

2020

## Talking Foreign Policy: The U.S.–Iran Crisis

TFP Radio Broadcast (Jan. 20, 2020)

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## *Talking Foreign Policy*, January 20, 2020, broadcast: "The US—Iran Crisis"<sup>1</sup>

*Talking Foreign Policy* is a one-hour radio program, hosted by Case Western Reserve University School of Law Co-Dean Michael Scharf, in which experts discuss the salient foreign policy issues of the day. The quarterly broadcast is produced in partnership between Case Western Reserve University, the only US law school with its own foreign policy talk radio program, and WCPN 90.3 FM Ideastream, Cleveland's National Public Radio affiliate. The broadcast on January 20, 2020, addressed the US—Iran Crisis. Archived broadcasts are available for viewing in video format online at [law.case.edu/TalkingForeignPolicy](http://law.case.edu/TalkingForeignPolicy).

Each episode features a regular cast of participants, with Scharf serving as host:

- **The ethicist:** Shannon French, director of Case Western Reserve's Inamori International Center for Ethics and Excellence;
- **The military expert:** Mike Newton, professor of law at Vanderbilt University;
- **The international law professor:** Milena Sterio, law professor at Cleveland State University; and
- **The negotiator:** Paul Williams, president of the Public International Law and Policy Group.

### Participants

Avidan Cover

Shannon French

Michael Scharf

Milena Sterio

Paul Williams

**SCHARF:** As the New Year was getting started, things between the United States and Iran got really tense. Things came to a head when the United States launched a drone strike on January 3, killing a powerful Iranian General near the Iraq Airport.<sup>2</sup> Are we on the brink of a new war in the Middle East? Welcome to *Talking Foreign Policy*. I'm your host, Michael

1. Transcript edited and footnotes added by Caroline Dzeba.

2. Michael Crowley et al., US Strike in Iraq Kills Qassim Suleimani, Commander of Iranian Forces, *NYTimes*, Jan. 3, 2020, <https://www.nytimes.com/2020/01/02/world/middleeast/qassem-soleimani-iraq-iran-attack.html>.

Scharf,<sup>3</sup> dean of Case Western Reserve University School of Law. In this broadcast, our expert panelists will be discussing the 2020 US–Iran crisis. We are joined today by Professor Milena Sterio,<sup>4</sup> a chaired professor at Cleveland State’s Marshall College of Law and a noted international law expert. Milena has been involved in several international law projects in Turkey, Jordan, and Yemen, in the past year. Milena, it is great to have you back on our program.

**STERIO:** Thanks, Michael. It is great to be here.

**SCHARF:** And we also have Associate Dean Avidan Cover, the Director of Case Western Reserve’s Institute for Global Security Law and Policy and a former counsel to Human Rights First. Welcome, Avi.<sup>5</sup>

**COVER:** Thanks for having me.

**SCHARF:** And we are happy to have with us once again Shannon French,<sup>6</sup> a world-renowned military ethicist and director of the Inamori International Center for Ethical Leadership. Dr. French began her career as a professor at the US Naval Academy. Welcome back to *Talking Foreign Policy*, Shannon.

**FRENCH:** Great to be here, Michael.

**SCHARF:** And it wouldn’t be *Talking Foreign Policy* without Paul Williams,<sup>7</sup> who is joining us from Washington, DC. Dr. Williams is the president of the Public International Law and Policy Group, a Nobel Peace Prize

3. Michael Scharf, Case Western Reserve University School of Law, <https://law.case.edu/Our-School/Faculty-Staff/Meet-Our-Faculty/Faculty-Detail/id/142>. Michael Scharf is the dean of Case Western Reserve University School of Law. He has also written and published extensively in the area of international law.

4. Milena Sterio, Cleveland Marshall College of Law, <https://www.law.csuohio.edu/newsevents/featuredfaculty/milena-sterio>. Milena Sterio is the associate dean of Cleveland Marshall College of Law and a renowned international law expert.

5. Avidan Cover, Case Western Reserve University School of Law, <https://case.edu/law/our-school/faculty-directory/avidan-y-cover>. Avidan Cover is the associate dean of Case Western Reserve University School of Law, and Director, Institute for Global Security Law and Policy, at the Frederick K. Cox International Law Center.

6. Shannon French, Case Western Reserve University School of Law, <https://case.edu/law/our-school/faculty-directory/shannon-e-french/>. Shannon French is the Inamori Professor in Ethics, Director of the Inamori International Center for Ethics and Excellence at Case Western Reserve University, a tenured member of the Philosophy Department, and associate professor at Case Western Reserve University School of Law.

7. Paul Williams, American University Washington College of Law, <https://www.wcl.american.edu/community/faculty/profile/pwilliams/bio>. Paul Williams is a professor at American University Washington College of Law. He is also the president of the Public International Law & Policy Group, a Nobel Peace Prize nominated NGO that has provided legal counsel in a dozen peace negotiations over the past twenty-three years.

nominated NGO that has provided legal counsel in a dozen peace negotiations over the past twenty-five years, including in Syria, Iraq, Sudan, and Yemen. Welcome back to our show, Paul.

**WILLIAMS:** Thanks, Michael. It's great to be back.

**SCHARF:** In our first segment, we'll explore how Iran and the US got to the brink of all-out war. Milena Sterio, let's begin with you. It could be argued that the current crisis began a year and a half ago, when President Trump pulled the United States out of the Iran Nuclear Accord.<sup>8</sup> Can you tell us what that agreement did, and why the Trump Administration decided to withdraw the United States from it?

**STERIO:** Sure. So, this agreement, formally known as the Joint Comprehensive Plan of Action, was an agreement signed back in 2015 in Vienna by China, the European Union, France, Germany, Russia, the UK, Iran, and the United States.<sup>9</sup> And it was an agreement in which Iran agreed to reduce its uranium stockpile by about ninety-eight percent over a fifteen-year period, and in exchange the other treaty partners agreed to lift crippling economic sanctions off of Iran. Iran, by the way, also agreed to an international inspection regime, so inspectors from the International Atomic Energy Agency were allowed, through this agreement, to go into Iran and inspect their uranium enrichment facilities. President Trump, as a candidate back in 2016, labeled this deal as a really bad deal and basically pledged to, as he said, tear it up. President Trump said that it was a weak deal, that in fifteen years it was about to expire, he just thought it was a bad deal and that we really should not be engaging with a rogue nation like Iran.

**SCHARF:** So not only did he tear it up, but he had the United States impose crippling sanctions on Iran. Avi Cover, how did Iran respond to that?

**COVER:** So, Iran has taken a series of actions in response to these sanctions, one of which initially was attacking and seizing various oil tankers in the Persian Gulf.<sup>10</sup> It was quite destabilizing. There were negotiations over

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8. Anne Gearan and Karen DeYoung, "Trump Pulls United States Out of Iran Nuclear Deal, Calling the Pact 'An Embarrassment,'" *Wash. Post*, May 8, 2018, [https://www.washingtonpost.com/politics/trump-will-announce-plans-to-pull-out-of-iran-nuclear-deal-despite-pleas-from-european-leaders/2018/05/08/4c148252-52ca-11e8-9c91-7dab596e8252\\_story.html](https://www.washingtonpost.com/politics/trump-will-announce-plans-to-pull-out-of-iran-nuclear-deal-despite-pleas-from-european-leaders/2018/05/08/4c148252-52ca-11e8-9c91-7dab596e8252_story.html).

