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When questioned NSC advised that the
President returned this memo to the
General - no decision - wants further
information

GBF 3/11/76

March 10, 1976

MR PRESIDENT:

**Response to Cuban Request for
Scheduled Service Transiting United
States Air Space**

The attached memorandum from Brent Scowcroft was staffed to Jack Marsh and Rogers Morton.

Jack Marsh disapproves the recommendations.

Rogers Morton concurs in NSC's recommendation.

Jim Connor

THE WHITE HOUSE

~~SECRET~~-XGDS

WASHINGTON

March 10, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: BRENT SCOWCROFT *BS*

SUBJECT: Response to Cuban Request for Scheduled Service Transiting United States Air Space

United States commercial carriers overfly Cuba from 35 to 50 times daily through two designated airways, filing only routine flight plans. To initiate such scheduled service, US carriers must make arrangements for payment of an overflight fee which usually requires a number of weeks. Cuba requires nonscheduled US flights to file plans 48 hours in advance and receive the "decision" and route before flying.

No commercial Cuban service overflies the US. To establish regular scheduled service over the US, Cuba must submit a request for routes and transit authority through diplomatic channels to the US government. For nonscheduled Cuban overflights of the US, the US, in a diplomatic note of 1973, requested two working days' advance notice through diplomatic channels.

For some months Canada and Cuba have been discussing a regular air service between Havana and Montreal. The Cubans have leased two Canadian DC-8s for the service, to be managed by Cubana Airlines. Until the Cubans are fully trained, Canadian crews have been operating the planes. We have been kept informed of the process by the Canadians and we informally warned them some weeks ago that the Cubans would have to request overflight permission for any regular service.

On February 18 and 25 Cuban flights transited US air space after filing routine flight plans. When the second request was referred to the State Department, a note was sent through diplomatic channels stating that Cubana Airlines should not undertake further flights transiting US territory until the Cuban Government had requested through diplomatic channels that the US Government authorize transit of US territory and provide designated transit routes. The following day a Cuban plane filed a flight plan for transit of US air space. At our request, the FAA informed the crew that until the Cuban Government had responded to our note,

XGDS of E.O. 11652 by authority
of Brent Scowcroft; Exemption
Category Section 5 (B) (3).

~~SECRET~~ - XGDS

DECLASSIFIED State visit 8/1/2000
E.O. 13526 (as amended) SEC 3.3
NSC Memo, 3/30/06, State Dept. Guidelines
By *M.D.* NARA, Date 9/7/2012



transit of US air space was not authorized. A similar request from the Cubans for an overflight on March 9 was also denied by the FAA while the matter was being discussed in diplomatic channels.

Last Friday, March 5, the FAA received a request for permission to establish a regular service beginning March 10 and following a prescribed air corridor which the FAA has designated as "non-sensitive" for use by communist countries. On the same day, State received through the Swiss a note (Tab B) from the Cuban Foreign Ministry, of conciliatory tone, denying any intention to violate the territory of the US and noting that its flights had conformed to the International Civil Aviation Convention. It did not mention our 1973 note requiring two working days' notice or Cuba's similar requirement for nonscheduled flights. Finally, the note asked for current, applicable US regulations.

Cuba, Canada, and the US are parties to the Chicago Convention and the International Air Services Transit Agreement. These treaties give air carriers of contracting parties the right to overfly the territory of other signatories after filing flight plans through designated corridors but without the need to seek special permission. Under US domestic law, foreign civilian aircraft must notify and obtain the approval of the FAA for each flight plan. State and FAA lawyers are of the view that we have no sustainable legal basis for denying the Cuban request for regular commercial overflight of the US through the designated non-sensitive corridor. They further believe that to do so would be to jeopardize US service south across the Caribbean and damage international air agreements from which we gain more than we give. It might also result in legal suits in US domestic courts.

Consequently, State proposes to reply to the Cuban note approving the proposal to establish the service and designating the corridor to be used. The note (Tab A) would further say that procedures with regard to nonscheduled flights should continue to conform to our note of 1973 requiring 48 hours' notice.

I believe, and Phil Buchen concurs, that we unfortunately have no choice but to approve this service. To refuse to do so would result in substantial harm to US commercial and diplomatic interests.



RECOMMENDATION:

That you approve our sending the note attached at Tab A.

Approve _____

Disapprove _____



~~CONFIDENTIAL~~

The Department of State wishes to draw the attention of MINREX to the note of the Department of State of April 6, 1973, requesting that the Government of the United States be informed through diplomatic channels no less than two working days in advance of flights by aircraft of Cuban registry which propose to enter the air space of the United States. The Department of State further refers to MINREX's note of March 5, 1975, and to the request of Cubana Airlines of the same date for authority to conduct regularly scheduled international air services through United States airspace.

We confirm clearance for the scheduled air service proposed in Cubana's March 5 request, according to the route designated [description of designated route].

In the interest of orderly air navigation procedures, and in accordance with past practice, MINREX should continue to follow the procedures set forth in the abovementioned note of April 6, 1973, in respect of non-scheduled air services.



