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COMMENTARY

JEFFREY T. RICHELSON

When Kindness Fails: Assassination as a National Security Option

In February 1976, President Gerald Ford, reacting to press and congressional revelations of previously planned and attempted Central Intelligence Agency (CIA) assassinations of foreign leaders—including Cuba’s Fidel Castro and Rafael Trujillo of the Dominican Republic—including in his executive order on intelligence the provision that “no employee of the United States Government shall engage in, or conspire to engage in, political assassination.” That ban reaffirmed and extended a CIA ban, dating back to at least 1972, on assassination. In 1978, Ford’s prohibition was extended by President Jimmy Carter to ban involvement, by either employees or individuals acting on behalf of the U.S. Government, in any assassination. Carter’s language was repeated in President Ronald Reagan’s 1981 executive order, which remains in effect.1

Over the last twenty-five years the ban has, on occasion, been the subject of controversy. During the Reagan administration, the issue arose as to whether the ban excluded pre-emptive attacks against terrorists. Later, Iraq’s 1990 invasion of Kuwait, which focused attention on Saddam Hussein and his quest for weapons of mass destruction, led to suggestions that he might be a legitimate target for elimination. The October 2000 bombing of the USS

Cole in Yemeni waters again focused attention on the possible desirability of targeting terrorists.

But considerable opposition remained to any suggestion that Reagan’s prohibition be eliminated. Former Director of Central Intelligence (DCI) R. James Woolsey observed that the attempted killing of a foreign leader “was wrong in Cuba,” and “we should not tell the world we support assassination as a tool of statecraft.” Likewise, former Assistant Secretary of Defense Lawrence Korb suggested that engaging in assassination would “bring us down to his [Saddam’s] level.” And Vincent Canistraro, former chief of CIA counterterrorism operations, wrote that targeted killings are “ineffective in achieving their stated objective of deterring terrorism” and their consequence is that “the cycle of violence is perpetuated.”

The 11 September 2001 attacks on the World Trade Center and Pentagon focused additional attention on the possible use of assassination as a tool in the war against terrorism—a strategy that had sometimes been suggested as worthy of consideration even before the attacks. Thus, former CIA officer Reuel Marc Gerecht wrote in 1998 that “Mr. Bin Laden has declared war on the U.S. and he will kill more Americans unless he is killed first.” That same year, Roger Medd and Frank Goldstein argued that “when hundreds and even thousands of innocent people are at risk, assassination of key terrorist leaders may be an option worthy of renewed debate.” In January 2001, Rep. Bob Barr (R., Ga.) introduced the “Terrorist Elimination Act,” which would have nullified the assassination prohibition of Reagan’s executive order. In the aftermath of the attacks some, including James Woolsey, changed their views, concluding that assassination is an option worthy of consideration. Others argue, particularly given the government’s interpretation of the limitations of the ban, that the prohibition should be retained or not lifted “rashly.”

The assassination issue contains several elements—the first being how to define assassination. Specifying the different categories of potential targets—categories that can be illustrated using examples from fact and fiction—is important, as are the possible reasons for assassination. In addition, practical, ethical, and legal issues abound. The question also arises: if the United States had engaged in assassination from 1972 through 2000 who would have been the potential targets in those years, and who would be the logical targets today and in the future? Such an exercise is necessary before fully confronting the ultimate issue of altering or eliminating the ban.

ASSASSINATION: A WORKING DEFINITION

According to Colonel Daniel Reisner, head of the international law branch of the Israeli army’s legal division, “Assassination is not a legal term, at least
not in international law." Despite the lack of a precise definition, much of the discussion concerning assassination, in international law journals and within the U.S. Government, has sought to determine whether certain acts are or are not assassination, and thus prohibited by President Reagan’s executive order.

In the late 1980s, the U.S. Army Judge Advocate General (JAG) concluded that “the use of military force in peacetime against a known terrorist or terrorist organization…is a legitimate exercise of the international right of self-defense and does not constitute assassination.” The JAG also concluded that, in wartime, targeting of military leaders also does not qualify as assassination. Of course, a chief of state often also serves as commander-in-chief of a nation’s armed forces. Thus, under the appropriate circumstances (wartime or response to terrorism) attempts to kill Libya’s Muammar Qaddafi, Iraq’s Saddam Hussein, or al-Qaeda terrorist leader Osama bin Laden by targeting facilities where they might be residing at a given time would not constitute assassination under such interpretations. According to one legal scholar, “If a country’s been attacked and it kills the leader of a force that attacked that country that’s a lawful killing.” In a similar vein, former Attorney General Richard Thornburgh observed that “in a war there’s no such thing as assassination.”

Such legal interpretations differ from the common understanding of assassination, in which a specific individual is targeted and killed (albeit usually with a bullet, knife, or other weapon rather than via a military aerial assault) for national security reasons. Herein, assassination is discussed according to its popular meaning—the targeting of a named individual, whether during peace or war, in order to remove a national security threat.

The intent of using a fairly broad definition is to focus the discussion on the subject of whether the United States should seek to kill (or have killed) specific types of individuals, in peacetime or wartime, for national security reasons. This follows Jacob Sullum’s suggestion that “instead of insisting on distinctions that seem to have no moral basis, perhaps we should talk about the circumstances in which self-defense justifies killing people in cold blood. That’s the real issue whether we choose to call it assassination or not.”

While agreeing that not all targeted killings are prohibited by the executive order, some have argued that the ban should be extended by congressional action to explicitly prohibit *all* targeted killings, in peace or war. Others may conclude that only the actions that do not constitute assassination according to the above legal interpretations are acceptable and therefore the ban should be left in place. Finally, still others might believe that some actions constituting assassination under present interpretations should be considered options in the future, and that the prohibition should be eliminated or revised.
WHY?

At least three rationales for assassination are possible. One is preemption of actions that would be considered severely damaging to the national security—including planned or potential terrorist acts or direct attacks by foreign governments. The decision to preempt may be based on intelligence indicating an imminent attack or on the belief that the terrorist group or state is sufficiently hostile and may not be deterred by U.S. threats of retaliation. Preemption, in the absence of actual warning, may be undertaken for two reasons: the realization that there is no guarantee that warning will be obtained in every instance and the awareness that the consequences of a failure of deterrence, particularly with respect to the use of nuclear or biological weapons, may be immense.

A second rationale is retaliation in order to prevent and deter further undesirable behavior. In the aftermath of a terrorist or state attack, a multitude of responses may be undertaken for the purposes of prevention and deterrence. These may include conventional military operations, special forces operations, diplomatic initiatives, economic sanctions, and covert actions. Assassination might be considered as a means of sending a dramatic message that those engaged in certain activities are not likely to survive for long.

A third motivation is simple revenge, which may provide some comfort or satisfaction for victims of an attack, their friends and relatives or others. Whether revenge actually serves a purpose or is adequate given the offense is a more subjective question than whether retaliation is adequate. Thus, in the remake of the film *Get Carter* (2000), Michael Caine tells Sylvester Stallone that “revenge doesn’t work.” Stallone’s response—“Sure it does”—can be taken not as a disagreement over fact but as an expression of the difference in the psyche of the characters. Likewise, not everyone will feel that there is great satisfaction in “living to see your enemy die,” as one character in a novel argued, but some people undoubtedly do.

