

# Do Drone Strike Assassinations Render Conceptions of 'Just War' Redundant?

Written by Hannah Eastwood

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<https://www.e-ir.info/2014/04/08/do-drone-strike-assassinations-render-conceptions-of-just-war-redundant/>

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### **Policies of 'Targeted Assassination' by Drone Strike Render Conceptions of 'Just War' Redundant. Discuss.**

The concept of 'Just War' retained "a remarkable vitality and power" in moral political theory (Rengger, 2002, 353) until the events of September 11, which "precipitated one of the greatest contests the tradition has endured" (Long & Sutch, 2012, p. 87) and illustrated an unprecedented change in the nature of security threats and subsequent response mechanisms. 'Targeted assassination' became one of the key weapons systems used to tackle the security threat posed by terrorist groups. First used in Afghanistan by the US in 2001, targeted assassinations involve drone intelligence surveillance monitoring the behaviours and positions of confirmed and potential targets. It has been encouraged as a low cost, low risk, "light footprint" counterterrorism tactic (Mardell, 2012) and the minimal collateral damage ensured by its surveillance capacities is an advantage few other systems can offer. Naturally this triggered debates concerning the relevance of the concept of Just War in contemporary warfare. Some believed the theory could not be "superimposed" onto the 'war on terror' nor the response mechanisms it required (Blank, 2011, p. 711), whilst others considered such views "the product of a poor understanding" of the law (Schmitt, 2010, p. 325). With this debate in mind, one will assess the relevance of several *Jus ad Bellum* and *Jus in Bello* principles to targeted assassination, considering the disconnectedness of – notably US – foreign policy in the process. Then, despite the seeming redundancy of Just War as a shaper of academic theory and policymaking, the impact the theory has had on international law, namely the Geneva Convention, will also be briefly assessed. Following these considerations it would appear that laws influenced by Just War are far from unhelpful or irrelevant; even if the Just War *theory* is no longer relevant to security studies.

It is first necessary to address the varying definitions of targeted assassination, as some have such normative agendas that the entire debate can be rendered redundant before it has even begun. The most significant issue is that 'assassination' is illegal under international law – yet, subject to certain conditions, 'targeted killing' is not. In academic literature, both terms are used interchangeably and so for the sake of this essay targeted assassination will not be perceived as necessarily illegal. Instead, targeted assassinations will be seen as no different from 'targeted killings' and, as such, "no different from conventional killing methods from a functional or moral perspective" (Pillar, 2013). This warrants supporters of the concept of Just War to assess targeted killings using certain principles; for example proportionate cause and means. By nature targeted assassinations must display a degree of premeditation "which is incompatible with generally held conceptions of self-defence during peacetime", thus making it "a product of the twilight zone between war and peace" (Downes, 2004, p. 280). In assuming this definition, one can see how dominant approaches in Just War theory are incompatible with the 'war on terror' debate, where "the distinction between war and peace...military success and failure...enemy and innocent are fluid and contested" (Long & Sutch, 2012, p. 88).

### **Jus ad Bellum**

The principles of *Jus ad Bellum* are those which a state must adhere to prior to using force (Schmitt, 2010). The principle of legitimate authority allows states to use force within another state's territory so long as the acting party

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are accountable to a legitimate authority and have received host state consent. While Yemen has consented to US targeted assassinations on al-Qaeda members within its airspace, Pakistan claims to have opposed this counterterrorism strategy. Conflicting principles of state sovereignty are likely to be one of the causes of the tension between the US and Pakistan, and unfortunately the notion of legitimate authority fails to adequately deal with this issue. Whilst Just War theorists maintain rights to state sovereignty, Schmitt (2010) suggests that those states which experience terrorist attacks can claim the "undeniable right" to execute drone attacks on terrorist organisations who "seek sanctuary" within another states' borders if the sanctuary state is incapable of or refuses to conduct appropriate action to "prevent its territory being used to harm other states" (Schmitt, 2010, p. 316). US targeted assassination policy certainly seems to adopt this line of argument, ignoring the importance of state sovereignty in Just War theory and therefore rendering this principle redundant.

