



# **Taking Justice to the Terrorist: Extraterritorial Use of Targeted Killing by States**

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## **ABSTRACT**

Targeted killing has increasingly become the cultivated means of combating terrorism by some countries of the world citing preemptive and anticipatory self defence necessity as the major justifications for disregarding the sovereignty of another country in carrying out the act. The issues of sovereignty which is rapidly giving way to newer interpretations and the right of self defence under the UN Charter together with the elusive tact with which terrorists have been operating since 9/11 incident have worsened this imbroglio creating a huge hollow that has hitherto been unable to be filled in the legal circles. Taken that Article 51 UN Charter supercedes Article 2(4) on territorial integrity, it is doubtful if that envisages the way in which self defence encapsulated in customary norms, is being invoked by the targeting countries. This paper argues that customary norm cannot displace the clear letters of Article 51 UN Charter. Also, that even if this has happened, the threshold established by case law has never been taken into consideration. This paper also endeavours to suggest a new regulatory framework in the form of the codification and streamlining of the customary norm in line with the spirit and letters of Article 51 UN Charter and suggests among other things, a new way to determine the cause of action suitable and when the targeting countries' right to self defence crystallises. This paper also views targeted killing policy strictly on its legality under international law vis-à-vis the law of interstate force. Collateral damage and other international human right issues are outside its purview.

**Keywords:** Targeted Killing, Self Defence, Sovereignty, Use of Force, Terrorism

## **1. INTRODUCTION**

Targeted killing outside the scope of conventional type of armed conflict has disregarded the sovereignty of nations in the face of some exculpatory circumstances said to justify such infractions especially the extra territorial targeting of non-state terrorist members that hide in sovereign countries albeit, without such countries giving them any kind of support.

The politics of propagating the will of stronger states by targeted killing policies has been noticed. In the course of the targeted killing policies, stronger states map out measure which often times are geared towards changing the government of the weaker states who they allege are incapable of removing or handling the so-called threat; most of the time making the new government a mere puppet in the hands of the stronger state. This neo colonialist attitude has completely exterminated the sovereignty of the weak states that are often indirectly ruled by stronger ones. The killing of civilians in abrupt invasion of a State apparently at peace with the targeting State; and a restatement that customary law relating to such act has not displaced the relevant treaties prominent among which is the UN Charter, is in the core of this discuss. Even in the face of arguments otherwise, I have endeavoured to suggest a new regulatory

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framework.

State sponsored targeted killing which amounts to interstate force could be lawful if justified not just on the part of the injured person but also regarding the injured state. But targeted killing by a state of an individual outside the boundaries of the targeting state and involving a third-party state where the individual is targeted has been otiose considering the fluid normative frameworks under which these justifications have been claimed by various states perpetrating the acts. The extent of the exculpatory circumstances capable of justifying such extraterritorial targeted killing and the qualifications needed to make them appropriate exceptions have been a subject of discussion for years. However, sovereignty from the Westphalian Concept to the modern trend has greatly waned in its form wherein modifications have increasingly been made to contain the exigencies in the realities of the present time.

### **1.1 What is Targeted Killing?**

Targeted killing is the premeditated, preemptive and intentional killing of an individual or individuals known or believed to represent a present and/ or future threat to the safety and security of a state through affiliation with terrorist groups or individuals.<sup>2</sup>

Philip Alston, the UN Human Rights Expert defines targeted killing as the intentional, premeditated and deliberate use of lethal force, by States or their agents acting under colour of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator.<sup>3</sup>

While the former definition posits targeted killing in the light of terrorism which trend has been the underpinning of the policy, the later posits it in the context of armed conflict, which per se removes such style of killing from the ambit of assassination or extrajudicial execution. While the later definition makes targeted killing the act or policy of States, the former establishes a motive in a continuing or future threat to another country that counters such threat using targeted killing of representatives or posers of such threat which in its present context is mainly terrorism. The two definitions complement each other in trying to fathom the comprehensive picture of what this act or policy means.