9. Arms Control Association. *The Joint Comprehensive Plan of Action*. <https://www.armscontrol.org/factsheets/JCPOA-at-a-glance>.

10. Erin Cunningham et al., "US Blames Iran for Attack on Oil Tankers, Releases Video Purporting to Show Iranians Removing Mine," *Wash. Post*, June 13, 2019, <https://www>.

some of this and they ultimately relented in some of those circumstances. But the situation continued to escalate. They shot down a US drone,<sup>11</sup> and in fact, one of the interesting things that—in light of what we’re talking about now—is that it was noted at the time that President Trump showed surprising restraint. There was an expectation in some respects that the United States would act with greater force back then. In particular, Iran also took out Saudi Arabia’s oil refining capacity.<sup>12</sup> Really affected oil markets for a couple of days. And finally, an Iranian-backed militia killed a US contractor on a Kirkuk US military base, on December 27th.<sup>13</sup> This seemed to be a final straw, if you will, that broke the back and led to the crisis that we are now facing.

**SCHARF:** And so, right after that, the United States responded with its airstrikes, is that right?

**COVER:** Yeah. First there were a series of airstrikes that killed about twenty-five militia fighters,<sup>14</sup> and Iran-supported demonstrators laid siege to the US Embassy, of course, in Baghdad.<sup>15</sup> And so, it was in that circumstance that we then had the attack on Soleimani.

**SCHARF:** And Paul, what do you want to add to that?

**WILLIAMS:** I think that as we step back and we look at this we see that, this is sort of an arc of Iran testing to see whether the Trump policy was going to be markedly different than the Obama administration policy when it comes to deterring military action. The Iranians cannot retaliate economically, but they can militarily, and if you follow what Avi was saying, it was incremental until it finally was attacking bases directly, targeting a US drone, and then targeting our Embassy, which harkens back to the

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washingtonpost.com/world/oil-tankers-attacked-in-gulf-of-oman-us-navy-says/2019/06/13/d59b784c-8db0-11e9-b162-8f6f41ec3c04\_story.html.

11. Nasser Karimi and Jon Gambrell “Iran Shoots Down US Surveillance Drone, Heightening Tensions,” *Associated Press*, June 20, 2019, <https://apnews.com/e4316eb989d5499c9828350de8524963>.

12. David D. Kirkpatrick and Ben Hubbard, “Attack on Saudi Oil Facilities Tests US Guarantee to Defend Gulf,” *NY Times*, Sep. 9, 2019, <https://www.nytimes.com/2019/09/19/world/middleeast/saudi-iran-attack-oil.html>

13. Julian E. Barnes, “American Contractor Killed in Rocket Attack in Iraq,” *NY Times*, Dec. 27, 2019, <https://www.nytimes.com/2019/12/27/us/politics/american-rocket-attack-iraq.html>.

14. Alissa J. Rubin and Ben Hubbard, “American Airstrikes Rally Iraqis Against US,” *NY Times*, Dec. 30, 2019, <https://www.nytimes.com/2019/12/30/world/middleeast/iraq-airstrikes-us-iran-militias.html>.

15. Id.

Embassy takeover in Tehran in the '70s. And they basically were trying to figure out, Is Trump going to accommodate them or is he actually going to engage in serious deterrence? And that brings us to the next point.

**SCHARF:** I want to quote President Trump's tweet that occurred right after the Embassy attack. He says: "Iran will be held fully responsible for lives lost, or damage incurred, at any of our facilities. They will pay a very BIG PRICE! This is not a Warning, it is a Threat. Happy New Year!"<sup>16</sup> So then on January 3, President Trump ordered the drone strike near the Baghdad airport, that killed Qassim Soleimani. Shannon French, what can you tell us about this man?

**FRENCH:** Well, first of all, let's be clear: I don't think anyone should shed a tear over his loss. He was a horrible human being. He was a terrorist and he enabled many terrorist militias and acts that did quite a lot of harm. And he was also, it should be noted, a brutal enforcer for an authoritarian regime and killed protesters within Iran.<sup>17</sup> So, we should start from the point of recognizing that this was a bad man.

**SCHARF:** Well, let me ask you this, other than with the protesters, was he a popular figure back in his country?

**FRENCH:** I think it's very hard to determine that because I think there are people with whom he is popular. He's a sign of strength, he's a sign of standing up to the West and other powers, but on the other hand, there are people who are afraid of him and even hate him, and they're not necessarily feeling safe being loud about that.<sup>18</sup> So, I don't know that we should make sweeping statements about which side is stronger at the moment.

**SCHARF:** So, after Suleimani's death was announced, US Secretary of State Mike Pompeo told ABC News, "It's very clear the world is a safer place today."<sup>19</sup> It sounds like you would agree with that assessment.

**FRENCH:** No! *[laughs]* Actually, I wouldn't.

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16. @RealDonaldTrump, Twitter, Dec. 31, 2019, 4:19 p.m., <https://twitter.com/realdonaldtrump/status/1212121026072592384?lang=en>.

17. Crowley, *supra* note 2.

18. Nasser Karimi and Jon Gambrell, "Iran's Popular Gen. Soleimani Became an Icon by Targeting US," *Associated Press*, Jan. 3, 2020, <https://apnews.com/3bb7af59e8b1bfd3e15222a98395ee85>.

19. Conor Finegan and Adia Robinson, "World is Safer Because of Iranian Commander's Death: Secretary of State Mike Pompeo," *Am. Broad. Co.*, Jan. 5, 2020, <https://abcnews.go.com/Politics/world-safer-iranian-commanders-death-secretary-state-mike/story?id=68056187>.

SCHARF: Ah! Interesting. Okay.

FRENCH: I think the point that we have to make is saying he is a bad person is very separate from saying it's a good idea to kill him. Those are very different moves. For example, Kim Jong Un is a bad person and has done horrible things. You know, we can talk about loss of Americans, as well, there. We can talk about how the family of Otto [Warmbier] feels about, you know, the loss of their son.<sup>20</sup> There are many people around this planet right now who have committed horrific crimes. We don't assassinate all of them. When you do, it is because—or it's supposed to be because—you are preventing an imminent threat, an imminent attack.<sup>21</sup> And we'll talk more about that, I'm sure. The argument for it being safer is that he was personally behind things that did cause the loss of human—or caused human carnage in Iraq. In particular, he helped build a particular kind of operation of IEDs that actually was meant to maim—

SCHARF: —and that's Improvisational Explosive Devices—

FRENCH: That's right, and they were diabolical in that the way that they were built was actually to cause maximum carnage, so, that's not to be discounted.<sup>22</sup> However, the militias that he enabled are still out there. It's not as though we can necessarily point to cases where the “beheading” approach has worked successfully.

SCHARF: You know, usually when you refer to somebody as a terrorist, you're talking about a non-state actor, an independent person. This is a man that you're referring to as a terrorist who had the military rank of Major General of a country's army—and it's a country that has one of the biggest armies in the world. Does that make a difference?

FRENCH: It doesn't, I think, in his case because that wasn't the only role that he played. Or, as we trivially say, the only hat that he wore. He also worked with and directed non-state actors and militias that were not under state control.<sup>23</sup> So, had he been exclusively an Iranian General and worked only

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20. Gina Kolata, “Otto Warmbier Suffered Extensive Brain Damage, Coroner Confirms,” *NY Times*, Sep. 28, 2017, <https://www.nytimes.com/2017/09/28/health/otto-warmbier-north-korea-autopsy.html>.

