

## Managing Covert Political Action

**James A. Barry**

In 1954, at the height of US concern about the threat from international Communism, President Eisenhower appointed a panel to make recommendations regarding covert political action as an instrument of foreign policy. The panel, named after its chairman, Gen. Jimmy Doolittle, included the following statement in its report:

It is now clear that we are facing an implacable enemy whose avowed objective is world domination by whatever means and at whatever costs. There are no rules in such a game. Hitherto acceptable norms of human conduct do not apply. If the US is to survive, longstanding American concepts of "fair play" must be reconsidered. We must develop effective espionage and counterespionage services and must learn to subvert, sabotage and destroy our enemies by more clever, more sophisticated means than those used against us. It may become necessary that the American people be made acquainted with, understand and support this fundamentally repugnant philosophy.<sup>1</sup>

In counseling such a radical departure from American norms, the authors of the Doolittle report adopted an argument that appears in hindsight to be extreme. But in the context of the times, it was consistent with several overlapping schools of thought in international affairs that formed the basis for many Cold War policies. The first was the "realist" tradition in international affairs, which traces its origins from the Greek historian Thucydides through the philosophies of Machiavelli, Hobbes, Spinoza, and Rousseau to modern theorists such as Hans Morgenthau and Reinhold Neibuhr. Although realists differ significantly in their views, they tend to emphasize the primacy of power in international affairs, and to exclude morality from considerations of making foreign policy.<sup>2</sup> Modern realism encompasses views ranging from George Kennan's proposals to combat Communism through a patient policy of

containment and a low-profile approach to moral issues to Henry Kissinger's opportunistic use of moral language coupled with a belief that moral norms could not govern the conduct of states. Reinforcing the views of the early Cold War realists were the arguments of ideological crusaders who conceived of the struggle with Communism as kind of holy war, as well as those of American nationalists who, like General Sherman, believed that "war is hell" and that the merciful thing is in fact to wage it ruthlessly. Members of these several groups supported the need for covert action against Communism either because they believed that the exceptional circumstances of the times required it or because they judged that it was simply one of the methods that states used to struggle with each other.<sup>3</sup>

But it is clear that even the authors of the Doolittle Report were uncomfortable with the "repugnant philosophy" that they deemed necessary. Indeed, although covert political action became an important tool of US policy America never completely abandoned its moral traditions. The threat of international Communism, however, became a compelling rationale for covert action, to the extent that many operations needed no more specific justification. Thus the Cold War, and the perceived severity of the Soviet threat, made it possible for policymakers to ignore competing ethical considerations when they endorsed covert actions.

This Cold War rationale began to crumble in the late 1960s with popular opposition to the Vietnam War and the subsequent revelation in Congressional inquiries of abuses by the CIA. The result was that greater attention has been paid to the process of managing covert actions. Until recently, however, despite changes in decisionmaking and oversight mechanisms, the Soviet threat was a dominant consideration in most covert action decisions.

---

A revised version of this article will appear in the Summer 1993 edition of *Orbis: A Journal of World Affairs*.

## Covert Action and the New World Order

Since the dismantling of the Berlin Wall, the abortive coup in the Soviet Union, and the dissolution of the Soviet empire, the confluence of ideological, nationalist, and realist thought that formed a compelling rationale for covert action in the early Cold War period has lost more validity. In a dangerous world, however, presidents probably will not eschew this particular element of foreign policy, even in a "new world order." The Persian Gulf war shows that aggression by hostile states remains a threat to US interests, and other challenges such as terrorism, narcotics trafficking, and the potential for proliferation of weapons of mass destruction are likely to motivate the US to consider covert responses. What frame of reference, then, should replace the Cold War philosophy that has shaped covert action policy since the founding of the CIA?

Although the ideological crusade, American nationalism, and political realism dominated US thinking about international affairs in the immediate post-World War II era, there are other enduring philosophical traditions. Some emphasize the ends of policy (utilitarianism and Marxism); others are "rule-based" (international law and Kant's rationalism are in this category<sup>4</sup>).

One of the "rule-based" traditions has received greater attention in recent years. This is the natural law tradition, and in particular its rules regarding the use of force by states, which fall under the rubric of "Just War Theory." Just War Theory was used extensively by the Bush Administration in explaining its decision to go to war, under UN auspices, against Iraq.<sup>5</sup> More recently, a symposium of jurists, philosophers, theologians, government officials and military officers affirmed that Just War Theory is useful in deliberations regarding low-intensity conflict.<sup>6</sup>

## Just War Theory

The origins of the Just War Theory can be traced to Saint Augustine in the 4th century A.D., and especially to Saint Thomas Aquinas, who extended and codified it in the 13th century. Just War Theory is in

essence a set of guidelines for going to war (the so-called *jus ad bellum*), and for the conduct of hostilities (*jus in bello*).<sup>7</sup> Though largely associated with Catholic scholars, Just War Theory is not a religious teaching per se, but rather part of a tradition of theological and philosophical thought, dating from Aristotle, which emphasized the importance of ethical processes in decisionmaking.

