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Link to publisher version (DOI)
https://doi.org/10.15779/Z38GD3N

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The Legality of Covert Action Under Contemporary International Law

1
INTRODUCTION

This comment will discuss the legal status of covert action within the framework of contemporary international law. Covert action can tentatively be defined as a spectrum of coordinated coercive measures, short of direct military assault, secretly exercised by one state in order to influence the sovereign affairs of another. To explicate this definition, United States involvement in Chile during the early 1970's and currently in Nicaragua will be examined. This comment will argue that although covert action may not involve direct use of armed force, it is a form of intervention generally forbidden under international law.

Covert action is a foreign policy option not available to most or even many states.1 It is an option generally reserved to the superpowers and exercised against Third World nations.2 Only the superpowers, with their military superiority can rest assured that even if they are discovered in their covert activity, they will generally be safe from retaliation by the subject nation. Nations who are weak militarily cannot take similar risks. The superpowers are also uniquely able to exploit the economic dependency of Third World nations who have only recently broken away from colonialism, and whose national economies are in many cases presently incapable of surviving without steady assistance and trade with the superpowers.3

The increased use of covert activity is linked to the pressure on states to refrain from open warfare.4 Recognizing that intervention into another nation's sovereign domain in an attempt to influence its independent policy is threatening to international peace and order and even threatening to the existence of states as states, most jurists have condemned such acts.5 However, these jurists have generally focused

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2. But see, Ruebensaal, Substitutes for Force: The Example of Subversion, in The Use of Force in International Relations 139-140 (1974) (asserts that subversion can serve the purposes of poor nations as well).
5. See infra text accompanying notes 44-48.
only on the most blatant forms of intervention — open armed aggression. Nonetheless a body of international law has developed prohibiting military aggression and, perhaps more importantly, a strong world opinion has developed in opposition to intervention.

The rudimentary legal prohibition of military aggression and the growth of world public opinion against military aggression combine to produce undesirable political consequences for the would-be aggressor. The aggressor opens itself up to international condemnation as a violator of international law. This is no small matter. The intensity of the arguments over what is acceptable international conduct and what is not illustrates the importance placed on avoiding a negative public image.

Decisionmakers realize that the political position and isolation of a government may worsen as the result of an exercise of force, although the military balance of power may shift in its favor. Therefore, governments are less likely to opt for military aggression as a means of intervention.

There are also pragmatic reasons to refrain from the blatant use of force. Military adventures are costly, both in financial and in human terms. They drain the domestic economy, divert scarce resources from productive use, and leave a substantial portion of the workforce, including future leaders and innovators, dead on the battlefield. Furthermore, sending troops abroad has not proved to be the most effective means of securing national objectives in the post-war world. Although they commanded substantial military strength, neither Britain, France, nor Portugal were able to hold on to their colonial empires. In the same vein:

Despite an enormous effort, the U.S. failed to defeat the Vietnamese Communists. The Suez invasion failed to restore control of the Canal to the maritime states and actually strengthened Nassar's position. The departure of French combat troops from Chad in 1972 left the rebels there undefeated. In Lebanon in 1958, the U.S. did succeed in restoring order but only by allowing a President to take over who was more anti-American than Chamoun, his predecessor.

Perhaps the greatest practical motivation for discarding the traditional military means of intervention is the presence of vast stockpiles of nuclear armaments held by hostile superpowers. In these times almost any conflict bears the risk of intervention by a nuclear power and the escalation of the crisis into a nuclear exchange.

In light of these considerations, it would appear that the most rea-

6. _Id._
COVERT ACTION

reasonable thing for nations to do would be to refrain from intervention altogether. But such is not the case. Rather, new methods are becoming more popular.\(^8\) These methods can be just as effective as a conventional military invasion in violating the sovereignty of a sister state. Because of the increased use of covert action, it is important that the phenomenon be defined and its legal status ascertained.\(^9\)

Section II will offer a definition of covert action. Section III will examine U.S. activities in Chile as an example of covert action. Section IV will discuss the legality of covert action under traditional international law and Section V will discuss covert action in light of the laws and resolutions of the United Nations. Finally, Section VI will apply the principles of law regarding covert action to the current U.S. activities in Nicaragua.

II

COVERT ACTION: TOWARDS A WORKING DEFINITION

Covert action can be broadly defined as a spectrum of coordinated coercive measures, short of direct military assault, secretly exercised by one state in order to influence the sovereign affairs of another. This definition contains three components: the tactics used, the cloak of concealment under which the operation is conducted, and the end sought.

A. Tactics

Richard Bissell, Chief of the CIA's Clandestine Services section from 1958 to 1962, listed eight distinct tactics which can be used as part of a covert action campaign:

(1) political advice and counsel; (2) subsidies to an individual; (3) financial support and "technical assistance" to political parties; (4) support of private organizations, including labor unions, business firms, cooperatives, etc.; (5) covert propaganda; (6) "private" training of individuals and exchange of persons; (7) economic operations; and (8) paramilitary or political action operations designed to overthrow or to support a regime.\(^10\)

To Bissell's eight categories can possibly be added a ninth—the outright

\(^8\) LITTLE, supra note 4.

\(^9\) See McDougal, Peace and War: Factual Continuum with Multiple Legal Consequences, 49 AM. J. INT'L L. 63 (1955). He points out that a wide range of coercion ranging from the secret use of armed force to unarmed methods such as economic or ideological coercion is utilized by states against other states, and that a demand has arisen that the rules of international law be updated, and that an intermediate status between war and peace be recognized in order to give greater precision to the rights and duties of states.

assassination of political leaders. Examples include the assassination of Diem in South Vietnam\textsuperscript{11} and the numerous attempts against Fidel Castro.\textsuperscript{12}

As can be seen from Bissel’s list, covert action does not necessarily involve the use of armed force at all, and generally involves lower levels of force than that generated by more traditional forms of intervention. Covert action allows the intervening state to be far less directly involved in violence. In fact, a covert action may rely entirely on guile rather than force. But that the intervening state is not directly involved in violence does not mean that covert action does not result in substantial violence and instability in the subject state and international order in general.

The typical tactics of covert action do not require that the country carrying out the action commit many resources. Thus the drain on the economy, populace, and raw materials, which is the hallmark of warfare, is much less pronounced when covert action is used.

\textbf{B. Secrecy}

The most prominent feature of covert action is its secrecy. But perhaps secrecy is not an appropriate term to describe covert action. First, not all covert actions are conducted in secret.\textsuperscript{13} Second, covert action may be kept secret from some, but deliberately made known to others.\textsuperscript{14} Rather than secrecy, the defining characteristic may be the attempt by the actor nation to retain the option to deny responsibility for its actions, or at least to deny that its acts are designed to threaten the political independence of the subject state.

