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## Covert Action: An Effective Instrument of U. S. Foreign Policy?

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## **ABSTRACT**

Covert action is the most controversial responsibility of the Central Intelligence Agency (CIA). This report addresses the statutory basis for covert actions, criteria for their use in the post-Cold War world, and procedures for their planning, conducting, and funding. It discusses the evolution of congressional oversight of cover actions. It analyses proposals for transferring responsibilities for covert actions outside the CIA. It also describes major post-World War II covert actions undertaken in Western Europe, Iran, Guatemala, Indonesia, Vietnam, Laos, Angola, and Nicaragua. An appendix describes the role of the Defense Department in supporting covert actions. The Report will be updated as major developments warrant.

# Covert Action: An Effective Instrument of U. S. Foreign Policy?

## Summary

Of all the functions of the United States Intelligence Community, covert actions tend to receive the greatest attention, even though they consume only a small proportion of intelligence budgets. They are often controversial and have on several occasions figured prominently in major political scandals. Almost inevitably, they intrude upon another country's internal affairs and can result in the loss of human life. They are by definition secret and thus do not undergo the public review and debate that is a hallmark of democratic society.

Most covert actions undertaken in the four decades after World War II were part of larger policies designed to contain the Soviet Union and other communist countries. With the end of the Cold War, the role of covert actions is being reassessed. Some observers have called for a halt to such efforts, while others have advocated different types of covert capabilities to counter the designs of rogue states, international terrorist groups, and narcotics smugglers.

For many years covert actions were often undertaken by the Central Intelligence Agency (CIA) without congressional approval or notification, but since the mid-1970s the executive branch has been required to provide increasingly detailed information to congressional intelligence committees on planned and ongoing covert actions. Some Members have sought to require congressional notification prior to the initiation of any covert action (or, in emergencies, within 48 hours of initiation), but presidents have thus far successfully resisted such a requirement. Congress can nonetheless use the power of the purse to halt covert actions and, on several occasions, has done so.

A number of proposals have been offered to improve U.S. capabilities to plan and undertake covert actions in the post-Cold War world. Most address the complicated relationship between CIA's Directorate of Operations and the rest of the Intelligence Community. Attention is also being given to the difficulties involved in maintaining capabilities for conducting covert actions against myriad targets in disparate locales. At present, however, no clearcut consensus for changes has emerged.

A review of covert actions suggests that most were not isolated initiatives, but components of larger U.S. policies. The extent to which they contributed to making those policies effective is subject to debate in almost all cases. Some observers continue to be concerned that covert actions are not adequately considered in the context of their place within a larger policy framework.

Covert actions are usually undertaken in peacetime by the CIA, but the Defense Department and the military services often provide important support. (Covert actions by law enforcement agencies such as the Federal Bureau of Investigation and the Drug Enforcement Agency are excluded from this discussion.) The line between special operations conducted by military personnel and covert actions is not always clear and a potential exists for misunderstandings between Congress and the executive branch regarding reporting requirements for each.

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# Covert Action: An Effective Instrument of U. S. Foreign Policy?

## Introduction

Of all the functions of the U.S. Intelligence Community, by far the most controversial is the planning and conduct of covert actions. Ranging from supplying financial subsidies to a foreign journal to extensive paramilitary operations, covert actions typify intelligence activities to many in the public who know little of the information gathering, analysis, and dissemination efforts that actually constitute the core functions of intelligence agencies. Many ill-informed members of the public believe that the bulk of the multi-billion dollar intelligence budget goes to covert actions when in fact they absorb only a small percentage of the total.

The end of the Cold War raises new questions about U.S. covert action capabilities. Most covert actions in the past were aimed at resisting Soviet and communist gains throughout the world. The controversies surrounding them were often a reflection of disputes over larger policies aimed at impeding communist advances. Without the need to counter a communist threat based on an expansive great power with nuclear capabilities, observers ask, does the United States need a covert action capability? Is there any justification for secretly interfering in the internal affairs of other countries in the absence of a credible threat from another superpower? How effective can covert actions be in dealing with likely post-Cold War threats?

Underlying the discussion of the need for future covert actions will be an assessment, however tentative, of the international environment and the extent and nature of U.S. interests. Such an assessment is notoriously difficult to make at a time of global instability and of an uncertain sense of the international responsibilities that the U.S. public is prepared to accept. These broader concerns are fundamental; the need for covert actions is contingent upon them. Nonetheless, those in intelligence agencies responsible for planning must determine the nature of covert action capabilities that should be created or maintained, levels of funding, and organizational relationships. The structure that is established in 1996 or 1997 may well influence the types of covert actions that can be undertaken for years to come.

The roles and missions of the post-Cold War Intelligence Community, including covert actions, are currently undergoing review by the Clinton Administration and by the two congressional intelligence committees. The independent Commission on the Roles and Capabilities of the U.S. Intelligence Community in its March 1996 report addressed covert action, although the emphasis of its recommendations lay in

other areas. Proposals to curtail covert actions, to make them the responsibility of an organization other than the Central Intelligence Agency (CIA), or to alter current congressional oversight procedures are receiving close consideration. Decisions on changes in covert action policies will be predicated upon some understanding of the range, variety, costs, and uses of covert actions, what they have accomplished in the past, and the criticisms that have been directed against them.

This paper largely concentrates on covert actions undertaken for national security purposes by the CIA. Covert operations by special forces and other Defense Department entities are briefly described in the Appendix. Covert efforts by law enforcement organizations such as the Federal Bureau of Investigation and the Drug Enforcement Agency are excluded from this discussion although the growing international role of these agencies may lead some to conclude that some of their efforts should in the future be considered as covert actions.

## **Definition: What Is a Covert Action?**

The National Security Act of 1947 (P.L. 80-253), which established the position of the Director of Central Intelligence (DCI) and the CIA, made no mention of covert actions, stating only that the DCI shall "perform such other functions and duties related to intelligence affecting the national security as the President or the National Security Council may direct."<sup>1</sup> It has been argued that the legislative history relating to the National Security Act did not support basing the conduct of covert action on this section, and the CIA was initially reluctant to become involved in view of the absence of legislative provisions specifically authorizing covert actions.<sup>2</sup> In December 1947, however, the National Security Council (NSC) in its Directive 4-A told the DCI "to initiate and conduct, within the limit of available funds, covert psychological operations designed to counteract Soviet and Soviet-inspired activities... ."<sup>3</sup> It is

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<sup>1</sup>50 U.S.C. 403(3)(d)(5).

<sup>2</sup>See Memorandum from the General Counsel of the Central Intelligence Agency (Houston) to Director of Central Intelligence Hillenkoetter, September 25, 1947, U.S. Department of State, Foreign Relations of the United States, 1945-1950: Emergence of the Intelligence Establishment (Washington: Government Printing Office, 1996), pp.622-623. This volume, hereafter cited as FRUS: Emergence of Intelligence Establishment, includes an authoritative reprinting of declassified documents relating to the creation of a covert action capability in the Truman Administration.

<sup>3</sup>Memorandum from the Executive Secretary of the National Security Council (Souers) to Director of Central Intelligence Hillenkoetter, December 17, 1947, FRUS: Emergence of Intelligence Establishment, pp. 650-651. NSC 4-A is also reproduced in Michael Warner, ed., The CIA Under Harry Truman (Washington: Central Intelligence Agency, History Staff, Center for the Study of Intelligence, 1994), p. 174. The Warner volume provides photographic reproductions of relevant documents. It was frankly acknowledged that authorization to undertake covert actions "goes beyond CIA legislative authority. There is no legal authority for this activity except that residing in the NSC." Comment by Under Secretary of State Robert Lovett during the meeting of the NSC on June 3, 1948, Memorandum for the President of Discussion at the 12<sup>th</sup> Meeting of the National Security Council, June 3, 1948, FRUS: Emergence of Intelligence Establishment, p. 697. At the same

(continued...)

uncertain if Congress was notified at that time that a program of psychological operations was being initiated.<sup>4</sup>

The phrase "special activities" has been used in a series of Executive Orders, beginning with the Ford Administration's E.O. 11905 of February 18, 1976 and continuing in the Carter Administration's E.O. 12036 of January 24, 1978. The most recent version appears in E.O. 12333 of December 4, 1981, *United States Intelligence Activities*, that continues to serve as the executive branch charter for intelligence agencies:

*Special activities* mean activities conducted in support of national foreign policy objectives abroad which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but which are not intended to influence United States political processes, public opinion, policies, or media and do not include diplomatic activities or the collection and production of intelligence or related support functions. (Section 3.4(h))

The Intelligence Authorization Act for FY1991 (P.L. 102-88), enacted August 14, 1991, provided for the first time a statutory definition of covert actions:

. . . an activity of the United States Government to influence political, economic, or military conditions abroad, where it is intended that the role of the United States Government will not be apparent or acknowledged publicly, but does not include--

- (1) activities the primary purpose of which is to acquire intelligence, traditional counterintelligence activities, traditional activities to improve or maintain the operational security of United States Government programs, or administrative activities;
- (2) traditional diplomatic or military activities or routine support to such activities;

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<sup>3</sup>(...continued)

meeting, Secretary of Defense James Forrester also stated that "it is not clearly legal for CIA to conduct these activities." Ibid., p. 698.

<sup>4</sup>An extensive discussion of congressional authorization for the conduct of covert actions by the CIA was included in the final report of the Church Committee; U.S. Congress, 94<sup>th</sup> Congress, 2d session, Senate, Select Committee to Study Governmental Operations with Respect to Intelligence Activities [hereafter cited as Church Committee Report], Foreign and Military Intelligence, Final Report, Book I, S. Rept. 94-755, April 26, 1976, pp. 475-509. The report argued that Congress did not specifically authorize the CIA to undertake covert actions in the National Security Act of 1947 or the CIA Act of 1949. Acknowledging the fact that Congress had, subsequent to 1947, provided funds for covert actions, it maintained that providing funds per se, and especially in the absence of detailed knowledge of the program by Congress as a whole, did not constitute authorization. The committee recognized, however, that situation had changed: "In the future the failure by Congress to prohibit funds from being used for covert action by the CIA would clearly constitute congressional ratification of the CIA's authority, eliminating any ambiguity." Church Committee Report, I, p. 501.

- (3) traditional law enforcement activities conducted by United States Government law enforcement agencies or routine support to such activities; or
- (4) activities to provide routine support to the overt activities (other than activities described in paragraph (1), (2), or (3)) of other United States Government agencies abroad.<sup>5</sup>

The accompanying conference report (H. Rept 102-166) discussed this definition at some length in an effort to distinguish covert actions from other secret governmental activities. It noted that "The new definition is meant to clarify the understanding of intelligence activities that require presidential approval and reporting to Congress; not to relax or go beyond previous understandings."<sup>6</sup>

Use of such terms reflects an unwillingness to spell out in statutory law the types of projects that the government may intend to undertake. These definitions reflect a general understanding of what constitutes a covert action, but there remains sufficient ambiguity to ensure that disputes over interpretation may emerge in the future, especially when there are sharp partisan differences over U.S. foreign policies.

In practice, covert actions have included propaganda, efforts to influence political campaigns, economic efforts, and large and small paramilitary operations. By far the most numerous efforts have been in the first two categories. Covertly spreading information (and occasionally disinformation) and attempting to gain support from influential persons in foreign countries (by financial subsidies if necessary) are the most frequent types of covert action employed. These types of covert action require personnel with skills in languages, media relations, diplomacy, political campaigns, etc. In many cases, covert actions of this nature will complement overt efforts of the State Department, and various information agencies. Covert efforts to affect economic conditions in other countries, violent direct action, and covert paramilitary operations are options that are more rarely chosen. Skills required

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<sup>5</sup>105 Stat 444. The definition included in the FY1991 Intelligence Authorization Act is an amendment to the National Security Act of 1947. It is to be noted that despite having made provision for the conduct and reporting of covert actions--along with authorizing and appropriating funds for specific ones--Congress has not passed legislation authorizing the undertaking of covert actions in more clear-cut language than that contained in the 1947 act. Observers suggest that this derives from a concern not to risk diplomatic embarrassments and in part from continued opposition to covert actions by some members. The Intelligence Authorization Act for FY1993 (P.L. 102-496) did not include covert actions among the enumerated responsibilities of the DCI as head of the CIA, but the accompanying conference report noted that "the conferees believe that it would be disingenuous for Congress not to acknowledge its awareness that covert actions remain an instrument of U.S. policy and a function which may be assigned to the CIA. . . ." U.S. Congress, House of Representatives, 102d Congress, 2d session, Committee of Conference, Intelligence Authorization Act for Fiscal Year 1993, House Report 102-963, October 1, 1992, p. 88.

<sup>6</sup>U.S. Congress, House of Representatives, Committee of Conference, 102d Congress, 1<sup>st</sup> session, Intelligence Authorization Act, Fiscal Year 1991, House Report 102-166, July 25, 1991, p. 28.

may be much different and personnel with military backgrounds in special operations may be required.<sup>7</sup>

## Questions Regarding the Future of Covert Actions

The most basic question is whether the United States should ever undertake covert actions. Covert actions can result in the loss of human life and almost invariably represent some sort of interference in the domestic affairs of other countries. Some critics charge that covert actions are fundamentally undemocratic inasmuch as they must be undertaken in secrecy and that there is no possibility for the influence of informed public opinion and for approval by officials whom the public can hold responsible. Although there is considerable publicity about some covert actions, by definition the process has to be cloaked in secrecy. Since 1974, the President has been required by statute to approve covert actions personally and Congress has taken on an increasingly important role in reviewing them; nonetheless, these approval and oversight processes also take place in secret and public awareness--usually not a detailed awareness--occurs only after the fact.

Covert actions in many, if not most, cases violate the domestic laws of the countries where they are implemented. That, of course, can also be true of diplomatic, commercial, and other activities of U.S. government representatives and U.S. citizens in totalitarian countries whose laws preclude almost any activity not directly supporting the regime in power. The extent to which covert actions violate international law in large measure depends, according to some authorities, upon an analysis of context rather than upon applications of textual authorities that are not, in any event, considered universally valid.<sup>8</sup>

Covert actions are undertaken in ways fundamentally different than almost all other functions of the federal government; they inevitably complicate--or, according to critics, compromise--democratic processes. Democratic governments, on the other hand, both in this country and abroad have historically coexisted with a covert action capability, albeit with recurring controversies and scandals. While the steps taken by Congress and the executive branch to regularize the approval and conduct of covert actions continue to cloak the process in secrecy, those charged with planning and conducting covert actions are directly accountable to democratically elected officials. Great efforts over several decades have been made to align procedures for planning and undertaking covert actions as far as practicable with democratic processes.

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<sup>7</sup>Descriptions of various types of covert actions are provided in W. Michael Reisman and James E. Baker, *Regulating Covert Action: Practices, Contexts, and Policies of Covert Coercion Abroad in International and American Law* (New Haven, CT: Yale University Press, 1992); Roy Godson, *Dirty Tricks or Trump Cards: U.S. Covert Action and Counterintelligence* (Washington: Brassey's, 1995); Gregory F. Treverton, *Covert Action: the Limits of Intervention in the Postwar World* (New York: Basic Books, 1987); and Loch K. Johnson, "On Drawing A Bright Line for Covert Operations," *American Journal of International Law*, Vol. 86, April 1992. These discussions, however, include certain types of intelligence collection operations that are beyond the scope of this paper.

<sup>8</sup>See Reisman and Baker, *Regulating Covert Action*, especially pp. 25, 141-142.

Arguments **in favor** of authorizing covert actions typically are:

- A covert action can allow the U.S. to exert influence and support friends without acknowledging its role. In many cases, obvious American support could undermine foreign leaders among a population that may resent Western influence; in some instances, it might lead hostile neighbors to attempt to counteract American interests.
- Covert actions include a wide range of initiatives between "a diplomatic note and sending in the Marines." The careful expenditure of funds, for instance, can arguably exert influence without jeopardizing lives or committing American prestige.
- Covert actions can achieve ends disproportionate to costs, averting wars, saving lives and money.
- Procedures for approving covert actions can limit the extent of congressional scrutiny and public knowledge of U.S. involvement in sensitive operations that could be rendered impossible by extensive public knowledge.
- Covert actions by the CIA can avoid embarrassment and save the government money since initiatives can be undertaken utilizing an established administrative structure instead of attempting *ad hoc* initiatives with inexperienced persons.
- Paramilitary operations can be conducted on occasions when the introduction of official U.S. military personnel is impossible because of international political consequences.

