

# Guest Post: Geoff Corn on “The United States and Iran are in an Armed Conflict, and it is Time to Act Accordingly”

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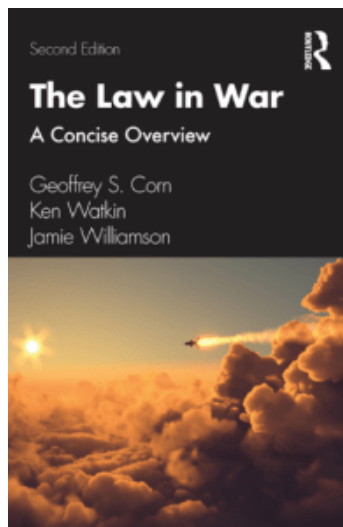
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Today’s guest post by my friend Professor [Geoff Corn](#) could not be more timely. He addresses the legal dimension of the U.S.’ strikes following the [latest attacks from groups affiliated with Iran](#) against U.S. and coalition forces (who are in Syria to [battle the remnants of the Islamic State](#)).

Geoff offers a provocative yet carefully reasoned argument that given the continuous hostilities from Iranian-backed militias, the U.S. as a matter of international law “is engaged in an ongoing – albeit low-level – armed conflict with Iran” – and should start being more vocal about that fact. This is important because as he points out “international law does not require a distinct self-defense justification for every use of force in the context of an ongoing armed conflict.”

So do the facts show there is an ongoing armed conflict with Iran?



Consider, as Geoff does, that “according to [data gathered by JINSA](#), since 2021 Iran is responsible for roughly 80 attacks against U.S. personnel in Iraq and Syria.” Nevertheless, the U.S. seems to be treating each attack as an individual action requiring a separate justification under the international law self-defense framework. Geoff contends (persuasively!) this is unnecessary and counterproductive.

I find the power of Geoff's arguments on law of war issues lies in the fact that they are informed not just by superb legal scholarship and a thorough grasp of military military matters, but also by a keen understanding as to how things can play out in the proverbial 'real world.' This why I am so excited about the new (2nd) edition of [The Law in War: A Concise Overview](#) by Geoff and his co-authors Ken Watkin and Jamie Williamson. It's just been released and it addresses some of the most difficult issues in international law today. I've ordered a copy and I recommend you do as well!

In the meantime, read Geoff's fascinating essay!

## **The United States and Iran are in an Armed Conflict, and it is Time to Act Accordingly**

by Prof. Geoff Corn

It is time for the United States to acknowledge the obvious: it is engaged in an ongoing – albeit low-level – armed conflict with Iran. That doesn't mean we are in a "war" with Iran. It does mean, however, that the United States is legally justified in identifying and neutralizing elements of Iranian military power – to include their proxy militias – without the need to engage in a separate self-defense analysis for every military engagement.

Acknowledging this international legal reality means that the latest 'tit for tat' military engagement against Iranian proxies in Syria, with the U.S. conducting an airstrike in response to an Iranian missile attack that killed and wounded U.S. personnel, was not a proverbial one-off.

Instead, it represents a continuation of a pattern of hostilities that has been ongoing arguably for decades, but at least since Iranian-backed, -trained, and -supplied militias killed or injured hundreds of U.S. military personnel in Iraq.

More recently, according to [data gathered by JINSA](#), since 2021 Iran is responsible for roughly 80 attacks against U.S. personnel in Iraq and Syria. Yet, in that same time, the United States has only responded four times, [suggesting](#) the U.S. decision-makers may be hesitant to engage in much more than very limited action; action that certainly appears insufficient to deter Iran and its proxies from continuing this pattern of provocation. Indeed, General Erik Kurilla, Commander of U.S. Central Command, recently told Congress as much, [testifying](#) that "Iran is undeterred from its malign activities."

Deterrence is an obviously critical policy justification for the use of military force, but whether such military action complies with international law is a distinct question. Absent United Nations Security Council authorization, any action in response to an unlawful attack on the United States – to include its military personnel abroad – must qualify as a legitimate act of individual or collective self-defense within the meaning of international law.

Such action is legally justified only in response to an actual or *imminent* armed attack, and pursuant to the strict test of necessity, may be continued only as long as is necessary to defend against that armed attack.

When each Iranian act of unlawful aggression is treated as a *distinct* event, this means that retaliatory action – even when motivated by a legitimate interest in deterring future unlawful attacks – may fall outside the scope of lawful self-defense. Some scholars, such as [Kenneth Watkin](#), argue there is valid legal justification for a robust military response – what may appear to be retaliatory – as a legitimate exercise of self-defense in response to an ongoing threat indicated by a pattern of proverbial pin pricks.