Targeted killing has often been employed as a countermeasure against terrorism and terrorist organizations. Specialized troops such as special operation forces, police and intelligence agents rather than conventional military forces with specialized equipment like Unmanned Aerial Vehicles (UAV) have often been used because of the clandestine and elusive nature of terrorists and their actions.<sup>4</sup> Targeted killing has oftentimes been confused with Assassination which is the premeditated killing of a prominent person for political or ideological reasons. While assassination has always been for purely political or ideological reasons, targeted killing has rather been employed exclusively for state self defence.<sup>5</sup>

### **1.2. Legal Analysis**

According to some legal scholars, for an alleged targeted killing to be legal, the following conditions some of which are analysed below, must be fulfilled by the acts:<sup>6</sup>

(1) An international or non-international armed conflict must be in progress: Without an ongoing armed conflict wherein, the victim will be classified as participating in hostilities, the targeted killing of such person whether or not a terrorist with a continuous combat function is classified as homicide and a domestic crime;<sup>7</sup>

<sup>2</sup> Thomas B. Hunter, Targeted Killing, Self Defence, Preemption and the War on Terrorism 2 (2009).

<sup>3</sup> Phillip Alston, Report of the Special Rapporteur on Extra Judicial, Summary or Arbitrary Executions General Assembly, 28th May, 2010.

<sup>4</sup> David Tucker, Counterterrorism and the Perils of Preemption Problems and Command and Control in Targeted Killing in Self Defence, Preemption and the War on Terrorism 2 (2009).

<sup>5</sup> Thomas Hunter, Targeted Killing, Self Defence, Preemption and the War on Terrorism 5 (2009).

<sup>6</sup> Nils Melzer, Targeted Killing in International Law 5 (2008).

<sup>7</sup> Gary Solis, The Law of Armed Conflict: International Humanitarian Law in War 542 (2010).

- (2) The victim must be a specific individual. He must be targeted by reason of his activities in the armed conflict in progress;
- (3) The individual who engaged directly in hostility must be beyond a reasonable possibility of arrest;
- (4) Only a senior military commander representing the targeting state may authorize the targeted killing. The authorizing individual in this circumstance can be the president or any person he delegates to so authorize;
- (5) There must be the use of a lethal force.

### **I. Presence of International or Non-International Armed Conflict:**

Ever before the notorious 9/11 incident where thousands of people were killed in what is regarded today as the worst terrorist attack in history, it has never been conclusive that an armed conflict in the context of laws of armed conflict existed between the countries adopting the policy of targeted killing and the mainly terrorist groups who are repeatedly targeted.

In the United States, a vehement approach towards counterterrorism with the use of targeted killing was adopted by George Bush's administration after the 9/11 incident and since then numerous attacks have been made against suspected terrorists, including the killing of Osama Bin Laden, Mullar Omar and their key Lieutenants and lately Qasem Soleimani and Abu Bakr al-Baghdadi. The United States has used drones and airstrikes for targeted killings in the armed conflicts in Afghanistan and Iraq, where the operations are conducted (to the extent publicly known) by the armed forces. The US also reportedly adopted a secret policy of targeted killings soon after the attacks of 11 September 2001<sup>8</sup> pursuant to which the Government has credibly been alleged to have engaged in targeted killings in the territory of other States.<sup>9</sup> The secret targeted killing programme is allegedly conducted by the Central Intelligence Agency (CIA) using Predator or Reaper drones, although there have been reports of involvement by special operations forces, and of the assistance of civilian contractors with the implementation of the programme.<sup>10</sup>

The targeted killing policies are always embarked upon moments after the attack by the terrorists have subsided making the targeted killing look like a reprisal or revenge in what does not have a semblance of armed conflict. For instance when in 1985 an Italian cruise Liner, Achille Lauro was hijacked, in which Leon Klinghoffer an American was killed, the then American Secretary of State George Shultz, while having some consultations with then Israeli Prime Minister Shimon Perez, quipped: -Can we as a country, can the community of free nations stand in a purely defensive posture and absorb the blows dealt by terrorists?<sup>11</sup> This later culminated in a determination to go after the alleged terrorists.

