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OCEANS AND THE LAW OF THE SEA: LAW OF THE SEA

Impact of the entry into force of the 1982 United Nations Convention on the Law of the Sea on related existing and proposed instruments and programmes

Report of the Secretary-General

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I. INTRODUCTION

1. At its fifty-first session, the General Assembly, in paragraph 15 of its resolution 51/34 of 9 December 1996, reiterated its request to the Secretary-General to prepare a comprehensive report on the impact of the entry into force of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) on related existing and proposed instruments and programmes throughout the United Nations system, for submission to the Assembly at its fifty-second session, and called upon competent international organizations and other international bodies to cooperate in the preparation of the report.[1]

2. Pursuant to the above resolution, the Director of the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs addressed a letter to the relevant organizations and other bodies of the United Nations on 4 April 1997 requesting their views on the impact of the entry into force of the Convention by 15 July 1997.

3. In the letter, the term "impact" was defined to be understood to refer to:

"- Any formal amendments or revisions that in your view may be required in order to bring the provisions of treaties or other instruments under the responsibility/jurisdiction of your organization into line with the relevant provisions of the United Nations Convention on the Law of the Sea;

"- Any new tasks or modifications of current work programmes that in your view may be necessary on the part of your organization as a result of responsibilities assigned directly to your organization by the Convention or of the effects of other provisions of the Convention on the existing activities of your organization;

"- The necessity or usefulness, in your view, for your organization or any of its organs to establish new or revised procedures in its work, in order to discharge mandates entrusted to it by the Convention or to perform functions that have to be undertaken as a result of the Convention's provisions relevant to your organization."

4. As of 15 September 1997, communications had been received from 14 organizations; those replies are reflected in chapter II of the present report. Any further replies received will be incorporated in an addendum to the report.

II. REPLIES RECEIVED FROM ORGANIZATIONS AND BODIES OF THE UNITED NATIONS SYSTEM

5. Replies received from the following organizations indicated that there has been an impact on existing and proposed instruments and/or programmes: Economic Commission for Latin America and the Caribbean (ECLAC); the Food and Agriculture Organization of the United Nations (FAO); Intergovernmental Oceanographic Commission (IOC); International Civil Aviation Organization (ICAO); International Hydrographic Organization (IHO); International Labour Organization

(ILO); International Maritime Organization (IMO); and United Nations Development Programme (UNDP). Their replies have been reproduced in full where feasible, but certain replies have been excerpted in order to limit the number of pages of the report.

6. The International Atomic Energy Agency (IAEA), the International Court of Justice (ICJ) and the World Intellectual Property Organization (WIPO) stated that the entry into force of the Convention had had no impact on their existing or proposed instruments and programmes. The Secretariat of the Convention on Biological Diversity and the United Nations International Drug Control Programme (UNDCP) also stated that the entry into force had had no impact on those instruments, nor on the responsibilities emanating from them. They added that the conventions for which they were responsible had been negotiated to be complementary to and consistent with the relevant provisions of the Law of the Sea Convention. The United Nations Framework Convention on Climate Change indicated the linkages between the conventions, but did not state that the entry into force of UNCLOS had had an impact on its functions.

A. Convention on Biological Diversity

[25 July 1997]

1. The entry into force of UNCLOS has had no impact on the Convention on Biological Diversity. Article 22, paragraph 2 of that Convention provides that "Contracting Parties shall implement this Convention with respect to the marine environment consistently with the rights and obligations of States under the law of the sea". There are no amendments or revisions to be required in order to bring it into line with the relevant provisions of UNCLOS, as it has already taken into consideration the law of the sea. Indeed, many provisions under both Conventions are parallel and complementary.

2. In addition, the entry into force of UNCLOS has not caused any new task for or modification of the programme of the Biodiversity Convention. For example, the implementation of the provisions of UNCLOS relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, which is relevant to the marine and coastal biodiversity programme, has been taken into consideration by the Conference of Parties in its relevant decisions.

3. Regarding the procedures, there are no new or revised procedures for the work of the Convention on Biodiversity arising from the entry into force of UNCLOS.

B. Economic Commission for Latin America and the Caribbean

[17 July 1997]

1. As far as the ECLAC region is concerned, the entry into force of UNCLOS has had an important twofold impact: on national legal regimes; and on regional cooperation.

Impact on national legal regimes

2. The process of ratification was accelerated in those countries that had not ratified the Convention (as in Chile[2] and Colombia). Similarly, national forums are being convened in order to analyse the impact of the instrument mainly on fisheries, marine scientific research and pollution prevention legislation in force. Notwithstanding that many pieces of legislation have been enacted since the Convention's adoption and signature, aiming basically at the incorporation of the concept of the exclusive economic zone, the Convention in force now represents a context of challenge for the effective conservation and sustainable use of marine resources. In our recent communication on the implementation of General Assembly resolutions 51/35 and 51/36 of 9 December 1996, there is an interesting discussion on fisheries management models which depart from the adjustment of the maximum sustainable yield concept taking into account economic and environmental factors.

3. Similarly, as mentioned in our 1996 report, the United Nations Conference on Environment and Development, and specifically chapter 17 of Agenda 21, set an important task for countries relating to the need for aligning the provisions of the Convention with the concept of sustainable development and with the various other international and regional conventions relating to the marine environment. This holistic approach to a variety of demands has become an urgent concern and is one of the clearest impacts of the entry into force of the Convention. This aspect is closely related to the impact on the work of the United Nations system in the region.

4. The entry into force of the Convention has gradually resulted in increased attention being paid to its provisions under Part XI and those of the Implementation Agreement itself, reflecting the renewed interest of the mining sector in the subject and in the future possibilities of biotechnology in the deep seabed area.

Impact on regional cooperation

5. The impact on regional cooperation principally refers to the task of assisting States to implement various global conventions dealing with ocean affairs and the need to include provisions for the protection of coastal and marine ecosystems in national efforts for sustainable human development. Adjustments had to be made to the ECLAC work programme to ensure the successful implementation of UNCLOS, the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities, among others, in the context of sustainable development. In this connection ECLAC is carrying out activities relating to coastal and marine biodiversity; social, economic and environmental aspects involving the implementation of UNCLOS and related agreements and programmes; as well as developing a Latin American perspective on the International Year of the Ocean.

