

“Targeted Killing” Ordered by the President of the United States: What Ever Happened to the ‘Rules-based International Order?’

By failing to offer a legal justification for killing al-Qaida leader Ayman al-Zawahiri, Biden has made all of us less safe.

By [Connor Echols](#)

Global Research, August 10, 2022

[Responsible Statecraft](#) 9 August 2022

Region: [USA](#)

Theme: [Law and Justice](#)

All Global Research articles can be read in 51 languages by activating the “Translate Website” drop down menu on the top banner of our home page (Desktop version).

To receive Global Research’s Daily Newsletter (selected articles), [click here](#).

Follow us on [Instagram](#) and [Twitter](#) and subscribe to our [Telegram Channel](#). Feel free to repost and share widely Global Research articles.

Early last week, President Joe Biden announced that the United States had killed al-Qaida leader Ayman al-Zawahiri in Kabul, Afghanistan. The news initially sparked widespread media attention, but in the end it came and went with relatively little fanfare, especially for the death of a long-time American enemy with a [\\$25 million bounty](#) on his head.

Perhaps the most telling aspect of the announcement (and the discourse that followed) was what was left unsaid. Despite the fact that Biden ran for president in part on restoring the “rules-based international order,” he made no effort to justify the attack under international law, and most news coverage has failed to even touch on the issue.

On the surface, the strike left relatively little to complain about. It was remarkably precise, killing only Zawahiri, and, for many analysts, it [proved](#) that America’s withdrawal from Afghanistan would not hinder its ability to conduct precise counter terror missions.

But experts say the killing lacks legal justification and shows that Biden has bought into one of the most pernicious ideas driving the past two decades of U.S. policy: Washington can and should use force wherever it sees fit, even if that means twisting international law beyond recognition. This is in many ways the underlying logic for America’s globe-spanning military presence, according to experts who spoke with Responsible Statecraft. Worse, it erodes international law, allowing other states to justify all sorts of questionable actions outside their borders.

As Russia’s illegal war on Ukraine enters its sixth month, international law has seldom been more important, according to Craig Martin, a professor at Washburn University.

“We say it’s an act of aggression. We allege that they’re committing war crimes. We’re up in arms,” Martin said. “But you can’t argue that Russia is somehow in violation of this international law — and that they should be held accountable for it — if you yourself are not willing to comply with that international law.”

Neither the White House nor the Pentagon responded to questions from Responsible Statecraft about their legal justification for the strike. In fact, U.S. officials have not yet offered a public justification for the attack. On the domestic front, the administration could point to the 2001 Authorization for the Use of Military Force against al-Qaida, which provides a strong case under U.S. law.

The logic is less clear-cut when it comes to international law. Legal scholars who spoke to Responsible Statecraft say that Biden’s team would likely argue that it was an act of self defense and that America had the right to violate Afghanistan’s sovereignty because the Taliban is “unwilling or unable” to help stop the threat posed by Zawahiri. (Secretary of State Antony Blinken [may have alluded](#) to this idea in his speech after the strike in which he pointed to the “Taliban’s unwillingness or inability to abide by their commitments.”) Charles Dunlap, a Duke law professor who previously served as an attorney for the Air Force, [argued](#) in a blog post that this is enough to justify the strike under international law.

“Such facts seem sufficient, even in the absence of evidence about a specific forthcoming attack, to find that al-Zawahiri represented a threat that met the criteria for the application of anticipatory self-defense,” Dunlap wrote. “[T]he presence of al-Zawahiri living openly in Kabul showed that the Taliban was ‘unwilling or unable’ to address the threat he posed to the ‘security of other countries.’”

In Lawfare, national security law expert Robert Chesney [noted](#) that this concept has long held sway among U.S. officials, adding that “[t]here’s little doubt that the ‘unwilling’ condition applies here.”

But much of the international legal community is skeptical of this theory, with only a few countries [accepting](#) it as plausible. As legal expert Adil Haque told Responsible Statecraft, it also relies on the questionable assumption that America and al-Qaida are still at war.

“Anytime armed hostilities between the state and a non-state actor fall below a certain minimum threshold of intensity, the armed conflict temporarily pauses and the law of armed conflict no longer applies,” argues Haque, who teaches law at Rutgers University. “There’s a very plausible argument that that’s where the United States and al-Qaida have been for some time, while Al Qaeda really has not been carrying out attacks against U.S. targets on a kind of regular basis.”

And Haque is not alone in this assessment. As Martin noted, the United Nations Security Council recently [reported](#) that, while terror groups still create major issues in conflict-ridden countries, al-Qaida “is not viewed as posing an immediate international threat from its safe haven in Afghanistan.”

Questions left unanswered

Zawahiri’s death falls under the category of “targeted killing,” a somewhat euphemistic term that the military insists is different from assassination. Prior to 9/11, Israel was the only country that frequently engaged in the practice, which American leaders [opposed](#). But the

Global War on Terror changed the calculus in Washington, and the U.S. military [adopted](#) the tactic starting in 2002.

