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In-depth evaluation of the programme on the law of the sea and ocean affairs

Note by the Secretary-General

In conformity with General Assembly resolutions 48/218 B of 29 July 1994 and 54/244 of 23 December 1999, the Secretary-General has the honour to transmit herewith the report of the Office of Internal Oversight Services on the in-depth evaluation of the programme on the law of the sea and ocean affairs. The report has been reviewed by the relevant departments and offices. The Secretary-General takes note of its findings and concurs with its recommendations.

* E/AC.51/2003/1.

Report of the Office of Internal Oversight Services on the in-depth evaluation of the programme on the law of the sea and ocean affairs

Summary

The present report reviews the work of the programme on the law of the sea and ocean affairs, implemented since 1992 by the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs, with focus on the period 1998-2002. The Division promotes the universal acceptance of the United Nations Convention on the Law of the Sea and its implementing Agreements, provides secretariat services to the General Assembly and the Convention treaty system of institutions and assists Member States in deriving practical benefits from the international legal regime for the oceans.

Since 1992, the Division has effectively discharged the responsibilities of the Secretary-General under the United Nations Convention on the Law of the Sea. The Division's servicing of the General Assembly and its Consultative Process during their annual review of ocean affairs and the law of the sea has satisfied the users of services. Its administrative and technical support to the Commission on the Limits of the Continental Shelf and other treaty institutions has been useful and cost-effective.

The Division has played a useful role in promoting the universal acceptance of the Convention and the Agreements and their uniform application. The assistance it provides to international organizations to ensure that their legal instruments and agreements are developed in a manner consistent with the Convention has been appreciated by those organizations. To assist States in deriving practical benefits from the Convention, the Division has developed a range of information resources and has provided advisory services, training and fellowships. In particular, since 1995, the Train-Sea-Coast training programme has contributed to strengthening capacity in integrated coastal management at the national and regional levels.

Universal participation by Member States in the Convention is an important goal for the Division. To increase participation, the Division should ensure that it has the capacity to respond to requests of Member States for briefings and to promote greater awareness among policy makers of the practical economic benefits that can be derived from participating in the international legal regime for the oceans. The Division should develop its publications programme to cover topics in which States require assistance.

The Convention addresses all the problems of use of ocean space in an inter-related manner. Therefore, to be effective, the efforts of United Nations organizations assisting Member States in implementing the Convention need to be closely coordinated. The Division should be fully involved in the development of the new international coordination mechanism requested by the General Assembly in 2002. Considering the central role of regional cooperation in implementation issues, the Division should increase its participation in regional initiatives. Strengthened coordination should also provide the General Assembly with better information on the overall impact on the work of the competent organizations and options for necessary action to be taken.

The Division should review its capacity and range of skills necessary to perform its various functions taking into account its anticipated larger involvement in providing technical assistance and its role in inter-agency cooperation as highlighted by the General Assembly in 2002.

The report contains specific recommendations regarding the Division's promotion of universal acceptance of the Convention, its analysis of new developments in ocean affairs provided to the General Assembly and the scope of its programme of publications. It is recommended that the Division actively participate in establishing the new international coordination mechanism, further assist regional cooperation initiatives, strengthen consultations among the secretariats of the treaty system of institutions and conduct an assessment of the adequacy of its capacity and the range of expertise needed.

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I. Introduction

A. Mandate and methodology

1. The Committee for Programme and Coordination (CPC) at its forty-first session recommended that the programme for the law of the sea and ocean affairs be the subject of in-depth evaluation with a report on the evaluation submitted to the Committee at its forty-third session in June 2003.¹

2. The in-depth evaluation reviewed all the activities of the programme, focusing on the most recent medium-term plan periods, 1998-2001 and 2002-2005, and the plans' objectives. The programme is implemented by the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs. The present report contains the evaluation findings on the secretariat services provided by the Division (sect. II); promotion by the Division of the universal acceptance of the United Nations Convention on the Law of the Sea and the implementing Agreements, and their application (sect. III); and assistance provided by the Division to Member States to enable them to derive practical benefits from the international legal regime for the oceans (sect. IV).

3. In the conduct of the in-depth evaluation, the following categories of information were utilized by the Office of Internal Oversight Services (OIOS): (a) United Nations documents; (b) information from internal sources (the programme's internal assessments and internal working documents); (c) structured interviews with the staff of the programme and other Secretariat departments, representatives of the institutions established under the United Nations Convention of the Law of the Sea and other organizations of the United Nations system, and non-governmental organizations; (d) a survey of the views of Member States participating in the General Assembly open-ended, informal consultative process on oceans and the law of the sea, most of them being also parties to the Convention; and (e) a review of the professional literature on the Convention and related Agreements.

B. United Nations programme on the law of the sea and ocean affairs

1. International agreements

4. The United Nations Convention on the Law of the Sea (the Convention) was adopted in 1982 and entered into force, 12 years later, in 1994. Based on the understanding that "the problems of ocean space are closely interrelated and need to be considered as a whole", the purpose of the Convention is to establish "a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment" (Convention preamble). The Implementing Agreement on deep seabed mining, adopted in 1994, and the Straddling Fish Stocks Agreement, which was adopted in 1995 and entered into force in December 2001, complete the United Nations law of the sea "package" as it stands at present.