C. Food and Agriculture Organization of the United Nations

[21 August 1997]

1. While the entry into force of UNCLOS is overall a highly significant event, its impact with respect to the fisheries provisions is considerably less important than for other parts of the Convention, since a great number of States had already taken steps to give effect to the fisheries provisions over the last 20 years, in particular by enacting laws providing for zones of extended fisheries jurisdiction, and more recently, by enacting laws to give effect to the exclusive economic zone as provided for under part V of the Convention. One immediate consequence, however, is that the entry into force of the Convention will give added impetus to those few remaining States that had not so far taken steps to proclaim an exclusive economic zone to do so, or, having proclaimed a less comprehensive zone of fisheries jurisdiction, to upgrade it into a full exclusive economic zone claim in accordance with the Convention. In addition, the entry into force of UNCLOS will also serve as a useful basis for the consolidation and harmonization of laws and practices with regard to the exclusive economic zone.

2. As regards the high seas, the entry into force of UNCLOS will provide an extremely important base to support the recently concluded international agreements in this area. Particular reference should be made here to the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, 1993, and to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, both of which are intended to complement and be fully consistent with the 1982 Law of the Sea Convention.

3. FAO is continuing to provide technical assistance to those countries wishing to bring their fisheries laws into line with UNCLOS, and more recently, to those countries that have sought to implement in their national legislation the 1993 FAO Compliance Agreement and the 1995 Fish Stocks Agreement.

4. In addition to those two binding instruments, the Code of Conduct for Responsible Fisheries, which covers inland fisheries and aquaculture as well as marine fisheries, will support the two instruments as a voluntary Code of Conduct. The Code is likewise intended to be in conformity with UNCLOS and consistent with the 1995 Fish Stocks Agreement.

5. At a more general level, the entry into force of UNCLOS will provide impetus to the process of cooperation at the global, regional and subregional levels, as provided for in the Convention. This impetus is being given effect in a number of specific ways. Of particular importance is the recent entry into force of the Agreement for the Establishment of the Indian Ocean Tuna Commission, which was adopted by the FAO Council in November 1993 under article XIV of the FAO Constitution and entered into force on 27 March 1996. The Agreement is intended to give effect to the provisions of article 64 of UNCLOS concerning highly migratory species, and the Commission is to exercise

its responsibilities in accordance with the relevant provisions of the 1982 Convention.

6. FAO has also been promoting the review of regional fishery bodies under its purview with a view to strengthening them as called for by UNCLOS, taking into account in particular the 1995 Fish Stocks Agreement.

7. FAO also maintains a list of experts for the purpose of article 2 of annex VIII to the 1982 Convention and is currently in the process of updating the list.

D. Intergovernmental Oceanographic Commission

[25 June 1997]

1. The potential impact of UNCLOS on IOC has been reviewed by the IOC Governing Bodies in several sequences.

2. Before the entry into force of the Convention, studies were carried out, in the early 1980s, by both the IOC Working Group on the Future Role and Functions of the Commission and the IOC Task Team to study the implications, for the Commission, of UNCLOS and the new ocean regime. Studies were conducted concerning the provisions of the Convention as indicators of fields of activity requiring international cooperation in marine sciences and in the development of the related ocean services and training aspects, with special reference to the implications for IOC. These were considered in terms of the objectives, functions, structure, resources and statutes, as a means of strengthening the Commission. These reviews concluded that IOC must prepare itself for the entry into force of the Convention.

3. Accordingly, the IOC statutes were amended to reflect the thinking of IOC member States to enable IOC to discharge its functions more effectively under the emerging new ocean regime. Examples in this respect include:

(a) The amendment of article 1 to identify IOC "as a body with functional autonomy within the framework of UNESCO";

(b) The insertion of a new article 2 (1) (f): "promote and coordinate the development and transfer of marine science and its technology, particularly to developing countries";

(c) The amendment of article 2 (1) (j) to read: "promote scientific investigation of the oceans and application of the results thereof for the benefit of all mankind, and assist, on request, Member States wishing to cooperate to these ends. Activity undertaken under this subparagraph shall be subject, in accordance with international law, to the regime for marine scientific research in zones under national jurisdiction";

(d) The amendment of article 3 (2) to read: "the Commission may act also as a joint specialized mechanism of the organizations of the United Nations system that have agreed to use the Commission for discharging certain of their

responsibilities in the fields of marine science and ocean services, and have agreed accordingly to sustain the work of the Commission".

4. After the entry into force of the Convention, the IOC Assembly established an open-ended Intersessional Working Group on IOC's possible role in relation to UNCLOS, with the task of reviewing all provisions of the Convention that may have explicit or implicit relevance to the role of IOC and identifying IOC's role under UNCLOS. An interim report of the Working Group was presented to and endorsed by the IOC Executive Council at its twenty-ninth session in September/ October 1996. It was concluded that IOC has the following role and responsibilities:

(a) Under article 3, paragraph 2, of annex II to the Convention (where IOC is explicitly mentioned), IOC, upon express request from the Commission on the Limits of the Continental Shelf, should assist the Commission through the exchange of scientific and technical information. IOC may cooperate with IHO and other competent international organizations in this respect;

(b) Under article 2, paragraph 2, of annex VIII (where IOC is explicitly mentioned) and article 289 of the Convention itself, IOC shall draw up and maintain a list of experts in the field of marine scientific research who can serve as arbitrators;

(c) Since IOC is designated as a competent international organization in the field of marine scientific research by UNCLOS, it seems natural that IOC, as the sole body within the United Nations system dedicated to marine scientific research, has a major or leading role to play in the promotion and facilitation of the conduct of marine scientific research (part XIII of the Convention) and of the transfer of marine science and technology (part XIV) at global and regional levels, including in particular the formulation of relevant guidelines, procedures and criteria as called for in the Convention. IOC also has a new role to play in assisting the other international and regional organizations in the management and rational use of marine living and non-living resources, as well as in the protection and preservation of the marine environment.

5. The impact on the IOC statutes of the entry into force of UNCLOS together with other recent changes are being studied by the Study Group on IOC Development, Operations, Structure and Statutes, which is presenting an interim report to the IOC Assembly at its nineteenth session, in July 1997, and its final report to the IOC Assembly at its twentieth session in 1999.

6. Clearly, UNCLOS has had a marked impact upon IOC. For example, as a result of the Convention, IOC now has a separate agenda item on "IOC and UNCLOS" at the meetings of the IOC Governing Bodies, at which policy issues related to UNCLOS are considered. Several activities in relation to UNCLOS are already under way, e.g., the preparation of review by the IOC and IHO on science and technology associated with the definition of the continental shelf; drawing up of the list of experts in the field of marine scientific research for use by the Special Arbitral Tribunal; initial drafting of the IOC Principles on the Transfer of Marine Technology; and initial preparation of guidelines on the application of article 247 of UNCLOS.

