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**IOC/INF-1055
Paris, 30 May 1997
English only**



**INTERGOVERNMENTAL OCEANOGRAPHIC COMMISSION
(of UNESCO)**

**DRAFT IOC GUIDELINES FOR THE APPLICATION OF ARTICLE 247
OF THE UN CONVENTION ON THE LAW OF THE SEA**

This report has been prepared by the IOC Secretariat in consultation with Professor Soons, as a follow-up to the discussion of the 29th session of the IOC Executive Council. The 19th session of the IOC Assembly is invited to review it and provide guidance on further actions to be taken in this regard.

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INTRODUCTION

The IOC Executive Council, at its 29th Session, Paris, 24 September - 2 October 1996, endorsed the Progress Report of the Intersessional Working Group on IOC's Possible Role in Relation to UNCLOS. The Report through its attached table, identified, inter alia, IOC's role/responsibilities to help establish procedures with regard to Article 247 of the UN Convention on the Law of the Sea.

Article 247 of UNCLOS provides for a special procedure for marine scientific research projects which are conducted by, or under the auspices of, an international organization in the exclusive economic zone or on the continental shelf of its member States or of other coastal States having special bilateral agreements with the organization.

The United Nations, in its Guide to the Implementation to the Relevant Provisions of the UNCLOS in relation to marine scientific research (1993, UN publication sales no.E.91.V.3), considered, in a broad sense, Article 247. But the application of this Article is left with the individual international organizations through the establishment and implementation of clear guidelines with regard to this Article.

This Guideline is based upon the UN Guide on marine scientific research (1993) and aims at establishing specific procedures within the framework of the IOC through which a project is proposed, considered and approved, thus constituting a consent given by a coastal State to a marine research activity carried out directly by the IOC or under its auspices, which takes place in the coastal State's EEZ or on its continental shelf, with due regard to protecting the legitimate rights of the coastal States.

A. GENERAL PROVISIONS

1. SCOPE OF APPLICATION

This guideline is applicable to marine scientific research governed by Part XIII of the United Nations Convention on the Law of the Sea and conducted by or under the auspices of the IOC. It is also applicable to those coastal States who are parties to the Law of the Sea Convention, but not IOC Member States, having special bilateral agreements with the IOC concerning marine scientific research projects to be conducted in areas under their jurisdiction.

2. ADOPTION OF RULES (Art.255)

States shall endeavour to adopt reasonable rules, regulations and procedures to promote and facilitate marine scientific research conducted beyond their territorial sea, i.e. in the exclusive economic zone and on the continental shelf, and to facilitate access to their harbours and promote assistance for research purposes.

States may designate one office for co-ordinating marine research activities in the context of Article 247. This could be the MSR office processing the applications for consent with regard to marine scientific research on a bilateral basis, as suggested in the UN Guide for the Implementation to the Relevant Provisions of the UNCLOS in relation to marine scientific research (1993).

3. CONSENT REGIME UNDER ARTICLE 247

A Member State of the IOC shall be deemed to have authorized a marine scientific research project to be carried out, directly by the IOC or under its auspices, in the exclusive economic zone or on the continental shelf of that Member State if:

- a. it approved the detailed research project when the IOC was making a decision to undertake the project, or if it is willing to participate in it; and
- b. it has not expressed any objections within four months of notification by the IOC.

The coastal State shall, in normal circumstances, give its consent for such research project carried out by the IOC, or under its auspices. Abnormal circumstances such as a situation of imminent danger of armed conflict, where there is a jurisdiction dispute over the area for which the research activity is to be conducted shall not be used as reasons for not giving consent to a research project initiated by the IOC. Such consent shall not be delayed or denied unreasonably (Article 246, paragraph 3).

B. PROCESSING OF PROPOSED PROJECT

4. SUBMISSION OF THE PROJECT

In terms of IOC global programmes, a project concerning research activities in the EEZ and the continental shelf of a coastal State should first be submitted to the relevant scientific, or technical subsidiary body of the IOC, or co-sponsored by the IOC.

Within the framework of IOC regional subsidiary bodies, the project should first be submitted to an appropriate scientific or technical body of the regional subsidiary body.

5. CONSIDERATION OF THE PROJECT

The proposed project shall first be considered by the scientific and technical bodies in terms of its scientific values. Among others, experts of the country or countries in whose EEZ or on whose continental shelf the project is to be conducted, must be present at the meeting during which the project is considered. A recommendation on the acceptance of the project shall be proposed by such body if the project is considered acceptable.

