

The Relevance of the Law of Treaties for Integration of MASS into the International Regulatory Framework



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The Current Status of Unmanned Aerial Systems - ICAO

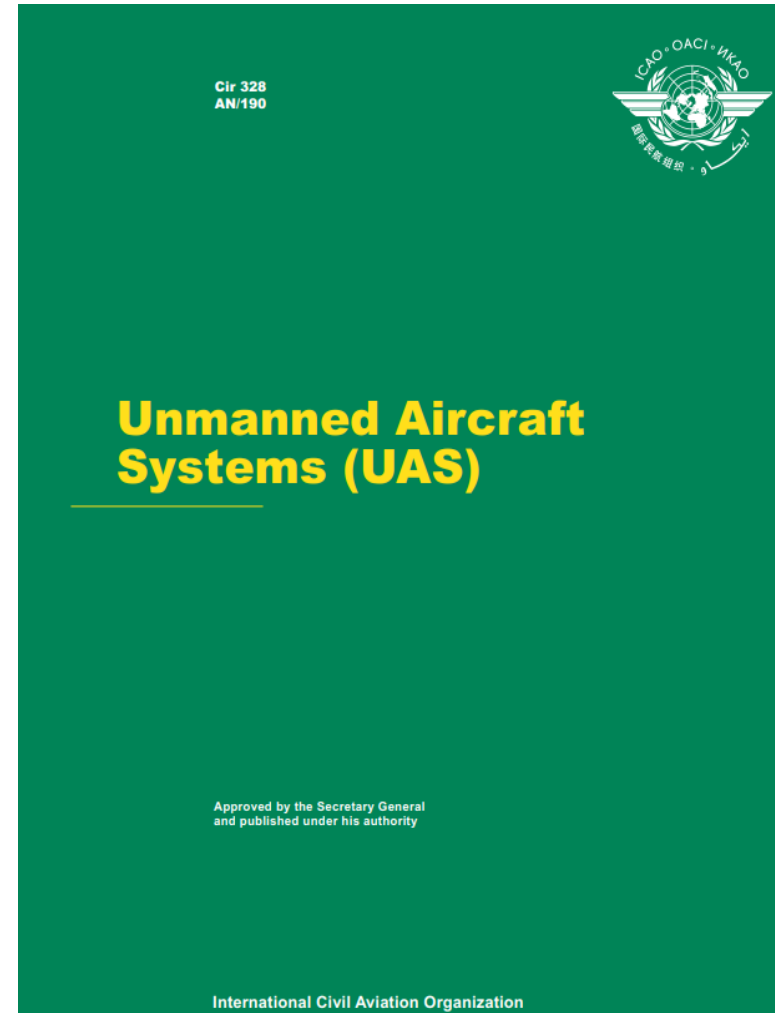


1948 Chicago Convention on International Civil Aviation



- Article 8: “No aircraft capable of being flown without a pilot shall be flown without a pilot over the territory of a contracting State without special authorization by that State and in accordance with the terms of such authorization. Each contracting State undertakes to ensure that the flight of such aircraft without a pilot in regions open to civil aircraft shall be so controlled as to obviate danger to civil aircraft.”

- In **2005**, the Air Navigation Commission, invited the ICAO Secretariat to exchange views with the Member States and other relevant international organizations regarding the possible integration of UAS.
- strategic guidance document that would guide the regulatory evolution for UAS, which could be used as the basis for the development of national regulations by the Member States.



