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**ASSASSINATION: A TOOL TO COUNTER OSAMA BIN LADEN
AND OTHER TRANSNATIONAL TERRORISTS?**

BY

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**Assassination: A Tool To Counter Osama bin Laden And Other
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ABSTRACT

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Osama bin Laden epitomizes the new face of transnational militancy--a terrorist who is not state supported and draws his followers from through out the world. When normal political, economic and diplomatic efforts fail to bring him to justice or to prevent further terrorist acts, should assassination be used to counter him? This paper addresses political, statute and ethical considerations in exploring this counter-terrorism option. Assassination is generally misunderstood because of a lack of a standard definition and interpretation of the law; therefore, each situation should be evaluated separately. Since bin Laden has not been brought to justice and he poses a continuing threat, the United States would be justified in killing him.

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A LOOK AT ASSASSINATION AND OSAMA BIN LADEN

"I don't want to wipe out everyone...Just my enemies."

—Michael Corleone, *The Godfather, Part II*¹

INTRODUCTION

U.S. counter-terrorism policy has remained essentially unchanged for the last twenty years. The U.S. has used diplomatic, economic, law enforcement, and military means to identify, deter, and bring terrorists to justice. However, with the new "transnational" militancy, what do we do when traditional means of counter-terrorism does not work? Osama Bin Laden is a great example of the need to review our counter-terrorism policy. One way to deal with him and other "nontraditional" terrorist threats is assassination. Is the U.S. prohibition on the use of assassination disingenuous? Before dismissing the idea of using assassination consider the cruel irony that exists today. The United States can rain missiles on known terrorist camps and factories, killing and injuring any innocent people whom happen to be in the wrong place. Yet because of Executive Order 12333 some say the government cannot hunt and kill a terrorist, mass murderer, or war criminal. This paper will examine the case of Osama bin Laden in order to consider the advisability of assassination.

OSAMA BIN LADEN: A CASE STUDY OF TRANSNATIONAL MILITANCY

On August 7, 1998, U. S. embassies in Kenya and Tanzania were bombed, killing more than 250 people, including a dozen Americans.² Almost immediately U.S. officials say they put Osama bin Laden high on their list of suspects for the bombings. He had the motive, the opportunity and the means for the attacks. He has a pronounced hatred for the United States, an infrastructure of men and material in East Africa and a fortune inherited from his late father

thought to be at least \$300 million.³ On August 20, 1998, President Clinton ordered missile strikes against a Sudan chemical factory (allegedly financed by Osama) and one of his training camps in Afghanistan where a high-level meeting of his lieutenants was supposed to be occurring. In justifying the attacks, President Clinton called evidence brought by United States intelligence linking Osama to the bombings as “compelling” and that bin Laden was planning future attacks.⁴ Officials say most of the intelligence gathered on the Bin Laden network came from electronic eavesdropping gathered from spy satellites and ground based facilities. U.S. intelligence put together numerous pieces of information which showed his involvement with the African bombings and provided critical warnings for the quick removal of Americans from Pakistan and Albania.⁵

Bin Laden personifies the new face of “transnational” militancy, in which rapidly shifting alliances may involve militants of nationalities operating all over the globe.⁶ Transnational militancy involves those terrorist movements which are not state supported and draw its members from throughout the world. Its members may be shielded by various governments who do not actively use terrorism to support their foreign policy. Henry Kusher, a professor at Long Island University who has been studying global militancy for 30 years, said bin Laden plays a critical role in financing militant activities, now that state sponsorship of terrorism is thought to be declining.⁷ “If you don’t have Libya as a player (financing militancy), and you don’t have Syria to support these groups, and you don’t have the Soviets supporting ‘terrorists’ a guy like bin Laden who is willing to finance this stuff becomes very important” Kusher said.⁸

Bin Laden’s wide reach is demonstrated by the terrorist attacks he is suspected of financing:

- 1) The December 1992 hotel bombings in Yemen that targeted U.S. servicemen.

