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THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

Responsibilities of the Secretary-General as a consequence of the
adoption of the United Nations Convention on the Law of the Sea
and of related decisions of the Third United Nations Conference
on the Law of the Sea and the General Assembly

Note by the Secretary-General

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I. INTRODUCTION

1. In accordance with operative paragraph 7 of draft resolution A/37/L.13/Rev.1, the General Assembly would approve the assumption by the Secretary-General of the responsibilities entrusted to him under the United Nations Convention on the Law of the Sea and the related resolutions and would also approve the stationing of an adequate number of secretariat staff in Jamaica for the purpose of servicing the Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea, as required by its functions and programme of work. In his letter to the President of the General Assembly (A/37/441), the President of the Third United Nations Conference on the Law of the Sea drew attention to the responsibilities that the Secretary-General of the United Nations was called upon to carry out under the Convention on the Law of the Sea, noting that they were in addition to the functions usually performed by the Secretary-General and were distinct from the requirements of resolution I of the Conference on the establishment of a Preparatory Commission for the International Sea-Bed Authority and for the International Tribunal for the Law of the Sea and resolution II governing preparatory investment in pioneer activities relating to polymetallic nodules.

2. The President of the Conference also informed the President of the General Assembly that he had addressed a communication to the Secretary-General concerning these additional responsibilities imposed by the Convention, recalling that they had been the subject of an earlier study by the Secretary-General prepared in accordance with General Assembly resolution 35/116 ("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", A/CONF.62/L.76 of 18 August 1981). It should be noted in this connection that, following the submission of this study, the Conference had requested continuation of the work involved, and that the General Assembly took note of that decision in its resolution 36/79. The various comments that were made by Governments and delegations, formally and informally, have been taken into account in the preparation of the present note.

3. In both the above communications, the President of the Conference has noted that it is necessary for appropriate action to be taken by the General Assembly to approve the assumption by the Secretary-General of these additional responsibilities and to provide the means to implement them. The Secretary-General believes also that it is important that the General Assembly be given the opportunity to examine his new responsibilities as a whole, at this session, since many of the additional responsibilities would commence effectively with the opening of the Convention for signature, and some may be expected to require a greater effort in the period before entry into force of the Convention than subsequently.

4. In this connection, the attention of the General Assembly is drawn also to paragraph 7 of its resolution 35/116, in which it suggested to the Secretary-General that special efforts be made to promote the widest possible public awareness of the achievements of the Conference.

5. The Secretary-General is required to bring resolution I of the Conference, and particularly its paragraphs 14 and 15 on the financing and servicing of the Preparatory Commission, to the attention of the General Assembly. As has already been pointed out by the President of the Conference, a distinction is to be made between duties of the Secretary-General under resolutions I and II, given their transitional nature, and those under the Convention or any other decision concerning the law of the sea which constitutes a continuing effort for the fulfilment of all his functions.

6. Finally, attention is drawn to the communication of the Secretary-General (A/37/566), transmitting a resolution adopted by the Conference on Development of National Marine Science, Technology and Ocean Service Infrastructures. For the purpose of considering this resolution and other major aspects of ocean affairs which concern the United Nations and various specialized agencies, the attention of the General Assembly is drawn to the "Cross-Organizational Programme Analysis of Marine Affairs Activities of the United Nations System" which is being prepared for submission to the Committee on Programme and Co-ordination in 1983. The results of that Committee's examination of the analysis can be expected to have a significant influence on the ability of the system to take account of the inter-relations among many marine questions and to harmonize activities accordingly.

II. THE RESPONSIBILITIES OF THE SECRETARY-GENERAL UNDER THE CONVENTION

7. The Secretary-General is charged with extensive functions under the Convention. These functions fall into three categories:

- (a) The usual functions of a depositary;
- (b) Functions which are not unusual for the Secretary-General to discharge;
- (c) Functions that are new and quite unprecedented.

8. Under the first category could fall such acts as receiving instruments of ratification or accession or even the Secretary-General's role concerning the amendments to the Convention. 1/

9. The Secretary-General's functions relating to the receipt of declarations or notices concerning the choice of procedures for the settlement of dispute could be considered as falling under category (b).

10. It is, however, with respect to his reporting duties under Article 319, paragraph 2 (a), and his functions as depositary of charts and lists of geographical co-ordinates that the Convention contains responsibilities which are new and unprecedented.

