

Targeted Killing in the US War on Terror: Effective Tool or Double-Edged Sword?

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Introduction

In recent years, sub-state organizations operating as institutionalized, hierarchical military organizations and “terrorilla armies”¹ have improved their operations and upgraded their capabilities. These organizations, which consciously ignore the legal regulations and restraints of humanitarian international law, undertake operations that are generally characterized by extreme, indiscriminate violence against civilians and are intended to provoke the government into a disproportionate response. The organizations hope that a state’s over-reaction will harm uninvolved civilians, alienate them due to their sense of the injustice done to them, and motivate them to take an interest in, support, and possibly become involved in terrorist activity. In addition, terrorists hope that a wide ranging state response to their actions will stir up local and foreign public opinion against the government, which will be cast as overly aggressive.

This type of challenge from sub-state entities requires an attacked state to adjust its combat strategy and provide as effective and precise a response as possible to those who attack its citizens, and both seek shelter and launch their operations from among populated areas. Thus, in the hope of not harming innocent citizens, and with the knowledge that a widespread retaliatory attack might incite the victims and their families and undermine the legitimacy of the government among public opinion at home and abroad, a state is interested in targeting as specifically as

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possible those engaged in planning and perpetrating acts of terror, while avoiding or limiting collateral damage. Today, this response is provided inter alia through increasing use of targeted killing operations that exploit advanced technologies.

This article describes and analyzes the policy of the United States in its war on terror vis-à-vis targeted killing. Alongside the operational advantages are political challenges, specifically as they emerge in US-Pakistan relations and in the public debate in the United States regarding the targeted killings in Yemen. In addition, the article will examine whether there is a connection between US and Israeli operational policies, notwithstanding the fundamental differences between the world's superpower, which is occupied with global interests and considerations, and Israel, engaged in a national and regional conflict, and despite the different historical contexts, that is, the length of the respective conflicts and the intensity of the respective threats.

The United States and Targeted Killings against al-Qaeda and the Global Jihad

The public debate concerning the legitimacy and effectiveness of targeted killing blends together different concepts, contexts, and methods of operation, resulting in a decided lack of clarity as to the realistic goals the tactic can achieve. This article focuses on the operational aspects of targeted killing, defining it as a pinpoint military operation carried out by a military or by an intelligence agency, by a single agent or by several people, who reach the target and attack it.² The operation can be executed from a distance, through fire, explosive device, or manned or unmanned aerial vehicle (UAV).

The context in which targeted killings occur is important. Depending on the circumstances, the actions can be carried out from time to time against significant targets involved in terrorism. An example would be targeting an organization's leader, or an activist or group of activists, whose elimination is expected to disrupt the activities of the entire organization or even prevent planned terror attacks that are liable to be launched in the near future. Alternatively, when there is an ongoing and uninterrupted struggle against intensive terrorist activity that is directed at civilians, the pinpoint strikes against operators and perpetrators of terror are employed by the state to thwart and disrupt the adversary's

terrorist activity, to keep its commanders busy seeking hiding places, and sometimes, to deter. However, because targeted killing skirts the accepted norm among democratic states of due judicial process, it sparks criticism and controversy regarding the legitimacy and legality of the practice. Furthermore, if the targeted killing is carried out by one state on the sovereign territory of another, it may create tension and harm inter-state relations.

The United States began to carry out sporadic targeted killing operations against al-Qaeda leaders as it confronted the violent challenge posed by the organization to the United States following the September 11, 2001 attacks. In the wake of the attacks on US territory, then-President George W. Bush formulated a strategy for a war on terror, and thus in addition to the conventional warfare in Afghanistan and Iraq and the battle on the intelligence, police, financial, and legal fronts, the President ordered US security forces to pursue al-Qaeda's commanders and activists everywhere in the world where there was reliable information that the organization was planning terror operations or that there were operatives who could not be arrested. Thereafter a number of al-Qaeda operational commanders were killed in aerial operations: in 2002, Abu Ali al-Harithi, the local commander in Yemen was killed; in 2005, Abu Hamza Rabia, head of al-Qaeda's international operations division was killed in Pakistan; and in 2006, Abu Musab al-Zarqawi, the al-Qaeda commander in Iraq was killed.

