

~~SECRET~~
CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

Executive Registry
75-11837/A

14 NOV 1975

OGC 75-3889

The Honorable Frank Church
Chairman
Select Committee to Study Governmental
Operations with Respect to Intelligence
Activities
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

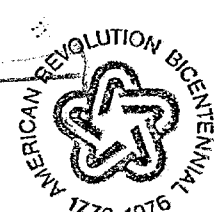
Thank you for the opportunity to submit a statement on the legal authority for covert action.

As you noted in your letter to me dated 10 October 1975, the Agency has already given the Select Committee on Intelligence Activities memoranda and documents relating to the question of legal authority for covert action. These memoranda and documents set forth the President's responsibility under the United States Constitution for the conduct of foreign affairs, the President's position as Commander-in-Chief of the armed forces and the authority of the President flowing from the vesting of the executive power in this office.

We, and the Department of Justice (in their 17 January 1962 memorandum), have taken the position that the authority flowing from the Constitution of the United States provides ample authority for the conduct of covert action. Although some of the memoranda and documents given you were prepared over ten years ago, the principles of constitutional law they enunciate are still valid. As you have noted, several of the documents indicate that there is no explicit authorization in the National Security Act of 1947, as amended, to conduct covert action.

EXECUTIVE REGISTRY FILE

T-33.1



~~SECRET~~

The very question as to the scope of activities authorized for the Agency is neither new nor easy to resolve and indeed is a problem that both the Executive and Legislative branches are now working on. There is some but not a great deal of legislative history in the enabling legislation of the Agency (the National Security Act and the Central Intelligence Agency Act of 1949, as amended) concerning the conduct of covert action. I believe, however, that there is ample historical and legal precedent for covert action by the Agency.

Over a year before the end of World War II, General William J. Donovan, Director of Strategic Services, prepared a study concerning the establishment of a permanent, centralized intelligence service for the Government. This document contained much of the basic plan for what eventually became the Central Intelligence Agency. General Donovan wrote that an organization was needed which will procure intelligence by overt and covert methods and which will be responsible for all "secret activities" such as "clandestine subversive operations."

In 1947, the Secretary of Defense asked the Director of Central Intelligence if the Agency could conduct covert action. It was the legal position of the Agency at the time that, although there was a relationship between the collection of intelligence information and covert action, it would be difficult to construe a specific charter in this field from the language of Section 102(d) of the National Security Act, but that authority for such action could be found in (1) the long recognized authority and responsibility of the President to take action to protect the national interest, so long as such action was not barred by the Constitution or statute, and (2) the making available of appropriations necessary to carry out these activities by the Congress.

In a statement prepared for a hearing by the House Armed Services Committee on 8 April 1948, the then Director, Rear Admiral Hillenkoetter, stated that the provisions of the proposed Act (H.R. 5871, which eventually became the CIA Act) were needed to enable the Agency to, among other things, do research on and purchase explosives, . . . utilize and supply underground resistance movements in overrun countries, purchase printing presses for the use of agents, and do research for psychological warfare purposes. Congress recognized the need for flexibility in the CIA Act so that the Agency might be able to conduct activities, such as covert action, similar to those conducted by the Office of Strategic Services. The annual appropriations language for the Office of Strategic Services served as the model for the permanent appropriations language found in Section 10 (now Section 8) of the CIA Act.

In the past questions have been raised as to the legal authority of the Agency to carry out covert action, and in 1961, we asked the Department of Justice for its opinion on this matter. In a memorandum dated 17 January 1962, the Department of Justice stated that it could be argued that many, if not all, of the covert activities assigned to the Agency by National Security Council directives are at least "related" to intelligence affecting the national security within the scope of 50 U.S.C. 403(d)(5) in the sense that their performance (1) may need to be closely intertwined with the clandestine collection of intelligence information, (2) may involve the use of the same or similar sources and methods and (3) may yield important intelligence results. The memorandum also indicates that it would appear that the Executive branch, under the direction of the President, has been exercising without express statutory authorization a function which is within the constitutional powers of the President, and that the President has designated the Agency to carry out these functions. The paper also quotes from the opinion of the United States Supreme Court in the Curtiss-Wright Corporation case:

The very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations... does not require as a basis for its exercise an act of Congress,....

although, like all governmental powers, it must be exercised in subordination to any applicable provision of the Constitution.

