

NAVAL WAR COLLEGE
Newport, RI

The Operational Impact of the U.S. Assassination Ban

by

Stephen J. Berg
Major, U.S. Army

A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Joint Maritime Operation Department.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

Signature: _____

DISTRIBUTION STATEMENT A
Approved for Public Release
Distribution Unlimited

5 February 2001

Jonathan P. Edwards
Captain, USN
Technical Advisor

20010510 111

REPORT DOCUMENTATION PAGE

2

Security Classification of This Page Unclassified

1. Report Security Classification: UNCLASSIFIED			
2. Security Classification Authority:			
3. Declassification/Downgrading Schedule:			
4. Distribution/Availability of Report: DISTRIBUTION STATEMENT A: APPROVED FOR PUBLIC RELEASE; DISTRIBUTION IS UNLIMITED.			
5. Name of Performing Organization: JOINT MILITARY OPERATIONS DEPARTMENT			
6. Office Symbol: C		7. Address: NAVAL WAR COLLEGE 686 CUSHING ROAD NEWPORT, RI 02841-1207	
8. Title (Include Security Classification): The Operational Impact of the U.S. Assassination Ban (Unclassified)			
9. Personal Authors: Stephen J. Berg Major, U.S. Army			
10. Type of Report: FINAL		11. Date of Report: 5 February 2001	
12. Page Count: 26		Advisor: CAPT EDWARDS	
13. Supplementary Notation: A paper submitted to the Faculty of the NWC in partial satisfaction of the requirements of the JMO Department. The contents of this paper reflect my own personal views and are not necessarily endorsed by the NWC or the Department of the Navy.			
14. Ten key words that relate to your paper: Assassination, Executive Order 12333, Operational Factors, Laws of Armed Conflict, Targeting, Principles of Necessity and Proportionality,			
15. Abstract: Regional CINCs are finding that their areas of responsibility contain more and more rogue states and non-state organizations, such as terrorist groups, governed by hostile leadership that recognize the benefits of assassination, the specific targeting of the top leadership of another nation, as a means of furthering their state's or organization's political objectives. Despite the fact that in numerous circumstances international laws of armed conflict do not bar the use of assassination, through a presidential executive order the United States has unilaterally banned its use regardless of the nature of the conflict or the status of the leader. The United States should eliminate the assassination ban. As potentially one of the most effective and efficient means for combating and deterring aggression from rogue states and terrorists, assassination or at least the credible threat of assassination, should be an option available to the United States.			
16. Distribution / Availability of Abstract:	Unclassified X	Same As Rpt	DTIC Users
17. Abstract Security Classification: UNCLASSIFIED			
18. Name of Responsible Individual: CHAIRMAN, JOINT MILITARY OPERATIONS DEPARTMENT			
19. Telephone: 841-6461		20. Office Symbol: C	

Abstract of

The Operational Impact of the U.S. Assassination Ban

Regional CINCs are finding that their areas of responsibility contain more and more rogue states and non-state organizations, such as terrorist groups, governed by hostile leadership that recognize the benefits of assassination, the specific targeting of the top leadership of another nation, as a means of furthering their state's or organization's political objectives. Despite the fact that in numerous circumstances international laws of armed conflict do not bar the use of assassination, through a presidential executive order the United States has unilaterally banned its use regardless of the nature of the conflict or the status of the leader.

The United States should eliminate the assassination ban. As potentially one of the most effective and efficient means for combating and deterring aggression from rogue states and terrorists, assassination or at least the credible threat of assassination, should be an option available to the United States.

I. INTRODUCTION

In today's environment of asymmetrical threats the regional CINCs are finding that their areas of responsibility contain more and more rogue states and non-state organizations, such as terrorist groups, governed by hostile leadership that threaten United States interests as well as peace and stability in their regions. The leaders of these rogue states and non-state organizations recognize the benefits of assassination, the specific targeting of the top leadership of another nation, as a means of furthering their state's or organization's political objectives. Despite the fact that in numerous circumstances international law and the laws of armed conflict do not bar the use of assassination, through a presidential executive order the United States has unilaterally barred its use as a military option regardless of the nature of the conflict or the status of the leader. As potentially one of the most effective and efficient means for combating and deterring aggression from rogue states and terrorists, assassination or at least the credible threat of assassination, should be an option available to the United States. By eliminating the assassination ban the United States would provide the CINCs and their planning staffs another arrow in their quiver of contingency plans for future operations.

II. BACKGROUND

A. The Legal Restriction

Although there has been no Congressional legislation banning assassination, Executive Order 12333, *United States Intelligence Activities*,¹ states in part:

2.11 *Prohibition on Assassination.* No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2.12 *Indirect Participation.* No agency of the Intelligence Community shall participate in or request any person to undertake activities forbidden by this Order.

