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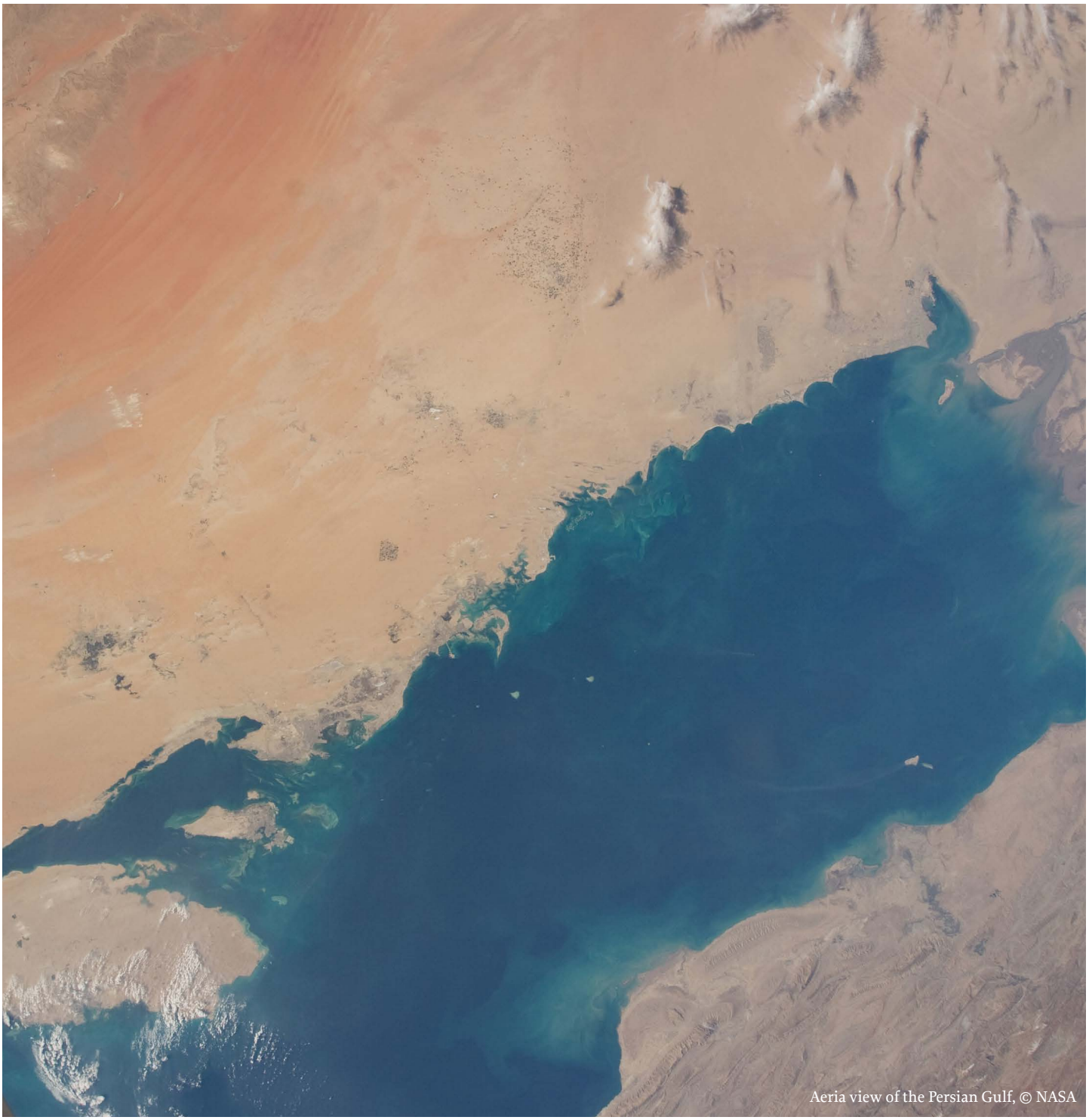
THE WAR REPORT

THE UNITED STATES OF AMERICA AND THE ISLAMIC REPUBLIC OF IRAN: AN INTERNATIONAL ARMED CONFLICT OF LOW INTENSITY



Aeria view of the Persian Gulf, © NASA

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CLASSIFICATION OF THE CONFLICT

The United States of America and the Islamic Republic of Iran were engaged in an international armed conflict (IAC) in June 2019 by virtue of Iran's shooting down a US military drone and the alleged counter cyber-attack by the US.