Upon acceptance by the appropriate scientific and technical body, the project shall be considered by a governing organ of that body. Among others, the representatives of the country or countries in whose EEZ or on whose continental shelf the project is to be conducted, must be present at the meeting during which the project is considered. If the organ considers the project acceptable from the policy point of view, the recommendation on the acceptance of the project proposed by the scientific and technical body shall be submitted to the IOC Assembly for approval.

In case that the proposed project is a regional project, not the regional component of an IOC global programme, the recommendation of the scientific and technical body shall be submitted to an IOC Regional Subsidiary Body for consideration, which in turn, shall submit the project, with its recommendations, to the IOC Assembly for approval.

6. APPROVAL OF THE PROJECT

In normal circumstance, the coastal State in whose EEZ or on whose continental shelf the marine scientific research is to be conducted shall give consent to the proposed project in the spirit of the provisions of the UN Convention on the Law of the Sea and the present guideline.

The IOC Assembly shall decide to approve the project, in the form of a resolution, with specific date of adoption. A notification, accompanied by the completed standard form as shown in the Annex, will be sent by the IOC to the coastal State or coastal States concerned once the resolution is adopted.

The resolution, once adopted, shall constitute a consent of the country or countries in whose exclusive economic zone or on whose continental shelf the project is to be conducted, unless within four months starting from the date of the adoption of the resolution, the country or countries in whose EEZ or on whose continental shelf the project is to be conducted formally express objection to the project in the form of a letter, duly signed by the Head of the MSR Office of the country, or his/her representative, accompanied by the stamp of that Office.

7. ADJUSTMENT OF THE PROJECT

The originator of the project shall adjust the project in the following cases:

- (i) If, at any formal occasions before and during the IOC Assembly, it is pointed out that the information required under article 248 of the Law of the Sea Convention is not fully provided;
- (ii) If the IOC receives objection from the coastal State concerned within four months after the approval of the IOC Assembly;

In case of (i), the IOC, or the institution who is to conduct the research activity under the auspices of the IOC shall modify the research project accordingly in order to ensure that provisions in Article 248 will be complied with, or convince the coastal State that the original research project can and will be carried out in accordance with the provisions of the Convention. If the IOC or the institution who is to conduct the research activity under the auspices of the IOC does not succeed in either of these two possibilities, the coastal State shall be entitled to refuse consent. The project proposal, thus modified, shall be submitted to the governing organ, for re-examination. The organ shall see to it that all information required under article 248 is provided. The revised project proposal shall then be submitted to the following IOC Assembly for reconsideration.

In case of (ii), the originator of the project shall make necessary modifications to the project based on the comments of the coastal State concerned, and submit the revised project proposal to the scientific and technical body and its governing organ, for re-examination. If both consider it acceptable, the revised project proposal shall be submitted to the following IOC Assembly for reconsideration.

8. DISCRETION TO WITHHOLD CONSENT

A coastal State of the IOC may in its discretion withhold consent for the conduct of marine scientific research if the research project:

- a. is of direct significance for resource exploration and exploitation of natural resources, whether living or non-living;
- b. involves drilling into the continental shelf, the use of explosives or the introduction of harmful substances into the marine environment;
- c. involves the construction, operation or use of artificial islands, installations and structures referred to in articles 60 and 80 of UNCLOS; and
- d. contains information communicated pursuant to article 248 regarding the nature and objectives of the research project which is inaccurate or if the IOC or the institution who conducts the research under the auspices of the IOC has outstanding obligations to the coastal State from a prior research project.

9. TERMINATION OF THE PROJECT

The IOC Assembly may decide to terminate the project for scientific reasons, provided that at least two thirds of the Member States, present and voting, are in opposition of the project.

The IOC Assembly may decide to terminate the project for legal and other reasons, in conformity with the provisions of the UN Convention on the Law of the Sea and the present Guidelines.

10. EXPLANATION

The coastal State who withholds the consent to the proposed project or who proposes the termination of the project, shall have to explain in oral and in form of a written note of explanation, before the project is terminated. This explanation shall be justifiable in accordance with the provisions of the UN Convention on the Law of the Sea and the present Guidelines.

