

DEPARTMENT OF STATE
THE LEGAL ADVISER



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January 30, 1968

TO :

- G/PM - Mr. Trippe
- H - Mr. Leahy
- SCI - Mr. Nesbitt
- SOV - Mr. MacCracken
- UNP - Mr. Lorenz
- INR/RSB - Mr. Baraz
- DOD/ISA - Mr. Anderson
- JCS - Capt. Valentine ✓
- NASA/GC - Mr. Aarons
- NASA/AI - Dr. Anderson

FROM : L/UNA - Stephen M. Boyd *SMB*

SUBJECT: QUESTIONS AND ANSWERS ON THE ASTRONAUT ASSISTANCE AGREEMENT

There are attached (1) a list of questions on the Astronaut Agreement and (2) proposed answers for the Senate Hearings briefing book.

Could we have your comments not later than February 7?

Please treat these papers as LIMITED OFFICIAL USE at this stage.

Attachments:

1. List of questions
2. Proposed answers

L/UNA:HReis:dws

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QUESTIONS AND ANSWERS FOR THE HEARINGS ON THE ASTRONAUT AGREEMENT

1. Why did the U.S.S.R. want this Agreement?
2. Did the Soviets initiate the idea of this Agreement? What has been our attitude in years gone by?
3. How was the Assistance and Return Agreement negotiated?
4. What are the benefits of this Agreement? Why do we need this Agreement?
5. In what specific ways does this Agreement add significantly to the Outer Space Treaty?
6. Obligations of space v. non-space powers under the Agreement (chart).
7. What is an "unintended landing"? Would a country be obliged to return an astronaut who made an "intended landing"?
 - 7bis. If a Soviet astronaut lands in the United States and does not want to return to the Soviet Union, would the Agreement obligate us to return him if the U.S.S.R. insists?
8. Does the Agreement oblige us to let Soviet aircraft into American airspace to look for a downed astronaut? Does "territory under its jurisdiction" include airspace above the territory where each nation exercises its sovereignty?
9. Do we have to wait for a request from another country before overflying its territory in searching for a downed astronaut? Under the Outer Space Treaty? Under this Agreement?
10. Why did the U.S. say in the Outer Space Committee that, in the event of a dispute whether assistance by a launching authority would help effect a prompt rescue, the territorial party has the final say?

10^{bis}. Does the Agreement authorize a launching authority to conduct search and rescue operations in the territory of another party only when requested by that party to do so.

11. When is a party "in a position" to extend assistance in search and rescue operations? Does Article 3 place our ships under the effective command of Soviet personnel if a Soviet astronaut lands near them?

12. Does the Agreement apply to Antarctica? To outer space? To the moon? Would the rescue operations proposed by this Agreement apply to astronauts who suffer distress while orbiting the Earth in a manned space station?

13. Would we be obliged to return FOBS fragments? Would we be obliged to return fragments from a Soviet ICBM test if they land on American Pacific islands?

14. Under the new Agreement will the United States be required to make advance payment as a condition for the return of either astronauts or space objects?

15. If a Soviet fragment lands in the U.S., do we have to return it even if the Soviets refuse to pay for damages that it has caused?

16. How can the U.S. guarantee the return of a space fragment if it lands on the property of a recalcitrant farmer? Does the Administration intend to ask for implementing legislation?

17. What is meant by objects "of a hazardous or deleterious nature"?

18. Why is the international organization provision different than Article 13 of the Outer Space Treaty? Would it apply to COMSAT? To INTELSAT? To ESRO? To ELDO?

19. Will the British sign? The French? Communist China?

20. When do we think the Agreement will enter into force?

21. If East Germany signs the Agreement, will we be forced to recognize her?

22. Do we expect to reach agreement on a liability convention soon?

23. What is the status of U.S.-Soviet space co-operation?

24. Does this Agreement, in any instance, provide less coverage, than the Outer Space Treaty?

QUESTION

Why did the USSR want this Agreement?

ANSWER

The USSR, like the US, has an advanced manned space program and hence an obvious interest in the rescue and return of space travellers. Soviet scientists have mentioned their desire to explore the moon and other celestial bodies and to orbit manned space laboratories. Doubtless, as they move toward more complex and ambitious tasks in manned space activities, the Soviets are conscious of the possibility that their space pilots may have accidents or forced landings. Perhaps their appreciation of this danger was heightened by the tragedy which took the life of Col. Komarov last May. We believe these considerations persuaded them to enter into constructive negotiations last fall at the United Nations which led to this Agreement.

No. 2

QUESTION

Did the Soviets initiate the idea of the Assistance and Return Agreement? What has been our attitude in the past?

ANSWER

1. From the early 1960's, there was a general recognition by the members of the U.N. Outer Space Committee of the desirability of agreed procedures on assistance to and return of astronauts and space vehicles. In March 1962, President Kennedy proposed in a letter to Khrushchev that the United States and Soviet Union lend their tracking facilities to support one another's manned spaceflights. Khrushchev responded later that month that a rescue treaty would be desirable.

