

Covert Intelligence Operations

**Are the covert activities of Intelligence agencies an appropriate tool to use in the
pursuit of national interests?**

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Abstract

This essay examines whether or not the covert activities of Intelligence agencies are appropriate tools to use in pursuit of national interests. Using the prism of practice theory, the essay focusses on how discrete intelligence agencies and their tasking authorities may be characterised and how this impacts context. It defines typologies of covert activity and seeks to explain how offensive covert activities during World War II influenced a continuum of intelligence activity through the Cold War and into the modern era. The essay concludes that appropriateness is a subjective term that relies upon differing conceptualisation of the contemporary rules-based world order and arenas of conflict encapsulated therein, and that analysis of context for any given covert activity is essential in assessing its legitimacy as a tool to be used in pursuit of any given national interest.

Keywords: intelligence, covert, security, assassination, Cold War

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News of a suspected assassination attempt on Russian political opposition leader Alexei Navalny in August 2020 (Kurshadayan, 2020) brings into sharp focus covert activities allegedly undertaken by intelligence agencies on behalf of the state. Although Navalny's poisoning has yet to be confirmed as an attempted political assassination, such activities are nothing new. In his sweeping history of intelligence, Andrew (2018) details methods of assassination set out in *Arthashastra*, the Indian Sanskrit manual of statecraft published in the 4th Century BCE (pp. 61-62). He goes on to cycle through an extensive range of examples across millennia of human history. For the modern era, authors such as Gleijeses (2016), Richelson (1997) and Roblin (2019) have, respectively, highlighted CIA attempts to kill Cuban leader Fidel Castro, the Russian NKVD's killing of Trotsky, and Israel's car bombing of Iranian nuclear physicist Professor Massoud Alimohammadi as examples of more recent state-sponsored policies of assassination.

The latter example stands in contrast to the attempts on Castro's life, the killing of Leon Trotsky and the possible attempted assassination of Alexei Navalny. The assassination of a scientist working on behalf of a foreign state represents the prosecution of a covert intelligence operation in support of national interests in a supra-political context. Professor Alimohammadi was not a political figure, he was a private citizen. His death, and other assassinations or 'targeted killings',¹ raise a raft of questions about the nature of covert intelligence activities, bringing into sharp relief challenges to their legitimacy in both ethical and legal contexts. What counts as a sufficiently important national interest warranting the application of covert lethal force or the deployment of other activities that are, at face value, illegal or indeed unethical? Where are the boundaries that separate covert intelligence activities from acts of war? Is there a clear

¹ Defined by numerous commentators as the state-sponsored assassination of perceived enemies.

delineation between routine and covert intelligence activities, and if so, how do we characterise the latter as being appropriate in a legal or moral sense?

These are big questions that are beyond the scope of a single essay, yet they all have a bearing on the question at hand. To limit our scope of enquiry, it will be useful to focus on one aspect of this broad tapestry. In examining covert intelligence operations, Lechner and Frost (2018) provide the useful prism of practice theory as a useful tool of analysis. Drawing on practice theory, a central observation arising from this essay is that the practice of any given intelligence agency is defined by how it is characterised by the state, and by the extent to which it self-defines its own character. Encapsulating analysis in this way facilitates understanding of context, and may shed light on the legitimacy or ‘appropriateness’ of contemporary covert intelligence activities.

This essay is broken down into four areas of discussion. First, it sets out a series of definitions that cover the concepts of national interest, intelligence, covert intelligence activities and appropriateness. Second, through the prism of practice theory, it defines the characteristics of state actors, intelligence agencies and covert intelligence activities. Thirdly, it defines categories of intelligence outcomes and makes some comment on the implications of consequentialism. Finally, it provides observations on boundary-setting for covert intelligence activities by convention, law and ethics. It concludes that a reliance on normative views of the international rules-based order as an instrument for curtailing offensive/covert intelligence activities may, in the light of such activities being a feature of the geo-political landscape extending as a continuum from 1945 until the present day, be a somewhat naïve position to adopt.

In his seminal work on the history of espionage, Hughes-Wilson (2016) asserts that, “for good or ill, intelligence will remain at the heart of the world’s affairs” into the future (p.

