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Report of the Chairman of the Drafting Committee

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The responsibility of the State may also be engaged by reason of failure to keep watch on the activities of its nationals, whether natural or legal persons, in the international Area, which are contrary to international law. The State must, indeed, prohibit such activities by every means at its disposal. In accordance with resolution 2749 (XXV): "Every State shall have the responsibility to ensure that activities in the area, including those relating to its resources, whether undertaken by governmental agencies, or non-governmental entities or persons under its jurisdiction, or acting on its behalf, shall be carried out in conformity with the international régime to be established. The same responsibility applies to international organizations and their members for activities undertaken by such organizations or on their behalf. Damage caused by such activities shall entail liability."

Available means of action

Every State, as a member of the international community, has, first of all, an objective remedy and an interest in acting to ensure respect of a principle of imperative law, in accordance with the terms of the 1970 judgement of the International Court of Justice in the *Barcelona Traction, Light and Power Company Case*: "In particular, an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*."¹⁰ The Vienna Convention on the Law of Treaties provides, in article 66, that "any one of the parties to the dispute concerning the application or the interpretation of article 53 or 64" (relating to *jus cogens*)

¹⁰ *Barcelona Traction, Light and Power Company, Limited, Judgment I.C.J. Reports 1970, p. 32.*

"may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration".

Consequently, States members of the Group of 77 are quite free to resort to the competent courts against States responsible for unilateral legislation, limited agreements and the activities of certain natural or legal persons carried out in violation of international law.

Before doing so, States members of the Group of 77, and any other State Member of the United Nations, are in a position to propose to the General Assembly that it consult the International Court of Justice on the legal consequences of any infringement of those fundamental principles applicable to the Area.

The General Assembly may also require the suspension of all unilateral activities in the international Area, pending the functioning of appropriate international machinery.

In addition, it would be desirable, in order to reaffirm the position of the Group of 77 within the Third United Nations Conference on the Law of the Sea and the resolutions adopted by the ministers of foreign affairs of the States members of the Group, that each State, individually, should protest against the adoption of unilateral legislation and address it directly to the country concerned.

Finally, a dispute relating to the wrongful appropriation of mineral resources of the sea-bed may at any given moment endanger the maintenance of international peace and security. Under the terms of Article 37 of the United Nations Charter if the parties to such a dispute fail to settle it by the means indicated in Article 33, they may refer it to the Security Council which, if it finds that there is a threat to the peace, may order various measures, including sanctions, to maintain or restore international peace and security.

DOCUMENT A/CONF.62/L.57/REV.1

Report of the Chairman of the Drafting Committee

[Original: English]
[1 August 1980]

An informal intersessional meeting of the Drafting Committee was held in New York from 9 to 27 June 1980 for the purpose of continuing the process of harmonization of words and expressions recurring in the second revision of the informal composite negotiating text (A/CONF.62/WP.10/Rev.2) and beginning the process of a preliminary and informal textual review of that text.

There were 81 meetings of the language groups, 21 meetings of the co-ordinators of the language groups under the direction of the Chairman of the Drafting Committee and two meetings of the Drafting Committee as a whole.

The first part of the report is devoted to specific items considered by the Drafting Committee. In accordance with the procedure adopted in the report submitted by the Chairman of the Drafting Committee to the Conference on 22 August 1979 (A/CONF.62/L.40)¹¹ each section contains: a list of examples which have been chosen from each section of Informal Paper 2/Add.1, an outline of the issues involved, the recommendations of the Drafting Committee and a list of the items still under consideration by the Committee and an indication of the application of the recommendations of the Committee.

The recommendations have been discussed extensively in the language groups and by the co-ordinators of the language groups under the direction of the Chairman of the Drafting Committee before submission to and approval by the Drafting Committee.

The second part lists the deferred items. These items will be further studied by the Drafting Committee at the resumed Geneva Session.

The textual review of the negotiating text

The language groups have begun the process of textual review of the negotiating text which will be continued during the resumed Geneva session. The documents produced by the language groups during this intersessional meeting reporting the results of this work will be circulated to the Conference.

Action taken on previous recommendations

It will be recalled that the report of 22 August 1979 submitted a series of recommendations on recurring words and expressions in the text which might require harmonization.

A letter was sent to the chairmen of the other Committees asking that the recommendations contained in the aforesaid report of the Drafting Committee be incorporated in the revision of the negotiating text. The Chairman of the Drafting Committee received replies from the Chairmen of the Second and Third Committees.

Computerized text

It should be noted that the computerization of the text by the secretariat has already proven valuable to the Drafting Committee during its informal intersessional meeting.

Meeting time and facilities

It is urged that the Drafting Committee be granted ample time and facilities at the Geneva session to enable it to continue its work as expeditiously as possible and that delegations will give

¹¹ See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. XII, United Nations publication, Sales No. E.80.V.12.

careful consideration to the recommendations of the Drafting Committee contained in this report.

RECOMMENDATIONS OF THE DRAFTING COMMITTEE AND ITEMS UNDER CONSIDERATION BY THE DRAFTING COMMITTEE

I

"mankind as a whole"

Examples

Article 137, paragraph 2:

"mankind as a whole",

Articles 140, paragraph 1 and 143, paragraph 1:

"for the benefit of mankind as a whole".

Article 149:

"for the benefit of the international community as a whole",

Articles 153, paragraph 1 and 155, paragraph 1:

"mankind as a whole".

Some issues involved

In this section the choice seems to lie between the expressions *"the benefit of mankind as a whole"* and *"the benefit of the international community as a whole"*.

The recommendations of the Drafting Committee

The Drafting Committee recommended that in article 149 the expression *"the international community as a whole"* should be replaced by the phrase *"mankind as a whole"*.

Application

Article 149

"All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole".

II

"the rights of States"

Examples

Article 2, paragraph 1:

"The sovereignty of a coastal State extends . . . over an adjacent belt of sea described as the territorial sea".

Article 3:

"Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles".

Article 15:

"neither of the two States is entitled, failing agreement between them to the contrary".

Article 17:

"ships of all States . . . enjoy the right of innocent passage through the territorial sea".

Article 25, paragraph 2:

"In the case of ships proceeding to internal waters or a call at a port facility outside internal waters, the coastal State also has the right to take the necessary steps".

Article 38, paragraph 1:

"In straits referred to in article 37, all ships and aircraft enjoy the right of transit passage".

Article 49, paragraph 1:

"The sovereignty of an archipelagic State extends to the waters enclosed by the baselines, described as archipelagic waters, regardless of their depth or distance from the coast".

Article 52, paragraph 1:

"ships of all States enjoy the right of innocent passage through archipelagic waters".

Article 50, paragraph 1:

"In the exclusive economic zone, the coastal State has:

"(a) sovereign rights for the purpose of exploring and exploiting, . . .

"(b) jurisdiction as provided for in the relevant provisions . . .

"(c) other rights and duties . . .".

Article 58, paragraph 1:

"In the exclusive economic zone, all States, whether coastal or land-locked, enjoy . . . the freedoms referred to in article 87".

Article 60, paragraph 1:

"In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize".

Article 60, paragraph 2:

"The coastal State shall have exclusive jurisdiction over such artificial islands",

Article 69, paragraph 1:

"Land-locked States shall have the right to participate".

Article 69, paragraph 4:

"Developed land-locked States shall . . . be entitled to participate".

Article 70, paragraph 1:

"States with special geographical characteristics shall have the right to participate, on an equitable basis, in the exploitation of an appropriate part".

Article 77, paragraph 1:

"The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it".

