

# **EFFECTIVENESS OF THE POLICY OF TARGETED KILLING**

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## INTRODUCTION

The terrorist attacks on New York and Washington, D.C. from 11 September 2001, on Madrid on 11 March 2004 and the London bombings in 2005 have once and for ever changed the general perception of threats and risks in the world. Western democracies do not view an attack from another sovereign state as a credible threat any more. The new security environment is marked out by an open battlefield, normative asymmetry and a decentralized adversary, that will try to collapse us from within.<sup>1</sup>

Fighting this qualitatively new kind of enemy calls for new methods of warfare. Leading a war in its traditional sense against an enemy spread out all over the world with no hierarchical structure does not seem to be a reasonable response any more. Therefore, threatened states have been seeking new, more appropriate means of fighting terrorism. A variety of discussed and employed counter-terrorism measures is almost limitless –from negotiations with terrorist groups, to targeted killing, up to waging wars against states sponsoring terrorism.

In the paper I will discuss one particular way of fighting terrorism – targeted killing. Steven R. David defines it as "the international slaying of a specific individual or group of individuals undertaken with explicit governmental approval".<sup>2</sup> The policy of targeted killing is, together with torture, by far the most controversial form of counter-terrorism nowadays. Even though it is not a new method<sup>3</sup>, the increased usage of it by Israeli security forces during the Second Intifada and its recognition as a legitimate counter-terrorism measure by Russian Federation and the United States has drawn public attention to this topic.

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<sup>1</sup> Flemming Hansen, Lecture on Terrorism and Counter-Terrorism in International Politics, 1 February 2007

<sup>2</sup>David, Steven R. „Fatal Choices: Israel’s Policy of Targetted Killing.“ *Mideast Security and Policy Studies* No. 51. The Begin-Sadat Center for Strategic Studies, September 2002, ISSN: 0793-1042, p. 2

<sup>3</sup> Israel has been using targeted killing since 1950s when they targeted Egyptian intelligence officers responsible for terrorist infiltration from Egypt. In 1960s they used mail bombs attacks to deter German scientists working on ballistic missiles technology for Naser. Probably the best known case of Israeli targeted killing was a revenge to the main operatives of Black September terrorist group after the Munich massacre in the 1970s. In. *Ibid.*, p. 6

Both the general public and the scholars are divided in their opinions on targeted killings. Its proponents claim that it is "discriminatory in that it focuses exclusively on one's adversaries; civilian casualties and collateral damage are minimized. It is proportionate in that only enough force is used to accomplish the task."<sup>4</sup> On the other hand opponents of assassinations raise a hand full of arguments against it. Their objections are legal (assassinations are nothing else but extrajudicial executions) and moral, as the assassination attempts often unintendedly hurt a number of noncombatants. Furthermore, they question its effectiveness. They state, that due to the increased wave of terrorism in revenge for the killed individual, targeted killing may be in fact counterproductive.<sup>5</sup>

When dealing with a topic like targeted killing both the logic of appropriateness and the logic of consequentiality may be used, based on the expected outcome<sup>6</sup>. Examining it from the logic of appropriateness point of view would give diametrically different results based on the cultural context of the author, i.e. on his/her religious beliefs and his/her threat perceptions<sup>7</sup> and on the kind of state that is using the policy of targeted killings. Hence, in my paper I will focus on the logic of consequentiality and the cost-benefit analysis.

The first part of the paper will be focused on the legitimacy of the targeted killing and its relation to the two basic principles of International Humanitarian Law – the principle of distinction and the principle of proportionality. The morality aspect of it in respect to international negotiations will be also briefly mentioned. Then, targeted killing as a mean of just war and its efficiency will be questioned. Finally I will concentrate on eligibility of possible targets with respect to the expected reactions of the terrorist group and wider public.

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<sup>4</sup> Ibid., p. 17

<sup>5</sup> Zussman, Asaf and Zussman, Noam. 'Targeted Killings: Evaluating the Effectiveness of a Counterterrorism Policy', Bank of Israel Discussion Paper No. 2005.02 (January 2005)

<sup>6</sup> March and Olsen define the logic of consequentiality as a logic where "human behavior is driven by preferences and expectations about consequences. Behavior is willful, reflecting an attempt to make outcomes fulfill subjective desires, to the extent possible." On the other hand, in the logic of appropriateness, human decision making and action are to a large extent determined by following formal and informal rules and routines. The decision-making process "involves what the situation is, what role is being fulfilled, and what the obligations of that role in that situation are."