2. In June of 1962, the USSR proposed a rescue treaty in the U.N. Outer Space Legal Subcommittee. At that time, the U.S. proposed a General Assembly resolution to deal with the matter but, in 1964, we came to the conclusion that the best way to handle the matter was by treaty and thereupon introduced a treaty proposal.

No. ³~~Ibis~~

QUESTION

How was the Assistance and Return Agreement negotiated?

ANSWER

1. Negotiations started in 1962 in the U.N Outer Space Legal Subcommittee. At a meeting of the parent Outer Space Committee in New York in September, 1967 the Soviet delegation agreed with the U.S. view that the Assistance and Return Agreement should have a broad scope and deal with three related questions -- assistance to astronauts, return of astronauts, and return of space vehicles.

2. The Soviets thereafter proposed bilateral negotiations to work out a draft Agreement. We agreed, and 15 US-SOV meetings were held from September 27 to December 14. During this time, we kept friendly members of the Outer Space Committee informed of the progress of negotiations and sought their views on all aspects of the Agreement. We particularly sought European and Australian views on how the agreement should treat astronauts and space vehicles launched by such international organizations as the European Space Research

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Organization (ESRO) and the European Launcher Development Organization (ELDO), since this matter involves their interests far more than ours.

3. We reached substantial agreement on the text of a draft Agreement with the Soviets early in December. We and the Soviets then agreed that the results of our negotiations should be formally referred to the Outer Space Legal Subcommittee. The Subcommittee met on December 14 and 15, and a number of suggestions of other members were incorporated in the Agreement. The Legal Subcommittee thereupon brought the revised text to the urgent consideration of the parent Outer Space Committee, which unanimously approved the treaty text (with one drafting change) and forwarded it to the General Assembly. On December 19 the General Assembly unanimously endorsed the Agreement and requested the US, UK and USSR to open it for signature as soon as possible.

No. 4

QUESTION

What are the benefits of this Agreement? Why do we need this Agreement?

ANSWER

As one of two nations presently conducting manned space flights, we have an obvious interest in a multilateral treaty which creates specific obligations on parties first with respect to rendering assistance to astronauts in emergency situations, especially in case of an unplanned landing on the territory of another state, and secondly with respect to returning rescued astronauts promptly and safely to the launching state. The Outer Space Treaty, which entered into force last October, deals very generally in Article V with astronaut assistance and return. The new Agreement adds significantly to the Outer Space Treaty and thus increases the protection for our astronauts under international law. For example, Article 1 provides for immediate notice to the launching authority whenever a party learns that an astronaut is in distress or has made an emergency landing on its territory. This is a new requirement, not covered by the Outer Space Treaty. Also, of considerable potential importance to the

No. 4

United States is the provision in Article 2 for launching authority cooperation when its assistance would contribute to the effectiveness of search and rescue operations within the territory of another state.

(See answer to Question 5 for a comprehensive list of ways in which this Agreement adds significantly to the Outer Space Treaty.)

QUESTION

In what way does the Astronaut Agreement add significantly to the Outer Space Treaty?

ANSWER

The new Agreement adds to the generalized provisions of Articles V and VIII of the Outer Space Treaty in the following specific ways:

1) Notification - Article 1 of the new Agreement requires immediate notice to the launching authority and the Secretary-General whenever a party learns that an astronaut has had an accident, is in distress, or has made an emergency or unintended landing on its territory, on the high seas or in any other place not under the jurisdiction of any state. Under this Article if a party is unable to identify and immediately communicate with the launching authority, it must make an immediate public announcement in addition to notifying the Secretary-General. The new Agreement also contains notification provisions in Articles 2, 3 and 5 relating to astronauts in distress and the recovery of space objects.

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2) Rescue of Astronauts - The Outer Space Treaty, in the first paragraph of Article V, provides:

"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."

Under the new Agreement "territorial rescue" is dealt with in Article 2, while "non-territorial rescue" is covered separately in Article 3. Article 2 contains a new provision for launching authority cooperation in search and rescue operations if its assistance "would help to effect a prompt rescue or would contribute substantially to the effectiveness of search and rescue operations." Under both Articles 2 and 3 of the new Agreement, parties must inform the launching authority and the Secretary-General of the progress of their search and rescue operations.

3) Return of Astronauts - Article V of the Outer Space Treaty provides that when astronauts make an emergency landing on the territory of another party or on the high seas, "they shall be safely and promptly returned." Article 4 of the new Agreement amplifies this duty by making it applicable also to astronauts found beyond the territory of the launching

No. 5

state; the Agreement speaks of astronauts who are found "in any other place not under the jurisdiction of any State" which would cover, for example, Antarctica and outer space.

4) Return of Objects - Article VIII of the Outer Space Treaty provides:

"Such objects or component parts found beyond the limits of the State Party ... shall be returned to that State Party which shall, upon request, furnish identifying data prior to their return."

