

ASSASSINATION & INTERNATIONAL HUMAN LAW

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Introduction:

Israel has adopted a policy of assassinations, much earlier than its racist assassination policy that was renewed during the Palestinian uprising against the occupation.

It goes back as far as 1947, when Israeli terrorists assassinated special UN Representative Count Bernadette¹.

International law prohibits without exception the extra-judicial killing of protected persons. Israel's policy of assassination clearly amounts to intentional or willful killing; such killings violate international humanitarian law, and human rights protocols. Since 9 November 2000 the Israeli Defense Force (IDF) has actively pursued a policy of deliberately targeting those alleged to have carried out, or to have planned to carry out, violent attacks against Israelis²

We will undertake this subject from the view of international law and international human rights.

I. Assassination Definition:

Assassination can be define as any kind of intended killing (murdering) by an attack exercising out of the judicial authority for political reasons.

Definition analyses:

- Killing (murdering): to deprive one of life³ so: hurting or injuring doesn't recognize as assassination.
- Intended: Assassination requires special criminal determination to deprive one of life.

¹ By cablegram dated 17 September (S/1002), Mr. Ralph Bunche, Personal Representative of the Secretary-General, informed the Security Council of the assassination in Jerusalem of Count Folke Bernadotte, United Nations Mediator, and Colonel Perot of the French Air Forces, a United Nations Observer.

² Palestinian Fatalities from September 29, 2000 to April 30, 2004 is 3152 among them 278 has been assassinating.

³ Merriam-Webster Dictionary.

- Attack: Assassination is an affirmative act so we can't imagine it to be taken by abstaining or negligence, such as refraining of keep someone alive without negligence premeditation⁴
- Extra-judicial : obviously that assassination consider as an illegal act because it happen out of judicial authority influence, actually every legislations prohibit extra-judicial killing of human being, even international law prohibit extra-judicial executions considering it as grave breaches of international humanitarian law & international human rights⁵
- For political reason: This is the kernel of assassination concept. Generally assassination doesn't perpetrate for unpolitical reasons, else it will take a different name such as murdering or other judicial description. So assassination in this meaning is apolitical tool can be using both by governments, individuals⁶ and organizations.

I have suggested this definition for assassination and give an analyses for it, & I hope it will help cleared it. So I will be able to continue depending on that understanding.

II. Assassination Position in International Law:

No doubt that international law is against assassination; International law prohibits without exception, the extra-judicial killing and considers it as a grave violated of international humanitarian law, and human rights protocols.

Some political writers doing their best to justify assassination disregarding the stable right of life, offering their opinion without presenting legitimate evidence or by using different illegal terms such as "Anticipatory self defense" without exert to give legitimacy of these terms!

Professor Louis Rene in his article:

"ASSASSINATION OF TERRORISTS MAY BE LAW-ENFORCING"⁷ wrote:

"No Crime without a Punishment is a sacred principle of international law Codified at Article 51 of the UN Charter is the customary right of anticipatory self-defense.

⁴Because the negligence premeditation is consider as premeditation.

⁵ Under the Fourth Geneva Convention extrajudicial killings constitute "grave breaches" and are subject to international jurisdiction.

⁶ Assassination can be exercise by individual to confirm an idea that he believes in. On November 4, 1995, Rabin was shot by Jewish fundamentalist Yigal Amir, after attending a peace rally in Tel Aviv's Kings Square. Amir strenuously opposed Rabin's signing of the Oslo Accords. For more information see AVINERI, Shlomo. "Murder in Zion." *The World Today*, 51 (December 1995), pp. 226-227. [ISSN 0043-9134; SocialSciAbs].

⁷ Louis Rene Beres Professor of International Law Department of Political Science Purdue University " ASSASSINATION OF TERRORISTS MAY BE LAW-ENFORCING" Tue, 31 Oct 95 19:02:03

A preemptive right that applies to attacks by terrorists as well as by enemy states. All viable alternatives to the assassination option also include violence, and may, in fact, exact a much larger toll in human life and suffering."

I have two critiques:

1-"No Crime without a Punishment" is not a "*sacred principle of international law*" it should be: (No crime and no punishment without [pre-existing] law⁸) A great gap between these two principles, the first one can't be found except at Jewish culture whereas the latest general principle is being found from antiquity to assure human nature for individual and stress his rights not to use for draw out it!

