

# Is Israel's policy of targeted killing synonymous with assassination? Can it be legally or morally

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## Is Israel's policy of targeted killing synonymous with assassination? Can it be legally or morally justified?

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FRANCES DEFT, JUL 25 2011

Israel is often criticized for its policy of targeted killing, which has escalated following the breakdown of Israeli-Palestinian communications of October 2000. Although Israel defends this policy, claiming that it can be both legally and morally justified, it has failed to provide an adequate definition. This essay seeks to determine whether Israel is pursuing a policy of assassination, and whether this can be considered legal under international law. The moral aspects will then be considered to determine whether targeted killing can ever give results which are great enough to overcome the cost of allowing perfidy to play a role in international politics.

It seems that for many, the definition of 'assassination' is as controversial as the meaning itself. Assassination is almost always defined differently within literature, and terms which for some authors are crucial can for others seem irrelevant or even erroneous. One definition is that offered by Daniel Pickard, whereby assassination is "the targeted killing by an official agent of a nation of another individual, regardless of whether a state of war exists, and will specifically exclude heads of state as potential targets".[1] This quite clearly states that assassination can occur within or without a state of war; yet for some authors the difference between a state of war and a state of peace can define an act as assassination or entirely legal warfare activity.[2] This is just an example of how hard it is to find a universally accepted definition of assassination, and therefore how hard it can be to determine whether a policy of targeted killing is synonymous with assassination.

Israel's policy of targeted killings is not a new phenomenon. In fact, reports of officially sanctioned assassinations still exist from before Israel's proclamation of statehood in 1948.[3] Even after the new democratic government was formed, strong arguments suggest that instead of ceasing their 'civilian victimization', the new democratic government under Ben-Gurion simply became more secretive regarding their policy.[4] Civilian victimization is defined as "a government-sanctioned military strategy that intentionally targets and kills noncombatants or involves operations that will predictably kill large numbers of noncombatants".[5] Perhaps this is not the same as the current situation, where Israel is not intentionally targeting noncombatants; nonetheless noncombatants are the inevitable casualties of a mistaken identity or even a successful targeted killing.

The current situation of target killings is most notably in response to Palestinian terrorist and militia action. Since the second intifada in September 2000, approximately 130 targeted killings have taken place, which the Israeli government has sought to defend rather than deny.[6] Although extrajudicial executions are usually surrounded in secrecy, members of the Israeli government have confirmed these killings to be, "deliberate government policy carried out under government orders", provoking strong international condemnation.[7] Officials initially argued that targeted killings were a legitimate act of law enforcement, but later changed their defense to that of just war theory and international law; offering a justification of their policy which satisfied neither guidelines.[8] Israel's failure to succinctly define and defend their actions has opened up the debate to those seeking to either justify or condemn such policy.

Steven R. David gives a definition of targeted killing which at first seems to fit an accepted notion of assassination; that "targeted killing is the intentional slaying of a specific individual group of individuals undertaken with explicit

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governmental approval".[9] Yet David argues that targeted killing can be differentiated from assassination, which is often described as perfidious, or "murder by treacherous means".[10] David asserts that Israel's targeted killings are *in general* conventional military actions and therefore not treacherous or deceitful.[11] Despite this assertion, there have been numerous killings whereby the assassins used fraudulent documents in order to breach the trust of a target; to which speculation has been made regarding the Israeli government's involvement.[12] Even if Israel's targeted killings are not *usually* acts of perfidy, is this a sufficient distinction to make? Or perhaps, even a single act of perfidy should be adequate proof that assassination has occurred; in which case David's difference between targeted killing and assassination seems tenuous at best.

Indeed, what is the practical importance of whether or not targeted killing is really the same as assassination? There seems to be greater distinction to be made in theory than in the actual acts themselves; which both involve targeting a specific individual without hope of free trial or the sentence being revoked. Either way it would seem that moral objections or justifications are bound to be similar, so therefore the importance must lie in the legal justification. If targeted killings are separated from the pejorative connotations of assassination, then perhaps they can be acceptable policy methods. Those inclined to argue for the legality of targeted killings are those who tend to insist on its difference to assassination; but can either really be legally justified?

If targeted killing is defined as above, different from assassination due to a lack of treacherous means, then technically it is not banned unequivocally by international law. Neither, to that matter, is assassination, as it falls under the general prohibition against killing by perfidious means.[13] However, assassination has always been criticized, not least for the role of perfidy, which erodes humanitarian norms and makes it much harder for peace to be made and trust regained.[14] Due to the above discussion showing that Israel's policy of targeted killing has included treacherous means to some degree; this essay shall from this point refer to 'assassination' and 'targeted killing' interchangeably, and shall consider the legal and moral justifications for this policy.