The Department of Justice memorandum then outlines the rather extensive history of covert operations that have been performed under the President's authority and responsibility for the conduct of foreign affairs. In concluding, the memorandum states:

Congress has continued over the years since 1947 to appropriate funds for the conduct of such covert activities. We understand that the existence of such covert activities has been reported on a number of occasions to the leadership of both houses, and to members of the subcommittees of the Armed Services and Appropriations Committees of both houses. It can be said that Congress as a whole knows that money is appropriated to CIA and knows generally that a portion of it goes for clandestine activities, although knowledge of specific activities is restricted to the group specified above and occasional other members of Congress briefed for specific purposes. In effect, therefore, CIA has for many years

~~SECRET~~

had general funds approval from the Congress to carry on covert cold-war activities, which the Executive Branch has the authority and responsibility to direct.

It is well-established that appropriations for administrative action of which Congress has been informed amount to a ratification of or acquiescence in such action. (Citations omitted.) Since the circumstances effectively prevent the Congress from making an express and detailed appropriation for the activities of the CIA, the general knowledge of the Congress, and specific knowledge of responsible committee members, outlined above, are sufficient to render this principle applicable.

I would also like to note that, while knowledge of the specific activities for which the Agency's appropriations are used is limited, the whole Congress chose to adopt that procedure for reviewing the Agency's activities and appropriations. Because of the need for confidentiality in the conduct of foreign affairs (as stated by Justice Stewart in his concurring opinion in the New York Times Co. case), Congress has chosen not to make public either the debate or the amount of the appropriations for covert action by the Agency.

As you are no doubt aware, both the House of Representatives and the Senate in the 93rd Congress considered a complete cut-off of appropriations for the conduct of certain types of covert action by the Agency. On 24 September 1974 a joint resolution amending the Supplemental Defense Appropriations Act was offered on the floor of the House by Ms. Holtzman:

After September 30, 1974, none of funds appropriated under this joint resolution may be expended by the Central Intelligence Agency for the purpose of undermining or destabilizing the government of any foreign country.

This proposal was defeated by the House by a vote of 291 to 108. Shortly thereafter, on 2 October 1974, Senator Abourezk offered the following amendment (No. 1922) to the Foreign Assistance Act:

(a) No funds made available under this or any other law may be used by any agency of the United States Government to carry out any activity within any foreign country which violates, or is intended to encourage the violation of, the laws of the United States or of such country.

(b) The provisions of this section shall not be construed to prohibit the use of such funds to carry out any activity necessary to the security of the United States which is intended solely to gather intelligence information....

This proposal was defeated by the Senate by a vote of 68 to 17.

Subsequent to these votes, Congress enacted Section 662 of the Foreign Assistance Act of 1974 which requires a report to certain congressional committees concerning expenditures of appropriated funds for covert action.

No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency for operations in foreign countries, other than activities intended solely for obtaining necessary intelligence, unless and until the President finds that each such operation is important to the national security of the United States and reports, in a timely fashion, a description and scope of such operation to the appropriate committees of the Congress, including the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives.

This amendment acknowledges that the CIA has been carrying out covert action and permits it to continue to do so as long as the specific approval of the President is obtained for each such activity and the CIA reports to certain congressional committees how much is being spent for what type of covert action.

As a final point, may I call to your attention that Congressman Mahon and Senator McClellan have acknowledged on the floor of the Congress that funds for the Agency are contained in the Department of Defense Appropriations Bill and that the House Appropriations Defense Subcommittee has identified the specific Department of Defense account which contains the Agency's appropriations. Some of these funds are intended for use in covert action. Nevertheless, as recently as 1 October 1975, the House by a vote of 267 to 147 agreed that the total dollar figure of Agency expenditures would not be made a part of the public record.

~~SECRET~~