A. Reporting functions of the Secretary-General

11. Article 319, paragraph 2 (a), embodies the reporting functions of the Secretary-General. It enjoins the Secretary-General to "report to all States Parties, the Authority and competent international organizations on issues of a general nature that have arisen with respect to the Convention". The legislative history of this provision indicates that its purpose is to ensure that the problems of ocean space, being closely interrelated, have to be considered as a whole, as stipulated by General Assembly resolution 3067 (XXVIII) and the third preambular paragraph of the Convention itself. This provision has to be seen as the major determinant of the arrangements for dealing with law of the sea affairs in the United Nations Secretariat and for ensuring consultation and collaboration on matters concerning the Convention within the United Nations system. The Secretary-General is aware of the fact that this function will only become mandatory with regard to States Parties and the Authority upon entry into force of the Convention. It is, however, clear that there is a need to ensure continuity in the process of collecting and analysing information relevant to these reporting functions, not only to enable the Secretary-General to discharge his responsibilities upon entry into force but also to make that information available to States, competent international organizations and, as appropriate, academic institutions, and for the purpose of promoting the widest possible public awareness of the achievements of the Conference. In this connection, it cannot be inferred that Governments will be interested in only those "issues of a general nature" which will have arisen after the entry into force of the Convention, but also in those that may arise with respect to the Convention before its entry into force, as they may have a significant influence upon the process of acceptance of the Convention itself. Moreover, it should be kept in mind that through the promulgation of national legislation some parts of the Convention constitute the law in force for numerous States. The importance of these considerations in the context of promotion of an integrated régime governing ocean space, especially given the continuing trend of national legislation in this sphere, cannot be overlooked.

B. Charts and lists of co-ordinates

12. Under the Convention, the coastal States are obligated to submit charts and lists of geographical co-ordinates on:

- (a) Baselines for measuring the breadth of the territorial sea or the limits derived therefrom (art. 16) and, where appropriate, archipelagic baselines (art. 47, para. 9);
- (b) Lines of delimitation (arts. 16, 75 and 84);
- (c) Outer limits of the exclusive economic zone (art. 75);
- (d) Outer limits of the continental shelf (art. 84).

It should be stated here that recommendations made to coastal States by the proposed Commission on the Limits of the Continental Shelf "on matters related to the establishment of the outer limits of their continental shelf beyond 200 nautical miles" should also be submitted to the Secretary-General.

III. INFORMATION, ADVICE AND ASSISTANCE UNDER THE NEW LEGAL REGIME

13. In connection with the decision of the General Assembly in its resolutions 35/116 and 36/79 concerning "the needs of countries, especially developing countries, for information, advice and assistance under the new legal régime", the subject of part two of the study of the Secretary-General (A/CONF.62/L.76), attention is drawn to the statement of the Secretary-General to the Fifth Committee on General Assembly resolution 36/79 (see para. 13, A/C.5/36/60 of 24 November 1981), as a consequence of which the following areas of activity were reinforced within the secretariat of the Conference:

"Information on national legislation pertaining to the exercise by coastal States of their sovereignty, sovereign rights or jurisdiction in their territorial sea, their exclusive economic zone and their continental shelf; information regarding existing global, regional, subregional or national programmes of technical co-operation on matters such as exploitation of living and non-living resources, marine scientific research, surveillance of extended maritime areas, protection of the marine environment, transit to and from the sea for land-locked States and navigation through straits and archipelagic waters; compilation of information relevant to the future functions of the Preparatory Commission, in co-operation with the Ocean Economics and Technology Branch."

Mention may also be made of General Assembly resolution 34/20 concerning the training needs of developing countries in deep-sea mining and related activities, although the requirements of the Secretary-General under this resolution are, to a great degree, superseded by the training activities called for in resolution II of the Conference.

IV. ORGANIZATIONAL FRAMEWORK FOR LAW OF THE SEA ACTIVITIES

14. The determination of the General Assembly in 1973 that "the problems of ocean space are closely interrelated and need to be considered as a whole" was the major determinant of the servicing arrangements adopted by the Secretary-General for the Conference, and what held true for the preparation of the Convention would hold equally true for its implementation and for the conduct of law of the sea activities within the United Nations Secretariat. It will be recalled that, in accordance with General Assembly resolution 3029 (XXVII) and 3067 (XXVIII), a Special Representative was appointed to act on behalf of the Secretary-General in his capacity as Secretary-General of the Conference and the necessary staff was recruited while utilizing to the fullest extent possible existing resources within the Secretariat. The arrangements thus established were successful mainly because of close co-operation between the Office of the Special Representative, the Legal

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Office and the Departments of Political and Security Council Affairs, of International Economic and Social Affairs and of Public Information. Mention has to be made of the fact that, thanks to these arrangements, it was not necessary during the eight years of servicing the Conference to enlarge the Office of the Special Representative, although the servicing requirements of the Conference increased substantially. Mention must also be made of the close co-operation that prevailed over the years of the Conference between the Office of the Special Representative and the secretariats of the United Nations organizations and specialized agencies. General Assembly resolutions subsequent to 1973 (resolutions 3483 (XXX), 31/63 and 33/17) have stressed the "efficient and continuous servicing of the Conference ... and of subsequent activities as may be decided upon by the Conference", and have also authorized the Secretary-General to "ensure stability and continuity for the secretariat personnel recruited for the Conference".

