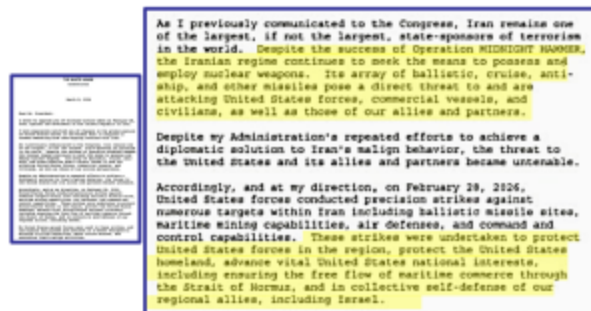


# Three independent justifications for the U.S./Israeli operations against Iran

[sites.duke.edu/lawfire/2026/03/13/three-independent-justifications-for-the-u-s-israeli-operations-against-iran/](https://sites.duke.edu/lawfire/2026/03/13/three-independent-justifications-for-the-u-s-israeli-operations-against-iran/)

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March 14, 2026



[International Law](#) / [Iran](#) / [Use of Force](#) / [WMD](#)

After the U.S. and Israeli began the strikes against Iran that killed Iranian Supreme Leader Ayatollah Ali Khamenei and attacked a wide variety of Iranian military assets, Russian President Vladimir Putin denounced the operation as “a cynical violation of all norms of human morality and international law.”

Shortly thereafter, [PBS reported](#) that UN Secretary-General António Guterres said “the U.S. and Israeli airstrikes violated international law, including the U.N. Charter.” Since then what has emerged is something of an echo chamber of [academics, media writers, and other pundits](#) insisting as Putin does that there is no plausible basis under international law to justify the strikes.

Indeed, as Professor [Julian Ku](#) indicated last week in a must-read [op-ed](#), a “[large segment](#) of the international legal academy” has already drawn that conclusion.

**I disagree with that “large segment”** of the international legal academy, and in this post we’ll unpack the *international* law issues surrounding what the U.S. is calling “[Operation Epic Fury](#)” (OEF) and that Israel is designating “[Operation Lion’s Roar](#).”

(For an analysis of U.S. *domestic* law issues see “[Without a declaration of war, do the attacks on Iran violate the Constitution?](#)”) Just as a reminder, there are [two separate legal regimes](#) at play here: *international* law and U.S. *domestic* law. As one source [explains](#):

“International law primarily focuses on the rights, obligations, and responsibilities of states and international actors, including international organizations and individuals. Domestic law, in contrast, governs the conduct and interactions of individuals, organizations, and entities within a specific country.

Often, analysis under both bodies of law reaches the same conclusion, but a particular activity could be legal under international law, yet prohibited by U.S. domestic law...and vice versa. Because there is overlap between the discussions of domestic and international law, I will repeat some of what I said in the [previous post](#).

To be clear, there is certainly a legitimate policy discussion to be had about whether or not the attacks on Iran make strategic sense for the U.S., but that is a rather different question from an *objective* determination of *legality* (or illegality).

I find that there are three independent bases that plausibly justify the strikes.

### ***The US rationale(s)***

Let's begin by recognizing that several U.S. government [officials have mentioned various purposes](#) for OEC. Ed Carr, deputy editor of the *Economist*, said this on a March 6th [podcast](#):

*America has, by my count, five reasons for going to war. There's a nuclear programme. There's the missile programme and how that extends across the region. There is the violence used by the regime against its people. And there's a regime change itself. And I think there's also a kind of reckoning of history. Trump in his eight-minute video on the night the attack started went all the way back to the hostage crisis...*

For the moment, let's take a look at what the White House formally said in its [March 2 letter to Congress](#):



As I previously communicated to the Congress, Iran remains one of the largest, if not the largest, state-sponsors of terrorism in the world. Despite the success of Operation MIDNIGHT HAMMER, the Iranian regime continues to seek the means to possess and employ nuclear weapons. Its array of ballistic, cruise, anti-ship, and other missiles pose a direct threat to and are attacking United States forces, commercial vessels, and civilians, as well as those of our allies and partners.

Despite my Administration's repeated efforts to achieve a diplomatic solution to Iran's malign behavior, the threat to the United States and its allies and partners became untenable.

