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ausländisches öffentliches Recht und Völkerrecht

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Roland Otto

Targeted Killings and International Law

Max-Planck-Institut für ausländisches
öffentliches Recht und Völkerrecht



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öffentlichen Recht und Völkerrecht

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Roland Otto

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Göttingen, December 2010

Roland Otto

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Introduction

The topic of “targeted killings” is strongly – but by no means exclusively – related to the State of Israel. Since the 1970s, dozens of alleged “terrorists”¹ are reported to have been assassinated by Israeli security forces in Israel and abroad.² In the early 1990s a number of human rights associations alleged that the Israel Defence Forces had set up units of “pseudo-Arabs” whose official mission was to catch wanted terrorists, but whose operation procedures *de facto* allowed the forces to kill their targets in many cases rather than arrest them.³ However, such a practice was vehemently denied by Israel and is thus at least not the official beginning of a policy of targeted killings.⁴

A. The Recent Situation in Israel

The topic became more prominent when Israel, as a consequence of the sharp escalation of the Israeli-Palestinian Conflict in October 2000, officially adopted a strategic military policy aimed at “neutralizing terrorist organizations” by “targeting wanted terrorists” suspected of initiating, planning, and executing terrorist activities against Israeli citizens.⁵ The Israeli Deputy Minister of Defence stated:

¹ The term “terrorism” will be examined thoroughly *infra*, Introduction, Chapter F) II.

² Gal Luft, ‘The Logic of Israel’s Targeted Killing: It’s Worked – Most of the Time’, in: 10 *Mid. E. Q.* (2003), pp. 3-14, at 3-7.

³ Compare Emanuel Gross, *The Struggle of Democracy Against Terrorism: Lessons from the United States, the United Kingdom, and Israel*, Charlottesville 2006, p. 222.

⁴ See UN General Assembly, Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories, Report of October 21, 1992, UN Doc. A/47/509 (1992), paras. 48-49; B’Tselem, ‘Activities of the Special Units in the Territories’, Report of May 1992, pp. 27-52.

⁵ Gross, *Struggle of Democracy*, p. 222.

I can tell you unequivocally what the policy is. If anyone has committed or is planning to carry out terrorist attacks, he has to be hit ... It is effective, precise, and just.⁶

In the context of the al-Aqsa Intifada,⁷ within less than two and a half years, 1,828 Palestinians are reported to have been killed by the Israeli Forces. At least 128 of them are reported to have lost their lives as a result of the Israeli policy of targeted killings, including 42 bystanders in such operations.⁸ Presently,⁹ these numbers have risen to 4,396 Palestinians killed by Israeli Forces. This number includes 372 persons reported to have been killed during targeted killings, 147 persons of whom are reported to having been bystanders.¹⁰ According to these numbers, innocent people make up about 39% of the persons killed in Israeli targeted killings.¹¹

⁶ Statement by Israel's Deputy Minister of Defence *Ephraim Sneh*, quoted in: UN Comm'n H.R., *Question of the Violation of Human Rights in the Occupied Arab Territories, including Palestine – Report of the Human Rights Inquiry Commission established pursuant to Commission Resolution S-5/1 of 19 October 2000*, UN Doc. E/CN.4/2001/121 (March 16, 2001), p. 17 (para. 54).

⁷ The 2000-2005 al-Aqsa Intifada is also referred to as the Second Intifada, as opposed to the 1987-1993 First Intifada, *compare infra*, Part Five, Chapter A) II. 1. d).

⁸ Orna Ben-Naftali; Keren R. Michaeli, 'Justice-Ability: A Critique of the alleged Non-Justiciability of Israel's policy of Targeted Killings', in: 1 *J. Int'l Crim. Just.* (2003), pp. 368-405, at 370 with further references. During the same period, 460 Israeli civilians and 216 Israeli security personnel are reported to have been killed by Palestinians, *see ibid.* This thesis is in no way meant to relativise any violent action taken by either side. Also killings of Israelis by Palestinians raise issues of international responsibility, *see e.g.* Demian Casey, 'Breaking the Chain of Violence in Israel and Palestine: Suicide Bombings and Targeted Killings under International Humanitarian Law', in: 32 *Syracuse J. Int'l L. & Com.* (2005), pp. 311-344, at 330-336.

⁹ Including the period of September 29, 2000 till December 31, 2007.

