

Why It's Not Wise to Assassinate bin Laden, by Anthony D'Amato, Chicago Tribune, October 28, 2001, Section 1, Page 21. Anthony D'Amato, a professor at Northwestern University School of Law, has served as a defense attorney at the International Criminal Tribunal in The Hague

President Bush has given the CIA a $1 billion budget to use covert means to kill Osama bin Laden. Assassination is an ugly business. It can backfire on us by making a martyr out of criminals like bin Laden. And state-sponsored assassination is probably a war crime—a minor one, but a crime nevertheless.

Although the customary international laws of war do not explicitly refer to assassinations, they forbid killings not justified by military necessity as well as attacks upon undefended villages and towns. Add to these prohibitions the right to life of soldiers who have surrendered and thus taken themselves out of combat, and you can make out a good case for the illegality of assassination.

To be sure, we must distinguish assassinations from killings in the course of waging war. Suppose the U.S. fires a missile into bin Laden's cave, knowing that he is there. Since it's a military target, there is no war crime.

A few weeks ago an Army lawyer made a very poor call on a similar question on the first night of the war in Afghanistan. As reported by journalist Seymour Hersh in the New Yorker, the Taliban leader Mullah Omar and 100 or so soldiers and guards were spotted going into a building. But on the advice of the Army attorney, the building was spared until Omar and his retinue had a chance to leave. Then it was destroyed by American missiles.

The lost opportunity left Defense Secretary Donald Rumsfeld "kicking a lot of glass and breaking doors," according to Hersh.

The Army attorney did not understand the difference between assassination and military targeting. If his mistake of law, in fact, triggered Bush's order to the CIA, the president's advisers have compounded the mistake.

During World War II, a few German generals sent a message to British Prime Minister Winston Churchill saying that they were plotting to assassinate German Chancellor Adolf Hitler and asking for British financial and logistical support. Churchill turned them down.

Perhaps Churchill was just being crafty; after all, Hitler was the Allies' best secret weapon. By his bungling interference with the conduct of the war, Hitler probably hastened Germany's defeat.

Bin Laden may be in Hitler's league as a military strategist.

His decision to attack the World Trade Center is now probably viewed by many of his followers as a colossal blunder, reminiscent of Hitler's 1941 decision to attack his ally the Soviet Union. It's not wise to awaken a sleeping giant.
Churchill may have had another reason: that it would not be good for his own health to plunge into the assassination business. Hitler had more than enough resources to slip a killer into Great Britain who could have reached the prime minister.

The recent movie "The Terrorist" depicts a young female assassin carrying a concealed weapon who pushes to the front of the sidewalk and is able to get close to the motorcade carrying her target, a visiting foreign head of state. Our Secret Service could hardly protect the president against this kind of attack. The more free and open a society, the more vulnerable it is to assassinations.

President Bush should reconsider his decision.

Assassination is a war crime for a good reason. The purpose of the laws of war is not to kill the enemy but to bring him to justice. Deaths are inevitable in war, but when a state authorizes killing as an end in itself, it amounts to murder. To order the CIA to target bin Laden is to lower ourselves to his level.

Bringing a criminal to trial is no sign of softness. Bin Laden would probably prefer to be shot. Hitler and Nazi leader Hermann Goering chose to commit suicide rather than face trial at Nuremberg. A trial is a protracted form of torture for the guilty. It slowly dissolves their high opinion of themselves as heroes. It reveals their lives to the world, to history, and to themselves, as shameful.

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