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Global Order, Low Intensity Conflict and a Strategy of Deterrence

John Norton Moore

The Radical Regime Assault on Global World Order

It has taken mankind more than 20 centuries to achieve the fundamental insight embodied in the United Nations Charter that aggressive use of force is impermissible in international affairs and that every nation has a right of individual and collective defense against such aggressive use of force. This dual insight—which was the single most important advance in the history of conflict management—is the principal foundation of modern world order.*

There is today, a fundamental assault on that foundation. Led by totalitarian and radical regimes, this assault seeks mainly to expand certain belief systems by use of force and is driven by radical ideologies. The nature and seriousness of that assault has not been generally recognized in the democracies partly because the assault has been covert and indirect. Radical regimes understand that the prohibition of aggression serves in important instances for their protection and that such a prohibition has strong community support which would, in all likelihood, prove too substantial to confront head-on.

As such, these regimes have sought to justify their own aggressive use of force through a variety of ambiguous doctrines at the margin of conflict management law and politics. These have included the “Brezhnev Doctrine,”

*For a history of the international law of conflict management, see generally, Myres McDougal and Florentino P. Feliciano, *Law and Minimum World Public Order* (New Haven, Conn.: Yale University Press, 1961); and J.N. Moore, “The Development of the International Law of Conflict Management,” chap. V in J. Moore et al., *Law and National Security* (forthcoming).

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or principle of "Socialist Self-Determination," by which the Soviet Union seeks to prevent any nation which has accepted a communist regime from ever departing from communism; doctrines of "war of national liberation," or "national unification" of divided nations, by which radical regimes seek to justify initiation of or support to Leninist or other radical movements; covert support to terrorist acts such as the seizure of TWA flight 847 or covert armed attacks which can simply be denied, as in the secret wars against El Salvador, Honduras and Guatemala; reliance on factually preposterous claims of "invitation" to openly invade neighboring states, as in the Soviet invasion of Afghanistan; and the encouragement, through propaganda and disinformation, of the false belief that the democracies are no different in the use of force than the totalitarian and radical regimes that are attacking them.

This assault on the legal order is led by the Soviet Union, in cooperation with a network of communist states, national communist organizations and radical insurgent movements, and by a variety of radical regimes, which share many common objectives with this Soviet network.

It should be emphasized that not all communist nations and organizations are part of this network. The People's Republic of China obviously pursues its own interests which are in many respects hostile to Soviet interests, as in Kampuchea for example. China is also influential with a smaller network of communist nations and movements. Nevertheless, it may still share substantial sympathy with a variety of radical objectives and seems unable to renounce the threat or use of force in its relations with Taiwan.

Similarly, not all radical regimes are communist regimes. The fundamentalist theocracy in Iran is one of the most radical and revolutionary regimes in the contemporary international system but it is certainly not communist. Again, however, it shares with radical regimes in general a particular antipathy to the Western democracies and traditional Arab governments such as Saudi Arabia and Jordan, and a willingness to encourage terrorist and covert attacks against the United States and others. In some respects, however, Iran is prepared to resist Soviet use of force if it directly threatens the regime's beliefs, as is the case of Iranian assistance to partisan forces in Afghanistan.

The real world of totalitarian and radical regime behavior is complex and not explained by simplistic approaches which seek to lay all blame at the Soviet doorstep. That same real world, however, requires candid recognition of the substantial Soviet network of client states, radical insurgent and terrorist organizations and cooperating political organizations. The documents captured in the Israeli incursion into Lebanon and the OECS action in Grenada, as well as the radical regime cooperation in Nicaragua, show conclusively these extensive Soviet client interactions

and, even more alarmingly, the existence of a network of specialized functional cooperation.*

The Soviet Union provides financial support, political and intelligence support, military assistance, and an overall deterrent setting in which secret wars and terrorist attacks are tolerated. East Germany provides local police and internal security functions; Czechoslovakia, Vietnam, and Ethiopia supply Soviet-bloc or captured American weapons; Bulgaria, Libya, North Korea, Syria, and the PLO provide specialists in terrorism for the training of terrorists; and Cuba provides a wide variety of services including indirect subversion, covert guerrilla attacks and its own armed forces for use as expeditionary forces abroad that, as in Angola and Ethiopia, can be decisive in local conflicts.

