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# Chapter 1

## The Astronaut Rescue Agreement at Fifty Years<sup>\*</sup>

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### Abstract

The year 1967 saw the first two major accidents in human spaceflight. The Apollo 1 spacecraft's command module caught fire during a launch rehearsal and Soyuz 1 crashed at landing because of a mishap with the parachutes. In both cases the crews were lost. One year later, the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, also referred to as the Rescue Agreement, was adopted. The history of this agreement goes back to 1959, when a report by UNCOPUOS referred to the very issues the rescue agreement intends to address. In 1962, the superpowers decided to bring these issues to legal codification, thus paving the way to the adoption of the Rescue Agreement in 1968. The mishaps of 1967 may have or have not contributed to the adoption of the Rescue Agreement. However, the Agreement has seen wide acceptance throughout the world over the last 50 years. Although the Rescue Agreement has—fortunately—seen little application, it remains an important legal instrument and it will be seen how its role will evolve and/or remain in the coming future.

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## I. Initial Developments

In the year 1962, the superpowers decided to bring the issue of astronaut rescue to legal codification. Deliberations began at UNCOPUOS<sup>1</sup>—especially between the two superpowers: the United States and the Soviet Union. In 1962, President John Kennedy and Chairman Nikita Khrushchev exchanged correspondence on possible cooperation in the exploration and use of outer space.<sup>2</sup>

From the onset, there were certain differing views on how to come up with such a legal regime. This was leading to several discussions and proposals amongst actors involved—besides the major space powers there was (joint) involvement from Canada and Australia drafting proposals for an eventual agreement and submitting them to the UNCOPUOS Legal Subcommittee.<sup>3</sup> In 1967, after the conclusion of the Outer Space Treaty and three years of intensive negotiations, the drafts were much closer in contents.<sup>4</sup>

The draft proposals benefited from previous texts referring to the rescue of astronauts and the return of space objects such as the Principles Declaration and the Outer Space Treaty.<sup>5</sup>

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.<sup>6</sup>

Discussions in the Legal Subcommittee were accompanied by some controversial legal questions. One of them concerned the form of the legal document. The Soviet Union submitted a draft text for a binding international treaty, while the United States at the time preferred a (nonbinding) UN General Assembly Resolution.<sup>7</sup> The Soviet Union and her communist allies argued that it was an established practice that questions of assistance to persons in distress were dealt with in treaties. The United States on the other hand pointed out that states would willingly comply with an eventual resolution's provision because humanitarian and scientific concerns were shared by the international community and the time-consuming process of drafting a treaty could be avoided.<sup>8</sup> One year later, an agreement could be reached that there should be a treaty.<sup>9</sup>

Questions concerning the return of space vehicles proved controversial as well. The Soviet Union only wanted to agree to return spacecraft that had identification marks and after the launch had been officially announced. Further, the Soviets did not want to return spacecraft carrying devices to gather intelligence in the territory of another state. This was unacceptable to the United States and Western states, since there were serious concerns about the practical implementation, especially due to the lack of an arbitration clause. After tense negotiations, it

was agreed in accordance with principles 7 and 9 of the Principles Declaration that the return of space objects should be fixed as unconditional.<sup>10</sup>

The United States and its Western partners intended to treat international organizations on the same footing as states; something the Soviet Union rejected for political and juridical reasons.<sup>11</sup>

The compromise that was eventually reached made the ARRA applicable to international organizations if they accepted the rights and obligations of the agreement if a majority of said organizations' member states had ratified the ARRA and the OST.<sup>12</sup>

## II. Drafting History

The agreement did benefit from previous legal texts that referred to the rescue of astronauts and the return of space objects—for example Principle 9 of the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space and Art. V OST.<sup>13</sup>

The need for internationally agreed rules on rescue and return of astronauts and space objects became more obvious when, during the negotiations, tragic accidents and incidents happened.<sup>14</sup> The negotiations started at the first session of the UNCOPUOS Legal Subcommittee in 1962 in Geneva. The Soviet Union proposed an “International Agreement on the Rescue of Astronauts and Spaceships Making Emergency Landings” containing a preamble and nine articles, with Art. 1 providing for a duty “to render assistance to the crew of spaceships which have met the with an accident and to take steps to rescue astronauts making an emergency landing.” The draft agreement also laid out a duty to notify the launching state without delay. In case of an emergency landing on the high seas, the draft agreement provided for a joint search. The early return of astronauts should be facilitated. The return of spacecraft and similar hardware should only be returned without delay if they carried identification marks and if the launch had been officially announced. Spying or intelligence gathering equipment would not be returned. Expenses from the fulfilling these obligations should be reimbursed by the launching state.<sup>15</sup>

The United States tabled a draft General Assembly resolution containing three principles on “Assistance and Return of Space Vehicles and Personnel.” The first principle foresaw that “all possible assistance shall be rendered to the personnel of space vehicles who may be the subject of accident or experience conditions of distress or who land by reason of accident, distress, or mistake, or otherwise than as planned.” In the second principle the duty to safely and promptly return space vehicles and their personnel that land otherwise than as

planned to the state or states or international organizations responsible for the launching. The third principle said that any expense arising from assisting or returning space vehicles and their personnel should be borne by the state or states or international organizations responsible for the launching.<sup>16</sup>

