CABINET

CUBA

Memorandum by the Lord Chancellor

I was invited by the Cabinet (C. C. (62) 61st Conclusions, Minute 3) to consider the legal justification for the imposition of the American "quarantine" of Cuba with a view to briefing the United Kingdom Permanent Representative at the United Nations.

2. I have, in consultation with the Attorney-General, the Solicitor-General and the Legal Adviser to the Foreign Office, considered the instructions already sent by the Foreign Office to the Permanent Representative (Foreign Office telegram No. 3881 to New York (Annex 'A')) in response to his request (New York telegram No. 1703 (Annex 'B')). We agree with the views expressed by the Foreign Office.

3. In our view the imposition of the "quarantine" cannot be justified as "pacific blockade" under international law. In fact, the United States' conduct is not in conformity with international law.

We think that the most favourable line of argument that can be advanced in support of the United States is that the conduct of Cuba and the Soviet Union constitutes a threat to the United States of such imminence as to necessitate the taking of immediate steps to render that threat nugatory. But we doubt that this can be established as the United States' action appears to be designed to prevent the threat becoming imminent.

If the threat could be regarded as immediate, the right of self-defence would entitle them under international law to destroy the missile sites and they would be equally entitled to stop war-heads reaching those sites. The issue depends on the immediacy of the threat being sufficient to justify the United States in acting before having recourse to the Security Council.

4. We are agreed that the situation in Cuba constitutes a threat to peace under Article 39 of the United Nations Charter.

5. We have also considered what would be the best line for Ministers to take in Parliament if they are pressed to comment on the legality of the United States' action. In our view the best line would be to state the accepted principles of international law as to the right of self-defence, but to refuse to express any opinion as to their applicability in circumstances which are not yet fully known.
5. We think it important that we should make it clear to the United States Government exactly what our views are on the legality of the proposed blockade and emphasise that, while in the present circumstances we will co-operate with them and not stand on our rights, we do not concede that they have any legal right to search or detain British ships on the high seas. I suggest, therefore, that we send to the United States Government a communication on the following lines:

"Her Majesty's Government regret that after careful consideration they are not satisfied as to the legality of the blockade measures to be taken by the United States against Cuba in the absence of adequate cover from a competent organ of the United Nations. Nevertheless, they fully sympathise with the measures and understand the reasons that have made them necessary. They will give the fullest possible support in the Security Council and, if need be, in the General Assembly, and they hope that all British ships will in fact co-operate with the United States' armed forces so far as those ships may be affected by the blockade measures. But Her Majesty's Government also fully endorse the decision of the British Chamber of Shipping that the legal rights of British ships should be reserved. Although Her Majesty's Government do not, in present circumstances, intend to stand on their legal rights in this matter, they also must reserve the right to extend such diplomatic and legal protection to British shipping as may be permissible in accordance with international law."

If we send such a communication to the United States Government it might prove very useful in Parliament if we are criticised for permitting the search of British vessels.

D.

House of Lords, S. W. 1.

24th October, 1962.
ANNEX 'A'

COPY OF FOREIGN OFFICE TELEGRAM No. 3881
TO THE UNITED KINGDOM MISSION TO THE UNITED NATIONS

23rd October, 1962.

Your telegram No. 1703: Cuba.

If the sequence of events works out as expected, I think you should make a short and sharp intervention in support of the Americans at whatever moment you think appropriate during the debate.

2. In view of the difficulty of the legal case, you should leave it to the Americans to defend the legality of their blockade. For your own information, while it may be possible to justify action against Cuban ships and possibly against Soviet ships, I am advised that in the absence of United Nations authority it is very difficult to justify action against the ships of third countries. If you feel obliged to say anything on this point, it should be to the effect that there is an inflammable situation, that there is no virtue in a detailed examination of the legal point by the Security Council, that the Americans have acted properly by coming to the Security Council at the first possible moment, and that the Council should take immediate steps to deal with the situation. The inference may be left that the Americans were justified in taking immediate emergency action having regard to all the circumstances. The important thing now is to obtain adequate United Nations cover for what the Americans are doing, and for that purpose the finding of a threat to peace is vital.

