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AD HOC COMMITTEE TO STUDY THE PEACEFUL USES OF THE SEA-BED AND THE OCEAN FLOOR BEYOND THE LIMITS OF NATIONAL JURISDICTION

LEGAL ASPECTS OF THE QUESTION OF THE RESERVATION EXCLUSIVELY FOR PEACEFUL PURPOSES OF THE SEA-BED AND THE OCEAN FLOOR, AND THE SUBSOIL THEREOF, UNDERLYING THE HIGH SEAS BEYOND THE LIMITS OF PRESENT NATIONAL JURISDICTION, AND THE USE OF THEIR RESOURCES IN THE INTEREST OF MANKIND

Study prepared by the Secretariat

PART II. PRINCIPLES AND RULES OF INTERNATIONAL LAW APPLICABLE TO THE SEA-BED AND THE OCEAN FLOOR, AND THE SUBSOIL THEREOF, UNDERLYING THE HIGH SEAS BEYOND THE LIMITS OF PRESENT NATIONAL JURISDICTION

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Introduction

1. Traditional international law, either by custom or by treaty, has not made extensive provision for the regulation of activities of States on the ocean floor and sea-bed of the high seas beyond the limits of national jurisdiction. Even as late as the 1958 Conference on the Law of the Sea it was considered premature[1/] to formulate comprehensive and detailed regulations to govern state activity in this area. However, this does not mean that no law at all is applicable to the ocean floor beyond the limits of national jurisdiction. This part of the present study will examine legal principles and rules applicable to the ocean floor and sea-bed beyond the limits of national jurisdiction. The topics to be examined include non-appropriation of any part of the high seas, freedom of the high seas including freedom of exploitation and scientific research in this area, the laying of submarine cables and pipelines, the concept of "reasonable" regard to the rights of other States with respect to the use of the high seas, prevention of pollution and the reservation for peaceful uses of the ocean floor and sea-bed.

2. It may be noted that the International Law Commission first began its consideration of the law of the sea on the basis of reports submitted by the Rapporteur, Mr. J.P.A. François, at its second session in 1950. The final report of the International Law Commission on this subject was made in 1956 and the First United Nations Conference on the Law of the Sea was convened in 1958. The Conference adopted the following four Conventions: Convention on the Territorial Sea and the Contiguous Zone; Convention on the High Seas; Convention on Fishing and Conservation of the Living Resources of the High Seas; Convention on the Continental Shelf. The Conference also adopted an Optional Protocol of Signature concerning the Compulsory Settlement of Disputes.

1/ See below, paragraphs 23-27.

A. Non-appropriation and freedom of the high seas

(i) Non-appropriation of any part of the high seas

3. Article 2 of the 1958 Convention on the High Seas provides that:

> "The High seas being open to all nations, no state may validly purport to subject any part of them to its sovereignty...".

4. In its Commentary in 1956 on article 27 (later article 2 of the 1958 Convention on the High Seas) the International Law Commission stated:2/

> "The principle generally accepted in international law that the high seas are open to all nations governs the whole regulation of the subject. No State may subject any part of the high seas to its sovereignty; hence no State may exercise jurisdiction over any such stretch of water...".

5. The principle of non-appropriation of the high seas was generally agreed upon during the meetings of the International Law Commission and the Law of the Sea Conference in 1958.3/

6. In the more recent debates in the First Committee of the General Assembly on the sea-bed and ocean floor, the same view concerning non-appropriation or non-application of the doctrine of sovereignty to any part of the high seas, was propounded.4/

2/ Yearbook of the International Law Commission, 1956, vol. II, p. 278.

3/ See the statement of the representative of the USSR, First United Nations Conference on the Law of the Sea, Official Records, vol. IV, p. 39. See also ibid., pp. 9, 11, 21 and 39; and Yearbook of the International Law Commission, 1955, vol. II, p. 21 and Yearbook of the International Law Commission, 1950, vol. I, p. 189 and vol. II, pp. 36-37.

4/ For example, the representative of Cyprus said:

> "This vast area has not been appropriated by any nation. The concept of separate state sovereignties in respect of all land on this globe fortunately so far has left the high seas untouched and immune. They come under no sovereignty. Their resources are, therefore, the heritage of all mankind, and should be treated as such." (A/C.1/PV.1530, pp. 21-22; see also, Finland (A/AC.135/1/Add.6, p. 2.)

7. If the principle is generally accepted that any claim to sovereignty over the high seas would be incompatible with the doctrine of the freedom of the high seas, the question then arises whether this principle applies equally to the ocean floor, or merely refers to the water above the ocean floor of the high seas.

8. It may be noted that the legal régimes applicable to the sea-bed and the superjacent water need not necessarily coincide. Article 2 of the Convention on the Territorial Sea and the Contiguous Zone provides specifically that "The sovereignty of a coastal state extends to the airspace over the territorial sea as well as to its bed and subsoil." However, in the Convention on the Continental Shelf, although under article 2 the coastal State is entitled to exercise over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources, article 3 provides that the rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas.

9. With respect to the ocean floor beyond the limits of national jurisdiction, reference may be made to a Brazilian proposal put forward during the Conference on the Law of the Sea. The purpose of the proposal was to limit the text of article 27 (subsequently article 2 of the High Seas Convention) to the waters of the high seas.5/

5/ Document A/CONF.13/C.2/L.66.

Brazilian proposal

Article 27

Replace article 27 by the following texts:

"Article 27

"Legal Status of the waters of the high seas

1. The waters of the high seas are for the joint use of all States.

2. No State may validly purport to subject any part of them to its sovereignty."

"Article 27A

Exercise of authority by States over the waters of the high seas

No State may exercise over the waters of the high seas any authority other than that permitted by these articles or by other rules of international law, or exercise such authority for purposes other than those referred to in these articles or rules.

"Article 27B

Use of the waters of the high seas

1. All States are entitled to use the waters of the high seas in accordance with the relevant regulations.

2. The use of the waters of the high seas is regulated solely:

(a) By international law; and

(b) By States, in such cases, for such purposes and within such limits as are authorized or determined by international law.

3. All States shall use the waters of the high seas in such a way as not to interfere unduly with their use by other States."

