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# The Relevance of Human Rights Provisions to American Intelligence Activities

PATRICK COLE\*

## I. INTRODUCTION

In March, 1981, the American press reported that officials of the Central Intelligence Agency (CIA) were discussing a plan to ease restrictions that had been imposed on its intelligence-gathering operations.<sup>1</sup> These discussions stirred public concern because they involved the possibility of allowing the CIA to perform covert operations in the United States to observe perpetrators of international terrorism.<sup>2</sup> Some feared that this would lead once more to domestic spying of American citizens by the CIA, a practice contrary to its charter. After these revelations, officials in the intelligence community assured the public that such plans were only discussed but not approved.<sup>3</sup> By the end of the year, however, President Ronald Reagan signed into effect an executive order that allowed, among other things, the CIA to engage in domestic counterintelligence operations in conjunction with the Federal Bureau of Investigation (FBI).<sup>4</sup>

The reform of intelligence activities which occurred in the late 1970's reflected a public and governmental concern for the need to protect constitutional and human rights from government actions. The Carter Administration sought to curb the activities of the CIA, an agency which had violated principles of human rights as defined by international law. On January 24, 1978, President Carter signed into effect Executive Order 12,036<sup>5</sup> which sought to "provide

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1. Morgenthau, Shannon & Martin, *A CIA Spy Plot Backfires*, NEWSWEEK, Mar. 23, 1981, at 29. See also TIME, Mar. 23, 1981, at 14.

2. Mohr, *C.I.A. Aide Clarifies Stand on Restraint*, N.Y. Times, Mar. 12, 1981, at A7, col. 1.

3. *Id.* In response to the alleged changes which would allow the CIA to spy domestically, Admiral Bobby R. Inman, the Deputy Director of the Central Intelligence Agency, said that he did not approve of these proposals. The Admiral did, however, indicate that some changes would be necessary because of the threat of international terrorism.

4. Exec. Order No. 12,333, 3 C.F.R. 200, 202 (1982).

5. Exec. Order No. 12,036, 3 C.F.R. 112 (1979).

for the organization and control of United States foreign intelligence activities . . . .'<sup>6</sup> Additionally, Congress adopted the Foreign Intelligence Surveillance Act of 1978<sup>7</sup> which sought to protect the privacy of the American people by requiring judicial warrants for all electronic surveillance for foreign intelligence or counterintelligence purposes. These regulations were designed to prevent the reoccurrence of past abuses committed by the CIA.

These controls were adopted, however, to protect constitutionally-guaranteed rights only. The past transgressions of the CIA—ranging from assassination attempts on the lives of foreign leaders to the opening of mail and surveillance of American citizens—violated human rights principles. Documents such as the Universal Declaration of Human Rights prohibit invasions of privacy and intervention by foreign states in a country's domestic affairs. Although President Reagan's modification of Executive Order 12,036 still sought to protect constitutional rights by prohibiting certain measures such as assassination, it is not clear whether the latest order recognizes principles of international human rights. The CIA's past violations prompt an important question: Should the Universal Declaration of Human Rights and other documents of international law form a basis for restricting the activities of the intelligence community?

To answer this question, Part II of this article will illustrate how human rights became a part of U.S. foreign policy. Part III will examine the activities of the CIA which sparked reform by Congress and will examine whether international law sanctioned these activities. Part IV will examine whether Presidents Carter or Reagan intended the executive orders on intelligence to further human rights policies. Finally, Part V will discuss the advantages and disadvantages of supporting human rights in American foreign policy and intelligence matters.

## II. THE STATUS OF HUMAN RIGHTS IN U.S. FOREIGN POLICY

### A. *The Origin and Development of Human Rights in American Political Thought*

The United States first linked human rights to foreign policy during the Kennedy Administration when Congress passed the Foreign

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6. *Id.*

7. Foreign Intelligence Surveillance Act of 1978, Pub. L. No. 95-511, 92 Stat. 1783 (1978).

Assistance Act of 1961:<sup>8</sup>

The United States shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinction as to race, sex, language, or religion. Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries.<sup>9</sup>

The Act also required the United States government to discontinue assistance to those nations which violated human rights principles: "Except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights."<sup>10</sup> Despite this provision, however, the President may continue military aid to these countries if he certifies to the Speaker of the House of Representatives and the Chairman of the Senate Committee on Foreign Relations "that extraordinary circumstances exist warranting provision of such assistance."<sup>11</sup>

The United States' commitment to human rights can be traced to the beginning of this century. During the early 1800's, American foreign policy focused on economic and commercial expansion, while human rights did not play a significant role.<sup>12</sup> When Woodrow Wilson became president, this trend changed. President Wilson justified foreign intervention with a deeply held belief that the United States had an "exceptional mission" to spread human freedoms. This policy was one of the causes of U.S. involvement in World War I,<sup>13</sup> and it was later used as a justification for intervention in Latin America.<sup>14</sup>

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8. 22 U.S.C. §§ 2151-2443 (1979).

9. *Id.* § 2304(a)(1).

10. *Id.* § 2304(b)(2).

11. *Id.* See also *id.* § 2151n(a). Additionally, the Foreign Assistance Act of 1961 set standards for granting military and economic assistance to a country. Consideration is given to the extent of cooperation by the government in allowing an unimpeded investigation by appropriate international organizations of its human rights record. *Id.* §§ 2151n(c) & 2304(b).

12. Johnson, *Historical Perspectives on Human Rights and U.S. Foreign Policy*, 2 UNIVERSAL HUMAN RIGHTS 2, 4 (1980).

13. *Id.* at 4-5.

14. N. LEVIN, *WOODROW WILSON AND WORLD POLITICS: AMERICA'S RESPONSE TO WAR AND REVOLUTION* 8 (1968).

Meanwhile, the concepts of economic and social rights were evolving as member nations fulfilled their commitment to these principles by participating in the International Labour Organization (ILO) founded under the Versailles Treaty in 1919.<sup>15</sup> The goal of the ILO, which the U.S. joined in 1934, was to define the rights of workers and principles of social justice.<sup>16</sup>

President Franklin D. Roosevelt was involved in the enforcement of human rights as was President Woodrow Wilson. In fact, President Roosevelt combined the ideas of Wilson with his own to proclaim an "Economic Bill of Rights."<sup>17</sup> From this evolved the "Four Freedoms," the basis of Roosevelt's human rights policies.<sup>18</sup> Roosevelt believed that the hardship inflicted on people during the Great Depression demonstrated that the world needed economic, social and moral security, as well as physical security.<sup>19</sup> With his goal to expand economic and political rights in the United States, Roosevelt encouraged support for these ideas, as well as for international human rights and world peace, before a world-wide audience at the United Nations.<sup>20</sup>

After World War II, the United Nations made major strides toward the internationalization of human rights. The United Nations Charter encourages respect for human rights by member nations. In 1948, the Human Rights Commission of the UN General Assembly drafted the Universal Declaration of Human Rights,<sup>21</sup> which listed various political, civil, social, economic and cultural rights. Additionally, the Human Rights Commission spent eight years drafting the Covenant on Civil and Political Rights,<sup>22</sup> and the Covenant on Economic, Social and Cultural Rights.<sup>23</sup> These two covenants, adopted by the General Assembly in 1966, became effective ten years later.<sup>24</sup>

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15. Fagen, *The United States and International Human Rights, 1946-1977*, 2 *UNIVERSAL HUMAN RIGHTS* 19, 21 (1980).

