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# Covert Action

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# US Definition of Covert Action

- *Covert action* is “an activity or activities of the United States Government to influence political, economic, or military conditions abroad, where its intended that the role of the United States Government will not be apparent or acknowledged publicly.”<sup>1</sup>
- This definition of covert action intentionally does not include government activities aimed at misleading an adversary (real or potential) about the true nature of US military capabilities, intentions, or operations

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# US Definition of Covert Action (cont'd)

- Remember the difference between “covert” and “clandestine” from first class lecture.
- *Covert*: The event is publicly observable, but the sponsorship is hidden
  - E.g., an intelligence service can covertly supply weapons to one side in a war — the fact that the weapons are there and being used is publicly observable, but their source is hidden
- *Clandestine*: The event itself is secret or hidden
  - E.g., a case officer meeting her agent is a clandestine act

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# Presidential Findings

- In 1974, Congress began to assert some level of statutory control over covert action in response to revelations from Church/Pike committees
- Hughes-Ryan Amendment to the Foreign Assistance Act of 1961
  - No appropriated funds could be expended by CIA for covert actions unless and until the President formally:
    - “Finds” that each operation was important to national security
    - Provided the appropriate committees of Congress with a description the operation, including its scope, in a timely fashion
    - The phrase “timely fashion” was not defined
- Hughes-Ryan was repealed in 1980, and throughout the 1980s various laws were passed, directives signed, and agreements reached between the executive and legislative branches on covert action

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# Current Law on Covert Action<sup>1</sup>

1. Presidential finding must be in writing
2. Finding may not retroactively authorize covert action which has already occurred
3. President must determine the covert action is necessary for identifiable foreign policy objectives
4. Finding must specify all government agencies involved and whether any third party will be involved
5. Finding may not authorize any action intended to influence United States political processes, public opinion, policies or media

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# Current Law on Covert Action

## (cont'd)

6. Finding may not authorize any action which violates the Constitution of the United States or any statutes of the United States
  7. Notification of appropriate congressional leaders must be followed by submission of the written finding to the chairmen of the intelligence committees
  8. Intelligence committees must be informed of significant changes in covert actions
  9. No funds may be spent by any department, agency or entity of the executive branch on a covert action until there has been a written and signed finding
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# Specific Statutory Exclusions from “Covert Action” Definition<sup>1</sup>

1. Intelligence collection, counterintelligence, operational security, or related administrative activities
2. Traditional diplomatic or military activities, or their routine support
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4. Routine support to the overt activities of other United States Government agencies abroad

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Bullet 2 is a current point of contention between Department of Defense (DoD) and some intelligence watchdog groups.

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# DoD Overstepping the Bounds?

- Some assert that DOD, in the wake of 9/11, is engaging in counterterrorism activities that should be legally considered “covert action”
- Citing exemption 2 from the previous slide, DoD holds that such activities do not constitute covert action, and are thus exempt from Presidential findings and Congressional oversight
  - Is the war on terror close enough to an ordinary “war” for DoD’s activities to be considered “traditional military activities?”

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# Executive Order 12333

- President Ford issued an Executive Order (EO) banning assassination by the US government
  - Ford was responding to the findings of the Church/Pike Congressional investigations of the mid-1970s
  - Church/Pike accused the CIA of trying (unsuccessfully) to assassinate certain foreign officials, particularly Fidel Castro
- President Carter issued a similar EO, superceding Ford's
- President Reagan issued a third EO banning assassination, superceding Carter's
  - Reagan's order is EO 12333, and it stands to this day

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# Executive Order 12333 (cont'd)

- “Assassination” is not defined in EO 12333
  - According to the nonpolitical, nonpartisan Congressional Research Service’s work on EO 12333, “[I]t appears that an assassination may be viewed as an intentional killing of a targeted individual committed for political purposes.”
- EO 12333’s application in wartime is controversial, as is its scope overall

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# Executive Order 12333 (cont'd)

- On 14 September 2001, the House and Senate passed joint resolutions SJ Res 12 and HJ Res 64
- Authorized the President to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”
- Effect of EO 12333?