Article 79, paragraph 1:

"All States are entitled to lay submarine cables and pipelines on the continental shelf".

Article 81:

"The coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes".

Article 90:

"Every State . . . has the right to sail ships under its flag on the high seas".

Article 112, paragraph 1:

"All States shall be entitled to lay submarine cables and pipelines on the bed of the high seas beyond the continental shelf".

Article 116:

"All States have the right for their nationals to engage in fishing on the high seas".

Article 125, paragraph 1:

"Land-locked States shall have the right of access to and from the sea".

Article 193:

"States have the sovereign right to exploit their natural resources pursuant to their environmental policies".

Article 234:

"Coastal States have the right to adopt and enforce non-discriminatory laws and regulations".

Article 238:

"All States . . . have the right to conduct marine scientific research".

Article 245:

"Coastal States, in the exercise of their sovereignty, have the exclusive right to regulate, authorize and conduct marine scientific research".

Article 246, paragraph 1:

"Coastal States . . . have the right to regulate, authorize and conduct marine scientific research".

Article 253, paragraph 1:

"Coastal States shall have the right to require the suspension . . .".

Article 253, paragraph 2:

"Coastal States shall have the right to require the cessation of any marine scientific research activities".

Article 256:

“All States . . . have the right . . . to conduct marine scientific research in the Area”.

Article 257:

“All States . . . have the right . . . to conduct marine scientific research”.

Some issues involved

In this list of references, different expressions are employed to refer to the rights of States, e.g., “has the right”, “is entitled”, and “enjoy the right”. There is some need for harmonization.

The recommendations of the Drafting Committee and items under consideration

The Drafting Committee recommended that in principle the phrase “have the right” should replace the expression “enjoy the right”. This recommendation does not affect the term “enjoy the freedom”.

The Drafting Committee is considering a proposal that “have the right” should also replace the expression “is entitled”. This proposal would not necessarily affect article 15. Moreover, articles 79 and 112 respectively use the expressions “are entitled to lay submarine cables and pipelines” and “shall be entitled to lay submarine cables and pipelines”. The Drafting Committee noted that the basic articles on this issue, articles 58 and 87, refer to the “freedom” to lay submarine cables and pipelines, but also noted that articles 79 and 112 apply to different areas and contain different provisions.

Application

Article 17:

“ships of all States . . . have the right of innocent passage through the territorial sea”.

Article 38, paragraph 1:

“In straits referred to in article 37, all ships and aircrafts have the right of transit passage”.

Article 52, paragraph 1:

“ships of all States have the right of innocent passage through archipelagic waters”.

III

“legislative measures”

Examples

Article 21, paragraph 1:

“The coastal State may make laws and regulations”.

Article 24, paragraph 1:

“or of any laws or regulations made under this Convention”.

Article 42, paragraph 1:

“States bordering straits may make laws and regulations”.

Article 58, paragraph 3:

“shall comply with the laws and regulations established”.

Article 73, paragraph 1:

“The coastal State may . . . take such measures . . . to ensure compliance with the laws and regulations enacted by it”.

Article 79, paragraph 2:

“Subject to its right to take reasonable measures”.

Article 99:

“Every State shall adopt effective measures to prevent”.

Articles 113, 114 and 115:

“Every State shall take the necessary legislative measures”.

Article 117:

“All States have the duty to adopt, or to co-operate with other States in adopting, such measures”.

Article 118:

“shall enter into negotiations with a view to adopting the means necessary for the conservation”.

Article 119, paragraph 1:

“States shall:

“(a) adopt measures which are designed”.

Article 125, paragraph 3:

“Transit States . . . shall have the right to take all necessary measures”.

Article 130, paragraph 1:

“Transit States shall take all appropriate measures”.

Article 139, paragraph 1:

“has taken all necessary and appropriate measures”.

Article 139, paragraph 3:

“States Parties shall take appropriate measures to ensure”.

Article 194, paragraphs 1 and 2, and Article 196:

“States shall take all necessary measures”.

Article 207, paragraph 1:

“States shall adopt laws and regulations to prevent, reduce and control pollution”.

Article 207, paragraph 2:

“States shall also take other measures as may be necessary to prevent”.

Article 208, paragraph 1:

“Coastal States shall adopt laws and regulations to prevent, reduce and control pollution”.

Article 208, paragraph 2:

“States shall also take other measures as may be necessary to prevent”.

Article 210, paragraph 1:

“States shall adopt laws and regulations to prevent, reduce and control pollution”.

Article 210, paragraph 2:

“States shall also take other measures as may be necessary”.

Article 211, paragraph 2:

“States shall adopt laws and regulations for the prevention”.

Article 212, paragraph 1:

“States shall . . . adopt laws and regulations to prevent, reduce and control pollution”.

Article 213:

“States . . . shall adopt the necessary legislative, administrative and other measures to implement”.

Article 214:

“States . . . shall adopt the necessary legislative, administrative and other measures to implement”.

Article 217, paragraph 1:

“States . . . shall adopt the necessary legislative, administrative and other measures for”.

Article 219:

“States . . . shall, as far as practicable, take administrative measures to prevent the vessel from sailing”.

Article 220, paragraph 1:

“laws and regulations adopted”.

Article 220, paragraph 4:

“Flag States shall take legislative, administrative and other measures”.

Article 222:

“States . . . shall adopt the necessary legislative, administrative and other measures to implement applicable international rules and standards”.

Article 223:

“States shall take measures to facilitate”.

Article 246, paragraph 3:

“coastal States shall establish rules and procedures”.

Some issues involved

Various expressions are used in this section to refer to the duty of States to take certain measures on the national plan, e.g., “make laws and regulations”, “take the necessary legislative

measures", "establish national laws and regulations" and "take legislative, administrative and other measures".

The recommendations of the Drafting Committee

The Drafting Committee recommended that the phrase "legislative measures" should be replaced by "laws and regulations", except in articles 213, 214, 217, paragraph 1, 220, paragraph 4 and 222 which would read: "adopt laws and take other measures necessary".

The Committee also recommended that the verb "adopt" should be employed with respect to "laws", "laws and regulations" or "laws or regulations", and that the verb "take" should be employed with respect to "measures". No change should be made to articles 118 and 119, paragraph 1 (a), pending a textual review.

The Committee recommended that it was unnecessary to qualify "laws and regulations" with the adjective "national".

The Drafting Committee recommended the general use in English of "the measures necessary" instead of "the necessary measures" where a verb in the infinitive follows the expression.

Application

Article 21, paragraph 1:

"The coastal State may adopt laws and regulations",

Article 24, paragraph 1:

"or of any laws or regulations adopted under this Convention".

Article 42, paragraph 1:

"States bordering straits may adopt laws and regulations".

Article 58, paragraph 3:

"shall comply with the laws and regulations adopted by the coastal State".

Article 73, paragraph 1:

"The coastal State may . . . take such measures . . . to ensure compliance with the laws and regulations adopted by it".

Article 99:

"every State shall take effective measures to prevent".

Articles 113, 114 and 115:

Every State shall adopt the laws and regulations necessary to provide that the breaking or injury".

Article 117:

"All States have the duty to take, or to co-operate with other States in taking, such measures".

Article 125, paragraph 3:

"Transit States . . . shall have the right to take all measures necessary to ensure".

Article 194, paragraph 2:

"States shall take all measures necessary to ensure".

Article 196, paragraph 1:

"States shall take all measures necessary to prevent".

Articles 213, 214, 217, paragraph 1, 220, paragraph 4 and 222:

"States . . . shall adopt laws and take other measures necessary to implement".

IV

"interests"

Examples

Article 47, paragraph 7:

"existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters".