16. *Id.* at 22.

17. *Id.* at 20.

18. *Id.* The Four Freedoms were freedom of speech and expression, freedom from fear, freedom to worship God in the individual's own way, and freedom from want.

19. *Id.*

20. *Id.*

21. *Id.* at 21.

22. *Id.*

23. *Id.*

24. *Id.* President Carter signed the covenants in 1977.

## 1. Restrictions against intervention

Various international legal documents provide for the enforcement of human rights principles. For instance, the United Nations and the Organization of American States (OAS) Charters contain provisions which strongly support state sovereignty. Both charters prohibit intervention in matters within the domestic jurisdiction of states. Article 2(7) of the United Nations Charter states:

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of the enforcement measures under Chapter VII (of the Charter).<sup>25</sup>

While this clause imposes restrictions on UN intervention, the OAS Charter's prohibition against intervention is much broader because it applies to the member states:

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements.<sup>26</sup>

The Charter of the Organization of African Unity (OAU) also prohibits such intervention. This Charter supports "non-interference in the internal affairs of States" and "respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence."<sup>27</sup> The Helsinki Final Act similarly denounced intervention. The domestic jurisdiction clause of the document requires that all participating States refrain from direct or indirect intervention.<sup>28</sup> Further, the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States

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25. U.N. CHARTER art. 2, para. 7.

26. O.A.S. CHARTER art. 15, in 2 U.S.T. 2394, 2419-20, T.I.A.S. No. 2361, 119 U.N.T.S. 3.

27. O.A.U. CHARTER art. 3, paras. 2-3.

28. HELSINKI FINAL ACT, GUIDING PRINCIPLE VI, *reprinted in* 73 DEP'T ST. BULL. 323, 325 (1975). The Final Act was signed on Aug. 1, 1975. *Id.*

in Accordance with the Charter of the United Nations contains provisions which address intervention.<sup>29</sup>

The theory of non-intervention is based on one of the most fundamental principles of international law—the doctrine of sovereign equality and independence of States.<sup>30</sup> This theory suggests that each State shall have the right to exist and to operate a government within its territory without the interference of another foreign State. How much jurisdiction a given State can enjoy over its affairs depends on which of its internal matters it has “internationalized” through treaties. According to a statement issued by the Institute of International Law, “the reserved domain is the domain of State activities where the State is not bound by international law. The extent of this domain depends on international law and varies according to its development.”<sup>31</sup> Therefore, the prohibition against intervention in the domestic affairs of a State applies to efforts by one government to curtail another government’s human rights violations, provided, however, that neither human rights in general, nor specific State action, is the subject of international obligations.

## 2. Internationalization of human rights

Although the UN Charter requires member States to take action which promotes universal respect for human rights and fundamental freedoms,<sup>32</sup> it does not internationalize all human rights. An essential question to answer, therefore, is which human rights demand recognition? It is generally assumed that the Universal Declaration of Human Rights and other related documents define “human rights” and “fundamental freedoms” for purposes of the UN Charter.<sup>33</sup> UN policy suggests that a country’s obligation to promote human rights is violated if it pursues policies which deny the enjoyment of basic

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29. 13 U.N. GAOR (188 3d plen. mtg.) at 337, U.N. DOC. A/8082 (1970), *reprinted in* [1972] U.N. JURID. Y.B. 105. For background on how the Declaration was made, see Sohn, *The Shaping of International Law*, 8 GEO. J. INT'L & COMP. L. 1 (1978).

30. I. BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 284 (2d ed. 1973).

31. 2 *Annuaire de l'Institut de Droit International* 150 (1954) *cited in* HUMAN RIGHTS AND U.S. FOREIGN POLICY 114 (P. Brown & D. Maclean eds. 1979).

32. U.N. CHARTER art. 1, para. 3 & art. 2, para. 2.

33. T. BUERGENTHAL & J. TORNEY, *INTERNATIONAL HUMAN RIGHTS AND INTERNATIONAL EDUCATION* 45-46 (1976).

human rights on a large scale.<sup>34</sup> The UN Charter implies, however, that the prohibition against intervention does not apply to governmental acts or policies involving a consistent pattern of gross violations of human rights.<sup>35</sup>

In addition to the UN Charter, a number of treaties impose specific human rights obligations on nations. For example, the Universal Declaration of Human Rights provides for the privacy of the family unit in article 12: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."<sup>36</sup> Moreover, in article 21, the Declaration affirms the right of citizens to choose their own leaders.<sup>37</sup> The Declaration also considers "full development of the human personality and . . . respect for human rights and fundamental freedoms" through the educational process is also considered a human right.<sup>38</sup>

### *B. U.S. Government's Enforcement of Human Rights*

Although the Universal Declaration of Human Rights had existed since 1948, the Carter Administration ushered in a global awareness of human rights in the late 1970's. A few years before President Carter took office, the Foreign Assistance Act of 1961 was amended to introduce more severe economic sanctions against human rights violators. The 1973 amendment boldly stated that "[i]t is the sense of Congress that the President should deny any economic or military assistance to the government of any foreign country which practices the internment or imprisonment of that country's citizens for political purposes."<sup>39</sup> Additionally, Senator Edward M. Kennedy initiated an amendment to the Act during the same year to address human rights

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34. HUMAN RIGHTS AND U.S. FOREIGN POLICY, *supra* note 32, at 115.

35. *Id.* See generally, E.S.C. Res. 1503, 48 U.N. ESCOR Supp. (No. 1A) at 8-9, U.N. Doc. E/4832/Add. 1 (1970), reprinted in L. SOHN & T. BUERGENTHAL, BASIC DOCUMENTS ON INTERNATIONAL PROTECTION OF HUMAN RIGHTS 111 (1973).

36. Universal Declaration of Human Rights art. 12, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

37. *Id.* art. 21.

38. *Id.* art. 6, para. 2. See also Hassan, *The Right to Be Different: An Exploratory Proposal for the Creation of a New Human Right*, 5 LOY. L.A. INT'L & COMP. L.J. 67 (1982).

39. Foreign Assistance Act of 1973 § 32, Pub. L. No. 93-189, 87 Stat. 714, 733 (1973).



abuses in Chile.<sup>40</sup> In 1974, other human rights measures were adopted which placed restrictions on trade with human rights violators and withdrew security assistance to countries that practiced torture.<sup>41</sup>

Congress further strengthened its commitment to human rights in 1976 by amending section 502B of the Foreign Assistance Act. This amendment established a mandatory cutoff of security assistance for gross human rights violators.<sup>42</sup> Congress also required that full reports must be submitted by the Secretary of State on behalf of those countries requesting security assistance concerning those countries' observation of internationally recognized human rights.<sup>43</sup>

This strengthening of human rights enforcement by the U.S. government was followed by an even more aggressive policy by President Carter. In an address before the United Nations, he declared the United States' strong commitment to human rights:

We in the United States accept this responsibility [of promoting human rights] in the fullest and most constructive sense. Ours is a commitment, and not just a political posture. I know perhaps as well as anyone that our own ideals in the area of human rights have not always been attained in the United States, but the American people have an abiding commitment to the full realization of these ideals. And we are determined, therefore, to deal with our deficiencies quickly and openly.<sup>44</sup>

While recognizing an obligation to promote all human rights, as defined by the Universal Declaration of Human Rights, the President seemed to emphasize a need to defend those human rights which were fundamental. Secretary of State Cyrus Vance further outlined what the Carter Administration meant by human rights: the right to be free from governmental violation of the integrity of the person; the right to food, shelter, health care, education; and the right to enjoy civil and political liberties.<sup>45</sup>

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40. *Id.* § 35, 87 Stat. at 734.