¹⁰ *See* B'Tselem, 'Statistics: Fatalities 29.9.2000-31.12.2007'. During the whole period, 705 Israeli civilians and 325 Israeli security personnel are reported to have been killed by Palestinians, *see ibid.*

¹¹ Casey, 32 *Syracuse J. Int'l L. & Com.* (2005), at 316 refers to at least 30-35%. According to Helen Keller/ Magdalena Forowicz, 'A Tightrope Walk between Legality and Legitimacy: An Analysis of the Israeli Supreme Court's Judgment on Targeted Killing', in 21 *Leiden J. Int'l L.* (2008), pp. 185-221, at

The most prominent cases under this policy, among others, were the eliminations of Sheikh *Abmed Ismail Yassin*,¹² the founder of the Hamas¹³ organisation and *Salah Shehade*, the commander of the military wing of the Hamas¹⁴. After many eliminations had taken place, Israel finally officially accepted responsibility for the policy both through notices issued by Israel Defence Forces' spokesmen¹⁵ and through interviews given by senior political figures and defence officials.¹⁶

Until now, these operations have been executed by using three main techniques, namely sniper shooting, bomb laying (especially placing bombs in cars and phone booths) and pinpoint air strikes by fighter planes and helicopter gunships. Almost all operations have taken place in the Occupied Palestinian Territory¹⁷ and most targets have been mid-

186, some 38 per cent of those killed in total were bystanders, and only 62 per cent of them were accurately targeted.

¹² Margot Dudkevitch, 'Sheikh Ahmed Yassin killed in Airstrike', in: *Jerusalem Post*, Online Edition, March 22, 2004.

¹³ The word "Hamas" means "strength and bravery". The full Name of the organisation is "Harakat al-Muqawama al-Islamiyya" or "Islamic Resistance Movement".

¹⁴ Luft, 10 *Mid. E. Q.* (2003), at 7-8; Gross, *Struggle of Democracy*, p. 238; Sharon Weill, 'The Targeted Killing of Salah Shehadeh: From Gaza to Madrid', in: 7 *J. Int'l Crim. Just.* (2009), pp. 617-631, especially on the criminal investigations in Spain concerning the killing of *Shehadeh*.

¹⁵ See e.g. the November 9, 2000 statement by Major General *Yitzhak Eitan*, Chief of the Army's Central Command issued shortly after the attack on *Hussein 'Abayat*: "You have to understand that such actions are taken by high levels of the IDF and by high levels of the Israeli government, and I would say that it was the same this time and I would prefer not to add anything about it. ... The action was based on intelligence information. It was performed with accuracy by the Israeli air force.", quoted in: Amnesty International, *Israel and the Occupied Territories, State Assassinations and Other Unlawful Killings*, AI Doc. MDE 15/005/2001 (February 21, 2001), p. 7.

¹⁶ See e.g. the statements by Prime Minister *Ariel Sharon*: "The goal of the plan is to place the terrorists in varying situations every day and to knock them off balance so that they will be busy protecting themselves.", quoted in: Deborah Sontag, 'Israelis, Suspecting Mortars, Raid Camp; 2 Arabs Die', in: *New York Times*, April 12, 2001; compare also Gross, *Struggle of Democracy*, p. 222.

¹⁷ On this terminology "Occupied Palestinian Territory" compare *infra*, Introduction, Chapter F) I.

to high-level officials of various Palestinian militant organizations involved in violent operations against Israeli targets.¹⁸

A petition brought before the Israeli Supreme Court against targeted killings was first rejected by reasoning that “choice of means of warfare” was not justiciable.¹⁹ The Court ruled that

the choice of means of war employed by respondents in order to prevent murderous terrorist attacks before they happen, is not among the subjects in which this Court will see fit to intervene.²⁰

Obviously, the policy became the subject of intense public, political, and legal controversy in domestic and in international fora. In that discussion, the policy of targeted killings has been labelled as “unlawful killings” by the U.K. Foreign Secretary *Jack Straw*²¹ and as a “summary execution that violates human rights” by *Anna Lindh*,²² then the Foreign Minister of Sweden. It has been described as being “contrary to

¹⁸ Yuval Shany, ‘Israeli Counter-Terrorism Measures: Are they “kosher” under International Law?’, in: Michael N. Schmitt/ Gian Luca Beruto (eds.), *Terrorism and International Law: Challenges and Responses*, San Remo 2003, pp. 96-118, at 103.

