

March 1968

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### Repository Citation

Paul G. Dembling and Daniel M. Arons, *The Treaty on Rescue and Return of Astronauts and Space Objects*, 9 Wm. & Mary L. Rev. 630 (1968), <https://scholarship.law.wm.edu/wmlr/vol9/iss3/4>

# THE TREATY ON RESCUE AND RETURN OF ASTRONAUTS AND SPACE OBJECTS

PAUL G. DEMBLING\* AND DANIEL M. ARONS\*\*

## INTRODUCTION

On December 19, 1967, the General Assembly of the United Nations by a vote of 115-0 approved an "Agreement on the Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched in Outer Space"; requested the Depositary Governments "to open the Agreement for signature and ratification at the earliest possible date"; and expressed its hope "for the widest possible adherence to this Agreement."<sup>1</sup> This approval by the General Assembly marked the climax of almost a decade of efforts to secure widespread international agreement on procedures assuring the humanitarian and scientific objectives of the rescue of astronauts in distress, their return, and the return of space objects. It is the purpose of this paper to trace the development of the Assistance and Return Agreement, and to examine the text of its various provisions in order to provide some understanding of the rights and obligations created thereby.

## BACKGROUND

Consideration of the problems treated in the Assistance and Return Agreement has paralleled the space age. With the launching of the unmanned Soviet Sputnik satellite on October 4, 1957, international legal scholars and diplomats readily noted the difficulties imposed by

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The opinions expressed in this article are solely those of the writers and are not intended to represent the views of any agency or organization with which they may be connected.

1. G.A. Res. 2345 (XXII), December 19, 1967, printed in 58 DEP'T STATE BULL. 85 (1968).

the return of such satellites on foreign soil. International lawyers in the United States and the Soviet Union, of course, urged that a spacecraft which landed on foreign soil remains the property of the state that launches it and should be returned.<sup>2</sup> However, the following proposition was also advanced:

Once a satellite is launched, it is beyond the control of human beings, and therefore its flight is analogous to the flight of a meteor. Because a meteor is the property of the nation in which it lands, a spent satellite would also be the property of the nation in which it lands, regardless of its point of origin.<sup>3</sup>

That a space object launched by man is not like a meteor is evident from the remarkable degree of control exercised over the movements in space of even most unmanned vehicles. And ownership of objects launched into outer space by the states which launched them is established, as an international legal matter, by Article VIII of the Outer Space Treaty of 1967.<sup>4</sup>

It was also urged, at an early date, that the return of a space object from foreign territory should be conditioned upon payment of compensation for any damages caused by the landing. Such a condition was urged by Loftus Becker, Legal Adviser to the Department of State during the late 1950's, Congressman Kenneth B. Keating, and the Counsel to the House Science and Astronautics Committee.<sup>5</sup> However, as consideration of the legal problems associated with space flight developed, concerned scholars and diplomats sought to separate the scientific objective of returning space objects to the interested launching entity from the equally important, but distinguishable, objective of assuring compensation for damages.

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2. JESSUP AND TAUBENFELD, *CONTROLS FOR OUTER SPACE* 246 (1961). See Dembling, *Aspects of the Law of Space Activities*, 21 *FED. B. J.* 235 (1961).

3. LIPSON AND KATZENBACH, *REPORT TO THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION ON THE LAW OF OUTER SPACE*, A.B.A. Found. 99 (1960).

4. *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies* (signed January 27, 1967; entered into force October 10, 1967); T.I.A.S. No. 6347. The text of the Treaty is reprinted in 61 *AM. J. INT'L L.* 644; and 33 *J. AIR L. & COM.* 132 (1967).

5. See JESSUP AND TAUBENFELD, *supra* note 2; Keating, "Space Law and The Fourth Dimension of Our Age," Address before the IXth Annual Congress of the International Astronautical Federation, The Hague, Netherlands, August 29, 1958, reproduced in *SYMPOSIUM ON THE LEGAL PROBLEMS OF SPACE EXPLORATION*, Sen. Doc. No. 26, 87th Cong., 1st Sess. 372 (1961), (hereafter referred to "Senate Symposium"); Beresford, *Liability for Ground Damage Caused by Spacecraft*, 19 *FED. B. J.* 242 (1959) at 253.

The proposition that the obligation to rescue and return astronauts and space objects should be treated separately from the obligation to compensate for damages took hold in early consideration of these matters by the United Nations. On December 13, 1958, the General Assembly established the eighteen member Ad Hoc Committee on the Peaceful Uses of Outer Space and required that it, *inter alia*, report on "the nature of legal problems which may arise in the carrying out of programmes to explore outer space."<sup>6</sup> The Ad Hoc Committee formed a Legal Subcommittee which met during 1959. In its report,<sup>7</sup> which was later incorporated into the report of the full Committee,<sup>8</sup> the Legal Subcommittee called attention to a number of problems that it felt required priority treatment including

. . . the desirability of the conclusion of multilateral agreements concerning re-entry and landing, such agreements to contain suitable undertakings on cooperation and appropriate provisions on procedures. Among the subjects that might be covered by such agreements would be the return to the launching state of the vehicle itself and—in the case of a manned vehicle—provision for the speedy return of personnel.<sup>9</sup>

The Legal Subcommittee also urged the possible applicability of certain rules of international law pertaining to aircraft and airmen landing on foreign territory through accident, mistake, or distress. The matter of liability for damages caused by space vehicles was also considered a priority problem by the Subcommittee. However, no connection was drawn or suggested between the obligation of a foreign state to rescue and return astronauts and space vehicles, and any corresponding right of the foreign state to compensation for damages caused by the landing of such vehicles. This separation of the two problems by the Ad Hoc Committee established a precedent. For in succeeding General Assembly resolutions, and in deliberations in the U.N. Outer Space Committee, the proposition that states should be obligated to assist and return astronauts and space objects has not been treated as conditioned upon a corresponding obligation on the part of the launching state to

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6. G.A. Res. 1348 (XIII), December 13, 1958.

7. U.N. Doc. No. A/AC.98/2, June 18, 1959.

8. U.N. Doc. No. A/4141, July 14, 1959.

9. U.N. Doc. No. A/AC.98/2 at 7. The Report of the Legal Subcommittee became Part III of the Report of the full Ad Hoc Committee to the General Assembly, *supra* note 8, reprinted in Senate Symposium at 1246.

pay compensation for damages caused by the landing of the space vehicles. Separate draft treaties have been considered on assistance and return, and on liability for damages.

After the Ad Hoc Committee submitted its 1959 report, the General Assembly established a permanent Committee on the Peaceful Uses of Outer Space consisting of twenty-four members<sup>10</sup> and requested the Committee, *inter alia*, "to study the nature of legal problems which may arise from the exploration of outer space."<sup>11</sup> Due to differences between certain of the committee members over voting procedures, nothing of substance was accomplished until after the General Assembly had again, in December 1961, requested that the Committee consider certain matters relative to the exploration of outer space, including the study of legal problems.<sup>12</sup> The Committee met in Geneva in March 1962. The members resolved their differences over voting procedures by agreeing that the Committee and its subcommittees would not vote on issues but rather that approval would be sought by consensus. Formal dissent by any one member would prevent the achievement of a consensus. This procedure has endured to the present, and, as discussed below, several provisions of the Assistance and Return Agreement reflect the various accommodations required to achieve a consensus.

The Assistance and Return Agreement is a product of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space. The Legal Subcommittee has held six sessions. Since it first met in Geneva in June 1962, one session has been held each year, of about a month's continuous duration, except that the 1964 and 1966 sessions were divided into two parts.<sup>13</sup> In 1962, shortly before

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10. The twenty-four original members are Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Czechoslovakia, France, Hungary, India, Iran, Italy, Japan, Lebanon, Mexico, Poland, Rumania, Sweden, the Union of Soviet Socialist Republics, the United Arab Republic, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. Chad, Mongolia, Morocco and Sierra Leone were added in 1961. This membership of 28 has endured to the present.