See: March, J.G. and Olsen, J.P. *Democratic Governance*. New York: Free Press, 1989, p. 160

<sup>7</sup> Whereas the majority of the EU political leaders consider assassination and capital punishment as something immoral and outdated; Israelis who have to face the risk of terrorist attacks daily, call for unhesitating counterterrorist operations.

## LEGITIMITY OF TARGETED KILLING AND ITS RELATION TO INTERNATIONAL HUMANITARIAN LAW

Paul Wilkinson, of the University of St. Andrews claims that „risk of appearing weak and undermining a government's political system during negotiations [with terrorists] is so great that governments should make 'no concessions'”<sup>8</sup> Even though this statement may seem to be too sharp, it raises several important issues related to legitimacy and morality of the policy of targeted killing. First of all, it is the state's role to be a security provider to its citizens. Due to the relatively long period of peace, this function of the state is nowadays being forgotten or marginalized. However, it is still one of its most important ones. And in the realistic point of view, the state is justified to use all the tools to fulfill it, including targeting of its enemies.

The second remark of Mr. Wilkinson is that negotiations with terrorists is unacceptable. Through negotiations, one grants terrorists legitimacy and one risks being perceived as weak. Hence, states should have no mercy with terrorists. Does it then mean, that killing terrorists enjoys the same legitimacy as killing the enemy combatants in war?

### LEGITIMITY OF TARGETED KILLING

Lethal military operations and targeting have been justified as being part of the preparation of the battlefield during war in traditional sense. The question is whether the "war against terrorism" can be considered a war or not. Osama bin Laden in his *Fatwah Urging Jihad Against Americans* rules that "killing the Americans and their allies – civilians and military – is an individual duty for every Muslim who can do it in any country in which it is possible to do it".<sup>9</sup> In this respect the terrorists themselves claim to be in war and once in war, the killing of enemies is justified.

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<sup>8</sup> Neumann, Peter R. „Negotiating With Terrorists.“ *Foreign Affairs*, January/February 2007, Vol. 86 Issue 1, p. 134

<sup>9</sup> bin Ladin, Osama. „Fatwah Urging Jihad Against Americans.“ *Al-Quds al-'Arabi*, 23 February 1998

The United States of America in their 2006 National Security Strategy also clearly stated that they are in the war against terrorism and so for them targeted killing should be legal. However, the International Covenant on Civil and Political Rights limits these operations to the "zone of active combat".<sup>10</sup> When fighting terrorism it is impossible to draw a line of the zone of active combat. Terrorist groups are highly mobile and they do not hold any territory. Thus, assassinating a terrorist outside your own territory always means violation of the other state's sovereignty (if it is not a state of war) and so violation of one of the basic principles of international law. Furthermore, the rest of the world is not "in war against terrorism". Terrorism is considered to be a crime and dealing with suspects of crime is in the responsibility of police. In this case, targeted killing would enjoy no legitimacy at all.

Equally important to preemptive counter-terrorism function of targeted killing is its effect of deterrence. Sometimes states decide to kill a well-known terrorist mainly because they want to send a clear message that following his example will not pay off. These terrorists are normally held responsible for attacks with strong impact on public. Killing of such a terrorist can be understood as an act of retribution on behalf of the whole nation. Additionally the deterrence for future terrorists these acts help to raise the moral of the citizens and support the legitimacy of the government. An example of this is the killing of Shamil Basayev<sup>11</sup>, the leader of the Chechen separatists responsible among others for the terrorist attack on the school in Beslan, in July 2006. The President of the Russian Federation Vladimir Putin welcomed his death by saying that "it is a comeuppance to bandits on behalf of our children in Beslan, Budonnovsk and for all the terrorist attacks they had perpetrated".<sup>12</sup> Yet, the acts of retribution cannot be confused with the acts of revenge. Revenge as such is not a subject of international law and thus these acts would not enjoy any legitimacy.

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<sup>10</sup> "Any killing that is carried out beyond a zone of active combat and within a different state without intermission is also, absent a right of self-defense triggered by that state's malfeasance or nonfeasance, a flagrant violation of the state's sovereignty." In: „Targeted Killing“. In: Heymann, Philip and Kaye, Juliette: *Protecting Liberty in an Age of Terrorism*. Cambridge, MA: MIT Press, 2005, Pp. 61-62

<sup>11</sup> Some sources state, that Shamil Basayev was not assassinated, but that he was killed in an accident.

