

Y4
.F 76/2

1039

9214
F76/2
A17

Ai 7 AIRCRAFT HIJACKING CONVENTION

GOVERNMENT

DOCUMENTS

Storage

JUN 17 1971

THE LIBRARY
KANSAS STATE UNIVERSITY

HEARINGS

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS

UNITED STATES SENATE

NINETY-SECOND CONGRESS

FIRST SESSION

ON

Executive A, 92d Congress, 1st Session

THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL
SEIZURE OF AIRCRAFT, SIGNED AT THE HAGUE,
DECEMBER 16, 1970

JUNE 7 AND JULY 20, 1971

KSU LIBRARIES



A11900 914613



NOTE.—The hearing on Tuesday, July 20, 1971, was held in Executive Session. Portions of that hearing have been deleted at the request of the Department of State. Deleted material is indicated by the notation "[Deleted]."

Printed for the use of the Committee on Foreign Relations

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1971

AY
7. 10/2
7 A

DOCUMENTS

AUG 1 1951

THE LIBRARY
KANSAS STATE UNIVERSITY

COMMITTEE ON FOREIGN RELATIONS

J. W. FULBRIGHT, Arkansas, *Chairman*

JOHN SPARKMAN, Alabama
MIKE MANSFIELD, Montana
FRANK CHURCH, Idaho
STUART SYMINGTON, Missouri
CLAIBORNE PELL, Rhode Island
GALE W. MCGEE, Wyoming
EDMUND S. MUSKIE, Maine
WILLIAM B. SPONG, Jr., Virginia

GEORGE D. AIKEN, Vermont
KARL E. MUNDT, South Dakota
CLIFFORD P. CASE, New Jersey
JOHN SHERMAN COOPER, Kentucky
JACOB K. JAVITS, New York
HUGH SCOTT, Pennsylvania
JAMES B. PEARSON, Kansas

CARL MARCY, *Chief of Staff*
ARTHUR M. KUHLMAN, *Chief Clerk*

(II)



CONTENTS

	Page
Statements by:	
Beggs, Hon. James M., Under Secretary, Department of Transportation; accompanied by Robert P. Boyle, Deputy Assistant Administrator of International Affairs, Federal Aviation Administration---	9
Donnelly, Daniel, chairman, Hijacking Committee, Aviation Law Section, American Trial Lawyers Association-----	41
Huisentruit, Jerome F., assistant general counsel, Air Transport Association-----	27
Meyer, Hon. Charles A., Assistant Secretary of State, Bureau of Inter-American Affairs; accompanied by Robert A. Hurwitch, Deputy Assistant Secretary, Bureau of Inter-American Affairs; Robert L. Funseth, Coordinator of Cuban Affairs; and Mark B. Feldman, Assistant Legal Adviser, Inter-American Affairs-----	58
O'Donnell, J. J., president, Air Line Pilots Association-----	33
Stevenson, John R., Legal Adviser, Department of State; accompanied by David Ortman, Bureau of Economic Affairs; and Knute E. Malmberg, Assistant Legal Adviser-----	1
Appendix-----	93

COLLIERIES

1. The first colliery was established in 1840 at the site of the present-day town of ...

2. The second colliery was established in 1850 at the site of the present-day town of ...

3. The third colliery was established in 1860 at the site of the present-day town of ...

4. The fourth colliery was established in 1870 at the site of the present-day town of ...

5. The fifth colliery was established in 1880 at the site of the present-day town of ...

6. The sixth colliery was established in 1890 at the site of the present-day town of ...

7. The seventh colliery was established in 1900 at the site of the present-day town of ...

8. The eighth colliery was established in 1910 at the site of the present-day town of ...

9. The ninth colliery was established in 1920 at the site of the present-day town of ...

10. The tenth colliery was established in 1930 at the site of the present-day town of ...

AIRCRAFT HIJACKING CONVENTION

MONDAY, JUNE 7, 1971

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 4221, New Senate Office Building, Senator J. W. Fulbright (chairman) presiding.

Present: Senators Fulbright, Case, Javits, and Pearson.

Also present: Richard Boylan, attorney, Criminal Division, Department of Justice.

The CHAIRMAN. The committee will come to order.

OPENING STATEMENT

The Committee on Foreign Relations is meeting today to receive testimony on the Convention for the Suppression of Unlawful Seizure of Aircraft, which was signed at the Hague on December 16, 1970.

The CHAIRMAN. Mr. Stevenson, will you come forward please, sir.

Do you have a prepared statement, Mr. Stevenson?

Mr. STEVENSON. Yes, Mr. Chairman.

The CHAIRMAN. Will you proceed.

Mr. STEVENSON. It is relatively short, if I might read it.

The CHAIRMAN. All right, you may proceed.

STATEMENT OF JOHN R. STEVENSON, LEGAL ADVISER, DEPARTMENT OF STATE; ACCOMPANIED BY DAVID ORTMAN, BUREAU OF ECONOMIC AFFAIRS AND KNUTE E. MALMBORG, ASSISTANT LEGAL ADVISER

Mr. STEVENSON. Mr. Chairman, I am the Legal Adviser to the Department of State, and I am accompanied today by Mr. David Ortman of the Bureau of Economic Affairs, and Mr. Knute Malmberg, assistant Legal Adviser.

EARLY AND FAVORABLE SENATE ACTION RECOMMENDED

President Nixon stated when he transmitted to the Senate the Convention for the Suppression of Unlawful Seizure of Aircraft, which I will hereafter refer to as the hijacking convention, that aircraft hijacking has become a serious global threat to international aviation. For that reason, it was his urgent recommendation that the Senate give early and favorable consideration to the convention in order to permit its early ratification. That threat still remains. Even in the short time

since his submission of the convention, we have seen hijacking spread to parts of the world such as the Indian subcontinent not previously touched.

Air travelers continue to experience danger, delay, or worse. Early favorable action by the Senate in giving its consent to ratification remains the urgent recommendation of this administration.

INTERNATIONAL COMMUNITY'S DEEP AND GENERAL CONCERN

The action of the 77 countries represented at the Hague International Conference on Air Law last December in adopting the hijacking convention with no negative vote and only two abstentions is the most dramatic evidence to date of the international community's deep and general concern with the hijacking problem and its willingness to take prompt and effective international measures to combat this menace to civil aviation.

As early as 1968 the threat to international air safety posed by hijacking had become an acute problem. Fortunately, the international civil aviation community recognized this fact and the International Civil Aviation Organization (ICAO) Assembly in that year put into motion a study of concrete international measures. The United States itself took the leadership in tabling a draft antihijacking convention before an ICAO legal subcommittee in February 1969, an initiative that ultimately led to the Convention presently before this committee.

In his address to the United Nations General Assembly in September 1969, President Nixon asked the international community to work together to end sky piracy. The response has been both swift and decisive.

The first steps had already been taken by the United States in ratifying the Tokyo Convention on Offenses and Certain other Acts Committed on Board Aircraft, thereby bringing that Convention into force on December 4, 1969. At the time of this hearing, we have been advised by the International Civil Aviation Organization (ICAO) that 42 States are now parties to the Tokyo Convention. That Convention gives the state of registration of an aircraft criminal jurisdiction over all offenses committed on board, and requires a contracting state in which a hijacked aircraft lands to permit continuation of the journey of passengers and crew and to restore the aircraft to those entitled to possession.

On September 11, 1970, President Nixon announced a seven-point program to combat aircraft hijacking. The first three of these points involved security measures such as armed guards, surveillance, and research and development on security devices. Another was the international exchange of information on how to foil hijackers. The fifth point affirmed the support of the United States for both the Tokyo Convention and the present convention (when adopted) and called upon other governments to become parties to both; it also called upon the international community to take joint action to suspend airline service with countries which refuse to punish or extradite international blackmail hijackers. The sixth point was a statement of U.S. policy to hold the countries in which hijackers planes are landed

responsible for protecting the lives and property of U.S. citizens. Finally, with the United Kingdom the President called for a meeting of the U.N. Security Council to consider the problem. The Council agreed that hijacking was a serious threat and called for international action.

Meanwhile, the ICAO was moving forward with unusual speed in the preparation of the Hijacking Convention and a convention directed against sabotage and other acts of violence directed against international civil aviation.

Finally, the United Nations General Assembly passed resolutions in 1969 and 1970 calling upon states to take effective action to stop hijacking.

Thus it is that the Hijacking Convention comes to this committee with a rare combination of broad international agreement upon its terms and compelling need for early entry into force.

STRENGTHENING OF DRAFT CONVENTION

The draft convention which was before the international conference at The Hague last December had been prepared by the ICAO legal committee and two sessions of its subcommittee on unlawful seizure. It was not a bad draft, or a weak draft; it represented various compromises thought to have been necessary to gain wide acceptability. But the legal committee completed its work in March 1970 and between then and the Hague Conference in December two events occurred which significantly altered the U.S. view of what would be widely acceptable. The first was the dramatic series of international blackmail hijackings into Jordan last Labor Day weekend. The deliberate endangering and holding hostage of hundreds of innocent persons for political purposes mobilized public opinion against hijacking as never before. Second, the Soviet Union, which became a member of ICAO in November 1970, was itself the victim of two hijackings shortly before the conference and came to the conference with great interest in strengthening the convention.

The United States therefore proposed a series of strengthening amendments and actively sought the support of other governments for those amendments. We had the following objectives:

(a) To limit to as few cases as possible exceptions to an obligation to extradite a hijacker to the state of registration of the hijacked aircraft. This was the area in which there was most resistance to our proposals, and the extradition provisions were not greatly strengthened at The Hague.

(b) To have a clear-cut determination that hijacking is not itself a political offense. The provision of the convention that hijackers shall be submitted to prosecution "without exception whatsoever" was the response of the conference to this idea.

(c) To strengthen the obligation to prosecute where extradition does not occur. The Convention was substantially strengthened in this respect.

(d) To provide mandatory universal jurisdiction over hijacking. The convention so provides.

In addition, a number of strengthening proposals of others, supported by the United States, were adopted by the conference.

STATES SIGNING AND RATIFYING

Fifty states of the 77 attending the conference signed the convention at The Hague. Since then 14 more states have signed, significantly including the first Arab State to sign, Iraq. Jordan is scheduled to sign on June 9.

Japan and Bulgaria are the first two states to deposit their instruments of ratification, and we have been informed that Sweden, Burundi, Dahomey, Czechoslovakia, Costa Rica, Hungary, Norway, Poland, and Switzerland expect to do so very soon. I will leave a complete, up-to-date list of accomplished signatures and ratifications for the committee's use.

(The information referred to follows:)

ACCOMPLISHED SIGNATURES AND RATIFICATIONS OF CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT AS OF JULY 16, 1971 (SUPPLIED BY DEPARTMENT OF STATE)

50 signatures at The Hague

14 signatures at Washington

5 ratifications at Washington

(As this is a three-depository convention, there may have been other actions in the other two depository capitals which are not recorded here.)

STATUS OF U.S. DEPOSITORY ORIGINAL OF THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT, DONE AT THE HAGUE ON DEC. 16, 1970¹

State	Date of signature	Date of deposit of instrument of ratification	Date of deposit of instrument of accession
Afghanistan	Dec. 16, 1970		
Algeria			
Argentina	Dec. 16, 1970		
Australia	June 15, 1971		
Austria	Apr. 28, 1971		
Barbados	Dec. 16, 1970		
Belgium	do.		
Brazil	do.		
Bulgaria	do.		
Byelorussian Soviet Socialist Republic	{ May 19, 1970 ² }		
Cameroon	Dec. 16, 1970 ²		
Canada			
Ceylon	Dec. 16, 1970		
Chile			
China, Republic of	Dec. 16, 1970		
Colombia	do.		
Congo, People's Republic of			
Costa Rica	{ Dec. 16, 1970 }		
	{ July 9, 1971 }		
Czechoslovakia	Dec. 16, 1970		
Dahomey	May 5, 1971		
Denmark	Dec. 16, 1970		
Dominican Republic	June 29, 1971		
Ecuador	{ Mar. 19, 1971 ² }		
	{ June 14, 1971 }		
El Salvador	Dec. 16, 1970		
Equatorial Guinea	June 4, 1971		
Ethiopia	Dec. 16, 1970		
Finland	Jan. 8, 1971		
France	Dec. 16, 1970		
Gabon	do.		
Germany, Federal Republic of	do.		
Ghana	do.		
Greece	do.		
Guatemala	do. ²		
Holy See			
Hungary	Dec. 16, 1970		
India	July 14, 1971		
Indonesia	Dec. 16, 1970		
Iran	do.		
Ireland			
Israel	Dec. 16, 1970		
Italy	do.		
Jamaica	do.		
Japan	{ do. }		
	{ Apr. 19, 1971 }		

STATUS OF U.S. DEPOSITORY ORIGINAL OF THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE
OF AIRCRAFT, DONE AT THE HAGUE ON DEC. 16, 1970—Continued

State	Date of signature	Date of deposit of instrument of ratification	Date of deposit of instrument of accession
Jordan	June 9, 1971		
Kenya	Dec. 16, 1970		
Khmer Republic			
Korea, Republic of			
Kuwait	Feb. 16, 1971		
Laos			
Lebanon			
Lesotho			
Libya	Dec. 16, 1970		
Luxembourg	do.		
Malaysia	do.		
Mexico	do.		
Netherlands	do.		
New Zealand			
Niger	Feb. 19, 1971		
Norway	Mar. 9, 1971		
Norway	Dec. 16, 1970		
Panama			
Paraguay	Dec. 16, 1970		
Philippines	do.		
Poland	do.		
Portugal			
Romania	Dec. 16, 1970		
Rwanda	May 10, 1971		
Senegal	Dec. 16, 1970		
South Africa	Mar. 16, 1971		
Spain	(Dec. 16, 1970 July 7, 1971)		
Sweden	Dec. 16, 1970		
Switzerland			
Tanzania	Dec. 16, 1970		
Thailand	do.		
Trinidad and Tobago			
Tunisia	Dec. 16, 1970		
Turkey	do. ¹		
Ukrainian Soviet Socialist Republic			
Uganda	Dec. 16, 1970 ²		
Union of Soviet Socialist Republics			
United Arab Republic			
United Kingdom of Great Britain and Northern Ireland	Dec. 16, 1970		
United States of America	do.		
Venezuela	do.		
Yugoslavia	do.		
Zambia			

¹ Signed on Dec. 16, 1970, at The Hague; thereafter at Washington.

² With reservation regarding paragraph 1, Article 12.

³ With reservation regarding paragraph 2, Article 12.

Department of State, Washington, July 16, 1971.

PROSPECTS FOR ENTRY INTO FORCE

It is our belief that a sufficient number of states will ratify the Convention this year to bring it into force. Our experience with the Tokyo Convention indicates that once ratifications reach a sufficient number to approach the number required to bring it into force—in this case 10—many states quickly will ratify or accede. It is also the case that many states will wait to see what the United States does. We do recognize that few states have on the books criminal legislation necessary for them to implement the obligations of the Convention, and the process of internal legislation is somewhat slow, especially for criminal law.

Nevertheless, we have inquired informally, and the response indicates that some seven additional countries plan to sign in the near future and 29 countries plan to ratify or accede within the year.

I would like to outline very briefly the major provisions of the Convention.

SCOPE OF CONVENTION

The Hijacking Convention applies to any unlawful seizure or exercise of control, by force or threat of force, or by any other form of intimidation, committed on board a civil aircraft in flight, and to any attempt at such an act committed on board. An aircraft is defined to be in flight from the moment when all its external doors are closed following embarkation until the moment when any door is opened for disembarkation. But in the event of hijacking the flight is deemed to be continued until the competent authorities where the plane lands assume responsibility for the aircraft and the persons and property on board. The Convention does not apply to aircraft used in military, customs or police services. This is an accordance with the usual practice of limiting international air law conventions to civil aircraft.

The Convention also contains provisions which limit its scope of application geographically. Thus flights which occur solely within the state of registration of the aircraft are excluded. Perhaps two examples will best illustrate the territorial operation of that paragraph.

An Eastern Airlines aircraft scheduled from New York to Montreal is hijacked en route and diverted to Chicago. In that situation the Convention would not apply (unless the hijacker subsequently escaped to another country in which case the extradition, punishment, and certain other provisions become applicable).

On the other hand, an Eastern Airlines aircraft scheduled from New York to Chicago which is hijacked en route and diverted to Canada would be covered by the convention.

PENALTIES AND UNIVERSAL JURISDICTION PROVISIONS

The penalties and universal jurisdiction provisions are among the most important in the convention.

Under these each state is obliged to make hijacking punishable by severe penalties, and to establish its criminal jurisdiction to cover cases where an alleged hijacker is present in its territory, regardless of where the hijacking takes place.

As you know, under present U.S. law aircraft piracy carries a minimum penalty of 20 years imprisonment and a possible death penalty, and so our law already meets the requirement for severe penalties.

The "special aircraft jurisdiction" of the United States as it now exists in law and would be extended by the proposed legislation will be discussed by Under Secretary Beggs. I should mention here however that this proposed legislation would meet the requirement that the contracting state establish jurisdiction to prosecute a hijacker found within its territory regardless of where the hijacking occurred.

CUSTODY

Under the convention each state is obliged, when it is "satisfied that the circumstances so warrant," to take a hijacker into immediate custody or to take other measures to ensure his presence for such time as may be necessary to enable criminal or extradition proceedings to be instituted.

Normally the circumstances are quite clear—an aircraft lands with the alleged hijacker on board—but there could be cases where there is

little or no evidence to support placing a person in custody and a certain flexibility is required. Once the decision is made that the circumstances warrant taking the hijacker into custody, however, there is no exception to the obligations on contracting states that flow from action under this paragraph, namely, notification to the other States specified in the convention and extradition or submission to prosecution.

EXTRADITION OR PROSECUTION

The convention amends existing extradition treaties, all bilaterals in the case of the United States, to include hijacking as an extraditable offense and also provides that it shall be an extraditable offense between states which do not make extradition conditional on an extradition treaty. If a state in which a hijacker is found does not extradite him, that state is obligated "without exception whatsoever, and whether or not the offense was committed in its territory to submit the case to its competent authorities for the purpose of prosecution." These authorities are also required to make their decision whether or not to prosecute in the same manner as for serious, ordinary offenses under their own laws.

These provisions of the convention taken together provide the basic deterrent to hijackers—the risk to any hijacker who enters any one of the contracting states that he will either be extradited to another state or prosecuted where he is found.

The United States now has over 80 bilateral extradition treaties in force, but in only four of them is hijacking listed as an extraditable offense. Clearly, the provision of the convention amending existing treaties will greatly facilitate extradition of hijackers by eliminating the need to negotiate individual amendatory treaties. I should note that this would be a retroactive amendment in the sense that it would make extraditable hijackings that had occurred before the amendment entered into force. The convention also requires that contracting states include hijacking as an extraditable offense in all future extradition treaties concluded in the future between contracting states. The United States is presently including hijacking as an extraditable offense in all new extradition treaties it negotiates.

The provisions of the convention relating to extradition in the absence of treaty are not applicable to those countries, like the United States, which by law cannot extradite except pursuant to treaty.

Since many existing extradition treaties are limited to offenses that occur within the territory of the state requesting extradition, the Convention also, in effect, amends such treaties to expand what is to be considered "territory" for purposes of extradition of hijackers. As a result, a hijacking over the high seas could be considered for purposes of extradition to have occurred within the territory of as many as three states—that of the registry of the aircraft, that where the aircraft lands with the alleged offender on board, and that where a person who has "dry leased" the aircraft has his principal place of business or permanent residence.

Probably the single most important provision of the convention, however, is the requirement that if the state where the hijacker is found does not extradite, it has the obligation to submit the case for prosecution "without exception whatsoever." The language I have

just quoted is taken from the United Nations General Assembly resolution adopted on November 25, 1970, with no negative votes. We understand, and the negotiating history of the convention makes clear, that this language precludes a state which is a party to the convention from deciding that any hijacker should be immune from the criminal process because of his motives. On the other hand, it does not, for example, mean that a mentally incompetent person must be prosecuted or that a prosecutor must go forward when he knows that he has no evidence.

REPORTING REQUIREMENTS

The convention requires that, when a state has taken a hijacker into custody, it shall immediately notify certain states, including the state of registration of the aircraft and the state of nationality of the hijacker. In addition, each state is required to report to the council of the International Civil Aviation Organization relevant information concerning a hijacking, the release of passengers, crew, cargo, and aircraft, and the results of any extradition or other legal proceedings.

In the past we have found that our efforts to deter hijacking have been hindered by our inability in some cases to find out what has happened to hijackers. These reporting requirements should provide this information. More importantly, it will put pressure on states with reporting responsibility to take action against hijackers in order that the report will be favorably received.

UNIVERSALITY IN AIR LAW

Universality in air law is not the product of any single article or even a series of substantive articles; it results in the case of this Convention from a great number of features. The Convention applies to hijacking of all civil aircraft, whether engaged in an international or a domestic flight if the actual flight crosses an international border. The obligations of states to release hijacked passengers, crew, and aircraft, and to extradite or prosecute are absolute and are not based upon reciprocal treaty relationships. Together they provide a framework within which the problem of hijacking can be dealt with as forcefully as piracy.

Finally, the Convention may be ratified, or acceded to, by all States.

RELATED CONVENTIONS IN PROCESS OF PREPARATION

Before concluding I will just mention two other related international conventions in the process of preparation.

One of these is a draft convention on acts of violence other than the unlawful seizure of aircraft directed against international civil aviation. The ICAO Legal Committee has completed its work on this convention, and a diplomatic conference will meet to consider the draft from September 8 to 23, 1971, in Montreal. This convention, which will be quite similar to the hijacking convention except for article 1—defining the offense—grew out of explosions in the spring of 1969 which destroyed a Swiss civil aircraft in flight and badly damaged an Austrian civil aircraft also in flight.

The other new convention is a specific response to President Nixon's seven point program announced on September 11, 1970, to deal with the menace of international blackmail hijackings such as those which took place last Labor Day weekend. The ICAO Legal Committee has begun consideration of a draft convention which would make concerted action, such as suspension of air service to States participating in or facilitating international blackmail, binding upon States once a determination of default had been made and would provide a mechanism for making that determination.

After Under Secretary Beggs has given his statement, Mr. Chairman, I would be pleased to answer any questions that the committee may have.

The CHAIRMAN. Thank you very much. Do you wish Mr. Beggs to testify now?

SUPPORT FOR CONVENTION

Senator JAVITS. Mr. Chairman, could I have one word before he does? I will not ask any questions. I just wanted to say, as New York is such a tremendous center for civil aviation, you have my full support for this convention. I believe that the United States has proceeded admirably in respect of this negotiation. I hope very much that the total diplomatic machinery will be put into effect for getting the maximum number of adherents. I think it is critically important that the convention be open to universal adherence, as Mr. Stevenson has testified, rather than limited to certain participants or even those who engage in civil aviation activities.

I thank the Chair very much for allowing me to express this view. I would support the convention very, very strongly. I think you have done a very remarkable job. Thank you.

The CHAIRMAN. Mr. Beggs, will you proceed, sir?

STATEMENT OF JAMES M. BEGGS, UNDER SECRETARY, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY ROBERT P. BOYLE, DEPUTY ASSISTANT ADMINISTRATOR OF INTERNATIONAL AFFAIRS, FEDERAL AVIATION ADMINISTRATION

Mr. BEGGS. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I am most grateful for the opportunity to appear before the committee to express the views of the Department of Transportation on the convention which is before you. I am accompanied by Mr. Robert P. Boyle, Deputy Assistant Administrator of International Aviation Affairs for the Federal Aviation Administration, who was a member of the U.S. Delegation to the Diplomatic Conference at the Hague where this convention was opened for signature.

DEPARTMENT OF STATE RECOMMENDATION ENDORSED

As you know, the Department of Transportation is responsible for the safety and security of the air commerce of the United States. We strongly endorse the recommendations made by the Department of State that the U.S. Senate give its advice and consent to the ratification of the convention for the suppression of unlawful seizure of aircraft. The safety and security of international air transportation is at issue.

CONVENTION IS DESIGNED TO SUPPLEMENT TOKYO CONVENTION

This convention is designed to supplement the Tokyo Convention which applies to the commission of all crimes aboard aircraft. The Tokyo Convention provides that in the case of aircraft in flight in international air transportation the law of the State of the flag of the aircraft applies to events occurring aboard that aircraft. That convention gives certain powers and responsibilities to the commander of an aircraft with respect to crimes committed aboard his aircraft. Furthermore, it imposes on the state in which the aircraft lands following the commission of a crime certain obligations toward any alleged offenders which the aircraft commander asks it to take into custody. In the case of a hijacked aircraft, these obligations include restoration of control of the aircraft to its lawful commander, to permit the passengers and crew to continue their journey as soon as practical, and return of the aircraft and its cargo to the lawful possessors. However, the Tokyo Convention does not oblige any state to establish jurisdiction over hijacking or to extradite or submit to prosecution hijackers in their custody. It is this gap in the international legal system which the Convention for the Suppression of Unlawful Seizure of Aircraft closes. This convention would obligate its parties to establish jurisdiction over hijackers and agree to extradite or submit to prosecution offenders in its custody.

The administration, including the Department of Transportation, in the exercise of its responsibilities to assure the safety and security of the air commerce of the United States, is endeavoring to establish a system of international public law dealing with crimes in and to international air transportation. The Tokyo Convention of 1963 was a first and most significant step in this direction. However, it does not adequately cover today's problems. We now need the additional guarantees that states will establish jurisdiction over the offense of hijacking and will extradite or submit to prosecution the offenders without any exception. In fact, in order to complete a system of international public law which will cope fully and completely with the problem of criminal acts of violence in and to international air transportation, we believe two additional international agreements are necessary.

ADDITIONAL INTERNATIONAL AGREEMENTS

The first is one which takes appropriate measures against those persons who commit acts on the ground directed against international air transportation or its facilities such as acts of sabotage or other forms of unlawful interference. The International Civil Aviation Organization (ICAO) has been at work on this particular problem for some time, and its legal committee has completed a draft convention which we expect will be finalized and opened for signature at a diplomatic conference to be convened in September of this year.

The second of these additional international agreements is one which will provide for the application of some form of concerted action against any country who does not comply with the international undertakings expressed in the Tokyo Convention, the convention before us today, and, upon its agreement, the convention dealing with ground activities interfering against aircraft.

This second proposed convention resulted from the rash of hijackings that occurred over the Labor Day weekend last year. At that time the President called for international action to curb the major threat to international air transportation represented by the so-called Dawson Field incidents. Secretary Volpe went to Montreal at the request of the President and presented to the council of ICAO a resolution calling for the development of an international agreement to apply sanctions against any country which would countenance the use of aircraft hijacking for international blackmail purposes. As a direct result of this request by the Secretary on behalf of the United States, the ICAO council asked its legal committee to begin work on a convention which would provide for the taking of concerted action in such a situation. While this work is not yet completed, substantial progress has been made, and we are hopeful that this international agreement will be reached. We then would have an integrated system of public law adequate to cope with the major threat to safety and security of international air transportation that aircraft hijacking poses.

OBJECTIVE OF FOUR CONVENTIONS ON HIJACKING

To summarize, our objective is to have four conventions on hijacking:

1. The Tokyo Convention on Crimes on Board Aircraft. This convention has been ratified and is operative.
2. The Convention for Suppression of Unlawful Seizure of Aircraft. We are asking the committee to give its advice and consent on this unratified convention.
3. The Convention on Interference Against Aircraft. A diplomatic conference in September this year will complete the drafted convention, and it will be submitted to the Senate.
4. A convention providing sanctions against states which detain aircraft. The ICAO legal committee is working on a draft convention.

IMPLEMENTING LEGISLATION

In order to effectively implement the convention for the suppression of unlawful seizure of aircraft for which we are asking the advice and consent of the U.S. Senate, some additional legislation will be needed. At this time I would like to give the committee a brief description of the key provisions of this legislation which has been submitted to the Congress. Since the groundwork for our international public law on the subject of crimes in international transportation was accomplished with the passage by Congress of the implementing legislation connected with the Tokyo Convention, no major new legislation is required for the implementation of the convention currently before the committee.

However, we will, for example, have to amend our existing laws to extend jurisdiction by the United States over any aircraft outside the United States on which the offense as defined in the convention is committed whenever that aircraft lands in the United States with the offender still on board. Additionally, we will have to establish jurisdiction over any aircraft, no matter what its registration, if it is leased without crew to an operator who has his principal place

of business in the United States or who is a permanent resident of the United States.

In addition, in order to satisfy article 2, paragraph 2 of the convention our legislation proposes a special provision to establish jurisdiction over the offense of hijacking when it occurs anywhere outside the special aircraft jurisdiction of the United States but the alleged offender is found here. We are proposing that there be established a separate substantive offense to cover this situation, carrying its own penalty provision. The proposed penalty for this offense would be death or imprisonment for any term of years, or for life, whereas, under our existing law (and our proposed law as it relates to the extension of our special aircraft jurisdiction) the offense of aircraft piracy is punishable by death if the verdict of the jury so recommends or by imprisonment for not less than 20 years if the death penalty is not imposed. This separate offense of hijacking outside the special aircraft jurisdiction of the United States, however, would cover a wider variety of situations, ranging from the most flagrant case of hijacking by force and violence with the individual being ultimately overcome by a violent struggle to the situation where the offender even peacefully surrenders within the United States many years after the commission of a hijacking under extenuating circumstances which took place in another country. To cope with this wide range of possible offenses which may be presented to courts, it is our judgment that flexibility in the penalties that may be applied is necessary. Simply stated, we do not wish to compel the courts to apply the penalty of a minimum sentence of 20 years in the case of hijackers where special equities may be present. Thus, while the Convention imposes on the United States the obligation to undertake prosecution without exception whatsoever, we think it necessary that the courts be allowed to consider motivation and other special circumstances in sentencing. These are the essential provisions of the implementing legislation which we are recommending.

RECOMMENDATION OF ADVICE AND CONSENT URGED

The convention on suppression of unlawful seizure of aircraft, when combined with the implementing legislation I have just outlined, will significantly add to our integrated system of international public law designed to preserve and protect the safety and security of international air transportation. I urge this committee to recommend to the Senate to give its advice and consent to the ratification of this convention.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Beggs.