Article 59:

"and a conflict arises between the interests of the coastal State and any other State or States".

Article 66, paragraph 1:

"States in whose rivers anadromous stocks originate shall have the primary interest".

Article 82, paragraph 4:

"taking into account the interests and needs of developing States".

Article 87, paragraph 2:

"with due consideration for the interests of other States in their exercise of the freedom of the high seas".

Article 116, subparagraph (b):

"the rights and duties as well as the interests of coastal States".

Article 125, paragraph 3:

"shall in no way infringe their legitimate interests".

Article 140, paragraph 1:

"taking into particular consideration the interests and needs of the developing States".

Article 142, paragraph 1:

"with due regard to the rights and legitimate interests of any coastal State across whose jurisdiction such resources lie".

Article 148:

"having due regard to their special needs and interests".

Article 155, paragraph 1:

"taking into particular consideration the interests and needs of the developing States".

Article 267:

"shall have due regard for all legitimate interests".

Article 274:

"Subject to all legitimate interests".

Some issues involved

The principal question is whether the term "interests" and "legitimate interests" should be harmonized.

Items under consideration

The Drafting Committee deferred a discussion on this section pending a textual review.

V

(i) "shall respect"

(ii) "shall pay due regard to"

Examples

Article 27, paragraph 4:

"the local authorities shall pay due regard to the interests of navigation".

Article 39, paragraph 3(a):

"will at all times operate with due regard for the safety of navigation".

Article 41, paragraph 7:

"Ships in transit shall respect applicable sea lanes and traffic separation schemes established in accordance with this article".

Article 51, paragraph 2:

"Archipelagic States shall respect existing submarine cables laid by other States and passing through their waters without making a landfall".

Article 56, paragraph 2:

"the coastal State shall have due regard to the rights and duties of other States".

Article 58, paragraph 3:

"States shall have due regard to the rights and duties of the coastal State".

Article 60, paragraph 6:

"All ships must respect these safety zones and shall comply with generally accepted international standards".

Article 79, paragraph 5:

"States shall pay due regard to cables or pipelines already in position".

Article 87, paragraph 2:

“with due consideration for the interests of other States in their exercise of the freedom of the high seas, and also with due consideration for the rights under this Convention with respect to activities in the Area”.

Article 142, paragraph 1:

“Activities in the Area, with respect to resource deposits in the Area which lie across limits of national jurisdiction, shall be conducted with due regard to the rights and legitimate interests of any coastal State across whose jurisdiction such resources lie”.

Article 234:

“Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence”.

Article 240, subparagraph (c):

“Such research shall not unjustifiably interfere with other legitimate uses of the sea compatible with this Convention and shall be duly respected in the course of such uses”.

Article 260:

“All States shall ensure that such safety zones are respected by their vessels”.

Article 267:

“shall have due regard for all legitimate interests”.

Annex II, article 2, paragraph 1:

“having due regard to the need to ensure equitable geographical representation”.

Annex IV, article 5, paragraph 2:

“due regard shall be paid to the principle of rotation”.

Annex IV, article 7, paragraph 4:

“pay due regard to the importance of recruiting personnel”.

Some issues involved

The main question relates to harmonization of the terms “reasonable regard”, “due regard” and “due consideration”.

The annex illustrates the issues in relation to the words “due regard”, “due consideration” and “reasonable regard”.

Items under consideration

A preliminary decision was reached to use the phrase “have due regard” rather than “pay due regard”. The decision was made subject to the textual review of the negotiating text.

The harmonization of these expressions in the various authentic languages should be reviewed.

VI

“a warship or other government ship operated for non-commercial purposes”

Examples

Article 29:

“For the purposes of this Convention, “warship” means a ship”.

Article 31:

“a warship or other government ship operated for non-commercial purposes”.

Article 32:

“warships and other government ships operated for non-commercial purposes”.

Article 42, paragraph 5:

“a ship or aircraft entitled to sovereign immunity”.

Article 96:

“ships owned or operated by a State and used only on government non-commercial service”.

Article 102:

“a warship, government ship or government aircraft”.

Article 107:

“warships or military aircraft, or other ships or aircraft clearly

marked and identifiable as being on government service and authorized to that effect”.

Article 110, paragraphs 1(c), 1(e) and 2:

“warship which encounters on the high seas”.

Article 111, paragraph 5:

“warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and specially authorized to that effect”.

Article 224:

“by warships or military aircraft or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect”.

Article 236:

“do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service”.

Article 298, paragraph 1 (b):

“military activities, including military activities by government vessels and aircraft engaged in non-commercial service”.

Some issues involved

What expression should be used to refer to ships and aircraft enjoying sovereign immunity?

Should the word “specially” in article 111, paragraph 5 be retained?

Items under consideration

The Drafting Committee is considering a proposal that the title of article 236 be changed.

The Committee suggested that the term “state aircraft” was preferable to “military” or “government aircraft” following the model of the Convention on International Civil Aviation, 1944.

The following text is being considered by the Committee for use in articles 31, 32, 96 and 236: “warship, state aircraft, or ship or aircraft owned or operated by a State and used for exclusively non-commercial purposes.” Further discussion on the harmonization of article 298 was postponed for study. The Drafting Committee observed that, as in the negotiating text, there would be no reference to “aircraft” in articles 31, 32 and 96 and no reference to “warships” in article 96.

The Committee also noted that article 73 on the enforcement of laws and regulations of the coastal State does not contain the requirement as to the marking of vessels which appears in articles 107, 111 and 224. The possibility of including a general provision concerning the marking of vessels in a miscellaneous Part of the Convention was raised.

VII

“Artificial islands, installations and structures”

Examples

Article 1, paragraph 5 (a) (i):

“platforms or other man-made structures at sea”.

Article 19, paragraph 2 (k):

“or any other facilities or installations of the coastal State”.

Article 21, paragraph 1 (b):

“The protection of navigational aids and facilities and other facilities or installations”.

Article 56, paragraph 1 (b) (i):

“the establishment and use of artificial islands, installations and structures”.

Article 60, title:

“Artificial islands, installations and structures”.

Article 60, paragraph 1 (a):

“Artificial islands”.

Article 60, paragraph 1 (b):

“Installations and structures”.

Article 60, paragraph 1 (c):

