February 2021 American airstrikes in Syria: necessary and proportionate acts of self-defence or unlawful armed reprisals?

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ABSTRACT
This article examines the *jus ad bellum* necessity and proportionality requirements pertaining to the American airstrikes on 25 February 2021 against alleged Iran-supported non-state militia groups in Syria. From the limited publicly available information, the February airstrikes appear to be punitive rather than defensive. Consequently, this author concludes that the airstrikes were likely unnecessary as there was no situation of genuine emergency that required the USA to act when and where it did or else lose the ability to defend itself effectively. The necessity of targeting the militiamen in Syrian territory is also highly questionable. If not necessary, the airstrikes constitute unlawful armed reprisals. The proportionality of the airstrikes is moot, therefore, although the article proceeds to articulate certain challenges to assessing such proportionality if the necessity of the American response against an ongoing threat could be hypothetically established.

KEYWORDS Self-defence; necessity and proportionality; February airstrikes; Erbil; Syria; reprisals

1. Introduction

On 25 February 2021, the Biden Administration carried out its first act of military intervention in the territory of another state. The operation consisted of airstrikes against targets located in eastern Syria (the February Airstrikes). In its letter to the UN Security Council required by Article 51 of the UN Charter, the USA justified its actions as necessary and proportionate acts of self-defence ‘against infrastructure used by Iran-supported non-State militia groups.’ President Biden said that such militia groups had been involved in recent attacks against American and Coalition personnel.
in Iraq, including an attack against Erbil airport on 15 February 2021, which was the immediate precursor to the American operation. The President also asserted that the Iranian-supported militia groups were ‘engaged in ongoing planning for future such attacks.’

The February Airstrikes count among numerous military operations carried out by the USA in Syrian territory during the course of the ongoing civil war. The airstrikes raise a number of contentious issues for the interpretation of international law, not least regarding any requisite gravity threshold for armed attacks and whether in principle a state may lawfully act in self-defence against non-state actors (NSAs) where there is no attribution of an armed attack to a state. However, these well-known debates are not the focus of present inquiry and are discussed by other contributors to this symposium. In relation to the latter issue, however, the following analysis will necessarily assume that armed attacks by NSAs (reaching any required gravity threshold) can in principle trigger a state’s right of self-defence, regardless of whether the attacks are attributable to a state.

The purpose of this article is to focus on the assertion by the USA that the February Airstrikes were necessary and proportionate acts of self-defence. This claim calls for an examination of the customary international law requirements of necessity and proportionality that condition a state’s right of self-defence once that right has been triggered by an ongoing or (potentially) imminent armed attack. In so doing, this author draws upon recently published research that focuses on these two requirements, and applies that research to the facts of this incident. Section 2 examines the necessity of the USA’s airstrikes, explaining how necessity requires two questions to be answered: 1) is any force required at all in the circumstances; and 2) if so, where must that force be directed? Section 2 concludes that the February Airstrikes were probably intended to be punitive rather than limited to a defensive purpose. They were also carried out on Syrian territory to avoid diplomatic tensions with Iraq. As such, they were likely unnecessary.

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3The White House, ‘A Letter to the Speaker of the House and President Pro Tempore of the Senate Consistent with the War Powers Resolution’ (27 February 2021) www.whitehouse.gov/briefing-room/statements-releases/2021/02/27/a-letter-to-the-speaker-of-the-house-and-president-pro-tempore-of-the-senate-consistent-with-the-war-powers-resolution/ (accessed 29 July 2021).
4American intervention in Syria has mainly been directed at countering the ongoing threat posed by Daesh, Al-Qaeda and other terrorist groups since 2014. See generally the Global Coalition website: https://theglobalcoalition.org/en/ (accessed 29 July 2021).
5Credible arguments may be made either way on this issue. See the contribution by Henderson to this symposium. See also Chris O’Meara, Necessity and Proportionality and the Right of Self-Defence in International Law (Oxford University Press, 2021) 172–4. In respect of the requisite gravity of force required to amount to an armed attack, see Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (merits) [1986] ICJ Rep 14, para 191. Regarding carrying out acts of self-defence on host state territory, see subsection 2.1(c).
6Biden Letter (n 3).
7Regarding the controversies associated with armed attacks that are ‘imminent’, see subsection 2.1(a). An ‘ongoing’ armed attack is understood as a current manifestation of armed violence.
8O’Meara (n 5).
There are also concerns regarding the necessity of targeting troops of an ally (Iraq) in foreign territory (Syria). Assuming for present purposes that the necessity of the February Airstrikes might be satisfied, section 3 examines the proportionality of those actions. Given the perceived ongoing threat posed by the militia groups, the proportionality assessment is extremely difficult to make given that the situation has escalated over time. This author nevertheless offers some observations regarding indicators of whether the American response might be regarded as excessive.

2. Necessity

In accordance with the approach of the International Court of Justice (ICJ) in Nicaragua and Oil Platforms, the necessity of any action in self-defence must be considered before a proportionality assessment may be made. Each requirement is independent and, as explained in the following sections, each performs a distinct function in the jus ad bellum so as to restrain a state’s use of force and keep it truly defensive. This order of application allows for that distinct function to be realised. As such, in response to an armed attack (whether ongoing or imminent) if a declared act of self-defence is unnecessary, it cannot be disproportionate or proportionate: it will simply be an unlawful use of force. If necessity is satisfied, however, an exercise of self-defence might be proportionate or disproportionate.

When assessing the necessity of the American operation, this paper applies a novel taxonomy that captures the two distinct questions that necessity addresses and which are reflected in state practice, the ICJ’s jurisprudence and scholarship. The first necessity question (which is how most commentators traditionally conceive of necessity) is whether in response to an armed attack any form of military force is required at all, or whether peaceful alternatives suffice to resolve the issue. This author calls this type of necessity ‘general necessity’. If force is the only reasonable response available to a state in the circumstances, the subsequent issue that necessity addresses is where such force must be directed so as to be capable of achieving a defensive purpose. This issue of the targeting of defensive measures is labelled ‘specific necessity’. If both types of necessity are satisfied, proportionality proceeds to assess the overall outcomes of a defensive operation and whether or not they are excessive in the circumstances.

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9 *Nicaragua* (n 5) para 237; *Oil Platforms (Islamic Republic of Iran v United States of America)* (judgment) [2003] ICJ Rep 161, paras 76–7. In *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda)* (judgment) [2007] ICJ Rep 168, para 147, the ICJ was not as structured in its approach, but the Court did not consider necessity and proportionality in detail.