In the 17<sup>th</sup> and 18<sup>th</sup> centuries, political thinkers such as Rousseau deemed assassination to be contrary to both customary law and the law of nature; and by the 19<sup>th</sup> century a codified ban was introduced.[15] However, an argument made by those in support of assassination is the principle of self-defense; which has become especially relevant in the modern sense of waging a war on terrorists rather than states. Article 51 of the UN Charter rules that, "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security".[16] This enables the position that states must do what they have to in the name of self-defense, without needing to wait for permission from the Security Council.

Yet there is disagreement concerning at what stage of the 'armed attack' is deemed cause enough to act in self-defense. David, on behalf of those in support of targeted killing, argues that, "just as a soldier can legally fire on an opposing army in wartime before it attacks, so Israel is legally justified in preemptively killing terrorists, even if they are not in the act or have not previously attacked Israel".[17] By this justification, and by the very nature of targeted killings, the terrorist must be killed before the attack has occurred. Yet if an attack has not yet occurred, and by David's own statement the target may not have any history of terrorist action, to what extent is it still self-defense?

To counter this criticism, David offers the following conditions which legally justify targeted killing as an act of self-defense. First, Israel informs the Palestinian National Authority (or PA) of any suspected terrorists. If the suspects are not arrested, and Israel concludes that they themselves are unable to arrest the suspects; they can be targeted.[18] However, since the failure of the peace initiative in October 2000, communications between Israel and the PA have broken down, and the initial list of suspects is no longer provided.[19] David's response is that if the PA showed willing to punish its transgressors, perhaps Israel's policy of targeted killing would lose its legal validation; but the current situation leaves Israel no option.[20]

St Thomas Aquinas offers the Doctrine of Double Effect, which suggests that a policy of targeted killing due to self-defense might be lawful, provided that the intention is to protect one's own life [or state].[21] The international community is fully aware of Palestinian terrorist activity towards Israel, and thus expects Israel to act accordingly. According to the Doctrine, however, "an act may be rendered unlawful even though proceeding from a good intention

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if it is out of proportion to the end".[22] It is debatable whether a policy of assassination is indeed a proportionate response, and therefore legal, or whether it is unlawful due to its severity and eternalness.

The legal justification also depends on the status of the target: whether they are classed as a combatant, terrorist or civilian. According to Article 23(c) of the Hague Regulations and Article 40 of the Additional Protocol, combatants are secured Prisoner Of War (POW) status.[23] Targeted killings illegally deny combatants the opportunity of POW status. Terrorists are legally deprived of POW status, but this does not deny them the right to surrender or lay down arms; thus by assassinating without due process Israel could still be pursuing an unlawful policy.[24] Civilians, on the other hand, cannot participate in hostilities and so do not become legitimate targets under Article 51 of the 1977 First Additional Protocol.[25] Yet Israel has not signed the protocol; and even if they had, civilians would only be legitimate targets for the time they were actively involved in hostilities, not before or after.

Whether targeted killing is legally justified affects whether it can be morally justified. David claims that targeted killing is legal and is therefore, "morally defensible because although it would be preferable to have negotiated peace, such an outcome has not proved possible so far".[26] Even if this is the case, surely a lack of alternatives is not enough of an incentive to defend a policy of assassination. David adds to his moral defense by claiming motives of revenge, and retribution; yet these are emotions that could be associated with any action, even illegal ones, and are definitely insubstantial as a moral justification.

Yael Stein further criticizes David's argument, and asserts that there cannot be any moral justification for an illegal action. Emotions such as revenge cannot be the basis for political decision, and transgressors must be punished according to law.[27] She denies the necessity to debate the moral justification because, to her, an illegal option cannot be considered just because it, "deliver[s] the results that policy makers desire".[28]

Alternatively, Daniel Statman agrees with David's notion that there may be a moral justification for targeted killing—though he does not necessarily agree with the legal justification. Statman's argument concerns the long-term repercussions of an assassination, which he says, "has a chance of achieving *better* results from a moral point of view".[29] Although there is a moral risk involved, perhaps the benefit of removing one terrorist leader outweighs the cost; if the alternative is to wage war with an entire country, where the danger to civilians could be much greater. Yet this same principle of utility could also be used to argue that the cost of assassination outweighs the benefits. Michael Gross claims that targeted killing "feeds a cycle of retaliation and vengeance that precipitates further Israeli casualties, and invites harsh and often brutal measures against the Palestinian civilian population, which only incite further terror attacks without providing additional security for Israelis".[30] Targeted killing can therefore not be morally justified according to the utilitarian notion of providing the greatest happiness to the greatest number of people, regardless of the benefits offered.