41. Congress adopted the Jackson-Vanik amendment which conditioned trade on the existence of favorable emigration policies. *See* Trade Act of 1974, 19 U.S.C. § 2432 (1980).

42. *See* International Security Assistance and Arms Export Control Act of 1976 § 502B(a), Pub. L. No. 94-329, 90 Stat. 729, 748 (1976)(amending the Foreign Assistance Act of 1961).

43. *Id.* § 502B(b), 90 Stat. at 748-49.

44. Address by President Jimmy Carter to the General Assembly of the United Nations, Mar. 17, 1977 reprinted in 1 PUB. PAPERS 450 (1977).

45. Vance, *Human Rights and Foreign Policy*, 76 DEPT ST. BULL. 505 (1977)(Address by Secretary of State Vance to students at the University of Georgia School of Law at Athens, Georgia on Apr. 30, 1976).

The Carter Administration vigorously enforced its policy. By the end of 1978, the U.S. had opposed fifty-two loans to sixteen countries on human rights grounds.<sup>46</sup> In other instances, countries were notified that the human rights concerns of the Carter Administration would result in a vote against a loan from an American bank. In February, 1977, the Carter Administration reduced its assistance to Argentina and two other countries. This was believed to be the first time a country had publicly announced a reduction in foreign aid on human rights grounds.<sup>47</sup> In July, 1978, the United States Export-Import Bank withheld a \$270 million loan for Argentina because of human rights violations.<sup>48</sup> This produced an angry reaction from American businessmen in that country as well as from Argentine officials.<sup>49</sup>

President Carter issued Executive Order 12,036 which clarified and restricted the duties of the American intelligence community. While the Executive Order appears, on the surface, to protect some human rights principles enunciated by the Universal Declaration of Human Rights, it is difficult to determine whether a direct link exists between Carter's human rights campaign and the Executive Order. It will be useful, therefore, to examine the manner in which the CIA abused its statutory authority and the human rights implications of such actions.

### III. VIOLATIONS OF HUMAN RIGHTS PRINCIPLES BY THE CENTRAL INTELLIGENCE AGENCY

The CIA was established after World War II by the National Security Act of 1947.<sup>50</sup> This Act gave the CIA authority to collect

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46. Schneider, *A New Administration's New Policy: The Rise of Power of Human Rights*, in HUMAN RIGHTS AND U.S. FOREIGN POLICY 10 (P. Brown & D. Maclean eds. 1979).

47. N.Y. Times, Feb. 25, 1977, at A1, col. 6.

48. De Onis, *U.S. Denial of Loan Angers Argentines*, N.Y. Times, July 21, 1978, at A4, col. 3. Alexander Perry, a representative in Argentina of the St. Joe Mining Company, led a delegation of American businessmen in protesting the decision at a meeting with Ambassador Raul Castro.

49. *Id.*

50. 50 U.S.C. § 403 (1951 & Supp. 1983). The Act grants the CIA power to coordinate the nation's intelligence activities and to correlate, evaluate and disseminate intelligence which affects national security. In addition, the Agency was to perform such other duties and functions related to intelligence as the National Security Council might direct. The Act also made the Director of Central Intelligence (DCI) responsible for protecting intelligence sources and methods.

foreign intelligence which presumably was to be used in formulating foreign policy.<sup>51</sup> For years, the CIA had wide latitude to perform a variety of missions to influence events abroad.<sup>52</sup> In 1975, the world learned about the extent of the CIA's covert activities, ranging from assassination attempts on foreign leaders to mind control experiments. In December, 1974, the *New York Times*, in a story by reporter Seymour Hersh, reported that the CIA maintained files on as many as 10,000 American citizens who were suspected of being dissenters against the Vietnam War.<sup>53</sup> After Congress ordered investigations into the Agency's activities, more revelations about CIA activities followed. President Gerald Ford also ordered a separate investigation to be performed by a blue-ribbon committee headed by Vice President Nelson Rockefeller.<sup>54</sup>

#### A. Assassination Attempts on Foreign Leaders

During the year the Foreign Assistance Act of 1961 was drafted, a major covert operation was being planned by the CIA. A new leader, with possible Communist ties, had taken power in the Congo.<sup>55</sup> On August 18, 1960, the CIA Chief of Station sent the following cable to CIA Headquarters:

EMBASSY AND STATION BELIEVE CONGO EXPERIENCING CLASSIC COMMUNIST EFFORT TAKEOVER GOVERNMENT. MANY FORCES AT WORK HERE: SOVIETS \* \* \* COMMUNIST PARTY, ETC. ALTHOUGH DIFFICULT TO DETERMINE MAJOR INFLUENCING FACTORS TO

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51. *Id.*

52. 50 U.S.C. § 403(d)(5) (1951). This provision is broadly worded: "to perform such other functions and duties related to intelligence affecting the national security as the National Security Council may from time to time direct." Much of the authority to perform covert operations derives from this provision.

53. Hersh, *Huge C.I.A. Operation Reported in U.S. Against Antiwar Forces, Other Dissidents in Nixon Years*, *N.Y. Times*, Dec. 22, 1974, at A1, col. 8. Anonymous sources told Hersh that the CIA had authorized agents to follow and photograph participants in anti-war and other demonstrations. The CIA also set up a network of informants who were ordered to penetrate anti-war groups. Students were not the only subject of these files maintained by the CIA; the list included members of Congress as well.

54. Hersh, *Ford Names Rockefeller to Head Inquiry Into CIA; Wants Report in 90 Days*, *N.Y. Times*, Jan. 6, 1975, at A1, col. 6.

55. ALLEGED ASSASSINATION PLOTS INVOLVING FOREIGN LEADERS: AN INTERIM REPORT OF THE SENATE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, S. REP. NO. 465, 94th Cong., 1st Sess. 13 (1975)[hereinafter cited as ALLEGED ASSASSINATION PLOTS]. This was an interim report which detailed allegations of U.S. involvement in assassination plots against foreign leaders.