10 See O’Meara (n 5) especially 30–8.
2.1. General necessity

General necessity captures the ‘no choice of means’ element of the much-celebrated Caroline formula, from which our contemporary understanding of necessity and proportionality is traditionally distilled. General necessity reflects American Secretary of State Daniel Webster’s assertion that the necessity of self-defence must be ‘instant, overwhelming, and leaving no choice of means and no moment for deliberation.’\(^\text{11}\) Today, in response to an armed attack, general necessity requires that self-defence be a measure of last resort. Military force must be the only reasonable option in the circumstances.\(^\text{12}\) This means that a defending state\(^\text{13}\) must be able to show that either: i) it has resorted to peaceful measures before using defensive force (and they have failed), or ii) peaceful measures are unfeasible and/or, on their own, they will be ineffective to halt or repel an armed attack or (if a limited right of anticipatory self-defence is accepted) prevent the occurrence of an imminent armed attack.\(^\text{14}\)

2.1. (a) An ongoing ‘threat’ and deterrence

The February Airstrikes are only capable of satisfying the requirement of general necessity if at the time the USA launched the strikes it was facing an ongoing or imminent armed attack, in each case, satisfying any required threshold of gravity. If the purported armed attack against the USA was fully complete, there is no pressing need to halt, repel or prevent it.\(^\text{15}\) As force is not the only reasonable option in these circumstances, the American response cannot be characterised as a necessary act of self-defence. Instead, the emphasis is placed on non-military options to resolve the perceived threat posed by the militia groups. These options might include recourse to the UN Security Council, diplomacy, or co-operation with either the Syrian or Iraqi governments to contain the threat. Whether these alternatives to using military force constitute viable options is discussed in section 2.1(b).

\(^\text{11}\)Letter from Mr Webster to Lord Ashburton (6 August 1842) British and Foreign State Papers, 1841–1842, vol XXX, 201. Webster was referring to earlier correspondence between him and Lord Ashburton’s predecessor, Mr Fox. See Letter from Mr Webster to Mr Fox (24 April 1841) British and Foreign State Papers, 1840–1841, vol XXIX, 1126.

\(^\text{12}\)James A Green, ‘Docking the Caroline: Understanding the Relevance of the Formula in Contemporary Customary International Law Concerning Self-Defense’ (2006) 14(2) Cardozo Journal of International and Comparative Law 429, 453, 455–6.

\(^\text{13}\)A ‘defending state’ is a state that is, or claims to be, the victim of an armed attack by another state or NSAs.

\(^\text{14}\)O’Meara (n 5) 41. Regarding a right of self-defence against imminent armed attacks, see further section 2.1(a).

\(^\text{15}\)For further consideration of complete armed attacks and the necessity requirement, see O’Meara (n 5) 71–2.
As stated in the Introduction, the immediate precursor to the February Airstrikes was the Erbil attack on 15 February 2021, being ten days before the American response on 25 February. On the facts, it might be natural to conclude that the Erbil attack was over\(^\text{16}\) and that the February Airstrikes were therefore a response to a completed armed attack. Concerning the significance of the ten day interval, despite official assertions that the USA ‘would respond to the [Erbil] strike at a time and place of its choosing’\(^\text{17}\), general necessity requires that the American defensive response to an armed attack be made within a reasonable timeframe, without unduly postponing the taking of measures\(^\text{18}\). This so-called ‘immediacy’ requirement is reflected in the ICJ’s determination in *Nicaragua* that purported defensive measures taken by the USA were unnecessary, primarily based on the fact that the measures were taken several months after the major offensive of the armed opposition against the government of El Salvador had been completely repulsed\(^\text{19}\).

The immediacy requirement is a flexible concept, however, and context specific\(^\text{20}\). In the present case, the USA reportedly waited in order to establish the perpetrators of the attack with ‘high confidence’\(^\text{21}\). Collecting appropriate intelligence to confirm that the targets of the defensive responsive were in fact responsible for the attack against Erbil airport is consistent with the idea that states may need to take time to prepare an appropriate course of action rather than acting rashly. A ten-day delay between the attack and purported act of self-defence does not necessarily, *on its own*, render the American response an unlawful armed reprisal\(^\text{22}\), provided that a defensive purpose to that action can be identified. The defensive purpose that the USA can point to is that it perceived an enduring threat to it over and above an attack that was materially complete (i.e. the Erbil attack). In such instances, where a series of attacks is expected from the same source, the immediacy of the response is to be considered against the threat considered as a

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\(^{16}\)Reaching this conclusion, see Adil Ahmad Haque, ‘Biden’s first strike and the international law of self-defense’, *Just Security* (26 February 2021) www.justsecurity.org/75010/bidens-first-strike-and-the-international-law-of-self-defense/ (accessed 29 July 2021).

\(^{17}\)Helene Cooper and Eric Schmitt, ‘U.S. airstrikes in Syria target Iran-backed militias that rocketed American troops in Iraq’, *The New York Times* (28 June 2021) www.nytimes.com/2021/02/25/us/politics/biden-syria-airstrike-iran.html?action=click&module=Top%20Stories&pgtype=Homepage (accessed 29 July 2021).

\(^{18}\)Oscar Schachter, ‘The Lawful Resort to Unilateral Use of Force’ (1985) 10 *Yale Journal of International Law* 291, 292; Judith Gardam, *Necessity, Proportionality and the Use of Force by States* (Cambridge University Press, 2004) 150; Yoram Dinstein, *War, Aggression and Self-Defence* (Cambridge University Press 6th edn, 2017) 252.

\(^{19}\)*Nicaragua* (n 5) para 237.

\(^{20}\)See O’Meara (n 5) 72–84.

\(^{21}\)Cooper and Schmitt (n 17).

\(^{22}\)Regarding reprisals, see generally Shane Darcy, ‘Retaliation and Reprisal’ in Marc Weller (ed), *The Oxford Handbook on the Use of Force in International Law* (Oxford University Press, 2015) 879.
This means that the immediacy element of general necessity requires that actions in self-defence be aimed at behaviour that is still current, even if the material effects of its latest manifestation have disappeared. Whether the USA can credibly point to an ongoing threat necessitating a defensive response rests on whether further armed attacks were imminent at the time it launched the February Airstrikes (see later in this section).