For a nation that has been subject to a terrorist attack, and particularly for those who have lost friends or relatives, the infliction of death and pain on the perpetrators may provide some degree of satisfaction. While “revenge” has a far less favorable connotation than “justice,” in some cases the difference may not be readily discernible.

TARGET CATEGORIES

Recent discussions of assassination usually have focused on two types of individuals—foreign “leaders” such as Saddam Hussein and terrorists such as Osama bin Laden. But an attempt to develop a set of categories of potential, at least in theory, assassination targets would be useful. A later section will examine who the actual candidates for elimination might have
been over the twenty-eight years since a memorandum from DCI Richard Helms banned CIA assassination operations; this section relies on examples of the assassination targets of other Western intelligence services and special forces (essentially, those of France, Israel, and the United Kingdom), of the CIA prior to 1972, and from works of fiction.

A. Probably, the best known and most controversial target category is that of foreign political and military leaders. During World War II, the United States, acting upon communications intelligence that identified the timing and route of a plane carrying Admiral Isoroku Yamamoto, the commander-in-chief of Japan’s combined fleet, shot down the aircraft, resulting in Yamamoto’s death. Meanwhile, Britain considered possible attempts at assassinating both Adolf Hitler and Field Marshal Erwin Rommel, the commander of German forces in Africa during World War II. Both plans were abandoned.9

During the 1950s and 1960s assassination was an option that some members of the United States and British national security establishments considered using, and in some cases did attempt to use. In 1952 a proposal for the assassination of the Soviet Union’s Joseph Stalin reached the desk of Director of Central Intelligence Walter Bedell Smith, who vetoed it. In considering measures to exploit East European unrest in 1953, the National Security Council approved a plan to “encourage the elimination of key puppet leaders.” In 1952 and 1954, assassination planning and proposals, which were eventually abandoned, were injected into covert operations (PBFORTUNE and PBSUCCESS) directed at the Guatemalan government of Jacobo Arbenz. In 1955, one of the CIA’s East Asian station chiefs proposed assassinating Chinese premier Zhou Enlai by placing undetectable poison in Zhou’s rice bowl at the final banquet of the Bandung conference. The proposal was vetoed by DCI Allen W. Dulles.10

In the aftermath of the Suez fiasco of 1956, British Prime Minister Anthony Eden, shortly before leaving to visit James Bond’s creator, the novelist Ian Fleming, ordered the assassination of Egyptian leader Gamal Abdel Nasser. But his order was disobeyed. The CIA also attempted or planned to eliminate numerous troublesome heads of state. A Senate committee found hard evidence of at least eight plots, from 1960 to 1965, involving the CIA, whose objective was the assassination of Cuban dictator Fidel Castro. Two progressed to the stage of sending poison pills to Cuba and another involved furnishing weapons and other assassination devices to a Cuban dissident. The Dominican Republic’s Rafael Trujillo also became a target, starting in 1960. He was shot by Dominican dissidents on 31 May 1961. From early 1960 the United States supported the dissidents, and some U.S. government personnel were aware that they intended to kill Trujillo. Three pistols and three carbines were furnished.
There was conflicting evidence as to whether the weapons were knowingly supplied for use in the assassination and whether they were so used. In 1960, President Dwight Eisenhower may have authorized the assassination of Patrice Lumumba, who had served briefly as premier of the newly independent Congo and threatened to invite Soviet troops into that country. An assassination kit, with the appropriate poison, was sent to the CIA station chief in the Congo, but Lumumba was captured and killed, possibly by the Belgian secret service, before the CIA acted.11

The thought of the CIA organizing the assassination of an allied leader may have crossed the mind of at least one senior U.S. official. In a 1966 memo, W. Averell Harriman recalled an August 1950 conversation with Dean Rusk, the future Secretary of State who was then Assistant Secretary of State for Far Eastern Affairs, about Chiang Kai-Shek, the Nationalist Chinese leader. Rusk was strongly opposed to Nationalist involvement in the Korean War for political reasons and because the troops were not adequately trained. Harriman recorded that Rusk, feeling that Chiang could be a great difficulty, suggested giving consideration to a CIA-organized plot to kill Chiang, while building up a replacement in Taiwan.12

B. Terrorists have also been frequent assassination targets, particularly of Israel’s secret service, the Mossad. In retaliation for the 1972 massacre of Israeli Olympic athletes by the Black September branch of the Palestine Liberation Organization, Israel established a number of hit squads that assassinated Black September officials. The campaign, begun in the fall of 1972, concluded in Beirut, Lebanon, in 1979, when a car loaded with explosives was detonated as Ali Hassan Salameh, the “Red Prince,” drove past. In 1996, Israel’s General Security Service, the Shin Bet, succeeded in killing Yehiya Ayyash by placing a bomb in his cellular phone. Ayyash, better known as “The Engineer,” was a bomb builder whose reign of terror, beginning in April 1994, had resulted in several hundred Israeli deaths. Israel has continued its policy of assassinating terrorists into the new century. In 1988, in an operation directed by Britain’s Security Service (better known as MI-5) and designated FLAVIUS, members of the Special Air Service gunned down three members of the Irish Republican Army in Gibraltar, who they believed were planning a major bombing.13

C. A third group of individuals who have been the focus of assassination planning and, on occasion targets, are scientists. Scientific and technical personnel are generally understood to be the most fundamental resource in the development of advanced weapons systems. In August 1943, British bombers attacked Peenemünde, where Germany was developing and testing rockets, including the V-2. The RAF’s Bomber Command had originally intended to focus on the development and test facilities, but were convinced by Duncan Sandys, who headed the investigation into the
nature of the facilities at Peenemünde, that the primary targets should be the homes of the scientists and engineers associated with the program. As a result, some key personnel were killed during the raids.\textsuperscript{14}

Late in 1944, Office of Strategic Services (OSS) officer Moe Berg arrived in Zurich, Switzerland, to attend a lecture by German physicist Werner Heisenberg, who was the logical person to head any German project to build an atomic bomb. Berg had been given a crash course in physics. If anything Heisenberg said convinced Berg that Nazi Germany was close to attaining an A-bomb he was to shoot Heisenberg before he left the auditorium. Heisenberg’s comment, at a dinner party, that Germany had lost the war helped convinced Berg that no German A-bomb was on its way.\textsuperscript{15}

In June 1980, Dr. Yahya al-Meshad, an Egyptian-born specialist in metallurgy and a member of the Iraqi Atomic Energy Commission, was found murdered in his Paris hotel room. He was in Paris to complete arrangements for a shipment of nuclear fuels from France to Iraq. Israel’s Mossad is generally considered to be the likely perpetrator—due to its other efforts (including sabotage) to disrupt French–Iraqi nuclear commerce, as well its early 1960s attacks on German scientists working on Egypt’s rocket program.\textsuperscript{16}

