

Assistance by the Launching Authority

Requirement or Entitlement?

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Abstract

When owing to accident, distress, emergency or unintended landing, the personnel of a spacecraft land in territory under the jurisdiction of a Contracting Party to the ARRA, the respective Contracting Party (i.e. which has *jurisdiction* over said territory) is obliged to immediately take all possible steps to rescue them and render them all necessary assistance (Art 2 ARRA). According to Art 2 ARRA, the launching authority is obliged to assist a Contracting Party in its efforts to rescue the astronauts if such assistance would help to effect a prompt rescue or would contribute substantially to the effectiveness of search and rescue operations. The launching authority may be interested in assisting the state where the crew of the spacecraft has landed. On the one hand, it is in the interest of the launching authority to quickly find and rescue the crew (and possibly recover the spacecraft). On the other hand, the launching authority may be interested to participate in the recovery effort to safeguard potentially highly skilled personnel, sensitive technology and scientific data and keep their exposure to a foreign government at a minimum. The state in which the astronauts have landed may request the assistance by the launching authority for several reasons. For example, it might lack the expertise and or technology to carry out a recovery operation properly. Any assistance by the launching authority might hence be welcome. On the other hand, a state might not wish the participation of the launching authority in the recovery effort. Reasons for this might range from sovereignty issues to security matters – not to forget questions of national prestige. According to Art 2 ARRA, the launching authority has to assist with the efforts to recover and retrieve such a space object. Still can the launching authority derive any *entitlement* to participate in a recovery operation from this article? Or can the launching authority only actively engage in the recovery effort when requested to do so by the respective Contracting Party? The launching authority might argue that its active involvement in the rescue effort would constitute a substantial contribution to the search and rescue operation. The Contracting Party on the other hand could argue that involvement by the launching authority might hinder the rescue efforts.

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I. Introduction

The Astronaut Rescue Agreement stipulates that when owing to accident, distress, emergency or unintended landing, the personnel of a spacecraft land in territory under the jurisdiction of a Contracting Party to the ARRA; the respective Contracting Party (i.e. which has *jurisdiction* over said territory) is obliged to immediately take all possible steps to rescue them and render them all necessary assistance (Art 2 ARRA). If a manned spacecraft has to make an emergency landing in territory that is under the jurisdiction of a Contracting Party (sic) to the ARRA, said Contracting Party has to undertake all necessary measures to rescue the crew of the spacecraft and render them assistance.¹ The launching authority is obliged to cooperate with the efforts of the Contracting Party when and if such a measure would enhance the effectiveness of the search and rescue operation.²

Similar provisions concerning unmanned spacecraft are found in Art. 5 ARRA. Although no such astronaut rescue operation under the ARRA has been carried out³ to date, due to the nature of the usual spacecraft landing measures, a situation where the ARRA would be applicable could arise. Especially spacecraft landing by parachute can easily be veered off course by strong winds. Russian Soyuz spacecraft sometimes landed hundreds of kilometers away from their designated landing sites (though still on Russian or – formerly – Soviet territory).

The question now is whether this obligation to assist also entitles the launching authority to take an active part in the rescue and recovery efforts. The wording of the Art. 2 ARRA does not explicitly state an entitlement to participate in any rescue and recovery missions. It merely states that the launching authority has to assist with the rescue efforts. The question remains whether this also entails any entitlement of the launching authority to play an active role in the rescue and recovery operations, unless being invited to do so by the Contracting Party.

The launching authority could be in a position where active participation in the rescue operations could actually be helpful. After all, the launching authority will have undertaken certain amounts of planning and preparation for an eventual rescue and recovery operation, whether it is within their own territory or abroad. Therefore, it might appear reasonable to involve the launching authority in the operation.

1 Soucek, p. 29.

2 Ibid.

3 Ibid.

II. Relevant Regulations

Art. V OST states that astronauts shall be rendered all necessary assistance. Art. 2 ARRA takes up this wording and further specifies it:

“When owing to accident, distress, emergency or unintended landing, the personnel of a spacecraft land in territory under the jurisdiction of a Contracting Party to the ARRA; the respective Contracting Party (i.e. which has jurisdiction over said territory) is obliged to immediately take all possible steps to rescue them and render them all necessary assistance [...] 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 co-operate with the Contracting Party with a view to the effective conduct of search and rescue operations [...]”

