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"I can assure you that in this Administration, our actions will be governed by the rule of law; and the rule of law is congenial to action against terrorists." Secretary of State George Shultz**

Early in May, 1985, undaunted by Congressional opposition to further funding for the contra rebels,¹ President Reagan urged plans to embargo all trade between Nicaragua and the United States. These plans, representing the latest response to what the President calls Nicaragua's "aggressive activities in Central America,"² express a continuing U.S. pattern of disregard for the normative requirements of international law. Nurtured by fear that Nicaraguan activities are "supported by the Soviet Union and its allies,"³ they are offered without any respect for the peremptory principles of non-intervention and self-determination.

Curiously, in defending its forceful actions against the Sandinista government, the Reagan administration no longer feels the need for legal justifications. Although these actions were originally defended largely in terms of the U.N. Charter's Article 51 provision for collective self-defense (i.e., that they were undertaken by the U.S. in law-enforcing response to alleged Nicaraguan support for anti-government rebels in El Salvador),⁴ the current position of the Reagan administration is grounded exclusively upon geopolitical considerations. As a result, the Reagan administration

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** BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE, CURRENT POLICY No. 629, TERRORISM AND THE MODERN WORLD (1984).

1. At the time of this writing, there is evidence that this opposition may end and that further support for U.S. military intervention in the internal affairs of Nicaragua will receive Congressional authorization.

2. Christian, *Action Urged to Counter 'Aggressive Actions' by the Sandinistas*, N.Y. TIMES, May 1, 1985, at 1.

3. *Id.*

4. OFFICE OF PUBLIC DIPLOMACY FOR LATIN AMERICA, U.S. DEP'T. OF STATE, BACKGROUND PAPER: NICARAGUA'S MILITARY BUILD-UP AND SUPPORT FOR CENTRAL AMERICAN SUBVERSION (1984). See also, U.S. DEP'T OF STATE, NEWS BRIEFING: INTELLIGENCE INFORMATION ON EXTERNAL SUPPORT OF THE GUERRILLAS IN EL SALVADOR (1984). The Reagan administration's original "white paper" was widely discredited by press reports. Compare U.S. DEP'T OF STATE, COMMUNIST INTERFERENCE IN EL SALVADOR, REP. No. 80 (Feb. 23, 1981) with Kwitny, Apparent Errors Cloud U.S. 'White Paper' on Reds in El Salvador, WALL ST. J., June 8, 1981, at 1, col. 6.

seriously undermines worldwide respect for the rule of law. The most visible and dramatic manifestations of this country's "outlaw" behavior are: (1) its wanton disregard for the territorial and jurisdictional integrity of another state, and (2) its decision, announced on January 18, 1985, not to participate further in proceedings of the case brought by Nicaragua in the International Court of Justice.⁵

Initially, the Reagan administration also sought to justify its support for contra activities in terms of the principle of humanitarian intervention. It has now muted this rationalization, however, in the face of obvious policy contradictions. Since the administration continues to support other regimes in the region that are vastly more repressive than that of the Sandinistas,⁶ its alleged concern for human rights is merely a contrivance. Indeed, it is now plain that U.S. tactics in Central America are motivated entirely by *Realpolitik* and by the desolate machinations of anti-Sovietism.

From the standpoint of modern international law, humanitarian intervention certainly has its place. Operating within the severely limiting context of a decentralized and sovereignty-centered system—one without collective enforcement machinery—individual states must increasingly act on their own to protect and promote human rights. In this connection, however, the standard for permissible intervention must hinge, *inter alia*, on more than ideological motives and it must be applied uniformly wherever egregious violations are in evidence. The sharply divergent and in-

5. Dep't of State to the American Embassy at the Hague, telegram NO. 017113, Jan. 18, 1985. Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U. S.), Jurisdiction and Admissibility, 1984 ICJ REP. 392 (Judgment of Nov. 26).