D. Arms traffickers, drug lords, and international crime figures are also possible targets. Possibly the best known fictional assassination of an international crime figure occurs at the beginning of the film \textit{Thunderball} (1965) when James Bond uses a crowbar to strangle Col. Jacques Bouvard, a member of the Special Executive for Counterintelligence, Terrorism, Revenge, and Extortion (SPECTRE). Among the real life arms traffickers who met their death at the hands of an intelligence service was George Puchert, who had been selling weapons to Algerian nationalists. In 1959, while he was driving his car, an explosive device placed under the vehicle’s hood blew up its entire front. His death was the result of a larger operation conducted by the French DST (Direction for Surveillance of the Territory) and SDECE (Service for External Documentation and Counterespionage) to neutralize the Algerian independence movement. About two decades later, the Mossad apparently ended the life of Gerald Bull, who was seeking to develop supergun technology for Iraq.\textsuperscript{17}

E. During the Cold War, the U.S. and Soviet Union refrained from attempting to kill each other’s intelligence officers—at least in fact. In the fictional world, where the intelligence war was often more brutal and a U.S. secret organization charged with assassination existed, it was a different story. In \textit{The Wrecking Crew}, Donald Hamilton’s Matt Helm, who worked for a classified component of the Department of Defense, at times referred to as “the wrecking crew” or “murderer’s row” (the reader never learns the organization’s actual name) is instructed, on a number of
occasions, to eliminate specific Soviet agents. In one instance Helm tracks down and executes a Soviet agent who, having watched too much television, throws down his weapon and attempts to surrender.  

F. Defectors, rogues, and double agents represent another category of potential assassination targets. While there are plenty of such individuals, there are no known instances where one has been the subject of assassination planning. But at least some individuals in the British Secret Intelligence Service might have wondered about the possibility of assassinating Soviet agent Kim Philby, particularly when he was living in Beirut, and George Blake after his escape to Moscow.

The targeting of defectors, rogues, and double agents plays a prominent role in a number of television shows, films, and works of fiction. In an episode of *I Spy*, a 1960s television show, two U.S. agents (who work for another unnamed Defense Department intelligence organization—but with a wider mandate than Matt Helm’s) are instructed to kill a fellow member of their organization for having sold information to a hostile intelligence service. Likewise, in an episode of *Secret Agent*, another 1960s television program, a British intelligence officer in the Middle East, who is believed to be working for the Soviet Union, is targeted for execution. In the film *Apocalypse Now*, a member of the U.S. special forces is ordered to locate and “terminate with extreme prejudice” the “command” of a rogue special forces officer operating in Cambodia. Finally, in another novel, *The Betrayers*, Helm is sent to Hawaii to eliminate a member of his organization who, as it turns out, is planning to blow up a ship carrying U.S. troops to Vietnam.

G. A final category of targets would be denial targets—individuals, particularly talented nuclear physicists or biological warfare experts, whom a nation might want to deny to an enemy. In a 1949 report on Swedish science, the CIA noted that if the Soviet Union overran Sweden it would gain a distinct, if small, scientific advantage from the individuals and facilities it would gain control of, and suggested “denying” them certain Swedish scientists and research facilities in case of a Soviet invasion. No specific means of denial was discussed, and the assumption that assassination was ever considered should not be made. In the world of fiction, however, that option would be seriously considered—as in another Donald Hamilton work, *Murderer’s Row*, where Helm is instructed to kill an abducted American expert in submarine detection technology rather than let him be shipped off to the Soviet Union.

ISSUES

Three types of issues are to be concerned with in regard to assassination—practical, ethical, and legal.
**Practical Issues** Foremost among the practical issues is whether assassination is feasible. The United States’s experience in efforts to assassinate foreign leaders is one of profound failure—attempts or plans to assassinate foreign leaders have been unsuccessful or overtaken by events, while the political embarrassment that ultimately resulted was significant. Given the intense security surrounding some likely targets, and/or their mobility, success may not be likely. The inability to obtain solid intelligence on German General Erwin Rommel’s whereabouts led Britain to veto any attempt on his life.\(^{21}\)

Of course, some targets will not have the security that Saddam Hussein does, or the resources possessed by Osama bin Laden. Thus, scientists working on a weapons program may not be able to do so effectively unless they show up at a particular facility on a regular basis and are not likely to have the same degree of protection as heads of state.

Two further concerns are the potential impact of failure as well as of success. Repeated failed attempts to kill a particular individual—particularly a national leader or terrorist—may enhance his prestige. On the other hand, “success” might have no impact or backfire. Adolf Hitler is often used as an example of a foreign leader who could have been justifiably assassinated. But by the time Hitler attained that status it may already have been too late. One cannot know what would have happened had Hitler met an untimely end in 1938, but it is certainly possible that events would have proceeded on the same course with a new leader. Had the U.S. succeeded in assassinating Fidel Castro it may simply have resulted in his replacement by his brother Raúl. Removal may set off a fight for power, but not necessarily a reversal of course. The survivors would have a great deal to lose in a regime they did not control. As one writer observed, “There is a good chance Saddam would be replaced by Saddam II, another Baathist general ready to continue the military dictatorship.”\(^{22}\)

Success could also backfire by creating a martyr or replacing a leader or other target with someone more talented, deadly, or hostile. Major Field Robertson, the head of the British Special Operations Executive’s (SOE) German section, argued that killing Hitler would lead the Germans to “canonize [him] as a martyr.” At the same time, several British officers, Robertson among them, argued that Hitler’s strategic blunders made him more of an asset to the Allies alive than dead. Robertson calculated Hitler’s worth to the British effort as being equivalent “to an almost unlimited number of first-class SOE agents strategically placed inside Germany.” In December 1953, Foreign Minister Anthony Eden was dissuaded from any thought of ordering the assassination of the new Egyptian leader Mohammed Neguib by the prospect that Nasser would replace him. Nasser did eventually replace Neguib, and his seizure of the
Suez Canal resulted in now–Prime Minister Eden’s directive to have him eliminated.23

A similar concern may apply to other targets—that their elimination may lead to their being replaced by someone as or more capable. There is no guarantee that if a nation’s “top” nuclear physicist is eliminated his successor would not find a faster path to the bomb. Likewise, a terrorist chief’s second-in-command may turn out to be more charismatic or more skilled at perpetrating atrocities, or both. Thus, elimination of selected individuals may not have a significant impact—and provide only a false sense of security and accomplishment.

Yet another concern is retaliation, particularly with respect to U.S. leaders. Attempts to assassinate a leader or key individuals in a weapons program could well lead to the target nation’s leaders to attempt to return the favor—one reason why the U.S. Secret Service has been concerned about any removal of the prohibition. While the evidence is persuasive that John F. Kennedy was killed by a lone assassin, the logic behind speculation that Castro would retaliate for the various U.S. attempts on his life is not hard to understand. Beyond speculation is the fact that Saddam Hussein had predelegated to Iraqi military officials the authority to fire Scud missiles armed with biological agents should Baghdad be destroyed by a nuclear weapon. The order could just as easily have been given with respect to a successful assassination attempt. Indeed, Saddam did attempt to have former President George H. W. Bush killed, presumably in retaliation for the American attempts to kill Saddam from the air. Because of the openness of U.S. society, American presidents are among the world’s most vulnerable leaders. In contrast, dictators, in order to survive in power, create an elaborate protective apparatus to reduce the chances of being assassinated. Thus, Saddam Hussein has reportedly survived numerous assassination attempts.24

Ralph Peters has argued that concerns about retaliation are “unspeakable cowardice,” that if “leaders will not risk the fate they ask of their privates, they are not fit to lead their people.”25 But the issue extends beyond the question of the President’s courage. The loss of the President through assassination, even an unpopular President, can have a traumatic impact on the nation, for his or her assassination would not be just an attack on one person but on the nation as a whole.

