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Frank E. Loy

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Some International Approaches to Dealing With Hijacking of Aircraft†

When dealing with the problem of aircraft hijacking it is easy to move right away to the question: How can hijackings be stopped? Before doing so, however, it is worthwhile to stress a proposition that, surprisingly, needs restressing; namely, that we are dealing with a very serious threat to human life. Despite all the talk about hijacking, there are quite a few who consider hijacking to be a nuisance, an annoyance or perhaps even a bit of semi-pleasant excitement, but not a crime of chilling potential for disaster. The record of zero passenger fatalities to date has surely fostered this belief.

Yet what circumstances more inimical to human life can you imagine than these: An armed, mentally unbalanced individual, frequently with a criminal record, is in control of a large passenger aircraft which he cannot operate. The aircraft is high in the air. In today's crowded airways—many of which pass over large population centers—it is no longer responsive to ground control. Add to these considerations the further ones of possible weather and fuel problems en route to the hijacker's destination, and of weather, landing facility and language problems at that destination. Moreover, and entirely apart from the safety consideration, there is the possibility that a hijacking to one of several countries in the world that might choose not to return the aircraft or its passengers right away could occasion a serious international political crisis.

Thus, hijacking—or what to do about hijacking—confronts the government of the United States with serious challenges that require the harnessing of its technological, political and legal skills. As a beginning, however,

*Deputy Assistant Secretary of State for Economic Affairs.

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we might just look at the “facts of hijacking,” so to speak—how many have there been; what kinds of people commit them; what are their motivations; and what has happened to the hijackers, both in this country and elsewhere. In dealing with these matters, reference will be made mainly to hijackings to Cuba, because that is where the problem has been most serious.

Since May, 1961, and up to August 9, 1969, there have been 83 actual or attempted hijackings to Cuba—taking into account all types of aircraft and all of the nations involved. Seventy-three of these have succeeded. Of the 83 actuals or attempts, 54 have involved aircraft of United States registry, and 29 have involved aircraft of foreign registry (principally Latin American). Of the 54 U.S.-registered aircraft, 45 have been commercial transport and nine have been general aviation aircraft. Ten United States flag carriers have had their planes hijacked to Cuba, with National Air Lines and Eastern Air Lines tied in an unenviable lead (13 each). All told, during the entire eight-year period, close to 3,000 passengers and crew members have been hijacked to Cuba on American flag carriers.

Rather broadly speaking, hijackings seem to have occurred in waves. There was (for then) a considerable wave between 1961 and 1962; another between 1964 and 1965; and a tremendous surge in the latter part of 1968 and the early part of 1969. In fact, there were more during this last period than during the entire preceding seven years. Since last winter and early spring, hijackings have leveled off again. But they still occur at an average rate of about four a month.

The hijackers themselves seem to fall into three broad categories: mentally disturbed persons; fugitives from justice; and persons wishing to return to Cuba. The mentally disturbed usually have been personal and professional failures, and suffer from varying degrees of paranoia and/or schizophrenia. To them, hijacking offers a long-sought means of proving themselves. But it is interesting to note that, during 1969, at least, five out of six attempted hijackings by such mentally disturbed people failed. During the course of 1969 there has been a change of the type of person who has undertaken the crime. Late last year, most of the hijackers were mentally disturbed. During the late winter and spring, criminal types predominated. And more recently, there seem to be a growing number of Cuban expatriates, although these still are a definite minority among hijackers.

There appear to be several discernible motives for hijacking. The predominant one seems to be some combination of political motivation, neurotic make-up, and the desire for a safe haven in what is believed to be a

Cuban utopia. Next, mental disturbance. Next, some private reason for wishing to go to (principally return to) Cuba. And finally, fleeing justice.

What has happened to the hijackers? Thirteen persons who have hijacked or attempted to hijack U.S.-registered aircraft during the heavy incidence of hijacking of the past year are in the custody of the United States. Four of these returned to the United States, one of his own volition. The other three had left Cuba to go to Canada and ended up in our hands. The remainder were apprehended within U.S. jurisdiction after unsuccessful attempts at hijacking. Six of these thirteen have been convicted for varying offenses, though not air piracy. Sentences have ranged from indeterminate to 15 years. Prosecution is pending in the remaining seven cases which are awaiting the outcome of mental examinations.

