

V. RECOMMENDATIONS

The Committee's long investigation of assassination has brought a number of important issues into sharp focus. Above all stands the question of whether assassination is an acceptable tool of American foreign policy. Recommendations on other issues must await the completion of our continuing investigation and the final report, but the Committee needs no more information to be convinced that a flat ban against assassination should be written into law.

We condemn assassination and reject it as an instrument of American policy. Surprisingly, however, there is presently no statute making it a crime to assassinate a foreign official outside the United States. Hence, for the reasons set forth below, the Committee recommends the prompt enactment of a statute making it a Federal crime to commit or attempt an assassination, or to conspire to do so.

A. GENERAL AGREEMENT THAT THE UNITED STATES MUST NOT ENGAGE IN ASSASSINATION

Our view that assassination has no place in America's arsenal is shared by the Administration.

President Ford, in the same statement in which he asked this Committee to deal with the assassination issue, stated:

I am opposed to political assassination. This administration has not and will not use such means as instruments of national policy. (*Presidential Press Conference, 6/9/75, Weekly Compilation of Presidential Documents*, Vol. II, No. 24, p. 611.)

The witnesses who testified before the Committee uniformly condemned assassination. They denounced it as immoral, described it as impractical, and reminded us that an open society, more than any other, is particularly vulnerable to the risk that its own leaders may be assassinated. As President Kennedy reportedly said: "We can't get into that kind of thing, or we would all be targets." (Goodwin, 7/18/75, p. 4)

The current Director of Central Intelligence and his two predecessors testified emphatically that assassination should be banned. William Colby said:

With respect to assassination, my position is clear, I just think it is wrong. And I have said so and made it very clear to my subordinates. (Colby, * * * 5/21/75, p. 89)

Richard Helms, who had been involved in an assassination plot before he became DCI, said he had concluded assassination should be ruled out for both moral and practical reasons:

As a result of my experiences through the years, when I became Director I had made up my mind that this option * * * of killing foreign leaders, was something that I did not want to happen on my watch. My reasons for this were these:

There are not only moral reasons but there are also some other rather practical reasons.

It is almost impossible in a democracy to keep anything like that secret * * *. Somebody would go to a Congressman, his Senator, he might go to a newspaper man, whatever the case may be, but it just is not a practical alternative, it seems to me, in our society.

Then there is another consideration * * * if you are going to try by this kind of means to remove a foreign leader, then who is going to take his place running that country, and are you essentially better off as a matter of practice when it is over than you were before? And I can give you I think a very solid example of this which happened in Vietnam when President Diem was eliminated from the scene. We then had a revolving door of prime ministers after that for quite some period of time, during which the Vietnamese Government at a time in its history when it should have been strong was nothing but a caretaker government * * *. In other words, that whole exercise turned out to the disadvantage of the United States.

* * * there is no sense in my sitting here with all the experience I have had and not sharing with the Committee my feelings this day. It isn't because I have lost my cool, or because I have lost my guts, it simply is because I don't think it is a viable option in the United States of America these days.

Chairman CHURCH. Doesn't it also follow, Mr. Helms—I agree with what you have said fully—but doesn't it also follow on the practical side, apart from the moral side, that since these secrets are bound to come out, when they do, they do very grave political damage to the United States in the world at large? I don't know to what extent the Russians involved themselves in political assassinations, but under their system they at least have a better prospect of keeping it concealed. Since we do like a free society and since these secrets are going to come out in due course, the revelation will then do serious injury to the good name and reputation of the United States.

Would you agree with that?

Mr. HELMS. Yes, I would.

Chairman CHURCH. And finally, if we were to reserve to ourselves the prerogative to assassinate foreign leaders, we may invite reciprocal action from foreign governments who assume that if it's our prerogative to do so, it is their prerogative as well, and that is another danger that we at least invite with this kind of action, wouldn't you agree?

Mr. HELMS: Yes, sir. (Helms, 6/13/75, pp. 76-78)

John McCone said he was opposed to assassinations because:

I didn't think it was proper from the standpoint of the U.S. Government and the Central Intelligence Agency. (McCone, 6/6/75, p. 15)

B. CIA DIRECTIVES BANNING ASSASSINATION

Helms in 1972 and Colby in 1973 issued internal CIA orders banning assassination. Helms' order said:

It has recently again been alleged in the press that CIA engages in assassination. As you are well aware, this is not the case, and Agency policy has long been clear on this issue. To underline it, however, I direct that no such activity or operation be undertaken, assisted or suggested by any of our personnel * * *. (Memo, Helms to Deputy Directors, 3/6/72)

In one of a series of orders arising out the CIA's own review of prior "questionable activity," Colby stated:

CIA will not engage in assassination nor induce, assist or suggest to others that assassination be employed. (Memo, Colby to Deputy Directors, 8/29/73)

C. THE NEED FOR A STATUTE

Commendable and welcome as they are, these CIA directives are not sufficient. Administrations change, CIA directors change, and someday in the future what was tried in the past may once again become a temptation. Assassination plots did happen. It would be irresponsible not to do all that can be done to prevent their happening again. A law

is needed. Laws express our nation's values; they deter those who might be tempted to ignore those values and stiffen the will of those who want to resist the temptation.

