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Astronauts

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A. Definition of the Term and Safety Provisions

1 From the advent of manned space flights, their international legal regulation has been legitimately concerned with the need to enhance by legal means the safety of astronauts, both in flight and in the case of emergency landings. This concern is clearly reflected in the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies ('Outer Space Treaty'), in the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space ('Rescue and Return Agreement'), and in the Agreement Governing the Activities of States on the Moon and Other Celestial Bodies ('Moon Treaty').

2 The rights and obligations of States in relation to the safety and well-being of astronauts had initially been framed in broad terms. Due to the very limited number of persons who at that time had flown in → *outer space*, and the lack of any clear differentiation between their functions, the multilateral space treaties do not contain a definition of the term 'astronaut' (which was first used in the Outer Space Treaty). In referring to those persons participating in manned space flights, the terms 'astronauts', 'personnel of a space object', 'personnel of a spacecraft', and 'persons on board a space object' are used interchangeably. This implies that, in principle, the protection provided by the space treaties covers all persons participating in manned space flights. Furthermore, in the former Soviet Union and now in the Russian Federation, instead of the term 'astronauts', the term 'cosmonauts' is used. Likewise, in some other countries different terms are used to relay the same notion.

3 Under the provisions of Art. V Outer Space Treaty: (1) the astronauts shall be regarded as 'envoys of mankind in outer space'; (2) States shall render to them all possible assistance in the event of accident, distress, or emergency landing on the territory of another State or on the → *high seas*; (3) when astronauts make such a landing, they shall be safely and promptly returned to the State of registry of their space vehicle; (4) the astronauts themselves shall render all possible assistance to the astronauts of other States in outer space and on celestial bodies; and (5) States shall immediately inform the other States or the United Nations Secretary-General (→ *United Nations, Secretary-General*) of any phenomena in outer space, which could constitute a danger to the life or health of astronauts.

4 It is generally admitted that the first of the above stated provisions, qualifying astronauts as 'envoys of mankind', entails moral rather than legal consequences and does not provide astronauts with a special legal personality or supra nationality. This provision serves as a kind of introduction to or justification of the legal obligations of States contained in the rest of Art. V Outer Space Treaty.

5 Elaborating on the provisions of Art. V Outer Space Treaty, the Rescue and Return Agreement sets out the obligations of States to provide mutual assistance relating to the search, rescue, and return of astronauts in the event of accident, distress, or emergency or unintended landing in territory under their jurisdiction, on the high seas or in any other place not under the jurisdiction of any State, such as → *Antarctica* (see also → *Jurisdiction of States*). The obligations under Art. V Outer Space Treaty relating to the mutual assistance of astronauts while in outer space and on celestial bodies have been supplemented by a number of provisions in the Moon Treaty. Thus, Art. 10 Moon Treaty speaks of the duty of States to adopt 'all practicable measures' to safeguard the life and health of persons on the Moon, and to offer for these purposes shelter in their stations, installations, vehicles, and other facilities to persons in distress on the Moon. According to Art. 12 (3) Moon Treaty, in the event of an emergency, involving a threat to human life, States Parties may use the equipment, vehicles, installations, facilities, or supplies of other States Parties on the Moon

on the condition of prompt notification of such use. Admittedly, the practical realization of these provisions will depend to a large extent on the technical feasibility of international rescue operations in outer space and on celestial bodies and on the further development of international space co-operation. Therefore, the cited instruments use the cautious wording of 'possible' assistance and 'practicable' measures.

B. Jurisdiction and Control

6 An important aspect of the legal status of astronauts relates to jurisdictional issues. Article VIII Outer Space Treaty provides as follows:

A State party to the Treaty on whose registry an object launched into outer space is carried shall retain jurisdiction and control over such object, and over any personnel thereof, while in outer space or on a celestial body.

7 The words 'over any personnel thereof' imply that the State of registration retains its jurisdiction over astronauts (personnel), irrespective of their nationality, and whether or not they are on board the spacecraft or outside it while in outer space or on a celestial body. It follows from this provision that as a general rule the State of registration has a specific jurisdiction, which prevails over personal jurisdiction or any other possible basis of jurisdiction known in general international law. Article VIII Outer Space Treaty, however, does not touch upon issues of jurisdiction over astronauts when they are not in outer space or on a celestial body; thus issues of jurisdiction over astronauts finding themselves in the air space of a foreign State or on its territory, or in any other place beyond the limits of the jurisdiction of any State, such as on the high seas, remain within the realm of general international law. Neither does Art. VIII Outer Space Treaty take away the right of States to conclude *inter se* appropriate agreements on jurisdiction and control over the space objects and over any personnel thereof (Art. II Convention on Registration of Objects Launched into Outer Space).

