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DEPARTMENT OF STATE

Washington, D.C. 20520

DECLASSIFIED
PA/HO, Department of State
E.O. 12958, as amended
June 22, 2004

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TO: J - Mr. Johnson
THROUGH: S/S
FROM: O - William B. Macomber, Jr.
SUBJECT: U.S. Policy Toward Politically Motivated
Kidnapping of U.S. Officials Abroad -
ACTION MEMORANDUM

DISCUSSION:

This paper addresses the question of policy options open to the U.S. with respect to politically motivated kidnapping of U.S. officials abroad, the category in which all of the recent kidnappings involving U.S. citizens fall. The isolated non-politically motivated kidnapping by criminals is not considered, for it is virtually impossible to guard against such an event. This paper does not address incidents involving private U.S. citizens, who would continue to receive normal consular protection. The questions of improved security for our personnel abroad and of political measures we could undertake to inhibit kidnapping are addressed in other papers.

With the exception of the abortive kidnapping attempt of Soviet officials in Argentina, all of the kidnappings involving foreign officials (including U.S.) have been carried out by left extremist dissident groups. They appear in all instances to have been motivated by the three-fold desires to (1) obtain the release of political prisoners (often their comrades); (2) publicize and gain sympathy for their cause; and (3) embarrass their government. Politically-motivated kidnapping of U.S. officials could occur in virtually any Latin American

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country where there are extremist groups with the above-described political motives. Conditions are propitious under the following circumstances:

(a) in countries where kidnappings have recently taken place: Argentina, Brazil, Colombia, the Dominican Republic, Guatemala and Uruguay.

(b) in other countries that hold political prisoners and in which there are organized extremist groups: Bolivia, Chile, Ecuador, El Salvador, Mexico, Nicaragua, Panama and Venezuela.

(c) Additionally, kidnappings may be expected in some of the above-mentioned countries as the result of political violence in connection with elections this year: Chile, Colombia, the Dominican Republic, Ecuador, and Mexico.

Given the probable triple motivations of these dissident groups, the categories their prospective victims might come from may perhaps be roughly delimited. In Latin America, politics is a man's game. A successful daring act against a political opponent, actual or symbolic, is an accepted, if not applauded, manifestation of virility. The more prominent the individual the more attractive the target, provided that that individual were not a popular figure, whose kidnapping would arouse sympathy for him and commensurate opprobrium for the kidnappers and their cause. The following inferences from the dissidents' political motivations may therefore be drawn:

(a) Women and children will probably not be their targets.

(b) Tourists will probably not be their targets.

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(c) Low-level businessmen will probably not be their target.

(d) Prominent businessmen will probably be somewhat vulnerable, for they would be regarded by these dissidents as allied with the "oppressive" host government.

(e) Officials will probably be a main target, with the more prominent the more vulnerable.

The capabilities of the dissident groups vary considerably from country to country as do the political situations of each of the host governments at any given time. It is therefore extremely difficult to predict how the host government might react to the conditions set by the kidnappers for freeing a U.S. official captured, and it is equally difficult to predict how insistent the kidnappers would be in the face of resistance by the host government to accepting the terms of freedom. Much would also depend upon the nature of the terms themselves.

With prominent officials the most likely target, and the reactions of host governments to kidnappers' demands unpredictable, the generally accepted principles of international law and practice concerning the inviolability of the person of a diplomatic agent and his dependents become particularly significant. The most recent authoritative statement of these principles is found in the Vienna Convention of 1961, which the U.S. has signed but not ratified. Article 29 of the Convention states:

"The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on the person, freedom or dignity."

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In those countries where the risk of kidnapping is considerable, we should express unequivocally to the host government our expectation that the sense of Article 29 will be met in full measure.

Any specific U.S. reaction to a future kidnapping should be preceded by general statements at appropriate levels of the U.S. Government deploring kidnapping of public officials or private citizens as a crime and decrying the use of such methods as a political weapon. The possibility of OAS or UN resolutions condemning kidnapping of officials for political purposes as near term objectives and of OAS or UN conventions establishing such kidnappings as crimes under international law as longer term objectives are discussed in a separate paper. The public announcement of the initiation of international consultations or negotiations toward these ends or even the announcement of the U.S. intention to pursue these objectives would help build a general climate of opinion which would diminish the advantages kidnapers would expect to derive.