PREDICT OUTCOME STRUGGLE FOR POWER, DECISIVE PERIOD NOT FAR OFF. WHETHER OR NOT LUMUMBA ACTUALLY COMMIE OR JUST PLAYING COMMIE GAME TO ASSIST HIS SOLIDIFYING POWER, ANTI-WEST FORCES RAPIDLY INCREASING POWER CONGO AND THERE MAY BE LITTLE TIME LEFT IN WHICH TO TAKE ACTION TO AVOID ANOTHER CUBA.<sup>56</sup>

The problem was Patrice Lumumba, the new leader of the Congo, a country which had recently declared its independence from Belgium. The immediate goal of the CIA was to replace Lumumba with a pro-Western leader. On August 19, 1960, the director of the CIA's covert operations branch sent a cable to Leopoldville, in the Congo, authorizing a "removal" of Lumumba.<sup>57</sup> A week later, CIA Director Allen Dulles sent another cable to the Leopoldville Station Office stating:

IN HIGH QUARTERS HERE IT IS THE CLEAR-CUT CONCLUSION THAT IF [LUMUMBA] CONTINUES TO HOLD HIGH OFFICE, THE INEVITABLE RESULT WILL AT BEST BE CHAOS AND AT WORST PAVE THE WAY TO COMMUNIST TAKEOVER OF THE CONGO WITH DISASTROUS CONSEQUENCES FOR THE PRESTIGE OF THE UN AND FOR THE INTERESTS OF THE FREE WORLD GENERALLY. CONSEQUENTLY WE CONCLUDE THAT HIS REMOVAL MUST BE AN URGENT AND PRIME OBJECTIVE AND THAT UNDER EXISTING CONDITIONS THIS SHOULD BE A HIGH PRIORITY OF OUR COVERT ACTION.<sup>58</sup>

Before Dulles sent the cable to the Congo, Bissell and CIA scientist Joseph Schneider, discussed the technical capability of the CIA to assassinate foreign leaders.<sup>59</sup> After concluding that it was possible to perform this mission, Schneider (who was given the alias "Joe Braun") was sent to the Congo on September 26, 1960, with lethal chemicals to assassinate Lumumba.<sup>60</sup> The designated chief assassin was Congo Station Officer Victor Hedgman.<sup>61</sup> Although the

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56. *Id.* at 14 (quoting CIA Cable, Bronson Tweedy to Leopoldville, the Congo, Aug. 18, 1960).

57. *Id.* at 15 (quoting CIA Cable Directive to Leopoldville, the Congo, Aug. 19, 1960).

58. *Id.* (quoting CIA Cable, CIA Director Allen Dulles to Congo Station Officer, Aug. 26, 1960).

59. *Id.* at 20.

60. *Id.* at 22, 23.

61. *Id.* at 26.

CIA had designed a number of ways to assassinate Lumumba, the UN had obtained protective custody of the Congolese leader, making an attempt more difficult.<sup>62</sup> Lumumba died on January 17, 1961, and it is unclear which of his many opponents were responsible.<sup>63</sup>

Lumumba and two of his supporters were en route by plane to Bakwanga. The flight, however, was redirected to Ilisabethville when it was learned that UN troops were waiting at the airport.<sup>64</sup> It was reported that Lumumba died at the hands of hostile villagers who were part of an anti-Lumumba faction in the Congo.<sup>65</sup> The UN investigation discounted this theory and found instead that it was most likely that Lumumba had been killed by political enemies.<sup>66</sup>

Three potential assailants have been identified. In November, 1960, a foreign agent identified as WI/ROGUE attempted to form an execution squad without the consent of the CIA.<sup>67</sup> Second, the CIA may have been involved. However, although the extensive planning efforts seem to indicate that the CIA could have caused Lumumba's death, Congressional investigations concluded that the CIA had no involvement.<sup>68</sup> Instead, Congress discovered evidence by which an inference could be drawn that President Eisenhower authorized Lumumba's assassination.<sup>69</sup>

According to the testimony of Robert H. Johnson, a member of the National Security Council (NSC) staff from 1951 to 1962, President Eisenhower had made a direct order to the Director of Central Intelligence to assassinate Lumumba.<sup>70</sup> Testimony of other

62. *Id.* at 22, 33.

63. *Id.* at 50.

64. *Id.*

65. *Id.* at 15 (quoting CIA Cable, Leopoldville to CIA Director, Aug. 24, 1960). This cable revealed that anti-Lumumba forces—although willing to eliminate his influence—saw no adequate replacement for Lumumba.

66. *Id.* at 50.

67. *Id.* at 43. QJ/WIN one of the assailants, was a foreign citizen with a criminal background and was recruited in Europe for the plan. This code name was used to provide deep cover for the agent's identity. WI/ROGUE was described as a "man . . . who would try anything once, at least." The CIA had intentions to use him as a utility agent in order to organize and conduct a surveillance team, to intercept packages, to blow up bridges and to execute other assignments requiring positive action. *Id.* at 46.

68. *Id.* at 48-49, 50, 52.

69. *Id.* at 51-60.

70. *Id.* at 55-56. It was difficult for Johnson to recollect the exact words President Eisenhower used in suggesting an assassination of Lumumba—and understandably so, since Johnson's testimony occurred some fifteen years after the NSC meeting took place. Johnson, nevertheless, remembered that what the President said at that time shocked him so deeply that despite his failure to recollect the President's words verbatim, the shock effect on Johnson

individuals revealed that members of the NSC had discussed various types of covert actions aimed to reduce Lumumba's power, such as arranging a vote of no confidence in the Congolese Senate.<sup>71</sup> Although other NSC members did not recall President Eisenhower making any references to the assassination plot,<sup>72</sup> one participant in the NSC meetings, Douglas Dillon, stated that there might not be much evidence of discussions between the President and the CIA in order to shield Eisenhower from any negative publicity.<sup>73</sup>

The assassination attempt of Lumumba and the overall plan to destroy his political power was contrary to international law. The Universal Declaration of Human Rights prohibits any nation from circumventing the will of the people or undermining the authority of the government. The Universal Declaration states that "[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections . . . ."<sup>74</sup> The CIA activities regarding Lumumba violated the spirit of this document since an attempt to kill or incapacitate him was not a result of the people's will to remove him by an election process. Furthermore, the NSC's attempt to arrange a vote of no confidence also violated the Universal Declaration because it would not have been initiated by the Congolese Senate. Instead, it would have been the influence of a foreign power.

In addition to the assassination attempt on Patrice Lumumba, the CIA had also planned to eliminate Cuba's Fidel Castro.<sup>75</sup> Over a five year period, there were at least eight plots to assassinate

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could have only been caused by an order to assassinate the political figure:

At some time during that discussion, President Eisenhower said something—I can no longer remember his words—that came across to me as an order for the assassination of Lumumba who was then at the center of political conflict and controversy in the Congo. There was no discussion; the meeting simply moved on. I remember my sense of that moment quite clearly because the President's statement came as a great shock to me . . . .

I must confess that in thinking about the incident more recently I have had some doubts. As is well known, it was quite uncharacteristic of President Eisenhower to make or announce policy decisions in NSC meetings. . . . All I can tell you with any certainty at the present moment is my sense of that moment in the Cabinet Room of the White House.

*Id.*

71. *Id.* at 60 (citing National Security Council Special Group Minutes, Aug. 25, 1960).

72. *Id.*

73. *Id.* at 61.

