

Norwegian Ministry of Foreign Affairs' Assessment of the advantages and disadvantages of entering into a treaty on geodesy compared with other options

Background

The Norwegian Mapping Authority (NMA), together with the planning department of the Norwegian Ministry of Local Government and Modernisation, has requested a legal assessment of the advantages and disadvantages of entering into a treaty compared with other options for regulating work on geodesy internationally. They have also requested an assessment of other non-binding options for the standardisation of international geodetic work. Such work has so far been run by the UN's Committee of Experts on Global Geospatial Information Management (UN-GGIM) under the UN Economic and Social Council (Ecosoc). Norway is represented on the committee by the NMA. The committee has called in recent years for a convention in this area, and the issue was considered by the UN General Assembly in resolution 69/226 during February 2015.

Maintaining standards in the area has earlier been based on voluntary efforts by universities, research institutions and national specialist bodies such as the NMA's geodetic Earth observatory in Ny-Ålesund. This is no longer considered an adequate arrangement in an area of such great social importance. An international agreement which ensures predictable operating parameters is therefore required.

The issue

On behalf of Norway, the NMA is seeking information about the opportunities and challenges which a convention could present compared with other options.

Overview of international legal instruments

Conventions are binding agreements under international law, which means that drawing up a text can be a lengthy business. Generally speaking, conventions are only binding on those states which have ratified them, unless they are considered to give expression to international custom. The primary advantage of regulating a subject in the form of a convention is that ratifying states are legally bound by the convention's provisions. However, the convention only enters into force when the necessary number of states have ratified it. This can also take time, and examples exist of conventions which came into force many years after their text was approved at diplomatic level. Important questions are whether reaching agreement on a convention is possible, and whether it is reasonable to suppose that key states would ratify it.

Resolutions and other forms of non-binding guidelines are another option. Although these are not binding under international law, they can nevertheless have value by giving expression to political will in a specific area. A number of examples exist where Ecosoc has adopted a code of conduct, a resolution, or another form of non-binding standardisation on key issues. These include the UN Code of Conduct on Transnational Corporations (1987) and Resolution 2005/30 on Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005). Such instruments will regularly have great significance for the way states and other players act in the relevant area.

Whether geodesy should be regulated in the form of a convention or non-binding guidelines

will depend on an overall assessment of a number of factors, including the time aspect, political willingness and available resources.

Assessment

The NMA will sound out with like-minded states whether it is desirable to regulate international geodetic work, and their preferred method for doing this. It could also be appropriate to consult informally with the Ecosoc secretariat. Following such a clarification round, the NMA will consult the Ministry of Foreign Affairs over further handling of the issue.

IMPORTANT TO BE SPESIFIC:

What are the specific needs?

Start formulating articles regarding these needs

Consultation must identify these needs

EXAMPLES MENTIONED IN THE TEXT:

UN Code of Conduct on Transnational Corporations (1987)

The first effort to arrive at comprehensive and balanced rules governing the relations of governments and multinational enterprises were undertaken in the United Nations a few decades ago. The negotiations of a United Nations Code of Conduct on Transnational Corporations began in the late 1970s against the background of the quest for a New International Economic Order, and they ended unsuccessfully in the early 1990s, against the background of a beginning trend to liberalize the regulatory framework for foreign direct investment in order to attract such investment. These negotiations crystalized the interest situations of developed and developing countries in the area of international investment agreements. What were these interest situations? What were the obstacles for reaching agreement? Why could negotiators not arrive at an agreement? Where do we stand today? What could bring about change? What are the lessons learned from these negotiations? These are the principal questions that are explored in the framework of this project, including through interviews with key participants in the negotiations.

Article examples Code of Conduct:

Review and renegotiation of contracts

11. Contracts between Governments and transnational corporations should be negotiated and implemented in good faith. In such contracts, especially long-term ones, review or renegotiation clauses should normally be included. In the absence of such clauses and where there has been a fundamental change of the circumstances on which the contract or agreement was based, transnational corporations, acting in good faith, shall/should co-operate with Governments for the review or renegotiation of such contract or agreement.

Respect for human rights and fundamental freedoms

13. Transnational corporations should/shall respect human rights and fundamental freedoms in the countries in which they operate. In their social and industrial relations, transnational

corporations should/shall not discriminate on the basis of race, colour, sex, religion, language, social, national and ethnic origin or political or other opinion. Transnational corporations should/shall conform to government policies designed to extend equality of opportunity and treatment.

Abstention from corrupt practices

20. [Transnational corporations shall refrain, in their transactions, from the offering, promising or giving of any payment, gift or other advantage to or for the benefit of a public official as consideration for performing or refraining from the performance of his duties in connection with those transactions.

Resolution 2005/30 on Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005)

The Principles and Guidelines describe the States' obligations in cases of gross violations of international human rights law, which entail: (1) the duty to investigate and (2) the duty to submit to prosecution the person allegedly responsible for the violations, in case there is sufficient evidence and (3) the duty to punish the person, if found guilty. Strong emphasis is placed on the fact that the Principles and Guidelines reiterate existing international law and do not create new rules and obligations. The text also stresses the duty of States to cooperate with one another in the investigation and prosecution of such violations. Moreover, the Principles and Guidelines name the obligation of the States to provide to the victims equal access to an effective judicial remedy. In addition, the Principles and Guidelines state that international law requires the States to make adequate, effective and prompt reparation available to the victims. The Commission further recommends that States, among other things, bring the Principles and Guidelines to the attention of members of the executive bodies of Government, such as law enforcement officials and military and security forces. The United States initiated a roll-call vote, which resulted in 40 in favor to none against, with 13 abstentions, the United States' vote being one of the abstaining votes.

Article examples Resolution 2005/30:

“1. *Expresses its appreciation* to the Commission for the adoption of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law;

“2. *Adopts* the Basic Principles and Guidelines as contained in the annex to Commission resolution 2005/35;

“3. *Recommends* to the General Assembly that it adopt the Basic Principles and Guidelines.”

3. The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to:

(a) Take appropriate legislative and administrative and other appropriate measures to prevent violations;

(b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with

domestic and international law;

(c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and

(d) Provide effective remedies to victims, including reparation, as described below.

4. In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him. Moreover, in these cases, States should, in accordance with international law, cooperate with one another and assist international judicial organs competent in the investigation and prosecution of these violations.

9. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.