- 2) The attempted assassination in June 1993 of Jordan's Crown Prince Abdullah.
- 3) The attempted assassination in June 1995 of Egyptian President Hosni Mubarak.
- 4) A November 1995 bombing of a Saudi National Guard (OPSANG) building that killed five U.S. servicemen in Riyadh.
- 5) The bombing of Egypt's embassy in Pakistan later that month that killed 17.
- 6) The February 1993 World Trade Center Bombing.
- 7) An attempt on the Pope's life in January 1995 in the Philippines.
- 8) Participated in the planning for the bombing of Khobar Towers in June 1996⁹

Bin Laden's forces have also operated in other areas. "His forces, thought to number over 3000, have fought over the years in Somalia, Eritrea, Chechnya, Afghanistan, Bosnia, Tajikistan and Yemen, according to U.S. intelligence sources, one of who credits bin Laden with 'internationalizing and privatizing' militancy."¹⁰

Bin Laden's history of involvement in terrorist attacks begs the question of how do we counter him and his network or other terrorist threats that do not have apparent state-sponsorship? U.S. counter-terrorism policy has three parts: make no concessions to terrorists; put political, military, and economic pressure on states which sponsor terrorism; and bring terrorists to justice.¹¹ These efforts have been worked within the world community—identifying, isolating, and pressuring those states that either used terrorism as part of their "foreign policy" or harbored terrorists.

The U.S. government's campaign against bin Laden dates to his arrival in Sudan from Afghanistan.¹² During 1993-1996, he financed at least three terrorist training camps within

Sudan. The United States charged Sudan as a state sponsor of terrorism and placed political pressure on it to expel bin Laden. When the world community joined in this condemnation he fled to Pakistan and eventually to Afghanistan.¹³

The United States also placed diplomatic pressure on the Taliban government in Afghanistan. Bin Laden was high on the U.S. agenda when United Nations Ambassador Bill Richardson led the first high-level delegation visit to Afghanistan since the 70s, asking officials there to suppress bin Laden's threat against American interests.¹⁴ Prior to Richardson's visit, the Pakistani press reported sensational stories of U.S. commandos and intelligence officers staking out bin Laden from the Pakistan border. U.S. officials refused to confirm or deny these reports.¹⁵ President Clinton also announced steps to identify, track and seize bin Laden's financial assets. These efforts isolated him in Afghanistan. Recent press reports say that because of this continued political pressure on Taliban officials, bin Laden may have disappeared from Afghanistan and is now thought to be in Iraq, Sudan, or Chechnya.

ASSASSINATION QUESTIONS

That the United States has been unsuccessful so far to capture or neutralize bin Laden caused political columnists, journalists, military watchers, and even government officials to raise the question of using assassination. On 3 September 1998, the Senate Judiciary committee asked Louis J. Freech, Head of the FBI, to study the legality of using assassination for counter-terrorism. Senators advised although the law was clear on the prohibition of killing heads of state, they were not sure about killing others.¹⁶ Senator Feinstein advised that "arrests of terrorists is the best option but other robust strategies should be considered."¹⁷ Others though have said using assassination would be a bad idea.

If assassination is a potential violation of U.S. and international law, it is imperative to have a clear definition of it. But none of the domestic or international laws proscribing assassination actually defines it.¹⁸ This makes an analysis problematic. Some scholars focus on the killing of internationally protected persons or high-level political figures.¹⁹ Others focus their definition on the purpose of the act and the presence of political motivations.²⁰ Still others focus on the role of the law of armed conflict that prohibits treacherously killing one's enemy.²¹

All these definitions lack substance when considering the use of assassination against an Osama bin Laden. He is not a political figure representing a specific country. Rather, he represents transnational militants with an alleged religious based hatred of the United States and Israel. Without a clear definition it is difficult to evaluate its legality. Legal treatises evaluate definitions in relation to U.S. and international law and do not agree.²² Due to a clear lack of agreement on definition and interpretation of the law, every situation should be looked at separately.

It is U.S. policy to use force to protect its citizens overseas if the country from which the threat emanates is unable or unwilling to effectively fulfill its international responsibilities. A review of the current law and policy is important in determining the use of assassination to protect U.S. citizens.

