

# Time to Kill?

## State Sponsored Assassination and International Law



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## *ABSTRACT*

Allegations of the United States' (U.S.) involvement in assassination plots are often cited to demonstrate that the use of political assassination is still in vogue. In 1998, the U.S. Congress debated lifting the ban on political assassinations by the U.S. intelligence communities contained in Executive Order 12,333. This article takes a diverse approach to the examination of conducting assassinations in foreign lands by examining the policy and legal ramifications of assassinations. By examining the strategic and tactical pitfalls in assassination, and by examining human rights law and humanitarian laws regulating assassination, a conclusion is established that assassinations might be technically legal in some circumstances. Yet, complying with international legal obligations entailed therein, and forecasting the security related ramifications of an assassination are difficult.

## INTRODUCTION

Allegations of the United States' (U.S.) involvement in assassination plots against officials in Cuba, Vietnam, the Congo, the Dominican Republic in the 1960s and Chile in the 1970s are examples cited regularly to demonstrate that the use of political assassination is still in vogue.<sup>1</sup> In 1998, the U.S. Congress debated lifting the ban on political assassinations by the U.S. intelligence communities contained in Executive Order 12,333.<sup>2</sup> And Israel, a sturdy U.S. ally unashamedly conducts state sanctioned assassinations of Palestinians and other Arabs whom they allege to be terrorists.

The debate on lifting Executive Order 12,333 is curious for at least three reasons.

First, the use of assassinations as a foreign policy tool seems to conflict with the U.S. logic in enacting Executive Order 12,333. Strategically, hegemonic empires like the ancient Romans had an aversion to assassinations in *inter-state relations*. The U.S. itself has previously enacted Executive Orders against the use of assassinations with such logic in mind.<sup>3</sup>

Secondly, the debate on lifting Executive Order 12,333 prompts questions as to what exactly international law has to say about the legality of an assassination? If assassinations are legal, in what ways are they regulated by international law?

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1 Patricia Zengel, *Assassination and the Law of Armed Conflict*, 134 Mil. L. Rev. 123 (Fall 1991).

2 Paul Richter, *Congress Ponders Whether the U.S. Should Ease Ban on Assassinations*, L.A. Times, 18 September, 1998; Matthew S. Pape, *Can We Put the Leaders of the "Axis of Evil" in the Crosshairs?*, Parameters, Aug. 2002, at 66, 62-71; See Supra, Figure 3 p.22.

Thirdly, the pro-assassination and anti-assassination lobby utilise similar arguments within the rubric of human rights and humanitarian law to justify their respective positions. How then can the legal arguments of seemingly incompatible lobbies be reconciled?

After a recital of the first curiosity of the *hegemonic logic and assassinations* the question of whether a legal definition of the term *assassination* exists is considered, an examination of whether assassinations are illegal *vel non* in international law follows. This article then examines the laws regulating the *conduct* of assassinations. To overcome Reisman's frustration over inconsistencies between the right legal answer in *abstracto* and the right legal answer in *concreto*, this article uses historical examples to illustrate the various legal nuances in both the "black letter" statement of the law and its application.<sup>4</sup>

## HEGEMONIC LOGIC AND HISTORIES ON THE REGULATION OF ASSASSINATIONS

At their hegemonic best, the ancient Romans possessed the most powerful army in the world, yet they were also the nation that held the greatest aversion to *inter-state assassination*. The Romans found utility in a normative structure that delegitimised subterfuge and exalted the military virtues of *sheer value and downright force* in international relations.<sup>5</sup> A strong correlation can today be drawn between the U.S. hegemony and ancient Rome. We live in a world of a single hegemonic superpower. As hegemonies go Israel qualifies as a regional military hegemony in the Middle East.

Today, the Romans would consider it irrational for the U.S. hegemony to depart from a tradition which provides a cloak of security (albeit far from absolute) to their President and others of influence.

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3 David Moon, *Pacification By Assassination: The Legality of Assassination in Conducting US Foreign Policy*, (2 Oct., 2003) at <http://faculty.lls.edu/~manheimk/ns/moon2.htm>

4 W. Michael Reisman, *The Raid on Baghdad: Some Reflections on its Lawfulness and Implications*, 51 Eur. J. Int'l L. 121, 121-123 (1994).