5. The Convention codifies and develops the rules of international law of the sea and, as an umbrella treaty, establishes general principles to be implemented through

special regimes established in instruments developed by other bodies: it provides for stability in the law with possible adaptation and change. Currently nearly 500 treaties at the global and regional levels regulate major human activities at sea or affecting the sea. Recent instruments refer to the Convention as a basis for international action.

6. The major non-binding agreement adopted by the United Nations Conference on Environment and Development (UNCED) in 1992, known as Agenda 21, formulates a programme of action for sustainable development, including, in its chapter 17, the protection of the oceans, seas and coastal areas that is guided by the provisions of the Convention. Chapter 17 recommended that the General Assembly should provide for regular consideration, within the United Nations, at the intergovernmental level of general marine and coastal issues, including environment and development matters.

7. In 1994, the General Assembly decided to undertake an annual review and evaluation of the implementation of the Convention and other developments relating to the ocean affairs and the law of the sea. In 1999, the Assembly endorsed related recommendations of the Commission on Sustainable Development at its seventh session and decided to establish an open-ended informal consultative process on oceans and the law of the sea (the Consultative Process), consistent with the legal framework provided by the Convention and the goals of chapter 17 of Agenda 21. Integrating all legal, economic, social, environmental and other relevant aspects, the Consultative Process is meant to facilitate the annual review by the Assembly and to help it identify priority areas in ocean affairs and necessary actions to be taken. It is open to all stakeholders. In 2002, the Assembly noted the contribution of the Consultative Process to strengthening the Assembly's annual review and decided to continue the arrangement.

2. Secretariat arrangements

8. Since 1992, the Division for Ocean Affairs and the Law of the Sea (the Division) of the Office of Legal Affairs has carried out the functions entrusted to the Secretary-General as depositary of the Convention and a number of other functions assigned in various articles of the Convention, such as reporting to the States parties on issues of a general nature. Following the entry into force of the Convention in 1994, the Division has provided assistance to the treaty system of institutions. In 1994, the General Assembly requested the Division to implement an integrated programme on ocean affairs and the law of the sea. Its main objectives under the medium-term plan for the period 2002-2005 are: (a) to promote universal acceptance of the Convention and the implementing Agreements; (b) to promote their uniform and consistent application; and (c) to facilitate States' efforts to derive practical benefits from the international legal regime for the oceans.

II. Secretariat services and assistance to the treaty system of institutions

A. Secretariat services

9. The Division provides secretariat services to the General Assembly, in particular in the preparation of the draft resolutions under its agenda item entitled

“Oceans and the law of the sea”, to its Consultative Process, to the Meetings of States Parties to the Convention, to the Commission on the Limits of the Continental Shelf (the Commission) and to the Informal Meeting of States Parties to the United Nations Fish Stocks Agreement, pursuant to General Assembly resolutions 56/13 of 28 November 2001 and 57/143 of 12 December 2002. These services include organization of the sessions, preparation of documentation and provision of substantive meeting servicing. According to government representatives’ responses to the OIOS survey on the work of the Division, the secretariat support provided by the Division is satisfactory. Regarding the General Assembly Consultative Process, the support provided requires the collaboration of the Division with a large number of competent agencies and programmes, including the Department of Economic and Social Affairs.

1. Annual reports

10. Beginning in 1997, the Division has taken measures to make the comprehensive annual report on oceans and the law of the sea and the fisheries-related report mandated by the relevant resolutions of the General Assembly available at least a few weeks before the Assembly meetings on the related agenda item, which was not the case previously. With the establishment of the Consultative Process, which has held its annual meetings in the April-June period since 2000, the comprehensive annual report needs to be issued six to eight months earlier in the calendar year. The Division has generally been able to adjust to this new calendar.

11. The General Assembly considers that the comprehensive annual report plays a critical role and constitutes the basis for its annual review of all developments relating to ocean affairs and the law of the sea. Due to its mandated coverage, the length of the annual report increased from 74 pages, in 1998, to 137 pages, in 2002. Government representatives have discussed ways of streamlining its contents, but many still believe that if the length of the report were significantly reduced, it would lose its usefulness.

2. Meetings of States Parties

12. The Meetings of States Parties, which have been held since the entry into force of the Convention, have dealt primarily with elections of the members of the International Tribunal for the Law of the Sea (the Tribunal) and the members of the Commission as well as with budgetary and administrative matters of the Tribunal. Some delegations have proposed that the States parties should consider the implementation of the Convention, while others believe that, to avoid duplication with the work of the General Assembly, the agenda of the Meetings should not be expanded. Eleven NGOs have been admitted to attend the Meetings, but only one, the Seaman’s Church Institute, attended this forum in 2002. This raises the question of how to increase the participation by NGOs at the Meetings.