The goal of concealment is not to hide the activity from the target state. That country well knows when it is under attack. Nor is it to hide the identity of the nation directing the covert activity. This knowledge can complement the ends of covert action. The purpose of secrecy is to prevent responsibility or blame from being placed at its real source.\textsuperscript{15}

\begin{itemize}
  \item \textsuperscript{11} \textit{Frances Fitzgerald, Fire in the Lake} 182 (1973); \textit{Theodore Draper, Abuse of Power} 56-57 (1967).
  \item \textsuperscript{12} \textit{See Warren Hinkle & William Turner, The Fish Is Red} (1981).
  \item \textsuperscript{13} \textit{See infra} text accompanying note 34.
  \item \textsuperscript{14} For example, U.S. covert actions in Nicaragua require the assistance of allies and depend to some extent on the use of proxies. \textit{See infra} text accompanying notes 145-189. \textit{See also Marchetti & Marks, supra} note 10, at 144, for an account of CIA support to Portugal to help that country maintain its aging colonial empire.
  \item \textsuperscript{15} In this sense, covert action is similar to a gangland style “hit.” When a body is found in a river attached to a block of concrete, everyone assumes that the murder was committed by organized crime. Of course, this cannot be proven, but the assumption furthers the interest of organized crime. Likewise, a state that launches a covert action wants the world to be able to assume who did it and why. It just does not want to accept legal responsibility for the act.
\end{itemize}
Secrecy serves other purposes on the domestic front. The country engaging in covert action often desires to prevent its own citizenry from discovering the nature and extent of the covert action. This in part is a recognition of public opposition to intervention and in part a result of pragmatic considerations. By keeping covert action secret from its citizens, a government can dispense with time consuming public debate on the advisability of the action. Secrecy provides the actor government freedom to engage in covert action quickly, without having to justify the action to its citizenry.

Finally, it should be emphasized that not all aspects of covert action need be kept secret at all. Cutbacks in economic aid or trade are not always concealed from either a nation’s citizenry or the international community. Yet, when done in coordination with other concealed acts, these actions may play a key role in the success of any covert action.

C. Purpose

The final characteristic of covert action is its purpose to influence the sovereign affairs of another state. The existence of this purpose is not easily distinguished from legitimate foreign policy attempts to influence sister states.

The purpose of any nation’s foreign policy is to influence other countries to act in ways which tend to further its own national priorities. At some point, however, a nation in pursuit of its national interest may influence the sovereign affairs of another state to the extent that the political independence of the latter is threatened.

Whether such actions should be classified as covert action will depend on whether it can be inferred that the actor nation purposely intended to threaten the political independence of the subject state. The question is whether the facts are such as to reasonably give rise to an inference of intent on the part of the actor nation’s government to threaten the political independence of the subject state. Under this standard, where the effect of an act or acts is to threaten a state’s independence, intrusionary purpose or intent on the part of the actor state should be presumed.

It is difficult to precisely define the contours of actions which “threaten a subject state’s political independence.” When countries draft trade agreements, sign treaties and engage in the normal functions of state craft and diplomacy, they do not necessarily have the purpose of threatening the independence of the subject state. Even though these acts may seek to influence a state to behave in a fashion which, if left alone, it would not do, they do not rise to the level of covert action.
if they do not challenge the rationality of the subject state’s existence as a sovereign, independent state.

Thus, whether a particular act constitutes covert action cannot be accurately determined without recognition of the entire range of interaction between the actor and subject state. Acts which appear as merely normal diplomatic bargaining may, when viewed in the context of other activities of the actor state, appear more clearly as one part of a larger plan of covert action.

The events in Chile in the early 1970's illustrate the nature of covert action.

III
COVERT ACTION IN CHILE: A PARADIGM CASE

"Covert United States involvement in Chile in the decade between 1963 and 1973 was extensive and continuous." Following the popular election of Salvador Allende as president on September 7, 1970, the U.S. government began to interfere in the sovereign affairs of the Unidad Popular government on a massive scale.

The U.S. spent 8 million dollars between 1970 and 1973 in its attempts to overthrow the Allende government. The Nixon administration organized its attack on two fronts: the political and the economic. On the political front, the CIA was used to disseminate seditious propaganda and manipulate the media. It provided financial support to various right-wing political parties and groups, and when it viewed its intermediaries as incompetent, it made direct attempts at a coup.

The CIA had on its payroll several persons, or “assets” situated in the Chilean media (notably El Mercurio) who wrote articles and opinions favorable to U.S. interests when requested. Finding that this activity was not sufficient, the CIA created its own media outlets, and subsidized other right-wing propaganda sources that might have otherwise folded. In 1971-72 El Mercurio, an opposition newspaper, received over 1.6 million dollars in financial assistance from the CIA. The effect of these efforts is illuminated by the report of a Senate Staff Committee that, “a CIA Project Renewal Memorandum concluded that El Mercurio and other media outlets supported by the Agency had played an important role in setting the stage for the September 11, 1973

17. Id.
18. Id. at 7-8.
19. Id. at 8.
20. Id.
military coup which overthrew Allende."21 CIA activity was not limited to interference in the arena of "free speech." CIA efforts were also directed toward controlling labor organizations, and various other reactionary professional groups known as *gremios*,22 as well as student organizations and women’s groups.

The U.S. attempted to drive a wedge between the Chilean government and the Chilean military. Not only did arms sales more than double from 1972 to 1973,23 but total U.S. aid to the Chilean military ominously rose over 1800% during the period of 1970-73.24 The CIA disseminated false information designed to deceive Chilean officers into believing there was Cuban infiltration in the Chilean army orchestrated by Allende.25 The Senate Staff Committee documents at least one instance where the CIA, following directives received from the highest executive level, attempted to directly foment a military coup which ended abortively in the abduction and murder of General Rene Schneider.26 Whether the CIA initiated other military coup attempts, including the successful one of September 11, 1973 remains an unanswered question. Substantial evidence exists that the CIA played a major role in the demise of the *Unidad Popular* and the establishment of the brutal Pinochet dictatorship.27

At a meeting on September 15, 1970, President Nixon, speaking in respect to Chile, expressed his desire to "make the economy scream."28 U.S. policy over the next three years was designed to carry out the President’s wishes. During the *Unidad Popular’s* three years of power, short-term U.S. credits dropped to one-tenth of their previous level,29 no new bilateral foreign assistance was extended, and the U.S. pressured international financial institutions into not extending financial assistance to Chile.30 In sum, during the Allende years, total U.S. economic aid dropped by over seventy-seven percent from 1969 levels and aid from international organizations dried up completely.31 This turn of events made it extremely difficult for the *Unidad Popular* to fulfill the economic program that had swept it into office and made it almost

21. Id.
22. Id. at 30-31.
23. Id. at 37.
24. Id.
25. Id. at 37-38.
26. Id. at 11.
27. See ARMANDO URIBE, THE BLACK BOOK OF AMERICAN INTERVENTION IN CHILE (1975); SAMUEL CHAVKIN, THE MURDER OF CHILE 39-80 (1982); COVERT ACTION IN CHILE, supra note 16.
28. COVERT ACTION IN CHILE, supra note 16, at 33.
29. Id.
30. Id. From 1970-73 the World Bank extended no financial assistance to Chile.
31. Id. at 34.
impossible for Chile to purchase much needed replacement parts and machinery from abroad.