11. G.A. Res. 1472 (XIV), December 12, 1959.

12. G.A. Res. 1721 (XVI), December 20, 1961.

13. The first four sessions of the Legal Subcommittee are treated in detail in Dembling and Arons, *Space Law and the United Nations: The Work of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space*, in 32 J. AIR L. & COM. 329 (1966). The Fifth Session is discussed in Dembling and Arons, *The United Nations Celestial Bodies Convention*, in 32 J. AIR L. & COM. 535 (1966); and in Dembling and Arons, *The Evolution of the Outer Space Treaty*, in 32 J. AIR L. & COM. 419 (1967).

the first meeting of the Legal Subcommittee, President Kennedy and Chairman Khrushchev exchanged correspondence in which each proposed a number of possible areas for U.S.-U.S.S.R. cooperation in the exploration and use of outer space. One of Chairman Khrushchev's proposals was that an international agreement be concluded on the rescue and return of astronauts.<sup>14</sup> In accordance with Chairman Khrushchev's suggestion, the Soviet Union introduced in the first session a detailed draft "International Agreement on the Rescue of Astronauts and Spaceships Making Emergency Landings."<sup>15</sup> In addition to an article imposing a general duty on states to employ every possible means at their disposal to rescue astronauts in distress, the Soviet draft included specific provisions covering notification of the launching state of an astronaut in distress, the rescue of an astronaut who has made an emergency landing on the territory of a foreign state, similar rescue in the event of a landing on the high seas, the return of such astronauts to their own countries, the return of objects launched into outer space found by a party on its territory or on the high seas, and the reimbursement of expenses incurred in returning astronauts and space objects. The Soviet Union also introduced a proposed "Declaration of Basic Principles Governing the Activities of States pertaining to the Exploration and Use of Outer Space," Article 9 of which provided for the rendering of all possible assistance to spaceships and their crews which may make emergency landings on the territory of a foreign state or on the high seas, and the return of space objects found beyond the limits of the launching state.<sup>16</sup> At the same time, the United States tabled a draft General Assembly resolution containing three proposed "principles" covering approximately the same subject matter as that contained in the two Soviet drafts.<sup>17</sup> This first effort by the Legal Subcommittee to explore the possibility of an international agreement

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14. Chairman Khrushchev stated the following:

At the present stage of man's inroads into outer space, it is very desirable to draft and conclude an international agreement providing for assistance in the search for and rescue of spaceships, sputniks and capsules that descend to the earth due to accident. Such an agreement seems even more necessary because the point in question here is the saving of the lives of cosmonauts, these intrepid explorers of universal space.

This letter is dated March 20, 1962, and printed in *The New York Times*, March 22, 1962. President Kennedy's letter dated March 7, 1962, appears in *PUBLIC PAPERS OF THE PRESIDENTS, JOHN F. KENNEDY*, 1962, at 244 (1963).

15. U.N. Doc. No. A/AC.105/C.2/L.2 (1962).

16. U.N. Doc. No. A/AC.105/C.2/L.1 (1962).

17. U.N. Doc. No. A/AC.105/C.2/L.3 (1962).

on assistance and return was commended by the General Assembly in December 1962, when it requested the Committee on the Peaceful Uses of Outer Space "to continue urgently its work on . . . assistance to and return of astronauts and space vehicles."<sup>18</sup>

In the Second Session of the Legal Subcommittee, which met in New York during April of 1963, the Soviet Union again introduced its draft Declaration of Basic Principles including an article on assistance and return, and its prior draft agreement on assistance to and return of astronauts and return of space objects. The United States also introduced a draft Declaration of Basic Principles which, unlike the Soviet draft Declaration, provided for the return of astronauts as well as assistance to astronauts and the return of space objects.<sup>19</sup> The United Arab Republic also introduced a draft "Code for International Cooperation in the Peaceful Uses of Outer Space" which contained provisions on rescue and return of astronauts and return of space objects.<sup>20</sup>

The Second Session of the Legal Subcommittee featured a consensus on a number of basic principles which the various delegations felt ought to be applicable to the conduct of activities in outer space. This agreement led to the unanimous adoption by the General Assembly, on December 13, 1963, of Resolution 1962 (XVIII, entitled *Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space*). The *Declaration* included provisions on the rescue of astronauts, the return of astronauts, and the return of space objects.<sup>21</sup>

After the adoption of the *Declaration* by the General Assembly, the members of the Legal Subcommittee turned their attention exclusively to the proposed detailed international agreements on assistance and return and liability. In the first part of the Third Session, held in Geneva in March 1964, the Soviet Union introduced a revised proposal of its

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18. G.A. Res. 1802 (XVII), December 14, 1962.

19. Report of the Legal Subcommittee on the Work of its Second Session (16 April-3 May 1963) to the Committee on the Peaceful Uses of Outer Space, U.N. Doc. No. A/AC.105/12, Annex I G.

20. *Id.* Annex I E.

21. The last sentence of Paragraph 7 provides that objects launched into outer space or their component parts "found beyond the limits of the State of registry shall be returned to that State, which shall furnish identifying data upon request prior to return." Paragraph 9 provides 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, distress, or emergency landing on the territory of a foreign State or on the high seas. Astronauts who make such a landing shall be safely and promptly returned to the State of registry of their space vehicle."

earlier draft,<sup>22</sup> and the United States introduced a draft treaty entitled "International Agreement on Assistance to and Return of Astronauts and Objects Launched into Outer Space."<sup>23</sup> The Australian and Canadian delegations introduced a draft treaty in the form of a working paper on the same subject,<sup>24</sup> which combined some of the provisions set forth in the U.S. and U.S.S.R. drafts, along with some compromise formulations.

The Legal Subcommittee met again in New York in October 1964, and during this second part of its Third Session tentatively agreed on the text of a preamble and three articles of a treaty on "assistance and return." The three articles agreed upon provided for notification of the launching state and the U.N. Secretary-General in case of an accident or distress involving space personnel, the rescue of space personnel who have made an emergency landing in territory under the jurisdiction of a contracting party, and the return of space objects.<sup>25</sup>

During the Fourth Session, which was held in New York in late September 1965, an effort was made to resolve those issues which had been discussed in the prior sessions but on which no agreement had been reached. Although progress was made, no final agreement was achieved on either the Soviet proposed article setting forth the general duty of "assistance and return," or the various proposed articles on return of astronauts and rescue of astronauts who have landed on the high seas or elsewhere outside the jurisdiction of any state. Furthermore, questions remained as to the method by which international organizations involved in space activities might become subject to the rights and obligations of the treaty, the procedure for settling disputes arising under the treaty, and whether the treaty should be open to "all states" for signature. However, by the close of the Fourth Session, most of the remaining differences were semantic. Agreement had essentially been attained on the specific subject matters to be included in the treaty, and in general the rights and obligations of the parties that would arise thereunder.

During 1966 the attention of the Legal Subcommittee was diverted

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22. U.N. Doc. No. A/AC.105/C.2/L.2/Rev.1 (1964).

23. U.N. Doc. No. A/AC.105/C.2/L.9 (1964).

24. W.G. I/23, included in Report of the Legal Subcommittee on the Work of the Second Part of its Third Session (5-23 October 1964) to the Committee on the Peaceful Uses of Outer Space, U.N. Doc. No. A/AC.105/21, October 23, 1964.

25. These articles are found in the Report of the Legal Subcommittee on the Second Part of its Third Session, *id.*, Annex III (1964).



from the detailed drafts on "assistance and return" and "liability" due to the urgency attached by the United States, the Soviet Union, and many other nations, to the need for a treaty establishing a code of general legal duties to govern states in the exploration and use of outer space. The entire effort of the Legal Subcommittee during its Fifth Session was devoted to arriving at agreement on such a treaty. The Legal Subcommittee met twice during 1966, in Geneva in July, and in New York in September. The product of its labors, and certain bilateral negotiations thereafter, is the *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies*, which was approved unanimously by the General Assembly on December 19, 1967, entered into force on October 10, 1967, and has now been signed by over eighty nations.<sup>26</sup> Most of the provisions of the Treaty were based on the U.N. General Assembly's 1963 *Declaration of Legal Principles*. Provisions covering the rescue and return of astronauts and space vehicles closely resembling those in the *Declaration* are included in Articles V and VIII of the Treaty.<sup>27</sup>

With the approval of the Outer Space Treaty by the General Assembly, questions were raised as to the need for a detailed international agreement on "assistance and return" in view of the inclusion in the Treaty of provisions establishing general duties in that regard. That many states continued to believe such a detailed agreement to be necessary is evidenced by the same General Assembly resolution that commended the Outer Space Treaty for signature. In that resolution the

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26. Dembling and Arons, *The Evolution of the Outer Space Treaty*, *supra* note 13.

27. The first two paragraphs of Article V provide that

States Parties to the Treaty shall regard astronauts as envoys of mankind in outer space and shall render to them all possible assistance in the event of accident, distress, or emergency landing on the territory of another State Party or on the high seas. When astronauts make such a landing, they shall be safely and promptly returned to the State of registry of their space vehicle.

In carrying on activities in outer space and on celestial bodies, the astronauts of one State Party shall render all possible assistance to the astronauts of other States Parties.

The last sentence of Article VIII provides, with respect to objects launched into outer space, that

Such objects or component parts found beyond the limits of the State Party to the Treaty on whose registry they are carried shall be returned to that State Party, which shall, upon request, furnish identifying data prior to their return.