B. Administrative, technical and other services

1. Commission on the Limits of the Continental Shelf

13. The Commission considers the data and other material submitted by coastal States concerning claims to outer limits of the continental shelf that may extend beyond 200 nautical miles. The preparation of submissions for the Commission is a

very complex task requiring significant resources, capacity and expertise to collect and analyse a large amount of data. To date, the Secretary-General has received one submission, from the Russian Federation in December 2001. Members of the subcommission elected to consider the submission of the Russian Federation were very satisfied with the technical support they received from the Division and its state-of-the-art technical equipment.

14. The Division played a positive role in encouraging submissions by States parties. It provided an outline of benefits accruing to States on making a submission and, as developing States raised concerns regarding the difficulty of complying with the time limit for submissions, it presented to the States parties options that addressed those concerns. Also, based on a five-day course outline prepared by the Commission, training courses have been organized in Brazil, the United Kingdom of Great Britain and Northern Ireland and Malaysia. The Division was able to obtain funds to develop a comprehensive course manual requested by the Commission in 2002.

15. To support the work of the Commission, the General Assembly in 2000 established two trust funds, administered by the Division. One trust fund, to provide scientific and technical assistance to developing States, has received contributions of US\$ 1 million and several applications have already been approved. The other trust fund, to help the members of the Commission from developing countries to attend its meetings, has recently received its first two contributions amounting to \$114,000.

2. International Tribunal for the Law of the Sea

16. The entry into force of the Convention brought into operation its elaborate system of dispute settlement. Disputes can be submitted, at the request of any party to the dispute, to the International Tribunal for the Law of the Sea (the Tribunal), the International Court of Justice or arbitration and conciliation procedures (ad hoc arbitral tribunals).

17. The General Assembly has underlined the important role and authority of the Tribunal concerning the interpretation and application of the Convention and the international seabed Agreement. Between 1997 and 2002, 11 cases had been entered in the Tribunal's list of cases, which involved mainly prompt release cases and requests for provisional measures, that is, provisional measures taken pending decision by another court or tribunal. No substantive cases have been submitted to its seabed, fisheries or environmental disputes chambers. One case concerning the sustainable exploitation of specific fish stocks has been submitted to a chamber specially formed by the Tribunal to deal with it. More information may be needed by parties to future cases on the interpretation or application of the Convention by the Tribunal, the International Court of Justice or arbitral tribunals. In this context, the Division decided to prepare a compendium of cases. It is a useful initiative which will facilitate a review of decisions made by the different jurisdictions.

18. The Division agreed to provide administrative services to the Tribunal and act as its liaison office in New York, with compensation for the costs involved. The agreement includes exchange of information and publications between the United Nations and the Tribunal as well as administration by the Division of the trust fund to assist States in the settlement of disputes through the Tribunal. No application for financial assistance from the trust fund has yet been submitted. Officials of the Tribunal stated to OIOS that they appreciate the relationship with the Division not

only for the services it provides, but also for the information provided which keeps them up to date with new developments relevant to the law of the sea. They believe that information flow between the two entities and other organizations can be strengthened and that an increased number of regular joint meetings would be useful.

3. International Seabed Authority

19. The International Seabed Authority (the Authority) is an autonomous international organization established to organize and control all mineral-related activities in the international seabed area (the Area). As spelled out in the Convention, resources in the Area are vested in mankind as a whole. The Authority also has a role in protecting the environment of ecosystems.

20. The Authority and the United Nations agreed, among other things, to consult each other regarding their respective responsibilities under the Convention and the implementing Agreement; to exchange material and information of mutual interest which are not subject to confidentiality provisions; and to achieve effective coordination of their technical assistance activities.

21. Consultations between the Authority and the Division have addressed mostly administrative matters. The Authority and the Division have also closely collaborated to develop the Authority's data repository. However, studies on issues of common interest to the Area and to areas under national jurisdiction or new developments that might impact on the implementation of the Convention and the Agreement have not been the subject of periodic substantive consultations and increased collaboration.

III. Universal acceptance of the Convention and the Agreements, and their consistent application

A. Promotion of universal acceptance

1. Progress towards universal participation

22. The Convention was elaborated to achieve a universally acceptable set of principles and norms that would govern all uses and resources of the oceans. In 1993, 60 States had ratified the Convention. By 1997, this number has risen to 123 States and to 141 by 2002. The States which have not yet ratified the Convention include a number of important States in terms of their use of ocean space. The rapid increase in ratifications from 1993 to 1997 is attributed to the entry into force of the Convention and the adoption of the Implementing Agreement on the international seabed, in 1994.

23. The goal of universal ratification is a key objective for the Secretariat. In 1990, in pointing to aspects of the deep seabed mining provisions of the Convention which had prevented some States from ratifying it, the Secretary-General took the initiative to convene informal consultations which led to the 1994 implementing Agreement. Since the entry into force of the Convention, the Secretariat has not launched any major high-level effort aimed at achieving universal participation in the Convention.