In its assault against the Allende government, the U.S. utilized many of the tactical options discussed by Bissel. The CIA was used to 1) disseminate seditious propaganda, 2) provide financial and technical assistance to various groups opposed to the Allende government, 3) provide subsidies to individuals criticizing the Allende government, 4) create divisions between the military and the political branches of the government, and 5) create economic instability in Chile. In addition, the U.S. assassinated at least one Chilean leader.

With the exception of cutbacks in economic aid and trade, virtually all these actions were taken without the knowledge of the U.S. people and the international community. Therefore, U.S. actions in Chile meet the requirements of the tactics used and the general secrecy of covert activities.

That the U.S. actions were coordinated with the purpose of threatening the political independence and sovereignty of Chile is made clear by the statements of various U.S. officials.

Henry Kissinger, the top U.S. foreign policy advisor during the period of covert involvement in Chile, strongly believed Allende represented some sort of "Red Threat" to U.S. interests in Latin America. On one occasion he claimed:

"If Allende wins, there is a good chance that he will establish over a period of years some sort of communist government. In that case, we would have one not on an island off the coast [Cuba] which has not a traditional relationship and impact on Latin America, but in a major Latin American country you would have a communist government, joining, for example, Argentine . . . Peru . . . and Bolivia. . . . So I don't think we should delude ourselves on an Allende takeover and Chile would not present massive problems for us. . . . It is one of those situations which is not too happy for American interests."

The clear implication is that regardless of the legitimate status of the Allende government, the U.S. would oppose its continued existence. This view is supported by the Senate Staff report which concluded, "it seems clear from the pattern of U.S. economic actions and the nature of debates within the Executive Branch that American economic policy was driven more by political opposition to an Allende regime than by purely technical judgements about Chile's finances."

Because the entire operation was a conscious attempt to intrude

32. See supra text accompanying note 10.
33. See supra text accompanying note 26.
34. Covert Action in Chile, supra note 16, at 49-50.
35. Id. at 27.
36. Id. at 35.
into domestic Chilean politics in order to oppose the Unidad Popular government and conducted largely under an umbrella of secrecy, the operation qualifies as an example of "covert action."

Why the U.S. launched such a massive attack against the Chilean people remains to be considered, especially in light of a high level CIA Intelligence Memorandum which concluded, "[t]he United States had no vital interests in Chile, the world military balance would not be significantly altered by an Allende regime, and an Allende victory in Chile would not pose any threat to the peace of the regime." Notwithstanding a bevy of intelligence estimates which down-played the threat of the Allende government, United States' action appeared to be motivated by fear that the global balance of power would shift in favor of the Soviet Union if the Unidad Popular was allowed to consolidate power in Chile. Covert operations in Chile can only be understood as an effort to further the interests of the U.S. in particular, and the capitalist bloc countries in general. This view was shared at the highest level by all of those responsible for the formulation of U.S. foreign policy, including President Richard Nixon, his two predecessors and their senior advisors.

Chile had long been within the United States' economic sphere of influence. There were, and are, substantial U.S. capital investments in Chile, particularly in the mining sector. In order to protect their economic investments, many U.S. corporations, particularly ITT, lent support to, and engaged in, covert activities against the Chilean government. In the minds of the captains of industry who directed these corporations, and those within the U.S. government with whom they shared their confidences, covert action became a necessary and convenient method of insuring that Chilean resources would remain available for exploitation by foreign capitalist interests.

At every step, the motive force behind the U.S. covert action program in Chile was the concern that a successful socialist experiment by the via pacifica might serve as a model to other Latin American countries, that Allende would harbor dissidents and revolutionaries from neighboring countries, that Chile would become a military foothold for the Soviet Union, and that a Marxist government in Chile might expropriate U.S. economic interests.

We have examined U.S. actions in Chile and concluded that they

37. Id. at 48. This memorandum summarized the views of the Inter-Departmental Group for Inter-American Affairs which included representatives of the White House, the CIA, the Defense Department and the State Department.
38. Id. at 44-48.
39. Id. at 27.
40. Id. at 12-13, 16.
constitute covert action. The question remains what is the legal status of such activities under international law.

IV
STATUS OF COVERT ACTION UNDER TRADITIONAL INTERNATIONAL LAW

Intervention may be defined as "any interference by a state in the affairs of another state which is meant or intended to compel certain action or inaction by which the intervening state imposes or seeks to impose its will." Intervention is generally prohibited under international law because it violates the concept of independent state sovereignty. The first expressions of this maxim can be found in the 18th century writings of Christian von Wolff and Emmerich de Vattel.

Wolf's repudiation of interventionism was total. He wrote that:

to interfere in the government of another, in whatever way indeed that may be done is opposed to the natural liberty of nations, by virtue of which one nation is altogether independent of the will of other nations in its actions. If such things are done, they are done without right. And although the less powerful may be compelled to yield at length to the more powerful, nevertheless, might confers no right which the latter does not have from any other source.

Vattel believed that each state reserved to itself an area of influence in national affairs by reason of its own independence and sovereignty, and that no other state could claim the right to intervene in this area or seek to prevent another state from exercising its due influence within its own domain. From this axiom he deduced that all nations have the right to govern themselves as they deem fit and that no nation could rightfully interfere in the government of another. Vattel concluded that "to intermeddle in the domestic affairs of another Nation or to undertake to constrain its councils is to do it an injury.

In contemporary times nonintervention is "widely accepted by the majority of jurists as the correct rule of international law and the correct behavior of nations in their international relations." However,

45. C. Von Wolff, supra note 43.
47. Id.
48. Id. at 75. But see Harcourt, Letters by Historicus on Some Questions of Inter-
there is no similar agreement in respect to how intervention should be defined. Lawrence asserts that "there can be no intervention without ... the presence of force or threats of its use." This is a viewpoint shared by many other writers. There has been a reluctance to include economic or political pressure or other acts of coercion short of direct military involvement in any definition of intervention.

The best reason to support a narrow definition of intervention is that it provides a more easily applied bright line rule. A broader definition of intervention which includes economic or political coercion not involving force could pose difficult problems in distinguishing between normal diplomacy and intervention. However, if one looks to the reason why intervention is prohibited the problem may be resolved. If the economic and political pressure is such that it violates the concept of independent state sovereignty, it constitutes intervention. While line drawing to separate legitimate diplomacy from intervention may remain problematic in some cases, it would not be difficult to conclude that when one state uses economic pressure to overthrow the legitimately elected government of another state, as the U.S. did in Chile, an act of intervention has occurred.

Several jurists have recognized that certain acts not involving force nonetheless constitute intervention. Quincy Wright was of the opinion that "officially supported hostilities, assassinations, or incitements; infiltration of government agencies; bribery of officials; espionage into official secrets; and other acts within a state's territory forbidden by its laws" may constitute acts of illegal intervention. Ann and A.J. Thomas, Jr. also advocate a definition of intervention broad enough to include covert action. In their view:

[A]ctions taken by one state to impose its will upon another against the latter's wishes with respect to the latter's right to organize its government as it sees fit, to regulate the rights and duties of its population, and to provide for the needs of its people can well be an intervention, whether or not that action is backed by force or threat thereof to its territorial domain or otherwise.