Despite the ongoing controversy over the form of the document, it was understood that agreement about assistance and return was practicable and desirable. In December 1962, the General Assembly requested UNCOPUOS to continue its work on assistance to and return of astronauts and space vehicles.<sup>17</sup>

During the second session of UNCOPUOS in 1963 in New York, consensus on the form of the document could be reached. It was agreed that the relevant instrument should take the shape of an international agreement.<sup>18</sup>

In 1963, the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space was unanimously adopted. It referred in its principles 7 and 9 to the rescue and return of astronauts and space objects.<sup>19</sup>

Several drafts were submitted in 1964 and 1965 to the Legal Subcommittee on the issue of assistance and return. While the Soviet Union submitted two revised drafts of her earlier proposal, the United States submitted a newly drafted proposal for an international agreement on assistance and return that was also more detailed and extensive than her earlier draft resolution. Canada and Australia submitted a separate draft text. Several delegations asked for changes to those drafts.<sup>20</sup>

By the end of the third session of the Legal Subcommittee in 1964, agreement on the preamble and three articles could be reached.<sup>21</sup>

Disregarding the formulation of the 1963 Principles Declaration, the Soviet Union continued to insist that the duty to return should only apply to objects launched for peaceful purposes or in accordance with the Principles Declaration. The Western states maintained the view that the wording of the declaration was to be read as imposing an unconditional obligation.<sup>22</sup>

The United States draft provided for reference to the International Court of Justice by any contracting party for dispute settlement.<sup>23</sup>

In 1967, the Outer Space Treaty, containing provisions on assistance to astronauts and on the return of astronauts and space objects in Art. V and Art. VIII.<sup>24</sup>

After the adoption of the Outer Space Treaty, the momentum in drafting an agreement on assistance and rescue of astronauts and space objects could be regained. During the 1967 session of the Legal Subcommittee, the US proposed treaty, a revised Soviet draft a revised version of the Australian/Canadian working paper was discussed. The revised Soviet proposal contained only standards

for rescue and assistance to astronauts, no references to space vehicles or the return of astronauts was made, thereby avoiding the former controversial issue of whether the return should be conditional or unconditional.<sup>25</sup>

### **III. Impact of the 1967 Accidents**

The Soviets tried to justify the restricted scope of the draft with a sense of urgency: saw the first two major accidents in human spaceflight. The Apollo 1 spacecraft's command module caught fire during a launch rehearsal, and Soyuz 1 crashed at landing because of a mishap with the parachutes. Both cases saw the complete loss of the crews. The Soviet Union pointed out that these developments highlighted the urgent need to come to an agreement on the earliest possible date and argued this could easier be achieved by agreeing on an absolute minimum.<sup>26</sup>

The United States was not ready to omit the return provisions of her draft and justified this with the General Assembly's mandate to arrive at an agreement on the return of astronauts and space objects as well as on the rescue and return of astronauts. This notion was supported by other states.<sup>27</sup>

Tentative agreement could be reached on portions of the text covering notification of accidents and assistance to astronauts in the territory of a contracting party.<sup>28</sup>

### **IV. Final Phase**

When the UNCOPUOS main committee reconvened in New York in September of 1967, the Soviet Union indicated willingness to discuss the return of astronauts and spacecraft. Several bilateral meetings between the United States and the Soviet Union on the sidelines of the General Assembly led to a rapprochement on a number of provisions.

The Legal Subcommittee reconvened in a special session in December 1967. The text of a "Draft Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space" was discussed and some amendments were made. The draft text was then forwarded to the full committee, which approved it with slight modifications on 16 December 1967 and decided to submit it to the General Assembly.<sup>29</sup>

The text of the ARRA was adopted by the General Assembly on 19 December 1967 by unanimous vote.<sup>30</sup> After achieving the necessary number of ratifications, the ARRA entered into force on 3 December 1968.<sup>31</sup>

## V. ARRA Today

As of May 2013, 92 states have ratified the Rescue Agreement, 24 having signed, and two international intergovernmental organizations (the European Space Agency and the European Organisation for the Exploitation of Meteorological Satellites) have declared the acceptance of the rights and obligations conferred by the agreement.<sup>32</sup>

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- <sup>2</sup> Dembling/Arons, p. 634.
- <sup>3</sup> Marchisio, “Reviewing the Astronauts Agreement: The Role of COPUOS,” Lafferanderie/Marchisio (eds), *The Astronauts and Rescue Agreement. Lessons Learned*, Paris, 2011, 141.
- <sup>4</sup> *Ibid.*
- <sup>5</sup> Marchisio, 142.
- <sup>6</sup> Dembling/Arons, 632.
- <sup>7</sup> Marboe/Neumann/Schrogl in CoCoSI2, 13.
- <sup>8</sup> *Ibid.*
- <sup>9</sup> Marboe/Neumann/Schrogl in CoCoSI2, 14.
- <sup>10</sup> *Ibid.*



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- <sup>11</sup> Ibid.
- <sup>12</sup> Marboe/Neumann/Schrogl in CoCoSI2, 15.
- <sup>13</sup> Marchisio, 142.
- <sup>14</sup> Marboe/Neumann/Schrogl in CoCoSI2, 15.
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