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TARGETED KILLINGS: AN EFFECTIVE AND JUSTIFIED METHOD OF SELF DEFENSE AGAINST TERROR ATTACKS

Lt Col M. Thembo

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Exercise Solo Flight

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EXERCISE *SOLO FLIGHT* – EXERCICE *SOLO FLIGHT*

**TARGETED KILLINGS: AN EFFECTIVE AND JUSTIFIED METHOD
OF SELF DEFENSE AGAINST TERROR ATTACKS**

Lt Col M. Thembo

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INTRODUCTION

The world today is afflicted by many conflicts and wars, some of which have their roots in dangerous ideologies, such as sectarianism and radical Islamism, which have led to insurgency and terrorism. Terrorist organizations have waged a protracted war on states, other beliefs, practices, and symbols that they perceive to be an obstacle to the advancement of their ideologies or beliefs. States have, as their basic moral principle and duty, an obligation to maintain security of their territories, defence of their people, their national interests, and those of their allies. Any apparent threat to these should be met with commensurate counter measures to ensure that the state's legitimacy is maintained.

In order to maintain this legitimacy, in the face of these threats by insurgents and terrorists, states have waged and are continuing to wage wars against these threats, and have also resorted to the strategy of "targeted killing" to eliminate those leading campaigns to undermine their legitimacy. In the definition by Simon Frankel Pratt, a Faculty Fellow at the School of International Service, American University, and a PhD Candidate in Political Science at the University of Toronto, Targeted Killing is "the premeditated killing of specific individual(s), known to represent a present and/ or future threat to the safety, welfare, interests, and security of a state and its citizens through association or patronage to terrorist groups or individuals."¹ Targeted killing can be carried out in a number of ways, the latest form being the use of drones to target terrorist leadership, command and control, as well as operatives.

¹ Simon Frankel Pratt, "Crossing Off Names: The Logic of Military Assassinations." *Small Wars and Insurgencies* Volume 26, no.1 (December 2014): 3.

Although the strategy of targeted killing has its proponents who hail it as effective and call for the expansion of its usage, there is a fair share of critics as well, who argue that it is not effective as it escalates conflicts, it represents everything inhumane as the laws of war are often not adhered to, and that it is often times prone to abuse by those using it. Pardiss Kebriaei, a constitutional and senior lawyer at the legal advocacy group, The Centre for Constitutional Rights in the USA, questions the legal basis “used to justify killing suspected terrorists off the battlefield, suggesting a violation of constitutional rights of due process.”² Be that as it may, targeted killing has proved effective in an important way than its critics will readily admit.

Accordingly, this paper will argue that targeted killing, when carried out within the confines of the law and against legitimate targets, is a very effective strategy of protecting states against such threats as posed by terrorists and insurgents. To argue this position, the paper will give a brief history of targeted killings. The legal framework within which targeted killing may be applied including the definition of a “legitimate target” will be examined. It will also give an overview of some of the debates on targeted killing. Lastly, this paper will examine some of the methods and types of weapons currently used to carry out targeted killings, specifically the use of drones, with a view to assess their effectiveness and some controversies their use has evoked. For the purpose of arguing the thesis of this paper, only the United States of America’s (USA) and Israel’s fight against terrorism and insurgency will be used as a case study, given these countries’ propensity to undertake the targeted killing approach to do so.

BRIEF HISTORY OF TARGETED KILLING

The USA and Israel are the two most renowned states to have used targeted killing to eliminate those they considered to be a threat to their interests and their legitimacy. Lately, the

² Matthew C. Waxman, “The Targeted Killing Debate,” *Expert Roundup: Campaign 2012*, (June, 2011). Last accessed 2 May 2016. <http://www.cfr.org/world/targeted-killings-debate/p25230>

focus has shifted to terrorists and insurgents in particular, the aim being to eliminate leaders or influential individuals that are considered to be central in propagating ideologies, beliefs, and or agendas that are pro terrorism or insurgency, as well as their command and control nodes, and the operatives themselves. Hitherto, the focus was even against whoever had the intention of developing weapons considered to be likely to be used to ferment terror and disorder in the regions and the world at large. Steven R. David, Professor of International Relations at Johns Hopkins University, noted that “since her independence in 1948 to the present, Israel has used the policy of targeted killings to advance its interests. When the intensity of the Arab- Israel conflict was high, especially if the main antagonist were the Palestinians, the number of targeted killings rose.”³ Steven David asserts that;