74. Universal Declaration of Human Rights, *supra* note 36, art. 21, para. 3.

75. G.A. Res. 217A (III), U.N. Doc. A/810 (1948).

Castro.<sup>76</sup> Among the plans discussed were a campaign to destroy Castro's public image by sabotaging his public speaking engagements.<sup>77</sup> This was to be achieved by spraying Castro's broadcasting studio with a chemical which had effects similar to LSD.<sup>78</sup> One chemical, to be used in another plan, consisted of thalium salts, a strong depilatory that was to be dusted on Castro's shoes to make his beard fall out.<sup>79</sup> The first attempt on the life of the Cuban leader sponsored by the CIA took place in 1960<sup>80</sup> when the CIA formulated an accident plot. The plan was later abandoned.<sup>81</sup> In a second plan discussed in 1960, a CIA official was given a box of Castro's favorite cigars with instructions to treat them with lethal poison. They were contaminated with botulinum toxin which is so potent that a person would die after putting one in his mouth. CIA records indicate that the cigars were ready on October 7, 1960, but it is not known whether an attempt was made to pass the cigars to Castro.<sup>82</sup> On November 30, 1961, President John F. Kennedy launched Operation MONGOOSE, a project to "use our available assets . . . to help Cuba overthrow the Communist regime."<sup>83</sup>

The Congressional investigations also examined whether the CIA was linked to the assassination of Rafael Trujillo, former leader of the Dominican Republic.<sup>84</sup> Trujillo was a brutal dictator, and both the Eisenhower and Kennedy Administrations encouraged his removal from office. Although there is no evidence that the U.S. instigated any assassination efforts, evidence before the Committee tended to link U.S. officials to the assassination plots.<sup>85</sup> On February 10 and 15, 1961, CIA officials met with Dominican dissident leaders who indicated to agents that Trujillo must be assassinated if the government was to be overthrown.<sup>86</sup> Subsequently, the CIA sent pistols,

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76. *Id.* at 71.

77. *Id.* at 72.

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.* at 73.

82. *Id.*

83. *Id.* at 139 (citing Memorandum from President Kennedy to the Secretary of State, et al. (Nov. 30, 1961)).

84. *Id.* at 191.

85. *Id.*

86. *Id.* at 198 (citing CIA Memoranda of Feb. 13, 1961 & Feb. 16, 1961).

rifles and grenades to its station in Ciudad Trujillo.<sup>87</sup> On May 30, 1961, Trujillo was ambushed and assassinated near San Cristobal, Dominican Republic.<sup>88</sup> Although the assassination closely paralleled the plan disclosed by the action group to American representatives in the Dominican Republic and passed on to officials in Washington at the CIA and the State Department, no evidence was discovered implicating the CIA.<sup>89</sup>

The assassinations of South Vietnamese President Ngo Dinh Diem and his brother, Ngo Dinh Nhu, were attributed to Buddhist uprisings following the slaying of Buddhists by South Vietnamese troops and subsequent dissatisfaction on the part of the U.S. government with the Diem regime's handling of that problem.<sup>90</sup> Evidence indicated that the U.S. offered encouragement for the coup but did not desire the assassinations.<sup>91</sup> By September, 1963, American displeasure with the Diem regime had increased; the Agency for International Development (AID) Director threatened that Congress might cut economic aid to South Vietnam if the regime did not change its course.<sup>92</sup>

The U.S. continued to disapprove assassination plans,<sup>93</sup> but on November 1, 1963, after the U.S. Embassy was given just four minutes warning before the coup began, Conein, a CIA official, gave \$42,000 to South Vietnamese General Don to procure food for his troops and to pay death benefits to those killed in the coup.<sup>94</sup> That afternoon, the takeover generals demanded Diem's resignation.<sup>95</sup> He refused at first, but later offered to surrender unconditionally. An escort was sent to the palace, but neither Diem nor his brother were present. Conein received orders from the President of the United States to locate Diem. A South Vietnamese general informed Conein that Diem and Nhu had committed suicide. The details are not known and no CIA involvement has ever been proven.<sup>96</sup>

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87. *Id.* at 211.

88. *Id.* at 213.

89. *Id.* (citing Cable from State Department to Dearborn (May 29, 1961)).

90. *Id.* at 217-20.

91. *Id.* at 217.

92. *Id.* at 220.

93. *Id.* at 221.

94. *Id.* at 222.

95. *Id.*

96. *Id.* at 223.



Finally, Congress discovered that the Nixon Administration was directly responsible for overthrowing the regime of Salvador Allende. On September 4, 1970, Dr. Salvador Allende Gossens won Chile's presidential election.<sup>97</sup> Eleven days later, President Richard Nixon informed CIA Director Richard Helms that an Allende regime would be unacceptable to the U.S.<sup>98</sup> Helm's handwritten notes of that meeting reflect the urgency of Nixon's intentions.<sup>99</sup>

The following day, September 16, 1970, Helms held a meeting with officials at CIA Headquarters to discuss Nixon's wishes.<sup>100</sup> It was decided that the best way to carry out the Presidential order was to organize a military coup.<sup>101</sup> However, all Chilean military conspirators had one obstacle to overcome—General Rene Schneider, Commander-in-Chief of the Chilean Army, who insisted that constitutional process be followed in removing Allende from power.<sup>102</sup> Unsuccessful kidnap attempts were made on October 19 and 20, 1970. On October 22, 1970, the CIA passed machine guns and ammunition to the group of military officers who made the first abduction attempt; Schneider was killed later that day by different conspirators using different weapons.<sup>103</sup> While it has been established that CIA efforts to organize a coup began prior to October 15, 1970, the testimony conflicted as to whether or not the coup was specifically authorized by the White House.<sup>104</sup> Then Secretary of State Henry Kissinger and General Alexander Haig testified that on October 15, 1970, the White House disapproved CIA efforts to promote a military coup in Chile. Conversely, CIA officials testified that their activities,

97. *Id.* at 225.

98. *Id.* at 227.

99. *Id.* Helms wrote the following comments:

One in 10 chance perhaps, but save Chile  
 worth spending  
 not concerned risks involved  
 no involvement of Embassy  
 \$10,000,000 available, more if necessary  
 full-time job—best men we have  
 game plan  
 make the economy scream  
 48 hours for plan of action.

100. *Id.* at 228.

101. *Id.* at 228-29.

102. *Id.* at 225.

103. *Id.* at 226.

104. *Id.* at 246.

before and after October 15, 1970, were known and approved by the White House.<sup>105</sup>

These assassination attempts on the lives of Lumumba, Castro, Diem, Trujillo and Schneider constituted violations of the OAS Charter. These plans show a willful attempt to interfere with the political elements and events of other nations and a desire to eliminate the influence of its political leader without the use of the constitutional or judicial process. Despite such actions, the United States claimed to have recognized the Charter as binding international law at the time these assassination attempts occurred during the 1960's and 1970's.

### *B. Electronic and Mail Surveillance of American and Foreign Citizens*

Along with the well-chronicled files maintained on anti-war activists, the CIA surveilled the mail through project SGPOINTER/HGLINGUAL.<sup>106</sup> The program, which was started by the CIA Office of Security, was designed to detect communication of any information through the mail by persons suspected of anti-American activity. It was decided that this information might be of interest to the government.