Aquinas specified three conditions for the decision to go to war: the action must be ordered by proper authority, the cause must be just, and the authority must have a right intention of promoting good or avoiding evil.<sup>8</sup> Other authorities subsequently added three further criteria: the action must be a last resort and all peaceful alternatives must have been exhausted, there must be a reasonable probability of success, and the evil and damage which the war entails must be proportionate to the injury it is designed to avert or the injustice which occasions it.<sup>9</sup>

Once these conditions are met, the belligerent is subject to two further constraints in seeking his military objectives: his actions must be directed against the opponent, not against innocent people; and the means of combat must be proportionate to the just ends envisioned and must be under the control of a competent authority.<sup>10</sup>

The first of these constraints has been further refined, under the "principle of double effect," to encompass situations in which injury to innocent parties is unavoidable. Aquinas formulated the principle as follows:

There is nothing to hinder one act having two effects, of which one only is the intention of the agent, while the other is beside his intention. But moral acts receive their species from what is intended, not from what is beside the intention, as that is accidental.<sup>11</sup>

Under this principle, then, a belligerent may, if there is good reason, be justified in permitting incidental evil effects. The conditions governing this, however, are held by most commentators to be exceedingly strict. For example, the action taken must not be evil in itself; the good effect, and not the evil effect, must be intended; and the good effect must not arise out of the evil effect, but both must arise simultaneously from the action taken.<sup>12</sup>

Modern political theorists have continued the Just War tradition and focused primarily on the criterion of just cause. Currently, the majority school of thought appears to favor the view that the only justifiable cause for armed conflict is to repel aggression. Traditionally, however, there were two other acceptable causes: to retake something wrongfully taken and to punish wrongdoing.<sup>13</sup> Another area of debate has been whether forcible intervention in another state could be justified in order to reform that state's political system, for example in the case of flagrant human rights abuses.<sup>14</sup>

### **The Theory and Covert Action**

But what can an arcane theological and philosophical doctrine that is more than 1,600 years old and which was codified to regulate war during the Middle Ages have to do with covert action following the collapse of Communism? At least one former practitioner, William Colby, has argued that "a standard for selection of covert actions that are just can be developed by analogy with the longstanding efforts to differentiate just from unjust wars."<sup>15</sup> Perhaps more to the point, former Director of Central Intelligence (DCI) William Webster has noted that in its deliberations the CIA's Covert Action Review Group explores three key questions regarding a proposed covert action: "Is it entirely consistent with our laws? Is it consistent with American values as we understand them? And will it make sense to the American people?"<sup>16</sup> With respect to the last two considerations, a reformulation of the Just War criteria in common sense terms would probably appeal to the American people. It seems fair to conclude that the people would want the government to undertake covert actions only if:

- The action is approved by the President, after due deliberation within the Executive Branch and with the full knowledge and concurrence of appropriate members of the Congress.
- The intentions and objectives are clearly spelled out, reasonable, and just.
- There is a reasonable probability of success.
- The methods envisioned are commensurate with the objectives.

Moreover, in conducting covert action, it is reasonable to presume that the American people would approve of methods that minimize physical, economic, or psychological injury to innocent people and that are appropriate to the threat and under firm US control.<sup>17</sup>

Formulated this way, the Just War guidelines seem to be directly applicable to covert paramilitary operations or other actions involving the use of violence or coercion. Those who advocate or approve such covert actions, however, bear the additional burden of demonstrating why they must be conducted covertly. As ethicist Sissela Bok has pointed out, every state requires a measure of secrecy to defend itself, but when secrecy is invoked citizens lose the ordinary democratic checks on those matters that can affect them most strongly.<sup>18</sup> In addition, a special problem of operational control can arise when intermediaries (agents) are employed—because their aims may differ from ours, and because the chain of command may be ambiguous or unreliable.<sup>19</sup> Finally, most covert actions will necessarily lack the public legitimacy and legal status under international law of a declared, justifiable war. This makes it incumbent on those advocating such actions to take into account the consequences of possible public misunderstanding and international opprobrium.

### **The Chile Case**

It would appear that a framework similar to the Just War Theory could be useful in evaluating covert actions that result in economic dislocation, distortion of political processes or manipulation of information, because these cause suffering or moral damage, as war causes physical destruction.<sup>20</sup> To explore this, consider how the guidelines would have applied to two instances of covert US intervention in Chile, in 1964 and 1970.<sup>21</sup>

### **The 1964 Election Operation**

As part of its worldwide buildup of covert action capabilities in the early 1950s, the CIA established a capacity to conduct covert propaganda and political influence operations in Chile. In 1961, President Kennedy established a hemispheric policy to promote

the growth of democratic institutions, the Alliance for Progress. That same year, the President became convinced that the Chilean Christian Democratic Party shared his belief in democratic social reform and seemed to have the organizational competence to achieve their common goals. It lacked the resources, however, to compete with the extremist parties of the left and right.