Even those who propose a great number of benefits often hold moral objections. Pickard suggests numerous advantages to a policy of assassination; he agrees with Statman that there would be fewer civilian casualties; he argues that there would be no prisoners left to become cause for further terrorist attacks, and offers numerous further benefits. Yet Pickard reveals his own, most compelling reason for not assassination; that targeted killing "is morally wrong".[31] Despite an objective display of advantages and reasons why assassination might be the more effective, legal and supportable method; from an entirely subjective position, it was still unacceptable. Vincent-Joël Proulx agrees, calling assassination "morally irresponsible".[32]

It can be difficult to conclude whether Israel's policy of targeted killing can be legally or morally justified, as it seems to be a controversial and often subjective topic. Those who differentiate targeted killing from assassination by describing a lack of perfidy often speak of the policy in general, and overlook the exceptions which do involve killing by treacherous means, and so do fall under the same legal and moral standpoint as assassination. No universal definition of assassination means it is not explicitly illegal, and is subject to great discussion. The most compelling legal justification is that of self-defense, but if Israel is not actively pursuing alternatives (such as arrest, or negotiation) can a killing really be considered self-defense? Moral justifications are equally subjective, with the utilitarian principle effectively used to argue both for and against assassination. However, it seems that despite possible advantages, the general consensus is that perfidy cannot be allowed to play a role in international politics,

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simply because it is morally wrong. Therefore Israel's policy of targeted killing, *without* the treachery involved, could potentially be justified; but the current situation is not morally defensible.

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[1] Daniel B. Pickard, 'Legalizing Assassination? Terrorism, the Central Intelligence Agency, and International Law', *Georgia Journal of International and Comparative Law* 30 (2001): 10.

[2] Steven R. David, 'If Not Combatants, Certainly Not Civilians', *Ethics and International Affairs* 17 (2003): 134.

[3] Ian Black, and Benny Morris, *Israel's Secret Wars: A History of Israel's Intelligence Services* (St Ives: Warner Books, 1992): xiii.

[4] Alexander B. Downes, *Targeting Civilians in War* (Ithaca: Cornell University Press, 2008): 205.

[5] Downes, *Targeting Civilians in War*, 14.

[6] Steven R. David, 'Israel's Policy of Targeted Killing', *Ethics and International Affairs* 17 (2003): 111.

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[7] Ardi Imseis, 'On the Fourth Geneva Convention and the Occupied Palestinian Territory', *Harvard International Law Journal* 44 (2003): 65.

[8] Michael L. Gross, 'Fighting by Other Means in the Mideast: A Critical Analysis of Israel's Assassination Policy', *Political Studies* 51 (2003): 353.

[9] David, 'Israel's Policy of Targeted Killing', 112.

[10] Gross, 'Fighting by Other Means in the Mideast', 355.

[11] David, 'Israel's Policy of Targeted Killing', 114.

[12] E.g. the murder of Mahmoud al-Mabhouh in Dubai in January 2010.

[13] Gross, 'Fighting by Other Means in the Mideast', 354.

[14] Gross, 'Fighting by Other Means in the Mideast', 356.

[15] Pickard, 'Legalizing Assassination?', 16.

[16] United Nations, 'Charter, chapter VII (1946)', in Thom Brooks (ed.), *The Global Justice Reader* (Oxford: Blackwell, 2008): 487.

[17] David, 'Israel's Policy of Targeted Killing', 113.

[18] David, 'Israel's Policy of Targeted Killing', 115.

[19] Yael Stein, 'Any Name Illegal and Immoral', *Ethics and International Affairs* 17 (2003): 131.

[20] David, 'If Not Combatants, Certainly Not Civilians', 135.

[21] St. Thomas Aquinas, 'War, Sedition and Killing', in Thom Brooks (ed.), *The Global Justice Reader* (Oxford: Blackwell, 2008): 477.

[22] Aquinas, 'War, Sedition and Killing', 477.

[23] Vincent-Joël Proulx, 'If the Hat Fits, Wear It, If the Turban Fits, Run for your Life: Reflections on the Indefinite Detention and Targeted Killing of Suspected Terrorists' *Hastings Law Journal* 56 (2004): 884.

[24] Proulx, 'If the Hat Fits, Wear It, If the Turban Fits, Run for your Life', 889.

[25] Stein, 'Any Name Illegal and Immoral', 129.

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[26] David, 'Israel's Policy of Targeted Killing', 123.

[27] Stein, 'Any Name Illegal and Immoral', 132.

[28] Stein, 'Any Name Illegal and Immoral', 133.

[29] Daniel Statman, 'The Morality of Assassination: A Reply to Gross', *Political Studies* 51 (2003): 778.

[30] Gross, 'Fighting by Other Means in the Mideast', 360.

[31] Pickard, 'Legalizing Assassination?', 31.

[32] Proulx, 'If the Hat Fits, Wear It, If the Turban Fits, Run for your Life', 888.

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