Valid Target?

Policy Forbids Killing Foreign Leaders; Should That Mean Saddam, Al Qaeda?

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Some argue that during a state of war, the rules against assassinating a foreign leader may change for Iraq's Saddam Hussein. (ABCNEWS.com)

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— Sixty years ago, deep into World War II, the United States put one of its enemies on a hit list.

Yamamoto was the Japanese admiral who had planned the attack on Pearl Harbor and was considered by his people to be their greatest military commander.

On April 18, 1943, U.S. fighters tracked Yamamoto, traveling in an aircraft, and blew him out of the sky. No one questioned the wisdom of that action.

How different it would be a generation later.

In 1975, a Senate committee exposed the fact that the United States was, again, using a hit list.

It was the Cold War. The Soviets were the clear enemy. But the tactics were sometimes murky. The U.S. government at some point decided it needed to assassinate Soviet allies around the globe. The targets were not military men, but political leaders — Fidel Castro in Cuba and Patrice Lamumba in Congo, among others.

At the time, the policy seemed unwise and immoral to a nation going through a bout of self-loathing. America had just lost a war in Vietnam. A president had just resigned. And the word "assassination" was too painfully real after the killings of President Kennedy, Robert F. Kennedy and Martin Luther King Jr.

America did not want to be a nation that assassinated other people's leaders, even enemies. In 1976, President Gerald Ford signed an executive order banning assassination as a tool of U.S. policy.

Is Terror War Different?

On Sept. 17, 2002, President Bush told America of the war on terror, "This will be a different type of war than we're used to."

In this war, the United States has again become willing to use hit lists, even if the administration does not like to use the term "assassination."

The first concrete sign of this came in November. The United States tracked an al Qaeda leader, Qaed Senyan al-Harthi. And when it learned that he was in a car crossing a stretch of desert in Yemen, the CIA sent a missile into the car, killing him and five associates, one of whom was a U.S. citizen.

It's the Yamamoto treatment of 60 years ago, updated for this different kind of war that the president has talked about. It is not a declared war.

Al-Harthi wasn't wearing a uniform, but he was an enemy responsible for violent acts against the United States, the government said, claiming he helped to plan the attack on the *USS Cole* that killed 17 American service people.

Though Yemen approved the operation, moral objections were raised elsewhere. The Swedish foreign minister called the Yemeni attack "a summary execution that violates human rights."

In other words, it was that dirty word: "assassination."

The Bush administration never responded to that point of view. When asked whether the United States is returning to a policy of using targeted killings, officials all but answered, yes, when it comes to al Qaeda.

"The president has directed our government to work to help us track down killers and trained terrorists all across the globe," White House Deputy Press Secretary Scott McClellan said.

"But there are guidelines and policies which guide how we approach this," said Victoria Clarke, assistant secretary of defense for public affairs. "We've made it very, very clear that we will go after the al Qaeda wherever we can."

And it was the president himself who said at this year's State of the Union Address on Jan. 28: "All told, more than 3,000 suspected terrorists have been arrested in many countries. Many others have met a different fate. Put it this way: They're no longer a problem to the United States and our friends and allies."

And it is clear that what the president had in mind was not only the leader of al Qaeda, Osama bin Laden, but also his lieutenants, his aides, his operatives — a network that literally covers the Earth.

Many suggest "self-defense" of Americans can be a justifying factor.

"If a leader of a country is responsible for killing Americans, and is planning to kill more Americans, as Osama bin Laden was planning to kill more Americans, it would be perfectly proper to kill him rather than to wait until more Americans were killed," Abraham Sofaer, legal adviser to the State Department during the Reagan and first Bush administrations, and now with the Hoover Institution at Stanford University, told Chris Bury of ABCNEWS' *Nightline*.

Can America Be Certain?

However, some critics say American intelligence on the ground in the Middle East may not be good enough to say conclusively, often at a distance, who is a terrorist and who is not.

"We can't do it," said Robert Bear, a former CIA agent. "Our intelligence is not good enough. And that's the problem with assassinations. They usually don't work. You usually end up killing the wrong people."

Israeli intelligence has more experience than American intelligence the use of targeted killings. Going back decades, it has tracked down and assassinated Palestinians accused of involvement in terrorism — often in Europe, and without the agreement of European governments.

