

Covert Action Reporting to the Congress

Developments in the Congress - Up until recently, the Executive Branch has been able to satisfy the Congress by CIA reporting to the four established oversight committees from which there are "no secrets," in view of the wisdom and restraint of experienced oversight committees in dealing with such matters. In the face of mounting criticism, legislation was introduced by the chairmen of the legislative oversight committees which essentially would enact into law existing reporting procedures. Subsequently, as a result of revelations concerning covert actions in Chile, it was agreed that the Foreign Affairs Committee would receive reports on covert actions. The Foreign Affairs Committee was granted special oversight of the CIA and Senator Stennis invited Senators Mansfield and Scott to sit with the Senate legislative oversight committee. The pending amendments to the FY 75 Foreign Assistance bills, go beyond enlarging the audience for reporting on covert action and, prohibits, it could be argued, the carrying out of a constitutional responsibility unless the President first (presumably) submits his plan to committees of Congress. These amendments prohibit expenditures for any covert action, except for obtaining intelligence, without a specific Presidential finding and report to committees of Congress. This may be viewed as a reasonable congressional limitation on Executive Branch authority in the field of foreign affairs. (In fact, recent Executive Branch actions concede that certain reporting to congressional committees on such matters is appropriate.) However, it could be argued also that these amendments

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directly impinge upon Presidential power not shared with the Congress.

Material Relating to Foreign Assistance Act Amendments
On Intelligence Activities

- A President's Statement following Chile disclosures
- B Colby/Kissinger Agreement with House Armed Services and Foreign Affairs leadership
- C Hughes amendment
- D Stennis Statement on Hughes amendment
- E Modified Hughes amendment including changes Recommended by CIA and passed by Senate 4 December
- F Ryan amendment
- G Agency position on Hughes/Ryan amendments
- H Reporting provisions of Stennis and Nedzi bills
- I Bolling/Hansen rules changes with Zablocki modifications
- J Implications of Additional Reporting and Finding Requirements Regarding Covert Action

Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8



Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8

President's Remarks on 16 September 1974
Following Coup in Chile

CIA--Chile

Q: Mr. President, recent Congressional testimony has indicated that the CIA, under the direction of a committee headed by Dr. Kissinger, attempted to destabilize the Government of Chile under former President Allende.

Is it the policy of your Administration to attempt to destabilize the governments of other democracies?

P: Let me answer in general. I think this is a very important question.

Our Government, like other governments, does take certain actions in the intelligence field to help implement foreign policy and protect national security. I am informed reliably that Communist nations spend vastly more money than we do for the same kind of purposes.

Now, in this particular case, as I understand it, and there is no doubt in my mind, our Government had no involvement whatsoever in the Allende coup. To my knowledge, nobody has charged that. The facts are we had no involvement in any way whatsoever in the coup itself.

In a period of time, three or four years ago, there was an effort being made by the Allende government to destroy opposition news media, both the writing press as well as the electronic press, and to destroy opposition political parties.

The effort that was made in this case was to help and assist the preservation of opposition newspapers and electronic media and to preserve opposition political parties.

I think this is in the best interest of the people in Chile, and certainly in our best interest.

Now, may I add one further comment.

The 40 committee was established in 1948. It has been in existence under Presidents since that time. That committee reviews every covert operation undertaken by our Government, and that information is relayed to the responsible Congressional committees where it is reviewed by House and Senate committees.

It seems to me that the 40 committee should continue in existence, and I am going to meet with the responsible Congressional committees to see whether or not they want any changes in the review process so that the Congress, as well as the President, are fully informed and are fully included in the operations for any such action.

Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8

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Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8

Remarks by Rep. Zablocki & Rep. Nedzi
On Zablocki Amendment to H. Res. 1248

&

Chairman Morgan's Announcement

Mr. ZABLOCKI. Mr. Chairman, my amendment amends both section 101 dealing with special oversight functions and section 310 which establishes the jurisdiction of the Committee on Foreign Affairs.

The purpose of the amendment is to provide the Committee on Foreign Affairs with the special oversight function of reviewing and studying on a continuing basis—and I quote—"intelligence activities relating to foreign policy".

There are two reasons for this change in terminology:

First, because the oversight function is limited to those intelligence activities related to foreign policy it is made clear that the committee's jurisdiction does not include some aspects of intelligence activities or information—for example, general capabilities of foreign weapon systems or force structures of potential adversaries.

