

DEBATE

Israel's Policy of Targeted Killing

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Since the eruption of the second intifada in September 2000, Israel has openly pursued a policy of targeted killing. The Israelis have identified, located, and then killed alleged Palestinian terrorists with helicopter gunships, fighter aircraft, tanks, car bombs, booby traps, and bullets. Approximately eighty Palestinian militants and about fifty innocent bystanders have been killed through fall 2002, prompting international condemnation, domestic soul-searching, and bloody retaliation.¹ Given its controversial nature and obvious costs, it is worth considering whether this policy is defensible. Why has Israel embarked on a policy of targeted killing? Has the policy been effective in reducing Palestinian attacks on Israeli civilians? Is targeted killing permitted by Israeli and international law? Can it be justified in moral terms?

For Israel, it is necessary to know whether its policy is pragmatically and ethically justified. If it is, it makes sense for Israel to continue this approach. If there are serious shortcomings, they need to be highlighted so that the policy can be modified or discarded. For countries other than Israel, and especially the United States, assessing the worth of targeted killings is hardly less significant. Ever since September 11, much of the world, with the United States in the lead, has sought ways to counter terrorism. If the Israelis have a successful approach, it makes

sense to emulate it. If Israeli policy is fundamentally flawed, however, better to understand that now, especially when voices demanding that terrorists be hunted down and killed have grown so loud. Either way, learning from the Israeli experience is central to those seeking to combat the threat from terrorism.

If it can be directed against military, albeit irregular, combatants as opposed to political adversaries as determined by a formal, open process, targeted killing is acceptable under the international law governing warfare. Targeted killing has not appreciably diminished the costs of terrorist attacks and may have, in the short term, even increased them. But if those targeted cannot or will not be apprehended by the Palestinian Authority (PA) or the Israeli armed forces, the policy is the only way to mete out justice to perpetrators of violence against Israeli civilians. Over the long term, the policy may reduce the capacity of terrorist networks to carry out attacks. So long as Israel's adversaries target civilians as a prime goal of their operations,

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¹ Karin Laub, "'Targeted Killings' Claim Civilians," Associated Press, September 27, 2002; available at www.acj.org/Daily%20News/Sep_02/Index.htm#1.

the Israeli government will have little choice but to continue this practice.

THE NORM AGAINST ASSASSINATION

Targeted killing is the intentional slaying of a specific individual or group of individuals undertaken with explicit governmental approval. Whether targeted killing constitutes assassination is a critical issue not only because of the pejorative connotation of assassination, but because both international treaty and customary law outlaw assassination. The 1937 Convention for the Prevention and Repression of Terrorism, the UN Charter, and the 1973 New York Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, are prominent examples of efforts undertaken to codify the illegality of assassination.

Philosophical and political norms against assassination have been even more influential than written law. The notion that assassination is not an accepted practice of statecraft became prominent with the writings of Hugo Grotius and Emmerich de Vattel in the seventeenth and eighteenth centuries. The prohibition against assassination was strengthened in the mid-1970s following congressional investigations into activities by American intelligence agencies. The Church and Pike congressional committees were outraged by CIA efforts to assassinate several world leaders, including Patrice Lumumba of the Congo and Cuba's Fidel Castro. The committees' findings led President Gerald Ford to issue an executive order in 1976 prohibiting assassination or the conspiracy to commit assassination by employees of the U.S. government, which was broadened by President Jimmy Carter in 1978 to include those acting on its behalf.

This executive order has been reaffirmed by each succeeding American president. Although pertaining only to the United States, given America's leading role in the world, the executive order contributed to the general agreement that assassination is unacceptable.²

There is a consensus that assassination violates international law, but the Israeli policy of targeted killing can be distinguished from assassination. There is no universally accepted legal definition of assassination, but there is general agreement that it involves the killing of a specific individual who is politically prominent and who is targeted because of that prominence. Assassination also customarily involves the use of treacherous means to carry out the killing. And targeted killing of an individual by the state has more often been understood as assassination when the countries involved are at peace.³

The question of whether Israel is at war or engaged in armed conflict is not easily answered. As the head of the international law branch of the Israeli army's legal division remarked, "International law actually only recognizes two situations: peace or war. But life isn't as simple. Israel is not at war since war is between two armies or two states and the Palestinians have neither. But since Israel is in armed conflict with Palestinians, you are allowed to target combatants."⁴ If it is accept-

² See, e.g., Ward Thomas, *The Ethics of Destruction: Norms and Force in International Relations* (Ithaca, N.Y.: Cornell University Press, 2001), p. 49; and Tim Weiner, "Rethinking the Ban on Political Assassinations," *New York Times*, August 30, 1998, sec. 4, p. 3.

³ See Michael N. Schmitt, "State-Sponsored Assassination in International and Domestic Law," *Yale Journal of International Law* 17, no. 2 (1992), pp. 632-42; and Thomas, *The Ethics of Destruction*.

⁴ Tim Weiner, "Making Rules in the World Between War and Peace," *New York Times*, August 19, 2001, pp. A1, A4.

ed that Israel is in fact engaged in armed conflict with terrorists, then its policy of targeted killing becomes legally defensible. Law professor John Norton Moore explains, “If one is lawfully engaged in armed hostility, it is not ‘assassination’ to target individuals who are combatants.” American military lawyer Charles J. Dunlap, Jr., agrees: “Contrary to popular belief, neither international law nor U.S. domestic law prohibits the killing of those directing armed forces in war. Nations have the right under international law to use force against terrorists.”⁵

All states are afforded the general right of self-defense as affirmed in Article 51 of the UN Charter. This right is consistent with Israel’s obligations under the 1993 Oslo Accords and international law concerning the obligations of occupying powers. When a state is negotiating with a political body in an occupied territory, in this case the PA, that will not or cannot stop those who threaten its security, international law allows it to take steps necessary to protect itself.⁶ 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. War—or armed conflict—is a legal license to kill whether it is targeted killing or more traditional combat.