24. Continued promotion of participation to the Convention is carried out by the Division in the course of special events such as the celebration of the twentieth anniversary of the opening for signature of the Convention, in December 2002, and at national workshops organized at the invitation of Governments. Briefings such as the first joint briefing of the Division and the United Nations Institute for Training and Research (UNITAR) organized in 2002 on developments in ocean affairs and the law of the sea are also useful in promoting participation. A number of delegates attending the briefing stated that such events should be organized in their capital, or at the regional level, and that the Division should prepare an assistance package to raise the level of expertise of national policy makers on the regime established by the Convention. UNITAR informed OIOS that it would continue the collaboration with the Division, including the joint organization of regional courses, should funding permit it. Government representatives of countries engaged in the ratification process stated to OIOS that the Division should have the means to brief government entities or their legislative organs, upon request.

2. Dissemination of information

25. Publications and other information material prepared by the Division are used to assist States in implementing the legal regime for the oceans (see sect. IV below). Information is also disseminated in collaboration with the Department of Public Information of the Secretariat and other entities to raise general awareness of the legal regime. An examination of news agencies' stories on the law of the sea indicates that this aspect of the work of the Organization reported in the media does not receive the same attention as do other legal frameworks related to the issues of sustainable development. This is an issue that relevant United Nations programmes need to address.

3. Information on the benefits from participation in the international legal regime

26. The more recent comprehensive survey by the Secretariat, in the early 1990s, of the needs of States to develop and manage their resources for the realization of benefits under the Convention reported that a large number of States were not able to realize the expected benefits. An initial impediment was the general lack of awareness, both at the national planning and policy-making levels and at managerial levels, of the potential for greater use of ocean space provided under the Convention, and its prospective contribution to their socio-economic development.

27. During the 1990s, topics related to economic aspects of ocean affairs were frequently discussed in various forums. However, no publication or report analysed the economic benefits that could be expected from participation in the legal regime for the oceans or illustrated such benefits through the presentation of case studies. Similarly, this aspect is not discussed comprehensively in the different reports submitted to the General Assembly. Greater attention by the Division, similar to that devoted in other domains to economic instruments or ways to generate revenues to better equip States to implement international agreements, could help promote greater acceptance of the international legal regime for the oceans. It is a task that the Division can undertake, in collaboration with other organizations, since the Secretariat capacity to deal with ocean economics was integrated to the Division. *The Office of Legal Affairs in its comments on an earlier draft of the present report stated that the term ocean economics no longer applies. Following UNCED in 1992, the tendency has been to deal with issues of ocean affairs more in terms of*

sustainable development. OIOS understands that the practice of sustainable development implies the integration of environmental, social and economic aspects and considers that the United Nations needs to provide more information on the economic aspects of ocean affairs.

B. Uniform and consistent application of the Convention and the Agreements

28. Coherence and uniformity of substance in the application of the legal regime is another important goal of the Division. In this regard, it should be noted that the Convention prohibits reservations that would modify the legal effect of provisions in their application to a State.

1. Assistance to international organizations

29. As a first step towards maintaining coherence and uniformity, the Division provides advice and assistance to intergovernmental organizations and monitors their work to ensure that the rules contained in the Convention are uniformly implemented. Such assistance is particularly important during the development of new agreements, as was the case during the drafting of the Underwater Cultural Heritage Convention under the auspices of the United Nations Educational, Scientific and Cultural Organization (UNESCO), adopted in 2001. Officials in other organizations stated to OIOS that Division staff are regarded as experts who can provide clarifications on specific clauses of the Convention.

30. Remedies to issues approached from a technical perspective, such as the work of the Food and Agriculture Organization of the United Nations (FAO) on the over-exploitation of fish stocks, which may disturb the legal balance between freedom and control that exists in the Convention, call for ongoing legal analysis and clarification. Also, intergovernmental cooperation may raise legal questions, such as reconciling environmental boundaries with administrative or political boundaries. Such issues of implementation are frequently raised in the context of regional agreements. Assistance is sometimes provided by the Division during negotiations among member States of a regional group (see para. 41 below). There is also a need to advise regional seas programmes that have only an action plan but no legal instrument or, more generally, United Nations programmes involved in regional activities, such as the United Nations Environment Programme (UNEP). The Meeting of Regional Seas Conventions and Action Plans, in 1999, recommended that competent organizations, including the Division, should hold regular meetings of technical and legal experts to ensure a consistent approach on specific issues of common concern, including trade, marine protected areas, land-based sources of pollution and others. The Division was unable to send a representative to all the biennial meetings of regional seas conventions and action plans or to other meetings on regional issues. The increased participation of the Division in regional consultations is needed. It should be recalled that the Consultative Process, in 2002, underlined the central role of regional cooperation in achieving integrated ocean management.

2. State practice

31. Under the Convention, there are several sources of international standards, rules and regulations creating obligations for States parties. The Division considers that studying the existing legal and regulatory practice of States and disseminating such information is one practical way to assist Member States in consistently applying the Convention.

32. No comprehensive information on implementation by parties is reported to the Secretariat, as might be the case under other instruments. To find out about State practice, the Division has, every four to five years, sent to Member States questionnaires on the implementation of the Convention. In 2002, only 23 States had responded to the questionnaire. This low response rate is a problem common to many United Nations programmes. To supplement the information received, the Division is using information gathered by other competent organizations for other purposes, which still leaves a gap in terms of coverage of the surveys and their quality. In spite of these shortcomings, government representatives stated to OIOS that the information available through the Division's databases is the most comprehensive and authoritative available.