D. IMPLEMENTATION OF THE PROJECT

11. PARTICIPATION

The scientists of the coastal State shall participate in the research project and work together with external scientists from the beginning till the end of the project, including the planning and preparatory phases. A minimum of 2 scientists may go on board research vessels under its auspices of the IOC, and when practicable, the scientist(s) from the coastal State shall also participate in other crafts (e.g. submersible) or scientific research installations, at the expense of the IOC, or the institution conducting the marine scientific research under the auspices of the IOC.

The scientists of the coastal State may also participate in the research project by sending their own research vessels, or other crafts and installations at their own expense.

12. REPRESENTATION

A maximum of 2 observers appointed by the coastal State shall be present on board the research vessel during the project, without actually taking part in the scientific work. The expenses of the observers shall be borne by the coastal State.

13. DUTY TO INFORM ABOUT CHANGES

The IOC or the institution conducting marine scientific research under the auspices of the IOC, shall inform the coastal State immediately of "any major change" in the research project. They include:

- a. changes to the items listed in Article 246 paragraph 5 of UNCLOS, which may cause the coastal States to refuse consent at their discretion; and
- b. changes with respect to the information provided under Article 248 of UNCLOS. However, changes with respect to sub-paragraph (e) of the Article shall not be considered as a "major change".

14. SUSPENSION OF ACTIVITIES

The coastal State has the right to require the suspension of marine scientific research activities in progress being conducted by the IOC directly, or under its auspices, either if they are not being conducted in accordance with the information communicated according to Article 248, upon which the consent of the coastal State was based, or if the IOC or the institution conducting marine scientific research, fails to comply with the provisions of Article 249 concerning the rights of the coastal State with respect to the research project.

Following notification by the coastal State of its decision to order suspension, the IOC, or the institution who conducts the research activity under IOC's auspices, shall terminate the activities that are the subject of such a notification.

An order of suspension shall be lifted by the coastal State and the research activities allowed to continue once the IOC or the institution who conducts the research activity under IOC's auspices has complied with the conditions required under Article 248 and 249.

15. CESSATION OF ACTIVITIES

Coastal States may require the cessation of marine scientific research activities if any of the situations mentioned in paragraph 1 under the " Suspension of Activities" are not rectified within a reasonable period of time (e.g. 30 days after the formal notification of the coastal State), or if the non-compliance with the provisions of Article 248 amounts to a major change in the research project.

Following notification by the coastal State of its decision to order cessation, the IOC, or the institution who conducts the research activity under IOC's auspices, shall terminate the activities that are the subject of such a notification.

16. EXPLANATION

The coastal State who request the suspension or cessation of the research activity shall provide explanations in written form, which shall be justifiable in conformity with the provisions of the UN Convention on the Law of the Sea and the present Guidelines.

17. REMOVAL OF INSTALLATIONS AND EQUIPMENT

The IOC or the institution who conducts marine research under the auspices of the IOC shall remove the scientific research installations or equipment once the research is completed, unless otherwise agreed (article 249 (1) (g)). Due account shall be taken with regard to the guidelines of the International Maritime Organization in this respect (IMO resolution A.672 (16)).

18. PORT CALLS

Coastal States are exhorted to facilitate, subject to the provisions of their laws and regulations, access to their harbours and to provide assistance for research vessels. Researchers are encouraged to enlist the assistance of relevant shipping agents when planning port calls.

19. RIGHTS OF LAND-LOCKED AND GEOGRAPHICALLY DISADVANTAGED STATES

The neighbouring land-locked and geographically disadvantaged States shall, at their request, be given the opportunity to participate, whenever feasible, in a marine scientific research project through qualified experts appointed by them and not objected to by the coastal State. They shall be done in accordance with the conditions agreed for the project, and in conformity with the provisions of the Convention, between the coastal State concerned and the IOC or the institution who conducts the marine research project under the auspices of the IOC (article 254 (3)).

