

On the 55th Anniversary of the Rescue Agreement: The Drafting History and Contribution to Strengthening International Cooperation

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Abstract

The Rescue Agreement, the second space treaty adopted under the auspices of the United Nations in 1967, celebrates its 55th anniversary. Its entry into force in 1968 became a true milestone in the evolution of space law. The drafting history of the Rescue Agreement was anything but short and easy. It took almost ten years of lively discussions within the walls of the UN Committee on the Peaceful Uses of Outer Space. The geopolitical situation and challenging events of that time could not but affect its work. Tense negotiations time and again gave way to promising spirit of cooperation, and seemingly opposed views were pointed, however, in the same direction: towards an absolute value of human life and the need for humanism under any circumstances. The Rescue Agreement can rightly be considered a shining example to follow since it is never impossible to agree when the interests of humankind are at stake.

1. Introduction

The Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (Rescue Agreement) was commended by the United Nations General Assembly on 19 December 1967 by a unanimous vote of 115 states.¹ The Governments of the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America were designated depositaries and

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1 Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (Rescue Agreement), UN Doc. A/RES/2345(XXII), 19 December 1967.

requested to open the Rescue Agreement for signature and ratification at the earliest possible date.

It was done so in London, Moscow and Washington, D.C. on 22 April 1968. The Rescue Agreement entered into force on 3 December that same year, as soon as five ratifications were deposited. Among them, ratifications were required from all the three Depositary Governments.² Such a requirement emphasized the utmost importance of this international treaty, which would not have become a true milestone in the evolution of space law and yet another step towards international cooperation in space without consent of the then-leading powers.

The drafting history of the Rescue Agreement was anything but short and easy. It took almost ten years to negotiate a mutually acceptable treaty based on the opposing proposals of the Soviet Union and the United States, and all this in the era of the Cold War.

For the first time, the issue of the re-entry and landing of both uncrewed and crewed space vehicles was identified as a legal problem of priority treatment as early as 1959. Recognizing that landings may occur through accident, mistake or distress, the Ad Hoc Committee on the Peaceful Uses of Outer Space called attention to the desirability of the conclusion of appropriate multilateral agreements.³ The Rescue Agreement was the culmination of a series of meetings of the Committee, which subsequently became permanent, and its Legal Subcommittee.

The overall political situation and the events of that time such as the Cuban missile crisis, conflict in the Middle East, nuclear weapons tests at high altitudes and in space, which ended with the Moscow Test Ban Treaty, could not but affect the drafting. Each time the USSR and the US came to understand each other better, delegations met in an atmosphere of reduced international tension. Meetings that exhibited a promising spirit of cooperation were inevitably followed by periods of complete deadlock.

When emotions ran high and any compromise between the two space powers seemed to be unthinkable, it was made absolutely clear more than once that outer space must not become a theater of the Cold War.⁴ With such a fundamental understanding, the drafting of the Rescue Agreement began.

2 Article 7(3), Rescue Agreement.

3 Report of the Legal Committee, Ad Hoc Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.98/2, 12 June 1959, at 7.

4 Summary Record of the Eighth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.8, 21 August 1962, at 5 (Czechoslovakia); Summary Record of the Twelfth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.12, 21 August 1962, at 2 (Morocco).

2. Drafting and Negotiating

In 1961, Soviet cosmonaut Yuri Gagarin became the first human to journey into space when his Vostok 1 spacecraft completed one orbit of the Earth. Later that same year, German Titov became the second human to orbit our planet. He completed 17 circles aboard Vostok 2. The United States was meanwhile running its own human spaceflight program named Mercury. The first two launchings by Alan Shepard and Virgil Grissom in 1961 were suborbital.

In 1962, John Glenn became the first American to complete an orbital flight when he circled the Earth three times. Soviet Prime Minister Khrushchev congratulated astronaut Glenn and the American people in his letter to President Kennedy and called upon two countries to pool scientific, technical and material efforts to jointly master the universe for the benefit of all peoples.⁵

This historic event kick-started a dialogue between the space powers with regard to the Rescue Agreement. The consideration of such agreement was initiated by the USSR as highly desirable at that stage of human penetration of outer space.