The mail operation involved obtaining access to mail sent to or from the Soviet Union and to copy the names and addresses of the communicators. The program operated as follows: mail to and from the Soviet Union and other countries was processed through the branch post office at LaGuardia Airport in New York City. As mail was received, it was screened, and the exteriors of the envelopes were photographed. About sixty items a day were set aside and then covertly removed from the post office. From there, mail was carried to the Manhattan Field Office. The letters were steamed open, reproduced, resealed and sent back to the LaGuardia Post Office the following morning. Films of the letters were then sent to CIA Headquarters.<sup>107</sup>

The Agency wished to learn about persons with ties to hostile governments. In many cases, however, the information discovered

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105. *Id.*

106. *Intelligence Activities—Mail Openings, Senate Select Comm. to Study Governmental Operations with Respect to Intelligence Activities, 94th Cong., 1st Sess. 187 (1975).*

107. *Id.*

consisted of only gossip about relatives and friends.<sup>108</sup> While the public had no knowledge about the mail opening campaign conducted by the CIA, some of the postmaster generals knew about the mail surveillance project. In fact, three Postmaster Generals, Arthur Summerfield, J. Edward Day and Minton M. Blount, approved the operation once they were informed by the CIA Director.<sup>109</sup>

The government used electronic surveillance in a variety of ways. In an effort to prevent national security leaks during the Nixon Administration, Chief of Staff Alexander Haig ordered wiretaps on seventeen public figures, including members of the press.<sup>110</sup> In a Freedom of Information Act request released to the *Los Angeles Times*, it was learned that Attorney General Robert F. Kennedy ordered the CIA to wiretap civil rights leader Martin Luther King, Jr.<sup>111</sup>

The electronic and mail surveillance conducted by the CIA violated domestic law as well as international law. According to the National Security Act, the Agency's Charter, the CIA has the responsibility to collect *foreign* intelligence only.<sup>112</sup> The FBI is charged with the responsibility of collecting domestic intelligence and counterintelligence. Furthermore, this activity constituted an invasion of privacy which is prohibited by international law.<sup>113</sup>

In article 17, the International Covenant on Civil and Political Rights states: "[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."<sup>114</sup> The American Declaration of the Rights and Duties of Man states that "[e]very

108. *Id.* (citing Memorandum from Chief of Operations, Deputy Directorate of Planning to Director of Central Intelligence on Project HGLINGUAL). This was the result of the examination of thirty-five communications.

109. *Id.* at 202.

110. Wash. Post, Dec. 20, 1980, at A1, col. 2.

111. See Nelson, *Documents Reveal CIA Spied on Civil Rights Leader, Martin Luther King*, L.A. Times, Feb. 20, 1980, at A4, col. 1.

112. 50 U.S.C. § 403(d)(3) (1976). It is the duty of the CIA to: [c]orrelate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities: *Provided*, That the Agency shall have no police, subpoena, law-enforcement powers, or *internal-security functions* . . . .

*Id.* (emphasis in original and added).

113. See *supra* note 36 and accompanying text.

114. International Covenant on Civil and Political Rights, G.A. Res. (XXI), 220, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1967), *reprinted in* 6 I.L.M. 368, 373. The U.S. had signed but not ratified this Covenant as of Dec. 31, 1979.

person has the right to the inviolability and transmission of his correspondence."<sup>115</sup>

### C. Human Drug Experimentation and Behavior Modification

The CIA, through various government agencies, coordinated drug experiments aimed at discovering how the human mind could be controlled.<sup>116</sup> An investigation by the Senate Subcommittee on Health and Scientific Research in 1977 disclosed that the Army participated in such experiments from 1969 to 1973, and that the Navy was involved from 1947 to 1973. Both departments received funds from the CIA to conduct the experiments.<sup>117</sup>

During the past three decades, there were approximately six experimentation programs conducted by the intelligence community: MKDELTA,<sup>118</sup> MKULTRA,<sup>119</sup> MKNAOMI,<sup>120</sup> MKSEARCH,<sup>121</sup> MKCHICKWIT (or HICKWIT),<sup>122</sup> and MKOFTEN (or OFTEN).<sup>123</sup> Congressional investigations revealed that the Army was involved in two programs, MKCHICKWIT and MKOFTEN, which were designed to identify new drugs in Europe and Asia and to test the behavioral effects of these drugs on humans and

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115. American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, O.A.S. Off. Rec. OEA/Ser. L/V/I.4 Rev. (1965). This declaration was adopted by the Ninth International Conference of American States in Bogota, Colombia on Mar. 30-May 2, 1948.

116. See *Human Drug Testing by the CIA, Hearings Before the Senate Subcomm. on Health and Scientific Research of the Comm. on Human Resources*, 95th Cong., 1st Sess. (1977).

117. *Id.* at 157 (citing Memorandum for the Secretary of Defense on Experimentation Programs that had CIA Sponsorship or Participation (Sept. 20, 1977)).

118. *Id.* at 158. This was the first project established by the CIA in October, 1952, for the use of biochemicals in clandestine operations. It is possible that it was never made operational.

119. *Id.* This was the successor to project MKDELTA, which was established in April, 1953. It was terminated in the late 1960's and involved ways of controlling human behavior by the use of drugs.

120. *Id.* at 157-58. Beginning in the 1950's, the project involved stockpiling severely incapacitating and lethal materials and developing gadgetry for disseminating the materials.

121. *Id.* at 158. The objective of the program was to learn how to manipulate human behavior through the use of drugs.

122. *Id.* An investigation project to identify new drug programs and developments in Europe and Asia and to obtain information and samples.

123. *Id.* A part of the MKSEARCH project, its objective was to test the behavioral and toxicological effects of certain drugs on animals and humans.

animals.<sup>124</sup> There is no evidence that the Navy was directly involved in these two projects, but there is evidence of Navy participation in other programs which involved human experimentation.<sup>125</sup>

In October, 1954, the Navy attempted to devise a technique to induce brain concussions. After research revealed that this could be achieved by introducing a small quantity of gas into the spinal cord, the CIA took over the project and named it MKULTRA. The CIA began to use this technique with subjects of interrogation and brain-washing.<sup>126</sup>

Additionally, the CIA conducted experiments with humans using LSD.<sup>127</sup> In another project called BLUEBIRD/ARTICHOKE,<sup>128</sup> the CIA sought to investigate the effect of marijuana and heroin on speech inducement. Although six known volunteers were used in 1950, the Office of Naval Intelligence conducted similar experiments with human subjects in Europe in 1952, one of whom was a Soviet defector. These tests were apparently not satisfactory because the drugs had such a bitter taste and it was not possible to keep the human subjects from knowing about the test.<sup>129</sup>

The Universal Declaration of Human Rights condemns such activities. Article Five declares that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."<sup>130</sup> The type of experiments conducted by the government could be considered inhuman by the standards of the Universal Declaration of Human Rights. Of course, not all experiments in which humans are involved would constitute inhumane treatment. An experiment to test whether laetrile cures cancer in humans would not be considered inhumane because the purpose of the test would be to eradicate a fatal disease, hopefully resulting in a longer life for the human subject. A drug experiment, however, which has a dynamic effect when used by a human being could cause irreversible damage to the brain or other organs. Altering the state of that person's physical being to the point of making that person experience a life different than previously experienced should be considered inhumane.

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124. *Id.*

125. *Id.* at 161.

126. *Id.* at 164-65.

127. *Id.* at 166.

128. *Id.*

129. *Id.* at 167.