Israel is not alone in claiming the right to target individuals. The United States has also adopted this view. Despite the executive order banning assassination, the Bush administration has reserved the right to kill those it believes are terrorists. Strikes are authorized by a collection of classified presidential findings, legal opinions, and policy directives, some of which predate the September 11, 2001, attacks. At least two senior operatives of al-Qaeda have been deliberate-

ly and admittedly killed by the United States in its ongoing war against terrorism.⁷

The legal question also rests on whether Israel is using treacherous means when it kills suspected terrorists. Since assassination is defined as “murder by treacherous means,” how one is killed is as important as who is killed. Politically, the question of what constitutes treachery can be decisive in determining whether a killing is justifiable. The United States had little trouble defending its efforts to kill Muammar al-Qaddafi in 1986 or Osama bin Laden in 1998 using bombs and cruise missiles. Precisely because they were military operations and not carried out under false pretenses, the ban against assassination did not apply. Similarly, if the United States makes war on Iraq and kills Saddam Hussein in a bombing raid, it would not be considered assassination.

In some of their killings, the Israelis have used deception, disguising themselves as women or Arabs to facilitate getting to their targets. Not all the killings have been justifiable, but the point here is to outline a policy that would pass legal muster. What distinguishes many of the killings in the second intifada from those in the past is their open and military nature. Although it has sometimes involved greater collateral damage, the use of helicopter gunships or F-16s to kill sus-

⁵ Harry Levins, “Military Experts Debate Moral Ramifications of Killing Leaders,” *St. Louis Post-Dispatch*, August 3, 2001, p. A10.

⁶ The failure of the PA to stop suicide bombings against Israel is well documented. See Human Rights Watch, *Erased in a Moment: Suicide Bombing Attacks against Israeli Citizens* (New York: Human Rights Watch, 2002).

⁷ “Fleischer Backs Hussein’s Slaying: ‘One Bullet’ Less Costly than War, Bush Spokesman Says,” *Washington Post*, October 2, 2002, p. A12; David Johnston and David E. Sanger, “Fatal Strike in Yemen Was Based on Rules Set Out by Bush,” *New York Times*, November 6, 2002, p. A1; and Eric Schmitt, “U.S. Would Use Drones to Attack Iraqi Targets,” *New York Times*, November 6, 2002, p. A14.

pected terrorists has fit the conventional modes of warfare more than the shadowy, deceitful world that characterizes assassinations. As such, international lawyers may disapprove of the Israeli actions, but so long as conventional military means are employed to kill those engaged in terrorism, few would argue they violate the ban on assassination.⁸

Finally, for targeted killing to be legal, the targets must be combatants. Under the laws of war and armed conflict, combatants are subject to attack, raising the question of just what constitutes a combatant. It is true that the Palestinians, lacking a state, do not field a regular army with uniformed soldiers. This does not mean, however, that terrorists cannot be considered combatants. What is critical is whether the objects of the targeted killings pose an armed threat to Israeli security. If they do, then they are combatants, regardless of whether they wear a uniform. Since most of the targets of Israeli strikes have been members of militant organizations that call for the destruction of Israel through military struggle, they present an armed threat and are subject to attack. Moreover, most experts on international law argue that even civilians can be considered combatants if they are part of the military chain of command that poses a threat to your country.⁹ Here again the United States appears to be supportive of Israeli policy in deed, though not in word. In November 2002, the United States used an unmanned Predator aircraft to launch a missile that killed a senior al-Qaeda operative traveling with five associates by car in Yemen. In commenting on the killing, a Pentagon official remarked, "We're at war with Al Qaeda. If we find an enemy combatant, then we should be able to use military forces to take military action against them."¹⁰ This

rationale mirrors the Israeli justification for targeted killing.

In sum, in the majority of cases during the second intifada, the Israeli policy of targeted killing has not been tantamount to assassination because Israel is engaged in armed conflict with terrorists, those targeted are often killed by conventional military means, and the targets of the attacks are mostly combatants or are part of the military chain of command. In those cases in which the targeted killings did not fit these criteria, they may indeed be considered assassinations. Nevertheless, the thrust of the Israeli practice of targeted killing is consistent with a country's right to target specific individuals in the pursuit of self-defense and is thus not a policy of assassination.

Within Israel, targeted killing is not a secret, extralegal policy. There is a body of case law within the Israeli courts concerning the policy, and the general finding has been that it can be carried out in a legal way. It is true that Israel does not allow capital punishment for its citizens. It is also true that Israel's Basic Law: Human Dignity and Liberty, adopted in 1992, guarantees that "There shall be no violation of the life, body or dignity of any person as such." However, the Basic Law does allow these rights to be suspended "by a law fitting the values of the State of Israel,

⁸ For general discussions of why conventional attacks on individuals during armed conflict do not constitute assassination, see Schmitt, "State-Sponsored Assassination in International and Domestic Law"; and Patricia Zengel, "Assassination and the Law of Armed Conflict," *Mercer Law Review* 43 (1991), p. 627. I am grateful to Ward Thomas for alerting me to these citations.

⁹ See, e.g., Louis R. Beres, "The Permissibility of State-Sponsored Assassination During Peace and War," *Temple International and Comparative Law Journal* 5, no. 2 (1991), p. 237.

¹⁰ James Risen, "CIA is Reported to Kill a Leader of Qaeda in Yemen," *New York Times*, November 5, 2002, p. A1.

designed for a proper purpose, and to an extent no greater than required or by such a law enacted with explicit authorization therein.” Israeli law has allowed for just such a suspension. In February 2002 Menachem Finkelstein, the judge advocate general of the Israeli Defense Forces (IDF), issued three conditions under which targeted killing can take place. Before suspected terrorists are killed the PA must first ignore appeals for their arrest, the Israelis must conclude that they would be unable to arrest the individuals themselves, and the killing must be done to prevent an imminent or future terrorist attack—not for revenge or retribution. The Israeli High Court has supported these conditions in a strongly worded opinion on January 29, 2002, that rejected petitions calling for an end to targeted killing. Provided these conditions are followed, targeted killing is consistent with Israeli law.¹¹

Norms are broad guidelines of behavior that are largely followed by states and other actors. There is no established norm against targeted killing, but there is one against assassination. Although there is a substantial difference between the two concepts, they are related in public perceptions. Understanding the difficulty Israel has had in justifying the practice of targeted killing stems, in part, from the norm against assassination. More important, continued Israeli employment of targeted killing can work to erode that norm in people’s minds, with negative consequences for Israel and the world community.