In 1962, the delegation of the Soviet Union submitted a draft International Agreement on the Rescue of Astronauts and Spaceships making Emergency Landings. The United States tabled a draft General Assembly resolution titled the "Assistance to and Return of Space Vehicles and Personnel." The two drafts were immediately recognized as mutually totally unacceptable. The drafts were subsequently revised and updated, while the negotiating table was supplemented by proposals from other states, whose contribution to the achievement of the overall result is no less significant.⁶

To understand the starting negotiating positions and issues of fundamental importance, it is worth considering the main stumbling blocks.

2.1. Two Mutually Totally Unacceptable Drafts

First, it was the format itself that was viewed differently. A number of delegations, including the Soviet one, strongly favoured the form of an

5 Letter from Chairman Khrushchev to President Kennedy, Moscow, 21 February 1962.

6 USSR Proposal: International Agreement on the Rescue of Astronauts and Spaceships making Emergency Landings, UN Doc. A/AC.105/C.2/L.2; United States Proposal: Assistance to and Return of Space Vehicles and Personnel, UN Doc. A/AC.105/C.2/L.3; Summary Record of the Seventh Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.7, 21 August 1962, at 7 (United States); Summary Record of the Eighth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.8, 21 August 1962, at 2 (Union of Soviet Socialist Republics); see also the third proposal by Australia and Canada, proposals and amendments by other states.

international agreement as having binding force and a detailed content. International air and maritime rescue agreements took the same form, and no reason could be seen why a different method should be used for outer space.⁷ The United States and some other delegations, in turn, argued that the principles of assistance and return were sufficiently clear and could be incorporated in a General Assembly's resolution, which would ensure a general agreement in the shortest possible time.⁸ They were unwilling to postpone the adoption of the urgent regulation due to a long process of drafting, signing, ratification and entry into force that was typical for international treaties.

A compromise was suggested by the representative of Italy and supported by a number of delegations,⁹ that an immediately accepted and applied resolution that reaffirms the application of humanitarian principles in outer space could be a very useful beginning. Such resolution was to serve as an interim measure pending the drafting and adoption of a detailed international agreement.

And so it happened. In 1963, the United Nations General Assembly adopted two space-related resolutions. The first one was the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space.¹⁰ It stated certain basic provisions on the return of space objects and the assistance to and return of astronauts, which later received a legally

7 Summary Record of the Seventh Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.7, 21 August 1962, at 6 (Union of Soviet Socialist Republics); Summary Record of the Eighth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.8, 21 August 1962, at 6 (Czechoslovakia).

8 Summary Record of the Ninth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.9, 21 August 1962, at 5 (Canada); Summary Record of the Thirteenth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.13, 22 August 1962, at 8 (United States).

9 Summary Record of the Seventh Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.7, 21 August 1962, at 12 (Italy); Summary Record of the Ninth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.9, 21 August 1962, at 2 (France); Summary Record of the Tenth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.10, 21 August 1962, at 7 (Italy); Summary Record of the Eleventh Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.11, 21 August 1962, at 8 (United Arab Republic).

10 Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, UN Doc. A/RES/18/1962(XVIII), 13 December 1963.

binding form of Article V of the Outer Space Treaty.¹¹ The other resolution instructed the Committee to promptly draft the relevant international agreement.¹²

2.2. Conditions of Return

The United States draft provided for the return of all spacecraft and astronauts unconditionally. The USSR draft, in turn, made astronauts' return dependent on three conditions: spacecraft must have identification marks, the launching state must have officially announced the launching, and the purposes of the launching must be peaceful.

The first two conditions, due to their technical complexity and a clear need for a detailed approach, were ultimately supposed to be settled in a separate agreement, currently known as the Registration Convention.¹³ The question of whether the noble goals of the Rescue Agreement would be subject to the peaceful intentions of the launch was considered the key to the success or failure of the Agreement as a whole.

The debate as to whether or not a launching would be in conformity with rather general criteria of the "peaceful purpose" inevitably led to the widest divergence of opinions. In particular, with regard to identifying espionage.

The USSR suggested that space vehicles carrying devices for the collection of intelligence information in the territory of another state must not be returned.¹⁴ The United States representatives argued that international law contained no prohibition of the peaceful observation of the Earth from outer space. As an example, the US referred to the observations made by Major Titov from the Vostok II spacecraft, which were considered by the United States peaceful despite his military status.¹⁵

With regard to the return of astronauts some delegations reminded that a person with a hostile intent who intruded into the territory of a foreign state had to face consequences under the law of that state. Taking into account that astronauts were privileged to fall outside the jurisdiction of the state of landing in their capacity as envoys of humankind in outer space, they

11 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, UN Doc. A/RES/2222(XXI), 19 December 1966.

