

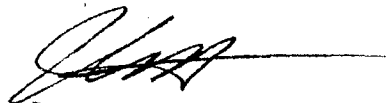
OFFICE OF THE SECRETARY OF THE AIR FORCE
DIRECTOR, SPECIAL PROJECTS
Air Force Unit Post Office, Los Angeles 45, California

MEMORANDUM FOR:

DATE

Col Worthman (SAF55) 10/28/65

1. A very good report.
2. Watch out for State to propose the old "horse for a rabbit" trade. Reading this, I get the feeling that nothing has changed except some people in the act; that we are back in the same situation in which I wrote a ream of paper on "trap not to get caught in".



JOHN L. MARTIN, JR.
Brig Gen. USAF

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22 October 1965

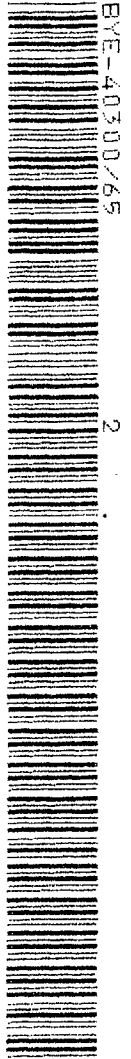
MEMORANDUM FOR GENERAL MARTIN

SUBJECT: Fall 1965 Meeting of the Legal Subcommittee of the UN
Committee on the Peaceful Uses of Outer Space

1. Attached is my report of subject meeting.
2. In substance, I express concern over language proposed by the Soviet Bloc in their Assistance and Return and Liability drafts. I point out that the proposed language as interpreted by the Bloc would be to place the US military use of outer space in the category of unauthorized or unlawful.
3. I recommend that DOD hold fast against any State Department proposal to agree to the language.
4. Not mentioned in the report is a sort of "seat of the pants" reaction on my part that the whole US military program in space is under a cloud. You will recall Colonel General V. F. Tolubko's article attacking MOL, and I believe you noted that with the NASA/DOD split in space responsibilities DOD activities are set apart as a convenient target for those in the world who object to the use of outer space for military purposes. I think you will be interested in the Bloc comments on space espionage and military use summarized on pages 5 and 6 of the report. I have an uneasy feeling that Russia might muster the support to make an embarrassing attack - at least - on satellite reconnaissance in the UN. Part of my uneasiness is that I am not confident in the support we would receive from State or NASA and I fear that we may find ourselves having agreed to outlaw the use of space for reconnaissance purposes. Perhaps my fears are unjustified; I am not privy to the views of the higher levels involved in the NRO and cannot assess their resolve.

F. NED HAND
Colonel, USAF

DOD Representative to the US Delegation to Legal Subcommittee
of the UN Committee on the Peaceful Uses of Outer Space



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HEADQUARTERS
SPACE SYSTEMS DIVISION
AIR FORCE SYSTEMS COMMAND
UNITED STATES AIR FORCE
LOS ANGELES AIR FORCE STATION

Policy: Space Law
Policy: Peaceful
Policy: 18 Points



Air Force Unit Post Office, Los Angeles, California 90045

REPLY TO
ATTN OF: SSJ

22 Oct 1965

SUBJECT: (U) Report on Meeting of Legal Subcommittee of the U.N. Committee
on the Peaceful Uses of Outer Space, New York, 18 Sep - 1 Oct 1965

TO: Col Marshall Sanders
OSD ISA

Policy: Space Law ✓
Policy: 18 Points
Policy: Peaceful Uses

1. ~~(S)~~ Subject meeting resulted in no accomplishments insofar as the agenda items of Liability and Assistance and Return (A&R) were concerned. There were, however, developments which in my opinion have serious implications for the DOD and its missions. These center about the language in the Russian draft on A&R that the obligation to search for space objects and to return astronauts and space objects be conditional upon the launch's having been "in accordance with the Declaration of Legal Principles Governing the Activities of States on the Exploration and Use of Outer Space" and the language in the Hungarian draft on Liability establishing a higher standard of liability "if the damage occurred while exercising an unlawful activity in outer space, or the space vehicle or object was launched for unlawful purposes, or if the damage has otherwise resulted from an unlawful activity." These provisions are at first blush rather innocuous; to understand their importance it is necessary to look into their evolution and the interpretations that these terms are given in certain quarters.