Despite the lack of central direction, totalitarian and radical regime states engaged in an assault on the global order exhibit certain commonalities. Together these make up what I have termed the "radical regime syndrome." These commonalities, not all of which are inevitably present, include:

- establishing and maintaining a state-controlled, centrally planned economic infrastructure and a concomitant disdain for private property (this also includes a slavish adherence to collective agriculture despite all the negative experience);
- a failed economy illustrated by economic development lagging behind that of comparable regional states with relatively free markets;
- a single party political process, usually totalitarian, in which there is no genuine, broad-based political opposition to participate in free elections, and in which the party is merged with the state;
- a virtually absolute denial of human rights and political freedoms at home coupled with a pervasive and repressive internal security apparatus, a large number of political prisoners, and often a denial of the right to emigrate;
- hostility to the creation of independent labor organizations, and genuine collective bargaining;
- a high level of national chauvinism, which often includes prejudice against minority, ethnic or religious groups and frequently antisemitism;
- the existence of a "cult of personality," such as the USSR under Stalin, China under Mao, North Korea under Kim Il Sung, Libya under Muammar Qaddafi, Cuba under Fidel Castro, Iran under the Ayatollah Khomeini, and Vietnam under Ho Chi Minh;
- a high degree of militarization of society as indicated by percent of GNP allocated to the military, percent of the population in the military, and quite often the existence of a revolutionary cult illustrated by the constant

*See generally on this subject, Ray S. Cline and Yonah Alexander, *Terrorism: The Soviet Connection* (New York: Crane, Rnssak, 1984).

wearing of revolutionary fatigues by national leaders, such as Castro in Cuba or the Sandinista Commandantes in Nicaragua;

- the use of pervasive political indoctrination at home through state-dominated or party-dominated schools, state organizations—such as the “Pioneers” in the USSR—and complete state control of the media;

- a firm belief in the importance of expanding the socio-ideological system through the use of force, and a willingness to subsidize and promote terrorism and indirect attack;

- hostility to pluralist democracy in general and those states in particular which do not share the beliefs of the radical regime, manifested in the radical regime’s willingness to focus massive political effort against such “enemies of the people.”

In reality, this radical regime syndrome is usually a formula by which the power holders, the privileged elites, perpetuate their hold on society. This hold is sustained only by a massive internal security and military apparatus, and pervasive political indoctrination. The radical regime assault on world order is, in part, simply an extension to the international plane of the politico-military strategies employed domestically by these regimes.

There have, of course, been a number of open assaults by totalitarian and radical regimes. These include the June 1950 attack by North Korea against South Korea, the 1974-75 assault by North Vietnam against the South after giving their solemn pledge to respect the territorial integrity of the Saigon Government as acknowledged in the Paris Accords, the attack by Vietnam against Kampuchea, and the ongoing Soviet attack against Afghanistan.

But the most dangerous technique of the radical regime assault, and therefore the most important for the West to comprehend, is simply to provide assistance to terrorist groups and full-scale guerrilla movements conducting politico-military attacks through covert programs. Modern techniques for disguising the origins of such sophisticated attacks are difficult to penetrate when originating in totalitarian and closed societies. Moreover, by keeping such attacks covert—indeed by openly denying any responsibility—a number of important advantages accrue to the attacking state or movement. First, they maintain the general protection of the legal order for their own interests. Second, they avoid the political cost associated with an unambiguous violation of the legal order. Third, when the origin of the attack is uncertain they make defensive response difficult and, in fact, focus world attention on its legitimacy. Finally, they focus attention on the social or human rights shortcomings of the attacked regime by popularizing some such deficiency as the reason for the attack. They also take advantage of differential world tolerance for *individual* aberrant behavior as opposed to equivalent *state* behavior.

A careful analysis shows that terrorism is predominantly directed against the pluralist democracies in general, and the United States, Nato members, and their allies in particular. This is the converse of what one would expect if terrorism were truly responsive behavior to redress social ills and lack of political freedom. Of great concern for the future of the world legal order, terrorism seems to be moving from a vaguely defined, general technique of political warfare against pluralist democracies to a focused methodology for achieving specific political effects. For example, given the official platform on national security of the Labor Party in the United Kingdom, the terrorist attack on Prime Minister Margaret Thatcher and the British Cabinet, if successful, might have achieved direct and substantial benefits for the opponents of Nato.

One can, moreover, observe an alarming escalation of terrorist targets in recent years including the assassination of President Anwar Sadat of Egypt, the bombing of the American Embassy and US Marine barracks in Lebanon, the attempt to assassinate the Pope, the attempt on the Republican Senate cloakroom in the United States, the bombing attempt against the cabinet of South Korea while on a visit to Burma, the assassination of President Gemayel in Lebanon, and the taking of American hostages in Iran and, more recently, Lebanon.

