

Lethal Targeting on the Conventional Battlefield: An Ethical Argument

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Introduction

The U.S. defense establishment may face an ethical dilemma in the next conventional war. Several technological advances in the last two decades have made lethally targeting specific Soldiers possible during conventional operations. Additionally, the changing nature of warfare, in which an enemy will attempt to exploit asymmetries in relation to U.S. capabilities, may necessitate creative targeting methodologies beyond what the U.S. military tried in the Gulf War, OIF, or OEF. The familiarity the U.S. military has with lethal targeting may have decreased the ethical threshold for targeting in a conventional conflict. The U.S. is uniquely responsible for structuring the normative, or commonly accepted, understanding of lethal targeting. This article will address the contextual aspect of lethal targeting by addressing the *prima fascia* ethical considerations associated with such operations. It will also analyze lethal targeting based on international law and normative considerations. Lastly, the article will address the utility of targeting efforts within the context of *jus in bello* and *jus ad bellum*. The next war may allow the U.S. to target, based on better intelligence and more precise weaponry, those persons of an opposing military force. This specific targeting would lead to a political or morale advantage on the battlefield. With deference to the ethical concerns regarding such targeting, the U.S. should capitalize on those lethal targeting efforts and kill particular commanders or opposing armies because doing so is normatively and morally permissible. Lethal targeting, categorized for this paper into “targeted killing” and “assassination,” depending on context, is a fundamental capability the U.S. may have over its enemies. It is important to know the definitions of assassination and targeted killing to understand lethal targeting within the context of a conventional war.

There is important U.S. military historical context for targeting particular military leaders in war. Providing several examples of such operations is instructive. However, the distinguishing element in future wars, opposed to past wars, very well may be the frequency of targeting efforts. A normative shift in the military over the last decade, as well as technological capability, may make targeting specific persons on the battlefield a rule rather than an exception. Three examples will illustrate the historical context of targeting. The first is the operation carried about by the U.S. Navy to kill Admiral Isoroku Yamamoto during World War II. Then we will discuss decisions to target Saddam Hussein during the Gulf War. Lastly, the effort to target Osama Bin Laden, specifically at Tora Bora, is germane to the discussion of targeted killing on the battlefield.

Examples of Lethal Targeting on the Conventional Battlefield

Operation Vengeance, the mission to kill the Japanese Admiral Isoroku Yamamoto during World War II, provides the best example of lethal targeting conducted by U.S. forces in combat. The admiral was conducting an inspection of the Solomon Islands and New Guinea in April 1943. On 14 April Nisei military intelligence interpreters decoded orders using naval signal intelligence intercepts which detailed the itinerary of Admiral Yamamoto later in that month. The intelligence confirmed that the admiral would be flying in a bomber with six A6M Zero fighters providing an escort. The Navy provided the information to President Roosevelt, who authorized an operation to kill Yamamoto. Eighteen P-38 fighters from the 339th Fighter

Squadron, 347th Fighter Group were tasked to penetrate Japanese radar coverage and intercept the bomber. The fighters did so at 0934 on 18 April, engaging the bomber with their 20mm cannons and .50-caliber machine gun. Though the bomber eventually crashed into the jungles of New Guinea, Japanese authorities determined that before the crash a bullet impacted the bomber and killed Yamamoto. The event raised U.S. morale and struck a blow to Japanese operational effectiveness. The U.S. government suggested that the killing of Yamamoto was a chance event, though this wasn't true.¹ The killing of Yamamoto established the precedent for the targeted killing of military leaders by the U.S. within the context of a conventional war. However, the targeting of Yamamoto is a near-perfect case. The U.S. military has attempted other operations, such as attacks on Saddam Hussein, which were less successful.

