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**Study on the future functions of the Secretary-General under the draft convention and on the needs of countries, especially developing countries, for information, advice and assistance under the new legal regime**

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## Report of the Chairman of the Drafting Committee

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[3 August 1981]

1. An informal intersessional meeting of the Drafting Committee was held in Geneva from 29 June to 31 July 1981 in accordance with the decision taken by the Conference at its 149th meeting on 16 April 1981.

2. There were 204 meetings of the language groups open to all delegations, 17 meetings of the co-ordinators of the language groups under the direction of the Chairman of the Drafting Committee and 5 meetings of the Drafting Committee as a whole. Representatives of 43 delegations participated in the meetings. The Drafting Committee maintained its previously established informal working methods, supplemented more than heretofore by informal consultations on certain provisions of Part XV of the draft convention.

3. In accordance with the time-table proposed at the 149th plenary meeting, the Drafting Committee directed its attention exclusively to Part XV and annexes V, VI, VII and VIII of the draft convention during the first three weeks of its meetings, and gave consideration also to Part XI, section 6, during the last two weeks of the intersessional meetings.

4. The volume and juridical complexity of the provisions in Part XV and the annexes relating thereto posed drafting problems of a different order from those which faced the Committee in its consideration of other Parts of the draft convention. The Committee had to deal with two main problems raising juridical, technical and linguistic issues: the internal co-ordination of the various provisions of this Part and the annexes relating thereto; and the co-ordination between these provisions and their counterparts in Part XI, section 6, of the

draft convention. This task of internal co-ordination absorbed much of the time of the Drafting Committee during this informal intersessional meeting of the Committee.

5. The language groups were able to complete the textual review of sections 1, 2 and 3 of Part XV and the annexes relating thereto and section 6 of Part XI. The co-ordinators completed consideration of sections 1 and 2 of Part XV and then gave consideration to the related provisions of section 6 of Part XI in order to comply with the time-table decided on by the Conference.

6. The Drafting Committee is now submitting a series of proposals to the informal plenary Conference on sections 1 and 2 of Part XV and section 6 of Part XI. These recommendations are set out in addenda 1, 2, 3 and 4 to this report. Other matters regarding these Parts are still under review.

7. It is recommended that the language groups of the Drafting Committee meet as frequently as possible during the first week of the resumed tenth session of the Conference with a view to early completion of their work on section 3 of Part XV and annexes V, VI, VII and VIII, Parts XVI, XVII, the preamble, article 1 and Part XI.

8. It is further recommended that a decision be reached in plenary at an early stage concerning those parts of the draft convention to which the Drafting Committee should give priority during the resumed tenth session of the Conference. It is recommended also that sufficient time and the necessary facilities be provided for the Drafting Committee to enable it to expedite its work during the resumed tenth session.

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**Study on the future functions of the Secretary-General under the draft convention and on the needs of countries, especially developing countries, for information, advice and assistance under the new legal régime**

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### Introduction

1. Under paragraph 6 of resolution 35/116, the General Assembly requested the Secretary-General, in his capacity as Secretary-General of the Third United Nations Conference on the Law of the Sea, to prepare and submit to the Conference at its tenth session, for such consideration as it deems appropriate, a study identifying:

“(a) the future functions of the Secretary-General under the draft convention;

“(b) the needs of countries, especially developing countries, for information, advice and assistance under the new legal régime”.

In the preparation of this report the Secretary-General has been guided by a principle underlying the negotiations carried out by the Conference and affirmed in the third preambular paragraph of its draft convention: that the problems of ocean space are closely interrelated and need to be considered as a whole.<sup>39</sup>

2. This report was prepared bearing in mind that the functions which the Secretary-General would be called upon to perform under the draft convention have to be seen as complementary to his responsibilities under the Charter of the United Nations as Chief Administrative Officer of the organization and as compatible with other functions entrusted to him by the General Assembly, by the Security Council and by the Economic and Social Council with regard to the maintenance of peace and security, the progressive development of international law and its codification, the promotion of international economic and social co-operation and development, and the co-ordination of the policies and activities of the United Nations and the specialized agencies.

3. Account has also been taken of the preamble of the draft convention, endorsed by the Conference by consensus, and in particular the recognized desirability of establishing a legal order for the seas and oceans which would facilitate international communication and promote their peaceful uses, the equitable and efficient utilization of their resources, the study, protection and preservation of the marine environment and the conservation of the living resources thereof as a contribution to the realization of a just and equitable international economic order which would take into account the interests and needs of mankind as a whole and in particular the special interests and needs of developing countries, whether coastal or land-locked.<sup>40</sup>

<sup>39</sup>See paragraph 3 of General Assembly resolution 3067 (XXVIII), the declaration incorporating the “Gentleman’s Agreement” approved by the General Assembly at its 2169th meeting on 16 November 1973, and the preamble to the draft convention, A/CONF.62/WP.10/Rev.3 and Corr.1 and 3.

<sup>40</sup>A/CONF.62/WP.10/Rev.3, and Corr.1 and 3, preamble.

### Part I. The future functions of the Secretary-General under the draft convention

#### INTRODUCTION

4. The draft convention would assign to the Secretary-General functions with respect to the establishment of the limits of coastal State jurisdiction, depositary and related functions, other functions in respect of the convention itself and of amendments to it, administrative functions associated with the convening of meetings of States parties and the servicing of such meetings, functions associated with certain aspects of the settlement of disputes, and special reporting functions which imply new or additional responsibilities.

5. This part of the report is intended to present those functions in such a way as to facilitate consideration of their implications for the work of the Secretariat.

6. The necessity of having to take into account the inter-relationships among problems of ocean space in preparing a new convention on the law of the sea affects also the organizational approach that would be adopted in the future for the performance of the Secretary-General’s functions under the convention. Questions that would arise concerning, for example, the most appropriate delegation of functions to established Secretariat units with major responsibilities in marine and marine-related sectors and consequent inter-departmental co-ordination, preparation of programme budgets reflecting new or increased activity in a coherent manner, or the status attributed to organizational units cannot be resolved without first adopting a single, comprehensive policy with respect to all United Nations Secretariat activities that may be associated with the acceptance and implementation of the convention.

7. The need to adhere to a single policy, whereby the necessary interrelations among marine questions are determined and methods adopted to ensure that all the relevant activities of the United Nations Secretariat are conducted in full understanding of their broader context, may be a matter of concern also to governments with respect to their own institutional arrangements. It is logical to assume that the co-ordination of marine-related activities within the Secretariat would have to be as consistent as possible with the efforts that many governments are making in the same direction at the national level. There is evidence, for example, that some States are considering the utility and feasibility of establishing new governmental units or institutes with broad competence in ocean affairs in order to better identify and deal with interrelated functions. In some cases, there is evidence of new initiatives to bring questions of ocean research and development within the immediate compass of ministries of economic development and planning or the equivalent. There is evidence also of the retention of special co-ordinating units or inter-ministerial committees, established originally with the needs of the Law of the Sea Conference negotiations in mind, to deal with the continuing need to take account of the prevailing pattern of inter-relationships and establish comprehensive policies.

8. The need to take account of the interrelations among many marine questions is also a matter of concern for the United Nations system as a whole. Care would have to be taken to avoid inconsistencies and variations in understanding as among the different organizations of the United Nations system. Sectorial approaches to such a complex convention, adopted without reference to their broader context, could lead finally to imbalances in its application. Special efforts would, therefore, have to be made to ensure that there is a good understanding throughout the United Nations Secretariat, and in the secretariats of the different specialized agencies of the United Nations system, of the purposes and specific provisions of the convention.

9. This study does not intend to give answers to these questions. The Conference itself will have to make recommenda-

tions to the General Assembly on how best to ensure that the philosophy reflected in the General Assembly resolution that convened the Conference, in the "Gentleman's Agreement", and in the preamble of the draft convention itself is preserved and developed by the Secretary-General in the exercise of the functions that would be conferred upon him by the convention.

10. In the same connection, it is suggested that the Conference take note of the decision of the Committee on Programme and Co-ordination (CPC) to conduct a "cross-organizational programme analysis" of marine affairs for 1983<sup>41</sup> and of the consequent need to take this undertaking into account should any recommendations or requests be made pursuant to General Assembly resolution 35/116.

#### A. FUNCTIONS EXPRESSLY ASSIGNED TO THE SECRETARY-GENERAL<sup>42</sup>

11. The following provisions of the draft convention expressly assign functions to the Secretary-General of the United Nations: article 16 of Part II; article 47 of Part IV; article 75 of Part V; articles 76 and 84 of Part VI; articles 287 and 298 of Part XV; articles 305, 306, 307, 311, 312, 313, 315, 317, 319 and 320 of Part XVII; articles 2 and 6 of annex II; articles 2, 3, 7 and 8 of annex V; articles 4, 5 and 42 of annex VI; article 2 of annex VII; article 3 of annex VIII.

12. These functions are described under the following categories:

##### 1. *Functions of the Secretary-General with respect to the establishment of the limits of coastal State jurisdiction*<sup>43</sup>

(a) Functions pertaining to charts or lists specifying geodetic datum. Under articles 16, 47, 75 and 84, the coastal State is to give "due publicity" to its charts or lists showing the limits of its territorial sea, its archipelagic baselines, the limits of its exclusive economic zone and lines of delimitation, and the limits of its continental shelf and lines of delimitation, and to deposit a copy of all such charts or lists with the Secretary-General;

(b) Provision of the secretariat of the Commission on the Limits of the Continental Shelf in accordance with article 2 (5) of annex II. Reference may also be made to the following article, article 3 (2), which would necessitate co-ordinating activities as among the secretariats of the Commission, the International Oceanographic Commission, the International Hydrographic Organization and other competent international organizations;

(c) Receipt of the recommendations of the Commission on the Limits of the Continental Shelf in accordance with article 6 (3) of annex II;

<sup>41</sup> Decision taken at the twenty-first session of the CPC, May 1981, the original recommendation having been made by the Administrative Committee on Co-ordination (ACP).

<sup>42</sup> Account may be taken of certain functions of the Secretary-General of the Authority that may be viewed as depositary or related functions with respect to Part XI and related annexes and other functions as derived, for example, from the provisions of Part XIV. Close co-operation must therefore be assumed between the Secretary-General of the United Nations and the Secretary-General of the Authority. The need for such co-operation would arise as, for example, in the cases of amendments under articles 314 and 319 (2) (b) and (d); promotion of international co-operation and progressive development of international law under articles 160 (2) (i) and 319 (2) (a); and provision of specialized information as indicated by such articles as article 13 (9) (b) of annex III.

<sup>43</sup> Reference might also be made to article 134 of Part XI whereby the Authority is required to register and publish notifications of the limits of national jurisdiction. A co-operative arrangement as between the Secretaries-General of the Authority and the United Nations might be warranted in this regard. Also to be considered is whether, prior to the establishment of the Authority, the Secretary-General should maintain the information on relevant limits in such a way as to be able to demonstrate the evolution of the Area to the international community.

(d) Functions pertaining to the receipt and publicity of charts and related information describing the permanent limits of the continental shelf under article 76.

##### 2. *Depositary and related functions of the Secretary-General*

Only those functions specified in the draft convention are mentioned below. It was not considered necessary to enumerate all the aspects of depositary functions for which reference to the Charter and the Vienna Law of Treaties<sup>44</sup> would be required, in view of article 319 (1).<sup>45</sup>

###### (a) *Functions in respect of the convention itself*

- (i) Signatures, under article 305;
- (ii) Deposit of instruments of ratification and accession under articles 306 and 307, taking account of articles 309 and 310.<sup>45</sup> This entails receipt and custody of them, determining whether they are in due and proper form and informing States parties and those entitled to become parties of their receipt, content and date of entry into force. The Authority is also to be notified under article 319 (2) (b);
- (iii) Determination of the date of entry into force under article 308 and notification to States;
- (iv) Receipt, under article 317, of written notifications of denunciation and notification thereof with dates upon which they take effect. The Authority is also to be notified under article 319 (2) (b);
- (v) Functions associated with the deposit of authentic texts under article 320, including registration and publication;
- (vi) Receipt and transmittal of declarations and notices of revocation, expiration or withdrawal under articles 287 and 298.

###### (b) *Functions in respect of amendments to the convention*

- (i) Receipt and circulation of communications under articles 312 and 313, and notification of rejections and acceptances under article 313;
- (ii) Convening of meetings of States parties under article 312;
- (iii) Functions associated with the deposit of authentic texts of amendments under article 315, including registration and publication;
- (iv) Circulation of amendments under article 319 (2) (d), and notification to the Authority under article 319 (2) (b);
- (v) Receipt of signatures under article 315;
- (vi) Receipt and notification of instruments of ratification and accession under article 315;
- (vii) Notification of dates of entry into force of amendments under article 316 (1) and 316 (5).