So far as we know, the remaining hijackers still are in Cuba, although we have heard that one or two of them have gotten to Europe. As to what has happened to them in Cuba, we have to work on bits and pieces of information. The Cuban government publicly has said very little on the subject. However, it seems fairly obvious that they are not accorded hero status, or otherwise given any prominence. We have information that some of them were put to work in the cane fields. A member of the Black Panther organization who had hijacked a plane to Cuba recently gave a press interview in Havana in which he roundly condemned the Cuban government for the way he had been treated in Cuba. According to him, Black Panthers were "isolated and imprisoned" in Cuba, although seeking political asylum there. And he was on his way to a work camp in the interior. Alban Barkley Truitt, who was returned to the United States via Canada, mentioned having been put in solitary confinement for some period of time. He was quoted as having said that anybody who hijacked an airplane to Cuba might be killed. Statements of this nature, as well as other information available to us, all seem to comport with a statement attributed to a high Cuban government official in a *Miami Herald* story last summer to the effect that the Cuban government welcomes immigrants to Cuba, "but not if they have to take an airplane to do it."

So far, we have been discussing aircraft highjacking in the Western Hemisphere. However, that is only part of a broader problem. There have been hijackings of commercial transports in Europe, Africa and the Philippines. And there have been incidents not involving hijacking, but rather armed intervention, involving commercial aircraft at Athens, Zurich, Beirut, Frankfurt and Karachi. In these, the flag aircraft of various other nations have been bombed, machine-gunned or burned on the ground.

Thus, hijacking and other forms of armed intervention involving aircraft are matters of serious concern to the entire international community—not just to the United States, and not just to the countries so far involved. These acts threaten a transportation system which is at once terribly important to the smooth running of a peaceful, progressing world, and terribly fragile.

In deciding how it could best deal with this problem, the United States government soon concluded that efforts to stop hijacking could be put into three categories: First, detecting the would-be hijacker before he gets on the airplane and denying him passage. Second, frustrating a mid-air attempt by either mechanical or human means, or both. And third, deterring future hijackers—with emphasis on punishing the successful hijacker under either the laws of the United States or the laws of the country to which he takes the hijacked airplane. These three methods may be briefly characterized as those of detection, frustration and deterrence.

The principal problem so far has been perfecting a detection device that will reliably and accurately discriminate between a weapon and other metal objects normally carried by a person. Unexpected progress has been made in this direction; and an over-all detection system, including such a device, is now in the testing stage and gives considerable promise of working with an acceptable degree of accuracy. Assuming that we can get such a system that works reasonably well, I think that we can all sense the search and seizure and other civil liberties problems which could stem from putting the system into actual operation. Can a person be made to submit to the detector—if he knows it is there—or can it be imposed on him, so to speak, if he doesn't know that it is there? If the application of the system indicates him to be suspect, can he be forcibly searched and forcibly denied boarding the plane? And if he is to be searched and denied passage, which law enforcement agency is competent to do these things?

Now, moving on to the problem of deterring future hijackers by punishing past ones. Interestingly enough, the problem to date has largely been a diplomatic one, rather than a straight-out criminal enforcement problem.

Obviously, if we are going to try to get hijackers punished in another country, we are going to have to persuade that country to do this. We cannot just tell another sovereign power to do it and, even more obviously, the writ of the United States does not run to that country. As for punishing hijackers in this country, the base problem is getting them back—right now, getting them back from Cuba—to be punished.

When the most recent wave of hijackings began, we looked around to see what existing international legal instruments might be available to help

us. There were two: an extradition treaty with Cuba and the Convention on Crimes and Certain Other Offenses Committed on Board Aircraft, otherwise known as the Tokyo Convention. We shortly concluded that neither would be particularly helpful.

The extradition treaty was concluded in 1904—only shortly after the airplane was invented. It has not since been revised and, pretty obviously, hijacking is not listed among the treaty crimes. The usual common law crimes—including kidnapping and robbery—are listed. But the omission of hijacking is troublesome. In this regard, it is worth noting that the governments of Cuba and Mexico have been working to conclude a reciprocal extradition treaty pertaining specifically to hijacking, although a usual extradition treaty is in force between the two countries. Our extradition treaty with Cuba has the usual exemption for political crimes, which would somewhat limit its use. Furthermore, we have no diplomatic relations with Cuba, and pursuant to international customs and usage, obligations under an extradition treaty are suspended in the absence of diplomatic relations—probably because, as a practical matter, proceedings under an extradition treaty are difficult to impossible in the absence of diplomatic relations.