Similar covert politico-military attacks were an integral part of the first stage in North Vietnam's attacks against South Vietnam, as well as in Libya's attack on Chad, and, today, the ongoing Cuban-Nicaraguan secret war against Central American states. Indeed, such attacks can be a highly successful strategy. By denying that any such attack actually took place (or is taking place) the perpetrators can express outrage at any response in defense—such as the mining of harbors in Vietnam or Nicaragua—and even, in a perversion of international legal norms, take the United States to the World Court as has Nicaragua. There, in sworn affidavits they boldly lie to the Court about their secret war which precipitated the regional response. Similarly, until the reformist and popular Duarte government in El Salvador, the attackers were able to focus attention on human rights shortcomings in that country rather than on the Cuban-Nicaraguan organized and supported secret war against El Salvador and neighboring Central American states.

Problems of Democracies in Responding to the Radical Regime Assault

There are several factors that make it difficult for the pluralist democracies to understand fully the nature of and take effective action against the serious totalitarian and radical regime assault on world order. These are not necessarily weaknesses of democracy. In many cases they are some of the very strengths that predispose democratic governments to peace and world order

rather than sharing the aggressive expansionism of the totalitarian and radical regimes. In the short run, however, such factors often make it difficult for democratic governments to respond effectively. This, in turn, may encourage greater aggressiveness and undermine overall deterrence as totalitarian and radical regimes become emboldened at the lack of response.

One factor which sometimes makes it difficult for pluralist democracies to provide effective deterrence is the government's genuine willingness to respond to the wishes of the people who strongly seek peace. This is precisely the converse of the totalitarian regime's militarism of society. It is frequently manifested in a powerful tendency by the people to "mirror image"; that is, when the public and leaders alike tend to see other nations and leaders as peace-loving and pragmatic, thereby underestimating the ideological motivation and aggressive intent of the radical regimes. Disputes among nations are thus seen as accidents and misunderstandings to be resolved by improvements in third-party dispute settlement techniques, enhanced trade relations, more exchanges of people to promote enhanced understanding, or more direct negotiations to work out pragmatic solutions to difficulties. The conventional thinking is that Ho Chi Minh surely would have been willing to call off the attack on South Vietnam if he had been offered an ambitious multimillion-dollar Haiphong harbor project, and the Cubans and Sandinistas can surely be weaned away from the Soviets by simply giving them an enormous amount of economic assistance—on their terms of course.

Sometimes, of course, such measures can be successful and certainly they should be encouraged as techniques for conflict resolution. As a universal view of the world, however, those who would advocate almost total reliance on such methods fail to appreciate the nature of the threat facing the world today. They underestimate the seriousness with which totalitarian and radical regimes seek to expand their belief system by any and all means necessary, but particularly by the use of force. Furthermore, when misapplied in many conflictual settings they may even escalate the totalitarian assault.

A second factor impeding effective deterrence is the normal and vigorous exchange of conflicting opinion that characterizes the media and public discussion within the democracies. Because of the general aversion of democratic peoples to military solutions, this exchange, on balance, is likely to be skeptical of strong defensive (i.e., military) measures. Even when balanced, such an exchange may very well prevent development of a consensus necessary to pursue an effective deterrent policy. This normal process of vigorous debate and media discussion is, of course, often further weakened by the strong democratic tradition of skepticism of government and government solutions.

A third difficulty for the West is that most pluralist democracies, unlike the totalitarian or radical regimes, are governments of "checks and balances," in which a Congress or a Parliament must approve a particular course or policy.

Although this is a strength of the pluralist democracies, in ensuring careful deliberation and representative government, it does complicate the effective execution of foreign policy. It also holds the seeds of undermining deterrence when such legislative bodies are themselves targeted for political action or simply perceived as unwilling to support an effective response.

A fourth factor is that, to some extent, there exists a significant gap between executive branch leaders' extensive awareness of radical regime support for terrorism and subversion, and the general public's minimum knowledge of this reality. One reason for this phenomenon is that because such attacks are covert the Executive learns of them through intelligence means not available to the general public. A real concern for protecting intelligence sources and methods then has a chilling effect on how much the public can be told. Moreover, the public is often skeptical of government-revealed "truths" which it cannot verify and, therefore, it is disinclined to accept effective military solutions which may be required.

A fifth factor is the effect of totalitarian propaganda and disinformation,* or more broadly, the effect of political action. All available indicators—whether radio broadcast time, comparative levels of funding for political activities, or numbers of foreign students recruited for in-country "education"—suggest that totalitarian and radical regimes place a major emphasis on political action and propaganda. Indeed, this is endemic to the radical regime which follows the same approach with its own people. Certainly one of the principal lessons of Vietnam for our adversaries has been the importance of targeting domestic political audiences and national legislatures in a combined politico-military struggle.