The norm against assassination is relatively new. Before the seventeenth century, assassination was regarded as a normal means for states to conduct their business, similar to diplomacy and war. Statesmen, philosophers, and even the Catholic church approved of the practice as a method for states to pursue their interests while limiting

harm done to innocents. The support of assassination dropped precipitously, however, in the 1600s. Both in terms of rhetoric and practice, assassination became frowned upon. The norm against assassination became so strong that even as odious a character as Adolf Hitler was not seen as a legitimate target by the British, who deemed any effort to kill him unsportsmanlike.¹²

What changed? According to Ward Thomas, norms stem not only from moral considerations, but also from the interests of the great powers. Moral concerns regarding assassination existed before the seventeenth century, but so long as assassination served the interests of the major states, those concerns did not constitute a norm against its practice. The rise of the sovereign state and the beginnings of the mass army in the mid-1600s changed the thinking about the acceptability of assassination. By limiting legitimate conflict to clashes of large military forces, the leaders of the great powers established rules that increased their advantages while sidelining the weaker states that could not muster mass armies. Similarly, the norm against assassination protected leaders of great powers by depriving the weak of an instrument that allowed them to threaten those leaders. So long as there was general agreement that the way to resolve violent conflicts was through conventional war and that assassination was unacceptable, the hierarchy of the international system and the interests of the leaders of the major powers would be preserved.¹³

¹¹ Amos Harel and Gideon Alon, “IDF Lawyers Set ‘Conditions’ for Selective Assassination Policy,” *Ha’aretz*, February 4, 2002; available at www.haaretzdaily.com/hasen/pages/ShArt.jhtml?itemNo=125404; and *Muhammad Baraka v. the Prime Minister and the Minister of Defense*, HCJ 5872/01.

¹² See Ward Thomas, *The Ethics of Destruction*, pp. 56, 60.

¹³ *Ibid.*, pp. 60–62.

The reasons for the emergence of the norm against assassination illustrate some of the costs Israel could be expected to bear if the norm were eroded. Assassination is a weapon of the weak. It benefits those with limited resources but fanatical devotion to a cause. In other words, it plays to Palestinian strengths. So long as conventional military operations hold sway, Israel is in an unsailable position. Its use of multimillion-dollar jet fighters and modern tanks manned by trained crews makes it the strongest power in the Middle East. But when the arena switches to the world of assassination, young men and women armed with a couple of hundred dollars of explosives and eager to achieve martyrdom are able to inflict grievous harm on Israel. Insofar as Israel erodes the norm against assassination, it transforms the rules of conflict in a manner that benefits its most fervent adversaries.

It is of course true that norms do not determine behavior. Terrorists, almost by definition, are not constrained by established norms. The long history of plane hijackings and other attacks against civilians by terrorists gives testimony to their willingness to violate established codes of conduct. In confronting this problem, states have also had to depart from the usual norms. Terrorists typically do not appear in identifiable uniforms or hold clear swaths of territory, making conventional responses to their threats all but impossible. Insofar as Israel and other states make war on terrorism, traditional norms of combat will have to change.

These changes may not all be to Israel's and other countries' benefit. When a major regional power such as Israel openly proclaims its right to pursue a policy of targeted killing, it helps to create a new standard of behavior that may work to its detriment.

Norms may not be determinative, but neither are they irrelevant. Rather than simply disregarding norms because they interfere with its war on terrorism, Israel needs to act in a way that preserves its right of self-defense without bringing about future harm to itself and the international community. The emergence of new laws and institutions to deal with war crimes will be an additional constraint on Israeli behavior. In fighting terrorism, Israel and other states will have to play by new rules, but no state, especially one that is not a great power, such as Israel, is totally free in acting against the wishes of the international community.

THE SECOND INTIFADA

The policy of targeted killing is not entirely new. Three major efforts at targeted killing took place in the 1990s. The first operation killed Palestinian Islamic Jihad head Fathi Shikaki in Malta in October 1995. No competent successor emerged to replace Shikaki, producing disarray in Islamic Jihad.¹⁴ In January 1996 Yahya Ayyash was killed in Gaza while speaking on a mobile telephone that had been booby-trapped by the Israeli domestic intelligence agency, Shin Bet. Ayyash had been one of Hamas's most skilled and prolific bomb makers whose handiwork proved critical to many terrorist attacks against Israel. Ayyash's death, however, also unleashed four suicide bus bombings in the next two months, killing more than fifty Israelis. Finally, in an embarrassing, almost comic episode, the Israelis failed to kill Khaled Meshal, the chief of Hamas's

¹⁴ Michael Eisenstadt, "Pre-Emptive Targeted Killings' as a Counter-Terror Tool: An Assessment of Israel's Approach," *Peacewatch*, August 28, 2001, p. 1.

political bureau in Amman, in September 1997. Two Mossad agents succeeded in poisoning Meshal, but were captured by Jordanian authorities before they could leave Jordan. In order to secure the return of the two operatives, Israeli prime minister Benjamin Netanyahu agreed to provide the antidote for the poison and released Hamas's founder, Sheik Ahmed Yassin, from an Israeli prison. As a result of this episode, Israel damaged its relations with Jordan and infuriated Canada when it was revealed that the Mossad agents had used Canadian passports.¹⁵

A wave of targeted killing began in November 2000 as a response to the second Palestinian intifada. Following the failure of the Camp David accords in the summer of 2000 and Israeli prime minister Ariel Sharon's visit to the Temple Mount in late September, the Palestinians unleashed a violent revolt against Israel. While in the first intifada the ratio of Palestinians to Israelis killed was roughly twenty-five to one, well-armed Palestinian groups making use of suicide bombers had now reduced that proportion to three to one.¹⁶ Israel responded to these increasingly lethal attacks with military incursions into Palestinian controlled areas, increased use of checkpoints to control Palestinian movements, the reoccupation of the West Bank, and a dramatic rise in the slaying of Palestinian militants.