33. Coastal States are required to deposit with the Secretary-General charts showing, inter alia, baselines, delimitation of maritime zones or lists of geographical coordinates and to give due publicity to them. By 2002, only 24 States had fully or partially complied with their obligations. The Division has established facilities for the custody of the information deposited and for its dissemination to assist States with their publicity obligations. It has also established a geographic information system to store and process geographic information and produce custom-tailored cartographic outputs. The system helps to identify any inconsistencies in the information submitted. Among different issues of compliance with the Convention, it is noted that, since the Convention's adoption, 16 States have abandoned their claims for territorial seas in excess of the 12-nautical-mile limit; less than 10 States still claim territorial seas in excess of the 12-mile limit.

3. Analysis of new developments

34. The comprehensive annual report prepared by the Division (see paras. 10-11 above) is one of the main contributions of the Secretariat to the General Assembly's annual review of developments relating to ocean affairs and the law of sea. The report has provided regular updates of actions taken to combat illegal, unreported and unregulated fishing activities (IUU fishing) on the high seas, assessments of the success of these actions as well as issues of implementation. The Consultative Process has emphasized some of these issues, which the General Assembly has included in its annual resolutions under its agenda item entitled "Oceans and the law of the sea".

35. Most government representatives who responded to the OIOS survey find the documentation provided by the Division useful. A few of them stated that the documentation could be more analytical, in particular the comprehensive annual report. Officials in organizations interviewed by OIOS stated that the Division is very effective in summarizing the information they provide to fit the format of the report. They also believe that, as the Division is the central entity reviewing their inputs, it is well placed to provide additional analysis that would present assessments of overall progress and suggestions for future actions. The additional

analysis the Division would generate, particularly for cross-cutting issues, would entail a more developed process of consultation among organizations. OIOS believes that such effort would serve well the purpose of the annual report, which is to synthesize above all “the relevant aspects of oceans and seas, including the political, legal, economic, social, environmental, scientific and technical” (A/55/61, para. 10).

IV. Assistance

36. The Division is expected to provide assistance to States to strengthen their institutional infrastructure as well as human, financial and technical resources so that they can exercise their rights and fulfil their obligations under the legal regime for the oceans. Assistance is provided by making information available, through publications, reference collection, databases and the Internet, and by providing advisory services, training and fellowships. (For assistance provided to international organizations, see paras. 29-30 above.)

A. Information

1. Publications

37. Through its publications, the Division provides samples of national legislation, handbooks on technical aspects of implementation of the Convention and legislative histories of selected provisions of the Convention. Most government representatives surveyed by OIOS found the publications useful, with special mention of the *Law of the Sea Bulletin*, which is issued three times per year and reports on the current status of the Convention and related Agreements, and presents complete texts of declarations of States, relevant national legislation, and decisions related to the Convention.

38. The Division does not conduct surveys of the users of its publications to determine their needs. A publication on settlement of disputes is planned for the current biennium. Several topics for which States require assistance as identified in Division work plans, such as crimes at sea, navigation and sustainable development, are not adequately covered by the publications. A number of topics fall under the mandates of other organizations. Collaboration between the Division and these organizations to produce publications on these topics would be beneficial.

2. Reference collections, databases and web sites

39. The Division maintains an extensive reference collection dealing with oceans and law of the sea matters and provides library services to United Nations staff, delegates, researchers and NGOs. The reference centre handled 400 external and 500 internal queries in 2001. The Division also has developed extensive databases containing national legislation and delimitation treaties and maintains a geographical information system database (see para. 33 above). Information is extracted from these databases to assist States in adopting national legislation and delineating their maritime zones. Furthermore, the Division contributes relevant bibliographic data and abstracts to the international Aquatic Science and Fisheries Abstract (ASFA) used, inter alia, by marine scientists, fisheries managers and international lawyers.

40. The General Assembly in resolution 49/28 of 6 December 1994 had requested the Division to develop a “centralized system with integrated database for providing coordinated information and advice”. This task has been greatly facilitated since the mid-1990s by the rapid advance of Internet technology: the Division and key agencies responded to the request by developing their respective web sites with cross-links among each other. The Division has provided such links since the inception of its web site in 1996 and has gradually made its databases available on the site subject to confidentiality provisions. Recently the web site system has benefited from added functionalities and access to relevant documents available on the United Nations Official Document System and to the United Nations Atlas of the Oceans. The Atlas of the Oceans, launched in 2002, is the first attempt to fully integrate internal databases available at all relevant agencies and the Division is one of the 29 editors. The Atlas covers some 1,040 topics on the oceans.