General Assembly requested the Committee on the Peaceful Uses of Outer Space "to continue its work on the elaboration of . . . an agreement on assistance to and return of astronauts and space vehicles . . ." <sup>28</sup>

Pursuant to this mandate, the Legal Subcommittee again considered the subject of "assistance and return" as one of four items on the agenda for its Sixth Session. The Sixth Session was held in Geneva between June 19 and July 14, 1967. The drafts on which discussion was based included the United States proposed treaty that had been introduced in the Fourth Session, a revised version of the Australia-Canada Working Paper,<sup>29</sup> and a revised Soviet draft.<sup>30</sup> The provisions of the Soviet draft dealt exclusively with the rescue of astronauts. No coverage was given in the Soviet draft to the return of astronauts or the return of objects launched into outer space, matters which were covered in the U.S. and Australia-Canada drafts. It was this difference in scope which provoked a large measure of disagreement during the Sixth Session, with the result that little progress was made.

The Soviet delegation attempted to justify the restricted scope of its draft on the ground that the deaths of U.S. and Soviet astronauts in space vehicle accidents during January and March 1967, made obvious the urgent need to arrive at an agreement on astronaut rescue at the earliest possible date. The Soviet delegation expressed the belief that the exclusion of provisions on return of astronauts and space objects would expedite proceedings, and that an agreement on "assistance" constituted "an absolute minimum which would be practical at the present stage of outer space activities."<sup>31</sup> Although the Soviet delegates expressed their willingness to discuss the matter of "return,"<sup>32</sup> they resisted any meaningful negotiations other than on the basis of the Soviet draft.<sup>33</sup> On the other hand, the United States delegation was unwilling to drop the "return" portions of its prior draft and regarded the mandate imposed by the General Assembly on the Outer Space

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28. G.A. Res. 2222(XXI), January 25, 1967.

29. U.N. Doc. No. A/AC.105/C.2/L.20 (1967).

30. U.N. Doc. No. A/AC.105/C.2/L.18 (1967).

31. U.N. Doc. No. A/AC.105/C.2/SR.76 (1967) at 4-5. The discussions in formal meetings of the Legal Subcommittee are reported in Summary Records (hereafter "SR").

32. SR. 85 at 6.

33. United States Deputy Ambassador William B. Buffum stated before the Committee on the Peaceful Uses of Outer Space on September 13, 1967, that the Soviet delegation took the position that "only provisions regarding rescue should be incorporated in a detailed and separate treaty." U.N. Doc. No. A/AC.105/PV.49 at 36 (1967).

Committee as including an obligation to arrive at an agreement on the return of astronauts and space objects as well as on the rescue of astronauts.<sup>34</sup> Reflecting the attitude of the smaller nations, that an agreement on assistance alone would benefit solely the space powers, the Japanese delegation urged that tying together the three matters of assistance to astronauts, return of astronauts, and return of space objects in a single instrument “. . . was the only way of satisfying all States concerned while serving the interests of mankind.”<sup>35</sup>

Notwithstanding this fundamental difference of opinion over the scope of the treaty, tentative agreement was expressed on portions of the texts of articles covering notification of accidents and assistance to astronauts in the territory of a contracting party.<sup>36</sup> As a practical matter, however, the Sixth Session produced no greater amount of agreement on a text than had already been achieved by the Working Group during the Third Session, in 1964. Although Chairman Wyzner (of Poland) called attention to the consensus achieved in 1964 on the preamble and three articles,<sup>37</sup> that consensus was not reaffirmed. If anything, the Sixth Session marked a step backward in the negotiation process in view of the Soviet desire to disregard all of the progress that had been made regarding articles on return of astronauts and return of space objects.

The prospect of reaching early agreement on a detailed “assistance and return” treaty appeared dim when the full Committee on the Peaceful Uses of Outer Space convened in New York in September 1967. However, hope for success was not abandoned. In his statement before the Committee on September 13, U.S. Deputy Ambassador William B. Buffum stated:

. . . our strong hope [is] that an assistance and return agreement will be forthcoming without undue delay. We know of no real reason of substance why it should not be. It is with that hope in mind that I should like to add that the United States would welcome diplomatic discussions on this particular subject in advance of the next meeting of the Legal Subcommittee, and would be

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34. SR. 85 at 5-6.

35. *Id.* at 7.

36. U.N. Doc. No. A/AC.105/37, Report of the Legal Subcommittee on the Work of its Sixth Session (19 June-14 July 1967) to the Committee on the Peaceful Uses of Outer Space, at 3-4.

37. SR. 76 at 4.

very happy if other delegations were prepared to participate in such provisional talks.<sup>38</sup>

Much to the surprise of the U.S. and other delegations, Mr. Platon Morozov, the Deputy Soviet Ambassador, stated the following before the Committee on the same day:

We declare again here that we have no objection to completing the draft presented by the Soviet Union on 19 June 1967 concerning the rescue of astronauts in the event of accident or emergency landing, with provisions concerning the return of astronauts and space vehicles, in conformity with the provisions of the [Outer Space Treaty]. We consider that this repeated statement makes quite unnecessary any criticism levelled at our delegation and any attempt to make us responsible for the fact that the Legal Sub-Committee, despite such wide possibilities, was unable to achieve better and more effective results in its work.<sup>39</sup>

As a result of this apparent reversal of the Soviet position on the inclusion of articles on the return of astronauts and space objects, a series of fifteen bilateral negotiating meetings was held during the Twenty-Second Session of the General Assembly between the U.S. and Soviet delegations to the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space. Other interested delegations were consulted with a view to reaching rapid agreement on a final text.<sup>40</sup> During the course of negotiations, the General Assembly approved a resolution requesting the Committee on the Peaceful Uses of Outer Space " . . . to continue *with a sense of urgency* its work . . . on assistance to and return of astronauts and space vehicles."<sup>41</sup>

On December 14, 1967, five days before the scheduled adjournment of the General Assembly, the Legal Subcommittee was convened in a Special Session. At the request of the U.S. and U.S.S.R. delegations, the Chairman introduced, as Working Paper No. 1, the complete text

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38. U.N. Doc. No. A/AC.105/PV.49 at 36 (1967).

39. *Id.* at 61.

40. It is speculated that a greater sense of urgency regarding the conclusion of an "assistance and return" treaty accompanied increasing concern by the United States and the Soviet Union over the possibilities of unplanned landings that may take place in the course of upcoming manned lunar explorations. The New York Times, December 13, 1967, at 11, col. 1.

41. G.A. Res. 2260 (XXII), November 3, 1967. [Emphasis added.]

that had been agreed upon by the U.S. and U.S.S.R.<sup>42</sup> Minor revisions to the text were made to accommodate the views of other delegations, and a revised Working Paper was introduced by the Chairman on the following day.<sup>43</sup> Further revisions made during the three meetings held on December 15 resulted in a consensus on a final text which was reported to the full Committee.<sup>44</sup> The Committee convened on the following day, December 16, approved the draft agreement, and decided to submit it to the General Assembly for consideration.<sup>45</sup> On December 19, the General Assembly unanimously endorsed the treaty.<sup>46</sup>

### THE TREATY

Turning to the text of the treaty, one notices that it is patterned more or less on each of the three drafts previously before the Legal Subcommittee. The preamble is followed by articles on notification of accidents; rescue of astronauts on the territory of a Contracting Party; rescue on the high seas or elsewhere not under the jurisdiction of any state; return of astronauts; recovery and return of space objects; a definition of "launching authority" which covers international organizations as well as states engaged in space activities; and final clauses on signature, ratification, accession, entry into force, amendment, withdrawal, and authenticity of texts. Its purpose, as an elaboration and implementation of the Outer Space Treaty, is reflected in the

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42. U.N. Doc. No. A/AC.105/C.2/L.28. The fact that Working Paper No. 1 was sponsored jointly by the U.S. and U.S.S.R. is reflected in a statement by the Chairman that it had been circulated by the Secretariat at the request of the delegations of the U.S.S.R. and the United States. JOURNAL OF THE UNITED NATIONS No. 4310, at 8 (December 15, 1967).

43. U.N. Doc. No. A/AC.105/C.2/L.28/Rev. 1 (1967).

44. U.N. Doc. No. A/AC.105/43, Report of the Legal Subcommittee on the Work of its Special Session (14-15 December 1967) to the Committee on the Peaceful Uses of Outer Space, December 15, 1967. The views expressed by the various delegations at the four formal meetings of the Legal Subcommittee held on December 14 and 15, 1967, are summarized in U.N. Doc. Nos. A/AC.105/C.2/SR.86, 87, 88, and 89 (1967).

45. U.N. Doc. No. A/6804/Add.1, Addendum to the Report of the Committee on the Peaceful Uses of Outer Space, December 16, 1967; The New York Times, December 17, 1967, Sec. 1, p. 1, col. 1.

46. The Washington Post, December 20, 1967, at A-20, col. 1. The final text of the Agreement, as approved by the General Assembly, is annexed to G.A. Res. 2345 (XXII), December 19, 1967. The texts of the Resolution and the Agreement are printed in 58 DEP'T STATE BULL. 85 (1968). The text of the Agreement also appears in The New York Times, December 17, 1967, Sec. 1, at 66, col. 2.