- “Installations and structures”.
- Article 60, paragraph 3:
“artificial islands, installations or structures . . . installations or structures”.
- Article 60, paragraph 4:
“artificial islands, installations and structures”.
- Article 60, paragraph 5:
“artificial islands, installations or structures”.
- Article 60, paragraph 6:
“artificial islands, installations, structures and safety zones”.
- Article 60, paragraph 7:
“Artificial islands, installations and structures and the safety zones”.
- Article 60, paragraph 8:
“Artificial islands, installations and structures”.
- Article 80, title:
“Artificial islands, installations and structures”.
- Article 80:
“applies *mutatis mutandis* to artificial islands, installations and structures”.
- Article 87, paragraph 1 (d):
“artificial islands and other installations permitted under international law”.
- Article 94, paragraph 7:
“damage to shipping or installations of another State or to the marine environment”.
- Article 109, paragraph 4:
“a ship or installation on the high seas”.
- Article 111, paragraph 2:
“continental shelf installations”.
- Article 125, paragraph 3:
“the rights and facilities provided for in this Part”.
- Article 128:
“free zones or other customs facilities”.
- Article 129:
“the existing means, including the port installations and equipment”.
- Article 132, title and text:
“transit facilities” and “transit facilities which are greater”.
- Article 145, subparagraph (a):
“installations, pipelines and other devices related to such activities”.
- Article 147, paragraph 2:
“stationary and mobile installations used for the conduct of activities in the Area”.
- Article 153, paragraph 5:
“all installations in the Area used in connexion with activities in the Area”.
- Article 194, paragraph 3 (c):
“installations and devices used in exploration or exploitation of the natural resources of the sea-bed and subsoil, . . . such installations or devices”.
- Article 194, paragraph 3 (d):
“other installations and devices operating in the marine environment, . . . such installations or devices”.
- Article 208, paragraph 1:
“artificial islands, installations and structures under their jurisdiction”.
- Article 208, paragraph 5:
“artificial islands, installations and structures under their jurisdiction”.
- Article 209, paragraph 2:
“vessels, installations, structures and other devices flying their flag or of their registry”.
- Article 211, paragraph 6:
“necessary reception facilities”.
- Article 214:
“artificial islands, installations and structures under their jurisdiction”.
- Article 246, paragraph 5 (c):
“use of artificial islands, installations and structures referred to in articles 60 and 80”.
- Article 249, paragraph 1 (g):
“the scientific research installations or equipment”.
- Article 258:
“any type of scientific research installations or equipment”.
- Article 259:
“The installations or equipment referred to in this section”.
- Article 260:
“scientific research installations”.
- Article 261:
“any type of scientific research installations or equipment”.
- Article 262:
“Installations or equipment referred to in this section”.
- Article 274, subparagraph (b):
“the relevant equipment, machinery, devices and processes”.
- Article 274, subparagraph (d):
“necessary equipment, processes, plant and other technical know-how”.

Some issues involved

The fact that the expression “artificial islands, installations and structures” is mentioned in certain provisions of the text, whereas in other provisions there are references to e.g. “artificial islands and other installations”, “installations”, “installations and structures”, reveals a lack of consistency in the use of these expressions.

Another issue raised in this section is the various uses of the word “facilities”. The difficulty of the issue is illustrated by the problems of conveying the meaning of the term in the languages other than English.

Items under consideration

1. The Drafting Committee is considering the possibility of inserting a new subparagraph to article 1 which would read as follows: “‘installations’ includes artificial islands and structures”. The consequence of such an insertion would be that the words “artificial islands” and “structures” would be deleted in the text with this result in the following articles:

- Article 56, paragraph 1 (b) (i):
“the establishment and use of installations”.
- Article 60, paragraph 1 (b):
“Installations for the purposes provided”.
- Article 60, paragraph 1 (c):
“Installations which may interfere”.
- Article 60, paragraph 2:
“The coastal State shall have exclusive jurisdiction over such installations”.
- Article 60, paragraph 3:
“Due notice must be given of the construction of such installations”.
- Article 60, paragraph 4:
“The coastal State may, where necessary, establish reasonable safety zones around such installations in which it may take appropriate measures to ensure the safety both of navigation and of the installations”.
- Article 60, paragraph 5:

“nature and function of the installations”.

Article 60, paragraph 6:

“regarding navigation in the vicinity of installations and safety zones”.

Article 60, paragraph 7:

“installations and the safety zones around them”.

Article 60, paragraph 8:

“installations have no territorial sea”.

Article 79, paragraph 4:

“the operations of installations”.

Article 80:

“applies *mutatis mutandis* to installations”.

Article 87, paragraph 1 (d):

“Freedom to construct installations”.

Article 208, paragraphs 1 and 5:

“from installations under their jurisdiction”.

Article 209, paragraph 2:

“undertaken by vessels, installations and other devices flying their flag”.

Article 214:

“from installations under their jurisdiction”.

Article 246, paragraph 5 (c):

“use of installations”.

The Drafting Committee noted that there would be no change in the wording of article 60, paragraph 1 (a). In this connexion it was also noted that the special problem posed by the requirement concerning the removal of “installations and structures” in the second sentence of paragraph 3 required attention.

The Committee is also considering whether it would be necessary to add the phrase “except in articles 60 and 80” to the proposed subparagraph referred to above.

2. The Drafting Committee is also considering an alternative proposal. This would entail adding the words “artificial islands” and “structures”, as appropriate, where they do not now appear. This approach, if adopted, would lead to changes in the following articles:

Article 87, paragraph 1 (d):

“Freedom to construct artificial islands, installations and structures”.

Article 94, paragraph 7:

“serious damage to shipping or artificial islands, installations or structures of another State”.

Article 109, paragraph 4:

“or television broadcasts from a ship, artificial island, installation or structure on the high seas”.

Article 111, paragraph 2:

“including safety zones around artificial islands, installations and structures on the continental shelf”.

The word “platform” in article 1, paragraph 5 (a) (ii) might be deleted under both approaches.

The word “structures” would be added in the following articles:

Article 153, paragraph 5:

“inspect all installations and structures in the Area”.

Article 249, paragraph 1 (a):

“scientific research installations and structures”.

Article 249, paragraph 1 (g):

“scientific research installations and structures”.

Article 258:

“scientific research installations, structures or equipment”.

Article 259:

“The installations, structures or equipment”.

Article 260:

“around scientific research installations and structures”.

3. The Drafting Committee also considered replacing the expression “damage to shipping” in article 94, paragraph 7 by “damage to ships”.

VIII

“other uses of the sea”

Examples

Article 1, paragraph 4:

“marine activities, including fishing and other legitimate uses of the sea”.

Article 47, paragraph 7:

“existing rights and all other legitimate interests which the latter State has traditionally exercised”.

Article 51, paragraph 1:

“traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States”.

Article 58, paragraph 1:

“other internationally lawful uses of the sea related to these freedoms such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention”.

Article 147, paragraph 1:

“Activities in the Area shall be carried out with reasonable regard for other activities in the marine environment”.

Article 147, paragraph 3:

“Other activities in the marine environment shall be conducted with reasonable regard for other activities in the Area”.

Article 155, paragraph 2:

“accommodation as between the various forms of activities in the Area and in the marine environment”.

Article 194, paragraph 4:

“shall refrain from unjustifiable interference with activities in pursuance of the rights and duties of other States exercised in conformity with this Convention”.

Article 240, subparagraph (c):

“other legitimate uses of the sea compatible with this Convention”.

Article 246, paragraph 8:

“shall not unjustifiably interfere with activities undertaken by coastal States in accordance with their sovereign rights and jurisdiction as provided for in this Convention”.

Article 266, paragraph 2:

“and other activities in the marine environment compatible with this Convention”.

Article 296, paragraph 1 (a):

“and other internationally lawful uses of the sea specified in article 58”.

Annex III, article 17, paragraph 1 (a) (ix):

“Prevention of interference with other activities in the marine environment”.

Some issues involved

Is there a distinction between “lawful uses” and “legitimate uses”?

The recommendations of the Drafting Committee and items under consideration

The Drafting Committee recommended that the phrase “accommodation as between the various forms of activities in the Area or in the marine environment” in article 155 be replaced by “accommodation between activities in the Area and other activities in the marine environment”.

The Committee will continue to consult on the use of the expressions “legitimate uses” and “lawful uses”. It was noted that

there is no exact equivalency of usage of these expressions in the various authentic languages.

Application

Article 155, paragraph 2:

“The legal status of the superjacent waters and air space and accommodation between activities in the Area and other activities in the marine environment”.

IX

“the prevention of infringement of the fisheries regulations of the coastal State”

Examples

Article 21, paragraph 1 (e):

“The prevention of infringement of the fisheries regulations of the coastal State”.

Article 42, paragraph 1 (c):

“With respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear”.