OPPOSITION TO CONVENTION

Is there any opposition to this convention that either of you know of?

Mr. STEVENSON. I don't think there is any significant opposition.

The CHAIRMAN. Is there any insignificant opposition of which you are aware? All I want to know is the nature of it.

Mr. STEVENSON. The only opposition that I am aware of may result from some concern in some quarters about the obligation to prosecute without exception. I might point out that there is no compulsory obligation to extradite, so that you do not have the situation of being required to extradite.

The CHAIRMAN. But if you don't extradite, you obligate yourself to prosecute.

Mr. STEVENSON. That is correct, prosecute.

The CHAIRMAN. Who objects to that? Is there any organization or any country or any one who made a big point of this or not?

Mr. STEVENSON. No, but there has been some concern about being forced to return hijackers, say, behind the Iron Curtain.

The CHAIRMAN. By us?

Mr. STEVENSON. Not so much. This is, of course, more a concern in European countries where they have had that type situation.

But there has been concern expressed in this country by those who have been concerned in the same way as the European countries about having that obligation. This was really one of the major issues at the conference in December. It was for this reason that we did not have a compulsory extradition requirement but simply the requirement that if you do not extradite you are obligated to prosecute. So that European countries are not forced to extradite but, of course, they remain compelled to prosecute.

And we feel that is the minimum that you need for an effective deterrent.

CUBAN ATTITUDE TOWARD AGREEMENT FOR RETURN OF HIJACKERS

The CHAIRMAN. Has Cuba ever approached the United States, either directly or indirectly, with a proposal to seek an agreement for return of hijackers?

Mr. STEVENSON. The Cuban Government announced publicly its willingness to enter into discussions under a decree that it issued relating to hijacking. We have on several occasions followed this up through the Swiss mission in Havana, and our latest followup, which we made January of 1971, still remains unresponded to by the Cuban Government.

The CHAIRMAN. I will put this article in the record. It is dated September 27 and says that the Cuban Foreign Minister said that his Government is willing to enter immediate agreement with the United States for reciprocal return of all boat and plane hijackers if no exceptions are made. It says, "In Washington a spokesman of the State Department said there would be no immediate comment." Why didn't we comment?

U.S. ATTITUDE TOWARD HIJACKING AGREEMENT WITH CUBA

I mean what is our attitude now. This is where most of our hijacking incidents have taken place; isn't it?

Mr. STEVENSON. Well, let me say that, on the one hand, we have worked out very effective arrangements for rapid return of passengers and crew. Now, this question of an agreement, as I indicated, we have taken this up on various occasions. We are very much concerned with

the Cuban problem, But the situation remains that the Cuban Government has not responded to our latest suggestion. I don't think—

The CHAIRMAN. What was the suggestion? This paper left the impression that you didn't respond.

Mr. STEVENSON. That is not correct. We did respond.

The CHAIRMAN. This was as of September 27. You have responded since that time?

Mr. STEVENSON. Well, we responded before that.

The CHAIRMAN. Before then?

Mr. STEVENSON. Yes, the situation is we have responded several times but they have not replied to our suggestion.

The CHAIRMAN. What was the suggestion?

Mr. STEVENSON. Mr. Chairman, I would prefer not to comment on that in public session, since it is still under consideration.

The CHAIRMAN. Are we making the point of not recognizing the Cuban Government? We do not wish to talk to them directly about it.

Mr. STEVENSON. No, that is not the point, sir.

The CHAIRMAN. It is not.

Mr. STEVENSON. We have communicated through the Swiss Embassy with them on a number of occasions.

The CHAIRMAN. Swiss Embassy.

Mr. STEVENSON. But the point is since it is something that is under discussion between the two governments—

The CHAIRMAN. This article says, "Mr. Roa's offer of direct talks on hijacking marked a departure from their previous attitude of dealing only through third party governments such as the Swiss." Was the Roa offer a proposal that they talk directly to you and not through a third party?

Mr. STEVENSON. We, Mr. Chairman, made a suggestion to them which we are still waiting—

The CHAIRMAN. Did they make the suggestion to you that they talk to us directly?

Mr. STEVENSON. Well, their basic suggestion was—

The CHAIRMAN. This says they did. I want to know whether it is right or not. I don't think there is any use being secretive about a statement in the paper.

Mr. STEVENSON. They did not make the suggestion of direct discussions.

The CHAIRMAN. They did not do it. Then this story is incorrect in saying they offered to discuss the matter directly with this Government. I just want to get the facts.

Mr. STEVENSON. They did not make that offer to us.

(The article referred to follows:)

[The Baltimore Sun, Sept. 27, 1970]

CUBA SEEKS U.S. AGREEMENT FOR RETURN OF ALL HIJACKERS

Miami, Sept. 26 (AP)—Cuba's foreign minister, Raul Roa, said today his government is willing to enter immediate agreement with the United States for reciprocal return of all boat and plane hijackers if no exceptions are made.

Mr. Roa made the offer in a statement read on all stations of the government-controlled Cuban radio monitored in Miami.

In the broadcast the Cuban government also revealed that the return from Cuba this week of Robert J. Labadie, a 27-year-old American hijacker, had been negotiated through secret diplomatic channels initiated by the U.S. August 27.

COVERED-UP SITUATION

The Cubans accused the United States of covering up the circumstances of the agreement which the Cuban radio said called for confining Labadie in a mental hospital.

Labadie's return was the first time the Cuban government had handed over directly to U.S. authorities any hijacker.

In Washington, a spokesman for the State Department said there would be no immediate comment.

"We would have to have time to look over their proposal," he said.

Mr. Roa's offer of direct talks on hijacking with the U.S. marked a departure from the previous attitude of dealing only through third party government such as the Swiss.

"If the U.S. government really wishes to discuss in a serious and definitive way that problem, the Cuban government is willing to subscribe right away an agreement on the basis established in the Cuban law No. 1,266."

That law said agreements must cover ships as well as planes.

U.S. POSITION CONCERNING DISCUSSIONS WITH CUBAN GOVERNMENT

The CHAIRMAN. The position of our Government today is that we do not discuss anything directly with the Cuban Government; is it not?

Mr. STEVENSON. That has been our position.

The CHAIRMAN. Isn't it today?

Mr. STEVENSON. We customarily deal through the Swiss Embassy.

The CHAIRMAN. I know you do, but your position today is not to talk directly with the Cuban Government, isn't it? Why do you hem and haw about it? I thought everybody knew this unless you have changed it.

Mr. STEVENSON. That has been our position today; yes, sir.

The CHAIRMAN. We don't recognize the Cuban Government. Isn't that correct?

Mr. STEVENSON. That is not correct.

The CHAIRMAN. Isn't it?

Mr. STEVENSON. We do not have diplomatic relations with them. We broke diplomatic relations. We had recognized them and we simply broke diplomatic relations with them.

The CHAIRMAN. What is the distinction between recognition and having no diplomatic relations?

Mr. STEVENSON. Well, the distinction is a point of time. In some cases when a new government comes into power we do not recognize it. In other cases we recognize it and then we break off diplomatic relations, but this does not mean we have ceased to recognize it. We just have broken diplomatic relations. It can make a difference in some legal situation.

The CHAIRMAN. Senator Pearson, do you have any questions?

CONVENTION IS STEP FORWARD BUT NOT SOLUTION

Senator PEARSON. Mr. Chairman, to the extent that I understand the Tokyo Convention and to the extent I understand the proposed convention, I think this is a step forward particularly as it relates to jurisdictional matters. But the truth of the matter, as I think Mr. Beggs has more accurately described it, is that we don't solve these problems so long as there is a single sanctuary available in the international community. So it would be accurate, I assume, to say that this

is another step forward, but in no way does it represent a solution to the hijacking problem at the international level. Is that correct, Mr. Beggs? I will address the question to you because you set out four or five other steps that it is essential to take.

Mr. BEGGS. That is correct, Senator Pearson. Secretary Volpe did go to Montreal and address ICAO on this very subject pointing out that until we had a very effective way of applying sanctions against those nations which provide sanctuary for hijackers, we did not have a complete body of international public law to deal with the problem. Subsequently, I went to Montreal and followed up on that, and there was general agreement by the Council of ICAO that they would draw such a convention. I believe they are in the process of doing that and it is our hope that they will submit such a convention to the international community within the near future. With that, plus the other conventions I mentioned in my statement, including the convention which has already been drawn on the subject of sabotage or acts against aircraft on the ground not covered by either the Tokyo or the Hague conventions, we would have a complete body of international law dealing with crimes in international air transportation.

FAILURE TO RATIFY BY UNITED KINGDOM AND FRANCE

Senator PEARSON. I understand that the United Kingdom and France have not ratified. Mr. Stevenson, is that a manifestation of the resistance, to which you pointed, of some nations who have some hesitancy about returning some hijackers to eastern Communist bloc nations?

Mr. STEVENSON. Well, as I indicated, Senator, I think we overcame a good deal of that opposition by not making extradition mandatory. There is considerable European opposition to any sort of mandatory extradition.

However, with the modifications that were made so that the residual obligation is simply to prosecute, we are hopeful that we will get substantial adherence in Europe.

Senator PEARSON. Could you say why the United Kingdom or France have not ratified this convention?

Mr. STEVENSON. We have no reason to believe they will not. They participated actively in the negotiations and voted for the convention at the conference. I am advised that they have informally indicated they will ratify.

ATTITUDE OF ADMINISTRATION AND PRIVATE AIRLINE MANAGEMENT

Senator PEARSON. This last question is a little bit of a digression, Mr. Chairman, but I have a special reason for asking it. I would like to ask Mr. Beggs what is the attitude of the airline management of this country and other private airline managements regarding this convention. The reason I ask is that in September of last year, without any publicity, we held a conference in the Commerce Committee room after a hijacking which landed at Dulles and a TWA pilot who happened to live not only in my State but my hometown was injured at Dulles Airport. It was a very courageous act on the part of the crew at that time. Representatives of everybody in the Govern-

ment and all the airlines, again without any publicity, were trying to find some answers. The attitude of the management of the airlines at that time was that they really have done about all they can do. The competitive situation, the economic burdens upon them, held them back, I thought, from really moving forward to attack this particular problem. As a matter of fact, the Government, it seems to me, talks a great deal about this, but only one-quarter of 1 percent of the FAA appropriations in fiscal year 1971 was directed toward research and development in finding some solution to international or national hijacking.

What is the attitude, as you understand it, of the management of U.S. carriers? Also, beyond support of this convention, what is the attitude of the administration?

Mr. BEGGS. Well, Senator Pearson, I understand the airlines will appear here and speak for themselves, but it is my understanding they favor this convention.

Now, there has been, I think it is fair to say, an ambivalent attitude on the part of the airlines in the past on measures to counter hijacking. They of course, as well as we, in the administration, are most directly concerned with safety of the passengers and the crew, and the aircraft itself. In view of that there has been some reluctance to apply measures which might precipitate an accident either in the air or on the ground. Therefore, we have moved slowly and, as you point out, our research and development program has been a relatively small one in terms of the size of the program. However, I am not aware that we are not pursuing any measures or any devices which have been brought to our attention which may have a chance of improving either security on the ground or in the air. We have put money into all of the various surveillance or monitoring devices which have been brought to us, and we are actively testing about half a dozen different devices of this type so as to improve the monitoring of passengers on the ground.

It is our intent to devote more attention to this overall question of crime in transportation, not only hijacking but crime in other areas of transportation. In fact we are holding a conference here in Washington later this month on the very subject of crime in transportation. That aside, we do intend to try to increase our efforts to improve both the surveillance and to improve our abilities to cope with the various and sundry different crime problems that we have in the various modes of transportation.

I don't know whether that responds completely to your question. I agree with you completely that many times a hijacking has been prevented by a heroic act on the part of the crew rather than any planned response that we made ourselves.

Senator PEARSON. I think the record should show that the figures for which I have just asked indicate that for fiscal year 1972 the budget is \$218,000 for research and development.

Mr. BEGGS. That is not totally correct, Senator Pearson. In addition to that there is some money we have devoted to this from the Office of the Secretary. I can supply for the record the total.

Senator PEARSON. It is probably not pertinent to this record. I thank the chairman.

U.S. ACCEPTANCE OF JURISDICTION OF INTERNATIONAL COURT OF
JUSTICE

The CHAIRMAN. Mr. Stevenson, is article 12 of this convention still subject to the Connally amendment? In other words, can we still say this is a matter of domestic concern and not recognize the jurisdiction of the International Court of Justice?

Mr. STEVENSON. This does not include the Connally amendment reservation in it so it would not be subject to the Connally amendment.

The CHAIRMAN. In other words, the Connally amendment would not apply.

Mr. STEVENSON. It would not apply.

The CHAIRMAN. So we would not reserve to ourselves the decision as to whether or not we would allow the Court to take jurisdiction in a case where we do not agree.

Mr. STEVENSON. That is correct.

The CHAIRMAN. The way it reads, I wondered how the department interpreted it.

Mr. STEVENSON. Well, of course, a country could impose a reservation at the time it ratified this convention.

The CHAIRMAN. Does the United States accept the jurisdiction of the court under the circumstances described in article 12?

Mr. STEVENSON. The United States does not plan to enter a reservation to article 12.

The CHAIRMAN. I wanted it for the record. I will probably be asked that. Somebody always does when we get to the floor.

SIGNING OF CONVENTION BY STATES PARTICIPATING IN HAGUE
CONFERENCE

You stated that representatives of Cuba did not participate in the Hague Conference.

Mr. STEVENSON. They did not.

The CHAIRMAN. Some of the Arab States did, but would not sign the convention. Is that correct?

Mr. STEVENSON. Of the total number of states participating, well over half signed at the time of the conference. The fact that the others did not sign does not mean that they will not subsequently sign.

The CHAIRMAN. That is what I was getting to.

PROSPECTS FOR SIGNING BY CUBA AND ARAB STATES

What are the prospects that Cuba and the Arab States will sign? Do you have any reason to believe they will?

Mr. STEVENSON. We now have one Arab State, Iraq, that has signed, and Jordan has indicated they will sign later this month. So I think the prospects for a number of Arab States signing and ratifying are reasonably good.

Cuba in the past has been opposed to multilateral approaches to hijacking, preferring the bilateral approach.

PERCENTAGE OF HIJACKINGS TO CUBA AFFECTING U.S. PLANES

The CHAIRMAN. What percentage of the hijackings that affect United States planes have been to Cuba?

Mr. STEVENSON. A very high percentage. We will give you that figure for the record. I should point out that the type of hijacking that we have had in the case of Cuba is a hijacker wanting to get from one point to another rather than the blackmailing type of hijacking. The blackmailing type really was initiated Labor Day weekend last year when planes and crew and passengers were held for political blackmail purposes. We have not had the situation typically with Cuba.

BLACKMAIL HIJACKING

The CHAIRMAN. Do you call it hijacking when they hold them for ransom? Is that blackmail too?

Mr. STEVENSON. That is basically what I am talking about.

The CHAIRMAN. Ransom as to money or political objectives are blackmail under this.

Mr. STEVENSON. Most of the blackmail hijackings have been for political blackmail purposes. This is not the typical sense of blackmail to obtain money, but rather is to achieve other objectives.

The CHAIRMAN. I was reading the other day that some of these fellows wanted \$500,000 or something like that.

Mr. STEVENSON. That is right, there have been some of those cases.

The CHAIRMAN. You would consider that blackmail also?

Mr. STEVENSON. That would, of course, be blackmail, too, but it hasn't been as serious a threat as the others.

PERCENTAGE OF HIJACKING TO CUBA

Mr. BEGGS. Mr. Chairman, if I may respond to your initial question, there have been 224 total hijackings. From my figures only eight of those have been to other than Cuba.

The CHAIRMAN. About 95 percent have been to Cuba.

Mr. BEGGS. Yes, sir.

Senator PEARSON. You are talking about international hijackings.

Mr. BEGGS. International as well as domestic.

Mr. STEVENSON. That is just United States.

Mr. BEGGS. No, sir; that is total American-flag carriers as well as foreign.

WHY ISN'T UNITED STATES MORE FORTHCOMING REGARDING CUBA?

The CHAIRMAN. It seems to me this is what I had in mind, Mr. Stevenson, when I asked the original question as to why we apparently, according to the newspaper, are not more forthcoming with regard to Cuba because that is where our main problem is. All these others are more or less hypothetical. Approximately 95 percent of our hijackings go to Cuba. I would think in that case it would almost warrant some special attention.

The real reason is political. You don't want to reestablish relations with Cuba. Is that right?

Mr. STEVENSON. Mr. Chairman, I repeat what I said earlier about Cuba's having failed to respond to our inquiries.

So far as the hijacking question with Cuba is concerned we feel we have been responsive. We have not yet had a reply from Cuba to our latest suggestion. I really don't think I should go further than that in the public hearing, but we are very concerned with the problem. We recognize what you say about the Cuban situation which does represent quantitatively by far the greater part of our problem. From a qualitative standpoint, though, I think the international blackmail type of hijacking that we had in the Middle East is something that we are very concerned about also. Hopefully this convention will be very helpful in respect to that type of hijacking.

HIJACKS FOR POLITICAL ASYLUM

The CHAIRMAN. Does this convention apply in a case where an individual hijacks an aircraft for the purpose of seeking political asylum in another country?

Mr. STEVENSON. Yes, it would. This was the point to which I referred earlier. It would not require you to extradite someone seeking political asylum, but you would have the obligation to submit that person to competent authority for purposes of prosecution.

The CHAIRMAN. Do you think in such cases that those who undertake to prosecute them will actually prosecute them?

Mr. STEVENSON. We expect that they will. Certainly the record of the language of the convention which was based on the United Nations General Assembly resolution of November 1970, indicates a general consensus in the international community that in order to prevent hijacking, hijackers whatever their motives should be punished. That is the only way you could have an effective deterrent against this threat to international aircraft safety and the lives of the passengers.

The CHAIRMAN. It would be more effective if they were returned to the country; wouldn't it?

Mr. STEVENSON. There is no question that is so. But as I pointed out it would have been impossible to get general agreement on mandatory extradition.

The CHAIRMAN. Was that on our account or because of the Western European countries? Did we also object to that?

Mr. STEVENSON. We were prepared to go on further than the convention does in narrowing the exceptions to mandatory extradition. We also, of course, in the case of some bilateral treaties such as the one with Spain, are attempting to more clearly limit the grounds for not extraditing.

ACTIONS AGAINST COUNTRIES NOT COOPERATING

The CHAIRMAN. If a country does not prosecute properly, are there any other sanctions contemplated in the convention? For example, if a country does not cooperate would you have the authority or would it be expected that you would refuse landing rights in the future to such country?

Mr. STEVENSON. Well, this is the topic which the other convention presently being considered by the legal committee of ICAO deals with. The legal committee is attempting to reach an agreement on possible joint action participating countries could take against a country which either detains passengers and crew contrary to the hijacking convention or refuses to extradite or punish hijackers contrary to the hijacking conventions. But that is still under discussion in the legal committee, and more work has to be done on it. As Under Secretary Beggs pointed out, ICAO did adopt a resolution that collective action could be considered in such situation.

U.S. PENALTIES FOR HIJACKERS SEEKING POLITICAL ASYLUM

The CHAIRMAN. You have already described the severity of our own penalties for hijacking. Does that apply also to a hijacker who might come here seeking political asylum? Would we still prosecute him and would he be subject to the law which you already described, 20 years minimum or death?

Mr. STEVENSON. Mr. Beggs may want to comment on that.

Mr. BEGGS. The short answer, Mr. Chairman, is that he would be subject to the penalty you mentioned. However, the law as drafted, as I understand it, does provide for a separate offense, which would allow a judge to apply discretion in certain mitigating circumstances and to consider motivation such as a political motivation.

The CHAIRMAN. I thought that discretion was for lack of evidence. Is it recognized that if the judge is not sympathetic to the political system of the country of origin that he can say the law does not apply? Is it contemplated that he has that discretion?

Mr. BEGGS. Let me ask Mr. Boyle, who is much more familiar with it than I am to answer.

The CHAIRMAN. All right.

Mr. BOYLE. Mr. Chairman, the draft legislation we are submitting or have submitted provides, as indicated by Secretary Beggs' testimony, that in the case of the application of the universal jurisdiction called for in this convention that the court in determining a sentence may sentence for any term of years.

Our existing domestic law, applicable to cases of aircraft piracy, provides for, as you say, the verdict of death, if the jury so recommends, or 20 years.

But in the case of a prosecutor applying our law to a hijacker who has come to this country for political motivation or other extenuating circumstances, whatever it is, the prosecutor has his normal prosecution prerogative of possibly bringing action against the individual for a lesser and included offense which does not necessarily require the court to submit the individual to a minimum sentence of 20 years. In other words, for example, he might be indicted for the crime of interfering with flight crew; he might be indicted for the crime of carrying a concealed weapon on board an aircraft. It is possible, in other words, under our domestic law for discretion to be shown in appropriate cases where extenuating circumstances warrant. The draft legislation, in covering the case where universal jurisdiction applies, reflects this type of flexibility.

EXCEPTION CONCERNING POLITICAL ASYLUM QUESTIONED

The CHAIRMAN. I am afraid it might open up a weakness in this whole matter. I wondered if we were justified in going that far. It has to work both ways. To put into the treaty, in effect, a provision that you accept people who are seeking this means to escape a country with whose political or social system they do not agree could be stretched pretty far, I think. Do you think it is really necessary to go that far? In other words, the crime of hijacking is so dangerous to everyone that I wonder if you are sure you want to make an exception because the seeking of political asylum is the motivation. You really are, in effect, making an exception.

Mr. STEVENSON. I think the further point with respect to the legislation is that the legislation would give this special discretion only in the case of the universal jurisdiction situation. The normal situation is as described by Mr. Boyle where you not only have the hijacking, which is subject to the air piracy statute, but you also have the possibility of conviction for a number of other crimes. In that case the prosecutor has the normal discretion that a prosecutor always has. On the other hand, where the universal jurisdiction provisions of the new convention apply you could have a situation where a hijacking completely unrelated to the United States, which wouldn't be covered by these other statutory provisions, would be caught by the universal jurisdiction provision.

In other words, to give you an example, a hijacking occurred completely within some other country and years later the hijacker turns up here. Under the universal jurisdiction provision we would still have an obligation to either extradite or prosecute that hijacker. The statutory provisions permitting conviction for other offenses would not be applicable, but there has to be some basis for prosecuting that hijacker where our only hold is this universal jurisdiction. The point is that in that situation we don't want the choice to be between 20 years and nothing. Therefore, more statutory discretion is needed where our only hold on the hijacker is the fact that under this convention we have assumed as a member state the obligation to prosecute where a hijacker ultimately turns up here.

So I think more discretion is required in that situation because you don't have all these other laws that are applicable.

PLANES AND HIJACKERS RETURNED FROM CUBA

The CHAIRMAN. Mr. Beggs, out of the 216 cases you mentioned of hijacking to Cuba, how many of those planes have been returned?

Mr. BEGGS. All of them have been, Mr. Chairman.

The CHAIRMAN. How many of the hijackers who hijacked them have been returned?

Mr. BEGGS. I have some statistics here, Mr. Chairman. It looks like about 53 of the 145 individuals. Now each one of those individuals does not necessarily account for a separate hijacking. In some cases there may have been an accomplice or perhaps two or three individuals who went along with them. My figures show 53 of the 145 involved in 111 hijackings. Obviously this is incomplete though, and I will have to get the others for you.

The CHAIRMAN. You had 216 hijackings to Cuba. How is it that there are only 145 people involved? Were there 145 returned?

Mr. BEGGS. No, there were not—statistics I have here say 53 were returned.

The CHAIRMAN. To this country.

Mr. BEGGS. Or have come back, yes, sir.

The CHAIRMAN. How do you explain that? I didn't know that many were returned. Did they come back voluntarily or did Cuba send them back?

Mr. BEGGS. My understanding is most of them that have come back have come back voluntarily, Mr. Chairman.

PROSECUTION OF RETURNED HIJACKERS

The CHAIRMAN. What did we do? Did we do anything to them?

Mr. BEGGS. Yes, sir, we prosecuted. I believe, in all of the cases where we have had them come back, we prosecuted. In this case there have been, according to the figures I have here, three have been acquitted. There were 10 dismissals, and there are still 12 pending. There have been 28 convictions out of that group.

The CHAIRMAN. How do you explain that? I am just curious. Everybody has been excited about the seriousness of this problem. Why haven't they been convicted?

Mr. BEGGS. Why have not all of them been convicted?

The CHAIRMAN. What was the reason?

Mr. BEGGS. Seven have been dismissed on mental grounds.

The CHAIRMAN. That is what I mean; seven mental cases.

Mr. BEGGS. Yes, sir.

The CHAIRMAN. What about the others?

Mr. BEGGS. Of the acquittals, I do not have those here, Mr. Chairman.

The CHAIRMAN. Since that is the core of our problem—

Mr. BEGGS. I will supply them.

REASON FOR RELEASE OF PLANES BY CUBA

The CHAIRMAN. It must be 98 or more percent of the hijackings that go to Cuba. It looks as if that is what we ought to concentrate on more than any other matter if we are interested in our own air industry and air traffic. I don't understand why the Cubans have released all the planes. Have you some understanding with them, Mr. Stevenson?

Mr. STEVENSON. I think in some cases the hijackers became increasingly dissatisfied with the conditions in Cuba. They were not treated quite as hospitably as they thought, had to work pretty hard, and so elected to come back and to take the consequences. I think this is an important fact which hopefully should get more attention.

EFFICIENCY IN U.S. PROSECUTION OF HIJACKERS QUESTIONED

The CHAIRMAN. I thought the danger and inconvenience to the passengers was of the greatest public concern. Just because the hijackers didn't happen to like the life down there doesn't seem to be

a valid reason for excluding the hijacking because it is a very dangerous operation.

Mr. STEVENSON. I thought your question was why the hijackers have elected to return.

The CHAIRMAN. Why haven't we been very efficient in prosecuting them? Because they decide that Cuba is not a paradise, then we forgive them and say, "well you are such a good fellow we will let you go."

Mr. STEVENSON. I believe last year, the Department of Justice, having exactly the same concern you have, Mr. Chairman, indicated to their U.S. attorneys that they wished to take a very vigorous approach towards prosecuting hijackers that did come back.

REASON FOR CUBA'S ALLOWING RETURN OF PLANES

The CHAIRMAN. How do you explain the fact that Cuba has allowed the planes to come back? What advantage has it been to Cuba? Do they get anything out of these hijackings? Do we pay them a fee or what?

Mr. STEVENSON. Well, monetarily all they have gotten are the landing fees, and so forth.

The CHAIRMAN. Is that all?

Mr. STEVENSON. I think the answer really is why should they want to hold the planes and passengers. It is not anything for which they will be regarded very favorably internationally.

The CHAIRMAN. The planes are worth a couple of million dollars. Some of them are worth \$5 million. I thought they could take them and sell them back. They could confiscate them because of our existing relations couldn't they? We don't have an aid program with Cuba now. We couldn't use the aid program to bludgeon them.

Mr. STEVENSON. Mr. Chairman, I am sure you are not suggesting this—

BILATERAL AGREEMENT WITH CUBA SUGGESTED

The CHAIRMAN. I am not suggesting. It seems to me that, this being the core of our problem, we ought to be a little more forthcoming to strike a bargain with Cuba. This would solve our problem to a great extent. It doesn't have to be multilateral. There is nothing against having a bilateral agreement: is there?

Mr. STEVENSON. We have a very vigorous program for bilateral arrangements.

The CHAIRMAN. I don't know why we shouldn't have it, at least as far as we are concerned. It is not that I am not for the multilateral agreement. I am, and I expect to support this convention. I am only developing the core of the problem for the United States, which is Cuba. Out of all the 224 hijackings, 216 have been to Cuba, according to Mr. Beggs. I would think that would call for a bilateral agreement if the Cubans say they don't like the multilateral approach. I don't know why they don't.

I don't know why that matters to us. If they would make a bilateral agreement and stop the hijacking to Cuba, I would think it would be a great achievement for our people and for our planes.

U.S. HIJACKINGS TO CUBA

Mr. BEGGS. Mr. Chairman, I am afraid I misled the committee.

The CHAIRMAN. I hope you didn't and if you have, correct it.

Mr. BEGGS. Not egregiously. The figures I quoted are worldwide figures. Of that group, as far as I can tell, it is something in excess of 80 out of a 100 have gone to Cuba.

The CHAIRMAN. I thought you said 216 out of 224.

Mr. BEGGS. I did, but I was quoting worldwide figures. But I had counted the ones that didn't go to Cuba and I was subtracting from a wrong total.

The CHAIRMAN. Let's start all over. How many hijackings from the United States have gone to Cuba?

Mr. BEGGS. It looks like about 80.

The CHAIRMAN. Over what period?

Mr. BEGGS. Over a period since 1968, the last 3½ years.

HIJACKERS AND PLANES RETURNED FROM CUBA

The CHAIRMAN. Of the 80 how many have been returned?

Mr. BEGGS. All of the aircraft and it looks like 15 of the individuals have been returned. I will provide for the committee's information a detailed breakdown of the hijackings—United States and foreign—the hijacking to Cuba, and the disposition of the hijackers.

The CHAIRMAN. They allowed all the aircraft to be returned.

Mr. BEGGS. Yes, sir.

The CHAIRMAN. Without any damage or anything.

Mr. BEGGS. Yes, sir.

The CHAIRMAN. There were no fines or anything else.

Mr. BEGGS. That is correct, sir. Well, they levy rather heavy landing and servicing charges, but there have been nothing beyond that.

The CHAIRMAN. Are they beyond normal?

Mr. BEGGS. Yes; they are beyond normal.

The CHAIRMAN. Are they beyond what Peru charges for a tuna boat?

Mr. BEGGS. No; but they average about a thousand dollars for each aircraft.

BILATERAL TREATY WITH CUBA SUGGESTED

The CHAIRMAN. That certainly is not quite as many as you first stated. The only thing I am suggesting is, it being such an important matter for the United States and if Cuba simply doesn't wish to participate in a multilateral treaty, I would think a bilateral treaty would be in order from our own point of view if they are willing to do it. I regret that that article in the paper was not correct because it looked hopeful that they might.