Arguments **against** covert actions usually fall into one of several categories:

- Covert actions can all too easily result in the loss of human life. They can jeopardize the inherent values in U.S. democracy and undermine the nation's commitment to international law.
- Covert actions undertaken without informed debate in Congress undermine the checks and balances built into the Constitution.
- Covert actions, in the current social, legal, and political milieu will probably not remain secret and their promise of controlled, low cost, low risk results are deceptively attractive.
- Covert actions reflect decision-making in secret, without public accountability, potentially undercutting larger goals of U.S. national security policy.
- Covert actions undermine international law by allowing the U.S. to surreptitiously influence developments in foreign countries, perhaps contrary to the interests of the affected countries.
- Paramilitary operations managed by the CIA are inefficient, by-passing the capabilities of the Defense Department.

Most observers expect that the United States will retain a capability to plan and conduct covert actions--few members of Congress have ever advocated the termination of such a capability. If so, policymakers and intelligence community officials will prudently take into account the reality that there exists a significant body of opinion that opposes them in virtually all situations.<sup>9</sup> Approval of a covert action would normally be made with an understanding that it will never have universal support and will be inherently suspect by many observers with keen interests in foreign policy questions.

### **Under What Conditions Should Covert Actions Be Considered in the Post-cold War World?**

Attempting to estimate likely requirements for U.S. covert actions in the coming decade is an uncertain proposition. Some covert actions will probably be necessary as adjuncts to military operations. There will, according to most observers, be a need for capabilities to counteract the efforts of international terrorist organizations that target Americans and U.S. interests. This line of reasoning holds that some movements or activities directly hostile to U.S. interests can be most effectively countered by covert means. There may be a role for covert actions in the effort against international narcotics production and transport. Covert actions could be part of efforts to return suspected criminals to U.S. territory for legal prosecution.

In general, however, requirements for covert actions are likely to be determined by decisions on larger national security goals made by the executive branch and Congress. Some policies will require no covert components; in other areas, covert actions will be perceived as logical and necessary. The experience of the Bush and Clinton Administrations indicates that requirements may change rapidly and will probably not resemble those that prevailed through much of the Cold War period. To serve effectively under such conditions, most observers believe that the Intelligence Community will have to be more flexible and innovative while not enjoying all the financial and personnel resources previously available.

In some areas, the United States has moved away from an earlier reliance on covert action. Although once supported semi-secretly by intelligence agencies, U.S. international radio broadcasting (*e.g.*, Radio Free Europe, Radio Liberty) is now publicly funded. The National Endowment for Democracy (NED), established in 1983, serves to provide U.S. funds to political groups in foreign countries where democracy is weak, threatened or nonexistent.<sup>10</sup> NED grants are openly made through four private organizations and in some cases provide assistance where any role by a U.S. intelligence agency could be counterproductive.

Public support for international radio and for the NED reflects, nonetheless, a willingness to accept responsibility for sponsoring activities that may cause resentment by foreign governments. It puts the U.S. government behind efforts to spread

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<sup>9</sup>See, for instance, Kenneth E. Sharpe, "Intelligence vs. Covert Action: the CIA and Democracy," *World Politics*, Winter 1989.

<sup>10</sup>See Abram N. Shulsky, *Silent Warfare: Understanding the World of Intelligence* (Washington: Brassey's, 1991), pp. 94-95; also, (name redacted), *National Endowment for Democracy: Policy and Funding Issues*, CRS Report 96-222F, March 7, 1996.

information and promote democracy in countries or regions where such activities are distinctly not welcomed by local governments. Deniability is much more limited than is the case with covert actions; Washington has to take responsibility for its instrumentalities.

Proponents of covert action argue, however, that NED grants cannot be tailored to specific policy goals in a short time frame and are not likely to replace covert actions in certain crucial areas. Similarly, observers suggest that there may be occasions when it is important to provide support to journals or other media that have no official connection with the U.S. government.

Covert actions are often controversial. While some oppose covert actions under virtually any circumstances, in the past, divisions over covert actions were in many cases by-products of profound divisions over Cold War security policies especially in the years after the end of American involvement in Vietnam.<sup>11</sup> These divisions have healed somewhat with the end of the Soviet Union, although lingering concern about the role of the CIA in Guatemala, Haiti, Iraq, and elsewhere reflects disagreement about current policy goals. Analysis of the differing perspectives on covert actions in such individual cases lie beyond the scope of this report.

Ultimately, covert actions have to be justified on the basis that they can help achieve important national objectives that can be attained by no other way or that they can assist in achieving them at less cost than would be the case with any other option. The cost criteria would encompass not merely a financial investment, but conceivably a commitment of diplomatic support or armed force.

Some observers are concerned that the complex reporting procedures currently surrounding covert actions, and an inability to ensure plausible deniability, can encourage an undesirable tendency to try to accomplish covert efforts outside the Intelligence Community. The effort to supply the Nicaraguan Contras through private contributions is one example. Another is the Clinton Administration's determination to avoid involving the intelligence agencies in training or equipping Bosnian and Croatian armed forces even as it provided tacit support to resupply from Iranian sources or allowed a private organization composed of retired senior U.S. military officers to contract for training programs. Critical observers suggest that efforts to undertake what might be considered covert actions without involving intelligence agencies are in reality driven by narrow considerations of domestic politics, a determination not to confide in Members of Congress that an administration suspects are hostile to the policy being pursued. Critics of such efforts argue that, even if they are completely within the law, they do not permit the extensive and expensively acquired expertise of the Intelligence Community to be utilized, nor do such expedients permit the tight control by the U.S. government that is inherent in a covert action undertaken by the CIA or DOD. Further, they suggest, the deniability achieved by pursuing a secret initiative while avoiding involvement of U.S. intelligence agencies may be wholly unpersuasive to cynical foreign observers in any event.

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<sup>11</sup>Opposition to covert actions has not been invariable; some opponents of the Reagan Administration's policy towards Nicaragua in the 1980's fought covert support to the Contras even as they supported covert actions in Afghanistan.

## Changes in Criteria

Are there useful criteria by which the wisdom of a covert action can be weighed? A number of observers suggest that a covert action should be undertaken only if it is consistent with publicly proclaimed policies, is consistent with democratic values, and would not unduly embarrass the U.S. government if it were compromised. As rules of thumb, these guidelines are useful, but they do not necessarily provide definitive guidance for all occasions. Covert actions may, after all, be considered in the most difficult cases, not just to fund worthy journals of democratic opinion in need of a subsidy. In some cases, a covert action may serve as a way of testing the possibility of a change in policy or to initiate a change in policy. In such situations, a covert action would not necessarily be consistent with current policy. In other cases, such as a hostage release or the interdiction of a terrorist act, the goal of a covert action may be thoroughly consistent with democratic values, but the action may be implemented only with the assistance of undemocratic elements and through the use of bribery, blackmail, or various forms of coercion. In still other cases, the action might meet the previous criteria, but still embarrass the U.S. government if it were required that assistance be provided to an ostensibly hostile government or group. In the 1960s, when it was revealed that the CIA had subsidized the National Student Association, then a somewhat liberal organization, there was embarrassment all around. Ultimately, however, some observers concluded that CIA support enabled the National Student Association to reflect U.S. values and interests effectively in international fora where they could well have been outmaneuvered and outnumbered by the well-subsidized communist youth groups.

Some observers argue that covert actions should be undertaken only under exceptional circumstances and that they should never become routine instruments of policy. This argument is based largely on a concern that covert actions are planned and undertaken in secrecy and lack the accountability that characterizes other governmental initiatives. Covert action "should never be viewed as a routine support for policy, but rather as an exceptional response to compelling national interest. No lesser level of significance justifies abridgement of the democratic process."<sup>12</sup> Other observers argue, however, that covert actions can be most effective when they are a component of a larger policy that is supported by U.S. diplomacy, the Defense Department, and economic initiatives. They suggest that covert actions attempted when all else has failed are almost always doomed. In part, this argument turns on questions of what types of covert actions are under consideration. Most probably would acknowledge that certain non-violent covert actions, *e.g.*, subsidizing a foreign political party or journal, would effectively serve as part of a larger policy. On the other hand, some more ambitious covert actions would probably be chosen only if no other option were available and these are usually the ones that are the most likely to end in disaster.

Formalizing criteria for covert actions would provide guidance to planners, but in many, if not most, cases the decision to undertake a covert action is likely to remain heavily dependent upon specific circumstances. It is not difficult to find some policy rationale to justify a given covert action. (Even the most controversial covert actions in the past did have at least some relationship to shoring up anticommunists or freeing

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<sup>12</sup>The Need to Know: the Report of the Twentieth Century Fund Task Force on Covert Action and American Democracy (New York: Twentieth Century Fund, 1992), p. 13.

hostages.) A covert action virtually by definition contravenes some publicly espoused policy of non-interference in other countries' affairs (as, of course, do many efforts to promote human rights).

Given past experience, however, future administrations will at least have the benefit of knowing the harsh reaction--and the political price paid, in Congress and among the American public, of covert actions that were implemented in contradiction to democratic values and publicly avowed policies. Given a record of public disclosure of highly sensitive covert actions, every proposal has to be considered in light of the potential ramifications of public exposure. Some suggest that perhaps the best criteria is consideration of the effect of unauthorized public disclosure.

### **Should the United States Reorganize Its Covert Action Bureaucracy and Procedures?**

Assuming that the U.S. government retains a capability to plan and undertake covert actions, a number of fundamental questions arise.

- Should covert actions be the exclusive province of the Operations Directorate of the CIA?
- Should the Operations Directorate remain an integral part of CIA or should it be established as an independent agency (a Clandestine Services Agency), under the operational control of (a) the Director of Central Intelligence, (b) the Secretary of Defense, or (c) another official?
- Should the role of the Defense Department in covert actions be expanded?
- Should legislation be enacted that would establish criteria for initiating covert actions?
- Should there be a statutory requirement that at least certain specified members of Congress be notified *prior* to the initiation of a covert action or, in emergency situations, at least within forty-eight hours?

**Detaching the Operations Directorate From CIA.** As noted at the beginning of this report, a covert action capability is not necessarily an inherent part of an intelligence agency responsible for the collection, analysis, and dissemination of secret information. Most of the major intelligence agencies in the U.S. government have little or no connection with covert actions, and the CIA was itself not originally organized to undertake covert actions, but acquired the function as the United States gradually became committed to resisting communist political gains in Western Europe and elsewhere. In recent years, DCIs have been increasingly expected to oversee the nation's multi-billion dollar intelligence effort; to the extent that they must concentrate on complex reconnaissance systems and coordinating with intelligence agencies within the Defense Department, they must necessarily rely on their deputies and senior CIA officials to manage covert actions. Some observers argue that highly sensitive projects may now be receiving less attention from senior policymakers appointed by the President and confirmed by the Senate. Particular concerns have been raised that

day-to-day management decisions lay in the hands of officials who have not made their careers in the Operations Directorate.

Some critics have advocated splitting out the parts of the CIA responsible for covert actions and human intelligence collection, now known as the Directorate of Operations (or the Clandestine Service), and making it an independent agency. Admiral Bobby Ray Inman, who served as Deputy DCI in the Reagan Administration, suggested such an approach as an appropriate response to new post-Cold War realities.<sup>13</sup> This concept was also proposed in the Intelligence Community in the 21st Century (IC21) study undertaken in 1995-1996 by the House Permanent Select Committee on Intelligence, although it was not included in legislation reported by the committee.<sup>14</sup>

**Advantages.** A separate clandestine service directly under the DCI would ensure that the nation's chief intelligence officer take direct responsibility for planning, management, and oversight of covert actions (as well as humint collection). The CIA, shorn of its covert action tasks, could concentrate on its intelligence collection and analysis responsibilities. The CIA would be less likely to serve as a lightning rod for opponents of an Administration pursuing risky foreign policy initiatives. It could also improve the CIA's relations with an academic/research community often opposed to covert action and with those in government who are skeptical that analysis can be kept independent of a parochial need to justify ongoing covert actions. It would remove longstanding rivalries and bureaucratic competition between analysts and operators in the CIA.

Given the post-Cold War environment, analysts at CIA, as in other agencies, have to make greater use of open source materials and work openly with other government agencies and outside experts on topics far removed from many of the highly sensitive security concerns of the Cold War period. It is not just that academic and media experts may have a distaste for covert actions in principle, but rather that the world of information acquisition, storage, and retrieval technology has grown enormously and that the extent of post-Cold War interests have broadened to such an extent that, from a management perspective, information-related activities require greater emphasis and managerial attention than is possible in an organization whose managers must supervise sensitive covert actions that can result in the loss of American lives.

In summary, those who hold this view argue that:

- CIA's involvement in covert actions complicates its analytical efforts because there may be a tendency to provide evidence supporting the policies calling for covert actions.

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<sup>13</sup>"Inman Urges Creating Single Agency Outside CIA for Humint," *Aerospace Daily*, January 22, 1996, pp. 98-99.

<sup>14</sup>See U.S. Congress, 104<sup>th</sup> Congress, House of Representatives, Permanent Select Committee on Intelligence, IC21: Intelligence Community in the 21<sup>st</sup> Century, Staff Study, 1996, pp. 181-222.

- CIA's role in covert actions also complicates its efforts to work with area specialists and other outside scholars in view of the widespread hostility to covert actions that exists in the academic community.
- The leadership role of the Intelligence Community in acquiring and managing information technology and in supporting government agencies outside the national security arena is constantly undermined by inevitable controversies over covert actions.

**Disadvantages.** Responsibilities for covert action have been given to the CIA since the 1940s because of a disinclination to incorporate them into either the State or Defense Department; the passage of time has not made alternatives more attractive. Removing covert action capabilities from the CIA would be a major innovation and would engender strong opposition and perhaps partisan political controversy. The advantages would have to be clearly demonstrated and the disadvantages acceptable. Many observers believe that the case has not yet been made.

Those who would retain covert action capabilities within CIA argue (as did their predecessors in the late 1940s and early 1950s) that:

- The DCI is the logical official to be assigned the responsibility for covert actions. Although a separate covert action office outside the CIA could report to the DCI, this did not work in the 1940s; it would add significant administrative overhead and potentially overlapping responsibilities in the field.
- Some would argue that creating a separate organization outside CIA but still subordinate to the DCI would be a separation in fiction more than fact.
- CIA analysts benefit from close working relationships with Operations Directorate officials and the latter need close access to analysts in planning covert actions. Considerable efforts have been made in recent years to encourage closer working relationships between analysts and Operations Directorate officers; this cooperation would be jeopardized if separate organizations were established.

**Detaching Covert Action, but not Humint Collection, Capabilities from CIA.** Covert action capabilities, but not human intelligence collection capabilities, could be located outside the CIA--essentially the situation that existed prior to 1952. Responsibility for covert actions, especially those that are paramilitary in nature, could be given to specialized military units as is reportedly the case in Britain.<sup>15</sup> To a certain extent, such capabilities already exist, designed for use in time of war by the military services under the direction of the Joint Chiefs of Staff (JCS).<sup>16</sup>

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<sup>15</sup>Arguments for this approach are made by David Charters, "The Role of Intelligence Services in the Direction of Covert Paramilitary Operations," in Alfred C. Maurer, Marion D. Tunstall, and James M. Keagle, eds. *Intelligence: Policy and Process* (Boulder, CO: Westview Press, 1985), especially pp. 338, 341-346.

<sup>16</sup>See John M. Collins, *Special Operations Forces: An Assessment 1986-1993*, CRS Report 93-697S, July 30, 1993; also the Appendix to this paper.

**Advantages.** This proposal would remove from CIA its most controversial function and place covert actions in a smaller, and hopefully obscure, organization. CIA would become solely an information gathering and analytical institution with greater legitimacy in the eyes of those (especially in the media and academic profession) who have been traditionally opposed to covert action. It is argued that although human intelligence collectors belong in the same organization as analysts, covert operators do not. For its part, the covert action agency would be smaller, its *esprit de corps* would be enhanced, and it could work more closely with the armed services.

**Disadvantages.** Considerable administrative overhead would have to be duplicated. Human intelligence sources in foreign countries are useful in some covert action efforts. In the early years of the CIA, administrative separation of covert action and intelligence collection led to competing efforts by U.S. officials in the field that were clearly counterproductive. The possibility exists that separate offices would bid against each other for the services of foreign sources.