The USA’s justification does indeed indicate that the necessity of its military response was to counter more than a completed armed attack (i.e. the attack on Erbil airport). The USA maintained that ‘[i]n recent weeks, United States and Coalition partner forces in Iraq have been the target of an escalating series of threats and attacks by such non-State militia groups’ and that the ‘continued operation’ of militia groups in Syria and the use of Syrian territory by these groups constitutes a threat to the USA and to the region. ‘Threats’ do not constitute armed attacks giving rise to a right of self-defence. The ICJ, for example, has confirmed that the right of self-defence is not available to states to protect ‘perceived security interests’. Furthermore, the notorious ‘Bush Doctrine’, which embodies the notion that states might lawfully respond in self-defence to unmaterialised future threats, is broadly rejected by states and scholars alike.

However, where a perceived threat comprises a series of past and imminent armed attacks from the same source, the situation is different. In such instances it is possible to make a credible case for the general necessity of the USA’s claim to a right of self-defence. Albeit credible, this argument is controversial for two reasons. First, although the USA asserts a right of anticipatory self-defence to respond to armed attacks that are ‘imminent’, such right remains unsettled in international law. O’Connell’s contribution to this symposium, for example, represents scholarship that maintains that self-defence is only available to halt or repel an armed attack that is underway, not forestall one that is imminent. Given the historical state practice on

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23International Law Commission, ‘Addendum – Eighth Report on State Responsibility by Mr Roberto Ago, Special Rapporteur – The Internationally Wrongful Act of the State, Source of International Responsibility (Part 1)’ (1980) UN Doc A/CN.4/318/Add.5-7, para 122.

24Olivier Corten, The Law Against War: The Prohibition on the Use of Force in Contemporary International Law (Hart Publishing, 2010) 487. See further O’Meara (n 5) 78–84.

25UN Doc S/2021/202 (n 2) (emphasis added).

26Armed Activities (n 9) para 148.

27See, for example, Corten (n 24) 406–43; Tom Ruys, ‘Armed Attack’ and Article 51 of the UN Charter: Evolutions in Customary Law and Practice (Cambridge University Press, 2010) 322–4; James A Green, ‘The Ratione Temporis Elements of Self-Defence’ (2015) 2(1) Journal on the Use of Force and International Law 97, 106–7. It is well-known that the Non-Aligned Movement has explicitly rejected this possibility: UNGA, ‘XVII Ministerial Conference of the Non-Aligned Movement, Algiers, Algeria, 26–29 May 2014, Final Document’ (2014) UN Doc A/68/966-S/2014/573, para 26.5.

28Department of Defense, Law of War Manual (June 2015) (updated December 2016) https://dod.defense.gov/Portals/1/Documents/pubs/DoD%20Law%20of%20War%20Manual%20-%20June%202015%20Updated%20Dec%202016.pdf?ver=2016-12-13-172036-190 (accessed 29 July 2021) para 1.11.5.1.
this issue and the fact that states continue to claim such a right, however, the status of anticipatory self-defence under contemporary international law is arguably not so clear-cut. The most we can say is that states might possess a right of self-defence against imminent armed attacks. Second, the ability of states to react to an ongoing threat in this way potentially implicates the ‘accumulation of events’ or ‘pin-prick’ theory of self-defence. This theory, while often associated with the Nicaragua gravity threshold, might also be employed to justify a state responding militarily to actually completed armed attacks where further attacks from the same source are imminent.  

The accumulation of events theory nevertheless remains a fairly controversial basis on which to ground a right of self-defence. Not least because considering whether or not a state is subject to a series of armed attacks over time rests on the prospect of whether the next armed attack is imminent. Without a further imminent armed attack, the last attack against the state will have factually ended, meaning that self-defence is no longer necessary. Absent ongoing hostilities or occupation, it is only the prospect of a further imminent armed attack that keeps the threat current, thereby maintaining the general necessity of self-defence. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions recently adopted this approach commenting on the lawfulness of the killing of General Qassem Soleimani in 2020: ‘[i]f an “attack” is clearly over, then the legal “clock” resets. If no further attack is imminent, then there is nothing to lawfully defend against.’

Regarding the February Airstrikes, it is possible that the USA, in referencing an ‘escalating series of threats and attacks by militia groups’ and the ‘continued operation’ of militia groups is justifying its self-defence on the basis referred to in the preceding paragraph. As with so many reports of self-defence to the UN Security Council, however, there is insufficient detail to come to an authoritative conclusion as to whether the USA is making this argument to justify the airstrikes. What we can say is that the USA has previously claimed a right of self-defence in circumstances where an armed attack has occurred and further anticipated attacks from the same source are to be prevented. Examples among many include the Gulf of Tonkin incident in 1964 when the USA claimed a right of self-defence to ‘deter future aggression’ by North Vietnam following previous alleged attacks. A more recent example is the American response to 9/11, where

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29See O’Meara (n 5) 58–71.  
30See, e.g. Ruys (n 27) 168–75.  
31See O’Meara (n 5) 76–84. For discussion of differing views pertaining to perceived ‘campaigns’ of armed attacks, see the contribution by Henderson to this symposium.  
32UN Human Rights Council, ‘Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions’ (29 June 2020) UN Doc A/HRC/44/38, Annex, para 61.  
33UN Doc S/2021/202 (n 2) (emphasis added).  
34UNSC Verbatim Record, UN Doc S/PV.1140 (5 August 1964) 44–5.
the USA referred to the ‘ongoing threat’ against it to justify its military response, which included the need to prevent and deter further attacks. The same justification was used to explain the killing of General Qassem Soleimani. Other states have made similar arguments for a right of self-defence in response a series of armed attacks over a period of time, including in relation to the 9/11 attacks and the ongoing anti-terrorist operations against Daesh in Syria.

The logic of the continuing threat that allows for a defensive response might seem compelling. After all, if the threat posed by Iranian-backed militia groups is perceived by the USA to be genuine and ongoing, and there are no other means to counter that threat effectively, the general necessity of self-defence might potentially be satisfied. In support of this conclusion, the principal significance of the prior attacks is evidential: the threat is not simply hypothetical, as the NSAs have already demonstrated the hostile intent and capacity to carry out attacks against the defending state. A pattern of behaviour potentially indicates (taken together with other credible intelligence) that further attacks are forthcoming. With hindsight, the American concern expressed in February 2021 of an ongoing threat appears to have been vindicated. In June 2021, the USA reported to the UN Security Council that, in addition to its February operation, it had undertaken further airstrikes in Syrian and Iraqi territory against ‘Iran-backed militia groups’ (June Airstrikes). The USA maintained that the militia attacks had escalated in recent months and injured and threatened the lives of American and Coalition personnel.