They've made mistakes, once killing a waiter they mistook for an organizer of the 1972 Munich Olympic attack.

And the Bush administration has criticized the Israeli practice of "targeted killings."

"As we've made clear, we're very much against targeted killings," State Department spokesman Richard Boucher has said.

Martin S. Indyk, who was the American ambassador to Israel as often as 2001, said he often had to deliver that argument to the Israelis.

"It's this kind of extra-judicial killings — the way that the U.S. government defined what Israel was doing — [that] was first of all, against our standards," Indyk said.

Then, terror struck America at home.

"That's where I think Sept. 11 is the great turning point for us," Indyk said. "People said we became Israelis, in those circumstances. And so, our standards changed, as well."

Different Rules in Wartime?

"Dead or alive" is the language used about bin Laden, who leads no state and wears no uniform.

But Saddam Hussein, who does, is a different kind of target altogether. "Regime change" in Baghdad may be the official American policy, but the devil is in the details. Assassinating heads of state is clearly prohibited in peacetime, but once the shooting starts, the rules can get a lot murkier.

In 1986, Moammar Gadhafi was seen as a serious threat to American security and a supporter of terrorism. Ronald Reagan sent planes to bomb Gadhafi's house. Yet when asked whether his intent was to kill Gadhafi, Reagan would not commit. Rhetorically, he winked at the question.

"I don't think any of us would have shed tears if that had happened," Reagan said.

There continued to be a reluctance to say out loud that the United States would actually try to kill another nation's leader.

In 1998, when two U.S. embassies were bombed in Africa, that reluctance extended even to killing bin Laden, not a head of state or even really a political leader.

President Clinton held bin Laden responsible for attacks on America and announced an attack on his headquarters in Afghanistan, missiles timed to hit while bin Laden was there. Yet afterward, the U.S. defense secretary was quoted as saying, "Killing him was not our design."

Kill and — Maybe — Be Killed?

Killing someone else's leader was, even then, still seen as something you don't do.

"I think the deeper reality underlying that taboo, which was reflected in international law for many centuries, is that if you're the king, you don't want to be killed," said Stuart Taylor Jr., a columnist for the *National Journal*. "If you don't target the other king, he won't target you. I think it was sort of a self-preservation pact among kings and leaders. And there's still something to it."

"Of course, the president has the authority to waive the executive order that President Ford suggested and enacted, and it's been followed by every president since," Sen. Richard Durbin, D-Ill., told *Nightline's* Bury. "But frankly, I hope that the president will reflect on that before he goes forward. To make assassination a policy of the United States government, is, in my mind, an invitation for retaliation. We live in a dangerous world. It's just not a policy that we should dismiss lightly."

President Bush may have personal knowledge on the risks of allowing political assassinations. Authorities foiled a 1994 plot to assassinate his father, former President George Bush, during a visit to Kuwait. That plot was blamed on Saddam.

"There's no doubt he can't stand us," said the younger Bush. "After all, this is the guy that tried to kill my dad at one time."

Now, with the United States. threatening war on Saddam, it has tended to use the term, "regime change," which, like Reagan's remarks on Gadhafi, could be a kind of wink that says: We'd really love to get rid of this guy.

If war breaks out, arguably, even the existing rules against assassination may let the United States go after Saddam, personally.

"If it's armed conflict, then you're attacking valid military targets," said Ruth Wedgwood of the U.N. Human Rights Committee. "And the personnel of the enemy are valid military targets, anybody who's in the military chain of command. But, in wartime, it's established that you can try to disable the adversary's functioning."

When a U.S. senator, Peter Fitzgerald, R-Ill., spoke last month of a conversation with Bush about possibly assassinating Saddam, Bush's spokesman was careful to keep a distance between his boss and that old taboo.

"There's an executive order that prohibits the assassination of foreign leaders, and that remains in place," White House spokesman Ari Fleischer said.

And yet, there have been times when maybe even Fleischer let his guard down. Last fall, when asked how to calculate the cost of war, Fleischer said: "The cost of one bullet. If the Iraqi people take it on themselves, it's substantially less than that." ▪

ABCNEWS' John Donvan contributed to this report.