There is every reason to believe that this is a lesson fully understood and widely applied by the Sandinistas in their effort to block an effective democratic response to the Cuban-Nicaraguan secret war in Central America. Nicaragua seems to have supported substantial political action in the United States, centered on campuses, church groups, and, most important the Congress. It has been implemented by direct calls from the Sandinistas to members of Congress on the eve of important votes on Capitol Hill, a Washington lobbying office for the Sandinistas, and frequent, controlled trips to Nicaragua by members of Congress and other groups targeted for political action. Arturo Cruz, a former Ambassador of the Sandinista regime in Nicaragua to the United States and currently the leading democratic opponent of the "Commandantes," has indicated that there may be as many as 200 pro-Sandinista "solidarity groups" operating in the United States and 60 operating in West Germany. In contrast, we are so distrustful of any government information that we are often skeptical of the

*See generally on this subject, Richard H. Shultz, Jr. and Ray S. Godson, *Dezinformatsia: Active Measures in Soviet Strategy* (New York: Pergamon, 1984).

credibility of the White Papers on Central America released by the Department of State.

Central America as A Case Study

It is widely understood today that the United States has a special stake and interest in Latin America. Yet, ironically, the decade of the 1970s witnessed a dramatic US withdrawal from the region concurrent with a dramatic Soviet and Cuban buildup in the area. During the 1970s the number of US military advisers in all of Latin America plummeted from 516 at the beginning of the decade to 70 in 1981. By 1981 the Soviet Union had 50 times more military advisers in Latin America than did the United States.

From 1962-1982 the Soviets provided more than twice as much security assistance to Latin America as did the United States, or roughly \$4 billion for the USSR to \$1.5 billion for the United States. Last year the Soviet Union gave \$4.9 billion in assistance to Cuba and Nicaragua—nearly six times the \$837 million in US assistance to *all* of Central America.

In 1970, Soviet naval vessels spent 200 ship days in the South Atlantic; in 1980, they spent approximately 2,600 ship days for a 13-fold increase. The Cubans have 2,000-3,000 military advisers in Nicaragua compared with 55 US trainers in El Salvador. There are even more East German military advisers in Nicaragua than US military trainers in El Salvador.

Not surprisingly, the result of this Soviet-Cuban policy has been a rapid military buildup in Cuba and, after the establishment of the new Sandinista government in 1979, in Nicaragua. On a per capita basis the Cuban military buildup has been 10-20 times greater than that of any other major nation in this hemisphere. Mexico, for example, with 7 times the population has a defense establishment only half the size of Cuba.

Despite this background of Soviet buildup in Cuba and Nicaragua, the United States actively sought good relations with the new Sandinista government when it took power in Nicaragua in 1979. The United States cut off military aid to Somoza in 1977, two years before the revolution and voted for an OAS Resolution endorsing the revolution. Further, the United States gave \$118 million in economic assistance to the Sandinistas in the first two years of the new regime—more than triple the level of aid that it gave to the Somoza regime in the preceding 20 years. The United States also supported \$292 million in World Bank and Inter-American Development Bank loans to the Sandinistas.

President Carter invited Daniel Ortega to the White House. A substantial Peace Corps commitment was rejected by the Sandinistas in favor of thousands of Cuban, Bulgarian, East German, Libyan, PLO and other Soviet-bloc and radical regime advisers. (There are approximately 11,000 such advisers today in Nicaragua.) On the point of US efforts to have good relations with the

Sandinistas, the bipartisan Kissinger Commission found that the United States undertook a patient and concerted effort to build a constructive relationship of mutual trust with the new government.

In response to these overtures of friendship the nine Commandantes began three policies that are the root cause of the challenge to Charter principles in Central America.

First, they began consolidation of a Leninist vanguard party to control Nicaragua and reneged on their 1979 pledge to the OAS to build a democratic, pluralist society that would be nonaligned and supportive of human rights. Their actions included:

- The nine Commandantes—who had been chosen three each from the three Nicaraguan Marxist parties at a 1979 meeting in Havana—began a purge of the many genuine democrats such as Arturo Cruz, who had fought against Somoza.

- The Commandantes began a massive campaign against the Miskito Indians. This included attacks on villages, destruction of houses, crops, and livestock, arrest of the Indian leadership, disbanding of the Indian's organization as "counterrevolutionary" and in some cases brutal killings and attacks. Of approximately 100,000 Indians at the beginning of these atrocities some 20,000 have fled Nicaragua and another 20,000 have been moved to "relocation camps."