21. UN Charter art. 51.

22. Alex Horton, “Soleimani's Legacy: The Gruesome, Advanced IEDs that Haunted US Troops in Iraq,” *Wash. Post*, Jan. 3, 2020, <https://www.washingtonpost.com/national-security/2020/01/03/soleimanis-legacy-gruesome-high-tech-ieds-that-haunted-us-troops-iraq/>.

23. Crowley, *supra* note 2.

in that capacity, we might want to label him differently. But that is not the case and he certainly worked with militias—Yemen, Syria, Iraq, and so forth.

**SCHARF:** And he's been doing this for fifteen years or more, right?

**FRENCH:** Oh, absolutely.

**SCHARF:** So, my understanding is that the Bush Administration, the Trump Administration, they all had him under surveillance. They had predator drones that could have taken him out, and then they consciously decided not to.<sup>24</sup> Let me ask Paul, Avi, or Milena—why do you think the other administrations didn't pull the trigger and this one did?

*[voices overlapping].*

**STERIO:** Go ahead, Paul.

**WILLIAMS:** I think it's reached a head. I think the Iranians have upped their game. It's clear that Iran is a state sponsor of terrorism, that Soleimani was a terrorist, and that this was a targeted killing of an individual who was engaged in ongoing efforts to kill Americans. I think there was some hope in the earlier years that Iran would change its behavior. It's clear, the actions over the last six months that it was progressively engaging in heightened military actions under his leadership.<sup>25</sup> And so, it was a military act to deter the future killing of Americans.

**SCHARF:** Milena.

**STERIO:** Sure. So, I just wanted to make a couple of points. One, this designation, when do we call somebody a terrorist, that is a State Department designation.<sup>26</sup> The State Department can label an individual or an organization a terrorist, and President Trump has actually labeled the entire Iranian Military as a terrorist organization, which is problematic in itself.<sup>27</sup> So, those are dependent, you know, one administration can consider one individual a terrorist and then the next administration could reverse course.

**SCHARF:** And, just to be clear, that triggers certain legislation that freezes the assets<sup>28</sup>—

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24. Id.

25. Id.

26. Foreign Terrorist Organizations, US Department of State, <https://www.state.gov/foreign-terrorist-organizations/>.

27. Office of the Spokesperson, "Designation of the Islamic Revolutionary Guard Corps," US Department of State, Apr. 8, 2019, <https://www.state.gov/designation-of-the-islamic-revolutionary-guard-corps/>.

28. Id.



**STERIO:** Exactly.

**SCHARF:**—in the banks of these individuals?

**STERIO:** Exactly. That is a very significant thing. Second thing. So here, Soleimani and the Quds forces had been labeled a terrorist organization under the George W. Bush administration,<sup>29</sup> but the Trump administration actually labeled the entire Iranian military as a terrorist organization.<sup>30</sup> The other thing I—

**SCHARF:** So, you're saying that we shouldn't be too concerned with what people call terrorists in Iran—

**STERIO:** Yeah, I think these are somewhat fluid, exactly. But the other point I wanted to make is on this difference between acting against a non-state actor and a state actor. I do think it's significant from the perspective of international law, which I know we'll talk about. Under international law, if you take out an official, a military general of a foreign nation, that could be seen as an armed attack on that country, which can then trigger a response under the law of self-defense from that country.<sup>31</sup> So, I'm sure that that's not the situation that we want to be in where we're now actively waging a war against Iran and Iran is engaging in retaliatory strikes.

**SCHARF:** Avi, briefly, do you have anything to add?

**COVER:** I would only add, I mean, you know the Bush administration and the Obama administration weren't exactly soft on [Iran]. I mean, we had different ways in which they were trying to interdict in trying to neutralize Iran. Most notably, there was essentially a cyber-war going on. Whether it was using Stuxnet, Olympic Games, various other things that really tried to undermine their entire nuclear infrastructure.<sup>32</sup> I think those might be classified, first off, as acts of war as well. But by the other side of things, maybe from a more policy side of things, this seems a far more provocative action, and that's probably why they chose not to do so.

**SCHARF:** Well, on that note, it is time for our first station break. When we return, we'll talk about the prospects for peace. We'll be back in just a moment.

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29. *Id.*

30. *Id.*

31. UN Charter art. 51.

32. David E. Sanger, "Obama Order Sped Up Wave of Cyberattacks Against Iran," *NY Times*, June 1, 2012, <https://www.nytimes.com/2012/06/01/world/middleeast/obama-ordered-wave-of-cyberattacks-against-iran.html>.

**SCHARF:** Welcome back to *Talking Foreign Policy*, brought to you by Case Western Reserve University and WCPN 90.3 Ideastream. I'm Michael Scharf, dean of Case Western Reserve University School of Law. We're talking today about the 2020 US-Iran crisis. Before the break, we were discussing the causes of the crisis. In this segment, we'll examine the legality of the January 3 US airstrikes on Iran General Soleimani. Milena Sterio, you have written extensively about the legality of use of force under international law. What was the US legal case for the killing of the Iranian General?

**STERIO:** So, the United States claimed, basically, that it was acting in self-defense and that it was acting to prevent a serious imminent attack against the United States, against the United States' national security interests.<sup>33</sup> Now, under international law, a state can use force against another state only if it has United Nations Security Council authorization or in self-defense.<sup>34</sup> Here, clearly there is no Security Council authorization, so the United States to justify this legally under international law has to invoke the law of self-defense. The key thing here is that the United States would have to demonstrate that there was an imminent threat coming from Soleimani. So far, the intelligence does not back that up. There could be intelligence, you know, from the US agencies, military, what have you, that could demonstrate that there is, that there was an imminent threat, but so far, we haven't seen that.<sup>35</sup>

**SCHARF:** And when the US acts in self-defense, doesn't the United Nations Charter require it to report to the Security Council?

**STERIO:** Exactly, yes it does, under Article 51 of the UN Charter, the United States would have to report back and provide the Security Council with details about why it acted in self-defense. That has not happened as of now.

**SCHARF:** Alright. So, Shannon French, President Trump has spent much of his presidency attacking US intelligence agencies, rejecting their conclusions on critical national security issues ranging from Russia's interference in the 2016 presidential election to the complicity of Saudi Crown Prince

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33. Finegan and Robinson, *supra* note 19.

34. UN Charter art. 51.

35. David Welna, "'Imminent' Threat—Trump Justification of Attack on Iranian General—Is Undefined," *NPR*, Jan. 10, 2020, <https://www.npr.org/2020/01/10/795438264/imminent-threat-trump-justification-of-attack-on-iranian-general-is-undefined>.

Mohammed bin Salman in the murder of journalist Jamal Khashoggi.<sup>36</sup> Do you find it surprising that President Trump and other US officials have pinned the decision to target General Soleimani on intelligence from the same agencies that the president has so frequently disparaged?

**FRENCH:** Well, consistency has not been a hallmark of this administration, so I don't think it's surprising in that sense. I do think it's incredibly frustrating, the inconsistency, and the fact that we've had folks like Esper come on and say, "Well no, I didn't see that intelligence that the president is referencing,"<sup>37</sup> and if he didn't see it, who did?

**SCHARF:** Esper being the Secretary of, or the Director of—

**FRENCH:** Secretary of Defense.

**SCHARF:** Secretary of Defense, right.

**FRENCH:** And the idea that we would have people that high up in the organization saying that they haven't seen something which the president is citing as justification is incredibly troubling. And I think we are also back at the point I made earlier that you mentioned, the Saudi Crown Prince, where there have been clear indications of crimes against Americans, American citizens, American residents, and no action.<sup>38</sup> So, we can't say that there's consistency in the actual responses as well.