Thus, the violation of another state's independent sovereignty, and the

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52. See supra text accompanying notes 28-31.
means used to accomplish this violation are the critical factors in defining intervention.

Despite disagreement as to how to define it, most jurists maintain that the general rule prohibiting intervention is subject to various exceptions. The exceptions most often promulgated are: 1) self-defense or self-preservation; 2) upholding the balance of power; 3) humanitarian intervention; 4) intervention by treaty; 5) intervention to protect foreign nationals and property; and 6) collective intervention by an organization of states.

Although the equality and independence of sovereign states are fundamental principles of international law, Lawrence declared that "the duty of self-preservation is even more sacred than the duty of respecting the independence of others. If the two clash, a state naturally acts on the former."55 The danger threatening the intervening state, however, must be *imminent* and involve the use of armed force. "The mere fear," wrote Lawrence, "that something done by a neighbor state today may possibly be dangerous to us in the future if that state should happen to become hostile, is no just ground of intervention."56 This exception is consistent with the principle of independent sovereignty in that the state acting to protect itself is doing so in order to protect its sovereignty and independence.57

In deference to the right of a state to enter into contracts Lawrence maintained that "intervention in pursuance of a right to intervene given by treaty is technically justifiable."58 As to humanitarian intervention, Lawrence believed it better not to establish a formal rule, trusting that "each case must be judged on its own merits."59

Lawrence looked with disfavor upon all other justifications put forward in defense of intervention, particularly arguments made in favor of intervening to maintain a balance of power. Lawrence asserted this type of intervention was fatal to international progress both as an attempt to "stereotype the existing order of things" and as a mere "cloak for ambitious scheme."60 Lawrence's opinion concerning interference in internal strife is worth quoting: "Any intervention in an internal struggle is an attempt to prevent the people of a state from settling their own affairs their own way, and as such, a gross violation of natural independence."61

In sum, although Lawrence generally maintained that nations

55. LAWRENCE, supra note 50, at 127.
56. Id. at 118.
57. A state which has provoked an attack cannot claim this exception.
58. LAWRENCE, supra note 50, at 118.
59. Id. at 120.
60. Id. at 128.
61. Id. at 126.
should refrain from meddling in the government or policies of other nations, there were some areas where he believed it was justified; in these Lawrence urged intervention as a rejection of isolationism. “[States] should intervene very sparingly, and only on the clearest grounds of justice and necessity; but when they do intervene, they should make it clear to all concerned that their voice must be attended to and their wishes carried out.”

Oppenheim was another jurist who supported the principle of non-intervention. “That intervention is, as a rule, forbidden by international law, which protects the international personality of the state, there can be no doubt,” he declared. Oppenheim warned this rule had exceptions, then proceeded to list enough of them to practically emasculate it. He recognized seven instances where a state could intervene by right and technically refrain from violating the independence or personal supremacy of a state. Those were: 1) intervention in the external affairs of a state held as a protectorate by the intervening state; 2) intervention where two states share a common interest in the external affairs of a state held as a protectorate by the intervening states; an external matter and one seeks to deal with it unilaterally; 3) intervention sanctioned by treaty; 4) intervention to enforce a universally recognized custom of international law; 5) intervention to maintain a form of government guaranteed by treaty; 6) intervention to protect foreign nationals and property; and 7) collective intervention sanctioned by an international organization, such as the League of Nations or the United Nations. In addition, Oppenheim supported humanitarian intervention and intervention on grounds of self-preservation.

Hall’s position is remarkably similar to that of Oppenheim. “Though as a general rule,” writes Hall, “a state lies under an obligation to respect the independence of others, there are rights which may in certain cases take precedence of the right of independence.” The exceptions are principally the same as those offered by Oppenheim, except Hall opposes intervention under a treaty of guarantee on the

62. Id. at 135.
64. Id. at 306.
65. Id.
66. Id. at 307.
67. Id. at 308.
68. Id. at 309.
69. Id.
70. Id.
71. Id. at 312.
72. Id. at 310.
73. W. E. HALL, A TREATISE ON INTERNATIONAL LAW, 294 (7th ed. 1917).
grounds that the right to select means of governance is too consequential to be contracted away.74

Bustamante, on the other hand, recognized only one exception to the rule of nonintervention, that being collective intervention on the behalf of an organization of states.75 In the eyes of the Cuban jurist, to allow intervention under any other circumstances would naturally result in injustice and lawlessness. Refuting the arguments of some of his contemporaries, Bustamante reasoned that "[t]he independence and sovereignty of the weaker States are reduced to an empty formula if the strong can impose their will, adopting various coercive measures, with the strong as the only judge of their methods, their opportunity and their reach."76

Bustamante went on to articulate a beautifully coherent rationale for the rule of nonintervention:

[N]inguna regla de derecho debe ser de tal indole que en una sociedad de iguales la tengan a su disposición los poderosos y estén imposibilitados de invocarla y de usarla los humildes. Toda regla or remedio jurídico que no esté sino al servicio de unos pocos para su ventaja y el daño de los demás, constituye un monopolio y un privilegio, y con ello se convierte necesariamente en una injusticia. . . . Intervenir no es un derecho y, en cambio, para honor de la vida internacional, no intervenir debe ser un deber.77

As a consequence of their frequent subjugation at the hands of the European powers and the U.S.,78 the Latin American countries led the way in the modern formulation of the doctrines of nonintervention. The 1826 Congress of Panama marked the first instance of official international recognition of an absolute prohibition of the need for intervention by states in each other's internal affairs.79 In attendance, were the states of Columbia, Central America, Mexico, and Peru. Led by Simon Bolivar, the Congress declared its determination to maintain "the sovereignty and independence of all and each of the confederated powers of America against foreign subjection."80 A similar view was enunciated by a treaty signed at the conclusion of the American Congress of 1848 by Bolivia, Chile, Ecuador, New Granada, and Peru. This

74. Id. at 301.
75. A. S. BUSTAMANTE Y SIRVEN, DERECHO INTERNACIONAL PÚBLICO 439-441 (1933).
76. Id. at 310.
77. [T]here should be no rule of the law in a society of equals which is intended solely for the use of the powerful and is unavailable to the humble. Any legal rule or remedy which is at the service of only a few for their advantage and to harm others, is a monopoly and a privilege, and is therefore necessarily an injustice. . . . Intervention is not a right, on the other hand, to preserve the honor of international life, non-intervention is a duty.
79. Id. at 55.
80. Id. at 56.
treaty expressed the parties' solidarity in the face of any foreign intervention attempting to alter their institutions or change their policies.\textsuperscript{81} Neither of these documents became binding treaty law, however, as the signatories subsequently failed to ratify them.\textsuperscript{82}

