

Legal Problems of the Rescue and Return of Astronauts†

The Agreement on the Rescue and Return of Astronauts and the Return of Objects Launched into Outer Space, which was unanimously approved by the United Nations General Assembly in December 1967, has been hailed as a momentous accomplishment and a prompt follow-up to the Outer Space Treaty of 1966. The provisions of the Agreement are broader than those of the Treaty dealing with assistance to distressed astronauts.¹

The stipulations in the Agreement spell out in detail the rights and obligations of the contracting parties as they relate to the rescue, assistance and return of distressed astronauts, and the return of space objects. The purpose of this brief review is merely to reflect on and to raise a few queries in relation to some of its provisions—questions which will some day undoubtedly be answered in more detail, perhaps authoritatively or possibly otherwise.²

Some Ambiguity

A preliminary though important question which comes to mind relates to the scope and coverage of the Agreement. Who has to be rescued, assisted or returned, under what conditions or in what manner? Unfortunately, it would appear that the relevant provisions are not without ambiguity. Thus, for instance, both the Treaty and the title of Agreement refer to “astronauts”, whereas the text of the Agreement speaks of “personnel” of a spacecraft which denotes a broader concept. Personnel of a spacecraft seem to include not only

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¹ Art. V of the Outer Space Treaty

² For a comprehensive discussion and interpretation of the Agreement’s provisions, see Dembling & Arons, *The Treaty on Rescue and Return of Astronauts and Space Objects*, 9Wm. & MARY L. REV. 630 (1968).

astronauts—that is people who are trained to pilot spacecraft—but also other persons assigned to and accompanying the spacecraft, such as a scientist or physician on a space mission. On the other hand, the term would not appear to include regular passengers, and even less stowaways, if any, since such persons would not fall normally under the category of “personnel”.

As to the conditions and the manner of assistance, the Agreement provides that the requirement regarding immediate notification of the launching authority and the Secretary-General of the United Nations arises when a contracting party receives information or discovers that the personnel of a spacecraft have suffered an 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.³

Since the Agreement is silent on the source of information or discovery, the information may have been received from any source, domestic or foreign, or the event may have been discovered by the signatory through its official organs or agents. It is not necessary that the information be scrutinized or verified as to its content prior to notification. On the contrary, because of the importance of the time element in rescue operations and other types of assistance, the notification requirement arises immediately upon receipt of the information or making of the discovery.

“Unintended” Landings

The Agreement is also silent on the types of “accident” which the spacecraft personnel must have suffered, or the “conditions of distress” that they must have experienced, or the kinds of “emergency or unintended landing” which they must have made. However, it would seem that any accident, distress, or emergency landing in which outside help is reasonably needed or requested would almost certainly be included. The only type of situation which would appear to be excluded would be an accident or distress condition arising after an intended landing. Under Article 2, the landing must, in fact, be prompted by an accident or distress or constitute an emergency or unintended landing. The provision does not specify just how much or

³ Art. 1

to what extent the landing must be due to such conditions, but there can be little doubt that such events must be the major cause or preponderant reason for the landing.

Actually, more of a problem may arise in relation to the precise meaning of "unintended landing". For instance, does a person land unintentionally when he lands under condition of distress, even though he is still able to select the site for landing and does so intentionally? What if he lands intentionally, but under a mistaken belief as to the landing area's location or identity? In response to these questions, it may be pointed out that an astronaut may land intentionally in a selected area, having chosen the preferable site, and still be covered under the Agreement so long as his landing is due to an accident, distress, or emergency.

Thus it would appear that the crucial question is whether or not the landing would have taken place if there had been no accident, distress or emergency. If the answer to this question is in the negative, then the landing must be regarded as unintentional even though a site may have been selected intentionally for the landing. In case the astronaut mistakes the landing area for another site, the landing should be regarded as unintentional. Similarly, if the spacecraft is forced down by some other event, such as hijacking, the threat of force, or an outright attack, the landing would have to be regarded as unintentional. In such case it should make little difference from the viewpoint of intention, whether the attack or the threat comes from the very signatory who would be required to render assistance.