**SCHARF:** I mean, sometimes the intelligence really isn't that good, as well. For example, when the United States went to war against Iraq in 2003, it was because Iraq was supposed to have all these chemical weapons and was just a couple of weeks away from having nuclear weapons.<sup>39</sup> And nobody ever found those, is that correct?

**FRENCH:** Well it's correct that the WMD reasoning that was used, and Colin Powell speaking and making this argument turned out to not be

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36. Aruna Viswanatha, "Trump's Rocky Relationship with Intelligence Community Worsened with Whistleblower Complaint," *Wall St. J.*, Sep. 27, 2019, <https://www.wsj.com/articles/trumps-rocky-relationship-with-intelligence-community-worsened-with-whistleblower-complaint-11569582000>.

37. Peter Baker and Thomas Gibbons-Neff, "Esper Says He Saw No Evidence Iran Targeted 4 Embassies, as Story Shifts Again," *NY Times*, Jan. 12, 2020, <https://www.nytimes.com/2020/01/12/us/politics/esper-iran-trump-embassies.html>.

38. Viswanatha, *supra* at note 36.

39. J. D. Maddox, "The Day I Realized I Would Never Find Weapons of Mass Destruction in Iraq," *NY Times*, Jan. 29, 2020, <https://www.nytimes.com/2020/01/29/magazine/iraq-weapons-mass-destruction.html>.

based in fact.<sup>40</sup> I'm not sure how much of that I would want to lay on the doorstep of the intelligence community. I think they've been through a lot lately, and we should be careful about blaming them for what may have been political decisions, and what may have been driven by listening to certain voices, in that case, coming out of Iraq, who had their own agendas, and taking seriously what you wanted to hear in order to get the end result that was already in people's minds. So, you know, I feel like that was a conclusion looking for an argument.

**SCHARF:** So, between Trump's criticisms of the intelligence communities and the history back then, you could forgive the common person on the street for being a little skeptical, right? Well, what makes this case even more bizarre is that on January [13], President Trump and Attorney General Barr said that it really didn't matter if General Qasem Soleimani posed an imminent threat to Americans when he was killed by the US drone strike.<sup>41</sup> Milena, you said it did matter. Is this consistent with international law? What do you make of this new statement?

**STERIO:** Sure. So, it's not consistent—I would argue it is not consistent with international law. It is somewhat consistent with prior US policies, namely under President George W. Bush in the wake of 9/11. President Bush advanced the so-called Bush Doctrine of preemptive self-defense under which, basically, the United States would have a right to act against individuals who pose some sort of a threat to the United States, even if that threat is not necessarily imminent.<sup>42</sup> So, I do think that the Trump comments are consistent with the Bush Doctrine, with the Bush administration views in the wake of 9/11, but are not consistent with international law.

**SCHARF:** Well let me ask Professor Avi Cover a question. A lot of us have just recently seen that movie *Midway* which was terrific, that came out over the holidays.<sup>43</sup> What a lot of people don't know is after the Japanese Admiral orchestrated the Midway battle, later, not long after, he was flying in an aircraft, and the United States through its intelligence figured out

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40. Id.

41. "Trump: 'Doesn't Really Matter' if Soleimani Posed Imminent Threat," *Al Jazeera*, 13 Jan. 2020, <https://www.aljazeera.com/news/2020/01/trump-doesn-matter-soleimani-posed-imminent-threat-200113180451067.html>

42. Michael P. Scharf, Milena Sterio, and Paul Williams, "The Syrian Conflict's Impact on International Law," in *The Syrian Conflict's Impact on International Law* (Cambridge: Cambridge University Press, 2020), Chapter 3.

43. *Midway* (Lionsgate, 2019).

which airplane it was, and blew him up.<sup>44</sup> And he wasn't at that moment engaged in hostilities. Isn't that sort of what has happened in this case and, Avi Cover, was that legal?

**COVER:** Well, so that was during a state of armed conflict, right? So, there was clearly a war going on. He's a clear, legitimate military target. I think here, that's part of the issue. Is there a war going on, is there a state of armed conflict? And that raises a whole inquiry, I think, into American, US, law, right? It's Congress that has the authority to declare war. There's been no declaration of war here.

**SCHARF:** Yeah, but we haven't had a declared war since World War II, right?

**COVER:** Right. So, if Congress hasn't declared war, then there's a couple of ways that the president might be able to act. One is a question of whether there's been an authorization of military force in some capacity. And much speculation is that the administration might well be relying on what's called the Authorization for Use of Military Force against Iraq to support its attack on Soleimani.<sup>45</sup> Now, think about that right there, the language of that authorization for use of military force specifically says against Iraq, not against Iran.

**SCHARF:** Soleimani was in Iraq.

**COVER:** He was in—

**SCHARF:** —and he was accused of terrorist acts in Iraq.

**COVER:** Absolutely, so the issue then becomes, right, the purpose of the AUMF in Iraq, as it's known, is to support and stabilize Iraq. Here we have the government of Iraq outraged over this attack. It's hard to make the argument that the attack on Soleimani has actually led to stability nor that it's authorized by Congress back in 2002 for this sort of action. But the other authority that clearly, certainly the president's Attorney General is a big fan of, [Bill] Barr, would be simply that that there is inherent authority under Article II of the Constitution, that the president has this power as

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44. Robert F. Dorr, "Killing Yamamoto: How America Killed the Japanese Admiral Who Masterminded the Pearl Harbor Attack," *Nat'l. Int.*, Aug. 4, 2018, <https://nationalinterest.org/blog/buzz/killing-yamamoto-how-america-killed-japanese-admiral-who-masterminded-pearl-harbor-attack>.

45. United States. Cong. Authorization for Use of Military Force Against Iraq Resolution of 2002. 107th Cong. S.J. Res 116 Stat. 1498 (2002).

Commander-in-Chief to do so, doesn't need Congressional authorization.<sup>46</sup> The problem there, and you're certainly right, there's been plenty of US military action that's been taken in the absence of congressional authorization, then the question is, Is this action taken for a brief period of time? Is it going to lead to war? And is it in US national interests? And the question might be, if indeed we've just talked about how this may escalate and lead to a war, to take this sort of action, however discrete it might seem, if it's going to escalate a war then that is highly problematic and might run afoul of the president's inherent authority under Article II.

**SCHARF:** I want to get back to the first thing that you said, which is, Are we already in a war, whether it's authorized by domestic statutes or not? When Paul Williams and Milena and Shannon were describing the tit-for-tat escalation of the violence between these two countries over the last two months, at what point does that cross the threshold and can be considered a war whether it's declared or not? Paul Williams, do you have a thought on that?

**WILLIAMS:** Well, I think it's clearly crossed the threshold into terrorism. And when we talk about Iran, we have to be very careful about applying, sort of, square, you know, frameworks of international law, to what is really a round peg. You know, Iran, for decades, has been a state sponsor of terrorism, and so it's less of a, more of a traditional analysis of a straight-up declaration of war or a peace-loving state which may find itself in a conflict.<sup>47</sup> This is a state who uses terrorism as a means of its foreign policy and that terrorism involves killing Americans, civilians and service personnel. You know, just these past couple of years, the Iranians have tried to engage in terrorist acts in France,<sup>48</sup> and Denmark,<sup>49</sup> and the United States,<sup>50</sup> and so you find a situation where you shift out of the traditional legal analysis of whether it's a war or not and into whether it's targeted killing of a designated terrorist, and I think that's where we've found ourselves. And I think there's plenty of legal authority for this type of action to remove a terrorist who's engaged in ongoing planning and implementation of actions against Americans and our allies.