What was new during the second intifada was the scale of the effort—never have so many been killed in such a short span of time. Also new were some of the tactics, particularly the use of helicopters and warplanes. Because of the extent of the campaign and the obvious use of Israeli military forces, the Israeli government has been forced to acknowledge its role in targeted killings to a much greater extent than previ-

ously, although it still refuses routinely to claim responsibility for its operations.¹⁷

The specific procedures for determining who is to be targeted have not been made public, but an overall sense of how these decisions are made has emerged. Typically, Israeli intelligence agencies, often relying on the testimony of collaborators, will identify individuals who pose a terrorist threat. The agencies prepare a report detailing the past activities of the suspect and assess the potential for him or her to engage in future attacks. This information is evaluated by a group in the Israeli Defense Forces that includes the commander of the region and military lawyers. A recommendation is then made to the chief of staff. If the recommendation is to target the individual, the Israeli cabinet is brought in to approve or disapprove of the action. Once approval is given, the IDF usually does not seek additional approval to make the strike. However, if innocent casualties could occur as a result of the operation, the IDF will again seek the approval of the minister of defense and the prime minister before launching the attack. The operations are carried out by specially trained forces, not the regular military. The Israelis claim that they only target those who are on their way to a terrorist attack or are actively planning one. During the early months of the second intifada, when the Israelis had ongoing talks with the PA, they would first hand over a list to the PA of the suspected terrorists for apprehension. If the PA did not arrest the individuals, and Israel determined that it

¹⁵ Barton Gellman, "For Many Israelis, Assassination Is Only as Bad as Its Execution," *Washington Post*, October 12, 1997, p. A1.

¹⁶ James Bennet, "Mideast Balance Sheet," *New York Times*, March 12, 2002, p. A1.

¹⁷ Samantha M. Shapiro, "Announced Assassinations," *New York Times Magazine*, December 9, 2001, p. 54.

could not arrest them, they were killed.¹⁸ Once talks broke down with the PA in the spring of 2002, it has not been clear if the Israelis attempted to provide a list for the Palestinians before taking action.

Several high-ranking Palestinians have been killed during the second intifada. They include the head of the Popular Front for the Liberation of Palestine, Abu Ali Mustafa, one of the leaders of the Tanzim movement, Raed al-Karmi, and a senior official of Hamas, Salah Shahada. Most of those killed, however, were mid-level fighters, important enough to disrupt a terrorist cell but not so important as to provoke retaliation.¹⁹ The targets of the attack usually knew they were being sought. It is not known how many mistakes Israel has made by targeting the wrong individual because Israel usually does not acknowledge such mishaps. Given that the decision to kill individuals is made without a trial, there is little question that innocent people are sometimes slain. In addition, even when the right individual is targeted, innocent bystanders are often killed in the operations. Nevertheless, most of those killed are acknowledged, or celebrated, as having been active anti-Israeli fighters.

IS TARGETED KILLING EFFECTIVE?

There are strong arguments that targeted killing is an ineffective and possibly harmful policy. During the second intifada, Israel embarked on more targeted killings than at any time in its history. At the same time, record numbers of Israeli civilians have become victims of Palestinian attacks. It is possible that even more Israeli civilians would have been killed if not for the policy of targeted killing, but given the roughly 600 Israelis killed, it is clear that targeted killing has been unable to stop terrorism.

It is not difficult to understand why targeted killing has not been more effective. Organizations promoting terrorism against Israel such as Hamas, Islamic Jihad, and the al-Aqsa Martyrs Brigades, a paramilitary offshoot of PA chairman Yasir Arafat's Fatah faction, are very decentralized. They are made up of many cells, the destruction of some having little or no impact on others. Moreover, the number of young men and women who are willing to be suicide bombers appears to be practically limitless. Outfitting these self-described martyrs with primitive bombs capable of wreaking murderous assaults appears to be relatively easy. There is also no doubt that targeted killing, at least in some instances, increases the terrorist threat against Israel by producing retaliation. The killings of Ayyash, Karmi, and Shahada all resulted in dramatic escalations in attacks against Israelis with revenge explicitly cited as the motivation. Targeted killing also hurts Israeli interests by removing current adversaries who may prove to be useful negotiating partners in the future. On many occasions, Israeli leaders have publicly lamented the lack of moderate, pragmatic Palestinian leaders with whom they could negotiate. It is a problem that the Israeli policy of targeted killing is partially responsible for creating. For example, when Israel killed Arafat's second in command, Abu Jihad, in 1988 it eliminated not only an individual behind several bloody operations, but also someone on the right wing of the Palestinian Liberation Organization whom many saw as a pragmatist capable of making peaceful compromises.

¹⁸ Harel and Alon, "IDF Lawyers Set 'Conditions' for Selective Assassination Policy"; and Shapiro, "Announced Assassinations," p. 54.

¹⁹ Shapiro, "Announced Assassinations," p. 54.