President Ford ordered the executive ban in 1975. It was reissued by President Carter in 1976, by President Reagan in 1982, and has not been revoked since.² The politically motivated ban arose out of the ashes of the Watergate investigation when the Congressional inquiry turned its attention to the CIA and alleged illegal domestic intelligence operations against persons involved in the anti-Vietnam War movement. When the inquiry incidentally uncovered assassination plots against foreign leaders, a special subcommittee on assassination was formed.³ The committee determined that, though unsuccessful, the United States had directly plotted the deaths of two leaders, Fidel Castro of Cuba and Patrice Lumumba of Congo.⁴ Three other assassinations were investigated and blackened the eye of the CIA but no direct link was established in the deaths of General Rafael Trujillo of the Dominican Republic, President Ngo Dinh Diem of South Vietnam and General Rene Schneider of Chile.⁵ In an effort to stave off the public demand for Congressional termination of the CIA and all covert operations, President Ford issued the Executive Order regulating intelligence activities and banning assassination.

B. The Ban's Effect

A major deficiency of the order is the failure to define assassination. It is clear from its inception that the executive order intended to ban attempts to kill the political leaders of countries with which we are not engaged in a declared war or war-like conflict. By failing to define assassination in the order, however, the President may well have intended to leave wiggle room for some covert operations, particularly where international law would not bar such an act. However, the opposite has occurred. The result of the assassination ban has been to not only prohibit attempts on the life of any country's leadership, regardless of the

underlying conflict or status of the leader, but also to inhibit the execution of any operation that may endanger the life of a foreign leader.

When President Reagan ordered the 1986 bombing raid on Libya, despite the bombing of Colonel Muammar Qaddafi's living quarters, the Bab al Azizia barracks, the administration took great pains to insist that the raid was not an assassination attempt on Colonel Qaddafi.⁶ Secretary of State George Schultz emphasized that Qaddafi was not a target. "We have a general stance that opposes direct efforts of that kind, and the spirit and intent was in accord with those understandings."⁷ In 1989, President Bush was criticized by members of the Senate Intelligence Committee for not moving quickly enough to support the bungled October 3rd coup attempt against Panamanian dictator General Manuel Noriega. President Bush contended that U.S. military officers and intelligence agents on the scene had refrained from assisting the plotters on the grounds that General Noriega might be killed.⁸ In the 1991 Persian Gulf War, despite lawfully declared hostilities against Iraq and Saddam Hussein's status as a military officer commanding Iraq's armed forces, the Bush administration took great pains to publicly deny that Saddam was a target.⁹ General Swartzkopf affirmed that the United States does not have a policy of trying to kill any particular individual.¹⁰ Air Force Chief of Staff General Michael Dugan was even fired by Defense Secretary Dick Cheney for telling reporters that the United States would attempt to target Saddam.¹¹ Once again, however, the United States bombed virtually all of the places where intelligence sources indicated that Saddam worked and slept.¹²

In each of the above operations the United States' own assassination ban may well have rendered more protection to an adversary than that provided under international law. It is clear from its application and influence that the assassination ban has evolved to

encompass the intentional killing of *any* specifically named state leader whether or not he or she would be recognized as a lawful target under the international laws of armed conflict. So for purposes of this paper assassination is defined as *the specified killing of an individual in a leadership position by another individual acting under the authority of another state and done for the purpose of influencing the policies of the targeted leader.*¹³ Operationally defined, if an official action or military plan targets an individual by name, then it fulfills this definition of assassination. A “bullet with a name” on it is always an instrument of political assassination.¹⁴

Despite this definition of assassination, as the past examples have shown, administrations have been willing to push the edge of the envelope by targeting the known residences of the Libyan and Iraqi leaders. However, because of the broad interpretation of the assassination ban these attempts have been operationally excessive and ineffective. Even though Qaddafi, Noriega and Hussein were identified as centers of gravity, United States military operations were blunt and resulted in extensive collateral damage to both civilians and civilian infrastructure and failed to topple these centers of gravity. With the absence of Executive Order 12333 a more surgical operation could be far more effective.

C. Legal Alternatives

Elimination of the assassination ban does not necessarily mean the United States should engage in assassination, nor does it address what limits should be placed on it, what legislative constraints if any should be applied nor what consultation requirements should be established. Such considerations are beyond the scope of this paper. It simply removes a publicly declared prohibition policy and thereby adds a deterrent element to United States

foreign policy and provides war fighters with an operational alternative when the laws of armed conflict are not in opposition.

Because even the term assassination is so repugnant to most Americans, proposing to remove the ban appears politically untenable. The assassination ban simply seems like the right thing to do. So why haven't other nations, particularly the United States' closest allies followed suit?¹⁵ Perhaps the answer lies in the fact that history has long recognized a pragmatic and even a moral utility for such an action.¹⁶ Saint Thomas Aquinas contended that assassination, even of the sovereign, is warranted by natural law if the murder of the tyrant is done for the common good.¹⁷ It appears that the larger international community is satisfied that the international laws of armed conflict that generally govern the use of force between nations adequately regulate the assassination use of force as well.