Instead, the intelligence activities covered by the amendment are defined as those related to foreign policy, which is a clear area of jurisdiction for the Committee on Foreign Affairs.

Second, the words which I propose adhere closely to the understanding which has been reached by ranking members of the Committee on Foreign Affairs with the leadership of the House and of other appropriate House committees, to improve the committee's access to intelligence information.

The public announcement of this agreement was made by the distinguished chairman of the committee, Dr. MORGAN, on October 1.

In his announcement, Chairman MORGAN said, and I quote:

There is agreement that the Committee on Foreign Affairs must have access to information about overseas activities which affect our foreign policy and United States relations with other countries—including covert activities.

My amendment would formalize this arrangement in the Hansen substitute by adding in two appropriate places the words "foreign intelligence relating to foreign policy."

Mr. Chairman, it is clear that the Committee on Foreign Affairs cannot adequately fulfill its responsibilities unless it has greater access to information than it currently has.

First, foreign intelligence is an integral part of the foreign policy process. No foreign policy can succeed unless it is based on timely and accurate information. The task of intelligence is to provide that information.

To assess foreign policy without access to the information on which it is based is similar to estimating the condition of a house without checking the foundation.

Second, the task of gathering intelligence, or of conducting intelligence activities abroad, can sometimes be an important foreign policy factor in and of itself. All of us are aware of international incidents which have resulted from past U.S. intelligence operations. Let me name just a few of them:

United States support of unsuccessful rebels soured relations with Indonesia in 1958.

The shooting down of the U-2 spy plane in 1960 caused the failure of the U.S.-U.S.S.R. summit conference of that year.

The failure of the CIA-supported invasion of Cuba in 1962 resulted in serious problems for the United States in the hemisphere.

A forged letter sent to top Thai officials by a CIA agent last year led to anti-Americanism and demands for U.S. military withdrawal.

A third reason for giving this responsibility to the House Committee on Foreign Affairs is that agreement among nations for the exchange of information or intelligence is an important category of relationships which two or more nations can carry on. Such exchanges can have great significance for the foreign relations of the countries involved.

The Committee on Foreign Affairs cannot do a fully adequate and effective job of meeting its foreign affairs responsibilities without having some jurisdiction in the area of intelligence relating to foreign policy.

Mr. NEDZI. Mr. Chairman, I would like to confirm what the gentleman said. We have discussed this matter. It is my opinion that the amendment conforms to the agreement worked out between Mr. Colby and Dr. Kissinger, and the chairman of the Committee on Armed Services, and the chairman of the Committee on Foreign Affairs. We certainly think it is absolutely essential that the Committee on Foreign Affairs have this kind of oversight function.

Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8



Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8

SEC. 33. Chapter 3 of part III of the Foreign Assistance Act of 1961, as amended by sections 17(a) and 18 of this Act, is further amended by adding at the end thereof the following new section:

"SEC. 661. Limitations Upon Intelligence Activities. (a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency or any other agency of the United States Government for the conduct of covert action operations other than operations intended solely for obtaining necessary intelligence. Notwithstanding the foregoing limitation, the President may authorize and direct that any covert action operation be resumed, or that any other covert action operation be initiated, and funds may be expended therefor, if, but not before, he (1) finds that such operation is vital to the defense of the United States, and (2) transmits an appropriate report of his finding, together with an appropriate description of the nature and scope of such operation, to the committees of the Congress presently having jurisdiction to monitor and review the intelligence activities of the United States Government.

"(b) Notwithstanding the provisions of subsection (a) of this section, the President may authorize and direct the conduct of such covert action operations as he deems of immediate need and urgency during military operations initiated by the United States under a declaration of war by Congress or an exercise of powers by the President under the War Powers Resolution (Public Law 93-148)."

Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8

5

Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8

Floor Remarks on 2 October 1974
By Sen. Stennis & Sen. Hughes
On Hughes Amendment to
S. 3394 Foreign Assistance Act Amendments

Mr. STENNIS. Mr. President, I think the intentions and the planning of the Senator from Iowa have been in good faith, and he has been very reasonable about making some modifications as he sees them.

Anyway, I just wanted to point out the rather casual way that we are adopting this amendment. For my part, I would want the matter further analyzed by experts in language in this particular field, and I cannot support it. I wish to reserve my rights in that respect.

I do not mean to pursue the matter now to the nth degree, or call for a roll-call vote, or anything like that. But I do not agree to it and I do not accept it; I want to make that clear.