### **Greater Use of Non-official Cover**

In the post-Cold War world, the CIA will likely require different types of approaches to covert actions. In the past, emphasis was given to recruiting Soviet and other communist officials serving in embassies abroad for intelligence collection purposes. It was hoped that these officials could be encouraged to supply accurate information about their own countries to the United States and supply disinformation about the United States back to their seniors. It was notoriously difficult to obtain access to individuals within communist countries outside of official circles; in many cases, the embassy circuit was the only means of approach.

The Cold War-era emphasis on developing contacts on the diplomatic circuit had certain advantages. U.S. embassies provided security for CIA personnel as well as extensive logistical support. CIA officials ostensibly filling non-intelligence positions could still devote most of their energies to their CIA duties. They were usually covered by diplomatic immunity and, thus, could usually be brought home if their safety was jeopardized. Their assignments often focused on contacts with other members of the diplomatic corps or host-nation officials, all of whom they could contact in the context of their position in the embassy.

In the post-Cold War environment, Operations Directorate personnel may be given assignments that involve contacts with elements far removed from embassy social circles. In such cases, diplomatic cover may be counterproductive and Operations Directorate officers may be sent abroad under commercial or other cover. There are, however, major challenges to be overcome. Not all U.S. corporations are prepared to cooperate with the CIA in providing such cover and strong opposition exists to providing CIA officials cover as journalists, academicians, or members of the clergy. Without official cover, logistical and administrative difficulties become much greater. The official will probably have to be engaged in near-full time work in his cover capacity. Routine health care, retirement, and other personnel issues are much more complicated. Security risks are far higher; such agents do not enjoy diplomatic immunity, and there is far less that the U.S. government can do to protect them if they fall afoul of local authorities or criminal elements. Inevitably, also, there is a higher

risk that the U.S. government will become associated with parties who have embarrassing financial or political entanglements with local interests.

In early 1996, there was renewed consideration of the use of journalists and clergymen by the CIA (or having CIA officers ostensibly serving as journalists or clergymen), based on a recommendation by a task force of the Council on Foreign Relations.<sup>17</sup> Subsequently, it was revealed that there had been a few exceptions to the policy precluding the employment of journalists that had been established by George Bush in February 1976 when he was DCI and subsequently amplified the following year by his successor, Stansfield Turner.<sup>18</sup> In April 1996, DCI John Deutch essentially reaffirmed the earlier policy, disclaiming any intention to use American journalists as agents or American news organizations for cover, but reserving the possibility to do so in "genuinely extraordinary circumstances."<sup>19</sup> The Intelligence Authorization Act for FY1997 (P.L. 104-293) essentially places this policy into statutory law, permitting use of U.S. journalists as intelligence agents only on an exceptional basis and requiring notification of the two intelligence committees in each instance.

Many journalists and leaders of religious organizations are naturally concerned that their representatives not be perceived as agents of an intelligence service. Such perceptions at home and abroad (valid or not) at least complicate their efforts to perform their duties and, in extreme situations, could lead to hostile actions taken against them by foreign governments or groups. Intelligence sources indicate that exceptions have been rare and made only when important interests (such as American hostages in Iran) were at stake and no reasonable alternatives were available. Drawing a hard and fast policy will be resisted by intelligence leaders; it might be difficult in any event to draft a precise definition of a journalist or clergyman.

## **The Planning, Conduct, And Oversight of Covert Actions**

The management of covert actions presents significant challenges to any government, but especially to a democratic government that operates on the basis of openness and public accountability. Inherently, covert actions must be planned and undertaken in secret. Funding arrangements--the normal focus of accountability in the U.S. government--must also be made secretly. Secrecy also hinders the ability of government officials, or the public, to evaluate the contribution that covert actions make to the achievement of national security goals.

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<sup>17</sup>The Task Force specifically recommended "that a fresh look be taken at limits on the use of non-official 'covers' for hiding and protecting those involved in clandestine activities." Council on Foreign Relations, *Making Intelligence Smarter: The Future of U.S. Intelligence: Report of an Independent Task Force*, 1996, p. 24.

<sup>18</sup>See Walter Pincus, "Turner: CIA Nearly Used a Journalist in Tehran," *Washington Post*, March 1, 1996, p. A15; the regulations were reproduced in U.S. Congress, House of Representatives, 95<sup>th</sup> Congress, 1<sup>st</sup> and 2<sup>d</sup> session, Permanent Select Committee on Intelligence, *The CIA and the Media*, Hearings, December 27-29, 1977, January 4,5 and April 20, 1978, pp. 331-334.

<sup>19</sup>"CIA Chief Won't Rule Out Use of Journalists," *Washington Post*, April 19, 1996, p. A21.

The structure established to plan, undertake, and oversee covert actions has evolved incrementally over the years through executive branch initiatives but with increasing congressional guidance. Funding mechanisms for covert actions, as well as the broader range of CIA activities, were at one time handled by CIA and DOD officials working with a very small group of Members of Congress; since the 1970s procedures have become much more formal, and Congress has funded, or withheld funds from, specific covert actions. Usually, this has been done in classified annexes to committee reports that are incorporated into legislation, but, on several occasions, funding provisions have been directly included in statutes.

Covert actions are reviewed by congressional committees. Two select committees in 1975-1976 (usually referred to as the Church and Pike Committees, after the two chairmen, Senator Frank Church and Representative Otis Pike) looked at covert actions under highly publicized conditions. Subsequently, the two intelligence oversight committees have conducted investigations of covert actions, but mostly on a classified basis. The Iran-Contra investigation in 1987 provided a mass of documentation on covert action practices. Nonetheless, analysts working from the basis of materials released during the Church/Pike and Iran-Contra investigations inevitably center their assessments on highly controversial covert actions rather than on the entire spectrum. Sufficient information is, however, becoming available from documents gradually being released by the CIA and other intelligence agencies and from the memoirs and biographies of participants to indicate the nature and scope of covert actions undertaken since the Truman Administration. Although not complete, analysis of this body of material provides a framework to understand the importance covert actions have played and continue to play and suggests options for future consideration.

## **Organizing for Covert Actions**

Americans have conducted covert actions of various types since the eighteenth century--and developed expertise in such efforts during World War II by the Office of Strategic Services (OSS).<sup>20</sup> After the end of World War II, the responsibilities of the OSS were initially divided among the military services and the State Department. In 1947, a Central Intelligence Agency was established as part of the National Security Act that also created the independent Air Force and the National Security Council. Little attention was given to covert action; the focus was on providing better analysis to ensure that no surprise on the order of Pearl Harbor could occur.

With the beginnings of the Cold War in 1946 and 1947 State and military planners sought ways to support resistance to communist advances in Western Europe and, as noted above, a program of psychological operations was launched. Given limited resources, the program was necessarily limited in scope. George Kennan, then the head of the State Department's Policy Planning Staff, argued for much more ambitious programs of "political warfare" that were beyond the capabilities of the CIA

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<sup>20</sup>Stephen F. Knott, *Secret and Sanctioned: Covert Operations and the American Presidency* (New York: Oxford University Press, 1996) gives an extensive description of pre-1947 covert actions (and associated funding mechanisms); for the OSS, see Thomas F. Troy, Donovan and the CIA: A History of the Establishment of the Central Intelligence Agency (Frederick, MD: University Publications of America, 1981).

as then constituted. Kennan's goal was also to ensure close ties between the State Department and those responsible for covert actions. At his urging, at the time of the beginning of the Berlin blockade, the National Security Council established (by Directive 10/2 which superseded NSC-4-A) a new office located for administrative purposes in the CIA, but headed by an official nominated by the Secretary of State and supervised by the State and Defense Departments.<sup>21</sup> The office, which came to be known as the Office of Policy Coordination (OPC), was charged with the planning and conduct of covert operations, specifically including:

propaganda; economic warfare; preventive direct action, including sabotage, anti-sabotage, demolition and evacuation measures; subversion against hostile states, including assistance to underground resistance movements, guerrillas and refugee liberation groups, and support of indigenous anti-communist elements in threatened countries of the free world.<sup>22</sup>

Under the energetic leadership of Frank Wisner, an OSS veteran who had subsequently worked in the State Department, OPC launched a wide variety of projects. Wisner was allowed considerable flexibility in developing covert action projects and the close relationship of OPC with the State Department that Kennan had envisioned did not emerge.<sup>23</sup> Wisner's initiatives were reflected in growing budgets and personnel levels. In 1949, OPC had 302 people and a budget of some \$4.7 million; by 1952 it employed 2,812 (in addition to 3,142 overseas contract personnel) with a budget of \$82 million.<sup>24</sup>

With the establishment of OPC in the summer of 1948, the DCI had two clandestine services, OPC devoted to covert activities and CIA's Office of Special Operations (OSO) devoted to human intelligence collection. It was not an easy relationship; OPC operated largely independently of the rest of the CIA, had more funds at its disposal, and cultivated a "can-do" attitude. OSO was more methodical in its approach and more constrained in its budgets and operations. There was an inevitable potential for undesirable competition and overlap. A major assessment of intelligence activities undertaken for the NSC by Allen Dulles, William Jackson, and Matthias Correa, New York attorneys and OSS veterans, recommended the merger

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<sup>21</sup>Kennan's role is further described in Wilson D. Miscamble, C.S.C., George F. Kennan and the Making of American Foreign Policy, 1947-1950 (Princeton, NJ: Princeton University Press, 1992), pp. 106-111.

<sup>22</sup>National Security Council Directive on Office of Special Projects, June 18, 1947, FRUS: Emergence of Intelligence Establishment, p. 714. The document provided a definition of covert operations as "all activities. . . which are conducted or sponsored by this Government against hostile foreign states or groups or in support of friendly foreign states or groups but which are so planned and executed that any US Government responsibility for them is not evident to unauthorized persons and that if uncovered the US Government can plausibly disclaim any responsibility for them." Ibid.

<sup>23</sup>Wisner's role is described in Evan Thomas, *The Very Best Men: Four Who Dared: the Early Years of the CIA* (New York: Simon & Schuster, 1995).

<sup>24</sup>Church Committee Report, IV, p. 31.

of the two entities under the DCI; the recommendation was accepted by the NSC in July 1949 in NSC-50, although full implementation would be delayed.<sup>25</sup>

As the recommendations contained within NSC-50 were being considered, the international atmosphere continued to deteriorate. By 1948, most of Eastern Europe had been absorbed within the Soviet sphere. In 1949, the communists were victorious in China, and the West learned that the Soviet Union had acquired its own atomic weapon. In June 1950, communist North Korea launched an attack designed to gain control of the whole peninsula. The Truman Administration quickly endorsed a comprehensive anti-communist policy (described in another NSC document, NSC-68). According to an official CIA history, with the outbreak of the Korean War, "OPC's budget expanded dramatically and its focus shifted from essentially defensive psychological operations to active economic, political, and even military actions."<sup>26</sup>

The new DCI, Lieutenant General Walter Bedell Smith, made OPC a regular office of the CIA upon taking up his duties in October 1950; in August 1952, OPC and OSO were finally formally consolidated. Smith did have considerable hesitation in taking this step out of concern that covert actions, including paramilitary operations in support of U.S. forces in Korea, were overwhelming its intelligence collection and analytical functions. Given the imperatives of a wartime situation, he nonetheless acceded to a recommendation of the NSC (NSC-10/5) that CIA continue its anti-communist covert action program.

In the Eisenhower Administration, Smith's successor, DCI Allen Dulles, gave even greater emphasis to covert actions. Having served as head of the OSS in Switzerland during World War II, Dulles took a personal interest in a wide variety of specific covert actions. He was heavily involved in efforts intended to prevent communist or leftist takeovers in Iran and Guatemala. Although there has been intense historical controversy regarding whether or not these covert actions ultimately served U.S. interests, at the time they were considered major successes by the CIA in implementing the policies the Eisenhower Administration. Allen Dulles, described as the "Great White Case Officer" because of his affinity for covert actions, was retained as DCI at the beginning of the Kennedy Administration. He would preside over one of the great failures of U.S. policy, the aborted invasion of Cuba at the Bay of Pigs in 1961, and had to resign a few months after the debacle.<sup>27</sup>

Even in the late 1960s, the Operations Directorate played a dominant role in the CIA. Robert Gates, DCI under President Bush, recalled that when he was a junior

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<sup>25</sup>The Dulles-Jackson-Correa Report is partially reprinted as Report From the Intelligence Survey Group to the National Security Council, January 1, 1949, FRUS: Emergence of Intelligence Establishment, pp. 903-911. The DCI described the NSC's action on the Report in his Memorandum for CIA Assistant Directors, "Approval by the NSC of Much of the Dulles Report," 12 July 1949; reprinted in Warner, pp. 315-318.

<sup>26</sup>Warner, p. xxiii.

<sup>27</sup>See Peter Grose, *Gentleman Spy: the Life of Allen Dulles* (Boston: Houghton Mifflin, 1994). Much of the preparatory work for the Cuban invasion was undertaken by Richard M. Bissell, the head of the Directorate of Operations; see *ibid.*, pp. 494, 519-533. Bissell's own account has been published as *Reflections of a Cold Warrior: From Yalta to the Bay of Pigs* (New Haven, CT: Yale University Press, 1996).

analyst at that time, the CIA "was totally dominated by the clandestine service. Its division chiefs (Near East, Soviet Bloc, etc.) were powerful figures in their own right and not afraid to run their own shows independent of both the DCI and the head of the clandestine service. . . ." Of the members of the Operations Directorate, he wrote, "Their culture, their ethic were CIA's in 1969. They ran the Agency bureaucratically and dominated it psychologically. And few questioned the rightness of that."<sup>28</sup> Between 1961 and 1976 CIA conducted some 900 major or sensitive covert action projects in addition to several thousand smaller ones.<sup>29</sup>

The Carter Administration took office in 1977 with an apparent lack of enthusiasm for covert actions, in part a reaction to the abuses that had been revealed by the Church and Pike Committees (Vice President Walter Mondale having been a member of the former). DCI Stansfield Turner instituted sizable personnel reductions in the Operations Directorate, believing that the possibility of major increases in covert actions should be closed off, as he "did not foresee that as being something that the country would need or want."<sup>30</sup> Even though it was widely agreed that the number of agents needed to be reduced, the reduction in force came as a shock to officials who had assumed that they could rely on job security. Perceived by opponents as reflective of a vacillating national security policy, the initiative became a political issue as opponents of the Administration charged that Turner was denigrating the need for human intelligence and covert actions. Nevertheless, as noted below, a determination to promote anticommunist elements in Eastern Europe and to limit Soviet military initiatives in the Third World led (with the encouragement of the National Security Adviser Zbigniew Brzezinski) to an increasing number of covert actions during the Carter Administration.

The advent of the Reagan Administration in 1981 brought a strong and public emphasis on rebuilding a covert action capability. The new Administration was willing, even eager, to conduct covert actions in key areas where it perceived threats from the Soviet Union and its surrogates or opportunities to injure communist regimes and movements. Under the leadership of DCI William Casey, the CIA's Operations Directorate once again increased in size and importance. Casey, who had served in the OSS during World War II, took a personal interest in expanding covert actions to support the Administration's determination to counter Soviet influence throughout the world, but especially in Afghanistan and Central America. Some of these efforts were widely known, even if not officially acknowledged.

Covert action efforts came under great criticism during congressional hearings concerning the Iran-Contra affair when many concluded that the Reagan Administration had undercut its publicly announced policy of isolating Iran. Reagan subordinates made covert arms transfers to Iranian "moderates" and, through the involvement of NSC staff personnel, concluded covert monetary transactions to the

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<sup>28</sup>Robert M. Gates, *From the Shadows: The Ultimate Insider's Story of Five Presidents and How They Won the Cold War* (New York: Simon and Schuster, 1996), pp. 32,33.

<sup>29</sup>Church Committee Report, I, p. 445.

<sup>30</sup>Stansfield Turner, *Secrecy and Democracy: the CIA in Transition* (New York: Harper & Row, 1986), p. 201; earlier, in the Nixon Administration, DCI James Schlesinger had also made sizable reductions in the staffing of the Operations Directorate.