Another example of targeted killing policies bereft of a semblance of armed conflict, apart from the killing of Osama Bin Laden and others mentioned above, is the killing of Al-Harithi, an Al Qaeda leader and one of the terrorist network's top figures in Yemen. Al Harithi was killed in a drone attack with other people in the vehicle in which he was traveling.<sup>12</sup> Apart from this, recently, in June, 2012, Al-Libi whose ingenuity in running Al-Qaida since the death of Bin Laden was considered invaluable was killed with a drone strike in Pakistan. According to Washington, Al-Libi, was considered a hero in militant circles because of his escape from the American military prison, which elevated him to al-Qaida's No. 2 spot when Ayman al-Zawahri replaced bin Laden. As Al-Qaida's de facto general manager, he was responsible for running the group's day-to-day operations in Pakistan's tribal

<sup>8</sup>Council of Europe, Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States, report submitted by Mr. Dick Marty, Doc. 11302 Rev. June 7, 2007, at paras. 58-64.

<sup>9</sup> Greg Miller, Feinstein Comment on US Drones Likely to Embarrass Pakistan, LA Times, February 13, 2009.

<sup>10</sup> Jane Perlez, Pakistan Rehearses Its Two-Step on Airstrikes, NY Times, April 15, 2009; James Risen & Mark Mazzetti, CIA Said to Use Outsiders to Put Bombs on Drones, NY Times, August 21, 2009.

<sup>11</sup>Ibid

<sup>12</sup> Jane Mayer, *The Predator War*, The New Yorker, October 26, 2009; Greg Miller, C.I.A. Said to Use Outsiders to Put Bombs on Drones, LA Times, February 13, 2009.

areas and managed outreach to al-Qaida's regional affiliates- a position Washington has contended was irreplaceable in Al Qaeda circles and hence offered a great advantage to his death.

Fundamentally, for there to be an international armed conflict, the armed conflict has to be between states. In the Tadic case, the Appeals Chamber of the ICTY held that an armed conflict exists whenever there is resort to armed force between States.<sup>13</sup> The ICRC Commentaries on the Geneva Conventions state that any difference arising between two States and leading to the intervention of armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war.<sup>14</sup> Since Al-Qaida cannot be categorised as a state under statute and case law, it is arguable whether the alleged war between America and a non-state actor in the war on terrorism will qualify as an international conflict.

To come under the ambit of a non-international armed conflict, both Common Article 3 of the Geneva Conventions and Article 1(1) of Additional Protocol II to the Geneva Convention relate to conflicts occurring within the territory of a state party. Undoubtedly, this qualification does not bring the above incidents within the confines of a non-international armed conflict; though, it has been argued that a stretch of both Common Article 3 and AP II in a way to bring some customary international law norms contemplated by especially Common Article 3, would somehow give a great deal of non-international armed conflict character to such incidents.<sup>15</sup> While it cannot be substantiated that there is a conflict of international or non-international character between the targeting state and the non-state actors, the sovereignty right of the territorial state is sacrosanct.

## **II. The victim must be a specific individual. He must be targeted by reason of his activities in the armed conflict in progress:**

To illustrate this point, some instances of targeted killing incidents involving the state of Israel will suffice:

Israel has been a known practitioner of Targeted killing for decades citing its need to defend its citizens from the actions of the Palestinian Terrorists and related threats. The missions are assigned to members of Mossad responsible for human intelligence collection, counterterrorism and counteraction, Sin Bet (internal Security) Aman (Military Intelligence), the elite Sayeret, etc.<sup>16</sup> In 2004, Sheikh Yassin founder and leader of Hamas Terrorist group was killed by Israel in a targeted attack from a missile fired from a helicopter, an attack that was widely condemned due mainly to Yassin's disabled state at the time of the attack.

In January 2010, in an operation allegedly carried out by 18 Israeli Mossad intelligence agents, Mahmoud al-Mahboub, a Hamas leader, was suffocated with a pillow at a Dubai hotel, an action that snuffed the life out of him, according to Dubai officials.<sup>17</sup> The officials released videotapes of those responsible, whom they alleged to be Mossad agents.