The comparable provision in the new Agreement is Article 5, paragraph 3. The other four paragraphs of Article 5 are new, and provide for:

- (a) notification to the launching authority and the Secretary-General by a party which discovers that a space object has returned to earth on its territory and the high seas elsewhere beyond national jurisdiction;
- (b) the recovery of space objects upon the request of the launching authority if such recovery is practicable;

No. 5

- (c) the elimination by the launching authority of possible danger of harm in cases in which the authority has been notified that a space object of a hazardous nature has been discovered on the territory of a party, and
- (d) the bearing by the launching authority of expenses that have been incurred by parties to the Agreement in fulfilling their obligations to recover and return space objects.

5) International Organizations - Article 6 represents a significant advance over Article XIII of the Outer Space Treaty from the standpoint of international organizations such as the European Space Research Organization (ESRO) and the European Launcher Development Organization (ELDO). Under the new Agreement, an international organization responsible for launching objects into space is entitled to the same treatment as a state party, provided that it:

- (a) declares its acceptance of the right and obligations of the Agreement;

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(b) that a majority of its member states are parties to both the Astronaut Agreement and the Outer Space Treaty.

No. 6

RIGHTS AND OBLIGATIONS OF PARTIES
TO THE AGREEMENT ON THE RESCUE OF ASTRONAUTS, THE RETURN OF ASTRONAUTS
AND THE RETURN OF OBJECTS LAUNCHED INTO OUTER SPACE

LAUNCHING AUTHORITIES

ALL PARTIES

ARTICLE 1

Notification of Accident

Right to be notified immediately when information is received or it is discovered that its astronauts have had an accident, are experiencing conditions of distress, or have made an emergency or unintended landing.

Obligation to notify immediately the launching authority and the U.N. Secretary-General, and, when the launching authority cannot be immediately identified and notified, to make an immediate public announcement if it receives information or discovers that astronauts have had an accident, are experiencing conditions of distress, or have made an emergency or unintended landing in its territory or in any place not under any State's jurisdiction.

ARTICLE 2

Assistance in a Party's Territory

Right to be informed of the steps being taken by the territorial sovereign to rescue downed astronauts and the progress of those steps.

Obligation to take immediately all possible steps to rescue and render all necessary assistance to astronauts who, owing to accident, distress, emergency or unintended landing, have come down in territory under its jurisdiction.

Obligation to keep the launching authority and the U.N. Secretary-General informed of the steps it is taking and

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116.6
Right to be consulted by the territorial sovereign in search and rescue operations it carries out.

Obligation to carry out search and rescue operations in close and continuing consultation with the launching authority.

Right and obligation to cooperate with the territorial sovereign in search and rescue operations if launching authority assistance would help effect a prompt rescue or would contribute substantially to the effectiveness of the operations.

Right and obligation to secure the cooperation of the launching authority in the search and rescue operations if launching authority assistance would help to effect a prompt rescue or would contribute substantially to the effectiveness of such operations.

Right to subject search and rescue operations in its own territory to its own direction and control.

ARTICLE 3

Rescue on the High Seas

Right to be informed by Parties of the steps they are taking to render necessary assistance in search and rescue operations for astronauts downed on the high seas or any other place not under the jurisdiction of any State, and of the progress of such steps.

Obligation to extend assistance, if necessary and if it is in a position to do so, in search and rescue operations for astronauts downed on the high seas or any other place not under the jurisdiction of any State.

Right, if necessary, to have assistance lent by Parties in a position to do so in search and rescue operations for such downed astronauts.

Obligation to inform the launching authority and the U.N. Secretary-General of the steps it is taking and their progress.

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ARTICLE 4
Return of Astronauts

Right to the safe and prompt return of its astronauts who have come down owing to accident, distress, emergency or unintended landing.

Obligation to return safely and promptly to representatives of the launching authority astronauts who have come down owing to accident, distress, emergency or unintended landing.

ARTICLE 5
Space Objects

Right to be informed when information is received or it is discovered that its space object has come down outside its territory.

Obligation to notify the launching authority and the U.N. Secretary-General if it receives information or discovers that a space object has come down on its territory or in any place not under the jurisdiction of any State.

Right, upon request, to have the territorial sovereign take such steps as it finds practicable to recover a space object which has been discovered on its territory.

Obligation, upon request by the launching authority, to take such steps as it finds practicable, to recover a space object discovered on its territory.

Obligation to assist the territorial sovereign, if requested, in such recovery measures.

Right to have launching authority assistance in such recovery.

Right to have its space objects returned.

Obligation to return space objects to the representatives of the launching authority or to hold them at the representatives' disposal.

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Obligation, upon request of the Party in possession of a space object which it has reason to believe is hazardous or deleterious, to eliminate possible danger of harm by the object.

Right to require identifying data prior to return.

Right, if it has reason to believe that a space object on its territory or which it has recovered elsewhere is hazardous or deleterious, to have the launching authority immediately take effective steps to eliminate possible danger of harm.

Right to subject such safety measures to its direction and control.

Obligation to bear expenses incurred by others in fulfilling the obligation to recover and return its space object.

Right to have expenses it incurs in fulfilling the obligation to recover and return space objects borne by the launching authority.

ARTICLE 8
Amendments

Right to propose amendments to the Agreement.