6. According to the opening paragraph of the AMNESTY INTERNATIONAL REPORT: 1984 listing for Nicaragua: "Amnesty International's concerns included trials of political prisoners which fell short of internationally accepted standards; the detention of prisoners of conscience; the detention of political prisoners after their sentence had expired; and the prolonged incommunicado detention of political prisoners in the custody of the Direccion General de Seguridad del Estado (DGSE), Department of State Security. Amnesty International welcomed the release in a December 1983 amnesty of most of the Miskito and Sumo Indian prisoners known to the organization, some of whom it had believed were prisoners of conscience." AMNESTY INTERNATIONAL REPORT: 1984 at 178.

A comparison with the opening paragraph of Amnesty's 1984 assessment of El Salvador suggests a significantly greater respect for human rights in the Sandinista regime. Regarding El Salvador: "Amnesty International remained gravely concerned about the continued involvement of all branches of the security and military forces in a systematic and widespread program of torture, mutilation, 'disappearance' and the individual and mass extrajudicial execution of men, women and children from all sectors of Salvadoran society. Paramilitary civilian defense squads which operated under military supervision as well as so called 'death squads' were also consistently named as having been responsible for such abuses." *Supra* at 148. Despite the Reagan administration's assurances that Salvadoran human rights have significantly improved after the latest elections, these assurances are utterly without empirical foundation. In the words of the Americas Watch Report on Human Rights and U. S. Policy in Latin America: "The human rights situation in El Salvador continues to be bleak and heading for no significant improvement." See WITH FRIENDS LIKE THESE 138 (C. Brown ed. 1985).

consistent policies adopted by the Reagan administration in Central America regarding "totalitarian" and "authoritarian" states fail to meet this standard.

Within the current system of international law, external decision-makers are authorized to intercede in certain matters that might at one time have been regarded as internal to a particular state. While, at certain times in the past, even gross violations of human rights were defended by appeal to "domestic jurisdiction," today's demands for exclusive competence must be grounded in far more than an interest in avoiding "intervention." This trend in authoritative decision-making toward an expansion of the doctrine of "international concern" has been clarified by Lauterpacht's definition of intervention:

Intervention is a technical term of, on the whole, unequivocal connotation. It signifies dictatorial interference, in the sense of action amounting to a denial of the independence of the State. It implies a demand which, if not complied with, involves a threat of, or recourse to, compulsion, though not necessarily physical compulsion, in some form.⁷

We can see, therefore, that intervention is not always impermissible, and that, indeed, any assessment of its lawfulness must always be contingent upon *intent*. Applying Lauterpacht's standard, where there is no interest in exerting "dictatorial interference," but simply an overriding commitment to the protection of human rights, the act of intervening may represent the proper enforcement of pertinent legal norms. This concept of intervention greatly transforms the exaggerated emphasis on "domestic jurisdiction" that has been associated improperly with individual national interpretations of Article 2(7) of the Charter and, earlier, with Article 15(8) of the Covenant of the League of Nations. By offering a major distinction between the idea of self-serving interference by one state in the internal affairs of another state and the notion of the general global community's inclusive application of law to the protection of human dignity, it significantly advances the goal of a just world order.⁸ But there must be consistency. In Grenada, the Reagan administration—faced with a threat from what the President described as "leftist thugs"—responded

7. H. LAUTERPACHT, *INTERNATIONAL LAW AND HUMAN RIGHTS* 167 (1950).

8. The importance of the changing doctrine of "intervention" to the shift in global "allocation of competences" was prefigured by the Tunis-Morocco case before the Permanent Court of International Justice in 1923. In this matter, the Court developed a broad test to determine whether or not a matter is essentially within the "domestic jurisdiction" of a particular state; "The question whether a certain matter is or is not solely within the domestic jurisdiction of a state is an essentially relative question: it depends upon the development of international relations." Although this test is hardly free of ambiguity, it does clarify that the choice between "international concern" and "domestic jurisdiction" is not grounded in unalterable conditions of fact, but rather in constantly changing circumstances that permit a continuing adjustment of competences. It follows that whenever particular events create significant violations of human rights, the general global community is entitled to internationalize jurisdiction and to authorize appropriate forms of decision and action.