...in 1950, Israel focused its targeted killings on efforts to halt Fedayeen attacks from Egypt. Two senior Egyptian military intelligence officials in charge of *fedayeen* operations were killed by mail bombs sent by Israel intelligence. In 1960s, Israel’s policies of targeted killings had another key success when mail bombs were again sent, this time to German scientists developing missiles capable of reaching Israel from Nasser’s Egypt. The bombs, sent to the scientist and their families, convinced the scientists to return Germany, bringing about an end to the Egyptian missile program.”⁴

During the first *intifada*, Israel instituted secret policy of targeted killings, but in the second *intifada*, it started to acknowledge responsibility for targeted killings.⁵ The magnitude, effort,

³ Steven R. David, "Fatal Choices: Israel's policy of targeted killing." *The Begin- Sadat Center for Strategic Studies: Mideast Security and Policy Studies*, no. 51(September 2002): 3.Last Accessed on 26 April 2016. http://lloydthomas.org/1-IsraelTimeLine/8-2000/assassinations_david.pdf

⁴ *Ibid.*, 3.

⁵ Lisa Hajj, “Lawfare and Armed Conflict: Comparing Israel and the US targeted Killing Policies and Challenges against them.” *International Affairs: American University of Beirut Research Report* (January 2013). Last Accessed on 26April 2016. http://www.aub.edu.lb/ifi/international_affairs/Documents/20130129ifi_pc_IA_research_report_lawfare.pdf

tactics, and weapons used in carrying out these killings are the only distinguishing features of this policy from how it used to be.⁶

The US on the other hand, has for a long time carried out covert assassinations and targeted killings with presidential approval, using the Central Intelligence Agency (CIA), and during the Vietnam War, by the military and CIA.⁷ However, after 9/11, the USA started to conduct what is likely the most overt, technologically advanced and prolific targeted killings programme the world has seen, using Unmanned Aerial Vehicles (UAVs) also called drones. These have been revolutionized from their traditional role of surveillance to become attack platforms from which to launch both surveillance and precision guided munitions on the intended targets.⁸ As noted by Doug Noble, an activist with Occupy Rochester NY and Rochester against War, “the only things new in the latest, more publicized revelations about targeted killings are the use of drones, the president’s hands-on approach in vetting targets and the global scope of the drone killings.”⁹

Although measuring the effectiveness of these targeted killings by both Israel and the US may be difficult, it can be argued that based on the past decisions to abandon certain programs, such as the Syrian Nuclear program, that indeed targeted killing has the effect to deter and defend. Israel targeted and killed General Muhammad Suleiman in 2008 who was Special Advisor for Arms Procurement and Strategic Weapons to Syrian President after they had

⁶ Simon Frankel Pratt, Crossing Off Names: The Logic of Military Assassinations.” *Small Wars and Insurgency* Volume 26, no.1 (December 2014): 11.

⁷ Phillip Alston, “The CIA and Targeted Killings beyond Borders.” *Harvard National Security Journal* Volume2, no. 2 (2011): 283.

⁸ Simon Frankel Pratt, Crossing Off Names: The Logic of Military Assassinations.” *Small Wars and Insurgency* Volume 26, no.1 (December 2014): 11.

⁹ Doug Noble, “Assassination Nation: Fifty Years of the US Targeted ‘Kill Lists’: From the Phoenix Program to Predator Drones,” *Information Clearing House*, July 12, 2012. Last Accessed 26 April 2016. <http://www.informationclearinghouse.info/article31925.htm>

destroyed the nuclear reactor, because he was behind the endeavour to resuscitate the development of the nuclear program in Syria.¹⁰

From time immemorial, targeted killing has always been subjected to a test of conformity with the legal framework of laws of war especially the aspects of legitimate military targets, the issue of proportionality and collateral damage as well as the aspect of sovereignty of states. Targets are followed to their hiding places everywhere they are, without the inhibition of sovereignty of countries they are hiding in or operating from. The legality of this strategy is one of the aspects that critics of targeted killing often leverage.

TARGETED KILLING AND THE LEGAL FRAMEWORK

Although targeted killing, in the case of the war on terror and insurgency involves the elimination of a terrorist and insurgents who seek the death of innocent people, such killing still involves the death of human being(s). The issue of a legitimate military target then arises. The additional Protocol 1 to the Geneva Convention Article 52 describes a legitimate military target as; “those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”¹¹ It is upon this fact that a number of factors, such as the status of war or peace, the status of the targeted person as a civilian or combatant, the character of a conflict as internal or international and the level of the conflict must be considered.¹² All these depend on the more general consideration, the

¹⁰Last Accessed 08 May 2016.