The Tokyo Convention was written for several purposes other than that of dealing with hijacking, so its treatment of the subject in Article 11 is quite limited. The Article requires that a Member State in which a hijacked airplane lands take all appropriate measures to restore control of the aircraft, its passengers, crew and cargo, to the plane commander, and to facilitate the onward movement of the aircraft. This is an extremely important and useful international standard to establish. But the convention makes no provision for the return of the hijacker—probably because it was felt that this could or would be covered in individual bilateral extradition treaties. Also, the Convention is not yet in force; accession by 12 nations is necessary to bring it into force and only eleven have acceded.

This being the state of the relevant international law, we had to strike out in new directions. As we saw it, our first task was to arouse the international community to the seriousness of the threat to air transportation posed by hijacking, preliminary to seeking concerted international action against the crime. The obvious second task was to induce such international action. And finally, with regard to our particular problem, we would go to the Cubans themselves. In this last regard, we would make several proposals, some of them falling short of our ultimate goal of achieving the return of the hijackers, but all aimed at the alleviation of the problem.

In the effort to arouse the international community to the seriousness of hijacking, we turned to the International Civil Aviation Organization, ICAO. ICAO is an international organization of 116 member governments which, under the general aegis of the United Nations, concerns itself with certain technical, economic and legal aspects of international air transport. ICAO also is a repository for several multilateral treaties affecting international air transport.

At the 16th Assembly of ICAO in Buenos Aires in September, 1968, the United States delegation was successful in obtaining the unanimous passage of a resolution calling upon member states to accede to the Tokyo Convention as soon as possible, and, in the meantime, to enforce Article 11 of the Convention as if it were in force and effect. It also called upon the Council of ICAO to undertake a study of other means of dealing with hijacking than the Tokyo Convention. We consider it noteworthy that the Cuban delegate to the Assembly joined in this unanimous vote. In December, 1968, and again at the behest of the United States, the Council of ICAO—the permanent body which sits in Montreal—passed a resolution which urged all Member States to take all possible measures to prevent hijackings, and to cooperate with any other country—Member State or not—whose aircraft had been hijacked.

These resolutions of course are only hortatory. But we believe them to be useful since they help in emphasizing the seriousness of the problem, and since they are declaratory of some sort of international standard that requires countries to deal with hijacking in a serious fashion and to return the hijacked aircraft and occupants promptly.

In April, 1969, the Council passed a third resolution, this time directed at the broader subject of armed intervention involving aircraft and international aircraft facilities, but including hijacking. This resolution appointed a Special Committee of the Council to solicit information, advice and recommendations with regard to acts of armed intervention from the countries involved, and directed the Committee to report its findings and recommendations to the Council.

Appointing a committee may seem like a cheap, ineffective step to take in such a circumstance. But we believed that investigation by an international organization, possibly involving an on-the-scene look, would help to force all nations to deal with such incidents sensibly, promptly and in a non-political way. The fact that a number of incidents had been motivated politically made it both harder and more important to eliminate political considerations. The substantial political content involved in the issue was manifested by the difficulty we had in getting satisfactory terms

of reference for this Committee. In the end, it was explicitly excused from delving into any incident that had political ramifications, and it was left unclear exactly what ICAO would do with the information and recommendations passed back.

In any event, this Committee opened its first meeting August 4 in Montreal, and has since been hearing testimony from various aviation experts on the subject of armed intervention involving aircraft, including hijacking.

To the end of inducing concerted international action against hijacking, in November, 1968—against the background of the ICAO Assembly resolution of the preceding September—we proposed in the Council of ICAO a protocol to the Tokyo Convention which would require Member States to return a hijacker to the state of registration of the hijacked aircraft without regard to considerations of political asylum. Almost needless to say, we ran into rather heavy going when it became clear that our proposal abrogated the historic right to political asylum in relation to hijackers.

Frankly, we crossed this bridge ourselves only after considerable soul-searching. But it had become our judgment, after many weeks of mental and moral agonizing, that the magnitude of this 20th Century crime outweighed the right of political asylum which had come to us sacrosanct through the ages. When the November meeting of ICAO broke up, we stood almost alone in our contention that hijackers were not entitled to political asylum. The position of the great majority of states was that the state in which the hijacker landed had the prerogative of determining whether political asylum should be granted; and that this prerogative should not be abridged by an international commitment.