with a "liberating" invasion.⁹ In Guatemala, however, where almost a quarter of a million people have been exterminated during the past thirty years by a succession of military dictatorships, the administration favors the perpetrators of regime terror. Similar patterns of U.S. support are enjoyed by the Stroessner regime in Paraguay, which practices genocide against the Ache Indians under the approving eyes of the American embassy in Asuncion, and by the Pinochet regime in Chile, which defiles essential human rights on an almost equally savage scale.

Repression spawns rebellion. Although international law has consistently condemned particular acts of international terrorism, it has also made very clear that not all forms of insurgency are instances of terrorism. In fact, it has approved certain forms of insurgency that derive from "the inalienable right to self-determination and independence of all peoples under colonial and racist regimes and other forms of alien domination. . . ." This exemption, from the 1973 General Assembly Report of the Ad Hoc Committee on International Terrorism, is corroborated by

9. The invasion of Grenada by U.S. military forces took place on October 25, 1983: Led by 1900 U.S. Marines and Army Airborne Rangers, the invasion force also included 300 troops representing Jamaica, Barbados, Dominica, St. Lucia, Antigua and St. Vincent. By October 30, the invasion had been completed and the island—a microstate located in the southeastern Caribbean was "militarily secure." The stated U.S. governmental rationale for the invasion was to protect the 1100 U.S. nationals residing on Grenada, including some 650 students at the St. George's University School of Medicine, and to meet an urgent request by six Caribbean states that the U.S. assist in restoring political order on Grenada (states belonging to the Organization of Eastern Caribbean States (OECS), a regional body formed by treaty in 1981). Moreover, in view of the President's explicitly-stated concern over the 9000 foot airport runway then being constructed by Cubans at Point Salines (a facility feared as a potential fueling stop for Soviet planes carrying arms and other military equipment to Nicaragua and as a base for launching "subversive operations" throughout the lower Caribbean basin), the invasion was also intended to counter Soviet-Cuban influence in the region. Indeed, there is little question that its actual purpose was preeminently to depose the leftist military junta that had seized power after the coup against Prime Minister Maurice Bishop, and then to install a government to the United State's liking. None of these stated justifications, however, meets the requirements of international law. Although it is conceivable that the lives of U.S. citizens had been endangered, the actual military operation took the form of a wholesale assault against the authority structure of another government. To meet the expectations of long-standing customary international law, the intervention should have been severely restricted in application: i.e., it ought to have been conducted as a limited-purpose rescue mission.

As for the rationale of collective action, nowhere in the operative collective security provision of the 1981 OECS Treaty (Art. 8) is there an option to invite outside assistance against a member state (the U.S. is not a party to this Treaty). Furthermore, Article 8 deals with "collective defense and the preservation of peace and security against external aggression," yet there was no external aggressor. OECS Article 8 also requires unanimous agreement among member states before action can be taken, and that condition was never fulfilled. Finally, and this is perhaps the central flaw of the invasion's rationale, no state has the right under international law to intervene militarily in the affairs of another state because it finds another regime ideologically distasteful or potentially harmful. Rather, international law expects that every state be free to choose its own form of political institutions under the principle of "self determination". There is no support under international law for "anticipatory self-defense" if the danger posed is purely hypothetical.

Article 7 of the 1974 Definition of Agression by the U.N. General Assembly.¹⁰

International law has also approved certain forms of insurgency that are directed toward improved human rights where repression is neither colonial nor racist. Together with a number of important covenants, treaties and declarations, the U.N. Charter codifies many binding norms on the protection of human rights. Comprising a human rights "regime," these rules of international law are effectively enforceable only by the actions of individual states or by lawful insurgencies (i.e., those that combine "just cause" with respect for the humanitarian rules of war.)