ADMINISTRATION VIEWS ON REESTABLISHING RELATIONS WITH CUBA AND CHINA

Since we are on this subject, Mr. Stevenson, is the administration considering reestablishing diplomatic relations with Cuba?

Mr. STEVENSON. I cannot comment on that, sir.

The CHAIRMAN. Why not?

Mr. STEVENSON. So far as I know, they are not.

The CHAIRMAN. What?

Mr. STEVENSON. I have no information on it.

The CHAIRMAN. Are they considering reestablishing relations with China?

Mr. STEVENSON. I can't comment on that at the present time, sir. I have no indication of that.

The CHAIRMAN. That is very odd. It is a matter of great interest. The department is aware of the ping-pong trip; aren't they?

Mr. STEVENSON. Of course.

The CHAIRMAN. They are aware of what the President said; aren't they? Why can't you comment on it? I don't know why you are so reticent about commenting on matters of public interest. I thought everything the President said recently indicated that he is examining and considering the reestablishment of relations with China.

The public has been led to believe that?

Mr. STEVENSON. I don't think at a public hearing it is useful—the President has indicated our whole approach to the Chinese problem. I don't think I should go beyond that.

The CHAIRMAN. I asked whether you were considering it. Your answer should clearly be he was certainly considering it. That doesn't mean he would do it next week or at any particular time. I would think he was considering it. If he wasn't, he certainly misled me.

Mr. STEVENSON. I don't think I should comment on it.

The CHAIRMAN. All right. Have you any other questions?

BILATERAL ARRANGEMENTS CONCERNING AIRCRAFT HIJACKING

Senator PEARSON. No, Mr. Chairman, but may I suggest that perhaps a list of the bilateral arrangements we have on this subject might be useful for the record.

The CHAIRMAN. Certainly. You can supply that.

Mr. STEVENSON. We would be glad to supply that. We have four extradition treaties that cover hijacking.

Senator PEARSON. You have four that cover it now?

Mr. STEVENSON. That cover hijacking, we have more than 80 extradition treaties.

Senator PEARSON. With what nations?

Mr. STEVENSON. The four are Sweden, Brazil, New Zealand, and France. Of course this convention will automatically amend all of our other extradition bilaterals to include hijacking so when this convention enters into force we will vastly increase our coverage in the bilateral field as well.

Senator PEARSON. Are those four bilateral arrangements or agreements more stringent in their terms than this convention?

Mr. STEVENSON. The one with Spain goes further in making it clear that hijacking is presumed not to be a political offense. So that it is somewhat more stringent.

Senator PEARSON. I thank you, Mr. Chairman.

ARTICLE 33 OF GENEVA CONVENTION ON REFUGEES

The CHAIRMAN. It has been called to my attention to ask this question for the record. Is there any conflict between article 33 of the Gen-

eva Convention on Refugees and this proposed convention? We are a signatory of the Geneva Convention on Refugees.

Mr. STEVENSON. We don't feel that there is because there is no mandatory extradition requirement here.

The CHAIRMAN. All right.

Thank you very much.

Mr. BEGGS. Thank you, Mr. Chairman.

The CHAIRMAN. The next witness is Mr. Jerome F. Huisentrut, assistant general counsel, Air Transport Association of America.

STATEMENT OF JEROME F. HUISENTRUIT, ASSISTANT GENERAL COUNSEL, AIR TRANSPORT ASSOCIATION

Mr. HUISENTRUIT. My name is Jerome F. Huisentrut. I am assistant general counsel of the Air Transport Association of America, which is the trade and service organization representing virtually all of the scheduled airlines of the United States.

PROMPT RATIFICATION URGED

The airline industry enthusiastically endorses the principles of the Hague Convention as an instrument which will greatly enhance the that convention. Our paramount duty as common carriers by air is to transport our passengers safely to their destination. We view the Hague Convention as an instrument which will greatly enhance the safety of international civil aviation because it will minimize hijacking and the attendant dangers which accompany it.

WHY CONVENTION WILL DETER HIJACKING

Why do we believe that this convention will deter hijacking? Because for the first time we have an international instrument which labels hijacking as a "serious offense" which states must "severely punish." The state which has custody of the offender must either prosecute or extradite. The treaty emphasizes these obligations by requiring prosecution "without exception whatsoever," and by automatically incorporating hijacking as an extraditable offense in existing extradition treaties. These obligations are not limited to the state of landing, but apply to any contracting state where the hijacker may be found. To us this is the most important feature of the Convention—the fact that there will be no safe haven or refuge for hijackers.

OBLIGATION TO SECURE RIGHTS OF HIJACKING VICTIMS

There is an additional reason why we urge prompt ratification of the Hague Convention. This convention goes beyond the principles of the Tokyo Convention in establishing the rights of the victims of a hijacking and in emphasizing the obligations of states to secure those rights. Thus, in this convention all states, and not merely the state of landing, must help the passengers and crew continue their journey and must return the aircraft and cargo. The state in which the passengers and crew are located must do more than merely permit their departure—the state must actually aid or facilitate their departure. We believe these provisions establish the inviolability of the passengers

and crew and place upon all states the moral obligation for their comfort and safety.

PRINCIPLE OF UNIVERSAL PARTICIPATION

Finally, we believe the principles of this treaty will be universally accepted as part of the Law of Nations. We say this because of the dedication and enthusiasm which exuded at the diplomatic conference which drafted this convention. On the final day of the conference no less than 50 states demonstrated their intentions by signing this treaty. In order to emphasize the universality of the principles established by this treaty, the drafters included an "all states" clause which permits any state—even those which do not belong to the United Nations or affiliated organizations—to become a party to the convention. We endorse this principle of universal participation and believe that it greatly increases the viability of the convention.

EXPRESSION OF APPRECIATION AND ENDORSEMENT OF TREATY

In closing we would like to express our thanks and appreciation to the U.S. delegation which played a leading role in the drafting of this convention. We also thank this committee and the Senate as a whole for its prompt consideration of the treaty. It is indeed gratifying to realize that the United States will be one of the first states of the world to become a party to this most important convention to enhance the safety of international civil aviation.

We thank you for this opportunity to express our views and to give our absolute and unqualified endorsement to this treaty.

QUESTION OF CUBA

The CHAIRMAN. What do you think about the question of Cuba? It is the principal country in which we have had experience with hijacking, is it not?

Mr. HUISENTRUIT. Mr. Chairman, I share your concern. Fortunately, Cuba has been most cooperative with us in the problem, in the sense that it has, as a general rule, turned around the aircraft within just a few hours and permitted the passengers to continue their journey.

With respect to the offender himself, he is not treated as a hero when he lands. There is no parade for him. From what I have been able to read and determine, he is treated rather harshly.

I certainly hope that every effort is made either to bring Cuba into this treaty multilaterally or to have the United States explore the bilateral approach, because I think it is obviously desirable, if not essential, that Cuba become a party to a treaty with respect to hijacking.

HIJACKINGS TO CUBA

The CHAIRMAN. While I think of it, I want to clarify the record. Mr. Beggs started out with 224 hijackings, of which 216 went to Cuba. Then he revised it to 80. I want that record to be clear. Can you see

that it is cleared up precisely by a statement for the record of how many hijackings have gone to Cuba, and what has happened to them?

Mr. BOYLE. Yes, sir; we will take care of it.

The CHAIRMAN. It came right at the end and it looks as though he revised it. I think the record will look very confused. Would you ask him to submit a very precise account of that situation, because it seems to me it is evident from the testimony that we are allowing our political prejudices to interfere with a proper hijacking agreement, which is pretty important in this case, as you have just stated.

Mr. HUISENTRUIT. I would like to follow up on that by stating that under the universal jurisdiction provisions of this convention, if the defendant leaves Cuba and goes to another state which is a party to the convention he will be subject to prosecution or extradition by that state. So, as more and more states become party to the convention, there will be fewer places where the offender can go and, hopefully, some day there will be no sanctuary whatsoever.

CIVILIAN AIRCRAFT CHARTERED TO FLY SERVICEMEN TO VIETNAM

The CHAIRMAN. Do you know what the situation is on the exemption of military aircraft? What if one of your civilian planes is chartered to fly servicemen to Vietnam, as I think many are, and it is hijacked? Does the convention apply?

Mr. HUISENTRUIT. Mr. Chairman, I am uncertain. I believe it does apply, but I will correct the record if I am in error.

The CHAIRMAN. Yes. Would you correct that. I overlooked asking Mr. Beggs that question. Obviously it would not apply to a military aircraft. I wonder if it would apply to a civilian aircraft chartered to fly them. Would you see that that is answered for the record?

Mr. HUISENTRUIT. I will supply that information.

(The information referred to follows:)

AIR TRANSPORT ASSOCIATION OF AMERICA,
Washington, D.C. June 16, 1971.

Re Hague Convention for the Suppression of Unlawful Seizure of Aircraft.

Hon. J. WILLIAM FULBRIGHT,
Chairman, U.S. Senate Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: During the course of my testimony before your Committee on June 7th I was asked whether a commercial aircraft chartered by the Government to transport servicemen to Vietnam would be covered by the Hague Convention. I replied that I believe it would be covered, but that I would verify it for the record. (Tr. 58)

My answer in the record is correct; the Convention does cover such flight. The Convention does not apply to aircraft used in military services. (Article 3, paragraph 2.) However, it is our position that such charters are a part of the common carrier operations of the airlines, since these flights are subject to the economic regulatory jurisdiction of the Civil Aeronautics Board as well as to the operational requirements of the Federal Aviation Administration. In short, we believe these charters are treated under the Convention in the same manner as other commercial charters or individually-ticketed flights of the carriers.

Very truly yours,

JEROME F. HUISENTRUIT,
Assistant General Counsel.

The CHAIRMAN. Senator Pearson, do you have any questions?

USEFULNESS OF CONVENTION

Senator PEARSON. I get the impression from your testimony that you believe, speaking for the association, that this is not only a very, very important step forward but it somewhat solves the problem. You didn't mean to leave that impression, did you?

Mr. HUISENTRUIT. I want to leave the impression that this is the instrument which will be a big step toward solving the hijacking problem as more and more countries of the world become parties to it. It does not solve the problem, no.

Senator PEARSON. In your statement you say, "To us this is the most important feature of the convention—the fact that there will be no safe haven or refuge for hijackers." That is not the case even if all the 50 nations ratify it. If the nations that have been indicated by the State Department come in and sign it, there will still be a safe haven and refuge for hijackers; will there not?

Mr. HUISENTRUIT. Well if Cuba or some other states do not become parties to the convention, to that extent, yes, Senator.

Senator PEARSON. This convention, in other words, is a viable and a useful instrument if all nations that are involved in air transportation become party to it. Isn't that true?

Mr. HUISENTRUIT. That is correct. The more that become parties obviously the more useful the convention becomes.

Also, when a large number of states become parties to an important convention, the principles of such convention become an accepted norm of conduct for all states, including nonparties.

INCREASED SENSE OF URGENCY OF ATA

Senator PEARSON. You spoke for the ATA. Do you find among your membership, and as their spokesman, a greater sense of urgency and a greater sense of moving forward in some of the steps that can retard hijacking on the international level?

Mr. HUISENTRUIT. Yes, Senator, we have been moved by events; we have responded to events. As you know, the administration set up in the Department of Transportation a security group headed by General Davis which the airline industry has worked very closely with in the hijacking area, and I believe we have substantially increased security since that time.

PAST RESISTANCE TO SEARCH

Senator PEARSON. I don't really say that critically. You are in a competitive situation and you are in a very difficult economic situation today. Anyone who does not understand that doesn't know anything about air transportation in this country. But there was on balance great resistance to search, even though my experience was that people boarding aircraft in various parts of the world have no objection whatever to it.

Mr. HUISENTRUIT. Well, the airlines have, of course, increased the use of the system developed by the FAA, the magnetometer and profile screening and I think that the statistics on the decrease of hijackings are indications that it has been successful.

Senator PEARSON. In many cases they worked. That is all I have.

Mr. HUISENTRUIT. Yes.

Mr. Chairman, may I add one point that came up in testimony previously?

The CHAIRMAN. Yes.

DISCRETION LEFT WITH SENTENCING AUTHORITY OPPOSED

Mr. HUISENTRUIT. I have not read the implementing legislation, but I understood from the testimony this morning that there would be a certain exception or discretion left with the sentencing authority with respect to a hijacking which was politically motivated. The aviation industry would strongly oppose such exception because we feel that it would gut the convention itself.

After all, the convention states that this is a "severe crime" and it should be "severely punished, without exception whatsoever," and if we are going to undo by legislation what we thought we accomplished by treaty we would be most gravely concerned. As I said, I haven't studied the legislation, and therefore don't know the precise language proposed.

The CHAIRMAN. You are saying you would not like the penalty for hijacking to be weakened. Is that correct?

Mr. HUISENTRUIT. That is correct, Mr. Chairman.

MR. MINICHIELLO'S HIJACK OF TWA PLANE TO ROME

The CHAIRMAN. That reminds me. What happened to the Italian who hijacked the TWA plane to Rome? I read in the paper that they made a hero of him in the small village where he lived in Italy. Did they ever do anything to him?

Mr. HUISENTRUIT. He was prosecuted by the Italian Government under Italian law and given a sentence, which he has served. He has been released from jail.

The CHAIRMAN. What was the sentence?

Mr. HUISENTRUIT. I am not entirely sure, Mr. Chairman, but part of it was forgiven because of a certain amnesty.

The CHAIRMAN. It couldn't have been very severe. It only happened about a year or two ago.

Mr. HUISENTRUIT. It was about a year. I am not certain.

The CHAIRMAN. Would you call it a very severe sentence?

Mr. HUISENTRUIT. I would not.

Mr. BOYLE. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Boyle.

Mr. BOYLE. The original sentence by the Italian court was 7½ years. He was recently freed as a result of clemency action by the court and I think the total amount he served was less than 18 months. Mr. Boylan is here from the Department of Justice. He may know the exact figure.

Mr. BOYLAN. Close to 18 months.

The CHAIRMAN. That is a long way from 20 years or death; isn't it?

Mr. BOYLAN. This was not for hijacking, Mr. Chairman.

The CHAIRMAN. What?

Mr. BOYLAN. He was not prosecuted for hijacking or related crimes. He was prosecuted for an assault upon a policeman, kidnaping and other domestic crimes after he left the aircraft and had proceeded into the countryside.

The CHAIRMAN. Do you mean crimes he committed in Italy?

Mr. BOYLAN. Yes.

The CHAIRMAN. Then he wasn't really prosecuted for hijacking at all.

Mr. BOYLAN. No.

The CHAIRMAN. There was no treaty, of course, with Italy.

Mr. BOYLE. No, sir. We do not have an extradition treaty which includes hijacking.

The CHAIRMAN. Wasn't his announced reason for that hijacking that he wanted to see his family in Italy? Do you remember?

Mr. BOYLE. I really don't remember well enough to be sure.

The CHAIRMAN. It seems to me that was it. He wanted to go home to see his family.

Mr. BOYLAN. Mr. Chairman, he started out originally saying that, but later on "First Tuesday," which carried a special on the aircraft piracy problem, he stated in an interview, after he was returned or after he was released, that his reason was that he had a number of very difficult problems in the military. He was, I believe, subject to a possible court-martial and as a result of all these personal pressures as well as the fact that his father lived in Italy, he was prompted to go there. At least this what what he said on the TV program.

The CHAIRMAN. You say returned. Has he returned to this country?

Mr. BOYLAN. No; when he was released from the Italian prison.

Mr. BOYLE. Mr. Chairman, may I add one more point on this? Italy does not or did not at that time make hijacking a crime under its national law. That is one of the reasons why Minichiello was prosecuted for other crimes. But that is one of the things that this particular convention will do: it will compel those States who become party to the convention to make hijacking a crime under their domestic law.

HAS ITALY SIGNED CONVENTION?

The CHAIRMAN. Do you know whether Italy has signed this convention?

Mr. BOYLE. They signed the convention at The Hague, if my recollection is correct, and certainly they were most cooperative at The Hague. So that we would have every reason to believe that they will become party to this convention.

The CHAIRMAN. They have very large international flights of their own; don't they? Alitalia covers much of the world; doesn't it?

Mr. BOYLE. They have also experienced a hijacking.

The CHAIRMAN. Have they?

Mr. BOYLE. Yes.

The CHAIRMAN. That helps them a lot in making up their minds. [Laughter.]

Do you have anything further, Mr. Huisentruit.

Mr. HUISENTRUIT. No, sir. Thank you.

The CHAIRMAN. Thank you very much.

Our next witness is Mr. J. J. O'Donnell, president of the Air Line Pilots Association.

STATEMENT OF J. J. O'DONNELL, PRESIDENT, AIR LINE PILOTS ASSOCIATION

Mr. O'DONNELL. Mr. Chairman, I am John J. O'Donnell, president of the American Air Line Pilots Association. Our association represents 31,000 airline pilots, 39 airlines, and it represents 12,000 stewards and stewardesses, of 22 commercial airlines.

The CHAIRMAN. Is this just the United States or is it everywhere?

Mr. O'DONNELL. Just the United States, sir.

SUPPORT FOR IMMEDIATE RATIFICATION OF CONVENTION

I am grateful for this opportunity to appear before your committee to express our association's support for immediate ratification of the Hague convention.

We would like to enter our supporting positions into the record and touch briefly on only two points we feel important if the purpose and principles of the Hague convention are to be meaningful.

Immediate ratification of the Hague convention by all signatory nations is imperative as a first step to remove the threats and dangers of aerial piracy.

BILATERAL AGREEMENT WITH CUBA IMPERATIVE

We would like to point out that while the convention is an excellent document it would legally apply only to those ICAO Nations who ratify it. We cannot assume that it will remove all threats of hijacking or even the great majority of hijacking that occurs across this Nation.

This past week, for the 66th time, American passengers' lives were placed in jeopardy by a single criminal in his flight to Cuba from the continental United States.

It was the first time, however, American passengers and crew members were detained and held incommunicado for such a long period of time.

It is the feeling of the 43,000 members of our association that it is only a matter of time when a serious disaster is going to occur in flight as a result of one of these hijacking attempts or as a result of the crew's attention being diverted by the hijacker in flight or by a crash when landing in Cuba.

We feel it is imperative that the United States enter into a bilateral agreement with Cuba for the immediate return of these criminals as one important means for deterring hijacking.

If the attitude of this administration can change toward China, in the interests of safety in the air over the United States, serious consideration must be given to this most frequent haven of hijackers from this country.

PREVENTION IS BEST WAY TO STOP HIJACKING

In conjunction with this, airline pilots believe the best way to stop hijacking is to prevent the crime before it occurs. Prevention is always better than apprehension, particularly if the apprehension is an attempt at 30,000 feet for a shootout with one of these hijackers.

We also feel that more attention to airport security is important. We also believe that profile scanning must be increased. We feel that the baggage and freight scanning systems must also be increased and improved.

Mr. Chairman, I am sure if you were aboard one of my flights you would want me to know who is on board and what is placed in the belly of the aircraft that you are on. Today we do not know this.

ALPA wants to prevent the crime before it occurs, not afterwards; therefore, we view the Hague convention agreement, although vital to worldwide security, as only one step, an essential measure that must be taken by our Government. We hope our committee will use its influence to get nonsignatory nations to comply with its provisions.

IMPORTANCE OF PASSING OF TREATY BY ALL SIGNATORY NATIONS

We also believe that passing of a treaty by all signatory nations is important. It will be the first signal to potential hijackers that swift and severe prosecution and punishment will be met at every quarter.

Havens must disappear either through the Hague convention, bilateral agreements, or whatever other means that this great Nation of ours must use to remove this constant danger and threat against our citizens.

We appreciate this opportunity to appear before you and give you our position.

Thank you very much.

(Mr. O'Donnell's prepared statement follows:)

STATEMENT BY J. J. O'DONNELL, PRESIDENT, AIR LINE PILOTS ASSOCIATION

Mr. Chairman: I am John J. O'Donnell, President of the Air Line Pilots Association. In this capacity, I represent more than 31,000 pilots of 39 commercial airlines and 12,000 stewards and stewardesses of 22 airlines.

I am grateful for the opportunity to appear before your committee because it gives the Association the opportunity to go on record in support of the immediate ratification of the Convention for the Suppression of Unlawful Seizure of Aircraft, which was signed at The Hague last December.

As President Nixon said, the Convention will be an important step in the development of international law and practice and we uphold the administration's stand on this great issue. From the standpoint of the flight crews who are literally in the front lines in the war against hijacking, the ratification of the Convention by the signatory nations is absolutely essential if lives and property are to have any measure of protection. The Convention, however, is only one of the actions that this nation and all nations must take if lives and property are to be saved from acts of aerial piracy.

The Air Line Pilots Association strongly urges that ways and means be found to bring *all* hijackers to the bar of justice wherever found and make them subject to severe punishment for any act which endangers the safety and well-being of airline passengers and crews. We wish to point out that the Convention, while an excellent, forward-moving document, would legally apply only to those Nations who are members of the International Civil Aviation Organization. It would not necessarily be honored by non-participating nations.

Therefore, we urge in the strongest possible terms that the United States enter into bilateral agreements with other nations not members of the International Civil Aviation Organization. It is only through this means that *all* hijackers will be susceptible to punishment and thus present a psychological deterrent that may substantially lower the number of planes being diverted by this type of criminal.

The most recent hijacking, when a Pan American World Airways plane was diverted to Cuba, is a significant case in point. For the 66th time, American passengers, crew and plane were forced to land there because a single individual

threatened to harm or murder innocent people in order to get his way. It was the first time, however, that the passengers and crew were held incommunicado and detained for such a long time.

It is the feeling of flight crews that it is only a matter of time before an aircraft being hijacked to Cuba is either destroyed in flight, or mid-air collision will occur because the crew's attention is diverted or an accident will take place because of below standard airport conditions in Cuba. Therefore, it is especially imperative that the United States enter into a bilateral agreement with Cuba as one important means to deter diversion of American planes to that country.

The Association also wishes to go on record before your committee as firmly believing that the best way to stop hijacking is to prevent the crime from happening in the first place. Prevention is always better than apprehension—especially if apprehension is attempted by a shoot-out at 30,000 feet. Airline crews want more diligence and attention paid to security measures on the ground. We want airport security plans that will affirm who has jurisdiction, who will search the baggage and how bomb scares and hijacking attempts will be handled. In short, we want deterrence through prevention—before the crime, not after.

Therefore, we view the Convention agreement—although vital to the best interests of the traveling public of the world—as only one of the many essential measures that must be taken by our Government to make air piracy as rare as piracy at sea. It must *not* be considered the final answer to the air hijacking problem. However, we urge its endorsement at the earliest possible moment and hope that your committee will use its influence to pursue ways and means to get non-signatory nations to comply with its provisions.

Thank you for allowing us to have this day with this important Committee. We want you and the American public to know that we stand ready to assist in any way possible to prevent the dastardly crime of airliner hijacking that still occurs with frightening frequency and we expect the passage of this Treaty.

The CHAIRMAN. Thank you, Mr. O'Donnell. A rollcall is going on in the Senate and I will have to go, but I will ask you a question or two.

NUMBER OF HIJACKINGS TO CUBA

You have referred to hijackings to Cuba. You said for the 66th time. Is it your information that there have been that many hijackings to Cuba?

Mr. O'DONNELL. Commercial carriers. I believe the State Department or Transportation figures will show that they include light aircraft and light twins. We do not keep those figures.

The CHAIRMAN. This is commercial planes?

Mr. O'DONNELL. Yes, sir.

The CHAIRMAN. There have been 66.

NECESSITY OF BILATERAL AGREEMENT WITH CUBA

Do I understand you to feel that we ought to exert ourselves more to make a bilateral agreement with Cuba if she does not wish to subscribe to a multilateral agreement?

Mr. O'DONNELL. If we don't, sir, we are just operating in an area of futility. Cuba is the destination of the great number of hijackers in this country, and to ignore it is to ignore hijacking.

CUBA'S FIRST HOLDING OF PASSENGERS AND CREW INCOMMUNICADO

The CHAIRMAN. It strikes me that way too. Do you have any explanation of this last case, in which you said for the first time they held the passengers and crew incommunicado for a considerable time.

Mr. O'DONNELL. I believe the State Department would be more in a position to answer that.

The CHAIRMAN. The State Department doesn't like to talk about these things.

Mr. O'DONNELL. I noticed that, sir.

The CHAIRMAN. I thought maybe you knew.

POSITION OF DEPARTMENTS OF STATE AND TRANSPORTATION QUESTIONED

Mr. O'DONNELL. I wish I had the opportunity to rewrite my statement after I heard the position put into the record this morning by the State Department and Department of Transportation.

The CHAIRMAN. I will give you permission to submit another statement to include in the record.

Mr. O'DONNELL. I would appreciate it if I may.

The CHAIRMAN. You may do so.

Mr. O'DONNELL. It is a statement which, to a very large degree, nullifies the efforts put in to the Hague Convention. Our members participated in that; we went over there and spent a considerable amount of energy and time. We now find out the attitude of this Government is to slap some of these demented people on the wrists, and give them 6 months and let them off. Sometime they are going to kill a planeload of people through the mishandling of explosives they bring on board. The amount of time and energy a crew must expend when they have a hijacking on board is tremendous. Their attention is diverted from looking outside the cockpit. The potential for air collision is greatly increased.

In Cuba we have to make an approach in weather without the types of facilities we are used to, where the Cubans have large numbers of airplanes flying around, and again, the potential for a mid-air collision is greatly increased.

It is only a matter of time when this (a tragedy) does happen. For us to ignore Cuba is like ignoring hijacking itself.

The CHAIRMAN. It struck me that way. You are probably familiar with the article to which I referred earlier. It seemed to indicate that they had made some gesture toward seeking direct relations to discuss this matter. On the whole, considering our relations with them, they have been very reasonable in the return of our planes; have they not?

Mr. O'DONNELL. Yes, sir.

The CHAIRMAN. They haven't mistreated the passengers so far as you know.

Mr. O'DONNELL. No, sir.

The CHAIRMAN. I don't understand it other than the political aspect, that we disapprove of their political system.

Mr. O'DONNELL. Well, our disapproval of their political system is going to cause at some future date the death of a hundred people on one of our aircraft.

The CHAIRMAN. I certainly would welcome your submitting a further statement in view of and in light of the testimony this morning. It takes a long time for us, apparently, to recognize and to take measures in cases like this because of the political overtones. This could well weaken the whole effect of the agreement if we allow it to continue.

HIJACKING OF PLANE TO ITALY

Mr. O'DONNELL. Yes, it does. You mentioned the incident in Italy and they made great light of it. The fact that somebody hijacked an airplane from the middle of the United States almost from the west coast—

The CHAIRMAN. I really have to take a recess for about 5 or 8 minutes before we take the next witness, if you care to stay.

Mr. O'DONNELL. At your pleasure, sir, I shall stay.

The CHAIRMAN. I will have to go to the floor right now. We will recess for approximately 10 minutes.

(Short recess.)

The CHAIRMAN. The committee will come to order.

Mr. O'Donnell, do you have anything further you would like to say about this question or any question, but particularly about Cuba?

Mr. O'DONNELL. Yes, sir; I do.

FEES CHARGED BY CUBA

A statement was put into the record that the ransom being charged by Cuba for a hijacked aircraft is in the vicinity of a thousand dollars. The landing fees, navigation charges, weather charges, inflated fuel prices run an airline anywhere from \$5,000 to \$10,000 for every aircraft hijacked to Cuba. These are far in excess of what they would pay in the United States for like service.

FREE U.S. TRANSPORTATION FROM BUT NOT TO CUBA

The other thing I wanted to bring out, the reason I wanted to stay and spend a moment with you, is that for some reason or another the State Department, or the Government is reluctant to, or refuses to, allow those people who desire to leave this country to go to Cuba access to free transportation to Cuba. Today, 5 days a week there are two flights from Miami to Veradero, Cuba on a military contract flight or State Department contract flight that is being flown presently by Eastern Air Lines. Starting July 1 it will be flown by Overseas National. These are flown empty to Cuba and carry people who want to come to the United States.

The CHAIRMAN. Are they flown free of charge?

Mr. O'DONNELL. I believe the State Department pays for them.

The CHAIRMAN. They don't charge them?

Mr. O'DONNELL. No, sir.

The CHAIRMAN. How many are involved each day approximately?

Mr. O'DONNELL. The aircraft will hold approximately 88 people so it would be a total of about 176 seats.

The CHAIRMAN. About 176 people come from Cuba to this country every day?

Mr. O'DONNELL. Yes, sir.

The CHAIRMAN. They will not allow any Cubans to go the other way?

Mr. O'DONNELL. That is right, sir.

The CHAIRMAN. Have there been any applications for it?

Mr. O'DONNELL. No, sir. The Air Line Pilots Association a year ago, or a year and a half ago, when this program started, approached the State Department and requested that this free transportation be made available to these demented people. They said, well if you do that it would be criminals who would want to leave the country. I would just as soon let that type of person go on an aircraft that is scheduled to go there than place a hundred lives in jeopardy.

The CHAIRMAN. I don't know why they wouldn't want to get rid of the criminals if those are the ones who want to go. What do they say to that?

Mr. O'DONNELL. That was the only response we received, sir. This is still going on. In fact, one gentleman here with me today flies that trip periodically.

The CHAIRMAN. How long have these two flights a day been going on?

Mr. O'DONNELL. We have increased it to two flights a day because of the number of seats available. A year ago Pan American was flying this shuttle, we call it a shuttle, between Miami and Cuba and they were using a large jet which had more seats available. Eastern is using an Electra aircraft which has a lesser number of seats.

The CHAIRMAN. Do you know what that program is costing us?

Mr. O'DONNELL. No; I don't, sir.

The CHAIRMAN. A good deal, I guess.

Mr. O'DONNELL. I am sure it is. Whatever it is, it is worth it to save the lives of American passengers.

The CHAIRMAN. I meant what the present program costs.

Mr. O'DONNELL. No, sir; I don't.

The CHAIRMAN. But it is very substantial.