Another concern is world reaction. Israel has taken considerable heat, including from the United States, over its “targeted killings.”26 The mere suggestion that the United States was behind the demise of a foreign leader, even someone such as Saddam or Qaddafi, would probably produce various levels of protests from both allies and adversaries, along with international condemnation. No doubt many of the protests would be hypocritical, coming from governments with their own record of
assassinations or worse, but they might represent a public relations problem of significant proportions.

There is also the “oops” factor. Even Israel’s Mossad, which has conducted a large number of successful assassinations over the years, is not immune to serious mistakes. The “assassination” of an Arab waiter in Norway, who the Israelis mistook for Ali Hassan Salameh—the man responsible for the 1972 Munich massacre—resulted in a public relations disaster for Israel. In addition to faulty intelligence, a botched operation can be cause for great embarrassment. More recently, Israel’s failed attempt to eliminate Khaled Meshal of the fundamentalist group Hamas severely damaged relations with Jordan, where the attempt was made.\(^{27}\)

Even a successful assassination could be the cause of problems with the nation on whose soil it takes place, particularly if innocents are hurt or killed as a by-product. Even if the target is the only victim, a foreign government might well resent the U.S. (or any other nation) assassinating individuals residing or traveling in its country, just as the U.S. would have been concerned if the British SAS had gunned down IRA terrorists on the streets of New York. An article in the Canadian press noted that the “police don’t look kindly on the idea of U.S. agents killing suspected terrorists on Canadian soil.” A Royal Canadian Mounted Police (RCMP) officer was quoted as saying that “Murder would not be permitted anywhere in our jurisdiction” and “we would take action against anyone who committed a crime in Canada.”\(^{28}\) (Quite possibly however, some foreign governments might prefer the quiet and covert elimination of such a person in contrast to prolonged legal proceedings.)

Covert action can be dangerously attractive because it often appears to be a means of accomplishing a diplomatic objective cheaply, and without public debate. Assassination might represent a cheap alternative to political covert action. An assassination, at least in theory, could be cheaper, quicker, and far less complicated than messy political operations requiring the spending of hundreds of millions of dollars on squabbling political groups.

**Ethical Issues** One component of the moral discussion is the apparent absurdity and moral contradiction of being willing to kill innocent people, sometimes large numbers of innocent people, as a consequence of being unwilling to target specific individuals. Thus, Donald Hamilton’s fictional Matt Helm asked why “it seems to be all right to plan on, and create the machines for, exterminating billions of human beings at a crack, but just to send out [one] guy to rub out another who’s getting to be a very active menace, that’s ... considered very immoral and reprehensible.”\(^{29}\) In 1996 Ralph Peters argued that:

> our [the United States] most recent campaign in the desert also highlighted another ethical disconnect: while it was acceptable to bomb those divisions of
hapless conscripts, it is unthinkable to announce and carry out a threat to kill Saddam Hussein, even though he bore overwhelming guilt for the entire war and its atrocities. We justify this moral and practical muddle by stating that we do not sanction assassination in general, and certainly not the assassination of foreign heads of state. Yet where is the logic in this? Why is it acceptable to slaughter ... the commanded masses but not to mortally punish the guiltiest individual, the commander, a man stained with the blood of his own people as well as his neighbors?  

Similar sentiments have been expressed by former Reagan administration counterterrorism chief Paul Bremer and former Clinton aide George Stephanopoulos.  

Many individuals and groups suggest that some or all varieties of assassination should be banned. In a letter to President George W. Bush, Human Rights Watch officials wrote that “a policy of assassination is obviously a blatant violation of the right to life.” Assassination, according to one author, is “a brutal, cowardly, and inhuman act,” one that cannot be justified by “noble ends.” Another suggests that assassination “cheapens the value of human life.” And, of course, a pacifist philosophy of “thou shalt not kill” would prohibit assassination, along with any other form of killing.  

Arguably, those objections need not be taken seriously. The “right to life” is not a blank check to engage in murderous behavior without fear of deadly retaliation, particularly in the absence of judicial remedies. The right to live unmolested (to speak freely and engage in voluntary exchange) is valid as long as one respects the right of others. Nor is assassination necessarily brutal, cowardly, or inhuman. In many cases, an assassin may require a great deal of courage to complete the task and to cope with the fear of the consequences of failure, and the leader who orders the killing risks retaliation. (Challenging bin Laden or Saddam to “pistols at twenty paces” is not, after all, a viable option.) To describe a simple bullet to the head as “brutal” when dealing with an individual who has committed mass murder and other brutal crimes (such as running a police state) hardly seems warranted. Such an ending could be considered a far kinder one than the offender deserved. As for the alleged inhumanity, the suggestion might be made that it would be inhuman to permit an individual to continue inflicting grievous suffering on innocents if assassination is a viable option.  

And a reasonable argument might be that pacifism, not assassination, is highly immoral. A philosophy that requires a state to let innocents be killed rather than take violent action against the killers is both cowardly and immoral—it sacrifices the innocent in the hope that the guilty will stop killing. Columnist Michael Kelly has argued that “pacifism is on the side of the murderers, and it is on the side of letting them kill again.”
More commonly accepted than pacifism is the notion that killing is prohibited except when someone is in imminent danger of serious harm. That concept rules out vigilante justice, and requires that individuals charged with murder or other serious crimes be brought before a judge and jury before being sentenced to prison or death—partly to ensure that the individual is actually guilty of the crime and partly in an attempt to assure appropriate punishment. A Harvard Law School faculty member, Ann-Marie Slaughter, has argued that if assassination is not prohibited “you’d be saying it’s all right to kill an individual without judicial process,” which is “a violation of a core tenet of the world’s great legal systems and religions.”

Of course, the problem in the international arena is that neither the United States nor anyone else could file legal documents that would lead to the arrest and trial of Saddam Hussein or Osama bin Laden as long as they had a sanctuary. U.S. action to apprehend an individual and bring him to the United States may be feasible in some, but not all, cases. Either there may be no chance to capture and transfer the person or the cost may be prohibitive—either politically or in terms of the lives required to capture him. The question then becomes—given an inability to invoke any legal mechanisms to halt the activities of such individuals and groups, can assassination be morally acceptable?

Coming to any answer other than yes is difficult. Such individuals, by repeated acts of murder, often repeated acts of mass murder, their undoubted unwillingness to subject themselves to any legal proceedings, and the continuing threat they represent make themselves targets whose assassination would not be an immoral act.