Where it is understood as resistance to despotism, revolutionary insurgency has its roots as accepted practice in the Bible and in the writings of ancient and medieval classics. Support for such insurgency is not the creation of modern international law. The tyrannicide motif can be found in Aristotle's *Politics*, Plutarch's *Lives*, and Cicero's *De Officiis*. In the Preamble to the U.N. Charter, the peoples of the United Nations reaffirm their faith "in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small" and their determination "to promote social progress and better standards of life in larger freedom."

Article 1 lists a main purpose of the U.N. as "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." Similarly, in Article 55, the Charter seeks "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." And in Article 56, all members of the United Nations "pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

Reinforced by an abundant body of ancillary prescriptions, this obligation stipulates that the legal community of humankind must allow, indeed require, "humanitarian intervention" by individual states in certain circumstances. Of course, such intervention must not be used as a pretext for aggression and it must conform to settled legal norms governing the use of force, especially the principles of discrimination, military necessity and proportionality. Understood in terms of the long-standing distinction between *jus ad bellum* and *jus in bello*, this means that even where the "justness" of humanitarian intervention is clearly established, the means

10. Interestingly enough, the most recent official U.S. government definition of terrorism does not allow for "just cause." According to a September 1984 definition offered by the Department of State, Bureau of Public Affairs: "Terrorism is the use or threatened use of violence for political purposes to create a state of fear that will aid in extorting, coercing, intimidating or otherwise causing individuals and groups to alter their behavior." See *International Terrorism*, DEP'T. ST. BULL. (Sept. 1984). By this definition, of course, the 18th century revolutionary insurgency that led to the creation of the United States was *pure terrorism*. Similarly, The U.S.-supported contras are also terrorists by this definition.

used in that intervention must not be unlimited. The lawfulness of a cause does not in itself legitimize the use of certain forms of violence.

We have seen, therefore, that contemporary international law concerning human rights is necessarily founded upon a broad doctrine of humanitarian intervention. Indeed, it is the very rationale of the prevailing human rights regime to legitimize an "allocation of competences" that favors the natural rights of humankind over any particularistic interests of state. Yet, there is no evidence that U.S. support for the contras is at all consistent with the imperative to oppose repressive governments.¹¹ With such support, this country is not acting on behalf of the international law of human rights. Rather, it is acting only to restore authoritarian repression to Nicaragua. Although this design does not flow from any principled preference for regime terror, but solely from the presumption that such terror is a "necessary evil" in the struggle against Marxism, it represents a *prima facie* instance of aggression. Moreover, since U.S. support for contra rebels is directed against a country with which it has formal diplomatic relations, this aggression may represent a remarkably disingenuous instance of lawlessness.

In support of the principle that foreign intervention is unlawful unless it is understood as an indispensable corrective to gross violations of human rights, most texts and treatises on international law have long expressed the opinion that a state is forbidden to engage in military or paramilitary operations against another state with which it is not at war. Today, the long-standing customary prohibition against foreign support for lawless insurgencies is codified in the U.N. Charter and in the authoritative interpretation of that multilateral treaty in the 1974 U.N. General Assembly Definition of Aggression.

The legal systems embodied in the constitutions of individual states are a part of the international legal order and are, therefore, an interest that all states must defend against aggression. This peremptory principle was expressed by Lauterpacht. According to Lauterpacht, the following rule concerns the scope of state responsibility for preventing acts of insurgency or terrorism against other states:

International law imposes upon the State the duty of restraining persons within its territory from engaging in such revolutionary activities against friendly States as amount to organized acts of force in the form of hostile expeditions against the territory of those States. It also obliges the States to repress and discourage activities in which attempts against the life of political opponents are regarded as a proper means of revolutionary action.¹²

Lauterpacht's rule reaffirms the *Resolution on the Rights and Duties of Foreign Powers as Regards the Established and Recognized Governments in Case of Insurrection* adopted by the Institute of International

11. AMNESTY INTERNATIONAL REPORT: 1984, *supra* note 6.

12. 3 H. LAUTERPACHT, INTERNATIONAL LAW, THE LAW OF PEACE 2-6 (1977).