International law prohibits military forces from targeting civilians and noncombatants, from employing "treacherous means" such as attacks by non-uniformed personnel to attack enemy combatants and from "perfidious attacks" such as feigning noncombatant status and appearing to be unarmed to further an attack.¹⁸ These laws seem more than adequate to protect against the morally reprehensible act of murder against a civilian head of a state that is not engaged in lawful hostilities.¹⁹ However, an attack upon a hostile military commander who is also a head of state, during a time of lawful hostilities, to be carried out by uniformed military personnel or by clearly marked warplanes or warships, would not be prohibited by the laws of war and would therefore not be considered unlawful assassination by the international community.²⁰ This would however run afoul of the assassination prohibition as it has come to be interpreted in Executive Order 12333. Therefore, to prevent the United States from denying itself both a deterrent and a defensive

weapon that is already regulated and recognized by the international community as a potentially lawful use of force, the ban should be eliminated.

At the strategic level dropping the ban against assassination may be a most effective deterrent in today's environment of asymmetrical third world threats. Particularly because Third World nations do not play by the same balance of power rules based on threats from abroad that for so long governed relations between the global powers. Steven David explains that Third World leader's actions and calculations are not only based on threats from abroad but also from within. David describes this multi-faceted analysis as "omnibalancing."²¹ The most powerful motivator for the seemingly irrational behavior of such Third World leaders is really the rational calculation of how to ensure their political and physical survival. Instead of pursuing policies that benefit the state, such a Third World leader will make policy decisions to ensure that he will remain in power.²² Thus, it becomes apparent why these leaders will sometimes protect themselves at the expense of the state and engage in seemingly irrational behavior against a superpower or global coalition. Ready examples include Saddam Hussein's disastrous defiance in the face of a virtual world-wide coalition aligned against him and the vastly superior military might he faced during Desert Shield/Desert Storm. Likewise, Serbian leader, Slobodan Milosovich's defiance of NATO demands seemed irrational in the face of the overwhelmingly superior military might of the NATO coalition.

David offers three major reasons why Third World leaders are most influenced by threats to their hold on power as opposed to threats to the interests of the state. The first is their lack of identity with the mix of peoples, both ethnic and religious, that were lumped together by their nation's arbitrary boundaries - - the creation of the colonial powers that

once ruled over them. Second, because many Third World leaders came to power by force, they must rule by force and use force to remain in power. Finally, Third World leaders can be especially tenacious about their hold on power because a loss of power often means a loss of life.²³ Therefore, it is apparent for such Third World countries that the leader, often a single individual, is the nation's center of gravity. It is the self-interest of the leader of the state and not the welfare of the state that is the force behind foreign policy decisions. When such a leader is faced with a choice of endangering his hold on power or endangering the state itself, the latter will be the choice. Therefore, the leader will not succumb to a deterrent that only threatens the well being of their state without actually threatening their regime, their hold on power or their life.²⁴ Thus, an absolute ban on the use of assassination eliminates a most powerful deterrent for such a regime and its leader.

But how does the United States eliminate the ban without appearing to be an excessive advocate of assassination? Although they function similarly, executive orders are not laws. They do not contain punitive provisions for a violation. Most often the fallout arises from public opinion and political costs. Just as they are created, by Presidential fiat, they can be eliminated. If the President made the required finding that a given covert operation was important to national security and if the appropriate reports were provided to Congress, a covert operation that involved the killing of a specified foreign leader would not be illegal under United States law. Executive Order 12333 is subject to modification or rescission by the President at any time. The true legal effect of the executive order is to ensure that the authority to direct such acts rests with the President alone.²⁵ In this way it discourages the establishment of the plausible deniability that was so prevalent in the Kennedy, Johnson and Nixon administrations. Likewise it dispenses with the appearance of

the CIA and military operatives operating as “rogue elephants on a rampage”²⁶ without clear guidance from the National Command Authorities. Alternatively, the ban could cease to exist altogether by the current administration reissuing the executive order *United States Intelligence Activities* without including paragraphs 2.11 and 2.12.

Again, to eliminate the assassination ban in this manner would not necessarily be to advocate the rampant use of assassination, rather it would keep potential enemies guessing and thereby be an additional deterrent to destabilizing conduct that is adverse to United States interests abroad. As was seen in the Kosovo air operations, absolute statements precluding the use of a weapon such as ground troops may actually prolong a conflict and create additional unnecessary casualties and collateral damage. Unpredictability, particularly for military heads of state could be a powerful deterrent.

At the operational level, if dropping the assassination ban is to become an effective deterrent, CINC staffs must also be prepared to actually execute such a directive from the National Command Authorities. For reasons discussed in the following section, such a plan may actually prove to be the most operationally expedient means to prevail in the next armed conflict.