###### (c) *Functions in respect of other agreements*

Transmittal of notifications of intent to conclude agreements under article 311 (4); notification of such agreements under article 319 (2) (c).

##### 3. *Administrative functions associated with the convening of meetings of States parties*

The Secretary-General is required to call for invitations for nominations and convene meetings of States parties to elect the members of the Commission on the Limits of the Continental Shelf, under article 2 of annex II, and the first

<sup>44</sup> See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5).

<sup>45</sup> It is customary to mention both reservations and declarations in the Secretariat's publication entitled *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions*.

members of the International Tribunal on the Law of the Sea, under article 4 of annex VI.<sup>46</sup>

#### 4. *Servicing of meetings of States parties*

The Secretary-General would need to make special arrangements with respect to the servicing of any amendment conference under article 312. Account might also be taken of article 42 of annex VI whereby it is possible to conceive of an amendment conference having solely to do with the settlement of disputes machinery provided under the convention. The particular wording of article 319 (2) (e) is to be noted in connection with all meetings of States parties convened by the Secretary-General.

#### 5. *Functions of the Secretary-General with regard to the settlement of disputes*

(a) With respect to articles 287 and 298 on choice of fora or procedures and optional exceptions, receipt of declarations and notices of revocation, expiration or withdrawal, and transmittal of copies;<sup>47 48</sup>

(b) With respect to conciliation procedures under annex V:

- (i) Drawing up and maintaining a list of conciliators under articles 2 and 12;
- (ii) Possible appointment of conciliators in consultation with the parties involved under articles 3 (e) and 12;
- (iii) Receipt of reports of commissions and transmittal to parties involved under articles 7 and 12;
- (iv) Receipt of notifications of rejection of recommendations under articles 8 and 12;

(c) With respect to arbitration under article 2 of annex VII, drawing up and maintaining a list of arbitrators; and

(d) With respect to the constitution of a special arbitral tribunal, appointment under article 3 (e) of annex VIII of members of the Tribunal following consultations with parties to the dispute and the appropriate international organization.

#### 6. *The reporting function of the Secretary-General under article 319*

A special reporting function is expressly assigned to the Secretary-General under article 319 (2) (a). While there is a clear link between this function and the other functions expressly assigned to the Secretary-General, important and essentially new responsibilities are implied. These may be categorized as research and analysis, information and consultation functions:

(a) Since "the problems of ocean space are closely inter-related and need to be considered as a whole", the Secretary-General would have to closely examine possible "issues of a general nature that have arisen with respect to this convention" in the light of its objects and purposes as well as its relevant provisions;<sup>49</sup>

(b) This reporting function presupposes an information base broader than that derived from information deposited with the Secretary-General under the articles referred to in the various categories listed above. The following section C of this

study contains a brief indication of the type of additional information that might be required;

(c) The preparation of such reports presupposes the ability to consult States parties when appropriate as to whether the possible subject or subjects of any given report are indeed "issues of a general nature" and whether they should be regarded as having "arisen with respect to this convention";

(d) Since it is necessary to allow for cases where issues may arise in the context of international rather than national implementation of the convention, leading one or several competent international organizations to look to article 319 as a means for their presentation, a similar consultation process would be implied as between the Secretary-General and the organizations concerned.

#### B. SOME IMPLICATIONS OF THE FUNCTIONS EXPRESSLY ASSIGNED TO THE SECRETARY-GENERAL

13. The functions enumerated in section A are presented in such a way as to facilitate consideration of their implications for the work of the Organization.

14. The first category of functions raises the problem of dealing with the charts and other information involved. This would be an activity essentially unprecedented in the work of the Organization, possibly involving certain of the responsibilities associated with depositary functions. The potential volume and complexity of the charts and data to be deposited with the Secretary-General pose problems as to appropriate physical facilities and staff capabilities. The implications, particularly for reproduction capabilities, would be greater still should States seek to give "due publicity" to such charts and lists through the United Nations Secretariat. There would appear to be a need to create a central facility for receiving and maintaining all such materials on the zones of coastal State jurisdiction and for instituting an arrangement that would emphasize the hydrographic skills required.

15. It also seems feasible to assume that the secretariat to be provided for the Commission on the Limits of the Continental Shelf would, in some respects, be an outgrowth of this arrangement since the staff servicing the Commission would need to be familiar with, and have ready access to, many of these same materials.

16. It is possible that the functions associated with the deposit of charts and lists would need to be taken up at an early stage. In view of the importance that States may attach to these functions, responsibility would have to lie within the organization centre of the Secretary-General's substantive functions under the convention.

17. The second category of functions, depositary and related functions, is not regarded as having important organizational implications in the nearer future. However, attention has to be drawn to the existing scale of the receipt and notification functions of the Secretary-General and to the possible effect of articles such as article 311 (4) on these activities.<sup>50</sup> It is assumed that the future programme of the Legal Office must reflect the volume and rate of communications required by the convention.

18. The future impacts of the amendment provisions on the work of the Organization would not warrant attention at this point, given the 10-year delay established by article 312.

19. The third category, concerning the administrative functions associated with the convening of meetings of States parties, is not considered to have any significant implication.

20. The fourth category, also concerning meetings of States parties, was identified as a separate matter since international conferences generally require their own and special

<sup>46</sup>The procedure for subsequent elections to the International Tribunal on the Law of the Sea is to be agreed on by the States parties (article 4 (4) of annex VI). Meetings of States parties under annex VI are also referred to in articles 18 (5) and 19 (1).

<sup>47</sup>Since these functions may be considered depositary in nature, they have also been listed under paragraph 2 (a) (vii) above.

<sup>48</sup>The exception allowed in article 298 (1) (c) implies additional responsibilities for the Secretary-General. For example, circumstances may require submission of information to the Security Council, or, conversely, to the Tribunal.

<sup>49</sup>No attempt has been made to examine the possible ways in which or circumstances under which the Secretary-General may make a first identification of such issues, because of the great variety of fora, sectors and levels from which questions concerning law of the sea may emerge.

<sup>50</sup>On the problems related to registration and publication of treaties and international agreements pursuant to Article 102 of the United Nations Charter, note might be taken of the report of the Secretary-General, of 24 September 1980 (A/35/423).

servicing arrangements. Future meetings, convened under the convention, may vary greatly in terms of the range of substantive support or in the level of conference services required of the Secretary-General.

21. The fifth category assembles all the provisions according functions to the Secretary-General in the area of peaceful settlement of disputes. There may be significant implications in view of the need to ensure that staff involved in such work have a specialized knowledge of law of the sea; the need to facilitate the flow of information among the different machineries provided for settlement of disputes and to provide a central reference source among the United Nations Secretariat, the Registrars of the International Court of Justice and the International Tribunal for the Law of the Sea and, in respect of arbitral tribunals, the international organizations listed in article 2 of annex VIII; and the possibility, as indicated by article 42 of annex VI, of an amendment conference having solely to do with the machinery for the settlement of disputes.

22. The sixth category of functions, the reporting function under article 319 (2) (a), is closely related to all other functions assigned to the Secretary-General under the convention and would have an important relationship also with many activities of the United Nations in the marine sector. The approach adopted for its performance would largely determine the best method for carrying out the general substantive responsibilities of the Secretary-General with respect to the convention.

23. Any assessment of the implications of this reporting function would not only need to take account of implied research and analysis, information and consultation functions, but would also need to base itself on an understanding as to the possible scope and purpose of reports prepared under this provision. No assumption could be made as to the frequency of the reports.

24. The reports may respond to various needs:

(a) The continued need for international co-operation on marine questions encompassed by the convention;

(b) The need to treat issues that arise in a comprehensive manner, in harmony with the spirit of the convention itself, as expressed in resolution 3067 (XXVIII) of the General Assembly and in the preamble to the draft convention. The reports might thus be expected to use a multidisciplinary approach in order to give the background of an issue and its context as established by the convention, and to present it as one having a general character and deserving widespread attention. This would not mean that the reports should document and analyse trends in ocean uses and activities involving, as that would, special efforts in information collection and analysis of economic, scientific and technical developments;<sup>51</sup>

(c) The need to inform the international community, in a coherent manner, of developments which further the objects and purposes of the convention. The draft convention, which is in some aspects a legal framework, foresees many such developments, as in the area of responsibility and liability for damage under article 314 and also article 235, and in the field of regional and subregional co-operation. Issues concerning the relation of the law of the sea convention to other conventions and international agreements may also become subjects for such reports. It is conceivable that, as a consequence of the information conveyed to States parties under article 311 (4) and 319 (2) (c), the Secretary-General would consult States parties as to the emergence of trends that might be of general interest;

<sup>51</sup> The trends in ocean use with emphasis on economic and technical developments are already monitored by the Secretary-General in his report entitled "Uses of the Sea" (E/1980/68 and Corr.1), in connection with the agenda item of the Economic and Social Council entitled "International co-operation and co-ordination within the United Nations system".

(d) The need to present relevant information and discuss issues that arise which directly concern the "competent international organizations" under the convention. The reports may provide the means for a continued assessment of the needs of States for information, advice and assistance as a consequence of the convention, and for discussing problems that organizations may face in providing such information, assistance and advice in an effective and efficient manner.

25. The most significant implication of this sixth category of functions concerns the method for preparing and presenting reports. Clearly they would be done under the direct authority of the Secretary-General, at the organizational centre of his substantive functions with respect to the convention. While such central responsibility must be established, the reports could only be prepared by involving all organizational units having knowledge of and experience in sea and ocean matters, and only on the basis of systematic consultations, not only within the United Nations Secretariat, but also with the competent international organizations and with governments.

26. Before any mechanisms for consultation, or any special organization for the preparation and presentation of such reports, could be established, further work would be needed on possible alternative methods for consulting governments and the competent international organizations and ensuring better co-ordination on ocean space matters.

#### C. FUTURE FUNCTIONS OF THE SECRETARY-GENERAL WHICH MAY EVOLVE FROM THE PROCESS OF IMPLEMENTING THE CONVENTION

27. Reference has been made to the possible need to establish a broader information base for the performance of the reporting function of the Secretary-General under article 319 than that which would be derived from the functions of the depositary. States may, as indicated by article 319 (2) (c), also wish to ensure that the information most relevant to the actual processes of implementation is collected and regularly disseminated.

28. The Conference may therefore wish to take up the question of the dissemination of legislative and administrative information on the law of the sea as a distinct matter. This information might be regarded as encompassing:

(a) Information received from States in the process of their acceptance and implementation of the convention;

(b) Additional information received from States seeking to give their legislation, rules and regulations, and other decisions "due publicity" through the United Nations;<sup>52</sup>

(c) Information on regional and subregional arrangements and co-operative measures;

(d) Other information, received and compiled by agencies and organizations of the United Nations system, which would be important to an understanding of the implementation of the convention.<sup>53</sup>

29. Such approaches as the publication of a Law of the Sea Yearbook and/or a special legislative series might be considered. Either device might take account of relevant information received and published elsewhere in the United Nations system, by an indexing system for example. Whatever the

<sup>52</sup> A number of provisions, e.g., articles 21, 22, 24, 25, 41, 42, 51, 52, 58, 60, 62, 198, 211, 244, 246 and 254, call, variously, for "due publicity", "due notice", "notification", "appropriate publicity", etc. Depending on the context, States may regard the United Nations and/or an organization of the United Nations system as an appropriate channel for achieving such ends. However, the actual mode of application of such provisions would be a matter of interpretation. Where these provisions are based on the provisions of other treaties, presumably the use of methods of notice and publicity under their terms would be maintained.

<sup>53</sup> Some such information would derive directly from the legislative activities of international organizations including those activities associated with their depositary functions.

approach adopted, account might have to be taken of the possible need to establish special methods for collecting and verifying information and for collating it in categories which might best enable States to share experiences in their implementation of the convention.