Nicaraguan Resistance that the CIA could not legally undertake. In the aftermath of the hearings, new policies were issued regarding the administration of clandestine activities. The policy specifically precluded NSC staff from participating in "the conduct of special activities." In addition, procedures were established to ensure that any covert action would support national foreign policy objectives abroad. Further, to "the extent possible, they should be conducted only when we are confident that, if they are revealed, the American public would find them sensible."<sup>31</sup>

With the end of the Cold War, during the Bush Administration, the Intelligence Community faced significant reductions in budgets and personnel even though DOD and other agencies have faced deeper cuts. The Directorate of Operations was not exempted, especially as many of the former targets of clandestine intelligence collection have disappeared. Reportedly, the number of deployed, officially covered case officers has been declining at an average rate of almost ten percent a year over the last several years, large numbers of stations and bases have been closed, and those that remain have been reduced in size. These reductions have encouraged a shift from "global presence"--a station in every country that could reasonably be of interest--to "global reach"--withdrawing from many countries but attempting to maintain some sort of access along with a capability to reconstitute and expand a presence if necessary. Although the immediate effect may be in the area of clandestine intelligence collection, covert action capabilities are often affected by these drawdowns.<sup>32</sup>

Covert actions have been utilized by both the Bush and Clinton Administrations. DCIs William Webster, Robert Gates, R. James Woolsey, and John Deutch have not shared Casey's emphasis on covert action capabilities. Revelations of the treachery of Operations Directorate official Aldrich Ames seriously compromised the reputation of the Operations Directorate where he was assigned throughout most of his CIA career. On the other hand, covert actions played a part in U.S. military operations in Panama and in Desert Storm and Desert Shield. The Clinton Administration's efforts at peacekeeping in Somalia, Haiti, and Bosnia have been assisted by covert efforts by CIA. Press accounts indicate that CIA provided support to Kurdish groups opposed to Saddam Hussein and to some dissident Iranian elements although these efforts have been effectively countered by the Iraqis. The effort to bring together intelligence analysts in CIA's Directorate of Intelligence and clandestine officials in the Operations Directorate has been accelerated with the hope of keeping the latter better aware of current analytical and policy needs.<sup>33</sup>

Covert actions are ordinarily planned in CIA's Operations Directorate, reviewed within the agency, and by the DCI. They are further reviewed at the NSC-level prior to approval. NSC committees charged with reviewing covert action proposals have operated under a variety of names, *e.g.*, 40 Committee, Operations Advisory Group,

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<sup>31</sup>National Security Decision Directive (NSDD) 286, October/November 1987?, sanitized version reprinted in Christopher Simpson, *National Security Directives of the Reagan and Bush Administrations* (Boulder, CO: Westview Press, 1995), p. 826.

<sup>32</sup>IC21, pp. 193, 202.

<sup>33</sup>See Gregory F. Treverton, "Intelligence Since Cold War's End," in *from the Cold: the Report of the Twentieth Century Fund Task Force on the Future of U.S. Intelligence* (New York: Twentieth Century Fund, 1996), pp. 126-127.

National Security Planning Group, etc. The extent to which covert actions have been considered by the executive branch in the larger context of policy has varied. In some cases, planning has been restricted to a small group directed by the President or the national security adviser. In others, planning has been much more formal, involving extensive coordination among the major agencies involved in national security policy. The extent of coordination depends on a given President's managerial style and the perceived sensitivity of the covert action under consideration. Given statutory requirements for findings that must be provided to Congress, the process has become increasingly formal in recent years.<sup>34</sup>

## Funding of Covert Actions

As might be expected, in recent years, Congress has closely overseen funds available for covert actions. The law currently requires that no funds be expended on a covert action until the President has made a "Finding," *i.e.* a formal determination that a covert action should be carried out. Findings include provisions indicating funding requirements.

Intelligence authorization acts--and related appropriations measures--include funding for the Reserve for Contingencies of the CIA, a budgetary account originally established in 1952 to provide funding for unanticipated intelligence activities, including covert actions. The DCI must notify congressional intelligence committees when he intends to transfer funds from the Reserve for Contingencies to undertake a covert action.<sup>35</sup> (Transfers from budgetary accounts other than the Reserve for Contingencies require more extensive congressional notification.) Congressional committees cannot prevent the executive branch from making use of funds from the Reserve for Contingencies, but funds may not be spent on any activity for which funding was denied by Congress.<sup>36</sup> On a number of occasions, legislation has specifically precluded the DCI from using funds available to him in the Contingency Reserve Fund for covert actions in a specified area.

## Congress and Covert Actions

For many years, it appeared that Congress had little interest in being involved in approving or overseeing covert actions. Congress has, in fact, never asserted an absolute right to approve covert actions;<sup>37</sup> the initiation of covert actions, like

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<sup>34</sup>See Church Committee Report, IV, pp. 50-51; Mark M. Lowenthal, *U.S. Intelligence: Evolution and Anatomy*, 2<sup>nd</sup> edition (Westport, CT: Praeger, 1992), pp. 112-114.

<sup>35</sup>50 U.S.C. 414(a). The Defense Appropriations Act for FY1995 (P.L. 103-335) provided that no funds authorized therein may be "used to pay the salaries of any person or persons who authorize the transfer of obligated and deobligated appropriations" into CIA's Reserve for Contingencies (108 Stat. 2637). This provision covered funds appropriated in that act; a similar provision did not appear in the FY1996 Appropriations Act (P.L. 104-61).

<sup>36</sup>50 U.S.C. 414(b).

<sup>37</sup>A floor amendment introduced in the House during consideration of the FY1991 Intelligence Authorization bill would have required prior approval of covert actions by the intelligence committees (although in emergency situations a covert action could proceed for 48 hours, but  
(continued...)

decisions to deploy military forces or conclude executive agreements, being, at least arguably, a presidential prerogative. Until the mid-1970s, covert actions were routinely conducted without notification to Congress.<sup>38</sup> Although procedures were always in place to allow Congress to review intelligence budgets, it is much less certain that congressional committees or even key members were apprised of specific covert actions.

In the wake of the Southeast Asian war, the Watergate scandal, and President Nixon's resignation, legislation, known as the Hughes-Ryan Act, was enacted in 1974 requiring that no funds might be used, except in wartime, by CIA for activities other than intelligence collection:

unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress.<sup>39</sup>

The legislation thus established a requirement for an official "finding," a term that has since become an important part of the literature of covert actions.

Without knowledge of covert actions, it was maintained, Congress could not carry out its constitutional responsibilities of providing funds and oversight. The fact that those responsible for planning covert actions had envisioned assassinations abroad and domestic surveillance gave impetus to the demand for congressional notification. Presidents, thereafter, could no longer maintain plausible deniability of actions allegedly initiated by subordinates (even though covert actions would continue to be designed to avoid revealing the U.S. role). This requirement meant that the U.S. government must take official responsibility for covert actions.<sup>40</sup> Although the potential disadvantages of having to acknowledge the fact that a covert action had been approved by the President were recognized at the time, they were outweighed by a determination to prevent subordinate officials from undertaking operations so

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<sup>37</sup>(...continued)

then cease unless the two committees approved). The amendment failed on a 70-341 vote. Congressional Record, October 17, 1990, p. H10084.

<sup>38</sup>According to the Church Committee, "Of the 33 covert action projects undertaken in Chile between 1963 and 1974. . . , Congress was briefed in some fashion on eight." Church Committee Report, I, p. 150.

<sup>39</sup>P.L. 93-559, December 30, 1974. These provisions, known as the Hughes-Ryan Act, were included in the Foreign Assistance Act of 1974. The reports, it was specified, were to go to appropriate committees of Congress, including the Senate Foreign Relations Committee and the House Foreign Affairs Committee.

<sup>40</sup>Many observers believed that when President Eisenhower in 1960 accepted responsibility for U-2 overflights of the Soviet Union, he made reaching agreements with Moscow much more difficult; had he blamed the flights on the Pentagon or the CIA, Khrushchev arguably might not have felt forced to react so strongly even though he might not believe the denials. Such reasoning, while constrained, is hardly unusual. It is easier for a President to deal with foreign leaders who are known to have committed violent acts, but have never admitted having done so, than to meet formally with those who have acknowledged "unacceptable" behavior.

outrageous (such as assassinations) that no President could ever publicly associate himself with.

Comprehensive investigations of intelligence activities undertaken by the Church and Pike select committees in 1975-1976 focused in large measure on covert actions. Highly publicized hearings revealed efforts to topple the Castro regime in Cuba, support for political assassinations in Zaire, and other projects that appeared inconsistent with democratic principles, some with dubious prospects for success, and severely damaged the nation's reputation both abroad and at home. Revelations that intelligence agencies had undertaken surveillance of domestic political groups and systematically opened mail led to a greater determination to reform an intelligence bureaucracy that was perceived by many as out of control.<sup>41</sup>

The Pike Committee's recommendations were published as a congressional document (even though the House did not consent to the publication of the entire report).<sup>42</sup> After recommending that direct or indirect attempts to assassinate any individual be prohibited except in time of war, the committee urged that within 48 hours of initial approval of any covert action, the DCI should provide Congress with details of the initiative and the President should certify that the action is required to protect the nation's security, along with "duplicate originals" of the recommendations of administration officials involved in approving the action. Finally, covert actions should be terminated within twelve months of initial approval.

The Church Committee, for its part, found that:

covert action operations have not been an exceptional instrument used only in rare instances when the vital interests of the United States have been at stake. On the contrary, presidents and administrations have made excessive, and at times self-defeating, use of covert action. In addition, covert action has become a routine program with a bureaucratic momentum of its own.<sup>43</sup>

The Committee argued, however, that although it considered a total ban on covert actions,

the United States should maintain the capability to react through covert action when no other means will suffice to meet extraordinary circumstances involving grave threats to U.S. national security. Nevertheless, covert action should be considered as an exception to the

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<sup>41</sup>See Loch K. Johnson, *A Season of Inquiry: the Senate Intelligence Investigation* (Lexington, KY: University Press of Kentucky, 1985).

<sup>42</sup>U.S. Congress, House of Representatives, 94<sup>th</sup> Congress, 2d session, Select Committee on Intelligence, *Recommendations of the Final Report of the House Select Committee on Intelligence*, House Rept. 94-833, February 11, 1976. A version of the final report, including many details of covert action efforts, was printed by a New York tabloid.

<sup>43</sup>Church Committee Report, I, p. 425.

normal process of government action abroad, rather than a parallel but invisible system in which covert operations are routine.<sup>44</sup>

It proposed a restructuring of executive branch procedures for approving covert actions and recommended that, by statute, the DCI should be required to notify Congress of covert actions prior to initiation, and that no funds should be expended on an action until the President certifies that it is required by extraordinary circumstances to deal with grave threats to the national security.<sup>45</sup>

The Church Committee further recommended that the CIA be given a more complete legislative charter, including the mission of conducting foreign covert actions, that political assassinations be prohibited along with efforts to subvert democratic governments and support for police or other internal security forces which engage in the systematic violations of human rights.<sup>46</sup> Congress would exert control over covert actions through actions it would take on an annual budget submission for covert action; funds could be taken from the Contingency Reserve Fund of the CIA for covert actions only with the concurrence of appropriate congressional committees.<sup>47</sup> The committee also recommended that covert paid relationships between the CIA and any American clergyman or missionary should be precluded by law.<sup>48</sup>

For two decades, the recommendations of the Church Committee have provided a basic agenda for intelligence reform and reorganization not only in terms of covert action but in a wide variety of intelligence activities. Most notably, they led directly to the establishment of permanent oversight committees in both houses of Congress. The Senate Select Committee on Intelligence was established in May 1976; the House Permanent Select Committee on Intelligence in July 1977. In ensuing years, Congress, working for the most part through the two intelligence committees, has repeatedly addressed the concerns of the Church and Pike Committees regarding covert actions. Congress has not moved to enact all their recommendations, in some cases because actions by the executive branch have been deemed adequate.<sup>49</sup> In other cases, it would appear that subsequent congresses did not agree with the thrust of certain recommendations. Virtually all observers would now agree that there is a consensus that covert actions are a legitimate function of government, and that both the executive and legislative branches must take a definite responsibility for them.

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<sup>44</sup>Ibid., pp. 446-447.

<sup>45</sup>Ibid., p. 430.

<sup>46</sup>Ibid., pp. 441, 448.

<sup>47</sup>Ibid., p. 449.

<sup>48</sup>Ibid., p. 456.

<sup>49</sup>Assassinations have been prohibited by Executive Order beginning with E.O. 11905 in 1976, but no statutory prohibition has been enacted. Section 2.11 of E.O. 12333, currently in effect, states: "No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination." For further discussion, see Boyd M. Johnson, III, "Executive Order 12,333: the Permissibility of an American Assassination of a Foreign Leader," *Cornell International Law Journal*, Vol. 25, Spring 1992.

After the passage of the Hughes-Ryan Act in 1974 and the creation of the two intelligence committees in 1976 and 1977, Congress considered charter legislation for all intelligence agencies, devoting extensive attention to the role of CIA in undertaking covert actions. Given conflicting concerns within both Congress and the executive branch, a charter was not enacted during the Carter Administration. The Intelligence Oversight Act of 1980 (Section 407 of the Intelligence Authorization Act for FY1981, P.L. 96-450) did, however, revise the provisions of the 1974 legislation. The 1980 act required that the DCI and others with responsibilities for intelligence activities should keep the two intelligence committees (rather than the eight committees) "fully and currently informed" of all intelligence activities, "including any significant anticipated intelligence activity." The act thus required prior notification to Congress, but expressly stipulated that approval by intelligence committees would not be "a condition precedent to the initiation of any such anticipated intelligence activity." Further, the act provided that if the President believes that "extraordinary circumstances affecting vital interests of the United States" exist, notice shall be limited to the chairmen and ranking minority members of the two intelligence committees, the speaker and minority leader of the House and the majority and minority leaders of the Senate (this group came to be known as the "Gang of Eight").<sup>50</sup>

In enacting the 1980 legislation, both Congress and the executive branch recognized that there was a degree of ambiguity surrounding the requirement for timely notice of covert actions. The ambiguity would be severely tested a few years later when the Reagan Administration launched a covert action to provide arms to elements in Iran who it hoped might encourage a more moderate government in Tehran and further the release of American hostages in Beirut.

The issue came to public notice in the investigations of the Iran-Contra Affair when it became known that President Reagan had signed a finding on December 5, 1985 authorizing CIA to provide assistance to private parties attempting to obtain the

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<sup>50</sup>In addition the 1980 Act contains a preamble stating that these reporting responsibilities should be carried out "[t]o the extent consistent with all applicable authorities and duties, including those conferred by the Constitution upon the executive and legislative branches of the Government" and by the need to protect sources and methods. Some maintained that this "preambular statement" recognized the president's constitutional authority to initiate covert actions and that it might permit a withholding of prior notice. The Senate Select Committee on Intelligence had taken cognizance of this position prior to approval of this language and acknowledged that "Those powers concerning national security and foreign policy are in a 'zone of twilight' in which the President and Congress share authority whose distribution is uncertain." U.S. Congress, Senate, 96<sup>th</sup> Congress, 2d session, Select Committee on Intelligence, Intelligence Oversight Act of 1980, S. Rept. 96-730, p. 9. The report did state further, however, that "The requirement to 'fully and currently inform' the oversight committees of 'any significant anticipated intelligence activity' is intended to mean that the committees shall be informed at the time of the Presidential finding that authorizes initiation of such activity. Arrangements for notice are to be made forthwith, without delay." Ibid. The report subsequently acknowledged the possibility that the President might withhold prior notice "in rare extraordinary circumstances," but, in accordance with an understanding reached between the Senate Select Committee and the Executive Branch, "he is obliged to inform the two oversight committees in a timely fashion of the action and the reasons for withholding such prior notice." P. 12.

release of Americans held hostage in the Middle East, but at the same time directing that the finding not be briefed to Congress "until such time as I may direct otherwise."<sup>51</sup> (Earlier, in the Carter Administration, efforts to rescue several Americans hiding in the Canadian Embassy in Tehran had also been withheld from Congress.<sup>52</sup>) The majority of the Iran-Contra Committees took strong exception to this practice, viewing it as a deliberate effort to usurp congressional prerogatives. They recommended, as had their predecessors on the Church Committee, that the law be changed to require that "Congress be notified prior to the commencement of a covert action except in certain rare instances and in no event later than 48 hours after a Finding is approved."<sup>53</sup>

In the aftermath of Iran-Contra, the two intelligence committees gave extensive consideration to tightening covert action reporting requirements. Legislation (S. 1721, 100th Congress) introduced in September 1987 required that findings be in writing and could not be made retroactive (an exception was made for emergency actions, but in such cases the President's finding was to be made in writing within 48 hours); findings were to identify which agencies were involved; and Congress was to be notified prior to the initiation of a covert action (or at least within 48 hours of its commencement). S. 1721 eventually passed the Senate in March 1988, but was never acted on by the House.