E. AFTER THE RESEARCH CRUISE

20. PROVISION OF REPORT AND ACCESS TO DATA AND SAMPLES

The IOC or the institution who conducts the marine research under the auspices of the IOC, shall:

- a. provide the coastal State, at its request, with preliminary reports, as soon as practicable, and with the final results and conclusions after the completion of the research (article 249 (1) (b));
- b. undertake to provide access for the coastal State, at its request, to all data and samples derived from the marine scientific research project and likewise to furnish it with data which may be copied and samples which may be divided without detriment to their scientific value (article 249 (1) (c));
- c. provide, if requested, the coastal State with an assessment of such data, samples and research results or provide assistance in their assessment or interpretation (article 249 (1) (d));
- d. ensure, subject to paragraph 2 of article 249 of UNCLOS, that the research results are made internationally available through appropriate national or international channels, as soon as practicable (article 249 (1) (e));

After completion of the above-mentioned obligations, the IOC, or the institution who conducts the marine research under the auspices of the IOC, shall send a letter to the designated MSR Office in the coastal State, that all obligations related to the research project have in its opinion been fulfilled. Unless the coastal State reply with a different opinion within two months after this letter indicating the existence of unfulfilled obligations in accordance with the UN Convention on the Law of the Sea and this guideline, the coastal State is considered to have concurred that the obligations

of the IOC, or the institution conducting marine scientific research under the auspices of the IOC, with regard to the research project, is completed.

The IOC, or the institution conducting marine research under the auspices of the IOC, shall provide to the land-locked and geographically disadvantaged states who are allowed to participate in the marine research project, at their request, the information and assistance specified in article 249, paragraph 1 (d), subject to the provisions of article 249, paragraph 2.

21. DISPUTE SETTLEMENT

Any disputes derived from a marine scientific research project conducted by the IOC or an institution who conducts the marine research under the auspices of the IOC shall be subject to the procedures provided for in Part XV of the UN Convention on the Law of the Sea.

ANNEX I
DRAFT STANDARD FORM

Date: _____

1. *General information*

- 1.1 Cruise name and/or number: _____
- 1.2 Sponsoring institution:
Name: _____
Address: _____
Name of director: _____
- 1.3 Scientist in charge of the project:
Name: _____
Address: _____
Telephone: _____
Telex: _____ Telefax: _____
- 1.4 Scientist(s) from involved in the planning of the project
(name of coastal State)
Name(s): _____
Address: _____

- 1.5 Submitting officer:
Name and address: _____
Country: _____
Telephone: _____
Telex: _____ Telefax: _____

2. *Description of project (Attach additional pages as necessary)*

- 2.1 Nature and objectives of the project: _____

- 2.2 Relevant previous or future research cruises: _____

- 2.3 Previously published research data relating to the project: _____

3. *Methods and means to be used*

- 3.1 Particulars of vessel
Name: _____
Nationality: _____
Owner: _____ Operator: _____
Overall length: _____
Maximum draught: _____
Net tonnage: _____ Gross tonnage: _____
Propulsion: _____
Cruising speed: _____ Maximum speed: _____
Call sign: _____
Method and capability of communication (including telex, frequencies): _____

Name of master: _____
Number of crew: _____
Number of scientists on board: _____
- 3.2 Aircraft or other craft to be used in the project: _____

3.3 Particulars of methods and scientific instruments

<i>Types of samples and data</i>	<i>Methods to be used</i>	<i>Instruments to be used</i>

3.4 Indicate whether harmful substances will be used: _____

3.5 Indicate whether drilling will be carried out: _____

3.6 Indicate whether explosives will be used: _____

4. *Installations and equipment*

Details of installations and equipment (dates of laying, servicing, recovery, exact locations and depth): _____

5. *Geographical areas*

5.1 Indicate geographical areas in which the project is to be conducted (with reference in latitude and longitude): _____

5.2 Attach chart(s) at an appropriate scale showing the geographical areas of the intended work and, as far as practicable, the positions of intended stations, the tracks of survey lines, and the locations of installations and equipment.

6. *Dates*

6.1 Expected dates of first entry into and final departure from the research area of the research vessel: _____

6.2 Indicate if multiple entry is expected: _____

7. *Port calls*

7.1 Dates and names of intended ports of call in
(name of coastal State)

7.2 Any special logistical requirements at ports of call: _____

7.3 Name/Address/Telephone of shipping agent (if available): _____

8. *Participation*

8.1 Extent to which will be enabled to
(name of coastal State)
participate or to be represented in the research project: _____

8.2 Proposed dates and ports for embarkation/disembarkation: _____

9. *Access to data, samples and research results*

9.1 Expected dates of submission to of preliminary reports
(name of coastal State)
which should include the expected dates of submission of the final results: _____

9.2 Proposed means for access by to data and samples:
(name of coastal State)

9.3 Proposed means to provide with assessment of
(name of coastal State)
data, samples and research results or provide assistance in their assessment or interpretation:

9.4 Proposed means of making research results internationally available: _____