5 Ward Thomas, *Norms and Security: The Case of International Assassination*, 25 Int'l Sec. 108 (2000).

Consider the security logic of the debate. The U.S. is widely deemed impervious to symmetrical warfare strategies (often thought of two large opposing armies on battlefields), but there is a U.S. vulnerability to asymmetric attack strategies like terrorism or guerilla warfare. The events on 11 September 2001 demonstrate the U.S. vulnerability to asymmetric war. Regime change in the U.S. could turn on the success of a sole assassin, when the efforts of entire armies and high-tech warfare would fail.

A further issue to emerge since the ancient Romans is that, since 1945, there has been a general ban on the use of force by the U.N. Charter. The international community has also witnessed the rise of *human rights law* in peacetime and *international humanitarian law* during wartime.<sup>6</sup> Notions of proportionality and mitigating civilian casualties now influence the legality of assassination and create factors that were not questioned by the ancient Romans. Therefore, a new age counter argument to the Roman's logic in the delegitimation of international assassinations is that stated by Ann-Marie Slaughter, "Political assassinations *may* be a more humane approach to resolving conflict than conventional warfare".<sup>7</sup> An example illustrating this claim is the domestic assassination of Julius Caesar in 44 B.C. Caesar's death is seen as ushering in the Golden Age of Rome, Rome's greatest period of prosperity.<sup>8</sup>

There was a lobby calling for the assassination of Saddam Hussein in Iraq.<sup>9</sup> Some argued that a well placed (U.N.) bullet to kill Hussein could have averted masses of civilian casualties, and could avert environmental damage as well as saving plenty of money. Of course, the anti-assassination lobby recite

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6 Ann-Marie Slaughter, *Mercy Killings: The United Nations Can And Should Target Dictators Directly, Instead of Their Peoples*, Foreign Pol. May/June 2003, available at [http://www.ciaonet.org/olj/fp/fp\\_mayjune03m.html](http://www.ciaonet.org/olj/fp/fp_mayjune03m.html), (last visited 20 Aug., 2003); Christian Tomuschat, *Are Counter-measures Subject to Prior Recourse to Dispute Settlement Procedures?*, 5 Eur. J. Int'l L. 77, (1994).

7 Ann-Marie Slaughter, *Mercy Killings: The United Nations Can And Should Target Dictators Directly, Instead of Their Peoples*, Foreign Pol. May/June 2003, available at [http://www.ciaonet.org/olj/fp/fp\\_mayjune03m.html](http://www.ciaonet.org/olj/fp/fp_mayjune03m.html), (last visited 20 Aug., 2003).

8 Moon, *supra* note 3;  
Richard Camellion, *Assassination: Theory And Practice*, 13 (Paladin Press 1977).

9 Jeffrey T. Richelson, *When Kindness Fails: Assassination as a National Security Option*, in 15 Int'l. J. Intelligence & CounterIntelligence, 244-5 (Taylor & Francis ed., 2002).

that the First World War was ignited by the assassination of Archduke Ferdinand of Austria: an assassination which promptly led the rush towards massive civilian death.<sup>10</sup>

### **ASSASSINATION: A DEFINITION**

Colonel Daniel Reisner, the head of the International Law Section of the Israeli Army Legal Division has stated, “Assassination is not a legal term, at least not in international law.”<sup>11</sup> This seems accurate as the word *assassination* does not appear in the United Nations Charter, the Geneva Conventions, Hague Conventions, international case law or the Statute of the International Criminal Court.

Perusing international law journals and domestic legislation enables a broad working definition of assassination to be established. Two examples are extracted below.

(i) The *U.S. Army Lieber Code of 1863* states in Section IX under the heading of “Assassination” that:

The law of war does not allow proclaiming either an individual belonging to the hostile army, or a citizen, or a subject of the hostile government an outlaw, who may be slain without trial by any captor, any more than the modern law of peace allows such international outlawry; on the contrary, it abhors such outrage. The sternest retaliation should follow the murder committed in consequence of such proclamation, made by whatever authority. Civilized nations look with horror upon offers of rewards for the assassination of enemies as relapses into barbarism.<sup>12</sup>

(ii) The *Canadian Armed Forces Manual on the Law of Armed Conflict* states, “Assassination means the killing or wounding of a selected non-combatant for a political or religious motive. It is not forbidden,

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10 General Sir Hugh Beach & David Fisher, *Terrorism, Assassination and International Justice*, 80 Int’l Sec. Pol’y Paper, (2001), <http://www.isisuk.demon.co.uk/0811/isis/uk/regpapers/no80.html> (last visited 20 Aug., 2003).