HISTORY OF THE CONFLICT

BACKGROUND

It has been more than 160 years since the first Treaty of Friendship and Commerce was signed between Iran and the US, exactly 140 years since the first US warship entered the Persian Gulf and almost 140 years since Iran (Persia) and the US established diplomatic relations.[1] Since then, their relationship has oscillated between cooperation and conflict and between hope and a lack of trust. In the second half of the nineteenth century, Iran perceived the US as a new power which could help an old and proud Persian nation squeezed between Britain and Russia. Some Americans were even engaged, albeit unsuccessfully, in early attempts to organize the public finances of Iran after the First World War.

The first large-scale contact between Americans and Iranians took place during the Second World War when 30,000 Americans were deployed to Iran in order to deliver Lend-Lease aid to the Soviets.[2] Iran tried to use the American presence to secure the sovereignty and territorial integrity of the country as it was afraid that Britain and the USSR would permanently divide the country after the war. It seems that American pressure on the Soviets was one of the most important reasons why, after serious hesitation and the first Cold War crisis, they decided to leave Iran. These events created an important impression in Iran of American omnipotence. Therefore, it is not surprising that Iranians were disappointed with the modest American aid they received after the war.[3]

However, major disappointment and fury in Iran came with the oil nationalization crisis at the beginning of the 1950s. The Anglo-Iranian Oil Company treated Iranian employees as slaves and manipulated the profit in order to cut the Iranian income; therefore, Iranians wanted to change the terms of the concession.[4] The new Iranian Prime Minister, Mohammed Mosaddeq, pushed for nationalization of the oil fields and the Shah signed this decision. The response of the British was harsh as they saw oil from Iran as a strategic interest. Both Iranians and the British expected the support of the US. The Americans pushed Britain to cancel plans for a military invasion, so the British decided to look for alternative ways to overthrow Mosaddeq. The new US administration wasn't impressed with Mosaddeq either (especially his flirting with the USSR and the communist Tudeh Party of Iran), so it decided to actively participate in his overthrow and arrest. This was perceived by Iranians as the ultimate betrayal by America and the event played an important role in the development of Iranian political identity and anti-Americanism since then.[5] Mosadeqq became the brave figure who represented the fight for independent Iran, free from the influence of the West.

Mohammad Reza Shah used the 1953 events to cement his power in Iran for the next 25 years. There were three major factors in this process: US support, oil and SAVAK (the Iranian intelligence service). The bilateral defence agreement concluded between the US and Iran exactly 60 years ago, according to which the US guaranteed assistance to Iran in the case of aggression, looks peculiar from today's perspective (bearing in mind the very tense relations between the two countries at the moment).[6]

Be that as it may, Reza Shah started a process of reforms in the country – the White Revolution, mainly focused on land reform – but there were protests against these in 1962 and 1963. One of the protestors was the then little-known cleric Ruhollah Khomeini who was arrested because the protests became a serious threat to the Shah. In the end, the White Revolution failed to deliver its promises and Khomeini was expelled from the country (first to Turkey, then to Iraq for 15 years and then, from 1978–1979, he was in Paris). Nevertheless, Reza Shah managed to rule the country until the Iranian Revolution in 1979.[7]

It could be said that relations between Iran and US have been determined by what happened in 1979 in Iran. On the one hand, American involvement in Iran's domestic affairs and its support for the Shah (especially that of Jimmy Carter's administration before and during the revolution) would come to be viewed as an unwelcome intervention by some of the Shah's opponents.[8] After all, it went against a

1 K. M. Pollack, *The Persian Puzzle: The Conflict Between Iran and America*, Random House, 2004, p 19.

2 Ibid, p 40.

3 Ibid.

4 Ibid, p 53.

5 P. Kinch, *The US-Iran Relationship: The Impact of Political Identity on Foreign Policy*, I. B. Tauris, 2016, p 43.

6 D. Murray, *US Foreign Policy and Iran: American-Iranian Relations Since the Islamic Revolution*, Routledge, 2009, p 3.