30. The question of information is also considered in part II of this report.

**Part II. The needs of countries, especially developing countries, for information, advice and assistance under the new legal régime**

INTRODUCTION

31. The identification of needs of countries and in particular developing countries for information, advice and assistance under the new legal régime cannot be limited to the particular needs of States that would arise pursuant to ratification and entry into force of the convention. The practices of States with regard to some aspects of the utilization, exploration, exploitation and preservation of the sea and its resources have undergone a rapid evolution as a consequence of the work of the Conference. Since the publication of the first informal single negotiating text (A/CONF.62/WP.8/Parts I, II and III<sup>54</sup> of 7 May 1975), a large number of States with different geographic circumstances and varied degrees of development have adopted legislation with regard to extended maritime jurisdiction. In many, but not in all, of those cases, the legislation has been drafted following very closely provisions contained in the informal texts prepared by the Conference with regard to the territorial sea and the exclusive economic zone. Reflecting on these developments, many authoritative commentators have suggested that the negotiating texts have themselves accelerated and consolidated the process of change.<sup>55</sup>

32. The evolution of the new law of the sea and the consequent impacts on the policies, plans and programmes of international institutions may be observed at all levels—global, regional and subregional. Important new global and inter-regional projects have been developed, as a consequence, with substantial international financial assistance in some cases.<sup>56</sup>

33. At the same time, it must also be borne in mind that in such important areas as maritime operations a complex inter-connection of law and practice exists among States. Under a number of multilateral agreements in force as well as measures embodied in resolutions, recommended practices and codes, States receive information, advice and technical assistance in order for them to implement such international agreements and other measures.

34. In this situation, there is the possibility that unanimity and consistency in State practice, compatible with the convention, may be endangered in the absence of an effective system of information, advice and assistance to enable States to determine or refine their policies with regard to matters such as fisheries, exploration of non-living resources, the conduct of marine scientific research, preservation of the marine environment, and the many other aspects of the exercise of national jurisdiction. The information required is that which will best

demonstrate policies, practices and experiences of other States and also of international organizations with competence in the different aspects of marine affairs; the advice and assistance that may be most needed, in the first instance, would be that which enables that information to be studied in terms of its relevancy to particular situations.

35. In adjusting to the new legal régime for the oceans, States may have to redefine over-all objectives, formulate general and specific policies and develop the requisite legal framework and the administrative and organizational mechanisms to implement those policies. The need for information, advice and assistance in this connection will have to be assessed by every State taking into account many factors essentially outside of the ambit of the convention since marine policy has to be defined within the broader framework of economic and social development. Those needs will also be determined in varying degrees by the geographic characteristics of different States, whether they are island developing States, States with long coastlines, States with only narrow outlets to the sea, States with limited resources near their coasts, or States with no coast at all, and by the priority attached to the different uses of ocean space.

36. It is justified to assume that most governments will undertake this task with the full involvement of all the sectors responsible for the different aspects of a comprehensive marine policy such as those dealing with international relations, security, law enforcement, fisheries, mineral resources, energy, environment, hydrography, navigation, transportation, labour, scientific and technological development and training, etc. Consequent requests for information, advice and assistance could only be met effectively by taking into account the requirement to ensure a uniform and consistent approach.

37. The purpose of this second part of the study is to demonstrate the many and varied activities that States may undertake, or may have already undertaken, as a consequence of a new legal régime, and thus to indicate matters on which governments may need to seek information, advice or assistance. Such needs would also be determined by the extent to which a State, as a party to an existing convention, is already benefiting from international sources of information, advice or assistance. The following lists may also assist consideration of appropriate methods of facilitating the flow of information on the actions of States and international organizations and of identifying which information will be most useful to governments according to the stage of policy formulation and implementation involved.

A LISTING OF ACTIVITIES THAT MAY BE UNDERTAKEN AS A CONSEQUENCE OF A NEW LEGAL RÉGIME

38. The activities described in the following lists, whether of a legislative, regulatory, administrative or co-operative nature, are based on the provisions of the draft convention, as the article references will indicate. The activities listed cannot be considered exhaustive. They are, however, repetitious, inasmuch as the substance of many provisions is repeated in several sections of the listing in order to illustrate the nature of the tasks involved from the different perspectives of a legislator, enforcement officer, or administrator, for example. Care has been taken to avoid raising unrelated problems of interpretation; some liberties have, however, been taken with the conventional language so that the listings can be used more readily by the various personnel from different sectors who may be engaged in reviewing existing activities in the light of a new legal régime.

39. A mostly artificial distinction has been drawn in these listings between legislative and regulatory actions, enforcement, and administrative requirements. The draft convention itself uses varied terminology and does not always allow a distinction to be inferred as between a matter requiring or permitting legislative action or a matter for which an adminis-

<sup>54</sup>See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IV (United Nations publication, Sales No. E.75.V.10).

<sup>55</sup>See, for example, R. Y. Jennings in "Law-making and Package Deal" in *Mélanges offerts à Paul Reuter*, Edition A. Pedone, Paris, 1981, p. 350, and Guy de Lacharrière in "La Réforme du Droit de la Mer et le rôle de la Conférence des Nations Unies", *Revue Générale de Droit International Public*, Tome LXXXIV, 1980, p. 245.

<sup>56</sup>Mention may be made, by way of illustration, of such relatively new programming efforts as FAO's programme on the exclusive economic zone, the Intergovernmental Oceanographic Commission's programmes to enhance the marine scientific capabilities of developing States and the UNESCO/ECA project for marine scientific and technological development in Africa.

trative measure alone may suffice. Also, there would be a natural variation in this respect depending on the prevailing legal system and practice of States, and according to the existing stage of development as regards ocean law, administration and infrastructure. However, given the particular problems posed for many countries by enforcement, the provisions which may carry such implications deserve to be listed separately. Equally, many countries will face important decisions of an administrative or organizational nature whether with respect to policy-making, preparation of legislation or implementation, so that some administrative implications have been dealt with in some detail. Indeed, the section on administrative matters may be regarded as providing a central focus for the listings as a whole since it is from that viewpoint that the consideration of policy and implementation questions may be undertaken.

40. The listings may be divided into seven sections:

(a) *Legislation and regulation.* This listing attempts to identify all matters on which States would or might take legislative and regulatory action. No distinction is made between those matters requiring the adoption of laws and regulations and those which are permissive in this respect. It is understood that in many instances there may be existing legislation which may merely require modification or amendment for purposes of harmonization with the convention. Similarly, legislation adopted pursuant to other international agreements may have already dealt with many of the items listed. The order of presentation essentially follows that of the draft convention, with the major exception of item 10 which groups all matters pertaining to vessels and aircraft flying the flag of the State or of its registry. This was done to facilitate study of the draft convention from this legislative perspective.

(b) *Regulation by activity.* This listing is given by way of example to demonstrate how users from a given sector would need to range over various Parts and Sections of the draft convention to identify their legislative tasks and the contexts in which they would be undertaken.

(c) *Publication or notification.* A significant number of provisions of the draft convention call for due publicity or due notice, for example of laws and regulations, for exchange of information, for publication of reports, for preparation of maps and charts, etc. Thus, those matters, for which such action is contemplated, are repeated in this listing to indicate *inter alia* the nature, scope and form of the information which would be contributed or exchanged among States in the natural course of enacting laws and regulations, adopting other measures and entering into various agreements and arrangements, including those of a co-operative nature.

(d) *Surveillance and enforcement.* Since there has already been some experience with the effects of extended national jurisdiction on questions of surveillance and enforcement, particularly with regard to fisheries, it was thought useful to list all those provisions together which may entail legislative and regulatory action. Also, a separate item 12 is included in the administrative listing to again highlight possible implications from this perspective. Governments reviewing the situation with regard to their needs and capabilities for surveillance, control and enforcement may find such separate listings useful.

(e) *Administrative and organizational requirements.* This listing is intended primarily to assist consideration of such questions as mechanisms for establishing policy, processes of preparing legislation and other measures, allocation of functions among existing agencies or departments, and co-ordination among all sectors concerned for these purposes. Emphasis has been placed on the possible need to treat activities in the exclusive economic zone from as comprehensive a viewpoint as circumstances warrant, and on the need to review the various sectoral requirements in terms of common needs. For example, where applicable, attempts have

been made to identify common elements as amongst fisheries administration, environmental protection, maritime safety, marine scientific research, and development of marine technology.

(f) *Co-operation directly with other States or through international organizations.* This listing is intended primarily to indicate the scope of a State's possible co-operative activities directly with other States or through international organizations, with implications for its legislative and administrative activities. The questions which may entail co-operation are grouped under the headings of maritime safety, living resources, marine environment, marine scientific research, and marine technology. But this does not mean that this method of listing should carry any implications as regards the competent international organization through which co-operation may be effected.

(g) *Some scientific and technical aspects.* Many of the provisions of the draft convention will depend for their effective application on scientific and technical capabilities in the marine sector and on international co-operation to develop and improve the capabilities of the developing countries. Some provisions, such as those dealing with the preparation of charts, require specific technical capabilities. In view of the particular importance of hydrographic surveying and nautical charting to the implementation of the convention, some comments have been prepared, with assistance from experts, on the technical problems associated with baselines, delimitation, etc.

## 1. Legislation and regulation

### 1. Establishment of sovereignty or jurisdiction

(a) Establishment of the breadth of the territorial sea (arts. 3, 48) (art. 121 ??); contiguous zone (art. 33); exclusive economic zone (arts. 48, 57); and continental shelf (arts. 48, 76);

(b) Delineation of archipelagic waters (arts. 47, 49); and internal waters (arts. 8, 50).

### 2. Territorial sea

(a) Elaboration of "innocent passage" by regulations relating to: safety of navigation and regulation of marine traffic; protection of aids, facilities, installations, cables and pipelines; fishing activities; prevention of infringement of fisheries, customs, fiscal, immigration, sanitary regulations; preservation of the marine environment; marine scientific research and hydrographic surveys (art. 21);

(b) (Obligations regarding innocent passage (art. 24) ???;

(c) Measures regarding access to port facilities or internal waters; and suspension of innocent passage (art. 25);

(d) Establishment of traffic separation schemes (art. 22);

(e) Criminal and civil jurisdiction regarding foreign ships (arts. 27, 28);

(f) Customs, fiscal, immigration, sanitary regulations (art. 33);

(g) See item 10 below for duties of flag State;

(h) For environmental measures applicable to territorial sea, see arts. 208, 210, 211, 212, 216, 220, 222;

(i) Regulations regarding marine scientific research (art. 245).

### 3. Contiguous zone

Regulations for prevention and punishment of infringement of customs, fiscal, immigration or sanitary regulations within its territory or territorial sea (art. 33).

4. *Straits used for international navigation* (account being taken of art. 36)

(a) Designation of sea lanes and provision of traffic separation schemes; co-operation for this purpose with other States bordering the strait (art. 41);



(b) Elaboration of "transit passage" by regulations relating to: safety of navigation and regulation of marine traffic; prevention of discharges (giving effect to applicable international regulations); regulation of fishing; loading or unloading of any commodity, currency or person in contravention of regulations (art. 42);

(c) Agreements providing for co-operation regarding navigational aids and other improvements to navigation; and prevention of pollution from ships (art. 43);

(d) Appropriate enforcement measures regarding major pollution damage (art. 233);

(e) Application of regulations regarding innocent passage in certain geographic circumstances (art. 21 (excluding suspension of passage), art. 45).

#### 5. *Archipelagic waters*

(a) Elaboration of innocent passage in archipelagic waters (arts. 19, 21, 52);

(b) Suspension of innocent passage in specified areas (art. 52);

(c) Designation of sea lanes, traffic separation schemes and air routes; regulations regarding archipelagic sea lane passage, i.e. regulations on safety, pollution, fishing, marine scientific research, etc., comparable to those elaborating transit passage through straits (arts. 53, 54);

(d) Recognition and regulation of traditional rights and existing arrangements (art. 51).

#### 6. *The exclusive economic zone*

(a) Regulations regarding exploration, exploitation, conservation and management of natural resources and other economic activities, such as production of energy; establishment and use of artificial islands, installations and structures; marine scientific research; protection and preservation of the marine environment (art. 56);

(b) Obligations with respect to navigation, overflight, cables and pipelines, etc. (art. 58);

(c) Regulations ensuring compliance with laws and regulations of coastal States (art. 58);

(d) With respect to jurisdiction over artificial islands, etc.: adoption of customs, fiscal, health, safety and immigration regulations; establishment of safety zones and appropriate measures for navigational safety therein; constraints dependent on any needs of international navigation (arts. 60, 260);

(e) See also item 7 below, inasmuch as the rights of the coastal State with respect to sea-bed and subsoil are exercised in accordance with Part VI.