¹⁹ Supreme Court of Israel, *Barakeh v. Prime Minister (“Targeted Killings” Admissibility I)*, H.C.J. 5872/01, Judgment of January 29, 2002, in: 56 *Piskei Din* (2002), Issue 3, p. 1; compare also Eyal Benvenisti, ‘Ajuri et. al. – Israeli High Court of Justice, 3 September 2002’, in: 9 *Eur. Pub. L.* (2003), pp. 481-491, at 487 (footnote 18).

²⁰ Supreme Court of Israel, *“Targeted Killings” Admissibility I*; also quoted in: Supreme Court of Israel, *The Public Committee Against Torture in Israel and LAW (Palestine Society for the Protection of Human Rights and the Environment) v. The State of Israel et al. (“Targeted Killings” Merits)*, H.C.J. 769/02, Judgment of December 11, 2006, para. 9, English translation reprinted in: 46 *ILM* (2007), pp. 375-408, at 378.

²¹ Matthew Tempest, ‘UK condemns “unlawful” Yassin killing’, in: *Guardian*, March 22, 2004.

²² The then Swedish foreign minister, *Anna Lindh*, told the Swedish news agency TT with reference to the United States dropping a bomb on six al-Qaeda terrorists in Yemen: “If the USA is behind this with Yemen’s consent, it is nevertheless a summary execution that violates human rights. If the USA has conducted the attack without Yemen’s permission it is even worse. Then it is a question of unauthorised use of force.”, see Brian Whitaker/ Oliver Burkeman, ‘Killing Probes the Frontiers of Robotics and Legality’, in: *Guardian*, November 6, 2002.

international law” by UN Secretary-General *Kofi Annan*,²³ and the issue was *inter alia* considered by the United Nations Human Rights Committee in its 2003 review of the report submitted by Israel. The Committee stated that

The State Party should not use ‘targeted killings’ as a deterrent or punishment. The State party should ensure that the utmost consideration is given to the principle of proportionality in all its responses to terrorist threats and activities. State policy in this respect should be spelled out clearly in guidelines to regional military commanders, and complaints about disproportionate use of force should be investigated promptly by an independent body. Before 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.²⁴

In late 2006, the Israeli Supreme Court finally considered whether the policy of targeted killings of the Israeli government was lawful under international law. The Court held that hostilities were taking place in the context of an international armed conflict but that the “terrorists” who are targeted by Israeli forces do not have combatant status under international humanitarian law.²⁵ Therefore, the Court considered them to be civilians, but as civilians taking a “direct part in hostilities”. The Court stated that a person who is belonging to an armed group and “in the framework of his role in that organization he commits a chain of hostilities” is losing his immunity from attack.²⁶ However, after taking this “law of war” approach, the Court introduced human rights elements well known from the European Court of Human Rights’ *McCann* judgment²⁷ such as a general test of proportionality to the question.²⁸

²³ See UN Secretary General *Kofi Annan*, Statement at the UN Headquarters, in: *Off the Cuff – Remarks to the Press and the Public*, March 22, 2004 (unofficial transcript).

²⁴ H.R. Committee, *Concluding Observations on Israel*, UN Doc. CCPR/CO/78/ISR (August 21, 2003), para. 15.

²⁵ Supreme Court of Israel, “*Targeted Killings*” (*Merits*), H.C.J. 769/02, Judgment of December 11, 2006, para. 24, English translation reprinted in: 46 *ILM* (2007), pp. 375-408, at 386.

²⁶ *Id.*, para. 39, 46 *ILM* (2007), at 393.

²⁷ Eur. Ct. H.R., *McCann, Farrell and Savage v. United Kingdom*, Appl. No. 18984/91, Judgment (Grand Chamber) of September 27, 1995, Series A, No. 324.

B. The Further International Context

Beside Israel, it is foremost the U.S. which has an – albeit not official – practice of targeted killings.²⁹ In the past, this mostly concerned assassination plots by the Central Intelligence Agency (CIA).³⁰ A prominent recent example which is part of the so called “war on terror” is the killing of six alleged terrorists in their car by a U.S. Predator drone in Yemen:

On 3 November 2002, over the desert near Sanaa, Yemen, a Central Intelligence Agency-controlled Predator drone aircraft tracked an SUV containing six men. One of the six, Qaed Salim Sinan al-Harethi, was known to be a senior al-Qa’ida lieutenant suspected of having played a major role in the 2000 bombing of the destroyer USS Cole. He ‘was on a list of “high-value” targets whose elimination, by capture or death, had been called for by President Bush.’ The United States and Yemen had tracked al-Harethi’s movements for months. Now, away from any inhabited area, the Predator fired a Hellfire missile at the vehicle. The six occupants, including al-Harethi, were killed.³¹

²⁸ Compare especially Supreme Court of Israel, “Targeted Killings” (*Merits*), para. 40, 46 *ILM* (2007), at 393.