10. The representative of Brazil, introducing his proposal in the Second Committee of the 1958 Conference on the Law of the Sea, stated:6/

> "... it was unlikely that any international agreement could be achieved if the legal régime relating to safety, navigation, fisheries, exploitation of the sea-bed, air space, etc., were made dependent solely on a horizontal demarcation line on the surface of the sea. Agreement could better be reached if the general concept of the sea were divided into four separate ones - waters of the sea, living resources of the sea, the sea-bed and the air space above the sea - and if an attempt were made to legislate for each separately."

11. However, the Brazilian proposal was subsequently withdrawn when a related amendment by Brazil to article 26 was rejected.7/

12. The impossibility of appropriation or the exercise of sovereignty over any areas of the high seas thus does not necessarily settle the question of the possibility of "occupation" of the ocean floor. The legal status of the sea-bed and whether it could be characterized as "res nullius" or "res communis" were

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6/ First United Nations Conference on the Law of the Sea, Official Records, vol. IV, p. 42, 1958. The representative of Brazil continued:

> "His delegation's purpose in introducing the words 'waters of the high seas' into article 26 was to restrict the application of articles 26 to 48 and 61 so that decisions taken by the Second Committee on the régime of the high seas would not apply automatically to the continental shelf and to fisheries. The present conference had displayed some indecision in getting to grips with the various topics discussed by each committee for fear that, if the principles approved by one committee were too wide in scope, they might prejudice the decisions of other committees."

7/ First United Nations Conference on the Law of the Sea, Official Records, vol. IV, p. 54, 1958. The text of the Brazilian amendment to article 26 is contained in document A/CONF.13/C.2/L.67 reading as follows:

> "The term 'waters of the high seas' means those waters lying between the outer limits of the territorial seas."

discussed in some detail in the early debates[8] and reports[9] on the law of the sea, by the International Law Commission. However, as the debates were conducted in the context of the rights of the coastal State over the continental shelf, the views expressed may not be really pertinent to any attempt to ascertain the present legal status of the sea-bed beyond the limits of national jurisdiction. It may be noted, however, that in the final text of the Convention on the Continental Shelf the concept of rights based on occupation was rejected. Article 2 (2) of the Convention on the Continental Shelf provides that the rights to be exercised are "exclusive" to the coastal State and article 2 (3) stipulates that: "the rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation".

13. The doctrine of acquisition of territory by occupation was referred to by a number of representatives in the First Committee of the General Assembly during the debate on the sea-bed.[10] It was also mentioned by a number of Governments in their response to General Assembly resolution 2340 (XXII).

8/ First United Nations Conference on the Law of the Sea, Official Records, 1958, vol. VI, pp. 2-3, 12, 21.
Yearbook of the International Law Commission, 1953, vol. I, p. 137, vol. II, pp. 7, 19-21.
Yearbook of the International Law Commission, 1950, vol. I, pp. 188, 215, 226-230, vol. II, pp. 97-98.
Yearbook of the International Law Commission, 1951, vol. I, p. 407.
See, for example, the analysis made by Mr. Hudson, Yearbook of the International Law Commission, 1950, vol. I, p. 228.

"Mr. Hudson said that he had made an attempt to set out the problem on the basis of what Mr. François and Mr. Brierly had said, and he read out the following text, in which he had used the terminology of the Treaty of 1942 between Great Britain and Venezuela: 'Is the submarine area (sea-bed and subsoil) of the continental shelf off the coast of a littoral state and outside the area of its territorial waters (1) res nullius, (2) res communis, (3) subject ipso jure to the control and jurisdiction of the littoral state, or (4) subject to the exercise of control and jurisdiction by the littoral state for the limited purpose of exploring and exploiting the natural resources?' He would say no to the first three questions, and yes to the fourth. His suggestion was in response to Mr. Yepes' appeal to the Commission to define the legal status of the continental shelf."

9/ Yearbook of the International Law Commission, 1956, vol. II, p. 298.

10/ Sudan, p. 4; Netherlands, p. 25, para. 12; document A/AC.135/1; Malta, document A/C.1/PV.1515, pp. 37-40; China, A/C.1/PV.1525, p. 32.

14. The reply of Finland, for example, states:[11] "The Government of Finland considers that the principles of freedom of the high seas, set forth in the 1958 Convention on the High Seas, can also be related to the ocean floor and that the prohibition of occupation contained in these principles refers also to attempts to subject any part of the above-mentioned ocean floor for national purposes."

15. Finally, the views expressed by various authors and jurists may be noted. Although a substantial number of authorities have taken the view that claims to sovereignty over any part of the high seas would be incompatible with the firmly established principle of freedom of the high seas, few authorities have examined in detail the legal status of the ocean floor. Most of the authorities that have considered this question have usually done so by considering the ocean floor of the high seas in general, without special reference to the ocean floor beyond the limits of national jurisdiction as established by recent practice.

16. Amongst these authorities, opinion is divided concerning the status of the ocean floor underlying the high seas. Some writers, including Gidel[12] and Colombos[13] maintain that the sea-bed has the same legal status as the high seas.

11/ Document A/AC.135/1/Add.6, p. 2.

12/ Gidel, Le Droit International Public de la Mer (1932), vol. I, pp. 498-501.

13/ Colombos, The Law of the Sea, 1967, p. 67. "A clear distinction must be drawn between the bed of the sea and its subsoil. As regards the former, the better opinion appears to be that it is incapable of occupation by any State and that its legal status is the same as that of the waters of the open sea above it. The same reasons for maintaining it unappropriated in the interests of the freedom of navigation apply, with equal force, to the bed of the sea. Exceptionally, on grounds based on historical and prescriptive considerations, it has been generally admitted that a limited portion of the bed of the open sea is capable of occupation by individual States for well-defined purposes, and entitled to recognition by other States. This is notably the case of the pearl fisheries off the coasts of Ceylon and the Persian Gulf which belongs to Great Britain by immemorial usage and effective occupation."

Other writers, including Fauchille,[14] Westlake,[15] Hurst,[16] H.A. Smith,[17] Oppenheim,[18] and O'Connell[19] appear to take the view that the sea-bed is susceptible of occupation.