The targeted killings continued sporadically, benefiting from the decided technological advantages of the United States, primarily precision fire from UAVs armed with missiles. This operational tool was chosen as the principal vehicle for targeted killings for several reasons: it took the adversary by surprise; it could be used from a distance, without risk to soldiers; and it could overcome the difficulty of reaching the targets physically. This tool was discovered to be especially helpful in combat against senior al-Qaeda figures and their collaborators who hid in areas whose topography made movement and access difficult, taking shelter among a population that was partly sympathetic to them and had principled objections to the presence of foreign soldiers on its soil.

In early 2009, when President Barack Obama took office and realized the severity of the continued threat to US citizens on sovereign US

territory as well as the ongoing threat around the world from al-Qaeda and global jihad elements, he adopted a combat strategy that included:

- a. a significant increase in US conventional military forces in the main theaters of war in Iraq and Afghanistan;
- b. increased intelligence and operational cooperation with US allies;
- c. assistance in rebuilding institutions and economic and social infrastructures in societies damaged by the fighting or by subversive terrorist activity;
- d. training of army and security forces in countries hit by terrorism.

This policy has shown success, and according to past and current senior US officials, the “Obama doctrine” has proven to be more effective than previous approaches to the war on terror.³ In addition, in order to boost the war against al-Qaeda, combat operations involving targeted killings of terrorists using US technological capabilities were stepped up significantly. With a determination that surprised many people, Obama expanded the authority of the Central Intelligence Agency (CIA) to carry out targeted killing operations against al-Qaeda leaders and senior activists, their affiliates throughout the world, and foreign elements that trained in camps in Pakistan. In fact, Obama approved more targeted killing operations than any other president in modern history: during his presidency, the number of targeted killing operations almost doubled, from 33 in 2008 to 53 in 2009, and later, it spiraled to 118 in 2010.⁴ Thus, most of al-Qaeda’s senior commanders were killed in aerial operations one after the other, along with senior Taliban and Haqqani network⁵ officials, who collaborated with them in Pakistan and Afghanistan.

Support for claims of the effectiveness of the targeted killing policy in the war against al-Qaeda appears in Bin Laden’s writings found in his hiding place after his assassination. Bin Laden revealed that he was very concerned about the damage sustained by his organization from the UAV attacks in the tribal areas of Pakistan, which he believed was the only weapon capable of harming al-Qaeda. According to his writings, al-Qaeda activists complained to him that after the tribal area became a free-fire zone exposed to US fire, they were unable to train or maintain communications, and their ability to move freely and recruit new troops was limited.⁶

The United States pursued targeted killing not only against al-Qaeda operatives, but also conducted pinpoint strikes against squads of Muslim

operatives from Western countries who had trained in Pakistan among the Taliban and al-Qaeda and intended to undertake attacks in Western countries. These targeted killings were carried out not only through aerial fire, but also through helicopter raids by commando ground forces, such as: the operation in which Bin Laden was killed in Abbottabad, in the heart of Pakistan, in May 2011; the killing of Saleh Ali Nabhan, a senior operative of al-Qaeda and the Somali Shabab, who was killed by a US commando force that raided his hiding place in Somalia; and the death of Fazul (Haroun) Abdullah Mohammad,⁷ Nabhan's partner in African operations, who was killed by a Somali policeman who stopped his car at a random checkpoint and claimed that the suspect had attempted to flee. (The circumstances of his death actually remain a mystery, since it is not clear whether this was a planned ambush.)

Political Challenges at Home and Abroad

In recent years, the nature of the US war on terror around the world, and the lack of transparency concerning targeted killing operations defined as classified, have been a source of both tension between countries and ongoing criticism of US policy. This criticism has come mainly from Pakistan, since many of the targeted killings have been carried out on Pakistani territory. President Obama and senior administration officials have argued that the use of UAVs for direct strikes at those responsible for carrying out terror attacks is proportional and is undertaken as judiciously as possible, and that only rarely are uninvolved civilians injured by these operations. However, the failure to include Pakistan in the campaign, most of which is underway on Pakistani territory, and the President's public declarations that if his country has reliable intelligence about high value terrorist targets it will continue to act unilaterally because it does not receive local cooperation, have aroused Pakistani public opinion against him. Indeed, the US approach has fueled strong suspicion and deep resentment of the United States among many in the Pakistani public.