Two Argentinean jurists, Dr. Carlos Calvo and Dr. Luis Drago, contributed greatly to the formulation of the doctrine of nonintervention. Calvo published a treatise in 1868 advocating that intervention for the purpose of rectifying private claims against a government be considered illegal, even if these claims resulted from civil war or internal strife.\textsuperscript{83} Drago extended this position further, believing that any use of force to pressure a state into paying debts owed to foreign governments should be considered illegal as well.\textsuperscript{84}

Beginning in 1902, many attempts were made to reduce the emerging Latin American doctrine of nonintervention to a codified legal rule, particularly one which would bind interventionist tendencies of the United States. Attempts to accomplish this were frustrated by the U.S., usually on the grounds that in some cases interventionary expeditions were justified in order to protect the lives and property of foreign nationals.\textsuperscript{85} This obstruction was first overcome during the Seventh International Conference of American States held in Montevideo in 1933. The Convention on Rights and Duties of States issued at the conclusion of the conference, to which the U.S. was a signatory, declared that "no state has the right to intervene in the internal or external affairs of another."\textsuperscript{86} The legal position of the doctrine of nonintervention was solidified three years later at Buenos Aires with the adoption of the Additional Protocol Relative to Non-Intervention. This document declared "inadmissible the intervention of any [of the parties to the treaty], directly or indirectly, and for whatever reason, in the internal or external affairs of any other of the Parties."\textsuperscript{87} The U.S. government agreed to this treaty without reservation as well.

This review of traditional law reveals a basic rule against intervention and a number of exceptions to this general rule. Two questions remain: 1) whether covert action is indeed intervention and 2) if so, can it ever be justified under any of the exceptions to the rule. Assuming that one adopts the broader definition of intervention — that intervention need not require use or threat of force — covert action would be intervention because by definition it seeks to "interfere in the sover-

\textsuperscript{81} Id.
\textsuperscript{82} Id.
\textsuperscript{83} Id. at 56-57.
\textsuperscript{84} Id. at 57.
\textsuperscript{85} Id. at 60.
\textsuperscript{86} Id. at 62.
\textsuperscript{87} Id. at 62-63.
eign affairs of other states." Assuming that covert action is intervention, its very nature would strongly suggest it never would fall into any of the exceptions to the noninterventionary norm. If covert action was justifiable, there would be no need for it to be clandestine.

V

THE STATUS OF COVERT ACTION UNDER THE LAW OF THE UNITED NATIONS

The United Nations has become the primary source of the rules of international behavior since World War II. As one writer pointed out in regards to the U.N. Charter, the principle of nonintervention between states is "everywhere implicit." Article 1 of the U.N. Charter sets forth the four purposes of the organization, one of which is "to maintain international peace and security," a task which includes the suppression of "threats to the peace," "acts of aggression" and "other breaches of the peace." Another is "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of people." Article 2(1) goes on to base the organization on "the principle of the sovereign equality of all its members." Articles 2(3) and 2(4) require Member States to utilize peaceful means in the settlement of disputes and to refrain from the use of force.

Article 2(4) states:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any manner inconsistent with the Purposes of the United Nations.

The proper interpretation of this short phrase is the subject of considerable debate. Some have advocated the position that "threat or use of

88. See text discussion at 143-44, sec. IIC.
89. There is a lively debate over what legal significance should be accorded resolutions of the General Assembly. See Warren W. Kim, The Legal Significance of Resolutions Adopted by the General Assembly of the United Nations 39, 55-58 (1975). Kim's position is that some General Assembly resolutions must be granted binding legal force depending on the situation to which they are intended to be applied. Id. at 56-57, 549-550. The resolutions mentioned herein are discussed from the perspective that, regardless of whether they are technically binding, they represent the majority opinion of the United Nations and therefore must be granted strong persuasive authority. Id. at 550-551; Oppenheim, supra note 63, at 424; Louis Henkin, How Nations Behave: Law and Foreign Policy 168 (1968).
91. U.N. Charter, art. 1.
92. Id.
95. U.N. Charter, art. 2, para. 4.
96. Rifaat, supra note 1, at 120.
force" refers to both armed and non-armed force. Thus, Article 2(4) would prohibit the use of the economic and political pressures and the indirect subversion which is an integral part of covert action. Most scholars, however, interpret Article 2(4) as prohibiting only the threat or use of armed forces. This position has been advocated because the primary purpose of the U.N. is to prevent war, the legislative history of the Charter supports such an interpretation, and this approach is apparent from the practice of the U.N.

That covert action is forbidden under the law of the U.N. is supported by the numerous resolutions passed by the General Assembly which assert the right to national sovereignty and the principle of non-intervention in general, while specifically condemning particular tactics used in covert action.

The General Assembly began to come to grips with the international problems created by covert activity with the passage of Resolution 290(IV) in 1949. Referred to as the "Essentials of Peace" Resolution, this enactment called upon every nation to "refrain from any threats or acts, direct or indirect, aimed at impairing the freedom, independence or integrity of any State, or at fomenting civil strife and subverting the will of the people in any state." Resolution 1236(XII) passed in 1957, declared that "peaceful and tolerant relations among States" should be based upon "respect for each other's sovereignty, equality and territorial integrity and nonintervention in one another's internal affairs."

The first General Assembly resolution specifically prohibiting covert action was Resolution 2131(XX). Entitled the "Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States"...
and the Protection of Their Independence and Sovereignty," this reso-
lution was based on proposals made by the Soviet Union, nineteen
Latin American States, and the United Arab Republic, whose draft res-
olution was co-sponsored by 26 other non-aligned countries. During
the debate on this resolution, Mr. Rossides, of Cyprus, called the draft
declaration "a historic document of no less importance than the other
historic declaration against colonialism." The declaration contained
a long preamble which restated the aims and purposes of the U.N. and
noted the importance of recognizing State sovereignty and freedom to
self-determination in the current political atmosphere. The preamble
also reaffirmed the position taken by the Third World nations on the
principle of nonintervention, as expressed by regional organizations
and at varied conferences. Finally, it connected the observance of the
principle of nonintervention with the fulfillment of the purposes and
principles of the U.N.

The eighth preambular paragraph of Resolution 2131(XX) states
that "direct intervention, subversion and all forms of indirect inter-
tervention are contrary" to the principles of the U.N. and, "consequently,
constitute a violation of the Charter of the United Nations." The
operative portion of the declaration consists of eight paragraphs, the
first of which makes clear there can be no "intervention as of right":

1. No State has the right to intervene, directly or indirectly, for any
reason whatever, in the internal or external affairs of any other State.
Consequently, armed intervention and all other forms of interference
or attempted threats against the personality of the State or against its
political, economic and cultural elements, are condemned.

In another paragraph the Resolution precisely defined the scope of its
prohibition against intervention, demonstrating the illicit status of cov-
ert activities:

2. No State may use or encourage the use of economic, political or
any other type of measures to coerce another state in order to obtain
from it the subordination of the exercise of its sovereign rights or to
secure from it advantages of any kind. Also, no state shall organize,
assist, foment, finance, incite or tolerate subversive, terrorist or armed
activities directed toward the violent overthrow of the regime of an-
other State, or interfere in civil strife in another State.