Preamble,<sup>47</sup> which notes the provisions in the Outer Space Treaty on rescue and return of astronauts and space objects, and expresses the desire "to develop and give further concrete expression to these duties."<sup>48</sup>

Article 1, on notification, was one of the least controversial, and reflects the essential humanitarian purpose of the Assistance and Return Agreement. Upon receiving information or discovering that the personnel of a spacecraft have suffered accident, are experiencing conditions of distress, or have made an emergency or unintended landing in territory under its jurisdiction, or on the high seas or in any other place not under the jurisdiction of any state, a Contracting Party must immediately notify the launching authority and the Secretary-General of the United Nations. If the Contracting Party cannot identify and immediately communicate with the launching authority, it must immediately make a public announcement by all appropriate means of communication at its disposal.<sup>49</sup>

47. The Preamble is as follows:

*The Contracting Parties,*

*Noting* the great importance of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, which calls for the rendering of all possible assistance to astronauts in the event of accident, distress, or emergency landing, the prompt and safe return of astronauts, and the return of objects launched into outer space,

*Desiring* to develop and give further concrete expression to these duties,

*Wishing* to promote international cooperation in the peaceful exploration and use of outer space,

*Prompted* by the sentiments of humanity,

*Have* agreed on the following:

48. By the use of the word "duties," in the second preambular paragraph, the drafters of the Assistance and Return Agreement have provided an interesting comment on the Outer Space Treaty which is entitled "Treaty on Principles Governing the Activities of States . . ." The Assistance and Return Agreement is regarded as a further amplification of existing legal duties prescribed by Articles V and VIII of the Outer Space Treaty, not an initial imposition of the obligations already binding upon the parties to the Outer Space Treaty.

49. The text of Article 1 is as follows:

Each Contracting Party which receives information or discovers that the personnel of a spacecraft have suffered accident or are experiencing conditions of distress or have made an emergency or unintended landing in territory under its jurisdiction or on the high seas or in any other place not under the jurisdiction of any State shall immediately:

(a) Notify the launching authority or, if it cannot identify and immediately communicate with the launching authority, immediately make a

This article constitutes an important addition to the related provisions of Article V of the Outer Space Treaty. Although the duty to notify might be implied from the duty to render assistance under the Outer Space Treaty, notification under Article 1 of the Assistance and Return Agreement is expressly prescribed as a duty antecedent to or contemporaneous with the duty to assist astronauts under Articles 2 or 3. Moreover, Article 1 extends the duty to notify to situations where a Contracting Party has learned that the personnel of a spacecraft have suffered accident or distress in outer space, or on celestial bodies. Notification of such situations is in addition to that required where emergency or unintended landings have been made anywhere on Earth, or accident or distress suffered in airspace, other than on or above the territory of a state which is not the Contracting Party acquiring the requisite knowledge.<sup>50</sup>

In other respects also Article 1 exemplifies the broad scope of the treaty. As in Articles 2, 3 and 4, Article 1 applies to the "personnel" of a spacecraft. Article V of the Outer Space Treaty uses the term "astronauts," which might be construed narrowly as applying only to those persons who pilot or operate a spacecraft. The term "personnel" may more clearly be regarded as encompassing the whole crew of a spacecraft, or even future passengers. More critical to the scope of the Treaty, the duty to notify arises only in situations of "accident," "distress," or "emergency or unintended landing." The words "accident," "distress," and "emergency" had appeared in all prior drafts. While the phrase "unintended landing" is original with the Working Paper introduced in the Special Session of the Legal Subcommittee, it appears to constitute an agreed upon substitute for the prior U.S. proposal to include "mistake" as a somewhat distinct concept. These four expressions also constitute touchstones for the duties arising under Articles 2, 4, and, by implication, Article 3. More will be said about "unintended landings" in connection with Article 2 where the issue raised by possible intended landings is more pronounced. Insofar as the duty to notify is concerned, it should be emphasized that the infor-

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public announcement by all appropriate means of communication at its disposal; and

(b) Notify the Secretary-General of the United Nations who should disseminate the information without delay by all appropriate means of communication at his disposal.

50. More comment will be made on the phrase "in any other place not under the jurisdiction of any state" in connection with Article 3, *infra*.

mation in the possession of the cognizant authorities of the Contracting Party is of critical importance. In the case of a predicament involving space personnel, the duty to notify would arise where those authorities have information giving them reason to believe that the situation is caused by accident, distress, emergency, or is otherwise unintended, without regard to whether, upon investigation, the information does not prove to be correct. In the event that the Contracting Party has complied with the notification requirement based upon an erroneous interpretation of the facts, the launching authority may then take whatever corrective action is necessary.

Throughout Article 1, the emphasis is on maximum insurance on providing the requisite notification in timely fashion to the launching authority or other Contracting Parties in order that assistance may be rendered in accordance with Articles 2 or 3. The word "immediately" is used three times and "without delay" once. Although it is contemplated that the Contracting Party would make an effort to identify and communicate with the launching authority before making a public announcement, any flexibility permitted by subparagraph (a) must be considered limited by the information which the Contracting Party has received regarding the condition of the astronauts. By requiring immediate notification to the Secretary-General, subparagraph (b) provides additional insurance that the information will reach the proper authorities as soon as possible.<sup>51</sup>

Article 2 sets forth the measure of assistance which a Contracting Party must provide to astronauts who have landed in its territory, including its territorial waters. It must inform the launching authority and the Secretary-General of the rescue efforts being made. Further, provision is made for the cooperation of the launching authority in the rescue operations.<sup>52</sup> The controversy over this article arose out of the sensibilities of states which would be required to "take all possible steps"

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51. Unlike the comparable provisions in Article 2 and 3 which require only reporting to the Secretary-General, Article 1 contemplates that the Secretary-General will take the affirmative action of disseminating information. Although by use of the word "should," the burden of dissemination is not made mandatory, as a practical matter the Secretary-General would hardly hesitate to carry out such a function.

52. The text of Article 2 is as follows:

If, owing to accident, distress, emergency or unintended landing, the personnel of a spacecraft land in territory under the jurisdiction of a Contracting Party, it shall immediately take all possible steps to rescue them and render them all necessary assistance. It shall inform the launching authority and also the Secretary-General of the United Nations of the steps it is taking



to rescue persons who have landed in their respective territories without their consent, and impliedly to permit representatives of the launching authority to enter if their assistance "would contribute substantially to the effectiveness of search and rescue operations."

In analyzing Article 2, a comparison may be drawn between its provisions and the analogous provisions of treaties applicable to air navigation, particularly Article 25 of the Chicago Convention on Civil Aviation of 1944.<sup>53</sup> Notwithstanding the general rule of international law that every state has complete and exclusive sovereignty over the air space above its territory,<sup>54</sup> in which the Chicago Convention is in complete accord,<sup>55</sup> it is generally recognized that aircraft which are in distress in a state's airspace and make emergency landings are entitled to some measure of assistance. For example, Article 22 of the Paris Convention of 1919 provides that "Aircraft of the Contracting States shall be entitled to the same measure of assistance for landing, particularly in case of distress, as national aircraft."<sup>56</sup> Article XXVII of the Havana Convention on Commercial Aviation provides that "[t]he aircraft of all states shall have the right, in cases of danger, to all possible aid."<sup>57</sup> The measure of assistance required by Article 25 of the

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and of their progress. If assistance by the launching authority would help to effect a prompt rescue or would contribute substantially to the effectiveness of search and rescue operations, the launching authority shall cooperate with the Contracting Party with a view to the effective conduct of search and rescue operations. Such operations shall be subject to the direction and control of the Contracting Party, which shall act in close and continuing consultation with the launching authority.

53. Convention on International Civil Aviation, Chicago, December 7, 1944, 61 Stat. 1180, T.I.A.S. No. 1591 (1947), Article 25:

Each Contracting State undertakes to provide such measures of assistance to aircraft in distress in its territory as it may find practicable, and to permit, subject to control by its own authorities, the owners of the aircraft or authorities of the State in which the aircraft is registered to provide such measures of assistance as may be necessitated by the circumstances.

54. BRIERLY, *THE LAW OF NATIONS* 186, 197 (5th ed. 1955).

55. Article 1 of the Chicago Convention provides that "The Contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory." See Cooper, *Air Transport and World Organization*, 55 YALE L.J. 1191 (1946).

56. Convention Relating to the Regulation of Aerial Navigation, signed at Paris, October 13, 1919, League of Nations T.S. No. 297 (1922), reprinted in *AIR LAWS AND TREATIES OF THE WORLD*, prepared for the Committee on Commerce, United States Senate, 89th Cong., 1st Sess., July 1, 1965, Vol. III at 3085.

57. Convention on Commercial Aviation signed at Havana, February 20, 1928, U.S.T.S. No. 840, reprinted in *AIR LAWS AND TREATIES OF THE WORLD*, *id.* at 3094.

Chicago Convention is such assistance that the contracting state on which the emergency landing has taken place "may find practicable."