Some issues involved

The issue which is raised here concerns the question as to whether there is any need to make these two cognate provisions more uniform.

Items under consideration

The Drafting Committee noted that in this section there were some problems in the French text.

X

(i) “*bed and subsoil*”

(ii) “*sea-bed and subsoil*”

(iii) “*sea-bed and ocean floor and subsoil thereof*”

Examples

Preamble, sixth paragraph:

“the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction”.

Article 1, paragraph 1:

“sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction”.

Article 2, paragraph 2:

“the territorial sea as well as to its bed and subsoil”.

Article 34, paragraph 1:

“their sovereignty or jurisdiction over such waters and their air space, bed and subsoil”.

Article 49, paragraph 2:

“the air space over the archipelagic waters, the bed and subsoil thereof, and the resources contained therein”.

Article 49, paragraph 1:

“its sovereignty over such waters and their air space, bed and subsoil, and the resources contained therein”.

Article 56, paragraph 1 (a):

“the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters”.

Article 56, paragraph 3:

“the sea-bed and subsoil”.

Article 76, paragraph 1:

“the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin”.

Article 76, paragraph 3:

“does not include the deep ocean floor with its oceanic ridges or the subsoil thereof”.

Article 76, paragraph 5:

“the outer limits of the continental shelf on the sea-bed, drawn in accordance”.

Article 77, paragraph 4:

“the mineral and other non-living resources of the sea-bed and subsoil”.

Article 112, paragraph 1:

“on the bed of the high seas beyond the continental shelf”.

Article 133, subparagraph (b):

(i) “*at or beneath the surface*”.

(ii) “*on the surface . . . below the surface*”.

(iii) “*below the surface*”.

(iv) “*at or beneath the surface*”.

Article 194, paragraph 3 (c):

“the natural resources of the sea-bed and subsoil”.

Article 208, title:

“from sea-bed activities”.

Article 208, paragraphs 1 and 5:

“with sea-bed activities”.

Article 214, title and text:

“from sea-bed activities”.

Article 277, subparagraph (a):

“geological exploration of the sea-bed”.

Annex III, article 6, paragraph 3 (d) (ii):

“2 per cent of the total sea-bed area which is not reserved or otherwise withdrawn”.

Annex VI, article 7, paragraph 1:

“concerned with the exploration or exploitation of the resources of the sea or the sea-bed or other commercial use of the sea or the sea-bed”.

Some issues involved

One of the main issues concerns the nomenclature to be adopted for the various areas of the sea-bed.

Items under consideration

The question is still under consideration in the Drafting Committee. A proposal that the phrase “beyond the limits of national jurisdiction” in article 1, paragraph 1, be replaced by “beyond the limits of the continental shelf referred to in article 76” and the question of the deletion of the words “and ocean floor” are being discussed.

XI

“*Minerals to be derived from the Area*”

Examples

Article 1, paragraph 3:

“‘Activities in the Area’ means all activities of exploration for, and exploitation of, the resources of the Area”.

Article 133, subparagraph (b) (ii):

“including polymetallic nodules”.

Article 137, paragraph 2:

“All rights in the resources of the Area . . . The minerals derived from the Area, however, may only be alienated in accordance with this Part”.

Article 137, paragraph 3:

“No State or natural or juridical person shall claim, acquire or exercise rights with respect to the minerals of the Area”.

Article 142, paragraph 1:

“Activities in the Area, with respect to resource deposits in the Area which lie across limits of national jurisdiction”.

Article 142, paragraph 2:

“resources lying within national jurisdiction”.

Article 143, paragraph 2:

“The Authority may carry out marine scientific research concerning the Area and the resources”.

Article 150, subparagraph (a):

“orderly and safe development and rational management of the resources of the Area”.

Article 150, subparagraph (d):
 “the increase in the availability of the minerals produced from the resources of the Area”.

Article 150, subparagraph (e):
 “minerals produced both from the resources of the Area and from other sources”.

Article 150, subparagraph (f):
 “to participate in the development of the resources of the Area”.

Article 151, paragraph 1:
 “commodities produced from the resources of the Area”.

Article 151, paragraph 2 (e):
 “level of annual production of minerals from nodules”.

Article 151, paragraph 3:
 “The Authority shall have the power to limit the level of production of minerals from the Area, other than minerals from nodules”.

Article 155, paragraphs 1 and 5:
 “the system of exploration and exploitation of the resources of the Area”.

Article 161, subparagraph (b):
 “commodities produced from the categories of minerals to be derived from the Area”.

Article 161, subparagraph (d):
 “major importers of the categories of minerals to be derived from the Area”.

Annex III, article 1:
 “Title to the minerals shall pass upon the recovery in accordance with this Convention”.

Annex III, article 2, paragraph 2:
 “A prospector shall, however, be entitled to recover a reasonable amount of resources of the Area to be used for sampling”.

Annex III, article 3, paragraph 4 (c):
 “exploration and exploitation of the specified categories of resources in the area covered by the plan of work”.

Annex III, article 13, paragraph 5 (a):
 “the market value of the processed metals produced from the nodules extracted from the contract area”.

Annex III, article 17, paragraph 2 (b) (iii):
 “Exploitation should be of sufficient duration as to permit commercial extraction of minerals from the area”.

Annex III, article 17, paragraph 2 (f):
 “shipboard processing immediately above a mine site of minerals derived from the mine site”.

Annex IV, article 11, paragraph 3 (a):
 “funds necessary to explore and exploit one mine site and to transport, process and market the minerals recovered therefrom”.

Some issues involved

Various expressions are used to refer to the minerals extracted from the Area, e.g. “minerals derived from the Area”, “minerals produced from the resources of the Area”, “categories of minerals to be derived from the Area” and “minerals from the Area”. Some guidance may be given in the resolution of this issue by the fact that article 133 states in part that “when recovered from the Area, such resources shall be regarded as minerals”.

It should also be noted that in certain cases the text refers to “nodules”, while in other cases it refers to “polymetallic nodules”.

Items under consideration

The Drafting Committee deferred discussions on this section.

XII

(i) “By warships or military aircraft”

(ii) “By officials or by warships”

Examples

Article 111, paragraph 5:

“The right of hot pursuit may be exercised only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and specially authorized to that effect”.

Article 224:

“The powers of enforcement against foreign vessels under this Part may only be exercised by officials or by warships or military aircraft or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect”.

Some issues involved

In article 224, there is a discrepancy between the English text which states that: “The powers of enforcement . . . may only be exercised by officials or by warships or military aircraft or other ships or aircraft” and the French text which states: “*seuls les fonctionnaires et agents se trouvant à bord des navires de guerre ou aéronefs militaires, ou autres navires ou aéronefs . . . peuvent exercer des pouvoirs de police*”.

The recommendations of the Drafting Committee

With respect to article 224, the Drafting Committee recommended that the French text should conform to the other language versions.

XIII

(i) “Ships flying their flag”

(ii) “Ships flying their flag or of their registry”

Examples

Article 20:

“required . . . to show their flag”.

Article 90:

“has the right to sail ships under its flag”.

Article 91, paragraph 1:

“for the right to fly its flag. . . . the State whose flag they are entitled to fly”.

Article 91, paragraph 2:

“granted the right to fly its flag”.

Article 92, paragraph 1:

“shall sail under the flag of one State only”.

Article 92, paragraph 2:

“A ship which sails under the flags of two or more States”.

Article 93, title:

“Ships flying the flag of the United Nations”.

Article 93:

“flying the flag of the organization”.

Article 94, title:

“Duties of the flag State”.

Article 94, paragraph 1:

“exercise its jurisdiction and control . . . over ships flying its flag”.