- The Commandantes began to put in place the depressingly familiar apparatus of a totalitarian police state including suppression of labor movements, attacks on the Church and religious freedom, press censorship, a Cuban-style internal security system down to the bloc level, a merger of the Sandinista Party with the state, suspension of *habeas corpus* and detention of growing numbers of political prisoners without charges. The Pope was insulted by carefully orchestrated mobs when he sought to bring a message of peace to Nicaragua.

- Within nine months of taking power—as massive US aid continued—the Sandinistas made their first pilgrimage to Moscow. Their official anthem pledged "We shall fight against the Yankee aggressor, the enemy of humanity." We have recently seen some members of Congress—who had apparently not done their homework—surprised when Daniel Ortega went to Moscow immediately after he won the anti-contra vote in the House for his *fifth* trip to Moscow.

- Moreover, the UN voting record of the Sandinistas was aggressively aligned with the Soviet bloc. For example, in the 1983-84 session of the UN General Assembly they voted for a unified Soviet-Cuban position 96 percent of the time. They sided with the Vietnamese in the latter's invasion of Kampuchea, they refused to condemn the Soviet invasion of Afghanistan, and they worked to oust Israel from the United Nations.

- Although human rights abuses were legend under Somoza, as of today some 10 percent of the Nicaraguan population—people who stayed under Somoza—have fled the Sandinista revolution.

Second, the Commandantes began a massive military buildup even as the United States poured in economic assistance. Before any contra threat they had built up the Nicaraguan Armed Forces to nearly six times that of the Somoza National Guard. Today they are nine times that level and still escalating. At present they have some 350 tanks and armored vehicles compared with 3 tanks and 25 antiquated armored cars under Somoza, none in Costa Rica, 16 armored reconnaissance vehicles in Honduras, and less than 30 armored personnel carriers in El Salvador—a nation with a substantial military insurgency. A major airfield, capable of taking the largest aircraft in the Soviet arsenal, is being built at Punte Huete and Nicaraguan MiG pilots are being trained in Bulgaria.

Third, and most importantly for legal analysis, as the Sandinista revolution was being consolidated, the Cubans and Nicaraguans began to actively support “revolution without frontiers” in neighboring Central American states. In this connection, remember that Cuba had supported insurgencies and other operations designed to overthrow some 17 indigenous Latin and Caribbean governments during the first 25 years of its existence. Cuba began, in 1959, with attacks against Panama and Nicaragua. In fact, Cuba was condemned by the OAS for the serious attacks against Venezuela and Che Guevara’s own diary detailed the unsuccessful attacks in Bolivia and elsewhere in Latin America.

The evidence of the Cuban-Nicaraguan attacks on neighboring Central American states is clear. By late 1980, the Carter administration, initially favorably predisposed to the Sandinista regime, had become alarmed by the evidence. Carter suspended US economic assistance to the Sandinistas and began a program of emergency military assistance to El Salvador and neighboring states. The evidence proving the existence of such attacks includes:

- In December of 1979 and May of 1980, Castro held meetings in Cuba to organize competing Salvadoran insurgent factions into a unified command controlled by the Unified Revolutionary Directorate following the Moscow line. In 1980 FARBUNDO National Liberation Front leaders of the Salvadoran insurgency traveled to Moscow, East Germany, Bulgaria, Ethiopia and Vietnam in order to obtain arms and supplies for the insurgency. In response they received a major shipment of arms. It was primarily of US origin taken in Vietnam and Ethiopia and a total of over 700 tons of arms and ammunition. Weapons’ serial numbers and defectors’ reports show conclusively that the preponderance of weapons used by the insurgents are transshipped from Soviet bloc sources through Cuba and Nicaragua. The Department of State has issued detailed reports on weapons intercepts in

February 1981, March 1982, May 1983, and July 1984. The governments of El Salvador, Costa Rica and Honduras have confirmed this. Of particular importance is the 1980 report of the Costa Rican Special Legislative Commission detailing the arms flow to Costa Rica and Salvadoran insurgents.

Command and control of the insurgency, including daily orders, come from a headquarters complex near Managua, Nicaragua. The Kissinger Commission found "The guerrilla front has established a unified military command with headquarters near Managua." The statements of Sandinista leaders themselves confirm their intentions and assistance. As early as May 1980, well before the US Government ended its assistance to the Sandinista regime, no less an authority than Foreign Minister D'Escoto said, "You [the U.S.] may look at us as five countries, six now with Panama, but we regard ourselves as six different states of a single nation in the process of reunification."