12 International co-operation in the peaceful uses of outer space, UN Doc. A/RES/1963(XVIII), 13 December 1963.

13 Convention on Registration of Objects Launched into Outer Space, UN Doc. A/RES/3235(XXIX), 12 November 1974.

14 Summary Record of the Seventh Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.7, 21 August 1962, at 5 and 7 (Union of Soviet Socialist Republics).

15 Summary Record of the Seventh Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.7, 21 August 1962, at 9.

believed that such privilege was considered valid for peaceful purposes only.¹⁶ When opposing this approach, the United States referred to the matter of subjective interpretations and unilateral judgments. Some other delegations were also afraid of the possibility of false claims and unjust detention of astronauts, for instance, for the purpose of obtaining technical and other confidential information. No one could agree that the fate of an astronaut would hang on lawyers' debate.¹⁷

The dispute over the conditions for the return of space vehicles and astronauts was so fundamental and insoluble that at some point the USSR decided to completely withdraw from the discussion and excluded all provisions on return from its revised draft to expedite arriving at an agreement on the most important issue – the rescue of astronauts.¹⁸

Such a modification of the Agreement's scope could not be accepted as a number of delegations considered the return provisions an integral part and referred to the General Assembly resolutions that had instructed the Committee to draft an international agreement specifically on assistance to and return of astronauts and space vehicles.¹⁹

Thus, the matter in dispute had to be discussed on the basis of merit. The result of such discussions was the adoption of the Rescue Agreement, which covered all aspects as directed by the General Assembly, including the rescue of astronauts, the return of astronauts and the return of space objects, all without a direct connection to the "peaceful purpose" of the space mission as a condition for rescue and return. This, of course, in no way diminished the importance of the fundamental principles of space law, which began to be laid down in the Declaration of Legal Principles and later in the Outer Space Treaty.

With regard to space objects, it was argued that their return was important as it could promote the development of space science and engineering. Other delegations insisted, however, that a duty to return, if imposed, should be

16 Summary Record of the Forty-Fourth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.44, 30 November 1965, at 8 (Hungary); Summary Record of the Forty-Sixth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.46, 30 November 1965, at 4 (Bulgaria).

17 Summary Record of the Forty-Sixth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.46, 30 November 1965, at 7 (Mexico); Summary Record of the Forty-Seventh Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.47, 30 November 1965, at 7 (Australia).

18 Summary Record of the Seventy-Sixth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.76, 13 November 1967, at 5 (Union of Soviet Socialist Republics).

19 Summary Record of the Eighty-Fifth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.85, 14 November 1967, at 5-6 (United States).

made conditional on provision of certain information by the launching state.²⁰ An obligation to furnish, upon request, space objects' identifying data prior to their return to the launching authorities was included in Article 5(3) of the Rescue Agreement.

An important addition, strongly supported by other delegations, came from the representative of Austria, who proposed a provision on the obligation of the launching authority to remove space objects of hazardous or deleterious nature, even if the launching authority was not interested in their return.²¹ This provision is enshrined in Article 5(4) of the Rescue Agreement.

The issue of bearing costs associated with recovery and return of space objects was also discussed. While recognizing the humanitarian aspects that apply to searching and rescuing astronauts and not making saving lives a cost condition, some delegations were not prepared to apply the same approach to space objects. Space activities were not to be carried out at the expense of non-space powers.²² Expenses associated with the recovery and return of space objects were ultimately assigned to the launching authorities, as established by Article 5(5) of the Rescue Agreement.

2.3. Finding a Balance between the Basic Principles of Law

While states were willing to cooperate fully towards prompt search and rescue of spacecraft and astronauts, they felt that considerations of their own safety and security required attention.²³ Finding a balance between the principle of humanity and the principle of sovereignty became yet another challenge.

The principle of sovereignty meant that search and rescue operations were fundamentally a prerogative of the state in whose territory such operations were carried out. Such state may, at its discretion, establish conditions for the admission of foreign representatives and refuse their entry to areas which were of military, security or another similar importance.