We meet again in late September. We obviously must consider, in preparing for this meeting, the heavy objection to any limitation of the right to political asylum. But I have reason to believe that we can work out some type of multilateral undertaking—whether called a protocol to the Tokyo Convention or something else—which will provide considerably more deterrence to hijacking than currently is provided by international legal instruments.

Since our—that is the U.S.—problem is with hijackings to Cuba, we decided to approach the Cubans. In the absence of diplomatic relations with Cuba, we have worked through the Swiss Embassy in Havana.

Our first move was to suggest a less cumbersome and time-consuming procedure for the return of the hijacked aircraft. For the past two or three years, when a hijacked plane landed at Havana, the Cubans would disembark the passengers and their baggage and send them to a hotel in the resort town of Verdadero on the north coast of Cuba, and keep them there

until a plane or planes could be sent down to get them. In the meantime, the crew of the aircraft flew it back empty to Miami. While the plane was usually returned in two or three hours, it almost always took considerably longer, sometimes one or two days, to get the passengers back.

Some time ago, we suggested that the passengers and their baggage be returned on the hijacked aircraft. After considering the matter for some months, the Cubans responded that, if the government of the United States, the airline involved and the pilot in command of the plane all agreed to accept the total safety responsibility for the return of the passengers on the hijacked aircraft, the Cubans would send them back in it. Since then, the planes and passengers have been returned in two or three hours.

Another move was to suggest that Cuban residents of the United States who wished to go or return to Cuba be transported down there on the southbound trip of the so-called Refugee Airlift. The Refugee Airlift is operated, under contract with the State Department for the general purpose of bringing Cuban refugees to the United States. It operates empty from the United States to Cuba. Companion to our proposal with regard to the Refugee Airlift, we also proposed that the Cuban government review lists of names of Cuban residents of the United States who wished to return to Cuba and inform us whether it would admit any of the persons listed. The means of getting them back to Cuba were left open. We would compile such lists and submit them periodically. In the instance of each proposal, the underlying thought was that there might be potential hijackers among discontented Cubans resident in the United States; and that, if we could arrange for their return by other means, they would not hijack airplanes to get back. As a matter of fact, we know of at least one actual hijacker in this category.

The eventual Cuban response to the Airlift proposal was that they would not go along with it. Apparently, among other considerations, they apprehended a considerable and unmanageable influx of returning Cubans. However, rather recently, the Cubans did inform us that they would take back a limited number of specific persons named on the lists which we had furnished them, but via Mexico and not on the Refugee Airlift plane.

It was necessary for us to seek Cuban agreement to both of the proposals which I have just described because the Refugee Airlift is operated pursuant to an agreement between the United States (represented by the Swiss Embassy in Havana) and Cuba, and any change in its terms requires the agreement of both parties. More important, even, the Cuban government is, of course, the sole judge of whom it will allow to enter, or reenter, Cuba.

More fundamental to our own particular problem, we proposed to the

Cubans that we conclude with them some arrangement—formal or informal—for the return of hijackers. I regret to report that the response to this to date has been that the Cuban government has no present interest in such an arrangement. And that is where the matter stands at the moment.

Now, what remains to be done?

There is no single solution to the problem. Rather, we must continue to push along all of the lines we can think of as being helpful.

The coming into effect of the Tokyo Convention, accession to it by an increasing number of states, and the enforcement of its hijacking provisions by all states, whether or not members of the Convention, would at least assure the safety of passengers and air crewmen after a hijacking had taken place.

The ICAO Committee on Armed Intervention Involving Aircraft must prosecute its mission with energy and resolve. It must not be overly sensitive to any political ramifications of a given incident which is brought to its attention. A threat to air transportation is a threat to air transportation—whether politically motivated or not, whether with political overtones or without them.

Finally, the nations of the world—certainly the aviation nations of the world—must get together on a protocol to the Tokyo Convention, or some other multilateral instrument, which will assure either the return of a hijacker to the state of registration of the hijacked aircraft, or his punishment in the receiving state. In this connection, amendment of the federal air piracy statute to delete the death penalty may have to be considered, in order to make it easier for some nations to return a hijacker.

In any event, hijacking can probably best be deterred by the reasonably certain knowledge, on the part of the would-be hijacker, that he will not find a psychological or legal safe port, but rather that he will pay heavily for his commission of the act. Given the increasingly boundless reach of modern aircraft, given the international dimension of civil aviation, the provision of this deterrence is the primary responsibility of the international community. That community must get on with this task. It must turn against hijacking as it once turned against another, older, but no more dangerous form of piracy at sea.