130. Universal Declaration of Human Rights, *supra* note 36, art. 5.

### D. Efforts to Initiate Reform

After conducting a series of investigations into the activities of the CIA, Congress declared that reform was necessary. Even before the Congressional investigation, former Directors of Central Intelligence (DCI), Richard Helms and William Colby, issued internal CIA orders banning assassination.<sup>131</sup> Congress decided that more effective action was necessary and suggested the adoption of a statute addressing past abuses of the CIA. Although federal law made it a crime to kill or to conspire to kill a foreign official or foreign official guest while such a person is in the United States,<sup>132</sup> there was no law making it a crime to assassinate or to conspire to assassinate a foreign official while the individual was outside the United States. It was proposed, therefore, that a bill be considered to prevent the assassination of foreign leaders outside the United States.<sup>133</sup>

## IV. EXECUTIVE ORDERS ON INTELLIGENCE—WERE HUMAN RIGHTS MEANT TO APPLY?

### A. Restrictions

Executive Order 12,333, issued by President Reagan, was intended to reform the intelligence community while liberalizing some rules from Executive Order 12,036, issued by President Carter. Executive Order 12,333 clarifies the coordination duties of the DCI. The DCI is the primary advisor to the President and to the National Security Council on national foreign intelligence matters.<sup>134</sup> Order 12,333 lists other duties for various components of the intelligence community: the Departments of State, Treasury, and Defense, the Defense Intelligence Agency, National Security Agency, and Federal Bureau of Investigation.<sup>135</sup>

Concerning restrictions imposed on the CIA and FBI, the

131. ALLEGED ASSASSINATION PLOTS, *supra* note 55, at 282. The order stated: "[i]t has recently again been alleged in the press that the CIA engages in assassinations. As you are well aware, this is not the case, and Agency policy has long been clear on this issue. To underline it, however, I direct that no such activity or operation be undertaken, assisted or suggested by any of our personnel."

*Id.* (citing Memorandum from Richard Helms to Deputy Directors of the CIA (Mar. 6, 1972)).

132. 18 U.S.C. §§ 1116-1117 (1976).

133. ALLEGED ASSASSINATION PLOTS, *supra* note 55, at 289.

134. Exec. Order No. 12,333, 3 C.F.R. 200, 202 (Part 1.5(a))(1982).

135. *Id.* at 206-10 (Parts 1.9-1.14).

document explicitly prohibits assassinations and human experimentation<sup>136</sup> by anyone employed by the U.S. government.<sup>137</sup> The Executive Order also states that the CIA has the responsibility to collect *foreign* intelligence and counterintelligence,<sup>138</sup> and the FBI is responsible for collecting counterintelligence within the U.S. The Executive Order also establishes an Intelligence Oversight Board to monitor intelligence operations.<sup>139</sup>

### B. *The Search for a Human Rights Link*

Executive Orders 12,333 and 12,036 provide little, if any, clues as to whether these documents were intended to protect international human rights. President Reagan stated that the purpose of Executive Order 12,333 was to collect “[t]imely and accurate information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons and their agents . . . .”<sup>140</sup> Additionally, President Reagan said that the Order sought to control U.S. intelligence activities while protecting the constitutional rights of citizens.<sup>141</sup>

It appears that President Reagan, by mentioning “protecting the Constitutional rights of citizens,” intended to modify the Executive Order to protect rights granted by the U.S. Constitution. Under the U.S. Constitution, it is possible to seek relief for government violations of rights that may be committed by an intelligence agency.<sup>142</sup> Yet because there is no reference to international law or human rights, it is unlikely that the Executive Order intended human rights concepts to be included within the American concept of privacy and civil liberties.

It was also unclear if human rights concepts were meant to restrict intelligence activities during the Carter Administration. President Carter introduced Executive Order 12,036, which is substantially similar to Reagan’s Executive Order. When examining other relevant statements made by President Carter, his application of human rights to the intelligence community is ambiguous. His remarks upon signing

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136. *Id.* at 213 (Part 2.10).

137. *Id.* at 213 (Part 2.11).

138. *Id.* at 205 (Part 1.8(a)).

139. *Cf. id.* at 205 (Part 1.7(d)).

140. *Id.* at 200 (Preamble).

141. *Id.* at 200-01 (Preamble).

142. *See e.g.,* Birnbaum v. United States, 436 F. Supp. 967 (E.D.N.Y. 1977)(CIA’s reading and copying of mail without a warrant violates the First and Fourth Amendments).

Executive Order 12,036 suggest that he did not have international human rights principles in mind as a basis for restricting illegal intelligence-gathering activities. After briefly clarifying the coordination of duties of the DCI, President Carter stated that this "order gives a great deal of additional responsibility to the Attorney General to make sure that the civil liberties and the privacy of American citizens is adequately protected and that the *constitutional provisions and the laws of our Nation* are carried out precisely."<sup>143</sup>

President Carter only identifies restrictions which seek to protect those rights guaranteed by federal statutory and constitutional law. Eleven months later, when speaking in commemoration of the thirtieth anniversary of the signing of the Universal Declaration of Human Rights, President Carter emphasized that human rights policy applies to U.S. government agencies in their dealings abroad:

We will speak out when individual rights are violated in other lands. The Universal Declaration means that no nation can draw the cloak of sovereignty over torture, disappearances, officially sanctioned bigotry, or the destruction of freedom within its own borders. The message that is being delivered by all of our representatives abroad—whether they are from the Department of State or Commerce or Agriculture or Defense or whatever—is that the policies regarding *human rights count very much in the character of our own relations with other individual countries.*<sup>144</sup>

What conclusion can be drawn from these statements? It appears that while there was a *de facto* recognition that human rights principles should apply to the intelligence community on one occasion, the Carter Administration never made a *de jure* application of international human rights principles to the conduct of the intelligence community. Despite this failure to make a link between human rights and the conduct of the government in its dealings abroad, it can be argued that the Executive Order embodies these human rights principles because it prohibits the violation of rights mentioned in international

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143. President's Remarks on Signing of Executive Order No. 12,036 (Jan. 24, 1978), I PUB. PAPERS 189, 190 (emphasis added).

144. President's Remarks at White House Meeting Commemorating 30th Anniversary of the Signing of the Universal Declaration of Human Rights (Dec. 6, 1978), II PUB. PAPERS 2161, 2162 (emphasis added). Secretary of State Cyrus R. Vance expressed similar views in a major foreign policy address at the University of Georgia Law School in 1977: "Our policy [of human rights] is to be applied within our society as well as abroad. We welcome constructive criticism at the same time as we offer it." Speech by Secretary of State Cyrus Vance on Law Day Before the University of Georgia Law School (Apr. 30, 1977), reprinted in 76 DEPT ST. BULL. 505, 507 (1977).



legal documents.

What can be inferred from Executive Order 12,333? It can be said that the Reagan Administration never made a link between a respect for human rights with respect to intelligence activities. No link was made in the Executive Order, and it seems that only civil rights and liberties granted by the Constitution were meant to be protected by the Order.

#### V. THE CASE FOR USING INTERNATIONAL LAW TO CONTROL INTELLIGENCE ACTIVITIES

Once the Reagan Administration assumed power in Washington, Secretary of State Alexander Haig immediately announced that the major foreign policy concern would shift from human rights to international terrorism.<sup>145</sup> Shortly thereafter, President Reagan appointed Ernest Lefever to head the State Department's human rights division, a person regarded by some observers as not an avid supporter of human rights.<sup>146</sup> While the Reagan Administration's commitment to human rights can be best evaluated once the policy has been applied during the course of its entire tenure, the State Department's shift in focus and the appointment of Lefever have aroused a congregation of skeptics who are pessimistic about the present government's strong support for human rights causes around the globe.

