

ERIC HOLDER SUGGESTS SCARY IRAN PLOT WAS LEGAL

I'm sure that Eric Holder didn't mean to suggest that the assassination plots purportedly planned by Iran's Quds Force and Manssor Arbabsiar with the assistance of a DEA informant targeting the Saudi Ambassador to the US, Adel al-Jubeir, as well as Israeli and Saudi figures in Argentina, are legal.

But given the debate between the ACLU's Anthony Romero and Jack Goldsmith over whether assassinations in this country would be legal, I wanted to look at what he did say.

In their debate on WBUR's On Point, Romero said something to the effect of Holder's argument for targeted killing would serve as justification for other countries to target their own "terrorists" in our country. Goldsmith objected, saying such assassinations would only be legal in failed states (implicitly, like Yemen and Pakistan) where a state was unable to apprehend such a figure.

That's not what Holder said. Here's what he did say:

Over the last three years alone, al Qaeda and its associates have **directed several attacks** – fortunately, unsuccessful – against us from countries other than Afghanistan. Our government has both a responsibility and a right to protect this nation and its people from such threats.

This does not mean that we can use military force whenever or wherever we want. International legal principles, including respect for another nation's sovereignty, constrain our ability to act unilaterally. But the use of force in foreign territory would be consistent

with these international legal principles if conducted, for example, **with the consent of the nation involved – or after a determination that the nation is unable or unwilling to deal effectively with a threat** to the United States.

Furthermore, it is entirely lawful – under both United States law and applicable law of war principles – to **target specific senior operational leaders** of al Qaeda and associated forces. [my emphasis]

Strip this passage of its American exceptionalism, and here's what it justifies:

- Attacks in countries from which attacks have been planned or launched
- Targeted killings in countries where the home country had assented to the assassination attempt
- Targeted killings in countries that were unable to eliminate the threat against a third country
- Targeted killings in countries that were unwilling to eliminate the threat against a third country
- Targeted killings of senior operational leaders

As a threshold matter, Holder does **not** limit assassinations to failed states—those states that, according to Goldsmith, do not have the ability to apprehend a person who is a threat. (Note, I think Goldsmith overestimates the

degree to which Yemen in this case was unable to get Awlaki and underestimates the degree to which Ali Abdullah Saleh didn't want to take responsibility for doing so.)

Holder also says assassinations in countries that are **unwilling** to eliminate such a threat would be legal.

Let me be clear: I don't support this argument, from a practical standpoint, in any case. But Iran surely could argue that Israel poses an imminent threat to it right now (Israel is, of course, arguing the reverse right now, and appears to be conducting assassinations on just that logic). And it could argue—less credibly, but with some justification—that Saudi Arabia does too.

And one of the key figures trying to broker efforts to curtail Iran's sphere of influence in the Middle East, whether by sanctions or asymmetrical treatment of Shiite protestors or in support of a strike on Iran, would be Saudi Arabia's Ambassador to the US, Adel al-Jubeir, precisely the person allegedly targeted by Iran's Quds Force last year.

Mind you, I suspect Iran couldn't make the case that Jubeir, himself, presented an imminent threat (there are a long line of Israelis, though, starting with Bibi Netanyahu, against whom such a case would be a cinch). But Holder doesn't believe anyone should be able to review these decisions: not a judge, and especially not the international community. So according to the practice the US embraced with the Anwar al-Awlaki killing, Iran could just declare that Jubeir or Bibi are senior operational leaders in a plot to attack Iran. It could make some assessment that there would be no way the US would help it arrest these figures. So, voila, according to Holder's logic, Iran could assassinate these figures in the US.

It's a terrible argument. And the only thing preventing such interpretations from being invoked by Iran and any number of other

countries is US might, which effectively limits the ability to make such arguments to the US and countries, like Israel and its presumed assassination of Iranian scientists, we protect.

Now, I'm still agnostic whether Scary Iran Plot existed outside of the well-rehearsed lines of a DEA informant. As of February 1, the government had not yet even given Arbabsiar's defense counsel all his post-arrest statements on which so much of the case rests (the trial is conveniently scheduled for the weeks leading up to the election).

But the Scary Iran Plot is a perfect example of why Holder's argument is terrible precedent.