# (2020) CHAPTER 13 - TARGETING TERRORISTS

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

### How did the U.N. Special Rapporteur for Human Rights define targeted killings? P. 375

### What are examples of the US use of targeted killings since 9/11? (Review Drone strike stats WWW site)

### Why didn’t we use a drone strike to kill Bin Laden?

### Was he killed?

### Would this be a targeted killing under the US definition?

## 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? P. 378

### What does Article 10 require law enforcement officers to do 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

## Case Study: The Gibraltar Killings (McCann v. United Kingdom European Court of Human Rights, 21 E.H.R.R. 97 (1996))

### Were the killings “in defence of any person from unlawful violence”? Should it matter whether such violence was on-going, imminent, likely, or merely possible?

### The suspects were identified at the Spanish border, but allowed to cross. Since they could have been stopped at the border, was any subsequent use of force therefore “no more than absolutely necessary”? Does it matter that the suspects could lawfully have been arrested at the border or merely turned away?

### The SAS are soldiers trained to kill as a first resort. Law enforcement officers, by contrast, are trained to kill only as last resort; when they use force, it is the minimum force needed to prevent unlawful violence or effect an arrest, usually preceded by a warning or even a warning shot, as the United Nations Basic Principles suggest. Does the very fact that the SAS, rather than civilian law enforcement officers, were put on the suspects’ trail violate human rights law?

## Notes and Questions 340

### 1. Preventing Violence.

#### Why did the European court not find that the soldiers violated the law?

#### Did it matter that they believed something that turned out to be wrong?

#### How is this like qualified immunity in 1983 cases in the US?

### 2. No More Than Absolutely Necessary?

#### What about the overall operation?

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

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

#### Why was there a question about the choice of forces, i.e., SAS rather than police?

#### Why was the court concerned about the terrorists not being stopped at the border?

#### Did the Court find that the killings were not justified under Article 2 of the Convention?

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

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

### 3. Were the Predator Attacks in Pakistan and Yemen Extrajudicial Killings?

#### 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?

#### Should it matter where the killing takes place – Germany, where there is judicial process available, or the border region of Pakistan, where there is no local cooperation?

## U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities p 393

### Review and be prepared to discuss these.

## Notes and questions

### 2. Outside Areas of Active Hostilities.

#### Is there anything in the Policy that limits the president’s ability to declare a region an “area of active hostilities”?

#### Would this be judicially enforceable?

### 3. Targeting based on status

#### What did the Obama administration say about targeting people based on status, i.e., based on their membership in an armed group threatening the US? P. 395

### 4. Targeting based on conduct

#### What is the ICRC’s 3 part guidance on who can be targeted based on conduct?

#### Is this basically the same test for determining whether someone is a combatant based on conduct?

### 5. Self-defense

#### How do you make the self-defense argument for targeted killings?

### 6. Costs and benefits of targeted killings?

#### What are the benefits, as compared to what we have done in previous wars, especially Vietnam?

#### What are the costs? How might drone strikes make it impossible to win the war?

## D. U.S. LAW AND THE TARGETING OF U.S. CITIZENS

### Executive Order No. 12,333 – assassinations

#### Are executive orders binding law?

#### Could the president order an assassination (assuming it does not violate other US law) and not be in conflict with this EO?

#### Could he do it with a secret order?

#### What does this tell us about the limits of Executive Order No. 12,333?

### Can we do targeted killings in the US?

#### What would be constraints?

#### What is the risk if you get it wrong?

#### Are the police automatically liable for injuries to bystanders in ordinary police work?

#### Is there any penalty for getting it wrong internationally?

### What constitutional rights to US citizens have outside the US that are relevant to targeted killing?

### Does it matter if a target is a US citizen if he otherwise meets the criteria for targeted killings?

### Is this judicially reviewable?

### What is the political question problem?

### How are the potential penalties different, if at all, for bad decisions on targeting US citizens versus foreign nationals?

## Notes and questions

### 2. Murder v. Assassination – 408

#### What is the difference?

#### Can it be an assassination if it is lawful?

#### Are targeted killings assassinations?

### 5. The Process Due

#### While there is internal review of targeted killings of US citizens, is there any input from an advocate for the potential victim?

#### Why is this a problem from a due process point of view?

#### Is there an impartial decisionmaker?

### 7. Who May Conduct a Targeted Killing?

#### Absent statutory direction, is there any constitutional limit on who can conduct a targeted killing?

#### Could these be private contractors, once the decision has been made through military/political chain of command?

#### Are there any constitutional limits to delegating the decision on who to target to third party contractors?

#### Is there a constitutionally based precedent for this?

## Review TARGETING TERRORISTS: SUMMARY OF BASIC PRINCIPLES, p. 411