Both the Reagan and Bush Administrations strongly opposed an approach that they perceived as encroaching on "the President's independent constitutional authority

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<sup>51</sup>A copy of the finding, the original of which was subsequently destroyed by the National Security Adviser, is reproduced in U.S. Congress, 100<sup>th</sup> Congress, 1<sup>st</sup> session, House Select Committee to Investigate Covert Arms Transactions with Iran and the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition, Iran-Contra Investigation, Joint Hearings, Testimony of John M. Poindexter, 100-8, p. 463; subsequent versions of the Finding with the same restriction on congressional notification are reproduced in *ibid.*, pp. 502-503. An account of the preparation of this Findings is contained in a critical study by Theodore Draper, *A Very Thin Line: the Iran-Contra Affairs* (New York: Hill and Wang, 1991), pp. 203-263.

<sup>52</sup>Statement of former DCI Stansfield Turner before the Permanent Select Committee on Intelligence, House of Representatives, April 1, 1987; printed in U.S. Congress, House of Representatives, 100<sup>th</sup> Congress, 1<sup>st</sup> session, Permanent Select Committee on Intelligence, H.R. 1013, H.R. 1371, and Other Proposals which Address the Issue of Affording Prior Notice of Covert Actions to the Congress, Hearings, April 1, 8 and June 10, 1987, p. 46.

<sup>53</sup>U.S. Congress, 100<sup>th</sup> Congress, 1<sup>st</sup> session, Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition and House of Representatives Select Committee to Investigate Covert Arms Transactions with Iran, Report of the Congressional Committees Investigating the Iran-Contra Affair, November 1987, S. Rept. 100-216, H. Rept. 100-433, [hereafter cited as the Iran-Contra Report], p. 423. The committees' majority further recommended that legislation be enacted requiring that all findings be in writing and personally signed by the President, that he be responsible for reporting them to the Congress, that findings be required of covert actions undertaken by any agency of the Federal government, that the Attorney General be provided a copy of proposed findings for purposes of legal review, and that findings be operative for only one year unless the President recertifies them. *Ibid.*, pp. 423-424.

in the intelligence field."<sup>54</sup> Opponents of the legislation maintained that Presidents had sufficient constitutional authority to undertake covert actions without notifying Congress and that, because covert actions require secrecy, opponents could use leaks to undercut the President's policies.<sup>55</sup>

In the first year of the Bush Administration and the 101st Congress, efforts were made to reach a compromise on the requirement for prior or 48-hour notification. On October 30, 1989, President Bush wrote to the Senate Intelligence Committee:

I intend to provide notice in a fashion sensitive to congressional concerns. The [1980 statute then in force] requires prior notice or, when no prior notice is given, timely notice. I anticipate that in almost all instances, prior notice will be possible. In those rare instances where prior notice is not provided, I anticipate that notice will be provided within a few days. Any withholding beyond this period would be based upon my assertion of the authorities granted this office by the Constitution.<sup>56</sup>

Legislation dealing with covert action was reintroduced in the 101st Congress, but, at the request of the House Intelligence Committee, action was deferred until the second session. In 1990, both houses of Congress passed an intelligence authorization bill (S. 2834) for FY 1991 that incorporated changes in requirements for reporting findings authorizing covert actions. Findings would have to be in writing and signed by the President; they could not, except in emergencies, be retroactive; they would have to specify which agencies are involved; they would have to be forwarded to the congressional intelligence committees "as soon as possible after such approval". The bill further added that any request to a foreign country or to a private citizen to conduct a covert action be itself deemed a covert action.

Despite earlier assurances by some Administration representatives, President Bush did not approve the legislation. He argued that provisions regarding requests for assistance from foreign countries intruded on his constitutional authorities; more pointedly, he complained of a statement in the Joint Explanatory Statement accompanying the Conference Report on the bill that construed the bill to require notification not merely "in a timely manner" but "within a few days."<sup>57</sup> President Bush

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<sup>54</sup>Message to the Congress Transmitting the Directive Implementing the Recommendations of the President's Special Review Board for the National Security Council, March 31, 1987, in Public Papers of the Presidents, Ronald Reagan, 1987, 1 (Washington: Government Printing Office, 1989), p. 311.

<sup>55</sup>This view is set forth in Part VI of the Minority Report contained in the Iran-Contra Report, pp. 573-580.

<sup>56</sup>Quoted in U.S. Congress, Senate, 101<sup>st</sup> Congress, 2d session, Select Committee on Intelligence, Authorizing Appropriations for Fiscal Year 1991 for the Intelligence Activities of the U.S. Government, the Intelligence Community Staff, the Central Intelligence Agency Retirement and Disability System, and for Other Purposes, Report No. 101-358, p. 21.

<sup>57</sup>"The conferees . . . state unequivocally that the 'timely fashion' provision of the conference report means that in exigent circumstances where the President needs to implement a covert action immediately to protect United States interests the President may do so without first notifying the intelligence committees, but then must notify the committees within a few days."

wrote: "Such an interpretation would unconstitutionally infringe on the authority of the President and impair any Administration's effective implementation of covert action programs."<sup>58</sup> The President's action served as a "pocket veto" and another FY1991 intelligence authorization bill was considered in the next congress.

In the revised intelligence authorization bill for FY1991 relatively minor changes in the provisions relating to providing Congress with notice of covert actions went some way to meet the Administration's concern. It required that "Whenever a finding is not reported . . . , the President shall fully inform the intelligence committees in a timely fashion, and shall provide a statement of the reasons for not giving prior notice."<sup>59</sup> The accompanying conference report noted that neither intelligence committee has ever accepted the claim that the Constitution permits a President to withhold timely notice for an indefinite period. However:

The conferees recognize that this is a question that neither they nor the Congress itself can resolve. Congress cannot diminish by statute powers that are granted by the Constitution. Nor can either the legislative or executive branch authoritatively interpret the Constitution, which is the exclusive province of the judicial branch.<sup>60</sup>

The Bush Administration accepted this position, the bill became Public Law 102-88 on August 15, 1991, and there the matter has rested.

According to media reports, the Bush Administration was careful to notify the intelligence committees in a timely manner of covert actions, a policy followed by the Clinton Administration (although questions have been raised regarding possible involvement in shipments of Iranian arms to Bosnia in 1993-1994). The process has been assisted by the absence in recent years of raging disputes over foreign policy on the scale of Vietnam or Central America. The potential remains, however, that a

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<sup>57</sup>(...continued)

U.S. Congress, House of Representatives, 101<sup>st</sup> Congress, 2d session, Committee of Conference, Intelligence Authorization Act for Fiscal Year 1991, October 23, [1990], p. 26. The committee itself was reacting to a legal opinion prepared in the Justice Department in 1986 claiming that the formulation "in a timely manner" gave the President "virtually unfettered discretion to choose the right moment" to notify Congress. This opinion is reproduced in H.R. 1013, H.R. 1371 and Other Proposals, pp. 247-273.

<sup>58</sup>Memorandum of Disapproval for the Intelligence Authorization Act, Fiscal Year 1991, November 30, 1990, Weekly Compilation of Presidential Documents, December 3, 1990, p. 1959.

<sup>59</sup>105 Stat 433. The legislation also requires that findings support an identifiable foreign policy objective, that they not be retroactive, that they be in writing, specify all government agencies to be involved and whether any third party will be involved. Further, findings must not authorize any action intended to influence U.S. public opinion or that would violate the Constitution or any U.S. statutes. The intelligence committees are to be advised of any significant changes to a previously approved covert action.

<sup>60</sup>U.S. Congress, House of Representatives, Committee of Conference, 102d Congress, 1<sup>st</sup> session, Intelligence Authorization Act, Fiscal Year 1991, House Report 102-166, July 25, 1991, p. 28.

President may launch a highly controversial covert action of which he will be reluctant to advise Congress for an indefinite period.

Many observers believe that the requirement to notify Congress of covert actions has been beneficial to the Intelligence Community. Covert actions that have been explained to leading members of Congress will receive a degree and variety of scrutiny likely to demonstrate inherent flaws in the proposal. Furthermore, there are the undoubted advantages of hearing the reactions of senior members of both parties. Strongly expressed opposition to a covert action, especially from intelligence committee chairmen and ranking members, will inevitably carry considerable weight. Their comments at least prepare the Administration for the political fall-out should the action go awry.

In at least two instances, it has been reported that congressional objections were effective in encouraging the cancellation of plans for covert actions. In 1979, the Carter Administration proposed supporting resistance to the Marxist government in Grenada, but the Senate Intelligence Committee raised strong objections and the project was dropped.<sup>61</sup> In 1983, plans to assist elements opposed to the government of Surinam were halted after members of both intelligence committees remained unconvinced that significant U.S. interests were involved.<sup>62</sup>

Leaving aside the possibility of short-circuiting a covert action by an opportunistic leak, Congress always retains the power of persuasion and, ultimately, of the purse. Beyond proffering advice, Congress has, as instanced in the series of Boland Amendments regarding assistance to the Nicaraguan Contras and in halting involvement in the Angolan civil wars in the 1970s, prevented the expenditure of funds for specified actions. (Whether it could mandate expenditures for a covert action against the contrary determination of a President is much less clear.)

There will, undoubtedly, continue to be controversies over the scope of specific findings and the details required to be included in a finding (*e.g.*, how many different activities could be covered in a general finding authorizing actions to "counter subversion in country X"?). Questions may also arise regarding specialized military activities conducted by the Department of Defense that are essentially similar to those that could be undertaken by CIA.

Another major influence that Congress has had on the conduct of specific covert actions is through floor debates. Covert actions in Angola, Afghanistan, and, most importantly, Central America have been discussed extensively by both the House and the Senate. Most hearings and deliberations of the two intelligence committees have been closed (except for intelligence organization matters) and votes on intelligence authorization legislation are taken in secret. Those who oppose the decisions reached by intelligence committees have, however, a number of vehicles to attack them. The most direct way is to propose a floor amendment to the intelligence authorization bill, but efforts to change funding levels can also be made through the appropriations process.

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<sup>61</sup>Gates, *From the Shadows*, p. 143.

<sup>62</sup>See Philip Taubman, "C.I.A. Reported Blocked in Plot on Surinamese," *New York Times*, June 1, 1983, p. A1.

Although members are enjoined to avoid discussing classified information in public, debates about covert actions can make additional information public that intelligence agencies consider sensitive.<sup>63</sup> Debates can be lengthy and heated (if usually short on specific details); the Chairman of the House Intelligence Committee, Representative Edward Boland, described a covert action during a floor debate:

. . . the [Intelligence] committee developed its view of this covert action over a period of 18 months. It first learned of the covert action in December 1981. It was told the effort would involve a small number of paramilitary fighters who would be trained and armed to conduct raids against the Sandinistas' supply of arms to the Salvadoran guerrillas.

Gradually, however, the scope of the program was broadened by the administration. They wanted internal political changes in Nicaragua.

Today, the number of troops supported by the program is in the thousands. They are engaged not in efforts to intercept arms shipments, but in fighting Nicaraguan military units.<sup>64</sup>

Debates in the House on covert assistance to the Nicaraguan Contras on December 8, 1982 and July 27-28, 1983 were among the most contentious in recent history. The 1982 debate ultimately resulted in an amendment requiring that no funds be provided to groups known to have the intent of overthrowing the government of Nicaragua. Chairman Boland defended his committee's prerogatives, arguing that,

We ought not to legislate in an area such as this without the benefit of all the facts. That is why the Intelligence Committee was established and its effectiveness depends on its ability to keep the Nation's secrets and exercise sensible and prudent oversight.<sup>65</sup>

Contra aid had become an important political issue that few members would delegate to the Intelligence Committee; members on all sides found it important to take a public position and record their votes. Thus, secrecy requirements and even a normal inclination to avoid advertising covert operations were passed over. Seven months after asking that the House defer to its Intelligence Committee, Chairman Boland acknowledged that aid to the Contras had become a major political issue, "no longer just a matter for the 14 members of the Intelligence Committee. It is an action that must be justified in the full light of American values, American responsibilities, and future American involvement."<sup>66</sup> The House subsequently voted to end aid to the Contras, but ultimately yielded to the Senate in approving some \$24 million in the FY1984 Defense Appropriation Act (P.L. 98-212).

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<sup>63</sup>Some members have reportedly avoided classified briefings in order to avoid the danger of inadvertently revealing secret information in subsequent public discussions.

<sup>64</sup>Congressional Record, July 27, 1983, p. H21171.

<sup>65</sup>Congressional Record, December 8, 1982, p. H29466.

<sup>66</sup>Congressional Record, July 27, 1983, p. H21172.

Information obtained from congressional documents and in floor debates was cited by the International Court of Justice in its June 27, 1986 judgment that the United States by

training, arming, equipping, financing and supplying the *contra* forces or otherwise encouraging, supporting and aiding military and paramilitary activities in and against Nicaragua, has acted, against the Republic of Nicaragua, in breach of its obligation under customary international law not to intervene in the affairs of another State....<sup>67</sup>

It should be noted that the United States did not acknowledge the International Court's jurisdiction in this case, nor was it represented in the Court's proceedings. Although an analysis of the court's decision lies beyond the scope of this report, it is noteworthy that the court made use of official public U.S. documents, including congressional documents and floor debates, regarding covert actions in Central America. This usage illustrates the complications arising from open discussion of an operation "where it is intended that the role of the United States Government will not be apparent or acknowledged publicly."

In summary, since the early 1970s, Congress has asserted significant power to oversee the planning and conduct of covert actions and has demonstrated the capability of denying funds to ongoing covert actions that it does not approve of. There is today a genuinely shared responsibility for covert actions, although some would want to enact stricter reporting requirements. Profound policy disagreements in the future might, however, serve to undermine this shared responsibility.

The Clinton Administration, for its part, was reportedly careful to avoid any CIA involvement in the supply of weapons for Bosnian forces being undertaken by various countries in contravention of a U.N. embargo. Furthermore, widely-reported training programs of Croatian and Bosnian military forces have been conducted, not under DOD or CIA auspices, but by a private U.S. consulting firm, Military Professional Resources, Inc. Critical observers acknowledge that, although "privatization" of covert efforts provides deniability for U.S. officials, the efforts may not be as responsive to U.S. policy direction or standards of accountability as would an undertaking by the CIA or DOD. Some even suggest that "privatization" may be encouraged precisely to avoid notification to congressional committees.

Close congressional scrutiny has become a fact of life for Intelligence Community in planning and undertaking covert actions. Although few observers seriously propose returning to the looser practices of the 1950s and 1960s, some critics charge that the extensive oversight of covert actions and associated requirements for close scrutiny by legal staffs have made the Intelligence Community (as well as the Defense Department) risk-adverse. They argue that the nation faces a wide variety of threats not only from hostile nation states but also from terrorist and criminal organizations operating internationally, and that innovative approaches, including covert actions, need to be attempted even if considerable risks exist.

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<sup>67</sup>International Legal Materials, Vol. 25, September 1986, pp. 1044-1047, 1089.

Some observers also express concern that the careful secrecy involved in oversight of covert actions by the two intelligence committees can make it difficult for members to evaluate a proposed covert action finding in the context of larger issues of foreign policy for a given region. If covert action findings are handled on an exceptional basis rather than as one element of a larger policy, larger goals may be undermined. Such concerns are not, however, limited to issues of legislative oversight; in the executive branch, as well, covert actions, especially those that are very sensitive, may not be thoroughly reviewed by those responsible for related policies outside the Intelligence Community. Such difficulties are inherent but may not, according to some observers, be adequately understood.

## Covert Actions in Practice

Expectably, some covert actions have accomplished their intended purposes and others have failed. In some instances, covert actions have been considered important adjuncts to policies; in other cases, they are seen as having undermined important U.S. goals. There is unlikely to be widespread agreement on the contribution of covert actions to the accomplishment of U.S. policy goals, but a sense of the utility of covert actions may, however, be gained from a brief survey of several instances in which they were prominently employed.<sup>68</sup> In particular, the contributions, positive and negative, of covert actions to U.S. policy goals in Italy in the years 1947-1949, the Philippines during the early 1950s, and in Indonesia, Zaire, Cuba, Vietnam and Laos, and Afghanistan in the 1960s and 1970s should be acknowledged. This selection is arbitrary, but nonetheless illustrative. The Iran-Contra Affair in the mid-1980's encompassed several covert actions, but also included several efforts undertaken outside the customary covert action process (in large measure precisely to avoid the consultative procedures that were built into that process).