474). This statement drives to the heart of the question we're considering if we conceptualise 'appropriate' as meaning a determination between good or ill, that is, whether the activity is acceptable or otherwise in a moral, legal and constitutive sense. Gaddis (2005) explains the shape of the emerging world post-1945 by first characterising World War II as the "pursuit of compatible objectives by incompatible political and ideological systems", a Grand Alliance between the USA, Russia and the UK coming together to defeat Nazi Germany (p.5). His study of this Alliance concludes that, as it fractionalized in the aftermath of the War, the military establishments of Washington, Moscow and London continued to be haunted by fears of a surprise attack (p.46). This in turn, led to an expansion of intelligence capabilities by all sides, and the establishment in 1947 of the US Central Intelligence Agency (CIA).

It is essential to understand that, from the outset, CIA was authorized to undertake both "...analysis and clandestine activities" in the prosecution of US national security interests.² There has been no deviation from this through until the present day, as evidenced on its own website where the Agency declares that its "paramount goal and mission is to protect the national security of the US".³ In taking this mission forward, thinking within the Agency was from its inception dominated by the experience of the wartime Office of Strategic Services (OSS) and, to some extent, the UK's Special Operations Executive (SOE).⁴ In particular the so-called 'founding father' of CIA, wartime OSS chief William Donovan,⁵ was highly influential in promoting direct action capabilities in new arenas of conflict. It is interesting to note that Andrew (2018) highlights the support of UK Secret Intelligence

² <https://www.cia.gov/news-information/featured-story-archive/2008-featured-story-archive/national-security-act-of-1947.html>

³ <https://www.cia.gov/about-cia/cia-vision-mission-values>

⁴ Both the OSS and the SOE were tasked with a combination of information gathering and offensive action, the latter of which included the SOE-sponsored assassination of SS leader Reinhard Heydrich in 1942.

⁵ US General William "Wild Bill" Donovan, appointed by President Roosevelt as Coordinator of Information (COI) in 1941, and then Director of the Office of Strategic Services (OSS) in 1942. OSS is regarded as the predecessor of CIA.

Service (SIS) agent William Stephenson⁶ in Donovan's 1941 proposal for the establishment of a new US central intelligence organization (p. 609). Stephenson at the time was heading the British Security Coordination (BSC), an SIS liaison organization run from the Rockefeller Building in New York City (*ibid*). Conant (2009) sets out the principal roles of the BSC as shaping and influencing the US political/media landscape to support the President in driving through his 'lend-lease' policy,⁷ and shifting US society away from its isolationist mindset. As evidenced by many authors (including Sewell, 2011; Gleijeses, 2016; and Warner, 2010), subsequent US covert paramilitary actions and similar influence operations have been a consistent feature of CIA activity through until the present day, a continuum of practice under an Agency leadership that has included a number of former OSS officers.⁸

Looking to the East, Miroiu (2015) points to Stalin's alarm at post-World War II anti-communist uprisings in Romania, Ukraine, Poland and the Baltic states⁹ as catalysts to Russian-sponsored covert intelligence activities that have included influence operations, censorship, detentions and torture (pp. 462-465). Unconstrained by notions such as human rights or liberal political freedom, and concerned by CIA and SIS infiltration of paramilitary teams into Romania, Albania and elsewhere, the various branches of the Soviet Union's extensive intelligence apparatus prosecuted covert activities both within the USSR¹⁰ and extensively around the world in an attempt to counter what Stalin saw as US-led neo-Imperialism, and to spread its communist ideology. This position is supported by Hughes-

⁶ William Stephenson was a Canadian industrialist who gained Churchill's confidence in the mid-1930's and subsequently acted as MI6 lynchpin between Churchill and Roosevelt whilst head of the British Security Coordination (BSC) in New York during 1941-45. In addition to his MI6 duties, Stephenson helped to bankroll the Special Operations Executive (SOE), establishing a combined SOE/OSS training camp in Canada that taught various clandestine skills, including methods of assassination.