Accordingly, and at my direction, on February 28, 2020, United States forces conducted precision strikes against numerous targets within Iran including ballistic missile sites, maritime mining capabilities, air defenses, and command and control capabilities. These strikes were undertaken to protect United States forces in the region, protect the United States homeland, advance vital United States national interests, including ensuring the free flow of maritime commerce through the Strait of Hormuz, and in collective self-defense of our regional allies, including Israel.

### ***International law basics***



International law on the use of force is principally based on the UN Charter. [Article 2 \(4\)](#) of the Charter provides:

**All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.**

There are a number of exceptions to the prohibition on the use of force, the most important being set out in [Article 51](#) of the Charter. It addresses self-defense and, in the part most relevant to our discussion, states: **“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations...”**

#### ***Anticipatory self-defense and “imminence”***

Although Article 51 seems to limit self-defense to situations where attacks have already taken place, the “inherent right” language is widely understood to incorporate interpretations of international law that existed when the Charter entered into force. One interpretation accepted by the U.S. and [many other nations](#) is that there is an inherent right to “anticipatory self-defense.” The U.S. Air Force’s [Law of Air, Space, and Cyberspace Operations](#) (4th ed. 2020) [p. 5] explains:

It is well accepted in international law that the inherent right to self-defense, as referenced in Article 51, includes the right to use force in anticipatory self-defense to prevent an imminent attack. Anticipatory self-defense was first expressed in the 1837 Caroline case and subsequent correspondence between then-U.S. Secretary of State Daniel Webster and British Foreign Secretary Lord Ashburton. Secretary Webster posited that a State need not suffer an actual armed attack before taking defensive action, but may engage in anticipatory self-defense if the circumstances leading to the use of force are “instant, overwhelming, and leaving no choice of means and no moment for deliberation.” (Citations omitted.)

Similarly, the Pentagon’s [Law of War Manual](#) notes (§ 1.11.5.1), “[u]nder customary international law, States had, and continue to have, the right to take measures in response to imminent attacks.”

It is these references to imminence that seem to animate the critics as they argue that there is no evidence that there was an imminent attack from Iran. As Aviva Klompas said in an op-ed for [USA Today](#): “The common premise behind these objections is that the strike was unjustified because there was no immediate – i.e. “[imminent](#)“ – threat.” However, she contends “[t]hat premise is wrong.”

Let’s examine why she – and others – think that.

**Why is this important? In his 2023 *Lawfire*<sup>®</sup> post, “[The United States and Iran are in an Armed Conflict, and It’s Time to Act Accordingly](#),” Professor [Geoff Corn](#) explained that if the US was already in an *ongoing armed conflict* then, as a matter of international law, it is not relevant whether or not Iran happened to present an imminent threat immediately prior to the attack.**

Geoff cites [Mr. Brian Egan](#), the former legal advisor to the State Department during the Obama administration as saying:

*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.* (Emphasis added.)

***Was the U.S. already in an armed conflict before the recent attack?***



In the Klompas article noted above, the author contends that the U.S. has been in an armed conflict for decades, dating from the 1979 takeover of the U.S. Embassy in Tehran. She enumerates other malign Iranian actions since that time, and insists they amount to an “unbroken chain of hostile acts carried out by the Iranian regime or its proxies, targeting American personnel, allies and interests across multiple theaters.”

Klompas is not alone in making the argument. Former Secretary of State [Condoleezza Rice](#) makes a similar argument saying;



*“Iran has been at war with us for at least 47 years, all the way from 1979,” Rice said in an interview with Fox News anchor Bret Baier on “Special Report.”*

*“They took our embassy hostage... They were responsible for the killings of 300 plus Marines in Lebanon,” she added, noting that Iranian-made roadside bombs were responsible for a large share of U.S. casualties in Iraq.*

Likewise, military analyst [John Spencer](#) contends, “Iran started a war against the United States in 1979. It has never stopped.” Spencer points to more recent events:

*During the Iraq War, Iranian-backed militias killed 603 U.S. service members, according to Pentagon assessments. Iranian-supplied explosively formed penetrators tore through American armored vehicles. I know this personally. My soldiers and I faced those weapons. These were not isolated incidents. They were part of a deliberate strategy by Tehran to attack American forces.*



Mr. Spencer

*The campaign never ended. It evolved.*

*In January 2020, Iran fired ballistic missiles at U.S. bases in Iraq. More than 100 American service members were later diagnosed with traumatic brain injuries. Between October 2023 and early 2024, Iranian-backed militias conducted more than 170 attacks on U.S. forces in Iraq and Syria. Assassination plots targeting senior American officials have been disrupted on U.S. soil. The regime’s reach is not theoretical.*

*For 47 years, the Islamic Republic has targeted Americans directly or through proxies.*

Similarly, in his 2023 essay, Professor Corn says Iran has engaged in “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.”