During 1961, the CIA established relationships with key political parties in Chile, as well as propaganda and organizational mechanisms. In 1962, the Special Group (the interagency body charged with reviewing covert actions) approved two CIA proposals to provide support to the Christian Democrats. The program was modeled on that conducted in Italy in the late 1940s and 1950s, and it was intended to strengthen center-democratic forces against the leftist challenge from Salvador Allende, who was supported by the Soviet Union and Cuba. When President Johnson succeeded Kennedy, he continued the covert subsidies, with the objective of making Chile a model of democracy, as well as preventing the nationalization by a leftist government of the Chilean components of American multinational corporations.

The Chilean presidential election of 1964 came down to a battle between Allende and Eduardo Frei Montalva, a liberal Christian Democrat. The election was viewed with great alarm in Washington. *The New York Times* compared it to the Italian election of 1948, when the Communists had threatened to take over the country through the ballot box, and the US had intervened covertly to support democratic parties. Similarly, in 1964 the Johnson administration intervened in Chile, according to the Church Committee Report, to prevent or minimize the influence of Chilean Communists or Marxists in the government that would emerge from the election. Cord Meyer, a former CIA covert action manager, argues that the intervention was for the purpose of preserving the Chilean constitutional order.

In considering the 1964 election operations, the Johnson administration used the established mechanism, the interagency Special Group. By 1963, according to Professor Gregory Treverton, the Special Group had developed criteria for evaluating covert

action proposals. All expenditures of covert funds for the 1964 operation (some \$3 million in all) were approved by the Group. (There is no indication that the Congress approved these expenditures or was even informed in detail of the operation.) In addition, an interagency committee was set up in Washington to manage the operation, and it was paralleled by a group in the US Embassy in Santiago. Meyer contends that covert intervention on behalf of Christian Democratic candidates had wide support in the administration, and the Church Committee confirms that the covert action was decided upon at the highest levels of government.

During the early 1960s, the US pursued a dual-track policy in Chile, conducting covert action in support of broader, overt objectives. Overtly, the US undertook a variety of development programs, and Chile was chosen to become a showcase of such programs under the Alliance for Progress. Between 1964 and 1969, Chile received well over \$1 billion in direct, overt US aid—more per capita than any other country in the hemisphere. Moreover, funding to support the Frei candidacy was funnelled overtly through the Agency for International Development, as well as secretly through the CIA. Frei also received covert aid from a group of American corporations known as the Business Group for Latin America. Thus, the US used a variety of mechanisms to assist Frei. Covert support apparently was justified by the US Government on the grounds that Frei would be discredited if it were known that even more substantial support was flowing from the US.

That the 1964 covert action had a reasonable probability of success is evident from the outcome—Frei won a clear majority (56 percent) of the vote. According to Church Committee records, a CIA post mortem concluded that the covert campaign had a decisive impact. It is not clear from the available records whether a calculation of the likelihood of success was a specific part of the decisionmaking process. According to Treverton, the CIA was required under Special Group procedures to make such an estimate, and it is likely that its view would have been optimistic, because by the mid-1960s the Agency had managed to penetrate all significant elements of the Chilean Government and political parties.

In the 1964 operation, the CIA used virtually its entire arsenal of nonlethal methods:

- Funds were passed through intermediaries to the Christian Democrats for their own use.
- The CIA provided a consultant to assist the Christian Democrats in running an American-style campaign, which included polling, voter registration and get-out-the-vote drives.
- Political action operations, including polls and grassroots organizing, were conducted among slum dwellers, peasants, organized labor, and dissident Socialists.
- CIA-controlled assets placed propaganda in major Chilean newspapers and on radio, erected wall posters, passed out political leaflets, and organized demonstrations. According to the Church Committee, some of this propaganda used “scare tactics” to link Allende to Soviet and Cuban atrocities.
- Other assets manufactured “black propaganda,” material falsely purporting to be from Allende and his supporters, and intended to discredit them.<sup>22</sup>

Significant constraints were imposed, however. Paramilitary and other lethal methods were not used. The CIA explicitly rejected a proposal from the Chilean Defense Council to carry out a coup if Allende won. The Department of State turned down a similar proposal from a Chilean Air Force officer. Moreover, the Special Group turned down an offer from a group of American businessmen to provide funds for covert disbursement by the CIA. According to the Church Committee, the Group considered this “neither a secure nor an honorable way of doing business.”

### **The 1970 Elections and “Track II”**

Under Chilean law, Frei could not serve two consecutive terms as president. As the 1970 elections approached, the US faced a dilemma. The Christian Democrats had drifted to the left, and they were out of step with the Nixon administration’s policy views.

(The principal architect of those views was Henry Kissinger, who as an academic had been a prominent member of the realist school.) The conservative candidate, Jorge Alessandri, was not particularly attractive to the US, but there was even greater concern about an Allende victory.