<http://www.bing.com/videos/search?q=syrian+general+killed+by+israel&qpvt=syrian+general+killed+by+Israel&FORM=VDRE&adlt=strict>

¹¹Last Accessed 2 May 2016. <https://www.icrc.org/ihl/WebART/470-750067>.

¹²Roland Otto, *Targeted Killings and International Law: With Special Regard to Human Rights and International Humanitarian Law Volume 230*, (London: Springer Science & Business Media, 2011), 32.

fundamental question of whether the rule of law should apply at all or only to certain situations.

Roland Otto, author of the book “Targeted Killings and International Law,” notes that;

...“the relevant and decisive rules concerning the legality of targeted killings are human rights rules and international humanitarian law rules, but they are not subject to reciprocity, i.e., the general circumstances precluding wrongfulness under international law do not apply to them.”¹³

This aspect of legality has become a contentious issue regardless of whether targeted killing is effective or not. The issue is often looked at in line with whether terrorists or insurgents are considered as criminals or combatants. As noted by Ruth Wedgwood, Chairperson of International Law and Diplomacy at the School of Advanced International Studies at Johns Hopkins University, “Washington could not stop al Qaeda bombings by treating them as ordinary homicides, nor was it able to shut down the offshore camps that taught thousands of al Qaeda recruits how to fight or wire deadly explosives.”¹⁴ It was on the aftermath of 9/11 that the US classified terrorists as combatants, whereas Israel has developed a complex legal argument for its policy on targeted killing to neither declare terrorist and insurgents as neither combatants nor criminals. These positions by the two states allows them to hold up to international scrutiny and at the same time provide the necessary leverage to carry out targeted killings under the classification of targets as legitimate military targets. Therefore, under these new classifications of terrorists as combatants, the question of whether targeted killing is effective or not can be deduced from the overview of the debates on the use of this strategy.

AN OVERVIEW OF THE DEBATES OVER TARGETED KILLINGS

¹³ *Ibid.*, 539.

¹⁴ Ruth Wedgwood and Kenneth Roth, “Combatants or criminals: How Washington should Handle Terrorists.” *Hein Online Law Journal: Foreign Affairs Volume 83, no.3* (2004):126.

Nils Melzer, Human Rights Chair at Geneva Academy of International Humanitarian Law and Human Rights, who defines targeted killing as; “the use of lethal force attributable to a subject of international law, with the intent, premeditation, and deliberation to kill individually selected persons who are not in the physical custody of those targeting them,”¹⁵ goes on to argue that “as far as the duty of the states is to respect life is concerned, there seems to be no territorial limitation to the non-conventional right to life.”¹⁶ Whereas it is true that terrorists also have a right to life, the same can be said about the people they kill in furtherance of their agenda. If other measures such as their arrest and prosecution even in countries outside USA and Israel have failed to dissuade them from their terror acts, then other means such as targeting and killing them wherever they are is a viable option. It is the state’s responsibility to protect its citizens and those of its allies against any form of harm by whatever means possible. Targeting and killing terrorists in foreign countries should be seen as implementation of foreign policy by the state conducting it. There are some benefits that can be derived from conducting targeted killing everywhere targets are.

Targeted Killing Effectively Disrupts Terrorist Groups

There are a number of rebuttals to targeted killings as an effective strategy to fight terrorism, with some widespread public condemnations of the strategy. Kate Clark, an Afghanistan expert of Afghanistan Analysts Network (AAN), contends that the decapitation of leaders through targeted killing unleashes mayhem and produces an organizational chaos that hardens resolves and unleashes more radical subordinates.¹⁷ This argument is countered by Steven David’s who argues that targeted killings can assist states in combating their enemies through creating

¹⁵ Nils, Melzer, *Targeted killing in International Law*. Oxford: Oxford University Press, 2008, 5.

¹⁶ *Ibid.*, 7.

¹⁷ Matthew C. Waxman, “The Targeted Killing Debate,” *Expert Roundup: Campaign 2012*, (June, 2011). Last accessed 25 April 2016. <http://www.cfr.org/world/targeted-killings-debate/p25230>

paranoia and uncertainty within the organization and especially where personal charisma and professional skills of the leaders of certain organizations are crucial to the success of their organizations.¹⁸ Loss of leadership is dangerous to cohesion, and terrorist organizations are no exception to this. David further argues that intelligence analysts have found a trend among militants to deny the veracity of reports of death of their leaders as a strategy to allay fears of foot soldiers and prevent dissent and power struggles within their ranks.¹⁹ It is therefore argued that targeted killing degrades the effectiveness of terror groups where leadership, planning, tactical, and technical skills are confined to individuals. If these people are eliminated, their ability to carry out attacks will be degraded. Hence, in the long-term it will be hard for terror organizations to effectively function.