⁷ US legislation allowing the lending of war equipment to the UK in exchange for the leasing of certain UK sovereign bases to the US as strategic assets facilitating defence of the USA homeland and intelligence operations further afield.

⁸ For example, CIA Directors Allen Dulles, William Casey, Richard Helms and William Colby.

⁹ Lithuania, Latvia and Estonia.

¹⁰ The Union of Soviet Socialist Republics, the official designation of the Soviet Union. Autocratically dominated by Russia until its dissolution in 1991.

Wilson (2016), who identifies “political, ideological, economic and military differences” (p. 136) as being the catalysts to a new form of ‘Cold War’ conflict between East and West moving into the post-War era, a conflict characterized by the use of intelligence.

Meanwhile, Andrew (2018) records that in 1948 the newly-formed state of Israel, surrounded by potential enemies and determined to bring justice to those responsible for the Holocaust, adopted the strategy of “targeted killing as secret state policy under Prime Minister David Ben-Gurion” (p. 732). Although a significant element of this policy can be characterised as a drive for revenge, Bergman (cited in Andrew, 2018) claims that extension of this policy evidenced, for example, by the contemporary assassinations of Israel’s enemies in the Middle East and elsewhere, is driven by its “instinct to take every measure, even the most aggressive, to defend the Jewish people” (p. 732).

These concepts of defence and security, therefore, are central to our understanding of what is meant by ‘national interest’. Whether it is the defence of economy, ideology, political systems, military advantage, territorial integrity or the security of people, it is the prioritization of national security more than anything else that allows a universal conceptualisation of how most intelligence agencies justify their activities. Crucially, the additional significance of attitudes extending from the experience of conflict during World War II is that there has been a clearly visible continuum of mindset and the deployment of similar intelligence capabilities, both passive and active, through into the modern era.

Defining intelligence itself is problematic. Hughes-Wilson (2018) claims there are “many different meanings of the word” (p. 3), but for our purpose here it is useful to delineate between intelligence as a written product of analysis and intelligence as an activity. Hughes-Wilson (2016) does go on to define intelligence primarily as “information that has been systematically and professionally processed and analysed” (p. 55). However, intelligence as practiced by intelligence actors is more than just this. Some covert intelligence

activities such as agent handling, surveillance or spying can fit neatly into the collection phase of what Hughes-Wilson (2016) terms “the intelligence cycle”, a methodology that usually processes gathered information into written product (p. 55). However, activities such as assassinations, political shaping, the training of paramilitary forces and the arming of rebels are more accurately defined as practices of intelligence product exploitation. The question then becomes, are exploitation operations appropriate activities for intelligence agencies rather than, for example, the state military; and if so, can the results of these activities also be defined as intelligence products?

To further explore this, it is useful to recognize that the interlinked practices of nation state actors, their intelligence agencies and the covert activities of such agencies, can be very distinct between one nation and another. Hart (1958) refers to the “internal point of view” as being essential to making sense of any given practice (p.597). For example, one intelligence agency may view itself as being solely an information gathering/analysis arm of the state, whilst another may view itself additionally as being an arm of executive state action in exploiting such information. How actors within differing political systems view appropriateness of covert intelligence activities therefore differs accordingly.

Harmonising some kind of international rules-based order that helps define boundaries of permissible action is difficult between, say, the Russian state with its thinly-veiled structure of political dictatorship; the paranoia of the Israeli state, surrounded by enemies and still challenged by memories of the Holocaust; and the USA with its internally contested view of liberal freedoms and its ongoing attempts to establish global economic hegemony. Yet, such order does exist, at least in a constitutive sense. The United Nations Charter, the Universal Declaration of Human Rights, the Laws of Armed Conflict (LOAC), International Human Rights Law (IHRL), International Humanitarian Law (IHL) and the

Vienna Convention on Diplomatic Relations all seek to limit the means by which states may prosecute their interests in either peace or war.