In short, the evidence supports the finding that Cuba and Nicaragua are involved in the instigation, organization, training, financing, the preponderance of arms supply, command and control, and political and technical support to the ongoing insurgency in El Salvador. That insurgency is neither temporary nor small-time. It fields forces roughly one-fifth the size of the Salvadoran Army, it operates 67 offices in 35 countries and it has inflicted more than \$1 billion in direct war damage on the economy of El Salvador.

These are not just conclusions of the United States Executive Branch. The governments of Costa Rica, Honduras and El Salvador have all documented Sandinista subversive efforts and covert attacks. The Kissinger Commission found that the Sandinistas together with the Cubans and Soviets "committed all-out support" to the Salvadoran insurgents. And Congress has repeatedly made similar findings. For example, Congress found in the Intelligence Authorization Act of 1983 that "activities of the government of Cuba and Nicaragua threaten the independence of El Salvador and threaten to destabilize the entire Central American region and the governments of Cuba and Nicaragua refuse to cease these activities."

The 13 May 1983 Report of the House Permanent Select Committee on Intelligence found: "The insurgents are well-trained, well-equipped with modern weapons and supplies and rely on the sites in Nicaragua for command and control and for logistical support. The intelligence supporting these judgments provided to the committee is convincing. There is further persuasive evidence that the Sandinista government of Nicaragua is helping train insurgents and is transferring arms and financial support from and through Nicaragua to the insurgents. They are further providing the insurgents bases of operations in Nicaragua. Cuban involvement, especially in providing arms, is also evident."

And Congress as a whole found in the Intelligence Authorization Act of 1984: "By providing military support, including arms, training, logistical

command and control and communications facilities, to groups seeking to overthrow the government of El Salvador and other Central American governments, the Government of National Reconstruction of Nicaragua has violated Article 18 of the Charter of the Organization of American States."

It is important to keep in mind two other points about the factual background. First, the Sandinista armed attacks against their neighbors began in August 1979. Yet there was no "contra" response until the spring of 1982, more than two and a half years later. Second, the Sandinistas have simply lied about their secret war against neighboring states. As one sample: Foreign Minister D'Escoto filed a sworn affidavit with the World Court declaring "I am aware of the allegations made by the . . . United States that my Government is sending arms, ammunition, communication equipment and medical supplies conducting a civil war against the Government of El Salvador. Such allegations are false."

The Cuban-Nicaraguan efforts to subvert other regional states through the use of covert politico-military attacks as described above, violate:

- Article 2(4) of the United Nations Charter;
- Articles 3, 18, 20 and 21 of the Revised Charter of the Organization of American States;
- Article 1 of the hemispheric Rio defense treaty;
- Articles 1, 2, 3 and 5 of the United Nations Definition of Aggression;
- Article 3 of the 1949 General Assembly Essentials of Peace Resolution;
- Article 1 of the 1950 General Assembly Peace Through Deeds Resolution;
- Article 2 of the 1954 International Law Commission Draft Code of Offenses Against the Peace and Security of Mankind;
- The 1965 General Assembly Declaration on Inadmissibility of Intervention; and
- The 1970 General Assembly Friendly Relation Declaration.

And with respect to Soviet involvement, they also violate:

- The 1972 Principles Agreement;
- Principle 5 of the Helsinki accords; and
- Even Articles 1, 2 and 6 of the Soviet Draft Definition of Aggression.

This pattern of ongoing aggression constitutes an armed attack justifying the use of force in collective defense under Article 51 of the United Nations Charter and Article 3 of the Rio Treaty. Indeed, Article 27 of the OAS Charter, declares that such an attack is "an act of aggression against . . . [all] the American States" and Article 3 of the Rio Treaty creates a legal obligation on the United States to assist in meeting the armed attack. This obligation is parallel to that owed by the United States to Nato under Article 5 of the Nato Treaty in the event of an attack on a Nato member or under Article 5 of the Mutual Defense Treaty with Japan in the event of an attack on Japan.

A lawful response in defense may be overt, covert or both, as has been the case in virtually every conflict in which America has fought in this century. In World War II, no one regarded Allied support for partisan forces or covert operations in Germany as an illegal response to Axis aggression. Such activities in defense against an armed attack have never been and are not now "state terrorism." Indeed, to make such a charge is to undermine the most important distinction in the United Nations and OAS Charters—that between aggression and defense.

Some have argued that a covert attack cannot amount to an armed attack justifying a response in defense under Article 51 of the UN Charter. This is wrong both as a matter of law and policy.