17. With respect to the subsoil of the high seas, most writers regard it as capable of "effective occupation" subject to no unreasonable interference with the free use of the high seas above. This view was expressed by one writer as follows:[20]

> "On the other hand, the subsoil under the bed of the sea may be considered capable of occupation as the same reasons, based on the principle that no obstacles should be made to the freedom of communication and trade on the high seas, do not apply. It would therefore be unreasonable to withhold recognition of the right of a littoral State to drive mines or build tunnels in the subsoil, even when they extend considerably beyond the three-mile limit of territorial waters, provided that they do not affect or endanger the surface of the sea."

14/ Fauchille, Traité de Droit International Public (1925), vol. I, part II, p. 19.

15/ Westlake, International Law (1904), vol. I, pp. 187-188.

16/ Hurst, Whose is the Bed of the Sea, British Yearbook of International Law, 1923-1924, p. 43. "The claim to the exclusive ownership of a portion of the bed of the sea and to the wealth which it produces in the form of pearl oysters, chanks, coral, sponges or other fructus of the soil is not inconsistent with the universal right of navigation in the open sea or with the common right of the public of fish in the high seas."

17/ Smith, Great Britain and the Law of Nations (1935), vol. II, p. 122.

18/ Oppenheim, International Law, vol. I, Peace, eighth edition, p. 628. "In fact there exist numerous cases in which States habitually exploit through the activity of their nationals the resources of the surface of the sea-bed. Although it is traditional to base some of these cases on the ground of prescription, it is not inconsistent with principle, and is more in accord with practice, to recognize that, as a matter of law, a State may acquire, for sedentary fisheries and for other purposes, sovereignty and property in the surface of the sea-bed, provided that in so doing it in no way interferes with freedom of navigation and the breeding of free-swimming fish."

19/ O'Connell, International Law (1965), vol. I, p. 571.

20/ Colombos, op. cit., p. 69. See also, Oppenheim, op. cit., pp. 629-631; Gidel, op. cit., vol. I, p. 510.

18. A similar view was expressed by the Special Rapporteur on the Law of the Sea.[21] In this context, reference may also be made to article 7 of the Convention on the Continental Shelf.[22]

(ii) Freedoms of the high seas specified in article 2 of the 1958 Convention on the High Seas

19. Article 2 of the 1958 Convention on the High Seas enumerated four freedoms of the high seas:

> "... Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, inter alia, both for coastal and non-coastal states:
>
> (1) Freedom of navigation;
>
> (2) Freedom of fishing;
>
> (3) Freedom to lay submarine cables and pipelines;
>
> (4) Freedom to fly over the high seas.
>
> These freedoms, and others which are recognized by the general principles of international law, shall be exercised by all states with reasonable regard to the interests of other states in their exercise of the freedom of the high seas."

20. The use of the words "inter alia" and "these freedoms, and others..." indicates that the freedoms enumerated in article 2 are exemplary and not exhaustive. This interpretation is confirmed by the preparatory work and in particular it may be noted that the commentary of the International

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21/ Yearbook of the International Law Commission, vol. I, 1950, p. 212, "Mr. François replied that the principle on which he had taken his stand was to be found in the second paragraph of the part of his report under discussion where it was stated that 'the arguments on which recognition of the principle of the freedom of the high seas is based cannot be invoked in regard to the subsoil.' There are no rules of positive law which prohibit States from establishing their jurisdiction over the subsoil of the sea. The right of States to occupy portions of the subsoil of the high seas must therefore be admitted."

22/ Article 7 of the Convention on the Continental Shelf states: "The provisions of these articles shall not prejudice the right of the coastal State to exploit the subsoil by means of tunnelling irrespective of the depth of water above the subsoil."

Law Commission on article 27 of the final draft submitted to the Conference in 1958 states:

> "The list of freedoms of the high seas contained in this article is not restrictive. The Commission has merely specified four of the main freedoms, but it is aware that there are other freedoms, such as freedom to undertake scientific research on the high seas...." 23/

21. A number of statements made at the 1958 Conference on the Law of the Sea also emphasized that the category of freedoms of the high seas was not closed or exhausted by article 2.24/

(iii) Freedom of exploration and exploitation of the natural resources of the sea-bed and subsoil beyond the limits of national jurisdiction

22. Apart from the four freedoms specifically mentioned in article 2, two further freedoms are referred to: freedom of scientific research and freedom of exploitation of the natural resources of the high seas.

23. With respect to the latter, the International Law Commission, in its commentary in 1956, noted that it had only specified four freedoms, but was aware that there were other freedoms. After a reference to freedom of scientific research, the commentary continued:25/

> "The Commission has not made specific mention of the freedom to explore or exploit the subsoil of the high seas. It considered that apart from the case of the exploitation or exploration of the soil or subsoil of a continental shelf... such exploitation had not yet assumed sufficient practical importance to justify special regulation."

24. A further reference to freedom of exploitation was made by the Special Rapporteur in his report in 1956.26/ He stated:

23/ Yearbook of the International Law Commission, 1956, vol. II, p. 278.

24/ First United Nations Conference on the Law of the Sea, Official Records, 1958, vol. IV, pp. 17, 38 and 41.

25/ Yearbook of the International Law Commission, 1956, vol. II, p. 278.

26/ Ibid., p. 9.

"B. The Exploration and Exploitation of the Sea-bed and Subsoil of the High Seas outside the Continental Shelf

"In the report on the work of the seventh session, the Commission pointed out that it had not studied this problem in detail. It seems to the Rapporteur that the Commission will not have to consider the freedom of States to explore or exploit the subsoil of the high seas outside the continental shelf. The construction of permanent installations for that purpose in sea areas where the depth exceeds 200 metres is at present impossible, and is likely to remain so for some considerable time."

25. In 1955, the question was raised in the International Law Commission of the freedom to exploit the sea-bed of the high seas, by Mr. Scelle who said:27/

"If it were not possible at that late stage to delete the sub-paragraph in question, 28/ the comment to the article should, he proposed, make it clear that the Commission did not deal with freedom to fly over the high seas in the draft articles, any more than it dealt with several other important freedoms connected with the high seas. There was the freedom to carry out scientific research on the high seas; more important still was the freedom to extract mineral wealth from the high seas. The Commission, in its draft articles on the continental shelf, had granted to the coastal State the right to exploit the mineral wealth of the soil and subsoil of the high seas wherever the depth of the sea did not exceed 200 metres. It would be the height of absurdity if the coastal State, which might well not have a continental shelf, was not allowed to extract mineral wealth from the high seas themselves - as distinct from exploiting their living resources...."