7 Pollack, *The Persian Puzzle*, p 190.

8 Kinch, *The US-Iran Relationship*, p 91.

very significant aspect of Iranian identity which insisted on independence from foreign influences. On the other hand, the decision of Khomeini to support Iranian students who broke into the premises of the US diplomatic mission and held dozens of diplomatic staff hostage for 444 days has critically influenced the US position towards Iran ever since. The hostage crisis and the failure of all US measures to get the hostages released, including the failure of the special military mission, left a scar on America's self-image as a superpower.

The war between Iraq and Iran from 1980–1988 also did not help relations between the US and Iran. The Iranians were furious, not just because the US helped Iraq during the war, but also because the US tolerated the use of chemical weapons by Iraq. On the other hand, Ronald Reagan's administration accused Iran of being behind numerous terrorist attacks killing and injuring several hundred victims, including American soldiers and members of the CIA, in this period.[9] In October 1987 and April 1988, US forces attacked Iranian oil platforms, claiming the right to self-defence (the Americans argued that Iran was responsible for attacks on the tanker Sea Isle City and the warship USS Samuel B. Roberts). These incidents even became part of an International Court of Justice ruling on these matters.[10] The shooting down of Iran Air flight 655 in July 1988 by the Americans and the death of almost 300 civilians sealed the bitter enmity between the two countries.[11] The US claimed that the civilian aircraft was shot down by accident, but that is not how it was seen in Tehran.[12]

It seemed that both the death of Khomeini and the change in the American administration in 1989, with George H. W. Bush becoming President, could give new hope for the improvement of relations between the two states.[13] This did not happen, and things went from bad to worse during Bill Clinton's administration. In 1996, 19 US servicemen were killed in a terrorist attack in Saudi Arabia. Americans claimed that Iran was behind this event and a military option was seriously discussed.[14] Relations remained tense until Clinton's second term and the election of Mohammad Khatami as President of Iran in 1997. During an interview for the BBC, Khatami proposed a 'dialogue between civilizations'.[15] Later, the then US Secretary of State, Madeleine Albright, and even Clinton offered a kind of apology for certain previous acts by the US in Iran, officially admitting to US involvement in the overthrow of Mosaddeq.[16] However, the internal situation in Iran was complex, so Khatami was not able offer more than symbolic gestures.[17] Thus, another opportunity to improve US–Iran relations was missed.

Even though Khatami won the election in 2001, it was a Pyrrhic victory and the new American administration took a hardline approach towards Iran. That changed quickly as a result of 9/11 as Iran and the US now had a common enemy.[18] Iran played a very important role in American efforts to defeat the Taliban and this gave new hope for an improvement in relations. However, like many times before, this hope diminished after 2001, especially after the infamous speech of George W. Bush in which he mentioned Iran as part of an 'axis of evil'. Therefore, during the armed conflict in Iraq in 2003, the US and Iran could no longer be called allies.[19]

NUCLEAR ISSUES BETWEEN THE US AND IRAN

In 2003, Bush also stated that the US 'will not tolerate a nuclear armed Iran'.[20] This was just one episode in the long and harsh dispute between the US and Iran over Iran's nuclear programme, which dates from the 1980s to today (the US supported Iran's development of a nuclear programme during the government of Reza Shah).[21] In 2005, Ayatollah Khamenei issued a fatwa according to which the development or use of nuclear weapons was prohibited in Iran. Notwithstanding this, the international community have not trusted Iran on this issue and have persistently accused political leaders such as Akbar Hashemi Rafsanjani, and even more reformist ones like Mohammad Khatami, of violating the Non-Proliferation Treaty obligations. Continuing distrust between the US and Iran has been especially visible: 'for many in the West, the likelihood that such an ideologically driven and seemingly irrational regime would acquire the nuclear bomb evoked the worst-case scenarios of proliferation theory'.[22] This (ir)rationality of Iranian political stakeholders provoked a divergence of strategies in order to cope with the issue of Iran's nuclear

9 Pollack, *The Persian Puzzle*, p 210.

10 ICJ, *Oil Platforms* (Islamic Republic of Iran v United States of America), Judgment, 6 November 2003.

11 Pollack, *The Persian Puzzle*, p 210.

12 Ibid, p 232.

13 Murray, *US Foreign Policy and Iran*, p 70.

14 Ibid, p 101.

15 Ibid, p 107.

16 Kinch, *The US-Iran Relationship*, p 193.

17 Pollack, *The Persian Puzzle*, pp 325–331.

18 Ibid, p 346.

19 Ibid, p 354.

20 Kinch, *The US-Iran Relationship*, p 139.

21 F. Rezaei, *Iran's Nuclear Program: A Study in Proliferation and Rollback*, Palgrave Macmillan, 2017.

22 Ibid, p 1.

programme.[23]