On the other hand, Article 2 of the Assistance and Return Agreement requires that when a landing has been made owing to accident, distress, emergency, or is unintended, the Contracting Party on whose territory the spacecraft has landed must "immediately take all possible steps to rescue" the personnel of the spacecraft and "render them all necessary assistance." Thus Article 2 requires, at least in theory, that the maximum possible rescue effort be made by the Contracting Party. It may be argued that the Contracting Party must utilize all resources available for the rescue effort, even to the point of diverting certain resources from other important uses. This appears to be a greater measure of assistance than that required under Article 25 of the Chicago Convention, which requires only that assistance deemed "practicable" by the state on which a landing is made; but it is consistent with the measure of "all possible assistance" required to be rendered to astronauts under Article V of the Outer Space Treaty. Whether a real distinction exists between "all possible" and "practicable" will depend upon the efforts exerted by states in comparable situations.

Under Article 2, as well as under Articles 1, 3, and 4, the obligation on the Contracting Party is imposed where the predicament of the astronaut is due to accident, distress, emergency or unintended landing. Little difficulty should be encountered in interpreting the words "accident," "distress," or "emergency" in view of the humanitarian purpose of the treaty and the ample precedents in situations involving aircraft. Landings caused, for example, by malfunction of the spacecraft, a collision between the spacecraft and another object, or a physical disability suffered by the astronaut, would appear to fall under one or more of these three terms. However, the obligations under the first four articles of the treaty also arise upon a landing that is "unintended," or due to mistake. The most obvious example of an unintended landing, as distinguished from one caused by accident, distress, or emergency, is one caused by a navigational error, either by the astronaut in the spacecraft, the controllers on Earth, or by automatic equipment.

Since the obligations of a Contracting Party under Article 2 may involve a large and expensive rescue effort, and since no obligation is incurred if the landing is intentional, whether a particular landing is unintended may pose a question of importance and not so susceptible of resolution as the question of whether a landing was caused by acci-

dent, distress, or emergency. For instance, it would appear that assistance is required where the landing is caused by the negligence of the astronaut. The question might be raised as to the assistance required where the conduct of the astronaut is so grossly reckless as to amount to wilfulness. The question of whether assistance is required may also be raised where a navigational error has been made, or the astronaut is suffering distress, and cannot land at the spot called for by the mission, but still has a number of alternative locations on which he might make a landing. Although the landing might be considered as intentional in view of selection by the astronaut of the exact landing spot, a proper interpretation of Article 2 would appear to call for the rendering of assistance. Where a landing made in a location other than as planned was caused by events not contemplated or within the control of the astronaut, and if the astronaut selects his landing spot on the basis of safety and convenience, he should not be penalized for taking account of those factors. Criteria for resolving questions such as these may be developed from prior situations involving aircraft.<sup>58</sup>

The third and fourth sentences of Article 2 are intended to enhance the effectiveness of rescue operations beyond that reflected in Article V of the Outer Space Treaty. While the Outer Space Treaty calls only for rescue operations by the state in whose territory the astronaut has landed, these new provisions contemplate assistance by the launching authority in the rescue operation where such assistance "would help to effect a prompt rescue or would contribute substantially to the effectiveness of search and rescue operations . . . ." As stated by the U.S. representative:

Assistance by the launching authority in these rare and infrequent cases of emergency could be crucial in saving the life of an astronaut. The launching authority will have advanced competence and experience in locating space vehicles. It may have aircraft or ships available to join in a search for a downed astronaut.<sup>59</sup>

Should the launching authority enter to render assistance, its activities would be under the direction and control of the Contracting Party.

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58. See Lissitzyn, *The Treatment of Aerial Intruders in Recent Practice and International Law*, 47 AM. J. INT'L L. 559 (1953).

59. Statement By Herbert Reis, United States Representative, before The Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space, December 14, 1967, US/UN Press Release-240, December 14, 1967, reprinted in 58 DEPT STATE BULL. 80 (1968).

Maximum cooperation between the Contracting Party and the launching authority is contemplated.

However, the question left unanswered by the text of Article 2 is who determines whether assistance by the launching authority would facilitate rescue operations. The delegations of Italy, Iran, Australia, and India, among others, expressed in various ways their reservations of a possible interpretation of Article 2 permitting a unilateral determination on this matter by the launching authority followed by entry by the launching authority on the territory of the Contracting Party without the latter's consent. While Article 25 of the Chicago Convention contains similar language, entry by the owners of the aircraft or authorities of the state of registry is clearly subject to permission being granted by the state on which the aircraft has landed.

In order to assuage the fears of these delegations, the United States representative made the following statement in the Legal Subcommittee shortly after the Special Session opened:

We think it clearly correct to expect that the views of the territorial party and the launching authority will coincide on the question whether, in a particular case, launching authority assistance would—in the words of Article 2—‘help to effect a prompt rescue or would contribute substantially to the effectiveness of search and rescue operations.’ In the unlikely event they do not agree, the territorial party would of course have the final say in this matter.<sup>60</sup>

This statement was repeated by U.S. Ambassador Arthur J. Goldberg before the Committee on the Peaceful Uses of Outer Space on December 16, 1967.<sup>61</sup> Based on this authoritative interpretation, the delegations that had raised questions regarding possible infringements on territorial sovereignty by the launching authority accepted the proposed text with only a minor change in emphasis.<sup>62</sup> Thus agreement was

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60. *Id.*

61. Statement by Ambassador Arthur J. Goldberg, United States Representative to the United Nations, before the United Nations Committee on the Peaceful Uses of Outer Space, December 16, 1967, US/UN Press Release-246, December 16, 1967.

62. In Working Paper No. 1 (U.N. Doc. No. A/AC.105/C.2/L.28), the third sentence of Article 2 read as follows: “If assistance by the launching authority would help to effect a prompt rescue or would contribute substantially to the effectiveness of search and rescue operations, the Contracting Party shall co-operate with the launching authority with a view to the effective conduct of search and rescue operations.” In

achieved on an important addition to the territorial rescue obligation imposed by Article V of the Outer Space Treaty—namely, a mechanism through which the resources of the launching authority may be made available to facilitate the conduct of search and rescue operations.

Article 3 provides for the rescue of the personnel of a spacecraft who have “alighted” on the high seas or in any other place not under the jurisdiction of any state.<sup>63</sup> Thus, in addition to calling for the rescue of astronauts who have landed on the high seas, as provided for in Article V of the Outer Space Treaty, Article 3 would require that rescue operations be undertaken where a landing has been made on the moon or other celestial bodies, or on any land area of the Earth’s surface not under the jurisdiction of any state, such as Antarctica.

Although the words “accident, distress, emergency and unintended landing” are not included in Article 3, the expression “if necessary” modifying the duty to furnish assistance makes clear that no duty arises where the landing is made in a planned recovery area on the high seas where the launching authority has adequate facilities available. It is conceivable, however, that astronauts may one day make a landing on the moon or another celestial body precisely in the location planned and still be in distress. In that situation, a duty may be imposed on other contracting parties to furnish assistance if they are in a position to do so. That Article 3 contemplates distress situations was made clear by the United States representative to the Legal Subcommittee who stated in the Special Session that “Article 3 concerns the duty to rescue in the case where an astronaut in distress comes down on the high seas or elsewhere beyond national jurisdiction.”<sup>64</sup> In this connection, it should be noted that Article 3 is limited to situations in which astronauts have “alighted.” It therefore does not cover a situation where an astronaut is in distress while traveling in outer space. However, assistance to astronauts while in outer space falls within the scope of

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the draft that was ultimately approved, “Contracting Party” and “launching authority” were reversed in position.

63. The text of Article 3 is as follows:

If information is received or it is discovered that the personnel of a spacecraft have alighted on the high seas or in any other place not under the jurisdiction of any State, those Contracting Parties which are in a position to do so shall, if necessary, extend assistance in search and rescue operations for such personnel to assure their speedy rescue. They shall inform the launching authority and the Secretary-General of the United Nations of the steps they are taking and of their progress.

64. Statement by Herbert Reis, *supra* note 59.

the second paragraph of Article V of the Outer Space Treaty, which provides that while carrying on activities in outer space and on celestial bodies, the astronauts of one state party shall render all possible assistance to the astronauts of another state party.

Insofar as Article 3 concerns rescue on the high seas, this Article may be treated as an expansion of the duties already imposed upon states which are parties to certain maritime conventions. For example, Article 11 of the Brussels Convention of 1910, provides that "Every master is bound, so far as he can do so without serious danger to his vessel, his crew and passengers, to render assistance to everybody, even though an enemy, found at sea in danger of being lost."<sup>65</sup> Furthermore, the Brussels Convention, in Article 12, states that the parties must enact implementing domestic legislation to assure that this duty is performed.<sup>66</sup> The obligation to provide assistance to persons lost at sea was re-enforced by the 1958 Convention on the High Seas, Article 12 of which provides:

1. Every State shall require the master of a ship sailing under its flag, insofar as he can do so without serious danger to the ship, the crew or the passengers,

(a) To render assistance to any person found at sea in danger of being lost;

(b) To proceed with all possible speed to the rescue of persons in distress if informed of their need of assistance, insofar as such action may be reasonably expected of him, . . .<sup>67</sup>

Even if Article 3 of the Assistance and Return Agreement is considered to supersede the above provisions with respect to parties who sign the treaty, the nature of the existing obligations to render assistance to persons lost at sea furnishes some guidance as to the measure

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65. Convention for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea, September 23, 1910, 37 Stat. 1658, T.S. 576.