The moot issue here is whether Sheikh Yassin and Mahmoud al-Mahboub could be categorized as combatants at the time of their killing and if not, if they were directly participating in hostilities at the time of the attack. However, the issue of targeted killing would not be raised in any way if they were combatants because combatants are not immune from attack under the laws of armed conflicts. Were they

<sup>13</sup> Prosecutor v Dusko Tadic (Decision on the Defence Motion of Interlocutory Appeal on Jurisdiction), October 2, 1995, App. Ch., IT-94-1-AR72, 35 ILM (1996) 32 (hereinafter: Tadic Jurisdiction Appeal), at para. 70.

<sup>14</sup> It makes no difference how long the conflict lasts, or how much slaughter takes place: ICRC, Commentary on Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949, at 32.

<sup>15</sup> David Kretzmer, Targeted, *Killing of Suspected Terrorists, Extra Judicial Executions or Legitimate Means of Defence* 16 The European Journal of International Law 195 (2005).

<sup>16</sup> Gordon Thomas, Gideon Spies: The Secret History of the Mossad, in Thomas Hunter *supra* note 8 at 30.

<sup>17</sup> Der Spiegel, *Targeted Killing in Dubai: A Mossad Operation Gone Awry?* Christian Science Monitor, February 23, 2010; Ilene Prusher, *Was Mossad Behind Dubai Assassination? Israel Foreign Minister Isn't Saying*, Christian Science Monitor, 17 Feb. 2010.

directly participating in hostilities? First, it has been a notorious fact that Hamas group masterminded several terrorist attacks against Israel. But Article 51(3) API refers to such time as the civilians are taking a direct part in the hostilities (DPH). In the opinion of some scholars DPH must be given a narrow meaning to reflect the revolving nature of the protection accorded the civilian in this context. It is only while the persons are actually engaged in carrying out their hostile acts that they may be targeted. As soon as they have completed the hostile act, they once again enjoy the same protection as every other civilian. This view is equally supported by the ICRC Commentary on API<sup>18</sup>. This theory was tagged –revolving door theory by scholars.<sup>19</sup>

Following this revolving door theory, according to which international terrorists are civilians who may only be targeted while taking a direct part in hostilities, the right of self-defence under Article 51 of the UN Charter due to an armed attack by a terrorist group may become meaningless. In its brief to the Supreme Court of Israel, the government argued, inter alia, that the wide definition of Art. 51(3), which speaks not only of taking a direct part in hostilities, but also –for such time as they participate, does not reflect customary international law, contending that support for this view may be found in Art. 8(2)(b)(i) of the Rome Statute on the ICC, which, in defining the crime involved in violence against civilians, omits reference to the words –for such time. If the activities of Mahmoud al-Mahboub as Hamas leader were well pronounced to be tagged as taking direct participation in hostilities, can same be said of the Sheikh Yassin, the quadriplegic, partially blind Muslim cleric at the time he was targeted while on his wheelchair? The contention of moral and spiritual support maintained by Israel lacks the relevant legal basis.

The absence of this condition, however, raises the boarder issue of sovereignty. The majority of Israeli targeted killings have reportedly taken place in –Area A, a part of the West Bank under the control of the Palestinian Authority. The targets have included members of various groups, including Fatah, Hamas, and Islamic Jihad, who, Israeli authorities claimed, were involved in planning and carrying out attacks against Israeli civilians.<sup>20</sup> Since the killings occur in Area –Apart of the West Bank exclusively reserved for the Palestinian Authority, Israel never contemplated the “sovereignty” of Palestine before engaging in such acts in Area –A.

### **III. The individual who engaged directly in hostility must be beyond a reasonable possibility of arrest:**

Although not much involved in this act, the British involvement in the Northern Ireland exposed it to terrorist threats from the region. The most significant case of targeted killing carried out by GB was against Loughall of Northern Ireland where the IRA terrorists were ambushed and killed *en mass* by the British troop.