The recent shift in focus from human rights to international terrorism raises an important question: Is it practical at all to pursue an aggressive stance on human rights? Critics who oppose a strong stance on human rights in American foreign policy claim that such a position only expresses a hope that a nation will abandon its sovereignty. In fact, some critics consider a strong stance on human rights a form of intervention. Lefever stated that "[m]aking human rights the chief, or even major, foreign policy determinant carries dangers . . . . International law forbids any state from interfering in the internal, political, judicial and economic affairs of another. Fundamentally, the quality of life in a political community should be determined by its own people . . . ."<sup>147</sup>

Former Secretary of State Henry Kissinger warned that a human rights-based foreign policy has its limitations. He stated that there

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145. N.Y. Times, Jan. 24, 1981, at A10, col. 6.

146. N.Y. Times, Mar. 2, 1981, at A8, col. 4.

147. Lefever, *The Rights Standard*, N.Y. Times, Jan. 24, 1977 (Opinion-Editorial), at 23, col. 2.

are some situations in which it would be better to abandon human rights in order to further other national interests:

[R]esponsibility compels . . . a recognition of our limits. Our alliances . . . serve the cause of peace by strengthening regional and world security. If well conceived, they are not favors to others but a recognition of common interests. They should be withdrawn when those interests change; they should not, as a general rule, be used as levers to extort a standard of conduct or to punish acts with which we do not agree.<sup>148</sup>

A human rights position, therefore, may have to be sacrificed if it should jeopardize a relationship with an ally or if it will enhance our national interests.

Kissinger's reflections could serve as an omen to what occurred during the Carter Administration's campaign to promote human rights. After withholding a \$270 million loan to Argentina on human rights grounds in August, 1978, President Carter ordered the reversal of the Export-Import Bank's decision three months later.<sup>149</sup> The initial decision was provoked by torture and execution practiced by Argentine security forces. Carter's veto of the loan, however, produced adverse results. There were protests from Argentine officials and from the American business community located in that country. The U.S. Ambassador to Argentina, Raul Castro, said that the sanctions weakened the position of the Argentine government.<sup>150</sup> Also, there had been criticism of a State Department decision in 1978 to sell \$120 million worth of military equipment to Argentina, although there had been no improvement in that country's human rights record.<sup>151</sup> Other critics maintain that President Carter's application of human rights had become too moralistic, that is, he began denouncing abuses for moralistic reasons instead of legal ones.<sup>152</sup> Carter's policy came under

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148. Kissinger, *Moral Promise and Practical Needs*, 75 DEP'T ST. BULL. 597, 603 (1976).

149. DeOnis, *U.S. Reverses a Ban on Argentina Loan*, N.Y. Times, Nov. 11, 1978, at A1, col. 1.

150. *Id.*

151. De Young & Krause, *Our Mixed Signals on Human Rights in Argentina*, Wash. Post, Oct. 29, 1978 (Editorials), at C8, col. 3.

152. See HUMAN RIGHTS AND FOREIGN POLICY 93-105 (P. Brown & D. Maclean eds. 1979), and Forsythe, *American Foreign Policy and Human Rights: Rhetoric and Reality*, 2 UNIVERSAL HUMAN RIGHTS 35, 39-40 (1980). Furthermore, it was recognized by many observers that President Carter eventually backed down on his strong human rights stance, opting for a more balanced approach to applying human rights principles in his foreign

attack by Edward Mezvinsky, the U.S. representative to the UN Human Rights Commission. Mezvinsky's view on the Carter human rights policy was that "[l]ittle real progress on human rights can be expected so long as it is seen as America's own little corner on morality."<sup>153</sup>

## VI. CONCLUSION

Despite these criticisms and shortcomings, the application of human rights principles to the conduct of the intelligence community presents a different task. First, it must be realized that by using international law as a guideline for the intelligence community, it becomes an *internal* application of human rights and not an external one. Imposing values on our own system would not involve imposing values on the government of another country as in the situation of Argentina. A recognition by the intelligence community that human rights principles must be observed would not affect our relations with other countries. By recognizing that human rights principles apply to our government's dealings abroad, the U.S. would emphasize to American citizens and to other nations that it respects the rights of others in the course of pursuing foreign intelligence matters.

Moreover, beyond the moral reasons for supporting this doctrine, human rights principles should be applied because they are rooted in international law. The U.S., as a signatory to the Universal Declaration of Human Rights, has a responsibility to respect the rights of other States,<sup>154</sup> not to intervene,<sup>155</sup> and to faithfully fulfill obligations imposed by treaties and other sources of international law.<sup>156</sup> As a signatory to the Universal Declaration of Human Rights, the U.S. has a responsibility to obey the spirit of this document. Since the enforcement of human rights is a legal obligation, a more compelling reason for adherence can be provided where a moralistic ground might fail. Therefore, if it is clear that there is an international legal basis

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policy. After conceding that human rights had to be viewed with realism, President Carter stated, "[h]uman rights cannot be the only goal of our foreign policy, not in a world in which peace is literally a matter of survival." See Schweigler, *Carter's Detente Policy: Change or Continuity?*, in HUMAN RIGHTS AND U.S. FOREIGN POLICY 163 (B. Rubin & E. Spiro eds. 1979).

153. Mezvinsky, *Human Rights and International Organizations*, 78 DEP'T ST. BULL. 52 (1978)(based on an address at Grinnell College in Grinnell, Iowa on Apr. 6, 1978).

154. O.A.S. CHARTER art. 10, 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3.

155. *Id.* art. 15.

156. *Id.* art. 5(b).

for respecting human rights of other peoples in light of foreign intelligence missions, the government lacks a most compelling source of authority for maintaining the present restrictions.

Additionally, while it may be argued that an open recognition of the application of human rights to intelligence activities may cause the government to appear weak, it would tend to assure the public that the intelligence community abides by some standard of decency. As a result, the public would feel more secure knowing that the CIA is operating within guidelines. It is irrelevant if the intelligence community *appears* to be weak when it is, in fact, strong. Speculation that national security interests are being jeopardized is not significant if the CIA is successfully carrying out its intelligence duties within the restrictions of Executive Order 12,333.

In response to the demands for reform in the intelligence community by Congress, President Carter signed into effect Executive Order 12,036 to guide the conduct of the intelligence community. President Reagan later revised this order when he issued his version, Executive Order 12,333. While many of the government's past intelligence activities violated international law, President Reagan made no reference to any document of international law or to human rights principles to serve as a basis for restricting our government's conduct. The restrictions imposed by the Executive Order, nevertheless, prohibit abuses listed in the Universal Declaration of Human Rights and the UN Charter.

If the government were to link human rights to the conduct of the intelligence community, it would have a most compelling source of authority for adhering to the restrictions imposed by the Executive Order. Recognizing the applicability of the Universal Declaration of Human Rights, for example, would not only persuade the government not to abuse powers as it did in the past, it would also compel the government to be aware of other human rights.

