in the September 2019 attack on Saudi oil refineries. While Houthi Yemeni rebels claimed responsibility, this was rejected by US intelligence assessments, that directed the blame on Iran. Iran naturally denied the charges.

### **Drones and Non-State Actors**

The US pioneered drone technology to deal with the non-state actors. Their effectiveness was not lost on their would-be targets. This spurred an arms race and regardless of who deployed drones against the Saudi refineries, the principle is clear:

Drones offer remote capabilities with plausible deniability beyond the borders of a nation-state, similar to characteristics proxy groups have. Yet drones combined with formally non-state proxies effectively bypasses IL, with the defence of sovereignty to fall back on when the target state wishes to retaliate.

While this is not to say the Soleimani assassination was retaliation for the attacks on Saudi installations, US President Donald Trump decided the most effective counter to these diffuse non-state security threats – loosely pointing towards Iran – is to cut the head off. Iran had effectively marshalled non-state actors, with the US stuck in a position of either fighting ineffectively against the proxies while remaining within the ambit of IL, or doing something more drastic leading to legal questions.

Was Trump’s decision correct to stop the threat, or will it unleash a greater set of diffuse enemies to the West? The simple hope is that escalation would present a cost too great to Iran that it would pull back – indeed the death of Soleimani and the spectre of all-out war have likely reset its calculations about the costs of using non-state proxies. Its downing of the Ukrainian airliner PS752 shows other ricocheting costs are already hitting home.

### **Gordian Knot or Hydra?**

However, to agree with the US, it would need reassurance that the US, which Iran accuses of violating IL, would abide by it in the future. As reports indicate, Iran has instead resumed its nuclear arms programme for more concrete deterrence – an action contrary to US security goals, and which requires a US response. The tit-for-tat cycle is both costly and risky, which is why states have come to prefer international agreements.

From the US’ point of view, non-state proxies also render legal agreements ineffective: Iran can commit to something while its proxies continue to thwart US interests.

Moreover, the doctrinaire commitment to “non-interference” by authoritarian states has made the pursuit of security across borders virtually impossible when consent is not given.

If the other nation refuses to cooperate, the would-be enforcer faces a choice: bypass that nation’s consent to take out the threat (the US did this in Pakistan with the assassination of Osama Bin Laden), or leave it at the mercy of the other state (the US did this with Bin Laden in Sudan in the 1990s). The first choice violates the other state’s sovereignty to reinforce the initiating state’s self-protection, while the latter upholds international rule of law at the cost of the vitiating state’s right to protect itself. Whatever the decision, one state will be upset.

### **Can International Law Reassert Itself?**

IL has always been governed by mutual consent – that states see it in their best interests to play by the rules for mutual security because the costs of defection are too high. The problem is that there is no effective legal way to deal with diffuse “invisible” threats right now, which means the underlying glue of mutual consent is breaking apart.

Yet a rules-based order is much less risky and cheaper than arms races and proxy wars. This is critical because the drone technology race is taking place. The plausible deniability, accurate delivery of payload, and other features make it a preferred weapon and their capabilities are expanding. The costs of tit-for-tat can be better absorbed by the greater power, but it will suffer greater costs in absolute terms.

Today, several regional powers are trying to pursue security objectives abroad unilaterally. Each eats away at the international rules-based system whenever they make an exception for themselves, yet feel justified because the current rules do not offer them satisfactory choices. However, the costs will be great and the risks greater still if they unravel the system, which was created precisely because states had suffered those costs in the past.

Moreover, history tells us that where actors are deeply ideologically-committed, it will take a long and costly experience – or leadership change – to recognise the need to right the course and reconstruct a new rules-based order. Thus, a new regime that can deal effectively with “invisible threats” must be found before more parts of the system break down.

*Dr Joel Ng is a Research Fellow at the Centre for Multilateralism Studies, S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University (NTU), Singapore.*

#### **Nanyang Technological University**

Block S4, Level B3, 50 Nanyang Avenue, Singapore 639798

Tel: +65 6790 6982 | Fax: +65 6794 0617 | [www.rsis.edu.sg](http://www.rsis.edu.sg)