III. OPERATIONAL BENEFITS

The art of warfare at all levels is to obtain and maintain freedom of action; the ability to carry out critically important, multiple, and diverse decisions to accomplish assigned military objectives and ultimately the mission.²⁷ Although the decision to commence with an assassination operation would only come from the highest strategic level, proceeding with such an operation could provide the CINC or operational commander with numerous advantages in implementing the operational factors of Space, Time and Forces.

A. Factor Space

The major threats to United States' interests today are no longer found in the large and powerful nation state that lies within easy reach of an ally or a friendly port. Rather, the threats arise in small Third World nations that are often surrounded by unfriendly and uncooperative nations that do not share United States' interests. Consequently, these states are unwilling to contribute bases and ports to assist the United States in projecting power to these trouble spots. Examples include Kosovo, Iran, Iraq, Pakistan, India, the Stans and Southeast Asia. Without effective alliances or coalitions to expand the space in which United States forces can deploy and operate, the United States is severely limited in the amount and type of conventional forces that it can bring to bear. Without easy access to the often small and isolated space containing the conflict, the United States can best affect the outcome with small forces of special operations units focusing on the center of gravity – the rogue nation's leadership.

The terrorist threat to the United States poses the same dilemma. Small bands of terrorists with their dynamic leaders as their only center of gravity often hide themselves within the sovereign territory of an isolated nation that is, like all of its neighbors, unwilling to cooperate with United States efforts to bring these groups to justice. Once again, this inability to operate conventional forces within such a small and restricted space beckons for the use of unconventional special operations forces to sever the head of the terrorist organization – its dynamic leader.

Implementing an assassination plan could also limit the overall scope and area of a conflict by preventing it from spilling over into the space of neighboring regions.

Elimination of Milosovich during the Bosnian war may well have prevented the need for

U.S. troops in Bosnia as well as the spread of Serbian aggression in Kosovo, the ethnic cleansing of Kosovar Muslims and the refugee flow into Albania's sovereign territory. By focusing an assassination operation on the small space occupied by the rogue nation's or terrorist organization's leadership, the risk of collateral damage attributable to an expanded operating space can be avoided. For example, the retaliatory strikes against Libya and Colonel Qaddafi's terrorist supporting network resulted in the reported deaths of 36 civilians and one soldier²⁸ -- a result that may well have been avoided by a more precise assassination operation directed against the Libyan leader.

B. Factor Time

Closely related to the operational factor space is time. Space and time form the basis of most calculations of the operational commander. The operational commander must properly calculate or anticipate the time required for both friendly and enemy forces to plan and prepare for combat action, time for mobilization and deployment, warning and reaction time, time to regenerate combat power and time needed to bring up reinforcements.²⁹

The distant and isolated location of the world's current trouble spots results in the United States expending vast amounts of time creating coalitions and alliances to assist in the additionally time consuming process of deploying its conventional might to these far away places. The limited capacity of Third World airfields and seaports also contribute great delays to United States efforts to get effective conventional fighting or peacekeeping forces on the ground. Depending on the size of the operation, extensive delays also occur in mobilizing a national logistics system, calling up reserve forces, and conducting needed training. Once again, a properly executed contingency operation using limited amounts of

special operations forces to eliminate the rogue nation's leadership could result in avoiding all of these delays.

As seen in the NATO air operations over Kosovo, announcing to the world that a significant dimension of warfare, in this case land forces, would not be considered had an adverse effect on time by prolonging the air operation for several weeks. The result was extensive additional collateral damage, civilian casualties, continued ethnic cleansing by the Serbians and the inadvertent bombing of the Chinese embassy.³⁰ Likewise, by unilaterally imposing a greater assassination ban than that required by international law, the United States may find itself fighting a conflict for a much longer period of time than anticipated or desired.

C. Factor Forces

At the operational level the factor force is not simply troops, or naval forces, or air forces. Rather, it includes all the means by which operational objectives are attained. Such means include armed forces, as well as the political and economic assets and resources of the entire state or coalition that are applied to a given operation.³¹

By unilaterally imposing a greater assassination ban than that required by international law, the United States is forfeiting a potentially powerful means of achieving an operational objective with a minimum force. For example, a small special forces operation to remove Saddam or Milosovich, may have saved the vast amount of forces and resources that were needed in Desert Shield/Desert Storm and Operation Allied Force. Targeting an enemy's top political leadership, particularly if that leadership is controlling the nation's military, may serve to deflate enemy morale by creating disarray and competitive turmoil within the enemy military forces. Additionally, creating uncertainty in the security of an

enemy leader's political position and very life could result in deterring that leader from the aggressive behavior that seems so illogical and detrimental to their nation and ends up costing so much in lives and lost resources. At the very least it could reduce the enemy troops in the field by forcing them to strengthen rear area security for their nation's top leadership.