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46. US Const. art. II.

47. *Supra* note 27.

48. Saeed Kamali Dehghan and Kim Willsher, "France Blames Iran for Foiled Bomb Attack near Paris," *Guardian*, Oct. 2, 2018, <https://www.theguardian.com/world/2018/oct/02/france-blames-iran-for-foiled-bomb-attack-near-paris>.

49. Martin Selsoe Sorensen, "Iran Accused of Plot to Assassinate Dissident in Denmark," *NY Times*, Nov. 1, 2018, <https://www.nytimes.com/2018/11/01/world/europe/denmark-assassination-iran.html>.

50. *Supra* note 27.

**SCHARF:** Let me turn to Shannon French. Shannon has written a book called, *The Code of the Warrior*, which is a critically acclaimed book.<sup>51</sup> I definitely think everybody ought to read it.

**FRENCH:** Thank you.

**SCHARF:** It's right on point with what we're talking about. How does the killing of General Soleimani fit within the Just War theory that you talk about in your book?

**FRENCH:** Well the Just War tradition actually has quite a lot to say about these topics that are relevant in the public debate at the moment. And just to give a few key examples, we touched on one a moment ago. One of the core criteria for Just War theory is that you have to have a legitimate authority.<sup>52</sup> And basically, the idea is you don't just want anyone at all declaring war or acting in a way that will cause a war. I should point out that these criteria are supposed to prevent wars—they have not necessarily been good at that throughout the centuries—but that was the aim. So, the idea that the authority is somewhat questionable in this case arguably on both sides is intriguing. So, on the one hand you have the questions that Avi raised, like, does the AUMF actually authorize this kind of action still? Or have we stretched that far beyond the breaking point from what was originally done? You're quite right that we haven't declared war properly since World War II, but there are a lot of voices saying we need to cut that out and go back to having Congress holding that responsibility tight and not giving so much over to the executive. And then on the other side, you have these questions that Paul was raising as well, around what kind of authority do we have in Iran, and how are we going to recognize the state and sovereignty there when it's mixed up in some of this other language of terrorism and rogue nations. And then you have other criteria from the Just War tradition that come into play. You're supposed to act from a righteous intention.<sup>53</sup> Flowery language, but the idea is that it can't be for example an action taken out of revenge, which is something we touched on earlier. And also, it can't be done as a distraction for domestic troubles or anything else. It can't be a wag-the-dog scenario as has come out.

**SCHARF:** We'll talk about that in a few minutes.

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51. Shannon E. French, *The Code of the Warrior: Exploring Warrior Values Past and Present*, 2d ed. (Rowman & Littlefield, 2016).

52. Id.

53. Id.

**FRENCH:** Absolutely.

**SCHARF:** So, the other debate we seem to have here is between Milena and Paul because Milena says there is a difference if you attack a General as an official of a country at which we are not at war, and Avi says we are not, right now, at war with Iran. And Paul, who says, Hey, if you're a General who's engaging in terrorism, you're just like any other terrorist. But couldn't the same be said about the people in the US Army from the perspective of other countries where we're using our predator drones to attack without permission by the United Nations?

**STERIO:** Yeah, absolutely. I think there's a big danger here, because another nation could basically act in a similar way, designate a military official from the United States, or from one of our allies, as a terrorist, and then take out that person on the territory of a third country. So, the main purpose of international law is to prevent these kinds of actions. The big role of international law is to make sure that we have peace and security and that nations are not acting against the sovereignty of other states.

**SCHARF:** And Avi was telling us about the potential lack of authority to undertake this kind of military force. But, there's a whole other issue of US domestic authority and those are the prohibitions on government or political assassination. And I wonder if the fact this is a government official, a general from a country that we're not officially at war with, does that trigger the executive orders against assassination, 12333?<sup>54</sup>

**STERIO:** Sure. So, executive order 12333, which you just mentioned, signed back in 1981 by then President Reagan, bans political assassinations and says, quote "no person employed by or acting on behalf of the US government shall engage in, or conspire to engage, in assassination," end of quote.

**SCHARF:** And I want to point out it was actually in place even before President Reagan—

**STERIO:** Under Ford, correct. So, the issue here is that the Trump administration is going to say, no, this is not a political assassination. This is a targeted killing. And as Paul says, once you start linking Soleimani to terrorism, then the US has argued for years under the Obama administration or the Bush administration that we have the authority to carry out targeted killings of terrorists. And that these are not political assassinations.

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54. Exec. Order No. 12333, *United States Intelligence Activities*.



**SCHARF:** Now Avi, these other authorities that you were talking about were passed by the legislature. This executive order was adopted by a series of presidents. Does that mean that it's not really binding?

**COVER:** The executive order, no, well I mean, certainly can be binding, but I think Congress needs to step up and this has been an issue—

**SCHARF:** But can't the president, you know, just give himself an exception, or just declare the executive order which he has adopted is not applicable to the situation?

**COVER:** Again, if there is direct congressional action that's taken that's in contravention of the executive action, the congressional law can well exceed that. And that is to say that the congressional law should govern and prevail. Particularly if you're doing a constitutional analysis in terms of separation of powers. But Congress has abdicated its responsibility for decades here. This is not simply an issue of just the Trump administration. Certainly since 9/11, we have seen Congress give, by and large, a blank check to the executive to wage a war against terrorism, to wage a war against Iraq.<sup>55</sup> They've had ample opportunity through various administrations of either party to take action and rein in the president, and they have failed to do so. So now there's current talk of both houses of Congress passing various resolutions that might be in keeping with the War Powers Resolution to try and constrain the president. That would be a welcome step.

**SCHARF:** Well, in fact, on January 9, the House of Representatives, which is Democratically controlled, voted 224 to 194 to adopt a resolution limiting the powers of the president to conduct military action against Iran without further congressional approval.<sup>56</sup> So, what effect is that going to have?

**COVER:** Well, it's certainly a welcome step. It's an important statement. The Senate is expected to pass something with maybe even more teeth that would be in keeping with the War Powers Resolution.

**SCHARF:** Do you think so? The Republican-controlled Senate?

**COVER:** There's an expectation that they will have a majority. There's a number of Senators—Rand Paul, Mike Lee—who are quite critical of

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55. *Supra* note 45.

56. Karoun Demirjian, "House Approves Measure Limiting Trump's Authority to Take Further Military Action Against Iran," *Wash. Post*, Jan. 9, 2020, [https://www.washingtonpost.com/national-security/house-measure-demanding-trump-pull-back-on-iran-could-have-some-gop-support/2020/01/09/c612975c-3300-11ea-91fd-82d4e04a3fac\\_story.html](https://www.washingtonpost.com/national-security/house-measure-demanding-trump-pull-back-on-iran-could-have-some-gop-support/2020/01/09/c612975c-3300-11ea-91fd-82d4e04a3fac_story.html).

expansive presidential powers. However, the president can simply veto those resolutions. They're not necessarily going to limit and constrain the president. So, again this is something that requires bipartisan action.

**SCHARF:** And there's no way they're going to get two-thirds to override it.

**COVER:** That seems, you know, hardly foreseeable. That said, you know, there's been a lot of reports of the Trump administration's presentation of intelligence that was very unacceptable to people on both sides of the aisle.<sup>57</sup> The administration clearly seems to have not been forthcoming with Congress, which is what Congress has prerogative to do. They're supposed to execute oversight and ultimately have the power of the purse, which of course is another way to perhaps constrain the president here.

