

“Guns For Hire, Death on Demand:”

The Permissibility of United States Outsourcing of Drone Attacks to Civilian Surrogates of the
Armed Forces and Challenges to Traditional Just-War Theory

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and

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- I. ASSASSINATIONS AND LICIT TARGETED KILLINGS – DISTINCTIONS WITH A DIFFERENCE?
- II. “GUNS FOR HIRE:” THE HISTORY OF PRIVATE MILITARY FIRMS AND PRIVATE MILITARY CORPORATIONS AS DISTINCT ENTITIES AND NOT JUST MERCENARIES BY ANOTHER NAME
- III. AUTHORITY AND LIABILITY OF CIVILIAN OPERATIVES UNDER JUST WAR THEORY, INTERNATIONAL LAW, AND DOMESTIC LAW
- IV. THE DEBATE OVER THE WAY AHEAD UNDER LAW AND CUSTOMARY PHILOSOPHICAL BASES FOR CIVILIAN USE OF FORCE IN TARGETED KILLING
- V. CONCLUSION

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ABSTRACT

No subject receives greater concern in the canon of legal literature than the killing of one human being by another. National security considerations have prompted Presidents of the United States to direct the Department of Defense (“DOD”), the Central Intelligence Agency (“CIA”), and through delegated authority to those agencies, in turn to Private Military Companies (“PMCs”) and Private Military Firms (“PMFs”) to engage in “targeted killing” operations at an increasing pace since 9/11. Simultaneously, critics question the permissibility of these actions on several grounds.¹ The emergence of transnational threats², like terrorism, complicates traditional methods of acquiring counterintelligence information and apprehending terrorists, prompting government leaders to use targeted killing as one tactic to eliminate threats. The CIA’s policy is to neither confirm nor deny information regarding their targeted killing programs, yet foundational and demonstrable facts, and not merely historical accidents or innuendo, link various past illicit assassinations and licit targeted killings with contracted private military companies (PMCs), private military firms (PMFs), privateers, mercenaries and others hired by the United States Military or the CIA. Those contracted forces have often become “force multipliers” to existing uniformed military forces. This stems from their ability to assemble and employ, on demand, unique capabilities not readily available in sufficient scope or volume within regularly constituted active and reserve component uniformed forces, and in instances where the US government will neither confirm nor deny its role in such operations.³ This article will address in Part

¹ See Philip Alston, *The CIA and Targeted Killings Beyond Borders*, NYU School of Law, Public Law Research Paper No. 11-64, Harvard National Security Journal, Forthcoming, September 20th, 2011; http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1928963, pp.3-7.; See <http://www.cfr.org/intelligence/targeted-killings/p9627>; See <http://www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA211810> for bibliography of special operations.

² See Carolyn W. Pumphrey, Ed., *Transnational Threats: Blending Law Enforcement and Military Strategies*; <http://www.strategicstudiesinstitute.army.mil/pdffiles/pub224.pdf>; and see Gregory F. Treverton, *Intelligence for an Age of Terror*, Cambridge University Press (2009), pp. 21-28.

³ See letter from Delores M. Nelson, Central Intelligence Agency Information and Privacy coordinator to Jonathan Manes, American Civil Liberties Union Foundation on March 9th, 2010 neither confirming nor denying the existence of CIA drone programs, http://www.aclu.org/files/assets/20100309_Drone_FOIA_CIA_Glomar_Response.pdf. This response, colloquially known as a “Glomar denial” or “Glomarization,” was first judicially recognized in the national security context, see *Phillippi v. CIA*, 546 F.2d 1009, 1013 (D.C. Cir. 1976) (raising issue of whether CIA could refuse to confirm or deny its ties to Howard Hughes' submarine retrieval ship, the *Glomar Explorer*).

I how fundamentally assassinations and licit targeted killings differ legally and operationally. Part II considers why these so-called “guns for hire,” civilian contractors and government employees, have been employed in the guise of individuals as well as organized private military firms and private military corporations as distinct entities to support and carry out targeted killing and assassination operations, separate and distinct from those instances of such missions done by mercenaries. Part III outlines the authority and liability of such civilian operatives under just war theory, international law, and domestic law, laying the foundation for the debate examined in Part IV over the way ahead under law and customary philosophical bases for civilian use of force in targeted killing. This article concludes with the ramifications of such targeted killings in the context of adherence to the rule of law, and calls for a greater political scrutiny on (re)turning such targeted killing support and conduct back to military forces.