# Chapter 14 – Targeting Terrorists

## Targeted Killing By The United States After 9/11

### What are examples of the US use of targeted killings since 9/11?

### What did the U.N. Special Rapporteur to the Commission on Human Rights think about the drone attack in Yemen?

### How about the Swedish Foreign Minister?

### What about the killing of bin Laden?

### Were we calling him a criminal?

### Was there evidence that he was actively directing forces against the US?

### Was he armed when he was killed?

### What about the theory that he was a walking IED?

## Targeted Killing And Human Rights Law

### What is the law enforcement model under human rights law?

### What does the International Covenant on Civil and Political Rights art. 6, Mar. 23, 1976, 999 U.N.T.S. 171, provide?

### What exception does the European Convention on Human Rights provide that might shelter targeted killings?

### What does Article 10 require before the use of deadly force?

### What did Vincent-Joel Proulx argue about targeted killings in, If the Hat Fits, Wear it, If the Turban Fits, Run for Your Life

## McCann v. United Kingdom European Court of Human Rights, 21 E.H.R.R. 97 (1996)

### When did the government become aware of the threat posed by the deceased?

### How does that affect the potential legally of their eventual killing?

### What triggered the killing?

### Were the government agents right about whether they were about to trigger the bomb?

### Was there a car bomb?

### What did the European Commission on Human Rights find?

### Who has appealed this to the European Court of Human Rights?

### Is the Convention for the Protection of Human Rights and Fundamental Freedoms a strict liability statute, i.e., if the state acts reasonably based on the facts known at the time, but turns out to be wrong, is this a violation?

### Why weren’t the terrorists grabbed at the border?

### What implications of not stopping the terrorist at the border was the Court concerned with?

### How does this undermine the justification for the ultimate killing?

### Why does the Court question the assumption that they were about the trigger the bomb?

### What about their bomb expert?

### Why was there a question about their training?

### Was the Court able to learn about their training?

### Did the Court find that the killings were justified under Article 2 of the Convention?

### Did the dissent agree?

### What was the risk that the dissent believed justified the killings?

### If the justification depends on the risk, what happens if think there is a chance of a nuclear attack?

## Public Committee Against Torture in Israel v. Israel, Supreme Court of Israel, sitting as the High Court of Justice, 46 I.L.M 375 (2006).

### What is the factual background?

### Is Israel at war?

### Is it opposed by a state, i.e., is this an international conflict?

### What is ‘‘the policy of targeted frustration’’ of terrorism?

### Are the people they are killing part of the uniformed forces of a state?

### What is a lawful combatant?

### Does Israel consider the people it is targeting lawful combatants?

### Can you kill lawful combatants?

### What are the advantages of being a lawful, as opposed to unlawful, combatant?

### What is a civilian?

### Can you kill civilians?

### Does IHL recognize the category of unlawful combatant?

### Is that a satisfactory result in this case?

### What is the Court’s three part test for when citizens are no longer protected under IHL?

### How do you apply each part?

### What is a hostile action?

### What are some examples of direct versus indirect hostilities?

### What if you are hostile one day, but not the next?

### What did the U.N. Special Rapporteur tell us about the duration of participation? (401)

### What three part test must each action meet?

### What about the problem of unlawful combatants who go back to safe havens where they do not engage in hostilities between attacks?

### What about some who sees himself as defending his home against the occupying force?

### Why did Schmitt argue that it was good define direct hostilities very broadly?

### What is proportionality ‘‘stricto senso,’’?

### What is the proportionality test for injuring innocent civilians?

### Is there a proportionality test for combatants, both lawful and unlawful?

### Does the Court find that when the cannon roar, the law is silent?

### Did it find that all targeted killings are legal or illegal?

### How much the cases be resolved?

### In practical terms, is this likely to restrain the attacks?

## Harold Koh, The Obama Administration and International Law

### What does Professor Koh identify as the two key principles of law of war?

### How does he meet this three objections?

#### First, some have suggested that the very act of targeting a particular leader of an enemy force in an armed conflict must violate the laws of war.

#### Second, some have challenged the very use of advanced weapons systems, such as unmanned aerial vehicles, for lethal operations.

#### Third, some have argued that the use of lethal force against specific individuals fails to provide adequate process and thus constitutes unlawful extrajudicial killing.

## Executive Order No. 12,333

### What does Executive Order No. 12,333 ban?

### What is the traditional definition of an assassination?

### Why is it a problem as public policy?

### Is it defined in war time against combatants?

### When can you kill civilians as well?

### What are examples of the US targeting civilian populations directly, rather than as collateral damage to military attacks?

### Is there a provision of the United Nations Charter that might shelter assassinations?

### How does W. Hays Parks, in this Memorandum of Law: Executive Order 12333 and Assassination, distinguish various targeted killings from assassinations?

### Does this leave much that banded?

### Would Executive Order 12,333 ban killing al Qaeda members?

### Why or why not?

### Who about their bankers?

### When should we use assignation?

### How do you get around Executive Order 12,333?

### Can this be done secretly?