Mr. O'DONNELL. I am sure it is.

The CHAIRMAN. It wouldn't cost us anything to allow these people to go in the empty seats because the planes are going anyway under another program.

Mr. O'DONNELL. That is correct, sir.

The CHAIRMAN. Your point is they ought to allow anyone who wants to go so they won't hijack a plane.

Mr. O'DONNELL. Yes, sir.

POSSIBLE AMENDMENTS OR CHANGES TO CONVENTION

The CHAIRMAN. Coming back to this agreement itself, are there any amendments or changes that you think ought to be made?

Mr. O'DONNELL. Sir, our staff has studied that document. When it was in its first form we made recommendations. Some did appear in the document.

The only question we have now is section 4 at the end of it where there is a question of the sentence being reduced in the judgment of the court over here for somebody who hijacked an airplane in another country. We apprehend him in this country and then we want to reduce his sentence. I say to open that door raises the question whether they will act reciprocally to our hijackers here in this country.

The CHAIRMAN. This has relevance particularly to those who hijack for political asylum.

Mr. O'DONNELL. Yes, sir.

The CHAIRMAN. You think it is a mistake to open that up.

Mr. O'DONNELL. We do. We don't believe any excuse justifies placing a number of lives in jeopardy of a hijacker.

The CHAIRMAN. That is what struck me a moment ago. Just because a fellow wants to escape from Cuba or some other country is not a good reason to endanger a hundred or 150 innocent individuals. I don't quite see that myself. You recommend against that.

Mr. O'DONNELL. Yes, sir; we do.

The CHAIRMAN. The State Department apparently intimated this was put in, not because we liked it, but because of Western Europe. Do you know what the position of our representatives at the Hague was?

Mr. O'DONNELL. No; we do not, sir.

The CHAIRMAN. Did you have any reason to believe it was our policy too?

Mr. O'DONNELL. No, sir; I do not.

The CHAIRMAN. Is there anything else?

DAILY COST OF ROUND TRIP FLIGHTS BETWEEN MIAMI AND CUBA

Mr. O'DONNELL. Yes, sir; the cost of the flights per day is \$1,600 from Miami to Cuba.

The CHAIRMAN. \$1,600 round trip, for each plane?

Mr. O'DONNELL. Yes, sir.

The CHAIRMAN. If there are two planes, the cost would be \$3,200 a day.

Mr. O'DONNELL. That is two round trips, sir—it is \$800 per trip round trip.

The CHAIRMAN. Then it would be \$1,600 for both planes.

Mr. O'DONNELL. Per day.

The CHAIRMAN. They use Electras. If it were a big plane, would it be only \$800?

Mr. O'DONNELL. No, sir; for bigger jets it is probably a little bit less. The bigger jet operates cheaper than Electras do.

The CHAIRMAN. This is by contract with the State Department. The State Department pays for it?

Mr. O'DONNELL. Yes, sir.

The CHAIRMAN. Have you anything else?

Mr. O'DONNELL. No, sir.

The CHAIRMAN. If you wish to submit a further statement for the record, you certainly may.

Mr. O'DONNELL. Thank you.

QUESTION OF EXEMPTIONS FOR HIJACKERS SEEKING POLITICAL ASYLUM

The CHAIRMAN. I think this is a very interesting subject.

The real reason I was asking the State Department this question about the exemptions for hijackers seeking political asylum is that it does not appeal to me as being a very valid reason.

If you have anything further to say on that, we would be glad to have it.

Mr. O'DONNELL. The only reason we are concerned about it is some of these demented hijackers use explosives, hand grenades, or self-priming detonating devices. Accidents will occur. Even though a man does not intend to blow up the aircraft we fear that this could

happen. That is the reason we want a strong and firm position against it. That is why we believe arrangements have to be made with Cuba to return these people.

The CHAIRMAN. Yes; I would think there is a great necessity to do that.

Thank you very much, Mr. O'Donnell.

Mr. O'DONNELL. Thank you, Mr. Chairman.

(Mr. O'Donnell's supplemental statement follows:)

SUPPLEMENTARY STATEMENT OF JOHN J. O'DONNELL, PRESIDENT, AIR LINE PILOTS ASSOCIATION, BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE ON THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT

Mr. Chairman, I appreciate this opportunity to submit a supplementary statement for the record after hearing the statements by representatives of the Departments of State and Transportation.

Perhaps it is the sign of our times but the statements of both these representatives seemed to infer that the ratification of the Convention by the countries represented at The Hague last December would solve the hijacking problem.

Mr. Beggs, Undersecretary for the Department of Transportation, even suggested two more conventions be written and ratified. He also advocated that "we do not wish to compel courts to apply the penalty of a minimum sentence of 20 years in the case of hijackers where special equities may be present."

Mr. Chairman, it is this attitude of molycoddling of criminals that has placed the pilots of the nation's air transports in the dangerous position they are in today. Every time a commercial airliner takes off, the pilot and crew never know when some passenger will attempt to divert the plane to some unplanned destination. The destination for most hijacking attempts of U.S. planes has been Cuba—66 of them have been successful. Cuba is not a signatory to the Hague Convention. For all we know, Mr. Castro only interns them briefly and then puts them to work in the cane fields. He extracts anywhere from \$5,000 to \$10,000 in landing fees and ground handling costs from the airline. Therefore, he profits nicely each time a hijacked airliner lands in his country.

Last weekend, a new chapter began in the sordid history of air piracy. A Trans World Airlines jet was commandeered in Chicago by an individual who demanded that he be taken to North Vietnam. He had boarded without a boarding pass and seized a stewardess. He shot and killed a passenger. The plane was flown to New York and an aerial gunfight took place enroute. The hijacker was wounded and subsequently captured.

Mr. Chairman, this hijacking had the dubious honor of achieving three aviation "firsts." It marked the first time that an innocent passenger has been killed, the first time there has been a high altitude shoot-out on an American plane and the first time that a hijacker demanded passage to North Vietnam.

Now, Mr. Chairman, suppose for a moment that the hijacker had gotten his way and the crew had to try to fly to North Vietnam. Whether we want to admit it or not, we are at war with North Vietnam. A safe arrival in North Vietnam of a U.S. aircraft is doubtful.

It so happens that North Vietnam is not a signatory to the Hague Convention, either. Our State Department is not in direct contact with that country. It is conceivable that nothing could have been done to alert the North Vietnamese that a defenseless airliner was headed their way or that they would have honored its senseless mission.

So, it is the feeling of the 43,000 flight crew members I represent that these conventions, while necessary and probably helpful, do not solve the problem. Neither does it help for a government official to announce that we are in favor of lesser penalties for the crime of air piracy, and that the courts "be allowed to consider motivation and other special circumstances." What this means is that a slap on the wrist will be the eventual penalty for a crime that is potentially mass murder.

In your questioning of one of the government witnesses, you asked about the penalties for a passenger who hijacks an airliner from an Iron Curtain country to the United States and seeks asylum here. We do not believe the penalties should be any less for that individual just because he is escaping from some

brand of political oppression to the Free World. The act is a crime because it endangers the lives of innocent people.

It should be treated as a crime in the courts. It is only in this manner that we can expect hijackers from our country to be subject to swift and severe punishment *also*.

Again, I reiterate that we think the Hague Convention should be ratified. However, we want to see bilateral treaties with those nations that are not signatories and we are in no measure in favor of lesser penalties for hijacking.

Thank you, Mr. Chairman, for this opportunity to add a few words to my testimony of June 7. The members of our Association are available to do whatever we can for our country to help combat the serious hijacking situation. In light of the tragic events of last weekend, it is obvious that the threat is just as great as ever.

The CHAIRMAN. The next witness is Mr. Daniel Donnelly, chairman of the Hijacking Committee of the Aviation Law Section, American Trial Lawyers Association.

Mr. Donnelly, do you have a statement?

Mr. DONNELLY. Yes; I do, Mr. Chairman.

The CHAIRMAN. How long is it, Mr. Donnelly?

Mr. DONNELLY. My statement is 12 pages and I believe it is before you at this time.

The CHAIRMAN. Because the time is running late and in view of the previous testimony, would you put the statement in the record and pick out the important points.

Mr. DONNELLY. That would be fine.

The CHAIRMAN. Give us your views of the particular points that have been raised by the previous witnesses.

STATEMENT OF DANIEL DONNELLY, CHAIRMAN, HIJACKING COMMITTEE, AVIATION LAW SECTION, AMERICAN TRIAL LAWYERS ASSOCIATION

Mr. DONNELLY. Essentially, the American Trial Lawyers Association supports, in principle, the proposed treaty. There are certain observations, however, which we believe are in order.

TREATY'S EFFECT ON PROJECTED HIJACKINGS TO CUBA QUESTIONED

The first is by way of a caveat. We do not look upon this treaty as a panacea for the entire hijacking problem. Now, many figures have been mentioned this morning. I picked up some figures in January which indicated there have been 197 hijackings of aircraft from the United States to Cuba. This included American air carrier aircraft, general aviation aircraft, and foreign carrier aircraft; 121 of them were successful. If we were to project a situation into the future, of the next 197 hijackings 121 of those would also be successful—

The CHAIRMAN. When you say successful what do you mean?

Mr. DONNELLY. That the hijacker arrived in Cuba safely.

The CHAIRMAN. You say 121 were successful. What happened to the others?

Mr. DONNELLY. The others were foiled in one way or the other.

The CHAIRMAN. They were attempted, but stopped.

Mr. DONNELLY. Yes.

The CHAIRMAN. I see.

Mr. DONNELLY. If we may project that into the future we can see the treaty would have no effect on 121 future hijackings, so to speak. The treaty does not appear, therefore, to be a totally perfect instrument.

The CHAIRMAN. Over what period were these 197 hijackings?

Mr. DONNELLY. I believe it's from approximately 1930.

The CHAIRMAN. That is the total, so far as you know, since we have had air travel.

Mr. DONNELLY. That is correct. Of course, the bulk of those occurred in the latter part of the 1950's and through the 1960's.

The CHAIRMAN. That is just to Cuba.

Mr. DONNELLY. That is correct. My figures come from Aircraft Owners & Pilots Association, but I understand the Federal Aviation Administration also has some figures. I obtained those figures, but I was unable to completely decipher them.

POSSIBLE SOLUTIONS TO PROBLEMS OF HIJACKINGS TO CUBA

An effective system of sanctions is one possible solution and, as I understand it, there is a draft convention at the present time on sanctions. But it seems to me that even a convention on sanctions against a country which refuses to prosecute or extradite an offender, in itself, will not be totally effective because we have this picture: If an individual hijacked an aircraft from the United States to Cuba, we would ask all countries having international air commerce with Cuba to suspend air services with Cuba until Cuba would prosecute or extradite that person.

Now, if Cuba would not release that person we would be asking all countries which have air commerce with Cuba to perpetuate this type of boycott.

I don't think it is realistic. I don't think they will do it. I think eventually the commercial needs of Cuba and the other countries will tip the balance and they will resume international air commerce.

Now, there are several other solutions to this problem. Of course, one is the solution that you alluded to today, a bilateral. Perhaps, if Cuba could be persuaded to become a party to this convention, this would be an effective solution.

FAILURE TO INCLUDE POLITICAL OR RELIGIOUS EXCEPTIONS

Now, there is one principal misgiving that we have about this treaty; it is the failure of the treaty to include an exception to its applicability where an aircraft is hijacked by one attempting to escape from a nation which suppresses political beliefs or discriminates against him because of his religious belief.

Now, within very recent memory we had the trials in the Soviet Union, where several aircraft hijackers were placed on trial. It seemed to me that world opinion recognized the right of these people to do what they did: to get out of a country which refused to let them leave and yet suppressed their political and religious beliefs.

The Tokyo Convention, which the United States adhered to in December of 1969, contains a political, religious, and racial exception, so to speak. The Tokyo Convention, in my opinion, itself does not go

quite far enough, however. It seems to create these exceptions and then, to a great extent, takes them away again. It seems to me that it is not a good thing not to have an exception when a hijacking is committed by persons who are attempting to get out of the country which refuses to allow them to leave and yet refuses to allow them to have political freedom in that country.

Now, in going over the FAA statistics, out of approximately 280 hijackings, passengers or crew were killed in about 10. So that is considerably less than 5 percent.

Now, I think that is a risk we have to recognize and perhaps even accept in balancing freedom of international air transportation on the one hand, and, on the other the right of people to have freedom of political expression and freedom to practice their religion as they wish. It seems to me that it is very questionable if we put a greater value on freedom of air transport than on freedom of political and religious belief.

BALANCING DANGER TO PASSENGER WITH BELIEFS OF HIJACKERS
QUESTIONED

The CHAIRMAN. That is the core of the problem, but there are many other ways to seek exit from a country. I mean the airlines have come in fairly recently. I think it is a very serious question. Are you going to say it is all right for an individual to endanger a hundred or 200 innocent people's lives because of his political or religious beliefs? If you are balancing off the prospect of death or injury to the number of people who are usually in a plane with the one or two men who want to hijack it, do you think that is all right?

Mr. DONNELLY. Well, we are really dealing with a gray area. The type of hijacker that I have in mind is not the fanatic, the unbalanced, or the mental incompetent type person; nor is he the hijacker who, so to speak, is a guerrilla, so to speak, such as we had at Dawson Field and incidentally, I represent some of the people who were aboard some of those aircraft, which ended up at Dawson Field.

The CHAIRMAN. Which aircraft?

Mr. DONNELLY. I represent some of the people aboard that aircraft.

The CHAIRMAN. Which aircraft?

Mr. DONNELLY. The TWA aircraft which ended up in Dawson Field in Jordan. That was the hijacking Labor Day that was referred to earlier this morning.

Now, I think that the type of people that we are talking about, essentially what I am talking about, are people attempting to get out of Iron Curtain countries.

The CHAIRMAN. Yes.

Mr. DONNELLY. I am not willing to concede the point that there is a tremendous danger to the aircraft when these people take the aircraft over in an attempt escape from the Soviet Union. There is some danger, but I think we have to balance it, and I think that we should balance—

The CHAIRMAN. Mr. O'Donnell seemed to think there was considerable danger even going from here to Cuba, although we have flights over there every day. He testified that he thought there was sufficient

danger because of the distraction of the pilot or interference from the other planes. He seemed to think it was very serious even going to Cuba.

Mr. DONNELLY. I don't want to dispute the fact that there is some danger. I merely make the point that I think we have to balance this.

BALANCING POLITICAL OR RELIGIOUS BELIEFS AGAINST PASSENGERS' LIVES
QUESTIONED

The CHAIRMAN. I know. It is what you are balancing though. You are willing to balance off one man's desire for a different political or religious climate against the lives of a hundred or 200 people.

Mr. DONNELLY. Not quite.

The CHAIRMAN. Why isn't it?

Mr. DONNELLY. I don't think it is a situation of balancing one man's desires to get out of a country against the safety of an aircraft. I think it is a question of the United States lending indirect support to a nation which refuses to allow people to have political freedom and religious freedom. I think that is what we have, on the one hand, as against the safety of the aircraft on the other hand. I don't think the United States should indulge itself in supporting a system of political belief, and I think we do that indirectly by not recognizing the need for a very limited political and religious exception to the proposed convention.

The CHAIRMAN. An article, which I will insert in the record, has been called to my attention. I guess this is last year. It is dated October 27 and says:

Four Russians in a small aircraft landed at a Turkish military airport at Sinop on the Black Sea today, saying they had defected from the Soviet Union "to seek their freedom.

Down below it says:

Eight days ago, a Soviet Aeroflot AN-24 airliner was hijacked by a father and his son during a domestic flight. Branziskas Korejevo and his son, Aregedas, 18, forced the pilot to land at the Turkish town of Trabzon after taking over the airliner and killing a stewardess and wounding two crew members.

But you would say since he is seeking political freedom, that is all right.

Mr. DONNELLY. Again I don't want to couch it in those alternatives. (The article referred to follows:)

[The Washington Post, Oct. 27, 1970]

SMALL RUSSIAN PLANE IS HIJACKED TO TURKEY

ISTANBUL, Oct. 27 (UPI)—Four Russians in a small aircraft landed at a Turkish military airport at Sinop on the Black Sea today, saying they had defected from the Soviet Union "to seek their freedom," Turkish government officials announced.

The incident was the second involving a Soviet airplane in Turkey in eight days. All four Russians aboard this craft apparently were seeking political asylum.

The officials said the four told officers at Sinop they agreed to change their original flight plan to Sebastopol in the Soviet Union and defect to Turkey.

The officials quoted the four Russians as saying "they could no longer bear to live in the stranglehold regime of Soviet Russia and decided to seek their freedom."

Officials identified the pilot as Alexander Menchekov, 50, and the passengers as university students Nikolai Ginlov, 20, and Vitali Pozdeyir, 21, and Yuri Darbinoy, a 35-year-old worker.

A search of the twin-engined Czechoslovak-built aircraft found no weapons, Turkish officials said. They said the aircraft was used on Soviet domestic com-

mercial routes. Eight days ago, a Soviet Aeroflot AN-24 airliner was hijacked by a father and his son during a domestic flight. Branziskas Korejevo and his son, Aregedas, 18, forced the pilot to land at the Turkish town of Trabzon after taking over the airliner and killing a stewardess and wounding two crewmembers.

The 46 other passengers and five crewmembers were later returned to the Soviet Union, which has demanded that Turkey extradite the hijackers for prosecution in Russia.

The Turkish cabinet is considering the question.

The CHAIRMAN. I don't quite see the relevance of our attitude toward a political system to the lives of the passengers on the plane. We are not using this to solve political problems. We are really interested in the individual who happens to be on the plane.

Mr. DONNELLY. That is true, but I don't think we can compartmentalize it to that extent.

The CHAIRMAN. Personally, I certainly would feel pretty bad if I were engaged in a legitimate flight and some person hijacked the aircraft because he wanted to seek political asylum in another country.

The balance is not of individuals. There are other ways to do this.

There are other ways to get out of Russia or Cuba. They got along without this hijacking for a long time and only began to do this recently. I must say I am a little reluctant to say it is all right, if you have a good motive, to endanger the lives of any number of people up to the capacity of the plane.

RESTRICTION OF RIGHT TO EXTRADITE

Mr. DONNELLY. Passing, then, to some of the things we feel should be modified in the convention as it is presently prepared, and I will just touch on three of them. The first is that the convention seems to be oriented to vesting only in the state of registration of the aircraft the right to extradite the offender. It seems to, in effect, restrict that right to that nation.

Now, on pages 4 and 5 of the report which was prepared by our committee, we sought to expand that considerably, and an example comes to mind, namely, the example of the aircraft which were over Labor Day of last year hijacked to Dawson Field. Many of the people on the TWA aircraft were Israelis.

Now in that situation, I don't believe this convention would give Israel the right to have the offenders prosecuted in Israel. The United States could have obtained them. It was a TWA aircraft. It seems to me we should recognize that there are passengers aboard the aircraft, and that the state of which those passengers are citizens, has a legitimate interest in prosecuting the offender.

Now there are other states which I also believe have a legitimate interest in prosecuting the offender. I don't believe the convention as presently formulated affords them that opportunity and I think it might be wise to expand it.

The CHAIRMAN. Have you a proposed amendment or proper reservation that would do that or not?

Mr. DONNELLY. Not in the form of an amendment. But on page 4 to 5 of our report there is an enumeration of the States which we feel should have a right, in effect, to get a lick at the hijacker and we don't believe they presently do.

PERSONS TO WHOM CONVENTION APPLIES

Now, the other thing is that as presently formulated the convention seems too narrow as to the persons to whom it applies. It applies to people aboard the aircraft, but it does not seem to apply to an accomplice who may not be aboard the aircraft. Nor does it, for instance, in my opinion, apply to a coconspirator.

Now, I noticed that the draft convention relating to sabotage does cover that situation and perhaps when the draft convention relating to sabotage will be finally formulated it might provide an opportunity to amend this convention to provide for that situation.

RIGHT OF DETERMINATION CONCERNING CUSTODY

Lastly, I would just like to note that, in effect, the convention as presently drafted seems to repose in the State in which the hijacker is found the right to determine whether the person should be taken into custody or not.

It seems to me that that State alone should not have the prerogative for making that determination, but that on request of other interested States, as expanded as I suggest on pages 4 and 5, there should be an obligation to take the hijacker into custody.

The CHAIRMAN. You make that suggestion in your prepared statement.

Mr. DONNELLY. Yes, I do and there are several other suggestions relating to the treaty.

The CHAIRMAN. Well, we will certainly give that most serious consideration, and I am very glad to have your suggestions.

IMPLEMENTING LEGISLATION

Mr. Reporter, I wish to insert in the record a copy of the implementing legislation with a covering letter.

(The information referred to follows:)

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., June 4, 1971.

HON. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: Enclosed for introduction and referral to the appropriate Committee is a draft bill.

"To amend sections 101 and 902 of the Federal Aviation Act of 1958, as amended, to implement the Convention for the Suppression of Unlawful Seizure of Aircraft, and for other purposes."

The purpose of this proposed legislation is to implement for the United States the Convention for the Suppression of Unlawful Seizure of Aircraft (the Anti-Hijacking Convention).

On September 11, 1970, President Nixon signalled the need for strong international agreements to deter the worldwide threat of hijacking. He stated:

"It is imperative that all countries accept the multilateral convention providing for the extradition or punishment of hijacking which will be considered at the international conference which will be held under the auspices of the International Civil Aviation Organization. I affirm the support of the United States both for this convention and for the Tokyo convention, which provides for the prompt return of hijacked aircraft, passengers and crew. I call upon other governments to become parties to these conventions."

The United States was an active participant in the development of the Anti-Hijacking Convention. A Diplomatic Conference on Air Law, under the auspices of the International Civil Aviation Organization (ICAO), prepared this Convention. Seventy-seven States participated in that landmark Conference which culminated in the signing of the Anti-Hijacking Convention at The Hague, Netherlands, on December 16, 1970.

The Anti-Hijacking Convention represents a singularly significant development in international law. The Convention ensures that contracting States will subject hijackers to severe punishment, regardless of where the act of hijacking takes place. The major provisions of the Convention are described in Senate Executive A, 92nd Congress, 1st Session (copy enclosed). Executive A contains: (1) The message from the President of the United States transmitting the Anti-Hijacking Convention to the Senate; (2) The report on the Convention by the Secretary of State; (3) An Article-By-Article Analysis of the Convention; and (4) The text of the Convention itself.

The implementing legislation we propose would amend sections 101 and 902 of the Federal Aviation Act of 1958, as amended, to bring the laws of the United States into line with the key provisions of the Anti-Hijacking Convention. The definition of "special aircraft jurisdiction of the United States" in section 101(32) would be extended to certain "other aircraft" not now within that definition. The concept of the period during which an aircraft is "in flight" in section 101(32) would be extended and clarified as well. The legislation also proposes several changes to the criminal provisions in section 902 dealing with hijacking. These include creating a new criminal sanction for the crime of "international" hijacking established by the Convention (sec. 902(n)), conforming the definition of the "domestic" crime of aircraft piracy to the Convention's concept (sec. 902(i)(2)), and adding new section 902(n) to the crimes in section 902 that are investigated by the Federal Bureau of Investigation.

As now defined in section 101(32), the special aircraft jurisdiction of the United States extends to civil aircraft of the United States, to aircraft of our national defense forces, to other (such as foreign registered) aircraft within the United States, and to other aircraft outside the United States if they last departed from, or are next scheduled to land in, this country. The legislation we propose extends the special aircraft jurisdiction to two more classes of "other aircraft": (1) an aircraft outside the United States would be included when "an offense" (as defined in the Anti-Hijacking Convention) is committed aboard, if the aircraft lands in the United States with the alleged offender still aboard; and (2) An aircraft would be included when leased without crew, if the lessee has his principal place of business or permanent residence in the United States. Thus, the United States criminal jurisdiction over an alleged hijacker would be extended, and would apply to an aircraft without regard to its next scheduled destination or last point of departure.

As now described in section 101(32), an aircraft is in flight "from the moment when power is applied for the purpose of takeoff until the moment when the landing run ends." The legislation we propose conforms the description to the definition contained in the Anti-Hijacking Convention, "from the moment when all its [the aircraft's] external doors are closed following embarkation until the moment which any such door is opened for disembarkation." This amendment recognizes that an aircraft need not be airborne to come within the special aircraft jurisdiction, to invoke the applicable criminal provisions of section 902, or to invoke the provisions of the Convention.

A new subsection (n) added to Section 902 would establish Federal jurisdiction over the offense of aircraft piracy when the offense is committed outside the "special aircraft jurisdiction of the United States" and the offender is afterwards found in the United States. New section 902(n) further incorporates the definition of "an offense" in the Anti-Hijacking Convention. This subsection would carry out the obligation of the United States under the Convention to subject hijackers to severe penalties when they are later found in the United States, without regard to where they commit the offense.

The present definition of the offense of "aircraft piracy" contained in section 902(i) would be amended in line with the concept of "an offense" in the Anti-Hijacking Convention. This would be done by specifically including "any other form of intimidation" as an element of the offense of "aircraft piracy". Our proposed legislation would give the responsibility of investigating offenses under new section 902(n) to the Federal Bureau of Investigation, in addition to the responsibility they now have as to sections 902(i)-902(m).

Finally, the legislation we propose would specify the conditions that must be met before the Act becomes effective. Fulfillment of these conditions will ensure the existence of the necessary constitutional basis for this proposed legislation.

On April 15, 1971, the President transmitted the Anti-Hijacking Convention to the Senate for its advice and consent to ratification. We urge that the Congress promptly enact this legislation to ensure early implementation of the Anti-Hijacking Convention in the United States.

The Office of Management and Budget has advised that the enactment of this proposed legislation would be in accord with the program of the President.

Sincerely,

JAMES M. BEGGS,
Acting Secretary

A BILL To amend sections 101 and 902 of the Federal Aviation Act of 1958, as amended, to implement the Convention for the Suppression of Unlawful Seizure of Aircraft, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Anti-Hijacking Act of 1971".

Sec. 2. Section 101(32) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(32)), is amended to read as follows:

"(32) The term 'special aircraft jurisdiction of the United States' includes—

"(a) civil aircraft of the United States;

"(b) aircraft of the national defense forces of the United States;

"(c) any other aircraft within the United States;

"(d) any other aircraft outside the United States—

"(i) that has its next scheduled destination or last point of departure in the United States, if that aircraft next actually lands in the United States; or

"(ii) having 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, committed aboard, if that aircraft lands in the United States with the alleged offender still aboard; and

"(e) other aircraft leased without crew to a lessee who has his principal place of business in the United States, or if none, who has his permanent residence in the United States;

while that aircraft is in flight, which is from the moment when all the external doors are closed following embarkation until the moment when one such door is opened for disembarkation, or in the case of a forced landing, until the competent authorities take over the responsibility for the aircraft and for the persons and property aboard."

Sec. 3. Section 902 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472), is amended as follows:

(a) By striking out the words "violence and" in subsection (i) (2) thereof, and by inserting the words "violence, or by any other form of intimidation, and" in place thereof;

(b) By redesignating subsections (n) and (o) thereof as "(o)" and "(p)", respectively, and by adding the following new subsection:

"AIRCRAFT PIRACY OUTSIDE SPECIAL AIRCRAFT JURISDICTION OF THE
UNITED STATES

"(n) (1) Whoever abroad an aircraft in flight outside the special aircraft jurisdiction of the United States commits 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft, and is afterwards found in the United States shall be punished—

"(A) by death if the verdict of the jury shall so recommend, or, in the case of a plea of guilty, or a plea of not guilty where the defendant has waived a trial by jury, if the court in its discretion shall so order; or

"(B) by imprisonment for any term of years or for life, if the death penalty is not imposed.

"(2) A person commits 'an offense', as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft when, while aboard an aircraft in flight, he:

"(A) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act; or

"(B) is an accomplice of a person who performs or attempts to perform any such act.";

(c) By amending redesignated subsection (o) thereof by striking out the reference "(m)", and by inserting the reference "(n)" in place thereof; and

(d) By amending that portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the heading "Sec. 902. Criminal Penalties." by striking out the following items:

"(n) Investigations by Federal Bureau of Investigation.

"(o) Interference with aircraft accident investigation.";

and by inserting the following items in place thereof:

"(n) Aircraft Piracy Outside Special Aircraft Jurisdiction of the United States.

"(o) Investigations by Federal Bureau of Investigation.

"(p) Interference with aircraft accident investigation."

SEC. 4. The amendments contained in this Act shall become effective one day after fulfillment of the following conditions:

(a) the entry into force for the United States of the Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague, Netherlands, December 16, 1970; and

(b) the publication in the Federal Register by or on behalf of the Secretary of State of a notice referring to this Act and stating that the Convention has entered, or will enter, into force for the United States on a date specified in that notice.

The CHAIRMAN. Anything else, Mr. Donnelly?

Mr. DONNELLY. I believe not, sir.

The CHAIRMAN. Thank you very much. I am sorry we were interrupted, but we have a very busy time over on the Senate floor. We are getting ready to have an executive session.

Thank you very much.

Mr. DONNELLY. Thank you.

(Mr. Donnelly's prepared statement follows:)

REPORT OF HIJACKING COMMITTEE OF AVIATION LAW SECTION OF AMERICAN TRIAL LAWYERS ASSOCIATION ON THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT, DANIEL DONNELLY CHAIRMAN, HIJACKING COMMITTEE

INTRODUCTION

Lurking behind every attempted hijacking of an aircraft lies the specter of the destruction of the aircraft and the loss of the lives of those aboard. From 1930 through January 1971, worldwide, this specter has arisen 266 times; of these attempted hijackings, 197 were completed successfully by the hijackers. Of the successful hijackings, 121 involved flights originating in the United States and ending in Cuba (61 air carrier aircraft of U.S. registry; 9 U.S. light aircraft; 47 air carrier aircraft of foreign registry; 4 foreign light aircraft). Of the unsuccessful attempts, 24 involved aircraft of U.S. registry, and 45 foreign registry. These statistics demonstrate the abiding interest the United States must have in this problem.