The Committee recommends a statute¹ which would make it a criminal offense for persons subject to the jurisdiction of the United States (1) to conspire, within or outside the United States, to assassinate a foreign official; (2) to attempt to assassinate a foreign official, or (3) to assassinate a foreign official.

Present law makes it a crime to kill, or to conspire to kill, a foreign official or foreign official guest while such a person is in the United States. (18 U.S.C. 1116-1117). However, there is no law which makes it a crime to assassinate, to conspire to assassinate, or to attempt to assassinate a foreign official while such official is outside the United States. The Committee's proposed statute is designed to close this gap in the law.

Subsection (a) of the proposed statute would punish conspiracies within the United States; subsection (b) would punish conspiracies outside the United States. Subsection (b) is necessary to eliminate the loophole which would otherwise permit persons to simply leave the United States and conspire abroad. Subsections (c) and (d), respectively, would make it an offense to attempt to kill or to kill a foreign official outside the United States.

Subsections (a), (b), (c), and (d) would apply expressly to any "officer or employee of the United States" to make clear that the statute punishes conduct by United States Government personnel, as well as conduct by private citizens. In addition, subsection (a), which covers conspiracies within the United States, would apply to "any other person," regardless of citizenship. Non-citizens who conspired within the United States to assassinate a foreign official would clearly come within the jurisdiction of the law. Subsections (b), (c), and (d), which deal with conduct abroad, would apply to United States citizens, and to officers or employees of the United States, regardless of their citizenship. Criminal liability for acts committed abroad by persons who are not American citizens or who are not officers or employees of the United States is beyond the jurisdiction of the United States.

"Foreign official" is defined in subsection (e)(2) to make clear that an offense may be committed even though the "official" belongs to an insurgent force, an unrecognized government, or a political party. The Committee's investigation—as well as the reality of international politics—has shown that officials in such organizations are potential targets for assassination.² Killing, attempting to kill, or conspiring to kill would be punishable under the statute only if it were politically motivated. Political motivation would encompass acts against foreign officials because of their political views, actions, or statements.

The definition of "foreign official" in section (e)(2) also provides that such person must be an official of a foreign government or movement "with which the United States is not at war pursuant to a declaration of war or against which the United States Armed Forces

¹ The recommended statute is printed in Appendix A.

² For example, Lumumba was not an official of the Congolese government at the time of the plots against his life, and Trujillo, even though the dictator of the Dominican Republic, held no official governmental position in the latter period of his regime.

have not been introduced into hostilities or situations pursuant to the provisions of the War Powers Resolution." This definition makes it clear that, absent a declaration of war or the introduction of United States Armed Forces pursuant to the War Powers Resolution, the killing of foreign officials on account of their political views would be a criminal offense.

During the Committee's hearings, some witnesses, while strongly condemning assassination, asked whether assassination should absolutely be ruled out in a time of truly unusual national emergency. Adolf Hitler was cited as an example. Of course, the cases which the Committee investigated were not of that character. Indeed, in the Cuban missile crisis—the only situation of true national danger considered in this report—assassination was not even considered and, if used, might well have aggravated the crisis.

In a grave emergency, the President has a limited power to act, not in violation of the law, but in accord with his own responsibilities under the Constitution to defend the Nation. As the Supreme Court has stated, the Constitution "is not a suicide pact." (*Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 160 (1963))

During an unprecedented emergency, Abraham Lincoln claimed unprecedented power based on the need to preserve the nation:

* * * my oath to preserve the Constitution to the best of my ability, imposed upon me the duty of preserving, by every indispensable means, that government—that nation—of which that Constitution was the organic law. Was it possible to lose the nation, and yet preserve the Constitution? By general law, life and limb must be protected; yet often a limb must be amputated to save a life; but a life is never wisely given to save a limb. I felt that measures, otherwise unconstitutional, might become lawful, by becoming indispensable to the preservation of the Constitution, through the preservation of the nation * * *. (*The Complete Works of Abraham Lincoln*, Vol. X, pp. 65-66.) (Nicolay and Hay, Eds. 1894.)

Whatever the extent of the President's own constitutional powers, it is a fundamental principle of our constitutional system that those powers are checked and limited by Congress, including the impeachment power. As a necessary corollary, any action taken by a President pursuant to his limited inherent powers and in apparent conflict with the law must be disclosed to Congress. Only then can Congress judge whether the action truly represented, in Lincoln's phrase, an "indispensable necessity" to the life of the Nation.

As Lincoln explained in submitting his extraordinary actions to Congress for ratification:

In full view of his great responsibility he has, so far, done what he has deemed his duty. You will now, according to your own judgment, perform yours. (Abraham Lincoln, Message to Congress in Special Session, July 4, 1861.)