The likely negative impact of targeted killings by one sovereign state on the territory of another sovereign state is manifested particularly acutely in the complex relations between the two countries. After Bin Laden was killed, the political disputes rose harshly to the surface and ignited a sharp public debate in Pakistan, which even reached the Pakistani parliament,

on the continued US covert presence and independent US operations, especially the targeted killings in Pakistan and the flagrant violation of Pakistani sovereignty. The turmoil increased after an incident in which US planes, as a result of problems in coordination between the forces, accidentally fired on a Pakistani military force in November 2011, killing twenty-four Pakistani soldiers. This incident aroused tremendous anger and sharp public and political criticism of the government of President Zardari, and has clouded relations between the two countries. Together, these various events intensified the demand to reveal the scope of covert US intelligence activity in Pakistan, along with a demand to stop such activity completely and cease targeted killing operations immediately. In fact, in the first months of 2012, there was a significant decline in the number of US attacks on Pakistani territory with UAVs: from January-March, there were only eleven attacks, as opposed to twenty-eight in the same period in 2010.⁸ In effect these operations were suspended for a period of time, and today, high level discussions are underway on whether and how to continue them with joint US-Pakistani cooperation and monitoring. The senior military and political echelons in the two countries are engaged in intensive discussions on how to solve these disputes.

In Yemen, which is the center of activity for al-Qaeda in the Arabian Peninsula (AQAP), the pace of targeted killing operations has increased as well. AQAP is one of al-Qaeda's closest and most dangerous affiliates, and its members are responsible for two terror attacks that were intended for US territory. The organization's activity in Yemen has also posed familiar dilemmas for the US administration in its relations with the local government, even though it received tacit agreement from the government to operate in Yemeni territory. However, in contrast to the tension that has arisen between the United States and Pakistan, targeted killing operations in Yemen have prompted a public discussion within the United States itself, largely because President Obama approved the targeted killing of Anwar al-Awlaki, a US citizen who served as a senior operative in the ranks of AQAP; al-Awlaki was accused of involvement in terrorist activity against US citizens and of public activism in support of terrorism. He was killed in Yemen in September 2011 by aerial fire, together with Samir Khan, a US citizen of Pakistani origin who served as editor of *Inspire* magazine, the mouthpiece of AQAP. One month later,

an aerial targeted killing operation aimed at Ibrahim al-Bana, media chief for the organization, also killed al-Awlaki's sixteen year old son. These special circumstances led to a legal, constitutional, and moral debate among experts on human rights law and security officials concerning the state's right to make use of targeted killing in response to the involvement of a US citizen in terrorist activity. Human rights organizations believed that execution of three US citizens by the US government without due process and public scrutiny established a dangerous precedent.

The public discussion, which actually began when the intention to target al-Awlaki was announced, even before he was killed, illustrated the dilemmas concerning the manner in which governments use targeted killings and the degree of public transparency in their decision making process. While US administration officials have insisted that the Justice Department examined and approved these targeted killings, they have refused to publish the complete document that would substantiate their claims. Thus, if most of the information on fighting al-Qaeda leaders and other operatives is classified and available only to a small number of relevant establishment officials, according to opponents of targeted killings, the lack of transparency in the decision making process is liable to create an opportunity for abuse of authority, or at best, to cause errors. Furthermore, the system is apparently not subject to judicial review by an outside party, and for better and for worse, the decision as to whether there are sufficient indicators for an attack rests with the government. Therefore, the internal procedures the government has established and institutionalized for the purpose of overseeing decision making and making the decisions compatible with international humanitarian law are vitally important. However, by nature these procedures are likely to be classified, so that an outside observer would not be able to assess and judge them.⁹ Consequently, perhaps the US administration would do well to consider taking the path outlined by the Israeli Supreme Court on this issue: having an outside commission (headed by a retired judge) check the propriety of the targeted killing operation and confirm it for the public.¹⁰

In spite of criticism at home and abroad of the intensive US campaign of targeted killing of terrorist figures from the global jihad who threaten to operate on US territory, foremost among them al-Qaeda, this policy has become such an integral and central element in US successes against

these adversaries that senior US government officials have claimed that al-Qaeda is close to being defeated.¹¹ Yet notwithstanding the success, and although the threat of terror is far from disappearing from the agenda of the United States and its allies, as long as there is a sense that the danger of domestic terror in Western countries, and especially the United States, is waning, it is not clear how long the United States can adhere to its policy of targeted killing. The tension it has caused to US foreign relations with America's allies in the war on terror, the fear of retaliatory actions by terrorist organizations in Western countries, the reservations of Western democracies about covert, unmonitored methods of operation, and the harm to uninvolved civilians raise questions concerning the continuation of this policy.