Article 94, paragraph 2 (a):

“names and particulars of ships flying its flag”.

Article 94, paragraph 2 (b):

“Assume jurisdiction . . . over each ship flying its flag”.

Article 94, paragraph 3:

“Every State shall take such measures for ships flying its flag”.

Article 94, paragraph 7:

“involving a ship flying its flag”.

Article 98, paragraph 1:

“Every State shall require the master of a ship sailing under its flag”.

Article 99:

“in ships authorized to fly its flag”.

Article 108, paragraph 2:

“vessel flying its flag is engaged”.

Article 109, paragraph 2:

“before the court of the flag State of the vessel, the place of registry of the installation”.

Article 110, paragraph 1 (e):

“though flying a foreign flag or refusing to show its flag”.

Article 110, paragraph 2:

“to verify the ship’s right to fly its flag”.

Article 113:

“the breaking or injury by a ship flying its flag”.

Article 131:

“Ships flying the flag of land-locked States shall enjoy”.

Article 209, paragraph 2:

“undertaken by vessels, installations, structures and other devices flying their flag or of their registry”.

Article 211, paragraph 2:

“from vessels flying their flag or vessels of their registry”.

Article 211, paragraph 3:

“Every State shall require the master of a vessel flying its flag or of its registry”.

Article 212, paragraph 1:

“with regard to vessels or aircraft flying their flag or of their registry”.

Article 216, paragraph 1 (b):

“by the flag State with regard to vessels and aircraft registered in its territory or flying its flag”.

Article 217, paragraph 1:

“by vessels flying their flag or vessels of their registry”.

Article 217, paragraph 2:

“Flag States shall, in particular, take appropriate measures in order to ensure that vessels flying their flags or vessels of their registry are prohibited”.

Article 217, paragraph 3:

“States shall ensure that vessels flying their flags or of their registry”.

Article 222:

“with regard to vessels or aircraft flying their flag or of their registry”.

Article 292, paragraph 1:

“Where the authorities of a State Party have detained a vessel flying the flag of another State”.

Annex III, article 21, paragraph 2:

“to ships flying its flag”.

Some issues involved

One of the main issues in this section relates to the question as to whether expressions such as “ships flying their flags or of their registry” should be used in the text. The question is also raised as to the use of an expression such as “vessels, installations, structures and other devices flying their flag or of their registry”.

The recommendations of the Drafting Committee and items under consideration

The Drafting Committee recommended an addition to article 1 which would read: “a ship or vessel ‘flying the flag’ of a State means a ship or vessel authorized to fly the flag of that State”.

The Committee recommended the following changes:

Article 90:

The phrase ships under its flag should be replaced by ships flying its flag.

Article 91, paragraph 1:

The phrase ships have the nationality of the State whose flag they are entitled to fly should be replaced by ships have the nationality of States whose flag they are authorized to fly.

Article 98, paragraph 1:

The phrase sailing under its flag should be replaced by flying its flag.

Article 99:

The phrase ships authorized to fly its flag should be replaced by ships flying its flag.

Article 211, paragraph 2 and article 217, paragraphs 1 and 2:

The phrase vessels flying their flags or vessels of their registry should be replaced by vessels flying their flag.

Article 212, paragraph 1:

The expression vessels or aircraft flying their flag or of their registry should be replaced by vessels flying their flag or aircraft of their registry.

Article 216, paragraph 1 (b):

The expression vessels and aircraft registered in its territory or flying its flag should be replaced by vessels flying its flag or aircraft of its registry.

Article 217, paragraph 3:

The expression vessels flying their flags or of their registry should be replaced by vessels flying their flag.

Article 222:

The expression vessels or aircraft flying their flag or of their registry should be replaced by vessels flying their flag or aircraft of their registry.

The Drafting Committee is considering the question of the use of words such as “registry” or “authority” in connexion with installations or devices not flying a flag. See, for example, article 209, paragraph 2.

Application

Article 90:

“Every State, whether coastal or land-locked, has the right to sail ships flying its flag on the high seas”.

Article 91, paragraph 1:

“Ships have the nationality of States whose flag they are authorized to fly”.

Article 98, paragraph 1:

“Every State shall require the master of a ship flying its flag”.

Article 99:

“of slaves in ships flying its flag”.

Article 211, paragraph 2:

“pollution of the marine environment from vessels flying their flag. Such laws and regulations shall”.

Article 212, paragraph 1:

“with regard to vessels flying their flag or aircraft of their registry”.

Article 216, paragraph 1 (b):

“by the flag State with regard to vessels flying its flag or aircraft of its registry”.

Article 217, paragraph 1:

“pollution of the marine environment, by vessels flying their flag and shall”.

Article 217, paragraph 2:

“ensure that vessels flying their flag are prohibited”.

Article 217, paragraph 3:

“ensure that vessels flying their flags carry”.

Article 222:

“With regard to vessels flying their flag or aircraft of their registry, enforce”.

XIV

“*marine scientific research*”

Examples

Article 19, paragraph 2 (j):

“The carrying out of research or survey activities”.

Article 21, paragraph 1 (g):

“Marine scientific research and hydrographic surveys”.

Article 40:

“During their passage through straits, foreign ships, including marine scientific research and hydrographic survey ships, may not carry out any research or survey activities without the prior authorization of the States bordering straits”.

Article 56, paragraph 11 (b) (ii):

“marine scientific research”.

Article 62, paragraph 4 (f):

“fisheries research programmes”.

Article 87, paragraph 1 (f):

“Freedom of scientific research”.

Article 123, subparagraph (c):

“To co-ordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area”.

Article 143, paragraph 1:

“Marine scientific research in the Area”.

Article 143, paragraph 2:

“Marine scientific research in the Area, . . . such research”.

Article 143, paragraph 3:

“marine scientific research in the Area”.

Article 143, paragraph 3 (a):

“marine scientific research”.

Article 143, paragraph 3 (b) (i):

“research capabilities”.

Article 143, paragraph 3 (b) (ii):

“techniques and applications of research”.

Article 143, paragraph 3 (b) (iii):

“activities of research in the Area”.

Article 143, paragraph 3 (e):

“results of research and analysis”.

Article 155, paragraph 2:

“scientific research”.

Article 200:

“undertaking programmes of scientific research”.

Article 202, subparagraph (a) (v):

“research, monitoring, educational and other programmes”.

Article 238, title and text:

“marine scientific research”.

Article 239, title and text:

“Promotion of marine scientific research”.

Article 240, title:

“conduct of marine scientific research”.

Article 240, subparagraph (a):

“Marine scientific research”.

Article 240, subparagraphs (b), (c) and (d):

“Such research”.

Article 241, title and text:

“Marine scientific research activities”.

Article 242, paragraph 1:

“marine scientific research”.

Article 243:

“marine scientific research in the marine environment”.

Article 244, paragraph 1:

“marine scientific research”.

Article 244, paragraph 2:

“marine scientific research . . . marine research capabilities”.

Article 245, title:

“marine scientific research”.

Article 245:

“marine scientific research . . . Marine scientific research”.

Article 246, title and paragraphs 1 and 2:

“Marine scientific research”.

Article 246, paragraph 3:

“marine scientific research projects”.

Article 246, paragraph 5:

“marine scientific research project”.

Article 246, paragraph 8:

“Marine scientific research activities”.

Article 247:

“marine scientific research project . . . the project”.

Article 248: subparagraphs (a), (e) and (f):

“marine scientific research . . . research project”.

Article 249, paragraph 1:

“marine scientific research”.

Article 249, paragraph 1 (a):

“research project . . . scientific research installations”.