The principle of legitimate authority also fails to account for the covert nature of targeted assassinations, as the acting party is often unrecognised under international war law. The US is currently being subjected to legal scrutiny because the CIA is reportedly the primary agency planning and executing targeted assassinations despite not being recognised as a military force under the Law of Armed Conflict (Blank, 2011). However, Additional Protocol I of the Geneva Convention seemingly permits CIA activity so long as no war crime is committed. Laws prohibiting the deliberate killing of non-combatants are the greatest concern to drone pilots, however, the surveillance capacities of drones aim to ensure minimal collateral damage – thus reducing the likelihood of this war crime being committed. Furthermore, the Convention only prohibits the participation of the CIA "directly under hostilities"; that is, during officially recognised conflict (Downes, 2004, p. 283). Since the definition of 'war' in 'the war against terrorism' is still being debated, it appears that the Geneva Convention essentially permits CIA targeted assassination because war in the traditional sense has not been formally declared. The prominence of unaccountable covert bodies in counterterrorism and the changing nature of state sovereignty are aspects that the classic Just War notion of legitimate authority does not account for.

The *Jus ad Bellum* notion of last resort is another aspect of Just War theory disconnected from the realities of targeted assassination. Drone pilots heavily rely upon the surveillance capacities of drones to ensure an attack will only be launched once substantive evidence suggests the perceived threat is in fact a genuine one (Bowcott, 2012), (Burke, 2004). However, the line between pre-emptive and preventative, defensive action seems immeasurably thin. Similarly, the argument that "non-violent alternatives are always available" (Bellamy, 2006, p. 123) becomes almost irrelevant for some theorists; knowing the imminence of a threat is almost impossible when traditional war tactics are not in play (Guthrie & Quilan, 2007). For many it is clear that "bringing suspects for trial is simply not possible" – leaving few realistic alternatives to targeted assassination (Carvin, 2012, p. 533). Etzioni (2012) believes that most terrorists "cannot be deterred by the criminal justice system" (Etzioni, 2012, p. 533), suggesting that targeted assassination is the last resort because there is no other viable method of response left. But targeted assassinations are not necessarily the last resort in all cases; Israeli forces do not appear to have addressed or attempted feasible counterterrorist alternatives prior to launching drone attacks (Garlasco, 2009). With regard to the US and Israel it is likely that some circumstances may have offered opportunities for surrender or alternative mechanisms, but the lack of disclosure surrounding targeted assassination suggests we can never know whether attacks were the last resort. States are seemingly undeterred by the principle of last resort, which would suggest Just War theory is increasingly becoming detached from and irrelevant to the reality of modern warfare.

Fortunately, the *Jus ad Bellum* principle of proportionate cause can scrutinise targeted assassinations and has shaped international war law, and offers a comparison "between the future situation we expect to achieve if we take up arms and the future situation we expect if we do not" (Guthrie & Quilan, 2007, p. 21). Targeted assassinations have had a radicalising effect on some regions of Pakistan, causing anti-Americanism (Hill, 2012)(Thompson & Ghosh, 2009). Families of victims of targeted assassination are required by tribal code to seek revenge, making them ideal recruits for the Taleban. Fatal drone attacks are expected to bring four new suicide bombers to regional terrorist organisations (Cole, Dobbing, & Hailwood, 2010, p. 14). Although one cannot conclusively argue that targeted assassinations are the reason for these increased membership figures, there is a clear correlation between the number targeted assassinations and the anger Pakistanis feel towards the US and its actions (Zenko, 2013). Elsewhere, critics are accusing the US of being ignorant of "foreign languages and cultures, especially cultures built around honor, revenge, and intense family and tribal loyalties" (Posner, 2007, p. 24). In addition, others are

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increasingly believing that the US will only perceive the threat of al-Qaeda removed once all Afghan men of military age are killed (Hill, 2012); a somewhat culturally ignorant view given most Afghan males carry firearms out of cultural tradition. Evidently the US has “fetishized procedure over complexity and intentions over effects” (Burke, 2004, p. 352). These examples all suggest that the Just War theory concept of proportionate cause needs to remain a tool with which to assess counterterrorism methods. Additional Protocol I of the Geneva Convention states that causes must not be excessive “in relation to the concrete and direct military advantage anticipated” (Burke, 2004, p. 342). This clear reflection of the principle of proportionate cause in international law illustrates that the theory’s irrelevance elsewhere does not render the entire theory redundant and means targeted assassination can still be held accountable.

