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December 18, 2008

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21

DEPARTMENT OF STATE
ACTION MEMORANDUM

S/S

1

Copies to:

[Redacted]

December 29, 1973

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- EUR
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To: The Secretary

From: S/CCT - Lewis Hoffacker *UH*
L - Carlyle E. Maw *CEM*

12/29/73

Terrorism: Soviet Proposal for Bilateral

The Problem: At your dinner for Soviet Foreign Minister Gromyko in Geneva on December 20, he indicated that the Soviets would favor making bilateral agreements to combat terrorism. You agreed to study the problem and be in touch with Ambassador Dobrynin. (Tab A.)

Analysis/Background: The U.S. has sought to encourage a strong response to terrorism through international lawmaking, technical cooperation and political initiatives.

-- In the multilateral lawmaking field, the U.S. has sought since 1970 to achieve an agreement permitting pressures to be focused upon states harboring aircraft hijackers and saboteurs. The decisive rejection of this concept by the International Conference on Air Law in Rome this Fall and the failure of that conference or its companion body, the ICAO Assembly, to adopt any of the numerous proposals before them would appear to make any further legal initiative in the civil aviation field an unrewarding exercise at this time. Despite the failure in ICAO, the U.S. was successful in negotiating a protection of diplomats convention at the UN. (A broader effort in the UNGA in 1972 for a convention against exporting terrorism has been sidelined indefinitely.) In a bilateral context the U.S. has commenced a program of negotiating revisions in existing extradition agreements with states possessing compatible legal and political

3

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NODIS REVIEW

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Reviewed by: *[Signature]*

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Authority	NMD 969000
BC	NARA Date 12/6/04

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A/ISS/IPS, Department of State
E.O. 12958, as amended
December 18, 2008

2

systems to include the offense of hijacking, to expand jurisdiction to encompass extradition of persons for acts outside the United States, and in most cases, to prevent application of a political exclusion provision to hijackers. (The U.S. has no bilateral extradition relationship with the U.S.S.R.)

-- On a technical level we have approached governments bilaterally to suggest improvements which might be made in their screening processes for airline passengers, as well as in other aspects of airport and airline security. We have instructed all our Embassies to use the recent Rome airport incident to urge tighter security to counter terrorism against aviation. Multilaterally, in the ICAO Council, we have promoted the adoption of a technical security annex to the Chicago Convention which would require states to have their airports and carriers adopt security programs to be approved by the state. Deviations from the annex would have to be notified to the ICAO. The annex failed by one vote in mid-December to receive the statutory majority and has now been referred back to the Committee on Unlawful Interference.

-- On a political plane the U.S. has many times publicly and privately urged states to ratify the Tokyo, Hague and Montreal Conventions, to take strong measures against terrorists and to reject extortion threats. With some states we selectively exchange pertinent intelligence information on terrorist activities. With the Soviets, we have urged closer control over sophisticated Soviet missile systems (SA-7) which have found their way into Arab terrorists' hands. (Tab B.)

Our relations with the Soviets on terrorism matters have had mixed results.

-- In the lawmaking field, the Soviets could not accept the concept of an enforcement convention at the Rome ICAO conference, offering instead a mandatory extradition proposal. They were most helpful, however, in the negotiations on the protection of diplomats convention though they would have preferred a broader definition of the offenses against diplomats covered by

DECLASSIFIED	
Authority	NMD 969000
BC	NARA Date 12/16/04

DECLASSIFIED
A/ISS/IPS, Department of State
E.O. 12958, as amended
December 18, 2008

3

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the special mechanism of the convention to encompass offenses against dignity and prestige. (They were less helpful concerning our proposal in the UNGA in 1972 on the export of terrorism.) In the bilateral context, the Soviets have negotiated several agreements with some of their neighbors requiring extradition of hijackers but permitting local prosecution of nationals of the requested state and, in rare instances, third country nationals. Though the Soviets have, on several earlier occasions, suggested a bilateral hijacking agreement, we have turned them down for various reasons.

-- On the technical side, the Soviets have supported our efforts in ICAO towards a security annex to the Chicago Convention but we doubt that they have urged other states bilaterally to improve airport and carrier security systems.

-- Politically, the Soviets have not been very helpful. Though they have sometimes issued appropriate statements following tragedies, they have shown no willingness to urge actions against terrorists in bilateral contacts with other states. They have been reluctant in international fora to oppose the Afro-Arab bloc when it seeks to justify terrorism in the name of national liberation. The Soviets are believed to have knowingly permitted SA-7's to be transferred to fedayeen, and have never given us convincing assurances that these weapons will be kept out of irresponsible hands. These missiles have now spread to Western Europe and pose a grave threat to international civil aviation. We have never explored with the Soviets the possibility of forewarning each other of impending terrorist attacks when such action would not expose an intelligence source.