EXECUTIVE ORDER 12333 AND THE UNITED NATIONS CHARTER

In the mid 1970's, the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities issued a report which found that since 1960 the U.S. Government was implicated in five assassinations or assassination attempts against foreign government leaders. Involvement in these attempts varied but included plots against officials in Cuba, Vietnam, the Congo, the Dominican Republic, and in Chile.²³ The Committee urged that

assassination should not be used as a tool of foreign policy except in war. The Committee felt that assassination went against American principles, international law and morality. The Committee also noted its concern that the use of assassination could bring retaliatory actions against U.S. leaders, and it could create political instability in the target nation. The committee did concede that assassination may play a constructive role in certain situations, especially if all nonviolent and lawful means to overthrow a tyrant are unsuccessful.²⁴ The Senate report recommended statutory prohibition of covert assassination operations (explicitly excluding combat and wartime targeting).²⁵ Despite three attempts, Congress was unable to pass assassination legislation.²⁶ Subsequently, in 1976 President Gerald Ford issued Executive Order 11905, which prohibited government employees from engaging in assassinations. Presidents Jimmy Carter and Ronald Reagan reissued it (referred to now as Executive Order 12333) without significant changes. Presidents' George Bush and Bill Clinton never revoked the order.²⁷

Executive Order 12333 entitled "United States Intelligence Activities" provides the framework for intelligence and counterintelligence activities by all government organizations. In regards to assassination it states: "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."²⁸

The Order provides no further clarifying, instructions, policy or definitions concerning assassination. As a result "the effect of the order is neither to restrict in any legally meaningful way the President's ability to direct measures he determines necessary to national security, nor to create any legal impediment to action that can be said to constitute assassination. Instead the order ensures that authority to direct acts that might be considered assassination rests with the

President alone."²⁹ The order only proscribes employees and agents of the U.S. Government from committing assassinations without the approval of the President.³⁰ The resulting ambiguity provides the United States a tactical advantage because adversaries are unsure whether it will resort to its use.³¹ Additionally, a sitting President could revoke the Executive Order. Although Congress and the American public may see it as a moral issue, assassination would still be permissible if a President authorizes it.³²

One scholar provides four methods to circumvent the ban on assassination: "declare open war; broadly construe Article 51 of the United Nations Charter and interpret certain criminal acts as legitimating self-defense (such as terrorist acts); narrowly construe Executive Order 12333 and repeal or amend the order or permit Congress to do the same."³³ In the case of Osama bin Laden and his terrorists, Article 51 of the Charter holds the most applicability in using assassination as a counter-terrorism tool.

Under the Charter, there's no provision that prohibits the use of assassination; however, there are provisions that implicitly prohibit the use of assassination as a means of furthering a nation's foreign policy objectives. Article 2(4) of the Charter prohibits "the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purpose of the United Nations."³⁴ One scholar has interpreted Article 2(4) to mean that assassination is an unlawful killing that is prohibited under international law under any circumstances.³⁵ But such a strict interpretation ignores other provisions in the United Nations Charter.

Article 51 states: "nothing in the present charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations until the Security Council has taken the measures necessary to maintain international

peace and security.”³⁶ The U.S. interpretation of Article 51 recognizes three general forms of self-defense: (1) self-defense against an actual use of force or hostile act; (2) preemptive self-defense against an eminent use of force, (3) self-defense against a continuing threat. One scholar advises: “Presidents use these forms of self-defense to authorize assassinations in two situations: (1) when another nation breaches its international duty to protect Americans from acts of violence originating in or launched from its sovereign territory; (2) and, when a nation aids and abets international criminal activities, including terrorism.”³⁷ Indeed, President Reagan’s administration’s justification of its assassination attempt on Qaddafi as “self-defense” reveals the ease with which presidents can use Article 51.³⁸ Proponents of a narrow interpretation argue that Article 51 restricts the use of force only when an armed attack occurs. Other scholars, however, have asserted that Article 51 preserves the right of nations to exercise anticipatory self-defense. These scholars “would recognize the nation’s right to anticipatory self-defense if the preventive measures are regulated by the principles of necessity and proportionality.”³⁹

Under the Law of Armed Conflict, the two principles of necessity and proportionality govern the use of force. The principle of necessity requires any use of force contribute to the submission of the enemy as quickly as possible with the minimal use of resources. Proportionality means the selected use of force must be in proportion to the military goal—destruction and physical suffering may not be excessive in relation to the military gain.⁴⁰

Osama bin Laden’s past actions clearly support the criterion of Article 51 in the need for anticipatory self-defense in response to continuing threats (as well as retaliation for previous attacks). One legal scholar asserts that from a legal stand-point four factors are relevant in determining the reasonableness of a belief that a state will be attacked by terrorists: past practices, motives, current context, and preparatory actions.⁴¹ Assuming that a state concludes

that a terrorist attack can reasonably be expected, individual terrorists would then become subject to targeting. Bin Laden fits this criteria of evaluation extremely well. He has a long history of targeting U.S. interests. His motives are clear. He decries the U.S. presence in the Middle East and the support of Israel. He is violently anti-Israel. He has based his activities in countries that give him sanctuary. Afghanistan has refused to provide him to U.S. law enforcement authorities or to restrict his activities. Ostensibly, whichever country he has fled to lately may resist turning him over for prosecution. Meanwhile he prepares for further attacks. Clearly he poses a continuing threat to the United States and it would be legal to kill him as a form of self-defense.