#### 7. *Sovereign rights over living resources of the exclusive economic zone*

(a) Elaboration of concept of optimum utilization: conservation regulations and regulation of nationals of other States fishing in the exclusive economic zone; licensing and other forms of remuneration; determination of species, quantities, age and size of catch; regulation of equipment and areas and seasons for fishing; specification of information required of fishing vessels; requirements for conduct of research programmes; requirements for catch to be landed at national ports; joint ventures or co-operative arrangements; requirements for training, transfer of technology and placement of observers and trainees on board vessels; enforcement procedures (art. 62);

(b) Related environmental protection measures (e.g. arts. 193, 221);

(c) Conservation measures for marine mammals, anadromous stocks and catadromous species; regulations consequent upon agreements with other States (arts. 65, 66, 67, 120);

(d) Procedural requirements and constraints concerning enforcement of fisheries legislation (prompt release of vessels on posting of bond, etc.) (art. 73);

(e) Co-operative measures regarding straddling stocks and highly migratory species (arts. 63, 64, annex I);

(f) Regulations ensuring compliance of its nationals with coastal State regulations (art. 62).

#### 8. *The continental shelf (including the sea-bed and subsoil of the exclusive economic zone)*

(a) Regulations regarding exploration and exploitation of minerals, other non-living resources and sedentary species; construction, operation and use of artificial islands, installations and structures and establishment of safety zones; pollution from pipelines, sea-bed activities, dumping, artificial islands, etc.; course of pipelines; cables and pipelines entering territorial sea and those connected with resource activities or installations, etc.; customs and other regulations on installations, etc.; drilling on the shelf (arts. 77, 79, 80, 81, 194, 208, 216, 260);

(b) Regulations regarding express consent for exploration and exploitation of natural resources beyond 200 miles by foreign persons (art. 77);

(c) Regulations regarding designation of specific areas beyond 200 miles undergoing exploitation or detailed exploration (art. 246);

(d) Constraints on legislation on account of the legal status of superjacent waters and air space and rights and freedoms of other States (arts. 78, 79).

#### 9. *High seas (and the exclusive economic zone since arts. 88 to 115 could be applicable (see art. 58))*

(a) Legislation supplementing or amending existing admiralty or maritime laws as necessary, including prohibition of transport of slaves, piracy, illicit traffic in narcotic drugs and psychotropic substances, and unauthorized broadcasts (arts. 91, 92, 97, 98, 100, 102, 104, 105, 108, 109, 110);

(b) Regulations regarding damage to submarine pipelines or cables, including indemnity (arts. 113, 114, 115);

(c) Regulation of nationals and co-operation regarding conservation of living resources of high seas and adoption of conservation measures (arts. 117-120);

(d) See also item 10 below.

#### 10. *Vessels and aircraft flying its flag or of its registry*

(a) Establishment of conditions for granting of nationality to ships; requirements for documentation regarding nationality and flying the flag (arts. 20, 91, 92, 104);

(b) Regulation ensuring effective exercise of jurisdiction and control relating to administration, technical and social matters over ships and seamen, including penal jurisdiction (arts. 92, 94, 97);

(c) Establishment of a register of shipping (art. 94);

(d) Regulations to ensure safety at sea and safety of navigation, including use of signals, maintenance of communications, prevention of collisions, navigation in the vicinity of artificial islands, installations, structures and safety zones, ice-covered areas; regulations giving effect to and ensuring compliance with international regulations and standards relating to the above, including Rules of the Air and International Regulations for Preventing Collisions at Sea; sanctions for non-compliance (arts. 21, 39, 43, 60, 80, 94, 194, 219, 234, 260);

(e) Regulations pertaining to the design, construction and seaworthiness of ships, equipment, certification and documentation, operation and the carrying of charts, etc., including specifications relating to pollution; sanctions for non-compliance (arts. 21, 94, 194, 217, 219, 222);

(f) Regulations requiring periodic inspection and allowing for investigation in cases of alleged violations, particularly as regards pollution matters, or suspected malfeasance (arts. 94, 110, 217, 218);

(g) Regulations regarding manning of vessels, qualifications of master, officers and crew, and penal and disciplinary matters (arts. 92, 94, 97, 102, 211, 217);

(h) Regulations pertaining to safety of life at sea and the duty to render assistance (arts. 18, 39, 94, 98);

(i) Regulations to ensure compliance with laws and regulations of coastal States or archipelagic States relating to the territorial sea or archipelagic waters, including sanctions for non-compliance (arts. 21, 25, 27, 30, 31, 52) (particular reference is made to tankers, nuclear-powered ships, and ships carrying nuclear and other dangerous substances (art. 22));

(j) Regulations to ensure compliance with laws and regulations relating to the exclusive economic zone, including safety zones (arts. 58, 60);

(k) Regulations to ensure compliance with laws and regulations of straits States or archipelagic States, including sea lanes and traffic separation schemes and sanctions for non-compliance (arts. 41, 42, 53, 54);

(l) Regulations to ensure that ships and aircraft in transit passage or archipelagic sea lanes passage comply with the duty to proceed expeditiously and to refrain from threat or use of force or from other activities not normally incident to such passage (arts. 39, 53);

(m) Regulations prohibiting marine scientific research without prior coastal State authorization during transit passage (art. 40);

(n) Regulations requiring nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances to carry special documents and observe special precautionary measures established by international agreement (art. 23);

(o) Regulations for the prevention, reduction and control of pollution from vessels and requiring co-operation to promote pollution control (arts. 39, 42, 43, 54, 194);

(p) Regulations pertaining to notification regarding pollution by vessels and measures for dealing with pollution emergencies (arts. 194, 197);

(q) Regulations giving effect to and ensuring compliance with international rules and standards relating to pollution, including routing systems (art. 211);

(r) Regulations pertaining to notification regarding pollution or discharges; notification of itinerary; vessel identification and provision of other information in cases of suspected pollution violations (arts. 211, 220);

(s) Regulations for enforcement of international rules and standards and national laws and regulations relating to pollution, including pollution by dumping and from or through the atmosphere; inspection, certification and investigation, and sanctions for non-compliance (arts. 216, 217, 218, 219, 222, 226);

(t) Regulations regarding the institution of proceedings relating to pollution violations and transfer of information regarding such violations or proceedings (arts. 217, 218, 228);

(u) Liability, penalties and compensation regarding pollution violations (arts. 228, 230, 235).

#### 11. *Right of access and freedom of transit*

(a) Regulations providing access to and from the sea for land-locked States (arts. 125, 126);

(b) Establishment of free zones and customs facilities (art. 128);

(c) Other aspects of bilateral, subregional or regional agreements (arts. 124, 125).

#### 12. *Protection and preservation of the marine environment*

(a) Establishment of measures reflecting general obligations to prevent, reduce and control marine pollution (defined in art. 1) from any source and to promote harmonization of environmental policies; to ensure that activities under its jurisdiction or control do not cause damage to other States and their environment and that pollution from such activities or incidents does not spread beyond areas where it exercises sovereign rights; to protect rare or fragile ecosystems and the habitat of endangered species; to prevent transfer of damage or hazards, or transformation of one type of pollution to another; to prevent pollution from the use of technologies or introduction of alien species (arts. 194, 195, 196);

(b) Elaboration of measures to deal with the different sources of marine pollution (requirements as regards general conformity with internationally established rules, etc., are indicated in the various articles):

(i) Regulations regarding release of toxic, harmful or noxious substances from land-based sources (rivers, estuaries, pipelines and outfall structures), from or through the atmosphere, and by dumping (as defined in art. 1):

—Dumping within territorial sea, exclusive economic zone or onto continental shelf subject to express prior approval of coastal State. Enforcement by coastal State, by flag State, and by any State with regard to acts of loading wastes at offshore terminals, for example (arts. 210, 216);

—Enforcement with respect to pollution from or through the atmosphere by flag States and by States with respect to their air space (arts. 212, 222);

(ii) Regulations regarding pollution from sea-bed activities and installations and devices subject to or under its jurisdiction, particularly regarding accident prevention, emergency measures, operational safety, and regulation of design, construction, equipment, operation and manning of installations and devices (arts. 194, 208, 214);

(iii) Regulations regarding pollution from vessels, particularly regarding accident prevention, emergency measures, operational safety, prevention of discharges, and regulation of vessel design, construction, equipment, operation and manning. Adoption of routing systems. (See item 10 above for flag State regulations.) Constraints on requirements as concern the design, etc., of vessels (arts. 21, 211). Measures relating to seaworthiness of vessels (art. 219). Measures relating to maritime casualties (beyond the territorial sea) (art. 221);

(c) Additional or special regulations (any requirement as regards general conformity with internationally established rules is indicated in the various articles):

(i) Regulations pertaining to foreign vessels entering internal waters, ports or offshore terminals; and enforcement by such port States. Proceedings may be instituted in respect of discharges in violation of applicable international rules, etc. Compliance with requests for investigations from a flag State or from an affected State (arts. 211, 218);

(ii) Regulations pertaining to foreign vessels navigating its territorial sea including vessels exercising right of innocent passage; enforcement procedures; institution of proceedings (arts. 21, 23, 211, 220);

(iii) Regulations, for purposes of enforcement in the exclusive economic zone, giving effect to international rules, etc.; enforcement procedures; institution of proceedings (arts. 211, 220);

(iv) Regulations pertaining to transit passage through straits and to archipelagic sea lanes passage; enforce-

- ment measures with respect to major damage in straits (arts. 42, 54, 233);
- (v) Measures pertaining to exploration and exploitation of sea-bed resource deposits lying across the limits of national jurisdiction (art. 142);
  - (vi) Regulations pertaining to vessels navigating a special area of the exclusive economic zone and implementing international rules, etc., applicable to such special areas. Additional rules relating to discharges or navigational practices. Enforcement (arts. 211, 220);
  - (vii) With respect to ice-covered areas in the exclusive economic zone, regulation of pollution from vessels subject to constraints concerning navigation (art. 234);
- (d) Co-operation in enclosed and semi-enclosed seas, regulations consequent upon co-ordination (art. 123);
  - (e) Responsibility and liability, recourse for prompt and adequate compensation by persons under its jurisdiction (art. 235);
  - (f) Additional or amended regulations with respect to enforcement against foreign vessels (see item 10 above for flag State enforcement):
    - (i) Measures facilitating proceedings (art. 223);
    - (ii) Procedures for investigation, bonding or other financial security; release of vessels (art. 226);
    - (iii) Procedures enabling suspension of proceedings on request of flag State and termination (art. 228);
    - (iv) Establishment of monetary penalties (art. 230);
    - (v) Notification to flag States (art. 231);
    - (vi) Recourse through national courts in respect of damage or loss (art. 232).
13. *The conduct of marine scientific research*
- (a) Compliance with environmental regulations (art. 240);
  - (b) Regulations regarding use of appropriate scientific methods and means (art. 240);
  - (c) Establishment of exclusive rights regarding marine scientific research in territorial sea and conditions for such research (arts. 21, 245);
  - (d) Authorization with respect to research in straits and archipelagic sea lanes (arts. 40, 45, 54);
  - (e) Regulation and authorization of marine scientific research in exclusive economic zone and on the continental shelf; rules and procedures concerning granting of consent (art. 246); suspension or cessation of marine scientific research activities (art. 253);
  - (f) Promotion and facilitation of marine scientific research beyond the territorial sea; facilitation of access to harbours; assistance to research vessels (art. 255);
  - (g) Bilateral and multilateral agreements creating favourable conditions for marine scientific research (art. 243);
  - (h) Responsibility and liability for damage (art. 263);
  - (i) Related regulations requiring, authorizing and controlling specified fisheries research programmes including reporting of associated scientific data; training and other requirements enhancing its capacity to undertake fisheries research.
  - (j) Related regulations concerning assessment of potential polluting effects of planned activities (arts. 205, 206).
14. *Archaeological objects*
- Control of traffic in objects found in contiguous zone (on the assumption that their removal infringes regulations within the territory or territorial sea) (art. 303).
15. *Responsibility and liability*
- Regulations pursuant to such articles as 42, 111, 113 ?, 114, 115, 139, 228 ?, 230 ?, 235, 263, 304.
16. *Membership in the International Sea-Bed Authority and participation in activities in the Area* (arts. 139, 182, 183, 209)

## 2. *Regulation by activity: some examples of listing by sectors*

1. *Submarine cables and pipelines*. See articles dealing with:
- (a) The territorial sea (arts. 2, 19, 21);
  - (b) Archipelagic waters (art. 51);
  - (c) Exclusive economic zone (art. 58);
  - (d) Continental shelf (art. 79);
  - (e) High seas (arts. 87, 112 (and 79), 113, 114, 115) (arts. 113-115, according to art. 58, could also be applicable to exclusive economic zone).
2. *Aviation and communications*. See articles dealing with:
- (a) Air space over territorial sea (arts. 2, 34);
  - (b) Air space over archipelagic waters (art. 49);
  - (c) Systems of communication of the coastal State (art. 19);
  - (d) Aircraft in transit passage through straits (arts. 38, 39, 42);
  - (e) Archipelagic air routes (arts. 53, 54);
  - (f) Exclusive economic zone (art. 58);
  - (g) High seas (arts. 87, 101-107);
  - (h) Unauthorized broadcasting (art. 109);
  - (i) Hot pursuit (art. 111);
  - (j) Pollution from or through the atmosphere (arts. 194, 212, 222);
  - (k) Dumping (arts. 1, 194, 210, 216);
  - (l) Sovereign immunity with respect to enforcement of environmental regulations (art. 236).
3. *Customs, fiscal, immigration or sanitary regulations, and suppression of illicit traffic in drugs and psychotropic substances*. See articles dealing with:
- (a) Territorial sea (arts. 2, 19, 21, 26, 27);
  - (b) Contiguous zone (art. 33);
  - (c) Straits (arts. 39, 42);
  - (d) Archipelagic sea lanes (art. 54);
  - (e) Artificial islands, installations and structures (arts. 60, 80);
  - (f) Freedom of transit of land-locked States (arts. 127, 128);
  - (g) High seas (art. 108);
  - (h) Marine pollution, inasmuch as sanitary regulations may be related to measures to prevent, reduce and control pollution from various sources (Part XII, sects. 1, 5 and 6).