Worldwide reaction to aircraft hijackings has taken various forms, including security measures at airports and aboard aircraft and the formulation of international agreements designed to abolish what has been essentially a form of international lawlessness. The following conventions and draft conventions address themselves to the phenomenon of the willful jeopardizing of the safety of aerial navigation:

Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention).

Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) (see Appendix).

Draft Convention on Sabotage and Other Attacks on Aircraft.

Draft Convention Regarding the Safety and Security of International Civil Air Transport Services (Draft Convention on Sanctions).

The Tokyo Convention entered into force for the United States on December 4, 1969. Presently, twenty nations are parties to that Convention.¹ On April 15, 1971, the Hague Convention was referred to the United States Senate for advice and consent.² This Convention requires the adherence of ten states before it enters into force. Presently, Japan, which adhered to the Convention on April 19, 1971, is the only party to it.

The Hague Convention, addressing itself to the suppression of the unlawful seizure of aircraft, constitutes one facet of the solution to the problem threatening the safety of aerial navigation. The Hague Convention is an attempt to continue where the Tokyo Convention left off by providing for the prosecution and extradition of those committing certain designated offences. The Hague Convention also deals with the problems of restoration and preservation of control of aircraft for the aircraft commander, the return of aircraft and cargo to persons lawfully entitled to possession, and freedom of transit for passengers and crew, all problems previously dealt with by the Tokyo Convention.

COMMENTS ON THE HAGUE CONVENTION

ACTS CONTEMPLATED WITHIN THE SCOPE OF THE HAGUE CONVENTION

The Hague Convention proscribes the following conduct: either as a principal or as an accomplice, through force, threat, or other form of intimidation, the consummated act or the attempt to seize or exercise control of aircraft in flight by a person on board (Article 1, paragraphs (a), (b)).

As constituted, Article 1 is probably too narrow to accomplish its immediate objective (i.e. prosecution or extradition) and its ultimate objective (deterrence). It is too narrow with reference to the persons contemplated in that it may not include those not aboard the aircraft who assist an offender aboard the aircraft; further, it may not include co-conspirators.

It is also too narrow with reference to the acts contemplated in that it does not include the following where no attempt is made to seize or exercise control of the aircraft:

1. Assaulting, intimidating, or threatening any flight crew member or flight attendant so as to interfere with the performance by such member or attendant of his duties or lessening his ability to perform his duties (all of which conduct is, in fact, proscribed by 49 U.S.C. Section 1472 (j));

2. Murder (18 U.S.C. Section 1111), manslaughter (18 U.S.C. Section 1112), and assault (18 U.S.C. Section 113) (all of which conduct is proscribed by 49 U.S.C. Section 1472 (k));

3. Possession of concealed or dangerous weapons (which is again proscribed by 49 U.S.C. Section 1472 (l));

4. Imparting or conveying false information, knowing it to be false, concerning any attempt to do any of the above or to seize control of the aircraft (which is proscribed by 49 U.S.C. Section 1472 (m)).

¹ Canada, China, Denmark, Ecuador, Federal Republic of Germany, Israel, Italy, Madagascar, Mexico, Netherlands, Niger, Norway, Philippines, Portugal, Saudi Arabia, Spain, Sweden, United Kingdom, United States, and Upper Volta.

² Fifty nations are signatories to this Convention:

Afghanistan	Gabon	Philippines
Argentina	West Germany	Poland
Barbados	Ghana	Portugal
Belgium	Greece	Rwanda
Brazil	Guatemala	South Africa
Bulgaria	Hungary	Sweden
Byelorussian SSR	Indonesia	Switzerland
Cambodia	Iran	Thailand
Canada	Israel	Trinidad and Tobago
China	Italy	Turkey
Colombia	Jamaica	Ukrainian SSR
Costa Rica	Japan	United States of America
Czechoslovakia	Luxembourg	USSR
Denmark	Malaysia	UK
El Salvador	Mexico	Venezuela
Ethiopia	Netherlands	Yugoslavia
France	Panama	

To the extent this inadequacy in Hague will ultimately be corrected by the Convention on Sabotage and Other Attacks on Aircraft, this shortcoming in Hague will, however, be remedied.

LOCATION OF THE PROSCRIBED ACTS CONTEMPLATED BY THE HAGUE CONVENTION

The Hague Convention contemplates the following as the location of the acts proscribed by it:

On board, while the aircraft is in flight, i.e. from the moment all external doors are closed following embarkation until the moment any are opened for debarkation (Article 1, Article 3, paragraph 1), and, in the case of a forced landing, until such time as competent authorities take over the responsibility for the aircraft and for the persons and property aboard (Article 3, paragraph 1).

As previously noted, the Convention is too narrow in that it does not contemplate acts outside the aircraft done to assist an offender aboard.

Moreover, in passing, it should be noted that the term "flight" as used in our criminal statute relating to the unlawful seizure of aircraft (49 U.S.C. Section 1472 (i)) has a narrower definition than has that term in Hague. As used in our statute, "flight" is the period "from the moment when power is applied for the purpose of takeoff until the moment when the landing run ends" (49 U.S.C. Section 1301 (32)). In view of the mandate in Article 4, paragraphs 1 and 2 of Hague that all Contracting States shall take such measures as may be necessary to establish their jurisdiction over the offence, if the United State becomes a party to Hague, "flight" will have to be redefined to accord with the definition in Hague.

UNDERLYING JURISDICTIONAL FACTS RENDERING THE CONVENTION APPLICABLE

The Hague Convention contemplates the existence of the following operative facts to render the Convention applicable:

Either the takeoff of the aircraft aboard which the offence is committed occurs outside the state of registration of the aircraft or the landing occurs outside the state of registration or, the offender is found in the territory of a state other than the state of registration of the aircraft (Article 3, paragraphs 3, 4, and 5). In a joint air transport situation, contracting states are required to designate which among them is the state of registration (Article 5).

It is believed that the underlying jurisdictional facts which would warrant the application of the Convention are too few in number. As presently constituted, the Convention is too narrow in that it contemplates that only the state of registration of the aircraft aboard which the offence is committed will be interested in the offender. It would seem that the Convention should be enlarged to apply if the offender was found—

1. outside the state of registration of the aircraft;
2. outside the state of the principal place of business or the residence of the dry lessee, where the aircraft is being operated under a dry lease;
3. outside a state of takeoff of the aircraft with the offender aboard, with the intent to commit the offence, whether or not the offence was attempted or committed in that state;
4. outside a state of landing of the aircraft on which the offence has been or is being committed with the offender aboard;
5. outside the state where the offence occurred;
6. outside the state of residence or citizenship of the crew or passengers aboard.

By so expanding the Convention, not only would the state of registration but also the other states enumerated would have an opportunity to extradite the offender for purposes of prosecution. If the Convention were to be so expanded, an order of priority would have to be established enabling those states which have priority to extradite or waive extradition, so to speak, before any succeeding state on the list would have its opportunity.

LIMIT ON EXERCISE OF JURISDICTION

Unlike the Tokyo Convention, where the general rule with enumerated exceptions is that jurisdiction may not be exercised in respect of offences against penal laws of a political nature or those based on racial or religious discrimination

(Article 2), Hague allows no such exemptions. The absence of a similar provision in Hague represents a judgment that an aeronautical disaster with all that entails in terms of human life (a likely consequence of aircraft piracy), is more to be avoided than the suppression of political beliefs and racial and religious discrimination. While the acts contemplated within Hague are not themselves penal laws of such a nature, nor laws encouraging discrimination, they could exist as one strand in the net of a legal system so oriented and could serve as an effective aid in achieving that purpose. An example in recent history of exactly this situation was the recent trials in the Soviet Union. Where such a situation exists, one is forced to question the value judgment underlying the omission of such an exemption in Hague. Essentially, one must ask himself whether freedom of commerce ought to supercede freedom of political belief and freedom from irrational discrimination.

No impasse is created by this problem, however. If such an exemption to the exercise of the Hague's jurisdiction as presently exists in Article 2 of the Tokyo Convention were engrafted into Hague, Hague contains in Article 12 the means for resolving this problem, that is, by submitting the matter to arbitration, and should this be unworkable, referring the dispute to the International Court of Justice. Only in this way can the United States avoid sanctioning, albeit indirectly, suppression of political belief and the encouraging of discrimination. If this approach were to be taken, however, it would be suggested that the six-month provision contained in Article 12 of Hague be substantially reduced.

MEASURES TO BE TAKEN BY CONTRACTING STATES TO EFFECTUATE THEIR JURISDICTION OVER THE OFFENCES CONTEMPLATED WITHIN THE CONVENTION

Hague requires each contracting state to take steps necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed in connection with the offence in the following cases:

- a. the offence is committed on board an aircraft registered in that contracting state;
- b. the aircraft aboard which the offence occurred, with the offender aboard, lands in that contracting state;
- c. the dry lessee of the aircraft aboard which the offence was committed has either its principal place of business or residence in the contracting state (Article 4, paragraphs 1 (a) through (c)).

Hague also requires that each contracting state take steps necessary to establish its jurisdiction over the offences where the offender is present in its territory and it does not extradite him pursuant to Article 8 of the Convention. (Article 4, paragraph 2)

Lastly, the Convention provides that it does not exclude any criminal jurisdiction exercised in accordance with national law (Article 4, paragraph 3).

To be consistent with the proposal to enlarge the underlying jurisdictional facts rendering Hague applicable (Article 3, paragraphs 3, 4, 5), Article 4, paragraphs 1 (a) through (c) and Article 4, paragraph 2 should be merged and expanded to require each contracting state to establish its jurisdiction over the offence in the following cases:

1. when the offence is committed on board an aircraft registered in that state;
2. when the offence is committed on board an aircraft being operated under a dry lease and the lessee has its principal place of business or residence in that state;
3. when the aircraft on which the offence occurred took off from that state with the offender aboard, with the intent to commit the offence, whether or not the offence was attempted or committed in that state;
4. when the aircraft with the offender aboard landed in that state;
5. when the offence is committed in that state;
6. when the residence or citizenship of the crew and passengers is within that state;
7. when the offender is found in that state.

It should be noted that section 1301 of Title 49, United States Code, enacted October 14, 1970, presumably in anticipation of Article 4, will not, however, fulfill

the mandate of Article 4. Section 1301 defines the "special aircraft jurisdiction of the United States" as follows:

"(32) The term 'special aircraft jurisdiction of the United States' includes the following aircraft while in flight—

- (a) civil aircraft of the United States;
- (b) aircraft of the national defence forces of the United States; and
- (c) any other aircraft—
 - (i) within the United States, or
 - (ii) outside the United States which has its next scheduled destination or last point of departure in the United States provided that in either case it next actually lands in the United States.

"For the purpose of this definition, an aircraft is considered to be in flight from the moment when power is applied for the purpose of takeoff until the moment when the landing run ends."

As was previously noted, the term "flight" as used in Hague ("An aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.") and Section 1301 (32) are not the same. Moreover, "special aircraft jurisdiction of the United States" as defined in section 1301 will not, in all cases, include aircraft under dry lease, as mentioned in Article 4, paragraph 1 (c) of the Hague Convention.

MEASURES TO BE TAKEN TO RENDER OFFENCE PUNISHABLE

The Hague Convention requires each contracting state to make the offence punishable by severe penalties (Article 2).

49 United States Code, Section 1472 (i) provides a penalty for the unlawful seizure of aircraft of 20 years minimum imprisonment to life. It is to be noted that the Convention provides for no uniformity of penalties, an objective which may be unachievable, although desirable.

POWERS OF THE AIRCRAFT COMMANDER

Hague recognizes no power in the aircraft commander to restrain the offender and deliver him to competent authorities of contracting states; nor does it absolve from responsibility any person for actions taken in exercise of such power.

Inasmuch as the purpose of Hague and Tokyo is, among other things, handling the "offender" (Hague) or "objectionable person" (Tokyo), Hague, like Tokyo (which has only 20 adherents), should recognize some of the powers and immunity accorded to the crew and passengers as are contained in Tokyo. The following (with some modifications from Tokyo) would appear to be in order:

"Article —

"The aircraft commander may, when he has reasonable grounds to believe that a person has committed or has attempted to commit an offence, impose on such person, while aboard the aircraft, reasonable measures, including restraint, which are necessary to enable him to deliver such person to the competent authorities of the next Contracting State at which the aircraft lands.

"Article —

"The measure of restraint imposed on a person in accordance with Article — (i.e. above), shall not be continued beyond any point at which the aircraft lands unless:

- (a) such point is in the territory of a noncontracting state;
- (b) the aircraft makes a forced landing and the aircraft commander is unable to deliver that person to competent authorities of a Contracting State."

This proposed Article would, therefore, recognize the right to continue restraint to assure delivery of the offender into the hands of Contracting States.

"Article —

"1. The aircraft commander must deliver to the competent authorities of any Contracting State in the territory of which the aircraft lands any person whom he has reasonable grounds to believe has committed or has attempted to commit on board the aircraft an offence.

"2. The aircraft commander shall, as soon as possible before landing in the territory of a Contracting State with a person on board whom the aircraft commander intends to deliver in accordance with the preceding paragraph, notify the authorities of such State of his intention to deliver such person and the reasons therefor.

"Article —

"For the actions taken in accordance with this Convention, neither the aircraft commander, any other member of the crew, or any passenger assisting the aircraft commander, the owner or operator of the aircraft, nor the person on whose behalf the flight was performed shall be held responsible in any proceeding on account of the treatment undergone by the person against whom the actions were taken."

OBLIGATION OF CONTRACTING STATES TO TAKE SUBJECT INTO CUSTODY

The Hague Convention provides that a Contracting State, upon determining circumstances warrant, shall take custody of or take other measures to insure the presence of an offender present in its territory (Article 6, paragraph 1), determining whether the offender should be taken into custody. Were this Convention looking only to local prosecution and not extradition, this would probably suffice. It is not so limited, however. It is suggested that the first sentence of Article 6, paragraph 1 would be better if written to provide the following:

"Upon being satisfied that circumstances so warrant, or upon request of any Contracting State having jurisdiction over the offence, any Contracting State in the territory of which the offender or the alleged offender is present shall take him into custody or take other measures to insure his presence."

OBLIGATION OF CONTRACTING STATES TO NOTIFY INTERESTED PARTIES

The Convention provides that the Contracting State with the subject in custody shall immediately notify the state of registration of the aircraft, the state of the principal place of business or residence of the dry lessee, the state of which the detained person is a national, and any other state of the fact that the subject is in custody and the circumstances warranting his detention (Article 6, paragraph 4).

If the Convention were to be rewritten so as to expand the number of states having jurisdiction over the offence, these, too, of course, would have to be included in the notification provision of Hague.

OBLIGATION OF CONTRACTING STATES TO CONDUCT PRELIMINARY INQUIRY

The Hague provides that the Contracting State with the offender in custody shall immediately make a preliminary inquiry into the facts (Article 6, paragraph 2).

This is a salutary provision, but it does not go far enough; it should be expanded to include Contracting States where the offender boarded, landed, state of registry of the aircraft, state of principal place of business or residence of the dry lessee.

OBLIGATION OF CONTRACTING STATES TO REVEAL RESULTS OF INVESTIGATION AND TO WHOM

Hague provides that the state making the preliminary inquiry shall promptly report its findings to the state of registration of the aircraft, the state of the principal place of business or residence of the dry lessee, the state of which the detained person is a national, and any other state, and indicate whether it intends to exercise jurisdiction (Article 6, paragraph 4).

If the Convention were written so as to expand the number of states having jurisdiction over the offence, these, too, of course, would have to be included.

REQUIREMENT OF MUTUAL ASSISTANCE IN PROSECUTION

The Hague Convention requires that Contracting States afford one another the greatest measure of assistance in connection with criminal proceedings for offences and any other act of violence against passengers or crew committed in connection with the offence (Article 10, paragraph 1). It further provides that the law of the state requested shall apply in all cases (Article 10, paragraph 1). Moreover, it is specified that Article 10, paragraph 1 shall not affect any obligation under any other treaty governing or to govern mutual assistance in criminal matters (Article 10, paragraph 2).

Where provision does not already exist, this will require the contracting states, it would seem, to provide for the taking of depositions in criminal proceedings relating to the unlawful seizure of aircraft and the compulsory attendance of witnesses at these proceedings. Similarly, the codes of criminal procedure will have to provide, where they do not already do so, for the introduction of such depositions into evidence.

RIGHTS OF SUBJECT IN CUSTODY

The Hague provides that the subject shall be held in custody in the manner provided by the custodial state and may only continue as long as is reasonably necessary to enable criminal proceedings and extradition to be instituted (Article 6, paragraph 1). It also provides the subject shall be assisted in communicating immediately with the nearest appropriate representative of the state of which he is a national (Article 6, paragraph 3).

Hague does not contain the provision which was in Tokyo that the offender shall be accorded the same treatment for security and protection as accorded nationals in like circumstances (Article 15, paragraph 2). It would appear that the omission of this provision from Hague is without real significance.

DISPOSITION OF SUBJECT AFTER INITIALLY TAKEN INTO CUSTODY

Hague provides that the Contracting State where the offender is found shall, if it does not extradite the offender, without exception, whether or not the offence was committed in its territory, submit the case to its authorities for the purposes of prosecution. The Convention provides the authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that state (Article 7).

The Hague Convention continues by providing that the offence is deemed extraditable in existing extradition treaties and will be included as extraditable in future extradition treaties (Article 8, paragraph 1). It provides that where no extradition treaty exists, and a request for extradition is made, the requested Contracting State, at its option, may consider the Hague Convention as a basis for extradition, which extradition is then subject to other conditions provided by the law of the requested state (Article 8, paragraph 2). The Convention continues by saying that as to states which do not make extradition conditional on a treaty, they shall recognize the offence as extraditable subject to the conditions provided by the law of the requested state (Article 8, paragraph 3). For purposes of extradition, the Convention provides the offence shall be treated as if committed in the place it occurred, and also in states required to establish their jurisdiction under Article 4, paragraph 1 (Article 8, paragraph 4).

As presently constituted, Article 7 may conflict with Article 14, paragraph 1 of the Tokyo Convention. That paragraph provides, in pertinent part, "when such person cannot or does not desire to continue his journey and the state of landing refuses to admit him, that state may, if the person in question is not a national or permanent resident of that state, return him to the territory of the state of which he is a national or permanent resident or to the territory of the state in which he began his journey by air." The offender, therefore, by his inability to continue, or his distinction to do so, may avoid extradition to the state of registration of the aircraft. This apparent inconsistency between Hague and Tokyo could be avoided were a clause inserted into Hague providing that where both Conventions were in effect as between the same Contracting States confronted by this problem, Hague would prevail.

As to Article 8, paragraph 4, if the Convention were written so as to expand the number of states having jurisdiction over the offence, these, too,

should be included. In addition, if so expanded, the order of priorities of nations to which the offender was extraditable would also be increased.

OBLIGATION OF CONTRACTING STATES TO RESTORE CONTROL OF THE AIRCRAFT AND TO ALLOW THE JOURNEY TO CONTINUE

The Hague provides the Contracting States shall take all measures to restore control to the lawful commander or to preserve his control over the aircraft and also to return without delay the aircraft and its cargo to the persons lawfully entitled to possession (Article 9, paragraph 1). The Convention continues that Contracting States in which the aircraft, its crew, and passengers are present shall facilitate the continuation of their journey as soon as practicable (Article 9, paragraph 2).

DENUNCIATION MECHANICS

The Hague Convention provides that denunciation shall take effect six months following the date on which notification is received by the depository governments (Article 4, paragraph 2).

RESOLUTION OF DISPUTES

With reference to disputes regarding the interpretation and application of the Convention, Hague provides that if these disputes cannot be negotiated, then one party may request arbitration, and if, within six months from the date of the request for arbitration, the parties cannot agree on an arbitration organization, then one party may refer it to the International Court at the Hague (Article 24, paragraph 1). Article 24 also provides that any state may reserve as to this clause (Article 24, paragraph 2).

HAGUE—NO SANCTIONS AGAINST NON-CONTRACTING STATES

Perhaps the most glaring weakness in the Hague Convention is the fact that no sanctions are provided against non-Contracting States in whose territory the offender is found which refuse to prosecute or extradite the offender. The severity of this shortcoming, from the standpoint of the United States, becomes particularly apparent in view of the frequency with which U.S. registered aircraft have been hijacked to Cuba, a nation not a signatory to the Hague Convention and a nation which will probably not become a party to it. This shortcoming may, however, be remedied by the draft Convention Regarding the Safety and Security of International Civil Air Transport Services. This draft Convention, which specifically seeks the suspension of air services to a non-Contracting State of Hague which refuses to prosecute or extradite an offender, is the only truly effective means of assuring the ultimate effectiveness of international agreements designed to prevent aircraft piracy and other crimes designed to threaten the safety of international aviation.

Although Hague is rather replete with inadequacies, this Committee recommends that the U.S. adhere to the Convention with the hope that the improvements suggested will be incorporated into international law in the near future.

STATEMENT OF CHARLES A. MEYER, ASSISTANT SECRETARY OF STATE
BUREAU OF INTER-AMERICAN AFFAIRS, ACCOMPANIED
BY ROBERT A. HURWITZ, DEPUTY ASSISTANT SECRETARY
BUREAU OF INTER-AMERICAN AFFAIRS, ROBERT J. LINSSETH,
COORDINATOR, INTER-AMERICAN AFFAIRS, AND
STATE LEGAL ADVISER, INTER-AMERICAN AFFAIRS

AIRCRAFT HIJACKING CONVENTION

TUESDAY, JULY 20, 1971

UNITED STATES SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met, pursuant to notice, at 2:40 p.m., in room S-116, the Capitol Building, Senator J. W. Fulbright (chairman) presiding.

Present: Senators Fulbright, Sparkman, Church, Symington, Pell, Spong, Case, Cooper, and Pearson.

The CHAIRMAN. The committee will come to order.

OPENING STATEMENT

The Committee on Foreign Relations is meeting this afternoon in executive session to hear Assistant Secretary of State Charles A. Meyer on U.S. policy toward Cuba.

This meeting was called primarily to discuss the aircraft hijacking problem, but we hope to take up such other matters as travel and trade and the reestablishment of diplomatic relations with Cuba.

Last month, on June 7, to be precise, the committee held a public hearing on the Hijacking Convention which was signed at The Hague on December 16, 1970. During the course of that hearing I asked Mr. John R. Stevenson, the legal adviser for the Department of State, whether the Cuban Government had ever approached the United States, either directly or indirectly, with a proposal to seek an agreement for the return of hijackers. Mr. Stevenson replied that the Cuban Government had announced publicly its willingness to enter into such discussions and that our Government had followed this up through the Swiss mission in Havana as late as January of 1971. He added, however, that "the Cuban Government has not responded to our latest suggestion." When I asked him what the suggestion was, he replied, "I would prefer not to comment on that in public session, since it is still under consideration."

In view of Mr. Stevenson's reluctance to talk about the possibility of a prospective agreement with Cuba for the return of hijackers, this meeting was called to explore the matter in executive session.

Mr. Meyer, I hope you can enlighten the committee on the status of any discussions which may be taking place on this question of aircraft hijacking to Cuba.

As we said during the public hearing, since a very large percentage of the hijackings have been to Cuba, it seemed rather unusual to proceed with the convention when Cuba is not a party.

Mr. Meyer, do you wish to make a statement?

STATEMENT OF CHARLES A. MEYER, ASSISTANT SECRETARY OF STATE, BUREAU OF INTER-AMERICAN AFFAIRS; ACCOMPANIED BY ROBERT A. HURWITCH, DEPUTY ASSISTANT SECRETARY, BUREAU OF INTER-AMERICAN AFFAIRS; ROBERT L. FUNSETH, COORDINATOR OF CUBAN AFFAIRS; AND MARK B. FELDMAN, ASSISTANT LEGAL ADVISER, INTER-AMERICAN AFFAIRS

Mr. MEYER. I do, Mr. Chairman, by your leave.

Mr. Chairman, I am pleased to have this opportunity to describe to you and the other distinguished members of the Senate Foreign Relations Committee in executive session efforts by the Department of State to reach an understanding with the Government of Cuba for the reciprocal return of hijackers of aircraft and ships.

The Legal Adviser of the Department of State, John R. Stevenson, has testified in public session on the proposed Hague Convention for the suppression of unlawful seizure of aircraft and other aspects of the administration's program to attempt to curb aerial hijacking through multilateral agreements and actions. I am here to inform the committee of steps being taken to attempt to achieve cooperation with Cuba on a bilateral basis, and I shall confine my remarks to that aspect of our hijacking program.

The U.S. Government is deeply concerned about aerial hijacking not only because of the inconvenience and expense with which such actions burden international civil aviation, but particularly because aerial hijacking presents a continuing risk of a serious accident with tragic loss of life. It has been our belief that the most effective deterrent to hijacking would be a well-publicized arrangement for the extradition or prosecution of hijackers. Because the great majority of U.S. commercial aircraft have been hijacked to Cuba, participation by the Cuban Government in a multilateral or bilateral agreement on hijacking would be especially helpful.

Unfortunately, Cuba consistently has refused to consider any multilateral efforts to achieve a comprehensive solution to the hijacking problem.

[Deleted.]

In practice Cuba usually arranges for the prompt return of hijacked aircraft and their passengers and crews. We have not however been able to make any real progress as yet on an agreement for the extradition or prosecution of hijackers.

[Deleted.]

On September 16, 1969, Cuba promulgated Law 1226 which, while rejecting multilateral agreements, appeared to contemplate bilateral agreements for the return of hijackers on a reciprocal basis. In that decree, Cuba expressly reserved the right to deal with Cuban nationals and to grant political asylum to others. A complicating factor is that [deleted] the Cuban law dealt not only with aerial hijacking but also with a number of other crimes relating to ships and aircraft and to illegal entry or departure from Cuba.

[Deleted.] Obviously, the U.S. Government could not agree to return refugees to Cuba simply because they left that country without the consent of Cuban authorities.

[Deleted.] Because of the importance of making every effort to deter hijacking we continued to explore the possibility of reaching an understanding with Cuba. Accordingly, on December 5, 1969, the United States notified the Cuban Government through the Swiss Embassy in Havana that it was prepared on a reciprocal basis to return hijackers of Cuban ships and aircraft, subject to the exceptions for nationals and cases of political asylum established in the Cuban Law, and that we hoped Cuba would act positively on requests by the United States for return of hijackers of U.S. ships and planes.

[Deleted.]

A series of exchanges on this subject with the Cuban Government through the Swiss Embassy in Havana has not, as I have stated resulted in progress to-date. Nevertheless, the Government of the United States remains prepared to enter into such an agreement.

[Deleted.]

CUBA'S REASONS FOR REFUSING TO CONSIDER MULTILATERAL AGREEMENT

The CHAIRMAN. What reasons do the Cubans give for refusing to consider a multilateral agreement?

Mr. MEYER. Bob, if you can answer that specifically.

Mr. HURWITCH. Mr. Chairman, in their law 1226, and I quote this excerpt from it, it says:

The Cuban Revolutionary Government is unwilling to respect multilateral agreements adopted by international organizations, such as the OAS, an organization stripped of its prestige and with no moral authority, which has been an accomplice in the policy of economic blockade and imperialist aggression against our country and is responsible, along with the Government of the United States, for the fact that Cuba has often been the victim of pirate hijackings of its planes and ships; nor will it respect agreements on this matter adopted by the U.N., which did nothing in the fact of such acts against Cuba.

WHY WOULD CUBA CONSIDER AGREEMENT WITH UNITED STATES?

The CHAIRMAN. Since the United States has embargoed trade and other things with Cuba, why would they consider making any agreement with us? Is that the reason they won't make it on a multilateral basis?

Mr. HURWITCH. Sir, I cannot explain what lies behind the Cuban Government law.

UNITED STATES OBJECTIONS TO CUBAN LAW 1226

The CHAIRMAN. I don't know enough about law 1226. What is there in it that we don't like? Why is it that we don't want to sign an agreement based upon Cuban law 1226?

Mr. HURWITCH. Well, if I could read the pertinent points of their law in order to—

The CHAIRMAN. You had better interpret it for us; you might confuse us. Can't you tell us what it means?

Mr. HURWITCH. I think, as Mr. Meyer mentioned in his opening statement, part of their law would, in effect, require us in good faith to return any Cuban who wished to leave Cuba.

The CHAIRMAN. I see.

Mr. HURWITCH. That is so sweeping that it would really place us in an unreasonable position.

The CHAIRMAN. You are talking about political asylum?

Mr. HURWITCH. Yes, sir.

The CHAIRMAN. In other words, law 1226 requires us to return them regardless of their reasons. Is that right?

Mr. HURWITCH. Unless we accord them political asylum. We have reserved to ourselves the same right that the Cubans have reserved to themselves under law 1226 for political asylum.

The CHAIRMAN. They reserve also political asylum?

Mr. HURWITCH. Yes.

The CHAIRMAN. I may have lost the point. If we both retain the right to give political asylum, why is that an obstacle to signing an agreement?

Mr. HURWITCH. Well, because in many instances we would not want to make an agreement to return for the crimes that were committed, alleged crimes that they had committed, which had nothing to do with the question of hijacking.

The CHAIRMAN. What would be an example of that?

Mr. HURWITCH. Well, people who enter or depart from Cuba in violation of immigration and customs regulations or national or international epidemiological or veterinary or plant health control. That is a provision of their law.

The CHAIRMAN. Why is that an obstacle? I mean, what is our purpose in declining? As I understood it, we declined to agree with them on the basis of law 1226 because there are provisions in there, other than political asylum, which do not suit us. We do not agree with it. Is that right?

Mr. FELDMAN. Mr. Chairman, the Cuban law, although in its preamble the focus is specifically on the problem of diversion by force of ships and aircraft, the crimes that it covers involve a whole series of actions not at all related to hijacking, which really blanket the entire refugee problem, that is to say all efforts to leave Cuba; they make it criminal, of course, under their law to leave without consent of the authorities, and the crimes enumerated include such acts as theft of small boats, collusion with a pilot of a plane, a voluntary arrangement for diversion of an aircraft not involving force, bribery—these kinds of things would be covered plus most importantly the illegal departure from the country, without the consent of the Cuban authorities.