ARTICLE 9
Withdrawal

Right to withdraw from the Agreement by giving one year's notice.

No. 7

QUESTION

What is an "unintended landing"? Would a country be obligated to return an astronaut who makes an "intended landing"?

ANSWER

1. An "unintended landing" involves a manned landing in foreign territory at a place and time not part of the plans. Such a landing may have to be made because of mechanical malfunctioning or physical danger to an astronaut, whether actual or anticipated.

2. The Agreement requires return of an astronaut who lands in foreign territory or is recovered by another party due to accident, distress, emergency or unintended landing. Assuming that a party could assert in good faith that a foreign astronaut had landed in its territory, without its consent and as the result of a mission plan -- and where there was no accident, distress or emergency -- there would be no obligation under the Agreement or the Outer Space Treaty to return the astronaut.

3. The United States does not contemplate any "intended landings" by American astronauts on foreign territory without the consent of the territorial sovereign.

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QUESTION

If a Soviet astronaut lands in the United States and does not want to return to the Soviet Union, would the Agreement obligate us to return him if the USSR insists?

ANSWER

1. Yes, we would be obliged to return the astronaut if he came down as the result of accident, distress, emergency or unintended landing. This is the same rule as in the Outer Space Treaty.

2. Throughout the negotiations, the United States insisted that the obligation to return an astronaut safely and promptly should be absolute and unconditional. We could not have agreed to any exception.

No. 8

QUESTION

Does the Agreement obligate the United States to let Soviet aircraft into American airspace to search for a downed astronaut?

ANSWER

1. If Soviet astronauts land in United States territory as a result of accident, distress, emergency or unintended landing, our first obligation under the Agreement would be to "take all possible steps to rescue them and render them all necessary assistance."
2. Our second obligation would be to inform the USSR and the Secretary-General of our rescue efforts and their progress.
3. If Soviet assistance "would help to effect a prompt rescue or would contribute substantially to the effectiveness of search and rescue operations," the USSR would be obligated to cooperate with the United States "with a view to the effective conduct of search and rescue operations." Bearing in mind U.S. capabilities both on land and at sea, it is highly unlikely that Soviet assistance in U.S. territory would be necessary.

No. 8

4. If Soviet assistance were appropriate, we would, of course, welcome it. As to legal rights in this case, our control over Soviet operations in U.S. territory is expressly guaranteed by the last sentence of Article 2, which provides that "Such operations shall be subject to the direction and control" of the U.S. In turn, the U.S. would be obligated to "act in close and continuing consultation" with the USSR.

QUESTION

Must the United States await a request from another country before overflying its territory in searching for a downed astronaut? Under the Outer Space Treaty? Under this Agreement?

ANSWER

1. Article V of the Outer Space Treaty requires parties to render astronauts "all possible assistance in the event of accident, distress or emergency landing on the territory of another State Party or on the high Seas." This provision is general in character and does not deal directly with the question of overflight rights; it thus leaves unaffected the general international law rule that a state has complete and exclusive sovereignty of the airspace above its territory (1944 Chicago Convention, Article 1).

2. The Assistance and Return Agreement constitutes an improvement in this legal situation since it looks toward U.S. cooperation with another party if our

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assistance, in the words of Article 2, "would help to effect a prompt rescue or would contribute substantially to the effectiveness of search and rescue operations."^b

Given our high degree of competence in search and rescue operations, it is very likely that our assistance would be appropriate.

No. 10

QUESTION

Why has the United States said that in the event of a dispute as to whether assistance by a launching state would help effect a prompt rescue, the territorial party has the final say?

ANSWER

1. Other countries are, of course, sensitive about their right to act or to forbid acts by others in territory under their sovereignty or control. We also do not want to abandon our sovereign right in this regard. In negotiating the Assistance and Return Agreement, we found considerable sensitivity concerning the concept of launching state participation in search and rescue operations on foreign territory. Friendly as well as non-aligned members of the Outer Space Committee made it clear that they could accept the Agreement much more readily if Article 2 were authoritatively interpreted to mean that, in the event of a dispute between the launching state and the territorial sovereign over the desirability of launching state assistance, the territorial sovereign would have the final say.

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2. While we have not anticipated differing assessments by the launching state and the territorial sovereign, we thought that these concerns could reasonably be satisfied by an appropriate interpretive statement. In order to facilitate acceptance of Article 2, Ambassador Goldberg made the following statement to the Outer Space Committee on December 16:

"We think it clearly correct to expect that the views of the territorial party 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."

3. This interpretation is necessary for operations which may take place in U.S. territory; we would certainly not want the Agreement to suggest that we had surrendered the right to decide what foreign search and rescue operations are conducted on our territory, or the manner in which such entry takes place.

No. 10⁵¹⁸QUESTION

Does the Agreement authorize a launching authority to conduct search and rescue operations in the territory of another party only when requested by that party to do so?