Article 249, paragraph 1 (b):

“the research”.

Article 249, paragraph 1 (c):

“research project”.

Article 249, paragraph 1 (f):

“research programme”.

Article 249, paragraph 1 (g):

“the scientific research installations or equipment”.

Article 249, paragraph 2:

“research results of a project”.

Article 250, title and text:

“research project”.

Article 251:

“marine scientific research”.

Article 252:

“research project . . . the research”.

Article 252, subparagraphs (b) and (d):

“research project”.

Article 253, paragraph 1:

“marine scientific research activities”.

Article 253, paragraph 1 (a) and (b):

“research activities”.

Article 253, paragraph 2:

“marine scientific research activities . . . the research project or the research activities”.

Article 253, paragraph 3:

“marine scientific research activities”.

Article 253, paragraph 4:

“marine scientific research activities . . . research activities”.

Article 253, paragraph 5:

“marine scientific research activities”.

Article 254, paragraph 1:

“marine scientific research . . . proposed research project”.

- Article 254, paragraph 2:
 "proposed research project . . . such marine scientific research project".
- Article 255:
 "marine scientific research . . . marine scientific research vessels".
- Articles 256 and 257, title and text:
 "Marine scientific research".
- Article 258:
 "scientific research installations or equipment . . . marine scientific research".
- Article 260:
 "scientific research installations".
- Article 261:
 "scientific research installations or equipment".
- Article 263, paragraphs 1, 2 and 3 and article 264:
 "marine scientific research".
- Article 265:
 "marine scientific research project . . . research activities".
- Article 266, paragraph 2 and article 270:
 "marine scientific research".
- Article 275, paragraph 1:
 "national marine scientific and technological research centres . . . marine scientific research".
- Article 276, paragraph 1:
 "national marine scientific and technological institutions, . . . regional marine scientific and technological research centres . . . marine scientific research".
- Article 277, subparagraphs (a) and (f):
 "marine scientific and technological research".
- Article 296, paragraph 2 (a):
 "marine scientific research".
- Annex VIII, article 5, paragraph 1:
 "marine scientific research".

Some issues involved

The simple question raised in these examples is whether the expression "marine scientific research" should be used consistently throughout the text where the reference is to "scientific research".

The recommendations of the Drafting Committee and items under consideration

The Drafting Committee recommended that in conformity with general usage the term "marine scientific research" should be used consistently in Part XIII.

The Committee has considered the possibility of using the same term in article 123 and recommended that this matter should be deferred until the Geneva session.

Application

The insertion of the term "marine scientific research" in some of these provisions may be unnecessary and stylistically cumbersome. In this sense this literal application of the Drafting Committee's recommendations is subject to the textual review of these provisions.

- Article 248:
 "starting date of the marine scientific research project".
- Article 248, subparagraphs (a), (e) and (f):
 "marine scientific research project".
- Article 249, paragraph 1 (a):
 "be represented in the marine scientific research project, . . . other craft or marine scientific research installations, . . . costs of the marine scientific research project".
- Article 249, paragraph 1 (b):
 "after the completion of the marine scientific research".

- Article 249, paragraph 1 (c):
 "derived from the marine scientific research project".
- Article 249, paragraph 1 (f):
 "any major change in the marine scientific research programme".
- Article 249, paragraph 1 (g):
 "remove the marine scientific research installations or equipment".
- Article 250, title:
 "Communications concerning marine scientific research project".
- Article 250:
 "concerning the marine scientific research project".
- Article 252:
 "proceed with a marine scientific research project . . . conducting the marine scientific research that".
- Article 252, subparagraph (b):
 "objectives of the marine scientific research project".
- Article 252, subparagraph (d):
 "to a previous marine scientific research project".
- Article 253, paragraph 1 (a):
 "the marine scientific research activities".
- Article 253, paragraph 1 (b):
 "rights of the coastal State with respect to the marine scientific research project".
- Article 254, paragraph 2:
 "proposed marine scientific research project".
- Article 258:
 "any type of marine scientific research installations or equipment".
- Article 260:
 "around marine scientific research installations in accordance".
- Article 261:
 "any type of marine scientific research installations".

XV

- (i) "competent international organizations"
- (ii) "appropriate international organization"

Examples

- Article 22, paragraph 3 (a):
 "The recommendations of competent international organizations".
- Article 41, paragraph 4 and article 53, paragraph 9:
 "shall refer proposals to the competent international organization".
- Article 60, paragraph 5:
 "as recommended by the appropriate international organizations".
- Article 61, paragraph 2:
 "As appropriate, the coastal State and relevant subregional, regional and global organizations shall co-operate to this end".
- Article 61, paragraph 5:
 "exchanged on a regular basis through subregional, regional and global organizations where appropriate".
- Article 63, paragraphs 1 and 2:
 "these States shall seek either directly or through appropriate subregional or regional organizations".
- Article 64, paragraph 1:
 "shall co-operate directly or through appropriate international organizations . . . In regions where no appropriate international organizations exist".

Article 119, paragraph 2:
 “shall be contributed and exchanged on a regular basis through subregional, regional and global organizations where appropriate and with participation by all States concerned”.

Article 123:
 “To this end they shall endeavour, directly or through an appropriate regional organization”.

Articles 197, 198, 199, 200, 201, 204, paragraph 1, and 205:
 “competent international organizations”.

Articles 207, paragraph 4, 208, paragraph 5 and 210, paragraph 4:
 “acting especially through competent international organizations or diplomatic conference”.

Article 211, paragraph 1:
 “acting through the competent international organization or general diplomatic conference”.

Article 211, paragraphs 2 and 5:
 “standards established through the competent international organization or diplomatic conference”.

Article 211, paragraph 6:
 “Through the competent organization . . . to the competent international organization”.

Articles 212, paragraph 3, 213, 214 and 216, paragraph 1:
 “acting especially through competent international organizations or diplomatic conference”.

Articles 217, paragraph 1 and 218, paragraph 1:
 “standards established through the competent international organization or diplomatic conference”.

Articles 217, paragraph 7 and 220, paragraph 7:
 “and the competent international organization”.

Article 222:
 “standards established through competent international organizations or diplomatic conference”.

Article 223:
 “by the competent international organization”.

Articles 238, 239, 242, paragraph 1, 243, 244, paragraph 1, 246, paragraph 3, 248, 249, paragraph 1, 251 and 252:
 “competent international organizations”.

Article 253, paragraph 1 (b):
 “the State or competent international organization”.

Articles 254, paragraph 1, 256, 262 and 263, paragraphs 1, 2 and 3:
 “competent international organizations”.

Article 265:
 “the State or competent international organization”.

Articles 269, 271 and 272:
 “competent international organizations”.

Article 273:
 “States shall co-operate actively with competent international organizations and the Authority”.

Article 275, paragraphs 1 and 2:
 “through competent international organizations and the Authority”.

Articles 276, paragraph 1, and 278:
 “competent international organizations”.

Article 296, paragraph 1 (c):
 “by a competent international organization or diplomatic conference”.

Some issues involved

One of the issues concerns the use of the adjectives “competent”, “appropriate” and “relevant”.

Recommendations of the Drafting Committee and items under consideration

The Drafting Committee recommended the following changes:

(a) Add to article 1 on the use of terms the following provision: “‘international organization’ means an intergovernmental organization.” This provision is identical to article 2, paragraph 1 of the Vienna Convention on the Law of Treaties.

(b) In article 22, paragraph 3 (a), the phrase “recommendations of competent international organizations” should be replaced by “recommendations of the competent international organization”.