7. Several particular questions raised in IOC may also represent a potential impact of UNCLOS. For example, does IOC need to amend its statutes to reflect the new dimensions of its work, its new role and responsibilities as a result of the coming into force of UNCLOS, as a "competent international organization" in the field of marine scientific research? Since the implementation of UNCLOS often requires expertise in both law and marine sciences and involves cross-sectoral cooperation and coordination, is there a need to adjust the present working mechanism and staff composition, or to create new programmes dedicated to the law of the sea? Does IOC need to create new bodies to deal specifically with law of the sea matters? How does IOC effectively handle issues UNCLOS-derived of high political sensitivity and legal implications, and balance the rights and obligations of both coastal and researching States? Furthermore, when several organizations are "competent international organizations" in one field, which should be doing what? Finally, who has the most authoritative say in deciding whether an activity is being carried out correctly or incorrectly according to the Convention? In this connection, the specific impact of UNCLOS on IOC, and perhaps on other competent international organizations, may be seen more clearly when one is in the process of responding to these concerns and questions.

E. International Atomic Energy Agency

[15 August 1997]

1. No formal amendments or revisions are specifically required in order to bring the provisions of existing or proposed legal instruments under the responsibility of IAEA in line with relevant provisions of UNCLOS.

2. There are no responsibilities assigned directly to IAEA by UNCLOS. Furthermore, it cannot be seen that the provisions of UNCLOS would have any special effect on the functions of IAEA.

3. IAEA continues to refer to existing international laws and other binding instruments when developing or amending the treaties and instruments under its responsibility.

F. International Civil Aviation Organization

[9 July 1997]

1. The ICAO Legal Committee considered the subject at its thirtieth session (Montreal, 28 April-9 May 1997).[3] It noted that since the entry into force of UNCLOS on 16 November 1994, some legal issues of relevance to ICAO had surfaced. Among them were the designation of air routes through archipelagic waters under article 53, paragraph 9, currently handled by the IMO, and the jurisdiction of the International Tribunal for the Law of the Sea on overflight issues, which partly overlapped the jurisdiction of the ICAO Council. During the discussions, it was suggested that ICAO should closely monitor developments with respect to the two issues identified above in liaison with IMO and the Tribunal. The Committee decided that the ICAO secretariat should continue to study the matter

and that the Council should be kept informed with regard thereto. The Committee would consider the matter further on the basis of the study prepared by the secretariat.

2. At its 151st session, the ICAO Council noted the report of the Legal Committee on the above-mentioned subject and emphasized the importance of retaining on the general work programme of the Legal Committee the fourth item, "United Nations Convention on the Law of the Sea - implications, if any, for the application of the Chicago Convention, its annexes and other international air law instruments". It was further requested that the Council be informed immediately if any action were being contemplated by the International Maritime Organization with regard to the designation of air routes over archipelagic waters.

G. International Court of Justice

[15 July 1997]

The entry into force of the Convention inevitably affects the substance of the Court's consideration of cases concerning the Law of the Sea. It is possible that it may also affect the number and nature of Law of the Sea disputes that are submitted to the Court.

The Court has indicated its willingness to cooperate with the International Tribunal for the Law of the Sea, established pursuant to the Convention, on an informal, ad hoc basis, in the furnishing of information that may be requested by that Tribunal, to the extent that this is authorized by the Statute and Rules of the Court.

H. International Hydrographic Organization

[8 July 1997]

1. No formal amendments or revisions are, in the view of IHO, required to be made to any treaties or other instruments with which IHO is involved. The Organization's main instrument is the Convention of the International Hydrographic Organization, and at present no need of change is envisaged. However, during the XVth International Hydrographic Conference it was decided to form a Strategic Planning Working Group, one of whose tasks will be to review the Convention. This review will undoubtedly cover, inter alia, the direction and efficacy of the IHO Convention in the light of UNCLOS.

2. The major new task emanating from the entry into force of UNCLOS derives from the effect of article 76 and the general provisions of part VI and annex II. IHO member States with the possibility of a continental shelf extending more than 200 miles from the territorial sea baselines have been examining the need for, and the specifications for, surveys to establish their claims. Such surveys will be very costly and require Governments of the affected States to review their priorities for marine science and surveys. As a background to this work, it should be noted that two groups of expert meetings

have been convened by the United Nations Division for Ocean Affairs and the Law of the Sea to discuss the requirements for data and information. Representatives of member States as well as a representative from the International Hydrographic Bureau, participated in the meetings. Member States involved have also taken a great interest in the elections to the Commission on the Continental Shelf and several hydrographers from IHO member States have been elected to the Commission.

3. IHO has also taken an interest in the impact of part IV of the Convention concerning archipelagic States. In particular, the Bureau has held discussions with Indonesia concerning its declaration of archipelagic sea lanes, specified under article 53. IMO has been the forum for discussing these proposals and IHO has been requested to express its views on the state of the hydrography and general safety of the sea lanes proposed. IHO is of the strong opinion that an archipelagic State in proposing a sea lane has the obligation to ensure that the lane is thoroughly surveyed and charted and otherwise well serviced by adequate aids to navigation. It notes that the provision of such services imposes a significant cost upon the archipelagic State.

4. As regards other provisions of the Convention, IHO contributes advice to its member States involved in all areas of maritime boundary delimitation.

5. The Convention has reinforced IHO's commitment in several areas already enshrined in its own Convention and General Regulations. These include: part XII, Protection and preservation of the marine environment; part XIII, Marine scientific research; and part XIV, Development and transfer of marine technology. Elements of these, such as Global and regional cooperation, Technical assistance and international cooperation, are actively followed as basic goals of IHO and are now strengthened by the entry into force of UNCLOS.

6. In response to paragraph 13 of General Assembly resolution 51/34 of 9 December 1996, IHO wishes to note its ongoing work in encouraging the development of international charts, both graphic and digital, aimed at ensuring the safety of those at sea. It may also be noted that national Hydrographic Offices, in the course of their work, provide one of the most consistent methods of communicating all types of marine information to the public at large. Further, it wishes to note its ongoing work in the regular maintenance of the General Bathymetric Chart of the Oceans (GEBCO), which for many years has provided a basic reference for many marine scientific investigations.