11 Richelson, *supra* note 9.

however, to send a detachment or individual members of the armed forces to kill, by sudden attack, a person who is a combatant.”<sup>13</sup>

These sources are not identical in content but allow the principles of *targeting an individual* and for *murder* to be drawn from these manuals as core elements of an *assassination*. Yet neither the definition of “assassination” in the Canadian Armed Forces Manual, nor does the working definition of an assassination from legal scholars outlaws assassination in international law *in toto*.<sup>14</sup> The use of “lethal force” is recognised as legal in international law and similarly the specific targeting of an individual is not outlawed in the U.N. Charter or in other significant law governing warfare such as the Geneva Conventions. Yet it remains critical for a state using lethal force to rely on the correct source of international law as a head of power or authority to conduct an assassination. The following analysis illustrates that assassination is not outlawed, but it is regulated in its application.

## **ASSASSINATION: THE USE OF LETHAL FORCE**

International law permits the use of lethal force in two cases.<sup>15</sup> These are broadly (i) law enforcement measures and (ii) in self defence.

First – law enforcement measures. The international community rarely expresses outrage when members of the police service shoot a murderer trying to escape. To use this justification to assassinate Saddam Hussein, Yasser Arafat or Osama Bin Laden upon the allegation of links with terrorism, is to consider

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12 *The Lieber Code of 1863 Correspondence, Orders, Reports, and Return of the Union Authorities From January 1 To December 31, 1863 – #7 O.R.--Series III—Volume III [S# 124]* <http://www.au.af.mil/au/awc/awcgate/law/liebercode.htm#section9> (as of 7 Oct., 2003).

13 Robert A. Rowlette Jr (Colonel), *Abstract: Assassination in Justifiable Under the Law of Armed Conflict*, (25 Oct., 2001).

14 Richelson, *supra* note 9.

15 Michael L. Gross, *Fighting by Other Means in the Mideast: a Critical Analysis of Israel's Assassination Policy*, 51 Pol. Stud. 350 (2003).

terrorism a *crime not an act of war* and places onerous restraints on ordering an assassination. The second category of legitimised lethal force is under the “self defence” provision in Article 51 of the U.N. Charter. Both categories of lethal force are problematic in attempting to justify an assassination. A collateral noteworthy point is that either category may enjoy U.N. Security Council endorsement.

The first category of “law enforcement” when applied to *state sponsored assassinations* is problematic in that a state trying to rely on assassination denies *due process* to the target-victim.<sup>16</sup> Furthermore, to treat a target as having committed a crime expects standard law enforcement methods to be employed to apprehend the alleged criminal.<sup>17</sup> Elements of due process such as a *fair trial* encompass notions of *fair apprehension*. Where assassination occurs, due process is impossible. There is no right of reply, no natural justice. Also, an assassin state’s use of the *law enforcement* defense has been argued before by the Israel in the context of assassinations and is a weak argument that they soon abandoned.<sup>18</sup>

To rely on law enforcement measures as a legal basis for an assassination means that lethal force can only be used where it is absolutely necessary and otherwise unavoidable.<sup>19</sup> Law enforcement officers must first identify themselves, then warn and attempt to arrest a suspect unless they or others are then placed at risk of death or serious injury.<sup>20</sup> Bypassing such formalities renders an assassination illegal in international law. Furthermore, assassination in peacetime is incompatible with human rights law.

Professor Louis Rene Beres would likely disagree with my assessment. In his article entitled *Assassination of Terrorists May Be Law-Enforcing* Beres defends the assassination in Malta of Fathi

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16 Id. at 352.