*Western Europe.* The beginnings of the Cold War in 1947-1948 saw senior U.S. officials moving to shore up West European governments against Soviet-influenced communist parties, unions, and other organized groups. In Italy, the collapse of fascism had provided opportunities for electoral successes by the Communist Party against conservative and centrist rivals and, as the 1948 national elections approached, it appeared that a communist or communist-dominated government could come to power in Rome.

The Truman Administration put together a wide-ranging program of support to anti-communist elements.<sup>69</sup> Much of this effort, such as encouraging Italian-Americans to contact relatives in Italy to urge support of non-communist candidates, was public, but there was a perceived need to give assistance to democratic parties, support that could not be provided publicly without endangering the credibility of the recipients. Special secret funding measures were established. Another major goal

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<sup>68</sup>This approach does not address the concerns of those who oppose all covert action on a priori principle.

<sup>69</sup>See Sallie Pisani, *The CIA and the Marshall Plan* (Lawrence, KS: University Press of Kansas, 1991); also, James Edward Miller, *The United States and Italy, 1940-1950: The Politics and Diplomacy of Stabilization* (Chapel Hill, NC: University of North Carolina Press, 1986).

was to ensure that democratic elements were able to get their message across to the Italian electorate; here again, funds were secretly provided to newspapers and other journals. The effort succeeded; in the crucial April 1948 elections, conservative and centrist parties won enough seats to form a government even though the Communist Party garnered a significant number of parliamentary seats.

Similar covert efforts were undertaken in other Western European countries as pro-democratic forces struggled to establish stable governments in the aftermath of a devastating war and ceaseless communist agitation. Emphasis was placed on financial support and advice to politicians and political and intellectual groups with non-communist credentials.

It is difficult, if not impossible, to separate the contribution made by covert support to such elements from the overall financial and psychological support provided by the United States through the Marshall Plan and the creation of the North American Treaty Organization. These policies had bipartisan support in the United States at the time. Although there was significant political opposition to the permanent stationing of U.S. forces in Western Europe, covert support to democratic forces, to the extent that it became known, did not become a source of domestic criticism.

Other covert efforts were aimed at Eastern Europe and the Soviet Union itself. Even within the Soviet Union networks of resistance fighters were supported, although these were gradually suppressed by communist authorities. In non-communist countries, networks were established that were to be activated in the event of a feared Soviet invasion.<sup>70</sup>

A major initiative was the establishment of Radio Free Europe (RFE) and Radio Liberty (RL) to broadcast into Eastern Europe and the Soviet Union respectively. RFE began broadcasting in 1950; RL in 1953. Providing a combination of news, analysis, and cultural programming the two radios were funded through the CIA (along with, in the case of Radio Free Europe, public donations) until the early 1970s.<sup>71</sup>

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<sup>70</sup>See William Colby and Peter Forbath, *Honorable Men: My Life in the CIA* (New York: Simon and Schuster, 1978), especially pp. 81-83; Harry Rositzke, *The CIA's Secret Operations: Espionage, Counterespionage, and Covert Action* (New York: Reader's Digest Press, 1977), especially pp. 18-38.

<sup>71</sup>In the aftermath of the Vietnam War, the two radios came under strong criticism. After an extended period of debate among members of Congress, legislation was enacted in 1972 providing funds to the two radios through State Department appropriations rather than through intelligence bills. Although staffed in large part by emigres who occasionally had their own biases, the radios are generally considered to have provided a valuable and politically significant source of information independent of the tightly controlled communist media. See Donald R. Browne, *International Radio Broadcasting: the Limits of the Limitless Medium* (New York: Praeger, 1982); James R. Price, *Radio Free Europe--A Survey and Analysis*, CRS Report, March 22, 1972; Joseph G. Whelan, *Radio Liberty--A Study of its Origins, Structure, Policy, Programming and Effectiveness*, CRS Report, March 22, 1972. The complex legislative maneuvering that led to new funding procedures in 1971-1972 is described by Sig Mickelson, *America's Other Voice: the Story of Radio Free Europe and*

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***The Effect of Korea.*** The conflict on the Korean peninsula, that began in June 1950, did not itself involve significant numbers of paramilitary operations by CIA elements and the efforts that were undertaken in support of military operations were not considered especially successful.<sup>72</sup> The Korean War did, however, lead to a global anti-communist policy that included not only a major increase in U.S. treaty commitments worldwide, greatly enlarged defense budgets, but also an expanded covert action component.

As the Cold War spread far beyond Western Europe and into the underdeveloped world then emerging from colonial status, the emphasis on covert action grew, not least because there were limits as to how many American troops could be deployed. The effort to support democratic and anti-communist forces was pursued through financial subsidies to friendly foreign leaders, journals, non-communist unions, and other organizations. It was one element of larger policies aimed at preventing the spread of communist rule and influence.

To avoid being entirely dependent on conservative and centrist elements that were unreceptive to innovations that the U.S. considered vital, CIA covert actions were often designed to provide democratic forces on the political left with sufficient resources that they could provide a credible alternative to the communists among voters seeking change.<sup>73</sup> Outside Europe, American officials in both the Truman and Eisenhower Administrations often attempted to avoid tying the U.S. too closely with receding European empires and with the narrow elites that sometimes assumed power immediately after decolonization. Nevertheless, American interests were often seen as requiring cooperation with authoritarian regimes and reformers were often viewed as potentially sympathetic to communists.

***Philippines.*** An important instance of the contribution of U.S. covert support occurred in the Philippines in the early 1950s. The country had received independence from American administration in 1946, but the governing party, many of whose members had worked with the occupying Japanese, was widely perceived as inefficient and corrupt. With quiet support from an American officer, Lt. Col. Edward G. Lansdale, working on behalf of the CIA, the Defense Minister, Ramon Magsaysay, a former guerilla fighter against the Japanese, strove to expose corruption and build a competent military force that would not be viewed as part of an oppressive power structure. With impressive success in this endeavor, Magsaysay was chosen president of the Philippines in honest elections held in 1953. His tenure

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<sup>71</sup>(...continued)

Radio Liberty (New York: Praeger, 1983), pp. 129-156. For the subsequent history of the radios, see (name redacted) and (name redacted), International Broadcasting: Consolidation of U.S. Radio Services, CRS Report 94-29F, January 11, 1994.

<sup>72</sup>Covert actions during the Korean War are discussed in William B. Breuer, *Shadow Warriors: The Covert War in Korea* (New York: John Wiley, 1996).

<sup>73</sup>An early review, conducted under NSC auspices, of CIA efforts advised the DCI "to concentrate so far as possible upon the use of anti-Communist democratic forces in foreign countries, particularly those which are politically left of center." Memorandum from the Executive Secretary (Souers) to the members of the National Security Council, April 26, 1948, FRUS: Emergence of Intelligence Establishment, p. 665.

marked a period of rural development, increasing literacy, and functioning democracy and the end of the Hukbalahap insurgency supported by communists.

Lansdale became a prototype of the American intelligence operative. His skill in advising Magsaysay and the CIA's ability to provide the Philippine leader with support when needed. A friendly historian writes:

No other government agency [than the CIA] would have permitted its representative to have become involved in quite the same way with a foreign government leader as Lansdale became involved with Magsaysay across such a wide range of activities. The two men became close personal friends, shared quarters at various times, and were constantly together on inspection trips. They saw each other at least once a day and often sat up until the early hours discussing the problems and solutions that Magsaysay was preoccupied with.<sup>74</sup>

Many of the steps that Magsaysay took in the Philippines--stamping out official corruption, creating a more professional army, encouraging rural development through and reform, and access to credit, and a willingness to reintegrate former guerrillas into civil society--were to be recommended in other Third World countries. The CIA would, in many cases, have a leading role in encouraging such policies elsewhere. It is clear in retrospect, however, that unique and favorable conditions existed in the postwar Philippines--in particular, the multifaceted ties between large sections of the Philippine population and the United States--that were absent elsewhere.<sup>75</sup>

***Iran and Guatemala.*** In two other well-known efforts undertaken during the 1950s, the CIA promoted changes in the composition of foreign governments that some subsequent observers have considered problematical for the local populations and even for long-range U.S. interests. In Iran (1953) and in Guatemala (1954), the CIA was heavily involved in implementing Eisenhower Administration policies designed to remove leaders in the two countries who were perceived as sympathetic to communists and hostile to U.S. interests.

In the wake of post-World War II tensions over the role of the British-owned company that dominated Iran's oil industry, Mohammad Mossadeq, a mercurial and anti-western politician who had been elected prime minister. Subsequently, he reached for greater power at the expense of the Shah and the parliament, arousing deep concern in both Washington and London. The United States and Britain worked together in a covert operation, known as Ajax, coordinated by Kermit Roosevelt who worked for the CIA. With CIA (and British) support, the Shah removed Mossadeq

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<sup>74</sup>Douglas S. Blaufarb, *The Counterinsurgency Era: U.S. Doctrine and Performance: 1950 to the Present* (New York: Free Press, 1977), p. 39.

<sup>75</sup>See Cecil B. Currey, *Edward Lansdale: the Unquiet American* (Boston: Houghton Mifflin, 1988), pp. 56-133.

from power in August 1953, preparing the way for the very close ties between Washington and Tehran that lasted until 1979.<sup>76</sup>

Guatemalan President Jacobo Arbenz, who had been elected to office in 1951, was viewed by senior American policymakers as having extensive communist ties. The Eisenhower Administration used the CIA in a covert action known as Operation Success to provide support to anti-Arbenz elements in the military. The operation culminated in a June 1954 coup in which Arbenz and his wife left the country as new leadership took office that improved relations with Washington and with American commercial interests in Guatemala.<sup>77</sup>

**Indonesia.** Less well known is the CIA's role in Indonesia where the Eisenhower Administration and its successors were determined to shore up anticommunist elements in opposition to an influential communist party that apparently was gaining influence over President Sukarno. In the 1950s, this effort centered around extensive covert support to separatist elements in various islands of the archipelago. After Indonesian government forces captured an American pilot engaged in a bombing attack in May 1958, however, this support was curtailed. Subsequently, support was provided by the CIA and other parts of the U.S. government (along with other countries) to anticommunist elements in the Indonesian military. After an attempted coup in 1965 by a number of leftist military officers (alleged to have had Chinese support), anticommunist officers took control of the government and a massive wave of disorder and killing followed throughout the country.<sup>78</sup> The communist setback in Indonesia, some have claimed, served as a counterpart to the subsequent collapse of South Vietnam.

In these cases, covert actions were parts of larger policies that also involved the Defense and State Departments and agencies responsible for international economic policies. The CIA nonetheless used its influence in limited but tactically effective ways that involved U.S. personnel in little actual violence. Pro-American regimes in Iran, Guatemala, and Indonesia emerged. Critics have charged that, in all three cases, U.S. intervention ultimately undermined U.S. interests and fostered the impression that the United States had allied itself with oppressive regimes. The Pahlavi dynasty in Iran was overthrown in 1979 and the Islamic Republic that succeeded it has been a bitter enemy of the United States and an unceasing critic of the supposed global influence of the CIA. In Guatemala, the succession of military governments that followed the Arbenz government had good relations with Washington, but have been criticized for questionable human rights records and for failing to address questions of internal stability and economic development. The 1965 massacres in Indonesia afflicted the country's political life and Jakarta's human rights record continues to be widely criticized.

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<sup>76</sup>See Kermit Roosevelt, *Countercoup: the Struggle for the Control of Iran* (New York: McGraw-Hill, 1979); Grose, *Gentleman Spy*, pp. 363-368.

<sup>77</sup>See Richard H. Immerman, *The CIA in Guatemala* (Austin: University of Texas Press, 1982); Grose, *Gentleman Spy*, pp. 368-383.

<sup>78</sup>See Audrey R. & George McT. Kahin, *Subversion as Foreign Policy: the Secret Eisenhower and Dulles Debacle in Indonesia* (New York: New Press, 1995); H.W. Brands, "The Limits of Manipulation: How the United States Didn't Topple Sukarno," *Journal of American History*, Vol 76, December 1989.

**Congo.** Eisenhower Administration concerns about developments in the former Belgian Congo (now Zaire) led senior intelligence officials to mount a series of efforts to minimize the influence of Patrice Lumumba, a mercurial Congolese leader who, it was feared, would move the large and mineral-rich country into the Soviet orbit. According to the report of the Church Committee, CIA personnel were directly involved in an effort to assassinate Lumumba to the point that poisons were sent to the Congo for that purpose.<sup>79</sup> Subsequently, Lumumba died in an airplane accident unrelated to the CIA effort, and Zaire did not become a Soviet-satellite. The country has, however, been widely criticized for its human rights record, for corruption, and for failing to secure the economic security of its citizens.

**War in Vietnam and Laos.** During the period of American involvement in the Vietnam War, the CIA pursued a variant of the model followed by Lansdale and Magsaysay in the Philippines. The CIA was an integral part of a large-scale program aimed at building a governmental infrastructure within South Vietnam, although this effort, especially prior to 1968, was given much less emphasis than building a capability for large-scale combat operations. A considerable portion of the CIA's responsibilities in South Vietnam--in a program known as Phoenix--was directed towards the identification of members of the communist infrastructure; William Colby, a subsequent DCI, who was in charge of the effort in South Vietnam for much of the period credited the agency with helping to improve the stability of the South Vietnamese government from 1968 to the military invasion by North Vietnamese forces in 1975.<sup>80</sup> Critical observers charge that the CIA effort led to (or was part of) a program for assassinating civilians, some of whom were not part of the communist infrastructure but were victimized by corrupt local enemies.<sup>81</sup>

Beyond the pacification effort, CIA undertook considerable work with the hill tribesmen known as Montagnards, and CIA personnel served alongside the military's special forces. The CIA also supported the infiltration of agents into North Vietnam (a program administered by the Defense Department after 1963) that was effectively neutralized by the North Vietnamese.<sup>82</sup> In Laos, the CIA was heavily involved in training and supplying tribesmen that disrupted and attacked North Vietnamese forces transiting to South Vietnam and in other ground and air operations. Operating under the direction of the American Ambassador in Vientiane, CIA officers assumed paramilitary functions directly supporting combat operations in Vietnam. So large and complex were these operations--involving some 400 CIA personnel in Laos at certain times--that they can arguably be placed in a separate category distinct from

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<sup>79</sup>U.S. Senate, 94<sup>th</sup> Congress, 1<sup>st</sup> Session, Select Committee to Study Governmental Operations with Respect to Intelligence Activities, *Alleged Assassination Plots Involving Foreign Leaders*, S. Rept. 94-465, 1975, p. 255.

<sup>80</sup>See William Colby with James McCargar, *Lost Victory: A Firsthand Account of America's Sixteen-Year Involvement in Vietnam* (Chicago: Contemporary Books, 1989); also Colby, *Honorable Men*, p. 141-288.

<sup>81</sup>See, for instance, Blaufarb, *Counterinsurgency Era*, especially pp. 245-248, 274-276.

<sup>82</sup>See Sedgwick Tourison, *Secret Army, Secret War: Washington's Tragic Spy Operation in North Vietnam* (Annapolis, MD: Naval Institute Press, 1995).

other covert actions.<sup>83</sup> The CIA role in Laos, while not acknowledged publicly, was hardly secret as press accounts detailed some of the activities and, of course, the North Vietnamese were well aware of the U.S. involvement. Ultimately, the U.S. and allied tribesmen in Laos did not succeed, but the tactical effectiveness of this long-term operation is widely conceded.

During the period of the Vietnam War, the CIA made extensive use of a civilian airline, Civil Air Transport, a small firm that began operations in 1949 and was reorganized in 1959 as Air America. An ostensibly commercial enterprise, Air America provided logistical assistance to U.S. officials in Southeast Asia and undertook numerous covert operational missions for the CIA in Southeast Asia.<sup>84</sup>

**Cuba.** U.S. relations with Fidel Castro who lead an insurgency that took power in Cuba in January 1959 quickly became complex and hostile. Castro's embrace of Communism and cultivation of ties to Moscow were recognized as a direct challenge to U.S. interests; the Eisenhower and Kennedy Administrations undertook a series of covert actions designed to remove Castro, including far-fetched efforts to provide him with exploding cigars. The effort included sponsorship of a military expedition to initiate an anticommunist insurgency that came to humiliating failure at the Bay of Pigs in April 1961. The incompetent effort there may in turn have contributed to the Soviet Union's willingness to locate surface-to-surface missiles on Cuban territory--precipitating the Missile Crisis of 1962.

During this period, according to the Church Committee, there were at least eight plots to assassinate Fidel Castro from 1960 to 1965, involving high-powered rifles, poison pills, poison pens, deadly bacterial powders, "and other devices which strain the imagination."<sup>85</sup> In these projects, the CIA worked not only with Cuban enemies of Castro, but also with American underworld figures.