The principle of humanity assumed that search and rescue operations on the territory of any state should involve the launching authority that had all necessary technical information and equipment and, therefore, was able to offer the most efficient methods of works. The question seemed to be even

20 Summary Record of the 29th to 37th Meetings of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.29-37, 24 August 1964, at 15 (United States), at 22 (Japan) and at 33 (Union of Soviet Socialist Republics).

21 Summary Record of the 29th to 37th Meetings of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.29-37, 24 August 1964, at 38 (Austria).

22 Summary Record of the 29th to 37th Meetings of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.29-37, 24 August 1964, at 25 (Canada).

23 Summary Record of the Eighty-Sixth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.86, 9 February 1968, at 9-10 (Iran).

more difficult as the launching authority was expected to bear expenses of rescue and return operations which would be quite illogical if it could not give advice on how the operations should be carried out.²⁴

Finally, the Legal Subcommittee succeeded in finding a balance between the parties involved in dealing with incidents, which is now reflected in Article 2 of the Rescue Agreement. It assigns the leading role to the state in whose territory search and rescue operations are carried out: such operations are subject to its direction and control.²⁵ If assistance by the launching authority can contribute to search and rescue operations, the launching authority is obligated to cooperate with the state in whose territory such operations are being conducted.

2.4. International Organizations

There was no meeting of minds on international organizations' participation in the Rescue Agreement. At that time, the Soviet Union insisted that any exploration and use of outer space must be carried out solely and exclusively by states, which would completely deprive international organizations of the opportunity to engage in such activities.²⁶ Some other delegations also had serious doubts whether states and international organizations should be placed on an equal footing, as far as the latter had neither territory and nationals, nor sovereignty.²⁷

The provisions of the United States draft, to the contrary, explicitly specified that not only states but also international organizations could be beneficiaries of the rescue and return regime. The US delegation, strongly supported by some others, argued that an international organization, albeit consisting of states, must be considered an independent legal entity and treated in the same manner as states.²⁸

24 Summary Record of the Forty-Fifth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.45, 30 November 1965, at 6 (Union of Soviet Socialist Republics).

25 Summary Record of the 29th to 37th Meetings of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.29-37, 24 August 1964, at 32 (Union of Soviet Socialist Republics) and at 38 (Austria).

26 Summary Record of the Seventh Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.7, 21 August 1962, at 5 (Union of Soviet Socialist Republics); Summary Record of the Thirty-Eighth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.38, 24 November 1964, at 4 (Union of Soviet Socialist Republics).

27 Summary Record of the 29th to 37th Meetings of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.29-37, 24 August 1964, at 24 (Bulgaria) and 91 (Romania).

28 Summary Record of the 29th to 37th Meetings of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.29-37, 24 August 1964, at 53 (United Kingdom) and 67 (Italy).

A number of delegations pointed out that the exploration and use of outer space were already expensive and complex activities; therefore, only the largest and wealthiest nations were likely to conduct space activities on their own. Smaller nations could only participate in space activities by pooling their financial resources, techniques and knowledge through cooperation in an international organization set up for a specific purpose.²⁹ Such smaller nations were willing to freely choose how they should conduct their outer space programs.

Since the majority of countries participating in space activities were going to do so through international organizations and because a number of international organizations were already engaged in space activities, the application of the Rescue Agreement only to states could not be accepted. The Rescue Agreement was supposed to give status to international organizations, given their important role and achievements.

Having consulted with a number of delegations, the representative of the United Kingdom suggested that an international organization should be regarded as a launching authority for the purpose of the Rescue Agreement on certain conditions.³⁰ These conditions, including a formal declaration of acceptance of the rights and obligations of the Rescue Agreement and the fact that most member states were also states parties to the Outer Space Treaty and the Rescue Agreement itself, turned out to be a mutually acceptable solution. This solution was included in the text of the Rescue Agreement as its Article 6.

2.5. Settlement of Disputes

There was no agreement upon the procedure for settling disputes.

The United States draft provided for the compulsory jurisdiction of the International Court of Justice, while a number of states considered this possible only with the consent of both parties.³¹ At that time, only 38 out of 115 state parties to the Statute of the International Court of Justice regarded its decisions as having binding force.³² Some delegations warned against exaggerating the importance of the Court and opposed any expansion of its

29 Summary Record of the 29th to 37th Meetings of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.29-37, 24 August 1964, at 53 (United Kingdom) and at 57 (Sweden).