We had hoped to be able to conclude an agreement with them that would deal with the serious problem of diversion by force of ships or aircraft without making a commitment to them which we could never in good faith honor to return to them persons who left Cuba without, for example, consent of the authorities.

Senator CHURCH. May I ask a question at this point, Mr. Chairman?

The CHAIRMAN. Yes; I am trying to clarify it.

U.S. RESPONSE TO MEXICAN CLAIM OF UNLAWFUL ENTRY

Senator CHURCH. What do we do with a Mexican who came to the United States without the consent of the Mexican authorities or came to the United States unlawfully under Mexican law and the Mexican Government asked for his extradition.

Mr. FELDMAN. May I reply to that?

Senator CHURCH. Yes; would you, please?

Mr. FELDMAN. I do not believe that such a crime is recognized in any extradition treaty of the United States with any country of the world.

Senator CHURCH. We do not recognize their leaving unlawfully?

Mr. FELDMAN. In other words, it is a basic human right under international concepts to be able to leave a country, not to be constrained by force to permanently reside there. The UN refuge protocol would preclude us from returning persons who are refugees of political persecution, religious or racial persecution unless they had committed a serious nonpolitical offense and such an action could not be regarded—

Senator CHURCH. Wait a minute. In qualifying your answer, you say that we will give sanctuary to refugees who come because of political or religious or racial persecution. What you really are spelling out are the rights of political sanctuary; are you not?

Suppose we had a Mexican who is not being persecuted by virtue of his race or religion or political viewpoint, but who comes nonetheless to the United States in a way that violates Mexican law.

Mr. FELDMAN. Yes, sir.

Senator CHURCH. Under those circumstances, if the Mexican Government asked for his return to Mexico because he came unlawfully to the United States under Mexican law, we would not honor that request?

Mr. FELDMAN. No, sir; if it was—

Senator CHURCH. Even though he makes no claim—

Mr. FELDMAN. No, sir; such request would not be made under our extradition treaty because our extradition treaty does not contain such an enumerated offense. That does not mean that he would necessarily be admitted to the United States; that would depend on the immigration laws. He might be excluded, even conceivably—

Senator CHURCH. Excluded to Mexico, and under these circumstances if he were not a political refugee there that would be by force of American law rather than recognition of Mexican claims.

Mr. FELDMAN. Correct.

CUBAN VIOLATIONS NOT RECOGNIZED IN OTHER EXTRADITION TREATIES

Mr. HURWITCH. That is what I was trying to get at. There are a series of violations that we would be undertaking to return people to Cuba for which we do not recognize in extradition treaties elsewhere in the world.

Senator SPARKMAN. Would this be setting up automatic extradition?

Mr. HURWITCH. It would be only those people who, in our judgment, were bona fide political refugees where this would not be operable, but it is so wide in scope that our agreement with it if we would live up to it in good faith would be really acceding to a list of crimes that we do not, as I say, accede to in our extradition treaties with other countries and go far beyond what we have done with every other nation.

CONSISTENCY OF U.S. POSITION

Senator SPARKMAN. Do you think your position with respect to Cuba in this case is consistent with the position we take with respect to other countries?

Mr. HURWITZ. Yes, sir.

WISDOM OF RATIFYING MULTILATERAL AGREEMENT WITHOUT CUBA

The CHAIRMAN. To come back to the central question then, if you cannot make an agreement with Cuba, do you think it is really wise and worthwhile to proceed to ratify this multilateral agreement when Cuba is not a party to it? As I recall, about 75 percent of all the hijackings involve Cuba.

Mr. HURWITZ. I don't have the statistics, but the proportions must be something like that; yes, sir.

The CHAIRMAN. I don't know whether it is wise or not. I think we would give the impression we have done something about it and we have not. We postponed action on this convention because we felt it would be kind of a fraud on the public if we recommended ratification of an agreement which did not include Cuba, and the hijacking continued. I don't know. What is your judgment about it? Do you want to comment?

Mr. FELDMAN. Mr. Chairman, if I may.

The CHAIRMAN. Yes.

Mr. FELDMAN. Speaking for the Office of the Legal Adviser, I know that we attach the greatest importance to this convention on unlawful seizure. Even though a large majority of the cases of hijacking from the United States have gone to Cuba, there is an increasing incidence of hijackings going on elsewhere which create a greater safety hazard than the typical hijacking to Cuba. There are a number of problems arising out of hijacking even of aircraft that are not U.S. aircraft that cause serious, potentially serious foreign policy problems for the United States. One thinks of the Middle East. We feel that the convention is directly in the interests of the United States and that, of course, it helps create an international consensus behind a set of principles of how to deal with hijacking. These efforts at articulating international law in this area are quite important to U.S. interests. One day even Cuba may accept the convention.

There is no fraud to the public. It should be clear that the hijacking problem is a world-wide one, not just a U.S.-Cuban problem.

RECOMMENDATION FOR CHANGE IN ADMINISTRATION ATTITUDE
TOWARD CUBA

The CHAIRMAN. You know Mr. O'Donnell, who testified at the other hearing. He is president of the Air Line Pilots Association and he said "Cuba is the destination of the great number of hijackers in this country, and to ignore it is to ignore hijacking."

I don't remember whether he said it specifically or not, but he leaves the impression that he didn't want an agreement unless we could do something about Cuba. Am I incorrect in that?

Mr. FELDMAN. Sir, I can't speak for him but—

Mr. HURWITCH. We were not here when he testified.

The CHAIRMAN. You were not there. This is the statement of Mr. O'Donnell, who testified at the public hearing. I thought some one of you were there, representing the State Department. He said:

We feel it is imperative that the United States enter into a bilateral agreement with Cuba for the immediate return of these criminals as one important means of deterring hijacking.

If the attitude of this administration can change toward China, in the interests of safety in the air over the United States, serious consideration must be given to this most frequent haven of hijackers from this country.

He is suggesting perhaps we ought to change our attitude toward Cuba as we have toward China. What do you think about that?

Mr. HURWITCH. On the subject, Mr. Chairman.

The CHAIRMAN. Mr. O'Donnell mentions that. He says if the attitude of this administration can change toward China, in the interests of safety in the air, serious consideration must be given to this most frequent haven of hijackers.

Mr. MEYER. I think, Mr. Chairman, our attitude toward safety in the air does not need to undergo change in relationship to Cuba. I think it is fair to say that Cuba is not disinterested in arriving at a bilateral agreement.

Mr. HURWITCH. I think that is a fair statement. [Deleted.] Several, at least one other nation has attempted to achieve a bilateral agreement, and has been equally unsuccessful so far.

The CHAIRMAN. Who is that?

Mr. HURWITCH. [Deleted.]

CUBA'S OBJECTION TO ALL MULTILATERAL AGREEMENTS

Senator CASE. Why is Cuba objecting to all multilateral agreements.

Mr. HURWITCH. Well, sir, we have no other reason to know other than that portion I read of that law which addresses that question.

Senator CASE. Will you give me that again because I must have been missing the point?

Senator SYMINGTON. Would you say it a little louder. You say part of the blanket that answers the deal—

Mr. HURWITCH. All right, sir; if I can answer the Senator's question.

Senator SYMINGTON. I thought he asked you to do that.

Mr. HURWITCH. He wanted to know why they were unwilling to enter into an international multilateral agreement. With regard to that they say:

The Cuban revolutionary government is unwilling to respect multilateral agreements adopted by international organizations, such as the OAS, an organization stripped of its prestige and with no moral authority, which has been an accomplice in the policy of economic blockade and imperialist aggression against our country and is responsible, along with the Government of the United States,

for the fact that Cuba has often been the victim of pirate hijackings of its planes and ships; nor will it respect agreements on this matter adopted by the U.N., which did nothing in the face of such acts against Cuba.

(Cuban Law 1226 referred to follows:)

DEPARTMENT OF STATE, DIVISION OF LANGUAGE SERVICES
(TRANSLATION)

LAW 1226, SEPTEMBER 16, 1969

OSVALDO DORTICÓS TORRADO, PRESIDENT OF THE REPUBLIC OF CUBA

Be it known: That the Council of Ministers has issued, and I have approved, the following Law:

Whereas: The Government of the United States and lackey Latin American governments, as a part of the policy of blockade and aggression against Cuba, have fostered and encouraged the hijacking and sequestration of Cuban ships and planes, receiving common murderers as heroes, and, on occasion, taking possession of the ships and planes so removed [from Cuba]; leaving the Cuban people to deplore even the loss of valuable lives;

This activity in connection with Cuban planes and ships and other acts and violations of international law and principles, provoked by imperialism in its policy against the Cuban Revolution, have created a climate of illegality conducive to the proliferation of these new phenomena of violence;

The Government of the United States and lackey Latin American governments have encouraged illegal departure from our country, employing any means whatsoever, with total disregard for the life and safety of the persons involved, particularly through territory occupied illegally by the United States Naval Base at Guantánamo, which has also contributed to the climate of violation and illegality referred to above;

Diversions by force of ships and planes from their normal routes and activities jeopardize the lives of innocent people, adversely affect air and sea navigation activities, infringe national and international laws and the general immigration regulations in force in all countries, and involve the danger of bringing epidemics, plagues, and contagious diseases into the country that can affect the health of the Cuban people and their natural resources, owing to the sudden entry into our country of persons on those planes and ships without compliance with the pertinent health regulations;

Although in a few cases the hijackings have been caused by persons in real danger because of their political activities, in other instances they have been the work of common criminals, persons of immoral conduct, the mentally unbalanced or socially maladjusted, eager to change their country of residence, or those motivated by strictly personal reasons that cannot be classified in any way as revolutionary;

The Government of the United States and lackey governments of Latin America have maliciously attempted through their press organs and international news agencies to evade their responsibility for the origin and execution of these acts, now that the consequences of such acts are affecting the countries whose governments have irresponsibly encouraged them to be carried out against Cuba;

The Cuban Revolutionary Government is unwilling to respect multilateral agreements adopted by international organizations, such as the OAS, an organization stripped of its prestige and with no moral authority, which has been an accomplice in the policy of economic blockade and imperialist aggression against our country and is responsible, along with the Government of the United States, for the fact that Cuba has often been the victim of private hijackings of its planes and ships; nor will it respect agreements on this matter adopted by the U.N., which did nothing in the face of such acts against Cuba;

Our country cannot permit any kind of international pressure, threat of blockade, or boycott to force it to adopt measures that concern its sovereign prerogatives alone;

The Cuban Revolutionary Government considers that a solution to this problem is possible only through sovereign decisions of the State and the adoption of reciprocal measures to protect the Cuban people also from any kind of violation of laws in force;

The Cuban Revolutionary Government has steadfastly followed the policy of facilitating the return to their destination [sic] of the planes or ships brought

by force to Cuba and of allowing the passengers to continue their travel as soon as possible, with maximum guaranties for their safety, and in addition, it has avoided any publicity or propaganda that might encourage such acts;

The Cuban Revolutionary Government has consistently respected the international principles governing relations between States;

The Cuban Revolutionary Government considers it necessary to adopt measures to put an end to the climate of insecurity created in air and ocean navigation by the diversion by force of ships and planes from their normal routes and activities, and to adapt the application of such measures to the attitude assumed by other States on bases of equality and reciprocity;

THEREFORE:

By virtue of the powers vested in it, the Council of Ministers issues the following:

Law No. 1226

Article 1. This Law shall apply to the acts listed below:

(A) Seizure, removal, or appropriation of a ship or plane by any means whatsoever;

(B) Diverting a ship or plane from its normal route or activities by deceit, bribery, violence, or intimidation, or in connivance with any member of the crew;

(C) Jeopardizing the safety of a ship or plane, of the persons or property on board, of third parties, or the order and discipline within such plane or ship;

(D) Entering or departing from Cuba in violation of immigration and customs regulations, or of national and international epidemiological, veterinary, and plant health control;

(E) Violating the criminal laws of Cuba aboard any Cuban ship or plane, regardless of the territory in which they happen to be;

(F) Violations by the crew members or persons on board the ship or plane of any other regulations in force.

Article 2. Persons committing the acts described in Article I above who arrive in national territory may be returned to the State affected if they are claimed by that State in conformity with the provisions of this Law.

Article 3. The measures set forth in this Law shall apply solely on bases of equality and strict reciprocity with respect to the States affected that enter into a bilateral agreement with Cuba on the application of the same policy to the cases covered by this Law.

Article 4. When Cuban nationals are involved, the Cuban State reserves the right to apply whatever legal measures are appropriate.

Article 5. The provisions of this Law notwithstanding, the Cuban State, exercising its sovereignty, reserves the prerogative to grant the right of asylum, when it deems it to be justified, to persons who, for political reasons, come to our country, having found it necessary to employ that extreme means in order to escape from a real danger of death or grave repression.

Article 6. Persons committing the acts defined in Article 1 who arrive in national territory shall be placed at the disposal of the immigration authorities in order that, in conformity with existing laws and the recommendations of the competent organs of the State, appropriate measures for the effective attainment of the objectives of this Law may be applied.

If the authorities of the other State officially request the return of such individuals, the Cuban immigration authorities shall rule, by means of a summary proceeding, whether or not such request is in order, in conformity with the above provisions.

Article 7. Without prejudice to the provisions of Article 5 and 6, persons who commit the acts defined in Article 1 shall be criminally liable under the criminal laws in force for any offenses they have committed.

Article 8. All provisions contrary to those set forth herein are hereby repealed. This law shall go into force upon its publication in the *Gaceta Oficial* of the Republic.

THEREFORE:

I order that this Law in all its parts be carried out and enforced.
Done at the Palace of the Revolution, Habana, September 16, 1969.

OSVALDO DORTICÓS TORRADO,
FIDEL CASTRO RUZ,

Prime Minister.

RAÚL ROA GARCÍA,
Minister of Foreign Affairs.

Mr. HURWITCH. That is the reasoning that they give there although, as the chairman points out, they are apparently willing to entertain the idea of a bilateral agreement directly with us.

WHY DOESN'T UNITED STATES ACCEPT BILATERAL AGREEMENT WITH CUBA?

Senator SYMINGTON. Why don't we accept that?

Mr. HURWITCH. We have tried with very serious and sincere intent and have consistently been in conversation with the Cuban Government through the Swiss ambassador in Havana ever since before they promulgated their law and subsequent to promulgating their law trying to achieve an agreement.

Senator SYMINGTON. What is the stumbling block? What is the part of the blanket we won't take?

Mr. HURWITCH. The Cuban law would require us, if we agreed to it, to return Cubans who had violated any number of Cuban laws. Among those laws are such things as departing or entering Cuba in violation of immigration and customs regulations of Cuba, of national or international epidemiological, veterinarian, or plant health control. A series of such crimes, there are some seven items in their law, so in explaining to the chairman that a requirement to return to Cuba people who violated this kind of law would be far beyond any kind of provision in extradition treaties that we have with any country in the world, and under this business would be breaking new grounds with very widespread ramifications.

DO CUBANS WANT TO MAKE A DEAL?

Senator SYMINGTON. One more question, if I may—Do the Cubans want to make a deal?

Mr. MEYER. I was going to answer, Senator Symington. I think it is very hard to totally evaluate the Cuban rationale. They have said, as Mr. Hurwitch points out, they don't want to get into multilateral agreements. They have said, as I understand it, they would be willing to consider bilateral agreements with us and others, but in the case of hijacking two countries that still have diplomatic relations with Cuba—Canada and Mexico—have expressed an interest just as we in bilateral agreement covering hijacking and there has been no agreement.

CUBAN RESPONSE TO U.S. EFFORTS FOR BILATERAL AGREEMENT

Senator PEARSON. Will you yield so I can try to understand this. When we seek, through the Swiss embassy or whoever our intermediary is, to have a bilateral agreement, do they say, "Yes, if you comply with 1226"? Is that where the issue is joined?

Mr. MEYER. Yes.

TALKS CONCERNING EXCHANGE OF HIJACKERS ONLY

Senator PEARSON. Have we had any talks with them in relation to a bilateral agreement which would do nothing more than exchange the Cubans that have been picked up for hijacking for Americans that have been picked up for hijacking.

Mr. MEYER. That is our original proposal.

Mr. HURWITCH. Not an exchange on a one-for-one basis.

Senator PEARSON. No; but a blanket proposal.

Mr. HURWITCH. That is specifically our proposals. We have given them not only a general offer of that nature, but we have given them a detailed memorandum of understanding of what we propose so that they could see clearly what we had in mind.

OTHER PROPOSAL

Senator PEARSON. What did the other country propose?

Mr. HURWITCH. We don't know specifically.

Senator PEARSON. Have they had direct talks?

Mr. HURWITCH. Yes, sir; they have a representative there; they have diplomatic relations.

DOES CUBA WANT TO MAKE A DEAL?

Senator SYMINGTON. Do you think they don't want to make a deal?

Mr. HURWITCH. It is hard to be fully certain [deleted].

PROFIT TO CUBA FROM HIJACKING

Senator SYMINGTON. Do they get any money out of hijacking?

Mr. HURWITCH. They get some. They charge for the expenses. I must say the arrangements that exist result in very good treatment of American hijacked aircraft and their passengers.

Senator SYMINGTON. What I am asking is, "Do they get a profit moneywise out of condoning the hijacking?" Is that material to it?

Mr. HURWITCH. Not in any substantial way; no, sir.

LACK OF U.S. EFFORT TO ESTABLISH DIPLOMATIC RELATIONS

Senator SYMINGTON. Is there any effort being made to establish diplomatic relationships with Cuba comparable to Canada?

Mr. MEYER. No, sir.

Senator SYMINGTON. Why not?

Mr. HURWITCH. It would not be consonant with American policy today.

Senator SYMINGTON. Why can't we establish relationships with them? If the President can fly to Peking, why can't we fly to Havana?

Mr. MEYER. I think going back, Senator Symington, to the break in diplomatic relations or the freeze, if you will, in diplomatic recognition of Cuba within the inter-American family substantially or factually stems from the meeting of Foreign Ministers of the OAS in 1964. That was not our initiative, it was Venezuela's initiative.

COUNTRIES WHICH DO NOT RECOGNIZE CUBA

Senator SYMINGTON. What countries in Central and South America do not recognize Cuba?

Mr. MEYER. The only ones that do, putting more simply, are Mexico who never did change their independent posture and now Chile.

Mr. HURWITZ. Your question, Senator Symington, was asked specifically of the President, and you might wish, Mr. Secretary, to give this.

Senator SYMINGTON. I don't know. It just seems that at times we are overly concerned about actions 10,000 miles away from home, but right here we have this carbuncle, you might say, 90 miles from our coast which we don't seem to do anything about. Every few weeks they make a fool out of us by taking one of our planes and we don't seem to be able to do anything from a diplomatic standpoint.

Mr. MEYER. I might say it isn't the Cubans per se who are taking our planes. Half the planes that are taken to Cuba are taken I think it is fair to say, by disaffected Americans or people of that kind.

Senator SYMINGTON. I know, but they are condoning something that makes us look absolutely impotent before the rest of the world.

RATIONALE OF CONTINUING NONRECOGNITION POLICY

The CHAIRMAN. Why don't we discuss for a moment the rationale of our continuing the policy, if you call it that, of nonrecognition. Has the State Department recommended as such any relaxation of trade or recognition?

Mr. MEYER. No, sir.

The CHAIRMAN. Why not? What are the real reasons for continuing what you call the present policy?

Mr. MEYER. I think that as good a reason as any is the fact that the meeting of the Organization of American States and its resolutions of 1964 still are in force.

The CHAIRMAN. Do you think the OAS is more concerned about Cuba than Tito is about China?

Mr. MEYER. I think various countries have various opinions.

U.S. INFLUENCE ON OAS ATTITUDE TOWARD CUBA

The CHAIRMAN. Don't we have a lot of influence in the OAS? I mean if we wanted to change the situation and you said to the other countries, many of whom are recipients of our aid, especially military aid, "Look the time has changed." Don't you think you can get a response from them and they might say, "Well, maybe it has and we ought to enter into negotiations."? Don't you think they would change their attitude toward Cuba?

Mr. MEYER. After Salvador Allende was elected President of Chile, a part of his platform was that he would reestablish diplomatic and commercial relationships with Cuba, the other OAS members were considerably concerned as to whether or not erosion of the 1964 resolution was so significantly under way that each or any of them should move in the same direction.

HARM IN RECOGNIZING CUBA QUESTIONED

Senator SYMINGTON. Mr. Chairman, could I ask one question there. Is there any country or group of countries that would break off relationships with us if we recognized Cuba?

Mr. MEYER. No; I don't think so, Senator Symington.

Senator SYMINGTON. Then what harm would there be in recognizing them if it wouldn't hurt us with the other countries?

Mr. MEYER. In consultation with all of the foreign ministers of the hemisphere, some of whom represent governmental views that are still antipathetic to Cuba as an exporter of revolution, my question to all of them in every instance was that, "I think what you should do or perhaps all of us should do, not jointly necessarily, but independently, is to analyze exactly what has changed in Cuba that caused any of you in 1964 to take a position that some of you are now questioning."

In the main, sir, the foreign ministers of Latin America said to me, "We see what you mean." There are enormous negatives in changing the policy, and there may be negatives in continuing the policy. Without exception the undercurrent in each of these interviews, if you will, was that none of the nations of this hemisphere cared about trade with Cuba because none of them had any trade with Cuba before 1964. It was symbolic. Some of them were interested in reestablishment of diplomatic relations as a theoretical gesture which would, in their opinion, do some good for their internal political situations vis-a-vis the Che Guevara left. They were frank to admit this, and I said to them that I think this was understandable [deleted]. In any case the United States does have a different position from the rest of the hemisphere in relationship to Cuba, not the least of which is that the United States is the beneficiary of and haven for, what is it, 500,000 Cubans who left Cuba for their reasons, not ours [deleted]. Quite frankly any of us can look at both sides of this ledger, but I can see very little reason for us to seek to change our Cuban policy, particularly as Fidel clearly knows that all he has to do to wipe the slate clean is say, "I will no longer export revolution;" on the 15th of April he said, "I will ship every Cuban to Chile if I have to." Stalemate.

ACCOMPLISHMENTS OF NONRECOGNITION POLICY

Senator CHURCH. Mr. Secretary, what are we accomplishing with a policy of nonrecognition.

Mr. MEYER. Well, I guess, Senator Church—

Senator CHURCH. Is the trade embargo effective against Cuba?

Mr. MEYER. I would think so.

Senator CHURCH. Do you think it is preventing trade with other countries besides the United States, such as European countries?

Mr. MEYER. Well, the Canadians trade in some small measure with Cuba and the British do in some small measure with Cuba.

Senator CHURCH. Other Western European countries.

Mr. MEYER. Spain does with Cuba.

Senator CHURCH. Is the policy eroding away the foundations of the regime? Is it contributing to its collapse?

Mr. MEYER. Hard to say, sir. I would think not. They have been there after all for 10 years. But I think they are no longer the important factor in political thought that they were, and that is to my mind a valid objective.

Senator CHURCH. Is that the result of our policy of nonrecognition? It seems to me that Fidel has been able to use us as a whipping boy quite effectively to retain a large measure of popular support.

Mr. MEYER. I think, Senator Church, that was initially true. However, I gather [deleted] that the Cuban people are not necessarily 100 percent anti-American per se. They are just living in whatever they live in, so that the motivation of the Castro regime in using us as a whipping boy has not yet necessarily been translated to Cubans.

Senator CHURCH. But can you convincingly attribute many of the shortcomings of his regime to American policy?

Mr. HURWITCH. On the 26th of July last year, when approaching that anniversary, Senator Church, Fidel Castro got up and made a speech about the failure of the sugar harvest and not one word was said about the United States.

Senator CHURCH. And is that characteristic of all of his speeches?

Mr. HURWITCH. Not all.

Senator CHURCH. Is what you are saying that in none of his speeches has he said anything about American policy and its effect on his regime?

Mr. HURWITCH. What I am saying, sir, this is a wasting asset, the fact of the American whipping boy idea. There is widespread dissatisfaction in Cuba [deleted] and while none of this dissatisfaction with the Castro regime has in any way organized itself into a political force to upset the Castro regime, that there is dissatisfaction with Castro and life in Cuba, I think, is unquestionable.

END OBJECTIVE OF U.S. POLICY

Senator CHURCH. What is the end objective of our policy? Are we going to continue to impose an embargo and insist upon nonrecognition as long as there is a Communist regime in Cuba.

Mr. HURWITCH. I think the end objectives are multiple, if I may reply in that way, Senator Church. Some of them are in one sense positive and in another sense damage limiting. Some of the objectives are, for example, by isolating the Cuban Government the ability for Fidel Castro to make Cuba a model of communism is much lessened, for example. In 1959, 1960, and 1961, throughout the hemisphere Fidel Castro was a household word. Today that is no longer the case, far from it.

Senator CHURCH. Do you attribute that to our policy?

Mr. HURWITCH. In part, yes.

Senator CHURCH. Why?

Mr. HURWITCH. I think it is responsible.

Senator CHURCH. I think the likelihood is much greater that we will end up, among the real radical elements in Latin America, making Fidel Castro a hero as indeed we have made Ho Chi Minh a saint in Asia.

Mr. HURWICH. My facts don't bear it out. Fidel Castro, as I say, was a household word in Latin America in 1959, 1960, 1961. Today it is not the case.

Senator CHURCH. And you attribute that to our policy?

Mr. HURWITCH. I do; yes.

Senator CHURCH. Does it not occur to you in the immediate aftermath of revolution in which he twisted the Yankee tail, he was bound to be a hero? However, in the long 10-year period that has followed,

there are lots of things that have happened, including his acquiescence to making Cuba a Russian missile base at one point and a lot of solutions have not been achieved in Cuba. Communism promised more than it could deliver, but I wouldn't think it has been American policy that has been largely the cause.

U.S. INFLUENCE ON COUNTRIES BREAKING OFF RELATIONS WITH CUBA

Senator SYMINGTON. Are we the ones who coaxed these people into breaking off relations with Cuba.

Mr. MEYER. I was not in the Government then, Senator Symington, but I think it is fair and honest for me to say that the 1964 meeting, not 1961 or 1962, during our bilateral problem with the missile crisis and Bay of Pigs, was at the instigation of Venezuela.

Senator SYMINGTON. What year did the United States break off relations with Cuba?

Mr. HURWITCH. January 1961.

Senator SYMINGTON. That is what I thought. We were Santa Claus to the OAS. In fact we have been Santa Claus to the world since World War II. So in order to get more money from us, we break off in 1961 and they start breaking off after 1961. Isn't that a fair statement, or were we the last to break off?

Mr. MEYER. We were, I think, the first.

Senator SYMINGTON. That to me sums it up, you see. We have been working on these people with aid in order to get them to break off relationships.

Mr. HURWITCH. I think you have taken certain selected facts, if I may say so, Senator, to marshal a particular conclusion.

Senator SYMINGTON. You may think that, but it looks to me as if we did our best to get Castro in "wrong" with Central and South America after we broke off with him in 1961. Inasmuch as we were putting a lot of treasure in these countries, why would they not go along?

Mr. HURWITCH. Beginning in 1961 when we broke off diplomatic relations, not at our instance I might point out, Senator Symington, because we were forced into it by the Castro government in 1961. We did not seek to break relations with the Castro government. So I think the record should show that.

Secondly, what happened in 1964 is in Venezuela, the Venezuelan Government discovered a great cache of arms that had been sent in by Cubans and it was that which caused the outrage on the part of the Venezuelans, called an international meeting of the American Republics, and it was on that urging and that incident that caused the other Latin American countries to do so.

DIFFERENCE IN U.S. POLICY TOWARD LARGE AND SMALL COUNTRIES

Senator SYMINGTON. I don't mean to be contentious about it, but of all the things that make the United States look silly from a diplomatic standpoint nothing can beat our relationship with Cuba, particularly when you add this hijacking business. I have never been quite able to understand it. You can rationalize it any way you want, but the truth of the matter is we are awfully tough with a little country, whether

it is Vietnam, Cuba, the Dominican Republic, but we get very nervous with the big ones.

That has been the policy long before this administration. It has been the policy ever since I have been in the Government.

PRESIDENT'S RESPONSE TO QUESTION ON U.S. POLICY TOWARD CUBA

Mr. HURWITCH. Senator, if I may say, in consonance with what you say, in April of this year, the President in public with the press, this question was specifically asked by a Florida editor in which he said:

"Mr. President, in view of the long range attempt to normalize relations with China"—that was before the recent events—"and in view of the fact we now seem to be trying to maintain normal relations with Chile, in view of the changes in that government, are we thinking also about long range or short range normalizing of our relations with Cuba." That was the question that was asked of the President.

And the President replied:

"Certainly not short range. As far as long range, until Cuba changes their policy toward us we are not going to change our policy toward Cuba."

And then he went on to say:

"Let's look at Cuba." He talked a bit about the Chileans. He said: "As far as Castro is concerned he has already drawn the line. He is exporting revolution all over the hemisphere, still exporting it. His line is against the United States not only inside Cuba but outside Cuba. As long as Castro is adopting an antagonistic anti-American line we are certainly not going to normalize our relations with Castro. As soon as he changes his line toward us we might consider it, but it is his move."

Castro replied on April 19, a few days after, in which he said:

"That in a recent radio interview on international policy Nixon said in reference to Cuba, if Cuba would change its policy,"—

The CHAIRMAN. We have a vote. We will recess for 5 minutes.

(Short recess.)

The CHAIRMAN. The committee will come to order. Senator Cooper?

PROHIBITION AGAINST CUBANS JOINING THEIR FAMILIES IN UNITED STATES

Senator COOPER. I want to ask one question. Recently I read an article in one of the papers that the Cubans had discontinued their practice of allowing Cubans to come to the United States and join their families. Do you know anything about that?

Mr. MEYER. I don't know anything about that.

Senator COOPER. It probably results from a letter the head of some Cuban organization had written to the New York Times saying that a new policy would be adopted in Cuba, which would prohibit the practice they had had to allow some Cubans to come to the United States to join their families.

Mr. HURWITCH. Senator Cooper, the fact is that there are two planes a day coming from Cuba 5 days a week bringing between 3,000 and 4,000 Cubans in each month. That is as of today.