²⁹ See also Heiko F. Schmitz-Elvenich, *Targeted Killing: Die völkerrechtliche Zulässigkeit der gezielten Tötung von Terroristen im Ausland*, Frankfurt am Main 2008, pp. 14-15; compare also Michael N. Schmitt, ‘Targeted Killings in International Law: Law Enforcement, Self-Defense and Armed Conflict’, in: Roberta Arnold/ Noëlle Quénivet (eds.), *International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law*, Leiden 2008, pp. 525-553, at 525-526; Kenneth Anderson, ‘Targeted Killing in U.S. Counterterrorism Strategy and Law’, in: Benjamin Wittes (ed.), *Legislating the War on Terror: An Agenda for Reform*, Washington, D.C. 2009, pp. 346-400, at 365-375. For further examples concerning Russia, France and the United Kingdom, see Stefanie Schmahl, ‘Targeted Killings – A Challenge for International Law?’, in: Christian Tomuschat/ Evelyne Lagrange/ Stefan Oeter (eds.), *The Right to Life*, Leiden 2010, pp. 233-266, at 235-236.

³⁰ See William C. Banks/ Peter Raven-Hansen, ‘Targeted Killing and Assassination: The U.S. Legal Framework’, in: 37 *U. Rich. L. Rev.* (2003), pp. 667-749, at 702-705; Schmahl, in: Tomuschat *et al.* (eds.), at 235.

³¹ Gary Solis, ‘Targeted Killing and the Law of Armed Conflict’, in: 60 *Nav. War C. Rev.* (2007), pp. 127-146, at 130 (footnotes omitted). See also 72 *Archiv*

Four years later, in June 2006, the targeted killing of *Abu Musab al-Zarqawi*, the leader of al-Qaeda³² in Iraq, was celebrated as a strategic and political victory by the U.S.³³ Since September 11, 2001 a series of at least nineteen targeted killings by the U.S. via Predator fired Hellfire missiles is reported to have taken place, killing at least four senior al-Qaeda leaders and also many civilians.³⁴ This practice is continued. On January 28, 2008, senior al-Qaeda commander *Abu Laith al-Libi* and several other persons were reportedly killed by a Predator fired Hellfire missile in Pakistan.³⁵

But also democracies which are less involved in the so called “war on terror” do not necessarily decline targeted killings as a means. Such States which have not been directly affected by transnational terrorism sometimes offer what has been termed as “nice recipes ... that have little practical relevance” and “seem to be blind to real life hard choices”.³⁶ On the other hand, for example, Germany’s Federal Minister of the Interior, *Otto Schily*, in a 2004 interview took into account

der Gegenwart (2002), p. 45987; Walter Pincus, ‘U.S. Strike Kills Six in Al Qaeda’, in: *Washington Post*, November 5, 2002, p. 1; James Risen, ‘Threats and Responses: Hunt for Suspects – C.I.A. is reported to kill a Leader of Qaeda in Yemen’, in: *New York Times*, November 5, 2002, p. 1; c.f. Amnesty International Press Release, ‘Yemen/USA: Government must not sanction Extra-Judicial Executions’, November 8, 2002, AI Index AMR 51/168/2002; Chris Downes, “Targeted Killings” in an Age of Terror: The Legality of the Yemen Strike’, in: *9 J. Confl. Sec. L.* (2004), pp. 277-294; Gross, *Struggle of Democracy*, p. 243; Anderson, in: Wittes (ed.), at 362-363.

³² The group’s name is frequently also spelled as “al-Qaida”, “al-Qa’ida” or “al-Qa’idah”, which is Arabic and means “the base”.

³³ Solis, 60 *Nav. War C. Rev.* (2007), at 134.

³⁴ These examples include the December 2005 killing of senior al Qaeda operative *Abu Hamza Rabi’a* in Pakistan and the unsuccessful effort to kill al Qaeda co-leader *Ayman al-Zawahiri* in January 2006, also in Pakistan, which killed eighteen civilians. See Josh Meyer, ‘CIA Expands Use of Drones in Terror War’, in: *Los Angeles Times*, January 29, 2006, p. A1; W. Jason Fisher, ‘Targeted Killing, Norms, and International Law’, in: 45 *Colum. J. Transnat’l L.* (2007), pp. 711-758, at 712 with further references.