I. International Labour Organization[4]

[7 July 1997]

1. The ILO has no competence as regards the law of the sea as such. Its competence relates to workers and work at sea. Thus, its interest in relation to UNCLOS relates to work and workers at sea in the field of maritime labour and safety covering such areas as occupational health and safety, working conditions, labour inspection, human rights and economic and social policy generally. International labour standards covering these fields are important in preventing accidents at sea and promoting occupational health and safety,

while others address in particular the situation of seafarers and fishing industry workers. ILO has adopted maritime labour standards in its corpus of international labour standards and has cooperated with IMO and FAO in the adoption of other instruments.

2. Articles 60 and 80 of UNCLOS deal respectively in a similar way with artificial islands, installations and structures in the exclusive economic zone and the continental shelf. They provide that the coastal State shall have exclusive jurisdiction including jurisdiction with regard to customs, fiscal, health, safety and immigration law and regulations. The coastal State is also given the exclusive right to construct and to authorize and regulate the construction, operation and use of artificial islands.[a] * The legal status of offshore installations, the legislation applicable to workers thereon, the type of jurisdiction exercised by States over such installations and the possible obligations arising from licensing of the installation for the purposes of exploration and exploitation continue to be of concern to ILO, and work begun on this subject has not yet been completed. ILO will need to take into account the provisions of articles 60 and 80 of UNCLOS if and when it is decided to continue the study of the problems encountered on offshore installations.

3. Another provision of relevance to the work of ILO is article 94 dealing with duties of the flag State. Paragraph 1 of that article provides that every State is empowered to exercise "jurisdiction and control in administrative, technical and social matters over ships flying its flag" (emphasis added), while paragraph 3 (b) provides that the flag State must adopt such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments. Paragraph 5 of the same article states that, in taking the measures called for, each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps necessary to secure their observance. Paragraph 6 obliges the flag State, where it has received a report that proper jurisdiction and control have not been exercised, to investigate the matter and, if appropriate, to take any necessary action to remedy the situation. Article 94 is to be read together with provisions of the Convention that relate to the status of ships (article 92) and their nationality (article 91). Article 91, paragraph 1, provides that ships shall have the nationality of the State whose flag they are entitled to fly and that there must be a genuine link between the State and the ship.[b]

4. The provisions of article 94 relating to the flag State are considered to embody international customary law, as they have only reproduced the provisions of the 1958 Geneva Convention on the High Seas. As far as labour conditions are concerned, ILO can legitimately be regarded as the competent international organization. The provisions of article 94 impose upon the flag State the obligation to take internationally recognized labour standards into account in exercising its jurisdiction over the ships flying its flag.[c] It also incorporates the concept of flag State enforcement of labour conditions. The

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* The notes to ILO's reply appear at the end of the reply.

provisions of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), contain the standards which complement articles 91 and 94 of UNCLOS.

5. Flag State enforcement of labour conditions is not always possible, as many ships hardly ever call at the port of that State.[d] Article 94, paragraph 6, of UNCLOS does, however incorporate some aspect of port State control with regard to living and working conditions. The paragraph enables any State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised, to report the facts to the flag State. The latter must, on receiving such a report, investigate the matter and, if appropriate, take any action necessary to remedy the situation. The ILO Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), can in that regard be considered to complement UNCLOS.

6. Article 218 of UNCLOS deals with enforcement by the port State in the context of measures to prevent, reduce and control marine pollution. The provision empowers the port State to undertake investigations and to institute proceedings against a foreign vessel calling at one of its ports or offshore terminals where a discharge has taken place outside the limits of its territorial jurisdiction. The international rules and standards to which the article refer have, however, been considered to be those adopted by IMO as the organization competent to adopt rules and standards in the field of the prevention, reduction and control of marine pollution. Therefore, while UNCLOS article 218 deals exclusively with port State control in the context of the problems of marine pollution and may therefore be considered to be of marginal interest to ILO from a substantive point of view, some form of cooperation at a later date in matters that are within its competence would seem useful because, taken together with article 94, paragraph 6, it contains provisions of interest to the ILO concerning responsibilities of the port State.

7. Article 192 of UNCLOS imposes a general obligation on States to protect and preserve the marine environment. States are enjoined, for example to take measures to prevent pollution from land-based sources and, in accordance with article 207, paragraph 1, they are to take into account internationally agreed rules, standards and recommended practices and procedures. Paragraph 4 of the latter article provides that States are to act through competent international organizations or diplomatic conferences. Conventions adopted by ILO, such as the Chemicals Convention, 1990 (No. 170), and the Prevention of Major Industrial Accidents Convention, 1993 (No. 174), contain references to protection of the environment and may be regarded as pertinent to the issue of pollution of the marine environment produced from land-based sources. The same reasoning may be said to apply to article 208 of UNCLOS to the extent that it requires coastal States to take the same action in respect of pollution of the marine environment arising out of, or in connection with, seabed activities subject to their jurisdiction and from artificial islands, installations and structures under their jurisdiction pursuant to articles 60 and 80 of the Convention.

8. The other provision of UNCLOS of particular relevance to the work of ILO is article 138, dealing with the general conduct of States in relation to the Area (the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction). With the Governing Body's support, the Office's concern that workers who may be employed in activities in the Area should receive adequate

labour protection has been met with the adoption by the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea of draft regulations on labour, health and safety standards as part XI of the Mining Code. The Office was instrumental in elaborating that part of the Code. The draft report of the Preparatory Commission was adopted by the International Seabed Authority at the first Meeting of States Parties.

9. The draft regulations on labour, health and safety standards deal, inter alia, with the obligations and responsibilities of the sponsoring State and the enterprise, the operational arm of the International Seabed Authority, and are intended to ensure that labour and social conditions as well as safety standards applicable to workers engaged in activities in the Area are fixed at an appropriate level and effectively enforced. Article 158, paragraph 1, of the draft Mining Code provides that activities in the Area "shall be carried out under such conditions that the workers employed in such activities are afforded adequate protection against discrimination in employment on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin, as well as in the fields of occupational safety and health, labour relations, including freedom of association, conditions of work, social security, employment security and living conditions at the worksite".

10. Article 158, paragraph 2, of the Mining Code requires the International Seabed Authority to establish rules and regulations in the above fields drawing upon Conventions and Recommendations of the ILO and other competent international organizations, after consulting, as appropriate, with ILO. The future role of ILO under the Convention will be most marked in the identification of the provisions of international labour standards that should apply to workers in the Area once deep seabed mining activities are scheduled to begin.[e]

11. It is proposed to limit the organization's exercise of its competence to those areas most closely connected to its current work and to inform the United Nations Division for Ocean Affairs and the Law of the Sea accordingly. As regards substantive provisions, these would be UNCLOS articles 60, 80, 91, 94, 138, 207 and 208 and, marginally, article 218. The action of ILO would essentially be carried out in the framework of article 163, paragraph 13, which requires the organs of the Council to consult with the specialized agencies, and article 169, which imposes upon the Secretary-General of the Authority the duty to make arrangements for consultation and cooperation with international organizations. In the context of this requirement for cooperation, ILO will most likely be consulted by the Authority before the commencement of mining operations in the Area for the implementation of part XI of the Mining Code dealing with labour, health and safety standards. The Office does not consider that any immediate action is required of the Organization under the Convention.