The CIA began to warn policymakers early in 1969 that an Allende victory was likely. In March 1970, the 303 Committee (successor to the Special Group) decided that the US would not support any particular candidate. Instead, it authorized the CIA to conduct a “spoiling operation,” aimed at discrediting Allende through propaganda. The effort failed when Allende won a slim plurality in the 4 September election. Because no candidate won a clear majority, the election was referred to a joint session of Congress, which in the past had always endorsed the candidate who had received the highest popular vote. The joint session was set for 24 October 1970. Senior US officials maintained that their preoccupation with Allende was defensive and aimed at allaying fears of a Communist victory both abroad and at home. As Nixon noted in a *New York Times* interview:

There was a great deal of concern expressed in 1964 and again in 1970 by neighboring South American countries that if Mr. Allende were elected president, Chile would quickly become a haven for Communist operatives who could infiltrate and undermine independent governments throughout South America.<sup>23</sup>

Kissinger noted that what worried the US was Allende’s proclaimed hostility and his perceived intention to create “another Cuba.” He maintained that nationalization of American-owned property was not the issue, though he did emphasize US interest in adequate compensation.

The Intelligence Community, however, held a more nuanced view. According to an assessment by the CIA’s Directorate of Intelligence:

Regarding threats to US interests, we conclude that:

1. The US has no vital national interests in Chile. There would, however, be tangible economic losses.

2. The world balance of power would not be significantly altered by an Allende government.
3. An Allende victory would, however, create considerable political and psychological costs:
  - Hemispheric cohesion would be threatened by the challenge that an Allende government would pose to the OAS, and by the reactions that it would create in other countries. We do not see, however, any likely threat to the peace of the region.
  - An Allende victory would represent a definite psychological setback to the US and a definite psychological advance for the Marxist idea.<sup>24</sup>

Kissinger tacitly acknowledged the lack of vital US interests in Chile when he called it “a dagger pointed at the heart of Antarctica.”

When Allende won a plurality of the popular vote, the thrust of US covert action shifted to preventing his accession to the presidency. The objective had now become to stop Allende by manipulation of the congressional vote. The committee asked Edward Korry, the US Ambassador in Santiago, for a “cold-blooded assessment” of the likelihood of mounting a coup and organizing an effective opposition to Allende. With negative evaluations from both Korry and the CIA, the committee met on 14 September and explored a “Rube Goldberg” gambit, in which Alessandri would be elected by the Congress and then resign, thus allowing Frei to run in a second election. The play was turned down.

By this time, Nixon had taken a personal role. He met on 15 September with Donald Kendall, chief executive officer of Pepsi Cola, and Augustine Edwards, an influential Chilean publisher who had supported Frei during the 1964 election. According to Kissinger, Nixon was incensed by what he heard, and decided that more direct action was necessary. As a result, he called in DCI Richard Helms and ordered a major effort to prevent Allende’s accession. The CIA was instructed to play a direct role in organizing a military coup. Further, Helms was directed not to coordinate the CIA’s activities with the

Departments of State and Defense and not to inform Ambassador Korry. The 40 Committee was not informed, nor was the Congress. This activity became known as “Track II,” to distinguish it from the 40 Committee program, “Track I.”<sup>25</sup>

Track II was a carefully guarded secret, but US displeasure with the prospect of an Allende victory was not. According to Kissinger, all agencies were working to prevent the election. The Chilean Government was threatened with economic reprisals, and steps were taken to inform the Chilean armed forces that military aid would be cut off. Separately from the CIA’s effort, several large American companies had financed Alessandri’s campaign. One company, ITT, offered the CIA \$1 million, but Helms turned it down.

When Helms left the Oval Office on 15 September, he had a page of handwritten notes. The first entry read, “less than one in ten chance of success.” His pessimistic assessment was echoed by Ambassador Korry. According to his correspondence with the Church Committee, Korry consistently warned the Nixon administration that the Chilean military was no policy alternative. From Santiago, according to the Church Committee documents, the CIA reported: “Military action is impossible; the military is incapable and unwilling to seize power. We have no capability to motivate or instigate a coup.”

This view was shared by the managers of Track II. According to David Phillips, chief of the CIA’s Chile Task Force, both he and his immediate supervisor were convinced that Track II was unworkable. The CIA’s Deputy Director for Plans, Thomas Karame-sines, was adamant that the Agency should not refuse the assignment, but he personally briefed Nixon several times on the progress of the operation, always pessimistically.<sup>26</sup>

Track I included funding to bribe Chilean congressmen, propaganda and economic activities, and contacts with Frei and elements of the military to foster opposition to Allende. Track II was more direct, stressing active CIA involvement in and support for a coup without Frei’s knowledge. The CIA specifically offered encouragement to dissident Chilean military officers who opposed Allende, but who recognized that Gen. Rene Schneider, the Chilean

Chief of Staff, would not support a coup. These dissidents developed a plan to kidnap Schneider and take over the government, and this became known to CIA officials. Two unsuccessful kidnap attempts were made, and on the third attempt, on 22 October 1970, General Schneider was shot and subsequently died. Both the Church Committee and the Chilean inquiry concluded that the weapons used were not supplied by the US and that American officials did not desire or encourage Schneider's death. Neither, however, did they prevent it.