The Israeli Case

Israel faces similar dilemmas to the United States in its struggle against terror, specifically regarding organizations that operate on Israeli territory, along the country's borders, and around the world. Like the United States, it uses targeted killings as a main tool in its war on terror. In the past, Israel made sporadic use of covert, pinpoint, targeted killings to eliminate heads of organizations and major operatives, whose deaths were meant to harm the organizations and disrupt their activity. On several occasions this policy created complications for Israel with countries on whose sovereign territory these operations were carried out. For example, in 1973 major tension arose between Israel and Norway because of the accidental killing of a Moroccan waiter in Lillehammer incorrectly identified as Ali Hassan Salameh, the commander of the Black September organization, who was responsible for the massacre of Israeli athletes at the Munich Olympics in 1972. Israel nearly had a serious diplomatic rift in its delicate relations with Jordan in 1997, following the botched Mossad attack in Amman on Khaled Mashal, head of the Hamas political bureau. Following the capture of its agents, and in order to avoid a break in relations with one of its important allies in the Arab world, Israel was forced to release Hamas leader Sheikh Ahmad Yassin from prison, where he was serving a life sentence. There was also a great deal of tension between Israel and Canada when Canadian passports were found in the possession of the perpetrators.

Along with these covert operations, Israel also used open aerial targeted killing operations during the second intifada, especially against the instigators of suicide bombings. As Palestinian organizations made escalating use of suicide bombers, the list of targets was expanded until it included the senior leadership of these organizations. Overall, the Israeli public has supported targeted killing operations because of the large number of Israeli deaths caused by those targeted. However, in at least one case, namely, in July 2002, a public debate arose after an aerial targeted killing operation against Salah Shehadeh, one of the heads of the military arm of Hamas. In addition to Shehadeh and his assistant, Zaher Nasser, fourteen uninvolved civilians nearby, about whom there was no prior information, were accidentally killed. This led to a public debate in Israel that included publication of a letter by several pilots expressing their opposition to this policy.¹² However, in spite of the challenges and the various dilemmas – and given the attempted ground attacks and the launching of rockets, missiles, and mortars from Gaza at Israeli cities and villages, and more recently from Sinai as well at the southern border – targeted killing operations using fire from helicopters and UAVs have continued.

Israel's March 2012 targeted killing from the air of Zuhir al-Qaisi, secretary general of the Popular Resistance Committees, because of his involvement in planning an attack on the Israeli-Egyptian border, drew in its wake a round of continuous rocket fire at southern Israeli cities. It also engendered a media debate on the wisdom of Israel's use of targeted killing in its war on Palestinian terror.¹³ Nevertheless, in spite of questions raised by the Israeli media concerning the effectiveness and the wisdom of targeted killings in Gaza – which in many cases are followed almost immediately by fire at Israeli cities – it seems that Israel, perhaps even more than the United States, still opts to use its technological-operational advantage for precision strikes at those directly involved in carrying out terror operations. To be sure, targeted killing of senior figures in terror organizations has not solved and was not intended to completely solve the problem of terrorism, nor has it stopped terrorist activity by the organizations whose senior officials have been killed. However, it has more than once prevented or delayed terror attacks and forced the terrorist organizations to suspend activity and expend time and resources finding replacements for the leaders who were killed,

most of whom were not on the level of their predecessors. This is also true of targeted killings from the air conducted to thwart terror squads and rocket launching squads that are set to fire at Israel. In these cases as well, any expectation that this will completely prevent rocket and terror attacks from the southern border, which are part of the ongoing war of attrition that the organizations in Gaza are seeking to conduct against Israel, is entirely unrealistic.

In conclusion, the use of targeted killings in the combat strategy of Israel and the United States has inherent dilemmas, advantages, and disadvantages. Careful, intelligent, and controlled use of this tactic is required, both through wise political action and through judicial review, so that it is not a double-edged sword, but a sharp and precise weapon against the modern manifestations of terrorism.