## Jus in Bello

The principles of *Jus in Bello* seek to hold the actions committed within conflict accountable. In many ways, targeted assassination policies comply with the *Jus in Bello* principle of proportionate means, which essentially asks whether the chosen method is the most effective way of dealing with the issue. Targeted assassination complies with Additional Protocol I of the Geneva Convention prohibiting weapons which cause long-term or widespread damage. In addition, drone surveillance capabilities mean that removing threats is easier and the number of innocent civilians killed is dramatically lower than when conventional strategies are used (Downes, 2004) (Carvin 2012). However a multitude of other factors leave proportionate means unable to account for targeted assassinations.

Most significantly – proportionality assumes equal military capacity between both parties, but drones give “such an overwhelming military advantage to one side that war is no longer fair” (Davis, 2011). Evidently the principle cannot be successfully applied to modern weaponry complexities and international power imbalances. Asymmetric warfare is fast becoming a logical, low cost, low risk way of achieving state aims. Furthermore, if such tactics “suffice to damp down further attacks” (Schmitt, 2010, p. 317) and reduce the traumas associated with losing a soldier targeted assassinations, one can appreciate the reasoning behind adopting this one-way counterterrorism strategy. Although asymmetric warfare guarantees absolute safety for the drone pilot, it also means that those being attacked may be perceived as non-combatants because no formal declaration of war between two identifiable parties has been made meaning there is no obvious soldier to attack in return. Similarly, although the location of the drone pilot means he is safe from attack, this does not mean a given terrorist organisation should no longer constitute a threat. If pre-emptive action and asymmetric warfare are increasingly becoming the accepted response mechanisms to terrorism, proportionality of military capacity becomes irrelevant and therefore redundant.

The lack of transparency surrounding figures quantifying the use and results of targeted assassination means that it becomes almost impossible to “give a balanced assessment” on whether targeted assassinations are a proportionate means for the cause (Posner, 2007, p. 70). Figures illustrating the extent to which local populations are radicalised are non-existent, and the US government, CIA and government of Pakistan all provide different numbers regarding the number of deaths targeted assassinations have caused. The CIA claims no non-combatants were killed in Pakistan in 2010 (Blank, 2011); but Pakistani news reports suggest nearly seven-hundred non-combatants have died since 2006 and US Senator Lindsey Graham announced recently that the overall death toll is nearer five-thousand (Thompson & Ghosh, 2009)(Zenko, 2013). The geographical isolation alone of some terrorist organisations mean that any data collected will be somewhat unreliable, but this outright secrecy on the CIA’s part jeopardises the legitimacy of targeted assassination. For now at least, the Just War theory notion of proportionality should take a backseat until the lack of accountability surrounding figures disclosing civilian deaths is addressed.

Even with high-definition surveillance capabilities, the emergence of groups of unlawful combatants makes discrimination between actors messy – this is an aspect of contemporary warfare Just War theory cannot account for (Guthrie & Quilan, 2007). Gross (O’Driscoll, 2012, 116) defines lawful combatants as those armed by a lawful government and who take oath: henceforth, “his killing, wounding or other warlike acts are not individual crimes or offences, but acts of war”. As a result, those “who fail to meet these criteria but fight regardless should be cast to the wind” and “should not be granted the designation of ‘lawful combatant’ and the concomitant privileges this status would afford” (Gross in O’Driscoll, 2012, 116). The fact terrorist groups refuse to adopt an identifiable uniform and continue live their daily lives in conventional society – thus making discriminating them harder and their legal standing

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more dubious – reconfirms the reasoning for Gross' idea (Waltzer, 2000)(O'Driscoll, 2012). The Bush administration adopted a likeminded view as it deemed terrorists “effectively outside the civilised world” meaning “laws of war that apply within the civilised world [would] not apply to the same degree” (Boucher, 2012, p. 93). This adaptation of war law not only highlights the impact terrorism is having on the legal framework of war but also on Just War theory, which is evidently too state-centric and thus incapable of fulfilling any real purpose when the actors of war are changing (O'Driscoll, 2012).