**Legal Issues**

The legal literature on the laws of war, as well as the issue of assassination, in peacetime as well as wartime, is fairly extensive (and often emotional), making a comprehensive review or evaluation here impossible. The issue of assassination is directly or indirectly covered by a number of international conventions and agreements—such as the 1907 Hague Convention, the 1973 New York Convention on protected persons, the Geneva Conventions, and the United Nations Charter. The implications of those agreements have, to some extent, been the subject of disagreement among legal scholars.

One view is that, during wartime, the assassination of a head of state would constitute a war crime. Another, and apparently dominant, view is that heads of state who serve as commanders of an enemy’s armed forces qualify as combatants and targeting them is permissible—“from a legal point of view, there is no difference [between] bombing the Republican Guard and aiming for its leader… targeting Saddam Hussein would be consistent with the U.N. resolution.” Similarly, other officials involved in
war operations—whether military or civilian—could be targeted. Their targeting could be justified by a state invoking its legitimate right to self-defense or as a means of law enforcement, in the sense of enforcing a relevant United Nations resolution.  

One limitation, according to some scholars, is that assassination cannot be conducted “treacherously.” The most prominent example of “treacherous assassination” is Operation ANTHROPOID, the 27 May 1942 killing of SS-Obergruppenführer Reinhard Heydrich, head of Nazi Germany’s Reich Main Security Office (RSHA) and the Reichspräsident of Czechoslovakia. While being driven from his country mansion to Prague, two members of the Czech resistance, who had been given assistance by Britain’s SOE, stepped into the road and began firing. After Heydrich had his driver stop the car and attempted to shoot it out with his assailants, the explosion of a thrown grenade resulted in sufficient damage to Heydrich’s spleen to result in his death on 4 June. Numerous analyses argue that because the two assailants were not dressed as combatants they “deceived” their target, engaged in a prohibited assassination under international law, and the Germans, therefore, were entitled to take proportionate reprisals. Likewise, international law would have prohibited the assassination of Saddam Hussein during the Gulf War by commandos without uniforms or civilian agents.  

Such analyses suggest serious deficiencies either in international law or international lawyers. As Patricia Zengel observes, “The nature of the obligation that was betrayed is elusive … neither the Czech government in exile nor the British government can be said to have made use of their treachery to obtain Heydrich’s death.” In the cases of Heydrich and Saddam: wouldn’t any deceit have been morally justified by the nature of the target?)  

A clear consensus exists that the targeting of noncombatants—such as the residents of My Lai in Vietnam—is not permitted by international law. As noted, people in the military chain of command, even if they do not fire or operate weapons systems, would be considered combatants. Also included would be combat support personnel. According to the 1989 chief of the U.S. Army’s international law branch, this would include “civilian scientists occupying key positions in a weapons program regarded as vital to a nation’s security or war aims.”

In peacetime, according to Michael N. Schmitt, “no universal prescription outlaws assassination.” But Louis René Beres argues that assassination of the official of another state in a non-war context would represent a “prima facie violation of international law,” falling under the United Nations definition of aggression. Bert Brandenburg argues that “international law has long denounced assassination, except in exceptional circumstances.” The prohibition is intended to help maintain stability in the international
Thus, U.S. targeting of Saddam Hussein or other Iraqi officials prior to the invasion of Kuwait, or after the war’s end, was prohibited by international law. Had the U.S. wanted to target Saddam after the invasion of Kuwait, but before the U.S. commenced military action, it would have required Kuwait’s request. But, assassination would, according to some analysts, be permissible if necessary to prevent nuclear or some other form of highly destructive war. Targeting a foreign official, including a head of state who permits or encourages terrorist groups to use its territory as a base for its activities, would also be acceptable. Thus, Qaddafi’s support for terrorism directed against the U.S. made him a continuing threat and therefore a legitimate target, according to an Army legal analysis. In addition, terrorists engaged in a pattern of attacks, or who clearly are going to engage in a highly destructive attack, are also permissible targets.

Some scholars have argued that an actual attack must occur before Article 51 of the UN Charter, which permits national self-defense, becomes operative. But, according to the U.S. interpretation of Article 51, there are three forms of self-defense: self-defense against an actual use of force or hostile act; preemptive self-defense against an imminent use of force or hostile act; and self-defense against a continuing threat. Since such acts of self-defense include military strikes to eliminate the threat, it would follow that the targeting of specific individuals would be permissible in the above circumstances.

Schmitt notes in his article, “State-Sponsored Assassination in International and Domestic Law,” that a critical issue is the standard of imminence. Imminence might be interpreted as a temporal issue. How much patience a state must show before launching a preemptive strike of any sort should, some would argue, be a function of the relative capabilities of the possible attacker and its target. The more powerful the potential target relative to the attacker the more patience it should show. Equally matched states may also be expected to refrain from action until the last moment—although Schmitt notes that “international law does not require states to risk destruction in order to allow possibly fruitless negotiations to continue.” And when the weaker state is the possible target it has a justification for preemptive action before it becomes too late to do any good—for example, until after the stronger state has fully mobilized and is ready to begin operations.

Schmitt also notes that this analysis “breaks down in considering … terrorism” because “a state that hesitates to act against terrorists may lose the opportunity to act at all. Terrorists are difficult to locate and track. Moreover, since most operations generally are very secretive, particularly regarding the intended target, a state may not be able to mobilize reliable defenses for all potential locations of attack.” As a result, “unless
international law requires the potential victim simply to suffer the attack,” the proper question should not be whether the attack was imminent but whether or not a preemptive strike occurred during the last “window of opportunity.”45 Of course, while in some instances a nation might be confident that future opportunities for a preemptive strike will occur, in others being certain that a particular window of opportunity is the last one available might not be possible.

Finally, in contrast to other commentators on assassination, Schmitt considers the issue of possible targeting of overseas drug lords. He argues that irrespective of the threat from illegal drugs, “drug imports do not constitute an armed attack as traditionally understood under the doctrine of self-defense.” He notes that a variant of the self-defense argument might claim that since “drugs obviously kill more Americans every year than terrorism, and drug lords are aware of the deadly nature of their trade,” they represent legitimate targets. But he concludes, such an argument “has no basis in international law.”46

A HIT LIST?

Leaving questions of morality and legality aside for now, had there been no prohibition on assassination over the last twenty-five years, and had senior officials (possibly including the President) been homicidally inclined, who might have been targeted? Asking and answering such a question can provide a means of illustrating the potential risks of ending the assassination prohibition, as well as confronting the question of who, if anyone, the U.S. would actually want to have assassinated.

A number of foreign leaders have been considered at least as troublesome as Castro or Trujillo. According to one account, William J. Casey, while serving as President Reagan’s DCI, “occasionally raised the question of eliminating the Ayatollah Ruhollah Khomeini and Daniel Ortega of Nicaragua.”47 And Syria’s late strongman Hafez Assad gave protection to terrorist groups. Saddam Hussein, Muammar Qaddafi, and Serbia’s former President Slobodan Milosevic have all been targets of aerial assaults, but not of the more conventional type of assassination attempt. In 2001, Mullah Muhammad Omar, the Taliban leader, joined the list of leaders whose removal from power would be strongly desired.