Other experts, however, reject anything resembling retaliation as falling with the scope of self-defense justification. In this view, a state's *post-attack* response would be no different for a person walking down the street unlawfully victimized by an assailant: use of force would be justified to end the attack, but the law of self-defense generally will not permit chasing the assailant *after* the attack to retaliate.

But international law does not require a distinct self-defense justification for every use of force in the context of an ongoing armed conflict. This does not mean international law plays no role in such situations; quite the contrary. But once an armed conflict is ongoing, the *legality* of military response is established and international law shifts to regulating the *manner* of operational execution.

At the operational level of military action, the difference between a military operation conducted as an act of self-defense and one within the context of an ongoing armed conflict is somewhat transparent. At the strategic level, however, the equation is far different.

Retaliatory action is simply not permitted within the self-defense framework of international law. But this limitation does not constrain U.S. operations *if* they are involved in an ongoing armed conflict. Indeed, this principle was emphasized by the Legal Advisor to the Department of State in a highly authoritative speech explaining the Obama administration's legal framework for military operations against transnational terrorist organizations.

According to [Mr. Brian Egan](#):

*In the view of the United States, once a State has lawfully resorted to force in self-defense against a particular armed group following an actual or imminent armed attack by that group, it is not necessary as a matter of international law to reassess whether an armed attack is imminent prior to every subsequent action taken against that group, provided that hostilities have not ended.*

Accordingly, determining whether or not the United States needs a new legal justification, one hinging on self-defense, to respond to each attack by Iran (and its proxies) first requires assessing whether these are isolated incidents or part of an ongoing armed conflict.

Unfortunately, while international law provides a widely accepted definition of armed conflict between states – a dispute that results in the intervention of armed forces – it offers very little guidance on how to assess the duration of such a conflict. At some point, however, common sense dictates recognition that a continuing pattern of aggression – roughly 80 attacks in two years – indicates broader hostilities.

So why hasn't the United States been more vocal in asserting such an armed conflict? The answer almost certainly implicates a myriad of political, diplomatic, and policy considerations. For example, even if there is an ongoing armed conflict, pretending it is non-existent to enhance the potential for diplomatic engagement and reduce the risk of escalation may be a compelling consideration.

There are also political considerations of a President indicating our involvement in such an armed conflict, including more aggressive congressional scrutiny and demands that the President request and obtain express statutory authorization for continuing the hostilities – an ostensible requirement imposed by the War Powers Act.

There is cost in perpetuating this pretense. First, for those like Gen. Kurilla concerned by unrestrained Iranian malign activity, the absence of U.S. acknowledgment that armed conflict exists results in problematic limitations on the U.S. ability to effectively deter Iran from future acts of unlawful violence.

Second, it leads to stretched and distorted theories of what counts as an “imminent” attack to fit the square peg of retaliatory action into the round hole of self-defense. Nowhere was this more obvious than in the Trump Administration's asserted legal justification for its strike on Iranian Major General Qassem Soleimani. In an apparent recognition that its initial claim of self-defense was implausible, the Administration shifted position and seemed to assert that the attack was part of an ongoing armed conflict. As one [commentator](#) noted,

In this new report, the Trump administration relies on Article II and the 2002 Authorization for Use of Military Force Against Iraq to justify the U.S. strike. The administration abandoned its earlier claim of an imminent attack, and instead writes that the purpose of the action was to “deter Iran from conducting or supporting further attacks against United States forces and interests” and to “degrade Iran's and Qods Force-backed militias' ability to conduct attacks.”

It is illogical to perpetuate the pretense that the U.S. is *not* engaged in an ongoing armed conflict with Iran. Such a false characterization of operational and strategic reality produces legal and practical negative consequences. Legally, it reinforces the erroneous expectation that the U.S. must restrict its military actions to those falling within the strict limitations of national self-defense; practically it limits the military options available to deter and neutralize Iranian proxies that threaten U.S. forces.

Acknowledging the existence of an ongoing armed conflict does not necessitate an “all or nothing” response; when, where, and how to deal with the Iranian threat is a complex and sensitive issue entrusted to the President. But our nation – and more specifically our ability to deter Iran from future acts of hostility – will be better served by treating the Iranian threat no differently than we treated the ISIS threat: an enemy in an ongoing armed conflict.

***About the author:***



Lieutenant Colonel Geoffrey Corn (USA, ret.) is the George R. Killam, Jr. Chair of Criminal Law and Director of the Center for Military Law and Policy at Texas Tech University School of Law. He is also a Distinguished Fellow at the Jewish Institute for National Security of America (JINSA).

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