Whilst nation state actors and their intelligence agencies may exhibit differing characteristics and a greater or lesser respect for normative conventions and the rule of international law, the covert activities of their intelligence agencies may usefully be broken down into common categories of what Frost and Lechner (2018) term “meaningful conduct” (p. 20). Covert activities such as physical surveillance, aerial surveillance, communications monitoring and agent handling are all part of the collection phase in the intelligence cycle, and may be defined as passive in character. In contrast, activities such as influence operations, the training of guerilla forces, the arming of insurgencies and the conduct of what Hughes-Wilson (2016) terms ‘extraordinary rendition’ operations (p. 121)¹¹ may all be defined as active/covert in character. Active operations may be further categorised as offensive/covert in character where they engage in forms of direct action requiring the application of potentially lethal force.

Within this matrix, we begin to see the emergence of boundaries in terms of ‘rule-following activity’ and the likelihood, or otherwise, of state and intelligence actors respecting them. For example, it is unlikely that passive/covert activities transgress the constituted rules of international conventions such as the Articles of the UN Charter or those statutes comprising IHL, though some activities¹² might be against certain tenets of national law. Conversely, the active/covert activity of breaking into a foreign Embassy for the purpose of stealing high-value codes is, as highlighted by Daniell (2020),¹³ probably in breach of the Vienna Convention, whilst the offensive/covert action of assassinating a political opponent on

¹¹ The detainment of belligerents such as known or suspected terrorists on foreign soil and their subsequent extraction to so-called ‘black sites’ or more formal places of detention, for the purpose of interrogation.

¹² Such as receiving classified information from an agent whilst in a foreign territory.

¹³ In the RNZ podcast series *The Service*, broadcast in May-June 2020.

foreign soil contravenes various conventions and laws, and crosses any number of ethical boundaries.

Boundary-setting, however, has to take account of broader considerations such as whether the actors involved are at war in the sense of LOAC, whether they are situated in a state of conflict ‘other than war’,¹⁴ or whether there are other discernible mitigating factors at play. The implications of this are that any rules-based boundary must be contextualised for the circumstances within which the covert intelligence activity is being undertaken. Taking targeted killing as an extreme example, such activity is explicitly allowed under the tenets of LOAC,¹⁵ and yet, with the arguable exception of actions as a last recourse of defence, is proscribed during peacetime through a combination of national laws, IHL and IHRL. Yet the intelligence agencies of various states in situations other than war¹⁶ continue this practice, as evidenced by the BBC (2016) and Owen (2016) in analysing Russia’s assassination of former KGB spy Alexander Litvinenko; Dawson, Harris and Miller (2018) in reporting CIA conclusions on Saudi Arabia’s killing of journalist Jamal Kashoggi at its Consulate in Turkey; by Crowley, Hassan and Schmitt (2020) in reporting the US targeted killing of Iranian General Qassim Suleimani in Iraq; and by President Obama (2011) in announcing the death of Osama bin Laden, where he explicitly confirmed his earlier direction that CIA target bin Laden for “killing or capture”.

The deaths of Suleimani and bin Laden illustrate key differences in the practice of offensive/covert intelligence activities. Suleimani was killed by a drone strike and bin Laden was killed by US Special Forces. Both were facilitated by US intelligence assets in a surveillance role¹⁷. Whilst these actions risked significant collateral damage both physically

¹⁴ For example, during counter-insurgency operations (COIN), modern-day hybrid/asymmetric conflict, or even during the Cold War.

¹⁵ With specified exceptions.

¹⁶ In the sense that a declared state of war does not exist between the involved parties.

¹⁷ Notably by US GEOINT machinery.

and politically, they were respectively justified by President Trump (2020) as an act in response to intelligence reports that “Soleimani was plotting imminent and sinister attacks on American diplomats and military personnel”; and by President Obama (2011) because “we [the USA] went to war against Al Qaeda”. In contrast, the deaths of Kashoggi and Litvinenko appear to have been justified as the silencing of political critics and, in Litvinenko’s case, additionally as a punishment for treason.

We can see from this that there appears to be a sliding scale of ‘appropriateness’ when considering the use of covert activities as a tool in pursuit of national interests. Analysing the appropriateness of any given covert activity needs to identify the interest at stake; take account of the characteristics of the nation state/s and the intelligence agency/s involved; whether the activity at hand is passive, active or offensive; how the scale of appropriateness might be affected by the wider political or conflict circumstances within which the activity is being conducted; the legality and ethical justification of the specific outcome required of the covert activity; and whether negative consequences resulting from the activity in question might outweigh its advantages.