Mr. STENNIS. I want to ask the Senator from Iowa, as the amendment is written now, the Senator recognizes the present jurisdiction of the two Armed Services Committees, as I understand and any change in that could be made by subsequent legislation, but not by this amendment; is that correct?

Mr. HUGHES. I recognize the jurisdiction of the present Armed Services Committees and the present subcommittees handling the oversight of matters of intelligence and the CIA, yes. There is no attempt, in this amendment, to change or alter any jurisdictional matters in either House.

Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8



Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8

S. 3394

An act to amend the Foreign Assistance Act of 1961, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Assistance Act of 1974".

(b) Section 112 of such Act is repealed.

LIMITING INTELLIGENCE ACTIVITIES

SEC. 25. Chapter 3 of part III of the Foreign Assistance Act of 1961, as amended by sections 24(a) and 24 of this Act, is further amended by adding at the end thereof the following new section:

"SEC. 881. LIMITATIONS UPON INTELLIGENCE ACTIVITIES.—(a) No funds appropriated under the authority of this or any other Act may be expended by or on behalf of the Central Intelligence Agency or any other agency of the United States Government for the conduct of operations in foreign countries pursuant to section 102(d)(5) of the National Security Act of 1947 (50 U.S.C. 403), other than operations intended solely for obtaining necessary intelligence. Notwithstanding the foregoing limitation, the President may authorize and direct that any operation in a foreign country be resumed, or that any other operation in a foreign country be initiated, and funds may be expended therefor, if, but not before, he (1) finds that such operation is important to the national security, and (2) transmits an appropriate report of his finding, together with an appropriate description of the nature and scope of such operation, to the committees of the Congress having jurisdiction to monitor and review the intelligence activities of the United States Government.

"(b) The provisions of subsection (a) of this section shall not apply during military operations by the United States under a declaration of war approved by the Congress or an exercise of powers by the President under the War Powers Resolution."

Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8



Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8

H. R. 17234

Page 23

8 “SEC. 660. LIMITATION ON INTELLIGENCE ACTIVI-
9 TIES.— (a) No funds appropriated under the authority of this
10 or any other Act may be expended by or on behalf of the Cen-
11 tral Intelligence Agency for operations in foreign countries,
12 other than activities intended solely for obtaining necessary
13 intelligence, unless the President finds that each such opera-
14 tion is important to the national security of the United States
15 and reports, in a timely fashion, a description and scope of
16 such operation to the appropriate committees of the Con-
17 gress, including the Committee on Foreign Relations of the
18 United States Senate and the Committee on Foreign Affairs
19 of the United States House of Representatives.

20 “(b) The provisions of subsection (a) of this section
21 shall not apply during military operations initiated by the
22 United States under a declaration of war approved by the
23 Congress or an exercise of powers by the President under
24 the War Powers Resolution.”

Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8



Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

14 NOV 1974

Mr. James L. Frey
Deputy Associate Director, International Affairs
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Frey:

This is in response to the November 12th request of Mr. Arnold Donahue of your office for the views of this Agency on a proposed new section in the Foreign Assistance Act of 1961 which limits intelligence activities, specifically proposed new section 660 in H. R. 17234 and section 661 in S. 3394. Both of these sections have the identical basic purpose of limiting expenditures by or on behalf of the Central Intelligence Agency for clandestine operations other than those for intelligence collection.

With respect to preferences in language between the two versions:

(a) The language "operations in foreign countries" in section 660, as opposed to "covert action operations" as used in section 661 is preferable in the interest of not admitting to covert action in United States Statute and eliminating definitional uncertainty. If there is an opportunity for the insertion of totally new language, it is recommended that the wording be changed to "pursuant to section 102(d)(5) of the National Security Act of 1947 (50 U. S. C. 403)."

(b) With respect to the Presidential finding to remove the bar to expenditures, it would be preferable to use the language of section 660, "important to the national security of the United States," rather than the more restrictive language "vital to the defense of the United States" of section 661. A strict interpretation of the latter phrase may require a finding involving the territorial integrity of the nation.

(c) Regarding the contents of the report to be submitted to the Congress by the President, the language of section 661 is preferable, as the details to be reported are modified by the word "appropriate" which would provide flexibility for omitting extremely sensitive details.

(d) With respect to the committee recipient of the President's findings and report, the language of section 661 limiting such reporting to committees "presently having jurisdiction to monitor and review" intelligence activities is preferred.

(e) With respect to subsection "(b)" the preference is for the language of section 660 because it does not contain the words "covert action" as does section 661.