## 3. *Publication or notification*

(Note: Requirements as regards deposit with Secretary-General are listed in Part I of the study.)

1. Charts or lists showing baselines and limits derived therefrom, and other delimitation information and data (arts. 16, 33, 47, 48, 50, 75, 76, 84).
2. Publication of rules and regulations pertaining to:
- (a) Territorial sea (arts. 21, 211, 245);
  - (b) Straits (art. 42);
  - (c) Archipelagic waters (art. 54);
  - (d) Conservation and management of living resources (arts. 62, 66 ?, 67 ?);
  - (e) Prevention, reduction and control of marine pollution, particularly additional or special requirements such as for passage through territorial sea, straits, special areas of exclusive economic zone, and ice-covered areas, or for entry to ports and offshore terminals (arts. 21, 42, 211, 234);

- (f) Conduct of marine scientific research (art. 246).
3. Publication of charts showing sea lanes, traffic separation schemes (and air routes, where applicable) in:
- (a) Territorial sea (art. 22);
  - (b) Straits (art. 41);
  - (c) Archipelagic waters (art. 53).
4. Publication of charts (or other notification) of safety zones; and limits of any special exclusive economic zone area (arts. 60, 80, 260, 211).
5. Publication of dangers to navigation (and aviation, where applicable):
- (a) Territorial sea (art. 24);
  - (b) Straits (art. 44);
  - (c) Archipelagic waters (art. 54).
6. Publication of temporary suspension of innocent passage (arts. 25, 52).
7. Notifications concerning:
- (a) Cable location and repair activities (to archipelagic States) (art. 51);
  - (b) Construction of artificial islands, installations and structures (arts. 60, 80, 260 ?);
  - (c) Continental shelf areas undergoing exploitation or detailed exploration (art. 246);
  - (d) Suspension or cessation of marine scientific research (art. 253);
  - (e) Proposed marine scientific research projects (to landlocked and geographically disadvantaged States (art. 254);
  - (f) Maritime casualties (arts. 94, 211, 221);
  - (g) Imminent or actual damage to marine environment (to affected States) (art. 198).
8. Regular contribution and exchange of information:
- (a) Information, statistics and data relating to conservation of living resources (arts. 61, 119, 123, 63 ?, 120 ?, 64 ?, 65 ?);
  - (b) Maintaining consultations regarding conservation requirements and needs on anadromous stocks (art. 66);
  - (c) Information and data regarding pollution of the marine environment (arts. 200, 123);
  - (d) Information concerning safety and health of persons (art. 242).
9. Publication of environmental reports on:
- (a) Results of surveillance activities (arts. 204, 205);
  - (b) Possible effects of planned activities (art. 206);
  - (c) Proposed major programmes including objectives; results of marine scientific research (art. 244).
10. Reports giving results of marine scientific research conducted in accordance with art. 249.
11. Transmittal of information among States concerned regarding enforcement, proceedings and penalties (arts. 27, 73, 217, 218, 220, 226, 228, 231).

#### 4. *Surveillance and enforcement*

1. Measures to determine whether or not passage through the territorial sea is innocent (i.e. whether or not the foreign vessel has met the conditions set out in articles 18, 19, 20 and 23, and has complied with the laws and regulations enacted by the coastal State in accordance with articles 21 and 22); measures necessary to prevent breach of the above (art. 25).
2. Exercise of criminal jurisdiction on board foreign vessels passing through the territorial sea if the crime is one which disturbs the peace or if the consequences of it extend to the coastal State, if the assistance of the coastal State has been requested or is necessary to suppress illicit traffic in narcotic drugs or psychotropic substances; in addition to the above,

measures for the purpose of investigation or arrest of a vessel in the territorial sea after leaving internal waters (art. 27).

3. Exercise of civil jurisdiction in respect of obligations or liabilities assumed or incurred by the vessel in the course of or for the purpose of its voyage through coastal State waters; levy of execution or arrest of vessel in the territorial sea for the purpose of civil proceedings (art. 28).

4. Measures necessary for the prevention and punishment of infringement of customs, fiscal, immigration or sanitary regulations in the contiguous zone, committed while within the territory or territorial sea (art. 33).

5. Measures to determine whether or not passage through straits meets the conditions set out in articles 38 to 41 and 45 and whether the laws and regulations of the straits States enacted in accordance with article 42 have been complied with; measures necessary to prevent breach of the above.

6. Measures to determine whether or not the conditions for passage through archipelagic waters, set out in articles 52 to 54, have been met and whether the laws and regulations of the archipelagic State enacted in accordance with article 54 have been complied with; measures to prevent breach of the above.

7. Enforcement of regulations regarding construction, operation and use of artificial islands, installations and structures in the exclusive economic zone or on the continental shelf; enforcement of customs, fiscal, health, safety and immigration regulations regarding the above (arts. 60, 80).

8. Enforcement of regulations regarding conservation, management and utilization of living resources of the exclusive economic zone, including boarding, detention, inspection, arrest, judicial proceedings or other measures agreed upon by the States concerned (arts. 62, 73).

9. Enforcement of regulations in connection with exploration and exploitation activities being carried out on the continental shelf with the express consent of the coastal State (art. 77).

10. Enforcement of regulations regarding the laying of submarine cables and pipelines entering the territory or territorial sea of the coastal State, constructed or used in connection with exploration or exploitation activities on the continental shelf, or the operation of artificial islands, etc. (arts. 79, 81); surveillance of submarine cables and pipelines under the high seas (arts. 113, 114).

11. Enforcement measures with regard to breach of conditions of nationality of ships (arts. 91, 92, 104, 110).

12. Enforcement of regulations regarding administrative, technical and social matters regarding ships flying its flag, including penal jurisdiction regarding collision (arts. 94, 97).

13. Measures to prevent and punish the transport of slaves including hot pursuit and right of visit when on high seas (arts. 99, 110).

14. Measures to prevent and punish piracy, including hot pursuit, visit and seizure on the high seas, arrest of persons and seizure of property on board, and imposition of penalties (arts. 105, 110).

15. Measures to prevent and punish illicit traffic of narcotic drugs and psychotropic substances, including hot pursuit and right of visit (arts. 27, 108, 110).

16. Measures to suppress unauthorized broadcasting from the high seas, including right of visit, arrest, seizure of broadcasting equipment and civil or criminal jurisdiction (arts. 109, 110).

17. Measures allowing the right of hot pursuit for violations of the laws and regulations of the coastal State, including stop and arrest (art. 111).

18. Enforcement of measures regarding conservation and utilization of living resources of the high seas (art. 117).

19. Measures to monitor activities under its jurisdiction or control to ensure that they are conducted in such a manner as not to cause damage by pollution to other States and their environment or that such pollution does not spread beyond areas in which it exercises sovereign rights, including measures for preventing accidents and dealing with emergencies, and those necessary to protect and preserve rare or fragile ecosystems and the habitat of depleted, threatened or endangered species and other forms of marine life (art. 194).
20. Surveillance of the effects of activities in the marine environment to determine whether such activities are likely to cause pollution, including assessment of potential effects (arts. 204, 206).
21. Enforcement of laws and regulations and measures necessary to implement international rules and standards relating to land-based sources of pollution (art. 213).
22. Enforcement of laws and regulations and measures necessary to implement international rules and standards relating to pollution from sea-bed activities and from artificial islands, installations and structures (arts. 60, 80, 214, 215).
23. Enforcement with regard to acts of loading of wastes or other matter occurring within its territory or at its offshore terminals, including legal proceedings (art. 216).
24. Enforcement by flag States of laws and regulations and international rules and standards for the prevention, reduction and control of pollution, including pollution by dumping; enforcement of requirements in respect of design, construction, equipment and manning of vessels, the carrying of certificates; investigation of alleged violations, institution of legal proceedings, and imposition of penalties (arts. 216, 217).
25. Investigation by port States and institution of legal proceedings in respect of violations of international rules and standards relating to pollution which occur outside the jurisdiction of any State; investigation and institution of proceedings in respect of violations occurring elsewhere when requested to do so by another State concerned (art. 218).
26. Administrative measures to prevent non-seaworthy vessels from sailing when such vessels are within its ports or at its offshore terminals (art. 219).
27. Enforcement by coastal State of its laws and regulations and international rules and standards for the prevention, reduction and control of pollution in areas within its jurisdiction, including pollution by dumping; physical inspection of vessels regarding alleged violations, detention of vessels, institution of proceedings, requirements for vessel identification and provision of information (arts. 216, 220).
28. Measures proportionate to threatened or actual damage to protect the coastline or related interests, including fishing, from damage following upon maritime casualty (art. 221).
29. Enforcement of laws and regulations and international rules and standards regarding pollution from or through the atmosphere (arts. 212, 222).
30. Measures to ensure that enforcement is only carried out by authorized vessels, and that it is carried out in such a way as not to endanger the safety of navigation or otherwise create any hazard to a vessel or bring it to an unsafe port or anchorage, or expose the marine environment to an unreasonable risk, or delay the vessel longer than essential (arts. 224-226).
31. Measures to ensure that enforcement with regard to pollution violations is limited to examination of documents in the first instance and inspection of the vessel only where there appears to be a discrepancy or the information contained in the documents is not sufficient for ascertaining that the violation has been committed by the vessel; measures for prompt release of vessel upon posting of bond or other financial security, or for requiring vessel to proceed to repair yard when violation has been ascertained; provision for notification of flag State concerned (art. 226).
32. Measures for suspension of proceedings in respect of pollution violations where such have been taken up by the flag State; measures for release of bond or other financial security in respect of the latter case; statute of limitations in respect of institution of proceedings and bar of jurisdiction in cases where proceedings have been instituted in another State (art. 228).
33. Exercise of civil jurisdiction in respect of claims for loss or damage resulting from pollution (art. 229).
34. Measures for imposition of monetary penalties only in respect of pollution violations, except in cases of wilful and serious acts of pollution in the territorial sea; measures to ensure that the rights of the accused shall be observed during all such proceedings (arts. 228, 230).
35. Measures to ensure that all enforcement activities are lawful and are in proportion to those reasonably required in the circumstances; liability where such is not the case (art. 232).
36. Enforcement measures by straits States regarding laws and regulations regarding safety of navigation and regulation of marine traffic, and prevention, reduction and control of pollution, violation of which causes or threatens major damage to the marine environment of the straits (art. 233).
37. Measures to ensure compliance with and enforcement of regulations regarding marine scientific research conducted in the territorial sea or the exclusive economic zone (art. 246).
38. Measures for the suspension or cessation of marine scientific research projects in the exclusive economic zone or on the continental shelf when the research activities are not being conducted in accordance with the information supplied or when the researcher fails to comply with conditions regarding the rights of the coastal State with respect to the project, or has failed to provide certain information regarding the project; measures to determine whether the project is being carried out in accordance with requirements (art. 253).
39. Measures to ensure that the decisions of a court or tribunal competent under Part XV are complied with (art. 296; annex VI, art. 34; annex VII, art. 11; annex VIII, art. 4).
40. Measures to ensure enforcement of decisions of the Sea-bed Disputes Chamber in the same manner as judgements or orders of the highest court of the State in which enforcement is sought (annex VI, art. 40).

