

# On (Targeted) Assassinations

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*Some legal aspects of assassinating political opponents and alleged terrorists. By Katharina Kerenyi*

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The question of the legality of ‘targeted assassinations’, as carried out by Israel and the US, centres mainly on the following issues:

- The right of a state to self-defence
- The right of a state to pre-emption
- The right of the accused to defence in a court of law

## Self-defence

The 1970 Declaration on Principles of International Law established certain articles of the UN Charter pertaining to the use of force by states as customary international law, and as such binding upon all states. According to the Charter regime, three types of force are recognized: retorsion (unfriendly but lawful acts, such as the severing of diplomatic relations); reprisals (illegal acts committed as retaliation for a prior illegal act; such acts, however, may be considered legal when committed in conformance with the right of self-defence); and self-defence (which, crucially, must be necessitated and must be limited by that necessity).

The so-called targeted assassinations practised by Israel and the US, when they are justified by these two states, are justified as acts of self-defence. In the case of Israel, some say this argument is applicable since the assassinations are of terrorists preparing to strike at Israeli citizens. One must, however, then ask how necessary an assassination is to self-defence. Will an assassination prevent an imminent terrorist act? Or is it intended to lower the morale of resistance groups and as a threat to other leaders of such groups? It is clear that assassinations by Israel have passed into the latter category. For example, the assassination of the ‘spiritual’ leader of Hamas, Sheikh Yassin, cannot be seen as anything

other than a long-term strategic blow to Hamas. It was not carried out to prevent an imminent terrorist attack. To call such an act one of self-defence, would be to characterize, not only terrorist acts against Israel, but also the Palestinian struggle for independence and a separate state, as an attack upon Israel—which is a forced interpretation. The Israeli justification from self-defence should be seen for what it is: a fantasy of victimization on the part of the abusers.

The assassinations that American forces are carrying out in Afghanistan and Iraq are undoubtedly unlawful, because there is no reasonable way a claim of self-defence can be made for them. It is a measure of how unconstrained the American penchant for killing opponents has become that US commanders in Iraq repeatedly stated, at press conferences in April and May 2004, that they reserved the right to kill the radical Shia cleric Moqtada al-Sadr. They did not trouble with positing a justification of self-defence. That justification appears only when the question of legality arises.

It should be clear, therefore, that the self-defence argument cannot be allowed unlimited plausibility. Clearly, when an attack is imminent, a state is justified in taking action to prevent such an attack. Assassination should only be undertaken as a last resort and only if absolutely necessary to prevent an attack. The onus must be on states to prove, *before an impartial court*, that an assassination is, or was, necessary. It should not be the responsibility of the assassinated to prove his or her innocence.

## Pre-emption

The right of self-defence was until recently considered to exist only as a response to an armed attack. That, however, changed radically with the Bush doctrine of pre-emption, or anticipatory self-defence. The Bush doctrine should not be rejected out-of-hand. Considering that modern weapons can be launched, and reach their targets, with tremendous speed, pre-emption would appear to be a valid argument for armed force. But pre-emption depends on reliable information that has been interpreted in a balanced way, and it is a matter of relative timing. The

decision to use pre-emptive force must be based on incontrovertible proof of an imminent attack, and, failing this, a very high degree of probability that such an attack is imminent. The dangers of making a bad decision are well illustrated by the case made for invading Iraq.

In a context of relative timing, an assassination, by definition, can never be a pre-emptive act. The only way in which an assassination can be considered to be pre-emptive is when the target of the assassination is himself on his way to commit an armed attack. The targets of assassinations, however, are leaders of groups, who are not usually involved in armed attacks at operational level. If there is a case to be brought against such leaders, they should be arrested and tried. Assassinating a leader not operationally involved in an imminent threat is simply to take the easy way out by eliminating opponents without recourse to justice. That's what tyrannical regimes do, not those that respect the law.

#### Trial in a Court of Law

If a person is guilty of a crime, he or she should be properly tried in a court of law. The charges must be specified and the defendant given a chance to rebut them. If a person cannot be secured for a trial, then he or she can be tried *in absentia*. Every person must be presumed innocent until proven guilty. This principle must not be ignored by claiming that these are unusual times that require unusual measures. To do so is to subvert law, liberalism, and ethics, while aggrandizing one's own cause.

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## SIDEBARS

### A New Type of Assassination

Assassinations are by their nature targeted. So a 'targeted assassination' is a tautology.

Emphasizing that an assassination is targeted has two purposes: (i) to differentiate it from straightforward assassinations, which already have a history and are considered illegal; and (ii) to draw attention away from the indiscriminate nature of the killing—which is what happens when bombs and missiles are used in crowded areas.

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### Prose of Denial

You can always count on a murderer for a fancy prose style.

– Vladimir Nabokov, *Lolita* (1955, *Humbert Humbert in pt 1, ch 1*).

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### Dealing Out Death

Many that live deserve death. And some that die deserve life. Can you give it to them? Then do not be too eager to deal out death in judgement. For even the very wise cannot see all ends.

– JRR Tolkien, *The Fellowship of the Ring* (1954, *Gandalf in bk 1, ch 1*).