Opinion

## You bet this is a war of choice. Just not America's.

U.S. military action in Iran is justified because of longstanding armed conflict.

By [Michael O'Hanlon](#) and [Orde Kittrie](#)

Geoff has not changed his views. In [“You bet this is a war of choice. Just not America's,”](#) a just-published op-ed in the *Washington Post* (co-authored with law professor [Orde Kittrie](#)), the two scholars said:

Iran's assaults against U.S. personnel, bases, ships and Israel, which have been ongoing for at least the past several years, triggered [the right to self-defense], as reflected in the military responses ordered by Trump and President Joe Biden against the regime and its proxies. **That U.S. right of self-defense continues until Iran's willingness or capacity to continue such aggression ends.**

**[International law](#) does not require a distinct self-defense justification for every attack conducted once the right of self-defense is triggered.** Once that right is initiated, military action is justified to achieve the overall self-defense objective, in this case, terminating Iran's capacity to strike the United States and its allies. (Emphasis added.)

In a new essay on [Just Security](#), scholar [Ken Watkin](#), a retired flag officer who was once the senior military lawyer in the Canadian forces, concludes:

The 2026 Operation Epic Fury is **best seen as a continuation of an already existing armed conflict with Iran.** This means that the analysis of self-defense must be considered in the context of an ongoing state of war between the countries involved, and as it turns out more broadly within the region. Rather than focus on individual attacks, the law needs to be applied more realistically by considering the full scope of the hostilities.

### ***Considerations as to the kinds of acts that acts can trigger (or continue) an armed conflict***

As a matter of international law, an armed conflict governed by the law of war is fact-specific determination, and can exist even if a party to it denies it. It is typically triggered by a use of force.

What amounts to a “use of force” in international law is not always intuitive. For example, in the 1986 case of [Military and Paramilitary Activities in and Against Nicaragua](#) (Nicaragua), the International Court of Justice (ICJ) found (Pare. 228) that merely arming and training a hostile group amounted to a use of force in violation of the UN Charter.

However, the ICJ concluded that a “use of force” as found in Article 2 (4) of the Charter did not necessarily equate to an “armed attack” as used in Article 51 that would permit a kinetic response. The U.S. has never accepted that construct. (And, per [Article 59 of the ICJ Statute](#) it is not obliged to do so with respect to any matter beyond the Nicaragua case itself.)

In a [2012 speech](#) Harold Koh, the State Department Legal Advisor at the time, acknowledged “that some other countries and commentators have drawn a distinction between the ‘use of force’ and an ‘armed attack,’” and view ‘armed attack’ – triggering the right to self defense – as a subset of uses of force, which passes a higher threshold of gravity.” Koh described the U.S. view:

***The United States has for a long time taken the position that the inherent right of self defense potentially applies against any illegal use of force. In our view, there is no threshold for a use of deadly force to qualify as an “armed attack” that may warrant a forcible response. But that is not to say that any illegal use of force triggers the right to use any and all force in response – such responses must still be necessary and of course proportionate.***



Dean Koh

Thus, even if Iran only armed and trained proxies to commit acts against the U.S. or its allies, that could be sufficient to engage in acts of self-defence until the threat is extinguished.

There is another nuance in international law that may be relevant in considering Iranian activities over the years: a defensive armed conflict can arise and persist based on an “accumulation of events.” In a 2018 [essay](#) Francisco Lobo explained:

[I]n practice, the accumulation of events doctrine has been relied upon by several states, as documented by Tom Ruys in his canonical [monograph](#) on the concept of an armed attack under the U.N. Charter. Ruys explains that, according to this doctrine, **“incidents that would in themselves merely constitute ‘less grave uses of force’, can, when forming part of a chain of events, qualitatively transform into an ‘armed attack’ triggering the right of self-defence”** (p. 168).