Resolution 2225(XXI) reaffirmed the principles and rules ex-

107. Id. at 8. The other historic document referred to is the "Declaration on the Granting of
109. Id.
110. Id.
pressed in Resolution 2131 (XX), urged "the immediate cessation of intervention, in any form whatever, in the domestic or external affairs of States," and condemned "all forms of intervention . . . as a basic source of danger to the cause of world peace."111 Finally, the Resolution called upon all states to, "refrain from armed intervention or the promotion or organization of subversion, terrorism or other indirect forms of intervention for the purpose of changing by violence the existing system in another State or interfering in civil strife in another State."112

By Resolution 2625 (XXV), the General Assembly adopted the "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations."113 The Declaration had its origins with the first meeting of the Special Committee on the Principles of International Law held in 1964 in Mexico City.114 This impressive document asserted seven basic principles of international law, then elaborated how these principles were to be realized. In the view of Mr. Sahovic from Yugoslavia, these principles were derived from the Charter and represented "the present stage of development of legal thinking on the application of the fundamental principles of the Charter and on contemporary international law."115

The seven principles embodied in the Declaration were: a) the principle prohibiting the threat or use of force in international relations; b) the principle requiring the peaceful settlement of disputes; c) the duty of nonintervention; d) the duty of states to cooperate with each other; e) the principle of equal rights and self-determination of all people; f) the principle of sovereign equality of states; and g) the good faith duty of states to fulfill their obligations under the Charter.

In its discussion of the first principle — that states refrain from the threat or use of force — the Declaration emphasizes the duty of each state "to refrain from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another state."116 In addition, the Declaration insists that every state has a duty "to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or to allow such acts to be operated from its territory."117

112. Id.
114. Id.
117. Id.
During the Sixth Committee's consideration of the report of the Special Committee which contained the final draft of the Declaration, Canada's Mr. Lee wanted to insure that the principle of nonintervention would, "be broad enough to embrace one of the most dangerous current forms of intervention, namely, intervention which began in a clandestine manner and which employed the techniques of subversion and terrorism." Mr. Lee was satisfied that the Declaration had accomplished this by incorporating the dictates of Resolution 2131(XX) under its elaboration of the principle of nonintervention. The preamble urged the strict observance of this principle, "since the practice of any form of intervention not only violates the spirit and letter of the Charter, but also leads to the creation of situations which threaten international peace and security." In its preamble and in its restatement of Resolution 2131 (XX), the Declaration reaffirms the delictable nature of economic and political forms of coercion, in addition to those which involve military means.

That the nations of the U.N. consistently oppose covert action is demonstrated in more recent resolutions. Resolution 31/91, adopted by the General Assembly in 1975, recognizes the widespread use of a variety of "direct and indirect techniques, including withholding assistance and the threat of withholding assistance, subtle and sophisticated forms of economic coercion, subversion and defamation with a view to destabilization." The resolution reaffirmed the right of every state to determine its affairs free from foreign interference and denounced:

any form of interference, overt or covert, direct or indirect, including recruiting or sending mercenaries, by one State or group of States and any act of military, political, economic or other form of intervention in the internal or external affairs of other States, regardless of the character of their mutual relations or their social and economic systems.

By Resolution 31/92 the General Assembly reaffirmed, "its opposition to any threats of use of force, intervention, aggression, foreign occupation and measures of political and economic coercion which attempt to violate the sovereignty, territorial integrity, independence and security of States."

Resolutions 32/153 and 32/154 again called upon member states to respect the principle of noninterference in the internal affairs

120. Id.
122. Id.
of states, as does the "Declaration on the Preparation of Societies for Life in Peace," Resolution 33/73.126 Again and again the General Assembly hammered home the importance of the principle of nonintervention as a maxim of international law. The fifth operative paragraph of Resolution 33/75, passed in 1978, states that the General Assembly, "Reaffirms its opposition to any threat or use of force, intervention, aggression, foreign occupation or measure of political and economic coercion which attempts to violate the sovereignty, territorial integrity, independence and security of States or their right to freely dispose of their natural resources."127 This identical language can be found in Resolution 34/100, which was adopted the following year.128

Resolution 34/103 addressed the inadmissibility of the policy of "hegemonism" in international relations and defined that term as the "manifestation of the policy of a State, or a group of States, to control, dominate and subjugate, politically, economically, ideologically or militarily, other States, peoples or regions of the world."129 The resolution, inter alia, called upon states to observe the principles of the Charter and the principle of nonintervention. By this resolution it was declared that the General Assembly, "Resolutely condemns policies of pressure and use or threat of use of force, direct or indirect aggression, occupation and the growing practice of interference and intervention, overt or covert, in the internal affairs of states."130

The General Assembly passed another resolution dealing with this subject matter toward the end of 1980. Resolution 35/158 addressed a number of conflicts in the world which were seen to constitute threats to international peace and security, including colonialism, neo-colonialism, apartheid, and the division of the world into spheres of influence. In order to reduce these tensions and strengthen international security, the resolution declared that it strongly condemned, "any act of violation of the Charter . . . by the use of military force or intervention and interference or by more subtle and insidious means of subversion and destabilization, or by any form of political, economic, military, psychological, financial or ideological pressure."131

Finally, late in 1981, the "Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States" was adopted by the General Assembly through Resolution 36/103.132 The declaration set forth a number of specific rights and duties said to fol-

130. Id.
low from the principle of nonintervention. One of the duties imposed upon states by the Declaration was:

The duty of a State to refrain from armed intervention, subversion, military occupation or any other form of intervention and interference, overt or covert, directed at another State or group of States, or any act of military, political or economic interference in the internal affairs of another State, including acts of reprisal involving the use of force.¹³³

In addition, the Declaration called upon states to refrain from any action which seeks to disrupt the unity or to undermine or subvert the political order of other States,¹³⁴ training and equipping mercenaries or armed bands,¹³⁵ hostile propaganda,¹³⁶ and the use of "external economic assistance" programs or "transnational and multinational corporations under its jurisdiction and control as instruments of political pressure and control."¹³⁷ This Declaration thus explicitly prohibits the use of the tactics of covert action against other states.

Thus, the clandestine, coercive and interventionary characteristics of covert action render it forbidden under the law of the United Nations. Clearly, the Charter implicitly forbids intervention, clandestine or otherwise, in the internal affairs of sovereign states.¹³⁸ Many member states and international legal scholars are prepared to go one step further and argue that this prohibition is explicit as well.¹³⁹ It should be noted that the law of the U.N. has not recognized many of the traditional exceptions to the doctrine of nonintervention and instead has limited the justifications for interventionary behavior to those instances where there is collective intervention by the U.N. or some other regional organizations¹⁴⁰ or for purposes of immediate self-defense from an armed attack.¹⁴¹

As we have seen in the case of Chile, covert actions cannot generally be justified by either of these circumstances.¹⁴² Nor can such justifications be offered for U.S. actions in Nicaragua.