Of course, the top terrorist target, probably of all time, is Osama bin Laden. Indeed, for several years prior to the 11 September 2001 attacks, the United States had been seeking to persuade anti-Taliban forces to capture or kill bin Laden. Other key al-Qaeda leaders such as Ayman al-Zawahiri (a leader of the Egyptian Islamic Jihad), responsible for military operations, and Abu Zubaydah, director of external affairs, would also be logical targets.48 Examination of the State Department’s annual Patterns of
Global Terrorism publication would undoubtedly indicate other currently deserving candidates.

Going back to the period shortly after the issuance of the 1972 Helms directive, another potential candidate for elimination, at least in the early 1970s, was Yasser Arafat of the Palestine Liberation Organization (PLO). According to former National Security Agency (NSA) analyst Joseph Welch, the Agency, in February 1973, intercepted a communication from Arafat involving an imminent Black September operation in Khartoum. The following day, members of Black September invaded the Saudi Arabian embassy in the Sudanese capital and seized U.S. ambassador Cleo Noel, diplomat Chargé d’Affaires George Curtis Moore, and others. The next day, Noel and Moore were machinegunned to death, according to Welch, on direct orders from Arafat. If Welch’s account is accurate, senior national security officials might certainly have wished to see Arafat killed in retaliation.

During the last several decades, several nations, some quite hostile to the United States, have employed scientists, sometimes very large numbers of them, to develop nuclear, biological, and chemical weapons. For the United States to have attempted to target Soviet scientists working on such programs would have made little sense—because there were so many scientists involved and because Soviet weapons of mass destruction capabilities were so extensive that preventing some new advance would have been relatively inconsequential.

With respect to some nations, such as Iraq, those considerations may not apply. Elimination of a key nuclear or biological weapons scientist might serve to significantly delay a program—by both removing a valuable contributor and causing others to consider defection before they became victims. Key Iraqi scientists who might have been or could be targets include nuclear scientists Jaffar Dhia Jaffar and Khidhir Hamza, well as Rihab Taha, the head of the biological warfare effort and often referred to as “Dr. Germ.” According to one account, “Iraq still has the best biological expertise in the region—thanks in part to the efforts of ... Taha.”

The activities of several drug lords and arms dealers have been of great concern to the United States. Colombia’s Pablo Escobar was not only the source of narcotics being shipped to the United States. The Drug Enforcement Administration collected “overwhelming evidence” that Escobar and other drug barons had killed U.S. citizens in the 1980s and early 1990s—including two who died when a bomb, placed on an aircraft at Escobar’s direction in order to kill a political candidate, blew the plane out of the sky. Thus, Escobar was someone who “in the eyes of the [first] Bush administration could be legally killed,” and a variety of tactics, including assassination, were being seriously considered in 1989, according to one account.
Also residing in Latin America during the 1980s was Carlos Cardoen, a Chilean arms dealer. By 1990 Cardoen had become a major supplier to Iraq’s military programs. A report by the Defense Technology Security Administration noted that Cardoen had built or was planning to build a variety of factories: for fuses (including three employed in chemical weapons), cluster bombs, fuel-air explosives, midget submarines, and sea mines. The report also noted that “Cardoen’s Baghdad office may have acquired precursor chemicals for Iraq’s CW [chemical weapons] program” and that the arms dealer had “attempted to acquire nuclear technology on behalf of Iraq.”

During the Cold War the United States and Soviet Union did not target each other’s intelligence officers. Nor would there be any rationale today for targeting intelligence officers engaged in intelligence collection, counterintelligence, or standard covert action operations. Those involved in supporting terrorist activities would be another matter, however. Two Libyan intelligence officers were linked to the 1988 bombing of Pan Am 103, one of whom was later convicted by an international court.Suspicion exists that Iraqi intelligence officers may have provided key assistance to those involved in the 1993 and 2001 attacks on the World Trade Center, and the 1998 attack on the USS Cole—thereby making them desirable and worthwhile targets. An Iraqi intelligence officer, Ahmed Khalil Ibrahim Samir al-Ani, was known to have met, in Prague, with Mohammed Atta, one of the ringleaders of the 11 September attacks, five months before the hijackings. In addition, a defecting Iraqi intelligence officer reported that an Iraqi facility at Salman Pak was involved in training non-Iraqi Arabs in terrorist operations. Likewise, Iranian intelligence officers may have assisted in the 1996 attack on the Khobar Towers housing complex in Saudi Arabia, which killed 19 U.S. servicemen.

The defectors, double agents, and rogue categories would have a number of entries. In 1975, former CIA officer Philip Agee published a book which identified, apparently with the help of the Cuban intelligence service, several dozen CIA officers. Agee was considered by some to be the CIA’s first defector (to Cuba). In the 1980s, ex-CIA officer Edward Lee Howard, under suspicion for selling CIA secrets to the Soviet Union, escaped surveillance and defected to the USSR. By the late 1970s, Edwin Wilson, a former CIA and naval intelligence officer, operating from Tripoli, had become a major supplier to Libya. He was able to smuggle arms and explosives to European terrorist organizations, to train units of the Libyan military, to manufacture bombs for Libyan intelligence officers, and to accept contracts for the murder of Qaddafi’s opponents.

A number of potential denial targets are evident—particularly former Soviet scientists who worked on the USSR’s nuclear or biological weapons programs, and who have since been recruited by various rogue states. It
was reported in 1992 that “U.S. intelligence agencies have detected scientists from the former Soviet Union working on nuclear programs in Algeria and Libya.” In 1994, some scientists from Moscow’s Gamalaya Institute of Epidemiology and Microbiology spent a year working in Iran. In 1999, Iran signed several former Soviet bioweapons specialists to contracts. In mid-2000, unconfirmed reports indicated that three nuclear experts from former Soviet republics had defected to the Taliban.\textsuperscript{55} Certainly, their not reaching their destination would have been preferable.

THE WAY OF THE GUN?

There are essentially three options with regard to the present U.S. prohibition on assassination—make it absolute (possibly via legislation) and ban all targeted killings in all circumstances; continue the present ban, subject to the interpretations that permit targeted killing in certain circumstances; or eliminate or revise the ban.

No convincing case can be made that the ban should be made absolute—that the U.S. should forego options recognized in international law that might be employed in dealing with enemy leaders and terrorists. To suggest that killing Hitler, Saddam, or bin Laden would cheapen the value of human life ignores the extraordinarily low value they have placed on life, and indicates a willingness to permit such an individual to inflict further destruction. To suggest that killing a leader whose actions have significantly destabilized the international system will somehow further destabilize that system is equally absurd.\textsuperscript{56}

Arguing that the U.S. should continue the ban in its present form would be more reasonable. Under the standing U.S. interpretation of international law, targeted killings of enemy leaders and terrorists are permitted in just those situations where they are most likely to be indicated—in the midst of war, during a continuing series of terrorist attacks, or in the face of imminent attack. Thus, the ban did not stop President George W. Bush from signing a presidential finding in October 2001 that authorized the killing of Osama bin Laden. The finding, drawing on legal memoranda—one written for President Bill Clinton in 1998, and one prepared subsequent to the 11 September attacks—concluded that the prohibition in Executive Order 12333 did not prevent Bush from lawfully singling out a terrorist for death by covert action. The directive also broadened the class of potential targets beyond bin Laden and his immediate circle and beyond the confines of Afghanistan.\textsuperscript{57}

At the same time, eliminating the ban arguably risks allowing officials below the level of President to authorize targeted killings, and/or extend the types of individuals that might be targeted. The real world might then come to mirror the fictional world, with U.S. assassins (whether employed
by the CIA or some other government agency) roaming the earth, eliminating a wide range of individuals, from troublesome foreign leaders to suspected terrorists to renegade agents. Furthermore, a less restrictive policy on assassinations, even if it does not lead the CIA or other agencies to run amok, would increase the probability that something will eventually go wrong. For example, the assassination may backfire (perhaps by making someone a martyr, or replacing him with a bigger threat) or the wrong person may be killed, or the diplomatic relations between the U.S. and a foreign nation might be jeopardized.