The targeting of Saddam Hussein by the U.S. military during Operations Desert Storm and Iraq Freedom is instructive in the lethal targeting of a military leader during conventional operations and the U.S. political justifications for such action. During Operation Desert Storm, Robert M. Gates, a National Security counselor at the time, stated that the killing of Saddam Hussein within the context of "bombing leadership targets" was a goal of the initial bombing campaign at the beginning of the Gulf War. The U.S. effort targeted 580 command and control compounds and 260 "leadership targets, including Saddam Hussein's palaces and other buildings he had been known to frequent."² The U.S. again sought to kill Hussein during its opening salvo of Operation Iraqi Freedom, where the U.S. military tasked F-117A Nighthawks to drop a pair of EGBU-27 bunker-busting bombs on Dora Farm in the early morning hours of 19 March 2003. A group of informants passed information that Saddam, and his two sons, Uday and Qusay, would be at the compound.³ In both cases targeting Saddam, the intelligence community had little knowledge of Saddam's location at any given time. Saddam would "move around each night, sometimes more than once" and would use decoys to deceive those that would try to find him.⁴ The targeting of Saddam Hussein illustrates the problems associated with intelligence in targeting operations, both pre- and post-strike. However, the utility of the example is problematic because Saddam Hussein was a political, as well as a military, target as the dictator of Iraq. The highest levels of the U.S. government debated on the targeting of both Yamamoto and Saddam Hussein and the president made the decision to target the individuals. This level of governmental oversight was not the case in the example of Osama Bin Laden in Tora Bora.

Osama Bin Laden's role in the Battle of Tora Bora, as a part of a larger Taliban and Al-Qaeda force, provides a relevant example of how to conduct lethal targeting on a contemporary battlefield. There are inconsistencies in using the targeting of Osama Bin Laden as an example of conventional targeted killing, such as his status as a non-state actor. However, the focus of this anecdote is on Bin Laden's tactical role in the battle. Members of the 5th Special Forces Group deployed to Afghanistan in 2001 in the beginning stages of Operation Enduring Freedom. The team conducted laser designation of Taliban and Al-Qaeda forces for precision bombing in support of the Northern Alliance, a semi-conventional force opposed to the Taliban and the Al-Qaeda (AQ) terrorists that conducted the 9/11 attacks. The Northern Alliance and U.S. forces chased the Taliban-AQ forces into the Tora Bora Mountains in eastern Afghanistan and the boundary with Pakistan's Federally Administered Tribal Areas (FATA). The Central Intelligence Agency (CIA) had intelligence that Bin Laden was with the force in Tora Bora. During the campaign, the U.S. mounted massive air strikes to destroy Taliban-AQ positions and kill Bin Laden. Team Juliet of the 5th Special Forces Group was able to intercept and translate some messages thought to be transmitted by Bin Laden inside Tora Bora. The team identified a group of fighters, including Bin Laden, entering a cave. The team directed aerial bombardment of the cave entrance. They thought they killed Bin Laden but he had escaped. It is clear that Bin Laden withdrew from Tora Bora, but did so under significant pressure by Team Juliet.⁵ There is no unclassified evidence that there was oversight of the operation outside of Afghanistan. This presumed lack of oversight in the targeting operation contrasts with the operations against Yamamoto and Hussein, but more important is the transition Team Juliet made from conventional aerial bombing the Taliban and Al-Qaeda to lethal targeting of Bin Laden. The distinction between "leadership targets," "targeted killing" and other activities that fall under the more insidious term "assassination" are important.

Moral Arguments of Lethal Targeting

The crux of the definition of assassination has to do with its ‘treacherous’ nature and its focus on accomplishing political consequences. The term assassination has several definitions but is not defined by the 1907 Hague Conventions, 1949 Geneva Conventions, or the United Nations Charter. Assassination as defined during an armed conflict is “the specific targeting of a particular individual by treacherous or perfidious means.”⁶ The Hague convention notes that “it is especially forbidden...to kill or wound treacherously individuals belonging to the hostile nation or army.”⁷ A 1989 Army Judge Advocate memorandum defines assassination in peacetime as “murder of a targeted individual for political purposes.”⁸ Lastly, Abraham D. Sofar, a former legal advisor for the U.S. State Department, notes that assassination is “any unlawful killing of particular individuals for political purposes.”⁹