**SCHARF:** So, part of what's playing out in the background is a tug-of-war between the legislative branch and the executive branch. Not just with respect to the Iran crisis, but in a whole lot of areas. Are you suggesting—and anybody can weigh in—that this might be the tipping point that will cause the legislative branch to step up and say, “enough's enough”?

**COVER:** I think there certainly has to be a recognition that if you're going to allow the President *carte blanche*, whomever is the President, you're giving him that authority, and Trump might indeed be the President who's going to prove that you know we've given just too much authority.

**SCHARF:** Does this concern anybody else?

**STERIO:** Yeah, and I think, I just want to comment really briefly on what Avi said about, it's time that Congress stepped in. And I agree with that because post-9/11 basically the executive branch has taken more and more powers in this area and they've issued all these memoranda, they've been issued by the Office of Legal Counsel, which is within the executive Branch, that basically kind of slowly give more and more power to the executive branch, without to engage in this type of conduct without congressional authorization. So, unless Congress were to step in and say, “Hey, you can't do that,” this is just going to continue.

**SCHARF:** Alright, and Shannon.

**FRENCH:** Well, I was just going to add that, of course, the reason for all these checks and balances in the first place is that we know power corrupts.

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57. Evan Semones, “Pelosi Slams White House's War Powers Notification on Soleimani Strike,” *Politico*, Jan. 4, 2020, <https://www.politico.com/news/2020/01/04/nancy-pelosi-trump-qassem-soleimani-093787>.

And that's what the Founders had in mind. So, the fact that this imbalance has been allowed to proceed means that it will continue to cause actions that are going to make us all less safe.

**SCHARF:** Alright, well it's time for another short break. When we return, I'm going to ask our experts to look into their crystal balls and predict how the US-Iran crisis is going to play out internationally, and how it will affect the US Presidential election. Back in a moment.

**SCHARF:** This is Michael Scharf and we're back with *Talking Foreign Policy*. I'm joined today by some of the world's foremost international law and foreign policy experts, and we've been talking about the 2020 Iran-US crisis, which seemed to be reaching a tipping point when the United States killed Iran's military leader with a drone strike on January 3rd. In this final segment of our show, we'll look at the question of what comes next. Professor Avi Cover, after the killing of the general, Iran leaders warned that they had thirty-five US retaliatory targets to choose from.<sup>58</sup> What types of targets do you think Iran had in mind?

**COVER:** You know, I think what's one of the scary things about it here, maybe one of the really frightening aspects and why Obama and Bush did not act is that I think we really don't know. It's very hard to predict. I mean, notably, Iran did act in response to a base, a US base in Iraq.<sup>59</sup> They seem to have acted with a certain level of restraint. They've certainly spoken, I think from their leadership in certain measured tones of a desire not to escalate these matters. All of that said, I think no one—and we take what Professor Shannon French said at the outset, you know, this is a government and with a leader who are set out to do all sorts of things, use their proxies, terrorist actions through Hezbollah and other actions. We could envision things in Argentina, Bulgaria, in Israel, throughout the Middle East, against our allies, against United States interests. There certainly could be cyberwar actions taken. I don't think we should take too much stock in their words, but there is some, I suppose, cautious optimism I have in their initially measured response.

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58. "Iran Will Punish Americans Wherever They Are Within Its Reach: Guards Commander," *Reuters*, Jan. 4, 2020, <https://www.reuters.com/article/us-iraq-security-blast-iran/iran-will-punish-americans-whenever-they-are-within-its-reach-guards-commander-idUSKBN1Z30AV>.

59. "No Iraqi Casualties in 22-Missile Iranian Attack Overnight: Military," *Reuters*, Jan. 8, 2020, <https://www.reuters.com/article/us-iraq-security-military/no-iraqi-casualties-in-22-missile-iranian-attack-overnight-military-idUSKBN1Z70P7>.

**SCHARF:** So, not to be outdone, President Trump immediately said that he had fifty-two Iranian targets in mind, including, he said, cultural sites.<sup>60</sup> Shannon French, as a military ethicist, what do you make of that threat?

**FRENCH:** Well, it's a war crime that he's threatening, so I'm against it, I'd like to be clear on that.<sup>61</sup> But I actually think it's important that we also think about, why would an ethicist like me and so many other people be against this? Because it's really quite profound. When you're talking about protecting cultural sites, you're talking about something that belongs not even just to a single culture, or to a single country. While that does matter, and it's important to acknowledge the role of some of these important sites in Iranian culture, these belong to humanity.

**SCHARF:** Tell us about some of these sites. I don't think everybody in the audience knows the scope of the kinds of archaeological treasures that are in Iran.

**FRENCH:** Well, the richness of the Persian culture has informed so much, and even the lines we draw today about East and West are really artificial. Much of what we value today in art, architecture has come through the prism of this. And so, some of these things that were being threatened, I don't know all fifty-two of the targets that he had in mind. But, having seen some of the images—these are things that, if lost, would never be seen again by future generations. Our children would never get to see them. And I'm reminded of how everyone felt when the Buddhas were destroyed.<sup>62</sup> And even the recent, even though this was not intentional, but the loss of Notre Dame.<sup>63</sup> These are things that mean more than an ordinary building.

**SCHARF:** For those in the audience that aren't experts in the laws of war, no matter how bad a conflict is, there are just certain things that you're just not allowed to attack.

**FRENCH:** That's exactly right. And our forces go into conflicts with what's called a no-strike list, and there are places that you're not allowed to target

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60. @RealDonaldTrump, Twitter, Jan. 4, 2020, 5:52 p.m., <https://twitter.com/realDonaldTrump/status/1213593975732527112>.

61. United Nations Educational, Scientific, and Cultural Organization (UNESCO), Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954.

62. Barbara Crossette, "Taliban Explains Buddha Demolition," *NY Times*, Mar. 19, 2001, <https://www.nytimes.com/2001/03/19/world/taliban-explains-buddha-demolition.html>.

63. Adam Nossiter and Aurelien Breeden, "Fire Mauls Beloved Notre-Dame Cathedral in Paris," *NY Times*, Apr. 15, 2019, <https://www.nytimes.com/2019/04/15/world/europe/notre-dame-fire.html>.

and those are to preserve these greater values that go beyond the individual conflict.<sup>64</sup> And I have to say that goes all the way back to some of our most ancient concepts of warrior codes. Even in the Old Testament of the Bible, in Deuteronomy, it talks about things like not cutting down the fruit trees.<sup>65</sup> And the argument there is that if you cut down the fruit trees, it takes so long for them to grow up to the point where they can bear fruit again, that you're again punishing future generations. That's a special evil.

**SCHARF:** You spend a lot of time with military members at conferences and so forth.

**FRENCH:** I do, I was at Quantico last month.

**SCHARF:** If the president gave them a direct order to destroy some of the most profound archeological sites in Iran, would they follow it?

**FRENCH:** No. It would be an illegal order and they are required to refuse.

**SCHARF:** You think they would not follow it?

**FRENCH:** I trust them.

**SCHARF:** That's interesting. Do you all agree?

**STERIO:** I would like to agree with that, and I actually really hope that you are right, but it is absolutely true that following an illegal order is something that our troops are trained not to do.

