

THE SECRETARY OF STATE  
WASHINGTON

16554

October 31, 1969

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MEMORANDUM FOR THE PRESIDENT

Subject: Cuban Hijacking Decree

Recommendation:

That you approve the dispatch of the enclosed note to the Government of Cuba informing that Government that the United States is prepared on a basis of reciprocity to return hijackers of Cuban ships and aircraft except in the case of U.S. nationals or when we determine to grant a hijacker political asylum.

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_

Discussion:

The purpose of this note is to follow up on the Cuban hijacking decree of September 19 which suggests that Cuba may be prepared to return hijackers to the United States and other countries which are willing to agree bilaterally with Cuba to reciprocate. It is our belief that the return of hijackers from Cuba for prosecution in the United States would be the most effective deterrent to future hijackings; the announcement of an agreement with Cuba to return hijackers should have strong deterrent effect. The return of refugee-hijackers to Cuba would cause problems in the United States, but we expect that most hijackers coming from Cuba would be entitled to political asylum. In the exceptional case of a common criminal who uses hijacking to escape justice, we should be prepared to reciprocate in order to achieve the return of hijackers to the United States. A full discussion of the Cuban decree and an analysis of this problem is enclosed.

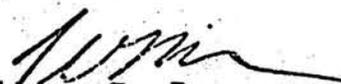
This note has been discussed with the Attorney General, and he agrees to the use of deportation or exclusion procedures under the immigration laws for this purpose.

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An understanding with Cuba on the return of hijackers would not alter the status of our relations with the Castro Government. There are many precedents for discussions and agreements with governments in the absence of diplomatic relations. The 1955 arrangement with Communist China for the exchange of civilian prisoners and the 1962 Agreement on the Neutrality of Laos are examples. Article 74 of the proposed Vienna Convention on the Law of Treaties states the accepted principle of international law that even "the conclusion of a treaty does not in itself affect the situation in regard to diplomatic or consular relations." In 1965 the United States and Cuba concluded a formal agreement for the establishment of the refugee airlift in a memorandum of understanding set forth in an exchange of notes between the Swiss Embassy in Havana and the Cuban Ministry of Foreign Relations. The proposed note, which is not drafted in the form of an agreement as such, would also be communicated to the Cuban Government by note of the Swiss Embassy in Havana. Although an agreement with Cuba might cause apprehension in some quarters that we intend to regularize relations with Cuba, we believe an agreement on hijacking generally would be understood to be limited to that subject and would be favorably received in most sectors of U.S. and Latin opinion. A favorable response would be enhanced if we move promptly.

  
William P. Rogers

Enclosures:

Note to the Government of Cuba.  
Background Memorandum

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