Law in 1900. His rule, however, stops short of the prescription offered by the 18th century Swiss scholar, Emerich de Vattel. According to Book 2 of Vattel's *The Law of Nations*, which states that support insurgency directed at other states becomes the lawful prey of the world community:

If there should be found a restless and unprincipled nation, ever ready to do harm to others, to thwart their purposes, and to stir up civil strife among their citizens, there is no doubt that all others would have the right to unite together to subdue such a nation, to discipline it, and even to disable it from doing further harm.¹³

In the aftermath of the Holocaust, the philosopher Karl Jaspers considered the question of German guilt. In this connection, he wrote: "There exists a solidarity among men as human beings that makes each co-responsible for every wrong and every injustice in the world, especially for crimes committed in his presence or with his knowledge. If I fail to do whatever I can to prevent them, I too am guilty." Understood in terms of the Reagan administration's refractory disregard for ongoing crimes against humanity in Central America, Jaspers' doctrine suggests an urgent need to confront overriding Nuremberg obligations while there is still time. Should we, as Americans, continue to support only lawless forms of destabilization, we shall surely lose our historic commitment to justice.

From the point of view of the United States, the Nuremberg obligations are doubly binding. This is the case because these obligations represent not only current normative obligations of international law, but also the doctrinal obligations engendered by the American political tradition. By their codification of the principle that fundamental human rights are not an internal question for each state, but an imperious postulate of the international community, the Nuremberg obligations represent a point of perfect convergence between the law of nations and the jurisprudential/ethical foundations of the American Republic.

The United States has been committed to the idea of a Higher Law from its beginnings. Codified in both the Declaration of Independence and in the Constitution, this idea is based upon the acceptance of certain principles of right and justice that prevail because of their own obvious merit. Eternal and unchangeable, they are external to all acts of human will and interpenetrate all human reason.

This idea and its attendant tradition of human civility runs continuously from elements of Mosaic Law and Greek philosophy to the American Revolution of 1776. By its actual conveyance of higher law or natural law thinking into American political theory, John Locke's *Second Treatise on Civil Government* echoed a more than two-thousand year tradition that the validity of civil law must always be tested against pre-existent natural law. The codified American "duty" to revolt when governments

13. 2 E. VATTEL, *THE LAW OF NATIONS* 130 (C.W. Fenwick trans. 1916).

commit "a long train of abuses and usurpations" flows from Locke's notion that civil authority can never extend beyond the securing of man's natural rights.

Significantly, the Declaration of Independence codified a social contract that set limits on the power of any government. Its purpose was to define a set of universally valid constraints upon secular political authority. Since justice, which is based upon natural law, binds all human society, the rights articulated by the Declaration of Independence cannot be reserved only to Americans. Rather, they must extend to all human societies, and can never be revoked by positive or municipal law. It follows that the principles of our own Declaration of Independence must shape not only our own domestic political relations, but our relations with other peoples as well. To do otherwise would be illogical and self-contradictory, since it would nullify the timeless and universal law of nature from which the Declaration derives. Indeed, this idea was reaffirmed recently by Secretary of State George Shultz:

All Americans can be proud that the example of our Founding Fathers has helped to inspire millions around the globe. Throughout our own history, we have always believed that freedom is the birthright of all peoples and that we could not be true to ourselves or our principles unless we stood for freedom and democracy not only for ourselves but for others.¹⁴

Curiously, the United States, founded upon the principles of revolution, has become the archetype of counter-revolution. Guided by short-sighted economic considerations and supremacist politics, it has propped up oligarchies, spawned militarism and thwarted hesitant national struggles to enter the modern world. In this connection, Octavio Paz, the Mexican poet and essayist, has commented:

This is tragic because American democracy inspired the fathers of our Independence and our great liberals like Sarmiento and Juarez. From the 18th century onward, for us modernization has meant democracy and free institutions: and the archetype of this political and social modernity was United States democracy. History's nemesis: in Latin America the United States has been the protector of tyrants and the ally of democracy's enemies.¹⁵

Nuremberg established, beyond any doubt, the continuing validity of natural law. While the indictments of the Nuremberg Tribunal were cast in terms of existing or positive international law, the actual decisions of the Tribunal reject the proposition that the validity of law depends upon its "positiveness." The words used by the Tribunal ("So far from it being

14. BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T. OF STATE, CURRENT POLICY NO. 659, AMERICA AND THE STRUGGLE FOR FREEDOM 1 (Feb. 22, 1985).

15. Paz, *Latin America and Democracy*, in DEMOCRACY AND DICTATORSHIP IN LATIN AMERICA 9 (1982) (a special publication devoted to the voices and opinions of writers from Latin America, Foundation for the Independent Study of Social Ideas).

unjust to punish him, it would be unjust if his wrongs were allowed to go unpunished") derive from the principle *nullum crimen sine poena* (no crime without a punishment). This principle is a clear contradiction of the underlying thesis of positive jurisprudence, the idea of *nulla poena sine lege* (no punishment without a written law).

As an answer to the question, "What is law?," international law now rejects all solutions that substitute force for justice. Rather than accept a distinction between the "concept" and the "ideal" of law, international law now recognizes that concept and ideal coincide. In the fashion of all other legal systems, the law of nations is a branch of ethics. Taken together with the understanding that the supremacy of natural law has always been a part of the American political tradition, and that the current position of international law is largely an "incorporation" of this tradition, this conclusion signals a compelling imperative for change in the direction of American foreign policy on human rights.

To meet its obligations, the Reagan administration must first bring its policies into line with its stated principles. In its most recent issue of Country Reports on Human Rights Practices (1984), the U.S. Department of State stipulates that:

our human rights policy has two goals. . . . First, we seek to improve human rights practices in numerous countries. . . . A foreign policy indifferent to these issues would not appeal to the idealism of Americans, would be amoral, and would lack public support. . . . As the second goal of our human rights policy, we seek a public association of the United States with the cause of liberty.¹⁶

These are decent and correct objectives of a nation's foreign policy. The problem, of course, is that they are not a truthful expression of our policy. They are intended exclusively for domestic and international political consumption. They have nothing whatever to do with the operational standards for U.S. involvement in other countries. They are a lie.

The Reagan administration embraces only one standard of judgment concerning American foreign policy: anti-Sovietism. Human rights have nothing to do with this standard. It follows from this standard that efforts to overthrow allegedly pro-Soviet regimes are always conducted by "freedom fighters" (even where these efforts involve rape, pillage and murder¹⁷ and where these regimes are substantially less repressive than

16. The Department of State is required to enforce the human rights provisions mandated by section 116(d) and 502B(b) of the Foreign Assistance Act of 1961 as amended. The Country Reports are also interesting for the strikingly different way they identify abuses in "authoritarian" and "totalitarian" regimes and for their sharply different assessments from those supplied by such independent human rights organizations as Amnesty International and Americas Watch. See *supra* note 6 and accompanying text.

17. Ironically, Secretary of State Shultz has often stated his commitment to the laws of war of international law, and to the understanding that these humanitarian rules of armed conflict apply as well to insurgent forces. According to Shultz: "The grievances that terrorists supposedly seek to redress through acts of violence may or may not be legitimate.

those of several U.S. allies) while efforts to oppose anti-Soviet regimes (even where these efforts are essentially non-violent and undertaken by the victims of genocidal regimes) are always conducted by "terrorists."