Relations with a Soviet-supported Marxist government in Cuba would undoubtedly have been difficult under any circumstances, but CIA-sponsored covert actions, especially the Bay of Pigs invasion and various assassination attempts, that became known to Castro, not only failed to achieve their objectives but, according to some observers, accelerated Cuban dependence on the Soviet Union. Other observers point out that all the blame cannot be laid on the CIA since crucial decisions were made by senior officials of the Kennedy and Johnson Administrations.

The full record of covert actions in the complicated U.S. policy towards Castro's Cuba since 1959 cannot be comprehensively described in this Report. CIA's role in the Bay of Pigs operation and in attempts to assassinate Castro have become an important part of the public perception of the agency. The nearly 40-year failure of

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<sup>83</sup>See Kenneth Conboy with James Morrison, *Shadow War: The CIA's Secret War in Laos* (Boulder, CO: Paladin Press, 1995). During the years 1964-1969, William H. Sullivan, a career diplomat serving as ambassador to Laos, essentially commanded the covert efforts by CIA and some DOD personnel; see his *Obbligato, 1939-1979: Notes on a Foreign Service Career* (New York: Norton, 1984), pp. 210-235.

<sup>84</sup>See William M. Leary, *Perilous Missions: Civil Air Transport and CIA Covert Operations in Asia* (University, AL: University of Alabama Press, 1984).

<sup>85</sup>*Ibid.*, p. 71.

such efforts to achieve their goals in Cuba, and questions of inherent morality, have contributed significantly to distrust or antipathy among sections of the public to covert actions and to the CIA generally.<sup>86</sup>

**Chile.** The role of the CIA in the early 1970s in supporting elements in Chile opposed to the leftist, but democratically elected, regime of Salvador Allende was also widely and severely criticized by outside observers and by congressional committees.<sup>87</sup> According to a congressional study, the Chilean effort involved propaganda--planting articles in local newspapers and journals, supporting media friendly to the United States, gaining influence in Chilean institutions and groups, aiding friendly political parties and factions, and, in specific instances, supporting officers involved in planning a coup. The CIA was not directly involved in the final coup against Allende that resulted in his death in September 1973.

Some members of Congress were concerned that certain covert efforts in Chile had been undertaken without the knowledge of the State and Defense Departments, and that only a few had been briefed to congressional oversight committees (at a time when, arguably, there was not a statutory requirement that Congress be informed of covert actions). Beyond this, no few members were highly skeptical that the threat posed by an Allende government was sufficiently serious to warrant the extensive and expensive covert intervention--and to justify the possibility of damaging revelations which, in this case, occurred.<sup>88</sup> In large measure, the criticisms were directed at the Nixon Administration's overall policies regarding Chile, including the application of economic pressures through international financial institutions (which were not the responsibility of the Intelligence Community).

**Covert Action Under Attack.** Against the background of Vietnam and Watergate, congressional hearings in the 1970s revealed numerous details of involvement of U.S. officials in unsavory activities, including efforts to assassinate Lumumba and Castro. Revelations about assassinations and efforts to undermine foreign governments--especially in Chile--led a number of respected observers and some members of Congress in the mid-1970s to advocate completely restructuring or even closing down the CIA's covert action efforts.

The establishment of requirements for presidential findings and notifying Congress of covert actions has been treated above. CIA involvement in assassination

<sup>86</sup>For discussions of covert actions undertaken against the Castro regime, see the relevant sections of the Church Committee's reports; also, Arthur M. Schlesinger, Jr. *Robert Kennedy and His Times* (Boston: Houghton Mifflin, 1978), pp. 443-556. The Clinton Administration reportedly became disenchanted with the usefulness of covert actions in Cuba and discontinued the effort; see Christopher Marquis and Andres Oppenheimer, "CIA Spies Blundered Over Cuba," *Miami Herald*, October 1, 1996, p. 1A.

<sup>87</sup>See, for instance, U.S. Congress, Senate, 94<sup>th</sup> Congress, 1<sup>st</sup> session, Select Committee to Study Governmental Operations with Respect to Intelligence Activities, *Covert Action in Chile, 1963-1973*, 1975; also, John Ranelagh, *The Agency: the Rise and Decline of the CIA*, revised ed. (New York: Simon and Schuster, 1987), pp. 513-520.

<sup>88</sup>Senior Nixon and Ford Administration officials tended to see events in Chile as reflective of a broader superpower competition with the Soviet Union and to weigh options less in a purely Chilean context.

plots led to the inclusion of a specific prohibition of assassination in executive orders governing intelligence agencies, as noted earlier. On October 2, 1974, a floor amendment to a foreign assistance bill was introduced by Senator James Abourezk to halt funding for any activity by a U.S. agency in a foreign country which would violate the laws of that country. Although the amendment was defeated by a vote of 17-68, the exposure of previous abuses led directly to a de-emphasis on covert actions as well as increased congressional oversight of the Operations Directorate that had previously operated with minimal outside interference.

In retrospect, it is apparent that the emphasis placed on covert actions in the latter years of the 1950s and the early 1960s was not matched by an equal determination to ensure effective oversight. The extent of presidential knowledge of some covert actions remains uncertain. Plausible deniability often meant in practice, according to critics, an excessive secrecy and compartmentation resulting in plans made and implemented by intelligence agencies that might not have been approved had they received systematic review by senior policymakers.

A number of other factors also contributed to the bad reputation that covert action had acquired by the 1970's. Some ill-judged projects may have resulted from the fact that DCI Dulles and others remained in their positions overlong. Some observers suggest that the mistakes in covert actions in the early 1960s derive from relatively unstructured decisionmaking in the Kennedy Administration. The Nixon and Ford Administrations, beset by increasing opposition to U.S. policies in Vietnam, conducted their policies with an unprecedented degree of secrecy; attacks on secret government, including intelligence operations, were components of a generalized opposition to policies that were viewed as focusing narrowly on anticommunism without due appreciation for conditions in disparate third world countries.

***The Carter Administration.*** The CIA and its involvement in assassination attempts was an issue in the 1976 presidential campaign, along with more general concerns about secrecy in government. As noted above, the Carter Administration came into office initially determined to downplay covert actions. Nonetheless, as DCI Stansfield Turner subsequently wrote, "despite its dedication to human rights and its considerable reservations about the morality of covert actions, [the Carter Administration] turned easily and quickly to covert devices" to respond to some of the despotic acts of Cuban and Soviet interventions.<sup>89</sup> Beginning in March 1977, the Carter Administration launched a program of covert actions designed to support dissident groups within the Soviet Union that some observers credit with making a substantial contribution to the ultimate dissolution of the regime.<sup>90</sup> Covert actions were also used to counter Soviet and Cuban initiatives in the Third World, especially in Afghanistan where the U.S. provided various types of assistance to the Mujahedin resistance forces even before the Soviet invasion of December 1979.<sup>91</sup> In Central

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<sup>89</sup>Turner, *Secrecy and Democracy*, p. 87.

<sup>90</sup>See, especially, Gates, *From the Shadows*, pp. 135-169.

<sup>91</sup>Gates also notes a Carter proposal for a covert action to head off Marxist advances, supported by Cuba, on the Caribbean island of Grenada that received a highly unfavorable review by the Senate Intelligence Committee in July 1979; as a result CIA ceased covert actions relating to Grenada. Gates argues: "Carter's effort to respond covertly to the Cuban

America, the Carter Administration began a covert effort to publicize the nature of the Sandinista regime that took power in Nicaragua in mid-summer 1979 and to assist El Salvador's government in dealing with an insurgency. The CIA was also involved with the ill-fated "Desert One" effort in 1980 to rescue U.S. embassy officials being held hostage in Tehran. These steps, not widely advertised at the time, arguably reflect a willingness to employ covert actions as a foreign policy tool at a time when most believed that the Carter Administration was fundamentally hostile to covert operations and an interventionist foreign policy.

***The Reagan Administration.*** Building on earlier covert action programs, the Reagan Administration moved in 1985 to provide the Afghan resistance with sophisticated arms, intelligence and training to assist them in their struggle against Soviet occupation. Much of the U.S. assistance was provided through Pakistan whose government was deeply concerned about Soviet military forces in Afghanistan. This program, which included the transfer of shoulder-fired anti-air missiles, which soon became publicly known and was openly debated in Congress, has been credited with providing the Mujahedin with the crucial edge ultimately to force out the Soviet occupiers. No few observers, however, have maintained that some U.S. covert support to the Afghans was subsequently funneled to Islamic fundamentalists elsewhere or stolen. Nonetheless, the Soviets withdrew from Afghanistan in 1989, an event that many observers have regarded as a key factor in the unfolding collapse of the Soviet system.

In Eastern Europe, the Reagan Administration also built upon covert actions initiated earlier. Although few observers would argue that covert actions had a decisive role in the breakup of the Warsaw Pact, support to Solidarity in Poland and other dissident groups, journals, and independent trade unions throughout the region led to the advancement of an anti-Soviet, anti-communist agenda at a time when Moscow's grip on its satellite states was loosening.

***Angola.*** Although not as controversial as support to the Nicaraguan contras, congressional actions on assistance to the Angolan resistance were undertaken in public to an unusual extent. In some cases, covert actions were widely discussed in the media with reports based on discussions with "informed administration sources," and leaks from various sources. There were also congressional floor debates, and even presidential comments.<sup>92</sup> At one point, members of the House Intelligence Committee complained that, of those concerned with covert efforts in Afghanistan, they were far more constrained than others by secrecy restraints from participating publicly in the debate.<sup>93</sup>

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<sup>91</sup>(...continued)

encroachment on Grenada was thwarted by Congress. Now the problem would fester until President Reagan's use of military force four years later." From the Shadows, p. 143.

<sup>92</sup>President Reagan in a press conference referred obliquely to covert assistance to UNITA; see Interview with Representatives of the Wire Services, November 6, 1985, Public Papers of the Presidents of the United States, Ronald Reagan, 1985, Book II (Washington: Government Printing Office, 1988), p. 1354.

<sup>93</sup>See, for instance, the remarks of Representatives Hyde and McCurdy, Congressional Record, October 17, 1990, p. H 10046.

Covert support to the non-communist National Union for the Total Independence of Angola (UNITA), initiated by the Ford Administration in the aftermath of the collapse of Portugal's dictatorship and the Portuguese empire, had been ended in 1976 by congressional initiative.<sup>94</sup> Growing concern about Soviet involvement in the Third World, and especially the continued presence of Cuban troops in Angola, eventually led to the repeal of restrictions imposed earlier.<sup>95</sup> A covert effort to support UNITA was launched, according to media reports, at an initial level of \$15 million annually and subsequently expanded, possibly up to \$60 million annually.

On October 17, 1990 the House debated the covert action program in Angola at length in the course of considering the FY1991 intelligence authorization bill. After defeating one proposed amendment to cut off covert support to Angolan parties, the House did amend the bill to limit covert support to UNITA by a one-vote margin. Some members opposed all assistance to UNITA, some argued that assistance to UNITA should be provided openly, while others suggested that keeping the U.S. role secret was necessary if other African countries were to facilitate aid deliveries. The language on Angola was modified in the subsequent conference. The bill, however, never became law.

The debate served to demonstrate concern with reliance on covert action in that instance and probably intensified the Bush Administration's efforts to obtain a negotiated settlement. Proponents, nevertheless, argued that support provided through covert action had given UNITA the wherewithal to maintain its position and, thus, it was covert action that provided the basis for a negotiated settlement. In any event, with the collapse of the Soviet Union, and the withdrawal of Cuban forces from Angola, U.S. concerns were significantly diminished. By 1990, the Bush Administration was negotiating with a more accommodating Soviet leadership to reduce tensions in Angola, Afghanistan, as well as Cambodia, and thus reducing the need for covert actions in those area.<sup>96</sup>

*Nicaragua and the Contras.* Promoting human rights in Eastern Europe and assisting Afghan freedom fighters had bipartisan support and complemented publicly announced policies. Widespread bipartisan support was, however, distinctly not present for the Reagan Administration's most controversial covert actions--assistance to the Democratic Resistance (popularly termed "Contras") in Nicaragua who were battling the leftist Sandinista government that had come to power in 1979. Although, as noted above, covert support to anti-Sandinista elements had actually begun under President Carter, the incoming administration substantially increased the size and scope of the effort. After 1981, armed opponents of the Sandinista regime grew in numbers and were being provided with weapons, equipment, and training from U.S. sources.

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<sup>94</sup>Section 404 of the International Security Assistance Authorization Act of 1976 (P.L. 94-329). This was the first congressional initiative to stop a covert action through legislation.

<sup>95</sup>Section 811 of the Foreign Assistance Authorization Act of 1985.

<sup>96</sup>See (name redacted) and (name redacted), Angola, Afghanistan, and Cambodia: Priorities in Support for Third World Resistance Movements, CRS Report 91-882F, December 5, 1991.

Opposition to this program arose from concern that many of the Contras were adherents of the deposed Somoza dictatorship and from fears that U.S. combat forces would at some point be sent to Nicaragua. A combination of additional factors--an atmosphere of distrust between the then-DCI, William Casey, and congressional oversight committees, revelations of an effort in 1984 to mine Nicaraguan ports that was to be almost universally condemned in Congress, and provocative U.S. military exercises in the region--served to harden opposition to the covert action program, especially in the House of Representatives.

Over the next few years, by extremely narrow margins Congress approved, halted, and then conditionally renewed covert assistance to the Nicaraguan Resistance. A series of statutory restrictions was imposed on support provided by the CIA and other intelligence agencies to the Contras. They were popularly known as Boland Amendments after their sponsor, Representative Edward Boland, chairman of the House Permanent Select Committee on Intelligence from 1977 to 1984. During the period when the most stringent Boland Amendment was in effect, from October 1984 to December 1985, the CIA was forbidden to provide any support to military or paramilitary operations by the Contras.<sup>97</sup> The Administration hoped to reverse this legislation, but in the meantime was determined to keep the Contras alive "body and soul," and sought assistance for the Contras from private citizens and from foreign governments.

In early 1986 the Reagan Administration decided to press for \$100 million in aid for the Contras without limitations on the CIA (or the Defense Department). Opinion had shifted to the extent that the proposal gained approval in the House in June. After further consideration, Congress voted for the \$100 million as part of an omnibus continuing resolution (P.L. 99-591) that President Reagan signed on October 30, 1986. In resuming aid to the Contras, Congress did not prohibit CIA involvement,<sup>98</sup> but included provisions, bitterly resented by CIA personnel working with the Contras, forbidding the provision of training and support in Honduras and Costa Rica within twenty miles of the Nicaraguan borders--precisely the areas where Contra bases were established.<sup>99</sup>

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<sup>97</sup>This prohibition was, however, modified by the passage of the International Security and Development Cooperation Act (P.L. 99-83) and a Supplemental Appropriations Act (P.L. 99-88) in August 1985. They provided \$27 million in humanitarian assistance to the Contras by a department or agency other than CIA or DOD. (99 Stat. 254; 324). The Appropriations Act further specified that nothing prohibited the United States from exchanging "information" with the Nicaraguan democratic resistance. (99 Stat. 325). The Intelligence Authorization Act for FY1986, P.L. 99-169, enacted the following December, reportedly allowed (in language in the classified Schedule of Authorizations) the CIA to provide the Contras with training in communications. See Kagan, *Twilight Struggle*, pp. 390-391.

<sup>98</sup>The FY1987 Intelligence Authorization Act (P.L. 99-569) did preclude the use of CIA's contingency fund for assistance beyond the \$100 million.

<sup>99</sup>100 Stat. 3341-307. One writer notes that this provision "created a crazy quilt of confusing and paradoxical rules. CIA planes could fly for hours deep inside Nicaragua, braving Sandinista anti-aircraft missiles, to drop supplies. But they couldn't make the quick and comparatively safe hop inside Honduras. . . to the contra bases at the border, where thousands of men were waiting for equipment." Glenn Garvin, *Everybody Had His Own Gringo: The* (continued...)

The efforts to supply the Contras had become linked with another covert action designed to encourage (through the transfer of sophisticated weapons) a better relationship with Iranian factions who could, it was hoped, assist in the liberation of American hostages in Lebanon. Funds generated by arms sales to the Iranians were to be transferred to the Contras. When this linkage became public in late 1986, two congressional select committees launched a massive investigation that focused in large measure on covert action procedures utilized by the Reagan Administration. A separate Executive Branch investigation, headed by former Senator John Tower, also assessed the Administration's covert action machinery.<sup>100</sup> An Independent Counsel was appointed to investigate allegation of illegal activity and bring prosecutions if necessary.