##### 5. *Administrative and organizational requirements*

###### 1. *Arrangements for the establishment of limits, etc.*

Conduct of surveys, preparation of requisite charts and other activities associated with establishment of baselines, delineation of territorial sea, contiguous zone, exclusive economic zone and continental shelf, including submission of charts, lists of geographical co-ordinates, and other information such as the geodetic datum used, to the Secretary-General of the United Nations (arts 5-7, 9-11, 13-16, 33, 47, 75, 76, 84 and art. 7 of annex II).

###### 2. *Arrangements for the establishment of sea lanes and air routes, traffic separation schemes, safety zones and routing systems*

(a) Study and activities associated with their establishment; reference of proposals to the competent international organization; provisions for giving notice of establishment and charting locations; participation in development of relevant international standards and recommended practices; co-operation with other States regarding straits (arts. 22, 41, 43, 53, 60, 80, 211, 260);

(b) Similar considerations with respect to navigational hazards (arts. 24, 44, 54) and provision of identification mark-

ings and warning signals for installations and equipment (arts. 60, 80, 262).

### 3. *Maritime administration*

(a) Administrative implications of new or amended maritime laws and regulations, including provision of a search and rescue service and regional arrangements in this connection (arts. 94, 98-109);

(b) Administrative aspects of levying charges on foreign ships (art. 26);

(c) Criminal and civil jurisdiction (arts. 27, 28);

(d) Competence regarding hot pursuit (art. 111);

(e) Administrative implications with respect to fishing vessels;

(f) Other considerations pertaining to existing laws of salvage, rules of admiralty, labour conditions and training, etc.

(g) Vessels which on account of their small size are not the subject of international regulations (art. 94) may require administrative action on the part of coastal States and their port authorities, and by the State of their registry, if any.

4. *Administrative considerations in extending range of customs, fiscal, immigration and sanitary regulations (arts. 21, 33, 42, 60, 80)*

5. *Administration regarding access to and from the sea and freedom of transit*

(a) Arrangements for negotiating and administering agreements (art. 125);

(b) Arrangements regarding inclusion of pipelines and gas lines, etc., as "means of transport" (art. 124);

(c) Arrangements regarding customs, free zones and other taxation aspects (arts. 127, 128);

(d) Provision of facilities and co-operation on construction projects and other transportation improvements (arts. 129, 130).

### 6. *Administrative implications for land-locked States*

(a) Arrangements regarding transit and access (arts. 125-132);

(b) Negotiation and administration of fisheries agreements (art. 69);

(c) Arrangements regarding participation in research activities and handling of information and data (art. 254).

7. *General administrative implications of the establishment of the exclusive economic zone*

(a) Establishment of comprehensive policy, administrative framework, allocation of functions and institution of co-ordinative mechanisms, as considered appropriate, to encompass the range of functions deriving from its duties, sovereign rights and jurisdiction, i.e., all the functions required to implement and enforce its laws, regulations and other measures regarding exploration, exploitation, conservation and management of natural resources and other economic activities such as production of energy; construction, operation and use of artificial islands and other offshore installations; marine scientific research; preservation of the marine environment; safety of shipping and navigation; establishment and maintenance of submarine cables and pipelines; prevention of infringement of customs and health regulations; etc. (a broadly conceived administrative framework might best take account of problems in competitive use);

(b) Elaboration of administrative machinery for the conservation and management of living resources, including surveillance and enforcement and taking account of sub-regional, regional and other agreements;

(c) Elaboration of administrative machinery for the protection and preservation of the marine environment, including monitoring and assessment, surveillance and enforcement and

taking account of specific obligations assumed under existing and new agreements as indicated in article 237;

(d) Elaboration of other distinct administrative mechanisms as required, for example, maritime administration of port States;

(e) Elaboration of administrative framework, as desired, and allocation of functions in order to deal both with the exclusive economic zone and the continental shelf (arts. 56, 77-81). This would include, where applicable, arrangements with respect to the shelf beyond 200 miles:

(i) Arrangements for payments or contributions regarding exploitation of non-living resources beyond 200 miles (art. 82);

(ii) Preparation of submissions to the Commission on the Limits of the Continental Shelf; arrangements in connection with any requests for scientific and technical advice regarding its delimitation; official certification of charts and maps produced (art. 76 and annex II);

(iii) Arrangements regarding consent for resource development by others (art. 77);

(iv) Arrangements regarding designation of areas in connection with marine scientific research (art. 246);

(v) Similar administrative considerations regarding the monitoring of activities in the Area where sea-bed resource deposits lie across the limits of national jurisdiction and the determination of consent for such activities taking account of pollution aspects for example (art. 142).

### 8. *Fisheries administration*

(a) Adoption of a co-ordinated policy for exploring, exploiting, conserving and managing the living resources of its internal waters, territorial sea, exclusive economic zone and continental shelf and for its fisheries activities in other areas, and implementation through appropriate mechanisms. This is a complex task in most circumstances, since it involves a number of disciplines and consultations among several government agencies, and is dependent on the ability to secure compliance with regulatory controls through a workable surveillance and enforcement system. Fisheries administration would, as appropriate, take account of the need for:

(i) Arrangements for determining the allowable catch for its exclusive economic zone and capacity to harvest, including methods and procedures for assessing all relevant factors and interests involved; and for utilizing the best available scientific evidence and exchanging information, statistics and data with international organizations and other States (arts. 61, 62);

(ii) Arrangements for determining fisheries research needs and regulating conduct of research, taking account of other research needs of a complementary nature (arts. 62, 246);

(iii) Preparation and administration of bilateral, sub-regional and regional agreements and arrangements (arts. 51, 62, 69, 70, 71);

(iv) Arrangements for a surveillance system both to prevent fishing activities by non-licensed vessels and to maintain compliance with regulatory controls and with specific conditions applicable to vessels, foreign and domestic; procedures for consulting, informing and decision-taking involving government departments having responsibilities affecting or affected by surveillance, control and enforcement activities; co-ordination to ensure consistency in instructions for surveillance operations; arrangements for onshore enforcement; reporting and recording of activities observed and inspections carried out and ensuring access to that information for policy-advising,

administrative and operational purposes; use of navy, aircraft and other government craft (and civilian-manned vessels where feasible); details of co-ordination where responsibilities for unified operations are not entrusted to a single department;

- (v) Arrangements for co-ordinative or co-operative activities with other States regarding shared stocks, straddling stocks, highly migratory species, marine mammals, anadromous stocks and catadromous species, as necessary (arts. 63, 64, 65 and 120, 66 and 67);
- (vi) Arrangements consequent upon agreements regarding management and for enforcement (arts. 66, 67);
- (vii) Arrangements for co-ordination in enclosed and semi-enclosed seas (art. 123);
- (viii) Additional measures as required in respect of high seas fisheries activities and co-operation on conservation and management (arts. 116-120);
- (ix) Co-ordinative arrangements regarding participation in and representation at various international and regional programmes and meetings concerning fisheries and the scientific aspects of living resources (as indicated by arts. 61, 62, 63, 64, 65, 66 and 120);

(b) Arrangements of land-locked States and States with special geographical circumstances to negotiate and administer agreements with neighbouring coastal States; arrangements for technical and financial assistance from other States or international organizations (arts. 69, 70, 72);

(c) Administrative aspects of ensuring compliance of its nationals with the conservation measures and regulations of other States (art. 62).

#### 9. *Environmental administration*

Adoption of policy, and its implementation through appropriate mechanisms, may entail considerations of its relationship both to more general environmental policies outside the ambit of the convention (e.g., dumping at sea may be viewed as one aspect of a general policy of waste management), and to other aspects of marine policy-making (e.g., development of fisheries and other ocean resources and uses). Administrative mechanisms may be expected to vary according to the source of pollution being dealt with, although important functions associated with the monitoring and assessment of the risks and effects of marine pollution and of activities likely to cause pollution may depend on close co-operation and co-ordination among many branches of government. Also, the wide range of scientific and technical support needed to identify research needs, study questions of giving effect to international rules, etc., or formulating rules with similar effect, for example, will have important administrative implications. In the case of "vessel-source pollution", administrative mechanisms may depend essentially on whether policies are adopted from the standpoint of a coastal State with major port facilities or of one without them, of a coastal State with port facilities also used by neighbouring States, of a State with a merchant marine or important fishing fleets or one without them, of an archipelagic State, of a State bordering a strait, of a State designating a special area within its exclusive economic zone, or of a State co-ordinating its policies at an appropriate regional level. (For example, a State with a significant merchant marine is more likely to approach pollution prevention as a basic aspect of maritime safety with consequent emphasis on the adoption and enforcement of safety standards and navigational rules, and on the competence of sea-going personnel.)

Environmental administration may encompass, as appropriate:

(a) Arrangements for participation in international organizations and conferences establishing or re-examining interna-

tional rules and standards, etc., and developing appropriate scientific criteria in this connection; formulating programmes of studies, research, education and training, information and data exchange, monitoring; and co-ordinating or harmonizing policies at appropriate regional levels. Account would have to be taken of participation also in conferences on safety of maritime operations, training and competence of crews, etc., and of needs for consultations with other States (arts. 194, 197, 200, 201, 204, 207, 208, 210, 211, 212);

(b) Arrangements in connection with co-ordination in enclosed or semi-enclosed seas (art. 123); other arrangements associated with harmonization of policies, particularly at appropriate regional levels (arts. 194, 207, 208);

(c) Arrangements with other States regarding pollution from ships in straits (art. 43);

(d) Participation in programmes of scientific and technical assistance to developing States and utilization of results. This requires assessments of available manpower and associated training needs; of the capabilities of existing infrastructure for research, education and training, information and data exchange and monitoring; and of equipment needs (art. 202);

(e) Arrangements for making observations, measurements, evaluations and analyses of risks or effects of pollution and preparing reports in this connection; assessing planned activities under national jurisdiction in terms of potential environmental effects, preparing and communicating reports thereon and requesting assistance in preparation of environmental assessments (arts. 202, 204-206);

(f) Arrangements to provide for such co-ordination as needed between programmes and projects on marine pollution and those concerning marine sciences and fisheries;

(g) Arrangements for response to pollution incidents, particularly with respect to joint development of contingency plans; international assistance to minimize effects of major incidents; arrangements for providing prompt notification in cases of pollution or incidents involving discharges; measures to deal with emergencies created by maritime casualties (arts. 198, 199, 202, 211, 221);

(h) Specific arrangements to deal with dumping, including designation of the competent authorities, issuance of permits, co-ordination with other waste management authorities and consultations with other States (art. 210);

(i) As a port State, administration of particular requirements established for entry of foreign vessels into ports, internal waters or offshore terminals; prior evaluation of need for their establishment and of ability to implement; consultations with other port States on harmonization of policies and establishment of co-operative arrangements; communications to the competent international organization and publicity. (Account would need to be taken of other laws and regulations applying to ships navigating the territorial sea, straits, the exclusive economic zone and any specially designated areas of the exclusive economic zone, and to ships flying its flag or of its registry.) Arrangements for investigation and institution of proceedings against vessels in respect of alleged discharges and violation of international rules, etc., outside its internal waters, territorial sea or exclusive economic zone; similar action at request of flag State or an affected State; transmittal of record of investigation to requesting State or transferral of evidence and records and any bonds posted to that State on suspension of proceedings (arts. 218, 228);

(j) Administration of special areas of the exclusive economic zone: prior study of its oceanographical and ecological conditions, questions of utilization and protection of its resources, and of traffic conditions; consultations with other States through the competent international organization regarding establishment of special mandatory measures; submission of evidence in support of measures including information on reception facilities to the competent international

organization; publication of limits of area and measures to be applied (taking account of time-limits specified); participation in activities developing international rules and standards or navigational practices for such special areas; enforcement (arts. 211, 220, 228);

(k) Administrative implications of adopting environmental laws with respect to ice-covered areas of the exclusive economic zone, including collection and analysis of scientific information and study of navigational requirements (art. 234);

(l) Administrative measures regarding seaworthiness of vessels: ascertaining that a vessel is in violation of applicable international rules; retention in port or at offshore terminal; ensuring rectification of causes of violation (art. 219);

(m) Administrative measures regarding violations of rules applicable to the territorial sea, straits, exclusive economic zone or special area of the exclusive economic zone. These might include, depending on the violation and the area to which the rule in question applies: ascertaining identity, registry and itinerary of vessel; conducting on-board inspection and other investigations associated with institution of proceedings in respect of the violation; detaining and releasing vessels; securing bond or other financial security; imposing monetary penalties. Such measures would need to take account of safeguards on exercise of enforcement powers, e.g., ensuring that proceedings are facilitated, that vessels are not delayed unduly, that flag States are promptly notified of enforcement actions, that proceedings are suspended when corresponding charges are brought by the flag State, that monetary penalties are appropriately applied, that recourse for liability is allowed for damage or loss arising from enforcement action, etc. (arts. 220, 223-233);

(n) Administrative measures to ensure prompt and adequate compensation for pollution damage; co-operation in implementation of existing international laws, further development of international law, and development of criteria and procedures with respect to compulsory insurance or compensation funds, for example (art. 235).