Prior to the exploits of the British forces in the mass killing of the members of the IRA, there were genuine intelligence report that a terrorist attack by the group was being planned which offered an ample opportunity for their arrest. Instead, they were ambushed and massacred, an attack the European High Court condemned for inability of the British forces to explore the possibility of arrest. It is absolutely doubtful if the mission was to arrest, when the order was –capture or kill. Although not raised by the High Court, there was ample time for British forces to collaborate with the Irish forces and have the terrorists arrested in a bit of regard of the Irish sovereignty.

<sup>18</sup> See ICRC, Commentary on Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, at para. 1942.

<sup>19</sup> David Kretzmer, Targetted, *Killing of Suspected Terrorists, Extra Judicial Executions or Legitimate Means of Defence* 16 The European Journal of International Law 195 (2005).

<sup>20</sup> K.A. Cavanaugh, *Selective Justice: The Case of Israel and the Occupied Territories*, 26 Fordham Int'l L. J. 934,960 (2003).

### 3. Self Defence

As severally stated, States may invoke the right to self defence as justification for the extraterritorial use of force involving targeted killings.<sup>21</sup> As noted above, international law permits the use of lethal force in self-defence in response to an armed attack as long as that force is necessary and proportionate.<sup>22</sup> In the context of self-defence, force is proportionate only if it is used defensively and if it is confined to the objective. The controversy however, remains whether the self-defence justification applies to the use of force against non-state actors and what constitutes an armed attack by such actors; the extent to which self-defence alone is a justification for targeted killings; and, the extent to which States have a right to anticipatory or pre-emptive self-defence.

According to Judge Tomka in the *Armed Activities on the Territory of the Congo (DRC v. Uganda)* when the use of armed force constitutes a lawful exercise of the right to self-defence, the measures at hand fall outside the scope of the prohibition contained in article 2(4).<sup>23</sup> In the *Wall Opinion*,<sup>24</sup> this decision was criticized for not addressing the possible change in interpretation or law resulting from the 9/11 attacks (purportedly planned and executed by Al Qaeda), and the Security Council's recognition or reaffirmation of the right of self-defence in relation to terrorist acts in resolutions 1368 and 1373 of 2001.

But interpreting article 51 in context makes it clear that the use of armed force by State A against State B will fall under the scope of article 2(4), and hence constitutes a violation, unless State A can invoke the right to self-defence as a justification. But precisely because self-defence involves the use of armed force against another State, the justification of self-defence must be invoked *against that other State* and not merely against non-state actors operating from the territory of that other State.<sup>25</sup>

It is quite obvious from this that self defence necessity could crystallize in a situation where an attack from a terrorist is so clearly imminent that a possible capture or arrest of the terrorist would be impossible. Scholars are of the view that in this circumstance, the duty of the state to protect its citizens from this threat is clear and unassailable and the terrorist's death is a necessary outcome.<sup>26</sup>

Support for that argument was found in Security Council Resolutions 1368 and 1373 issued in the wake of the September 11 attacks.<sup>27</sup> But even if it were to be accepted that Article 51 has not displaced customary law, the reality is that it will only be in very rare circumstances that a non-state actor whose activities do not engage the responsibility of any State, will be able to conduct the kind of armed attack that would give rise to the right to use extraterritorial force. In such exceptional circumstances, according to Philip Alston,<sup>28</sup> the UN Charter would require that Security Council approval should be sought. While this contention is debatable in line with the above-mentioned Security Council Resolutions, like 1373, especially on a strict interpretation with the guideline in *Namibia Advisory Opinion*.<sup>29</sup>

<sup>21</sup> Abraham D. Sofaer, *Terrorism, The Law, and the National Defense*, 126 *Military Law Review* 89, 103 (1989).

<sup>22</sup> ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua vs. US)* [1986] ICJ Rep., para. 194.

<sup>23</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*: Judgment, 19 December 2005.

<sup>24</sup> *Wall Opinion*: Declaration of Judge Buergenthal, para. 6; *Wall Opinion*: Separate Opinion of Judge Higgins, para. 33; *Wall Opinion*: Separate Opinion of Judge Kooijmans, para. 35.