ETHICS OF ASSASSINATION

As an ethical principle should we target individual terrorists for death? "A realist or Machiavellian would argue 'that morality must give way to share power if the nation is to thrive in a brutal world' or in other words the ends justifies the means."⁴² Most Americans, however, probably are uncomfortable using this rationale as the basis for assassination. Furthermore, the major problem with this amoral position is its subjectivity. A reliance on a Machiavellian vision could threaten the stability of the international community. On the other end of the ethical spectrum, the eighteenth century German philosopher Immanuel Kant emphasized that individuals should never engage in evil.⁴³ Perhaps, this was the spirit in which former Secretary of State Henry Stimson closed his Department's cryptographic division because "gentleman do not read each others mail."⁴⁴ History has proved that a literal interpretation and application of Kant's ethics is naïve and dangerous.

The commandment thou shalt not kill declares the fundamental Judeo-Christian foundation for the prohibition against assassination. Yet, even theologians recognize certain exceptions to this seemingly basic tenet. The Bible describes as righteous the slaying of Eglon,

the King of Moab, by Ehud, of the tribe of Benjamin, which ended eighteen years of foreign oppression.⁴⁵ A religious group, the Nizari Ismailis, a political religious Islamic sect which existed from the 11th to the 13th Centuries, believed that to assassinate one's enemies was a sacred duty and that it served the will of Allah.⁴⁶ The Catholic saint, Italian philosopher and theologian, Thomas Aquinas contented that assassination, even of the sovereign, is warranted by natural law if the murder of a tyrant is done for the common good.⁴⁷ In an ironic twist of fate, President Abraham Lincoln concluded that assassinating a leader is morally justified when people have suffered under a tyrant for an extended period of time and have exhausted all legal and peaceful means to overthrow that leader.⁴⁸

Spanish theologians of the sixteenth century also justified regicide. Just war theory is also flexible. Just war theory as interpreted by Saint Augustine (early Catholic theologian), St. Aquinas, and Hugo Grotius (Dutch jurist, humanist and statesman), describes when war is permissible in light of the commandment that shalt not kill.⁴⁹ Under the just war theory, an assessment is made as to whether the overall evil of war is balanced by the good that would be achieved. The use of force is acceptable if it is a last resort and if the response is proportional to the threat.⁵⁰ History acknowledges that even though assassination is an extreme method to bring about change, the use of assassination would be tolerated in certain extreme situations.

Contemporary history shows some pertinent lessons.

CONTEMPORARY HISTORICAL ASSASSINATION

Following the attack on Israeli athletes at the Munich Olympics in 1972, Israel used assassination extensively. Between 1972 and 1974, eleven known or suspected Palestinian terrorist leaders were hunted and killed by Israeli agents. This retribution ended when an innocent waiter in Norway was mistakenly identified as one of the terrorists.⁵¹ In the aftermath

of these actions, it was difficult to discern any decrease in terrorist activities directed towards Israel. No doubt terrorist operations were disrupted for a time. But were attacks prevented or incited by Israeli actions?

During the mid 1980's, the Hezbollah terrorist group took many Americans hostage in Lebanon with the United States seemingly impotent to obtain their release. About the same time, three Soviet citizens were taken hostage and were released within one week of capture. This quick release was due to one KGB operation. Within days of the kidnapping, the KGB seized a Hezbollah leader, castrated him, stuffed his testicles in his mouth, shot him in the head, and left his corpse with a note that if the hostages were not immediately released more would follow.⁵² Although this method was horrific it produced quick and lasting results. Meanwhile the U.S. spent a year before obtaining release of some hostages while others were killed.