**SCHARF:** Alright, well Paul, Avi suggested that some of the possible targets were all over the place. Is there a risk that this conflict with Iran can spill over to Iraq and Afghanistan, and set back some of the efforts of establishing peace and stability in those countries with which you have been so involved?

**WILLIAMS:** Yes, most definitely. And I think for two primary reasons. One is that this will be asymmetric conflict. Iran has no hope whatsoever of meeting America on the battlefield, so to speak. The conflict would last less than a day. And so, Iran, if this does tip into some type of more hot or active conflict is going to look initially to our Iraq and to Afghanistan to

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64. US Committee of the Blue Shield, "Cultural Heritage Inventories and No-Strike Lists," <https://uscbs.org/cultural-heritage-inventories.html>.

65. Deuteronomy 20:19 (NRSV). ("If you besiege a town for a long time, making war against it in order to take it, you must not destroy its trees by wielding an ax against them. Although you may take food from them, you must not cut them down. Are trees in the field human beings that they should come under siege from you?")

destabilize those countries and America's interests in those countries, and then it has a long reach of its terrorist network, through Syria, into Lebanon, into Yemen, and then overseas, as Avi had mentioned as well. The other reason is that both main actors are highly unpredictable. Part of Iran's policy is to be unpredictable. That's its strategy, both politically and militarily in terms of how and when it engages in terrorism. But what the wild card is, is the United States is now unpredictable. Usually, the United States has a very clear military policy and a very clear political policy, and it uses those two in tandem to deter rouge states or these bad actors. But we've seen the unpredictability in the last couple of years, and the question is, whether this targeted killing of Soleimani is actually part of an arc of a policy of deterrence or whether it was just a reaction to the attack on the American military base, and now we're back into a void of policy. I think that is what's going to be destabilizing is these two primary actors. One of them has a playbook of unpredictability. The other one, us, the Americans, don't really seem to have a playbook at this point in time. And that makes this conflict very dangerous.

**SCHARF:** So, on the flip side of that, when Iran fired the missiles at the US air bases in Iraq in retaliation for our killing of their general, apparently they notified the Iraqi authorities, who notified our people in the air base and nobody was killed.<sup>66</sup> And that is being described as restraint, you know, taking symbolic action when they could have taken more serious action. And President Trump appears to have stood down, calling for sanctions and diplomacy rather than taking the next step.<sup>67</sup> Let me ask all of you: Is this a signal that the crisis is over? Or how do you interpret that?

**FRENCH:** I mean, I would say rather than being over, it's going to slip into other realms. I mean, we have a lot of reason to fear cyber-attacks in particular,<sup>68</sup> and we've already mentioned so many proxies that are connected to this. And I actually feel like it might not always be clear what is going to trace back to the killing of Soleimani. We won't always know that this actually was provoked initially by that.

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66. *Supra* note 59.

67. Anne Gearan et al., "United States and Iran Back Away from Imminent Conflict as Trump Says He Is Ready for Peace 'With All Who Seek It,'" *Wash. Post*, Jan. 8, 2020, [https://www.washingtonpost.com/politics/united-states-and-iran-back-away-from-imminent-conflict-as-trump-says-he-is-ready-for-peace-with-all-who-seek-it/2020/01/08/20cbc0dc-323a-11ea-91fd-82d4e04a3fac\\_story.html](https://www.washingtonpost.com/politics/united-states-and-iran-back-away-from-imminent-conflict-as-trump-says-he-is-ready-for-peace-with-all-who-seek-it/2020/01/08/20cbc0dc-323a-11ea-91fd-82d4e04a3fac_story.html).

68. James Rundle, "Threat of Cyberattack by Iran Still Critical, Experts Say," *Wall St. J.*, Jan. 9, 2020, <https://www.wsj.com/articles/threat-of-cyberattack-by-iran-still-critical-experts-say-11578621927>.

**STERIO:** And Michael, I would just add that I absolutely agree with Paul that Iran—and the United States, but Iran in particular—part of their policy is to be unpredictable. While they're unpredictable, they're not irrational. So, I don't think that they would purposely go ahead and strike a US base and kill, you know, American soldiers. I think they know that that could you know, escalate the conflict, and I also agree with Paul that if it came to an actual conflict, actual war, they know that they would lose that war in a matter of hours. So, I don't think that they're irrational.

**SCHARF:** Now, they have a huge army, they have a nuclear facility—I don't think they have yet built nuclear bombs like North Korea have—but they have other kinds of ballistic missiles and so forth.<sup>69</sup> And my understanding is that the United States has been creating certain weapons that are focused specifically on Iran, like the MOAB—that's the mother of all bombs that they tested out in Afghanistan and it blew an entire mountain away.<sup>70</sup> And now there [are] actually these low-yield nuclear weapons that the United States has now added to its arsenal. Is this signaling Iran or is this preparing for an attack on Iran? How do you interpret those actions?

**STERIO:** I mean, that's a tricky one. And I would add that, by the way, yes, the US has all these weapons and although we don't think Iran has the nuclear bomb developed, Iran has announced that it is officially stepping out of the Iran Nuclear Deal, which we mentioned at the beginning of the program.<sup>71</sup> So, Iran now—although up until recently while it was still covered by the program—was actually in compliance with the restrictions that were part of the deal on enriching uranium, which was preventing its ability to develop nuclear weapons. Iran is now saying basically, We're out of this deal. You, the United States, you abandoned this deal, we're out, we can start enriching uranium. And so, the potential for a bad conflict, the potential for a serious escalation is there and I honestly don't think that it's in our national security interest to go down this route, even though we probably would win. We definitely would win a war against Iran.

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69. "Explainer: Iran's Ballistic Missiles," *Al Jazeera*, 8 Jan. 2020, <https://www.aljazeera.com/indepth/interactive/2020/01/explainer-iran-ballistic-missiles-200108184121600.html>.

70. Sune Engel Rasmussen, "US 'Mother of all Bombs' Killed 92 ISIS Militants, Say Afghan Officials," *Guardian*, Apr. 15, 2017, <https://www.theguardian.com/world/2017/apr/15/us-mother-of-all-bombs-moab-afghanistan-donald-trump-death-toll>.

71. Zachary Laub and Kali Robinson, "What is the Status of the Iran Nuclear Agreement?," Council on Foreign Relations, Jan. 7, 2020, <https://www.cfr.org/backgrounder/what-status-iran-nuclear-agreement>.

**SCHARF:** And you were saying Iran gets this, and I want to ask you also about this Ukrainian passenger plane that blew up as it was taking off from Iran. Iran then admitted pretty quickly, I guess, that it was responsible.<sup>72</sup> Was that another effort to de-escalate tensions, or was there something else behind that? What do we make of that story? Let's turn to Paul. Paul, have you thought about that?

**WILLIAMS:** Yeah, Michael, I would not characterize that as a de-escalation. I would characterize that as business as usual. The Iranians may be very good at terrorist actions; they're not very good at traditional military defense. They shot down with two missiles this Ukrainian airliner thinking it was an incoming cruise missile, although it took off from the airport in Tehran. And then, they sat on it for three days, generating their usual sort of "this is Western propaganda" until American intelligence, European intelligence, and Iranians with YouTube videos demonstrating that it was in fact Iranians who had shot it down.<sup>73</sup> So basically, their bluff was called by their own people, and this has led to a number of demonstrations, because of number of Iranians were killed. We keep calling it the Ukrainian airline, but a number of Iranians as well as Brits, Canadians, and Ukrainians were killed.<sup>74</sup> This might be not American deterrence in American policy, but the Iranians doing business as usual and lying about their bad acts, or their incompetent acts which causes the Iranian people to really have second thoughts about whether they want to continue with this regime. And that might be one of the most important factors in this development these last six weeks.