2. (U) In 1962 the bloc position was indicated by the following language in the Russian draft on Basic Principles Governing the Use of Outer Space:

"8. The use of artificial satellites for the collection of intelligence information in the territory of foreign States is incompatible with the objectives of mankind in its conquest of outer space." (A/AC.105/C.2/L.1)

During the meeting of the Legal Subcommittee in April-May 1963, the Russians continued to use this position except that the paragraph in question simply had moved to number 9 in their draft. (Annex I, A/AC.105/12) In this meeting the Russians also made the same

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point in Article 7 of their draft on A&R:

"Space vehicles aboard which devices have been discovered for the collection of intelligence information in the territory of another State shall not be returned." (Annex I, A/AC.105/12)

Intertwined in this problem was the position of the neutrals illustrated by the UAR draft for international cooperation in the peaceful uses of outer space also considered at April-May 1963 meeting of the Subcommittee. It provides:

"1. The activities of Member States in Outer Space should be confined solely to the peaceful uses." (Annex I, A/AC.105/12)

3. (U) However, at the XVIII meeting of the U.N. General Assembly, a compromise resolution (Number 1962) was unanimously passed under date of 13 Dec 1963 entitled, "Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space." It is this Resolution to which the present Russian draft refers in proposing conditions in the obligation to return astronauts and to search for and return space objects.

4. (U) Resolution 1962 was a compromise resolution and, while in accepting it the Russians and other bloc countries gave up the specific language outlawing espionage by satellite, subsequent meetings of the Legal Subcommittee indicate that the bloc maintains its original position, now relying on the general language in Resolution 1962. They point in particular to the following language in the Resolution:

"1. The exploration and use of outer space shall be carried on for the benefit and in the interests of all mankind."

"4. The activities of States in the exploration and use of outer space shall be carried on in accordance with international law, including the Charter of the United Nations, in the interest of maintaining international peace and security and promoting international co-operation and understanding."

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5. (U) After the adoption of Resolution 1962 in December 1963, the Legal Subcommittee met in Geneva during March 1964. Of interest were the changes in the drafts of the bloc. The USSR draft on A&R (A/AC.105/C.2/L.2/Rev.1) provided with respect to the return of space objects that they should be "returned without delay, together with the equipment they contain, to the States which launched them for purposes of peaceful exploration and use of outer space. . . ." On Liability the Hungarian draft (A/AC.105/C.2/L.10) provided:

"Article IV - The State shall assume full liability for damage caused. . . if the State is exercising an unlawful activity in outer space or the space vehicle or object has been launched for unlawful purposes."

6. (U) At the October 1964 meeting of the Legal Subcommittee in New York the paragraphs in question took on the following form:

a. USSR draft on A&R (A/AC.105/C.2/L.2/Rev.2)

Art 1

"(2) Each Contracting State shall foster international cooperation in the conducting of operations to find and salvage space objects launched in accordance with the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space."

Art 5:

"Each Contracting State shall do its utmost for the earliest possible return to their own country of the crew of a spaceship which was launched in accordance with the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space and which has met with an accident, been in distress or made an emergency landing in its territory or which it has rescued elsewhere."

Art 6:

"(2) Each Contracting State shall, at the request of the

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State which officially announced the launching thereof, return to that State foreign spaceships, satellites, and capsules launched in accordance with the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, together with the equipment they contain, or parts of any such objects, discovered in its territory or found by it elsewhere."

b. There was no change in the Hungarian draft on Liability over the one submitted in Geneva.

7. (U) At the September 1965 meeting in New York, the Russians continued to advance their October 1964 draft and the Hungarians presented a revised draft on Liability (A/AC.105/C.2/L.10/Rev.1) containing a rewrite of the former Art IV to read:

"Art V - The State shall assume liability for damage caused on the ground, in the atmosphere or in outer space, if the damage occurred while exercising an unlawful activity in outer space or the space vehicle or object was launched for unlawful purposes, or if the damage has otherwise resulted from an unlawful activity. In such cases, the State liable shall be barred from any exoneration whatsoever."