Notes

- 1 Military “terrorilla” organizations are sub-state groups that from their inception established their militant status through the use of terror, that is, sporadic violence against civilian targets. Afterwards, they added guerilla and hit-and-run operations to their repertoire, and eventually they built an orderly, institutionalized military force with companies, regiments, and even brigades (although at this stage, on a smaller scale than those of a conventional army), and used combat tactics combining all of these elements. See Yoram Schweitzer, “The Limitations on Fighting a Terrorilla Army: Lebanon and Gaza as Test Cases,” *Military and Strategic Affairs* 1, no. 1 (2009): 35-42, <http://www.inss.org.il/upload/%28FILE%291272780648.pdf>.
- 2 In Israel there is a legal definition of targeted killing: According to the fundamental ruling HCJ 769/02, “The Public Committee against Torture in Israel et al. vs. The Government of Israel et al.,” it appears that targeted killing, in its legal definition, is used against “civilians who directly carry out a hostile act” (and on this issue see Article 51[3] of the First Additional Protocol to the Geneva Convention).
- 3 David Rohde, “The Obama Doctrine: How the President’s Drone War is Backfiring,” *Foreign Policy*, March-April 2012.
- 4 Ibid.
- 5 The Haqqani network is a crime family that established its empire in Afghanistan and Pakistan, based on kidnapping, extortion, and smuggling, and has strong ties with the Taliban and al-Qaeda. See Mark Mazzetti, Scott Shane, and Alissa J. Rubin, “The Haqqani Network: The Crime and Terror Empire that Causes Obama to Lose Sleep,” *Haaretz*, September 26, 2011, <http://www.haaretz.co.il/news/world/1.1483970>.

- 6 David Ignatius, "10 Years after 9/11, al-Qaeda is Down but not Out," August 24, 2011, http://www.washingtonpost.com/opinions/10-years-after-911-al-qaeda-is-down-but-not-out/2011/08/23/gIQAQ3tZJ_story.html.
- 7 Saleh Ali Nabhan was killed in September 2009. The leader of al-Shabab, which is affiliated with al-Qaeda, he was number three on the FBI's most wanted list. Justin Fishel, "FOXWIRE: Navy Seals Kill Wanted Terrorist in Somali Raid," Fox News, September 14, 2009, <http://www.foxnews.com/world/2009/09/14/foxwirenavy-seals-kill-wanted-terrorist-somali-raid/>. Fazul Abdullah Mohammed was killed in June 2011. He was responsible for al-Qaeda operations in Africa and was a commander of al-Shabab. Jeffery Gettleman, "Somalis Kill Mastermind of 2 U.S. Embassy Bombings," *New York Times*, June 12, 2011, http://www.nytimes.com/2011/06/12/world/africa/12somalia.html?_r=2&scp=4&sq=somalia&st=cse.
- 8 Peter Bergen and Jennifer Rowland, "CIA Drone War in Pakistan in Sharp Decline," CNN, March 28, 2012, <http://edition.cnn.com/2012/03/27/opinion/bergen-drone-decline/index.html>.
- 9 Robert Chesney, "Who May Be Killed? Anwar al-Awlaki as a Case Study in the International Legal Regulation of Lethal Force," in M. N. Schmitt et al., eds., *Yearbook of International Humanitarian Law*, Vol. 13, 2010, DOI: 10.1007/978-90-6704-811-8_1.
- 10 See note 2. The examination is done after the fact, and the committee must check and confirm that there was indeed well established and verified information indicating that the target of the killing was actually a terrorist who took direct part in a hostile act (gathering intelligence, transporting or dispatching terrorists, making decisions on carrying out attacks, or planning attacks). In addition, the committee must confirm that targeted killing was used only in the absence of a less damaging military alternative, that is, only when arrest was not possible. Finally, the killing must meet the test of proportionality. If it finds that there were deviations from the legal requirements, the committee is authorized to convey its findings to the attorney general, the military advocate general, the defense minister, and/or the head of the General Security Services for the purpose of considering criminal proceedings.
- 11 Phil Stewart, "Leon Panetta Says al-Qaeda's Defeat 'Within Reach,'" *Reuters*, July 9, 2011, <http://www.reuters.com/article/2011/07/09/us-afghanistan-usa-panetta-idUSTRE76818V20110709>.
- 12 "Reserve Air Force Pilots: We Won't Attack in the Territories," *Ynet*, September 24, 2003, <http://www.ynet.co.il/articles/1,7340,L-2767679,00.html>.
- 13 Roni Shaked, "Assassinations Are No Longer Effective," *Yediot Aharonot*, March 11, 2012; Yoav Zitun, "2 Killed in Gaza Strike, including Terror Chief," *Ynet*, March 9, 2012, <http://www.ynetnews.com/articles/0,7340,L-4200651,00.html>.