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# Twenty Years of Drone Attacks

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By Mary Ellen O'Connell

November 15, 2022

On November 2, 2002, the United States conducted its first targeted killings using a drone. CIA agents based in Djibouti launched the drone's two Hellfire missiles at a vehicle traveling in rural Yemen, killing six.



Several weeks later the *Los Angeles Times* reported details, including the fact that while the U.S. Air Force controlled the drone fleet, the CIA ran the Yemen operation. Air Force lawyers had raised legal objections, while the CIA was “enthusiastic about the idea of shooting individual enemy leaders...” Plus, the Bush administration wanted a covert operation to try to keep the killings secret. But missile strikes are hard to hide, and in January 2003, UN Special Rapporteur Asma Jahangir investigated and concluded the U.S. had carried out extrajudicial killings in Yemen, unjustified by either the “global war on terror” or consent of Yemeni officials.

The time is right to again assess U.S. targeted killings. These are the intentional use of lethal force by governments to kill selected persons not in custody. Two aspects of the practice merit particular attention now: The impact on countering terrorism and the impact on the legal prohibition of the use of force. In addition to the anniversary, the *New York Times* recently reported that the White House had finished an 18-month review and Presidential Policy Memorandum (PPM) on targeted killings beyond armed conflict zones. The PPM is not publicly available, but the *Times* reports the practice will continue just with more presidential oversight and more care to spare civilians than in the Trump years. Otherwise, the use of drone-launched missiles, bombs, blades, and other munitions, including the drones themselves as kamikazes, will go on, as will other forms of intentional killing with military force outside hostilities. (For commentary on the article, see [JustSecurity](#) and [Lawfare](#).)

If accurate, the decision to continue targeted killings was reached despite the negative impact on both terrorism suppression and the rule of law. Drone attacks began for the purpose of eliminating Al Qaeda. Nevertheless, Al Qaeda is still very much with us, proven most recently by a U.S. targeted killing in August in a Kabul residential neighborhood. The victim was Ayman al-Zawahiri, the successor to Al Qaeda's founder, Osama bin Laden. Zawahiri took over when the U.S. killed Bin Laden and has likely already been replaced. Al Qaeda has survived persistent attacks as have the organizations it inspired—ISIS, Al-Shabaab, AQIM, AQIL, ISKP. In 2013, President Obama proclaimed targeted killings counter-productive because they fuel a cycle of revenge and anguish that only encourages terrorism, rather than defeating it. Even he, however, did not end drone strikes.

Targeted killing has also negatively impacted the law on the use of force. The U.S. has asserted one legal justification after another for twenty years. None rivals Jahangir's finding of extrajudicial killing. Following the August attack on al-Zawahiri, Craig Martin provided a helpful overview at [\*JustSecurity\*](#) of the various arguments and their weaknesses. Briefly, the Bush administration offered little more than vague references to the "global war on terror" as an excuse to kill suspects wherever found. Obama derided the idea of waging war on a concept when campaigning for president. Once in office, his attempts at justification were little better than Bush's. They included being in a worldwide war against Al Qaeda and redefining the terms of the right of self-defense. In 2016, the justification became a right to attack when a state was "unable" or "unwilling" to deal with situations as the U.S. wanted.

President Trump did not issue legal justifications for resort to force but implied a right to kill Iranian general Qassem Soleimani in a drone strike for Soleimani's past actions or future plans. The Biden administration reverted to Obama's "unable or unwilling" argument and has also claimed that weak, ineffective governments have the right to invite the U.S. to undertake targeted killings.

The PPM may or may not offer another argument. If so, it will inevitably aim, like all past arguments, at bypassing international human rights law. That law restricts government use of lethal force to the necessity of saving a life immediately. There is no right to pre-plan intentional killing, and there is no tolerance for the death of bystanders. No state has the right to consent to U.S. violation of these rights as Jahangir made clear in 2003. Modifications are permitted in only two cases: When a state has a right to resort to force in self-defense and when involved in the actual fighting of an armed conflict. In self-defense and in hostilities, fighters may be intentionally targeted and civilian deaths tolerated if not disproportionate. So the U.S. arguments attempt to either characterize situations as armed conflict when they are not or to dilute the restrictions on resort to force in self-defense under United Nations Charter Articles 2(4) and 51. (See analysis [here](#) and [here](#).)