26. In reply to Mr. Scelle, the Chairman of the International Law Commission invited the Commission to consider the additions to the comment on article 2 proposed by the Rapporteur in order to give satisfaction to Mr. Scelle.29/

"... The Commission has merely specified the four main freedoms. It is aware that there are other freedoms, such as freedom to explore or exploit the subsoil of the high seas and freedom to engage in

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27/ Yearbook of the International Law Commission, 1955, vol. I, p. 263.

28/ The sub-paragraph in question was sub-paragraph 4 of article 2 which referred to freedom to fly over the high seas.

29/ Yearbook of the International Law Commission, 1955, vol. I, p. 282, vol. II, pp. 21-22. See also Yearbook of the International Law Commission, 1955, vol. I, pp. 222 and 264.

scientific research therein. It is evident that the latter freedoms can only be exercised in the high seas covering a continental shelf subject to any rights over that shelf which the coastal State can invoke. The Commission did not study this problem in detail at the present session." 30/

27. It may be concluded from the above that, although reference was made both by the International Law Commission and its individual members to a further freedom to exploit the sea-bed and subsoil of the high seas, this freedom was not specifically included in article 2 on account of the fact that the subject was considered too premature and impractical for detailed regulation.31/

(iv) Freedom of scientific research

28. Apart from freedom of exploitation of the sea-bed, frequent reference was also made at the 1958 Conference to freedom of scientific research on the high seas. The representative of the United Kingdom particularly referred to the need for the specific inclusion of such a freedom in article 2 of the 1958 Convention on the High Seas:

"... explaining the reasons for the United Kingdom proposal, /he/ said that the point was actually mentioned in the second paragraph of the comment, which made it clear that the list of four freedoms was not restrictive. In paragraphs 53 to 55 of the Special Rapporteur's report (A/CN.4/97) attention was drawn to the concern aroused in international scientific circles by the Commission's proposals on the continental shelf. The omission of freedom of research, experiment and exploitation from a specific list of the freedoms open to all nations on the high seas had not unnaturally aroused serious concern, based on the apprehension that a state might use its rights over the continental shelf to the

30/ The session referred to was the seventh session.

31/ See, Yearbook of the International Law Commission, 1956, vol. I, p. 11:

"Sub-section B: Exploration and exploitation of the sea-bed and the subsoil of the high seas outside the continental shelf

"33. Mr. FRANÇOIS, Special Rapporteur, said there had been some criticism of the Commission for having neglected that aspect of the subject. It was, however, a purely theoretical question, and it would be a work of perfectionism to embark on its codification. The Commission should not examine it at present."

detriment of scientific research. That fifth freedom was surely as important as the four others that had been listed." 32/

29. In connexion with the reference to the continental shelf and scientific research, it may be recalled that article 5 (1) of the Convention on the Continental Shelf provides:

"The exploration of the continental shelf and the exploitation of its natural resources must not result in any unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea, nor result in any interference with fundamental oceanographic or other scientific research carried out with the intention of open publication." 33/

30. In its final commentary on article 2 in 1956, the International Law Commission referred to the four freedoms specified in that article and stated:34/

"/It/ is aware that there are other freedoms, such as freedom to undertake scientific research on the high seas - a freedom limited only by the general principle stated in the third sentence of paragraph 1 of the commentary to the present article."

The third sentence of paragraph 1 provides:

"States are bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other States."

31. The question of freedom of scientific research was referred to in connexion with the more complex issue of nuclear tests on the high seas by the Special Rapporteur of the Commission in his report to its seventh session:35/

32/ Ibid., p. 29.

33/ See, however, article 5 (8) of the Convention on the Continental Shelf: "The consent of the coastal state shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless, the coastal state shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal state shall have the right, if it so desires, to participate or to be represented in the research, and that in any event the results shall be published."

34/ Yearbook of the International Law Commission, 1956, vol. II, p. 278.

35/ Yearbook of the International Law Commission, 1956, vol. II, pp. 9-10. See also, below, paragraph 74 concerning the test-ban treaty.

"The Commission also pointed out that it had not studied the problem of scientific research in detail at its seventh session. It accordingly expressed no opinion on the question whether the freedom of the seas includes the freedom of each State to engage in any form of scientific research it desires, even if, as a consequence thereof, large sea areas used by others for purposes of navigation or fishing become closed to shipping. Attention has been drawn to this problem principally by research into the effects of atomic or hydrogen bombs."

A number of other references were also made to freedom of scientific research at the seventh session.[36/]

32. At the 1958 Conference on the Law of the Sea the following proposal was put forward by Portugal, to add to the four freedoms specified in article 27 (2) the following freedom:[37/]

"Article 27 (2)

"...

"(e) Freedom to undertake research, experiments and exploration."

However, the proposal was rejected by 39 votes to 13, with 8 abstentions.[38/]

33. In connexion with freedom of scientific research reference may be made to the provisions contained in the Antarctica Treaty 1959 and the Treaty of Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies 1966. Article II of the Antarctica Treaty provides:

"Freedom of scientific investigation in Antarctica and co-operation towards that end... shall continue, subject to the provisions of the present Treaty."

36/ Yearbook of the International Law Commission, 1955, vol. I, pp. 222, 264.

37/ Doc. A/CONF.13/C.2/L.7. See also, First United Nations Conference on the Law of the Sea, Official Records, 1958, vol. IV, p. 38. "The Portuguese delegation considered that the freedom to undertake research, experiments and exploration was of prime importance, and should therefore be mentioned in Article 27."

38/ Doc. A/CONF.13/C.2/L.7. See also First United Nations Conference on the Law of the Sea, Official Records, 1958, vol. IV, p. 55.

Article I of the Treaty on Outer Space states:

> "There shall be freedom of scientific investigation in outer space, including the moon and other celestial bodies, and States shall facilitate and encourage international co-operation in such investigation."