The issue of the alleged irrationality of the Iranian leadership with regard to nuclear weapons became even more acute when Mahmoud Ahmadinejad became President of Iran in 2005. He took a hard line on Iranian possession of nuclear energy and it seems that this position was backed by public opinion in Iran. However, it raised grave concerns in large parts of the international arena which resulted in, inter alia, numerous resolutions of the United Nations Security Council in 2006, 2007 and 2008.[24] Despite this, Ahmadinejad won the 2009 presidential elections. A new generation of smart sanctions put great pressure, both internal and external, on Ahmadinejad and the Iranian economy.

Change finally occurred with the election of Hassan Rouhani as President of Iran in 2013. Soon after that, the P5+1 (the five permanent members of UN Security Council and Germany) and Iran signed an Interim Agreement on Iran's nuclear programme in Geneva in November 2013. In July 2015, The Joint Comprehensive Plan of Action (JCPOA), which some authors called 'historic', was agreed.[25] In return for strict restrictions on their nuclear programme, Iran would receive relief from sanctions.[26] The first International Atomic Energy Agency report on nuclear-related commitments under the JCPOA concluded that Iran had respected its commitments under this agreement.[27] This was confirmed by Donald Trump's new administration in the US, even though President Trump openly heavily criticized the JPCOA. However, in May 2018, he officially declared that the US was withdrawing from the JPCOA. The official, albeit very controversial, justification for this move has been that the JPCOA failed to protect America's national interest and it was of utmost importance to re-impose sanctions on Iran.[28] A year later, Iran announced that it would no longer adhere to some of the JCPOA's limits.

PARTIES TO THE CONFLICT

The parties to the conflict are the US and Iran. The US is indisputably the greatest military power in the world.[29] It is estimated that it has a total of 2,141,900 military personnel.[30] The US defence budget is $716,000,000,000.[31] It also has the second highest number of nuclear warheads in the world (the Russian Federation has the most).[32] On the other hand, Iran has 873,000 military personnel.[33] According to certain sources, it is ranked the 14th military power in the world.[34]

KEY DEVELOPMENTS IN 2019

Even before the US decided to announce its withdrawal from the JPCOA, there were numerous incidents between the US and Iran, especially in the Persian Gulf.[35] It seems that some of these occurred in the territorial waters of Iran and others in international waters. On 13 June 2019, the Norwegian-owned tanker Front Altair and the Japanese-owned tanker Kokuka Courageous were attacked in the Gulf of Oman.[36] The US accused Iran of being behind those attacks and Iran dismissed these accusations. Even though President Trump said that he was in no rush to start a war over these and previous incidents, other US officials declared that military intervention was one of the options being considered.[37]

One week later, however, the Iranian Islamic Revolutionary Guard Corps (IRGC) used a surface-to-air missile to shoot down an MQ-4 Triton, an unmanned and unarmed US military aircraft intended for surveillance at sea. The IRGC chief commander confirmed the attack and justified the action by saying that the US aircraft had violated Iran's airspace.[38] On the other hand, US Central Command claimed that the drone was attacked in international airspace over the Strait of Hormuz.[39] President Trump also stated that someone from the Iranian side had made a 'big mistake' and that it would have made a 'a big, big difference'

23 Ibid, p 6.

24 Ibid, p 140.

25 Joint Comprehensive Plan of Action, 14 July 2015, https://www.justsecurity.org/wp-content/uploads/2015/07/271545626-Iran-Deal-Text.pdf, (last accessed 3 November 2019).

26 Rezaei, *Iran's Nuclear Program,* p 226.

27 F. Rezaei, *Iran's Foreign Policy After the Nuclear Agreement: Politics of Normalizers and Traditionalists*, Palgrave Macmillan, 2019, p 33.

28 The White House, 'President Donald J. Trump is Ending United States Participation in an Unacceptable Iran Deal', 8 May 2018, https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-ending-united-states-participation-unacceptable-iran-deal/ (last accessed 20 November 2019).

29 Global Firepower, 'United States Military Strength', https://www.globalfirepower.com/country-military-strength-detail.asp?country_id=united-states-of-america, (last accessed 3 November 2019).