Kelsen writes "Since the Charter of the UN does not define the term armed attack used in Article 51, the members of the UN exercising their right of individual or collective . . . defense, may interpret armed attack to mean not only an action in which a state uses its own armed forces but also a revolutionary movement which takes place in one state but which is initiated or supported by another state." This conclusion is supported by McDougal and Feliciano in perhaps the best scholarly treatment of the subject, *Law and Minimum World Public Order* (1961). Indeed, even the Soviet Draft Definition of Aggression says "that State shall be declared the attacker which *first* commits support of armed bands . . . which invade the territory of another State, or refusal, on being requested by the invaded State, to take in its own territory any action within its power to deny such bands any aid or protection." And within this hemisphere the principle that states may respond with use of force to a covert attack through assistance to insurgents was affirmed at the Ninth Meeting of Consultation of the Ministries of Foreign Affairs, serving as the Organ of Consultation under the Rio Treaty in response to the earlier problem of Cuban covert attack.

Some have conceded that the United States may respond in defense but have argued that support for contras is disproportionate. But why is it disproportionate for the United States to respond to an armed attack aimed at overthrowing a democratically elected government while not ruling out that same objective against the Sandinista military junta in Nicaragua? Remember, Nicaragua in its attack on El Salvador has no Boland Amendment or funds cutoff. That attack continues and is meant to replace the government of El Salvador before proceeding to Costa Rica, which will be, says Commandante Borge, "the dessert."

The Central American conflict illustrates fully the radical regime assault on world order and the difficulty of reaching an effective decision in response.

The Cuban-Nicaraguan war against their neighbors is a well-executed secret war supported by a network of radical regimes and accompanied by a

broad campaign of propaganda and disinformation. As in the first phase of North Vietnam's attack against the South, the existence of the secret attack is well enough concealed that democratic opinion is highly skeptical. In the West, moreover, there has been an intense focus on the general social, economic and political shortcomings of the regime under attack as well as increased attention on the propriety of using particular forms of assistance or defensive responses.

Because of the failure to appreciate this Cuban-Nicaraguan secret aggression, there is a confused, but nonetheless widespread belief in the West that an American defensive response is nothing more than an American "Brezhnev Doctrine." In other words, some critics argue that US policy is designed to prevent self-determination in Central and Latin America when, in fact, US policy is aimed at precisely the opposite objective—strengthening those institutions which would establish and guarantee self-determination throughout the region. This confusion between aggression and defense in turn undermines the deterrent effect of the legal order on the radical regime assault. In more specific terms, aid to contras should be thought of as one defensive option in responding to an armed attack where democratic objectives are to protect the right of self-determination of the attacked states, and the principle of the UN and OAS Charters prohibiting aggressive use of force.

Yet the issue is debated overwhelmingly as though it were the propriety of an American war of national liberation against a government we dislike. That is, it is debated as though there were no war begun by a Cuban-Nicaraguan attack.

Strategies for Strengthening Deterrence Against the Radical Regime Assault

There are several strategies available to the democracies if they are to respond effectively to the totalitarian and radical regime assault and if they are to strengthen deterrence.

First, it is important that the democracies act together in order to emphasize the value of the fundamental Charter distinction between aggression and defense and, thereby, coordinate strategies for strengthening world order. This strategy has at least three elements: emphasize the impermissibility of aggressive use of force, whether overt or covert, including the impermissibility of assistance to terrorist or insurgent groups across *de facto* political boundaries; emphasize the permissibility of defensive response, whether overt or covert, including necessary and proportionate response to any covert attacks such as terrorism or externally aided insurgent movements; and emphasize that one form of permissive response to an armed attack is overt or covert assistance to resistance or insurgent forces.

In connection with this last point, it must be understood that assistance to contras in Nicaragua, or resistance fighters in Afghanistan or Cambodia would in each case be a permissible response under Article 51 of the United Nations Charter to, respectively, a Cuban-Nicaraguan armed attack against El Salvador, a Soviet armed attack against Afghanistan and a Vietnamese armed attack against Cambodia.

As part of the effort to restore vitality to the prohibition of aggressive use of force we must vigorously resist radical regime efforts to legitimize terrorism. In the TWA flight 847 incident we were repeatedly told—as in virtually every terrorist attack—that the terrorists are acting out of some legitimate grievance. That, however, is the equivalent of the just war argument which has been decisively rejected by the United Nations Charter. We need no more resolve all the causes of terrorism before prohibiting aggressive terrorist attack than we need resolve all of the causes of war before prohibiting aggressive war.