In May 1970, Senator Cooper, there were reports from Cuba that they would no longer issue exit permits to Cubans to leave Cuba. But we have no positive information that would indicate that this action has been put fully into effect. So far, as I say, every day we are getting two planeloads of Cubans coming to the United States, every day, that is 5 days a week.

EFFECT OF U.S. ADHERENCE ON PRESENT ARRANGEMENTS WITH CUBA

Senator COOPER. I missed a great deal of testimony and questioning, but would our adherence to this convention—

Mr. HURWITCH. It is an understanding—to the hijacking convention.

Senator COOPER. The hijacking convention.

Mr. HURWITCH. Yes, sir.

Senator COOPER. In your judgment would it affect in any way arrangements which we now have with Cuba, tacit or expressed, toward treatment of hijacked planes and persons?

Mr. HURWITCH. I don't believe so, Senator Cooper. I don't believe that our adherence to the convention, hijacking convention, would give the Cubans a reason for taking different actions vis-a-vis our hijacking arrangement when we do.

OBJECTION TO UNDERSTANDING IN ACCORDANCE WITH LAW 1226

Senator COOPER. What would be the value of our understanding, which may be tacitly proposed, in accordance with their law 1226.

Mr. HURWITCH. What is our objection to it?

Senator COOPER. Yes.

Mr. HURWITCH. The main problem, Senator Cooper, is that their law does not address solely the question of hijacking of ships and aircraft but also would make it obligatory if we were to sign an agreement based on it for us to return to Cuba Cubans who came to the United States, who in Cuban judgment had violated any number of other laws, and these kinds of laws go far beyond our extradition agreements that we have with countries. [Deleted.]

INFLUENCE OF POSTPONING SIGNING ON CUBA

Senator COOPER. Senator Fulbright suggested, and I hope I am correct, that delay may have some influence. I am not exactly certain what he meant. In your view would there be anything to gain so far as Cuba is concerned by postponing it?

Mr. HURWITCH. Postponing the signing of the convention law by the United States?

Senator COOPER. Yes.

Mr. HURWITCH. I would say on the contrary, Senator Cooper [deleted].

SOVIET UNION'S SIGNING

Senator COOPER. Has the Soviet Union become a signatory?

Mr. HURWITCH. Yes, sir; Senator.

Senator COOPER. That is all.

STATE DEPARTMENT ATTITUDE TOWARD MR. HOLT'S GOING TO HAVANA

The CHAIRMAN. To come back to the question we were talking about, take a small matter. I had asked you, as chairman of this committee, for approval of Mr. Holt, one of our staff specialists in Latin American affairs, to go to Havana. It is my understanding you have taken the attitude you won't raise any obstacles and you won't prosecute him, but you won't approve it either.

It seems to me this is a rather narrow position. Why can't you just approve it and let him go. We are approving travel to China. This is rather hard to reconcile. It is a small matter, but this is the way we have approved a change in policy before. Why would you take that view? Why wouldn't you approve it the same way you approved the ping pong players' going to China?

Mr. MEYER. The passport regulations, Mr. Chairman, as they apply to Cuba apply to more than Cuba, and, as I am sure you know, the passport control vis-a-vis Cuba permits scholars, newsmen, physicians and other citizens for humanitarian reasons. Is that right, Bob?

Mr. FUNSETH. Yes, sir.

Mr. MEYER. To travel to Cuba, not necessarily that they are given visas by Cuba because they are not.

The CHAIRMAN. But they are by our Government. You give them.

Mr. MEYER. We validate their passports, but Cuba does not necessarily give them the visa.

In this category of scholar or newsmen—

Senator CHURCH. Mr. Holt is a scholar.

Mr. MEYER. I think he may even be a newsmen, too, Senator.

The CHAIRMAN. But I had understood—I had had assurances from the State Department. I mean being an official—Mr. Holt is after all attached to this committee. If I can get a visa to China, you would approve my going. Is that not true?

Mr. MEYER. I would very much assume so.

The CHAIRMAN. It is. I don't understand your attitude toward Mr. Holt's going to Cuba. I mean if Mr. Holt wants to go to China, it is my understanding that our Government would not oppose it.

They have just handed me a letter from Mr. Torbert dated April 2, 1970. He says:

We will be happy to validate the passports of Messrs. Jones, Lowenstein and Moose of the Committee Staff for travel to Mainland China. I suggest that they make their applications for validation to the passport office of the Department.

They are also members of the staff of this committee.

I don't understand why you wouldn't give the same reply to an application of Mr. Holt to go to Cuba.

Mr. MEYER. Mr. Chairman, there is a China policy and a Cuba policy, and the passport regulations as they apply to Cuba apply not only to Cuba but they also apply to North Korea and North Vietnam.

PREVENTING U.S. CITIZENS FROM GOING TO CUBA QUESTIONED

Senator CHURCH. But this policy does not come down from the gods on high. What possible national purpose is served by preventing American citizens from going to Cuba to see for themselves what is

happening there to make such appraisals as they can of such situation? How is our national interest advanced by such—

The CHAIRMAN. This is what I am trying to get at.

Senator CHURCH. How is our national interest advanced by having such an arbitrary rule?

Mr. MEYER. This, by the way, gentlemen, is a subject that is reviewed every 6 months; so it is not inflexible in terms of future but, Bob, you wanted to say something.

Mr. HURWITCH. I wanted to say two things really. One is this part of the OAS agreement we have and, as the chairman said, if we wanted to change policy we could probably take leadership in the OAS, we could probably bring about some changes if not the policy of the Government. Our experience has been when American citizens have gone to Cuba they have been exploited by the Cuban press, Prensa Latina, by Radio Havana to the detriment of the United States and for furthering Castro's views.

The CHAIRMAN. What is an example of that?

Mr. HURWITCH. There have been many Americans who have gone down there who have been led by leading questions in radio interviews in which they said everything is fine in Cuba and they see nothing wrong at all with what is going on there in the sense of the people and so on, are given very distorted meaning by, I think, objective assessments of what is going on there, which is then immediately picked up as I say, by Prensa Latina and Radio Havana played throughout the hemisphere by saying Mr. John Doe says so and so, things are wonderful in Cuba.

The CHAIRMAN. But the way your policy is carried out would seem to me insurance that only the wild ones who are willing to take the chances go to Cuba.

REASON FOR OPPOSITION TO MR. HOLT'S GOING TO CUBA

You refuse to approve a responsible man like Mr. Holt. There is no policy. You do not prevent Americans from going; you just don't approve it. So those who wish to be respectable and not be criticized for going against the policy don't go. I still say the very essence of it—what purpose does it serve not to allow Mr. Holt to go to Cuba?

Mr. HURWITCH. Mr. Chairman, as I am sure you are aware, Pat Holt is not only highly respected among those of us who deal with Latin America, we like to count on him as a personal friend and this is a decision that is not a particularly easy one under those circumstances.

The CHAIRMAN. What is the reason? You give everything else. What is the reason you oppose it?

Mr. HURWITCH. The reason, Mr. Chairman, is that just as you had indicated that if we were going to change our policy toward China, as we did, then of course you send ping pong players or what have you. I don't know that Pat is taking ping pong lessons.

The CHAIRMAN. They approved Mr. Lowenstein, who is not a ping pong player, and Mr. Moose. They are in the same category as Mr. Holt.

Mr. HURWITCH. That is because there has been a change in U.S. policy toward China.

REASON FOR NOT CHANGING U.S. POLICY TOWARD CUBA

The CHAIRMAN. Why don't you change our policy toward Cuba? Senator Church asks the reason behind it. Give us one good rational reason.

Mr. HURWITCH. Fine, Mr. Chairman. U.S. policy is based not on the internal workings of what is going on in Cuba.

The CHAIRMAN. What is it based on?

Mr. HURWITCH. The U.S. policy is based on two external manifestations of Cuba, the first external manifestation is that Castro's Cuba has publicly announced and has actively engaged in exporting its revolution to other countries in the hemisphere. It has been caught red-handed a number of times.

The CHAIRMAN. Recently?

Mr. HURWITCH. This is still going on.

Senator CHURCH. Let's just examine that. Has China stopped exporting revolution in Asia?

Mr. HURWITCH. Asia, I don't know about Asian policies.

Senator CHURCH. I know China is every bit as adamant in its advocacy of revolution as Cuba. So is the Soviet Union. Yet, these don't seem to be necessary reasons or insurmountable obstacles to improving relations with these two countries. We have dealt with the Soviet Union for years and yet it has exported revolution and advocated the export of revolution, and certainly if that can be said of the Soviet Union, it can be said 10 times over of China.

Mr. HURWITCH. I concede that is probably true, Senator Church. But you know the considerations. I am not an expert in those areas, but I would venture to guess that there are a variety of considerations which lead to a particular judgment, and those considerations, I think, are objectively looked at and the center of gravity of where the U.S. interests lie with regard to that is where the judgment derives.

Senator CHURCH. All right. The export of revolution then is certainly no necessary reason for this policy of nonrecognition, as witness China and Russia.

Furthermore, do you think that a policy of nonrecognition or recognition prevents the export of revolution? Either way, China is going to do what she can to stir up trouble in other countries in Latin America whether she is recognized or not. How does the policy of nonrecognition inhibit or obstruct revolutionary activity, underground revolutionary effort, as the Cubans want to pursue or other activities?

Mr. HURWITCH. Senator Church, I recognize that you are a student, particularly of Latin American affairs, and so, with due deference, I say that this is, the question of recognition per se is, only part and parcel of a whole policy which I guess could be best summarized if you wanted one word of isolation.

Now with regard to recognition, we do recognize Cuba in that sense. As I had mentioned to Senator Symington, we did not seek to break relations with Cuba. This was forced upon us by the Cuban Government itself in January of 1961.

Now, the whole ball of wax, if you like, of nondiplomatic recognition, no trade, no travel, has resulted in an isolation of Cuba from the hemisphere—

POLICY OF NONRECOGNITION AND ISOLATION HASN'T WORKED

Senator CHURCH. Don't you see this forms a pattern? Every time we have dealt with a large or small Communist country which we deemed an adversary of the United States we pursued the same policy. We pursued it with Russia for years where we tried to isolate the Soviet Union. From 1917 to 1933 we had no diplomatic relations. Isolation was gospel, uniform policy, but the policy didn't work and so finally the day of reckoning came when an American President found the gumption to say, "This doesn't work. Russia is there. The Soviet Government is there and we should establish ties with it."

Then came China, the same policy, a refusal to recognize and an attempt to isolate. It hasn't worked, and in the end comes a belated recognition of its failure and a readjustment to reality.

Now Cuba, a tiny country in our own backyard, with the same effort. But despite the fact that Cuba is a very small, relatively weak country, isolation has not worked. It has neither brought down the government nor put an end to such problems as the government may present to the hemisphere, and in the end we will come to terms with reality and stop it.

Mr. HURWITCH. It is possible that your prediction may come true, Senator Church. I would suggest—

Senator CHURCH. When it does come through, it will be out of the White House. Mr. Kissinger will one day phone you up and tell you that the policy has changed and that will be the end of it.

REASON FOR U.S. POLICY TOWARD CUBA

The CHAIRMAN. What was the other reason? You started to give that one, the export of revolution. You said there was another reason. What was it?

Mr. HURWITCH. Yes; the other is the military ties between Cuba and the Soviet Union. I am not talking in a sense, Mr. Chairman, of military ties in what would normally be considered such as the presence of military attachés or a large military advisory group, if you like, such as we have and the Soviets have in many places as well. But there in Cuba are large amounts of Soviet equipment.

Cuba has the largest standing army outside of the United States and the Western Hemisphere.

The CHAIRMAN. How large is it?

Mr. HURWITCH. I will get you the precise numbers.

The CHAIRMAN. About how large? You say it is the largest, but how large?

Mr. HURWITCH. About 200,000.

The CHAIRMAN. Yes.

Mr. HURWITCH. Out of a country of 7 million, and a large air force, larger than any or about equal to some of the larger countries.

SIGNIFICANCE OF SIZE OF CUBAN ARMED FORCES

The CHAIRMAN. You think that is a good reason not to recognize Cuba. What is the significance of it?

Mr. HURWITCH. I am just saying the whole military ties with the Soviet Union in which they have—

Senator CHURCH. Don't you think the size of the army and the air force has something to do with the fact that Cuba feels rather threatened and has some reason to in view of the Bay of Pigs and earlier episodes?

Mr. HURWITCH. Well, it may, although I would not think that even the size of that army would be a very important deterrent to the United States if it decided for good cause, such as the 1962 Cuban missile crisis, to—so I don't see how it is protected.

Senator CHURCH. I am not suggesting Cuba can whip the United States, but I am suggesting, in view of its past experience, it is not entirely irrational for them to maintain an armed force of some size and consequence.

Mr. HURWITCH. It could be for internal reasons.

Senator CHURCH. I see.

PAT HOLT'S PASSPORT

Mr. MEYER. Could I go back, Senator Church, and, Mr. Chairman, to Pat Holt's passport.

The CHAIRMAN. Yes.

Mr. MEYER. As I said this is a matter that is reviewed, not Cuba uniquely, but any area, where there is a passport restriction is reviewed regularly each 6 months.

I think in honesty what we are talking about is who makes the first gesture toward a new Cuba or toward an old Cuba or toward the present Cuba. We are operating still as a group of American nations under the provisions of the OAS, and I firmly believe that in 1964, from what I have read of that history, the United States was rather a moderating force in that particular assembly, where the presumed aggrieved, and I say presumed because Venezuela felt very much aggrieved. Another Latin American nation wrote such stringent concepts of isolation as to prohibit traffic with Cuba of any kind, and I believe that the United States was the principal agent in getting back into those prohibitions the concept of humanitarian assistance of food and medicine in the event of that need in Cuba.

Mr. HURWITCH. That is correct.

Mr. MEYER. Now, I come back, Mr. Chairman, to a question that was asked me I think by Senator Javits the day I appeared before your committee for confirmation and he asked "Do you know of any evidence, have you heard any evidences, of Cuba expressing an interest in some kind of a detente or entente with the United States? I remember saying, "No, I don't, Senator Javits." He said "What would you think?" I made the statement, "I assume if Cuba wants to talk to us, we would be willing to listen."

In essence, gentlemen, that is the consistent policy of the President. I am reminded again of that. Mr. Hurwitch touched on it in the Castro April 19 response to President Nixon's press appearance in early April, and I quote from Castro's speech:

"In a recent radio interview on international policy Nixon said in reference to Cuba"—this is Castro talking—"if Cuba's policy toward

us would change we would change our policy toward Castro. As long as the Havana government does not change its policy toward us we are not modifying our policy in any way and Havana has not taken any such step; therefore our relations with Cuba continue at a standstill." Castro goes on to say, "But such a gesture, Mr. Nixon, and we say that with all the honesty which characterizes this revolution and its statements, take that at its value, will never be made."

The CHAIRMAN. But we have this problem.

Mr. HURWITCH. The passport, sir, is part of that gesture.

The CHAIRMAN. We have this problem with hijacking. It is evident you are making no progress with it. Isn't that a reason maybe to make a gesture? I can't believe that validating Mr. Holt's passport and approving it, as requested, would be any great world shaking event which would upset all of our relations. Hopefully it might even lead to something. I don't know. It would lead to providing this committee with better information, at least.

RECONSIDERATION OF 1964 OAS POSITIONS

But isn't it a fact, with regard to OAS, that since that time Chile has already changed its position and we hear rumors that Peru, Bolivia, and Trinidad and some of the others are reconsidering their position with regard to the 1964 OAS position? Is that not true?

Mr. MEYER. That is true, sir. The last time a very informal survey was taken, the relaxation, the attitude of relaxation of the 1964 resolution, the attitude of relaxation was not shared by enough people in the hemisphere to carry.

The CHAIRMAN. Of course, I don't think it will ever carry against our opposition.

STATE DEPARTMENT ATTITUDE TOWARD RESOLUTION RECOMMENDING REESTABLISHING RELATIONS

What would be your attitude if this committee, in its wisdom, and I don't know whether it will or not, would propose a resolution that we reconsider our position and seek to reestablish diplomatic relations with Cuba? What would be the attitude of the department? Would you oppose such a resolution?

Mr. MEYER. It is hard to answer, sir, and I don't mean to hedge it, but one of the considerations, and don't think that we don't go over this field from the 0 to 180° spectrum conceptually reasonably constantly, but one question we ask ourselves in view of Fidel's announced statement is what if Fidel says, "thanks, but no, thanks?" What President Nixon has said is that is in effect he must have said vis-a-vis China over a period of time. There has got to be some crack in the door, and Fidel keeps closing it.

Mr. HURWITCH. Yes, sir; I think that is once again emphasized in the editorial in the New York Times that followed Castro's very flat rejection of President Nixon's attempt to try to get something going and I will just take your time to read a very short paragraph of the New York Times editorial which says:

Castro's verbal supermilitancy can only be interpreted as a public attack upon and repudiation of the more conciliatory lines now being followed in

Moscow and Peking. His words guarantee unfortunately that Cuban-American antagonism will continue, but he himself must now bear the responsibility.

The New York Times has been consistently an advocate of seeking some ways in which the present policy of the United States toward Cuba could be altered, and has consistently advocated that the United States take some first steps. We have, as high as the President, done so in April, categorically and flatly rejected by Castro to the point where the New York Times which had been very sympathetic to the policy that you gentlemen advocate as a possibility for the United States has said "we tried," flatly rejected. This is in consistent with the Moscow and Peking lines where there were openings and indications, and now, as they said, but he himself, Castro, must now bear the responsibility. It is very strong for the New York Times.

U.S. GOVERNMENT EFFORTS TO DETERMINE IF CASTRO WOULD RESPOND

Senator CHURCH. Has our Government made any official gesture or has it made any probe to determine if Castro was willing to respond? You referred, I think, Charlie, to a statement the President made at a press conference and then a response that Castro gave in a speech.

Mr. MEYER. Yes, sir.

Senator CHURCH. And the New York Times editorial refers to what?

Mr. MEYER. Castro's speech.

Senator CHURCH. The Castro speech.

Mr. HURWITCH. Both, the President's opportunity and the rejection.

Senator CHURCH. Has there been any inquiry on our part through our intermediary in Havana probing possibilities for any relaxation in relationships between the two countries? There hasn't been.

Mr. HURWITCH. Other than our attempt to seek a breakthrough on a hijacking agreement, seeking something that would be of mutual interest.

Senator CHURCH. That is the only direct contact or initiative we have undertaken.

The CHAIRMAN. Senator Cooper wants to ask a question.

SWISS REPRESENTATION

Senator COOPER. I want to ask a question about the Swiss. [Deleted.]

Senator SPONG. Mr. Chairman.

The CHAIRMAN. Yes, Senator Spong.

4-DAY DETENTION OF PAN AMERICAN PLANE

Senator SPONG. You mentioned that in your statement that last May a Pan American plane was detained for 4 days. Have you ascertained any information at all that would indicate that this represented any change of attitude on the part of the Cubans or any reason for the delay?

Mr. HURWITCH. The surrounding circumstances, Senator Spong, were that four Cuban fishing vessels were arrested by the U.S. Coast Guard for violating the U.S. exclusive fishing zone off of Florida. By chance and coincidence there was this hijacking. The Cubans were signaling to us that they have retaliatory powers if we kept tak-

ing their ships that violated clearly our exclusive fishing zone. Up until that time, I must say that the practice on the part of the Cubans had been quite good in the sense of turning around those planes in 3 or 4 hours with as much comfort to the passengers under those circumstances that one could expect. We have had really no problem. I might also say with regard to ships when American often times pleasure craft were shipwrecked or had some mechanical difficulty, the Cubans were quite good about allowing the U.S. Coast Guard to come to their rescue, often, sometimes, in Cuban territorial waters.

INFLUENCE ON CUBANS OF PASSAGE OF CONVENTION

Senator SPONG. Mr. Meyer, your position on the convention before us is that this might in some way influence the Cubans to enter a bilateral agreement, if we passed it.

Mr. MEYER. It is a worldwide convention as I understand it. As of this moment 62 nations have signed or more perhaps. Cuba was not a part of it initially for the simple reason they refused to sign a multilateral treaty, but I can only see plus in terms of the total world recognition of the problem.

LIMITATIONS OF CONVENTION WITH RESPECT TO CUBA

Senator SPONG. I share some of the chairman's concerns about approving it when it really doesn't do very much in terms of our immediate problem. We live in an age of great expectations where people think we have done something when it really amounts to very little. I am inclined to vote for the convention, Mr. Chairman, but I certainly hope the report will make it clear what it doesn't do.

DECLINE IN AIRCRAFT HIJACKED TO CUBA

Mr. MEYER. Could I say, Senator Spong, that on the scoreboard, in 1968 there were 13 commercial aircraft hijacked to Cuba; in 1969, 31; in 1970, 13; and through the first 7 months of this year, six.

Now it is nothing more than an atmospheric tally, I will admit, but I feel that the Hague Convention is a very valid plus in terms of world concern that Cuba can't be blind and deaf to it. We do not think of the Convention solely in terms of the Cuban hijacking in any event.

Senator SPONG. I would think some of the precautions that have been taken have something to do with that too. I hope so. Thank you, Mr. Chairman.

RESOLUTION URGING RECONSIDERATION OF CUBAN POLICY SUGGESTED

The CHAIRMAN. I am inclined to suggest to the committee to consider, at least, a resolution urging our Government to reconsider its Cuban policy. I wonder what your personal view of that is. Even though you have not consulted the Secretary of State, what would be your offhand reaction to that, Mr. Secretary?

Mr. MEYER. Well, sir, your committee I have the most respect and affection for, and I would give such resolution, if the committee passed such a resolution, the sincere thought I think it merits. I would only

go back to the conviction that I think we all share that the U.S. policy vis-a-vis Cuba is not totally unilateral. It is within a context of the inter-American family and, as I say, I recognize the leadership role of the United States clearly, but I have after nearly 21½ years been close enough to most of the governments of this hemisphere or the people representing the governments of this hemisphere to be able to talk to them honestly about a subject like this, and I don't find a Latin American surge, in the countries you mentioned, sir, to back away from the 1964 resolution.

The CHAIRMAN. Let me put it another way. Do you see any great harm or embarrassment it would cause the Government if this committee did recommend such a resolution. It would be an expression of our views that we ought to reexamine this policy and be more forthcoming in efforts to reestablish normal relations. What harm would result from that, as you see it?

Mr. MEYER. Well, it would agonize a half million Cubans living in this country.

The CHAIRMAN. There are 200 million Americans who are agonizing now over hijacking and a lot of other things. I really think our first duty is to the Americans and not to the Cubans.

Mr. MEYER. I was speaking of people who are now citizens.

The CHAIRMAN. You mean you think all the Cubans who are here do not want us to normalize relations with Cuba.

Mr. HURWITCH. Most of them.

Mr. MEYER. I obviously don't get contacted by all of them.

The CHAIRMAN. What is your impression?

Mr. MEYER. I would think almost without exception they would be adverse.

Senator CHURCH. Don't you think we have done a great deal for them by opening our gates and making them citizens of this land so our policy toward Cuba ought not to be determined any longer by concern for their—

Mr. MEYER. If indeed it is, Senator Church. I was just saying what the affect would be.

The CHAIRMAN. Let me see if he will answer my question. Can you think of any harm, other than the feelings of the Cubans, that would result from such an expression by this committee?

Mr. MEYER. No. I think it would probably be harmless.

The CHAIRMAN. Yes, Senator Church.

PRESENT FUNCTIONS OF U.S. NAVAL BASE AT GUANTANAMO

Senator CHURCH. May I ask what functions are now being performed by the U.S. naval base at Guantanamo.

Mr. MEYER. Specifically, I would have to get the full run down. I assume they are doing the same training role they have always done, and I assume that is primarily it.

We would have to check with the Defense Department.

Mr. HURWITCH. Generally that is what they are doing.

The CHAIRMAN. What are they training for?

U.S. INSISTENCE ON MAINTAINING GUANTANAMO BASE QUESTIONED

Senator CHURCH. Do you know anything they are training for that they could not train for elsewhere? What is the purpose of our insisting on maintaining a naval base in a country whose government opposes our remaining there? What great national principle is involved here that we can throw up at the world and say this is the way large nations should behave toward small ones?

Mr. MEYER. I would summarize my own impression, Senator Church, by saying Guantanamo is, has been, there since I can remember, a convenient facility, traditional facility for the U.S. Navy.

Senator CHURCH. Doesn't the present Cuban Government oppose our retention of that base?

Mr. MEYER. Periodically or officially they have not—

Mr. HURWITCH. I think it would be fair to say that the Cuban Government does not want that base to continue.

Senator CHURCH. Yet, against the will of the Cuban Government, we insist upon maintaining it on Cuban soil. Your answer to that is yes.

Mr. HURWITCH. Yes. I think the whole history of relationships taken in the context of what has happened from the taking of a billion dollars worth of U.S. property and the establishment of Soviet bases, including an attempt to establish missile bases, the whole question of Cienfuegos, and possible naval support facilities and all those, and since we have an international right to maintain it there—

Senator CHURCH. Why do we have an international right?

Mr. HURWITCH. By treaty which is in perpetuity.

Senator CHURCH. I would like to take that treaty into an American court and see if its terms could be upheld. That is if it were based upon normal principles of laws that apply to contracts. When was that treaty made?

Mr. HURWITCH. The turn of the century, as I recall.

Senator CHURCH. At a time when American forces were still in occupation of Cuba.

Mr. FELDMAN. The original lease was made around the turn of the century, but I think the original lease was confirmed by a treaty made in 1934.

Senator CHURCH. U.S. rights in Guantanamo Bay stem from a 1903 treaty with Cuba. This treaty recognizes ultimate Cuban sovereignty, but gives attributes of sovereignty within the area for an indefinite period. Such period can come to an end only by mutual agreement by the two parties.

Mr. HURWITCH. Yes, I think that is generally true.

I think, Senator Church, if one were to have a completely new relationship with the present Government or a future Government of Cuba, I then think the question of Guantanamo would not be, you know, a major problem. Given the context of present relations and our rights to be there, with deference to your legal judgment as to whether or not they are right or not, but under the treaty as it is presently provided, and given the whole history of this subject, to take that step in

isolation of the rest of our policy, would be really not consistent with the policy we are following. If we are to change the policy then a logical consequence of that would be the kind of thing you are talking about.

STATUS OF SOVIET FACILITIES AT CIENFUEGOS

Senator CHURCH. What is the present status of the Soviet facilities at Cienfuegos?

Mr. MEYER. To be honest with you, Senator Church, I don't know probably as much as all of you do.

Senator CHURCH. Thank you. We don't know anything because we haven't been informed since the last time that became an issue in the press. Aren't you being apprised by the Defense Department?

Mr. MEYER. Only of movement in and out.

Mr. HURWITCH. The matter in our bureaucracy, Senator Church, is regarded as a U.S.-Soviet matter and is being handled by our Soviet people as far as the geographic area is concerned and then by the, up the chain to the higher authorities in the Department of State and we are not aware of it in that sense.

Senator CHURCH. You said movements in and out. Have there been any recent movements of Soviet naval units, including the submarines, in and out of Cuba?

Mr. HURWITCH. In the last couple of months I believe so. There are still those two barges; they are still there, and there were in the last couple of months some destroyers or sub tenders as well as a submarine we believe that was there but not, so far as we know, of nuclear powered submarines armed with strategic weapons systems.

Those are no longer there and just the two barges remain at the present time.

Senator CHURCH. Don't you see the U-2 photographs taken of Cuba?

Mr. HURWITCH. We do get a briefing on that. But what I was referring to primarily were arrangements with the Soviet Union with regard to that, we are not privy to.

Senator CHURCH. Are you aware of any indication of any Russian buildup since the last time this issue was in the news?

Mr. HURWITCH. No, I don't believe there has been.

Mr. MEYER. There were none, sir.

Senator CHURCH. At that time, it was reported that we had reached some informal understanding with the Russians that they would not build a naval base or major naval facility in Cuba. Do you know whether or not that informal agreement has been adhered to?

Mr. HURWITCH. From the intelligence reports that you suggest we get we see no indication of further activity.

ATTRITION OF EMBARGO AND ISOLATION POLICY TOWARD CUBA

Senator CHURCH. Certainly I am unequipped, as are the rest of us here, to predict the future, but there is a sameness of pattern to this that is a bit depressing. I can see the real possibility soon that countries will break away from this official policy of embargoing Cuba and attempting to isolate her. Already the attrition has begun. The two most important countries in this hemisphere to the United

States are Canada and Mexico. Neither one of them adhere to our policy in connection with Cuba.

Now there have been further defections.

Chile has defected. Two or three other countries are giving active consideration to defection. I see no reason in the future to expect that others won't begin to review the policy as it becomes obvious that the policy is impotent, ineffectual and unrealistic. We will face a time when the question will be, can the United States, with all its influence, still maintain a majority vote in the OAS or will the United States be subjected to a humiliating defeat when the majority shifts against us. In the end, we will be facing the question of whether we should move with the majority and thus avoid the humiliation or should we adhere to the policy to the bitter end.

I would think it would be the better part of diplomacy to look down that road and to show a greater degree of flexibility than we have in the past.

LEARNING FROM EXPERIENCE IN U.N. WITH CHINA SUGGESTED

With the experience at the U.N., with China presently before us, we are faced with the necessity to change policy or be humiliated by a majority vote cast against us in the General Assembly. Suddenly the barriers are cracking and the President is making dramatic decisions and things are beginning to move again in Asia. I should think we could learn from that experience.

The CHAIRMAN. Senator Pell, do you have any questions?

Senator PELL. I have a couple of questions. Thank you, Mr. Chairman.

POSSIBILITY OF SPONTANEOUS REVOLT IN CUBA

I was, I think, the last Member of Congress to have been in Cuba in 1960 or 1961. I have always been interested in it as a result of that trip, particularly as there were very few tourists there at the time. I had the feeling then that they had the situation under control with those who disagreed with the regime either fleeing the country or pretty well incarcerated and that there was no possibility of any spontaneous revolt. I was wondering if conditions now in Cuba are different. Are the people dissatisfied or content? What do the intelligence reports indicate?

Mr. MEYER. The best answer I can give you—

Senator PELL. Those not in jail.

Mr. MEYER. Numb.