<sup>12</sup> „Rusové zabili čečenského vůdce Šamila Basajeva.“ *Novinky.cz*, 10 July 2006

## INTERNATIONAL HUMANITARIAN LAW

International Humanitarian Law (IHL) regulates who could be a legitimate target during armed conflict. As Helen Duffy states, the legitimacy is conditioned by two principles – the principle of distinction and the principle of proportionality. While the first one requires that civilians and civilian objects must be distinguished from military targets and the operations can be directed only against the military ones, the second principle states that these attacks must ensure that civilian losses are not disproportionate to the direct and concrete military advantage anticipated to result from the attack.<sup>13</sup>

The basic presumption of the policy of targeted killing is the assassination of thoughtfully selected individuals that represent an immense threat to state security while eliminating the possible collateral losses on human lives and material ones. Yet, accidental losses on innocent individuals cannot be completely avoided. And the critics of this policy claim, that these losses are too big and thus the policy should be abolished.

## TARGETED KILLING AS A MEAN OF JUST WAR

The 9/11 al-Qaeda attacks can be understood as a shift from the third generation warfare to the fourth generation warfare where states lose their monopoly on war.<sup>14</sup> The wars are no longer waged between the sovereign states, and the armies are predominantly fighting non-state adversaries such as al-Qaeda and Hezbollah. Terrorist groups do not declare a war to the state or its citizens before they attack them, and there is nobody to whom a state could declare a war in retribution, as the terrorist group cannot be linked to a specific state territory. Neither is there anybody to sign a peace treaty with. Terrorist groups thus represent a new kind of threat that the armies are not ready to fight. That is why many security specialists are calling for new policies and stronger tools that would be more effective in this changed security environment.

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<sup>13</sup> Duffy, Helen. The „War on Terror“ and the Framework of International Law. Cambridge. Cambridge University Press, 2005, Pp. 228-229

<sup>14</sup> For the concept of generations of warfares see Lind, William S. "Understanding Fourth Generation War." Lew Rockwell, 4 January 2004

Another characteristic of today's warfare is the normative asymmetry. On the one hand states are restricted in their actions by numerous international treaties and covenants prescribing when it is legitimate to wage a war. Furthermore, they are under the supervision of the international community and their citizens which limits the state's ability to wage a war. On the other hand, terrorists are not bound by any external powers<sup>15</sup> and so they have a comparative advantage over the states. Therefore not following the rules make the terrorists stronger. As William Lind observes "states are the weaker, not the stronger party, despite all their firepower and technology"<sup>16</sup>

With these changed circumstances in mind the policy of targeted killing may seem as a fully legitimate way of waging a just war against terrorism. As there is only a limited number of highly skilled terrorists, hunting and killing them can seriously disrupt the functioning of a terrorist organization. It takes several years until the terrorist can be fully trained and give the best performance. Moreover, some individuals possess specific skills – either tactical, strategical or technical – and these individuals cannot be replaced easily. Their assassination would mean that the new recruits, at least temporarily, would not pose such an immense threat as the older generation of terrorists. In addition, skilled individuals tend to be less willing to die for their objectives, and the terrorist organizations are not willing to sacrifice them. Hence targeting killing forces terrorists to spend more time and energy on protecting themselves. They have to move from place to place in order not to be detected. The progress of signal intelligence limits their communication capabilities and reduces the flow of information. So, even the threat of being targeted can infringe the operation capabilities of a terrorist group.

However, the upper mentioned outcome of the targeted killing seems to work only in case of highly hierarchical centralized terrorist groups such as Hamas and Hezbollah. Yet, the new generation of the terrorist organizations (even al-Qaeda) are marked out by loose structure with no strict hierarchy of

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<sup>15</sup> Even though event terrorists sometimes have to take the public opinion into account, as the support of the general public can be crucial for their success. First of all, it gives them the credibility and to some extent it legitimize their actions. Secondly, funds from various charities amount for a large proportion of the terrorists' financing. And lastly, terrorists need safe havens, place where they can operate from and once they know the population is not going to report them to the state authorities, they can spend more time on planning and executing their actual work.

<sup>16</sup>Lind, William S. "Understanding Fourth Generation War." Lew Rockwell, 4 January 2004

planning and financing where individual cells are in no contact with the rest of the group. Thus, targeting one cell would not damage the operation capabilities of the rest of the group. As the 2005 London bombings have shown, even a small, relatively isolated cell is capable of committing a devastating terrorist attack.