³⁵ See Eric Schmitt, ‘Senior Qaeda Commander Is Killed by U.S. Missile’, in: *New York Times* (February 1, 2008).

³⁶ Rein Müllerson, ‘*Jus ad Bellum* and International Terrorism’, in: 32 *Isr. Yb. Hum. Rts.* (2002), pp. 1-51, at 18.

the possibility of killing suspected terrorists.³⁷ His successor, *Wolfgang Schäuble*, recently addressed the topic in relation to *Osama Bin Laden*.³⁸

Imagine someone knew what cave Osama bin Laden is sitting in. A remote-controlled missile could then be fired in order to kill him.³⁹

Schäuble criticised that the question of legality of such an action was not regulated under German national law⁴⁰ – based on the fact that such an action is not explicitly rendered legal under German national law.⁴¹ It is questionable whether the latter was possible at all if not only national but international standards are taken into account. In trying to answer this question, the emphasis is put on State behaviour and responsibility and not on individual criminal liability. However, before going into the question of legality, a word about terminology is in order:

C. Defining “Targeted Killings”

During World War II, in April 1943, Admiral Isoroku Yamamoto, commander in chief of the Japanese Combined Fleet, was on an in-

³⁷ German Federal Minister of the Interior *Otto Schily*, Interview, ‘Wer den Tod liebt, kann ihn haben’, in: *Der Spiegel* (2004), No. 18 (April 26, 2004), p. 44.

³⁸ The full name “Osama bin Muhammad bin Awad bin Laden” is most often mentioned as “Osama bin Laden” or “Usama bin Laden”.

³⁹ German Federal Minister of the Interior *Wolfgang Schäuble*, Interview, ‘We Could Be Struck at Anytime’, in: *Spiegel Online* (July 9, 2007). For the original German version see German Federal Minister of the Interior *Wolfgang Schäuble*, Interview, ‘Es kann uns jederzeit treffen’, in: *Der Spiegel* (2007), No. 28 (July 9, 2007), pp. 31-33.

⁴⁰ *Schäuble* stated: “The legal questions involved would be completely open, especially if Germans were involved. We should try to clarify such questions as precisely as possible in constitutional law, and create legal bases that give us the necessary liberties in the struggle against terrorism. I think nothing of citing a supra-legal state of emergency, in accordance with the motto: ‘Necessity knows no law’.” See *id.*

⁴¹ On the situation under German national law see *Winfried Bausback*, ‘Terrorismusabwehr durch gezielte Tötungen? Assassination als Mittel des (deutschen) demokratischen Rechtsstaates?’, in: 24 *NVwZ* (2005), pp. 418-420.

nation policy”,⁴⁸ “extra judicial executions”,⁴⁹ “extra-judicial killings”,⁵⁰ “extra judicial punishment”,⁵¹ “interception”,⁵² “liquidation”,⁵³ “liquidation operation”,⁵⁴ “liquidation policy”,⁵⁵ “long-range hot pur-

2; Amnesty International, AI Doc. MDE 15/005/2001 (February 21, 2001); Asaf Zussman/ Noam Zussman, *Targeted Killings: Evaluating the Effectiveness of a Counterterrorism Policy*, Jerusalem 2005, e.g. at p. 23.

⁴⁷ Brenda L. Godfrey, ‘Authorization to Kill Terrorist Leaders and Those who Harbour Them: An international Analysis of Defensive Assassination’, 4 *San Diego Int’l L.J.* (2003), pp. 491-512.

⁴⁸ See e.g. Emanuel Gross, ‘Thwarting Terrorist Acts by attacking the Perpetrators or their Commanders as an Act of Self-Defense: Human Rights versus the State’s Duty to protect its Citizens’, in: 15 *Temp. Int’l & Comp. L.J.* (2001), pp. 195-246, at 196.

⁴⁹ Amnesty International, *Broken Lives: A Year of Intifada – Israel, Occupied Territories, Palestinian Authority*, London 2001, pp. 32-33.

⁵⁰ See e.g. International Committee of the Red Cross, ‘International Humanitarian Law and the Challenges of contemporary armed Conflicts: Excerpt of the Report prepared by the International Committee of the Red Cross for the 28th International Conference of the Red Cross and the Red Crescent Geneva, December 2003’, in: 86 *Int’l Rev. Red Cross* (2004), No. 853, pp. 213-244, at 217 and 233.

⁵¹ Luft, 10 *Mid. E. Q.* (2003), at 3.