30 Ibid.

31 Ibid.

32 Stockholm International Peace Research Institute, 'Modernization of World Nuclear Forces Continues Despite Decrease in Overall Number of Warheads: New SIPRI Yearbook Out Now', 17 June 2019, https://www.sipri.org/media/press-release/2019/modernization-world-nuclear-forces-continues-despite-overall-decrease-number-warheads-new-sipri, (last accessed 3 November 2019).

33 Global Firepower, 'Iran Military Strength', https://www.globalfirepower.com/country-military-strength-detail.asp?country_id=iran, (last accessed 3 November 2019).

34 Ibid.

35 Rezaei, *Iran's Foreign Policy After the Nuclear Agreement,* p 36.

36 'Gulf of Oman Tanker Attacks: US Says Video Shows Iran Removing Mine', *BBC News*, 14 June 2019, https://www.bbc.com/news/world-middle-east-48633016.

37 M. Landler, J. E. Barnes and E. Schmitt, 'U.S. Puts Iran on Notice and Weighs Response to Attack on Oil Tankers', *The New York Times*, 14 June 2019, https://www.nytimes.com/2019/06/14/us/politics/trump-iran-tanker-hormuz.html.

38 T. Law, 'Iran Shot Down a $176 Million U.S. Drone. Here's What to Know About the RQ-4 Global Hawk', *Time*, 21 June 2019, https://time.com/5611222/rq-4-global-hawk-iran-shot-down/

39 Ibid.

if this had been an attack on a piloted vehicle.[40] The US administration revealed that an armed attack on three Iranian sites had been ordered, but this had been cancelled at the last moment.[41] However, it seems that the US did respond to this and the other attacks on the Japanese and Norwegian tankers. Some newspapers reported that multiple computer systems in Iran, including ones that control Iranian missile launches, were the target of cyber-attacks.[42] Nevertheless, it has been impossible to confirm this information as Heather Babb, a Pentagon spokeswoman, stated, 'as a matter of policy and operational security, we do not discuss cyberspace operations, intelligence or planning'.[43]

The shooting down of the US military drone and the alleged US cyber-attack response have raised several very important issues related to the classification of armed conflicts.[44] First, whether one particular small-scale attack could be considered an IAC is controversial. Second, even if such an attack could trigger the existence of an IAC, the issue is whether Iran's shooting down of the US drone was intentional or not, and whether this could change the conclusion on the existence of an IAC. Third, the issue of whether alleged US cyber-attacks could be seen as part of an armed conflict between the US and Iran is also very controversial. Finally, the issue of the temporal application of international humanitarian law (IHL) in this particular case needs to be addressed.

The shooting down of the US military drone and the alleged US cyber-attack response have raised several very important issues related to the classification of armed conflicts.

As far as the first issue is concerned, an IAC exists whenever there is a resort to armed force between two states, and there is no requirement that the use of force between the states reaches a certain level of intensity (this is, of course, the difference between the criteria for the existence of an IAC and that for non-international armed conflicts). However, there are some authors who argue that a certain level of intensity must be a criterion for an IAC too.[45] In any case, in this concrete situation the question is: could a single attack on an unarmed drone be enough to trigger the existence of an IAC? A leading scholar in this field, Michael Schmitt, concludes that 'the Iranian downing of the drone initiated an international armed conflict between the United States and Iran to which IHL applied'.[46] Although Schmitt does not provide any argumentation on this issue, it seems that his conclusion is in accordance with the International Committee of the Red Cross' (ICRC) new Commentaries on the Geneva Conventions (GCs), which stipulate that even 'minor skirmishes between the armed forces, be they land, air or naval forces, would spark an international armed conflict and lead to the applicability of humanitarian law'.[47] The great majority of IHL scholars also agree on this issue: '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'.[48]

A practical argument for the interpretation of Common Article 2 of the GCs, which reflects the customary rule in this field, as covering even this kind of 'incident' – the shooting down of a military drone – is that this is the only way to fulfill the goals of IHL. Take, for example, the issue of the applicability of the proportionality rule in 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. Consequently, our conclusion is that even the shooting down of an unarmed military drone is enough to trigger the application of IHL.