The Options

1. Enlist Soviet support for a new multilateral lawmaking initiative.

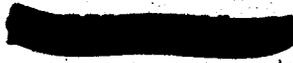
Pro: -- would be viewed with less suspicion by our allies and others concerned about increasing U.S.-Soviet bilateralism;

-- successful negotiation of protection of diplomats convention provides some hope that progress

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Authority NMD 96900
BC [initials] NARA Date 12/6/04

DECLASSIFIED
A/ISS/IPS, Department of State
E.O. 12958, as amended
December 18, 2008



could be made of another special purpose convention, e.g. on the taking of hostages (a Belgian suggestion).

Con: -- would first need Soviet commitment publicly to resist efforts to incorporate exceptions into proposal covering terrorist acts by "national liberation groups";

-- total failure of Rome ICAO meetings makes multilateral initiative in aviation field pointless at this time;

-- open point US-Soviet initiative could provoke negative reactions that might not be generated by proposal emanating from different quarters;

-- Soviet conduct at Rome meeting indicates they were generally disinterested in further aviation law initiatives in any event;

-- time-consuming and exhausting, albeit successful, negotiations of a way to treat "national liberation" issue with regard to the protection of diplomats convention indicate that similar difficulties might be more pronounced, perhaps preventing success on a new special purpose convention.

2. Offer to negotiate bilateral agreement with Soviets requiring extradition of hijackers and other terrorists.

Pro: -- Would signal clear U.S.-Soviet resolve to ensure severe punishment for terrorists;

-- might eliminate possibility dissidents in U.S.S.R. might seek to hijack Soviet aircraft to U.S.;

-- might please American Airline Pilots Association, airline industry and certain members of Congressional transportation committees who have spoken out in favor of mandatory extradition as only effective remedy to hijacking.

Con: -- would expose our allies near the U.S.S.R. to pressure for an extradition treaty which they have thus far resisted;

-- would have little practical utility for the U.S. since it would be most unlikely that a terrorist sought by the U.S. would go to the U.S.S.R.;

DECLASSIFIED	
Authority	NMD 969000
BC	NARA Date 12/6/84

DECLASSIFIED
A/ISS/IPS, Department of State
E.O. 12958, as amended
December 18, 2008

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5

-- would not strike at the real problem since terrorists are not generally found in either the U.S. or U.S.S.R.;

-- would provide opening for Soviets to request preferential protection of their missions and personnel in the US from harassment by the Jewish Defense League (JDL), anti-communists, and others. (We could not be responsive to such a request for obvious constitutional and political reasons.)

-- would cause grave concern among certain members of Congress and ethnic organizations who would prefer that a person fleeing the U.S.S.R. by hijacking an aircraft be prosecuted in the U.S. rather than returned to the U.S.S.R.;

-- might generate claim that U.S. was circumventing its obligations under Protocol Relating to Status of Refugees;

-- would have to be submitted to Senate for its advice and consent; approval would be problematical;

-- would be interpreted by Soviet dissidents that the US, which they regard as an ally in their struggle for civil rights in the U.S.S.R., no longer supports their cause and that they would face repatriation regardless of the means they employed in leaving the U.S.S.R. (Soviet authorities could seek their return by alleging that escapees were charged with crimes covered by provisions of an extradition treaty.)

-- might generate pressures from Cuba for analogous extradition relationship which we could not accept;

-- we are satisfied with the option provided under the Hague and Montreal Conventions, to which the US and USSR are parties, permitting local prosecution or extradition of offenders.

3. Enlist active Soviet support for resubmitting security annex to Chicago Convention at ICAO Council's next session (January 21, 1974).

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DECLASSIFIED	
Authority	NMD 96900
BC	NARA Date 12/6/84

DECLASSIFIED
A/ISS/IPS, Department of State
E.O. 12958, as amended
December 18, 2008

6

Pro: -- Soviets supported annex in last Council session and could easily do so again;

-- Soviet support could bring about heightened interest in annex in Council ensuring its adoption;

-- annex would be useful means for requiring all ICAO members to focus on security problem and implement meaningful security program;

-- adoption of annex would arrest declining interest in ICAO in security matters in wake of total failure of Rome Conference and Assembly.

Con: -- a second failure is a possibility.

4. Offer to negotiate a joint declaration with the Soviets presenting our positions and urging states to ratify pertinent conventions (illustrative drafts attached at Tab C).

Pro: -- would publicly underline U.S.-Soviet resolve against certain terrorist acts (scope to be determined in declaration);

-- might contribute to development of customary international law, such as norm requiring extradition or prosecution of aircraft hijackers;

-- would not require advice and consent of Senate or implementing legislation;

-- might encourage some states to ratify Hague, Montreal and Protection of Diplomats Conventions;

-- might affirm principle that there is no justification for terrorism;

-- might assist future efforts in multi-lateral fora to achieve agreement on other legal measures.

Con: -- prior Soviet positions on terrorism indicate their objectives in negotiating a declaration would probably be incompatible with our own, e.g., emphasis on extradition and protection of the dignity of diplomats and the USSR from low-level harassment offenses.