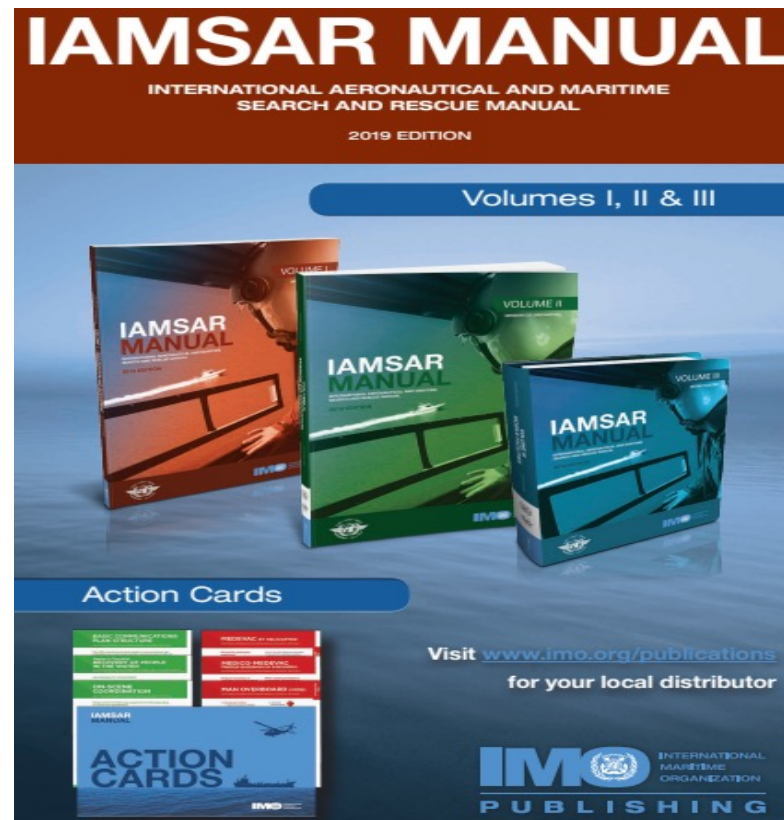
ICAO MODEL UAS REGULATIONS

This document is an example that member States may consider for implementation to regulate the operation of Unmanned Aircraft Systems (UAS).

June 23, 2020

*Part 101 and
Part 102*

- The comparative examination of the autonomous technologies in the aviation systems and land vehicles reveal that both for land and aviation transport modes, **safety is the main consideration.**



International Maritime Organization

Article 1

The purposes of the Organization are:

- a. To provide machinery for co-operation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning the maritime safety, efficiency of navigation and prevention and control of marine pollution from ships; and to deal with administrative and legal matters related to the purposes set out in this Article;



UNCLOS Regime and the Role of the IMO

- UNCLOS: IMO “competent international organisation”.
- UNCLOS: The international rules and standards to be developed at the competent organisation (IMO).



GAIRS

Generally accepted or globally agreed or applicable international regulations, rules, standards, recommendations, procedures and practices (GAIRS): IMO.



References to the IMO in the UNCLOS



- IMO; the FAO; the UNEP and the IOC.
- The IMO Secretariat significantly contributed to the deliberations of UNCLOS III.
- Art.2 of Annex VIII.
- DOALOS.
- State practice.

- In the context of "design, construction, manning or equipment" of ships relating to innocent passage, art. 21/2 refers to the "...unless they are giving effect to **generally accepted international rules or standards.**"
- Regarding the construction, equipment and seaworthiness of ships, and the manning of ships and the training of crews art. 94(3,4,) requires flag States to conform to the "3. **taking into account the applicable international instruments;**...4. ...to observe **the applicable international regulations.** Art. 94/5 provides that each State must conform to **generally accepted international regulations, procedures, and practices.**
- On flag States, art. 217 refers to the "1...applicable **international rules and standards,** established through the **competent international organisation**...2... **in compliance with the requirements of the international rules and standards** referred to in paragraph 1, including requirements in respect of design, construction, equipment and manning of vessels."
- Regarding the designation of sea lanes and traffic separation schemes, art. 22/3(a), art. 41/4 and art. 53/9 refer to the "**competent international organisation**".
- In the context of the flag States' duties art. 94/3,4, 5 and regarding the duties of ships in transit passage art. 39/2 refers to the "**generally accepted international regulations, procedures and practices**"—for instance, art. 94/3 requires the flag States to ensure that their ships are prohibited from navigating until they can comply with the requirements of **international rules and standards.**

Note: The above list is **not exhaustive.**

The Teleological Approach

- According to the teleological approach, an ambiguity in a treaty text should be resolved by preferring the interpretation which gives effect to the object and purpose of the treaty.