When considering the right of states to respond to continuing threats of this nature, however, we should recall that the USA currently relies on a broad conception of ‘imminence’, albeit that it has not explicitly referenced this standard in the present case. Imminence, on the American view, does not relate solely to the timing of the anticipated armed attack, but also relies on a number of non-temporal contextual indicators that determine whether or not the USA may lawfully act anticipatorily in self-defence.

35Letter dated 7 October 2001 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council, UN Doc S/2001/946 (7 October 2001).
36Letter dated 8 January 2020 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council, UN Doc S/2020/20 (9 January 2020).
37For this author’s review of relevant state practice, see O’Meara (n 5) 80–4; 187–202; 220–5.
38Regarding alternatives to military force, see section 2.1(b).
39Letter dated 29 June 2021 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council, UN Doc S/2021/614 (30 June 2021).
40Ibid.
41See, e.g. Brian Egan, Legal Adviser, U.S. Department of State, ‘International Law, Legal Diplomacy, and the Counter-ISIL Campaign: Some Observations’, speech to the 110th Annual Meeting of the American Society of International Law (1 April 2016) 92 International Law Studies 235. Regarding the meaning of imminence, including the USA’s interpretation of this term, see O’Meara (n 5) 58–71. See also the contribution by Henderson to this symposium.
Although some allies of the USA have also adopted this standard,\textsuperscript{42} it does not necessarily reflect the \textit{lex lata}. Moreover, such a conception of imminence is controversial because it offers these states enormous leeway to respond to anticipated threats and knit together past and future armed attacks in a way that potentially maintains the general necessity of self-defence against a persisting threat.

Such possibility stretches the idea of general necessity and of the right of self-defence more generally to breaking point. After all, self-defence is designed to be a temporary emergency measure, not a basis for a permanent war footing. When it comes to necessity, however, states tend to take greater latitude when combatting threats from NSAs than they do threats from other states. We see this, for example, in the ongoing intervention in Syria against Daesh. With these anti-Daesh operations, the prospect of the ‘permanent imminence’ of the threat posed by that terrorist group appears, for some states at least, to keep the general necessity of self-defence rolling on indefinitely.\textsuperscript{43} This worrying development in state practice challenges the ability of international law to regulate state behaviour in any meaningful way.

There are possible indications in the USA’s justifications for the February Airstrikes that the perceived threat is being interpreted in this very flexible manner. The USA maintained, for example, that ‘[t]his necessary and proportionate action was taken to defend United States personnel and to deter further attacks.’\textsuperscript{44} The same was said of the June Airstrikes.\textsuperscript{45} Whether or not the USA regarded these perceived further attacks as imminent is not clear from the public justifications. Perhaps the closest indication was President Biden’s statement in February that the militia groups were ‘engaged in ongoing planning for future such attacks’.\textsuperscript{46} There is no further detail, however, regarding the likelihood of such attacks, when and where they might occur, or whether there might be other opportunities to counter them. Such factors pertain to the USA’s contextual interpretation of imminence referred to previously and, therefore, whether there was a pressing need to use force at the relevant time. It is incumbent on the USA to provide further details when justifying the need to respond to threats in this way.

\textsuperscript{42}See the UK Attorney General’s Speech at the International Institute for Strategic Studies, ‘The Modern Law of Self-Defence’ (11 January 2017) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583171/170111_Imminence_Speech_.pdf (accessed 29 July 2021); Australian Attorney-General, ‘The Right of Self-Defence Against Imminent Armed Attack in International Law’, Public Lecture at the T C Beirne School of Law, University of Queensland (11 April 2017) www.ejiltalk.org/the-right-of-self-defence-against-imminent-armed-attack-in-international-law/ (accessed 29 July 2021).

\textsuperscript{43}See O’Meara (n 5) 206–8.

\textsuperscript{44}UN Doc S/2021/202 (n 2) (emphasis added).

\textsuperscript{45}UN Doc S/2021/614 (n 39).

\textsuperscript{46}Biden Letter (n 3).
Of particular concern when considering the general necessity of the USA action in February 2021 was the Pentagon press secretary’s comment that ‘the American retaliation was meant to punish the perpetrators of the rocket attack but not to escalate hostilities with Iran’. The notions of ‘deterrence’ and ‘punishment’ are potentially problematic when considering how far states may lawfully go to defend themselves. A motive or purpose that stretches beyond the defensive might render potentially lawful defensive action an unlawful armed reprisal. Yet, as Dinstein reminds us, ‘the motives driving States to action are usually multifaceted, and a tinge of retribution can probably be traced in every instance of response to force’. Although ‘punishment’ seems inimical to defensive action, being the language of reprisals, states might rightly regard deterring further armed attacks from the same source as integral to a necessary and proportionate defensive response. This was the American and British view in justifying targeting Al-Qaeda following the 9/11 attacks in 2001, for example, and such actions were broadly supported by the international community at the time. Other states have adopted a similar position in response to ongoing threats. If the militia threat to the USA was indeed genuine and current, and the June letter’s reference to ‘ongoing attacks’ suggests that it was, deterring repeated armed attacks is potentially legitimate as a matter of principle.

That said, for the February Airstrikes to be lawful, their main aim must still have been defensive. States might legitimately pursue other subsidiary aims in exercising their right of self-defence provided that such aims are necessary and proportionate to halting or repelling an armed attack or (if a limited right of anticipatory self-defence is accepted) preventing an armed attack that is imminent. However, there is real doubt that the February Airstrikes were indeed necessary acts of self-defence. The fact that they occurred ten days after the attack in Erbil, and that there was no indication in the public justifications at the time that further attacks were imminent (howsoever imminence is defined), suggests that the strikes were in fact primarily designed to be punitive. Furthermore, when considering the purpose

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47 Cooper and Schmitt (n 17) (emphasis added).
48 Yoram Dinstein, War, Aggression and Self-Defence (Cambridge University Press 3rd edn, 2001) 199.
49 In support of its intervention in Afghanistan, the USA referred to the ‘ongoing threat’ against it and argued that its actions, which were designed to prevent and deter further attacks, were in accordance with the right of individual and collective self-defence: UN Doc S/2001/946 (n 35). The UK stated that its actions in self-defence were designed ‘to avert the continuing threat of attacks from the same source’: Letter dated 7 October 2001 from the Chargé d’Affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council, UN Doc S/2001/947 (7 October 2001). Regarding the international community’s response to this incident, as well as other examples of relevant state practice, see O’Meara (n 5) 80–4.
50 UN Doc S/2021/614 (n 39).
51 Corten (n 24) 484–5.
of the February strikes, the aforementioned American statement that the
strikes were intended to punish the perpetrators of the prior rocket attack
in Erbil cannot be ignored, neither can the assertion that ‘[t]he operation
 sends an unambiguous message: President Biden will act to protect Ameri-
can and coalition personnel.’\(^{52}\) Taking the American justifications at face
value points to the primary purpose of the February strikes being more
likely punitive rather than defensive.\(^{53}\) Instead of being a lawful defensive
operation, therefore, it would seem that the February Airstrikes were
designed to be an armed reprisal.