⁵² Samantha M. Shapiro, ‘Announced Assassinations’, in: *New York Times*, December 9, 2001, p. 54; Steven R. David, *Fatal Choices: Israel’s Policy of Targeted Killing*, Ramat Gan 2002, p. 2.

⁵³ Political correspondent Qeren Neubach on Israel TV Channel 1, Jerusalem (in Hebrew), at 16.30 gmt, on June 20, 2001, according to *BBC Worldwide Monitoring*, June 20, 2001.

⁵⁴ Voice of Palestine, Ramallah (in Arabic), at 6.00 gmt, on March 7, 2002, according to *BBC Monitoring International Reports*, ‘Palestinian Radio says death toll rises to 18’, March 7, 2002.

⁵⁵ Statement by the Palestinian Minister of Local Government *Sa’ib Urayquat* in Voice of Palestine, Ramallah (in Arabic), at 11.33 gmt, on August 20, 2001, according to *BBC Monitoring International Reports*, ‘Palestine Minister slams Israeli “War Crimes”, criticizes US role’, August 20, 2001; Voice of Israel, Jerusalem (in Hebrew), at 8.00 gmt and 12.00 gmt, on February 2, 2002, according to *BBC Monitoring International Reports*, ‘Israeli PM’s Meeting with Palestinian Leaders had Arafat’s Approval’, February 2, 2002.

suit”,⁵⁶ “physical liquidation”,⁵⁷ “pinpoint liquidation”,⁵⁸ “pinpointed prevention”,⁵⁹ “pinpointed preventive actions”,⁶⁰ “pinpointed preventive operation”,⁶¹ “planned liquidation”,⁶² “pre-emptive killings”,⁶³ “preventive actions”,⁶⁴ “preventive killings”,⁶⁵ “preventive liquidation”,⁶⁶ “selective targeting”,⁶⁷ “sikul memukad”,⁶⁸ “specifically directed liquidation”,⁶⁹ “summary execution”,⁷⁰ “targeted killing”,⁷¹ “tar-

⁵⁶ Luft, 10 *Mid. E. Q.* (2003), at 3.

⁵⁷ MENA news agency, Cairo (in English), at 11.00 gmt, on March 15, 2001, according to *BBC Summary of World Broadcasts*, ‘Palestinian Security Heads says Intifadah “Message of Peace”’, March 17, 2001.

⁵⁸ Compare Peter Hirschberg, “Pinpoint Liquidations” to Continue’, in: *Irish Times*, August 3, 2001, p. 13.

⁵⁹ Voice of Israel, February 2, 2002.

⁶⁰ Amnesty International, *Broken Lives*, pp. 32-33.

⁶¹ Qeren Neubach on Israel TV Channel 1, June 20, 2001.

⁶² ITAR-Tass News Agency, ‘ITAR-Tass News Digest’ of September 27, 2002.

⁶³ C.f. Mordechai Kremnitzer, ‘Präventives Töten’, in: Dieter Fleck (ed.), *Rechtsfragen der Terrorismusbekämpfung durch Streitkräfte*, Baden-Baden 2004, pp. 201-222, at 201, based on a speech given at the February 2004 Conference on “Rechtsfragen der Terrorismusbekämpfung durch Streitkräfte” by the German Society for Military Law and the Law of War in Bonn.

⁶⁴ Qeren Neubach on Israel TV Channel 1, June 20, 2001.

⁶⁵ Kremnitzer, in: Fleck (ed.), *Rechtsfragen*, at 201.

⁶⁶ Compare Georg Nolte, ‘Preventive Use of Force and Preventive Killings: Moves into a Different Legal Order’, in: 5 *Theo. Inq. L.* (2004), pp. 111-129, at 114.

⁶⁷ Luft, 10 *Mid. E. Q.* (2003), at 3.

⁶⁸ Hebrew for “targeted prevention”, used by the Israel Defense Forces (IDF) according to Joseph Croitoru, ‘Nach Liquidierung Scheich Jassins: Moraldebatte unter israelischen Philosophen’, in: *FAZ*, March 24, 2004 (No. 71), p. 43.

⁶⁹ Yoram Gabbai, ‘The American Way’, in: *Israel’s Business Arena*, October 7, 2001.

⁷⁰ Swedish foreign minister *Anna Lindb* on US Yemen attack: Downes, 9 *J. Confl. Sec. L.* (2004), at 278; c.f. Whitaker; Burkeman, *Guardian*, November 6, 2002.