Often military leaders are a part of political decision-making and are more important politically than tactically. Helmuth von Moltke the Younger, Chief of the German General Staff during World War I, is a perfect example of a military leader who advised political action. His help in developing and implementing the Schlieffen Plan, which counselled invalidating Belgium sovereignty during the invasion of France, had significant political, as well as military, consequences.¹⁰ The marriage of politics with military leaders is not the only remnant of the past. There are many dictators in countries alive today that marry military and political decisions. However, the phenomenon is not isolated to dictatorships; the U.S. also mixes the political and the military. The geographic combatant commanders, for instance, take part in “military diplomacy” by developing “regional engagement strategies, efforts to build capacity in other countries, strategic information, and the disbursement of humanitarian, development, and security assistance.”¹¹ Examples of military leader involvement in politics abound, even in the U.S. They include General Curtis LeMay’s advice against a blockade of Cuba during the Cuban missile crisis, and advocacy of sanctions and other political decisions by General Colin Powell during Operation Desert Shield.¹² Beyond direct military involvement in politics, sometimes the persona of military leaders and their effect on Soldiers and citizens of the leader’s country, far exceed their tactical significance. Thus, lethally targeting specific individual Soldiers, usually strategically important officers, could be an act of assassination because its political consequences are greater than its tactical consequences.

Lawful combatants (members of an army, navy or air force) are normatively the executors of a nation’s military policy and receive protection of ‘combatant equality’ under the laws of international armed conflict.¹³ Combat equality is the principle that absolves a Soldier, no matter which nation for whom he fights, from criminal prosecution unless involved in war crimes. Unlawful combatants, as defined by Solis earlier in this article, are not subject to the same principle of combat equality, which designates that “unless soldiers are, in some sense, criminals, there is no cause to hunt them down and kill them.”¹⁴ A Soldier, indiscriminately placed on a foreign battlefield by his superiors, is fighting more for self-preservation than for any other reason, ignorant of *jus in bello*.

The ethical foundations for combat equality, far from applying to all Soldiers, exists along a continuum as military leaders become more senior and are increasingly responsible for political decisions to go to war and how to conduct it. The international community holds Soldiers to the moral standard of *jus in bello* (how the war is conducted), but the common Soldier was not directly involved in the decision to conduct the war, *jus ad bellum*. However, combat equality may erode somewhat when one country invades another, when the military’s strategic position is not de facto self-defense, and the Soldier understands his or her role as an invader. The bellicose foreign policy of a country could be construed as a criminal act if the country seeks to impugn another country’s citizens of “their right to self-determination, freedom, and independence” or in disruption of “territorial integrity.”¹⁵ Empirically, the normative conclusion is that an aggressive action by a country does not fall on the shoulders of its Soldiers. The common Soldier of Napoleon or Hitler’s armies was not treated like a criminal after the war. However, the Nuremberg trials, and later UN Resolution 3314,

do bring attention to the idea that there is a continuum used to define the authority and moral innocence of a Soldier.

The most problematic distinction, as it relates to combat equality, are those general officers that are intimately involved with political decisions to go to war and how to conduct it from a political and strategic viewpoint. These officers, directly participating in the conduct of a bellicose foreign policy against another country may be less equal as a combatant and more of a war criminal than the common Soldier focused on self-preservation. This position does pre-suppose the ability to assign the label of “aggressor” to a particular nation. The distinction of “aggressor” is hard to make because different perceptions of aggression must be taken into account and are often situational. An additional consideration is that Soldiers closer to political decision makers have a much better understanding of *jus in bello*, the way warfare is conducted, and are not morally innocent. This type of Soldier has a level of understanding that a common Soldier with a “narrow grasp of world events, limited political participation, and susceptibility to political indoctrination” may not be able to achieve.¹⁶ Considering this argument, it seems that the echelon at which the spectrum of combat equality dissipates, and thus the moral imperative for targeted killing begins, is situational. International norms and laws helped to define further situations in which targeted killing is appropriate in general terms and specific to the conventional battlefield.

Legal and Normative Arguments of Lethal Targeting

The idea of combat equality and the lawfulness of a combatant is present in the laws of international armed conflict as far back as the Civil War. The 1863 Lieber Code roots U.S. policy in a strong moral imperative against assassination. However, Lieber assumes the ability to distinguish between a criminal and a combatant in his definition of assassination. The Lieber Code was written by a Prussian immigrant jurist to the United States, Francis Lieber, as Lincoln’s “General Order 100, Instruction for the Government of Armies of the United States in the Field.”¹⁷ The code’s section IX addresses assassination and states that a Soldier of an opposing country is not an “outlaw, who may be slain without trial...”¹⁸ He assumes actions by Soldiers on the battlefield, wrought of self-defense, are required due to the belligerence of their governments as an *a priori* position.¹⁹ The international community used the Lieber Code as a guide to constructing the 1907 Hague Convention stance on assassination that “has survived in more or less the same form in subsequent international agreements and conventions.”²⁰ The Hague Convention established the norm against assassination and the imperative of self-defense of the combat Soldier, a stance that eroded over time.