Art. 5.2 ARRA contains similar provisions for uncrewed spacecraft:

“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.”

III. Assistance by the Launching Authority

The launching authority may be interested in carrying out a rescue and recovery operation on the territory of a Contracting Party. There are several reasons for this. Apart from the prestige involved with a rescue and recovery operation and the corresponding loss of prestige if said rescue and recovery is done by another party; the launching authority is most probably best equipped for such an operation. The launching authority will have the specific equipment (eg. recovery ships, helicopters) and personnel (technicians and medics) for such an operation.⁴ As mentioned above, the launching authority will also have intensively prepared and rehearsed for a recovery operation, including specific contingency plans.

This argument could be supported by Art. 2 sentence 3 ARRA.⁵ The assistance by the launching authority could indeed contribute substantially to the effectiveness of the search and rescue operations.⁶

“After the Cosmos 954 crash on Canadian territory, the Soviet Union claimed this right under Art. 2 ARRA. The Canadian government turned down this request in order to minimize the damage. The Soviet Union in turn used Art. 2 ARRA as an argument to pay less than half the bill sent to them by Canada.”⁷

4 Rinner et al., *Space Law Essentials*, Vol. 2, p. 61.

5 Marboe, Neumann and Schrogl in: *CoCoSl2*, 2013, p. 53.

6 Rinner et al., *Space Law Essentials*, Vol. 2, p. 61.

7 Marboe, Neumann and Schrogl in: *CoCoSl2*, 2013, p. 53.

Such an operation would be under the direction and control of the Contracting Party in whose territory the operation is carried out.⁸

IV. Requirement or Entitlement?

Art. 2 ARRA, however, does not afford the launching authority an explicit right to conduct a rescue and recovery operation nor does it explicitly rule out any entitlement by the launching authority to do so.⁹

It could be argued that the launching authority could only enter the sovereign territory of another Contracting Party upon request by said contracting party (under the terms of the ARRA). The argument could further include that any actions by the launching authority, meaning additional organization and coordination requirements, could actually hinder a prompt rescue.¹⁰

The launching authority could counter this with the argument that it has the necessary equipment and key personnel that could contribute substantially to the effectiveness of the search and rescue operations.

During the drafting of the ARRA, the United States had proposed to add the wording “such steps shall include the joint research by those Contracting Parties which may be in a position to conduct search and rescue operations” to Art.¹¹ Such a phrase would have supported the idea of an entitlement by the launching authority to participate in the search and rescue operations. The phrase did, however, not end up in the final agreement.

Art. 5 ARRA deals with the recovery of uncrewed spacecraft. It can be assumed that the term space object refers equally to crewed and uncrewed spacecraft.¹²

Art. 5.2 ARRA states that a Contracting Party has to act upon request of the launching authority and with the assistance of the launching authority if requested. This implies that the launching authority may only take an active part in the recovery operation, if the Contracting Party on whose territory the spacecraft has landed, requests its assistance.

Whether we are dealing with crewed or uncrewed spacecraft – with rescue and/or recovery operations – there seems little headroom for an entitlement of the launching authority to assist, as advisable as such a participation might be. While Dembling and Arons state that the launching authority has to be invited to participate in rescue operations,¹³ Marboe, Neumann and Schrogl (in the Cologne Commentary on Space Law) remain more ambiguous.¹⁴

8 Marboe, Neumann and Schrogl in: CoCoSL2, 2013, p. 70.

9 Marboe, Neumann and Schrogl in: CoCoSL2, 2013, p. 53.

10 Rinner et al., Space Law Essentials, Vol. 2, p. 61.

11 Marboe, Neumann and Schrogl in: CoCoSL2, 2013, p. 49.

12 Marboe, Neumann and Schrogl in: CoCoSL2, 2013, p. 66.

13 Dembling/Arons in: Lyall/Larsen, Space Law. A Treatise. UK 2009, p. 227.

14 Marboe, Neumann and Schrogl in: CoCoSL2, 2013, p. 53.

References

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