The latter point bears further examination. History is littered with examples of intelligence-driven initiatives resulting in negative consequences. A startling example would be the SOE assassination of SS leader Reinhard Heydrich in 1942,¹⁸ an offensive/covert intelligence activity that led not just to the deaths of Heydrich and the agents involved but also, according to Wilkinson (2002), to as many as 5,000 civilians being executed or deported to death camps during subsequent reprisal raids by the Germans. Negative consequences extending from more recent intelligence activities, many of them unforeseen, have been even more profound. Rabe (quoted in Gleijeses, 2016, p. 297) points to intelligence-driven covert intervention by the US in British Guyana leading to “racial warfare between blacks and

¹⁸ Operation Anthropoid.

Indians”, whilst Gleijeses (2016) rolls out a litany of collateral damage in Guatemala, Angola and elsewhere resulting in the deaths of hundreds of thousands (pp. 305-6). CIA Director Richard Helms’ proud boast (quoted in Leary, 1995, p. 517) that CIA “did a superb job” in Laos may be true in a micro sense, but it seems to miss the wider reality that, as evidenced in the trial papers of the Cambodian Genocide (Ed. De Nike; Quigley; and Robinson, 2000), US intelligence-driven bombing missions and a combination of active/covert and offensive/covert intelligence operations during the Vietnam War ultimately led to the genocidal euthanisation of hundreds of thousands, perhaps millions, of non-combatants as a largely unforeseen product of consequentialism in Cambodia and elsewhere.

Former head of MI6 David Omand (2010) refers to the influence of chaos theory on intelligence operations, positioning that the “fractal nature of reality means that it is not possible for the analyst to plot an exact course from here to the future to establish... which future we will end up with” (p. 237). For democratic states at least, in the modern era it is very likely that some form of risk assessment in the context of projected outcomes and the potential for collateral damage will always be undertaken before covert intelligence activities are launched.¹⁹ Notwithstanding this, in recent years, fundamental destabilisation has occurred as a consequence of covert shaping/influence operations undertaken by US and British intelligence agencies.²⁰

Recently, and perhaps with some irony, CIA contributed to a report published by the US Senate Select Committee on Intelligence confirming that “the Russian government directed extensive activity against US election infrastructure” during the 2016 Presidential Election (Select Committee Report, 2019, p. 3). Such activities then, are by no means confined to the history of the Cold War. They are, in fact, part of the contemporary geo-

¹⁹ As evidenced by Prime Minister Helen Clark’s observations about decision-making in the TV series *Secrets and Spies*.

²⁰ For example, in Libya and Syria.

political landscape. The point here, is that proposed covert intelligence activities should always be subject to some form of risk assessment because the risks of failure or unforeseen consequences could be harmful at best, catastrophic at worst.

We have seen through this necessarily brief analysis of covert intelligence activities that there are a range of factors potentially impacting any decision to deploy such capabilities, and that impact our judgement of whether such tools are appropriate to use in pursuit of national interests. Many of these factors come into sharp focus when considering the deployment of certain active/covert or offensive/covert capabilities, and there is very clearly a significant ethical dimension to these decisions that we have yet to explore.

For now, and in overall answer to the question addressed by this essay, we can summarise that recognising there are clear delineations between passive, active and offensive covert intelligence activities is key to assigning ‘appropriateness’ to the differing types of intelligence tools that are available; that the ‘risk appetite’ of tasking authorities will differ according to the character of the political body in question and the agencies at hand; that the conflict arena within which the covert activity is taking place may impact the legality or otherwise of the activity being proposed; that the continuum of active/offensive covert intelligence activities since 1945 suggests that a liberal interpretation of the contemporary international ‘rules-based order’ and its ability to regulate the behaviour of covert intelligence activities may be somewhat naïve and is broadly ineffectual; and that, as pointed out by Omand (2010), “understanding context is everything” (p. 216) if we are to achieve a balanced view of these activities.

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