By diverting scarce resources away from the collection and analysis of intelligence on the threat posed by adversarial states, Israel runs the risk of paying less attention to existential threats in order to combat pressing but less-than-vital challenges to its security. Following the 1972 Munich Olympics, Israel focused much of the attention of its intelligence services on hunting down the terrorist organization Black September. This effort may have led, in part, to diverting Israel's attention away from the growing threat posed by Egypt and Syria, which led Israel to being caught by surprise at the outbreak of the 1973 Yom Kippur War.²⁰ Even where the effect is not so grave, targeted killing can hurt Israel's ability to gather critical intelligence. Locating and killing key Palestinian terrorists requires timely intelligence, much of which can only be supplied by informers. Given that a limited number of people will know the whereabouts of the targets, it will not be difficult to isolate those who have collaborated with Israel. Increasing reports of informers being killed during the second intifada may partly be a result of their identities becoming known as a result of the targeted killing policy.²¹ Finally, Israel's policy has been condemned by Arab countries, Europe, the United Nations, and even the United States. Clearly, targeted killing is a policy with serious shortcomings.

UPROOTING TERRORIST NETWORKS

There are nonetheless strong arguments supporting the effectiveness of targeted killing. There is little question that Israel's policy has hurt the capability of its adversaries to prosecute attacks. Terrorism is essentially an offensive action, making counteroffensive actions such as targeted killing an especially effective response. It is

exceedingly difficult for Israel to defend or deter terror attacks from Palestinians. In terms of defense, there are literally tens of thousands of targets in Israel for Palestinian terrorists. Power stations, government bureaus, bus depots, airports, skyscrapers, open-air markets, sport stadiums—the list is endless. It is impossible to defend them all, especially against a determined adversary that can choose the time and place of attack. Although some level of deterrence of terrorism is achievable, dissuading potential terrorists is not easy when they are eager to die for their cause. In such situations, the best response to terrorism is to eliminate the threat before it can be launched. One of the most successful means of eliminating terrorists before they can strike is targeted killing.²²

Israel has achieved some notable successes in its policy of targeted killing. In the 1950s, terrorist infiltration from Egypt lessened as a result of the killing of Egyptian intelligence officers in charge of the operation. In the 1960s, Egyptian president Gamal Abd al-Nasser's plan to build ballistic missiles capable of reaching Israel collapsed when his German scientists fled in the wake of Israeli mail bomb attacks. Black September was all but destroyed as a functioning terrorist organization in the 1970s following the Israeli campaign to avenge the Munich massacre. The 1995 assassination of Islamic Jihad leader Shikaki undermined

²⁰ Dan Raviv and Yossi Melman, *Every Spy a Prince: The Complete History of Israel's Intelligence Community* (Boston: Houghton Mifflin, 1990), p. 194.

²¹ Joel Brinkley, "Israel Promises a Pullback as Death Toll Keeps Rising," *New York Times*, March 15, 2002, p. A9.

²² For a similar view regarding dealing with terrorism in general, see Richard K. Betts, "The Soft Underbelly of American Primacy: Tactical Advantages of Terror," *Political Science Quarterly* 117 (Spring 2002), p. 33.

the effectiveness of this group for several years as successors struggled over policy and power.²³

Several other benefits of Israel's policy of targeted killing became apparent from its heightened practice during the second intifada. First, targeted killings have impeded the effectiveness of Palestinian terrorist organizations where leadership, planning, and tactical skills are confined to a few key individuals. There is a limited number of people who have the technical ability to make bombs and plan attacks. If these people are eliminated, the ability to mount attacks is degraded. There is some evidence that targeted killings have reduced the performance of terrorist operations. Israelis estimate they stop over 80 percent of attempts, and the incidence of poorly planned attacks, such as suicide bombers who appear with wires sticking out of their bags or detonations that occur with little loss of life, indicates that there have been problems either with the organization of the operations or with those available to carry them out. There are individual leaders whose charisma and organizational skills keep a group together. If they are eliminated, they are not easily replaced.²⁴

Targeting killing also keeps potential bombers and bomb makers on the run. When the Israelis informed the PA whom they were after, this information was often passed to the targeted individuals so that they knew they were being hunted. Some voluntarily chose to place themselves in custody to avoid being slain. The threat they posed to Israel was consequently diminished. There are numerous accounts of others on the hit list taking precautions against being killed, such as sleeping in a different location every night and not letting others know their whereabouts.²⁵ Even for those

Palestinians who have not been told they are being hunted, the very possibility they might be targeted is likely to cause a change in behavior. Time and effort undertaken to avoid Israeli dragnets are time and effort not undertaken to plan or carry out operations.

Targeted killing also acts as a deterrent. Deterrence refers to the ability to persuade someone not to do something they are capable of doing by confronting them with unacceptable punishment. It is distinct from preventing someone from acting by hindering their ability to do so. Seen in this light, it appears virtually impossible to deter people willing and even eager to lose their lives. After all, what punishment could be employed to dissuade suicidal attackers? But behind every suicide bomber are others who might not be as ready for martyrdom, some of whom have shown signs that the policy is working. Prime Minister Sharon met with three PA leaders on January 30, 2002. When he asked for their negotiating position, first on their list was an end to targeted killings.²⁶ Islamic Jihad and Hamas agreed to refrain from launching attacks in pre-1967 Israel in December 2001 so long as Israel refrained from killing its leaders. Although the cease-fire eventually broke down, their willingness to abide by the

²³ See Nachman Ben-Yehuda, *Political Assassinations by Jews: A Rhetorical Device for Justice* (Albany: SUNY Press, 1993), pp. 304, 307, 318; and Eisenstadt, "Pre-Emptive Targeted Killings' as a Counter-Terror Tool," p. 1.

²⁴ See Eisenstadt, "Pre-Emptive Targeted Killings' as a Counter-Terror Tool," p. 2; and Brian Michael Jenkins, *Should Our Arsenal Against Terrorism Include Assassination?* (Santa Monica: Rand, 1987), p. 4.

²⁵ See, e.g., the account of a target in Yael Stein, "Israel's Assassination Policy: Extra-Judicial Executions," B'Tselem position paper, trans. Maya Johnston (Jerusalem: B'Tselem, January 2001), p. 6; available at www.btsalem.org.