(c) In article 60, paragraph 5, the phrase “the appropriate international organizations” should be replaced by “the competent international organization”.

(d) In article 61, paragraphs 2 and 5, the phrase “relevant subregional, regional and global organizations” should be replaced by “competent international organizations, whether subregional, regional or global”.

(e) In article 119, paragraph 2, the phrase “subregional, regional and global organizations” should be replaced by “competent international organizations, whether subregional, regional or global”.

(f) Article 197 should be left for consideration in conjunction with the textual review of Part XII.

(g) In article 204, paragraph 1, there is a typing error in the Russian text which should be corrected.

The question of including a provision in article 1 on the use of terms regarding subregional, regional and global organizations is still under consideration in the language groups.

With regard to article 211, paragraph 1, it was noted that “general diplomatic conference” was used in contradistinction to the use of “diplomatic conference” in other similar articles. It was also noted that as regards paragraphs 1 of article 217 and article 218, there are inconsistencies in the reference to “general” as between the different language versions. The Drafting Committee recommended that the Chairman of the Third Committee be consulted on this point.

Consideration is being given by the Drafting Committee to altering the order of the words in the expression “competent international organizations and the Authority” in article 273. Consideration of the implications of such a change on other articles may possibly be required.

Application

Article 22, paragraph 3 (a):

“The recommendations of the competent international organization”.

Article 60, paragraph 5:

“or as recommended by the competent international organization”.

Article 61, paragraph 2:

“The coastal State and competent international organizations, whether subregional, regional or global, shall co-operate to this end”.

Articles 61, paragraph 5 and 119, paragraph 2:

“on a regular basis through competent international organizations, whether subregional, regional or global”.

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Other recommendations of the Drafting Committee

The Drafting Committee recommended:

(a) that the term “nautical” should be added where it does not now appear, e.g. in article 10, paragraphs 4 and 5, and in article 246, paragraph 6;

(b) that in article 1 a provision be added to the English and Russian versions that “ships” and “vessels” have the same meaning.

ANNEX

A/CONF.62/WP.10/Rev. 2					
	Convention on the High Seas Article 2	Article 56, paragraph 2	Article 58, paragraph 3	Article 87, paragraph 2	Article 147, paragraphs 1 and 3
ARABIC	مع الرعاية المدقولة	أن تولي الرعاية الواجبة	أن تولي الرعاية الواجبة	مع الإلاء الاعتبار الواجب	مع الرعاية المدقولة
CHINESE	应适当顾及	应适当顾及	应适当顾及	应适当考虑到	应合理地顾及
ENGLISH	with reasonable regard	shall have due regard	shall have due regard	with due consideration	with reasonable regard
FRENCH	en tenant dûment compte	tient dûment compte	tiennent dûment compte	en tenant dûment compte	en tenant raisonnablement compte
RUSSIAN	разумно учитывая	должным образом учитывает	должным образом учитывают	должным образом учитывают	с разумным учетом
SPANISH	con la debida consideración	tendrá debidamente en cuenta	tendrán debidamente en cuenta	con la debida consideración	teniendo razonablemente en cuenta

ITEMS WHICH HAVE BEEN DEFERRED

- (i) "States with special geographical characteristics"
- (ii) "land-locked and geographically disadvantaged States"
- (iii) "land-locked and other geographically disadvantaged States"
- (iv) "land-locked or otherwise geographically disadvantaged"

Articles 69 and 70 use the phrase "States with special geographical characteristics" whereas articles 148, 160, 161, 254, 266 and 272 use the phrase "geographically disadvantaged States". The Drafting Committee recommended that the Chairman of the Committee consult with the relevant Chairmen on the question of the harmonization of the use of these terms.

"State enterprises"

The co-ordinators of the language groups are continuing to consult on this matter.

"artificial islands, installations and structures and international navigation"

The co-ordinators of the language groups are continuing their consultations. In this connection a model article based on article 60 is being examined.

"due publicity of charts"

The co-ordinators of the language groups are continuing to consult on the harmonization of articles 134, 76 and 84 with a view to consultation with the relevant Chairmen.

"transfer of technology"

The Drafting Committee recommended that the suggested deletion of "all kinds of" in article 269 (a) and "skills and" in article 273 should be subject to further consultation.

"international rules and standards"

The Drafting Committee recommended that there should be further discussion on this issue and that with this in mind representatives from all language groups could participate in the small group which has been established by the English language group.

- (i) "the above provisions do not affect the right of the coastal State to take any steps"
- (ii) "nothing in this Part shall affect the right of States to take measures"
- (iii) "applies"
- (iv) "shall apply"

The co-ordinators of the language groups are continuing to consult on this question.

DOCUMENT A/CONF.62/L.58

Report of the President on the work of the informal plenary meeting of the Conference on general provisions

[Original: English]
[22 August 1980]

1. The informal plenary Conference considered general provisions at eight meetings during the resumed ninth session.

2. At the end of the first part of the ninth session held in New York from 3 March to 4 April 1980, the outstanding items were listed in document A/CONF.62/L.53 and Add.¹²

3. In addition, during the resumed session the documentation placed before the Conference was as follows:

(a) the informal proposal (GP/5 dated 1 August 1980) on use of terms presented by Ecuador;

(b) the informal proposals (GP/6 dated 5 August 1980) on good faith and abuse of rights; on peaceful uses of the seas; and on disclosure of information;

(c) the informal proposal (GP/7 dated 4 August 1980) on general provisions and principles presented by Turkey;

(d) the informal proposal (GP/8 dated 5 August 1980) on responsibility for damage;

(e) the informal proposal (GP/9 dated 5 August 1980) on *jus cogens* presented by Chile;

(f) the informal proposal (GP/10 dated 18 August 1980) on objects of archaeological or historical value presented by Greece; and

(g) the informal proposal (GP/11 dated 19 August 1980) on objects of archaeological or historical value.

4. The three proposals dealing with good faith and abuse of rights; peaceful uses of the seas; and disclosure of information (GP/6) were taken up together. The article on good faith and abuse of rights was a modification of the similar proposal appearing in GP/2/Rev.1 of 28 March 1980. The article on the peaceful uses of the seas was a modification of GP/1 of 21 March 1980, the informal proposal of Costa Rica *et al.* The third article on disclosure of information was a modification of GP/3 of 25 March 1980, the informal proposal of the United States of Amer-

ica. In presenting GP/6, the President indicated that the consultations held by him on these three articles indicated that they should be considered for inclusion in the next revision of the informal composite negotiating text as a package, although they did not carry the implication of co-sponsorship. A discussion followed and, subject to the following drafting changes to GP/6, all three articles were accepted by consensus in the informal plenary Conference. The articles as accepted are as follows:

"Article . . .

"GOOD FAITH AND ABUSE OF RIGHTS

"The States Parties to this Convention undertake to discharge in good faith the obligations entered into in conformity with this Convention, and to exercise the rights, jurisdictions and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.

"Article . . .

"PEACEFUL USES OF THE SEAS

"In exercising their rights and performing their duties in accordance with the provisions of this Convention, all States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations.

"Article . . .

"DISCLOSURE OF INFORMATION

"Without prejudice to the right of any State Party to resort to the procedures for the settlement of disputes provided in this Convention, nothing in this Convention shall be deemed to require a State Party, in the fulfilment of its obligations under the relevant provisions of this Convention, to supply information the disclosure of which is contrary to the essential interests of its security".

The acceptance of these articles by consensus was on the understanding that the article on good faith and abuse of rights was to be interpreted as meaning that the abuse of rights was in relation

¹² *Ibid.*, vol. XIII.