VI
THE CASE OF NICARAGUA

In November of 1982, an article appeared in *Newsweek* magazine

¹³³. *Id.* at 80, sec. II, para. (c).
¹³⁴. *Id.* para. (f).
¹³⁵. *Id.* para. (g).
¹³⁶. *Id.* para. (j).
¹³⁷. *Id.* para. (k).
¹³⁸. *See supra* text accompanying notes 92-104.
¹³⁹. *See supra* note 97 and accompanying text.
¹⁴⁰. *See Vincent, supra* note 90, at 298.
¹⁴¹. *Id.*
¹⁴². *See supra* text accompanying notes 37-41.
which charged that the U.S. Ambassador to Honduras was overseeing a covert action program of harassment directed against the Sandinista government of Nicaragua.\textsuperscript{143} Ostensibly designed to halt an alleged flow of Cuban arms into El Salvador, the operation's real purpose, according to \textit{Newsweek}, may be to destabilize and eventually overthrow the Sandinista government.\textsuperscript{144} The \textit{Newsweek} article claimed extensive U.S. involvement in the destabilization program, which at the time included the participation of the Honduran Army, a few bands of disgruntled Miskito Indians, Argentinean intelligence officers, and the remnants of overthrown dictator General Anastasio Somoza Debayle's national guard, the \textit{Somocistas}.

Later, a "senior national security official" for the U.S. admitted his government was involved in "supporting clandestine hit-and-run paramilitary raids into Nicaragua and skirmishes with the Nicaraguan Army."\textsuperscript{145} The official also disclosed that the U.S. was supplying military equipment, money and training to the insurgents, although he denied that the U.S. was attempting to overthrow the Sandinista government.\textsuperscript{146} The President himself confirmed these statements. Speaking before a group of reporters at the White House, Mr. Reagan expressed his views on Congressional efforts to restrict U.S. aid to the \textit{contras}\textsuperscript{147} seeking to overthrow the Nicaraguan government:

they want to tell us that we can give money, and do the same things we've been doing — money, giving, providing assistance and so forth to these people directly — and making it overt instead of covert, that's alright with me. I just don't want the restrictions put on it that they might put on.\textsuperscript{148}

This admitted U.S. support for the Nicaraguan insurgents had resulted in serious consequences for Nicaragua. During 1983 alone, the armed bands supported by the U.S. were responsible for the deaths of over 600 Nicaraguans, 346 of them civilians, and a reported 514 kidnappings.\textsuperscript{149}

U.S. involvement in covert guerrilla activities against Nicaragua began with an agreement between the Reagan administration and the

\begin{flushleft}
144. \textit{Id.}
146. \textit{Id.}
147. \textit{Contrar} derives from \textit{contrarevolucionarios} (counterrevolutionaries) and refers to opponents of the Sandinista government.
\end{flushleft}
military regime of the Argentine Leopoldo Galtieri. Under the arrangement, the Argentineans assumed primary responsibility for arming and training guerrillas for the alleged purpose of stopping military supplies from reaching El Salvador and Guatemala from Nicaragua. Hector Frances, a former operative for the Argentine intelligence service in Central America, revealed that the guerrilla groups were created by the Argentineans "under pressure from the United States, which is always present in these processes." The origin of the contras as an organized fighting force can be traced to the arrival of fifty ex-Somocista National Guards in Argentina for guerrilla training toward the end of 1980. Subsequently, the contra movement went through a period of "rapid, easy growth," and at the beginning of 1982, after having reached an agreement in Miami to unite, the so-called Nicaraguan Democratic Forces (NDF) were formed. Frances, credits this rapid and easy growth:

Primarily to the contribution of an extraordinary amount of capital by the United States. This capital was reflected in the creation of a number of camps, in the arming of thousands of men, in the food and housing provided for thousands of men. It paid the salaries and provided the monetary support for the ones who lead the counter-revolution for paramilitary advisor’s like myself.

U.S. support for armed aggression against the Nicaraguan government is not limited to the NDF in Honduras. The U.S. provides financial and other assistance to several anti-Sandinista political and military groups. Frances disclosed that the CIA gave substantial support to Edén Pastora Gomez, “not only by providing him with advice... but also by providing him with an important flow of capital which allows him to pay the salaries of mercenaries aligned to his group.” The U.S. is also “directly involved in planning, arming and advising paramilitary forces based in Honduras and [is] providing them with intelligence data.”

Clearly, these actions by the U.S. are typical of the tactics of covert

151. Id.
153. Id.
154. Id. at 5.
155. Id.
156. Id. at 7-12.
157. Edén Pastora Gomez was a former participant in the Nicaraguan revolution who now associates with the contras. Id. at 10.
158. Id. at 10-11.
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action. Those listed above fall squarely into Bissel's eighth covert action category: "paramilitary or political action operations designed to overthrow or to support a regime." The development of paramilitary contra forces, must have involved other tactics of covert action such as providing "political advice and counsel" "subsidies to . . . individual[s]," and "private training of individuals and exchange of persons."

The U.S. may also be involved in disseminating what Bissell called "covert propaganda," also known as "black propaganda" or "disinformation" in intelligence circles. Covert propaganda is used to heighten tensions, polarize the population and undermine public confidence in leaders.

In 1981, Pedro Joaquin Chamorro, Jr., an executive of the Nicaraguan daily, La Prensa, gained a seat on the Board of Directors of the Inter-American Press Association (IAPA) and was made an Assistant Director at the newspaper. The IAPA has been identified as a CIA-controlled organization which provides the technical assistance to conservative Third World newspapers which enables them to conduct psychological warfare. These psychological warfare techniques are "intended to build negative subliminal impressions regarding targeted government officials." Simple techniques are employed, "photos of or headlined stories about target officials are juxtaposed with other unrelated photos and news items which project a negative association onto the target. Symbols are used to make the associations and are designed to be specific to the target population." Soon after the La Prensa/IAPA connection was made, examples of this type of manipulation began to regularly appear on the pages of the Nicaraguan daily. These occurrences have led some observers to believe that CIA subversion of La Prensa has occurred and that the newspaper is being used to spearhead a covert propaganda campaign critical of the Sandinista government.

There is also evidence that the contras have attempted or are plan-

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160. Marchetti & Marks, supra note 10, at 41.
161. Id.
162. Id.
163. Landis, CIA Media Operations in Chile, Jamaica and Nicaragua, 16 Covert Action 32, 35 (1982).
164. Id. at 33, 34.
166. Id. at 5.
167. See Landis, supra note 163, at 33-35.
168. See Landis, supra note 163; Crabtree, supra note 165.
ning the assassination of Nicaraguan political leaders. In June of 1983, the Nicaraguan government accused a U.S. diplomat, Ermila L. Rodriguez, of overseeing a secret plot to "kill or incapacitate" the Nicaraguan Foreign Minister.

Economic coercion has also been utilized aggressively against Nicaragua. The Reagan regime blocked loans to Nicaragua which had been approved by the Carter administration and were intended to allow the Sandinistas to buy grain and reconstruct their war-ravaged economy. The Reagan administration also moved to block approval of a 30 million dollar request made to the Inter-American Development Bank (IADB). In June of 1983, the Reagan administration vetoed a Nicaraguan loan request to the IADB, which was to be used to build roads to serve small coffee farms. These actions in the IADB were taken despite the fact that "[t]he charter of the Inter-American Bank in which 43 governments are members, stipulates that it is nonpolitical development agency set up to make loan decisions on technical criteria alone."