8. (U) While at Geneva, Russia and the United States presented a united front that the question of the illegal use of outer space was more properly a matter for the pending disarmament negotiations. The real problem of interest to the DOD in Geneva was the move of certain neutrals, notably India, to limit the use of space for peaceful purposes only or as they define it, nonmilitary use. See my letter (Secret) to you of 16 Apr 1964 reporting on the Geneva meeting. Of interest is that while the bloc at Geneva concurred with the United States that the "peaceful uses only" question might better go to the disarmament forum, they still made it clear that they were unalterably opposed to espionage from space. The October 1964 meeting in New York was relatively quiet on this point because the Russians were making a real effort to reach an agreement on an Assistance and Return convention.

9. (U) In subject New York 18 Sep to 1 Oct 1965 meeting, the U. S. position on the USSR conditional language was that the commitments in

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G.A. Resolution 1962 to return astronauts were unconditional. Further, that it would be improper to agree to any standards subjective in character that could be applied or not in the arbitrary opinion of one of the contracting parties. The U.S. position re the restrictive language in the Hungarian draft on Liability was that this was an unnecessary qualification because in the U.S. draft the proposal was that liability be assumed for all uses of outer space and that it would be improper to make exceptions.

a. (U) Bloc comments in this fall 1965 meeting pertinent to this discussion were:

(1) USSR: That they attached great importance to the "launched in accordance with the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space" limitation. That it would not be proper to provide for return when return would be of crews who had been performing acts inimical to the interests of the returning State.

(2) Romania: That this limitation is a basic principle and there was surprise at the objections. The launchings that are to be protected are those made in accordance with the Declaration. Why should we protect launchings contrary to the Declaration which provides in Art 1 that launches are for the benefit of mankind and in Art 4 that activities in outer space are to be carried out in accordance with international law.

(3) USSR: Would they be expected to return a bomb in a "silver platter" to a launching State? They would refrain from commenting on world events (presumed to be referring to MOL among other things) in interest of securing agreement here. There had been a great series of alarming world events, but perhaps it would be better to discuss them in the First Committee or in connection with disarmament.

(4) USSR: Believe there should be limitations on responsibility for space objects; no obligation can be assumed for objects launched contrary to the Declaration. The Western proposal to remove these limitations is at variance with USSR wishes. If we want agreement, we must bear in mind realities and what is happening on earth and in outer space.

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(5) Hungary: The statement in the Declaration in para 9 that "States shall regard astronauts as envoys of mankind in outer space, and shall render to them all possible assistance in the event of accident," etc., means that the astronauts are entitled to immunities of envoys generally, above and outside jurisdiction of recovering states. But this is true only when the astronauts are engaged in peaceful activities in outer space. If the astronauts are not engaged in peaceful purposes -- nowadays not imagination -- then the rule is quite different. If for other than peaceful purposes, then the astronauts are nothing more than soldiers or spies. Logic requires that we limit our obligation to return to cases where the launch was in accordance with the Declaration. The USSR draft magnanimously contemplates rescue of astronauts regardless of mission, but magnanimity cannot be extended beyond first aid or assistance, cannot be extended to return.

(6) USSR: The Declaration refers only to peaceful uses and they consider that its obligations do not relate to other than peaceful uses. The term "astronauts" in the Declaration does not include those in outer space with goals hostile to other States. The prohibition of outer space for military purposes is beyond this Subcommittee and for consideration of Committee of Eighteen, First Committee, General Assembly, or disarmament negotiations.

(7) Hungary: The Declaration must be interpreted in the light of international law. Under general international law if a hostile soldier finds himself in the custody of the enemy State, he must face the consequences. There are signs of new military developments in space and giving preferential treatment to astronauts could be detrimental. Might be a very delicate question if a distressed astronaut were an envoy or a punishable spy. The Declaration did not change the characteristics of a spy.