Such an approach is supported by the two principles of necessity and proportionality that govern the use of force under the international laws of armed conflict. The principle of necessity requires that any use of force contributes to the submission of the enemy as quickly as possible with the minimal use of resources.³² Proportionality requires that the selected use of force be in proportion to the military goal – destruction and physical suffering may not be excessive in relation to the military gain.³³ Other assassination benefits, particularly relevant to anti-terrorist operations, is that it takes no prisoners that can become the cause for further terrorist attacks.³⁴ Finally, because terrorist groups are most often led by a single charismatic, organizationally effective individual who cannot be easily replaced, assassination would disrupt the terrorist groups more than any other form of attack.³⁵

IV. OPERATIONAL DIFFICULTIES

Proponents of the assassination ban argue that the operational difficulties are too great to justify contingency plans that pursue such an option. Contrary to its reputation and appeal as a "simple solution," assassination is really an enormously complex operation.³⁶ Therefore, devoting operational staff time and resources to planning such an operation is at best a waste of time, but worse, it could divert precious time, space and forces from more pressing and effective operational demands.

How to get close enough to an adversary's leadership poses the first operational obstacle. The outbreak of war or any hostilities between nations is accompanied by heightened security measures designed to protect the lives of government and military leaders. Ironically, the men who bring their nations to war are the safest from the prospect of being killed in that war.³⁷ Likewise, oppressive Third World leaders who rose to power through the barrel of a gun are protected by the very repression and military infrastructure that brought them to power and over which they control. To circumvent this security structure and get close to the intended target requires tremendously detailed and current intelligence. The kind of intelligence that is best provided, and sometimes can only be provided, by human sources on the ground and close to the targeted leader. Such human intelligence (HUMINT), however, is most often lacking in the closed and militarized societies where it is needed the most. Additionally, such HUMINT may require meticulous collection over many years in an area of the world that may not yet be on anybody's radar screen as a potential trouble spot. For the United States this would require a large amount of resources to cover vast areas of the world based on intuition or speculation -- not a good formula for obtaining funding and resources. Even a small nation with a more focused threat, like Israel, observed the daily activities of Khalil al-Wazir for five years before Israeli commandos assassinated him.³⁸

A second operational obstacle concerns determining *who* would pull the trigger. Although the need to have an assassin who is an insider that can freely move in and out of enemy circles and get near the target without drawing suspicion may require hiring a foreign national, history has shown that such efforts most often lead to failure. Cuba and the Congo serve as prime examples. Assassination is a nasty business that often requires employing

nasty people who often have their own political agendas and attitudes that differ from our own.³⁹ While admitting that U.S. Special Operations Forces could achieve reliable assassination capability with minimal specialized training and equipment, Roger Herbert argues that American soldiers are not assassins.⁴⁰ To make them so would violate all the dictates of war. When a soldier steps out of the rules of armed conflict to covertly assassinate, he engages in murder. When this distinction between lawful killing and murder is abandoned “society will fall to pieces, and war—as distinct from mere indiscriminate violence—becomes impossible.”⁴¹ The ethical justification that makes soldiers possible will begin to decay and “soon such an army will cease to fight, each man seeking only to save his conscience and his skin.”⁴² Although such gloom and doom predictions do not address the assassination operations that could be within the bounds of the international laws of armed conflict and therefore be performed by soldiers,⁴³ it does lead us into some of the higher strategic concerns that also render assassination a difficult and dangerous tool to employ.

V. LARGER STRATEGIC DIFFICULTIES

First, argue proponents of the ban, even without Executive Order 12333, as it would most likely have to be attempted; assassination is still illegal under international law.⁴⁴ It is unlikely that a soldier in uniform openly bearing arms would ever get close enough to a political leader, even if that leader were a legitimate military target. The covert nature of the operation would surely require posing as the enemy in some manner that makes one indistinguishable from an enemy soldier or civilian. A soldier caught conducting such an operation would not be afforded prisoner of war protections under the laws of armed conflict.⁴⁵ To put a U.S. serviceman in the position to be lawfully tried as a murderer on

foreign soil is repugnant to American ideals and could adversely affect American citizens' willingness to serve the military in any capacity.