15. The Secretary-General has therefore concluded that the most desirable arrangement for the conduct of law of the sea activities within the United Nations Secretariat, taking into account also the need to ensure maximum efficiency and economy, is to establish the Office of the Special Representative as the office responsible for law of the sea affairs. That Office would carry out those new responsibilities which derive from the Convention and other decisions relating to the law of the sea, including that of giving substantive support to the Preparatory Commission and ensuring the co-operation of other departments and units of the Secretariat on matters relating to their particular areas of competence. Only in this way can the servicing of the Preparatory Commission take place without having to duplicate existing capabilities of the Secretariat. The experiences of the past 14 years in the servicing of the Sea-Bed Committee and the Conference on the Law of the Sea have amply demonstrated that this is the most economical and efficient way of giving substantive support to an activity of primary importance to the United Nations, that requires legal, technical, economic, financial and commercial expertise which, to a large extent, is available within the United Nations Secretariat.

V. AREAS OF ACTIVITY OF THE OFFICE FOR LAW OF THE SEA AFFAIRS

16. The main areas of activity would be as follows:

I. Reports on developments relevant to the new legal régime for the seas

- (a) Preparation of reports on "issues of a general nature which have arisen with respect to the Convention" (art. 319), in co-operation with other departments of the Secretariat, within their areas of competence;
- (b) Preparation of general studies for the General Assembly, Economic and Social Council and specialized United Nations bodies, relating to legal, political, economic and technical developments affecting the oceans;
- (c) Preparation of a Law of the Sea periodic publication to provide for regular dissemination of information indicative of the acceptance and

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implementation of the Convention, including the adoption of national laws and regulations, State practice, new agreements affecting the provisions of the Convention, decisions of States on settlement of disputes procedures, decisions of arbitral and other bodies, and other relevant developments in international law.

This reporting activity depends upon the establishment and maintenance of a broad information base, for which item III below provides; various research and study activities under item IV below; and communications and consultations with Governments, as required, and the competent international organizations to ensure conformity with the intent and purpose of Article 319 of the Convention, as provided under item VI below. It is understood also that this reporting activity will encompass information on preparations for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea.

II. Activities associated with the deposit of charts and lists of co-ordinates and servicing of the Commission on the Limits of the Continental Shelf

- (a) Receipt of information (charts and lists of co-ordinates) giving baselines, the various limits of national jurisdiction and lines of delimitation; arrangements for making available this information and information relevant to the delimitation of the international sea-bed area from areas under national jurisdiction;
- (b) Preparations for the establishment of the secretariat for the Commission on the Limits of the Continental Shelf with attention to the arrangements that will be required to provide scientific and technical advice to States making such requests of the Commission, and taking account of the close co-operative relations with the Intergovernmental Oceanographic Committee, the International Hydrographic Organization (UNESCO/IOC), and other international organizations as called for under the Convention.

III. Information activities

(a) Provision of a Law of the Sea Information Service

- (i) Collection of national policies, laws, regulations and administrative or institutional arrangements; bilateral, subregional and regional agreements and arrangements; and relevant international legal materials;

The development of an information capability with respect to legislative materials requires special efforts of location, authentication and translation; systematic storage of materials and the ability to retrieve on and according to request; and preparation of bulletins and similar information products;

- (ii) Major United Nations system programmes and projects in the marine sector;
 - (iii) Specialized information and data required for the work of the Preparatory Commission;
 - (iv) Specialized information and data required for the future Commission on the Limits of the Continental Shelf;
- (b) Establishment of a separate Law of the Sea Reference Collection, based on the special library set up for the Conference:
- (i) Maintenance of Conference documentation and relevant documentation of the United Nations and specialized agencies;
 - (ii) Development of the Law of the Sea Collection, including basic materials in scientific, technical and economic fields;
 - (iii) Preparation of bibliographies;
 - (iv) Development of specialized library and archival requirements of the institutions to be established at Jamaica and the Federal Republic of Germany;
 - (v) Development of specialized collection for the Commission on the continental shelf;
- (c) Development of arrangements for information exchange among the different entities involved in settlement of disputes procedures, viz., United Nations Secretariat, the Registrar of the International Court of Justice, and the Registrar of the International Tribunal for the Law of the Sea, once established, and, for special arbitral tribunals, the secretariats of the United Nations Environment Programme, the Food and Agriculture Organization of the United Nations, the International Maritime Organization and UNESCO/IOC.