As noted by Roland Otto, “killing senior terrorists, expert bomb makers, and those who provide philosophical guidance for terrorists may spare countless non-combatant victims, while at the same time, forgoing risk to friendly combatant forces.”²⁰ Although the magnitude of what the person targeted and killed had intended to do may not be readily known, the fact that they have been disrupted is solace enough. It is argued that there is a very high possibility that a terrorist targeted and killed would often have been on the way to either transmit plans to the foot soldiers, to plan a major attack with others members of the group or to execute a mission. Killing them in such circumstances not only disrupts the intended action, but also sends a state of panic, confusion, and uncertainty among the remaining.

Roland Otto notes that a successful targeted killing removes a dangerous enemy from the battlefield and deprives the foe of his leadership skills, guidance, and experience. He also

¹⁸ Steven R. David, “Fatal Choices: Israel’s Policy of Targeted Killing,” Bar-Ilan University: The Begin-Sadat Center for Strategic Studies, *Mideast Security and Policy Studies*, no. 51(September 2002):8.

¹⁹ *Ibid.*, 9.

²⁰ Roland Otto, *Targeted Killings and International Law: With Special Regard to Human Rights and International Humanitarian Law Volume 230*, (London: Springer Science & Business Media, 2011), 25.

observed that though confusion on the rank and file of terrorist organization may be temporary as a result of killing their leaders, their successors will feel trepidation knowing they may be killed anytime too.²¹ Even the killing of operatives has its fair share of a deterrent effect in that others will know that they may be targeted anytime, anywhere. The best form of defense against terror attacks in the homeland of countries fighting terrorist id to be on the offense and follow terrorist where ever they are and kill them.

Offense is the Best Form of Defense

Terrorism and insurgency are essentially offensive in nature, making counter-offensive measures such as targeted killing an effective response mechanism. Steven David noted that targeted killings have impeded the effectiveness of Palestinian terrorist organizations, where people who have the technical ability to make bombs and plan attacks were killed before they could do so.²² Defending all the likely terrorist targets in a country, against a determined adversary that can choose the time and place of the attack such as terrorists and insurgents, is exceedingly difficult. David argues that although some degree of deterrence of terrorism and insurgency is achievable, dissuading potential terrorists or insurgents is not easy, especially when they are eager to die for their cause.²³ Under such circumstances, the best response is to eliminate the threat before it can be launched, and one of the best and most effective means is targeted killing.

Critics of targeted killing argue that the US and Israel, of late renowned for overtly undertaking targeted killing, are waging political assassinations in foreign countries in the guise

²¹ Roland Otto, *Targeted Killings and International Law: With Special Regard to Human Rights and International Humanitarian Law Volume 230*, (London: Springer Science & Business Media, 2011), 25.

²² Steven R. David, "Fatal Choices: Israel's Policy of Targeted Killing," Bar-Ilan University: The Begin-Sadat Center for Strategic Studies, *Mideast Security and Policy Studies*, no. 51(September 2002):6.

²³ *Ibid.*, 7.

of targeting terrorists and insurgents.²⁴ This argument does not have substance however, as argued by some military scholars that; “targeted killings may be misinterpreted as assassinations due to the fact that during armed conflict, self-defence is a political purpose.”²⁵ A distinction should be drawn between killing individual(s) purely for political or ideological reasons, without such person(s) being necessarily a threat to the state to the extent of waging military type attacks that will call for state military type self-defence.²⁶ The concept of targeted killing is a justification for the concept of anticipatory self-defence. Terrorist are killed with the latest types of weapons before they carry out their plans, as a form of defence. Drones, as the latest weapons used in targeted killings, have elicited so much debate and alarm to some.

DRONES AS WEAPONS OF CHOICE IN TARGETED KILLING

As noted by Professor Claire Finkelstein (Professor of Law and Philosophy at the University of Pittsburgh), *et al*, the advent of war on terror has seen the emergence of war against non- state actors, the demise of the confinement of hostilities to an identifiable battlefield, the extensive involvement of civilian combatants, and the development of new and more precise military technologies.²⁷ Of late, drones have become a weapon of choice in carrying out targeted killings. They can conduct surveillance on the target for a considerable amount of time before striking, or they may strike without having to carry out protracted surveillance, based on the data that was input for action. In many ways, drones present the same moral issues as any other action at a

²⁴ Simon Frankel Pratt, Crossing Off Names: The Logic of Military Assassinations.” *Small Wars and Insurgency* Volume 26, no.1 (December 2014): 3.