Though always mindful of the risk of disproportionate reactions, Ruys provides evidence (albeit not unequivocal according to him) that several states in addition to Israel have relied on this doctrine in the past, including the United States, Russia, China, Lebanon, Iran, Iraq, Liberia and Sudan. Further, Ruys contends that the International Court of Justice itself has “implicitly” endorsed the doctrine in the [Nicaragua](#), [Oil Platforms](#), and [Democratic Republic of the Congo v. Uganda](#) cases. Ruys also points out that the doctrine enjoys considerable support among legal scholars, including such prominent scholars as [Ian Brownlie](#), [Rosalyn Higgins](#) and [Yoram Dinstein](#).

***When does an armed conflict end?***

International law is unsettled as to precisely when an international armed conflict ends. [Harvard Law School's Program on International Law and Armed Conflict](#) provided this analysis in 2017:

The ICTY [International Criminal Tribunal for the former Yugoslavia] is one exception. In 1995, in its influential *Tadić* decision, the ICTY Appeals Chamber held—and numerous ICTY Trial Chambers have since endorsed the approach—that

an armed conflict exists whenever there is a resort to armed force between States .... [IHL] applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities ***until a general conclusion of peace is reached***.... Until that moment, [IHL] continues to apply in the whole territory of the warring States ..., whether or not actual combat takes place there.

The ICTY's "general conclusion of peace" formulation concerning the end of application of IHL to an IAC is endorsed in the U.K. Ministry of Defence's *The Joint Service Manual of the Law of Armed Conflict* (2004), which explains, in a footnote, that "[t]his [ICTY formulation] does not necessarily mean on the conclusion of a *formal peace treaty*."

Unfortunately, as the melancholy record of failed diplomacy shows, there has been no "general conclusion of peace" between the U.S. and Iran, or between Iran and the U.S. ally Israel.

Here's the first justification:

**In summary, the facts make it apparent that there has been an ongoing armed conflict with Iran long prior to OEF. This means that, as a matter of international law, it was *not* necessary to show an "imminent" threat prior to the recent US and Israeli strikes**

At the same time, it is also possible to make a persuasive case that Iran did, in fact, present an imminent threat, given how that term is now understood in international law. Let's examine that alternative theory.

***"Imminence" is no longer strictly a temporal concept***

Thirteen years ago, I wrote an [article](#) in which I concluded at the time that there was not yet sufficient evidence to show that Iran posed an "imminent" threat to the U.S. or Israel (as that term was then understood in international law) to justify a strike on Iran's then nascent nuclear enterprise.

However, the facts today are much more compelling, and **the meaning of “imminence” in international law has evolved in recent years (and particularly since 2016). Once assessed (and still by some) in strictly temporal terms, most authorities now consider it a *contextual* concept.** From the U.S. perspective, then Attorney General Eric Holder [observed](#):



***“The evaluation of whether an individual presents an “imminent threat” incorporates considerations of the relevant window of opportunity to act, the possible harm that missing the window would cause to civilians, and the likelihood of heading off future disastrous attacks against the United States....***

***“Whether the capture of a U.S. citizen terrorist is feasible is a fact-specific, and potentially time-sensitive, question. It may depend on, among other things, whether capture can be accomplished in the **window of time available to prevent an attack and without undue risk to civilians or to U.S. personnel**...In that case, our government has the clear authority to defend the United States with lethal force.”*** (Emphasis added.)

Later, in the Obama Administration’s [Report on the Legal and Policy Frameworks Guiding the United States’ Use of Military Force and Related National Security Operations](#) issued in December 2016, it described the factors used in determining if there was an “imminent” threat:



These **factors** include “the nature and immediacy of the threat; the probability of an attack; whether the anticipated attack is part of a concerted pattern of continuing armed activity; **the likely scale of the attack and the injury, loss, or damage likely to result therefrom in**

the absence of mitigating action; and the likelihood that there will be other opportunities to undertake effective action in self-defense that may be expected to cause less serious collateral injury, loss, or damage.”...[It] is now increasingly recognized by the international community, the traditional conception of what constitutes an “imminent” attack must be understood in light of the modern-day capabilities, techniques, and technological innovations of terrorist organizations. (Emphasis added.)