**SCHARF:** One of the most unusual aspects of this crisis is that it is unfolding at just the moment that the US Senate is set to begin its impeachment trial of President Trump. And you, Shannon French, described this as a "wag-the-dog" situation. There was a famous movie a couple of years ago where there was a president, and things weren't going so well, and so he created a fictional war in order to get his popularity up just before an election.<sup>75</sup> Do you really think that that's what going on here?

**FRENCH:** I'm not sure I'm convinced that that's necessarily what's happening here, but I think it's bad enough that we're worried that it could be.

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72. Farnaz Fassihi, "Anatomy of a Lie: How Iran Covered Up the Downing of an Airliner," *NY Times*, Jan. 26, 2020, <https://www.nytimes.com/2020/01/26/world/middleeast/iran-plane-crash-coverup.html>.

73. Id.

74. Id.

75. *Wag the Dog* (New Line Cinema, 1997).



I mean, we have evidence before us including things like President Trump having tweeted years ago that then President Obama was likely to start a war with Iran in order to get re-elected.<sup>76</sup> And unfortunately, we know that President Trump is quite prone to projection, so having suggested that someone else might do this, it's not crazy to assume that he might have had those thoughts as well. But I think the overarching point is how troubling it is that it's plausible. The fact that we have to worry that the motive is not anything to do with genuine interests of the nation, but might be to do with these political motives, is a bad place to be, but that's where we are.

**SCHARF:** Milena.

**STERIO:** I absolutely agree with Shannon. The question is: Why strike now? I absolutely agree with Shannon that Soleimani was not a good person. He had done a lot of bad things. We could agree that he was a terrorist. But the question really is: What now? What was he doing in December or early January of 2020 to warrant the strike now? We know that the prior administrations knew where he was, contemplated a strike against him—perhaps at times where he was actually engaged in more imminent plotting of attacks against the United States. And unless the Trump administration can come forward with intelligence that shows the type of imminent attacks that he was plotting now, it is just hard to understand why strike against him now.

**SCHARF:** So, this really transforms the issue that you raised earlier about imminence, which is a legal issue for self-defense, into a political issue, making us wonder, why now? Because what the Trump administration is basically saying is, “we don’t have to prove that there was any imminence.” Well, maybe they don’t for some theories of international law, but don’t you for, political reasons?

**STERIO:** Well that’s part of, you know—it is election season here in the United States. The Iowa Caucuses are coming up. But it seems to me that these foreign policy issues, absent a serious escalation, have just not dominated the political debate. And so, it seems to me that absent some serious development and escalation in the conflict, I don’t think that this will matter as much.

**SCHARF:** Shannon.

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76. @realDonaldTrump, Twitter, Nov. 29, 2011, 2:48 p.m., <https://twitter.com/realDonaldTrump/status/141604554855825408>.

**FRENCH:** Well, I just wanted to add again that the inconsistency is also part of the problem here. And the fact that the other very bad men that are out there are not being treated the same way, and the most obvious example that I mentioned before is that of Kim Jong Un, and rather than going after him, Trump has made jokes about exchanging love letters with him.<sup>77</sup> So, it can't be the case that just because of the bad actions of this person, this was taken. There have to be other things. And if the other things don't amount to imminent threat, then we have to worry what else it could be, driving this.

**SCHARF:** Avi.

**COVER:** Yeah, I mean if I can just take a contrary standpoint for a little bit. It's just to think of one problem—and Shannon you began at the outset calling Soleimani a terrorist—is of course, we have had a policy now for over a decade of targeted killings.<sup>78</sup> We've killed thousands of people. Call them assassinations, call them targeted killings: that's been a policy of this country. And so, one can certainly see I think a through-line from the beginning of that policy, not long after 9/11 through to Soleimani's killing—

**SCHARF:** How many of them were military members?

**COVER:** No, agreed, but I think this is, it's a matter, a matter of degree, or rather, a matter of kind. We've started this practice, we continue to do it, there is fallout from those killings wherever they occur, there's collateral damage, and I think we're reaping what we've sown.

**SCHARF:** And Milena was suggesting that this might become a major campaign issue for the presidential election. ABC News conducted a poll to figure this out, and the poll last week said fifty-six percent of Americans said that they disapprove of President Trump's handling of the heightened tensions with Iran.<sup>79</sup> Fifty-six percent: Does that surprise you? Is that high? Is that low?

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77. Colby Itkowitz and John Hudson, "Trump Praises Kim Jong Un, Saying He Received a 'Beautiful' Letter from Him," *Wash. Post*, June 11, 2019, [https://www.washingtonpost.com/politics/trump-praises-kim-jong-un-saying-he-received-a-beautiful-letter-from-him/2019/06/11/4359f4d6-8c70-11e9-b08e-cfd89bd36d4e\\_story.html](https://www.washingtonpost.com/politics/trump-praises-kim-jong-un-saying-he-received-a-beautiful-letter-from-him/2019/06/11/4359f4d6-8c70-11e9-b08e-cfd89bd36d4e_story.html).

78. Scharf, Sterio, and Williams, *supra* note 42.

79. Kendall Karson, "Majority of Americans Disapprove of Trump's Handling of Iran, Feel Less Safe After Strike: POLL," *Am. Broad. Co.*, Jan. 12, 2020, [https://abcnews.go.com/Politics/majority-americans-disapprove-trumps-handling-iran-feel-safe/story?id=68219819&cid=social\\_twitter\\_abcn](https://abcnews.go.com/Politics/majority-americans-disapprove-trumps-handling-iran-feel-safe/story?id=68219819&cid=social_twitter_abcn).

**STERIO:** No, I mean it doesn't surprise me, but at the same time, people who support President Trump, believe, you know, I think most of them believe in targeted killings. Most of them see this as just another, as Avi was saying, another targeted killing of a terrorist. Love the fact that the Trump administration is so unpredictable. Actually love the inconsistency of President Trump's actions and think that's a good thing. So, I really don't think that this will change things significantly for the upcoming election.

**SCHARF:** Paul Williams, do you think the people of America should care about this?

**WILLIAMS:** I think they do care. I think the fifty-six percent number shows that the Americans are interested in a serious and a competent and a consistent approach to dealing with state sponsors of terrorism. You know, they see Iran as projecting its interest in an area where we have allies and where we have strategic interest and they just want competent and capable policy to contain Iran. I think that is an issue. Whether it rises to the political debate or not I don't know. Americans care about it, they're focused on it. And they want us to get it right.

**SCHARF:** Well, how are they supposed to assess this?

**WILLIAMS:** They're supposed to assess this whether or not we have a clear policy and whether the consequences of that policy are containing the Iranians. Shooting twenty-two missiles into a US base in Iraq is not the consistent policy that contains Iranians, which I think is why you had the targeted killing. Now the stand-down may weaken that deterrence, or the lack of an articulable deterrence policy may also weaken our ability to contain them.

**SCHARF:** Alright, well Paul, that's going to be the last word. Our producer is indicating that it's time for us to wrap up our program. So, let me say, Paul Williams, Milena Sterio, Shannon French, and Avidan Cover—thank you for providing your insights on the US-Iran crisis. I'm sure the audience will be following the next steps very closely with a better understanding because of what you've said today.

I'm Michael Scharf. You've been listening to *Talking Foreign Policy*.

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