But, an even better case can be made for eliminating the ban altogether, and clearly stating that in certain instances the United States will target specific individuals, including some now protected by international law.

One reason for doing so is that the world that existed at the time of, for example, the Hague Convention, is no more. In 1907, no weapons of mass destruction had yet been constructed. National leaders, however flawed, were not the incarnations of evil that many have become, including Hitler, Stalin, Mao Zedong, and Saddam. Had Saddam not invaded Kuwait in 1990, he might have had a few years later, several nuclear warheads to go along with any biological weapons in his arsenal. Had the United States been paying proper attention to his WMD programs in the 1980s, and not assisting Iraq in its war with Iran, a U.S. President might have come to the conclusion that there was a need to act to prevent Iraq’s attainment of full capabilities. The most effective strategy might have included the assassination of certain individuals. Nor, in 1907, were there terrorists with global reach, as well as access to the means of mass murder.

An individual leader’s control of a state apparatus, even when the state is not formally at war with the U.S., should not necessarily make him (or her) immune to being targeted—if that country is a rogue state whose government the U.S. does not recognize. (As one writer observed of the view that heads of state should be immune: “It is hard to understand the solicitude for thugs who are so thuggish that they’ve managed to dominate an entire country.”) The controlling factors should be the threat such a leader represents, the feasibility of his assassination, and the likely impact of that assassination. The same could be said with respect to key individuals, such as “Dr. Germ,” involved in a state’s weapons of mass destruction programs. Similarly, it is reasonable to judge that the risk that terrorists with grievances against the United States will attack U.S. targets, is sufficiently large to require that such groups be neutralized as soon as possible.

Even a particular assassination that violates international law should not be automatically ruled out on those grounds. Nations, including the United States, have violated international law, particularly to gather intelligence, whenever warranted by their national security considerations.
These violations have included “black bag jobs” at foreign embassies to obtain cryptographic material, submarine reconnaissance missions within foreign territorial waters, and U-2 and other aerial overflights to collect imagery and signals intelligence.\(^{59}\)

One justification for such activities is the lack of any real requirement for a government to be truly legitimate in order to receive full protection under international law. A parallel example would be to have United States law recognize as the “legitimate” owners and officers of a corporation individuals who had obtained control by killing or imprisoning their predecessors, seizing the firm’s property, and terrorizing its customers to ensure their continued patronage. As long as international law treats virtually all sitting governments as legitimate, exceptions will have to be made in dealing with rogue nations.

A second reason for eliminating the ban is the confusion, delay, hypocrisy, and absurdity it has engendered. A number of legal scholars have argued or noted that the common understanding of assassination—similar to the one used here—is incorrect, despite the lack of formal legal definition. According to Chris A. Anderson, “the intentional killing of any public official becomes the shorthand definition [for assassination]. This definition is inaccurate [and] muddles the debate because the opposing sides are not talking about the same thing.” And Abraham D. Sofaer suggests that “the indiscriminate expansion of ‘assassination’... to encompass every intentional killing of a foreign official risks confusing highly complex and quite distinct legal and moral issues.”\(^{60}\)

As noted, the ban does not cover the killing of enemy leaders during wartime, or compromise the U.S.’s ability to act in self-defense against terrorists. Assassination is akin to murder (unlawful killing), while targeting Saddam during the Gulf War would have been lawful as was targeting bin Laden in October 2001.

**Disingenuous Statements**

Yet U.S. government officials have frequently acted—publicly and privately—as if the ban does prohibit any targeted killing. Michael Schmitt has argued that “continuance of the executive order in its present form is unacceptable. Even government agencies seem confused about the boundaries of permissibility, and efforts to alleviate confusion by providing authoritative interpretations have been demonstrably ineffective.”\(^{61}\)

Thus, in 1985, a Reagan administration official stated that “Assassination is the purposeful targeting of a political leader, and we will not do that.” The following year, the Reagan administration claimed that the air attacks on Tripoli did not represent an attempt to kill Muammar Qaddafi—despite the fact that Qaddafi’s tent was the objective of nine of the eighteen planes
used to attack five “command and control” targets hit in Libya. Secretary of State George Shultz claimed that “We are not trying to go after Qaddafi as such.”

During the Gulf War, the U.S. used a special bomb to try to hit Saddam Hussein in a bunker, and went after him a second time when he was crossing the desert in a convoy. But then-President Bush specifically disavowed seeking Saddam’s death, stating that “We’re not in the position of targeting Saddam Hussein, but no one will weep when he is gone.” Clearly, such statements were disingenuous, and probably reflected the belief that admitting to a targeted killing would be akin to admitting to attempting to assassinate a foreign leader, since it would be so viewed by non-lawyers. Indeed, the strike against Qaddafi followed discussion in the National Security Council (NSC) about whether the attack would violate the presidential executive order. Eliminating the ban and acknowledging a willingness to direct targeted killings would at least allow U.S. Presidents or senior officials to cease denying the obvious.

In 1985, deputy CIA director John McMahon refused to implement a secret NSC order “telling us to go knock off terrorists in pre-emptive strikes.” McMahon told his subordinates to return the directive, and tell the NSC that the CIA would comply when the President revoked the executive order—although, according to some legal analysts, the President’s ordering of any assassination effectively revokes the executive order. The order remained in place, however, and the terrorists were not “knocked off.”

In 1995, the Federal Bureau of Investigation (FBI) conducted a top-secret criminal investigation of CIA officials on charges that they conspired to murder Saddam Hussein, in violation of the executive order. Hussein’s death was apparently intended to coincide with a military offensive against his regime by a CIA-backed group. The officers were ultimately cleared, but not without the inquiry’s having a chilling effect on CIA covert operations against Iraq. The whole episode was aptly characterized as “theater of the absurd.”