In 1996, Shin Bet, the Israeli Security Agency, located a Palestinian bomber known as "The Engineer." He was one of the Israelis most wanted terrorists because of his use of suicide bombers. "The Engineer" died when a cellular phone blew up when he attempted to use it. Shin Bet then publicly told the world about their operation to kill him.⁵³ Two months after the Engineer's death, there were three separate bombings which killed 44 Israelis and two Americans. One faction of Hamas claimed responsibility for these bombings while another faction denied it. More importantly, for the first time ever Hamas' military wing subsequently offered a cease-fire if Israel would release Hamas' prisoners, stop attacks against its militant wing, and stop aggression against Palestinian extremists.⁵⁴ The death of the Engineer shocked the confidence of Palestinian extremists. As one extremist noted, "Israel has the atomic bomb and we had the Engineer."⁵⁵

In October 1997, an Israeli assassination attempt failed on another Hamas leader in Jordan. Israeli Prime Minister Benjamin Netanyahu expressed embarrassment and promised to investigate Israeli actions. Shortly thereafter Hamas sent an offer to Israel to cease terrorist operations.⁵⁶ Although the assassination attempt failed, it brought terrorists back to the bargaining table.

These examples present a moral dilemma. How effective assassinations are really depends on how you view the results and how you interpret history. Arguably assassinations can be effective in furthering a nation's foreign policy goals, particularly towards terrorists. However, any decision should also be made with ethical and moral arguments in mind. The moral arguments for and against are interesting since both sides expound on the clarity of their positions.

ARGUMENTS FOR ASSASSINATION:

Assassination produces fewer casualties than retaliation with conventional weapons.⁵⁷ Conventional military operations have killed thousands through use of aerial bombardment to full scale invasions in response to terrorist attacks. If the number of deaths is the measure of success then assassination would certainly bring the death toll down—assuming that the death toll does not rise due to escalated violence resulting from the assassination—such as happened with the beginning of World War I.

Assassination could prevent genocide or wars resulting in untold deaths and suffering. Who disagrees that lives could have been saved if Hitler, Stalin, Pol Pot, or Idi Amin were killed before they put in motion their evil deeds? Future terrorists may use weapons of mass destruction, causing unimaginable suffering and death. An offensive capability to deal with terrorists is morally required.

Assassination would be aimed at the person directly responsible for terrorist acts, not innocent bystanders.⁵⁸ Innocent individuals have died in every U.S. attack on terrorists. Precision weapons kill innocent bystanders, and although may be highly accurate compared to their predecessors, they are not selective. Assassination would be more precise. Opponents state assassination violates “due process.” But this argument discounts that some terrorists are not accessible to the law. Currently we are forced to attack targets with military force knowing that innocent civilians will be killed. Larry Johnson, the State Department’s former counter-terrorism director, calls this the “janitor’s option.” “If someone has murdered or conspired to murder U.S. citizens and is beyond the reach of law enforcement--without an assassination option--we end up launching a nighttime strike on a chemical weapons plant that guarantees we are going to kill janitors and cleaning ladies, not the people who planned the operation.”⁵⁹ He continues: “Indeed, if we continue to target areas and individuals, we risk creating more genuinely aggrieved people—the victim’s of collateral damage—who will be available as new recruits for terrorist groups.”⁶⁰

Assassination of terrorist leaders would disrupt terrorist groups more than any other form of attack.⁶¹ The elimination of a terrorist group’s leader would cause confusion and disarray. Often terrorists are led by a charismatic and organizationally effective individual who cannot easily be replaced.⁶² National leaders involved in terrorism can more easily be replaced but they might not have the same agenda or the same authoritarian rule or control as their predecessor. Successors may be deterred because they know the consequences. One argument against assassination is that America is the most open system on earth and by targeting terrorist leaders we open ourselves up to retaliation.⁶³ Those who view this argument as credible ignore that our openness and democracy is our very strength which makes assassination of a leader less

effective in the terrorist hands than ours—our leaders are more easily replaced with little effect to the government. Democracies are relatively “insensitive” to political change through assassination due to institutionalized “authority and secession.”⁶⁴ The democratic leader is much less likely to represent his country’s center of gravity.

Assassination leaves no prisoners to become causes for further terrorist attacks.⁶⁵

The release of imprisoned terrorists is the most frequent goal in hostage situations and the terrorists’ second most important objective after publicity. The arrest and imprisonment of terrorist leaders make it virtually certain that further acts of violence will occur. Perhaps further innocent lives will be preserved if terrorist leaders are killed instead of imprisoned.