Despite the intention to avoid non-combatants, misplaced killings do occur in targeted assassination operations. Solis (2012) argues that mistakes can be made and innocents can be killed but that this is merely the “sad reality” of any war. This may be true, but the surveillance capacities that the US rely upon to prioritise drone strikes over ‘men on the ground’ should reduce civilian casualties far more than cases illustrate. In Yemen in 2002, a targeted assassination launched at a car carrying an alleged al-Qaeda terrorist also killed five passengers who were later discovered to be innocent civilians (Downes, 2004). In 2007, the US mistook traditional gunfire at a wedding ceremony in Afghanistan as an attack, and launched a drone missile killing approximately thirty-three innocent civilians (Verkaik, 2009). During conflict it would be incredibly unlikely that civilian casualties would be entirely avoided; Just War theory does not demand absolute civilian immunity, so long as any casualties are unintentional. Yet if drones have the capacity to rise above this issue, the bar determining an acceptable number of casualties should be raised. What it is vital to note is that collateral damage constitutes far more than just civilian death and infrastructural damage. Repeated reports from psychologists suggest the presence of drones makes parents unwilling to send their children to school for fear the school will be attacked. Similarly, attacks create mistrust amongst tight-knit communities as people begin to suspect others of bringing threats to the region (Luban, 2013). Seemingly the principle of non-combatant immunity is, too, disconnected from the realities of new technology and the implications it brings.

## The Inadequacy of Just War Theory

There is little doubt that Just War theory is vulnerable to tensions between what constitutes morally ‘correct’ behaviour and what seems ‘right’ from a practical, safety-conscious and perhaps selfish sense when it comes to targeted assassination. Under international law, targeted assassination must not be used if an alternative, feasible and proportionally sound method would result in less collateral damage and a greater chance of military success (Schmitt, 2010). But this law applies to every weapons system, so perhaps the applicability of Just War theory is jeopardised by the changing nature of ‘war’ rather than targeted assassination specifically. Subsequent to the changing nature of security threats state leaders are becoming “duly bound” to do whatever protects their citizens, even if this means violating Just War principles (Bellamy, 2006, p. 118). International law prevents responses to acts of terrorism adopting equally violent strategies, but the correlation between drone strikes and al-Qaeda membership estimations begins to demonstrate what constitutes an accurate response to the threat of terrorism. Despite this, the use of shock tactics and unpredictability of terrorist attacks makes distinguishing a possible threat from a probable one nearly impossible and therefore not a risk worth taking. Just War theory deliberately adopts an ambiguous definition of pre-emptive attack, yet even then it fails to adequately deal with the issue of possibility versus probability.

The counterterrorism mechanisms the US has adopted show just how disconnected Just War theory is from the realities of modern security challenges. Five days after the attack of September 11, 2001, former Vice President Dick Cheney stated:

[T]he US military might ‘have to work...sort of on the dark side’ and ‘[a] lot of what needs to be done here will have to be done quietly, without any discussion, using...methods that are available to our intelligence agencies...to use any means at our disposal...to achieve our objective (Paust, 2007, p. 12).

The counterterrorism strategies of the US since 2001 suggest that this view continues to shape their political thinking. A similar line of thought is being seen in foreign policy across the world; over forty countries are currently developing drones as either surveillance or attacking mechanisms, and the cheap price of drones means this figure, alongside the likelihood of asymmetric warfare, is likely to increase (Cole, Dobbins, & Hailwood, 2010). The

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international system undoubtedly needs a “workable and relevant moral compass” (Guthrie & Quilan, 2007, p. 3) but whether Just War theory can be this moral compass is debatable. Rengger (2002) confessed that Just War theory has been thrown into “an intellectual framework ill suited to its intellectual style and most effective mode of being” (Rengger, 2002, p. 361). Elsewhere, warnings that targeted assassinations “are not a silver bullet against terrorist organisations” (Carvin, 2012, p. 540) are backed up by reports that suggest such techniques in fact proliferate the number of suicide bombers in locations such as the northern regions of Pakistan. Fortunately, international law as laid out in the Geneva Convention ensures targeted assassination remains accountable in numerous ways. It would therefore seem that even if targeted assassination renders the theory of Just War redundant, this counterterrorism mechanism is far from above the laws that Just War theory has inspired.

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