The Church Committee, created by the U.S. congress, specifically addressed the idea of killing civilian foreign leaders as it applied to U.S. policy and clarified the government’s stance on lethal targeting. The 1975 U.S. Congressional review of the federal intelligence community investigated several allegations of U.S. involvement in the assassination of foreign leaders. While U.S. agents were not successful in any assassination attempt on a foreign leader, there was an admission concerning the participation of various intelligence agencies of the U.S. in attempts to orchestrate such assassinations. Interestingly, the committee supported the condition that the killing of foreign officials “absent a declaration of war or the introduction of U.S. Armed Forces” would be a criminal offense, and thus a form of murder.²¹ The committee’s report prompted President Gerald Ford to issue Executive Order 11905 in 1976. This order stated, “no employee of the United States Government shall engage in political assassination.” The loopholes in the phrasing of this EO are evident, with an emphasis on *political* assassination and *engaging* in the act, leaving open the possibility of using proxy agents. The wording was interesting, especially since the majority of the cases that the Church Committee investigated ultimately used proxies in attempting to kill foreign leaders. In 1978, President Jimmy Carter sought to close some of those loopholes in EO 12036, which states, “no person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.” The same language was brought forward by President Ronald Reagan into EO 12333,

which remains a standing EO. The constant theme through the EOs is that federal law forbids assassination. However, there are still some unanswered questions regarding the language in the EOs. Primarily, a precise definition of assassination versus lethally targeting combatants.

War being an “extension of politics by other means” shifts the moral foundation of lethal targeting and redefines “perfidy” as “surprise.” Gary Solis, in particular, confirms this stance by stating that military necessity justified the operation to kill Yamamoto and that military leaders do not fall under the same particular moral designation of targeted killing.²² This idea is contrary to the position of Lieber, which outlines the moral innocence of the individual Soldier, however, conforms to the shift in perception precipitated by the Church Committee. Interestingly, Solis also places the role of government officials within the category of ‘civilians,’ depending on their position and involvement in war making.²³ Solis’ definition includes the president, the secretary of defense, and similar government officials with authority associated with the war effort. It is their decisions that propelled the country into war in the first place. Certain military leaders are also involved in these decisions to go to war and how the war is conducted. Thus, it seems the legal threshold for lethal targeting has declined since the Hague Conventions through contemporary definitions used to justify the targeting of “unlawful combatants” in the War on Terror.

Norms against assassination were in place to play to the strengths of states that have large armies. In an age where the United States has a strong military, lethal targeting by the U.S. may degrade the norm against assassination.²⁴ Historically, the norm against assassination is thought to have been a deliberate agenda by those countries that have a larger military than their neighbors, to put pressure on smaller nations not to use alternative methods such as assassination that would circumvent military might. Assassinating leaders may introduce disruptive and retaliatory tactics to war.²⁵ For example, in 1610 an anarchic organization assassinated the religiously progressive King Henry IV of France, causing infighting and conflict of the French government; eventually leading to the 30 Years War.²⁶ This is one of only a few examples where killing leaders have precipitated larger political-military issues. However, lethal targeting on the conventional battlefield begs an additional argument, and that is its utility; especially concerning its ability to prevent or end major hostilities.

Utilitarian Argument of Lethal Targeting

The number of Soldiers in the U.S. military has become less relevant given the U.S. military’s ability to conduct precision strikes based on highly sophisticated intelligence and satellite imagery. The U.S. military has always sought to increase the effectiveness of each Soldier. This policy of efficacy is why the tooth-to-tail ratio, the ratio of Soldiers directly involved in tactical operations to Soldiers in support of those fighting in the U.S. military, has continued to decrease over time from under half to over three-quarters of the force from World War I to Operation Iraqi Freedom.²⁷ Additionally, precision weapons allow small, highly trained Soldiers to place fire on enemy positions accurately.²⁸ Precision weapons can very quickly be oriented based on military intelligence of distinct persons, turning the purpose of the operation into lethal targeting. Of course, the question becomes what the Soldier can find through intelligence that will make a large impact on the battlefield. Few other countries possess the capabilities of the U.S. in satellite technology and technical intelligence. The ability to precisely strike, either with precision guided munitions or special operations forces, against very specific hostile forces is an asymmetric advantage that only the U.S. and a few other countries are uniquely capable of doing.²⁹