The practice is controversial for a number of reasons, not the least of which being that attacks are rarely as “targeted” as last week’s was. In one previous attempt to take out Zawahiri, the U.S. military [killed](#) at least 18 Pakistani civilians. (A second [strike](#) that may have targeted the al-Qaida leader killed as many as 80 civilians, many of whom were children.) And this level of “collateral damage” is more common than people like to think. Take the case of Qasim Al-Raymi: The United States took out the former leader of al-Qaida in the Arabian Peninsula in 2020 after [killing](#) 66 people, including 31 children, in two prior attempts.

For international legal scholars, this type of attack is complicated. Though it can be legal under certain circumstances, most experts say the state carrying out the strike has to prove that it is at war with the group and that the person targeted poses an imminent threat to its security. In other words, it’s not enough to be a *member* of al-Qaida in order to be killed; the target has to be engaged in planning or carrying out actual attacks. And when it comes to the 71-year-old Zawahiri, [this was far from clear](#).

Furthermore, the CIA — not the military — carried out the strike on Zawahiri, [according to](#) U.S. officials. While Washington has long blurred the line between the CIA and the Pentagon, legal experts contend that intelligence officials cannot legally engage in war under any circumstances given that they’re not uniformed combatants.

“They don’t get to kill people in war, at least not with immunity,” said Martin, noting that domestic Afghan law would likely apply in this case.

Perhaps of greater concern is the question of sovereignty, the bedrock of international law. Notably, the United States is no longer at war in Afghanistan with the permission of the Afghan government, and it has made no indication that the Taliban gave an authorization for the strike. In such a case, Washington generally relies on the previously mentioned “unwilling or unable” theory. But Martin contends that this would require U.S. officials to actually seek permission from the Taliban, which seems not to have happened in this case. (The White House did not respond when asked if the U.S. spoke to Afghan officials prior to the strike.)

Policymakers might argue that this is unnecessary given that, by harboring terrorists, the Taliban has violated its 2020 accord with the United States. But that assertion is hard to scrutinize given that the pact has still not been made public.

And all of this relies on another dubious assumption: Namely, that the “battlefield” for war with al-Qaida includes anywhere a member of the group can be found — including an apartment in a crowded city where the United States is not at war.

“If the United States had fired a drone through a street in Paris to kill Zawahiri, there would be a much different conversation, right?” Martin asked. “You would intuitively say ‘no, surely the battlefield is not in France.’ But that is one of the implications of this idea that there’s this global armed conflict with which the battlefield is defined by wherever al-Qaida members happen to go.”

As with domestic law, the international system loses legitimacy and effectiveness when

powerful players bend the rule of law to their whim. Other countries have already used America's arguments to justify questionable attacks, including Turkey, which has [targeted](#) Kurdish [leaders](#) in Iraq and Syria. ("Turkey is essentially using the same legal rationale," said Haque. "It's very difficult to distinguish the two cases.") And this will only get worse if Washington continues to flout international law at will, according to Samuel Moyn, a professor at Yale University and a non-resident fellow at the Quincy Institute.

"In general, the United States has treated the law of self defense as always permissive for whatever it wants to do," argued Moyn. "And so why wouldn't other states follow suit?"

Fortunately, it's not too late for Washington to change its tune. With the threat from al-Qaida at an ebb, officials could start approaching counter terror as a question of law enforcement rather than war and encourage other states to do the same. But, in order to move on from two decades of hollowing out international law, the U.S. foreign policy community will need to get back to a question that has never been properly addressed since 9/11.

"Is it really true that this kind of illegal act is the only way of dealing with the threat?" asked Moyn. "If you say no, then your incentive is to figure out what a better regime looks like."

*

Note to readers: Please click the share buttons above or below. Follow us on Instagram and Twitter and subscribe to our Telegram Channel. Feel free to repost and share widely Global Research articles.

Featured image: The U.S. used a Hellfire R9X missile, like the one shown above, to kill al-Qaida chief Ayman al-Zawahiri on the balcony of a safehouse in Kabul on July 31, 2022. U.S. Navy photo by Mass Communication Specialist 2nd Class Nick Scott/Released via ABACAPRESS.COM

The original source of this article is [Responsible Statecraft](#)
Copyright © [Connor Echols](#), [Responsible Statecraft](#), 2022

[Comment on Global Research Articles on our Facebook page](#)

[Become a Member of Global Research](#)

Articles by: [Connor Echols](#)

Disclaimer: The contents of this article are of sole responsibility of the author(s). The Centre for Research on Globalization will not be responsible for any inaccurate or incorrect statement in this article. The Centre of Research on Globalization grants permission to cross-post Global Research articles on community internet sites as long the source and copyright are acknowledged together with a hyperlink to the original Global Research article. For publication of Global Research articles in print or other forms including commercial internet sites, contact: publications@globalresearch.ca

www.globalresearch.ca contains copyrighted material the use of which has not always been specifically authorized by the copyright owner. We are making such material available to our readers under the provisions of "fair use" in an effort to advance

a better understanding of political, economic and social issues. The material on this site is distributed without profit to those who have expressed a prior interest in receiving it for research and educational purposes. If you wish to use copyrighted material for purposes other than "fair use" you must request permission from the copyright owner.

For media inquiries: publications@globalresearch.ca