With respect to scientific research and the ocean floor, reference may be made to the establishment of an Intergovernmental Oceanographic Commission working group on legal questions related to scientific investigations of the ocean.[39/] The terms of reference of the working group are given in a resolution adopted by the Intergovernmental Oceanographic Commission.[40/]

39/ UNESCO, Intergovernmental Oceanographic Commission, Fifth Session, Doc. SC:CS/150, pp. 16-19.

40/ Ibid., annex III, pp. 5-6.

B. Laying of submarine cables and pipelines on the ocean floor and sea-bed of the high seas

34. Detailed provision is made in the 1958 Convention on the High Seas with respect to submarine cables and pipelines. Apart from article 2 of the Convention which expressly refers to "Freedom to lay submarine cables and pipelines" as one of the four freedoms enumerated in the Convention, four other articles of the Convention on the High Seas contain elaborate provisions concerning submarine cables and pipelines as follows:

"Article 26

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

"2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines.

"3. When laying such cables or pipelines the State in question shall pay due regard to cables or pipelines already in position on the sea-bed. In particular, possibilities of repairing existing cables or pipelines shall not be prejudiced.

"Article 27

"Every State shall take the necessary legislative measures to provide that the breaking or injury by a ship flying its flag or by a person subject to its jurisdiction of a submarine cable beneath the high seas done wilfully or through culpable negligence, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high voltage power cable shall be a punishable offence. This provision shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

"Article 28

"Every State shall take the necessary legislative measures to provide that, if persons subject to the jurisdiction who are the owners of a cable or pipeline beneath the high seas, in laying or repairing that cable or pipeline, cause a break in or injury to another cable or pipeline, they shall bear the cost of the repairs.

"Article 29

"Every State shall take the necessary legislative measures to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand."

The above provisions were partly based on the Convention for the Protection of Submarine Cables signed in 1884,[41/] the resolutions adopted at the 1913 Conference in London[42/] and the resolutions adopted by the Institute of International Law.[43/]

41/ Yearbook of the International Law Commission, 1950, vol. I, p. 188.

42/ See, Yearbook of the International Law Commission, 1951, vol. II, pp. 85-88; see also Yearbook of the International Law Commission, 1956, vol. II, pp. 293-294.

43/ Ibid.

35. The articles of the 1884 Convention which served as a basis for articles 26-29 of the Geneva Convention on the High Seas were articles II,[44] IV,[45] VII,[46] VIII,[47] and XII.[48]

36. Apart from the articles dealing with submarine cables and pipelines contained in the 1958 Convention on the High Seas, reference may also be made to article 4 of the Convention on the Continental Shelf:

> "Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf."

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[44] "The breaking or injury of a submarine cable, done wilfully or through culpable negligence, and resulting in the total or partial interruption or embarrassment of telegraphic communication, shall be a punishable offence, but the punishment inflicted shall be no bar to a civil action for damages.

"This provision shall not apply to ruptures or injuries when the parties guilty thereof have become so simply with the legitimate object of saving their lives or their vessels, after having taken all necessary precautions to avoid such ruptures or injuries."

[45] "The owner of a cable who, by the laying or repairing of that cable, shall cause the breaking or injury of another cable, shall be required to pay the cost of the repairs which such breaking or injury shall have rendered necessary, but such payment shall not bar the enforcement, if there be ground thereof, of article II of this Convention."

[46] "Owners of ships or vessels who can prove that they have sacrificed an anchor, a net, or any other implement used in fishing, in order to avoid injuring a submarine cable, shall be indemnified by the owner of the cable... ."

[47] "The courts competent to take cognizance of infractions of this convention shall be those of the country to which the vessel on board of which the infraction has been committed belongs. It is moreover, understood that, in cases in which the provision contained in the foregoing paragraph cannot be carried out, the repression of violations of this convention shall take place, in each of the contracting States, in the case of its subjects or citizens, in accordance with the general rules of penal competence established by the special laws of those States, or by international treaties."

[48] "The high contracting parties engage to take or to propose to their respective legislative bodies the measures necessary in order to secure the execution of this Convention, and especially in order to cause the punishment, either by fine or imprisonment, or both, of such persons as may violate the provisions of articles II, V and VI."

37. The articles contained in the 1958 Convention on the High Seas concerning submarine cables and pipelines were discussed at several sessions of the International Law Commission between 1950-1956.[49] On the whole there appeared to be general agreement about freedom to lay submarine cables and protection of submarine cables.[50]

38. In its commentary in 1956 on an article[51] concerning submarine cables, the International Law Commission stated that in its view, the principles adopted reflected existing international law.[52] The Commission also considered that the regulations concerning telegraph and telephone cables could be extended to include high-voltage cables and pipelines beneath the high seas.[53]

39. During the 1958 Conference on the Law of the Sea the draft articles on submarine cables and pipelines submitted by the International Law Commission[54] were considered in detail.[55] Article 64 submitted by the International Law Commission which provided that "Every State shall regulate trawling so as to ensure that all the fishing gear used shall be so constructed and maintained as to reduce to the minimum any danger of fouling submarine cables or pipelines", was not adopted and was deleted.[56] Proposed amendments by the United States of America to articles 62, 63 and 65 relating to submarine cables and pipelines were withdrawn[57]

49/ In particular, see Yearbook of the International Law Commission, 1950, vol. I, p. 188; Yearbook of the International Law Commission, 1951, vol. II, pp. 85-88; Yearbook of the International Law Commission, 1955, vol. II, pp. 31-32 and Yearbook of the International Law Commission, 1956, vol. I, p. 150.

50/ Yearbook of the International Law Commission, 1950, vol. I, pp. 199-200.

51/ "Article 61. 1. All States shall be entitled to lay telegraph, telephone or high-voltage power cables and pipelines on the bed of the high seas.

"2. Subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of such cables or pipelines."

52/ Yearbook of the International Law Commission, 1956, vol. II, pp. 293-294.

53/ Ibid., p. 278.

54/ Ibid., pp. 293-294.

55/ First United Nations Conference on the Law of the Sea, Official Records, 1958, vol. IV, Second Committee, pp. 88-90, 94-95.

56/ Ibid., pp. 94-95.

57/ Ibid., p. 90.

when it was agreed in principle that the adoption of these articles would not involve the repeal of the provisions contained in the 1884 Convention.