An emphasis on lethal targeting decreases the chances of collateral damage inherent in the wide-scale deployment of troops against conventional and unconventional targets. Lethal targeting, by either air delivered munitions or special operations forces (SOF), have a small footprint. An important distinction of lethal targeting is that by definition the government, not non-state actors, are carrying out the action. This difference is significant for several reasons. First, the intentions of state policymakers are assumed to be furthering state objectives, versus a lone assassin’s attempt to destabilize a system for destabilization’s sake.

Second, government actions include a fair amount of oversight of targeted killing, unlike individual actors. This control provides targeted killing a legitimacy that assassination, or other acts like it, committed by individual (possibly mentally ill) agents do not have.

Conclusions

There is little moral obstruction to lethal targeting on the conventional battlefield but it is important to understand the sometimes blurry line between peacetime and wartime international laws; particularly in this instance as it applies to lethal targeting. International law has maintained the preeminence of combatant equality, though the U.S. normative interpretation of lethal targeting has become more permissive since the turn of the century. This permissiveness is especially apparent as it relates to the killing of military leaders. The Civil Wars' Lieber Code and the Hague Convention of 1907 developed the idea that a Soldier involved in the war was not by consequence a criminal. A focus on post-war criminal trials, political assassination through mid-century, and practical experiences with lethal targeting during combat operations have degraded this normative viewpoint, especially for strategic leaders.

There is a distinct utility in conducting lethal targeting, decreasing the number of combatants involved, and affecting very specific centers of war making. The advent of technological advances in weaponry and intelligence have made the efficacy of lethal targeting increasingly morally plausible. Efforts to decrease the suffering in war, both by the Soldiers involved in the conflict and civilians' experiences collaterally, both abide by the use of lethal targeting in a conventional war. Lethal targeting in a conventional war is ethically defensible, though situationally dependent. The U.S. military must strike a delicate balance in determining the tactical utility of targeting versus the moral imperative of combat neutrality. Lethal targeting must have a positive impact on ending the war to be ethically solvent. If lethal targeting meets this threshold then targeting becomes a function of possibility.