As mentioned above, President Trump tweeted that the attack on the drone was probably unintentional. This issue of whether or not the drone was shot down intentionally is very relevant in the context of establishing the existence of an armed conflict between the US and Iran in June 2019. The 2016 ICRC Commentaries on the GCs state that IHL would not be applicable if clashes between armed forces of states 'are the result of a mistake or of individual ultra vires acts, which ... are not endorsed by the State concerned. Such acts

40 M. D. Shear, E. Schmitt, M. Crowley and M. Haberman, 'Strikes on Iran Approved by Trump, Then Abruptly Pulled Back', *The New York Times*, 20 June 2019, https://www.nytimes.com/2019/06/20/world/middleeast/iran-us-drone.html.

41 US President Donald Trump tweeted that he stopped the attack because he was told by a US general that 150 civilians would die as a consequence and he concluded that this would disproportionate.

42 J. E. Barns, T. Gibbons-Neff, 'U.S. Carried Out Cyberattacks on Iran', *The New York Times*, 22 June 2019, https://www.nytimes.com/2019/06/22/us/politics/us-iran-cyber-attacks.html?module=inline.

43 J. McLaughlin, Z. Dorfman and S. D. Naylor, 'Pentagon Secretly Struck Back Against Iranian Cyberspies Targeting U.S. Ships', Yahoo News, 22 June 2019 https://news.yahoo.com/pentagon-secretly-struck-back-against-iranian-cyber-spies-targeting-us-ships-234520824.html.

44 Of course, they have also raised several issues in the field of jus ad bellum, but these are beyond the scope of this article.

45 International Law Association Use of Force Committee, F*inal Report on the Meaning of Armed Conflict in International Law*, 2010; C. Greenwood, 'Scope of Application of International Humanitarian Law', in D. Fleck (ed), *The Handbook of International Humanitarian Law, 2nd edn*, Oxford University Press, 2008, p 48.

46 M. Schmitt, 'Top Expert Backgrounder: Aborted U.S. Strike, Cyber Operation Against Iran and International Law', 24 June 2019, https://www.justsecurity.org/64669/top-expert-backgrounder-on-aborted-u-s-strike-and-cyber-operation-against-iran-and-international-law/, *Just Security* (last accessed 3 November 2019).

47 ICRC, 2016 Commentary on Art 2 of the First Geneva Convention: Convention (I) for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field (GC I), §237. This is also in line with conclusions of previous ICRC Commentaries from 1952.

48 J. Grignon, 'The Beginning of Application of International Humanitarian Law: A Discussion of a Few Challenges', 96 *International Review of the Red Cross (IRRC)* 893 (2014) 152.

would not amount to armed conflict'.[49] In this particular situation, however, the attack on the US military drone was subsequently endorsed by state officials of Iran. Therefore, the condition that the 'highest authorities of the State must (previously or subsequently) additionally approve the use of force'[50] was met in this situation, even if the attack was indeed due to an initial mistake of one or more members of the Iranian armed forces. It should also be recalled that as the drone belonged to the US armed forces, the issue of whether it was shot down in Iranian airspace or above international waters is not relevant to the existence of an IAC.[51] That is, the attack on the armed forces of a state is 'clearly sufficient' for triggering an IAC, regardless of whether the attack occurred within or outside the territory of that state.[52] On the other hand, attacks which occur outside the territory of a state must be directed against the armed forces of that state in order to trigger an IAC.[53] Hence, the attacks on the Japanese and Norwegian tankers in the Gulf of Oman were not enough to trigger the existence of an armed conflict, even if they could be attributed to Iran.

However, cyber-attacks pose a serious challenge to the issue of the existence of an IAC, as states are reluctant to comment on their cyber operations.

The next issue which needs to be analyzed in the context of the shooting down of the US drone by Iran is that of the alleged US counter cyber-attack on several targets in Iran. First of all, it is well known that the existence of armed conflict must be determined on the basis of facts and not animus belligerendi.[54] However, cyber-attacks pose a serious challenge to the issue of the existence of an IAC, as states are reluctant to comment on their cyber operations. As already stated, this has been the case with US cyber operations against Iranian targets in June 2019. Finally, news reports on these alleged attacks do not provide information on whether they were in response to the shooting down of the drone or were previously planned.