The U.S.'s persistent attempts to re-interpret this law for its own purposes contrasts with its stance toward Russia, China, Iran, North Korea, and others. Critical voices have denounced the U.S. for condemning Russia while continuing to violate the Charter, including with targeted killings.

This perceived double standard has helped undermine respect for Articles 2(4) and 51. Russia has exhibited new depths of disrespect with its further invasion of Ukraine in February. Russia's attempt to eliminate Ukraine as a UN member is only the second example of its kind since the adoption of the Charter. The first was Iraq's invasion of Kuwait in 1990. The world opposed Iraq with near unanimity. Opposition to Russia's invasion has been far from unanimous. In March, 141 UN member states voted to condemn Russia. That left 52 states either voting against condemnation, abstaining, or failing to vote. On the day after the UN vote, Nico Krisch wrote on [this blog](#) of how U.S. and Western violations of Article 2(4) have clearly diluted the norm. He argued that rebuilding it will require new restraint.

Biden's new policy indicates this message has not been heard. The decision to continue a counterproductive practice is a testament to the strength of the Realist belief in military force that displaced faith in law in U.S. foreign policy during the Cold War. Promoters of Realism wanted to do just that—excise international law, “legalism-moralism” as they called it, from U.S. policy. Still, the tradition of honoring law hung on so long as the Soviet Union existed. Neither U.S. nor Soviet officials openly questioned Charter principles. Both deployed plenty of unlawful force but manipulated the facts to fit the law, not the other way around. This was true of interventions in Hungary, Vietnam, Czechoslovakia, Grenada, Afghanistan, and Panama. At the same time, huge efforts poured into weapons development and arms races because Realism teaches that security depends on military advantage and the projection of military power to maintain hegemonic status.

As the Soviet Union weakened, U.S. officials began to feel free to question the law they found constraining. In the 1980s, the U.S. ambassador to the United Nations, Jeane Kirkpatrick, debated Louis Henkin on the right to forcefully intervene to install democratic governments. Henkin countered drawing on his deep knowledge of war, law, and human rights:

[I]t is important that Charter norms—which go to the heart of international order and implicate war and peace in the nuclear age—be clear, sharp, and comprehensive; as independent as possible of judgments of degree and of issues of fact; as invulnerable as can be to self-serving interpretations and to temptations to conceal, distort, or mischaracterize events. Extending the meaning of “armed attack” and of “self-defense,” multiplying exceptions to the prohibition on the use of force and the occasions that would permit military intervention, would undermine the law of the Charter and the international order established in the wake of world war.

His wisdom went unheeded. When the Soviet Union collapsed, the U.S. continued investing in military force and weapons technology. The law was re-interpreted to justify using force for various policy goals. The Clinton administration undertook reprisal and punitive attacks as well as bombing Serbia for 78-days during the Kosovo crisis. In July 2001, the U.S. ambassador to Israel, Martin Indyk, emphasized in connection with Israeli targeted killings: “The United States government is very clearly on the record as against targeted assassinations. They are extrajudicial killings, and we do not support that.” Then 9/11 occurred and the combination of shock and belief in military force led to the very self-serving interpretations of which Henkin warned. The newly weaponized drone was quickly perceived as the ideal tool for the projection of military power in hard-to-reach places with no risk to U.S. lives. It was seductive technology that added to the interest in reinterpreting the law. U.S. presidents have yet to look back and have persuaded allies to travel down the same road to perdition.

Twenty years have passed since that first drone strike in Yemen, twenty-one years since 9/11, and thirty since the Cold War ended. These have been years of major violence and disregard for the prohibition on force with devastating consequences for human rights and the environment. Russia's drive to Kyiv marks a new era. It can be one to which international lawyers contribute constructively by rejecting false claims of legality whether for major invasions or targeted killings. Or the undermining of law can continue.