B. Advisory services and training

1. Advisory services

41. The Division provides advice in response to queries from individual Member States that sometimes require missions to the field. The Division does not participate in the drafting of national legislation. It does, however, provide assistance for the purpose of facilitating negotiations among several States. For example, in 2001, at the request of UNEP, and in connection with negotiations for the proposed regional seas programme for the North-East Pacific, the Division provided advice to three States on the legal framework for the protection and preservation of the marine environment in the subregion. Also, in 2002, the Division participated, at the request of participating States, in the preparatory committee which established the rules of the Conference on Maritime Delimitation in the Caribbean. The Division provided assistance to the first meeting of the Conference and will continue to do so in such matters as designing a geographic database, creating illustrative maps, providing a database on relevant legislation and maintaining a roster of experts in hydrography and geodesy.

2. Training and fellowships

42. In 1993, in consultation with other United Nations organizations, the Division developed an action plan for human resources development and capacity-building for the planning and management of coastal and marine areas. The main component of the plan became the Division’s Train-Sea-Coast programme, launched in 1995 with funding from the United Nations Development Programme (UNDP). The goal of the programme is to create capacity at the national level to develop and deliver training courses that meet the programme’s quality standards and address local needs through a network of centres. Between 1995 and 1999, a network of six centres trained over 600 people in integrated coastal management.

43. Since 2000 the Train-Sea-Coast programme has received funding from the Global Environment Facility (GEF), which supported the establishment of six additional training units at the regional level. GEF is one of very few financial mechanisms available to support integrated planning in multinational water bodies. GEF projects have contributed to the formulation of new policies, laws and regulations related to the international waters. Under the GEF framework, the Train-

Sea-Coast programme addressed critical issues affecting semi-enclosed seas in different regional settings.

44. In 2002, a tripartite review of the Train-Sea-Coast programme by the Division, UNDP and the United Nations Office for Project Services concluded that a number of centres were underperforming in terms of course development. It was recommended that only those centres should be maintained which could deliver courses of interest to the various GEF projects, networking among the centres should be strengthened and steps should be taken to promote sustainability of the training units. The tripartite review recommended further development of the Train-Sea-Coast programme through a second GEF project phase. Currently the programme is developing courses on such issues as ship ballast, at the request of the International Maritime Organization (IMO), and sewage management for the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA), jointly with these two organizations. Officials of FAO, IMO, GPA and UNDP stated to OIOS that the programme should continue and be expanded. It should be noted that in 2002 the General Assembly invited Member States and "others in a position to do so to support the training activities of the Train-Sea-Coast programme of the Division for Ocean Affairs and the Law of the Sea" (resolution 57/141, para. 70). Taking into consideration the expected increase in its responsibilities (see sect. V below), the Division should make a decision on the nature of its participation in such joint programmes, whether it will continue to play a lead role in developing courses for ocean management or will focus on legal aspects only.

45. The Division administers the Hamilton Shirley Amerasinghe Memorial Fellowship Programme on the Law of the Sea, established in 1982 with the joint participation of universities and institutions which provide free tuition to the fellows. The programme is intended to improve the expertise of government officials or academics involved in the law of the sea or marine affairs. Out of the 100 applications received on average, one to two fellowships are awarded each year by an advisory panel. Since the programme was established, fellows have been selected from all the regions in the world. The cumulative effect of these fellowships is small compared to those of other United Nations fellow programmes, which may include up to 20 fellows each year. However, the Division has taken steps to launch another project, entitled Ocean Policy and Human Resources Development, which will also provide academic internship programmes for mid-level ocean affairs administrators. The project, funded by the Nippon Foundation, will provide internships and academic training to 20 candidates, each year, over a 5-year period.

C. Inter-agency coordination

46. With the adoption of Agenda 21 in 1992 and the entry into force of the Convention, in 1994, issues of implementation of the Convention and coordination of international action became more pressing. The Division participated in an inter-agency mechanism, the Subcommittee on Oceans and Coastal Areas (SOCA) of the Administrative Committee on Coordination (ACC). SOCA was established in 1993 to monitor and review progress in the implementation of chapter 17 of Agenda 21 and support the work of the Commission on Sustainable Development. In 2000, the General Assembly requested more effective coordination and steps were taken by the participating agencies to strengthen SOCA. However, as a result of the

streamlining of the ACC machinery, all subsidiary bodies, including SOCA, were abolished in December 2001. At the end of 2002, the General Assembly, convinced of the need to improve cooperation and coordination at both intergovernmental and inter-agency levels, invited the Secretary-General to establish an effective, transparent and regular inter-agency coordination mechanism on oceans and coastal issues within the United Nations system. In its request the Assembly endorsed the recommendations of the Consultative Process and the decisions of the World Summit on Sustainable Development made earlier in the year.

47. Based on the experience of SOCA, officials of the SOCA participating organizations stated to OIOS that the new mechanism should be task-oriented. Periodic meetings of all participating agencies would still be needed and could take place back to back with other meetings. Issues of interest should be as inclusive as the coverage of ocean affairs by the General Assembly and, in order to provide the continuity and follow-up necessary, Secretariat resources should be identified to support its work.