40. Examples of national legislation, which States have adopted, with respect to submarine cables may be found in document A/AC.135/10.[58/]

41. During the debate in the First Committee of the General Assembly on the ocean floor and sea-bed, two representatives drew attention to the law regarding submarine cables.[59/]

58/ See document A/AC.135/10, pp. 52-61.

59/ Document A/C.1/PV.1526, p. 16, the representative of France stated:

> "I shall endeavour to show that these distinctions are not quite as simple as that, that law is not completely absent from the field of the sea-bed and the ocean floor and that therefore we shall have to take into account some rules which are already in existence.
>
> "As far as the sea-bed is concerned may I perhaps mention two examples: one relates to the laying of cables or pipelines, whose freedom has already been recognized by article 26 of the Convention on the High Seas of 1958. The second example is that of stationary fishing installations, some of which use posts set in the sea floor, and thus occupy the sub-jacent sea-bed."

Document A/AC.135/1, p. 46, para. 15, the representative of Norway also stated:

> "Thus Article 4 of the above-mentioned regulations of 25 August 1967 provides: '... Particular care must be taken to avoid any unreasonable impediment or nuisance to shipping, fishing or aviation, to avoid damage or risk of damage to marine life or to underwater cables or other underwater installations and to avoid pollution or risk of pollution to the seabed and its subsoil, the sea and the air.'"

C. The concept of reasonable regard to the rights of other States with respect to the use of the high seas

42. The concept of reasonable regard to the rights of other States was clearly enunciated in article 2 of the 1958 Convention on the High Seas. After enumerating four of the freedoms of the high seas, the article provides that: "These freedoms, and others which are recognized by the general principles of international law shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas. . ."

43. In its commentary on article 27 of its final draft in 1956 the International Law Commission said: "States are bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other States".60/

44. Also in 1956, the Special Rapporteur on the law of the sea, Mr. François, in his report to the International Law Commission, defended the criterion of "reasonableness" as a general principle to regulate the various freedoms of the high seas.61/

45. "The real difference between his text and Mr. Pal's62/ was that his own wording prohibited activities which 'unreasonably' prevented other States from exercising their rights, whereas Mr. Pal's ruled out altogether any use of the high seas which might be harmful to man. As Sir Gerald Fitzmaurice had emphasized Mr. Pal's text went too far because certain activities, though they might adversely affect other States, might be justifiable, and that was why he (the Special Rapporteur) was convinced that the concept of 'reasonableness' must be introduced."

60/ Yearbook of the International Law Commission, 1956, vol. II, p. 278.

61/ Yearbook of the International Law Commission, 1956, vol. I, p. 33.

62/ Mr. Pal had proposed the following text:

"Freedom of the high seas does not extend to any such utilization of the high seas as is likely to be harmful to any part of mankind. Scientific research and tests of new weapons on the high seas are permissible only subject to this qualification, as also to the qualification that they do not interfere with the equal freedom of other States."

Yearbook of the International Law Commission, 1956, vol. I, pp. 11-12.

46. At the 1958 Conference on the Law of the Sea, a number of statements by representatives emphasized the importance of this general principle that States should exercise their rights on the high seas in such a manner that they would not unduly, unjustifiably or unreasonably interfere with the exercise of its rights by another State.

47. The representative of the United States at the Conference stated that "The legality of all uses of the high seas must be determined by the application of the test of reasonableness."63/

48. The representative of Czechoslovakia expressed the view that "The freedom of every State in that respect was limited by the freedom of other members of the international community. Any State which used the freedom of the high seas in such a way as to exclude other States or their nationals from using the high seas would be violating that freedom, and would in consequence incur international responsibility."64/

63/ First United Nations Conference on the Law of the Sea, Official Records, 1958, vol. IV, p. 15.

64/ First United Nations Conference on the Law of the Sea, Official Records, 1958, vol. IV, p. 24.

D. Prevention of pollution of the sea

49. Two articles of the 1958 Convention on the High Seas deal with the problem of pollution. Article 24 provides that:

> "Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines, or resulting from the exploitation or exploration of the sea-bed and its sub-soil, taking account of existing treaty provisions on the subject."

Article 25 provides:

> "1. Every State shall take measures to prevent pollution of the seas from the dumping of radio-active waste, taking into account any standards and regulations which may be formulated by the competent international organizations.
>
> "2. All States shall co-operate with the competent international organizations in taking measures for the prevention of pollution of the seas or air space above, resulting from any activities with radio-active materials or other harmful agents."

50. In connexion with the reference in article 24 to "existing treaty provisions on the subject" mention might be made of the International Convention for the Prevention of Pollution of the Sea by Oil, done at London on 12 May 1954, as amended by the Conference of Contracting Governments, held at London from 4-11 April 1962.[65/]

51. Concerning pollution of the sea resulting from the dumping of radio-active waste, reference may be made to the provisions of the following resolution adopted by the 1958 Law of the Sea Conference.

"Pollution of the High Seas by Radio-Active Materials

"Resolution adopted on 27 April 1958, on the report of the Second Committee, relating to article 25 of the Convention on the High Seas

"The United Nations Conference on the Law of the Sea,

"Recognizing the need for international action in the field of disposal of radio-active wastes in the sea,

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65/ For the text of the Convention, see United Nations, Treaty Series, vol. 327, p. 4. The amendments to the Convention may be found in: U.K. Cmnd. 1801 (1962).

"Taking into account action which has been proposed by various national and international bodies and studies which have been published on the subject,

"Noting that the International Commission on Radiological Protection has made recommendations regarding the maximum permissible concentration of radio-isotopes in the human body and the maximum permissible concentration in air and water,

"Recommends that the International Atomic Energy Agency, in consultation with existing groups and established organs having acknowledged competence in the field of radiological protection, should pursue whatever studies and take whatever action is necessary to assist States in controlling the discharge or release of radio-active materials to the sea, in promulgating standards, and in drawing up internationally acceptable regulations to prevent pollution of the sea by radio-active materials in amounts which would adversely affect man and his marine resources."

52. The text concerning pollution prepared by the International Law Commission in 1956 and submitted to the 1958 Conference on the Law of the Sea was as follows:66/

"Pollution of the high seas

"Article 48

"1. Every State shall draw up regulations to prevent pollution of the seas by the discharge of oil from ships or pipelines or resulting from the exploitation of the sea-bed and its subsoil, taking account of existing treaty provisions on the subject.

