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Authority EO 12958
By 740 NARA Date 3/17/03

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MEMORANDUM

NATIONAL SECURITY COUNCIL

INFORMATION

13 February 1973

~~CONFIDENTIAL~~ (GDS)

MEMORANDUM FOR: GENERAL SCOWCROFT
FROM: SERBAN VALLIMARESCU
SUBJECT: Hijacking Agreement with Cuba

The U. S. and Cuba have reached agreement on the text of an agreement on hijacking. Attached for your information is a copy of the agreed text. (Tab A)

The most recent hijacking incidents involved hijackers of a clearly criminal nature, and the Cuban Government thereafter issued a statement indicating its willingness to enter negotiations with the U. S. on the air piracy problem. In response we indicated our willingness to hold talks through the Swiss Embassy in Havana but stressed that this represents no change in our overall policy toward Cuba. The first meeting between Cuban and Swiss officials was held in Havana November 25. The Cubans presented a draft agreement at that meeting. Subsequent meetings negotiated the text which has now been approved.

Previous attempts at negotiating an agreement with the Cubans on this problem foundered over Cuban insistence that any such agreement also cover the return of illegal exiles, including those already in the U. S., and the prohibition of any acts of piracy against Cuban territory by emigre groups. The approved proposal does deal with the Cuban concerns but rules out retroactive action, thereby protecting Cuban emigres already in the U. S. It also provides for exemption from the provisions of the agreement for cases of political asylum. It covers the hijacking of both aircraft and vessels. In brief, the parties agree to:

- give serious consideration to extraditing hijackers instead of prosecuting them in the country in which they land;
- provide for the continued protection and ongoing travel of passengers, aircraft and the like which have been diverted;
- provide for the return of funds or property obtained illegally;
- try, in accordance with national laws, any person or group who conducts acts of piracy against the territory of the other country;
- hold open the possibility of granting political asylum in some cases where no financial extortion or physical injuries are involved.

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The agreement is to be in force for five years and may be extended for an additional five years if both parties so agree. It may be terminated with six months written notice by either party.

The agreement will probably enter into force by means of an exchange of notes which would be handled through the Swiss and Czech Embassies in Havana and Washington respectively. Cuba is conducting talks on the hijacking problem also with Canada and Mexico.

Attachment:

cc U. S. - Cuba Hijacking Agreement Text

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MEMORANDUM OF UNDERSTANDING ON HIJACKING
OF AIRCRAFT AND VESSELS AND OTHER OFFENSES

The Government of the United States of America and the Government of the Republic of Cuba, on the bases of equality and strict reciprocity, agree:

FIRST: Any person who hereafter seizes, removes, appropriates or diverts from its normal route or activities an aircraft or vessel registered under the laws of one of the parties and brings it to the territory of the other party shall be considered to have committed an offense and therefore shall either be returned to the party of registry of the aircraft or vessel to be tried by the courts of that party in conformity with its laws or be brought before the courts of the party whose territory he reached for trial in conformity with its laws for the offense punishable by the most severe penalty according to the circumstances and the seriousness of the acts to which this Article refers. In addition, the party whose territory is reached by the aircraft or vessel shall take all necessary steps to facilitate without delay the continuation of the journey of the passengers and crew innocent of the hijacking of the aircraft or vessel in question, with their belongings, as well as the journey of the aircraft or vessel itself with all goods carried with it, including any funds obtained by extortion or other illegal means, or the return of the foregoing to the territory of the first party; likewise, it shall take all steps to protect

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the physical integrity of the aircraft or vessel and all goods, carried with it, including any funds obtained by extortion or other illegal means, and the physical integrity of the passengers and crew innocent of the hijacking, and their belongings, while they are in its territory as a consequence of or in connection with the acts to which this Article refers.

In the event that the offenses referred to above are not punishable under the laws existing in the country to which the persons committing them arrived, the party in question shall be obligated, except in the case of minor offenses, to return the persons who have committed such acts, in accordance with the applicable legal procedures, to the territory of the other party to be tried by its courts in conformity with its laws.

SECOND: Each party shall try with a view to severe punishment in accordance with its laws any person who, within its territory, hereafter conspires to promote, or promotes, or prepares, or directs, or forms part of an expedition ~~which~~ from its territory or any other place carries out acts of violence or depredation against aircraft or vessels of any kind or registration coming from or going to the territory of the other party or who, within its territory, hereafter conspires to promote, or promotes, or prepares, or directs, or forms part of an expedition which from its territory or any other place carries out such acts or other similar unlawful acts in the territory of the other party.

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THIRD: Each party shall apply strictly its own laws to any national of the other party 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.

FOURTH: The party in whose territory the perpetrators of the acts described in Article I arrive may take into consideration any extenuating or mitigating circumstances in those cases in which the persons responsible for the acts 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 financial extortion or physical injury to the members of the crew, passengers, or other persons in connection with the hijacking.

FINAL PROVISIONS:

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

This Agreement shall be in force for five years and 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 time while it is in force by written denunciation submitted six months in advance.

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This Agreement shall enter into force on the date agreed by
the parties.

Done in English and Spanish texts which are equally authentic.

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