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Authority EO 12958
By AKO NARA Date 3/17/03

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

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INFORMATION

December 3, 1972

MEMORANDUM FOR: THE PRESIDENT

FROM: HENRY A. KISSINGER *K*

SUBJECT: Secretary Rogers to See Swiss Ambassador to Cuba on Monday to Hand Him U. S. Draft Proposal on Hijacking

Secretary Rogers has sent you a memorandum (at Tab A) informing you that he has asked the Swiss Ambassador to Havana to come to Washington on Monday, when he intends to give the Ambassador, for transmittal to the Government of Cuba, the U. S. response to the draft agreement on hijacking proposed by Cuba. Tab B is the text of the U. S. response to the Cuban draft. Briefly the background is the following:

After the last incidents involving hijackers of a clearly criminal nature, the Cuban Government issued a statement indicating its willingness to enter negotiations with the U. S. on the air piracy problem. In response the U. S. indicated its willingness to hold discussions through the Swiss but stressed that this represents no change in our overall policy toward Cuba. At the first meeting between Cuban and Swiss officials in Havana on November 25, Cuban officials presented a draft agreement, a translation of which is attached for your information at Tab C.

Previous attempts at negotiating an agreement with the Cubans on this problem have foundered over Cuban insistence that any such agreement also cover the return of illegal exiles, including those already in the U. S., and prohibition of any acts of piracy against Cuban territory by emigre groups. The present Cuban draft proposal continues to cover these points but provides for exemption from the provisions of the agreement for cases of political asylum.

The major differences in the draft the U. S. will propose are:

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- to agree to give serious consideration to extraditing hijackers instead of prosecuting them in the country in which they land;
- to rule out retroactive action against acts of piracy thereby protecting Cuban emigres in the U.S.;
- to stiffen the sentence for aircraft piracy;
- to return any funds or property obtained illegally.

Bill Timmons has no objection to the proposed agreement but recommends State consult with the leadership of the Foreign Affairs Committee and the Foreign Relations Committee in Congress before public announcement of any final agreement. John Dean's office also sees no problem with the proposed draft agreement. The Justice Department concurs in the draft.

Attachments:

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THE SECRETARY OF STATE
WASHINGTON

December 2, 1972

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MEMORANDUM FOR THE PRESIDENT

Subject: Cuba - Hijacking

For several years the United States has been attempting to interest the Cuban Government in a reciprocal agreement for the return of hijackers. Cuban agreement to return or to prosecute hijackers could represent a major deterrent to future hijackings. Following the two recent cases in which one person was murdered and a plane was nearly lost, Castro has expressed interest in an arrangement dealing with hijackers of ships and aircraft and certain other crimes of interest to Cuba.

There is attached the response to the draft agreement proposed by Cuba that I intend to forward to the Government of Cuba through the Swiss in Havana. To facilitate agreement we have followed the Cuban text as closely as possible, but certain changes were necessary to eliminate lesser offenses and to conform with United States laws. While Cuba proposed only that each party prosecute hijackers reaching its territory, we have suggested in keeping with our worldwide policy, an option to return or prosecute them.

Under this arrangement, the United States would promise no more than to apply its own laws. The understanding could be included in an exchange of notes between the Swiss Embassy in Havana and the Cuban Foreign Ministry. No treaty or implementing legislation would be necessary. The Department of Justice concurs in this draft.

In view of the difficulties of communicating with Havana, I have asked the Swiss Ambassador who represents our interests there to come to Washington on Monday.


William P. Rogers

Attachment:

U. S. Response

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The Embassy of Switzerland presents its compliments to the Ministry of Foreign Relations and, in its capacity of representative of the interests of the United States in the Republic of Cuba, has the honor to refer to the recent talks between the Embassy and representatives of the Government of Cuba regarding airplane hijackings and other offenses.

The Embassy also has the honor to set forth below the English and Spanish texts, which shall be equally authentic, of the Memorandum of Understanding agreed to in the said conversations:

Memorandum of Understanding on Airplane
Hijackings and Other Offenses

The Government of the Republic of Cuba and the Government of the United States of America, on the basis of equality and strict reciprocity, hereby agree as follows:

Article 1. Any person who by force or threat of force hereafter unlawfully seizes, takes control of, appropriates or diverts from its normal route an aircraft or commits similar piratical acts against a vessel, that is registered under the laws of one of the parties, and reaches the territory of the other party shall either be returned to the first party or

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be prosecuted by the other party in accordance with its laws for crimes punishable, in the case of aircraft piracy by sentences ranging from imprisonment for not less than 20 years to death, and in other cases by sentences up to life imprisonment, according to the circumstances and seriousness of the acts. In addition, the other party shall take all necessary steps to facilitate without delay the continuation of the journey of the passengers and crew of the aircraft or vessel in question with their belongings, as well as the journey of the aircraft or vessel itself with all property brought with it, including any funds obtained by extortion or other illegal means, or the return thereof to the territory of the first party; likewise it shall take steps to protect the physical integrity of the aircraft or vessel, and all property brought with it, including funds obtained by extortion or other illegal means, and the physical integrity of the passengers and crew and their belongings, while they are in its territory as a consequence of or in connection with the acts to which this Article refers.

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Article 2. Each party shall investigate and prosecute strictly in accordance with its laws any person who within its territory hereafter conspires to promote, or prepares, or takes part in an expedition carried on from its territory that carries out acts of violence or depredation against aircraft or vessels of any type or registration coming from or going to the territory of the other party, or who within its territory hereafter conspires to promote, or prepares, or takes part in, an expedition carried on from its territory that carries out such acts or similar unlawful acts in the territory of the other party.

Article 3. Each party shall apply strictly its own laws with respect to any person, particularly those having committed common crimes, who, coming from the territory of the other party, enters its territory, violating its laws as well as national and international requirements pertaining to immigration, health, customs, and the like.

Article 4. The country exercising its responsibility with regard to the perpetrators

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of the acts described in Article 1 may take into account the mitigating circumstances in cases in which the perpetrators were being sought for strictly political reasons and were in real and imminent danger of death, without a viable alternative for leaving the country, provided there was no extortion or physical injury to the passengers, members of the crew, or other persons having responsibility with respect to the aircraft or vessel used. In any case involving such extortion or injury and in cases where the perpetrators had previously committed serious crimes of violence in the territory of one party, the party to whose territory they flee shall give serious consideration to returning the perpetrator to the territory of the party from which they came for prosecution under its laws.

Final Provisions:

This Agreement may be amended or expanded by decision of the parties.

This Agreement shall be in force for five years; it may be renewed for an equal term by express decision of the parties.

Either party may inform the other of its decision to terminate this agreement at any

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time while the agreement is in effect by written denunciation submitted six months in advance.

The Embassy has the honor to propose that, if the agreements described in the Memorandum of Understanding set forth above are acceptable to the Ministry of Foreign Relations, this note and the Ministry's reply concurring therein shall constitute acceptance by the Government of the United States and the Government of Cuba of the terms of the Memorandum of Understanding, which will enter into force on the date of the reply.