3. We do not dispute that a sovereign State is entitled to call for military aid from another Government if necessary for the purpose of its defence. In no case in which the United Kingdom has been involved have we gone beyond this. The situation in Cuba is entirely different. The threat comes not from without against Cuba but from within Cuba against its neighbours, and the threat is created by the import of the offensive weapons which the Soviet Union seeks to defend on the basis of the right of Governments to ask for military aid in their own self-defence.

4. We see considerable difficulty in the argument about "secret disturbance of the balance of power". While the presence of Soviet missiles in Cuba no doubt greatly increases Soviet striking power, it could still be argued that total American nuclear strength was still ahead of Soviet nuclear strength. We think that it would be better to emphasise and elaborate on other points in the President's speech as follows:
(i) This is a deliberately provocative action, particularly at a time when disarmament negotiations are in progress.

(ii) The secrecy with which the transfer of Soviet missiles has been conducted, and the deliberately misleading statements made on the subject, contrasts with the American attitude towards the stationing of their own missiles in other territories, and can only give rise to the inevitable inference that they are not for purely defensive purposes and therefore constitute a threat to the peace.

5. These seem to us to be far the most powerful general arguments and we think that it would be best to concentrate on them. There is the comparatively subsidiary point that the transfer of Soviet missiles has been taking place at a time when there have been American/Soviet conversations about limiting the spread of nuclear weapons, and the prospect of further discussion on this subject in the General Assembly. There is also the propaganda point that the transfer has taken place at a time when the Soviet Union are urging the complete abolition of foreign bases during the first stage of disarmament, i.e., within 18 months according to their own plan.

6. With reference to paragraph 3 of your telegram, in the event of a Soviet veto you may support the Americans if they wish to refer the matter to the General Assembly.
ANNEX 'B'

COPY OF NEW YORK (UNITED KINGDOM MISSION TO THE UNITED NATIONS) TELEGRAM No. 1793 TO THE FOREIGN OFFICE

Sir Patrick Dean. 23rd October, 1962.

My telegrams Nos. 1698 and 1699: Cuba.

I would expect the sequence of events in the Security Council to be as follows. Possibly after a procedural wrangle, the United States representative would speak first. He would be followed by the Cuban representative who will have been invited to the table and then by the Soviet representative. Thereafter, the United States Mission would hope for interventions by the two Latin-American members of the Council (Venezuela and Chile). The Americans would then, I think, look to us to speak next. The other members would have no interest in pushing themselves forward. The French here expect that they will have to speak in the course of the day.

2. When the issue comes to the vote the Americans should be able to count on seven votes in favour, provided they can keep the Irish and Chileans up to the mark. I would expect Ghana and the United Arab Republic to abstain and the Rumanian and Soviet representatives would of course vote against, the latter casting a veto.

3. The Americans are still undecided about whether to go for the uniting for peace procedure in the event of a Soviet veto. They have some doubts about whether they will be able to muster a sufficiently impressive majority in the General Assembly, but unless the Soviet response in the Security Council shows some signs of a desire to negotiate they may be compelled to move from the Security Council to the General Assembly. Much also depends on how the Organisation of American States' meeting goes and how solid the support of the Latin American countries is.

4. As for our speech, at first sight the most difficult points will probably be the legal ones. We should therefore be grateful for as full a briefing as possible on what we should say about the "quarantine". We should also like material to deal with the argument which we frequently use that any sovereign State is entitled to call for military aid from another Government if they feel their security is threatened.
5. In his broadcast the President laid great stress on the "secret disturbance of the balance of power". This seems an effective way of dealing with the argument that, as the Americans maintain missile bases in certain European countries, the Russians are equally entitled to maintain them in Cuba. The President also stressed the importance of the balance of nuclear power, which was emphasised by you in your speech to the General Assembly, and given the probable difficulties in the legal case it seems to me that this might be a profitable line to pursue. If you agree, please let us have as much supporting material as possible.