Another argument for the policy of targeted killing is the fast reaction achieved with minimum collateral damage which is the basic presumption of the just war. Yet, the additional costs associated with the targeting are high. It takes heavy investments into the intelligence (both HUMINT and SIGIT) and to the rapid-response forces. Targeted killing can to some extent also harm the operation capabilities of the intelligence agency, mainly its ability to gather and analyse critical intelligence, due to the shifted priorities of the analysts. Furthermore, the number of agents capable of merging with the members of the terrorist organizations is due to the language barrier, religious practice and racial features very limited. Moreover, the information gathering from "inside" of the group is extremely dangerous both for the agents and their families in case they are detected.

Conversely, Daniel Byman denies the effectiveness of targeted killing as a mean of the just war. As he states "killing suspects prevents them from striking, but dead men also tell no tales".<sup>17</sup> In other words assassination of a terrorist may prevent him from waging another attacks. However, an arrested terrorist may be of a better use to the intelligence. Through interrogations security forces may find out additional information such as the planned future plots, names of other operatives, the way the organization functions etc., and so they could prevent more attacks in the future. Yet, once the suspect is truly devoted to his/her case even the best interlocators may not be able to make him/her talk.

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<sup>17</sup> Byman, Daniel. „Do Targeted Killings Work?“ *Foreign Affairs*, March/April, 2006, Vol. 85 Issue 2

## ELIGIBILITY OF TARGETS

The effectiveness of the policy of targeted killing is closely related to the status of targets chosen. As the study of the Bank of Israel<sup>18</sup> has shown, terrorists with certain features are more suitable targets for counter-terrorism purposes than others. The study divides the terrorist according to their ranks and their affiliation to either political or military wing of the terrorist organization. Logically, targetting senior/higher rank leaders usually means a higher chance of disrupting the activities of the terrorist organization. The loss of leading personalities – both military and spiritual – cannot be easily replaced, especially, if the targetting of leaders is consistent. In addition to the fact that the human resources of the terrorist organization are limited, constant threat of assassination may discourage members of the group from standing in the leading positions. This was the case of Israel slaying down the leaders of Hamas – Sheikh Ahmed Ismail Yassin (22 March 2004) and his successor Abdel Aziz al-Rantissi (17 April 2004), when leaders of Hamas were temporarily reluctant to openly claim their functions from fear of being the next target. However, assassinating a senior leader would increase the probability of the subsequent retaliation operations of the terrorist group.

The second factor influencing the effectivity of targeted killing according to the study is the target's affiliation to either political or military wing of the terrorist organization. Military leaders of the organizations are normally dealing with the planning of the group's operations and they are responsible for recruiting and training of new members. Hence, targetting them would cause a significant disruption of the operation capabilities of the organization. Moreover, military leaders of terrorist groups better suit the definition of enemy combatant and thus their assassination does not usually cause worldwide condemnation. Even the calls for retaliation for the killed military leaders are smaller than in the case of the political leaders. Even the terrorist organizations recognize it as an acceptable part of a warfare.

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<sup>18</sup>Zussman, Asaf and Zussman, Noam. 'Targeted Killings: Evaluating the Effectiveness of a Counterterrorism Policy', Bank of Israel Discussion Paper No. 2005.02 (January 2005)

On the other hand, assassination of senior political leaders would fuel the anger of the terrorist organization while its effect on the operation capability of the group would be minimal. Since the Peace of Westphalia there is an unwritten convention prohibiting the assassination of inconvenient political leaders. In accordance with this convention targeting of political leaders would cause a worldwide condemnation and disrupt ongoing negotiations between the state and the terrorist organization. As Hiller Frisch states "Israel needs to understand that targeted killings of Palestinians do not end the violence, but are only inflaming an already volatile situation and making it much harder to restore calm".<sup>19</sup>

As the political leaders of the terrorist organization are usually by the public better known than the military ones, their assassination is more likely to cause a wave of increased public support for the terrorist organization, inspire new recruits and radicalize indecisive elements within the organization itself. As Daniel Byman notes targeted killing may be counterproductive as "they may create martyrs that help a group sell itself to its own community".<sup>20</sup>

The final objection towards the targeted killing of political leaders of terrorist organizations is the fact that they may turn out to be useful negotiating partners in the future, as the case of Yasser Arafat has shown. Since many terrorists turn to terrorism as to the tool of the last resort, changed circumstances and a vision of achieving their goals with peaceful means may bring rational terrorists to a negotiation table.