It is therefore impossible to offer a definitive conclusion on the nature of these alleged cyber-attacks and their consequences for the classification of armed conflict between Iran and the US. Rather, only a couple of general statements can be made. First, it should be stressed that there is an emerging consensus among IHL scholars that this branch of international law 'applies to cyber operations undertaken in the context of an armed conflict'.[55] This has been confirmed by the new ICRC Commentaries, which stipulate that when 'cyber activities are carried out by one state against another in conjunction with and in support of more classic military operations, there is no doubt that such a situation would amount to an international armed conflict'.[56] As previously mentioned, in this particular case one does not know the details related to the alleged US cyber-attacks against targets in Iran. That is, it is not clear whether they took place as a direct response to the shooting down of the US military drone or if they were previously planned. Generally speaking, this could be important as there was a consensus among the experts working on Tallinn Manual 'that there must be a nexus between the cyber activity in question and the conflict for the law of armed conflict to apply to that activity'.[57] It should be stressed, nevertheless, that if one could prove that US Cyber Command did carry out a cyber-attack on various targets in Iran in June 2019, that would, in our opinion, be enough to trigger an IAC between the two countries even without the previous shooting down of the drone. That is to say, at least in some circumstances, even when cyber activities are the only means by which hostile actions are taken by states, they could trigger the application of IHL rules (both the Tallinn Manual and ICRC Commentaries stress that these situations are complex).

Be that as it may, this case is one more illustration of the various challenges existing in the field of classification of armed conflicts and cyber-attacks. However, it seems that the key challenge is the usual lack of information concerning these kinds of attacks and the official policies of many states to not disclose them.[58]

The last issue that needs to be addressed here is the end of the application of IHL in this particular situation. The end of armed conflict is a difficult issue.[59] It should be stressed that the end of the US–Iran IAC is, like the beginning of it, based on purely factual criteria.[60] However, because the IAC threshold is low 'and because it would be both impractical

49 ICRC, 2016 Commentary on Art 2, GC I, §241.

50 M. Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Edward Elgar Publishing, 2019, p 169.

51 The location of attack is, of course, relevant with regard to the (il)legality of that action from the perspective of public international law, but this issue is beyond the scope of this article.

52 Sassòli, *International Humanitarian Law*, p 170.

53 Ibid, p 171.

54 Grignon, 'The Beginning of Application of International Humanitarian Law', 142.

55 See, e.g., M. N. Schmitt (General ed.), T*allinn Manual 2.0 on the International Law Applicable to Cyber Operations*, Cambridge University Press, 2017, p 375; L. Swanson, 'The Era of Cyber Warfare: Applying International Humanitarian Law to the 2008 Russian-Georgian Cyber Conflict', 32 *Loyola of Los Angeles International and Comparative Law Review* (2010); G. D. Solis, 'Cyber Warfare', 219 Military Law Review (2014).

56 ICRC, 2016 Commentary on Art 2, GC I, §254.

57 Schmitt, *Tallinn Manual*, p 376.

58 Ibid, p 377.

59 M. Milanovic, 'The End of Application of International Humanitarian Law', 96 *IRRC* 893 (2014) 164.

60 ICRC, 2016 Commentary on Art 2, GC I, §276.

and would open the door to abuse to treat every lull in the fighting as an end to an IAC and each resumption of combat as the start of a new one, hostilities must end with a degree of stability and permanence in order for the IAC to be terminated'.[61] Even though this conclusion is reasonable and well supported by the doctrine of IHL, it is hardly applicable to the kinds of situations where the application of IHL is triggered by one event – in this case, the shooting down of a US military drone by Iran. In such situations, it is probably more reasonable to rely on a principle used by Marko Milanovic and quoted in the ICRC Commentary on Common Article 2, which lays down that 'the application of IHL will cease once the conditions that triggered its application in the first place no longer exist'.[62] This would mean that IHL had ceased being applicable to the US and Iran in 2019 as soon as the drone was shot down or when the alleged cyber-attack on targets in Iran stopped. In order to conclude definitely that an IAC is over, one should be able to arrive at the judgment that there is no real likelihood of a resumption of hostilities.[63] Given that after June 2019 there were no further hostilities between the US and Iranian armed forces, it is now reasonable to conclude that this IAC is over.

WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

There have, so far, been no allegations, investigations and prosecutions concerning the shooting down of the US drone or the alleged cyber-attacks on Iran.

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61 Milanovic, 'The End of Application of International Humanitarian Law', 171.

62 ICRC, 2016 Commentary on Art 2, GC I, §281.

63 Milanovic, 'The End of Application of International Humanitarian Law', p 174.

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