Many international authorities take a similar approach. For example, in the highly influential [Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations](#), the issue of imminence was addressed. Specifically, the Manual says:

“The majority of the International Group of Experts rejected the strict temporal analysis of imminence. It took particular note of the ‘**last feasible window of opportunity**’ standard.”(Emphasis added.)

Later, the Manual noted that key scholars took a practical approach, given the realities of 21st-century threats:

“For these Experts, the critical question is not the temporal proximity of the anticipatory defensive action to the prospective armed attack, but **whether a failure to act at that moment would reasonably be expected to result in the State being unable to defend itself effectively when that attack actually starts.**” (Emphasis added.)

### ***What kind of threat did the Iranian nuclear enterprise pose?***

Iran has always denied it was seeking a nuclear weapon, and has insisted it was only using nuclear material for peaceful purposes. However, on February 28th [CBS News said](#):

Iran’s stockpile includes uranium enriched far beyond the level needed for most non-military uses like nuclear power or medical applications. The IAEA [said in May](#) that Iran is now “the only non-nuclear-weapon State to produce such nuclear material.”

Even non-military uses like nuclear power can be dangerous in the hands of an untrustworthy power. The [Council on Foreign Relations](#) (CFR) observes:

**The materials, technology, and expertise needed for enrichment can be used to both generate nuclear power and develop nuclear weapons.** Once a country is capable of enriching uranium for nuclear purposes, even peaceful ones, it usually can produce enough material for a nuclear weapon. For that reason, monitoring proliferation is exceptionally difficult. (Emphasis added.)

In a March 7th story, the *New York Times* [provided](#) some additional detail about Iran's enriched uranium:

By the time the United States started its attacks last June, which were designed to debilitate Iran's nuclear facilities, **Iran had amassed an estimated [970 pounds](#) of uranium enriched to 60 percent purity.**

**That brought Iran within days of producing the 90 percent uranium necessary to fuel devastating nuclear weapons. Even 60 percent enriched uranium, when converted to metal, can be used for a crude weapon with roughly the explosive power of the bomb dropped on Hiroshima.** Shortly after Mr. Trump's June attack, Iran kicked the I.A.E.A. inspectors out of the country, and the agency's head, **Rafael Grossi, has said he can no longer say for sure where the enriched uranium is.** He assumed it remains at Isfahan, but he said at a March 2 [news conference](#) that "we hope it has not been removed." (Emphasis added.)

Furthermore, in a March 4th [article](#), CFR concluded:

Iran does not yet have a nuclear weapon, but it has a **long history of engaging in secret nuclear weapons research** in violation of its international commitments. Western analysts say the country has the knowledge and infrastructure to **produce a nuclear weapon in fairly short order** should its leaders decide to do so.

**In weighing the "nature" of the threat in the imminence calculation, there is no question that the sheer destructive power of nuclear weapons is a key factor.** Ken Watkin [explains](#):

*The United States has never lost the title of being the "[Great Satan](#)" with its ally, Israel, not only being called the "[Little Satan](#)", but also **continually being threatened with extinction by Iran.** Shockingly this means Iran, a member nation of the U.N., is committed to destroying another recognized State. This puts Iran in company with Russia with its ongoing [attempt](#) to forcefully absorb Ukraine. These are true threats to the international rules based order. **It is just one indication of what makes Iran's potential possession of nuclear weapons and the means to deliver them (e.g. ,ballistic missiles) such a serious threat to international peace and security.** (Emphasis added.)*

Thus, in assessing “the likely scale of the attack and the injury, loss, or damage likely to result therefrom in the absence of mitigating action,” the uniquely catastrophic threat posed by a potential Iranian nuclear weapon very much supports a finding of “imminence” as that term is now understood.

### ***A military perspective on the “last window of opportunity”***

In evaluating whether there is a “likelihood that there will be other opportunities to undertake effective action in self-defense that may be expected to cause less serious collateral injury, loss, or damage,” the military perspective is key. The respected military expert [Dr. Rebecca Grant](#) wrote on March 6th that the U.S. was nearly too late:

**From a tactical perspective, the scale of the airstrikes unleashed in Operation Epic Fury indicates that the U.S. almost waited too long.** Starting [the campaign to take out](#) Iran’s ballistic missiles and drones required strikes on almost 2,000 aimpoints in just the first few days. That’s one munition per aimpoint, and there could be thousands more to go.