Second, argue the proponents, assassination compromises the democratic ideals that are the United States. It enables other nations to challenge America's traditional appeal to the letter and spirit of both international and domestic law. The ideas of due process, the rights of the accused and numerous other human rights are lost when the United States in essence determines guilt in absentia and unilaterally proceeds with the execution.⁴⁶ Thus, the United States' moral legitimacy and ability to lead young and budding democracies around the world is compromised. Brian Jenkins notes that we do not defeat terrorism by adopting their tactics and trying to match them car bomb for car bomb, hostage for hostage or bullet for bullet. "During wartime we did not torture POWs when we learned that American POWs were being tortured because it would have violated our own standards of conduct. It is not that our foes, then or now, weren't bad enough. The point is that we are not bad enough."⁴⁷

Third, assassination may not achieve the desired end state because the replacement leader may be even worse than the one assassinated. In 1973, Israeli agents killed Mohammed Boudia, an Algerian leader who had orchestrated Palestinian terrorist operations in Western Europe. His replacement, Carlos ("The Jackal"), was an even more notorious and ruthless terrorist.⁴⁸ During the 1986 bombing raid on Libya, Qaddafi's lieutenants included many of those who were actually running Libya's terrorist apparatus.⁴⁹ Although history is replete with leadership disputes following an assassination, most organizations do not end with the death of their leader. Most have a mechanism or chain of command set in place to replace a dead, retiring or resigning leader. Thus, an assassination is counter-productive if the successor is worse than the assassinated. Adding to the problem is the fact that in the

closed society in which they operate, it is often difficult to determine just who the successors are and what their disposition and foreign policy agenda may be.

Finally, argue the assassination ban proponents, the United States is ill prepared to defend against retaliation in the form of reciprocal assassination attempts against our leadership. Once the United States adopted a policy of assassination it could not cry foul when its own diplomats and political leaders at home are targeted. Jenkins argues that the world would simply see it as "another phase of a dirty war, fought with tactics we have agreed to."⁵⁰ The United States, however, would be at a distinct disadvantage in such a battle. The authoritarian regimes that dominate today's trouble spots already employ rigorous security measures in closed societies. This is particularly true in regimes that rose to power by force. The United States, on the other hand, has an open society where access to political leadership is relatively easy. To restrict access across the board because of foreign policy decisions would not be accepted by the American people.⁵¹ The very efficacy of a democracy depends on contact between politicians and their constituents.⁵²

VI. CONCLUSION

The United States assassination ban should be eliminated. Although proponents of the ban present legitimate concerns and rightly warn of potential adverse repercussions, these concerns all highlight the need for extreme caution and NCA controls on the actual implementation of an assassination contingency plan. The proponents articulate no compelling reason why the United States should continue to unilaterally impose a greater restriction on itself than that already imposed by the international laws of armed conflict. To the contrary, eliminating the ban would provide the operational warfighter with contingency plans that make optimal use of the operational factors of time, space and forces in the often

far away and isolated Third World regions in which he operates. Eliminating the ban would also accrue deterrent benefits against rogue state and non-state organization leaders whose foreign policy actions are not based on the best interests of their state or organization, but rather, on threats to their power and to their life. Ambiguity through silence would serve as the best deterrent and still leave open the possibility of action when it would be supported by the international laws of armed conflict. The United States should not needlessly jeopardize service men and women by continuing the mistake that it made in Kosovo when it announced to the world what it would not be willing to do.

NOTES

¹ President, Executive Order 12333, "United States Intelligence Activities" 3 Code of Federal Regulations 200 (1982), *reprinted in* War and National Defense, U.S. Code, Title 50, sec 401 (1991).

² President, Executive Order 11905, "United States Intelligence Activities" 3 Code of Federal Regulations 90 (1977), *reprinted in* War and National Defense, U.S. Code, Title 50, sec 401 (1976) *superseded by* Executive Order 12036, "United States Intelligence Activities" 3 Code of Federal Regulations 112 (1979), *reprinted in* War and National Defense, U.S. Code, Title 50, sec 401 (1979).

³ The eleven member "Church Committee" was chaired by Senator Frank Church (D-Idaho) and comprised of Howard Baker (R-Tennessee), Barry Goldwater (R-Arizona), Gary Hart (D-Colorado), Philip Hart (D-Michigan), Walter Huddleston (D-Kentucky), Charles Mathias (R-Maryland), Walter Mondale (D-Minnesota), Robert Morgan (D-North Carolina), Richard Schweiker (R-Pennsylvania), and John Tower (R-Texas). Roger Herbert, "Bullets With Names: The Deadly Dilemma." (Unpublished Paper. Naval Post Graduate School, 1992), 42-43, *citing the* Congressional Record, 21 January 1975, 596F.

⁴ The Congo is now Zaire. Congolese rivals ultimately killed Lumumba in 1961 without CIA assistance. Havens, Murray Clark, Carl Leiden and Karl M. Schmitt, The Politics of Assassination. Englewood Cliffs, NJ: Prentice-Hall, 1970, 127-136; Jonathan M. Fredman, "Covert Action, Loss of Life, and the Prohibition on Assassination, 1976-96" *reprinted from* Studies in Intelligence, Vol. 40, No. 2, Washington DC: Center for Studies of Intelligence, 1996, 15.

⁵ Herbert, 45; Fredman, 15.

