Targeted Killings: Is the Norm Against Assassination in Decline?

Nina Tannenwald
Brown University
ISODARCO January 2008

Targeted killings

- Legal dilemma: is this extra-judicial killing or legitimate self-defense?
- Moral dilemma: why, if by taking one life, many others could be spared?
- Practical dilemma: is it effective?

My argument….

- The norm is reasonably robust at the top.
- Targeted killings are legal in limited circumstances –the question is how to build a firewall between this limited practice and the broader norm (or whether this is even possible).

Outline of talk

I. The norm against assassination
II. Trends in targeted killing
III. Status of the norm
IV. Targeted killings
- are they legal?
- are the effective?
- are they desirable?

The norm against assassination

- A prohibition on assassination of foreign leaders

- "…in an armed conflict, assassination is killing a specific person (whether combatant or not) by treacherous means." (Schmitt, 1992)

Sources of the norm

- Arose in the 1600s, developed as customary int'l law,
- Eventually became codified in the U.S. Lieber code (1863) and the 1907 Hague convention
- Today, would also be a violation of state sovereignty and the UN prohibition on aggressive use of force

For three centuries, it has been quite robust…

In 1938, the British government rejected a proposal to assassinate Hitler as “unsportsmanlike.”

Cold War – the norm was weakened and then reaffirmed

- During the 1960s, the US CIA attempted to assassinate various leaders
- Other examples - Libya
- 1975 – Church committee hearings exposed CIA practices, resulted in “executive order” banning assassinations

Why did the norm arise?

- Two sources: (Ward Thomas, 2001)
  - The principle that treacherous murder is wrong.
  - It's in the interests of the great powers.

In’tl law and the norm are not quite the same….

Int’l Law

In wartime, it is legal to attack a national leader who is in the military chain-of-command, as long as the means are not treacherous

The norm

In practice, for three centuries, states largely refrained from targeting foreign leaders.

Targeted killings

Definition:

Critics argue…

- It's imposition of a death penalty without a trial.
- Killing without public accountability.
- Slippery slope – allowing the military to engage in targeted killings creates climate favoring military solutions when non-lethal means might be available.
- Ineffective – leads to vicious cycle of revenge
- Invites reciprocity—targeting of our leaders

Defenders of targeted killings argue…

1) A law-enforcement approach is not suitable when the scale of violence is extensive and the terrorists operate from a state that is either unable or unwilling to apprehend them
2) There is a clear distinction between targeting terrorist leaders and targeting heads of state for assassination,
3) Killing hostile combatants, including those in command, is permitted under int'l law

4) It’s more moral to kill a single individual who is guilty than masses of innocents who would die in battle

5) It’s effective – disrupts terrorist orgs.

2000-2007

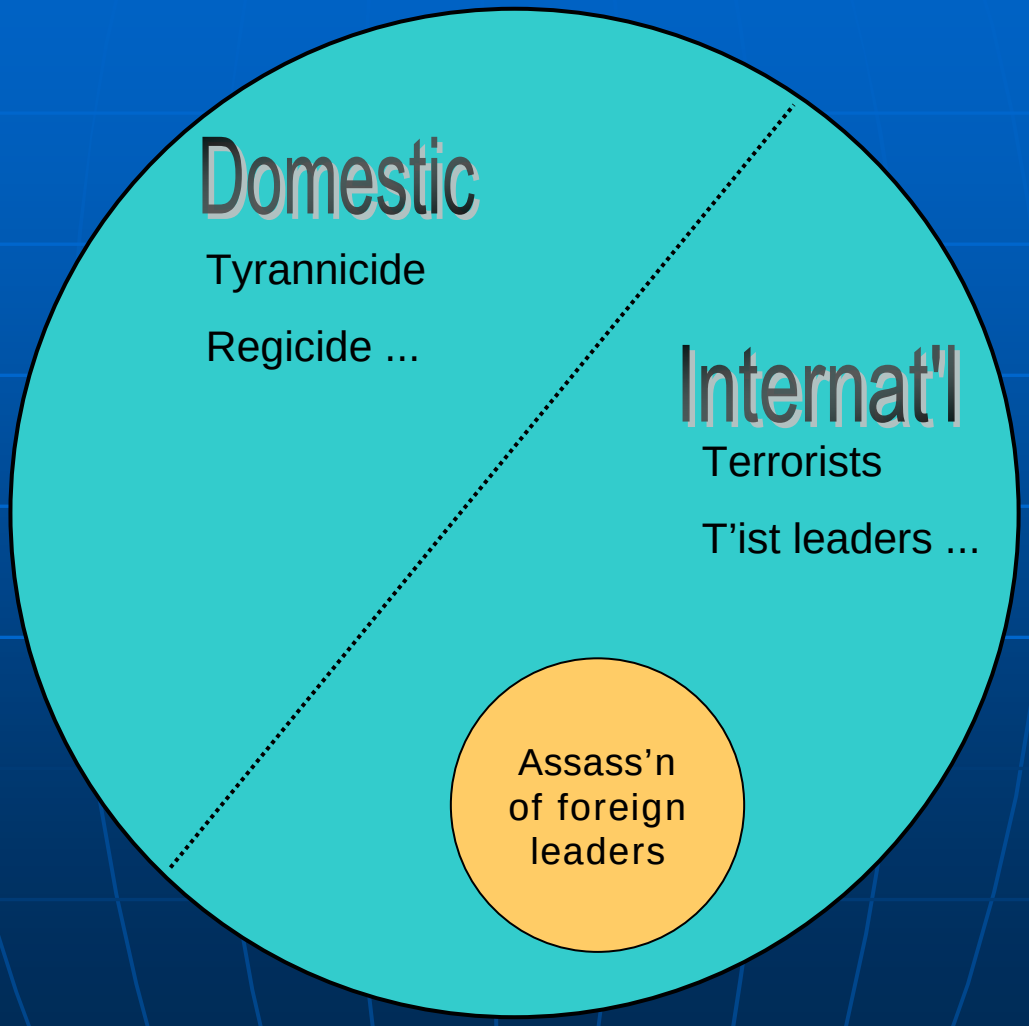
- Palestinian fighters killed in targeted killings: 225
- Palestinian civilians killed in targeted killings: 147
- Israelis killed by Palestinians: 559

(B'Tselem)

“While acknowledging that military necessity may dictate the deliberate killing of enemy combatants during an armed conflict, the Special Rapporteur recommends that transparent laws and guidelines on the practice be established, and that they be strictly limited to persons directly participating in hostilities and as a means of last resort....

Report of the UN Special Rapporteur on the Promotion of Human Rights While Countering Terrorism, 16 November 2007.

Targeted killings



Targeted killings

- Are they legal?
- Are they effective?
  compared to what?
- Even if legal and effective, are they desirable as policy?

Assisted by technology…..

Dec. 2007, *Washington Post*

A “bomb lady” has made a new portable lab that will evaluate biometrics

US Executive Order 12333 (1981)

- “No person employed by, or acting on behalf of the US government shall engage in, or aspire to engage in, assassination.”

However….

- ……it is permissible to attack heads of orgs which are engaged in armed combat with the US.

.....but....

- The president can issue case by case exemptions, and
- US government lawyers say the assassination ban applies only to political leaders, not to targeting “hostile military leaders”