**It was then or never.** Iran planned to stockpile missiles and drones and build a handful of nuclear weapons that no military force could reach.(Emphasis added.)

She added: “Imagine how difficult this job would have been in a few years — especially with Russia and China helping Iran restock.” She also pointed to Secretary of State Marco Rubio’s explanation of the urgency of the situation:

“This operation needed to happen because Iran, in about a year or a year and a half, would cross the line of immunity, meaning they would have so many short-range missiles, so many drones that no one could do anything about it, because they could hold the whole world hostage,” Rubio said on Capitol Hill on Monday. “Look at the damage they’re doing now. And this is a weakened Iran ... imagine a year from now,” he added.

In his [press conference today](#), the Secretary of War emphasized the importance of destroying Iran’s arms industry so it could not build a “conventional umbrella to continue a pursuit of nuclear ambitions.”

He referenced Iran trying to build an inventory of traditional weaponry “to ensure that no one would ever block them from their ability to get nuclear weapons.” Obviously, any delay in the effort to degrade Iran’s military only serves their aim to build such an “umbrella.”



BG Watkin, CF  
(Ret.)



Dr. Grant

Another key military factor was the degraded state of Iran’s air defenses, [especially in the aftermath of the 12-day war](#) in June 2025, which included [“the loss of more than 70 key air defense systems and radar units, significantly reducing the country’s operational capability.”](#)

In December *Forbes* [reported](#) that “Iran faced critical air defense gaps.” Additionally, it said:

A former Iranian president has said his country is highly vulnerable to Israeli airstrikes. He also indirectly acknowledged that Iran’s prior efforts to stand up air defenses against Israel in the regional countries between them have failed. He’s correct on both counts.

“The skies over Iran have become completely safe for the enemy,” [said](#) former Iranian President Hassan Rouhani earlier this month. “We no longer have real deterrence. Our neighboring countries – Iraq, Syria, Lebanon, Jordan – all have airspace controlled by the United States and Israel.”

**A permissive air environment is important as it obviously improves aircrew safety. Moreover, when pilots are not distracted by enemy air defenses while conducting strikes on military objectives, they can deliver more precise attacks, reducing the likelihood of unintended civilian casualties.**

The record so far proves that to be true. At a Pentagon news conference today, it was [reported](#):



Secretary of War Pete Hegseth said Friday at the Pentagon that the **American and Israeli militaries are “picking targets as they choose”** thanks to [aerial dominance over Iran](#).

“The United States is decimating the radical Iranian regime’s military in a way the world has never seen before. Never before has a modern, capable military, which Iran used to have, been so quickly destroyed and made combat ineffective, devastated,” Hegseth said. “We said it would not be a fair fight, and it has not been.”

**“Between our Air Force and that of the Israelis, over 15,000 enemy targets have been struck.** That’s well over 1,000 a day,” Hegseth continued. “No other combination of countries in the world can do that.”

Although any civilian losses are regrettable, [Iran's claims of 1,444 civilian casualties](#) actually show an astonishing level of precision airpower enabled by air dominance. Given that Iran has chosen to locate many of their military targets in urban and other civilian areas, the fact that there is only one civilian death for every ten targets attacked is a testament to the value of air dominance in limiting civilian losses.

**But Iran's weakened air defense state could be ephemeral** as [reports](#) emerged prior to the attacks that "Iran's Revolutionary Guard and the Armed Forces General Staff have been negotiating with commercial partners in China to acquire missiles, drones, and air defense systems as payment for oil shipments." Iran is also apparently [seeking air defense equipment from Russia](#).