²⁵ Asa Kasher and Amos Yadlin, “Assassination and Preventive killing.” *The Johns Hopkins Press: SAIS Review of International Affairs* Volume 25, no.1 (Winter-Spring 2005):55.

²⁶ Thomas B.Hunter, “Targeted killing: Self-defense, preemption, and the War on Terrorism. *Journal of Strategic Security* Volume 2, no.2 (May, 2009): 1.

²⁷ Claire, Finkelstein, Jens David Ohlin, and Andrew Altman, eds. *Targeted Killings: Law and Morality in an Asymmetrical World*. (Oxford: Oxford University Press, 2012),

distance weapon; they allow warriors to kill at a minimum risk to themselves, thus lowering the human cost of the aggression.²⁸

Another aspect of the law when conducting targeted killing relates to collateral damage. As it is, terrorists are non-uniformed combatants, who cannot be easily distinguished at face value. They operate within the civilian population, from civilian occupied areas, and use civilian assets to conduct their terror acts. With the advent of the drone as the weapon of choice to conduct targeted killings where such targets are, critics such as Paul Rosenzweig argue that collateral damage resulting from drone attacks is much more pronounced and frequent as a result of the distance from which they launch their munitions.²⁹ This argument however, loses sight of the fact that drones are hi-tech weapon platforms that use precision guided munitions, thereby reducing chances of collateral damage. These concerns are outweighed by the benefits of targeted killings using drones. James Ramsay argues that, use of drones is very effective because they (drones) can monitor the movement of the target up to a stage of engagement when it is at a location where collateral damage will be minimized.³⁰

In addition to this, the use of drones to conduct targeted killings has led to reduced physical risk to the pilot and ground troops. James Ramsay, goes on to note that; “Indeed, the pilot is often hundreds even thousands of miles away in perfect safety.”³¹ Paul Rosenzweig, a Senior Advisor in Homeland Security Policy and Strategy in USA, buttresses this point by pointing out that; the use of drones to conduct targeted killing “minimizes potential harm to US military personnel, whose “on the ground” presence is reduced when the killing of identified targets is

²⁸ Medea Benjamin, *Drone Warfare: Killing by Remote Control*, London and New York: Verso Books, 2013), 1.

²⁹ Paul Rosenzweig, Timothy J. McNulty and Ellen Shearer, *National Security Law in the News: A guide for Journalists, Scholars, and Policymakers*. (Chicago: American Bar Association Publishing, 2012), 161.

³⁰ James D. Ramsay and Linda Kiltz, *Critical Issues in Homeland Security*. (Boulder: Westview Press, 2014), 15.

³¹ James D. Ramsay and Linda Kiltz, *Critical Issues in Homeland Security*. (Boulder: Westview Press, 2014), 14.

conducted from UAVs.”³² It is therefore argued also that, before drone attacks are launched, an elaborate intelligence is provided, and they are also capable of conducting their own surveillance before ultimately engaging the target and thereby, reducing the risk of collateral damage. Again, it has to be borne in mind that there here can never be an absence of collateral damage in a war situation, but drone strikes endeavor at all costs to minimize this.

CONCLUSION

Targeted killing, which has been carried out ostensibly by the USA and Israel, has been effective in deterring possible terrorist and insurgents attacks on these countries and their allies, although the exact extent of the deterrence cannot be quantified. There are however some arguments that there is no proof whatsoever that targeted killing has reduced the potency of terrorists and insurgents, something, they argue, that can be proved by the continued terror attacks even to date. This argument losses sight of the many would be terror attacks that may have occurred if some terrorists had not being eliminated or what the security situation in the Middle East for instance, would be had some protagonists and sponsors of the acquisition dangerous weapons not being eliminated. It can be argued that targeted killing is a necessary evil for an unsavory time we live in.

Although there are other methods that may be used to achieve an end to terror act such as political settlement and arrest and prosecution of terrorists, these have proved to be ineffective, leaving targeted killing as the a viable and effective response to the horrific threat posed by insurgents and terrorists. In an environment of war, such as the war on terror and insurgency, there are bound to be negatives occasioned by the methods employed while carrying out attacks on the enemy. Collateral damage as a result of the use of UAVs or drones to carry out targeted

³² Paul Rosenzweig, Timothy J. McNulty and Ellen Shearer, *National Security Law in the News: A guide for Journalists, Scholars, and Policymakers*. (Chicago: American Bar Association Publishing, 2012), 161.

killing cannot be discounted all together. Targeted killing on the whole is an effective strategy as it focusses on the actual perpetrators of terror while by and large and to the extent possible, sparing the lives and property of innocent people. Targeted killing, in this imperfect world, remains a necessary evil.

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