2-"*Codified at Article 51 of the UN Charter is the customary right of anticipatory self-defense*" Article 51⁹ of the UN Charter hasn't any indication to this strange expression "**Anticipatory self-defense**", Israel political writers always bring such as this terms in order to justify their unlawful acts which is according to international law should be condemns.

Impossibility to describe the right of Self-defense as an "anticipatory" due to conditions of exercising this right. Article 51 of the Charter is silent about whether 'self- defense' includes the pre-emptive use of force, in addition to the use of force in response to an attack. State practice is ambiguous, but tends to suggest that the anticipatory use of force is not generally considered lawful, or only in very pressing circumstances.

Particularly relevant example is the international reaction to an Israeli bombing attack on an Iraqi nuclear reactor Security Council resolution condemning Israel (resolution 487/1991), voting in favor of operative paragraph 1 of the resolution, whereby the Security Council strongly condemns the military attack by Israel in clear violation of the Charter of the UN and the norms of international conduct. Mr. Cassese concludes that, "If one undertakes a perusal of State practice in the light of Article 31 of the Vienna Convention on the Law of Treaties, it becomes apparent that such practice

⁸Nullum crimen sine lege, nulla poena sine lege.

⁹ Article 51: Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

does not evince agreement among States regarding the interpretation or the application of Article 51 with regard to anticipatory self-defense¹⁰."

Exercising of the right of self-defense should be limited by three conditions: The attack should be immediate or very soon to take place, clear danger, and the most important condition that a balance must be struck between respect for human rights and the interests of security it is known as "to balance between the attack and the defense " the principle of proportionality¹¹ recognized by international humanitarian law. International humanitarian law clearly states that hostile activities have to be "in progress." There is neither a preventive nor a punitive right to kill.

Unfortunately Israel has succeeded in creating the wide spread perception that struggle committed by the Palestinian paramilitary is reprehensible and never justified, but that the violence committed by the Israeli occupation forces is somehow defensible by creation new terms inserting it in the wrong sequence such as " Anticipatory self defense, Preventive self defense " these terms has been created to justify it's violence.

In his article¹² Professor Louis said: ***"What is clear, however, is that such an assassination may be judged law-enforcing according to international law."***

He tried to justify the Israel assassination policy by saying that: ***"For the moment, our world legal order still lacks an international criminal court with jurisdiction over individuals. Only the courts of individual countries can provide the judicial context for trials of terrorists. It follows that where nations harbor such criminals and refuse to honor extradition requests, the only decent remedies for justice available to victim societies may lie in unilateral enforcement action. Here, extrajudicial execution may be essential to justice."*** But how could we balance between this opinion and the stable refused for assassination in the soul of international law and international human rights?

I think it's still difficult to do that especially that Israeli occupying forces have carried out assassination attempts against activists of various Palestinian organizations, whom they accuse of carrying out or planning attacks against Israeli forces in the Occupied Palestinian Territories and/ or inside Israel. Israeli forces have begun to target the

¹⁰ International Law (Oxford, 2001) at p309

¹¹ Report of the Special Reporter of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with Commission resolution 1993/2 A

¹² Assassination of Terrorists may be Law-Enforcing Louis Rene Beres Department of Political Science Purdue University can be found at <http://www.afsi.org/OUTPOST/98SEP/sep3.htm>

political leaders of Palestinian organizations. All assassination attempts against Palestinians have been carried out in a summary fashion; with neither evidence being offered to link the targeted individual to attacks committed by Palestinian resistance fighters, nor efforts made to provide judicial review of the means and methods employed and the process by which individuals are chosen to be targeted for assassination. These acts indeed concedes a grave violation to the Universal Declaration of Human Rights especially articles number 3, 10 and 11¹³ furthermore These acts, which contradict totally the provisions of the International Covenant on Civil Political and Cultural Rights, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949¹⁴ and the First Additional Protocol thereto, constitute, according to the provisions of international public law and international humanitarian law, flagrant violations of human rights and war crimes.

Human rights instruments stipulate that when a government suspects an individual of criminal or subversive activity, that government is obligated to capture and try the person. The government must present its evidence against the individual under a transparent judicial process of inquiry, not to assassinate him!

SO assassination is a crime under international law, in both times of war and in times of peace.