**In short, from a *military* perspective, the timing of the strikes may well have been the best "last window of opportunity" before Iran improved its air defenses to a degree that could significantly increase the risks to U.S. and allied forces, as well as to Iranian civilians, of any future effort to halt hostile Iranian activities. Thus, the argument that now is the best time to defang Iran is a strong one.**

***Could Iran attack Americans with a nuclear weapon even before it fielded intercontinental ballistic missiles capable of reaching the U.S. homeland?***

Many critics seem to assume that because Iran might be years away from fielding an intercontinental missile with a nuclear warhead, Iran presents no imminent threat to Americans. However, between [500,000 and one million U.S. citizens](#) are estimated to live in the Middle East, and another [1.5 million live in Europe](#), well within striking distance of Iran's large inventory of mid- and short-range missiles and drones.

In addition, there are other ways a nuclear weapon could be used against the U.S. homeland without Iran possessing ballistic missiles, long-range bombers, or ballistic missile submarines.

Renowned strategist [George Friedman](#) recalls how al-Qaida delivered its attack on the U.S. on 9/11 and points out on [Geopolitical Futures](#) that:

*[G]roups like Hezbollah both remember, praise and might seek to repeat what al-Qaida did, sharing the Islamist ideology, and also being harbored and funded in and by Iran. 9/11 happened. It is not paranoid to imagine that such an attack might happen again given the common ideology.*

***So the idea of a nuclear weapon loaded on a ship under a foreign flag and detonating in New York Harbor is not a paranoid fantasy, but rather an extension of an event that happened. My view was that Trump was pressuring Iran to abandon its nuclear program development. The Iranians refused to do so, negotiations collapsed, and the United States chose war on its terms, rather than allowing Iran to have that option. Remember that the nuclear issue was for Trump the primary issue throughout the period prior to this attack. (Emphasis added.)***

There are other ways an Iranian nuclear weapon might find its way to the U.S. homeland. Consider Ukraine's [Operation Spiderweb](#), where large containers of drones were smuggled deep into Russia by unwitting Russian drivers before they were activated to do significant damage to dozens of Russian aircraft. Given that drug cartels are moving tons of illicit drugs across the border despite heroic drug interdiction efforts, this threat must not be discounted.

### ***What about diplomacy?***

Prior to the attacks, President Trump said he [preferred a diplomatic solution](#), but obviously came to accept it was not possible. John Spencer provides a good summary of the diplomatic efforts:

Diplomacy has been attempted repeatedly over decades. Negotiations, sanctions relief, inspections, back-channel talks. The theory was that integration or incentive would moderate behavior. The historical record shows otherwise. While talks proceeded, Iran continued to fund Hezbollah, Hamas, Shia militias in Iraq, and the Houthis. It continued to refine missiles. It continued enrichment. It continued attacks on Americans.

**Put another way, after years of diplomacy, there was no reason to think that Iran would give up its quest for nuclear weapons and intercontinental ballistic missiles, or its “Death to America” and “Death to Israel” mantras.**



Sources: Center for Strategic and International Studies; CFR research



Dr. Friedman

Here's the second justification:

**Overall, as the meaning of imminence has developed in international law, a fully plausible case can be made that Iran did pose an "imminent" threat, thereby establishing a second, independent legal ground supporting the strikes.**

Let's examine a third possible justification for the operation.

*Iran's massacre of their own people by the Iranian regime: Does the international community care?*

Almost lost in the discussion of the attacks is the recent carnage the Iranian regime inflicted on its own people merely for protesting their denial of human rights. In a January 26th article, [Amnesty International](#) said that beginning on December 28th, Iranians, "outraged at decades of repression," took to the streets by the thousands, "demanding fundamental change and a political system that respects human rights and dignity."



Just before the strikes (February 25th), the *New York Times* published a guest essay ("[40 Iranian Doctors and Nurses Describe a Massacre](#)") by two journalists about a survey of health care providers who described horrifying injuries Iranian security forces inflicted on protesters that killed thousands. The essay reports:

"This regime must end, and the blood of so many young people must not be trampled," a surgical nurse in Isfahan wrote in response to our survey. "The world must not reach agreements with this regime and must help the people of Iran overthrow it."

What we heard repeatedly was a deep fear that the regime would go unpunished. One doctor in Tehran cautioned that without accountability, "any dictator could rise and kill as many as it takes to keep control."