Moreover, as TWA 847 illustrates, terrorism frequently involves neutral third countries, and involves attacks against innocent civilians. These attacks would be prohibited under the laws of war even in a lawful defensive use of force. And in the 847 incident, the attacks on civilian aviation also violate solemn international agreements. Most importantly, the brutal murder of an American serviceman, the looting and brutalization of hostages and the effort to single out those of Jewish faith would be war crimes even if committed pursuant to a defensive use of force. The 847 incident, like so many others, is a moral and legal outrage. The democracies must not become so numbed by the radical assault that they fail—as an important element in deterrence—to clearly understand, voice, and act against such outrages of terrorism.

Unless the pluralist democracies stand together in upholding the permissibility of effective defense against terrorist and covert guerrilla attack, they will be increasingly vulnerable to such attacks. Perhaps one technique for beginning to implement this strategy would be an expert level meeting between Nato countries. One possibility might be to raise the issue in a meeting of Nato representatives or a meeting of foreign office legal advisers. Perhaps such a meeting should be preceded by a decision, made by the heads of state, to hold expert level talks on strengthening the Charter framework for control of aggressive use of force. After Nato coordination, the issue could be appropriately raised through bilateral and multilateral discussions with like-minded nations—including such regional arrangements as the OAS.

Second, it is critical that the democracies make a major effort to educate their public, their media and their national legislatures on the nature of the totalitarian and radical regime assault on world order. This must include a more effective education on the nature of the terrorist and insurgent threat and assistance network. Such education will be more effective if undertaken by more than one democratic nation—possibly even with coordinated “white

papers." Parliamentary and congressional reports as well as bipartisan special commissions such as the Kissinger Commission report on the Central American conflict should also be encouraged.

Third, the democracies should encourage more vigorous media examination of totalitarian political action, propaganda and disinformation. A free and vigorous press is its own antidote to political action and propaganda. Efforts to encourage investigative reporting of front operations, terrorist assistance networks, foreign congressional lobbying campaigns and foreign political action programs are in the best tradition of democratic pluralism.

Yet another possibility for strengthening world order and neutralizing the totalitarian and radical regime assault is for the democracies to initiate "accountability" or "compliance" talks on world order principles. Human rights accountability talks have been undertaken with some success within the Helsinki process; success, not measured by Soviet compliance, but in raising the cost of Soviet noncompliance. Why not initiate such talks on world order issues within that process? It could be highly educational to hold public world order talks in which Nato, Warsaw Pact and European neutral and nonaligned nations participated. How would the Soviet Union explain to its Warsaw Pact allies an alleged legal right claimed under the "Brezhnev Doctrine" to deprive them of any sovereign right to select their form of government? How would it defend Soviet actions in Afghanistan? How would it defend before Nato and European neutrals a right to assist terrorist groups or "wars of national liberation"? If it did not legally defend such practices, how would it respond to disclosure of the facts of the covert assistance to terrorist and insurgent groups? Although some decision makers in the West may be so numbed by the assault on the permissibility of Western actions—such as US actions in Vietnam, Grenada and Central America, as to question how the West would fare in such talks—these actions are all defensible under fundamental Charter principles and are fundamentally different from the ongoing totalitarian and radical regime assault. Indeed, the difference is fundamental to the Charter's structure—response in defensive versus aggressive use of force.

One example that illustrates the democracies' failure to understand the importance of ending the covert politico-military attack is provided by the history of repeated crises involving Cuba. The emplacement of intermediate-range missiles in Cuba precipitated the 1962 missile crisis. Soviet submarines at Cienfuegos precipitated another period of tension, as did stationing of MiG-23 aircraft in Cuba and the "discovery" of a Soviet brigade there. Finally, Cuban expeditionary forces in Ethiopia ended the Carter administration's effort at normalization of relations. Yet, in a span of over 25 years, Castro has covertly attacked some 17 nations in Latin America and the Caribbean, and has sustained a major effort at subversion against his neighbors—such as recruiting and training Jamaicans for an "education" that

turned out to be education for subversion and guerrilla attack. These covert armed attacks and efforts to subvert regional states, however, have never triggered a major crisis with Cuba comparable to one of the above. The message received surely is that support for terrorism, covert attack and subversion is considered tolerable by the West.

The present war in Central America was not triggered by the existence of MiG-23s in Cuba (although this is not to dismiss the seriousness of such weapons buildups), but by Cuba's successful capture of the Nicaraguan revolution in direct consequence of Castro's effective political organization and Cuba's focused military support and training for the Marxist-Leninist Sandinista faction. After seizing power the Sandinistas simply took control of Nicaragua, and in cooperation with Cuba, continued and escalated the policy of "revolution without frontiers."

As illustrated by the seizure of TWA 847, the radical regime assault on world order is a clear and present danger. The time is late for the democracies but they can and must cooperate more effectively to enhance deterrence against such an assault. The alternative is simply unthinkable.