12. Subject to any comments or recommendations it may wish to make, the ILO Committee on Legal Issues and International Labour Standards recommended to the Governing Body that

(a) The International Labour Office should communicate to the United Nations Division for Ocean Affairs and the Law of the Sea that it considered the

articles mentioned in paragraph 11 to be most pertinent to the Organization's field of competence, and article 218 on a subsidiary basis;

(b) That the Office should report to the Secretary-General concerning the implications for the Organization under these provisions in the manner examined above.

Notes

[a] Article 80, which deals with the continental shelf, states: "Article 60 applies mutatis mutandis to artificial islands, installations and structures on the continental shelf".

[b] Since the jurisdiction of any member State which is a party to an ILO maritime convention has normally extended to ships registered in its territory, the reference to the flag State has been seen by some as raising a problem in relation to the scope of ILO maritime labour standards in the context of bareboat charters and suspended registrations, which may result in a split of jurisdiction as regards real rights (e.g., liens to cover wage claims) and non-real rights (e.g., crew safety matters). In its drafting of recent proposed ILO maritime instruments, the Office has taken relevant articles of UNCLOS into account.

[c] The Office may consider drawing the attention of member States to the provisions of that article when relevant conventions are communicated to them by the Director-General in accordance with article 19 of the ILO Constitution.

[d] This has led some flag States to adopt provisions assigning the inspection task to the ship's masters, classification societies and other organizations on behalf of the flag State. The obligations of flag States under article 94 of the Convention, however, remain intact. This issue will be discussed at the Maritime Session of the Conference.

[e] The Group of Technical Experts on the state of deep seabed mining concluded in their report that it was certain that commercial deep seabed mining would not take place during the remainder of the present century and it was unlikely that it would take place during the following decade (2001-2010). However, the report made it clear that such mining "is likely at some time in the future" (LOS/PCN/BUR/R.32).

J. International Maritime Organization

[27 June 1997]

1. Introduction

1. Following the entry into force of UNCLOS, the IMO Council, at its seventy-fourth session in June 1995, commented and endorsed proposals by the Secretary-General as to how IMO could fulfil its role under the Convention as a "competent international organization". An immediate implication of the entry into force is the responsibility assigned to IMO under provisions in articles 2 and 3 of UNCLOS annex VIII to draw up and maintain a list of experts in the field of navigation, including pollution from vessels and by dumping. ILO accordingly invited all States parties at the time of the entry into force and each State becoming party thereafter to nominate two experts to be included in the list. In response to that request, experts have been nominated by Argentina, Bahrain, Bolivia, Cameroon, China, the Cook Islands, the Czech Republic, Egypt, Fiji, Finland, Greece, Guinea, Ireland, Italy, Mexico, Nigeria, Norway, Palau, Romania, Samoa, Sierra Leone, Singapore, Slovakia, Slovenia, Togo and Uganda.

2. The Council also decided to keep arrangements for communication and exchange of information with the United Nations Division for Ocean Affairs and the Law of the Sea under review. In the view of the Council, this would enable IMO to consider whether there is a need for it to take additional measures to ensure a uniform, consistent and coordinated approach to the implementation of the provisions of UNCLOS throughout the United Nations system, as requested by the General Assembly in its resolution 49/28 of 6 December 1994, which deals with the entry into force of the Convention. The Secretary-General further informed the IMO Assembly at its nineteenth session of the above decisions taken by the Council.

3. In order to further assess the implications of the entry into force of the Convention, the Council approved the proposal to broaden and update an IMO study on the subject which has been widely circulated since 1987.[5] This updating should not only take into account the instruments adopted by IMO since the adoption and entry into force of UNCLOS, but also the current programmes of work and the long-term plan of the organization.

4. The following paragraphs contain the preliminary considerations to be included in the new study which relate to the general features of the relationship between UNCLOS and IMO shipping regulations. The study is also expected to include a detailed analysis of such a relationship in connection with the different instruments as well as conclusions and suggestions on how present and future work at IMO could be related to the implementation of UNCLOS.

2. General features of the relationship between the United Nations Convention on the Law of the Sea and IMO shipping regulations

Historical background

5. The involvement of the secretariat of IMO in law of the sea matters dates back to 1973, with the beginning of its active contribution to the work of the Third United Nations Conference on the Law of the Sea in order to ensure that the elaboration of IMO instruments conformed with the basic principles guiding the elaboration of the Convention.

6. The avoidance of overlapping or potential conflicts between the work of IMO and that of the Third Conference was ensured by the inclusion in several IMO conventions of provisions which specifically indicated that their text would not prejudice the codification and development of the law of the sea by the Conference or any current or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.

7. Since the adoption of the 1982 Convention on the Law of the Sea, the IMO secretariat has held consultations first with the Office of the Special Representative of the Secretary-General of the United Nations for the Law of the Sea and subsequently with the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs in connection with several matters relating IMO's work to UNCLOS. Even before the entry into force of the Convention, explicit or implicit references to its provisions were incorporated into several IMO treaty and non-treaty instruments.

The global mandate of IMO

8. Although IMO is explicitly mentioned in only one of the articles of UNCLOS (article 2 of annex VIII), several provisions in the Convention refer to the "competent international organization" to adopt international shipping rules and standards in matters concerning maritime safety, efficiency of navigation and the prevention and control of marine pollution from vessels and by dumping.

9. In such cases the expression "competent international organization", when used in the singular in UNCLOS, applies exclusively to IMO, bearing in mind the global mandate of the organization as a special agency within the United Nations system established by the Convention on the International Maritime Organization (the "IMO Convention"). The IMO Convention was adopted by the United Nations Maritime Conference at Geneva on 6 March 1948. (IMO's original name, "Intergovernmental Maritime Consultative Organization", was changed pursuant to IMO Assembly resolutions A.358(IX) and A.371(X), adopted in 1975 and 1977 respectively.)