Exactly how many were killed is hard to determine precisely, but at a February 25th conference at Harvard, an Iranian human rights activist [“described the premeditated and systematic massacre of 20,000–30,000 civilians over two nights in January, including families and children.”](#)

Here’s some context: In the 1990s, the late political scientist [R. J. Rummel](#) coined the term [“democide”](#) to describe a totalitarian government’s slaughtering of its own people. Over the years, there have been [various efforts to create an internationally acceptable framework](#) to act to prevent such killings.

In 2005, the concept of [Responsibility to Protect](#) was given life by a UN World Summit Report. As the CFR explains:

This doctrine states that countries have a fundamental responsibility to protect their citizens. If countries failed to do so, then the rest of the world would have a responsibility to intervene. In other words, countries can use all means necessary—including military intervention—to prevent large-scale loss of life.

The effort did not mature into an explicit legal authority to use force to intervene to protect innocents, absent UN Security Council authorization.

Because of some controversial interventions (especially the [2011 NATO intervention in Libya](#) that eventually resulted in regime change), “China and Russia in particular have used their [veto](#) power on the UN Security Council to block other such interventions. As a result, the United Nations has been unable to use military action to mitigate some of the world’s most violent conflicts.”

However, there is at least one major instance in which the international community (or at least key members of it) supported intervention even in the absence of a supporting US Security Council mandate, namely NATO’s operation in Kosovo.

Briefly, NATO acted when it became known that Serbs had killed ([about 2,600](#)) Kosovo Albanians, and raped and displaced thousands more. (Tragically, another 9,426 people [reportedly](#) were killed or disappeared *during* the operation.)

Here’s how the legal assessment of the operation is described in [The Use of Force in International Law: A Case-based Approach](#) (2018):

While opinions differ, the majority of commentators agree that Operation Allied Force was an unlawful use of force, although some add the legally irrelevant qualification that it was nonetheless a ‘legitimate’ one. **Cassese, for example, stated that ‘from an ethical viewpoint resort to armed force was justified. Nevertheless, as a legal scholar, I cannot avoid observing in the same breath that this moral action is contrary to current international law.** The Independent International Commission on Kosovo concluded that the

intervention was **'illegal but legitimate'**. The UK Foreign Affairs Committee found that 'NATO's military action, if of dubious legality in the current state of international law, was **justified on moral grounds'**. (Emphasis added; citations omitted.)

Notably, a scholar contends that “developments in state practice since 1945 might have made it legal under certain circumstances.” For example, another scholar [points out](#):

Successive UK governments have claimed that military force across state borders aimed at ending terrible suffering – without the consent of the target state and if necessary without express UN Security Council authorization – is legally permissible in exceptional circumstances.

Do exceptional circumstances exist in this case? I think this may be one of those very rare instances, but:

**Decide for yourself: do we want to live in a world where Iran can massacre tens of thousands of its own people and have any effort to help them characterized as illegal? Moreover, isn't it possible that, contrary to Putin's opinion, the effort to help them is one rightly justified on moral grounds?**

### *Concluding thoughts*

To reiterate, there is certainly a legitimate *policy* debate to be had about whether the attacks on Iran make strategic sense for the U.S., but that crucial discourse is not helped by conclusory opinions that do not even attempt to wrestle with the convoluted facts and law involved in assessing legality, let alone the morality, of this case.

Though the Pentagon seems to be improving its strategic communication about its aims and the operations to achieve them, the government could do a better job of explaining its legal justifications in more detail. In this regard, I don't think it needs to be a single legal theory, as several justifications may coalesce into a mutually supporting whole.

Many in the legal community have, as Julian Ku [says](#), “too often retreated into a rigid formalism that refuses to grapple with moral and strategic differences everyone else can see.” Ku also warns:

[I]nternational lawyers [need ]to move beyond a mechanical lawful-unlawful calculus and to develop a more openly normative framework — one that assesses the gravity (and not just the imminence) of the threat, the necessity and proportionality of the response in light of the speed and complexity of modern warfare, the risks to civilians, and the systemic consequences for international order.

**My bottom line:**

**Though I agree with Ku's observations, I recognize they (and critiques of them) are worthy of an extended discussion, but for now, the vital *policy* discussions about the conflict should not be encumbered by the seemingly widespread assumption among too many that the operation is palpably illegal, as the facts show that it is not.**

*Remember what we like to say on Lawfire®: gather the facts, examine the law, evaluate the arguments – and then decide for yourself!*

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