ANSWER

1. No. No mention is made of a request by the territorial sovereign because the Agreement contains quite a different rule which describes a method of operation rather than a diplomatic procedure. Under Article 2, the launching state becomes obliged to cooperate with the territorial sovereign in search and rescue operations "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..." In case of an emergency involving a manned flight, assessments of the desirability of launching state assistance will have to be made with great speed. Moreover, given the humanitarian character of the convention, we think that parties

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will want to lean heavily on such assistance as the launching state may be able to furnish.

2. During the negotiations, a suggestion was made that Article 2 should be worded so as to permit launching state assistance only where the territorial sovereign had made a prior request for such help. The U.S. strongly opposed this suggestion because the concept of "request" seemed to imply great deliberation over a period of time--with lengthy communications between the territorial sovereign and the launching state--which might well be impossible in the case of an emergency.

No. 11

QUESTION

When is a party "in a position" to extend assistance in search and rescue operations? Does Article 3 place our ships under the effective command of Soviet personnel if a Soviet astronaut lands near them?

ANSWER

To be supplied.

No. 12

QUESTION

Does the Agreement apply to Antarctica? To outer space? To the moon? Would rescue operations under the Agreement apply to an astronaut who suffers distress while orbiting the Earth?

ANSWER

1. Obligations to notify that an accident has occurred and to return an astronaut who suffers an accident prevail with regard to an accident on the high seas, in Antarctica, in outer space or on the moon or other celestial body. For example, a party learning that an astronaut has experienced an accident and landed in Antarctica is obliged immediately to notify the launching state. All these areas are covered by the phrase "in territory under its jurisdiction or on the high seas or in any other place not under the jurisdiction of any state."

2. As to rescue, the provisions of the Agreement on rescue outside of national territory deal only with the case where an astronaut has "alighted." The Agreement does not expressly deal with assistance in outer space to an

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astronaut in distress in view of the provision of Article V of the Outer Space Treaty which states that "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." We did not think that this provision could be made more precise, and it has thus been left as stated in the Outer Space Treaty.

No. 13

QUESTION

Would the United States be obliged to return FOBS fragments? Would the United States be obliged to return fragments from an ICBM test that land on American Pacific islands?

ANSWER

1. Yes, if the Soviets requested them. Article 5, paragraph 3 of the Agreement requires 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." The same provision would entitle the United States to request the USSR to "furnish identifying data prior to their return."

2. We would have the same return obligations with regard to Soviet ICBM test fragments if the Soviets were to request their return.

No. 14

QUESTION

Under the new Agreement will the United States be required to make advance payment as a condition for the return of either astronauts or space objects?

ANSWER

Article 5, paragraph 5 of the Agreement merely provides that expenses incurred in fulfilling obligations to recover and return space objects will be "borne by the launching authority." This provision does not make prior payment by the launching authority a condition precedent to the return of its space object. In the case of substantial anticipated expenditure by another country in searching for a U.S. space object, we would certainly want to study formally a request for advance payment. In general, however, compensation would be made after the recovery mission had come to an end.

Incidentally, it should be noted that the new Agreement makes no provision requiring the launching authority to bear expenses incurred in recovering, assisting and returning astronauts. This parallels the non-compensable humanitarian tradition of saving life at sea.

No. 15

QUESTION

Suppose a Soviet space fragment lands on United States territory and causes damage. Does the Agreement oblige us to return it even if the Soviets refuse to pay for the damage?

ANSWER

1. The obligation under the Agreement to return space fragments arises once the launching state has requested return. A careful assessment of any damage caused might require some time.

2. The Soviet Union is already obliged to pay compensation for such damage under the liability provision in Article VII of the Outer Space Treaty, and we expect they would do so.

No. 16

QUESTION

How can the U.S. guarantee the return of a space fragment if it lands on the property of a recalcitrant farmer? Does the Administration intend to ask for implementing legislation?

ANSWER

1. Article 5 of the Astronaut Agreement would oblige the United States to recover foreign-owned space objects which have landed on private property and return them to their owners or otherwise hold them at their disposal. Although like the comparable provision in Article VIII of the Outer Space Treaty, this Agreement does not impose a duty on the private property owner to deliver an object to the U.S. Government, our present thinking is that specific legislation imposing such a duty may not be needed.

2. Since the outset of the U.S. space program consideration has been given to the matter of retrieving space fragments which have fallen on private property in the United States. From time to time we have considered

the desirability of requesting specific legislation analogous to the provision in 49 U.S. Code Section 1441 which impliedly permits the Civil Aeronautics Board to enter upon an airplane crash site, to prohibit any movement of airplane fragments, and otherwise to conduct an investigation upon private property. However, we have always had the cooperation of private landowners in bringing objects to us and we anticipate that such cooperation will continue.

3. In the unlikely event that resistance is encountered, exceptions to the local law of trespass permitting recovery of personal property owned by another may be relied upon, particularly where the space object is of considerable value. In the event that the space object is of a hazardous or deleterious nature, local laws for the protection of the health and safety of the community would surely permit entry by the appropriate authorities to remove the danger. With these considerations in mind, the Administration does not intend at this time to request legislation to implement this provision of the Agreement.