(8) Bulgaria: The convention is for peaceful purposes only. Can't there be some provision to regulate unlawful uses of outer space?

b. (U) There were some interesting comments from neutrals:

(1) Mexico: Convention is not to apply to military activities, although there are some military activities devoted to peaceful purposes. The General Assembly did not ask us to draft a convention applicable to nonpeaceful uses.

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(2) India: Obligations of States under the convention should be limited to those arising from peaceful purposes only.

10. ~~(S)~~ The USSR argument could perhaps be summed up by saying that military uses of and particularly espionage from outer space are beyond the purview of the A&R and Liability negotiations. I believe it would be comparatively easy to secure agreement if we were to agree to the proposed exceptions. However, if we were to do so, it could be argued that we were admitting that military activities and observation from outer space are illegal. The proposed USSR exception in the A&R draft limits the application of the convention to activities conducted in accordance with the Declaration; thus the language divides space activities into those within and those without the Declaration. The Declaration provides for all practical purposes the color of international legal authority for overflights by space objects; it is the exception to the general rule of national sovereignty in the space above national territory. By agreeing to such an exception, we agree that there are space flights not permitted by the U.N. Resolution. Knowing the interpretation given by the bloc, we come close to agreeing that the legality of our military use of outer space is an open question. Thus, we are back to where we were prior to the Declaration when USSR was proposing that espionage from outer space be outlawed.

11. ~~(S)~~ This maneuver of the bloc has put the U. S. in an embarrassing position. By the play on words, the U. S. is in the posture of being against discouraging sin. By objecting to the limiting reference to the Declaration, we almost admit that we are conducting activities in outer space that are not in accordance with the Declaration. Our objections are somewhat lame because to "the peaceful uses only/nonmilitary use" group, we are taking a stand that space should be used for military purposes and to the anti-espionage group, we are arguing our right to peek. Neither is a popular position in a U.N. forum and both tend to mar our image as a leader for peace in a troubled world.

12. ~~(S)~~ Significantly, Ambassador Goldberg in his maiden U. N. speech before the General Assembly stressed the peaceful uses of outer space, and Mr. H. Rowan Gaither, member of the U. S. delegation to the Legal Subcommittee, commented in the closing days of our September 1965 meeting that we would have to do something about the restrictive reference to the Declaration.

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13. ~~(S)~~ The State Department apparently has strong desires to accomplish agreement, and there is a strong temptation to accept the limiting language relying on our own interpretation and disregarding or minimizing the interpretation of the opposition. I do not think this would be wise. An agreement using language the meaning of which is controversial between the parties to the agreement is not an agreement. I believe there is a real danger that the bloc, the neutrals, and the many new nations of the world might unite to overwhelmingly pass a U.N. resolution barring the use of outer space for observation satellites. Russia might resist the ban on military uses, but would lead the attack on observation satellites. The nonmilitary use group would probably join in the attack on observation satellites considering that this was a partial success. It is recognized that this danger exists even now without our agreeing to the use of the language in question. However, I believe our position can be weakened by agreeing to any language susceptible to interpretation contrary to our interests and in this case we know that the language in question is being given that type of interpretation.

14. ~~(S)~~ I recommend that the DOD position be:

a. Insist that U.N. Resolutions 1721 and 1962 gave the U.S. freedom of outer space including the right to fly observation satellites and use outer space for nonaggressive military purposes.

b. Resist any new agreements or other U.S. commitments or statements of policy that use language that can be interpreted as something less than the unalterable right of the U.S. to use outer space in accordance with its concept of freedom of outer space. In particular DOD must resist any move on the part of State and NASA to concede in this limiting language "in accordance with the Declaration of Legal Principles Governing the Activities of States on the Exploration and Use of Outer Space." It will be recalled what the Communists did to the word "democracy;" they are doing the same thing to this reference to the Declaration. I do not believe we can afford to base any agreement on language that has been as effectively twisted in meaning by the Communists as this phrase has.

F NED HAND, Colonel, USAF
Staff Judge Advocate