30 Summary Record of the Eighty-Sixth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.86, 9 February 1968, at 13 (United Kingdom).

31 Summary Record of the 29th to 37th Meetings of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.29-37, 24 August 1964, at 24 (Bulgaria), at 43 (Argentina), at 55 (Czechoslovakia), at 56 (Sweden) and at 68 (Italy).

32 Summary Record of the 29th to 37th Meetings of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.29-37, 24 August 1964, at 60 (Mongolia).

powers. Moreover, many states preferred to choose freely among peaceful means of dispute settlement.³³

As a result, there are no dispute settlement rules in the Rescue Agreement.

2.6. State Parties

Debates arose on whether the Rescue Agreement should be open to all states in the world or to the United Nations member states only.

The Soviet delegation argued that in view of the humanitarian nature and noble character of the Agreement, there was no reason to limit the number of parties.³⁴ This approach could also be supported by a purely objective reason. Since a spacecraft in distress would obviously not always be able to select the territory of its emergency landing, such Agreement should be applicable universally.³⁵

The formula used in the United States draft, which only provided for participation by states within the United Nations, was similar to those found in other agreements drafted under the United Nations auspices. This formula was widely disputed as derogating from the rights of a number of states, which argued that the fact that it had been written into various agreements over the unsatisfied protests did not make it any more just.³⁶

The question was sensitive as some delegations believed that participation in a multilateral treaty could affect the recognition status of an unrecognized regime which might elect to file an instrument of accession to the Rescue Agreement. The other argued that such a regime's participation in the treaty did not imply its recognition by states that did not choose to recognize it.³⁷

The doubts were dispelled by agreeing upon that, under international law,

33 Summary Record of the 29th to 37th Meetings of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.29-37, 24 August 1964, at 52 (United Kingdom) and at 60 (Mongolia).

34 Summary Record of the 29th to 37th Meetings of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.29-37, 24 August 1964, at 33 (Union of Soviet Socialist Republics).

35 Summary Record of the Eighth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.8, 21 August 1962, at 6 (Czechoslovakia); Summary Record of the 29th to 37th Meetings of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.29-37, 24 August 1964, at 60 (Mongolia).

36 Summary Record of the 29th to 37th Meetings of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.29-37, 24 August 1964, at 24 (Bulgaria) and at 87 (Union of Soviet Socialist Republics).

37 Summary Record of the 29th to 37th Meetings of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.29-37, 24 August 1964, at 87 (Union of Soviet Socialist Republics); Summary Record of the Eighty-Sixth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.86, 9 February 1968, at 9 (United States); Official records 1640th meeting, UN General Assembly, twenty-second session, 19 December 1967, at 11 paras 129-130 (United States).

recognition of a state was a result of a deliberate decision. Such recognition could not be inferred from participation in a treaty. With this understanding, as established by Article 7(1), the Rescue Agreement became open to all states.

3. Deadlock and Rapid Progress

It had been five years since the Rescue Agreement started to be elaborated and the first drafts were presented, but not all questions were settled.

In particular, some delegations considered that an absolute obligation of a state to return the personnel of a spacecraft that had landed on its territory to the launching authority might conflict with national laws, particularly those relating to the right of asylum. Such delegations were, however, prepared to accept said obligation if it was not interpreted as contradicting the recognized principles of international relations, which were reflected in policies towards aliens.³⁸

Another open question was whether space objects must be returned or held at the disposal of the launching authority, taking into account that in some cases recovering and returning an object might be difficult and costly.³⁹

As for the entry into force of the Rescue Agreement, the US considered that it might happen as soon as any two countries were prepared to adhere to it. The Soviet position was that the Agreement's entry into force required ratification by states that had already launched space objects. Though the wording used in the USSR draft was not clear enough as the number of launching states could increase, the goal of the Soviet Union was clear: to ensure the accession to the Agreement by both the USSR and the USA, without which it could not enter into force.⁴⁰

Among other unsettled questions was the interrelation between the Rescue Agreement and the Liability Convention.⁴¹ Discussions seemed to go on endlessly.

38 Summary Record of the Eighty-Sixth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.86, 9 February 1968, at 14 (France); Summary Record of the Eighty-Seventh Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.87, 2 February 1968, at 10 (Austria).