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No. 17

January 22, 1968

QUESTION

What is meant by objects "of a hazardous or deleterious nature?"

ANSWER

The words "of a hazardous or deleterious nature" are meant to cover such features of a spacecraft or its component parts as, for example, pyrotechnics or toxic fuels, which require handling by trained personnel.

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OPTIONAL FORM NO. 10
MAY 1962 EDITION
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UNITED STATES GOVERNMENT

Memorandum

TO : L/UNA - Herbert K. Reis

DATE: January 23, 1968

FROM : IO/UNP - Gerald B. Helman

SUBJECT: Questions and Answers for the Hearings on the Astronaut Agreement

Question No. 18. Why is the international organization provision of the Astronaut Agreement different from Article XIII of the Outer Space Treaty?

Answer. The reason for the difference between Article XIII of the Outer Space Treaty and Article 6 of the Astronaut Agreement is that the United States and its European allies considered that international organizations engaged in space activities should be accorded substantially the same treatment as national states in the return of their space objects and the rescue and return of their astronauts. Under the Astronaut Agreement this is the case, whereas it is not under the Outer Space Treaty. Article XIII of the Outer Space Treaty gives parties to the Treaty the option to deal either with states members of an international organization or with the organization itself. The new Agreement, on the other hand, requires that an international organization be dealt with directly, provided that the organization declares its acceptance of the rights and obligations of the Agreement and that a majority of its member states are parties to both the Astronaut Agreement and the Outer Space Treaty.

Many nations, including our European allies and Australia, consider that they can most effectively conduct their space operations within the framework of international organizations. Thus, from the standpoint of countries participating in international organizations such as the European Space Research Organization (ESRO) and the European Launcher Development Organization (ELDO), the

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Astronaut Agreement represents a notable advance over the Outer Space Treaty. Article 6 of the Agreement would also apply to INTELSAT, if it accepted the rights and obligations of the Agreement and a majority of its members are parties to the Outer Space Treaty and the Astronaut Agreement.

Question No. 18a. Would Article 6 of the Astronaut Agreement apply to COMSAT?

Answer. No, since COMSAT is a domestic corporation and not an international organization.

Question No. 18b. Would Article 6 of the Agreement apply to East European international space organizations?

Answer. No such organizations now exist. However, should they be established and meet the qualifications set forth in Article 6, they would be entitled to the same treatment as states parties to the Agreement.

No. 19

QUESTION

Will the French sign the Assistance and Return Agreement? Communist China?

ANSWER

1. We hope that France will in due course sign the Agreement. The French Delegation participated actively in the negotiations and, indeed, suggested a formula governing territorial rescue which made possible unanimous approval of the Agreement in the Outer Space Legal Subcommittee. The French Delegation was also well satisfied with the provisions on international organizations. (France is a member of ESRO and ELDO.) On September 25, France signed the Outer Space Treaty; it has not yet ratified.

2. We have no information on Communist China's intentions. We would welcome their signature.

No. 20

QUESTION

When will the Agreement enter into force?

ANSWER

1. Article 7 requires that ratifications by the United States, the United Kingdom, the USSR and two other countries be deposited in order for the Agreement to enter into force. We think that the British and Soviets will ratify promptly.

2. The Outer Space Treaty was signed January 27 last year. It entered into force October 10. Entry into force of the Assistance and Return Agreement might take a similar period of eight months.

No. 21

QUESTION

What will be the effect on United States recognition policies if East Germany or some other unrecognized regime signs or ratifies the Agreement?

ANSWER

1. None.
2. Neither (a) recognition of a regime as a government, nor (b) acknowledgment of the Statehood of an entity, can be inferred from signature or ratification of or accession to a multilateral agreement. Thus, for example, our recognition of the Federal Republic of Germany as the only German Government entitled to speak for the German people would in no way be affected if the regime in East Germany signs or ratifies the Agreement or deposits an instrument of accession to the Agreement in Moscow. Naturally, the United States would not permit the East German regime to sign, ratify or accede to the Agreement in Washington. The United Kingdom has the same policy.
3. When the USSR, as a depositary of the Outer Space Treaty, notified us of East Germany's signature of the Treaty,

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we replied that the United States did not accept notice of signature. We stated that "Bearing in mind, however, the purpose of the Treaty, the Government of the United States of America notes that the East German regime has signified its intention with respect to the matters dealt with in the Treaty" (U.S. note of February 25, 1967).

4. The United States is a party to a number of multi-lateral agreements to which regimes not recognized by the United States consider themselves to be bound. Examples are: (a) the Limited Text Ban Treaty of 1963, to which the East German regime is a party; (b) the Laos Agreement of 1962, to which the Chinese People's Republic is a party; (c) the four Geneva Conventions of August 12, 1949, to various of which agreements the Chinese People's Republic, the Democratic Republic of Korea, and East Germany are parties.