Unlike 1964, the 1970 covert operation did not involve extensive public-opinion polling, grassroots organizing or direct funding of any candidate. Moreover, Helms made it clear that assassination of Allende was not an option. And when a rightwing Chilean fanatic, Gen. Arturo Marshall, offered to help prevent Allende's confirmation, the CIA declined because of his earlier involvement in bombings in Santiago.

## **Evaluating the Two Operations**

A Just War theorist reviewing the two covert operation would likely reach two conclusions: first, the 1964 operation was more justifiable than the 1970 activity, which would not have been approved if the officials concerned were natural law advocates rather than realists or ideological crusaders; and, second, both operations would have benefited from a more rigorous application of the *jus ad bellum* and *jus in bello* criteria.

US authorities probably would have considered that their covert intervention in the 1964 election was generally consistent with the *jus ad bellum*. It had clear objectives: preservation of an important democratic force in Chile and defense against the establishment of another Communist stronghold in the Western hemisphere. These were set by President Kennedy, based on his assessment of the commonality of US and Chilean interests. While not strictly speaking a last resort, it was conducted in the context of, and consistently with, an overall overt policy (the Alliance for Progress); was likely to be successful; and the overall effort was limited in scope and generally proportionate to the perceived threat. It

was approved in accordance with the established procedures, though in retrospect the process would have been strengthened if the Congress had been consulted.

Some doubts can be raised regarding consistency with the *jus in bello*. The need for "scare tactics" and "black propaganda" is not obvious. (If indeed Allende's affinities for the USSR and Cuba were on the public record, promulgation of this truthful information should have been adequate.) Such activities inherently carry the possibility of distortion and deception. As Sissela Bok notes, lying and deception carry a "negative weight." They require explanation and justification, while the truth, including presumably the "truth" promulgated through propaganda mechanisms, does not.<sup>27</sup> If not clearly justifiable in terms of necessity or to respond to Cuban or Soviet activities, such deceptive actions would not meet the test of proportionality of the *jus in bello*.

The 1970 Track II operation, in contrast, violated virtually all the Just War guidelines, though this might not have been of great consequence to those who directed it. Its objective was to prevent Allende's confirmation, but little thought apparently was given to the consequences for the Chilean people or the political system. The normal consultative process was bypassed, and Nixon made the fateful Track II decision in a state of high emotion.<sup>28</sup> No expert believed that success was likely. The methods chosen were initially inadequate and subsequently, when support for coup plotting took center stage, the intermediaries could not be controlled. What began as a nonlethal action quickly turned lethal. Despite the fact that injury to innocent parties was a foreseeable outcome of the envisioned coup, no advance provision was made to prevent or minimize it. In light of the intelligence assessment that the US lacked vital interests in Chile, it is hard to rationalize support for a potentially violent military coup as a proportionate response.

In sum, the Chile case shows that Just War Theory can provide a useful framework for evaluating covert political action by asking certain penetrating questions: Is the operation directed at a just cause, properly authorized, necessary and proportionate? Is it likely to succeed, and how will it be controlled?

Is it a last resort, a convenience or merely an action taken in frustration? In the case of the 1964 operation, the answers to most of these questions were satisfactory; in 1970, they were not.

### Reforms Since the 1970s

In the more than two decades since Track II, significant improvements have been made in controlling covert action. The old doctrine of “plausible denial,” which allowed senior officials to disclaim responsibility for their actions, has been replaced by one intended to secure direct presidential accountability. Beginning with the Hughes-Ryan Amendment of 1974, a series of laws has been enacted requiring the president personally to “find” that proposed covert actions are important to the national security, and to report such operations to Congress in a timely manner. (Debate has continued over what constitutes a timely notification.) In the wake of the Iran-Contra scandal, it became obvious that the system of presidential “Findings” needed to be strengthened, and even more stringent procedures were implemented, first by the Executive Branch and then by the Congress.

Under the current system, established by the Reagan administration in 1987 and refined by legislation in 1991, a written Finding must be signed before a covert action operation commences, except that in extreme circumstances an oral Finding may be made and then immediately documented in writing. A Memorandum of Notification (MON), also approved by the president, is required for a significant change in the means of implementation, level of resources, assets, operational conditions, cooperating foreign countries or risks associated with a covert action. Each Finding or MON includes a statement of policy objectives and goals; a description of the actions authorized, resources required, and participating organizations; a statement that indicates whether private individuals or organizations of foreign governments will be involved; and an assessment of risk. Each proposed Finding or MON is reviewed by a senior committee of the National Security Council (NSC), and coordinated with the NSC Legal Adviser and with the Counsel to the President. Copies of Findings and MONs are provided to the Congress at the time of notification, except in rare cases of extreme sensitivity.<sup>29</sup>

### An Approach for the 1990s

These reforms are positive, especially with regard to the criterion of proper authority, because they provide for broader consultation, a legal review, presidential accountability, and Congressional involvement in covert action decisions. However, the content of Findings and MONs, as described above, leaves much to be desired from the perspective of Just War Theory. If, as the Chile case suggests, explicit use of Just War guidelines can strengthen the ethical content of covert action, more emphasis should be placed on the substance of discussions, not just the mechanics of the process. Further, the now widely accepted view that Just War Theory can be used to justify and explain resort to armed force strongly suggest that a similar approach would be useful in framing substantive debate on covert political action. In short, the current system addresses the legality, feasibility, and political sensitivity of proposed covert actions.<sup>30</sup> It does not, however, ensure that they are right, according to a widely accepted ethical standard.