17 Id.

18 Id. at 353.

19 Id. at 352.

20 Id.



Shiqaqi.<sup>21</sup> Shiqaqi was the alleged leader of the terrorist group Islamic Holy War (Jihad). The assassination is thought to have been conducted by Israel's Mossad. When categorising terrorists as "*hostes humani generis*" (common enemies of humankind), Beres maintains terrorists fall within "universal jurisdiction" and, like piracy, Israel can overcome any jurisdictional problems by relying on universal jurisdiction.<sup>22</sup> Beres also says that a literal adherence to "due process" can be avoided where it would represent the greatest injustice.<sup>23</sup> Beres cites the "retroactivity v. due process" debate at Nuremberg to support his view.<sup>24</sup>

Based on Beres' view, if assassinating terrorists is legal then tyrannicide upon leaders in the so-called "Axis of Evil" countries could also be legal. By Beres' reasoning surely tyrants are also *hostes humani generis* if they sponsor terrorism and are thus vulnerable to tyrannicide. However, Beres overstates the point. The argument used by Beres was tried previously by Israel in the *Eichmann Incident*.<sup>25</sup> In *Eichmann*, the Security Council held that universal jurisdiction does not allow the invasion of the sovereignty of another state in order to abduct (or assassinate) an alleged "*hostes humani generis*". Also, in the analogy Beres makes of a policeman shooting a fleeing felon, he is right to say that society distinguishes between that crime and the policeman's use of force, but is wrong in drawing such an analogy with legalised assassinations. In the Shiqaqi assassination for instance, no effort was made to bring Shiqaqi to trial, the assassins did not wear uniforms (like the police do) thus invoking *treachery* in international law, and Shiqaqi could not choose between appearing at trial and being shot.

The Israeli assassination of alleged terrorists after the 1972 Munich massacre provides another useful example to illustrate the futility of the *law enforcement* argument in attempting to legitimise an

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21 Louis Rene Beres, *Assassination of Terrorists May Be Law-Enforcing*, <http://www.professors.org.il/docs/beres3.htm> , (last visited 24 Aug, 2003).

22 Id.

23 Id.

24 Id.

assassination. Michael L. Gross writes that international human rights organisations, the U.S. State Department and the European Union all strongly condemned the Israeli instigated assassinations of the accused terrorists after the Munich massacre.<sup>26</sup> Israel then gave up on the law enforcement argument and argued that the “law of armed conflict” allows nations to take “reasonable” and “proportionate” action against an aggressor.

The second possibility of using lethal force (as assassination) is under the “self defence” provision in Article 51 of the United Nations Charter.<sup>27</sup> Under Article 51, a state enjoys an inherent right of individual or collective self -defence if an armed attack occurs against a member of the U.N. By this reasoning ‘lethal force’ is a response to “war” and not a “mere crime”. The labeling of the assassination target as being involved in “armed conflict” raises the issue of humanitarian law protecting the right to life. The state sponsoring the assassination is also required to comply with the “Caroline Incident” rules as the use of force must be “necessary”, it must comply with notions of “proportionality”, and it must minimise civilian casualties.<sup>28</sup> So too must other elements of humanitarian law be complied with.

### CASE STUDY 1

In April 1986, the U.S. attacked military targets in Tripoli and Benghazi including Colonel Muammar Qaddafi’s headquarters in the al-Azziziya Barracks.<sup>29</sup> While it is difficult to verify the civilian impact, Libyan alleges that 36 civilians and one soldier died. Other reports suggest the deceased were military personnel.<sup>30</sup>

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25 U.N. SCOR. Res. 138, 865th mtg. U.N. Doc.S/4336 (1960).

26 Gross, supra note 15, at 351.

27 See supra Appendix, Figure 4, p.23.

28 Timothy McCormack, *The Use of Force, Public International Law: An Australian Perspective*, 240-245 (Sam Blay Ed, Oxford University Press, Auckland 2002).