5. In order to ease any problems which might otherwise have been created for the Federal Republic of Germany, we agreed with them on a statement we would make concerning the "all States" accession clause in Article 7 of the Assistance

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and Return Agreement. On December 19, Ambassador Goldberg made the following statement on this point to the General Assembly:

"My delegation would like also to draw the attention of members to Article 7, which names the United States, the United Kingdom and the Soviet Union as Depositary Governments and specifies that the Agreement shall be open to all states for signature and ratification. The United States supports the accession clause now included in the draft Agreement because of the special and exceptional character of this Agreement. An agreement for the rescue of astronauts is an exceptional instrument of a special character. The fact that the "all states" clause has been employed in this instance does not indicate that it is suitable in other circumstances.

"Adoption of the 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 acknowledgment of the existence of a state is brought about as a result of a deliberate decision and course of conduct on the part of a government intending to accord recognition. Recognition of a regime or acknowledgment of an entity cannot be inferred from signature, ratification or accession to a multilateral agreement. This, of course, is something which all of us share in recognizing."

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6. The unconditional obligation to return downed astronauts makes desirable the broadest possible geographic coverage for the Treaty. The "all States" accession clause and the triple depositary feature of the Assistance and Return Agreement, as in the Outer Space Treaty, provide a means by which universal adherence can be obtained without forcing any depositary government to enter into relations or correspondence with the authorities of a regime it does not recognize.

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QUESTION

Do we expect to reach agreement soon on an outer space liability convention?

ANSWER

1. If all sides show a willingness to move forward, there is a good chance of reaching agreement at the next meeting of the Outer Space Legal Subcommittee, which is to take place June 4-23 in Geneva.

2. The liability convention is by its nature more technical and complex than the Assistance and Return Agreement. Moreover, our current thinking is that the liability convention should contain a provision for the compulsory settlement of any dispute as to the existence or extent of liability. We are not optimistic that the USSR can be brought to ready acceptance of arbitration. But we shall try our best.

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QUESTION

What is the status of US-Soviet space cooperation?

ANSWER

Our present space cooperation with the Soviet Union had its origins in February 1962, when President Kennedy took advantage of a routine reference to cooperation by Chairman Khrushchev to put forward specific U.S. proposals for joint projects. The resulting talks between Dr. Hugh L. Dryden and Academician Anatoly A. Blagonravov led to agreements on four projects.

(1) Meteorology.

Coordinated launchings of experimental, then operational, meteorological satellites, establishment of channels for the exchange of data thus obtained, plus the exchange of conventional meteorological data on a secondary basis.

Status. The communications channels were established between Washington and Moscow in October 1964 on a shared-cost basis under which each party pays \$28,000 every other month. Scheduled two-way transmissions of conventional weather data are made throughout the day. Exchange of satellite data began on an experimental basis in September 1966 and continued for some weeks until the Soviet satellite became inoperative. Soviet transmissions resumed on March 2, 1967. Although they have continued since then except for some intervals, Soviet data has not been operationally useful, and it has not been possible to move on to the second stage of the agreement, which calls for the coordinated launching by the two nations of a system of operational meteorological satellites.

(2) Magnetic Field Mapping.

Launching by each country of an earth satellite equipped with absolute magnetometers and the subsequent exchange of satellite and ground-based data.

Status. No exchange of satellite data has yet taken place although this should become possible soon

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on the basis of data accumulating here and believed accumulating in the USSR. Arrangements for exchange of ground-based data have occurred but have not been completely successful as to regularity, quantity, locations, or format.

(3) Communications.

Cooperative communications experiments by means of the U.S. passive satellite Echo II using the Jodrell Bank and Zemenki facilities.

Status. These experiments were completed in February 1964. In the event, the Soviets received only, declining to transmit, but did provide reasonable data relating to their radio receptions via Echo II. Technical difficulties (partly at Jodrell Bank) limited the experimental results.

(4) Space Biology and Medicine.

Preparation and publication of a joint review of space biology and medicine.

Status. A joint editorial board has been selected and an outline for the chapters of the review has been agreed. The U.S. side is now engaged in having "compilers" put together the basic materials. The Soviet side may be similarly engaged, but we have no confirming word to that effect. When it is agreed that adequate material has been provided by both sides, authors will be selected for each chapter.

QUESTION

What efforts have been made to expand US/USSR cooperation?

ANSWER

We have made repeated efforts to persuade the Soviets to enter new projects, but our initiatives have not been accepted. The joint review of space medicine is the only Soviet proposal which has been made and not subsequently withdrawn. A chronology of U.S. initiatives follows:

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December 7, 1959. NASA Administrator Glennan offered U.S. assistance in tracking Soviet manned flights. The Soviets replied that they would be in touch if the need arose.

March 7, 1962. President Kennedy proposed an exchange of tracking and data acquisition stations. The Soviets did not accept.

September 20, 1963. President Kennedy suggested in a speech to the U.N. General Assembly that the U.S. and the USSR explore the possibility of joint exploration of the moon. President Johnson later reaffirmed this offer. There has been no official Soviet response.

December 8, 1964. NASA proposed an exchange of visits by NASA and Soviet teams to deep space tracking and data acquisition facilities. The Soviets replied on August 13, 1965 that such visits were not then possible.