To come closer to this ideal, it is important that, at each stage in the covert action approval process, difficult questions be asked about the objectives, intentions, methods, and management of a proposed operation. It is equally important that they be answered in detail, with rigor, and in writing—even (perhaps especially) when time is of the essence. Covert operators are understandably reluctant to commit sensitive details to paper, but this seems essential if the US is to meet high standards of morality and accountability in an era in which the easy rationalization of fighting Communism is no longer available.

A decisionmaking process structured explicitly around Just War guidelines is, in many ways, simply a restatement of Judge Webster’s criteria of consistency with law, American values, and public mores. In that sense, Just War criteria merely reiterate the obvious and make explicit the goals that the US has striven toward in its reforms of the covert action process since the mid-1970s. But there is value to building a more systematic framework for substantive debate, constructed from specific questions derived from Just War Theory, even if many



of these questions are already considered in the CIA's Covert Action Review Group, the senior NSC groups or the oversight committees. The questions of concern include:

- *Just cause.* Exactly what are the objectives of the operation? Is it defensive—to repel an identifiable threat—or is it intended to redress a wrong, to punish wrongdoing or to reform a foreign country? Who or what are we conducting the operation against? Who are we for? What specific changes in the behavior or policy of the target country, group, or individual do we seek?
- *Just intention.* What will be the likely result in the target country and in other foreign countries? How will we or the international community be better off? How will we know if we have succeeded? What will we do if we win? If we lose?
- *Proper authority.* Who has reviewed the proposal? Are there dissents? What is the view of intelligence analysts on the problem being considered? Have senior government officials discussed the proposal in detail? Has the Congress been advised of all significant aspects of the covert activity? If notification has been restricted, what is the justification?
- *Last resort.* What other policies have been tried? Why have they not been effective? What overt policy options are being considered? What are their strengths and weaknesses? Why is covert action necessary? Why must the proposed activity be secret?
- *Probability of success.* What is the likelihood that the action will succeed? Are there differing views of the probability of success? Is the view of disinterested observers different from that of advocates or opponents? Why? What is the evidence?
- *Proportionality.* What specific methods are being considered? Does the proposal envision the use of lethal force, sabotage, economic disruption, or false information? Why are these methods necessary? Are they the same as those being used by the adversary, or are they potentially more damaging or disruptive? If so, what is the justification?
- *Discrimination and control.* What steps will be taken to safeguard the innocent against death, injury, economic hardship, or psychological damage? What will be done to protect political institutions and processes against disproportionate damage? If some damage is inevitable, what steps are being taken to minimize it? What controls does the US exercise over the agents to be employed? What steps will be taken if they disregard our directions? What steps will be taken to protect the agents, and what are our obligations to them? How will the operation be terminated if its objectives are achieved? How will it be terminated if it fails?

Each of these questions should be investigated at some step of the initial approval process, though some clearly exceed the competence of the CIA. Perhaps the NSC Staff and the Congressional oversight committees are the most appropriate bodies to probe these issues. Not all may be answerable at the outset, though this fact alone should signal caution. In addition, they should be posed again whenever there is a significant change in objectives, methods, or circumstances. The current management process calls for an annual review of all covert actions by the NSC, as well as periodic examinations by the oversight committees. These questions can guide such reviews as well.

## **The Casuistry of Covert Action**

Rigorous examination of the questions enumerated above would emulate the technique of moral reasoning recommended by the natural law tradition. This method, known as casuistry, is acknowledged by scholars to be complex and difficult, especially in cases involving politics and international affairs.<sup>31</sup> Moreover, in the hands of advocates, Just War criteria can deteriorate into mere rationalizations of intended actions. Just War Theory, then, can be exceedingly useful as an organizing principle, but in itself does not necessarily provide clear answers.<sup>32</sup> How can the inherent uncertainty of this casuistry, and its potential misuse, be minimized?

William Colby has suggested that our process of moral reasoning concentrate primarily on the criteria of just cause and proportionality.<sup>33</sup> These fundamental points do indeed appear to be the keys to an effective process of policy formulation. With respect to just cause, a recent report by a panel of distinguished scholars has recommended that covert action should be undertaken only in support of a publicly articulated policy.<sup>34</sup> Such an approach would ensure that the objectives of the policy could be debated publicly, even though some of the exact methods to be employed might be known to only a small group of elected and appointed officials. Open, public debate would go a long way toward determining whether a proposed course of action could be construed as a just cause. The need for such debate is so fundamental to the casuistry of covert action that, if it cannot be conducted, this in itself would seem to be grounds for rejection of any suggested operation.