2.1. (b) Alternatives to force available to the USA?

When considering the issue of the general necessity of the February Air-
strikes, we must also consider whether the USA had alternatives open to it
at the time to counter the perceived militia threat.\(^{54}\) The American justifi-
cation for the February Airstrikes reveals that the USA did indeed consider and
pursue such alternatives: ‘[t]his military response was conducted together
with diplomatic measures, including consultation with Coalition partners.’\(^{55}\)
Likewise, in respect of the subsequent June Airstrikes, the USA stated that
the ‘military response was taken after non-military options proved
inadequate to address the threat’.\(^{56}\)

The Americans chose, therefore, to combine peaceful measures with for-
cible measures. However, it would appear that they concluded that peaceful
measures, on their own, would not be effective to counter the perceived
threat. This latter conclusion accords with the core idea of general necessity,
which is that force may only be used either on its own, or in combination
with non-forceful measures, if the latter are unfeasible and/or will be ineffect-
tive if used exclusively. The focus, therefore, is on the availability of reason-
able alternatives to force in the circumstances.\(^{57}\) In respect of the February
Airstrikes, it is highly significant that the USA was not facing an ongoing
armed attack at the time it acted.\(^{58}\) Although the USA alluded to the
ongoing threat it faced, as explained previously, such threat necessarily

\(^{52}\) Cooper and Schmitt (n 17).

\(^{53}\) Haque (n 16) concludes that the airstrikes were ‘expressive’, being designed to send a message to the
USA’s adversaries, while also indicating that ‘President Biden will violate international law, much like
his predecessors.’

\(^{54}\) The option of states pursuing peaceful alternatives to military force is a feature of state practice of
those states that justify acts of self-defence, as well as states that review and comment on defensive
actions. For commentary on this state practice, see O’Meara (n 5) 42–51.

\(^{55}\) UN Doc S/2021/202 (n 2).

\(^{56}\) UN Doc S/2021/614 (n 39).

\(^{57}\) O’Meara (n 5) 38–42.

\(^{58}\) Where there is an ongoing armed attack, it is this author’s view that general necessity is satisfied *per se*,
irrespective of probabilities as to the effectiveness of peaceful alternatives to force: O’Meara (n 5) 57–8.
relies on the prospect of further imminent armed attacks, which was not an explicit feature of the American justification for using force at the time.

The timing issue bears heavily on assessing the general necessity of the American response. If further armed attacks were anticipated, that they will (or may) occur in the future places additional significance on peaceful alternatives and, for the purposes of general necessity, whether resorting to force was indeed reasonable in the circumstances. In simple terms, unless the USA can establish that it had to act when it did or else it would have lost the opportunity to defend itself effectively, then it would have had time to consider and pursue options other than military strikes inside Syrian territory.59 The question is whether such options constituted viable alternatives to military action at the relevant time.

In the present scenario, alternatives open to the USA in place of the February Airstrikes potentially include peaceful diplomacy, recourse to the UN Security Council and/or co-operation with the Syrian Government (e.g. using law enforcement or other appropriate measures) to counter the threat emanating from their territory. Given that the threat derives from NSA militia groups operating in a particularly unstable area of the world, and that key Iranian allies, including Russia, are permanent members of the UN Security Council, it is unlikely that the first two alternatives are realistically viable. Although the USA references having undertaken diplomatic measures, little detail is provided and it is not clear from public statements that the USA even attempted to bring the situation to the attention of the UN Security Council. The USA should provide details, if indeed this was the case, that such peaceful routes were not available to it in the circumstances.

The relationship between the USA and Syria and the conduct of President Assad’s regime during the ongoing civil war also means that co-operation with the Syrian Government is unlikely to constitute a real alternative to direct military action against the NSAs themselves. Western states have generally not deemed it necessary to co-operate with the Syrian Government during their anti-terrorism operations on Syrian territory. Indeed, there is a real risk to such states that any co-operation might engage their international responsibility in relation to the unlawful acts of the Syrian Government, including reported breaches of international humanitarian law and international human rights law.60

Of greatest significance when examining alternatives to the February Airstrikes is the evidence in the public record that targeting the militia groups within Syrian territory was based purely on political, rather than defensive, considerations. It was reported that ‘[t]he strikes were just over the border

59 Regarding this so-called last window of opportunity to act, see O’Meara (n 5) 65–7.
60 See O’Meara (n 5) 176–81.
in Syria to avoid diplomatic blowback to the Iraqi government. The Pentagon offered up larger groups of targets but Mr. Biden approved a less aggressive option. If true, this would suggest that there were other options open to the USA to counter the threat posed by the NSAs, including targets not based in Syria, but the Administration simply chose the most politically expedient option.

If the USA’s operation was truly designed to protect American and Coalition troops stationed in Iraq, then the clearest alternative to using force in Syrian territory was to co-operate with the Iraqi government to ensure the security of personnel operating there. If such co-operation was a viable alternative and likely to be effective, but doing so was simply difficult or embarrassing, the February Airstrikes would not satisfy the ‘no choice of means’ requirement of general necessity that justifies any use of force on Syrian territory. We are probably not looking at a case, therefore, of the USA having to act when and where it did or else it would have lost the opportunity to defend itself effectively. If action in Iraqi territory with the co-operation of the Iraqi government was a reasonable alternative, then such co-operative action (be it military, diplomatic, law enforcement, or otherwise) should have been taken. If co-operation with the Iraqi government, or any other alternative to military force in Syrian territory, was not practicable or likely to be effective, the USA should have made this clear in its letter to the UN Security Council.