#### 10. *Marine scientific research and development of associated technology*

(a) Establishment of an administrative framework to deal with marine scientific research activities and to develop marine scientific capabilities. This denotes in particular:

- (i) The development of adequate arrangements to co-ordinate programmes and projects, particularly those having a complementary nature. Arrangements might involve all the various entities conducting or sponsoring research, whether directed toward environmental protection, provision of meteorological services, utilization and protection of living resources and other offshore resources, or to other marine uses. Such co-ordination would serve the purposes of reviewing research needs and establishing priorities, and ensuring compliance of marine scientific research activities with environmental, navigational and other rules;
- (ii) An examination of the interests and capabilities (qualified personnel, level of funding, facilities and equipment, etc.) of institutions and sectors concerned, taking into account the establishment or development of a national marine scientific and technical centre (art. 275);
- (iii) Establishment of priorities and formulation of programmes and specific projects, taking account, *inter alia*, of opportunities provided by international programmes designed to strengthen the marine scientific capabilities of developing countries;
- (iv) Examination of needs associated with participation in the development and execution of international, regional and subregional programmes of research,

education and training, data and information exchange;

- (v) Co-operation as regards the creation of favourable conditions for the conduct of marine scientific research (arts. 240, 243, 244, 247, 266, 268, 269, 270).

(b) Arrangements to deal with research projects that another State or an international organization intends to undertake in its exclusive economic zone or on its continental shelf:

- (i) Assessment of suitably qualified personnel for participation in each such project and consequent arrangements;
- (ii) Maintenance of information on such research activities (vessels used, areas studied, institutions involved, deployment and use of installations and equipment, participants, reports) and dissemination of research results nationally and internationally;
- (iii) Establishment of specific arrangements ensuring expeditious consideration of such projects which may require devising methods to review projects in terms of their significance for resource development, taking account of general criteria and guidelines developed pursuant to article 251;
- (iv) Arrangements facilitating marine scientific research, access to harbours and assistance to research vessels (in co-ordination with port authorities);
- (v) Special arrangements associated with the designation of areas on the continental shelf;
- (vi) Procedures in the event that research activities have to be suspended or ceased as provided in article 253;
- (vii) Arrangements with respect to the participation of neighbouring land-locked and geographically disadvantaged States and provision of information and data;
- (viii) Arrangements to deal with disputes, including its requests for expert advice and assistance (arts. 246-255, 264, 265, 289);

(c) Administrative aspects of deployment and use of scientific research installations or equipment including safety zones, identification markings and warning signals (in co-ordination with maritime and aviation authorities) (arts. 258-262);

(d) Administrative arrangements (of a researching State) for preparation and submission of information to the coastal State concerned in compliance with the rules and procedures of that State and with the conditions listed in articles 249 and 254 (arts. 248, 249, 254).

#### 11. *Development and transfer of marine technology*

(a) Arrangements to take account of co-operative activities at all levels, including participation in fora dealing with economic and legal conditions for technical transfer and with policies and methods, or establishing guidelines, criteria and standards, and in programmes established to assist the development of technical capacity in marine science and in marine resource development (arts. 266, 268, 269, 271);

(b) Administrative measures associated with development of infrastructure; manpower development (including education and training and exchange of scientists, technological and other experts); acquisition, evaluation and dissemination of scientific and technical information and data, including information on marketing of technology, contracts and other arrangements; development of appropriate technology, etc. (arts. 268, 269);

(c) Arrangements for establishment or development of national and regional marine science and technology centres, taking account of international programmes of technical co-operation, and of functions to be performed (arts. 275, 276). (The Operational Plan for the Implementation of the Vienna Programme of Action on Science and Technology for Development will provide a useful elaboration of all the various



implications for States seeking to strengthen marine science and technology capabilities.)<sup>57</sup>

#### 12. Administrative aspects of surveillance, control and enforcement

Any agency or department seeking to review operations and services for surveillance, control and enforcement, and to formulate a set of funding, procedural or legislative proposals may need to cover such matters as the following:

(a) Marine safety and aids to navigation: vessel inspection procedures, vessel service systems, navigational aids, recreational boating safety;

(b) Law enforcement and search and rescue: responsibilities regarding fishery regulations and drug law enforcement, adequacy of resources for search and rescue;

(c) Marine environmental protection: enforcement of port safety and tanker safety regulations and of any new requirements relevant to transport or dumping of hazardous substances, traffic questions in congested or sensitive areas;

(d) Management procedures: methods of procuring equipment, developing ability to manufacture equipment, equipment maintenance measures, ability to attract qualified personnel;

(e) Questions of aerial surveillance;

(f) Questions involving marine science activities supported or conducted by the agency or agencies concerned. Such activities may have a bearing on safety of persons, marine environmental protection, commercial vessel safety and recreational boating safety;

(g) Emergency operations affecting life and property at sea;

(h) Prosecution of offenders (according to prevailing legal system);

(i) Questions of training for surveillance, control and enforcement, particularly briefing on background and practical aspects of tasks, working knowledge of relevant legislation, bilateral and other agreements and licensing arrangements in fisheries, competence as regards ship or aircraft operational and safety matters.

#### 13. Administrative framework for activities relating to membership in the International Sea-Bed Authority

(a) Arrangements with respect to entities conducting "activities in the Area" under its sponsorship or authority (arts. 139, 153, 209, 215);

(b) Representation at meetings of the Assembly and other organs of the Authority and participation in its work, including review activities (arts. 154, 155, 159, 164, 165). (Taking account particularly of the requirements of the Commissions and the staff of the Authority, advance action may be contemplated to train national personnel in scientific, technical, economic and legal fields relevant to sea-bed mineral resource development, drawing on existing and future international programmes of scientific and technical assistance for this purpose.);

(c) Co-operative activities for development of marine scientific research in the Area and participation in programmes; arrangements associated with promoting transfer of technology and scientific knowledge relating to activities in the Area (consequent upon measures taken by the Authority) (arts. 143, 144, 256).

#### 6. Co-operation directly with other States or through international organizations

##### 1. Co-operation regarding safety of navigation and regulation of maritime and air traffic

(a) Co-operation to formulate, elaborate or re-examine international rules, standards, practices and procedures, e.g.:

(i) Regulations or recommendations on sea lanes and traffic separation schemes; co-operation for preparation of proposals among straits States (arts. 22, 41, 53);

(ii) Regulations, procedures and practices for safety of life at sea and prevention of collisions (design, construction, equipment and seaworthiness; manning, labour conditions and training of crews; use of signals, maintenance of communications; navigational aids, warning signals on installations, etc.) (arts. 39, 54, 58, 94, 211, 219, 262);

(iii) Standards or recommendations for breadth of safety zones around artificial islands, installations and structures; standards for navigation in their vicinity (arts. 60, 80);

(iv) Regulations, procedures and practices for prevention and control of pollution from vessels (arts. 39, (54), 58, 211);

(v) Regulations regarding discharge of oil, oily wastes and other noxious substances (arts. 42, 54, 58, 208, 211);

(vi) Rules of the air (arts. 39, (54), 58, 212);

(vii) Assignment of radio frequencies (arts. 39, (54), 58);

(b) Co-operation to establish international and other agreements, e.g.:

(i) Measures for nuclear-powered ships and ships carrying nuclear or other dangerous substances (art. 23);

(ii) (Between user States and straits States) establishment and maintenance of necessary navigational and safety aids or other improvements in straits; pollution prevention (arts. 43, 44);

(iii) Establishment, operation and maintenance of search and rescue services (art. 98);

(c) Related forms of co-operation with respect to suppression of piracy, unauthorized broadcasting and illicit traffic in drugs (arts. 100, 108, 109).

##### 2. Co-operation regarding conservation, management and utilization of living resources

(a) Co-operation in fisheries would encompass:

(i) Questions concerning over-exploitation of resources of (exclusive economic zone) (art. 61);

(ii) Recommendations for minimum standards for maximum sustainable yields and on related questions such as environmental factors (exclusive economic zone) (art. 61); (high seas) (art. 119);

(iii) Regular contribution and exchange of information, data and statistics (exclusive economic zone) (art. 61); (high seas) (art. 119);

(iv) Questions concerning the promotion of the objective of optimum utilization (art. 62);

(v) Measures necessary to co-ordinate and ensure conservation and development of shared stocks (exclusive economic zone) (art. 63); co-operation agreements regarding catadromous species (art. 67);

(vi) Measures necessary to conserve stocks (area beyond and adjacent to the exclusive economic zone) (art. 63);

(vii) Conservation and promoting the objective of optimum utilization of highly migratory species in a region (within and beyond the exclusive economic

<sup>57</sup> The proposals for a detailed operational plan are contained in the report of the Director-General for Development and International Economic Co-operation (A/CN.11/12 and Corr.1, annex) of 1 May 1981.

- zone); and on establishing appropriate organizations where needed (art. 64);
- (viii) Conservation, management and study of marine mammals (exclusive economic zone and high seas) (arts. 65, 120);
- (ix) Establishment of equitable arrangements for participation of land-locked States and States with special geographical characteristics in exploitation (arts. 69, 70);
- (x) Facilitating participation of above States through provision of international financial or technical assistance (art. 72);
- (xi) Measures for conservation and management of high seas resources; and on establishing appropriate organizations where needed (arts. 118, 119);
- (xii) Co-ordinating management, conservation, exploration and exploitation in enclosed or semi-enclosed seas (art. 123);
- (b) Co-operation on related questions of environmental protection, recognizing that "harm to living resources" and "hindrance to . . . fishing" form part of the definition of marine pollution (art. 1);
- (c) Co-operation on related questions of marine scientific research, including co-operation on establishment of general criteria and guidelines regarding nature and implications of marine scientific research (arts. 62, 246, 251);
- (d) Co-operation on related questions of development and transfer of marine technology (arts. 62, 266, 269, 277);
3. *Co-operation regarding protection and preservation of the marine environment*
- (a) Formulation and elaboration of international rules, standards, and recommended practices and procedures, taking into account characteristic regional features. Co-operation on a global basis and, as appropriate, on a regional basis. Co-operation to develop regional as well as global rules, etc. (arts. 197, 207, 208, 210, 211, 212);
- (b) Development and promotion of contingency plans (arts. 198, 199);
- (c) Promotion of studies, programmes of scientific research and information and data exchange; establishment of appropriate criteria for formulating and elaborating rules, etc. (arts. 200, 201);
- (d) Provision of scientific and technical assistance to developing States; promoting programmes of assistance and providing assistance with respect to major incidents and preparation of environmental assessments (art. 202);
- (e) Monitoring of the risks or effects of pollution (art. 204);
- (f) Questions of harmonizing national policies at appropriate regional levels (arts. 207 and 208);
- (g) Co-ordination of implementation of rights and duties in enclosed and semi-enclosed seas (art. 123);
- (h) Implementation of existing international law regarding responsibility and liability, and co-operation for its further development (art. 235).
4. *Co-operation regarding marine scientific research*
- (a) Promotion of international co-operation and creation of favourable conditions for conduct of marine scientific research and integration of efforts of scientists, through bilateral and multilateral agreements (art. 243);
- (b) Publication and dissemination of information on proposed major programmes and knowledge resulting from research; strengthening the autonomous marine scientific research capabilities of developing States (art. 244);
- (c) Establishment of general criteria and guidelines enabling States to ascertain nature and implications of marine scientific research (art. 251);

(d) Co-ordination of scientific research policies and conduct of joint programmes in enclosed or semi-enclosed seas (art. 123).

5. *Co-operation regarding development and transfer of marine technology*

(a) Development and transfer of technology on fair and reasonable terms and conditions fostering favourable economic and legal conditions for such; development of marine science and technology capacities of developing States; and promotion of international co-operation at all levels (arts. 266, 267, 268, 269); (Co-operation to be conducted through existing programmes and through new programmes to facilitate marine scientific research, transfer of technology, and appropriate international funding) (art. 270);

(b) Establishment of generally accepted guidelines, criteria and standards for technology transfer (arts. 270, 271);

(c) Establishment of national and regional marine scientific and technological centres; regional co-operation with respect to the establishment and development of regional centres, including technical co-operation within the region (arts. 275, 276, 277).