10. Article 1 of the IMO Convention establishes the global scope of safety and anti-pollution activities of IMO. It also refers to other tasks such as efficiency of navigation and the promotion of availability of shipping services based upon the freedom of shipping of all flags to take part in international trade without discrimination. Article 59 outlines the role of IMO as the

specialized agency within the United Nations system in the field of shipping and the effect of shipping on the marine environment. Articles 60 to 62 refer to cooperation between IMO and other specialized agencies as well as governmental and non-governmental organizations (NGOs), in matters relating international shipping to other activities within the scope of activities of those entities.

11. The wide acceptance and uncontested legitimacy of IMO's universal mandate in accordance with international law is evidenced by the following:

- A total of 155 sovereign States representing all regions of the world are at present parties to the IMO Convention and accordingly are members of IMO;

- All members can participate in meetings of IMO bodies in charge of the elaboration and adoption of recommendations containing safety and anti-pollution rules and standards. These rules and standards are adopted by consensus;

- All States, irrespective of whether they are members of IMO or of the United Nations are invited to participate at IMO conferences in charge of adopting new IMO conventions. All IMO treaty instruments have so far been adopted by consensus.

Relationship between the United Nations Convention on the Law of the Sea and IMO instruments

12. UNCLOS is acknowledged to be an "umbrella convention" because most of its provisions, being of a general nature, can only be implemented through specific operative regulations to be contained in other international agreements or national law.

13. This feature is reflected in several provisions in UNCLOS which require that States "take account of", "conform to", "give effect to" or "implement" the relevant international rules and standards developed by or through the "competent international organization" (IMO). These are variously referred to as "applicable international rules and standards", "internationally agreed rules, standards, and recommended practices and procedures", "generally accepted international rules and standards", "generally accepted international regulations", "applicable international instruments" or "generally accepted international regulations, procedures and practices".

14. Since UNCLOS does not give any definitions of these expressions, their interpretation in connection with their application to specific cases could only be undertaken by States parties. Nevertheless, some important distinctions drawn from general principles of international and treaty law should be taken into account.

15. In the first place, a distinction should be made between two main types of instruments, namely the recommendations adopted by the IMO Assembly, and rules and standards contained in international treaty instruments adopted at diplomatic conferences convened by IMO.

IMO recommendations

16. All IMO member States are entitled to participate and adopt IMO Assembly resolutions, which frequently include comprehensive texts of rules and standards in the form of technical codes or guidelines. Although IMO Assembly resolutions are of a recommendatory nature, member States frequently make them binding by means of incorporating them into national legislation. Some of these recommendations enjoy worldwide implementation. Such is the case, for example, of the International Maritime Dangerous Goods Code (IMDG Code).

17. The extent to which Parties to UNCLOS should apply international rules and standards recommended by IMO Assembly resolutions greatly depends upon their own interpretation of the expressions "take account of", "conform to", "give effect to" or "implement" international rules and standards. States should nevertheless bear in mind that technical rules and standards contained in IMO resolutions are the expression of a global, consensual agreement by all IMO members. Accordingly, parties to UNCLOS should try to conform to those rules and standards, obviously bearing in mind the need to adapt them to the particular circumstances of each case. Moreover, national legislation implementing IMO recommendations in accordance with general provisions contained in UNCLOS can be applied with binding character to foreign ships.

IMO treaty instruments

18. The extent to which parties to UNCLOS should apply rules and standards contained in IMO treaty instruments (conventions and protocols) should be assessed bearing in mind not only the substantive contents of those regulations but in each case the peculiar treaty law features of a convention or protocol.

19. This case-by-case analysis should be guided by the provisions contained in articles 311 and 237 of UNCLOS. Article 311 regulates the relation between the Convention and other conventions and international agreements. Article 237 includes specific provisions on the relationship between UNCLOS and other conventions on the protection and preservation of the marine environment.

20. Article 311, paragraph 2 provides that the Convention shall not alter the rights and obligations of States parties which arise from other agreements, provided that they are compatible with the Convention and do not affect the application of its basic principles. Bearing in mind this paramount proviso of compatibility with the basic principles of the Convention, as long as this paramount proviso is observed, international agreements expressly permitted or preserved by other articles of the Convention will not be affected (article 311, para. 5).

21. Article 237, paragraph 1, establishes that the provisions of part XII of the Convention are without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously which relate to the protection and preservation of the marine environment, and to agreements which may be concluded in furtherance of the general principles set forth in the Convention. Paragraph 2 further provides that specific obligations assumed by States under special conventions with respect to the protection and

preservation of the marine environment should be carried out in a manner consistent with the general principles and objectives of the Convention.

22. Bearing in mind articles 311 and 237, the compatibility between UNCLOS vis-à-vis IMO conventions and protocols can be established on the basis of the following:

(a) Several provisions in UNCLOS reflect principles compatible with those which had already been included in IMO treaties and recommendations adopted prior to the Convention. In this regard, mention should be made of provisions on collisions at sea, traffic separation schemes, exercise of port State jurisdiction for the protection and preservation of the marine environment, liability and compensation for oil pollution damage and measures to a avoid pollution arising from maritime casualties;

(b) The participation of the IMO secretariat in the sessions of the Third United Nations Conference on the Law of the Sea ensured that no overlapping, inconsistency or incompatibility exists between UNCLOS and IMO treaties adopted after 1973. Compatibility was in some cases reinsured by the inclusion in IMO treaties of specific clauses indicating that these treaties should not be interpreted as prejudicing the codification and development of the law of the sea by UNCLOS (see article 9, paragraph 2 of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), article V of the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STW), and article II of the International Convention on Search and Rescue (SAR)). A similar provision is included in the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (the "London Convention"), in respect of which IMO performs the functions of the secretariat. The above clauses also contain the proviso that nothing in those treaties shall prejudice present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction. In this way, legal certainty is provided by ensuring avoidance between IMO global regulatory activities and future developments or codification of the law of the sea.

Legal status of IMO treaties in accordance with international law and the law of the sea

Consequences for parties to the 1982 Convention

23. The degree of acceptability and worldwide implementation enjoyed by the rules and standards contained in IMO treaties is a paramount feature to be taken into account in considering the extent to which parties to UNCLOS should, in compliance with obligations specifically prescribed in the Convention, apply IMO rules and standards. In this regard it should first of all be noted that reference to the obligation for States parties to the Convention to "take into account", "conform to", "give effect to" or "implement" IMO rules and standards is related to the requirement that those standards are "applicable" or "generally accepted". This means that the degree of international acceptance of those standards is decisive in establishing the extent to which parties to UNCLOS are under the obligation to implement them.