Endnotes

- 1 Burke Davis, *Get Yamamoto* (New York: Random House, 1969), 151-221.
- 2 Walter Pincus, “Saddam’s Death Is a Goal, Gates Says,” *Washington Post*, Page A36 (February 15, 1998), <http://www.washingtonpost.com/wp-srv/inatl/longterm/iraq/stories/saddam021598.htm>
- 3 Bob Woodward, “U.S. Aimed for Hussein as War Began,” *Washington Post*, April 22, 2004, 1A. http://www.washingtonpost.com/wp-dyn/articles/A32572-2004Apr21_3.html
- 4 Bob Woodward, “U.S. Aimed for Hussein as War Began,” *Washington Post*, April 22, 2004, 1A. http://www.washingtonpost.com/wp-dyn/articles/A32572-2004Apr21_3.html
- 5 Gary Bernstein, *Jawbreaker: The Attack on Bin Laden and Al-Qaeda* (New York: Three Rivers Press, 2005), 269-276.
- 6 Matthew J. Machon, “Targeted Killing as an Element of U.S. Foreign Policy in the War on Terror” (monograph, School of Advanced Military Studies, Fort Leavenworth, Kansas 25 May 2006)
- 7 *Convention (No. IV) Respecting the Laws of Customs of War on Land, with Annex of Regulations*, 18 October 1907, Annex 1, 36 Stat. 2277, TS 539 (26 January 1910), art. 23(b).
- 8 Judge Advocate Memorandum of Law (27-1a) <https://www.law.upenn.edu/institutes/cerl/conferences/targetedkilling/papers/ParksMemorandum.pdf> (accessed 21 March 2017).
- 9 Abraham D. Sofaer, “Terrorism, the Law, and the National Defense,” *Military Law Review* 126 (1989): 117.
- 10 Isabel V. Hull, *Absolute Destruction, Military Culture and the Practices of War in Imperial Germany* (Ithaca, NY: Cornell University Press, 2005), 171–81.
- 11 Shoon Murray, “Ambassadors and the Geographic Combatant Commands,” *EMC Chair Conference Paper*. [https://www.usnwc.edu/Academics/Faculty/Derek-Reveron/Workshops/Maritime-Security,-Seapower---Trade-\(1\)/papers/murray.aspx](https://www.usnwc.edu/Academics/Faculty/Derek-Reveron/Workshops/Maritime-Security,-Seapower---Trade-(1)/papers/murray.aspx) (accessed 21 March 2017).
- 12 John Garofano, “Deciding on Military Intervention: What is the Role of Senior Military Leaders?” *Naval War College Review* (Spring 200): 48. <https://www.usnwc.edu/getattachment/bf1e3c5d-26f5-46f7-8d7b-9b2de1e7545f/Senior-Military-Leaders-and-Intervention-Decisions.aspx>
- 13 Michael Gross, *Moral Dilemmas of Modern War* (New York: Cambridge University Press, 2010), 33.
- 14 Michael Gross, *Moral Dilemmas of Modern War* (New York: Cambridge University Press, 2010), 34.
- 15 UN General Assembly Resolution 3314 (XXIX), Definition of Aggression (General Assembly 29th Session, December 14, 1974): 142-4.
- 16 Michael Gross, *Moral Dilemmas of Modern War* (New York: Cambridge University Press, 2010), 34.
- 17 *Encyclopedia Britannica* (December 9, 2014), <https://www.britannica.com/biography/Francis-Lieber> (accessed March 8, 2017).
- 18 Francis Lieber, “General Orders No. 100: The Lieber Code,” *The AVALON Project: Documents in Law, History and Diplomacy*, (2008), http://avalon.law.yale.edu/19th_century/lieber.asp#sec9 (accessed March 8, 2017).
- 19 Michael Gross, *Moral Dilemmas of Modern War* (New York: Cambridge University Press, 2010), 29.

- 20 Ward Thomas, *The Ethics of Destruction* (Ithaca, New York: Cornell University Press, 2001), 59.
- 21 U.S. Government Printing Office, “Church Committee: Interim Report - Alleged Assassination Plots Involving Foreign Leaders.” <https://www.maryferrell.org/showDoc.html?docId=1156&search=definition#relPageId=298&tab=page> (accessed March 8, 2017).
- 22 Gary Solis, “Targeted Killing and the Law of Armed Conflict.” (Naval War College), <https://www.usnwc.edu/getattachment/764f1498-9f87-406c-b8e5-0068336aa9ed/Targeted-Killing-and-the-Law-of-Armed-Conflict---S>.
- 23 Ward Thomas, *The Ethics of Destruction* (Ithaca, New York: Cornell University Press, 2001), 82-83.
- 24 U.S. Department of the Army Training and Doctrine Command, *The Army Capstone Concept: Operational Adaptability; Operating Under Conditions of Uncertainty and Complexity in an Era of Persistent Conflict*. TRADOC Pamphlet 525-3-0 (Washington, DC: U.S. Department of the Army, Training and Doctrine Command, October 31, 2014), 12-14.
- 25 Ward Thomas, *The Ethics of Destruction* (Ithaca, New York: Cornell University Press, 2001), 61.
- 26 Stephen Toulmin, *Cosmopolis: The Hidden Agenda of Modernity* (New York: Free Press, 1990), XX.
- 27 John McGrath, *The Other End of the Spear: The Tooth-to-Tail Ratio (T3R) in Modern Military Operations* (Ft. Leavenworth: Combat Studies Institute Press, 2007), 64-67.
- 28 George Friedman, *The Next 100 Years: A Forecast for the 21st Century* (New York: Anchor Books, 2009), 178.
- 29 Robert Farley, “America’s Ultimate Weapon of War: Precision-Guided Munitions,” *The National Interest*, (October 2, 2014), <http://nationalinterest.org/feature/americas-ultimate-weapon-war-precision-guided-munitions-11389> (accessed March 8, 2017).