VCLT, 1969

Article 31 – The general rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.



Evolutionary Treaty Interpretation

the interpretation of treaties is an “art” not “science”!!!

International Conventions: not meant to last for eternity.

Evolving situations.

Passage of time.

Aust: "When a treaty refers to an 'aircraft', does that include all aircraft, civil and military; and what about microlights, hovercraft or balloons? For this purpose, one must look at the treaty as a whole, including the title, preamble and any annexes."

-ICJ and ECtHR.

-The ICJ, the Case concerning the dispute regarding navigational rights:

“Thus, where the parties have used generic terms in a treaty, the parties necessarily having been aware that the meaning of the terms was likely to evolve over time, and where the treaty has been entered into for a very long period or is “of continuing duration”, the parties must be presumed, as a general rule, to have intended those terms to have an evolving meaning.”

Amendment of the UNCLOS articles 39-41 of the VCLT.

Sri Lanka's representative (UNCLOS III): "It is in the nature of all things that they do not remain static, that there will be growth and there will be decay. The march of technology and changing perceptions and aspirations will, in time, place pressures upon the regimes we establish today."

The ICJ - **Advisory Opinion regarding the constitution of the Maritime Safety Committee (MSC):** "...The word obtains its meaning from the context in which it is used. If the context requires meaning which connotes a wide choice, it must be construed accordingly..."

Art.312: (within a year from the date of the circulation of the communication, half of the States Parties must reply favourably to the request to the convening of a conference, then the UNSG shall convene the amendment conference.)

Art.313: (a circular proposal is automatically considered to be adopted if no Contracting Party objects to the amendment within a year. **Even if a single party submits an objection, the amendment will be considered rejected!!!**)

The ‘living instrument’ expression is employed to show that treaties, similar to living organisms, have to grow and adjust to changes in the long run.

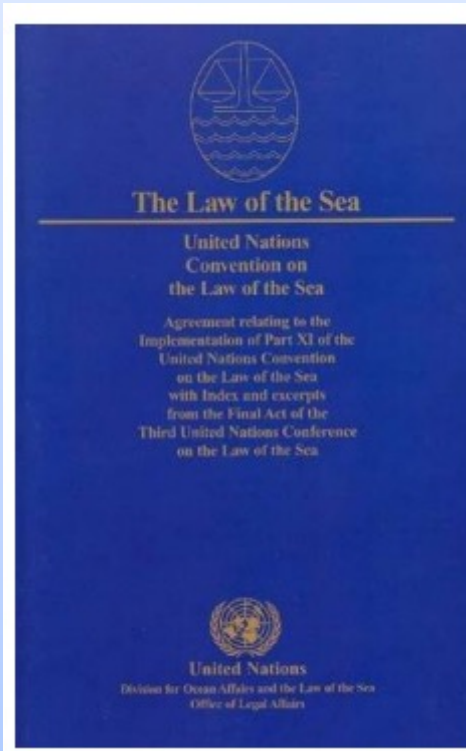
Sir Michael Wood: UNCLOS is not a monument set in stone.

The Application of the Evolutionary Interpretation to the generic term “Ship/Vessel” in UNCLOS



Judge Lucky of ITLOS recognised the dynamic character of UNCLOS: “The 1982 Convention and the Statute of the Tribunal are `living instruments`. This means that they “grow” and adapt to changing circumstances...The law of the sea is not static. It is dynamic and, therefore, through interpretation and construction of the relevant articles a court or tribunal can adhere and give positive effect to this dynamism. Since 1982, technology has advanced and therefore in my view judges must take a robust approach and apply the law in a legal but pragmatic way.”

“Affirming that matters not regulated by this Convention continue to be governed by the rules and principles of general international law.”



- IMO has been proactive for the possible integration of MASS operations.

