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Letters to the editor
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How can President Bush "violate international law by ordering abductions" in other countries and have "the power to authorize action inconsistent with the UN charter", even order the FBI to make arrests in other countries "in violation of" their laws (Post 8/14/91) without granting the identical rights and powers to all other heads of state, like Saddam Hussein?

Does not the Bush administration's claimed right to kidnap or arrest those it regards as "terrorists" or "drug-traffickers" in other countries give other countries the same rights within the United States?

Has the administration not in fact validated and justified the taking of American hostages in other countries, as Iran did?

And given legal sanction to violation of our laws against murder to the murders in the United States by Libya and Chile?



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U.S. 'Power' on Abductions Detailed

Controversial Justice Dept. Memo Asserts Authority to Act Overseas

By Michael Isikoff
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A 1989 Justice Department opinion concluded that "serious threats" to U.S. domestic security from "international terrorist groups and narcotics traffickers" would justify the president to violate international law by ordering abduction of fugitives overseas, according to a copy of the opinion obtained by The Washington Post.

Although the general findings of the memorandum have been known for nearly two years, the 29-page opinion outlining the department's Office of Legal Counsel's reasoning has never been disclosed.

It asserts that the president and attorney general have "inherent constitutional power" to order a wide range of law enforcement actions in foreign countries without the consent of foreign governments, even if they violate international treaties.

It also argues that "as a matter of domestic law, the executive has the power to authorize actions inconsistent" with U.N. charter provisions barring use of force against member nations.

Such decisions are "are fundamentally political questions," the opinion states, and therefore do not constrain the chief executive in fulfilling his law enforcement responsibilities.

The Office of Legal Counsel opinion, written by then-assistant and soon-to-be acting attorney general William P. Barr, has been at the center of controversy for nearly two years.

Along with a later opinion concluding that the U.S. military could make arrests overseas, it was relied on by Bush administration officials in launching the December 1989 invasion of Panama.

But critics have charged that it amounts to a dangerous extension of Justice Department authority overseas in violation of international law.

Justice Department officials have consistently refused to release the June 21, 1989, opinion, contending

that its public dissemination would inhibit department lawyers writing internal opinions.

They said it also had the potential to harm the government's position in pending cases, including the upcoming trial of ex-Panamanian dictator Gen. Manuel Antonio Noriega, by giving defense lawyers ideas about possible weaknesses in the government's arguments.

Last month, the House Judiciary Committee voted to subpoena a copy of the document, setting up an angry confrontation between the panel and Attorney General Dick Thornburgh.

While department officials first said that President Bush "was prepared to assert executive privilege" in defiance of the subpoena, they later sought to negotiate a compromise that would include permitting some members of the panel to review the opinion without publicly releasing a copy.

A committee lawyer said yesterday that the subpoena has been "suspended but not dissolved" as a result of the department's offer to negotiate a compromise. Barr, who is slated to take over the department Thursday because of Thornburgh's resignation to run for the U.S. Senate from Pennsylvania, said yesterday that he was "disappointed" a reporter had obtained a copy of the opinion, but declined further comment.

As Barr has previously testified to Congress, the opinion, written as a memo to Thornburgh, discusses only the issue of legal authority for overseas abductions, and not "the serious policy considerations that may weigh against carrying out such operations."

But the opinion also suggests that there may be some legal constraints on such actions.

It concludes that the attorney general as well as the president have inherent "executive power" to authorize overseas operations without foreign government consent.

But it recommends that such authority not be designated to lower-ranking officials because such operations are "political decisions af-

fecting our international relations" and the legal basis for them may, therefore, be weaker if exercised by subordinates.

The opinion vigorously challenges a 1980 opinion written by then-Assistant Attorney General John M. Harmon concluding that the FBI has no authority to forcibly apprehend fugitives overseas without the consent of foreign governments.

That opinion was "erroneous," the Barr memorandum states, and could limit even "routine" investigations overseas and thereby hamper efforts to combat terrorists and drug-trafficking organizations that are increasingly "targeting" U.S. citizens.

"Unfortunately, some foreign governments have failed to take effective steps to protect the United States from these predations, and some foreign governments actually act in complicity with these groups," the Barr opinion states.

"Accordingly, the extraterritorial enforcement of United States laws is becoming increasingly important to the nation's ability to protect its own vital national interests," the document said.

Another section of the opinion extends the scope of the 1980 opinion by concluding that the arrest by FBI agents of suspects overseas in violation of foreign laws would not violate the Fourth Amendment of the U.S. Constitution.

The Justice Department opinion is considered especially sensitive in light of a ruling by the U.S. Court of Appeals in San Francisco last month that concluded that the U.S. government cannot kidnap people from foreign countries and prosecute them over the other country's objections.