May 3, 1965. NASA suggested US/USSR communications tests via the Soviet Molniya I. There was no Soviet response.

August 25, 1965. At the request of President Johnson, Administrator Webb invited the Soviet Academy of Sciences to send a high-level representative to the launching of Gemini VI. At the same time, the President said that "we will continue to hold out to all nations including the Soviet Union the hand of cooperation in the exciting years of space exploration which lie ahead for all of us." The Soviets did not accept this invitation.

November 16, 1965. NASA inquired about the possibility of US/USSR communications tests via Molniya I. On January 26, 1966 the Soviets replied that it was not possible to conduct joint experiments "in the present conditions."

January 6, 1966. Administrator Webb asked Academician Blagonravov, Chairman of the Soviet Academy's Commission of the Exploration and Use of Outer Space, for a description of experiments on Soviet Venus probes then in flight in order that NASA plans for Venus probes might emphasize experiments which could complement rather than duplicate Soviet work. Blagonravov replied informally that he did not have authority to describe the experiments.

March 24 and May 28, 1966. Administrator Webb suggested to Academician Blagonravov that the Soviets propose subjects for discussion with a view to extending cooperation between NASA and the Soviet Academy. Blagonravov replied that the Soviets were not ready for further cooperation.

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September 22, 1966. Ambassador Goldberg, speaking in the U.N. General Assembly, said that if the USSR desired tracking coverage from U.S. territory, we were prepared to discuss with the Soviets the technical and other requirements involved "with a view to reaching some mutually beneficial agreement."

March 27, 1967. President Seitz of the National Academy of Sciences proposed to President Keldysh of the Academy of Sciences of the USSR that the USSR provide the U.S. with some results of the Luna 13 soil meter experiment in advance of Soviet normal reporting to the world scientific community in return for comparable data from future flights in the Surveyor series. President Keldysh replied four months later on July 28, forwarding data which had already been reported at the International Committee on Space Research (COSPAR) meeting in London.

March 27-31, 1967. Dr. Kistiakowsky, during the visit of a National Academy of Sciences delegation to Moscow, suggested small US/USSR meetings to consider such topics as cooperation in weather prediction, lunar and planetary research, and orbiting telescopes. At the same time Dr. Brown proposed that representatives of the two academies consider joint space efforts in basic science, including rocketry. The Soviets have not replied to these proposals.

April 4, 1967. Administrator Webb said in his statement on the death of Cosmonaut Komarov that NASA wished to make every realistic effort to cooperate with the Soviet Union. The Soviets have not responded.

June 2, 1967. Administrator Webb proposed to Academician Blagonravov that they meet in July at the time of the COSPAR meeting in London to review progress in the exchange of weather data as required every six months under bilateral agreements. Blagonravov replied on July 3 that he had been unable to arrange for the presence of the necessary Soviet experts. The required semi-annual meetings have not been held since October 1965.

October 10, 1967. President Johnson, speaking on the occasion of the entry-into-force of the U.N. Outer Space Treaty, listed previous U.S. offers of cooperation and said "We again renew these offers today. They are only the beginnings of what should be a long, cooperative endeavor in exploring the heavens together."

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October 18, 1967. President Seitz of the National Academy of Sciences, in a telegram congratulating Academician Keldysh on the success of Venus 4, spoke of the need to further full and prompt exchange of data on planetary exploration. Keldysh's telegram of acknowledgment made no reference to data exchange.

QUESTION

What are the prospects for the future?

ANSWER

We regret that the Soviets have not been prepared to move more rapidly and more broadly. Consistent with the stated objectives of three Presidents, we have made continuing efforts to interest them in specific projects. It has been made plain again and again that we stand ready to explore any and all possibilities for meaningful cooperation. The obstacles are clearly not technical in character. The future of space cooperation with the Soviet Union depends on the readiness of that nation to accept any of the broad range of projects suggested to it or to offer proposals suitable to it. The United States has set no arbitrary limits of any kind.

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QUESTION

Does this agreement in any instance provide less coverage than the Outer Space Treaty?

ANSWER

No. As stated in its preamble, the purpose of the Assistance and Return Agreement is "to develop and give further concrete expression to duties" set forth in the Outer Space Treaty. United States interests are in no case less well protected under the new Agreement than they were before.

(The following should be used in response to a direct question on the relationship of Article 3 of the Astronaut Agreement to Article V of the Outer Space Treaty.)

It might be suggested that Article 3 of the Assistance and Return Agreement provides "less coverage" with respect to non-territorial rescue than does Article V of the Outer Space Treaty. Article V of the OST provides that parties "shall render to [astronauts] all possible assistance in the event of accident, distress, or emergency landing on territory of another State Party or on the high seas." Article 3 (A & R) provides:

"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."

It could, therefore, be argued that Article 3 provides less coverage than Article V of the OST because the latter uses the words "all possible assistance."

The fact of the matter is that we purposely sought the new language; we wanted to avoid the possibility that the "all possible assistance" formula might be interpreted to call for excessive, unreasonable or impracticable steps on the high seas, for example.