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Covert Intervention and International Law

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regional organizations under the treaty could be accommodated. As to Mr. O'Leary's query whether the United States should take the lead in such a treaty, Mr. TIMBERG felt that it should because of its experience in the area, but other nations should be involved. The primary need was for understanding and support from Congress and the Administration and an informed public opinion with business groups being drawn in, as they were at the time of the Havana Charter.

ROGER MORRISON
Reporter

COVERT INTERVENTION AND INTERNATIONAL LAW

The panel convened at 8:30 p.m., April 25, 1975, A. A. Fatouros* presiding.

REMARKS BY THE CHAIRMAN

This panel differs from others recently held on covert intervention in that it is not intended to deal primarily with the pure policy issues of whether and how covert activities should be undertaken. It addresses instead the international legal dimensions of the problem. President Ford's casual comment in his September 16, 1974, news conference may be understood as a challenge to all those concerned with international law to determine, one way or another, its relevance to the issue. Does present-day international law have anything to say about covert intervention? Should it? If so, what is or should be the impact of legal regulation on the policies of national governments? Leaving to the speakers the issue of the lawfulness of covert intervention, the extent to which it is compatible with or infringes upon international law, I shall explore in introduction the forms and kinds of governmental activity that the term covers.

One principal distinguishing feature is that these are *covert*, secret activities; but not all secret activities constitute covert intervention. A former CIA official has provided a clear distinction between two kinds of covert operations:

(1) *intelligence collection*, primarily espionage, or the obtaining of intelligence by covert means; and (2) *covert action*, attempting to influence the internal affairs of other nations—sometimes called “intervention”—by covert means.¹

Emphasis on secrecy is not enough. It is reasonably clear moreover that we are not dealing with “intervention” in the traditional international

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¹ Richard Bissell, as quoted in the minutes of a 1968 meeting of the Council of Foreign Relations, *repr. in*, Appendix, V. MARCHETTI AND J. D. MARKS, *THE CIA AND THE CULT OF INTELLIGENCE* 357, at 359 (1974).

law sense. Oppenheim's "dictatorial interference" involves action clearly coercive in character. The point is made with exemplary clarity in a recent study:

Interference might be defined as action taken to affect the actions of others, dictatorial interference as action taken to prescribe the actions of others. The crucial, but in international relations elusive, distinction for Oppenheim's definition is that between affecting some action and prescribing its course. The notion of coercion might clarify this distinction by introducing the idea of force. . . . Coercive interference, then, might identify intervention by its use or threat of force.²

Some forms of covert intervention may reach the borderlines of the traditional meaning; others seem not to. Coercion is not always present; formal state involvement is missing, the action being "covert."

It is possible to identify at least four respects in which covert intervention is a discrete form of action, although none of them provides total distinctiveness. Total clarity in definition is impossible, but fortunately, it is also unnecessary; all that is needed is a reasonable elucidation of meaning.

First, the actor. The instrument of the intervening state will be typically its secret service, whatever its precise initials. Things are not that simple, of course; partly because of the secrecy, there is often enormous difficulty in ascertaining the actor's identity. Beyond that, the actor alone is not an adequate criterion. Diplomatic personnel for instance often double as secret agents, and then how can we tell in which capacity they are acting? Even in their capacity as such, diplomats may engage in covert action.

A closely related, though distinct, situation is the relationship between political parties. Problems arise particularly, if not solely, when one associated party or group is in power in its own state, while the others are not in theirs. We have a series of possible situations, with gradations in their connection to a government, as, for instance, in the cases of relationships among orthodox Communist parties, the assistance given to Greek resistance against the recent military dictatorship by European Socialist parties, or the recent moves around the Mediterranean by the neofascist parties of the "New Order."

The panel is not concerned, however, with private efforts to affect political outcomes in foreign countries, unless governmental aid is involved directly or indirectly. There will be no discussion therefore of such possible cases (which multinational enterprise spokesmen assure us no longer occur today) as a payment of \$1.25 million by a company to a foreign government official to ensure favorable tax treatment.

Secondly, the panel is dealing with deliberate, planned action. It is not primarily concerned with side effects of other action, whether foreseeable or not, although these might in some cases constitute intervention.

The third feature of covert intervention is that it involves material support (through funds, arms, technical advice, or promises of future

² R. J. VINCENT, *NONINTERVENTION AND INTERNATIONAL ORDER* 7-8 (1974).

support) to one political group in a foreign state. Being attempts to strengthen one political faction or to weaken another, these are primarily, in Dr. Vincent's terms, efforts to affect or influence conduct, not to prescribe. Mr. Bissell has provided a useful listing of possible action:

The scope of covert action could include: (1) political advice or 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) para-military or political action operations designed to overthrow or to support a regime. . . .³

It must be stressed that secrecy is of the essence here, not only in the sense that there would be embarrassment in disclosure, but primarily because the fundamental quality of the desired outcome differs when foreign action (or initiative) is or is not known to be present.

The fourth characteristic is closely related to the third. It has to do with the immediate goal of the intervention, which is, typically, of a domestic political character. It involves bringing to power, or retaining in power, a particular group, or influencing a group's policies in matters primarily domestic. There may be, and normally there is, a more distant goal as well, with more immediate relevance to external affairs. After all, a foreign political party is supported because it is expected (or in order to ensure) that its policies, or its very presence in power, will favor the supporting country's interests. And there may also be more specific external affairs goals: a vote in the United Nations, return of expropriated property of foreign nationals, etc. But the immediate goal remains one relating to domestic affairs, as traditionally defined.

A last point, before leaving the floor to the speakers. Is covert intervention a new phenomenon? Clearly not. There are too many examples from the past, going back to the father of the law of nations himself. It appears that as the Ambassador of Holland to France, Hugo Grotius was regularly "funded" by the French. Is then the current interest in the phenomenon merely a passing fad? I believe not, and I would cite two reasons, or rather categories of reasons. First, the incidence of international interpenetration has greatly increased in the last few decades. There are many causes: better communications, growth of a worldwide economy, more acute ideological concerns, increased interaction among peoples in various states. Although the two are by no means the same, and care should be taken to avoid confusing them, it remains true that greater interpenetration facilitates covert intervention and makes the formulation and application of clearcut rules more difficult. The second category of reasons involves changes in our perception of international law. We no longer admit passively that there may be an unbridged gap between international legal doctrine and international practice, that the principles and values embodied in the former can be routinely ignored in the latter. When con-

³ Bissell, *supra* note 1, at 364.