²⁶ See William Safire, "Sharon Enters Armistice Talks," *New York Times*, February 4, 2002, p. A27.

cease-fire, even temporarily, indicates the deterrent power of targeted killing.

In sum, the policy of targeted killing has prevented some attacks against Israel, weakened the effectiveness of terrorist organizations, kept potential bomb makers on the run, and deterred terrorist operations. It has not prevented all acts of terrorism, nor can it. But as part of a larger array of policies, including blockades, checkpoints, and incursions, it is a successful response to an intolerable threat.

REVENGE, RETRIBUTION, AND JUSTICE

Despite many problems, a policy of targeted killing makes sense for Israel for five reasons. First is the question of morality. There is widespread agreement that targeted killing raises disturbing moral issues. After all, Israel is killing individuals without any trial or due process. Innocent people are sometimes killed in these operations. It offends the moral sensibilities of many when government officials are reduced to the role of hit men, as if they were part of some criminal organization. The bedrock of Western democracy established by liberal philosophers such as John Locke has been limited government. How can that principle reconcile itself with a government that deprives people of their life without proper judicial proceedings? The moral squeamishness that the policy entails is demonstrated by the reluctance of Israel to comment on various killings for which it is clearly responsible.

Its qualms notwithstanding, the Israeli policy of targeted killing, if it is carried out strictly against combatants in the legal sense outlined above, can be defended from a moral perspective. Just war tradition from the time of Saint Augustine to the present

has emphasized the need for armed conflict to be discriminate and proportionate in the pursuit of legitimate ends for the use of force to be moral.²⁷ Targeted killing can be done in a way that meets these criteria. It is discriminate in that it upholds noncombatant immunity and minimizes collateral damage. It is proportionate in that only enough force is used to accomplish the task. Targeted killings do not employ large numbers of troops, bombers, artillery, and other means that can cause far more destruction than they prevent. And targeted killing serves a legitimate end by striking at those who threaten the lives of innocents. Since the policy is applied against those carrying out or assisting in terrorist attacks, targeted killing enables Israel to protect its civilians by eliminating those who would murder them.

Targeted killing also serves Israel's interests because it affords the Israeli public a calibrated form of revenge. Revenge is seen by many as a destructive and even evil motivation that should be avoided at all costs. This explains the 2002 decision by the IDF judge advocate general that allowed targeted killings but prohibited those undertaken for vengeance. But revenge is also a natural desire by an individual or society for obtaining justice when other means are not available. Achieving revenge can bring about a sense of fulfillment and justice for people who believe they have been wronged. Failing to achieve revenge can lead to despair, frustration, and anger. Politically, this can lead to the downfall of governments unwilling or unable to avenge attacks on its people. More fundamentally, withstanding repeated attacks

²⁷ See Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977).

without responding can lead to a sense of impotence and malaise that could weaken a society's ability to protect itself. Israel, like other states, has a moral right to exist. One of the greatest immoralities a state can commit is to behave in a way that results in its own destruction. Insofar as vengeance against terrorist acts contributes to Israel's security by reassuring the public, its practice is morally justifiable. Revenge becomes problematic when there are no guidelines for how to act and against whom. If there is too much space for arbitrary retaliation, revenge can indeed get out of hand and become disruptive. That is why states regulate and oversee the exercise of revenge. For domestic infractions, revenge is realized through the rule of law. In the international realm, revenge is pursued through foreign policy, ranging from diplomatic rebukes to war.²⁸

Israel's use of targeted killing is a form of controlled, state-sanctioned revenge. Since the government decides who is to be killed according to established criteria, the issue of arbitrary retaliation is resolved. Because the killers of Israeli civilians are themselves killed, the desire for revenge from both families of the victims and the society at large is met. Anger at the government is dissipated as the perpetrators of terrorism receive as punishment the same fate as their victims. A July 2001 poll by the Tami Steinmetz Center for Peace Research at Tel Aviv University found that 70 percent of Israelis support targeted killing.²⁹

Retribution is a further justification for the Israeli policy of targeted killing. Retribution, in its purest sense, has no utilitarian component. It is not motivated by vengeance. Even if the victims do not care about the offense committed or are opposed to punishing the aggressors, punishment nevertheless must be carried out. Nor is retribution

motivated by deterrence or a need to satisfy the demands of an aggrieved population. If it can be shown that deterrence will not be enhanced by retaliation or that the community has no wish to strike back, retribution still demands the punishment of the guilty. Retribution is driven by the belief that offenders need to be punished because such punishment is warranted. This concept of just deserts is compellingly put forward by the theorist Michael Moore, who writes, "Retributivism is the view that punishment is justified by the moral culpability of those who receive it. A retributivist punishes because, and only because the offender deserves it."³⁰

Israel's policy of targeted killing, stripped of its utilitarian justifications, is retribution, plain and simple. Palestinian suicide bombers seek out the most innocent of Israeli civilians—old men, women, and children—and attempt to kill as many of them as they can. Stopping these operations before they can inflict their horrific harm is of obvious importance and provides some of the justification for targeted killings. But what of those who plan the attacks—arm the bombers and send them on their way? How are they to be punished? The PA claims it is unable to stop the perpetrators, some of whom, such as those in the al-Aqsa Brigades, have links to Arafat's Fatah faction. Who,

²⁸ For an interesting discussion of revenge as it applies to capital punishment, see Ernest van den Haag and John P. Conrad, *The Death Penalty: A Debate* (New York: Plenum, 1983), pp. 247, 250.

²⁹ Ephraim Yaar and Tamar Hermann, "70% of Israeli Jews Support Assassination Policy," *Ha'aretz*, August 8, 2002; available at www.acj.org/august/August_8.htm#11.

³⁰ Michael S. Moore, "The Moral Worth of Retribution," in Jeffrie G. Murphy, ed., *Punishment and Rehabilitation*, 3rd ed. (Belmont, Calif.: Wadsworth, 1994), pp. 94, 97.

then, aside from the Israelis, will provide the just deserts to these terrorists? Even if the policy of targeted killing does not reduce Israeli casualties, such a policy is justified because it is only through this approach that the terrorists get what they inflict on others—a violent death.