The United States has a moral obligation to protect its citizens from terrorist attacks. Secretary of State George Schultz asserted previous terrorist policies lacked deterrent value, and that use of “swift and sure” measures against terrorists both “preemptive and preventive” would be more effective—the United States was morally obligated to protect its citizens.⁶⁶

AGAINST ASSASSINATION:

Assassination is illegal. Opponents of assassination point to international laws and norms (and Executive Order 12333) that preclude murder particularly when a country must invade another country’s sovereign territory to accomplish the act. It’s in America’s long-range interest to abide by the rules since we would not want other countries to commit assassinations on our territory.

We should not use tactics that the terrorists would use. This is the “high road” argument. We oppose terrorism not because we disagree with all terrorist aims, but because we disagree with the way they use force. We believe in the rule of law and that there are legitimate ways to

use force when necessary. State-sponsored terrorism causes and deserves outrage but assassination precludes “due process.” Not only is this a time honored government principle but also the great religions of the world all prohibit “extrajudicial killings.”⁶⁷ A bomb in the night, a poisoned drink or a knife in the belly does not allow for a jury to examine evidence and for the accused to confront his accuser.

Assassination of terrorists could justify further actions against us. If we kill their leaders, terrorist groups could target American interests or diplomats or go after our leaders. Some in the world would see the United States engaged in a dirty war using tactics we agreed too. Assassination would invite retaliation against U.S. leaders—in this the bad guys would have the advantage. Terrorist leaders are elusive, hard to find or to attack, whether they are transnational militants or leaders of states. Authoritarian leaders would be particularly harder to target because they control their physical environment much more than leaders of democracies. Our leaders are much more vulnerable to assassination due to our openness.

The replacement for the person we kill may be even worse. No guarantees exist that new terrorist leaders would not be worse than their predecessors. In 1973, Israeli agents killed Mohamed Boudia, an Algerian who had led terrorist operations in Western Europe. His successor Carlos was an even worse terrorist.⁶⁸ Assassination of terrorist leaders may intentionally strengthen terrorists resolve and morale. In the Middle East martyrdom can further inflame followers. It could also create a power vacuum that could lead to greater destabilization in the region as opposing sides fight for control of the terrorist organization.

Though the killing may be legal, many states may criticize the action as immoral. Because assassination is so legally misunderstood, allegations of abuse will be sure to follow.⁶⁹ Potential political fallout may make the operation undesirable. Although a killing may address

the immediate harm the use of force may isolate the nation employing it. U.S. moral leadership may be weakened.

FINAL THOUGHTS

Assassination is generally misunderstood because of a lack of a standard definition and interpretation of the law. Therefore, each situation should be evaluated separately. In some circumstances assassination can be legal: 1) in a state of war or self-defense and 2) the assassination be approved by the President. Current law is vague enough that our opponents do not know for sure if we would resort to using it. Unpredictability is a tactical advantage.

Assassination and its effects could be very unpredictable. Because of the morality of taking life, extreme care should be taken before resorting to use. However, selective and discriminate use is acceptable in certain extreme situations. For example, with proliferation of weapons of mass destruction, would an American public hold harmless a president who failed to use assassination to prevent a nuclear or chemical strike on American soil or on troop formations overseas?

We must continue to use intelligence, police, and military means to track, capture and bring terrorists to justice. If the world were filled with civilized cooperative governments which follow the rule of law, assassination would not be needed. Transnational militancy by its very nature means no government controls terrorist territory. Bin Laden is a prime example of an extreme case where assassination would be legal and moral. Other terrorists could undoubtedly take bin Laden's place, but Edwin G. Shirley, reporting in the Wall Street Journal argues:

"If we can eliminate Mr. bin Laden, we will seriously undermine his entire network. Middle Eastern politics are in large part personality cults and patronage systems. The region's dictators have understood this well, which is why serious opposition figures are usually snuffed out before they become regime threatening. The universalist appeal of radical Islam doesn't transcend this earthly fact. Other terrorists

could undoubtedly take Mr. bin Laden's place, but they wouldn't fill his shoes."⁷⁰