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NMD 969000

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NARA Date

12/6/08

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A/ISS/IPS, Department of State
E.O. 12958, as amended
December 18, 2008

7

-- negotiation of declaration might crystalize conflicting viewpoints making future cooperation on such matters more difficult;

-- a declaration would be of insufficient value to justify any compromise in our position on terrorism;

-- questionable whether states which have not ratified pertinent convention would be influenced by U.S.-Soviet declaration.

5. Request Soviets to make private demarches to third states urging them to restrain or punish known terrorists and to ratify pertinent conventions.

Pro: -- would be most effective steps Soviets could take in combatting terrorism;

-- would bolster will of states presently holding terrorists or fearful of acting decisively against them;

-- might produce some additional ratifications of the Hague, Montreal, and Protection of Diplomats Conventions;

-- would be consistent with prior U.S. requests to U.S.S.R.

Con: -- some states might regard Soviet involvement as another sign of big-power interference in internal affairs and react adversely;

-- Soviets might expect reciprocal demarches on other issues by U.S. to Israelis and others where US enjoys some influence.

6. Again seek Soviet assurances that they will not permit SA-7's to fall into irresponsible hands and would attempt to recover systems now known to be in terrorists' hands.

Pro: -- would reflect our continuing interest in problem and our lack of satisfaction with Soviet responses to date;

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Authority *NMD 969000*
BC *CE* NARA Date *12/6/04*

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A/ISS/IPS, Department of State
E.O. 12958, as amended
December 18, 2008

8


-- might result in effective Soviet action to recover or neutralize SA-7's now believed to pose grave threat to aviation in Western Europe;

-- might result in improvement of future Soviet controls on sophisticated weapons.

Con: -- none.

7. Explore Soviet willingness to inform us of impending terrorist attacks in return for reciprocal actions.

Pro: -- could provide extremely important intelligence information leading to saving of lives;

-- successful transfer of information in one case could produce substantial positive repercussions for other bilateral matters;

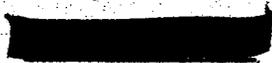
-- might seriously disrupt terrorist planning and consideration;

-- would not require complex negotiations.

Con: -- unless executed with sophistication, sources of information might be compromised.

Bureau Views: EUR feels sufficiently strongly on several points in the foregoing to wish to submit a separate statement in this study. (Tab D) Points which EUR underlines are: In the absence of any practical multilateral initiatives that can be taken at this time to deal with the problem of hijacking, we should reaffirm our opposition to a bilateral agreement with the USSR but indicate our desire to remain in close touch with the Soviets on possibilities for progress in the multilateral sphere whenever this becomes feasible ... EUR has serious reservations concerning the desirability of seeking a joint declaration on hijacking with the Soviet Union.





Recommendations:

Although the Gromyko initiative of December 20 may not differ from earlier Soviet suggestions for a bilateral agreement on hijacking, it provides an opportunity to explore Soviet intentions. Our preferences remain for Soviet collaboration in the multilateral context, supplemental bilateral cooperation (short of a treaty or agreement) where multilateral efforts are not feasible, and confidential Soviet help in such specific areas as control of SA-7 distribution, selective exchange of intelligence, and exertion of influence upon third parties as appropriate.

It is recommended, therefore:

That you propose private demarches to third states on terrorist issues and incidents. (option 5)

DEC 31 1973

Yes HAK No

That you seek Soviet assurances regarding SA-7's in order to keep them out of terrorists' hands. (option 6)

DEC 31 1973

Yes HAK No

That you explore Soviet willingness to exchange selective intelligence on impending terrorist attacks. (option 7)

DEC 31 1973

Yes HAK No

That you enlist Soviet support for resubmitting the security annex to the next ICAO Council's session. (option 3)

DEC 31 1973

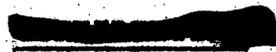
Yes HAK No

That if the Soviets are forthcoming on the foregoing and express an interest in a public declaration, that you agree to discuss a declaration affirming that there can be no justification for terrorist acts. (option 4)

Yes No

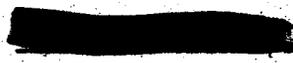
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E.O. 12958, as amended
December 18, 2008



That you respond negatively to any Soviet suggestion for a typical bilateral hijacking agreement. (option 2)

no action

Yes ___ No ___

That you refrain from suggesting any new multi-lateral lawmaking initiative at this time. (option 1)

no action

Yes ___ No ___

Attachments:

- Tab A - Section 227
- Tab B - Demarches to the Soviets on SA-7's
- Tab C - Draft joint declaration
- Tab D - Separate EUR statement

Clearances:

- EB/TT - Mr. Waldmann *LH*
- H - Mr. Jenkins *LH*
- IO - Messrs. Morey and Rothenberg *LH*
- INR - Mr. Denney *LH*
- EUR - Mr. Armitage *LH*
- CIA - Mr. Ober *LH*
- L - Mr. Feldman *MRF
WPK*

Drafted by:

- S/CCT - Lewis Hoffacker, Ext 29892
- L - Byron K. Huffman *LH* Ext 23736