It can be argued that the proposed new section merely implements agreements made between the Executive branch and congressional leaders. In fact, the proposed new section goes far beyond these agreements as we understand them. Therefore, we would not want the above-stated preference in language to be construed as an Agency position that the Administration should support such a new section. To the contrary, it is believed that strong arguments against such a position exist and they include:

(a) The foreign assistance legislation is an inappropriate vehicle for such a provision of law.

(b) No committee hearings have been held on the proposition and it is doubted that its implications have been adequately studied.

(c) A provision which in effect requires reporting of the type of programs covered by the proposed new section is included in legislation introduced by Senator Stennis and Representative Nedzi, which has received Administration support and on which the Director has testified before the Nedzi Intelligence Subcommittee. Both of these bills are before committees having legislative jurisdiction over the subject matter.

(d) There are movements in both the Senate and the House which make such a new section somewhat redundant, this includes Chairman Stennis' invitation to the Majority and Minority Leader, both members of the Foreign Relations Committee, to participate in sessions of the Senate Armed Services Intelligence Subcommittee; and an amendment to the Rules of the House which grants the House Foreign Affairs Committee certain jurisdiction with respect to intelligence activities affecting foreign policy.

(e) The proposal could impinge upon Presidential power not shared with the Congress. Whether the President fulfills such Constitutional responsibility privately or covertly, using the CIA as a mechanism, should make no difference and certainly does not eliminate the necessity for speed, dispatch, and secrecy to enhance the prospects of success.

In addition to the proposed new section dealing with limitation on intelligence activities, this Agency also has a complaint with sections of S. 3394 imposing ceilings on U. S. Government obligations in Indochina. These sections bar the obligation of any funds in excess of the stated ceilings, "for the purpose of carrying out directly or indirectly any economic or military assistance, or any operation, project, or program of any kind." This language is so broad that it could be construed to encompass normal U. S. Government activities, such as embassy staffing and intelligence collection.

Similar language was used in the Fiscal 1972 Defense Appropriations Act to limit U. S. expenditures in Laos, but to eliminate the overbreadth problem the House-Senate conferees included language in the conference report to make it clear that:

"... the conferees wish to make it understood that it is not the intent to place a ceiling on, or reduce, funds available for vital non-assistance-related activities in programs which must be carried on irrespective of assistance-related operations in Laos, such as the normal expenses incurred by the State Department . . ."

in the operation of its embassy and such normal and usual expenses of the embassy as would be incurred in peacetime in the absence of any military, paramilitary, or economic assistance programs of any kind."

I appreciate this opportunity to express our views on this bill, and trust they will be given due consideration.

Sincerely,

SIGNED ?

George L. Cary
Legislative Counsel

Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8

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Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8

Provision For Oversight By Congress
Senator Stennis Bill S. 2597
Amending the National Security Act of 1947

"Central Intelligence Agency"

"SEC. 102.

"(d)

"(5) to perform such other functions and duties related to foreign intelligence affecting the national security as the National Security Council may from time to time direct. may be specifically directed from time to time by the Council and reported to the Congress in such manner and in accordance with such procedures as the Congress may establish to insure effective legislative oversight with due recognition of essential security requirements."

Provision For Oversight By Congress
Rep. Nedzi Bill H. R. 15845
Amending the National Security Act of 1947

"Central Intelligence Agency"

"SEC. 102.

"(d)

"(5) to perform such other functions and duties related to foreign intelligence affecting the national security as the National Security Council may from time to time direct and report to the Congress in accordance with such procedures as the Congress may establish."

Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8



Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8

Zablocki Amendment to H. Res. 1248,
(Bolling/Hansen Committee Structure Reform)
To extend special oversight responsibility over certain intelligence
(Passed House 8 October 1974)

"(c) The Committee on Foreign Affairs shall have the function of reviewing and studying, on a continuing basis, all laws, programs, and Government activities dealing with or involving customs administration, intelligence activities relating to foreign policy, international financial and monetary organizations, and international fishing agreements."

"(h) Committee on Foreign Affairs. In addition to its legislative jurisdiction under the preceding provisions of this paragraph (and its general oversight function under clause 2(b)(1)), the committee shall have the special oversight functions provided for in clause 3(c) with respect to customs administration, intelligence activities relating to foreign policy, international financial and monetary organizations, and international fishing agreements."

Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8



Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8

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Approved For Release 2005/07/20 : CIA-RDP79-00957A000100040008-8