DECLASSIFIED State visit 8/1/2000
E.O. 13526 (as amended) SEC 3.3
State Dept Guidelines
By MLB NARA, Date 9/7/2012

H - 4245.

March 5, 1976

Subject: Violation of U.S. Airspace by Cuban DC-8

Embassy received the attached message from Havana:

MINREX is pleased to inform USG that the flight of a Cubana aircraft over US territory on 25 February 1976 corresponds to a non-scheduled international airline service and that, in the realization of said flight, it was not the intention to violate the territory of said country, and measures were taken to make this flight in accordance with Article 5 of the Convention on International Civil Aviation, in conformance with the information about US regulations available to the airline company and continuing the practice followed in previous flights over US territory.

MINREX has not exactly understood the text of the reference note in respect to the SD interpretation of Article 5, paragraph 1, because the general principle of this article is that all aircraft which are not engaged in regular international air service have the right, subject to conformance with the requirements of the Convention, to cross the territory and make non-commercial stops, without the necessity of obtaining prior permission. The exception indicated in this paragraph of Article 5 is established for instances in which an aircraft wishes to fly over inaccessible areas or ones without adequate air navigation facilities,

DECLASSIFIED

E.O. 13526 (as amended) SEC 3.3

State Dept Guidelines

By NARA, Date 9/7/2012



in which case the contracting state reserves the right to designate routes or require that special clearance be obtained for said flights.

Cuba adheres to this text of Article Five and to the general principle that aircraft in non-scheduled international air services are not required to obtain prior clearance, with the exception established in Article 5 paragraph 1 established for reasons of flight safety. In consonance with this interpretation, US aircraft overfly Cuban territory.

In the case of the Cubana DC-8 aircraft which overflowed US territory on 25 February 1976, MINREX [manifests to] SD that, on the part of Cuba, it was assumed that the interpretation on the part of both states with respect to Article 5 should have been the same, in accordance with its text.

In the above mentioned flight, it is evident that Cubana did not intend to violate US territory, which is proven by the fact that an advanced flight plan was filed to all ATC along the route by messages 251106 MUHACUOW and two subsequent messages to notify delays in the flight 25/200 MUHACUOW and 251350 MUHACUOW.

In these messages it was indicated that the flight was COBUS (Company business) of Cubana in non-scheduled air service, as understood in Article 5 of the Convention.

Prior clearance was not solicited because the practice followed in prior cases had been this and it had not been indicated incorrect by US authorities. The last previous instance was when the same DC-8 flew from Canada to Cuba on



February 18. But, primarily, according to the Cubana Department of Operations, prior clearance was not requested because, after reviewing the US AIP manuals, nothing was found to establish the prior clearance requirement.

MINREX would like to emphasize that Cubana works with publications which contain US regulations as well as US AIP and the Jeppessen manuals. However, MINREX cannot assure that these publications are complete or up to date given the unquestionable difficulties in communication.

MINREX would appreciate it if US aviation authorities would provide Cubana by rapid and secure means, the current applicable regulations or indicate the manner by which they may be obtained.

Unquote.

Informal translation: ARA/CCA:ELMolladay
3/8/76



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: March 10, 1976

Time:

FOR ACTION:

cc (for information):

EYES ONLY

Jack Marsh

✓ Rogers Morton

FROM THE STAFF SECRETARY

DUE: Date: IMMEDIATE TURNAROUND Time:

SUBJECT:

Brent Scowcroft memo 3/10/76
Response to Cuban Request for Scheduled
Service Transiting United States Air Space

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Your immediate attention to this matter is
required. Please return all papers with your decision.

Morton - concurs

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a
delay in submitting the required material, please
telephone the Staff Secretary immediately.

James E. Connor
For the President

Date: March 10, 1976

Time:

FOR ACTION:

EYES ONLY

cc (for information):

Jack Marsh
Rogers Morton

FROM THE STAFF SECRETARY

DUE: Date: IMMEDIATE TURNAROUND Time:

SUBJECT:

Brent Scowcroft memo 3/10/76
Response to Cuban Request for Scheduled
Service Transiting United States Air Space

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Your immediate attention to this matter is required. Please return all papers with your decision.

Morton concurs
RCH

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James E. Connor
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: March 10, 1976

Time:

FOR ACTION:

cc (for information):

EYES ONLY

Jack Marsh
Rogers Morton

FROM THE STAFF SECRETARY

DUE: Date: IMMEDIATE TURNAROUND Time:

SUBJECT:

Brent Scowcroft memo 3/10/76
Response to Cuban Request for Scheduled
Service Transiting United States Air Space

ACTION REQUESTED:

- | | |
|---|--|
| <input type="checkbox"/> For Necessary Action | <input checked="" type="checkbox"/> For Your Recommendations |
| <input type="checkbox"/> Prepare Agenda and Brief | <input type="checkbox"/> Draft Reply |
| <input checked="" type="checkbox"/> For Your Comments | <input type="checkbox"/> Draft Remarks |

REMARKS:

Your immediate attention to this matter is required. Please return all papers with your decision.

de signature.

[Handwritten signature]

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James E. Connor
For the President