

GENERAL PROVISIONS

INTRODUCTION

Each of these provisions covers a different area, and it is not possible to summarize the articles from a standpoint of principles common to all of them. It is even questionable whether the heading "General" can be applied to all five of the provisions; it is clearly applicable only to the first two on "good faith" and "peaceful use," as the last three are of more regulatory nature.

GOOD FAITH AND ABUSE OF RIGHTS (Article 300)

Pacta sunt servanda. This principle implies the condition that every party to an agreement has to recognize and to fulfil the obligations of the contract in good faith.

PEACEFUL USES OF THE SEA (Article 301)

The Conference took place under the auspices of the United Nations. The principle aim of the Charter of the United Nations is to maintain international peace and security, and, to that end, to take effective collective measures for the prevention and removal of threats to peace¹. In the ongoing effort to maintain peace, the Convention is intended as a contribution giving new impulse to the strengthening of peace and security². The obligation of the states parties to refrain from any threat or use of force against the territorial integrity or potential independence of any state is merely a logical consequence of this intention.

DISCLOSURE OF INFORMATION (Article 302)

It is not the intention of the Convention to infringe upon or impair a state's sovereignty or integrity in any manner whatsoever; for this reason, no state party may be obliged, in the fulfillment of its obligations under the Convention, to disclose any information which is contrary to the essential interests of the state party³.

ARCHAEOLOGICAL AND HISTORICAL OBJECTS FOUND AT SEA (Art. 303)

Whereas all objects found in the Area are to be preserved or disposed of for the benefit of mankind as a whole⁴, this provision establishes the duty of all states to protect such objects and to co-operate for this purpose. Coastal states are given control over the removal of objects from the contiguous zone⁵.

RESPONSIBILITY AND LIABILITY FOR DAMAGE AT SEA (Article 304)

This article ensures that the provisions of the Convention concerning responsibility and liability cannot be used to subvert or hinder the application of existing rules or development of further rules regarding responsibility and liability under international law.

¹ UN Charter, Art. 1, Para.2

² Preamble

³ For activities in the Area, see Annex III, 14; Art. 168(2)

⁴ Art. 149

⁵ Art. 303, Para. 2; Art. 33

REFERENCES TO PEACEFUL USES OF THE SEA

UNITED NATIONS CHARTER 1945

- Article 1: - maintain peace and security
- prevention and removal of threats to peace
- strengthen universal peace
- Article 2: - refrain from the threat and use of force against the territorial integrity or political independence of any state

CONVENTION ON THE LAW OF THE SEA 1982

- Article 301: - refrain from any threat or use of force against the territorial integrity or political independence of any state

Territorial Sea

- Innocent passage (Art. 19, Para. 2)
- Criminal jurisdiction (Art. 27, Para. 1(b))

High Seas (Article 88)

Area (Articles 138; 147,2(d))

Marine Scientific Research

(Art. 240, Subpara. (a))

Disputes (Article 279))

Straits

- Transit passage (Art. 39, Subpara. 1(b))

Exclusive Economic Zone

The coastal state is to act in a manner consistent with the provisions of the Convention (Art. 56, Para. 2)

but

Freedom of navigation in the exclusive economic zone must be exercised in accordance with the principle that the "high seas are reserved for peaceful purposes". (Art. 58, Para. 2)

Marine Scientific Research

Coastal states are expected to give their consent for peaceful research in their exclusive economic zone or continental shelf (Art. 246, Para. 3)