No matter what we do there is little that American policy can do to influence those who will join terrorist groups such as bin Laden. Bin Laden and his followers see little difference in whether American actions target his training centers or himself. He does not care about the U.S. position on assassinations. Is bin Laden fooled that we are a kinder nation because we disavow outright assassination? Is President Clinton any safer from a bin Laden retaliatory strike because we shot at his infrastructure and not directly at him? Or does bin Laden read *The Washington Times*, which quotes Defense Secretary Cohen that the United States aimed to "hit" reputed terrorist mastermind Osama bin Laden with its August 20, 1998 missile strikes?⁷¹

Our efforts to fight terrorism must continue. However, policy makers should recognize that growing "transnational" militancy means facing terrorist threats from non-traditional actors. To counter these growing and more unpredictable threats we need to increase our intelligence collection capabilities, particularly human intelligence as well as use assassination on a case by case basis. L. Paul Bremer III, President Reagan's chief of counter-terrorism, proposed ending the assassination ban over a decade ago and continues to call for the same. He does not propose handing free reins to U.S. agents, but developing a check and balance system that allows the president to have a legal finding before authorizing action.⁷² Even now Bin Laden continues to plot against the United States—let's not wait until it's too late.

WORD COUNT = 5005

ENDNOTES

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³⁰ Moon.

³¹ David Newman and Tyll Van Geel, "Executive order 12333: The Risks of a Clear Declaration of Intent," The Harvard Journal of Law and Public Policy, volume 12, no. 2 (1989):447

³² Zengel.

³³ Boyd M. Johnson III, "Executive Order 12.333: The Permissibility of an American Assassination of a Foreign Leader," Cornell International Law Journal Volume 25 (1992):402-403.

³⁴ Russell J. Breummer, "The Prohibition on Assassination, A Legal and Ethical Analysis," In In the Name of Intelligence, Essays in Honor of Walter Pforzheimer, ed. Hayden B. Peake and Samuel Halpern, (Wash D.C.: NIBC Press, 1994) 142-143.

³⁵ W. Hays Parks, Memorandum of Law: Executive Order 12333 and Assassination, Army Law, Army Pamphlet 27-50-204 (Wash D.C.: U.S. Department of the Army, December 1989), 3-4.

³⁶ Johnson, 420.

³⁷ Ibid.

³⁸ Ibid., 423.

³⁹ Breummer, 155.

⁴⁰ Schmidtt, 640-641.

⁴¹ Ibid., 649.

⁴² Breummer, 163.

⁴³ Ibid., 145.

⁴⁴ Ibid.

⁴⁵ Newman, 436.

⁴⁶ Moon, 1.

⁴⁷ Newman and Geel, 436.

⁴⁸ Johnson, 401.

⁴⁹ Breummer, 149.

⁵⁰ Ibid.

⁵¹ Jenkins, 12.

⁵² Lisa Beyer, "Death Comes Calling: The Untold Story Of How Israel Hunted Down and Blew Up Hamas' Fabled Bomber," Time, 15 January 1996, 43.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Patrick Cockburn and Stephanie Nolen, "Café Rumors Raise Bomber From the Dead," The Independent (London), 27 January 1996, 11.

⁵⁶ David Shapiro, "Assassination: Is It a Real Option?," Newsweek, 29 April 1986, 21.

⁵⁷ Brian Michael Jenkins, Should our arsenal against terrorism include assassination? (Rand Corp, January 1987), 3.

⁵⁸ Ibid.

⁵⁹ David L. Marcus, "A Case for Assassination?" The Boston Globe, 30 August 98, sec 1A p. 3.

⁶⁰ "Get Personal," The New Republic, 14 & 28 September 1998, 11-12.

⁶¹ Jenkins.

⁶² Schmitt, 676-677

⁶³ Ibid.

⁶⁴ LTC Bruce R. Ross, The Case for Targeting Leadership in War, Naval War College, February 1992, 16

⁶⁵ Jenkins, 4.

⁶⁶ Bert Brandenburg, "The Legality of Assassination as an Aspect of Foreign Policy," Virginia Journal of International Law, Volume 27:3 (1987):669.

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⁶⁸ Jenkins, 8.

⁶⁹ Schmitt, 677.

⁷⁰ Edward G. Shirley, "The Etiquette of Killing bin Laden," The Wall Street Journal, 27 August 1998, sec. 1A p. 15.

⁷¹ "Cohen says strike targeted terrorist bin Laden," Washington Times, 14 October 1998, sec. A 13.

⁷² Marcus.

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