⁶ Attacks were also made on numerous other military and intelligence targets in and around Tripoli and Benghazi by thirteen F-111 fighter-bombers flying out of England and twelve Navy A-6 attack planes launched from carriers in the Mediterranean. David C. Martin and John Walcott. Best Laid Plans: The Inside Story of America's War Against Terrorism. New York: Harper & Row, 1988, 294-310.

⁷ Department of State Bulletin, "U.S. Exercises Right of Self Defense Against Libyan Terrorism," June 1986, 15; *quoted in* Herbert, 59.

⁸ Fredman, 19. *See also* Herbert, 60 *citing* Pat Towell, "Administration Seeks Leeway in Helping Future Coups," Defense and Foreign Policy, 21 October 1989, 2812.

⁹ See notes 15-19 *infra* and accompanying text.

¹⁰ Stephen Budiansky, "The Real Target?" U.S. News and World Report, 18 February 1991, 20.

¹¹ *Ibid.*, 21.

¹² *Ibid.*, 26.

¹³ For similar but varying definitions see Patricia Zengel, "Assassination and the Law of Armed Conflict." Military Law Review. 134 (1991): 146; Michael Schmidt, "State Sponsored Assassination in International and Domestic Law." Yale Journal of International Law. 17 (1992): 610; David Newman and Tyll Van Geel, "Executive Order 12333: The Risks of a Clear Declaration of Intent." Harvard Journal of Law and Public Policy. 12 (1989): 434.

¹⁴ Herbert, 16.

¹⁵ No other nation has issued such an explicit and public prohibition against the potential use of assassination. Newman and Van Geel, 441, n.33.

¹⁶ Franklin L. Ford, Political Murder: From Tyrannicide to Terrorism (Cambridge, MA: Harvard University Press, 1985), 8-12. *See also* Boyd M. Johnson, "Executive Order 12333: The Permissibility of an American Assassination of a Foreign Leader." Cornell International Law Journal, 25 (1992): 403-17; Zengel, 125-30.

¹⁷ Newman and Van Geel, 436 *citing* Edward Hymans, Killing No Murder (London: Thomas Nelson and Sons Ltd., 1969), 17.

¹⁸ Zengel, 130-41. *See also* "The Law of War," Department of the Army, Operational Law Handbook. (Charlottesville, VA: Judge Advocate General's School, 2000), 5-1 through 5-16.

¹⁹ Article 51 of the United Nations Charter recognizes the inherent right of self-defense for all nations. The United States has consistently relied upon this provision to engage in lawful hostilities and strike against threats to its national security as well as to its citizens abroad. The Charter of United Nations, 26 June 1945.

²⁰ W. Hays Parks, "Memorandum of Law: Executive Order 12333 and Assassination. Army Lawyer. (DA Pamphlet 27-50-204 Washington DC: Department of the Army, 1989): 8-12.

²¹ Steven R. David, "Explaining Third World Alignment," World Politics, (June 1991), 235.

²² *Ibid.*

²³ *Ibid.*, 239-242.

²⁴ *Ibid.*, 243.

-
- ²⁵ Zengel, 146.
- ²⁶ This charge was first made in 1975 by Senator Church when he initiated the subcommittee to investigate CIA assassination attempts. Herbert, 46.
- ²⁷ Chester E. Helms, "A Short History of Operational Art" Newport, RI: Naval War College, October 1999, 1.
- ²⁸ Martin and Walcott, 310.
- ²⁹ Helms, 8.
- ³⁰ Department of Defense, Kosovo/OPERATION Allied Force After Action Report: Report to Congress. (Washington DC: 31 January 2000), 6-29.
- ³¹ Helms, 10.
- ³² Department of the Army, Operational Law Handbook, 5-3 through 5-4.
- ³³ *Ibid.*, 5-4 through 5-5.
- ³⁴ Brian Michael Jenkins, Should Our Arsenal Against Terrorism Include Assassination? RAND Papers, no.7303 (Santa Monica, CA: RAND Corp., 1987), 4.
- ³⁵ *Ibid.*, 3-4.
- ³⁶ Herbert, 93.
- ³⁷ *Ibid.*, 94.
- ³⁸ Smolowe, Jill. "Assignment: Murder." Time, 2 May 1988, 36-38, *cited in* Herbert, 94.
- ³⁹ Jenkins, 10.
- ⁴⁰ Herbert, 95.
- ⁴¹ Martin van Creveld, The Transformation of War. New York: The Free Press, 1991, 90.
- ⁴² *Ibid.*, 93.
- ⁴³ See notes 15-19 *supra* and accompanying text.
- ⁴⁴ Jenkins, 5.
- ⁴⁵ Department of the Army, Operational Law Handbook. (Charlottesville, VA: Judge

Advocate General's School, 2000), 5-1 through 5-16.

⁴⁶ Jenkins, 5-6.

⁴⁷ Jenkins, 7.

⁴⁸ Herbert, 106.

⁴⁹ Ibid.

⁵⁰ Jenkins, 7.