There is a danger that retribution, like revenge, can get out of hand. In order to prevent this from happening, two limits on retribution need to be imposed. First, the punishment must fit the crime. Retributivists emphasize that the response to an action must be proportionate to that action. Since Palestinian terrorists are bent on killing Israeli civilians, killing them in return is a fitting reaction. Second, the punishment must be focused on those who are committing the offense, with innocents spared. As the moral philosopher Judith Lichtenberg writes, “while the principle of retribution says that the guilty must be punished, equally important is its demand that only the guilty may be punished. Punishment must be tailored to reach those who have done wrong and leave untouched those who have not.”³¹ Targeted killing, when done properly, achieves this goal by focusing retaliation on the actual perpetrators of terrorism. To be sure, targeted killing that also produces innocent casualties weakens the retributive rationale. But given the greater risks of innocent Palestinians being killed by other forms of retaliation such as military strikes against urban areas, targeted killing best fits the retributive model of appropriate punishment for the guilty.

Aside from revenge and retribution, targeted killing is morally defensible because although it would be preferable to have a negotiated peace, such an outcome has not proved possible so far. It may therefore be the least bad option Israel can mount

against terrorism.³² As discussed, Israel has responded to Palestinian terrorism in several ways, all of which have major drawbacks. Checkpoints humiliate and inconvenience large numbers of the Palestinian population, producing resentment. Israeli raids to arrest militants result in large numbers of civilian casualties. For both of these responses innocent Palestinians are hurt in the effort to get at the guilty. Not only is this morally repugnant, it also plants the seeds for future terrorism.

Major incursions into Palestinian territory to root out the terrorist infrastructure have been especially controversial. In the spring of 2002, the Israelis carried out two massive interventions producing thunderous international condemnation. Following the Israeli incursion of early March 2002, UN secretary-general Kofi Annan, who opposes Israel’s policy of targeted killing, sent a letter to Prime Minister Sharon that was sharply critical of Israel’s actions. The text of the letter nonetheless suggests that more discrete, focused actions would be preferable to the policy of mass intervention:

In the process [of incursions] hundreds of innocent non-combatant civilians—men, women, and children—have been injured or killed and many buildings and homes have been damaged and destroyed. . . . Israel is fully entitled to defend itself against terror. . . . It is incumbent on all parties to take urgent steps to de-escalate the level of violence. Israel should contribute to this effort by ensuring that the IDF uses only weapons and methods that minimize the danger to the lives and property of Palestinian civilians, in conformity with its humanitarian obligations. . . .³³

³¹ Judith Lichtenberg, “The Ethics of Retaliation,” *Philosophy and Public Policy Quarterly* 21 (Fall 2001), p. 5.

³² For a similar view, see Eisenstadt, “Pre-Emptive Targeted Killings’ as a Counter Terror Tool,” p. 3.

³³ “Kofi Annan’s Blunt Words Criticizing Israeli Tactics,” *New York Times*, March 19, 2002, p. A12.

Targeted killing is a policy that meets these criteria of minimizing the danger to Palestinian civilians. Similarly, the *New York Times*, which had editorialized against targeted killings, seemed to endorse a similar policy when confronted with Israeli military incursions. A March 14, 2002, editorial stated, "Israel must cut way back in its use of military force as Washington urges, and direct its actions against suspected terrorists rather than against the broader Palestinian civilian population. Its current methods are causing great civilian suffering and unnecessary humiliation. With Palestinian police failing to make arrests, Israel is justified in sending its own forces after specific terrorist suspects."³⁴ This statement clearly calls for a carefully defined policy targeting terrorists.

The far greater Israeli intervention into the West Bank following the March 28, 2002, Passover massacre produced even more international opposition. This intervention saw a massive call-up of Israeli reserves as key Palestinian cities, including Jenin, Nablus, Ramallah, and Bethlehem, were attacked and reoccupied in an effort to destroy terrorism at its roots. However justified the intentions may have been, the operation produced casualties in the hundreds and widespread destruction of civilian areas. Both sides acknowledged that innocents were killed, though they differed greatly on the numbers. Inevitably, the Israeli action provoked harsh international criticism to the point where only the United States stood by Israel and even American support was called into question. The European Union for the first time threatened sanctions against Israel. Public opinion polls revealed greater support for Palestinians than Israelis in such countries as France, Italy, and England. UN special coordinator

for the Middle East Peace Process, Terje Roed-Larsen, an architect of the Oslo Accords, called the destruction wrought by the Israeli army in the West Bank city of Jenin "horrifying beyond belief." The Israelis found themselves defying U.S. president Bush's order to withdraw their troops "without delay," while Secretary of State Colin Powell criticized Israeli actions.³⁵ During the second intifada about twenty times as many Palestinians have been killed as a result of Israeli incursions as have been killed by targeted killing.³⁶

Some argue that Israel can protect itself from terrorism by withdrawing from the occupied territories. In this view, a more flexible and forthcoming Israeli approach to its negotiations with the Palestinians would halt terrorism without the need to resort to targeted killings. The continued refusal of Israel to abide by UN resolutions 242 and 338 calling for Israeli withdrawal from land occupied since 1967, the increasing number of Israeli settlements since the inception of the Oslo Accords in 1993, and the denial of statehood to the Palestinians have clearly contributed to a climate of despair that drives some to suicide bombing and other extreme acts. Why not give the Palestinians what they justifiably seek and thus end terrorism at its source?

³⁴ "Israel's Unwise Offensive," *New York Times*, March 14, 2002, p. A30.

³⁵ James Bennet, "Israeli Forces Pull Back from Jenin, But Blockade Still Remains," *New York Times*, April 19, 2002, p. A10; James Bennet, "Powell Ends Trip; Sees No Cease-Fire before a Pullout," *New York Times*, April 18, 2002, p. A1; and Patrick Tyler, David E. Sanger, Todd S. Purdum, and Eric Schmitt, "With Time Running Out, Bush Shifted Mideast Policy," *New York Times*, June 30, 2002, p. A12.