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<sup>19</sup> Frisch, Hiller. „Motivation or Capabilities? Israeli Counterterrorism against Palestinian Suicide Bombings and Violence.“ Mideast Security and Policy Studies No. 70, The Begin-Sadat Centre for Strategic Studies, December 2006, p. 4 In. Richard Boucher, State Department briefing, 2 July 2001, available at

<<http://www.state.gov/r/pa/prs/dpb/2001/4656.htm>> quoted in Gal Luft, 'The Logic of Israel's Targeted Killing', Middle East Quarterly, 10/1 (Winter 2003) 4

<sup>20</sup> Byman, Daniel. „Do Targeted Killings Work?“ Foreign Affairs, March/April, 2006, Vol. 85 Issue 2

The above mentioned study of the Bank of Israel has shown one neglected aspect of the policy of targeted killing – its impact on the economic sphere.<sup>21</sup> The authors concentrated on the reaction of the Tel Aviv Stock Exchange to the assassinations of the members of Palestinian terrorists organizations. Their findings have confirmed the above mentioned hypothesis that assassination of the low rank terrorist is not likely going to cause retaliations. However, as the authors claim the markets strongly react to the assassinations of senior leaders of terrorist organizations – they decline in case of assassination of a senior political leader and increase following assassinations of senior military leaders. Therefore the authors conclude that "the market perceives the first type of assassinations as counterproductive but the second as an effective counterterrorism policy."<sup>22</sup>

## CONCLUSIONS

The basic argument of the states using the policy of targeted killing is that it works. On the other hand, there are many states that denounce it as immoral, illegal and barbarous. Yet, as the world is not only black-and-white, nor is the policy of targeted killing only purely bad or purely good. The first important precondition for the implementation of this policy is the cultural predisposition of the society which shapes the public opinion on what is good and what is bad. Based on their cultural background some policy makers can find targeted killing a completely inappropriate form of counter-terrorism, no matter how effective it would be. The other group of the policy makers would, based on their logic of appropriateness, judge that in order to secure their population it is allowed to kill terrorists. For this group, the final decision about the use of targeted killing should be backed up by a cost-benefit analysis.

In general there are several pros and cons related to targeted killing as such. The basic benefits are the speed, low cost and relatively small collateral damage and to some extent the effect of deterrence. On the other hand general negatives are increased retaliation and radicalization, undermining the rule of law and condemnation from the international community. However, it is really difficult to estimate the

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<sup>21</sup>Zussman, Asaf and Zussman, Noam. 'Targeted Killings: Evaluating the Effectiveness of a Counterterrorism Policy', Bank of Israel Discussion Paper No. 2005.02 (January 2005) , p.8

<sup>22</sup> Ibid.

real effectiveness of this policy, because as Gal Luft puts it well "fighting terror is like fighting car accidents: one can count the casualties but not those whose lives were spared by prevention."<sup>23</sup>

For judging the effectiveness of targeted killing, every single case should be examined separately. Even though there may be some exceptions, there are several factors influencing the final effect. Firstly, assassination of low rank terrorists will not cause big retaliations or worldwide condemnation, however, its impact on operation capabilities of a terrorist group would be minimal. Thus, the higher the rank of the killed terrorist, the bigger the chance of disrupting the group. Secondly, the affiliation to political or military wing of the terrorist group is decisive. In general, it is considered effective to target military leaders, as it would lead to the disruption of the functioning of the terrorist group, and the probability of retaliation is relatively low. On the other hand, assassination of political leaders seems to be counterproductive – the costs of it are too high whereas the benefits seem to be minimal.

Relating the policy of targeted killing to fighting al-Qaeda, several conclusions may be made. First of all, assassinations should be aimed at the highest military operatives of the group, in order to maximize the disruptive effect on the whole organization. Targetting low rank operatives of local cells, on the other hand, would be less effective and compared to the cost of big retaliations caused by it. Secondly, targetting of senior political leaders may have the opposite effect. These figures are well known and their assassination would only skyrocket the retaliations. Furthermore, Osama bin Laden and his fellows would become martyrs and heroes in the eyes of the Muslim population and not criminals, as the rest of the world sees it.

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<sup>23</sup> Luft, Gal. „The Logic of Israel's Targeted Killing.“ Middle East Quarterly, Winter 2003

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