Consider President Reagan's press conference of March 21, 1985, where he stated that the 17 blacks recently shot by South African police had not been "simply killed," but were the excusable casualties of "rioting." Moments later, reacting to a question about Nicaragua, the president defended the use of force against a "Communist tyranny." In other words, rebellion against apartheid must always be peaceful, while opposition to Sandinista rule must inevitably be violent. (This from the president of a country founded upon the principle of "just cause" for revolution).

With this view, black South Africans—although understandably unhappy to be martyred by a uniquely repressive regime—are instructed to be "patient" as the U.S. continues its policy of "constructive engagement." At the same time, contra rebels—widely and authoritatively associated with the execution of noncombatants in Nicaragua and with death-squad activities in El Salvador and Honduras (not to mention their association with neo-Nazi groups in the United States)—are embraced by the President as "our brothers." These "freedom fighters," said the President on March 1, "are the moral equal of our Founding Fathers."

The central problem lies in this country's identification of East/West competition as the only meaningful axis of global conflict. Since such identification makes anti-Sovietism the centerpiece of its policy on human rights, the United States now fully accepts the pernicious doctrine that might equals right. Rejecting former President Carter's declaration of independence from "that inordinate fear of communism which once led us to embrace any dictator who joined us in that fear,"¹⁸ it now offers a parody of lawful and pragmatic behavior. Like a moth dancing in its own flame, the U.S. is moved not by reason but by illusions of immortality.

The Reagan administration claims that it has now begun to change its earlier views on human rights. Yet, there has been nothing to transform its understanding of these rights as an instrument of the Cold War. Clinging to the Manichean imagery of remorseless conflict between the American Sons of Light and the Soviet Sons of Darkness, it is guided not by the exigencies of politics but by the imperatives of "theology." With such a desolate set of prescriptions, the President's trip to Bitburg Cemetery in West Germany becomes easy to explain: We must learn to overlook Nazism in order to compete effectively with the Soviets. Nazism was

The terrorist acts themselves, however, can never be legitimate. And legitimate causes can never justify or excuse terrorism. Terrorist means discredit their ends." BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T. OF STATE, CURRENT POLICY No. 629, TERRORISM AND THE MODERN WORLD 3 (Oct. 25, 1984).

18. From speech on "Humane Purposes in Foreign Policy," delivered at Commencement Exercises at University of Notre Dame, Indiana (1977). Reprinted in THE HUMAN RIGHTS READER 306 (W. Lacquer, B. Rubin eds. 1979).

bad, but he would have us believe, only Communism is unforgivable.

In one of his best stories, Jorge Luis Borges, the Argentine writer, describes a time in the future wherein governments no longer exist and politicians have gone on to do what they are most capable of doing (" . . . some of them made good comedians or good faith healers. . ."). For the moment, however, we must continue to deal with national leaders who are hopelessly entombed by their barren imaginations and by the banal syntax of power politics. Living outside of history, in parentheses, these leaders will continue to oppose all forms of promising metamorphoses.

The United States now founds its human rights policy on the premises of unreason. During the next several years, this policy will fail completely in terms of its own *Realpolitik* objectives as well as an instrument of justice. In Nicaragua, for example, it is evident that the contras, even with U.S. aid, have no chance of overthrowing the government. Moreover, the prospect of Nicaragua becoming a satellite of the Soviet Union is tied directly to Sandinista fears of continuing U.S. aggression. In other words, the current policies of the U.S. regarding Nicaragua are not only unlawful, they are also self-defeating. They threaten to create the very conditions they intend to prevent. Without a return to international law, the prophecies of "another Cuba" will be self-fulfilled.

Should the Reagan administration continue to turn its back on international law in Central America, the victims of U.S.-backed repression will eventually throw out their rulers. In the fashion of Nicaragua, each successor government will join an expanding legion of states opposed to the United States. Even more important, however, this country will lose its capacity to bear witness as a righteous nation. A sinister parody of its own best traditions, it will forfeit any remaining claims to moral leadership, claims that lie at the heart of our widely-alleged superiority to the Soviet Union.