66. Masters of ships under the jurisdiction of the United States are subject to the following: "The master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, crew, or passengers, render assistance to every person who is found at sea in danger of being lost; and if he fails to do so, he shall, upon conviction, be liable to a penalty of not exceeding \$1000 or imprisonment for a term not exceeding two years, or both." 37 Stat. 242 (1912), 46 U.S.C. 728 (1964). See also OPPENHEIM, *INTERNATIONAL LAW*, par. 271 at 607 (8th ed. Lauterpacht, 1958).

67. Convention on the High Seas, April 29, 1958, in force, September 30, 1962, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82.

of assistance required under Article 3. No obligation to render assistance arises until the Contracting Party receives information or discovers that a landing in distress has been made. When the Contracting Party has reason to believe that such a landing has occurred, it must "extend assistance" if "it is in a position to do so." By not including the words "all possible" before "assistance," the thrust of Article 3 is to require the Contracting Party to take all reasonable measures of assistance consistent with established humanitarian obligations regarding the rescue of life at sea. Thus a Contracting Party would not be required to endanger the lives of the passengers and crew of one of its ships if such would be the result of its engaging in a rescue effort, nor would the Contracting Party be required to divert its entire fleet from other essential operations.<sup>68</sup>

The phrase "in a position to do so" has two aspects, geographical and technological. Obviously, a Contracting Party which has ships or airplanes in the vicinity of an emergency landing would be required to render reasonable assistance. On the other hand, a small state with no ships or airplanes readily available may not be "in a position" to render assistance even if the landing takes place a few miles off shore. Even if the state nearest to the location of a landing on high seas is unable to render assistance, other states with the requisite ships, airplanes, or other facilities needed to rescue the astronauts, including the launching authority, may be considered "in a position" to render assistance. Thus a determination of which Contracting Parties are bound to render assistance under Article 3 in a particular situation depends, as the United States representative made clear in the Special Session, upon a combination of geographical and technological considerations.

Finally, it should also be noted that Article 3 envisages a cooperative rescue effort by those Contracting Parties in a position to render assistance. In previous sessions of the Legal Subcommittee the Soviet Union insisted on inclusion of a provision that "These operations shall be directed by the State which officially announced its launching of the spaceship concerned or by such other State as it may request to

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68. It might be argued that Article 3 detracts from the obligation, imposed by Article V of the Outer Space Treaty, to render "all possible assistance" to astronauts who have landed on the high seas by reason of accident, distress, or emergency. As a practical matter, however, the measure of assistance to be rendered will depend on the available means at the disposal of the party providing assistance regardless of which treaty is considered to apply.

take charge thereof.”<sup>69</sup> Such mandatory control of the rescue effort by the launching authority in every situation was objected to as thwarting the objective of assuring a speedy rescue. Under Article 3, control by the launching authority is not presumed. However, as the U.S. representative stated in the Special Session, Article 3 contemplates that a Contracting Party would be entitled as a matter of right to obtain assistance from the launching authority, and the launching authority would be obligated to render such assistance. At the least, those Contracting Parties engaging in the rescue operation must inform the launching authority and the Secretary-General of the steps they are taking and of their progress.

Article 4 imposes an unconditional obligation to return the personnel of a spacecraft whose landing on the territory of a Contracting Party or outside the jurisdiction of any state is unintended or due to accident, distress, or emergency.<sup>70</sup> Agreement on the unconditional nature of the obligation to return astronauts constituted a major victory for the United States on an issue that had plagued the Legal Subcommittee's discussions on assistance and return for a number of years. The Soviet Union had previously sought to condition the duty to return astronauts on compliance by the launching authority with the *Declaration of Legal Principles*. Thus if the cognizant authorities of the state on whose territory an emergency landing is made were to believe that the astronaut is engaging in aggressive military activities, or espionage, they would not be obliged to return the astronaut. Adoption of the Soviet proposal would have weakened the humanitarian purpose of returning astronauts found in distress by subjecting it to the vicissitudes of international politics. Although Article 4 largely does away with the subjective conditions sought to be imported into the return obligation by the Soviet Union, a Contracting Party may still seek to argue that a landing on its territory is intentional, and no duty to return the astronaut arises.

Aside from the possibility that a Contracting Party might regard a landing as intentional, the agreement on Article 4 settled the questions of whether the personnel of a spacecraft should be returned even though

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69. U.N. Doc. No. A/AC.105/C.2/L.2/Rev. 2 (1964), Art. 4.

70. The text of Article 4 is as follows: "If, owing to accident, distress, emergency, or unintended landing, the personnel of a spacecraft land in territory under the jurisdiction of a Contracting Party or have been found on the high seas or in any other place not under the jurisdiction of any State, they shall be safely and promptly returned to representatives of the launching authority."



they have committed crimes on the territory of a Contracting Party, or whether they should be returned notwithstanding a request for political asylum. Under Article 4, the astronauts must be returned even though crimes have been committed. Presumably adequate punishment would be imposed by the launching authority. Regarding a claim of asylum, the Austrian delegate agreed to Article 4 on the understanding that the rights of aliens under national law are not impaired. However, the possibility that an astronaut might seek asylum in the Contracting Party on whose territory he has landed was viewed as not a real problem; and it was generally understood that astronauts who wish to defect would have to find a more convenient way of doing so.

The obligation to return astronauts does not necessarily require the Contracting Party actually to transport an astronaut to the territory of the launching authority. At the suggestion of the French delegation, it was made clear that an astronaut need only be returned "to the representatives of the launching authority."<sup>71</sup> Thus the obligation to return an astronaut would be discharged by turning him over to representatives of the launching authority at a location other than on the territory of the launching authority. Providing this option in Article 4 may be considered an improvement over the comparable provision in Article V of the Outer Space Treaty.

Article 5 is concerned with the return of space objects and is perhaps the most obvious example of how the Assistance and Return Agreement has elaborated upon fundamental obligations set forth in the Outer Space Treaty. The last sentence of Article VIII of the Outer Space Treaty merely imposes a duty on parties to return space objects to the launching authority subject to the furnishing of identifying data upon request. Article 5 of the Assistance and Return Agreement sets forth a number of subsidiary rights and obligations. It should be noted that of the first five articles of the Agreement, the first four are concerned exclusively with the rescue and return of astronauts while Article 5 is concerned exclusively with the recovery and return of space objects.

Paragraph 1 of Article 5 imposes a duty on the Contracting Party to notify the launching authority and the Secretary-General when it receives information or discovers that a space object or its component parts has come down in its territory, on the high seas, or in any other

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71. Statement by Herbert Reis, *supra* note 59.

place not under the jurisdiction of any state.<sup>72</sup> Similar to the intention of Article 1, a particular Contracting Party is not obligated to provide notification where it has reason to believe that a spacecraft has landed in the territory of another state.<sup>73</sup> However, unlike Article 1, no urgency is attached to the notification and therefore no public announcement is required in the event that the launching authority cannot be immediately identified.

Paragraph 2 of Article 5 provides for the recovery of space objects or their component parts which have landed in the territory of a Contracting Party.<sup>74</sup> The obligation to recover the object, or a component part, only arises where the launching authority has made a request. Presumably, no request will be made if the launching authority determines, upon being notified, that the object has little or no value. Also, no duty to recover arises in situations contemplated by Paragraph 4 regarding hazardous objects. Since Article 5 does not envisage situations where the lives of astronauts are at stake, the Contracting Party is only obligated to "take such steps as it finds practicable." It was felt that the Contracting Party should not be required to mobilize resources and act with an urgency to the extent required under Articles 2 and 3. Also, at the request of the Swedish delegation as well as others during the Special Session of the Legal Subcommittee, language was inserted providing the Contracting Party with the option of obtaining assistance from the launching authority in the recovery operation. While the Contracting Party cannot refuse to render any effort, presumably the launching authority may be called upon to furnish the bulk of the manpower and equipment in a large and complex recovery operation. Although it is not so stated in Paragraph 2, the efforts of

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72. Article 5; Paragraph 1, provides that "Each Contracting Party which receives information or discovers that a space object or its component parts has returned to Earth in territory under its jurisdiction or on the high seas or in any other place not under the jurisdiction of any State, shall notify the launching authority and the Secretary-General of the United Nations."