III. Assassination and Right of Life:

The right to life finds its most general recognition in article 3 of the Universal Declaration of Human Rights. "Everyone has the right to life, liberty and security of person."¹⁵

Also article 6 of the International Covenant on Civil and Political Rights

¹³ Article 3: Everyone has the right to life, liberty and security of person.

Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11: 1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. 2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

¹⁴ Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August, 1949 entry into force 21 October 1950

¹⁵ Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

"1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life¹⁶."

In accordance with article 2 of the Universal Declaration of Human Rights and articles 2 and 26 of the International Covenant on Civil and Political Rights, and pursuant to several other United Nations declarations and conventions, everyone is entitled to the protection of the right to life without distinction or discrimination of any kind, and all persons shall be guaranteed equal and effective access to remedies for the violation of this right. Moreover, article 4, paragraph 2, of the International Covenant on Civil and Political Rights provides that exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any derogation from the right to life and security of the person. Various other treaties, resolutions, conventions and declarations adopted by competent United Nations bodies contain provisions relating to specific types of violations of the right to life. One of the most pertinent of these instruments is the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions¹⁷, Article 1 of these principles states: "Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority."

Under the Fourth Geneva Convention (ratified by Israel in 1951), extrajudicial killings constitute "grave breaches" and are subject to international jurisdiction.

Moreover creating what Amnesty International called "a culture of impunity¹⁸."

Under international law, exceptional circumstances "including a state of war or threat of war, internal instability, or any other public emergency" may not be invoked to justify executions by a state. International law does not allow for willful killings under any circumstances.

¹⁶ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

¹⁷ Adopted by the Economic and Social Council in its resolution 1989/65 of 24 May 1989.

¹⁸ AI Index: AFR 16/016/2002 (Public) News Service No: 170 26 September 2002.

In his report John Dugard¹⁹ said and he is right:

"The Israeli practice of assassinating suspected terrorists has inflicted death and injury not only on those targeted but on a substantial number of innocent civilians in the vicinity of such actions... On occasion, Israel's action in the occupied Palestinian territories is so remote from the interests of security that it assumes the character of punishment, humiliation and conquest."

Terje Roed-Larsen, the UN Special Coordinator for the Middle East Peace Process, reiterated the UN's consistent and vocal opposition to such assassinations. "Israel clearly has a right to live in peace and security," Mr. Roed-Larsen said in a statement, "but no country can resort to these extra-judicial measures."

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American F-16 fighter jets, Apache and Cobra helicopters, and TOW missiles are specifically designed for military combat against a conventional army. The West Bank and Gaza are urban, civilian settings. Gaza, the site of numerous attacks, has one of the highest population densities in the world; seven refugee camps fill a 25-by-8-mile stretch of land. Israel's use of combat and antipersonnel weapons in such densely populated civilian settings surely is not "self-defense" furthermore Israel says that it goes "to great lengths not to harm innocent bystanders." However, the use of heavy weaponry and artillery-including combat aircraft in a civilian setting-suggests otherwise. Given the urban density of most Palestinian towns, even a direct hit inevitably damages adjacent homes and shops.

Finally extrajudicial killings violate the fundamental principles of democracy, and the conviction that a person is innocent until proven guilty under a policy of extrajudicial killing, a government becomes prosecutor, judge, and executioner, it is unconstitutionally.

¹⁹ UN COMMISSION ON HUMAN RIGHTS Sixtieth session 8 September 2003 Item 8 of the provisional agenda Ref: E/CN.4/2004/6

Conclusion:

The recent assassinations of Hamas leaders Sheikh Yassin²⁰ and Dr. Abdulaziz Rantisi are part of a long term Israeli strategy, the latest in a series of actions taken by Israel toward the ultimate destruction of Palestinian society.

Such killings violate international humanitarian law, international criminal law, and human rights protocols.

It is clear that relevant human rights principles and provisions of international humanitarian law prohibit without exception, the extra-judicial execution of individuals. It is within this context that Israel's policy of assassination is a serious crime under international law. It clearly amounts to intentional and willful killing, which constitutes a grave breach of international humanitarian law, and could be subject to international criminal prosecution.

²⁰ The Commission on Human Rights Strongly condemns the continuing grave violations of human rights in the Occupied Palestinian Territory, in particular the tragic assassination of Sheikh Ahmad Yassin on 22 March 2004, in contravention of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 see E/CN.4/2004/L.4 23 March 2004.