In a move which the White House admitted was "an additional form of pressure on the Sandinista Government," the U.S. reduced the quota of sugar it buys from Nicaragua by 90%. Since the bulk of the Nicaraguan sugar crop is sold to the U.S., the Sandinistas stood to lose at least 54 million dollars annually by this action.

To a country as poor as Nicaragua, economic actions such as these can have a debilitating effect on the stability of the government. When combined with other covert methods, which further drain economic resources, the effect can be devastating.

Standing alone, these paramilitary, economic, and propaganda, efforts are enough to raise an inference of a program of covert action directed against the Sandinistas, in clear violation of the international norm of nonintervention. Such acts are in direct violation of a number of U.N. resolutions which specifically forbid military aid, arms supply, black propaganda and other attempts to influence a govern-

169. Hector Frances has reported that large scale assassination plans had been made at least on one instance. Frances, supra note 152, at 8.
171. Crabtree, supra note 165, at 3.
172. Id.
173. Id.
175. Id.
178. See supra text accompanying notes 91-142.
ment by coercion specifically.\textsuperscript{179}

The illegal status of these acts is further enhanced through reference to their illicit purpose which has been openly admitted by the U.S. government.\textsuperscript{180} The design of the Reagan administration has always been to "harass" the Sandinista government into adhering to the policies which Washington would like to see emanate from Managua.

The Reagan regime claims this harassment stops short of attempts to overthrow the Nicaraguan government. However, illumination of the Reagan regime's illegitimate aims can be found in the Summary Paper on U.S. Policy in Central America and Cuba Through F.Y. '84.\textsuperscript{181} The document reflects concerns highly similar to those which motivated U.S. covert action against the Allende government in Chile.\textsuperscript{182} In its opening paragraph the document states:

Strategically, we have a vital interest in not allowing the proliferation of Cuba-model states which would provide platforms for subversion, compromise sea lanes and pose a direct military threat at or near our borders. This would undercut us globally and create economic dislocation and a resultant influx to the U.S. of illegal immigrants.\textsuperscript{183} The document also approvingly notes that "in Nicaragua, the Sandinistas are under increased pressure as a result of our covert efforts and because of the poor state of their economy."\textsuperscript{184} As a key part of U.S. strategy in the region, it was assumed that there would be "[s]ignificant covert effort as approved in National Security Decision Directive 17\textsuperscript{185} and other existing authorities."\textsuperscript{186}

In summary, the U.S. is engaging in a number of actions typically associated with covert activity. That the purpose of these acts is to violate the independent sovereignty of the government of Nicaragua can easily be inferred. Financial support for groups which seek to overthrow the Sandinistas cannot be understood as anything else but an attempt to overthrow the legitimate government of Nicaragua. The economic and propaganda pressure created by U.S. actions strongly support such an inference.

The relative brashness and openness with which this campaign is being conducted should not be construed as evidence that this is not

\textsuperscript{179} See supra text accompanying notes 120-141.
\textsuperscript{180} See supra note 148 and accompanying text.
\textsuperscript{181} Reprinted in N.Y. Times April 7, 1983, at A16, col. 1 [hereinafter cited as Summary Paper].
\textsuperscript{182} See supra text accompanying notes 135-139.
\textsuperscript{183} Summary Paper, supra note 181.
\textsuperscript{184} Id.
\textsuperscript{185} National Security Decision Directive 17, approved in November 1981, is the blueprint for U.S. covert activities against Nicaragua.
\textsuperscript{186} Bonner, President Approved Policy of Preventing Cuba-Model States, N.Y. Times, April 7, 1983, at A1, col. 1.
"covert action." The critical feature of covert action is that the actor country retains the option of denying responsibility for its acts. The U.S. has yet to openly acknowledge that its efforts are designed to overthrow the Sandinista government of Nicaragua. This is largely in recognition of the adverse effects such as disclosure would produce. This is confirmed by a Presidential report stating "we continue to have serious difficulties with the U.S. public and Congressional opinion, which jeopardizes our ability to stay the course. International opinion, particularly in Europe and Mexico, continues to work against our policies."  

Because their purpose is to violate the sovereignty of Nicaragua, the U.S. actions are clearly interventionary. The tactics employed and the absence of official acknowledgement that the goal is to overthrow the Sandinista government make these actions covert. In either case, the U.S. actions are in violation of international law and the norms of the United Nations.

VII
Conclusion

The preceding survey of international law from both traditional and U.N. sources demonstrates the illegality of covert action. Under traditional law, covert action is illegal because it seeks to violate the sovereignty of sister states and can rarely be justified under one of the exceptions to the rule of nonintervention.  

Under the laws of the U.N., covert actions which threaten the sovereignty of other states are at least implicitly prohibited by the U.N. Charter and are explicitly denounced by numerous U.N. resolutions. An examination of U.S. actions in Chile and Nicaragua reveals that the U.S. has and is currently engaging in illegal covert action.

As Fenwick pointed out, "governments have gone ahead and done what they thought they had a right to do without finding any great difficulty in formulating legal justification for their conduct." This statement aptly describes the posture the U.S. has taken vis a vis the Third World and raises the difficult question of what good is the formulation of legal rules prohibiting covert action if these rules are never invoked or enforced?

Some scholars contend that even in the absence of authoritative structure to enforce international law, such rules are useful because they help form certain noninstitutional norms which most states will

188. See supra text accompanying notes 44-88.
189. See supra text accompanying notes 89-142.
190. Fenwick, supra note 51, at 646.
recognize as limits on their conduct.191 Although all nations can be hostile, suspicious and jealous, to some extent they are rational as well and recognize the impossibility of pursuing national goals in a completely anarchistic, "dog-eat-dog" world. Peaceful relations between states, diplomatic negotiations, and even the conduct of warfare all presuppose the existence of at least a modicum of ground rules to facilitate the interaction between states. While international law does not serve as an absolute prohibition on anti-social activity like covert action, it is, at the very least, an expression of the norms of conduct existing within a system of order.

When a state engages in covert action against another state, it is operating in violation of international law and international norms of conduct. Yet a state does not deny the relevance of international noninstitutional norms by engaging in covert activity. By attempting to keep its activities hidden, the aggressor state pays homage to the applicability and moral force of the existing norms of conduct.

If covert action is to be stopped it must be exposed. Whenever it occurs, the moral force of the community of nations must be brought to bear upon the perpetrator. The U.N., the International Court of Justice and the regional international organizations all provide adequate forums for public revelation and censure. Official diplomatic channels should be utilized to transmit charges of covert action in order to demonstrate their gravity, but the utility of the mass media should not be overlooked. Those nations that choose to ignore international moral pressure will become isolated to a greater and greater extent. They will become international outlaws. The great majority of nations, however, eager to remain in the community of nations, can be expected to conform their behavior to the dictates of international law.