73. It would appear, however, that like the requirement of Article 1 regarding astronauts in distress, a Contracting Party would be required to provide notification if it learns that an object has passed through its airspace even though it landed in an adjacent state.

74. Paragraph 2 of Article V provides that "Each Contracting Party having jurisdiction over the territory on which a space object or its component parts has been discovered shall, upon the request of the launching authority and with assistance from that authority if requested, take such steps as it finds practicable to recover the object or component parts."

the launching authority would no doubt be undertaken under the direction and control of the Contracting Party.<sup>75</sup>

Paragraph 3 is the only portion of Article 5 that does not add significantly to obligations already provided for in the Outer Space Treaty.<sup>76</sup> Subject to Paragraph 4, an unconditional duty to return a space object is imposed on a Contracting Party which has "found" the object outside the territory of the launching authority if the launching authority requests the return and furnishes identifying data pursuant to a request by the Contracting Party. Presumably the launching authority will not desire the return of all of the objects which it launches, but will only request the return of objects having remaining scientific value or other residual worth. Also, a request for the return of the object need not be made until the launching authority has been notified, pursuant to Paragraph 1, and the object recovered pursuant to Paragraph 2, thereby providing ample opportunity for the launching authority to determine the value of the object.

Paragraph 3 not only concerns the return of objects which have landed on the territory of a Contracting Party, but also objects which have landed on the high seas<sup>77</sup> or in any other place not under the

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75. Where the Contracting Party is a state in which public officials have only limited authority to enter on private property, local law must be relied upon in order for the cognizant authorities to carry out the recovery operation if the space object has landed on private property. In the United States certain exceptions to the local law of trespass may be in point, e.g., a privilege to enter one's land to prevent serious harm to the chattel of another. RESTATEMENT (SECOND) OF TORTS, § 197 (1965).

76. Article 5, Paragraph 3, provides that "Upon request of the launching authority, objects launched into outer space or their component parts found beyond the territorial limits of the launching authority shall be returned to or held at the disposal of representatives of the launching authority, which shall, upon request, furnish identifying data prior to their return."

77. With respect to space objects found on the high seas, the Contracting Party might claim the benefits of the maritime law of salvage. Courts have considered a variety of objects to be "vessels" for the purpose of enforcing a salvage lien. See *Cope v. Vallette Dry Dock Co.*, 119 U.S. 625 (1887) (floating drydock permanently moored to a bank of the Mississippi); *The Robert W. Parsons*, 191 U.S. 17 (1903) (canal boats drawn by horses); *Lambros Seaplane Base v. The Batory*, 215 F.2d 228 (2d Cir. 1954) (seaplane); *Reinhardt v. Newport Flying Service Corp.*, 232 N.Y. 115, 133 N.E. 371 (1921) (hydro-aeroplane moored in Gravesend Bay). Also, treaties regarding aircraft provide that the salvage of aircraft wrecked at sea shall be governed by the principles of maritime law. (See Article 23 of the Paris Convention of 1919, *supra* note 56; Article XXVI of the Havana Convention of 1928, *supra* note 57; Knauth, *Aviation and Salvage: The Application of Salvage Principles to Aircraft*, 36 COLUM. L. R. 224 (1936)). However, the possibility of enforcing a salvage lien on a recovered spacecraft may have been rendered moot by Paragraph 5 of Article 5, discussed *infra*.

jurisdiction of any state. Indeed, under the text of this paragraph, one might argue that if a representative of a Contracting Party "finds" a space object or component part within the territory of another state, the Contracting Party becomes obligated to return the object, assuming that it can be lawfully removed from the state in which it is found. As in the case of astronaut return under Article 4, an object need not be physically transported to the territory of the launching authority. In accordance with a suggestion made by the French delegation, the Contracting Party may discharge its obligation under Paragraph 3 by turning the object over to representatives of the launching authority, or holding it at their disposal at a location other than on the territory of the launching authority.

Paragraph 4 of Article 5 provides an important practical benefit to all parties, particularly those that have no space programs of their own or are incapable of dealing with situations created by returning space objects.<sup>78</sup> If a Contracting Party has reason to believe that a space object or a component part which it discovers is hazardous or deleterious, it need not take any of the actions required under Paragraphs 2 or 3. Instead, it may notify the launching authority which is required to take immediate and effective steps to eliminate any possible danger or harm. The steps required to be taken depend upon the nature of the object. The launching authority may be required to remove the entire object, for example, if removal from the territory of the Contracting Party is the only way in which the danger can be eliminated. Or the required steps may merely be a rendering harmless of pyrotechnics or toxic fuels by trained personnel. In the event the launching authority merely renders the object harmless and does not remove it, the Contracting Party may then be requested to take the actions set forth in Paragraphs 2 and 3, to the extent then applicable.

The right of the Contracting Party to call upon the assistance of the launching authority under Paragraph 4 turns on possession of the space object by the Contracting Party, regardless of where the object first landed. Thus, the Contracting Party may have discovered the object on its own territory, or recovered it on the territory of an-

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78. Paragraph 4 of Article 5 provides as follows: "Notwithstanding paragraphs 2 and 3 of this article, a Contracting Party which has reason to believe that a space object or its component parts discovered in territory under its jurisdiction, or recovered by it elsewhere, is of a hazardous or deleterious nature may so notify the launching authority which shall immediately take effective steps, under the direction and control of the said Contracting Party, to eliminate possible danger or harm."

other state, on the high seas or elsewhere outside the jurisdiction of any state. Presumably the steps taken by the launching authority would be within the territory of the Contracting Party or in a vessel under its flag. Thus Paragraph 4 of Article 5, like Article 2, subjects the activities of the launching authority to the direction and control of the Contracting Party. It is possible, however, that representatives of a Contracting Party may have possession of a hazardous space object outside the territory of any state. Under the text of Paragraph 4, the launching authority would still be obligated to render the object harmless, but may not necessarily be subject to the direction and control of the Contracting Party. Under Article VIII of the Outer Space Treaty, the launching authority remains the owner of the space object even though representatives of another state might have possession of it.

Paragraph 5 of Article 5 provides for payment by the launching authority of expenses incurred by a Contracting Party in recovering and returning a space object or component part pursuant to its obligations under Paragraphs 2 and 3.<sup>79</sup> Previous drafts had sought to provide for the "reimbursement" of the Contracting Party. However, some delegations viewed "reimbursement" as foreclosing any possibility that the Contracting Party might request that the launching authority make an advance payment when the Contracting Party is confronted with the prospect of an expensive recovery operation. The phrase "shall be borne by" leaves open the possibility of negotiating an advance payment.

It is significant that payment by the launching authority of expenses incurred by the Contracting Party is only required in connection with the recovery and return of space objects, not the rescue and return of personnel. It was generally understood that humanitarian considerations should principally govern assistance to and return of astronauts, not the expectation of compensation, consistent with well-accepted principles governing rescue on the high seas. On the other hand, the return of space objects does not involve such overriding humanitarian concerns.<sup>80</sup>

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79. Paragraph 5 of Article 5 provides that "Expenses incurred in fulfilling obligations to recover and return a space object or its component parts under Paragraphs 2 and 3 of this article shall be borne by the launching authority."

80. Although the distinction is clear in principle, difficulties may arise in practical application. For example, if in a single operation astronauts are rescued and a spacecraft is recovered on the high seas, it may be quite arbitrary to allocate a certain portion of the expenses incurred to the rescue of the astronauts and another portion to the

Article 6 contains provisions of major substantive importance cast in the guise of a definition of "launching authority."<sup>81</sup> Under this article, a mechanism is provided through which an international organization may receive the benefits and incur the obligations of the Agreement, to the extent applicable to the activities of international organizations. Such a mechanism is important to a number of states which conduct their outer space activities through international organizations, the most obvious examples being the European Space Research Organization (ESRO) and the European Launcher Development Organization (ELDO). While it cannot become a party signatory to the Agreement, an international organization may become subject to it, if a majority of the states members are parties both to this Agreement and to the Outer Space Treaty, by declaring its acceptance of the rights and obligations provided for in the Agreement. It is unclear whether or not the requisite majority must consist of the same states with respect to both treaties.

From the standpoint of international organizations such as ESRO, Article 6 is a decided improvement over the comparable provision in the Outer Space Treaty. Under Article XIII of the Outer Space Treaty, a Contracting Party has the option of dealing directly with the international organization or with one or more members of the organization which are parties to the Outer Space Treaty. Article XIII provided a compromise through which the Soviet Union could adhere to its position of not acknowledging that an international organization is able to acquire rights under the Treaty. Indeed, Soviet insistence

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recovery of the spacecraft. Indeed, under U.S. admiralty law, "salvors of human life, who have taken part in the services rendered on the occasion of the accident giving rise to the salvage, are entitled to a fair share of the remuneration awarded to the salvors of the vessel, her cargo, and accessories." 46 U.S.C. 729. *See The Annie Lord*, 251 F. 157 (D.C. Mass. 1917). Possibly in negotiating the amount of the payment to be made by the launching authority account will have to be taken of the costs of the whole operation.