"2. Every State shall draw up regulations to prevent pollution of the seas from the dumping of radio-active waste.

"3. All States shall co-operate in drawing up regulations with a view to the prevention of pollution of the seas or air space above, resulting from experiments or activities with radio-active materials or other harmful agents."

53. It will be noted that the text of the International Law Commission was adopted by the 1958 Conference on the Law of the Sea, except in the following respects:

66/ Yearbook of the International Law Commission, 1956, vol. II, p. 285.

(i) The Conference adopted two articles, one concerned with pollution from oil and one concerned with pollution from radio-active waste.

(ii) Article 24 adopted by the Conference and article 48 (1) of the International Law Commission are the same except for the addition of the words "and exploration" in article 24.

(iii) Article 25 (1) contains the words "take measures" rather than "draw up regulations" and the words "taking into account any standards and regulations which may be formulated by the competent international organizations" have been added to article 25 (1).

(iv) Article 25 (2) after the phrase "shall co-operate" contains the words "with the competent international organizations in taking measures for" rather than "in drawing up regulations with a view to". It may also be noted that article 25 (2) refers to "any activities" whereas article 48 (3) refers to "experiments or activities".

54. In its commentary on article 48 the International Law Commission made a number of general observations concerning pollution by oil.67/

55. It is interesting to note that the International Law Commission in a comment referred to pollution as a result of defects in installations for the exploitation of the sea-bed and its subsoil.68/

> "Article 48 stipulates first that States shall draw up regulations which their ships must observe, even on the high seas. Pollution can also be caused by leaks in pipelines or defects in installations for the exploitation of the sea-bed and its subsoil. All these cases are covered by the stipulation in article 48."

56. Finally the Commission noted that a new source of pollution was the dumping of radio-active waste and that such dumping should be put on the same footing as pollution by oil.69/ With respect to pollution of the seas resulting from experiments or activities with radio-active materials or other harmful agents, it was felt that in view of the multilateral nature of the subject, there should

67/ Yearbook of the International Law Commission, 1956, vol. II, p. 286.

68/ Ibid.

69/ Ibid.

merely be an obligation on States to co-operate in drawing up regulations with a view to circumventing the grave dangers involved.[70/]

57. During the debate in the 1958 Conference on the Law of the Sea, a draft resolution was submitted by the United Kingdom and the United States to delete paragraphs 2 and 3 of article 48 of the International Law Commission's draft and to replace them by a draft resolution.[71/] The United Kingdom and the United States also put forward separate proposals[72/] to delete paragraph 1 of article 48 and replace it by a draft resolution. However, these proposals were not adopted.[73/]

58. With respect to State practice, it may be noted that a number of States have adopted municipal regulations in order to discharge the obligations incumbent on them under articles 24 and 25 of the 1958 Convention on the High Seas.[74/]

59. Reference may also be made to the fact that an extensive amount of work on the problem of oil pollution has been done by the Inter-Governmental Maritime Consultative Organization (IMCO). In March 1962, IMCO convened in London the International Conference on the Prevention of Pollution of the Sea by Oil. The conference was attended by delegates representing fifty-six countries and it was successful in extending the 1954 Convention on this subject, adopted by the London Conference so as to make it even more comprehensive.[75/] The problem is still under active consideration by IMCO.

70/ Yearbook of the International Law Commission, 1956, vol. II, p. 286.

71/ First United Nations Conference on the Law of the Sea, Official Records, 1958, vol. IV, p. 145. The resolution was adopted. For the text see above, para. 60.

72/ First United Nations Conference on the Law of the Sea, Official Records, 1958, vol. IV, pp. 142 and 145.

73/ Ibid., pp. 84-87 and 92-93.

74/ See doc. A/AC.135/10, pp. 63 and 66, for regulations adopted by the United Kingdom and Finland.

75/ See above, paragraph 59.

E. Question of the reservation exclusively for peaceful purposes of the sea-bed and the ocean floor, with particular reference to nuclear tests

60. With respect to the peaceful uses of the sea-bed and ocean floor, two proposals put forward during the 1958 Conference on the Law of the Sea may be noted.

61. Bulgaria put forward the following proposal concerning article 69.[76/]

"Add the following sentence:

"The coastal State shall not use the continental shelf for the purpose of building military bases or any installations which are directed against other States."

62. Subsequently, Bulgaria submitted a revised proposal:[77/]

"Article 71. Additional paragraph. Add a paragraph to read as follows:

"The coastal State shall not use the continental shelf for the purpose of building military bases or installations."

63. The other proposal which was put forward by India was as follows:[78/]

"Article 71. Additional paragraph. Add a new paragraph to read as follows:

"The continental shelf adjacent to any coastal State shall not be used by the coastal State or any other State for the purpose of building military bases or installations."

64. None of the above proposals was adopted.[79/]

65. In the context of the law of the sea the question of peaceful uses has arisen principally in connexion with the testing of atomic weapons on the high seas. It

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76/ Doc. A/CONF.13/C.4/L.41. First United Nations Conference on the Law of the Sea, Official Records, 1958, vol. VI, Fourth Committee.

77/ Doc. A/CONF.13/C.4/L.41/Rev.1. First United Nations Conference on the Law of the Sea, Official Records, 1958, vol. VI, Fourth Committee.

78/ First United Nations Conference on the Law of the Sea, Official Records, 1958, vol. VI, Fourth Committee. Doc. A/CONF.13/C.4/L.57.