<sup>25</sup> Andre de Hoogh, *Armed Activities Case: Unasked Questions: Proper Answers*, *Hague Justice Journal*, No1, Vol.1 (2006).

<sup>26</sup> Thomas Hunter, *Targeted Killing: Self Defence, Preemption and the War on Terrorism* 48 (2009).

<sup>27</sup> Sec. Co. Res. 1368 (2001) 12 Sept. 2001; Sec. Co. Res. 1372 (2001) 28 Sept. 2001) as well as NATO's invocation of the North Atlantic Treaty's Article 5 collective self-defence provision. (Press Release, North Atlantic Council, 12 Sept. 2001, available at <http://www.nato.int/docu/pr/2001/p01-124e.htm>).

<sup>28</sup> Philip Alston, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, UN General Assembly, May 28 2010.

<sup>29</sup> Res 1373 UN DOC SC/7158 <http://www.un.org/documents/scres.htm> in Michael Byers, *Terrorism, the Use of Force and International Law after 11 September* (2006). A passage in *Namibia Advisory Opinion* states that the language of the Security Council Resolution should be carefully analysed having regards to the terms of the resolution to be interpreted, the discussions leading to it, the charter provisions invoked, and in general, all circumstances that might assist in determining the legal consequences. See also Tony Blair's interview with *Daily Telegraph* of 24 October, 2001; also *New York Times*, 29 September, 2001.

However, it is still not clear the extent to which persistent but discreet attacks, including the ones by a non-state actor, would constitute an armed attack under Article 51 although, in a series of decisions, the ICJ has established a high threshold for the kinds of attacks that would justify the extraterritorial use of force in self-defence.<sup>30</sup> In its view, sporadic, low intensity attacks do not rise to the level of armed attack that would permit the right to use extraterritorial force in self-defence, and the legality of a defensive response must be judged in the light of each armed attack, rather than by considering occasional, although perhaps successive, armed attacks in the aggregate.

Proponents of a robust right to self-defence cite the ICJ's Nuclear Weapons Advisory Opinion, in which the court found that the threat or use of nuclear weapons would generally violate International Humanitarian Law, but held that it could not conclude that such threat or use would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.<sup>31</sup> While targeting a docile target, it has been argued that targeting named terrorists known to be planning an imminent attack is legally justifiable. An example is when in 1988, three known IRA terrorists traveled to Gibraltar with the purpose of planting a large explosive in a car to get British Soldiers during a changing of the guard ceremony at the governor's residence. The SAS (Special Air Service) team was warned that the device might be detonated by a remote control in the hands of one of the terrorists. Surveillance was laid on the three terrorists and they were subsequently gunned down. The killing was declared legal by a military tribunal set up for same.

#### 4. CONCLUSION AND RECOMMENDATION

Terrorism has been transnational, clandestine, and asymmetrical, which has unpleasantly eluded a possible institutionalized techniques by the UN and invariably provoked a tactically ruthless approaches by states as counter measures which keep information about further strategies behind the media and any prying eyes.

According to Kofi Anan commenting of Humanitarian Intervention by countries, nothing in the UN charter precludes recognition that there are rights beyond borders.... If the new commitment to humanitarian action is to retain the support of the world's peoples, it must be - and must be seen to be - universal, irrespective of region or nation. Humanity, after all, is indivisible<sup>32</sup>

The self defence excuse often offered as a justification, it is submitted, should be placed on anew legal framework which will stay in express terms when this right will reasonably crystalise. The reliance on the custom should be superseded by a form of treaty or an amendment of existing ones. The new parameters of sovereignty will be built on this regulatory framework in a way that will create new "handholds on the slippery slopes".

One possibility would be to recognize certain international institutions as the legitimate entities to decide on some of these parameters. This approach would require that such institution seriously discuss these limits and modes of activity, and then develops the limits with enough precision to be useful to national and international decision makers. This seems to be more carefully done in juridical institutions, which might well be an argument for more reliance on such institutions. However, "checks and balances" are needed regarding those institutions, lest they go wrong through faulty analysis, lack of adequate empirical information, or their frequent remoteness from the real-world activities that are relevant to reasoned and just opinions.