V. Scope of the role of the Division for Ocean Affairs and the Law of the Sea

48. At the end of the 1980s, a number of activities dealing with economic and technical aspects of ocean affairs and the corresponding staff resources were integrated into the programme on the law of the sea and ocean affairs. Over the years, the number of officers in the Division with backgrounds other than in legal areas was gradually reduced. Also, the number of posts deployed to the programme was reduced from 57 posts, during the biennium 1990-1991, to 27 posts for 2002-2003. Among different factors, this reduction was explained by the completion of the work of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea in 1995, to which support was no longer needed. In 1999, the General Assembly requested that support to the Consultative Process be provided by the Division in collaboration with other parts of the Secretariat, including the Department of Economic and Social Affairs. The Department of Economic and Social Affairs was unable to assign staff, full time, to provide support. As what follows indicates, the various functions of the Division require it to address issues that demand more than legal expertise:

(a) The Division is servicing the General Assembly, which reviews in an integrated manner all aspects of ocean affairs. Staff of the Division need to interact with the competent organizations and prepare documents and proposals that address other aspects of ocean affairs than purely legal ones;

(b) The Division is requested to assist Member States in developing their institutional infrastructure and their human, technical and financial resources. While the Division has focused its assistance on the legal aspects of implementation of the Convention, the integrated approach to ocean affairs embodied in the Convention also has generated requests related to marine policy and management requirements. The General Assembly has requested the Secretary-General to identify additional sources of support in implementing the Convention and in ensuring appropriate responses to requests of States for advice and assistance. Such a clearinghouse function requires familiarity with the subject content and methods used in different domains;

(c) The General Assembly in 2002 underscored the expected growing involvement of the Division with requests for technical assistance from States and its role in inter-agency coordination and cooperation.

The Division for Ocean Affairs and the Law of the Sea draws from the specialized expertise that exists in different United Nations programmes. However, to be the effective integrated programme on ocean affairs and the law of the sea that the General Assembly envisaged, it should review its staff requirements, including the mix of skills needed to perform adequately its assigned responsibilities.

49. Being mindful of the Secretariat goal of establishing gender parity among professionals, the Division has almost reached this goal. Also, it should be noted that two thirds of Division posts at the P-5 level and above are encumbered by women.

VI. Conclusions and recommendations

50. Since its establishment in 1992, the Division for Ocean Affairs and the Law of the Sea has discharged effectively the responsibilities of the Secretary-General under the United Nations Convention on the Law of the Sea. In particular, administrative support provided by the Division to treaty institutions has been useful and cost-effective and its technical support to the Commission on the Limits of the Continental Shelf has facilitated the work of the Commission. Its servicing of the General Assembly and its Consultative Process during their annual review and evaluation of the implementation of the Convention and other developments relating to ocean affairs has satisfied the users of the services. The comprehensive annual report prepared by the Division plays a critical role in the General Assembly's annual review.

51. One of the main objectives of the Division is to promote the uniform and consistent application of the Convention and its Agreements by international organizations and Member States. The Division ensured that international organizations assessed the impact of the entry into force of the Convention on other instruments and programmes. Since 1994, the continuous assistance provided by the Division to these organizations in the development of instruments and agreements related to the law of the sea has been appreciated. Its efforts to study the application of the Convention by States have been constrained by the small number of States responding to surveys, but it was able to supplement the information received with information available to other competent organizations.

52. An important goal of the Division is to promote universal acceptance of the Convention. The pace of ratification of the Convention increased during the period 1992-1997 but, as of early 2003, 50 States have not yet ratified the Convention. The Division played a useful role in promoting acceptance of the Convention. However, at this moment, the Division should ensure that it has the capacity to respond to all requests for briefing delegations and Member States, agencies and legislative organs and to promote greater awareness among national policy makers of the practical economic benefits that can be expected from participation in the Convention.

53. The Division is expected to assist States in deriving practical benefits from the Convention and in fulfilling their obligations under it. Assistance is provided by the Division through a range of information resources, advisory services, training and fellowships. The Train-Sea-Coast training programme is the Division's main training component. It has contributed to building capacity at the national and regional levels in integrated coastal management. The future orientation of the programme and its potential to build capacity that directly supports implementation of the Convention needs to be examined by the Division. The impact of fellowships and other training has not been significant due to the limited funds mobilized for these activities. The Division is currently identifying new sources of funding. The usefulness of the Division's information resources would be enhanced if its future programme of publications covered more systematically the topics for which States require assistance, as identified in the Division's work programme, and if the needs of the users of publications were regularly assessed.

54. The Division must ensure that the implementation of the Convention by international organizations and States, as well as the annual reviews of implementation by the General Assembly, take into account all aspects of ocean affairs in an integrated manner. This objective requires strengthening international coordination and increased participation of the Division in regional cooperation mechanisms. The inter-agency Subcommittee on Oceans and Coastal Areas (SOCA) was abolished in 2001. The Division and other former members of SOCA should apply lessons learned from the experience of SOCA in developing the new inter-agency mechanism requested by the World Summit on Sustainable Development and the General Assembly in 2002. One of the goals of strengthened coordination should be ultimately to provide to the General Assembly and other relevant intergovernmental bodies a more systematic analysis of the overall impact of the work of the competent organizations and options for necessary action to be taken. This analysis needs to be carried out with direct participation of the agencies and programmes concerned. Considering the central role regional cooperation is playing in addressing issues of implementation of the Convention, the Division should make it a priority to participate in the relevant regional meetings it is invited to attend and follow up with required advice and legal and technical studies. Another aspect of cooperation includes the interactions among the treaty system of institutions. At this point of their development, it would be useful for the secretariats of the treaty institutions to meet periodically to discuss substantive issues of common interest.