And during the first week of U.S. military operations against the Taliban regime in Afghanistan, an opportunity to kill Taliban leader Mullah Muhammad Omar may have been lost while the commander-in-chief of the U.S. Central Command and his judge advocate worried about whether such an attack would be legal. According to one report, a Predator unmanned aerial vehicle, equipped with Hellfire missiles, detected a convoy of vehicles carrying Omar fleeing Kabul. Neither the CIA or the U.S. Fifth Fleet in Bahrain had the authority to fire at the convoy. The situation was relayed to CENTCOM headquarters in the United States, along with a request for a full-scale assault. According to one account, because of concerns by the CENTCOM commander’s top legal adviser, a missile was
fired at the cars in front of the building that the convoy had disembarked at, rather than at the building itself. Omar survived.\textsuperscript{65}

In addition, Secretary of State Colin Powell told the House International Relations Committee in late October 2001 that he condemned Israel’s targeted killings of suspected terrorists. A month earlier, following President George W. Bush’s comment that bin Laden was wanted “dead or alive,” presidential spokesman Ari Fleischer stated that Executive Order 12333’s prohibition on assassination was still in effect, and refused on four occasions to interpret the text of the prohibition—suggesting a reluctance to publicly and explicitly confirm that specific individuals are being targeted.\textsuperscript{66}

**A MORAL OPTION**

To suggest that the ban should be eliminated is not to suggest that targeted killings become a common element of U.S. foreign policy or covert activities. Assassination should not be used as attempted in the past—as a foreign policy tool to eliminate troublesome foreign leaders such as Fidel Castro or Rafael Trujillo. Rather, it should be employed only, but not always, in dealing with severe threats, for example, the heads of rogue states who are seeking to develop weapons of mass destruction (and whose employment of such weapons against the United States is all too plausible), those who are playing a key role in helping them attain such capabilities, and a variety of terrorists. In addition, there should be some reason to believe that a successful assassination—by itself or in conjunction with other operations—will have a significant impact in alleviating the threat from the offending nation or terrorist group.

Keeping in mind the availability of other, better options, is also necessary. In some cases, legal recourse may be available, as indicated by Slobodan Milosevic’s appearance before an international court. The U.S. will likely be able to rely on the justice systems of many countries, including Canada, to deliver wanted terrorists.

In addition, threats don’t always materialize as feared, and some leaders turn out to behave more rationally than might be expected from their rhetoric. Despite a lot of loose talk, China’s acquisition of nuclear weapons has not led it into nuclear confrontation with the United States. And while the United States may have wished to see Iran’s Khomeini prematurely removed from the scene, the consequences of killing him—in the form of Islamic reaction—may have far outweighed any potential benefits. Scientists, such as Khidhir Hamza, whose death might seem to be a way to impede a foreign nuclear program, may eventually defect and bring with them valuable information. Financial inducements may be a far
more effective means than violence in discouraging scientists from accepting employment with rogue nations or terrorist groups.  

But in those cases where the U.S. does target an individual, assigning that job to the CIA is questionable. One alternative would be to assign such responsibilities to U.S. special forces, specifically, elements of the Joint Special Operations Command (JSOC). JSOC is a component of the U.S. Special Operations Command. Its components include Special Forces Operational Detachment—Delta (“Delta Force”), the Naval Special Warfare Development Group (formerly Seal Team 6), and the successor to the Army Intelligence Support Activity. Each of these groups has individuals capable of carrying out such missions. President Bush’s October 2001 finding apparently calls for close cooperation between the CIA and these units.

Rather than close cooperation, CIA support at a distance would perhaps be preferable. The CIA’s record in assassination has not been good—in several ways. Past CIA assassination strategies, such as turning an assassination into a “mob hit” or recruiting a foreign national, should not be employed. Preferably, any assassination attempt should be treated as a military operation, with very a selective target set—one that could be authorized only through the chain of command that begins with the President. Allowing the CIA to become involved in assassinations, except in terms of arms-length intelligence support, endangers its capability to do the important jobs of intelligence collection and analysis, and could cause it to become embroiled in future assassination controversies.

Whether the CIA would even have the appropriate personnel is not clear. A recent CIA inspector general has argued that “After fifty-plus years, the CIA is an organization of bureaucrats” and “This is not what intelligence officers do. They’re not trained for it... if you go out and hire a bunch of brass knuckle types... it strikes me that throws in the hopper all the things we learned about this bit of business in the Church committee investigations.”

If an administration decides to repeal or alter the ban, doing so publicly is important. According to Boyd M. Johnson, the President may legitimately conceal a complete or partial repeal of the executive ban on assassination from the public, but Brandenburg argues that while the President has clear authority to authorize such a ban, he “may not violate it short of repeal.” Irrespective of the legal issue, secretly altering or eliminating the ban would be unwise. In all probability, such an alteration, which would have to be communicated to several individuals in the administration, the CIA, and Congress, would leak. Equally serious would be the demonstration that apparent presidentially mandated limitations on intelligence activities are being evaded, with presidential approval. Inevitably, people would wonder what, if any, presidential declarations can be trusted.
As the Israeli government now does, the resulting policy should also be for the U.S. to acknowledge its hand in assassinations of foreign leaders and terrorists—as a deterrent to similar individuals, as a recognition of the demands of history, and as a means of making it clear under which circumstances the U.S. will employ such a lethal option. If the President can order such an operation, he should be able to defend it publicly.

But none of those considerations suggests that assassination, including the targeting of certain heads of state during peacetime, should be prohibited. In some circumstances, it is a perfectly legitimate and moral option for the United States to exercise. It is an option the U.S. should not deny itself—for both the sake of the nation and the multitude of victims of present and future tyrants. Nor should U.S. leaders pretend that they are aiming at command and control installations when the real target is another country’s commander-in-chief.

REFERENCES


   It has recently again been alleged in the press that the CIA engages in assassination. As you are well aware, this is not the case, and Agency policy has long been clear on this issue. To underline it, however, I direct that no such activity or operations be undertaken assisted or suggested by any of our personnel.


Jacob Sullum, “License to Take Out the Foe?”


Anthony Verrier, Through the Looking Glass (New York: W.W. Norton, 1983), p. 158; U.S. Congress, Senate Select Committee to Study Governmental

12 W. Averell Harriman, *Personal and Secret*, Memorandum for My Files Only, 7 October 1966; The memo which contained the instructions “No One Else to See,” and “Not Under Any Circumstances Is This Memorandum to Be Used by Anyone, At Least Until All Those Involved Are Dead,” noted that when Harriman “reminded [Rusk] of this . . . he said he didn’t recall it.”


18 Donald Hamilton, *The Wrecking Crew* (Greenwich, CT: Fawcett, 1960). Helm is not the only assassin to occupy the pages of spy fiction, particularly in the 1950s and 1960s. In addition to James Bond and his “license to kill,” there were the John Craig novels written by James Munro (e.g., *The Man Who...
Sold Death), as well as Andrew York’s Jonas Wilde novels (e.g., The Eliminator).

30 Ralph Peters, “A Revolution in Military Ethics?,” p. 104


34 David L. Marcus, “A Case for Assassination?”


For example, Bert Brandenburg, “The Legality of Assassination as an Aspect of Foreign Policy,” p. 694.


Jacob Sullum, “License to Take Out the Foe?”


Seymour Hersh, “King’s Ransom,” The New Yorker, 22 October 2001, pp. 35–39. According to another report, Secretary of Defense Donald Rumsfeld characterized the report as “just not true.” He contended that the green light to fire at Omar was given within five minutes, and that there was no veto by a military lawyer. See Robert D. Novak, “Targeting the Mullah,” The Washington Post, 18 October 2001, p. A39.


Barton Gellman, “CIA Weighs ‘Targeted Killing’ Missions.”

Ibid.