Assessments of proportionality are not susceptible to the same kind of open scrutiny, because they involve specific descriptions of secret methods. Nevertheless, it is important to ensure that proposed activities meet strict tests of consistency with American values and mores. Just War Theory does not offer specific guidance for such choices, despite its stress on necessity and minimal damage to innocent parties. Loch Johnson, a longtime commentator on intelligence activities, has suggested that, in addition to having a sound ethical framework, decisions on covert action must take into account other factors, such as the type of target regime and the severity and imminence of the threat that is to be countered.<sup>35</sup> These would seem to be useful guides to evaluating proportionality, to which could be added the types of actions, overt or covert, being undertaken by the target regime against US interests.

Johnson has also tried to rank-order various types of covert operations into a 38-rung “ladder of escalation,” and he introduces a useful concept of “thresholds” that involve different degrees of risk and interference in foreign countries.<sup>36</sup> Following Johnson’s concept, proposed covert activities could be arrayed for debate under thresholds of increasing ethical concern as follows:

- *Limited concern.* Benign provision of truthful information or support to existing political forces; intervention to keep election processes honest.
- *Significant concern.* Manipulative use of information; rigging of elections or other distortion of political processes; creating new opposition forces or increasing the strength of existing ones out of proportion to their indigenous support.
- *Serious concern.* Deceptive use of information, nonlethal sabotage, and economic disruption.
- *Grave Concern.* Use of lethal force; forcible changes in government.

Such actions are often taken in combination, rather than step by step in a scenario of escalation. Moreover, the amount or degree of covert support provided will vary in significance and moral weight depending on the nature of the foreign countries involved. And, as noted above, it is necessary to justify the actions proposed and the need to carry them out secretly. But clarity about what is being done, and whether or not it is proportional to the threat and proposed objectives, is a key element in sound policymaking.

## Conclusion

Such an application of the Just War framework would not end controversy regarding covert action, nor would it guarantee that inappropriate or unethical actions will not be taken in the future. Debate over just cause and proportionality are likely to be particularly difficult—especially when, as was the case in US policy in Central America, there is no political consensus—but these are precisely the elements that most require informed scrutiny. Those who oppose covert action in all forms will not be reassured by a process based on the Just War framework; realists or crusaders will see it as unnecessary and unduly restrictive; Executive Branch officials and members of Congress may perceive that they already probe these questions in one way or another; and bureaucrats will regard it as just another “paper exercise.” The claim for a conscious application of Just War guidelines is a modest one: it will help to make more rigorous Judge

Webster's common sense criteria, and to improve the quality of decisions regarding one of the most controversial aspects of US national security policy.

More generally, in light of recurring problems in the use of covert action as an instrument of policy, and the fact that it is likely to remain in the arsenal of states for the foreseeable future, greater rigor and structure in debates over specific proposals are essential. Reforming the process along the lines suggested would signal that the US is concerned—even in secret activities—with issues of right and wrong and not merely with power. It would promote openness and accountability and underscore that we firmly reject the “repugnant philosophy” of the Doolittle Report.

## NOTES

1. “Report of the Special Study Group (Doolittle Committee) on the Covert Activities of the Central Intelligence Agency, 30 September 1954 (excerpts)” in William M. Leary, ed., *The Central Intelligence Agency, History and Documents*; (The University of Alabama Press; 1984); p. 144.
2. Jack Donnelly, “Twentieth-Century Realism,” in Nardin and Mapel, eds., *Traditions of International Ethics*; (Cambridge University Press, 1992); p. 93.
3. The author is indebted to Rev. John P. Langan for this typology of Cold War political thought. Letter to the author, 28 May 1992.
4. A penetrating assessment of covert action from the perspective of international law can be found in W. Michael Riesman and James E. Baker, *Regulating Covert Action* (New Haven, Yale University Press, 1992).
5. See James Turner Johnson and George Weigel, *Just War and the Gulf War* (Washington, Ethics and Public Policy Center, 1991).
6. *Symposium on Moral and Legal Constraints on Low-Intensity Conflict*, sponsored by the Office of the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict; US Naval War College; Newport, Rhode Island; 9-10 April 1992.
7. National Conference of Catholic Bishops, *The Challenge of Peace* (Washington, US Catholic Conference, 1983), pp. 25-29.
8. Thomas Aquinas, *Summa Theologica*, Joseph Rickaby, S.J., trans. (London, Burns and Gates, 1892), Question XL, Article I.
9. National Conference of Catholic Bishops, *op. cit.*, pp. 29-32.
10. Aquinas, Q. XLI, Art. I.
11. Aquinas, Q. XLIV, Art. VII.
12. Paul Ramsey, *War and the Christian Conscience* (Duke University Press, 1969), pp. 47-8.
13. The classic modern work on Just War Theory is Michael Walzer, *Just and Unjust Wars* (New York, Basic Books, 1977).
14. Charles R. Beitz, “Recent International Thought,” *Ethics and International Affairs*, 1989, Vol. 3, p. 190.
15. William E. Colby, “Public Policy, Secret Action,” *Ethics and International Affairs*, 1989, Vol. 3, p. 63.
16. Address to the Eighth Circuit Judicial Conference, 12 July 1991.
17. There is some empirical research that suggests a correlation between these classic Just War criteria and American attitudes regarding war and peace. See Donald Secrest, Gregory G. Brunk and Howard Tamashiro, “Moral Justification for Resort to War With Nicaragua: The Attitudes of Three American Elite Groups,” *Western Political Quarterly*, September 1991, pp. 541-559.
18. *Secrets: On the Ethics of Concealment and Revelation* (New York, Pantheon Books, 1982), p. 191.
19. Charles R. Beitz, “Covert Intervention as a Moral Problem,” *Ethics and International Affairs*, 1989, Vol. 3, pp. 49-50.