55. As requested by the General Assembly, the Division is implementing an integrated programme on ocean affairs and the law of the sea, consistent with the multidisciplinary requirements for the promotion and proper implementation of the Convention. Throughout the 1990s, the work of the programme became increasingly focused on support for the legal implementation of the Convention. Considering the growing demand for technical assistance from States, which involve addressing in a coherent manner legal aspects of implementation of the Convention, issues of marine policy and management requirements, as well as the increasing importance of inter-agency coordination and cooperation, the Division should regularly assess the adequacy of its capacity to carry out its various mandates effectively. In

reviewing its capacity to implement effectively its integrated programme on ocean affairs and the law of the sea, the Division should take due account of the specialized expertise that exists throughout the United Nations system, as it currently does to support the work of the General Assembly on ocean affairs and its review of new developments from the economic, environmental and social perspectives. It is expected that the strengthening of coordination envisaged in paragraph 54 above will facilitate the more effective utilization of expertise and resources available in the different competent organizations to respond to requests of Member States for assistance.

Recommendation 1

Consultations among secretariats of the treaty system of institutions

To better address issues of common interest, the secretariats of the treaty system of institutions should hold periodic informal consultations on substantive issues which affect utilization of their institutions or which may require their joint examination and further legal or scientific studies. The International Tribunal for the Law of the Sea will participate in these consultations, having due regard to its status as an international judicial body. For cost-effectiveness, these consultations can be held back to back with Meetings of States Parties (see paras. 18 and 21 above).

Recommendation 2

Universal acceptance of the Convention and the Agreements

In promoting universal acceptance of the Convention and the Agreements:

(a) The Division should brief, upon request, government entities and legislative organs of countries engaged in the process of ratification of the Convention and/or the Agreements;

(b) To raise awareness among the national policy makers of the benefits from participation in the international legal regime for the oceans, the Division should disseminate information on the potential economic benefits and their contribution to socio-economic development, through case studies or prospective analysis (see paras. 24, 26-27 above).

Recommendation 3

Regional cooperation

Considering the central role of regional cooperation to ensure consistent application of the Convention and implementation of integrated ocean management:

(a) The Division should participate actively in the biennial meetings of regional seas conventions and action plans, and other relevant regional meetings;

(b) In collaboration with the competent international organizations, the Division should ensure that the implementation of regional or subregional initiatives is not hampered by lack of legal information or capacity to implement the international legal regime (see paras. 30, 41 and 43 above).

Recommendation 4
Analysis of new developments

To enhance support to the General Assembly in its identification of priority areas in ocean affairs and necessary actions to be taken, the Division should further synthesize the information received from the competent organizations presented in its comprehensive annual report on oceans and the law of the sea. The annual report should include assessments of the overall impact of the efforts of the competent organizations and suggestions for future activities. This additional analysis should be prepared in collaboration with the different contributing organizations, in the context of the new inter-agency coordinating mechanism on oceans and coastal areas recommended by the General Assembly in its resolution 57/141 of 12 December 2002, with due regard for the expertise of those organizations and the responsibilities of their governing bodies (see paras. 11, 34-35 above).

Recommendation 5
Publications of the Division

To better target its publications and to increase their usefulness, the Division should assess the needs of its readership. It should also review its publications programme to ensure that it provides adequate coverage of topics and issues, as identified in its work plans, for which States require assistance. Where specific gaps are identified in the publications programme, the Division should update existing publications or develop new ones as necessary. Whenever relevant, this should be done in collaboration with the competent specialized agency to ensure that there is no duplication and to explore cost-sharing arrangements (see paras. 17, 37-38 above).

Recommendation 6
Inter-agency coordinating mechanism

The new inter-agency coordinating mechanism on oceans and coastal areas, called for by the General Assembly in its resolution 57/141, should be task-oriented and involve representatives of all relevant United Nations agencies and programmes. Its coverage of issues should be as inclusive as the coverage of ocean affairs and the law of the sea by the General Assembly (see paras. 46-47 above).

Recommendation 7
Review of capacity

In implementing its integrated programme on ocean affairs and the law of the sea and in view of the growing demand for technical assistance from States, the Division should ensure that it maintains its capacity to fulfil its different responsibilities. In reviewing its capacity to implement its integrated programme, the Division should take due account of the specialized expertise

that exists throughout the United Nations system. Regarding activities that have been given insufficient attention, such as the dissemination of information on the economic aspects of ocean affairs, the Division should have the capacity to promote more systematically the work done in the United Nations system (see paras. 14-15, 24, 27, 30, 41, 44-46, 48 above).

(Signed) Dileep Nair
Under-Secretary-General for Internal Oversight Services

Notes

- ¹ *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 16 (A/56/16), para. 407.*
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