Senator PELL. Numb.

Then, in other words, a spontaneous revolt is still not in the cards.

Mr. MEYER. I would think not.

Senator PELL. Right.

CUBAN EXPORT OF REVOLUTIONARY ACTIVISTS

Is Cuba still active in exporting revolutionary saboteurs or activists to other countries in Latin America? If she is active, how many is she exporting a year?

Mr. MEYER. I don't know that the numbers can be arrived at in terms of exporting Cubans. She is training, this is fair, and Bob Hurwitch or Bob Funseth, who is Cuban coordinator and on top of this every day, can correct me or add, there is every evidence, including, if you will, Fidel's own statements, that she is still interested in training armed revolutionaries. Only recently, they republished the "Minimanual of the Urban Guerilla" and distributed it throughout the hemisphere.

The CHAIRMAN. Is there any evidence other than publications? Is there any evidence of actual movement?

Mr. MEYER. Of Cubans?

Senator PELL. In other words, how many human beings go back and forth?

Mr. MEYER. Honestly I can't tell you, Senator Pell, and I don't know if anybody can.

Mr. HURWITCH. We have good reasons to believe that the problems in [deleted] are being actively helped by Cuban nationals in place in [deleted].

Senator CHURCH. Your policy of isolation and nonrecognition is not preventing this from happening; is it?

Mr. HURWITCH. Senator Church, you had mentioned that earlier and let me address it that way, if I may. It would seem to me that the fact that one is not a hundred percent successful in one's attempts does not vitiate the validity of a policy. There is no question in my mind that there would be hundreds more of exactly what we are experiencing in, for example, [deleted] if we did not have the policy. No question in my mind about that at all.

The CHAIRMAN. You confuse me. Senator Pell was asking you a line of questions about the export from Cuba of revolutionaries. You never did say there was any evidence it is going on. You said there is evidence that people already in [deleted] who may have, in the past, come from Cuba, are raising trouble.

Senator PELL. Unfortunately the executive branch is being flanked by Senator Church and me from two different sides because I think Senator Church is maintaining that our policy is not working and they are exporting revolutionaries. My recollection is that they are not exporting.

CUBAN EXPORT OF REVOLUTIONARIES AND ARMAMENTS

The CHAIRMAN. The witness is saying he didn't have any evidence that they are. I am trying to get your question clarified. Is there any evidence, other than statements, that they are now actively exporting revolutionaries and armaments to any other Latin American country?

Mr. HURWITCH. Mr. Chairman, thank you for the opportunity to clarify what I said. When I said that there were Cubans actively helping the terrorism that is going on in [deleted], I am referring to Cuban nationals who had been infiltrated into [deleted] by the Cuban Government.

Senator PELL. Would you give us some idea of numbers—dozens or hundreds? I realize one does not know accurately.

Mr. HURWITCH. I can't give it to you that precisely, Senator Pell. But in following through our intelligence sources the amount that is

going on and in partial response to Senator Church's question, there is no question that this is diminishing in both directions. That is the infiltration of Cuban nationals into other countries, and the number of people who are coming to Cuba to be trained. Now part of this is explained, I believe, by a new Cuban policy in exporting subversion, if you like, or revolution, whatever the proper phrase might be, and that is the Cubans in the early days used the scatter gun technique.

Any Latin American "revolutionary," in quotes, who came to Cuba and said, "Give me some money, some arms, and some training, I will overthrow country X," was very sympathetically received. It was after a number of years of such experience plus Soviet advice that the Cubans found that this was really not a very productive policy, and besides their own resources in doing that were becoming increasingly limited in part due to our policy.

They don't take at face value every story that a so-called revolutionary gives to them, but they are abetting them through their own intelligence sources and picking groups who hold greater promise for delivering on what they predict they can do. So there is a much more selective process of training that is going on and the countries they are picking to infiltrate with their own people are much more selective. But in general, it is being—that is part of the reason, in general it has diminished because, as I have contended, I believe, that our policy of isolation has weakened the economic resources available to the Cubans to support this kind of activity.

They are forced by such maneuvers as 10 million tons of sugar goals to disrupt their entire society in such a way that they really don't have much time to focus on these matters.

So there is a diminishment.

COUNTRIES TO WHICH CUBA IS EXPORTING REVOLUTION

Senator PELL. I still feel a little unhappy because I don't have more of a feeling for the specifics. To what other countries are they exporting revolution besides [deleted]?

Mr. HURWITCH. For example, Senator Pell, in the kidnaping of American Ambassador to Brazil, and the kidnaping of the Swiss Ambassador in Brazil, the group that led, that accomplished that kidnaping, and other similar acts, were Cuban trained.

In Guatemala, the kidnaping groups also were involved in that.

TRAINING AS CRITERION FOR RESPONSIBILITY QUESTIONED

Senator PELL. I think you are letting your thoughts run away a little bit. If we said that every military junta in the world that was American trained was ipso facto an American imposition of these juntas around the world, I would hope that would be incorrect. It would be natural, I would think, for revolutionaries in Latin America to go to Cuba. Are they being trained by Cuba for these operations? We didn't train the junta in Greece to take over and yet they took over. I hope it was not an American operation, as some think it was. When you are saying these operations were done by people trained in Cuba and, therefore, Cuba is responsible, by the same token if Cuba is responsible we are responsible for our people.

Mr. HURWITCH. I understand your point, Senator Pell, and what I should do is to say they were trained for such purposes. The handbook published by Cuba which these people use, as a matter of fact a major article in the handbook, was written by a Brazilian who was at that time the leader of the group engaged in kidnapping. Part of the Cuban change in policy was not only a higher degree of selectivity but also a shift from rural guerrilla warfare to urban terrorism including kidnapping.

The people who came from Cuba were trained in those arts and those men engaged in the kidnapping of the U.S. ambassador and other people in Brazil, for example, were members of terrorist organizations closely associated with Cuba.

Mr. MEYER. Senator Pell, we don't have numbers. I would go back, if I might to say, apart from publishing a handbook, which they still publish, we do, in part depend for evaluation on Castro's statements and here again in his speech April 19 he said :

Cuban fighters have shed their blood helping peoples of other continents, helping African people. They shed their blood helping Latin American peoples. This is part of the best tradition our fatherland and our revolution. Therefore we may be depended upon. This is part of our history, part of our traditions. American revolutionary peoples can depend upon us. Latin American revolutionary governments can depend upon us. We say this publicly and clearly, they can depend upon the Giron fighters. We are citizens of this continent, revolutionaries of this continent.

EXTENT OF CUBAN EXPORTING OF REVOLUTIONARIES

Senator PELL. What is your own assessment of the extent to which they are exporting revolutionaries at this time?

Mr. MEYER. Just my own impression, Senator Pell, there is probably still a hard core of armed revolutionary Che Guevarists who might total more than 2,000 who have been in Cuba for one purpose or another.

Senator PELL. That would probably not be too different from many of the activities in which we have engaged at different times, the attempted assassination of Sihanouk, the overthrow of Mosahegh and the overthrow of Arbenz in Guatemala.

Senator CHURCH. There might be about 2,000 dedicated Che Guevarist revolutionaries extant in Latin America, but I just don't really think our policy has had that much effect upon their revolutionary zeal, except perhaps to enhance it.

COSTS OF SOVIET UNION IN CUBA

Senator PELL. What are the costs to the Soviet Union each year to maintain its presence in Cuba?

Mr. MEYER. Over a million dollars a day.

Senator PELL. A million dollars a day would be a third of a billion per year.

Mr. MEYER. \$365 million.

VALUE OF GUANTANAMO TO UNITED STATES

Senator PELL. With regard to Guantanamo, except for training purposes, what national interest of ours does it serve? I realize there is no movement at this time, but when the time comes for movement, I would be of the view this would be a very cheap chip for us to give up and a very valuable chip for them. What value is it to us besides training?

Mr. MEYER. I couldn't tell you sir, and I say that in total honesty, in this case. I am not ducking the issue. I think that is a Navy question and I would like to offer this thought that Guantanamo has traditionally been an important part of the Navy for training certainly, perhaps logistically, and perhaps total defense planning in the Caribbean. I would suspect that it is not of value to Cuba in terms of economic anything were it not to be the Guantanamo Naval Base.

PRESENT POSSIBILITY OF DIPLOMATIC BREAKTHROUGH

Senator PELL. Is there some possibility of any kind of a diplomatic breakthrough at this time? Are there any signs of movement of relations between nations indicating perhaps that there will be an exchange of missions and normalization of relations with Cuba?

Mr. MEYER. Well, this, sir, is in part the real crux of sustaining the present policy. If one wants to relate this to universality vis-a-vis the Cuban we have not had any indication from the Government of Cuba that they, as a Government, that the Cuban Government were interested in any rapprochement with the United States of America.

On the contrary. And the chairman asked if, by action of the Senate, there were to be a concept of movement toward this unilaterally by the United States, what might be the effect. I said, and I would repeat, that there could always be the stiff arm from Cuba because there is no indication currently from Cuba of anything but a totally negative attitude.

Senator PELL. On the other hand, if the Soviet Union did not support Cuba to the extent that it does, they might be more enthusiastic.

Mr. MEYER. It is very hard to say, sir.

Senator PELL. Yes, all right.

Senator CHURCH. I have a memorandum here dated April 24, 1971. This is a staff memorandum by this committee's staff with an excellent summary of the Guantanamo situation. You might like to look at that.

Senator PELL. Thank you very much.

FUTURE LEADERSHIP OF LATIN AMERICA

On a more general subject, I have great respect for Mr. Meyer's knowledge of Latin America. Looking ahead, where do you see the leadership in that continent? Do you see it coming from Brazil, Argentina or any other country? As you look ahead 20 years from now, in your own personal view, where do you see the leadership?

Mr. MEYER. From the nations of Latin America, Senator Pell, which are clear to you and Senator Church as being large and viable politically and economically, and I am going to quote an Argentine ambassador, obviously "Mexico, Argentina, Brazil, Venezuela, Colombia."

Senator PELL. Do you see any potential for greatness?

Mr. MEYER. Yes. [Deleted.]

Senator PELL. Thank you very much.

Thank you.

U.S. MISCONCEPTION OF DYNAMICS OF REVOLUTION SUGGESTED

Senator CHURCH. I have no further questions, gentlemen, but I do have a strong feeling that during the past decade when our foreign policy has been perhaps the weakest link in the Government, our basic misconception has been the dynamics of revolution. The very notion that revolution can be exported, or that 2,000 people trained in Cuba can constitute a serious threat to the political stability of all of the hemisphere, let alone one country, in itself demonstrates the extent of this misconception.

I just don't know of revolutions that have occurred where the internal conditions were not so bad that in the end they were successful by virtue of the internal support that developed for them. Lacking that, I don't think revolution can be exported from abroad. To be sure it is given aid and abetment from abroad, all revolutions including our own received much aid and abetment from foreign sources, but it is successful only where internal conditions make revolution ripe, and in those cases it is going to come with or without external assistance in one form or another. A policy that is directed toward trying to isolate nations that export revolutions seems to me to miss entirely the dynamics of the whole process. This is a dead end policy. It is just as surely a dead end policy as other similar policies have turned out to be toward other Communist countries.

And the argument you have made for it today seems to be extraordinarily unconvincing.

The tenet that lies behind it, domestic politics, may account for it. Yet that is not a convincing reason; nor is what you said today convincing reasons of why this should continue to be American policy in terms of how it actually serves our national interests in the hemisphere or in the world.

So I would hope that you will keep it under review. I know in this committee we are going to take it up and reconsider the policy and see if there are not some changes that we might propose in the laws dealing with the policy that might be forthcoming as a result of this review.

Is there anything else, Mr. Secretary, you would like to say before closing?

CUBAN TRAINED REVOLUTIONARIES IN OTHER COUNTRIES

Mr. MEYER. Senator Church, just one further clarification, having used the figure of 2,000 out of my head in terms of the number of Cubans, of Cuban trained or Cuban national revolutionaries that may be somewhere, I think that it should be said that that number of

2,000 is in line with your thought, not essential in our concept of the hemisphere but it worries the hemisphere. In another sense——

Senator CHURCH. Doesn't it worry the governments that need most to be worried?

I can understand some governments that are teetering right now on the brink of collapse would be worried about the input of one revolutionary coming from a Cuban school, but it seems to me that these are governments that preside over internal conditions so bad that revolution is likely to be the solution.

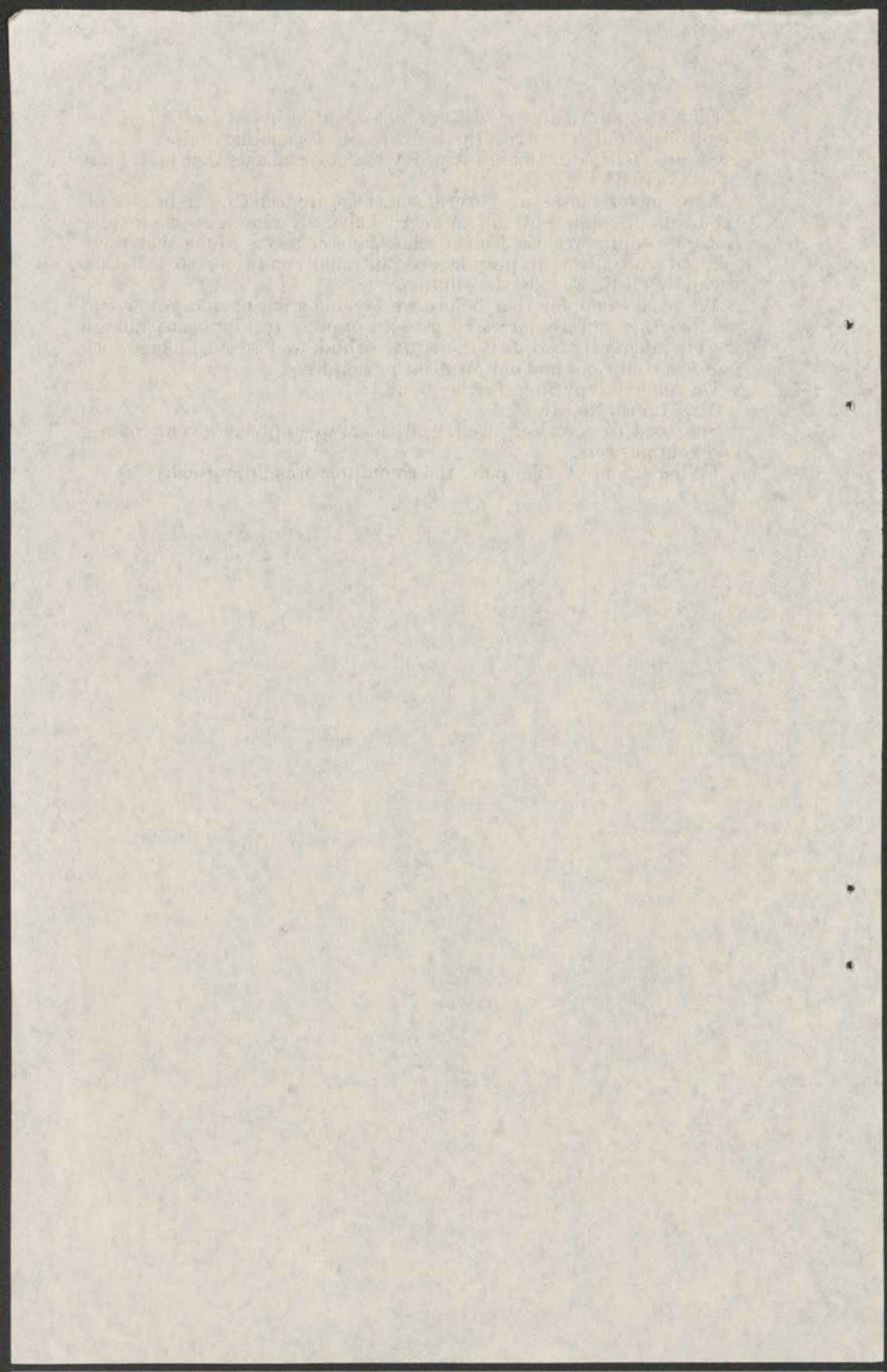
We once stood for that before we became a status quo power and insisted that our resources be used to oppress revolution as though it were inherently bad. It is there that I think we lose our linkage with our own traditions and our own best principles.

Do you have anything further to add?

Mr. MEYER. No, sir.

Senator CHURCH. Very well, gentlemen, we appreciate your coming and your answers.

(Whereupon, at 4:50 p.m., the committee was adjourned.)



APPENDIX

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT

PREAMBLE

The States parties to this convention

Considering that unlawful acts of seizure or exercise of control of aircraft in flight jeopardize the safety of persons and property, seriously affect the operation of air services, and undermine the confidence of the peoples of the world in the safety of civil aviation;

Considering that the occurrence of such acts is a matter of grave concern;

Considering that, for the purpose of deterring such acts, there is an urgent need to provide appropriate measures for punishment of offenders;

Have agreed as follows:

Article 1

Any person who on board an aircraft in flight:

(a) unlawfully, by force or threat thereof, or by any other form of intimidation, seizes, or exercises control of, that aircraft, or attempts to perform any such act, or

(b) is an accomplice of a person who performs or attempts to perform any such act commits an offence (hereinafter referred to as "the offence").

Article 2

Each Contracting State undertakes to make the offence punishable by severe penalties.

Article 3

1. For the purposes of this Convention, an aircraft is considered to be in flight at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation. In the case of a forced landing, the flight shall be deemed to continue until the competent authorities take over the responsibility for the aircraft and for persons and property on board.

2. This Convention shall not apply to aircraft used in military, customs or police services.

3. This Convention shall apply only if the place of take-off or the place of actual landing of the aircraft on board which the offence is committed is situated outside the territory of the State of registration of that aircraft; it shall be immaterial whether the aircraft is engaged in an international or domestic flight.

4. In the cases mentioned in Article 5, this Convention shall not apply if the place of take-off and the place of actual landing of the aircraft on board which the offence is committed are situated within the territory of the same State where that State is one of those referred to in that Article.

5. Notwithstanding paragraphs 3 and 4 of this Article, Articles 6, 7, 8 and 10 shall apply whatever the place of take-off or the place of actual landing of the aircraft, if the offender or the alleged offender is found in the territory of a State other than the State of registration of that aircraft.

Article 4

1. Each Contracting State shall take such measures as may be necessary to establish its jurisdiction over the offence and any other act of violence against passengers or crew committed by the alleged offender in connection with the offence, in the following cases:

(a) when the offence is committed on board an aircraft registered in that State;

(b) when the aircraft on board which the offence is committed lands in its territory with the alleged offender still on board;

(c) when the offence is committed on board an aircraft leased without crew to a lessee who has his principal place of business or, if the lessee has no such place of business, his permanent residence, in that State.

2. Each Contracting State shall likewise take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him pursuant to Article 8 to any of the States mentioned in paragraph 1 of this Article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 5

The Contracting States which establish joint air transport operating organizations or international operating agencies, which operate aircraft which are subject to joint or international registration shall, by appropriate means, designate for each aircraft the State among them which shall exercise the jurisdiction and have the attributes of the State of registration for the purpose of this Convention and shall give notice thereof to the International Civil Aviation Organization which shall communicate the notice to all States Parties to this Convention.

Article 6

1. Upon being satisfied that the circumstances so warrant, any Contracting State in the territory of which the offender or the alleged offender is present, shall take him into custody or take other measures to ensure his presence. The custody and other measures shall be as provided in the law of that State but may only be continued for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary enquiry into the facts.

3. Any person in custody pursuant to paragraph 1 of this Article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national.

4. When a State, pursuant to this Article, has taken a person into custody, it shall immediately notify the State of registration of the aircraft, the State mentioned in Article 4, paragraph 1(c), the State of nationality of the detained person and, if it considers it advisable, any other interested States of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary enquiry contemplated in paragraph 2 of this Article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution.

Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.

Article 8

1. The offence shall be deemed to be included as an extraditable offence in any extradition treaty existing between Contracting States. Contracting States undertake to include the offence as an extraditable offence in every extradition treaty to be concluded between them.

2. If a Contracting State which makes extradition conditional on the existence of a treaty receives a request for extradition from another Contracting State with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of the offence. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. Contracting States which do not make extradition conditional on the existence of a treaty shall recognize the offence as an extraditable offence be-

tween themselves subject to the conditions provided by the law of the requested State.

4. The offence shall be treated, for the purpose of extradition between Contracting States, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 4, paragraph 1.

Article 9

1. When any of the acts mentioned in Article 1(a) has occurred or is about to occur, Contracting States shall take all appropriate measures to restore control of the aircraft to its lawful commander or to preserve his control of the aircraft.

2. In the cases contemplated by the preceding paragraph, any Contracting State in which the aircraft or its passengers or crew are present shall facilitate the continuation of the journey of the passengers and crew as soon as practicable, and shall without delay return the aircraft and its cargo to the persons lawfully entitled to possession.

Article 10

1. Contracting States shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offence and other acts mentioned in Article 4. The law of the State requested shall apply in all cases.

2. If a Contracting State which makes extradition conditional on the existence under any other treaty, bilateral or multilateral, which governs or will govern in whole or in part, mutual assistance in criminal matters.

Article 11

Each Contracting State shall in accordance with its national law report to the Council of the International Civil Aviation Organization as promptly as possible any relevant information in its possession concerning:

- (a) the circumstances of the offence;
- (b) the action taken pursuant to Article 9;
- (c) the measures taken in relation to the offender or the alleged offender, and, in particular, the results of any extradition proceedings or other legal proceedings.

Article 12

1. Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other Contracting States shall not be bound by the preceding paragraph with respect to any Contracting State having made such a reservation.

3. Any Contracting State having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary Governments.

Article 13

1. This Convention shall be open for signature at The Hague on 16 December 1970, by States participating in the International Conference on Air Law held at The Hague from 1 to 16 December 1970 (hereinafter referred to as The Hague Conference). After 31 December 1970, the Convention shall be open to all States for signature in Moscow, London and Washington. Any State which does not sign this Convention before its entry into force in accordance with paragraph 3 of this Article may accede to it at any time.

2. This Convention shall be subject to ratification by the signatory States. Instruments of ratification and instruments of accession shall be deposited with the Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, which are hereby designated the Depositary Governments.

3. This Convention shall enter into force thirty days following the date of the deposit of instruments of ratification by ten States signatory to this Convention which participated in The Hague Conference.

4. For other States, this Convention shall enter into force on the date of entry into force of this Convention in accordance with paragraph 3 of this Article, or thirty days following the date of deposit of their instruments of ratification or accession, whichever is later.

5. The Depositary Governments shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of entry into force of this Convention, and other notices.

6. As soon as this Convention comes into force, it shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article 14

1. Any Contracting State may denounce this Convention by written notification to the Depositary Governments.

2. Denunciation shall take effect six months following the date on which notification is received by the Depositary Governments.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

Done at The Hague, this sixteenth day of December, one thousand nine hundred and seventy, in three originals, each being drawn up in four authentic texts in the English, French, Russian and Spanish languages.

The CHAIRMAN. The committee is adjourned.

(Whereupon, at 12:30 p.m., the committee was adjourned.)

(A letter clarifying the Department of Transportation's answers to certain committee questions, together with additional information, follows:)

THE UNDER SECRETARY OF TRANSPORTATION,
Washington, D.C., July 16, 1971.

HON. J. WILLIAM FULBRIGHT,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the request of the Chairman of the Committee addressed to Mr. Robert P. Boyle, Deputy Assistant Administrator for International Aviation Affairs, Federal Aviation Administration, there follows a statistical summary of the status of hijacked aircraft as of 13 June 1971:

HIJACKINGS—UNITED STATES AND FOREIGN AIRCRAFT (1961 TO JUNE 13, 1971)

	Unsuccessful attempts	Successful attempts	Total
U.S. aircraft.....	29	85	114
Foreign aircraft.....	47	135	182
Total.....	76	220	296

Of the foregoing hijackings of all aircraft, both U. S. and foreign, there follows a detailed breakdown of those statistics as applied to U. S. registered aircraft only :

HIJACKING STATISTICS—U.S. REGISTERED AIRCRAFT (1961 TO PRESENT) AS OF JUNE 13, 1971

	Air carrier			General aviation			Total		
	S	U	Total	S	U	Total	S	U	Total
1961.....	3	2	5	0	0	0	3	2	5
1962.....	0	0	0	1	0	1	1	0	1
1963.....	0	0	0	0	0	0	0	0	0
1964.....	0	0	0	1	0	1	1	0	1
1965.....	1	3	4	0	0	0	1	3	4
1966.....	0	0	0	0	0	0	0	0	0
1967.....	0	0	0	1	0	1	1	0	1
1968.....	13	4	17	5	0	5	18	4	22
1969.....	33	7	40	0	0	0	33	7	40
1970.....	18	8	26	1	0	1	19	8	27
1971.....	7	5	12	1	0	1	8	5	13
Total.....	75	29	104	10	0	10	85	29	114

Key to legend: S—Successful, U—Unsuccessful.

In connection with the number of aircraft hijacked to Cuba as opposed to other locations, there follows a table which shows the numbers of U.S. aircraft hijacked to Cuba and foreign aircraft also hijacked to Cuba :

Hijackings to Cuba (1961 to 13 June 1971)

U.S. aircraft.....	75
Foreign aircraft.....	59
Total	134

Note: There have been ten successful hijackings of U.S. registered aircraft which have terminated at locations other than Cuba.

The locations are :

Honolulu, Hawaii.....	1965
Damascus, Syria.....	1969
Rome, Italy.....	1969
Beirut, Lebanon.....	1970
Washington, D.C.....	1970
Cairo, Egypt (2).....	1970 & 1970
Zerka, Jordan.....	1970
Vancouver, B.C.....	1971
Nassau, Bahama.....	1971

The foregoing were hijackings of Air Carrier aircraft.

Information on the fate of known hijackers or persons involved in hijacking either as accomplices or otherwise, is necessarily incomplete. However, there follows a summary of the information known to us at this time on that subject :

DISPOSITION OF HIJACKERS (1961 TO JUNE 1971)

One hundred forty-seven persons were involved in 114 U.S. aircraft hijackings since 1961. Of this total:

92 are still fugitives (including several passive companions indicated along with active hijackers and one believed to have committed suicide).

28 have been convicted, 25 by U.S. authorities, 3 by Foreign authorities (one in Mexico, one in Lebanon, and one in Italy).

3 were acquitted.

10 dismissals; 8 mental, 2 other.

14 cases pending; 4 mental examinations pending, 10 other (includes one in Egyptian custody—status unknown).

Of the forgoing hijackers, fifteen were hijackers who forced aircraft to go to Cuba but who subsequently returned to the U.S. and have been tried for various offenses.

In addition to complying with the Committee's request to supply more accurate information with respect to the status of hijackers, our review of the record indicates that it may be desirable to clear up a misunderstanding that we unfortunately left in the minds of some witnesses and possibly some members of the Committee.

We note that both the representative of the Air Transport Association and the Air Line Pilots Association expressed considerable concern that the legislation to implement the Convention which we described to the Committee might make it possible for hijackers to escape with little or no penalty. We certainly did not intend to leave that impression and we do not believe the legislation now before the Congress has that effect.

The legislation which we have submitted to Congress does not change the penalties of our existing domestic law in the case of a hijacking committed within the "special aircraft jurisdiction of the United States", where the laws of the U.S. are directly violated at the time the crime is committed. It does, however, create a new offense for the crime of "international" hijacking, i.e., the situation in which the hijacking does not involve a direct violation of U.S. law at the time of the commission of the crime but later the hijacker is found in the U.S. Creating this new offense fulfills the obligation of the United States under the Convention to establish its jurisdiction over a hijacking without regard to where the offense is committed, when the hijacker subsequently is found within the jurisdiction of the U.S. Thus, a hijacking committed entirely outside of the United States, on an aircraft not of U.S. registry, with the aircraft landing in a country other than the United States, would be a violation of our criminal law if the hijacker is later found in the United States. It is this very unusual and we believe extremely infrequent case for which the proposed legislation does not provide a minimum penalty, and thus, is slightly different than the penalty provided by existing domestic law for hijacking which are direct violations of U.S. law.

In this exceptional case where the universal jurisdiction provision of the Convention requires us to apply our law, we have provided in the legislation for a penalty of either death or imprisonment for any term of years or for life. As we stated, this provision will permit the courts to determine an appropriate sentence for a hijacking which occurs entirely outside the special aircraft jurisdiction of the United States, does not involve any violation of U.S. law at the time of the commission of the crime, and which may involve unusual circumstances. Note that it provides for exactly the same maximum penalty as is found in our domestic law; only the minimum penalty is different. (49 U.S.C. 1472(1)). It should also be noted that the existing domestic law on air piracy provides for lesser and included offenses such as interference with flight crew members (49 U.S.C. 1472(j)), which is punishable by imprisonment "for any term of years"; the same minimum penalty we recommend for the "international" offense. Consequently, the penalty structure for a "domestic" hijacker is in practice no different from that which would be applied by the proposed legislation to the "international" hijacker, since in some domestic cases the hijacker may be prosecuted for a lesser included offense rather than air piracy because of lack of evidence, extenuating circumstances, or other reasons.

In connection with this, it should be pointed out that the penalty we propose for the case of the hijacker subject only to universal jurisdiction is the same as that provided for the analogous case of kidnapping, i.e., death, or imprisonment for any term of years or for life. (18 U.S.C. 1201). In fact, a "domestic" hijacker is usually charged with the offense of kidnapping along with that of air piracy to provide for the contingency that proof might fail as to the crime of air piracy but not as to the crime of kidnapping.

In any event, any possible broadening of the discretion which our proposed legislation vests in the courts for the case of the hijacker subject only to universal jurisdiction, permitting them to take account of all the circumstances that are likely to surround this unusual and infrequent case, should not be regarded as vitiating the good done by the Convention. We have no reason to believe that the courts of this country would abuse their discretion by treating "international" hijackers with less severity than their offense deserves. Certainly since the U.S. would, by this treaty, be compelled to submit to prosecution any such offender if he were not extradited, some degree of judicial discretion in this regard appears desirable.

Sincerely,

JAMES M. BEGGS.