7. *Some scientific and technical aspects*

*Hydrographic surveying and charting for the purposes of navigational safety and the establishment of jurisdiction*

(a) Preparation of nautical charts showing low-water lines, water depths, islands and rocks, etc., bottom elevations such as reefs, low-tide elevations, navigable channels, sea lanes and traffic separation schemes, aids to navigation and other information for mariners, such as hazards, safety zones around installations, etc. Correction of charts and navigational information as required. Publication and circulation.

(b) Preparation of lists of geographic co-ordinates, with the geodetic datum, for formal definition of areas. Questions of overprinting such lists on nautical charts, or producing special charts to show baselines (particularly where straight baselines (article 7) or where a combination of methods are used (article 14) and where archipelagic baselines (article 47) are used). Questions concerning scale of charts and determination of the geodetic datum.

(c) Determination of the features of the continental margin for purposes of establishing limits of continental shelf (article 76) and implementing jurisdiction over continental shelf.

(d) Establishment of navigational and hydrographical characteristics of territorial sea, straits and other areas requiring more detailed investigation.

*Technical comments*

(i) Low-water line (article 5) is normally shown as an identifiable feature on nautical charts unless the scale is too small to distinguish it from the high-water line (coastline) or where there is no tide. Thus a special "baseline" chart depicting the "normal baseline" is not necessary where a suitable nautical chart already exists. The actual water level taken as low-water for charting purposes is known as the level of chart datum, for which there is no universally agreed definition. However, a technical resolution of the International Hydrographic Conference states that it shall be a plane so low that the tide will not frequently fall below it. In practice, this will be very close to the lowest tide level.

(ii) Large-scale charts (article 5). Since the scale of a chart is an expression of the relationship between a distance measured on the earth's surface and the length that represents it on the chart, a chart of scale  $\frac{1}{50,000}$  is of larger scale than a chart of scale  $\frac{1}{100,000}$ . The larger

scales allow greater detail and are more usually kept up-to-date for small changes than the smaller scales. Nevertheless, it may not always be convenient or necessary to refer to the largest scale for adequate details of the low-water line. Because of the wide variety of scales employed depending on navigational needs and the detail with which an area has been surveyed it is not possible to state what may be the smallest scale. Where circumstances permit, the range may lie between  $\frac{1}{50,000}$  and  $\frac{1}{200,000}$ .

- (iii) Depiction of a line (articles 16, 75 and 84). It is possible to define a limit with far greater precision by reference to geographic co-ordinates although such precision may not be necessary; neither need such a list be at all a convenient method of defining a sinuous line or a complex line. In fact, a list of co-ordinates and charts may both be used—perhaps the first for formal definition and the second for illustrative convenience. In such circumstances, it would be necessary to make clear which is the definitive document and which merely illustrative.
- (iv) Scales (articles 16, 75 and 84). The requirement is that the scale of the charts on which the coastal State depicts its limits or boundaries should be adequate for the user to determine them to the same degree of accuracy as the coastal State intends. For instance, a limit depicted on a chart of scale  $\frac{1}{500,000}$  by a line 0.3 mm thick will represent a line on the sea's surface nearly 1/10 of an international nautical mile (185 metres) in width. Also, the accuracy with which a vessel may be able to determine its position depends on its equipment, weather conditions, distance from land, etc. Many fishing vessels working 200 miles from land would be unable to determine their position better than to within 5 nautical miles.
- (v) Charts. The lines or limits required under articles 16, 75 and 84 are features not necessarily shown on the ordinary nautical chart which is specifically designed to meet the requirements of marine navigation. Thus a choice will arise between using nautical charts or relying on lists of co-ordinates (or using the latter supplemented by the former), and if charts are used there will be a choice of overprinting the lines on all copies of the standard navigational chart, or of making a separate overprinted edition or of producing a special chart solely to show baselines.
- (vi) Geodetic datums (articles 16, 75, 76(9) and 84). Astronomical observations have been used traditionally to determine the latitude and longitude of a place, so that the apparent relationship between different positions is largely dependent on variations in gravitational force, which while slight are significant. Thus, the true distance between two astronomically determined positions may not be the same as the distance calculated from their apparent longitudinal and latitudinal differences. In an oceanic area where the positions of islands or groups of islands, separated by large distances, will have been found independently by astronomical means, each island or group will be on a different "geodetic datum". Neighbouring continental States, similarly mapped according to a nationally established, astronomically determined "origin", can find that the locations of particular places do not agree when their latitudes and longitudes are compared. Even though the means now exist to reconcile these differences, it is seldom worth the expense to do so for normal purposes since it might involve a complete recomputation and redrawing of

all a country's maps, which are perfectly suitable for most purposes.

Nonetheless, the practical effect of these differences is that the exact location of a maritime boundary in relation to coastal States cannot be determined unless the positions from which it is derived are first determined on or transformed to a single geodetic datum. In some areas a common datum exists (e.g., European datum) to which positions on individual national datums may easily be transformed. The introduction of satellite position fixing methods allows the geographical position of any chosen site to be determined on a single global geodetic datum. By using this it is possible to determine transformation data to convert existing "national" positions on to a common datum, suitable even for use in oceanic areas where more traditional observed trigonometrical links cannot be made.

Because of the differences between datums it is important that the datum used to quote geographical positions on maritime limits or boundaries should be stated, especially as very accurate positions can now be determined far from land by means of satellite positioning equipment. In reality, the subject is more complex than has been described here. The above explanation is only intended to give an idea of the technical problems involved in maritime delineation.

- (vii) Straight lines (articles 7, 8, 9, 10, 15, 47, 74, 76, 83). The equivalent of a "straight line" "on the surface of the earth" would be the line of sight between two objects. In mapping terms, this is the "geodesic", the shortest distance between two points on an ellipsoid (or on any regular surface). An equidistance line generated by two basepoints is very nearly the same as a geodesic. The geodesic appears practically as a straight line on certain types of map projection, but in the Mercator projection (widely used for nautical charts) the geodesic is a curved line except where it runs along the Equator or due north and south. The straight line on the Mercator chart is called a loxodrome (or rhumb line). The difference between the loxodrome and the geodesic joining two points can be very considerable, particularly in high latitudes, and if the lines are long the difference in area involved by using the different types of line may be very significant.

The precise nature of what a "straight line" should be is generally of less importance than that its nature be agreed between States when boundaries are determined, and that it be specified by States claiming straight baselines of a length that would make differences significant.

#### Concluding remarks

41. The emphasis in the present study has necessarily been placed on the interrelationships among "problems of ocean space" and on the need to establish effective linkages among marine activities, particularly for the establishment of sufficiently comprehensive policies. At the international level, it will also be important to demonstrate the fundamental importance of relating the substantive activities provided for in the convention to the overall economic and social development efforts of developing countries and to the activities of the United Nations system in support of these efforts, although studies of such questions may be considered as exceeding the mandate of the present Conference. Nonetheless, this second and broader implication of a new legal régime for the seas could be taken into account, as appropriate, by the future reporting function of the Secretary-General under article 319.

42. The provision of information, advice and assistance in the various sectors covered by the convention, will, given the

decentralized structures of the United Nations system, continue to be the responsibility of the specific organizations or entities concerned, though necessarily guided by coherent approaches and common goals. Also, it is clearly essential that full use be made of the resources of existing institutions—the various departments and units of the United Nations Secretariat and of the agencies and organizations of the United Nations system—in accordance with their mandates and with the requirements of the convention.

43. The general subject of the implications of a new convention for the United Nations system and for international co-operation at global, regional and sub-regional levels, deserves the most careful consideration and possibly extensive

consultations, preferably on the basis of guidance which only the Law of the Sea Conference itself is in a position to give. Clearly, a common understanding must be reached on the future roles of the international organizations concerned in the implementation of the convention. It may be expected that the “cross-organizational programme analysis” on marine affairs to be conducted for the Committee on Programming and Co-ordination in 1983 will be helpful in this respect, as will the various studies that have been made or are planned by individual organizations with respect to the effects of a new legal régime on their technical co-operation activities and the effects of the relevant provisions of the draft convention on their functions.

## DOCUMENT A/CONF.62/L.77

Letter dated 20 August 1981 from the Chairman of the group of Eastern European States to the President of the Conference

[Original: English]  
[20 August 1981]

In accordance with your suggestion, the group of Socialist Countries of Eastern Europe has considered at its meeting on 18 August 1981 the proposal of the Group of 77 presented at the 152nd meeting of the plenary Conference held on 17 August 1981 concerning the completion of negotiations on all outstanding issues and on formalizing the draft convention before the end of the present session.

In the annex attached to this letter, I have the honour to convey to you the opinion of the group and its proposal on this question.

I kindly request that this letter as well as the annex be circulated as a document of the Conference.

(Signed) A. OLSZOWKA  
Representative of Poland to the  
Third United Nations Conference on the Law of the Sea  
and Chairman of the group of  
Socialist countries of Eastern Europe

## ANNEX

Decision by the group of Socialist countries of Eastern Europe adopted at its meeting on 18 August 1981 regarding the position of the group on the question of the future programme of work of the tenth session

1. The group of Socialist countries of Eastern Europe is in full solidarity with the Group of 77 which comes out for strict implementation of the programme of work for the tenth session of the Conference that was adopted on 28 August 1980 and provided for an earliest completion of the negotiations on all outstanding issues and adoption, before the end of this year, of a law of the sea convention on the basis of the existing draft.

The group of Socialist countries of Eastern Europe deems it advisable that, in accordance with the above-mentioned decision of the Conference, the programme for the final stage of this session should provide not only for completion of the negotiations on all outstanding issues and formalization of the draft convention but also for its adoption immediately following formalization. In doing so, the group continues to come out for the adoption of the convention by consensus. However, if some delegations continue to oppose adopting the convention on the basis of the existing draft and thus to impede achieving a consensus, the group of Socialist countries of Eastern Europe will be prepared to co-operate with the majority in the Conference and to adopt the convention as a whole by a vote.

2. The group of Socialist countries of Eastern Europe can agree with the proposal by the Group of 77 made at the 152nd meeting of

the plenary Conference held on 17 August 1981 concerning an extension of this session for a fifth week, i.e., till 4 September 1981, in case this is needed to complete the negotiations on all outstanding issues and formalize the draft convention.

Therefore, in agreeing to the extension of the session for a fifth week, the group of Eastern European Socialist countries, like the Group of 77, proceeds from the assumption that the main and only objective of such an extension is precisely to complete the negotiations and formalize the draft convention.

However, should it appear that the extension of the session till 4 September does not lead to this objective, then the group will strongly object to such an extension.

3. In the case of formalization of the draft convention at this session the group of Socialist countries of Eastern Europe would not object to providing the Drafting Committee, upon the conclusion of this session, an additional five weeks to definitively complete the drafting work on the draft convention on the understanding that this time the Conference would establish the last and final dead-line for concluding the drafting work on the text. Upon the expiration of this time, the Secretariat should communicate to the Governments of all participating countries the report of the Drafting Committee and the final text of the draft convention.

4. With regard to the final stage of the Conference to be devoted to the adoption of the convention, the signing of the final act and the opening of the convention for signature, it would, in the opinion of the group of Socialist countries of Eastern Europe, be advisable to fulfil the tasks set before that stage at the Caracas session whose date will be agreed upon with the Government of Venezuela.

Of course the position of the group of Socialist countries of Eastern Europe is flexible with regard to the organization of work of the final stage of the Conference and it is ready to discuss possible proposals by other regional groups on this question.

5. Taking into account the decision of the Conference on the programme of work of the tenth session and the position of the Group of 77 on this question set forth in its statements in the plenary meetings on 5 and 17 August, as well as the above-mentioned considerations, the group of Socialist countries of Eastern Europe makes the following proposal concerning the programme of work of this session for the remaining period of time:

“To fix the following time-table for completing the discussions on the outstanding issues by the organs of the Conference in accordance with document A/CONF.62/62,<sup>58</sup> of 13 September 1978 and for considering the questions of formalizing the draft convention, its adoption and holding the final session of the Conference: to complete negotiations on all pending issues and to present the reports on the results of these negotiations before the end of the

<sup>58</sup>Official Records of the Third United Nations Conference on the Law of the Sea, vol. X (United Nations publication, Sales No. E.79.V.4).