

Replies and Comments:

Bernard Dougherty  
For comments:  
[bernard.dougherty@ruhr-uni-bochum.de](mailto:bernard.dougherty@ruhr-uni-bochum.de)

On the web

<http://www.ifhv.de/>

Focus

**CNN, 4 Nov 2002: U.S. policy on assassinations:**

„... President Bush ... signed an intelligence ‚finding‘ instructing the CIA to engage in ‚lethal covert operations‘ to destroy Osama bin Laden and his al Qaeda organization. White House and CIA lawyers believe that the intelligence ‚finding‘ is constitutional because the ban on political assassination does not apply to wartime. They also contend that the prohibition does not preclude the United States taking action against terrorists.“

**1863, Lieber Code, Article 148:**

„Assassination: The law of war does not allow proclaiming either an individual belonging to a hostile army, or a citizen, or a subject of the hostile government, an outlaw, who may be slain without trial by any captor....Civilized nations look with horror upon offers of rewards for the assassination of enemies as relapses into barbarism.“

**U.S. Army Field Manual 27-10 on the Law of Land Warfare (1956):**

para. 31: *Assassination and Outlawry*

**HR (Hague Regulations of 1907) provides:**

*It is especially forbidden [...] to kill or wound treacherously individuals belonging to the hostile nation or army.* (HR, art. 23, par. (b).)  
This article is construed as *prohibiting assassination, [...] or putting a price upon an enemy's head, as well as offering a reward for an enemy "dead or alive".*

**Targeted killings**

What are “targeted killings”? Are they assassinations? Are they legitimate acts of self-defense? Or are they violations of international and/or national law?

Targeted killings have become the latest course of action followed by states in situations that do not seem to fit within the historic definitions of war and peace we are familiar with. A new paradigm seems to be evolving. Such killings have been officially recognized by the United States in its “war against terrorism” and by Israel in its actions in the occupied territories.

In 1976, as a reaction to years of officially sanctioned assassination, U.S. President Gerald Ford issued Executive Order 11905. Section 5 provides: “(g) Prohibition of Assassination. No employee of the United States Government shall engage in, or conspire to engage in, political assassination.” Similar executive orders were also issued by Presidents Carter and Reagan.

Prof. Francis Boyle states: “It is the official policy of the U.S. Government that assassination of anyone, let alone a head of state or head of government, is a violation of the laws and customs of warfare and therefore a war crime [...]. This minimal standard of international behaviour was [...] incorporated into U.S. Army Field Manual 27-10 *Law of Land Warfare* (1956) [...]. According to paragraph 31 thereof, political assassination is a violation of the law of war.“

The CNN article cited in the left column contains a remarkable statement to the contrary: “White House and CIA lawyers believe that the intelligence ‘finding’ is constitutional because the ban on political assassination does not apply to wartime.”

From the viewpoint of international law, the prohibition against assassination in the traditional sense most certainly DOES apply during wartime. The prohibition is contained in IVth Hague Convention of 1907, Article 23 of the Regulations: “[...] it is especially prohibited [...] (b) to kill or wound treacherously individuals belonging to the hostile nation or army .“ The U.S. is also violating Article 23 (d) of the Hague Convention Regulations which prohibits a party „to declare that no quarter be given.“ The U.S. is a state-party to the 1907 Hague Convention. Both of these prohibitions bind the U.S. as treaty law and as customary international law.

From the viewpoint of national law, these practices are also illegal because both treaty law and customary international law are part of the national law of the U.S. Both prohibitions are also contained in Field Manual 27-10. The prohibition that no quarter be given is directly violated by President Bush’s directive that bin Laden be taken “dead or alive”.

In 2002 in Yemen, the U.S. killed 6 men, one of whom was a suspected terrorist, by firing a missile at a car from a drone. Is this attack prohibited by international law?

Despite official statements, the U.S. is not a party to an international armed conflict, as that term is properly used in international law, with al Qaeda. There cannot be an international armed conflict between a state and a non-state party. By definition, there can be an international armed conflict only between states. Therefore, the Geneva Conventions do not apply to the fight against al Qaeda. National and international human rights law and criminal law apply. The right to life, which is of customary nature, clearly prohibits taking life arbitrarily and the manner in which the attack was carried out appears to violate this fundamental rule of human rights law. A suspect may not be summarily executed. The police, or the military acting as police, must make every effort to bring a suspect before the judiciary. Thus, the correct procedure would have been to request Yemen to extradict the suspects. Members of al Qaeda involved in terrorist activities are criminals. If suspected of crimes, they must be pursued as criminals, not subjected to summary, extrajudicial execution.

**Responsibility**

BOFAXEs are published by the Institute for International Law of Peace and Humanitarian Law of the Ruhr-University Bochum: IFHV, NA 02/33 Ruhr-Universität Bochum, 44780 Bochum. Tel: 0049234/3227366, Fax: 0049234/3214208.

BOFAXEs are supported by the German Red Cross. **The writer is solely responsible for the content.**