IV. Research, studies and advisory activities

- (a) Systematic collection and analysis of national legislation in all matters pertaining to the implementation by States of their rights and duties in areas under their national jurisdiction;
- (b) Advice and assistance, on request, with regard to the formulation of marine policy, legislative review and preparation of new or modifying legislation; development of legislative guidelines as needs determine;
- (c) Advice on formulation and implementation of technical assistance projects having legal or institutional elements;

- (d) Special studies and advisory activities, including those conducted jointly with specialized agencies and with research and studies institutions of the United Nations system; 2/
- (e) Assistance to regional commissions and other United Nations bodies in the formulation of marine programmes under the new legal régime and promotion of complementary research, studies and advisory activities at the regional level; 3/
- (f) Legal research, studies and drafting activities for the Preparatory Commission;
- (g) Financial, economic and technical analysis and studies for the Preparatory Commission.

V. Promotion, education and training activities

- (a) Preparation of general articles and information materials, provision of speakers, etc., in connection with the promotion of the widest public awareness of the achievements of the Conference and of acceptance and implementation of the Convention;
- (b) Preparation of briefing materials for use by technical assistance experts, Resident Co-ordinators, UNDP Resident Representatives, etc.;
- (c) Assistance to seminars and workshops organized by Governments or United Nations organizations and agencies, as required; joint sponsorship where appropriate;
- (d) Provision of information and advice to educational institutions specializing in Law of the Sea;
- (e) Development and administration of the Hamilton Shirley Amerasinghe Fellowship;
- (f) Development and administration of a training scheme for personnel designated by the Preparatory Commission.

VI. Harmonization of activities at Secretariat and United Nations system levels

General requirements with respect to:

- (i) Meetings of various intergovernmental bodies, seminars, etc.;
- (ii) Activities jointly undertaken with United Nations organizations and agencies;

- (iii) Arrangements for flow of information to and from United Nations departments, regional commissions, secretariats of specialized agencies and normal channels of information available within the system;
- (iv) The various co-ordinating mechanisms in the United Nations system on marine affairs.

The establishment of special mechanisms, within the framework of the Administrative Committee on Co-ordination, particularly for communications and consultations concerning reports prepared under Article 319 of the Convention, will have to be considered.

VI. SERVICING REQUIREMENTS OF THE PREPARATORY COMMISSION

17. Under resolution I of the Conference on the establishment of the Preparatory Commission for the International Sea-Bed Authority and the International Tribunal for the Law of the Sea, the Secretary-General is required to convene the Commission no sooner than 60 days and no later than 90 days following signature of or accession to the Convention by 50 States. It is entirely possible, therefore, that the Preparatory Commission will be able to hold its first meeting in March 1983.

18. Under paragraph 15 of this resolution, the Secretary-General "shall make available to the Commission such secretariat services as may be required". While the powers and functions of the Commission, including those assigned to it by resolution II of the Conference on preparatory investment, clearly indicate the need for a wide range of secretariat services, actual requirements will greatly depend on the degree of detail required in, and the rate, duration and structuring of the work of the Commission. The Secretary-General therefore proposes to adopt a flexible approach to the servicing of the Commission, at least for the initial phases of its work, by ensuring that the Commission would have first called on the relevant Secretariat resources which have been devoted to the servicing of the Conference, and that the Office for Law of the Sea Affairs will be able to draw on other existing resources of the United Nations Secretariat where relevant. Since the services required involve collection and assessment of considerable information and data, extensive research and analysis of scientific, technical, operational, financial and economic aspects of deep sea-bed resource development and management, as well as major legal drafting activities, ad hoc teams of United Nations Secretariat experts would be formed as and when required to provide specialized advice and assistance.

19. To assist the Preparatory Commission in the adoption of its rules of procedure, the formulation of its programme of work and the adoption of the various decisions required for the implementation of resolution II governing preparatory investment, the Secretary-General intends to circulate, in conjunction with the convening of the Commission, a memorandum detailing the possible scope and content of its work. Special mention is made of the implementation of resolution II since it would be necessary for the Commission first to adopt the relevant procedures with respect to application and registration of pioneer investors and the supervision of pioneer activities before it could begin to function effectively for the purposes of paragraph 2 of resolution II.

Notes

1/ Arts. 312, 313, 314 and 315.

2/ Such activities are expected in connection with the preparations for the 1984 FAO World Conference on Fisheries Management and Development.

3/ The Secretariat is already providing assistance in this connection to two of the regional commissions and has been requested to provide additional assistance.