24. The criteria for establishing the extent to which the most important IMO treaties comply with the requirement of general acceptance must in the first place take into account that since 1982 formal acceptance of the most relevant IMO treaty instruments has increased in such a way that it seems beyond discussion that those treaties can be considered as widely accepted and implemented worldwide.

25. At present, between 85 and 139 States (depending upon the treaty) have become party to the main IMO Conventions. Since the degree of general acceptance of these shipping conventions is mainly related to their implementation by flag States, it is of paramount importance to note that States party to these Conventions represent in all cases more than 90 per cent of the world's merchant fleet. The effectiveness of this wide implementation is strengthened by the fact that, under the principle of "no-more-favourable-treatment", port States party to the three Conventions which include the most comprehensive sets of rules and standards (the 1974 International Convention for the Safety of Life at Sea (SOLAS), MARPOL and STCW) are entitled to apply these rules and standards to vessels flying the flag of non-States parties.

26. These facts are decisive for establishing the measure to which any obligation under UNCLOS to comply with generally accepted safety and anti-pollution shipping standards could bind parties to UNCLOS even if they are not party to the IMO treaties containing those rules and standards. In establishing the degree to which this binding character could operate the following circumstances should also be taken into account:

(a) The degree of compliance with IMO rules would vary depending upon the interpretation given by parties to UNCLOS to the expressions "give effect to", "implement" "conform to" or "take account of", with reference to IMO rules and standards. Parties should in each case assess the context of UNCLOS establishing obligations in this regard and relate that context to the IMO treaty in question and the corresponding rules and standards UNCLOS is referring to;

(b) The borderline of such an assessment seems to be that parties to UNCLOS should not apply less effective rules or lower standards than the IMO generally accepted ones without violating the general obligations regarding safety and prevention and control of pollution established in UNCLOS: the obligation to avoid "sub-standard ships" is necessarily defined with reference to IMO treaties;

(c) The fact that parties to UNCLOS should apply IMO rules and standards should be seen as a paramount incentive for them to become parties to the IMO treaties containing those rules and standards. As parties to those treaties they would be entitled to the specific rights conferred upon them in accordance with specific treaty law provisions in each case. Most paramount among them would be the value accorded by IMO treaties to certificates issued by their parties.

The exercise of State jurisdiction in accordance with IMO instruments

27. While UNCLOS defines the features and extent of the concepts of flag, coastal and port State jurisdiction, IMO instruments specify how State jurisdiction should be exerted to ensure compliance with safety and anti-pollution shipping regulations. The enforcement of these regulations is primarily the responsibility of the flag State. Nevertheless, one of the most important features reflecting the evolution of the work of IMO in the last three decades is the progressive strengthening of port State jurisdiction with a view to correct non-compliance with IMO rules and standards by foreign ships voluntarily in port. Voluntary access to port implies acceptance by the foreign ship of the jurisdictional powers of the port State to exert corrective jurisdiction in order to ensure compliance with IMO regulations.

28. An important distinction of a general kind can nevertheless be advanced here: in every IMO treaty the exercise of port State jurisdiction to correct deficiencies in the implementation of these regulations should be carefully distinguished from the power of the port State to impose sanctions. Sanctions can be imposed for violations occurring outside port State jurisdiction committed by a foreign ship voluntarily in port. The distinction is especially important in the case of pollution damage. In this regard, the power the IMO regulations conferred upon the port State to impose sanctions (notably in the MARPOL Convention) should be related to the features and extension of these jurisdictional powers, as regulated in part XII of UNCLOS.

29. In principle, IMO treaties do not regulate the nature and extent of coastal State jurisdiction in connection with their implementation. Thus, the degree to which coastal States can enforce IMO regulations in respect of foreign ships in innocent passage in their territorial waters or navigating the exclusive economic zone is a subject matter to be established by national law drafted in accordance with the provisions of UNCLOS. The same principle applies to transit passage in straits used for international navigation or archipelagic sea lane passage in archipelagic waters. There are, however, some cases in which the application of IMO provisions mainly relies upon the exercise of coastal State jurisdiction:

- The International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, and its Protocol relating to pollution by substances other than oil, 1973, are international public law treaties which specifically regulate the right of the coastal State to intervene in the high seas in the case of pollution casualties. The content of these instruments has been largely superseded by provisions of UNCLOS;

- Within the framework established by UNCLOS, IMO has adopted routeing measures the enforcement of which necessarily relies on the exercise of coastal State jurisdiction.

The sea zones and the implementation of IMO regulations

30. States party to IMO treaties are under obligation to exert enforcement jurisdiction on ships flying their flag, irrespective of the sea zone in which the ships may find themselves. Accordingly, the different legal status of the territorial sea, the exclusive economic zone and the high seas does not bear a direct influence on the way safety and anti-pollution measures on board should be implemented. The proximity of the coast, artificial islands and platforms sometimes modifies this implementation on account of the different features of safety and anti-pollution risks there, rather than the different jurisdictional regimes applicable to the corresponding sea areas.

31. Since the exercise of jurisdiction to ensure compliance with IMO regulations on board is primarily the responsibility of the flag State, IMO instruments do not regulate the extent to which coastal States can control foreign ships in different sea zones. The extension and features of coastal State jurisdiction to ensure compliance with IMO regulations is a matter regulated by UNCLOS.

32. The existence of sea zones, however, becomes relevant in determining how coastal State jurisdiction should be exerted in connection with the enforcement of routeing measures to be adopted by the Organization. IMO general provisions on routeing should in this regard be interpreted together with the corresponding provisions of UNCLOS. The legal status of the different sea zones has also been taken into account in the two IMO Conventions regulating a civil liability regime and compensation for oil pollution damage (the "Civil Liability Convention" and the "FUND Convention"). In such conventions, the legitimacy of States parties to file claims for pollution damage is directly related to the occurrence of this damage within their territory, territorial sea and exclusive economic zone.

K. United Nations Development Programme

[25 July 1996]

1. Since UNCLOS entered into force in November 1994, there has been increased focus within UNDP on assistance to countries in the responsible management of their 200-mile exclusive economic zones in line with the Convention. In more general terms, UNDP has had a fruitful dialogue with the United Nations Division for Ocean Affairs and the Law of the Sea on how UNDP and the Division might collaborate in helping countries fulfil their obligations under the Convention. The activities outlined in the following paragraphs are to be noted in particular:

2. UNDP and the United Nations have launched the TRAIN-SEA-COAST decentralized course development and sharing system project in nine countries and arrangements are under way for the development of 18 course modules which will be exchanged between those countries. These collaborative efforts between UNDP and the Division build on past UNDP programmes in other sectors and benefit from the professional support and coordination of the Division.