³⁶ As of December 2002, 1,794 Palestinians and 673 Israelis have been killed. The International Policy Institute for Counter-Terrorism, "Fatalities in the Palestinian-Israeli Conflict"; available at www.ict.org.il.

This contention is not persuasive for three reasons. First, the wave of violence—the second intifada—began after the Camp David meetings of the summer of 2000. Although there has been some controversy as to just what the Israeli-American proposal was, virtually everyone acknowledges that it offered unprecedented Israeli concessions on Jerusalem and a withdrawal from most of the occupied territories. At the very least, it warranted a counteroffer from Chairman Arafat, which never came. What emerged from the Palestinians instead was a wave of terrorism, perhaps expected to extort additional concessions. Second, the latest intifada was launched when Prime Minister Ehud Barak—not Sharon—led Israel. Following the failure of Camp David, Barak's government, which was committed to a diplomatic settlement with the Palestinians, continued to negotiate with the PA at Taba, where additional progress was made. Throughout this process, terrorism mounted, giving scant hope that a diplomatic settlement would stem the violence. Finally, most of the suicide bombings launched against Israel have been carried out by Hamas and Islamic Jihad. These organizations have openly proclaimed their goals to be the destruction of the state of Israel. It is difficult to see what kind of political compromise from Israel, short of national dissolution, would pacify these groups. It is certainly true that only a political settlement with the Palestinians will end terrorism against Israel. But the notion that what is required to bring about such a settlement is a more accommodating Israeli position, as opposed to a change in the Palestinian leadership, is not borne out by the experience of the past two years.

As this review of Israeli policies suggests, it is not enough to oppose Israel's policy of targeted killing. Critics of this approach

need to provide an alternative. Aside from anti-Israeli extremists and pacifists, few counsel Israel to simply endure suicide bombing attacks and do nothing. The question then becomes what for Israel is the correct response to terrorism. For hawks, Israeli incursions into Palestinian areas along with continued occupation are attractive options, though not so much to replace targeted killings as to supplement them. For Israel's international critics, there are few suggestions for how Israel should combat terrorism, only condemnation of whatever armed response Israel undertakes along with demands for Israeli political concessions. As we have seen, targeted killing may achieve international approval in retrospect not so much for what the policy has achieved, but rather because it is less objectionable than the alternatives. Although not a ringing endorsement, targeted killing may survive because it is indeed the least bad choice for a state confronted with the threat of terrorism.

I have conceded that there has been no clear benefit from this approach as record numbers of Israeli civilians have been killed in terrorist attacks at the same time that targeted killings have also reached unprecedented levels. But the absence of a short- or even medium-term benefit does not mean that targeted killings will not, over the long haul, eventually undermine the infrastructure of terrorism. As noted above, leaders of Palestinian organizations have acknowledged that the slaying of their leaders and operatives has hurt them and that they are prepared to modify or cease attacks if Israel would suspend its practice of targeted killings. Over time, the relentless elimination of the foot soldiers and planners of terrorism may well have an impact that is not discernible at present. It is far too early to

declare targeted killing an ineffective or failed policy.

CONCLUSION

There is little doubt that Israel will continue to pursue targeted killing, raising the question of how this policy can be improved. I suggest four improvements, all designed to make certain that the benefits of targeted killing are not overwhelmed by the very real dangers that such a policy can bring about. First, Israel should be open and unapologetic about its pursuit of targeted killings. Targeted killing is a legitimate and moral response to terrorist attacks. There is no need for Israel to evade responsibility for carrying out this policy, especially when Israeli involvement is obvious. Denial or refusal to comment leaves Jerusalem open to the charge that it is behaving improperly or has something to hide. Neither is the case and Israel should not behave like it is.

Second, Israel needs to make sure that its pursuit of targeted killing does not degenerate into lawlessness and savagery that makes it undistinguishable from the threat it seeks to counter. The guidelines that Israel has already instituted for targeted killing need to be strengthened and made the subject of open debate. Along with following the directive that targeted killing should be carried out only against combatants on their way to committing terrorist acts or who are known to be behind them, Israel must also do more to ensure that decisions on actual killings are overseen by elected officials. As a democracy, Israel needs to entrust the monumental decisions on whom to kill to those who are responsible to the Israeli people. In addition, Israel must do more to ensure that innocent casualties are minimized when targeted

killings are carried out. Operations such as the one that killed Hamas leader Shahada in Gaza along with sixteen bystanders must not be approved.

Third, Israel must refrain from killing political leaders. Granted, the distinction between political leaders and those who plan terrorist attacks is at best ambiguous. Nevertheless, for the norm against assassination to survive—a norm that Israel needs as much as any state—a distinction must be drawn between political leaders and combatants. Just as the Israeli government has announced it will not kill Chairman Arafat, despite its assertion that he is an active backer of terrorist operations, so too must it avoid the targeting of lesser leaders provided their main activities are political. The killing of Palestinian leaders such as Shikaki and Mustafa must stop. Finally, Israel needs to announce publicly that the policy of targeted killing is a temporary expedient while it is engaged in armed conflict with terrorists. Israel must unambiguously declare that if a Palestinian leadership makes peace with Israel and proves itself capable and willing to curb terrorism, targeted killing will cease. Targeted killing makes sense and is justifiable only as a weapon of war. Once that war is over, the policy must end.

Targeted killing is an unsavory practice for an unsavory time. It can never take the place of a political settlement, which is the only solution to the terrorism that confronts Israel. Until such a settlement is achieved, however, targeted killing stands out as a measured response to a horrific threat. It is distinctly attractive because it focuses on the perpetrators of terrorism while largely sparing the innocent. For a dangerous region in an imperfect world, targeted killing is the worst possible policy—except for all the others.