20. Langan notes that Just War Theory has both material and formal aspects, and that the formal aspects, such as just intention and proportionality, are applicable to a broad range of situations where one has to do harm to another, including punishment, surgery and —by extension— political or economic intervention. (Langan, *Op Cit.*)
21. The following discussion is drawn primarily from documents of the Church Committee, which investigated CIA covert actions in the mid-1970s, as well as memoirs of some of the participants and other government officials and commentators. (These include William Colby, Henry Kissinger, Cord Meyer, David Atlee Phillips and Arthur Schlesinger.) A summary of the Church Committee's findings, and recommendations for reform, can be found in Gregory Treverton, *Covert Action: The Limits of Intervention in the Postwar World* (New York, Basic Books, 1987). A case study based on Treverton's research has been published by the Carnegie Council on Ethics and International Affairs; an abridged version appeared in *Studies In Intelligence*, Winter 1992.
22. United States Senate, *Staff Report of the Select Committee to Study Government Operations with Respect to Intelligence Activities: Covert Actions in Chile, 1963-73*. (Washington, US Government Printing Office, 1975) pp. 15-17.
23. 12 March 1976.
24. Assessment dated 7 September 1970, declassified and quoted in the Church Committee report.
25. The US decision process is described in detail in the Church Committee Report, *Alleged Assassination Attempts Involving Foreign Leaders*, as well as in Kissinger's memoirs and John Ranelagh, *The Agency: The Rise and Decline of the CIA* (New York, Simon and Schuster, 1986), pp. 514-520.
26. David Atlee Phillips, *The Night Watch* (New York, Ballentine Books, 1977), pp. 283-287.
27. *Lying: Moral Choice in Public and Private Life* (New York, Random House, 1978), p. 30.
28. Another tenet of the natural law tradition, the notion of *prudentia* or prudence in statecraft, cautions against such hasty and passionate decisions. See Alberto R. Coll, "Normative Prudence as a Tradition of Statecraft," *Ethics and International Affairs*, 1991, Vol. 5, pp. 36-7.
29. *National Security Decision Directive (NSDD) 286*, partially declassified on 15 December 1987; *Intelligence Authorization Act, Fiscal Year 1991*, Title VI.
30. "Political sensitivity" can sometimes become a euphemism for morally questionable activities. This semantic twist means that such activities are then discussed as though they were merely political rather than ethical issues.
31. Joseph Boyle, "Natural Law and International Ethics," in Nardin and Mapel, *op. cit.*, p. 115.
32. The author is indebted to Joel Rosenthal of the Carnegie Council on Ethics and International Affairs for this point. (Letter to the author dated 12 May 1992)
33. Colby, *op. cit.* Colby concentrates on the self-defense aspect of just cause.
34. *Report of the Twentieth Century Fund Task Force on Covert Action and American Democracy* (New York, Twentieth Century Press, 1992) p. 8.
35. Loch K. Johnson, "On Drawing a Bright Line for Covert Operations," *American Journal of International Law*, Vol. 86, No. 2, April 1992. pp. 296-7.
36. *Ibid.* p. 286. Johnson's analysis is complicated by his mixing of traditional intelligence collection activities with covert actions, and his attempt to rank-order both categories hierarchically. At the lowest level of escalation ladder, Johnson enumerates routine, passive activities

to collect information. Above his first threshold of risk and interference he lists the placement of truthful, benign information in the foreign press and low-level funding of friendly political groups. His second threshold involves the placement of “contentious information” in the media, large-scale funding of foreign groups, economic disruption without loss of life, limited supplies of arms, small-scale hostage-rescue attempts, and disinformation. Above his highest

threshold are large-scale and potentially violent acts, including major secret wars, assassination plots, and hostage taking. Johnson argues that actions in this category should never be undertaken by the US. He also includes in this list of proscribed actions the supply of sophisticated weapons. This, however, would appear to be an option that might be considered in response to specific, serious threats.