79/ The Bulgarian text was withdrawn as an amendment to article 69 and reintroduced as an amendment to article 71. Subsequently, the Bulgarian proposal was withdrawn in favour of the Indian proposal. The Indian proposal was rejected by 31 votes to 18, with 6 abstentions. First United Nations Conference on the Law of the Sea, Official Records, 1958, vol. VI, Fourth Committee, pp. 72, 84 and 91.

may be noted that no specific provision dealing with this question was included in any of the 1958 Conventions on the law of the sea. However, since the 1958 Conference on the Law of the Sea, an important step towards reserving the sea-bed and ocean floor for peaceful purposes was taken in 1963, when the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water was signed in Moscow. The provisions of this Treaty are:

"Article I

"1. Each of the Parties to this Treaty undertakes to prohibit, to prevent, and not to carry out any nuclear-weapon test explosion, or any other nuclear explosion, at any place under its jurisdiction or control:

(a) in the atmosphere; beyond its limits, including outer space; or under water, including territorial waters or high seas; or

(b) in any other environment if such explosion causes radio-active debris to be present outside the territorial limits of the State under whose jurisdiction or control such explosion is conducted. It is understood in this connexion that the provisions of this sub-paragraph are without prejudice to the conclusion of a treaty resulting in the permanent banning of all nuclear-test explosions, including all such explosions underground, the conclusion of which, as the Parties have stated in the Preamble to this Treaty, they seek to achieve.

"2. Each of the Parties to this Treaty undertakes furthermore to refrain from causing, encouraging, or in any way participating in, the carrying out of any nuclear-weapon test explosion, or any other nuclear explosion, anywhere which would take place in any of the environments described, or have the effect referred to, in paragraph 1 of this Article." 80/

66. Although no express provision dealing with atomic bomb tests on the high seas was included in the 1958 Geneva Conventions, the 1958 Conference on the Law of the Sea adopted a resolution on this subject.

80/ Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, United Nations, Treaty Series, vol. 480, pp. 45-47.

"Nuclear Tests on the High Seas

"Resolution adopted on 27 April 1968, on the report of the Second Committee, in connexion with article 2 of the Convention on the High Seas

"The United Nations Conference on the Law of the Sea,

"Recalling that the Conference has been convened by the General Assembly of the United Nations in accordance with resolution 1105 (XI) of 21 February 1957,

"Recognizing that there is a serious and genuine apprehension on the part of many States that nuclear explosions constitute an infringement of the freedom of the seas,

"Recognizing that the question of nuclear tests and production is still under review by the General Assembly under various resolutions on the subject and by the Disarmament Commission, and is at present under constant review and discussion by the Governments concerned,

"Decides to refer this matter to the General Assembly of the United Nations for appropriate action."

67. Article 2 of the 1958 Convention on the High Seas referred to in the above resolution provides that no State may validly purport to subject any part of the high seas to its sovereignty. Freedom of the high seas is to be exercised under the conditions laid down by the Convention on the High Seas and the other rules of international law. After reference to freedom of navigation, fishing, the laying of submarine cables and pipelines and flying over the high seas, article 2 provides: "These freedoms and others which are recognized by the general principles of international law, shall be exercised by all States with reasonable regard to the interests of other States in their exercise of the freedom of the high seas."

68. In its commentary on article 27[81] of its final draft, the International Law Commission stated:[82]

81/ This article became article 2 of the Convention on the High Seas.

82/ Yearbook of the International Law Commission, 1956, vol. II, p. 278.

"Nor did the Commission make any express pronouncement on the freedom to undertake nuclear-weapon tests on the high seas. In this connexion the general principle enunciated in the third sentence of paragraph 1 of this commentary is applicable. In addition, the Commission draws attention to article 48, paragraphs 2 and 3, of these articles. The Commission did not, however, wish to prejudge the findings of the Scientific Committee set up under General Assembly resolution 913 (X) of 3 December 1955 to study the effects of atomic radiation."

69. The third sentence of paragraph 1 provided that: "States are bound to refrain from any acts which might adversely affect the use of the high seas by nationals of other States." Article 48, referred to in the above commentary, was concerned with pollution.[83/]

70. A proposal to amend article 27 of the final draft of the International Law Commission in order to prohibit nuclear-weapon tests on the high seas was not adopted.[84/] However, as referred to in paragraph 74 above, a Treaty was concluded in 1964 banning nuclear-weapon tests.

83/ Yearbook of the International Law Commission, 1956, vol. II, p. 278.

84/ First United Nations Conference on the Law of the Sea, Official Records, 1958, vol. IV, p. 124.

F. Summary

71. The text of article 2 of the 1958 Convention on the High Seas expressly provides that States may not validly purport to exercise sovereignty over any part of the high seas. (See above, paragraphs 3-6.)

72. The question arises whether this principle is applicable to the sea-bed and ocean floor beyond the limits of present national jurisdiction. (See above, paragraphs 7-16.)

73. The enumeration of the freedoms of the high seas in article 2 of the 1958 Convention on the High Seas is not exhaustive. (See above, paragraphs 19-21.)

74. Reference was made in the discussion and reports of the International Law Commission and the debate in the 1958 Conference on the Law of the Sea to two further freedoms:

(a) Freedom of exploration and exploitation of the natural resources of the sea-bed and subsoil of the high seas beyond the continental shelf; and

(b) Freedom of scientific research and exploration.

With respect to the former freedom, it was considered that such exploitation had not yet assumed sufficient practical importance to justify special regulation. (See above, paragraphs 22-33.)

75. Freedom to lay submarine cables and pipelines on the bed of the high seas is one of the four freedoms specifically mentioned in article 2 of the 1958 Convention on the High Seas. Detailed provision concerning the laying and protection of submarine cables and pipelines on the ocean floor and sea-bed of the high seas is made in articles 26-29 of the 1958 Convention on the High Seas. (See above, paragraphs 34-41.)

76. A general principle of the law of the sea which may have particular relevance to the ocean floor and sea-bed is that a State must exercise its freedom on the high seas with reasonable regard to the interests of other States in their exercise of the freedom of the high seas. (See above, paragraphs 42-48.)

77. Articles 24 and 25 of the 1958 Convention on the High Seas deal with the problem of pollution. Article 24 provides, inter alia, that every State shall draw up regulations to prevent pollution of the seas resulting from the exploitation and exploration of the sea-bed and its subsoil. Article 25 (1) is

concerned with the adoption of measures to prevent pollution of the seas from the dumping of radio-active waste. (See above, paragraphs 49-59.)

78. The International Law Commission and the 1958 Conference on the Law of the Sea discussed the question of nuclear tests on the high seas. A resolution on this subject was adopted by the 1958 Conference. Subsequently, in 1963, a Treaty was concluded banning nuclear texts both in territorial waters and on the high seas, inter alia. (See above, paragraphs 65-70.)