2.1. (c) Unwilling or unable

The fact that the February Airstrikes were undertaken against NSA militia groups within the territory of Syria without the Syrian Government's consent is highly pertinent to assessing the necessity of the American action. The ability to act militarily in foreign territory where the threat is located, but where the state in question (often referred to as the ‘host state’ or ‘territorial state’) is not responsible for the armed attacks, is justified by the USA on the basis of the controversial ‘unwilling or unable’ doctrine. For the USA and a handful of other states that support this doctrine, defending states may act in host state territory where the government of that state is unwilling or unable to prevent its territory being used by NSA groups to launch armed attacks against the relevant defending state. In terms of the lex lata, only a limited number of states have explicitly or implicitly endorsed the doctrine, meaning that it operates as an unreliable

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61 Cooper and Schmitt (n 17) (emphasis added).
62 Regarding the current scenario, see UN Doc S/2021/202 (n 2).
63 See Elena Chachko and Ashley Deeks, ‘Which states support the “unwilling and unable” test?’ Lawfare (10 October 2016) www.lawfareblog.com/which-states-support-unwilling-and-unable-test#UnitedKingdom (accessed 29 July 2021); Jutta Brunnée and Stephen J Toope, ‘Self-Defence
basis for states to justify their actions in self-defence. Nevertheless, the USA continues to do so.

Putting to one side the doctrine’s current status in international law, unwillingness and/or inability on the part of the host state relates to the necessity of self-defence against NSAs carrying out cross-border armed attacks. That there has been, or will be, an armed attack that requires a defensive response is an issue of general necessity (viz whether there is a need for some form of defensive response). Host state unwillingness and/or inability potentially denies the defending state an alternative means of redress, meaning that force might be the only way to remove the threat. Specific necessity accounts for military action taken against NSA targets on host state territory (see section 2.2).\(^64\) The argument goes that if the USA can establish the necessity of its actions as a result of the Syrian Government’s unwillingness or inability to counter the threat posed by the militia groups, in principle at least a resulting lawful exercise of self-defence against those groups in Syrian territory excuses a limited breach of Syria’s sovereignty and territorial integrity.\(^65\)

In the present case, even if other states, courts or tribunals, international organisations, or scholars were willing in principle to accept an American justification based on unwillingness or inability, no details have been publicly provided by the Biden Administration to substantiate it. It is fair to assume, as some scholars do,\(^66\) that Syria was in fact unwilling to counter the militia threat. Syria’s positive relationship with Iran and less than positive relationship with the USA makes unwillingness inevitable. Yet, without evidence pertaining to inability or unwillingness on the part of the Syrian Government over and above a brief statement in the USA’s report to the UN Security Council, it is impossible for third-party observers to verify the veracity of this claim. The American statement alone seems an insufficient basis on which to base intervention into foreign territory absent consent. Regardless, given the analysis in the preceding section regarding possible options open to the USA to co-operate with the Iraqi government and avoid acting on Syrian territory, it would seem a reasonable conclusion that reliance on the unwilling or unable doctrine is a spurious attempt to try and justify recourse to force where there was no general necessity to do so.

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\(^{64}\)See O’Meara (n 5) 182–5.

\(^{65}\)See ibid. See also Kimberley N Trapp, ‘Back to Basics: Necessity, Proportionality and the Right of Self-Defence against non-State Terrorist Actors’ (2007) 56(1) International and Comparative Law Quarterly 141, 147.

\(^{66}\)Michael N Schmitt, ‘President Biden’s first use of force and international law’, Articles of War (1 March 2021) https://lieber.westpoint.edu/president-bidens-first-use-of-force-and-international-law/ (accessed 29 July 2021).
2.2. Specific necessity

Even if the USA were able to establish to the satisfaction of third-party reviewers (whether they be other states, international organisations, courts, tribunals or scholars) the general necessity of the February Airstrikes, that is not the end of necessity analysis. Drawing on the ICJ’s decision in *Oil Platforms*, academic commentary, and associated state practice, this author’s position is that necessity also requires us to consider the target of purported defensive action. This author labels this requirement ‘specific necessity’, which is considered separately to the prior general necessity question of whether there is a *prima facie* need for a defending state to resort to force at all. In summary, specific necessity requires that defensive force is limited to military targets connected with the ongoing or imminent armed attacks. This *jus ad bellum* requirement operates separately, but in addition to, the targeting rules of international humanitarian law. In so doing, specific necessity ensures that the capture, neutralisation or destruction of such targets is confined to a defensive purpose: halting, repelling, or preventing armed attacks. A lack of this nexus suggests that a use of force is punitive and, therefore, unlawful.

In line with its previous state practice, the USA appears to accept that its actions in self-defence must be limited to targets connected with armed attacks against it. In respect of the February Airstrikes, the USA maintained that it carried out a ‘targeted military strike’, comprising military action in eastern Syria against facilities used by the Iran-supported NSA militia groups that were said to be responsible for the recent attacks against American personnel and engaged in ongoing planning for future such attacks. Specifically, the targets were said to be located at a border control point used by a number of Iranian-backed militant groups, including Kait’ib Hezbollah and Kait’ib Sayyid al-Shuhada. Similar claims were made regarding the June Airstrikes: ‘these necessary and proportionate actions were directed at facilities used by groups involved in these ongoing attacks for weapons storage, command, logistics and unmanned aerial vehicle operations.’

For the USA, therefore, the defensive nexus appears to be established. This is a question of fact, however, and the facts might be debated. There appears to be some doubt, for example, as to whether other groups may have been

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67This author recognises that some commentators view the issue of targeting in the *jus ad bellum* as being regulated by the proportionality requirement rather than by necessity. For a rejection of this argument, however, see O’Meara (n 5) 85–7, 163–6. See also section 3 of this article.

68O’Meara (n 5) 84–95.

69UN Doc S/2021/202 (n 2). Regarding previous consistent American state practice, see O’Meara (n 5) 92–3.

70*United States Department of Defense, ‘U.S. Conducts Defensive Precision Strike’* (25 February 2021) www.defense.gov/Newsroom/Releases/Release/Article/2516518/us-conducts-defensive-precision-strike/ (accessed 29 July 2021).