⁵¹ J. Manning Bolchoz, "Center of Gravity: Justification for Assassination." (Unpublished Research Paper, U.S. Army War College, Carlisle Barracks, PA: 1999), 13

⁵² Murray Clark Havens, Carl Leiden and Karl M. Schmitt, The Politics of Assassination. Englewood Cliffs, NJ: Prentice-Hall, 1970, 11.

Bibliography

- Bell, J. Bowyer. Assassin! New York: St. Martin's Press, 1979.
- Bolchoz, J. Manning. "Center of Gravity: Justification for Assassination." Unpublished Research Paper, U.S. Army War College, Carlisle Barracks, PA: 1999.
- Code of Federal Regulations, Title 3—The President. Washington DC: U.S. General Services Administration. National Archives Records Service. Office of the Federal Register, 1982.
- Code of Federal Regulations, Title 3—The President. Washington DC: U.S. General Services Administration. National Archives Records Service. Office of the Federal Register, 1979.
- Code of Federal Regulations, Title 3—The President. Washington DC: U.S. General Services Administration. National Archives Records Service. Office of the Federal Register, 1977.
- Crotty, William J., ed. Assassinations and the Political Order. New York: Harper & Row, 1971.
- David, Steven R. "Explaining Third World Alignment." World Politics, (June 1991): 233-56.
- Elliott, Paul. Assassin! The Bloody History of Political Murder. New York: Sterling Publishing, 1999.
- Ford, Franklin L. Political Murder: From Tyrannicide to Terrorism. Cambridge, MA: Harvard University Press, 1985.
- Fredman, Jonathan M. "Covert Action, Loss of Life, and the Prohibition on Assassination, 1976-96." *reprinted from* Studies in Intelligence, Vol. 40, No. 2, Washington DC: Center for Studies of Intelligence, 1996.
- Havens, Murray Clark, Carl Leiden and Karl M. Schmitt. The Politics of Assassination. Englewood Cliffs, NJ: Prentice-Hall, 1970.
- Heaps, Willard A. Assassination: A Special Kind of Murder. New York: Meredith Press, 1969.
- Helms, Chester E. "A Short History of Operational Art." Unpublished Paper. Newport, RI: Naval War College, October 1999.
- Herbert, Roger G. "Bullets With Names: The Deadly Dilemma." Unpublished Paper. Naval Post Graduate School, Monterey, CA: 1992.

- Jenkins, Brian Michael. Should Our Arsenal Against Terrorism Include Assassination? RAND Papers, no.7303. Santa Monica, CA: RAND Corp., 1987.
- Johnson, Boyd M. "Executive Order 12333: The Permissibility of an American Assassination of a Foreign Leader." Cornell International Law Journal, 25 (1992): 401-35.
- Kirkham, James F., Sheldon G. Levy and William J. Crotty. Assassination and Political Violence. New York: Bantam Books, 1970.
- _____. Kosovo/OPERATION Allied Force After Action Report: Report to Congress. U.S. Department of Defense: Washington DC, 31 January 2000.
- Laucella, Linda. Assassination: The Politics of Murder. Los Angeles, CA: Lowell House, 1998.
- Martin, David C. and John Walcott. Best Laid Plans: The Inside Story of America's War Against Terrorism. New York: Harper & Row, 1988.
- McConnell, Brian. The History of Assassination. Nashville, TN: Aurora Publishers, 1970.
- Newman, David and Tyll Van Geel. "Executive Order 12333: The Risks of a Clear Declaration of Intent." The Harvard Journal of Law and Public Policy. 12 (1989): 433-47.
- _____. "Operational Factors." Newport, RI: Naval War College, September 1997.
- Parks, W. Hays. "Memorandum of Law: Executive Order 12333 and Assassination." Army Lawyer. DA Pamphlet 27-50-204 Washington DC: U.S. Department of the Army, December 1989): 4-8.
- Schmitt, Michael. "State Sponsored Assassination in International and Domestic Law." Yale Journal of International Law. 17 (1992): 609-90.
- Stoker, Joseph M. "Assassination: A Tool to Counter Osama Bin Laden and other Transnational Terrorists?" Unpublished Research Paper, U.S. Army War College, Carlisle Barracks, PA: 1999.
- U.S. Department of the Army. Operational Law Handbook. Charlottesville, VA: Judge Advocate General's School, 2000.
- Van Creveld, Martin. The Transformation of War. New York: The Free Press, 1991.
- Vego, Milan N. On Operational Art. Newport, RI: Naval War College, September 1998.
- War and National Defense. U.S. Code, Title 50, sec. 401 (1991).

War and National Defense. U.S. Code, Title 50, sec. 401 (1979).

War and National Defense. U.S. Code, Title 50, sec. 401 (1976).

Zengel, Patricia. "Assassination and the Law of Armed Conflict." Military Law Review. 134 (1991): 123-55.