81. Article 6 provides that "For the purposes of this Agreement, the term 'launching authority' shall refer to the State responsible for launching, or, where an international inter-governmental organization is responsible for launching, that organization provided that that organization declares its acceptance of the rights and obligations provided for in this Agreement and a majority of the States members of that organization are Contracting Parties to this Agreement and to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies." It is noteworthy that the definition of launching authority does not take account of any "registry" of the space vehicle, unlike the comparable provisions of the Outer Space Treaty. Thus the rights and obligations which arise do not turn upon whether a spacecraft is listed on a particular registry.

on not including a provision requiring direct dealing between a party and an international organization constituted a major obstacle to agreement on an Assistance and Return Agreement in prior sessions of the Legal Subcommittee. Under Article 6, however, a Contracting Party must deal directly with an international organization that has become entitled to the rights conferred by the Agreement. Thus, for example, if an ESRO astronaut lands in Soviet territory due to an accident, the Soviet Union would be required to return him to a location designated by ESRO, assuming that both the Soviet Union and ESRO are subject to the Agreement. While ESRO might designate a member state to deal with the Soviet Union, the Soviet authorities would not have the option of choosing the ESRO member with whom they prefer to deal. That the Soviet Union agreed to Article 6 reflects a significant compromise in its former position on this matter.

As was the case in negotiating the Outer Space Treaty, it was agreed that no express provision would be made for the settlement of disputes that may arise under the Assistance and Return Agreement. Previous drafts proposed by the United States in the Legal Subcommittee provided for recourse to the International Court of Justice for a determination. The Soviet Union had insisted that the procedure for settlement of disputes be limited to consultations between the parties. No compromise between the two views could be agreed upon. Thus no provision for settlement of disputes was included in either the Outer Space Treaty or the Assistance and Return Agreement. Resolution of disputes must therefore be governed by normal diplomatic procedures or by other applicable international agreements between the parties to the dispute.

The final clauses in the Agreement duplicate those in the Outer Space Treaty. Article 7, Paragraph 1, provides that "This Agreement shall be open to all States for signature." Adoption of the "all states" formula was urged in connection with this treaty because, like the Outer Space Treaty, it seeks to assure the attainment of a fundamental humanitarian objective—the saving of lives. Under this formula, it is understood that certain states may incur rights and obligations under the treaty with respect to each other without according diplomatic recognition. As Ambassador Goldberg stated before the Committee on the Peaceful Uses of Outer Space:

Adoption of this accession clause—urged because of exceptional circumstances favoring a very broad geographical coverage for

the Assistance and Return Agreement—does not, of course, affect the recognition or status of an unrecognized regime or entity which may elect to file an instrument of accession to the Assistance and Return Agreement. Under international law and practice, recognition of a government or acknowledgement of the existence of a state is brought about as the result of a deliberate decision and course of conduct on the part of a government intending to accord recognition. Recognition of a regime or acknowledgement of an entity cannot be inferred from signature, ratification or accession to a multilateral agreement. The United States believes that this viewpoint is generally accepted and shared, and it is on this basis that we join in supporting the present text of the Assistance and Return Agreement.<sup>82</sup>

Thus signature of the Assistance and Return Agreement by the governments of East Germany or Communist China would not affect the U.S. policy on non-recognition of those regimes.

The other provisions of Article 7 set forth procedures for accession, ratification, deposit of instruments of ratification, entry into force,<sup>83</sup> dissemination of information as to signatures, and registry of the Agreement pursuant to Article 102 of the Charter of the United Nations.<sup>84</sup> The Governments of the United States, the United Kingdom, and the Soviet Union are designated as depositary Governments. These Governments are also the designated depositaries under the Outer Space Treaty. Article 8 provides that "amendments shall enter into force for each State Party to the Agreement accepting the amendments upon their acceptance by a majority of the States Parties to the Agreement and thereafter for each remaining State Party on the date of acceptance by

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82. Statement by Ambassador Arthur J. Goldberg, *supra* note 61.

83. Article 7, Paragraph 3, provides that "This Agreement shall enter into force upon the deposit of instruments of ratification by five Governments including the Governments designated as Depositary Governments under this Agreement." Thus the Agreement cannot enter into force until the Governments of the United States, the United Kingdom, the Soviet Union and two other governments have deposited instruments of ratification.

84. Article 102 provides "1. Every treaty and every international agreement entered into by any member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

"2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement with any organ of the United Nations." Since the Assistance and Return Agreement seeks to invest certain functions in the Secretary-General, compliance with Article 102 of the Charter may have substantive importance.



it." Article 9 provides that a State Party may give a written notice of withdrawal from the Agreement to the depositary Governments one year after its entry into force. Withdrawal would then be effective after one year from the date of receipt of this notification. Thus a party to the treaty on the day it enters into force could not effectively withdraw for at least two years. Article 10 provides for the equal authenticity of the English, Russian, French, Spanish and Chinese texts, and for the transmission of certified copies by the depositary Governments to the Governments of the signatory and acceding States.

### CONCLUSION

In conclusion, a word should be said about the prospects for entry into force of the Assistance and Return Agreement. It is obvious that the effectiveness of the treaty will depend upon the number of states that become parties to it. Because of its humanitarian importance and its consistency with the Outer Space Treaty, it would be fair to anticipate eventual adherence by at least those states that have signed the Outer Space Treaty. However, aside from the interest of all nations in saving the lives of astronauts, the treaty provides little practical benefit to those nations that do not participate in space programs, either on their own or through international organizations. While such states would undertake numerous obligations under the treaty, the only major benefit they would acquire is the right to call upon launching authority assistance in rendering hazardous objects harmless.

During the Special Session of the Legal Subcommittee, the delegations from the nations that do not have space programs, as well as delegations from many of those that do engage in space activities, expressed an urgent desire to reach agreement on a treaty on liability for damages caused by the launching of objects into outer space. Such a treaty would provide many practical benefits for all nations, including those that do not have space programs. While the General Assembly has not sought to condition the conclusion of an agreement on assistance and return on the contemporaneous conclusion of a treaty on liability, the two treaties have always had equal priority on the agenda of the Legal Subcommittee. For fear that the major space powers would lose interest in the liability treaty once the Assistance and Return Agreement enters into force, several delegations implied that their signatures to the Assistance and Return Agreement would be conditioned upon agreement on the provisions of a liability treaty. In order to show

that the United States concurs in the desire to arrive at a liability treaty, Ambassador Goldberg pointed out in the Committee on the Peaceful Uses of Outer Space and again in the General Assembly that "We attach a high degree of importance to the prompt conclusion of a satisfactory convention on liability for damage caused by the launching of objects into outer space. We intend to participate actively and constructively in the drafting of that agreement."<sup>85</sup> Consistent with the many expressions of views on this matter, the General Assembly Resolution adopting the Assistance and Return Agreement calls for the completion of an agreement on liability by the next session of the General Assembly.<sup>86</sup>

Regardless of when the Assistance and Return Agreement enters into force, its approval by the General Assembly is an event of major importance, for the treaty now reflects a wide consensus of views on the procedures that should be considered applicable to the rescue of astronauts, the return of astronauts, and the return of space objects. For example, should an astronaut suffer an accident or be in distress in a foreign state, that state may readily turn to the text of the Assistance and Return Agreement for guidance in discharging its humanitarian obligation to save the astronaut's life. Even though the approval of the Assistance and Return Agreement follows closely upon the entry into force of the Outer Space Treaty, its importance should not be underestimated. While the nations embarking on the exploration of outer space have thus far had little practical need for the protections provided by this treaty, the coming decades will see a rapid proliferation of space flights, both manned and unmanned, with the need for the assurances provided by the treaty proportionately increased. When astronauts and space vehicles land in locations other than those calculated, the launching authority will look to other nations for help; and the Assistance and Return Agreement will provide the international legal framework for the rendering of such help.

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85. Statement by Ambassador Arthur J. Goldberg in the General Assembly, 1640th Plenary Session, December 19, 1967, US/UN Press Release-252, December 19, 1967, reprinted in 58 DEP'T STATE BULL. 83 (1968).

86. Paragraph 4 of G.A. Res. 2345 (XXII) "Calls upon the Committee on the Peaceful Uses of Outer Space to complete the preparation of the draft agreement on liability for damage caused by the launching of objects into outer space urgently, and in any event, not later than at the beginning of the twenty-third session of the General Assembly, and to submit it to the Assembly at that session." 58 DEP'T STATE BULL. 85, 86 (1968).

As Ambassador Goldberg said in the General Assembly on December 19, 1967:

This Agreement bears witness to the fact that the United Nations can make a real contribution to extending the rule of law to new areas and to insuring the positive and peaceful ordering of man's efforts in science and the building of a better world.<sup>87</sup>

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87. 58 DEP'T STATE BULL. 83, 84 (1968).