71UN Doc S/2021/614 (n 39) (emphasis added).
responsible for the attack against Erbil airport.\footnote{It was reported that the attack was claimed by a group called Awliya al Dam: Cooper and Schmitt (n 17).} There was also a suggestion that, following the February Airstrikes, resulting dead militia fighters included members of Iraq’s Popular Mobilization Forces (PMF).\footnote{Ben Hubbard and Jane Arraf, ‘With strikes in Syria, Biden confronts Iran’s militant network’, The New York Times (26 February 2021) www.nytimes.com/2021/02/26/world/middleeast/biden-syria-iran.html (accessed 29 July 2021); Syrian Observatory for Human Rights, ‘Death Toll Update: 22 Militiamen of Iraqi Hezbollah and Iraqi Popular Mobilization Forces in US strikes on Syria-Iraq Border’ (26 February 2021) www.syriahr.com/en/206650/ (accessed 29 July 2021).} The PMF, which is a collection of militias that includes Kata’ib Hezbollah, has close links with Iran, but it is legally part of the Iraqi Government’s security forces.\footnote{Crispin Smith, ‘United States killed Iraqi military official and Iraqi military personnel in the two recent attacks’, Just Security (5 January 2020) www.justsecurity.org/67917/united-states-killed-iraqi-military-official-and-iraqi-military-personnel-in-the-two-recent-attacks/ (accessed 29 July 2021); Crispin Smith, ‘It’s time Iraq accepts legal responsibility for its Iran-backed militias’, Just Security (23 March 2020) www.justsecurity.org/69273/its-time-iraq-accepts-legal-responsibility-for-its-iran-backed-militias/ (accessed 29 July 2021).} If true, PMF members are state organs, which means that American airstrikes against the PMF constitute attacks against the Iraqi state. This possibility raises serious concerns for both general and specific necessity. With respect to general necessity, it is doubtful that the USA targeting troops belonging to an ally (Iraq) in foreign territory (Syria) was the only reasonable choice of means to defend itself in the circumstances. For specific necessity, the USA should confirm that the Iranian-backed militia groups that were said to be responsible for the armed attacks against it included the PMF. Clarification from the Biden Administration of how it views such militia groups and why it was required to target them and their facilities on Syrian soil is essential in ultimately determining the necessity (both general and specific) of the February Airstrikes.\footnote{Raising the same concern, see Ryan Goodman, ‘Legal questions (and some answers) concerning the U.S. military strike in Syria’, Just Security (1 March 2020) www.justsecurity.org/75056/legal-questions-and-some-answers-concerning-the-u-s-military-strike-in-syria/ (accessed 29 July 2021).}

3. Proportionality

The foregoing analysis indicates that the general necessity of the February Airstrikes is highly debatable, and there is also doubt regarding whether the strikes satisfy the requirements of specific necessity. A lack of either type of necessity renders the American action an unlawful use of force, meaning that the proportionality of the American operation is moot. For the purposes of this paper, however, let us proceed to consider briefly certain factors that would relate to considering the proportionality of the February Airstrikes.

The proportionality requirement governs how much total force a state may use to achieve a defensive purpose. It is a prohibition against excessive
reactions by states that undertake acts of self-defence that are necessary. The thorny issue for proportionality is the variable against which defensive force is measured: how do we determine whether the February Airstrikes might be excessive? The Biden Administration publicly stated that the February Airstrikes were ‘proportionate to the prior attacks.’\textsuperscript{76} Such formulation of the proportionality requirement reflects the so-called quantitative, ‘tit for tat’, or ‘eye for an eye’ model of proportionality that seeks to balance the amount of harm suffered, or anticipated, by each side to the conflict. This model dictates that the armed attack and the defensive response be commensurate in terms of relative injury, comprising human casualties and damage incurred.\textsuperscript{77} The quantitative model is often associated with \textit{Nicaragua}, in which the ICJ stated that ‘self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it.’\textsuperscript{78}

Reading the ICJ’s jurisprudence as purely quantitative, however, is overly simplistic.\textsuperscript{79} Moreover, it is not reflective of state practice. It is clear that the quantitative model alone does not describe how proportionality functions in the \textit{jus ad bellum}. Although states commonly reference material factors such as civilian harm on either side of a conflict when considering the proportionality of putatively defensive acts, states do not typically rely on a purely quantitative model to assess that proportionality. They do not require precise equivalence between an armed attack and self-defence in terms of the nature, scale or means of the action taken, or their respective outcomes. Instead, state practice tends to favour a functional or teleological model of proportionality that measures the actions taken in self-defence against the defensive needs of the defending state.\textsuperscript{80} This means that proportionality is balanced in large part against the defensive purpose to be achieved, namely halting or repelling an armed attack or (if a limited right of anticipatory self-defence is accepted) preventing an armed attack that is imminent.\textsuperscript{81} Functional or teleological proportionality is also overwhelmingly favoured by scholars in describing how proportionality operates.\textsuperscript{82} Given its prevalence in state practice, this is to be expected.

\textsuperscript{76}The White House, ‘Press Gaggle by Press Secretary Jen Psaki and Homeland Security Advisor and Deputy National Security Advisor Dr Elizabeth Sherwood-Randall’ (26 February 2021) \texttt{www.whitehouse.gov/briefing-room/statements-releases/2021/02/26/press-gaggle-by-press-secretary-jen-psaki-and-homeland-security-advisor-and-deputy-national-security-advisor-dr-elizabeth-sherwood-randall/} (accessed 29 July 2021) (emphasis added).

\textsuperscript{77}See O’Meara (n 5) 117–22.

\textsuperscript{78}\textit{Nicaragua} (n 5) para 176 (emphasis added).

\textsuperscript{79}See O’Meara (n 5) 101–2.

\textsuperscript{80}For a review of the state practice and scholarship that supports this conclusion, see O’Meara (n 5) 100–25.

\textsuperscript{81}It is for this reason, as much as any other, that unnecessary force cannot also be proportionate or disproportionate. There is no defensive purpose to unnecessary uses of force against which proportionality may be measured. Such force is simply unlawful.

\textsuperscript{82}O’Meara (n 5) 102–3.
Although the USA’s February report to the UN Security Council was silent regarding the variable against which proportionality was being measured,83 and despite the aforementioned public assertion seemingly referring to the quantitative model, most recent American state practice favours the teleological model of proportionality. We see this, for example, in the USA’s justifications for its military incursions in Syria against Daesh and other terrorist groups.84 Other American statements relating to proportionality have also been based on the need to achieve a defensive purpose rather than requiring parity between attack and defence.85 For present purposes, the main advantage for the USA of adopting the teleological model is that it may respond defensively on both a retrospective and prospective basis. This means that, in principle at least, the proportionality of the American operation may account for the wider threat, comprising past, ongoing and imminent armed attacks by the NSA militia groups. In accordance with the preponderance of state practice, if the American response was in fact necessary, in order to achieve the defensive purposes it does not need to be confined to mirroring the prior attack in Erbil. Where a defending state is facing a series of attacks from the same source, the defensive response might necessarily be of a greater magnitude than the armed attack that immediately prompted it in order to counter the threat taken as a whole.