The Iran-Contra revelations did not, however, result in an immediate end of support to the Contras. Funds for the Contras continued to be approved, albeit in decreasing amounts and were restricted to "humanitarian" or "non-lethal" purposes in April 1988 legislation (P.L. 100-276). The program was placed under the Agency for International Development (AID) with assistance to be delivered through private international relief organizations. In the Defense Appropriations Act for FY1989 (P.L. 100-463) provisions were set forth for future consideration of providing military assistance to the Contras; these provisions envisioned a role for the CIA.<sup>101</sup> Although the CIA was not responsible for transferring humanitarian support to the Contras, press reports in 1988 indicated that the CIA was involved in supporting anti-Sandinista political forces inside Nicaragua.<sup>102</sup>

The whole episode led to the most thorough reappraisal of the role of covert actions since the Church and Pike Committee investigations a decade earlier. The two select committees concluded, as had the Church Committee, that covert actions were a legitimate function of government, but they recommended that findings be in writing, that they be made available to Congress, that they stipulate which agencies are to be involved, that they identify participants, that the Attorney General review them for legality, that they should be reassessed after a year and recertified if necessary, and that requests to foreign countries to undertake a covert action on behalf of the United States be treated as a covert action. The Independent Counsel investigating the whole Iran-Contra Affair concluded that the Reagan Administration had issued two foreign policy directives that "skirted the law" and "veered off into criminality."<sup>103</sup> There was widespread criticism of DCI Casey who had died a few

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<sup>99</sup>(...continued)

CIA & the Contras (Washington: Brassey's, 1992), p. 204.

<sup>100</sup>The Tower Board was critical of the Reagan Administration's procedures for planning and implementing covert actions, but it made no recommendations for legislative initiatives in this area. Report of the President's Special Review Board, February 26, 1987.

<sup>101</sup>102 Stat. 2270-51.

<sup>102</sup>See Congressional Quarterly Almanac, Vol. 94, 1988, p. 486. Public reference to such activities by the then Speaker of the House, Jim Wright, was a source of much criticism.

<sup>103</sup>See United States Court of Appeals for the District of Columbia Circuit, Final Report of the Independent Counsel for Iran/Contra Matters, Vol. I Investigations and Prosecutions, (Washington: 1993), p. 562.

months after the story became public. A number of CIA Operations Directorate officials were charged with and convicted of various offenses.

Virtually all observers would probably agree, however, that the CIA's performance during the Iran-Contra period, with acknowledged shortcomings, was preferable to a situation in which NSC staff officers worked on an *ad hoc* basis with private donors and an assortment of arms dealers and middlemen. If covert actions are to be undertaken by the U.S. government, most observers agree that the experience in Nicaragua demonstrates that there are substantial advantages to be secured by having a well-organized and experienced agency in charge. The CIA is, moreover, far more accountable to Congress than the NSC staff.

The extent to which covert support to the Contras aided the eventual return to democracy in Nicaragua remains in dispute. Clearly, the presence of Contra forces in Nicaragua was a major concern to the Sandinista leadership and provided an inducement to the regime to hold free elections in 1990 despite previous reluctance. Equally clearly, the Contras were kept in being at several points because of support provided by the United States. At the same time, other observers point out that the growing weakness of the Soviet Union meant that the Sandinistas could not look to a foreign superpower for protection and thus had to accede to international pressure for elections.

Covert action continued as an important policy tool of the Reagan and Bush Administrations. Support to the Solidarity movement in Poland and to other democratic movements in Eastern Europe was provided, in part covertly. Aid to the Afghan resistance was, undoubtedly, a significant factor in enabling the resistance eventually to mount effective attacks on Soviet forces. Aid provided to Cambodian elements was intended to counteract the influence of Soviet, Chinese, and Vietnamese support to non-democratic factions. Similar motivations applied in Angola as described above. During the Persian Gulf War covert actions, some undertaken by CIA, some by military forces, were a component of the allied war effort that contributed to the defeat of the Iraqi Army.

***The Clinton Administration.*** In the Clinton Administration, DCIs Woolsey and Deutch have spoken of covert actions with neither the enthusiasm of Allen Dulles nor with the skepticism of Stansfield Turner. In September 1995, DCI Deutch suggested that the "U.S. needs to maintain, and perhaps even expand, covert action as a policy tool."<sup>104</sup> No reliable reports have suggested that covert actions have been initiated by the CIA in recent years without the appropriate notice to Congress. Revelations in April 1996 that the Clinton Administration was officially aware of Iranian arms transfers to Bosnia have led to a number of investigations by congressional committees. The Administration denied that U.S. intelligence personnel in any way assisted in these arms transfers and, thus, there was no U.S. covert action.<sup>105</sup> The

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<sup>104</sup>R. Jeffrey Smith, "Expansion of Covert Action Eyed," Washington Post, September 13, 1995, p. A7.

<sup>105</sup>See Ken Katzman, (name redacted), and Richard Best, Bosnia and Iranian Arms Shipments: Issues of U.S. Policy and Involvement. CRS Report 96-360F, April 24, 1996. The House International Relations Committee's Select Subcommittee on the United States Role in Iranian (continued...)

Iraqi Army's attacks on Kurdish elements in late summer 1996 led to reports that the CIA had been supporting groups opposed to Saddam Hussein, committing some \$100 million since 1991.<sup>106</sup>

There is a comparative wealth of evidence that has been published on a few covert operations, such as those in Chile, Zaire, Cuba, and the Iran-Contra affair, but much less is known on others that may or may not have been more successful. There is little public sense of the role of more routine and less dramatic covert efforts to influence opinion in foreign countries over a span of almost five decades. The available record does show the effectiveness and limitations of some covert actions; it suggests, at the least, that covert actions should be viewed in larger policy contexts. Few, if any, observers would suggest that a covert action program, no matter how well executed, can save a doomed policy. Most would also agree that at least some policies can be effectively supported with prudent covert initiatives.

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<sup>105</sup>(...continued)

Arms Transfers to Croatia and Bosnia concluded that while the U.S. Ambassador to Croatia may have overstepped the bounds of traditional diplomatic activity and engaged in a covert activity, CIA officers at several levels "correctly refused to participate" in the implementation of what the Subcommittee termed a "green light policy" towards Iranian arms shipments. In a public statement, it argued further that "[b]ecause CIA officials rightly insisted on proper legal authorization for the change in US policy to the green light policy (and, if required, a notification of Congress) the Administration side-stepped the CIA and did not keep it adequately informed." U.S. House of Representatives, Committee on International Relations, Select Subcommittee on the United States Role in Iranian Arms Transfers to Croatia and Bosnia, Press Release, October 10, 1996. The Subcommittee's conclusions, however, have been criticized for partisanship. See Walter Pincus, "House Panel Republicans Ask Legal Review of Testimony on Arms Sales to Bosnia," Washington Post, October 11, 1996, p. A29.

<sup>106</sup>See R. Jeffrey Smith and David B. Ottaway, "Anti-Saddam Operation Cost CIA \$100 Million," Washington Post, September 15, 1996, p. A1.

## Conclusion

Covert action has been a significant component of U.S. foreign policy in the post-World War II world. The reports of the Church, Pike, and Iran-Contra committees provided a wealth of detailed information about the history of covert actions undertaken by the United States, but that information is far from comprehensive; a good deal was left out, and much has happened since the reports were completed. The considerable amount of information currently available has not yielded a consensus on the value of covert action programs to the country. The question remains controversial, but as additional information is gradually declassified, it will be possible to gain a better appreciation for the importance of the programs that are known.

If the United States were to deny itself the covert action option, it would be forced to rely more heavily on other military, diplomatic, and economic instruments of power. Some opportunities would have to be foregone and some temptations foreclosed. This is an option with few influential supporters among policymakers and informed observers, even though covert actions continue to have controversial reverberations.

The planning and conduct of covert actions has become regularized within the government. Increasingly, they have become a shared responsibility of the executive and legislative branches. A substantial body of statutory law and precedent has come to govern the planning and conduct of covert actions. Covert actions cannot legally be initiated without presidential approval. Unless the President is prepared to risk a bitter constitutional dispute, notice of covert actions must also be given to appropriate Members of Congress. Congress tacitly endorses or withholds approval from covert actions in authorizing legislation; it can also selectively deny them funds.

Current laws and procedures appear to have fairly deep bipartisan support. There are few observers, especially at times when Congress and the White House are under the control of different political parties, who would advocate removal of the guidelines and restrictions that have been developed over the past quarter-century. There are, however, more than a few who argue that, once covert actions are underway, legislative micromanagement should be sharply curtailed. The desirable size of the Intelligence Community and its budget are disputed and covert capabilities will presumably be affected even though they are not central in this dispute.

Questions currently do exist regarding the organizational arrangements for planning and conducting covert actions. Despite the unwillingness of the 104th Congress to readjust the role of CIA's Operations Directorate, some informed observers continue to urge consideration of various differing proposals. Most informed observers acknowledge the complexity of the issue as well as the substantial merits of opposing arguments. There are clear advantages in having officials responsible for covert actions closely associated with human intelligence collectors and with analysts. There would also be clear advantages in removing analysts, and perhaps collectors, from the inherently secretive and potentially violent environment of covert actions.

Designing a covert action capability continues to be hampered by the absence of an overriding national security policy. This may become the normal state of affairs;

no single event, such as the Berlin blockade of 1948, may galvanize Washington policymakers and the American public around a new policy framework. At the same time, there are indeed geopolitical concerns in Europe and Asia that could become very serious. Further, possession of weapons of mass destruction could allow even an obscure terrorist group to pose an extraordinary threat to vital U.S. interests. The line between national security and law enforcement has become blurred, with narcotics smuggling and countermeasures being the most important example. Some observers (in addition to novelist Tom Clancy) have envisioned using intelligence operatives to destroy narcotics production and transport facilities. In 1989, a presidentially appointed Commission on Aviation Security and Terrorism recommended use of covert actions in certain situations "to preempt, disrupt or respond to terrorist actions."<sup>107</sup>

In the absence of an overarching national security policy, capabilities for covert action will probably be maintained with one eye on potential threats and opportunities and the other on costs and uncertain domestic backing. Those in the CIA responsible for planning and undertaking covert actions, as well as their executive branch and congressional overseers, will probably move with caution, and undoubtedly in the view of some critics, with excessive caution.

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<sup>107</sup>Report of the President's Commission on Aviation Security and Terrorism, August 4, 1989, p. 115.

## Appendix: Dod and Covert Action

E.O. 12333 specifically authorizes the CIA to conduct special activities approved by the President and adds (in section 1.8(e)) that

No agency except the CIA (or the Armed Forces of the United States in time of war declared by Congress or during any period covered by a report from the President to the Congress under the War Powers Resolution (87 Stat. 855)) may conduct any special activity unless the President determines that another agency is more likely to achieve a particular objective.

The extent to which Presidents have made such determinations is not publicly known, but this provision suggests that the Defense Department may be assigned responsibilities for certain types of covert action, even in peacetime. In some areas, an official DOD presence could provide cover for covert operators and, when combat or peacekeeping operations are underway, it may be more logical for the military commanders to conduct covert actions (or special operations requiring a degree of deniability and, thus, fairly described as covert actions) in direct support of operating forces. In the past, the Navy has acted covertly to protect its ships and installations; ground and air forces have also employed agents for certain operations.

The Defense Humint Service (DHS), established in 1995, centralizes most DOD capabilities for human intelligence collection. It incorporates defense attaches who undertake open collection of information as part of their regular duties and other civilian and military humint collectors. The DHS may also, according to press reports, have some capability for covert actions, although other DOD components outside the Intelligence Community, might also be involved, especially in paramilitary operations. Deployments of military intelligence personnel serving in clandestine intelligence collection units have been recognized as falling within the National Security Act's definition of "intelligence activity," about which Congress must be kept fully and currently informed in accordance with the National Security Act of 1947 as amended.<sup>108</sup>

In the Intelligence Authorization Act for FY1991 (P.L. 102-88), the Defense Department was given authority to establish commercial enterprises that would provide security (*i.e.*, "cover") for intelligence collection activities undertaken overseas by DOD personnel. Similar to arrangements previously approved for the CIA and the FBI, such cover usually consists of a civilian business which can shelter intelligence collectors (in areas where U.S. Embassy officials would be suspect). The House Report accompanying the FY1991 legislation stipulated that, "the Department of Defense may not engage in the commercial activities authorized by [this] legislation

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<sup>108</sup>See U.S. Congress, House of Representatives, 103d Congress, 1<sup>st</sup> session, Committee of Conference, Intelligence Authorization Act for Fiscal Year 1994, House Report 103-377, November 18, 1993, pp. 28-29.

to provide cover for covert action...."<sup>109</sup> This authority was extended for an additional three years in the Intelligence Authorization Act for FY1996 (P.L. 104-93).

Given the involvement of DOD units in human intelligence collection and related activities, there is inevitably a potential for duplication of effort or failures of coordination with other parts of the Intelligence Community and with congressional oversight committees.<sup>110</sup> The term "special operations," as used by the Defense Department, covers a multitude of functions, some of which are functionally equivalent to covert actions, including some of those undertaken by the CIA.<sup>111</sup> Special operations by military units are ordinarily related to other military missions or hostage rescue operations; normally, they would not extend to efforts to influence foreign public opinion or political policies. Nonetheless, the dividing line is not necessarily sharp and the possibility exists that special operations might at some point be undertaken by DOD to avoid complications arising out of compliance with laws that regulate covert actions.

Both the Commission on the Roles and Capabilities of the Intelligence Community (the "Aspin-Brown Commission") and the House Intelligence Committee's IC21 Study have recommended that humint collection be consolidated in the CIA and such a step, presumably, might constrain DOD's ability to undertake at least certain types of covert action. The IC21 Study advocated the creation of a Clandestine Service under the DCI that would include military personnel engaged in humint operations. This step might constrain the ability of military attaches to conduct their overt collection activities by appearing to tie them to the CIA.

In some cases, however, covert actions are undertaken by CIA in direct support of military operations conducted by the Defense Department. They can become necessary when it is imprudent for diplomatic or other reasons, to insert U.S. military personnel into a given area. This was especially the case during the Vietnam War, in

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<sup>109</sup>U.S. Congress, 102d Congress, 1<sup>st</sup> session, House of Representatives, Permanent Select Committee on Intelligence, Intelligence Authorization Act, Fiscal Year 1991, Rept. 102-37, April 22, 1991, p. 23. Years earlier, when a Navy humint capability was established during the Johnson Administration, the organization was specifically not authorized to undertake covert actions. See Jeffrey T. Richelson, "Task Force 157: the US Navy's Secret Intelligence Service, 1966-77," *Intelligence and National Security*, Vol. 11, January 1996, p. 108.

<sup>110</sup>In 1993, the House Intelligence Committee complained of a failure by DOD to provide notification of clandestine intelligence collection operations and proposed statutory language to rectify the problem, but dropped the provision in conference after DOD promised better notifications procedures. See U.S. Congress, 103d Congress, 1<sup>st</sup> session, House of Representatives, Committee of Conference, Intelligence Authorization Act for Fiscal Year 1994, Report 103-377, November 18, 1993, pp. 28-29.

<sup>111</sup>See John M. Collins, *Special Operations Forces: An Assessment, 1986-1993*, CRS Report 93-697S. During the Reagan Administration an Intelligence Support Activity (ISA) was established in the Army to gather human intelligence and to undertake certain special operations. Media accounts suggest that ISA was involved in gathering intelligence in Central America and Southeast Asia and secretly provided equipment to foreign governments. After reports of financial irregularities arose, the ISA was disbanded with certain functions transferred elsewhere. See also the account by Steven Emerson, *Secret Warriors: Inside the Covert Military Operations of the Reagan Era* (New York: G.P. Putnam's, 1988).

the Persian Gulf War, and as an adjunct to peacekeeping operations, such as those in Haiti and Bosnia. The necessity for close ties was recognized by creating the position of Associate Director of Central Intelligence for Military Support to be held by a serving officer of flag rank. The need to coordinate covert actions (and humint collection) with military planners in the Defense Department has been recognized in a revised Operations Directorate organization. Procedures to coordinate covert actions directed by CIA personnel (or an ambassador) with military operations have proven difficult to establish, especially given the reflexive determination by military personnel to uphold the principle of unity of command.

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