3. UNDP has developed a portfolio of ocean and coastal area management projects in excess of $70 million. The impetus for countries to enter this field was undoubtedly the entry into force of UNCLOS.

4. In order to improve the effectiveness of this portfolio of projects, UNDP is launching a global strategic initiative for ocean and coastal area management. The initiative will use the TRAIN-SEA-COAST programme to document and exchange high-quality course material and will perform the same documentation and exchange services between projects in the fields of research, policy frameworks, institutional frameworks and sustainable funding mechanisms. UNDP is also enhancing its capacity in this field through a strategy on the sustainable management of water resources and the aquatic environment and a new unit in its Sustainable Energy and Environment Division to deal with the relevant issues.

5. Together with the United Nations, UNDP is an active collaborator in the ACC Subcommittee on Oceans and Coastal Areas. UNDP recently received the approval of the Subcommittee for a collaborative framework for project review under which United Nations agencies can submit comments which will enhance the value of each agency's project.

6. UNDP, as an implementing agency with the World Bank and the United Nations Environment Programme (UNEP) in the Global Environment Facility (GEF), has played an active role in the development of the GEF Operational Strategy. The entry into force of UNCLOS has had an important impact and is specifically referred to in the GEF Operational Strategy in connection with the components on the international waters and marine biodiversity component.

7. UNDP has been active both in the preparations for and the follow-up to the UNEP Conference on the Prevention of Marine Pollution from Land-based Activities and the Global Programme of Action which emanated from the Washington Conference in November 1996. The relationship between the Global Programme of Action and UNCLOS has been emphasized throughout this process.

L. United Nations International Drug Control Programme

[21 July 1997]

1. No formal amendments or revisions are required by the entry into force of UNCLOS to the international drug control conventions, in particular the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. Article 17 of the 1988 Convention, entitled "Illicit traffic by sea", was negotiated to be complementary to and consistent with UNCLOS, particularly with article 108.

2. UNCLOS does not assign any responsibilities to UNDCP;

3. It is not necessary for UNDCP to establish new or revised procedures as a result of the entry into force of UNCLOS.

4. Because the 1988 Convention is consistent with and complementary to UNCLOS, the entry into force of UNCLOS facilitates the work of the international community in preventing drug trafficking by sea by providing the overall framework within which the specific provisions of article 17 of the 1988 Convention are to be implemented.

M. United Nations Framework Convention on Climate Change

[17 October 1996]

1. There are two fronts on which the United Nations Framework Convention on Climate Change could be linked to UNCLOS: science and research, and policy.

2. With regard to science, even though the impact of the seas (oceans) on climate is of extreme importance given their other functions as sinks and reservoirs, and conversely, increasing concentrations of greenhouse gases may lead to a rise in sea level and in temperature, changes in ocean currents as well as further climate change, the Convention Secretariat believes that for the time being this linkage is being thoroughly addressed in particular by the World Meteorological Organization (WMO) and IOC/UNESCO. Furthermore, the Intergovernmental Panel on Climate Change (IPCC), which was established by WMO and UNEP, could very well provide the necessary integrated assessments.

3. As for research and systematic observation, the secretariat of the Climate Change Convention is ready to support all efforts aimed at furthering our the understanding of the linkages between oceans and climate change as provided for in article 5 of the Convention. This is also relevant in response to article 200 of part XII of UNCLOS entitled "Studies, research programmes and exchange of information and data".

4. With regard to policy, two types of interventions may be relevant: (a) the dumping of carbon dioxide in deep waters, though still under research, can best be addressed by IOC/UNESCO and IPCC; and (b) coastal zone management, which is relevant for policy-making at the national, regional and international levels. Set against this backdrop, the secretariats of both Conventions need not have a direct linkage, as IPCC and IOC, among other organizations, could provide such a linkage.

5. However, it would be most useful to complement each other when necessary, fostering our collaboration in the exchange of information as well as following the evolution in the implementation of each Convention. This would enable us to provide a better service to Governments that have ratified both the Climate Change Convention and UNCLOS.

N. World Intellectual Property Organization

[7 May 1997]

The entry into force of UNCLOS does not have any impact on the treaties administered by WIPO or on the activities of WIPO.

Notes

[1] A similar request had been made in 1996 pursuant to General Assembly resolution 49/28 for the preparation of such a report for submission to the General Assembly at its fifty-first session, but because of the limited number of responses received, the report was postponed to the current session.

[2] Chile ratified UNCLOS on 25 August 1997.

[3] According to ICAO's reply of the previous year dated 19 August 1996, preparatory studies had been initiated in the ICAO Legal Bureau on the possible implications of UNCLOS for the application of the Chicago Convention, its annexes and other international air law instruments. The ICAO Council requested the ICAO secretariat to undertake a study of the item on 3 June 1983; the study was presented to the Council at its 111th session in March 1984. The Council requested the Secretary-General to circulate it among States and international organizations for comments.

At its 113th session, in November 1984, the Council had for its consideration the replies from States and international organizations. A Rapporteur was appointed, and he presented his report in September 1985; the report appeared in English in Annual review of ocean affairs, law and policy, 1985-1987, vols. I and II, pp. 115-123 (available from the secretariat of the Division for Ocean Affairs and the Law of the Sea). The item was prepared for consideration by the 26th session of the Legal Committee (April-May 1987). However, in view of other priorities, the subject was not addressed at that session, but was only taken up at the 29th session of the Legal Committee (Montreal, 4-15 July 1994), which noted the report of the Rapporteur.

Although no major problems had been identified in the Secretariat study (Working paper LC/29-WP/8-1, 10/3/94, available in English from the secretariat of the Division for Ocean Affairs and the Law of the Sea) or in the Rapporteur's report, the Committee believed that it would be prudent to await the practical implementation of the Convention by States to see whether any major problems would in fact arise which would require the attention of the Legal Committee.

[4] In its reply to the Secretary-General, the International Labour Office referred to its letter of 29 March 1996 transmitting a copy of the document submitted to the Governing Body on the "Implications for ILO of the coming into force of the United Nations Convention on the Law of the Sea" as well as a copy of the report of the Committee on Legal Issues and International Labour Standards, 265th session, March 1996, (GB.265/LILS/2). The report was adopted by the Office and the reply appearing in section I of the present report consists of excerpts from that report (paras. 5-16 at notes thereto).

[5] "Implications of the United Nations Convention on the Law of the Sea, 1982, for the International Maritime Organization"; IMO document LEG/MISC/1.