Options for U.S. Policy and Action

If a U.S. diplomat or a dependent were kidnapped (our improved system of alert and control with respect to our personnel overseas, our campaign to inhibit kidnapping by decreasing its potential political benefits, and the host government's efforts to prevent it notwithstanding), the U.S. would be faced with essentially three options for action:

(a) apply pressure to the extent necessary to persuade the host government to comply fully with the kidnapper's terms;

(b) express our expectation that the host government will do everything reasonable to obtain the freedom of the kidnapped official,

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recognizing, however, that the determination of what is reasonable would be made by the host government; and

(c) urge the host government to refuse publicly the kidnapers' demands.

Apply Pressure to the Extent Necessary to Persuade the Host Government to Comply Fully with the Kidnappers Terms.

This option has the advantage of maximizing the chances of recovering a U.S. official or his dependent whose life is in immediate danger.

A disadvantage of this course of action is that the kidnapers would have gained their ends. Also, they or others would become encouraged to repeat the performance. A further disadvantage would be that we could be making compliance with the kidnapers' terms a major issue in our relations with the host country. Finally, the "open endedness" of this course could encounter considerable public and Congressional concern as to where and when the line would finally be drawn.

Express in most categorical terms our expectation that host governments will take all reasonable and practicable action in advance to protect our personnel in their country in order to deter kidnap attempts. Note, however, that when the host government has, in the opinion of the U.S. Government, taken all appropriate preventive action and a kidnapping still takes place the U.S. Government will expect the host government to do everything reasonable and practicable to obtain the freedom of kidnapped officials or their dependents. It will leave to the host government the ultimate decisions as to what measures are reasonable and practicable and the host government's decision in this regard will not lead to recriminations by the U.S. Government.

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The advantages to this course would be:

(a) We would have acknowledged the importance of the life at stake and avoided the possibility of the problem becoming a major issue in our relations.

(b) Since each case might be decided differently by the host government, the resultant uncertainty as to the outcome of their demands could deter some potential kidnapers.

(c) Since it is possible that the U.S. might be faced with the reverse situation, this course of action would create a reciprocal basis for the U.S. President to decide in a given case that may occur in the U.S.

The main disadvantage would be that failure on our part to insist upon full compliance with the kidnapers' terms would quite probably result in the eventual torture and/or death of a U.S. official or dependent. Another disadvantage would be Congressional and public criticism from some quarters.

A subsidiary disadvantage would be that hazardous pay may have to be paid to U.S. personnel serving in areas where substantial danger of kidnapping existed.

Urge the Host Government to Refuse Publicly the Kidnapers' Demands.

If we were to adopt this course, we should probably announce it immediately and publicly for its deterrent potential -- its main advantage.

Its disadvantage lies in the near certainty that one or more U.S. officials or their dependents would suffer torture and/or death as the kidnapers tested our will.

Based upon its experience to date, ARA would be least uncomfortable operating within the second option.

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RECOMMENDATIONS:

A. Since kidnapping as a political weapon could occur in any area of the world and could involve the officials of any overseas U.S. agency, I recommend that the Under Secretaries Committee be tasked with reaching a government-wide recommendation, based upon the foregoing analysis, for the President's decision as to U.S. policy toward politically-motivated kidnapping of U.S. officials or their dependents abroad.

Approve _____

Disapprove _____

B. I recommend that the second option above, be followed as U.S. policy in the event a kidnapping should take place before the ultimate policy decision is reached by the President.

Approve _____

Disapprove _____

Concurrences:

L/ARA - Mr. Feldman (draft) *HC*
L/OSCA - Mr. Malmberg (draft) *HC*
INR/RAR - Mr. Summ (draft) *HC*
O/SY - Mr. Gentile (draft) *HC*

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*approved ARA - Mr. Cummings
Mr. METER RB
BB*