Finally, the question may also arise as to whether or not a signatory could grant political asylum to an astronaut or to other spacecraft personnel who intentionally or unintentionally land on its territory. The answer would seem to be in the affirmative if the landing is intentional and does not involve an accident, distress or emergency. However, if the landing appears to be unintentional and is not due to an accident, distress or emergency, the launching state could—under a strict interpretation—insist on the speedy return of its personnel.

When The Duty Arises

The obligation of a contracting party immediately to take "all possible" steps to rescue spacecraft personnel and render "all

necessary” assistance to them, arises only if the troublesome landing takes place in territory under the jurisdiction of such party.⁴ Should the spacecraft personnel alight on the high seas, or in any other place not under the jurisdiction of any state, the sole obligation is to “extend assistance” if the signatory is in a position to do so, and then only if such assistance is “necessary” to assure speedy rescue.⁵

Inasmuch as there is no judicial or other authority set up for the impartial determination of what is “possible” or “necessary” in a given case, it is quite conceivable that differences of opinion may arise between the launching state and the state charged with assistance. In the absence of an amicable disposition, of the dispute or the application of effective coercive measures, it is likely that the state which is bound to render assistance would make the final determination.⁶

While the obligation of a signatory regarding rescue and assistance is strongest when the landing takes place in its territory, its authority over search and rescue operations is also broadest in such a case. Not only is the launching authority required to cooperate with the contracting party in the effective conduct of the search and rescue operations, whenever the assistance by the launching authority would help to effect a prompt rescue, or would contribute substantially to the effectiveness of the search and rescue operations, but such operations—unlike those carried out on the high seas or in any other place not under the jurisdiction of any state—are subject to the direction and control the contracting party.

The effect of this stipulation is mitigated somewhat by the requirement that the contracting party is to act in close and continuing consultation with the launching authority, and by the additional requirement that it is to inform the launching authority and the Secretary-General of the United Nations of the steps it is taking regarding rescue and assistance and of their progress.⁷ The relatively weak position of the launching authority is also apparent from the fact that it has not been set up as a controlling authority over rescue operations conducted on the high seas.⁸ However, the solution

⁴ Art. 2

⁵ Art. 3

⁶ The International Court of Justice might be seized with jurisdiction of such a controversy as between parties which have declared their adherence to the Court.

⁷ Art. 2

⁸ Art. 3

embodied in the Agreement appears to be in line with the traditional doctrines of sovereignty and freedom of the seas, and with the time-honored practice of assistance to distressed mariners.

Finally, the obligation of safe and prompt return arises if—due to troublesome landing—the spacecraft personnel land in territory under the jurisdiction of a signatory, or have been “found” on the high seas or in any other place not under the jurisdiction of any state.⁹ Despite this clear obligation, there may be situations where safe and prompt return may be physically impossible because of the nature of the accident. Furthermore, the question may also arise as to whether mere “sighting” would constitute “finding” under the Agreement. It does seem that sighting of a distressed astronaut on the high seas or on no man’s land would require assistance by those signatories only, who are in a position to render it. Consequently, if they were unable to lend assistance, the requirement of safe and prompt return would not apply. Thus the term “found” is likely to indicate something more than the word “sighted” and may carry a connotation in relation to some control.

In conclusion, it may be pointed out that the safe and prompt return must be made to representatives of the launching authority rather than to the launching authority itself.¹⁰ This stipulation may have eliminated any extra expenses which could have been incurred by the rescuing state in connection with the return of spacecraft personnel to the launching authority itself. Presumably, the representatives of the launching authority would be able to travel to the place designated by the rescuing state, or to any other mutually acceptable area where the return could be effected.

The foregoing brief review and interpretation of the Agreement’s salient provisions pertaining to the rescue and return of spacecraft personnel, should be read with the realization that the Agreement is only the first of its kind in implementing some of the principles enunciated by the Outer Space Treaty. As man’s travel in outer space becomes commonplace, the initial agreements will unquestionably be expanded and revised in the light of experience and need.

⁹ Art. 4

¹⁰ *Id.*