29 Zengel, supra note 1, at 149-150.

30 Id.

Qaddafi was uninjured, safe in an underground bunker. The targeting of Qaddafi's headquarters arguably makes this an assassination attempt.<sup>31</sup> The U.S. reported this attack to the U.N. Security Council pursuant to Article 51 (Self Defence). They claimed the attack was in "self defence" to a series of attacks sponsored by the Libyan government, citing particularly the earlier terrorist attack on U.S. soldiers in a Berlin discotheque.<sup>32</sup>

If a state is involved in armed conflict, and if the elements of Article 51 were complied with, then an assassination might be legal.<sup>33</sup> The U.N. Charter itself does not explicitly prohibit this. Yet other practical considerations are imported into the legality of the assassination equation. For example, it is not practicable to have a uniformed sniper bearing a U.S. emblem march into Saddam Hussein's palace in Iraq to assassinate him. Furthermore, spies and informants are often required to provide intelligence on the movements of a target. This is especially so in the Saddam Hussein scenario as there are many body doubles to misdirect the efforts of assassins. By outlawing perfidy, many aspects of assassination have been rendered practically illegal.

## **TREACHEROUS METHODS AND THE REGULATION OF ASSASSINATIONS**

The Hague Conventions are widely considered to be customary international law. Article 23 of the Hague Convention IV (18 October 1907) *Respecting the Laws and Customs of War on Land* states that in addition to the prohibitions by Special Conventions, it is especially forbidden to: (a) employ poison or poisoned weapons; (b) kill or wound individuals belonging to the hostile nation or army; (c) kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has

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31 W. Michael Reisman, *The Raid on Baghdad: Some Reflections on its Lawfulness and Implications*, 51 Eur. J. Int'l. L., 131 (1994)

surrendered; (d) declare that no quarter will be given; (e) employ arms, projectiles, or material calculated to cause unnecessary suffering; (f) make improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention; (g) destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war; (h) declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party. A belligerent is likewise forbidden to compel nationals of the hostile party to participate in the operations of war against their own country, even if they were in the belligerent's service before the commencement of war.

Article 23(h) of the Hague Convention IV does not explicitly outlaw *assassination* however it regulates the practical aspects of an assassination.<sup>34</sup> If Article 23(h) forms customary international law then the act of compelling nationals of a targeted nation to assist in an assassination is outlawed. If this view is accurate then even the Yamamoto assassination might be outlawed (discussed later).

The *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, of 8 June 1977 prohibits “perfidy”.<sup>35</sup> Article 37 specifically states that it is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead them to believe that they are entitled to, or are obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy.

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32 Zengel, supra note 1, at 150.

33 Id. at 151.

34 See supra Appendix, Figure 1, p.20.

35 ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 1125 U.N.T.S. 3, (entered into force 7 Dec., 1978), at <http://www1.umn.edu/humanrts/instreet/y5page.htm> , (last visited 7 Oct., 2003).

Article 37(1) lists as examples of perfidy: (a) the feigning of an intent to negotiate under a flag of truce or of a surrender; (b) the feigning of an incapacitation by wounds or sickness; (c) the feigning of civilian, non-combatant status; and (d) the feigning of protected status by the use of signs, emblems or uniforms of the U.N. or of neutral or other states not parties to the conflict. Yet the restraint on treachery does not encompass *ruses of war*. Assassination is not rendered fully impracticable. Using this logic, one uniformed U.S. sniper who does not feign incapacitation might be able to legally assassinate a political figure who is not a civilian.

Article 37(2) states that “ruses of war” are *not* prohibited.<sup>36</sup> Such ruses are acts, which are intended to mislead an adversary or to induce him/her to act recklessly. They infringe no rule of international law applicable in armed conflict and are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law. Examples of such ruses are the use of camouflage, decoys, mock operations, and misinformation.

## CASE STUDY 2

The American assassination of Admiral Yamamoto during World War II was probably legal by today’s standards.<sup>37</sup> The U.S. Navy acquired intelligence that revealed the flight path of Yamamoto. A U.S. squadron of planes intercepted and shot down Yamamoto’s plane.

Yamamoto was specifically and individually targeted. Yet the assassination of Yamamoto is deemed legal as (1) Yamamoto was a combatant; (2) the planes attacking Yamamoto attacked in the open and on a battlefield; and (3) the planes were marked as military planes.<sup>38</sup>

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36 Id.

37 Zengel, *supra* note 1, at 137.

In comparison, the legality of the assassination of SS General Reinhard Heydrich, Acting Protector of German occupied Bohemia and Moravia, in 1942 is doubtful.