C. International Space Station

8 An example of such an agreement is the Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation and the Government of the United States of America concerning Cooperation on the Civil International Space Station ('ISS Agreement'). This agreement deals, *inter alia*, with questions pertaining to registration, jurisdiction, and control. Article 5 (1) ISS Agreement envisages that each Partner shall register as space objects the flight elements listed in the Annex to the ISS Agreement which it provides. The → *European Space Agency (ESA)* Member States delegated this responsibility to the ESA. Article 5 (2) ISS Agreement provides that each State shall retain jurisdiction and control over the elements it registers and over personnel in or on the International Space Station ('ISS'), who are its nationals.

9 Thus, the ISS Agreement combines the quasi-territorial jurisdiction over the elements of the ISS with the personal jurisdiction of States over their respective nationals while they are 'in or on the Space Station'. On the other hand, the ISS Agreement leaves open the question of jurisdiction over visiting astronauts, who are not nationals of the Partner.

10 The ISS Agreement also deals with issues of criminal jurisdiction over astronauts, these issues not generally being regulated by international space law. In conjunction with the provision establishing personal jurisdiction over the respective nationals of the Partner States, and citing the 'unprecedented nature of this particular international cooperation in space', Art. 22 (1) ISS Agreement further specifies that Partner States 'may exercise criminal jurisdiction over personnel in or on any flight element who are their respective

nationals'. In addition, Art. 22 (2) to (4) ISS Agreement sets out those circumstances and conditions under which an affected Partner State, other than the State of nationality of the alleged perpetrator, may exercise its criminal jurisdiction.

11 In implementation of Art. 11 ISS Agreement, a Code of Conduct for the International Space Station Crew ('ISS Code of Conduct') was developed and approved as an interim rule in 2000 and as a final rule—without any changes—in 2006. The ISS Code of Conduct, among other things, established a chain of command on-orbit, divided roles and responsibilities between ground and on-orbit management, and set forth standards for work and activities in space, as well as disciplinary regulations. According to the ISS Code of Conduct, the authority of the ISS Commander covers all orbiting elements, all personnel on the ISS and all activities carried out there. In certain circumstances, the Commander is authorized to take enforcement measures. Commercial exploitation of the ISS, including space tourism, and the desire to avoid as far as possible problems connected with potential conflicts of jurisdiction has made it necessary to adopt supplementary regulations and policies with regard to the ISS.

D. Evaluation and Prospects

12 The mutual rights and obligations of States under the ISS Agreement and under other space co-operation agreements do not affect the rights and obligations of third States accrued under the general principles and rules of international space law. With regard to the legal status of astronauts, these principles and rules, however, require further development and elaboration due to the growing number of people living and working in outer space, the regular flights to the ISS, the development of aerospace objects, the emergence of space tourism, and the prospects of long-term manned missions to the Moon and to Mars.

13 The idea of drawing up an international instrument specifically devoted to manned space flights was first put forward in the United Nations Committee on Peaceful Uses of Outer Space ('COPUOS') in the mid-1980s (see UN, 'Report of the Legal Subcommittee on the Work of its 26th Session [16 March to 3 April 1987] [16 April 1987]') but since that time this idea has been further developed, mainly on a scholarly level. For example, in 1988, scholars from the Institute of State and Law (USSR Academy of Sciences), the University of Mississippi Law Center, and the Institute of Air and Space Law of Cologne University initiated a joint research project, which resulted in the unofficial drafting of a Convention on Manned Space Flights. The draft was published in various law journals in the respective countries of the participating institutions and submitted by the International Institute of Space Law to the COPUOS Legal Subcommittee (see (1990) 18 JSpaceL 209–16).

14 Apart from the need to consolidate and clarify rules pertaining to manned space flights, currently dispersed in different texts, new problems requiring attention have been identified in the literature on the subject of astronauts. Prominent among them are questions relating to the necessity of making a distinction in the legal regimes of persons participating in space flights in different capacities, to liability which may arise out of claims by future space passengers and tourists, and to the applicability of the astronauts' status to participants of sub-orbital flights and to passengers of future commercial space planes.

15 Most of these and other similar problems, not to mention problems connected with any future permanent human settlements in outer space and on celestial bodies, will require regulation on an international level.

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