<sup>30</sup> Military and Paramilitary Activities in and Against Nicaragua 1986 I.C.J. 14; ICJ, Oil Platforms (Iran v. US), 2003 I.C.J. 161, 6 Nov. 2003; Armed Activities on the Territory of the Congo, 2005 I.C.J. 116, 19 Dec. 2005; Wall Opinion, 2004 I.C.J. 136.

<sup>31</sup> Dissenting Opinion of Judge Higgins, Dissenting Opinion of Judge Koroma; Dapo Akande, Nuclear Weapons, Unclear Law? Deciphering the Nuclear Weapons Advisory Opinion of the International Court, 68 Brit. Yearbook of Int'l Law 209 (1997).

<sup>32</sup> Kofi Annan, *Two Concepts of Sovereignty*, The Economist, September 18, 1999

In its 2003 analysis of Israel, The Human Rights Committee did allow for such a situation in which lethal methods could be employed, under the condition that –[b]efore resorting to the use of deadly force, all measures to arrest a person suspected of being in the process of committing acts of terror must be exhausted.<sup>33</sup> This suggests that in those cases where law enforcement measures fall short, one can look to a different legal framework.

Nonetheless, even when it is argued that it does not violate sovereignty to use force against certain individuals within a state, it does not rule out the possibility that such force could be interpreted as an act against the state itself. Although, it has been said that if the state in question cannot or will not eliminate the threat emanating from it, the United States' decision to take action into its own hands does not necessarily constitute force against that state.<sup>34</sup> Where however, the use of force produces numerous civilian casualties, it is difficult to argue that this does not constitute, to some degree, an attack on the nation itself.<sup>35</sup>

As stated in the preceding chapters, the politics of targeted killing has been absolutely a private business of the superpower countries which include the change of governments that pose threat to this policy. This is the most serious interference in the sovereignty of these weaker countries which people often times divert their allegiance to a foster country or organization promising to champion their cause including a reprisal against their perceived enemy. This is the present politics going on in Arabian Peninsula. Legitimacy in a sovereign State is somewhat sustained by what Thomas Franck described as symbolic pull.<sup>36</sup> In line with this, legitimacy in a State comprising mainly the middleclass of a local population having extremists and uninformed majority, is paradoxically sustained by a mere symbolic belief in existence of the state rather than the Marxist and Neo Marxist theory of a belief based on the sanity of a system and benefits derivable therefrom. This is why it is important to sustain the basic norms upon which the sovereignty is built in such States.

Iran seeking popularity in the Arabian Peninsula capitalizes on the drone warfare to create awareness of a big enemy and a consciousness of a sell out by the domestic regime. The A.Q.A.P (Al Qaeda in Arabian Peninsula) also gains prominence and recruits more supporters against the common enemy. The legitimate sovereignty dwindles, and the state becomes a sham. Only a long-term approach based on building relations with local communities, dealing with the economic and social drivers of extremism, and cooperating with tribes and local population of state actors as well as their armed forces will eradicate the threat of Islamic radicalism. Use of naked extraterritorial force devoid of necessary inter government cooperation will breed utmost distrust and provide further substrate to the dissident groups.

<sup>33</sup> Concluding Observations of the Human Right Committee on Israel CCPR/CO/78/ISR 21 August 2003 in Rebecca Perlman, Targeted Killing, Does Drone Warfare Violate International Law? *Journal of Public and International Affairs* (2011).

<sup>34</sup> Philip Alston, *Report of the Special Rapporteur on Extra Judicial, Summary or Arbitrary Executions* General Assembly, 11- 12, 28th May, 2010.

<sup>35</sup> Rebecca Perlman, Targeted Killing, *Does Drone Warfare Violate International Law?* *Journal of Public and International Affairs* 71 (2011).

<sup>36</sup> Thomas Franck, Power of Legitimacy Among Nations in John H. Jackson, *Sovereignty- Modern: A New Approach to Outdated Concept* (2003).