39 Summary Record of the Eighty-Sixth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.86, 9 February 1968, at 14 (France) and at 17 (Canada).

40 Summary Record of the 29th to 37th Meetings of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.29-37, 24 August 1964, at 16 (United States), Revised draft Agreement on the rescue of astronauts and spaceships in the event of accident or emergency landing, UN Doc. A/AC.105/C.2/L.2/Rev.1, Article 13(1) (Union of Soviet Socialist Republics).

41 Convention on International Liability for Damage Caused by Space Objects, UN Doc. A/RES/2777(XXVI), 29 November 1971.

The situation changed fundamentally in December 1967, when the Legal Subcommittee was convened for a Special Session just few days before the General Assembly meeting. At the request of the delegations of the USSR and the USA, there was circulated a single revised draft Agreement sponsored by both space powers. The Soviet and American delegations urged all members of the Legal Subcommittee to proceed in all seriousness and with all possible speed to complete the Rescue Agreement. They did just that.⁴²

Several revisions were made at the delegations' suggestions, and by the end of the next day the Legal Subcommittee reached consensus on the full text of the Rescue Agreement that represented a balance of the views expressed in the Subcommittee over the years. At that, the delegations rightly noted that they were forced to do a huge amount of work in a matter of hours and expressed their hope that such work would not become a habit.⁴³

The following day, the parent Committee approved the Agreement and submitted it to the General Assembly, which endorsed the new space treaty by a unanimous vote of 115 states.⁴⁴

One can only guess what was the turning point in the history of the drafting of the Rescue Agreement. Some believe that legal regulation develops by leaps and bounds in two cases: in case of technological breakthrough and in case of catastrophes. The year 1967, which marked the end of the first decade of the space age, gave the world both.

On 27 January 1967, exactly the day the Outer Space Treaty was opened for signature, Apollo 1 was destroyed by fire at the launch complex at Cape Kennedy during a practice session killing all three American astronauts on board. The prime crew scheduled for the first piloted Apollo launch in February 1967 consisted of Virgil Grissom, Edward White and Roger Chaffee. Three months later, on 24 April 1967, a failure during the spacecraft re-entry caused its crash into the ground making Soviet cosmonaut Vladimir Komarov the first human to die in space flight.

Both the USSR and the United States were about to launch their lunar missions. Future developments in the exploration and use of outer space would inevitably come with increasing risks to astronauts as space was clearly a dangerous and largely unknown environment. All possible efforts must be made to protect them from unforeseeable dangers. The tragic deaths of the US and Soviet space pioneers and the common desire to prevent human casualties spurred the two great powers to reach compromise.

42 Summary Record of the Eighty-Sixth Meeting of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/C.2/SR.86, 9 February 1968, at 5 (Union of Soviet Socialist Republics) and at 9 (United States).

43 Official records 1640th meeting, UN General Assembly, twenty-second session, 19 December 1967, at 7 para 78 (France) and at 9 para 101 (Ecuador).

44 Official records 1640th meeting, UN General Assembly, twenty-second session, 19 December 1967, at 10.

At the same time, one cannot but appreciate an important role played by a number of the Committee members, including non-spacefaring and emerging spacefaring nations, who actively participated in the discussions and submitted proposals, amendments and working group papers. They were the ones who helped to overcome impasses and opened the way for further progress.

4. Conclusions

The drafting history of the Rescue Agreement was full of tough negotiations so typical of the Cold War. As soon as political tensions subsided, heated debates gave way to fruitful discussions in a promising atmosphere of cooperation. Seemingly opposed views were pointed, however, in the same direction: towards the absolute value of human life and the need for humanism under any circumstances.

To date, the Rescue Agreement has 99 ratifications and 23 signatures,⁴⁵ making it a truly universal international treaty and the second largest number of states parties after the Outer Space Treaty. Three intergovernmental organizations have accepted the rights and obligations under the Rescue Agreement, thereby putting into practice a mechanism for the participation of international organizations in space activities, which was first laid down in the Rescue Agreement.

The Rescue Agreement has not only become an invaluable contribution to the peaceful exploration and use of outer space. It is a vivid example to follow: it is never impossible to reach an agreement if the interests of all humankind are at stake.

⁴⁵ Status of International Agreements relating to activities in outer space as at 1 January 2022, UN Doc. A/AC.105/C.2/2022/CRP.10, 28 March 2022.