### CASE STUDY 3

General Reinhard Heydrich was killed when a bomb was thrown into his car by members of the free Czechoslovak Army, headquartered in London.<sup>39</sup> Reinhard was individually targeted, yet the assassination is probably unlawful as (1) the assassins were non-uniformed; (2) Reinhard was not on a battlefield (although it could be argued that being in an occupied territory is a battlefield); and (3) the non-uniformed assassins did not carry their weapons openly.

Under international law, the U.S., Israel or any other would be acting illegally in employing assassins or hiring someone close to Saddam Hussein to carry out his assassination, such individuals would not be wearing the emblem of the U.S. armed forces and this would probably qualify as treachery under Customary International Law (CIL) by way of Article 23(b) crystallising as CIL.

Prior to the 2003 US invasion and occupation of Iraq, the bombing of Saddam Hussein's bunker using military planes bearing the U.S. emblem was contemplated. The legality of this tactic depends on the characterisation of a target as either military or civilian. For example, in the 1991 Iraqi "decapitation" attack, the Pentagon claimed that the targets were in fact control and command centres and so were legitimate military targets.

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38 Michael Ashkouri, *Has United States Foreign Policy Towards Libya, Iraq & Serbia Violated Executive Order 12333: Prohibition on Assassination?*, 7 *New Eng. Int'l. & Comp. L. Ann.* 160 (2001), available at [http://www.nesl.edu/intljournal/vol7/vol72001\\_pg155.pdf](http://www.nesl.edu/intljournal/vol7/vol72001_pg155.pdf), (last visited 7 Oct., 2003).

39 Ashkouri, *supra* note 38, at 161.

## CONCLUSION

The international law regulating assassination does not present an absolute obstacle to assassination. International customary and also treaty law does not prohibit the sort of open attacks generally employed by the U.S. when it strikes directly at foreign leaders in wartime. The laws of war give the U.S. much more legal freedom to apply deadly force than a body of law like human rights law during peacetime. Only in a narrow class of scenarios during times of conflict are such attacks accomplished through treachery or by the placing of a price upon a target's head. These narrow examples are prohibited under international law. Furthermore, legal analysis for the U.S. on the legality of assassination in war is made easier by the fact that the U.S. has not ratified the Additional Protocols to the Geneva Conventions.<sup>40</sup>

Voltaire was thought to have remarked that “killing a man is murder unless you do it to the sound of trumpets.”<sup>41</sup> It would seem Voltaire could have been commenting on the legality of assassination in the twenty-first century. On any single day a waiter placing cyanide in a president's drink is illegal for its “treachery” but F-16 fighter jets attacking the president's dual purpose home which may occasionally be used as a command facility would probably be legal.

As discussed earlier, any shift to outlaw assassinations will occur via a concern for proportionality and minimising civilian casualties. This argument will also involve a debate on how the difficulty to predict what effect a political assassination may have on any society is to be resolved.

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<sup>40</sup> State Parties and Signatories – by Treaties, Geneva Conventions of 12 August 1949, in ICRC Treaty Database, at <http://www.icrc.org/ihl.nsf/WebNORM?OpenView> (last visited 7 Oct, 2003).

The military, security agencies and parliaments contemplating assassinating a target-victim in another state may take heart at learning that *assassinations of state leaders* is not absolutely outlawed in international law.

The anti-assassination lobby and the pro-assassination lobby that emerge around issues such as the assassination of Saddam Hussein share significantly similar economic, legal and security rationales. Ultimately, the pro-assassination lobbies believe that assassinations are legal and that the awkward path of legal compliance and security issues related to the martyrdom status and the forecasting upon who the target-victim's their political replacement will be can be managed. The pro-assassination lobbyists in the U.S. seem less concerned than others as to what the further legitimizing of assassinations might mean for domestic security in the U.S. or for U.S. allies.

The logic of the Romans in lobbying for a *détente* on the assassination of political leaders is seen by the anti-assassination lobby as being valuable in keeping channels of dialogue open among states, and also for democracies to function effectively in the domestic realm.