However, although parity is not required between the defensive operation and the armed attack(s) to which they are said to respond, marked asymmetry between attack and defence might be indicative of disproportionality. A response greatly in excess of the perceived threat (comprised of past and anticipated armed attacks) might point to a lack of a defensive purpose and instead point to unlawful acts of retribution or punishment. The 2006 Israeli incursion into Lebanon in response to armed attacks by Hezbollah is a prime example.86 Regarding the February Airstrikes, American officials maintained that their strikes were ‘a relatively small, carefully calibrated military response: seven 500-pound bombs dropped on a small cluster of buildings at an unofficial crossing at the Syria-Iraq border used to smuggle across weapons and fighters.’87 Accounts of the resulting human casualties vary, but the Syrian Observatory for Human Rights report that at least 22 militiamen were killed.88

83UN Doc S/2021/202 (n 2).
84Letter dated 23 September 2014 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General, UN Doc S/2014/695 (23 September 2014).
85For example, in claiming a right of self-defence during the Vietnam War: Office of the Legal Adviser, Department of State, ‘Rights and Duties of States’ (1972) 66 American Journal of International Law 836, 837. See also the USA’s pleadings before the ICJ in Oil Platforms: Oil Platforms (n 9) Counter-Memorial and Counter-Claim Submitted by the United States of America (23 June 1997) para 4.32; Oil Platforms (n 9) Rejoinder Submitted by the United States of America (23 March 2001) paras 5.48-5.51.
86For this author’s analysis of this incident from a proportionality perspective, see O’Meara (n 5) 141–4.
87Cooper and Schmitt (n 17).
88Syrian Observatory for Human Rights (n 73).
Assessing the proportionality of this American response is difficult, particularly when the USA has provided scant details regarding the nature of the ongoing threat facing it. Yet, a few observations may be made in the space available. First, on these facts, the February Airstrikes appear to be quantitatively in excess of the Erbil attack that wounded one American service member, wounded four American contractors (including one critically), and killed one Filipino contractor. As mentioned previously, this quantitative imbalance is not determinative of proportionality, which also accounts for the defending state achieving its defensive purpose. A defensive response on a greater scale than the attack that immediately prompted it (i.e. the Erbil attack) may well be necessary in order to ensure that self-defence is effective to counter the threat to the USA taken as a whole. However, in circumstances where there is marked asymmetry between attack and defence, it is incumbent on the USA to provide a more detailed explanation to justify its response or risk its actions being regarded as excessive. Second, we are told that the purpose of the February Airstrikes was not to escalate hostilities with Iran; rather the USA had ‘acted in a deliberate manner that aims to de-escalate the overall situation in both eastern Syria and Iraq’. Only time will tell if this purpose is achieved, but given the further attacks by militia groups that ensued between February and June it might rightly be concluded that the February Airstrikes had the opposite effect. Such escalation might also point to excessiveness on the part of the USA.

Lastly, it is this author’s view that a proportionality assessment goes beyond the quantitative and teleological models to also include consideration of third-party interests. The result is an overriding teleological approach that primarily balances defensive force and its outcomes against a defensive purpose and against these other third-party interests. In this case, such interests include the sovereignty and territorial integrity of Syria and wider impacts of the American action on regional and international peace and security. At the time of writing, ongoing tensions in the region continue to escalate. Syria has complained to the UN Security Council regarding continuing American incursions into its territory and there has been a deterioration of an already volatile relationship with Iran. In considering the

89Biden Letter (n 3).
90Cooper and Schmitt (n 17) (emphasis added).
91 See UN Doc S/2021/614 (n 39).
92O’Meara (n 5) 125–55.
93Identical Letters dated 1 July 2021 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and President of the Security Council, UN Doc S/2021/620 (2 July 2021).
94Since the February Airstrikes, the USA has carried out further strikes in Syrian territory against the ‘Iran-backed militia groups’: UN Doc S/2021/614 (n 39). Iran continues to deny any support of militia groups or involvement in attacks against American personnel or facilities in Iraq: Letter dated 2 July 2021 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the President of the Security Council, UN Doc S/2021/623 (6 July 2021).
overall balancing of interests that the proportionality assessment requires, if the American response continues to escalate and an ever-increasing cycle of violence ensues, considering the proportionality of the airstrikes becomes a rather elusive exercise. Moreover, it is a feature of state practice relating to repeated armed attacks by NSAs that proportionality acts as a relatively weak limitation on states using force in self-defence. This is particularly notable in the context of combatting international terrorism, where state security is often prioritised above other considerations.\textsuperscript{95} In such circumstances, general and specific necessity have greater potential to limit state action and provide clearer answers regarding the legality of the February Airstrikes.

4. Conclusion

Coming to firm conclusions regarding the necessity and proportionality of the February Airstrikes is difficult. As with so many justifications of self-defence, the legal claims made by the USA are lacking in sufficient detail and public information regarding the incident is scant. These factors are an indictment on the self-defence reporting system and the ability of the UN Security Council to maintain international peace and security and hold states to account. Lamentable also is the fact that so many incidents of this kind go unnoticed or unremarked by the international community.

Conclusions are most easily reached on the general necessity of the USA using force on Syrian territory in circumstances where the militia’s attacks are not attributable to Syria. From publicly available information, it seems likely that the February Airstrikes were intended to be punitive rather than defensive. They were designed to carry a message to the Iranian backers of the militia groups and to do so in a way that avoided diplomatic tensions between the USA and their Iraqi allies. If true, the airstrikes were unnecessary based on the requirements of general necessity: there was no situation of genuine emergency that required the USA to act when and where it did or else lose the ability to defend itself effectively. Furthermore, from the perspective of both general and specific necessity, there are real concerns regarding the necessity of targeting Iraqi troops in Syrian territory. Absent either type of necessity, the February Airstrikes constitute unlawful armed reprisals.

The proportionality of the February Airstrikes is a moot point, therefore, given that a lack of necessity equates to an unlawful use of force on the part of the USA. If the necessity of self-defence over an extended period of time could be justified, assessing the proportionality of such defensive action is notionally possible. However, the analysis becomes almost meaningless

\textsuperscript{95}See O’Meara (n 5) 208–26.
given that self-defence ceases to become a temporary emergency response and morphs into a pretextual excuse for a permanent war footing against Iranian proxies. Ultimately, as with the majority of self-defence claims, it is the reaction of other states and the UN Security Council that will determine the legality, or at least the acceptability, of a use of force. In this instance, regardless of the necessity and proportionality of the February Air-strikes, it seems that the USA has so far been given a free pass by the international community.

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