

Assassination policy revisited

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On Oct. 1, White House spokesman Ari Fleischer skillfully danced around a controversial issue. Since September 11, the government has been searching for new tools with which it can combat terrorism. There have been new laws, such as the Patriot Act, which reform the way we pursue terrorists domestically.

However, when it comes to proactively countering terrorism abroad, much needed reforms have been few and vague at best. Of the few reforms proposed, only a handful have deserved the attention they have garnered. Of these, one of the most notable has been the proposed removal of the government ban on assassination.

The ban on U.S. assassination went into effect after a Senate Committee's 1975 investigation of CIA policies and operations.

The committee, chaired by former U.S. Sen. Frank Church, saw the CIA as a "Rouge Elephant" whose arbitrary powers needed to be curtailed. The question now is whether the criticisms levied by that committee still hold true in the face of the evolving threat of terrorism and irregular warfare.

One of the main arguments against the restrictions imposed by this Senate committee is that since the end of the Cold War the main threat to U.S. national security has shifted away from large nation-states to rogue, nonstate actors. These entities seek to employ terrorism to further their goals, and since these activities are irregular in nature, they are best countered by extraordinary means. This holds particularly true for techniques involving assassination, since nonstate actors most commonly have neither large standing armies, nor any other conventional forces.

Consequently, a nonstate actor's center of "gravity" is comprised of the principal leaders in the organization. Individually targeting these leaders at their vortex would be an effective way to engage this asymmetric threat.

The issue of actually enforcing a ban on assassinations is also complicated. For example, the military has carried out "indirect attacks" on individuals leaders for years. This can be seen in the bombing of Omar Gadhafi's living quarters in 1986, and in the attempt kill Osama bin Laden with cruise missiles in 1998. By focusing these attacks on situational targets such as training camps or government compounds, the military has circumvented the strict legal interpretation of the regulations on assassination. Thus, institutions such as the military have been able to evade the assassination issue by dodging the various semantic criteria behind the ban.

A further issue that complicates the enforcement of the assassination ban, is the definition of the term "terrorist."

Terrorists are a stumbling block, because many nations view terrorists as civilians, and thus targeting these individuals with lethal force is often seen as a violation of international law.

Of particular importance is whether a terrorist is classified as a combatant or a criminal. If a terrorist is classified as a combatant, then that individual is subject to the laws of war, and targeting that individual with lethal force would be perfectly justifiable. However if a terrorist is classified as a criminal, then that individual is subject to criminal law, and such actions would no longer be permissible.

The main concern behind the removal of the assassination ban is how we would deal with it. The attacks on September 11 have clearly illustrated we have to change how we combat and engage new threats in this post Cold War period. As the president correctly said in the days following September 11, it is a "Special Operations War." Accordingly, we should act without restraint. If we enact a proviso, it should have built in exacting congressional and even judicial oversight. It should also allow for assassination only where there is a clear and extreme threat to national security, especially the hostile proactive use of Weapons of Mass Destruction.

This would allow for more vetted decisionmaking than under standard de facto procedures. This also could function as a deterrent, by personalizing the threat of force. Finally, lifting the ban would allow us to utilize the means to accomplish the job, from CIA operatives to U.S. Special Operations Forces. This stands in stark contrast to conventional standoff weapons, like cruise missiles. These types of weapons can be inflexible or inaccurate, and generally do great collateral damage.

Lifting the assassination ban is a sensitive proposal, but if it is done correctly, it can save tens of thousands of lives on both sides. It is a tool that, if used with discretion, may enable us to counter terrorist threats abroad, thus minimizing the historical imprint we leave behind. This, while avoiding the nuclear tripwire of conventional military responses.

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