For the anti-assassination lobby, assassinations are a double-edged sword for all involved. If there is one maxim to derive from the history of political assassinations, it is that they should never be misconstrued as the 'quick and easy'. An assassination might itself be tactically achievable, but the necessary politico-legal analysis that must accompany such considerations is beyond the understanding of the average pro-assassination lobbyist.



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## Appendix

### **[FIGURE 1]**

Hague Convention IV (18 October 1907) Convention Respecting the Laws and Customs of War on Land

Entry into Force: 26 January 1910

Article. 23. In addition to the prohibitions provided by special Conventions, it is especially forbidden

–

- (a) To employ poison or poisoned weapons;
- (b) To kill or wound treacherously individuals belonging to the hostile nation or army;
- (c) To kill or wound an enemy who, having laid down his arms, or having no longer means of defence, has surrendered at discretion;
- (d) To declare that no quarter will be given;
- (e) To employ arms, projectiles, or material calculated to cause unnecessary suffering;
- (f) To make improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, as well as the distinctive badges of the Geneva Convention;
- (g) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;
- (h) To declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party. A belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war.

**[FIGURE 2]**

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

Article 37. Prohibition of Perfidy

1. It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy. The following acts are examples of perfidy:
  - (a) the feigning of an intent to negotiate under a flag of truce or of a surrender;
  - (b) the feigning of an incapacitation by wounds or sickness;
  - (c) the feigning of civilian, non-combatant status; and
  - (d) the feigning of protected status by the use of signs, emblems or uniforms of the United Nations or of neutral or other States not Parties to the conflict.
  
2. Ruses of war are not prohibited. Such ruses are acts which are intended to mislead an adversary or to induce him to act recklessly but which infringe no rule of international law applicable in armed conflict and which are not perfidious because they do not invite the confidence of an adversary with respect to protection under that law. The following are examples of such ruses: the use of camouflage, decoys, mock operations and misinformation.

**[FIGURE 3]**Domestic Rules Against Assassination

In 1975 a Congressional Commission headed by Senator Frank Church held an inquiry into whether the U.S. had engaged in “assassination plots” against certain foreign leaders. The Church Committee's conclusions condemned the use of assassination as a foreign policy tool and called for "a statute which would make it a criminal offence".<sup>42</sup> Whilst Congress never legislated to criminalise assassination, President Ford answered the Church Committee's call by issuing Exec. Order 11,905 which prohibited political assassinations.<sup>43</sup> Exec. Order 11,905 states "no employee of the U.S. Government shall engage in, or conspire to engage in, political assassination".<sup>44</sup>

President Carter also issued his own modified executive order in which he removed the word "political".<sup>45</sup> In 1981, President Reagan issued the exact same order entitled Executive Order 12,333.<sup>46</sup> Subsequent Presidents have not altered Reagan's order. Executive Order 12,333 remains in effect.

The Church Committee allowed for the legality of assassination during an authorised war. This exception would not however extend to all armed conflicts, but only to conflicts authorised by a Declaration of War or a statute which conforms to the War Powers Resolution.<sup>47</sup> In this regard, many scholars believe that the Authorization for Use of Military Force against Iraq Resolution of 2002<sup>48</sup>, which authorised the first Gulf War, overcame any legal obstacle that Executive Order No. 12,333 might have placed on Saddam Hussein's assassination. The law applicable to the assassination of Hussein's assassination would have been the law of armed conflict.

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42 U.S. Senate, *Alleged Assassination Plots Involving Foreign Leaders, an Interim Report of the Select Committee to Study Governmental Operations*, S. Rep. No. 94-465 (1975), at 283.

43 Exec. Order No. 11,905, 3 C.F.R. 90 (1976).

44 Id.

45 Exec. Order No. 12,036, 3 C.F.R. 112, 129 (1978).

46 Exec. Order No. 12,333, 3 C.F.R. 200 (1982), reprinted in 50 U.S.C. § 401 (2000).

47 U.S. Senate, *supra* note 42, at 289.

48 Authorization for Use of Military Force Against Iraq Resolution of 2002, H.J. Res. 114, 107th Cong. (2002), Pub. L. No. 102-1, 105 Stat. 3.



**[FIGURE 4]**

## Article 51. United Nations Charter

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.