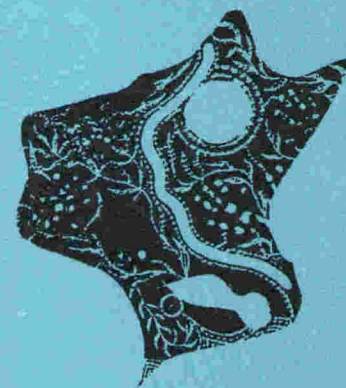
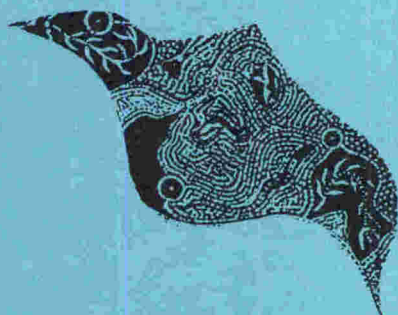




Evaluation of the Implications of the United Nations Convention on the Law of the Sea for SPREP Activities



April 1996

Prepared by Martin Tsamenyi

SPREP Library Cataloguing-in-Publication Data

Tsamenyi, Martin

Evaluation of the Implications of the United Nations Convention on the Law of the Sea for SPREP activities /prepared by Martin Tsamenyi.- Apia: SPREP, 1996.

iv, 22p.; 29cm

"Report of the South Pacific Regional Environment Programme"

ISBN: 982-04-0161-5

1. Maritime law - Oceania. I. South Pacific Regional Environment Programme.

343.096099

Published in October 1996 by:
South Pacific Regional Environment Programme
P.O. Box 240
Apia, Western Samoa

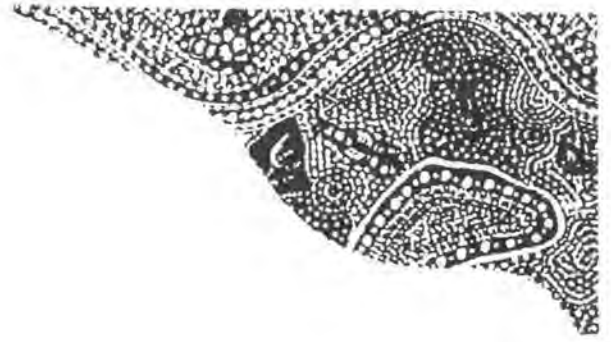
Printed by:
Commercial Printers Ltd
Apia, Western Samoa
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Original Text: English



*Evaluation of the Implications of the United Nations
Convention on the Law of the Sea for SPREP Activities*

1996

*Prepared by
Martin Tsamenyi*

*Report for the
South Pacific Regional Environment Programme*



Foreword

The largest geographical feature on earth is the Pacific Ocean and within this great ocean is the South Pacific region - home to some 3000 individual islands. These have been consolidated into 22 separate political entities of which 16 are independent nations and the remaining six are territories. Although by global standards, these islands are tiny, the combined area of their Exclusive Economic Zones (EEZs) totals 30 million square kilometres. The importance of the sea to the region is unqualified with most of the countries and territories relying heavily on the sea for their daily subsistence requirements.

In order to protect and improve its environment and to ensure sustainable development for present and future generations, the countries and territories, together with Australia, France, New Zealand and the United States of America established the South Pacific Regional Environment Programme (SPREP) in 1982 with this aim in mind. To achieve part of this broader aim, SPREP has identified the increasing importance of the United Nations Law of the Sea Convention for protecting the marine environment of the region. To obtain a clear idea of what the countries in the region could expect in terms of advice (analysis of the Convention, scope, etc in relation to SPREP's mandate), SPREP commissioned this independent report.

The Convention is one of the most complex treaties in the history of international relations and the most comprehensive marine environmental treaty in existence. It devises a comprehensive legal framework for the conduct and regulation of all marine sector activities and encourages all Parties (Part XII of the Convention) to take their environmental obligations seriously and cooperate to address issues of common and pressing concern. As well, it provides a framework for the settlement of disputes arising from conflicting ocean activities and States' interests at sea. Therefore, as a result of the complex nature of the Convention it is most likely that the countries and territories of the region will call for assistance. Such assistance would involve not only SPREP, but all the members of the South Pacific Organisations Coordinating Committee (SPOCC) in order to implement the Convention, or to provide information on what would be the consequences at the local level of joining the Convention.

Historically the Convention, which was concluded in 1982, almost a decade before the United Nations Conference on the Environment and Development (UNCED), Rio de Janeiro, 1992 was regarded as being insufficient to deal with many of the environmental problems in the marine environment. However, one of the outcomes of UNCED, namely Agenda 21 augments the provisions and provides the policy content for implementation of the Convention at the domestic level. This was done by elaborating on mechanisms at the national level that will facilitate the implementation of the resources and environmental aspects of the Convention. This means that the implementation of the environmental aspects of the Convention must be done within the framework suggested by Chapter 17 of Agenda 21. Therefore what emerges from Chapter 17 is that marine resource management and the protection of the oceans as a whole, are inseparable.

Further, in relation to Agenda 21, the report notes that although SPREP is the primary organisation in the region responsible for environmental matters, there are also a number of other regional organisations which, although without a direct environmental focus, coordinate activities that might overlap with some of SPREP's work. It is this coordinating aspect which is recognised by the Convention as one of its major tools to achieve protection for the marine environment. Thus, several provisions of the Convention call for cooperation among States at the global and regional levels in policy development, harmonisation of legislation, research and information exchange to achieve the objectives of the Convention.

According to the report, not all aspects of the Convention are relevant to the activities and programmes of SPREP, therefore it recommends that successful implementation of the Convention will require the development of a regional strategy by all the regional organisations that deal with aspects of the Convention.

Don Stewart
Acting Director
South Pacific Regional Environment Programme

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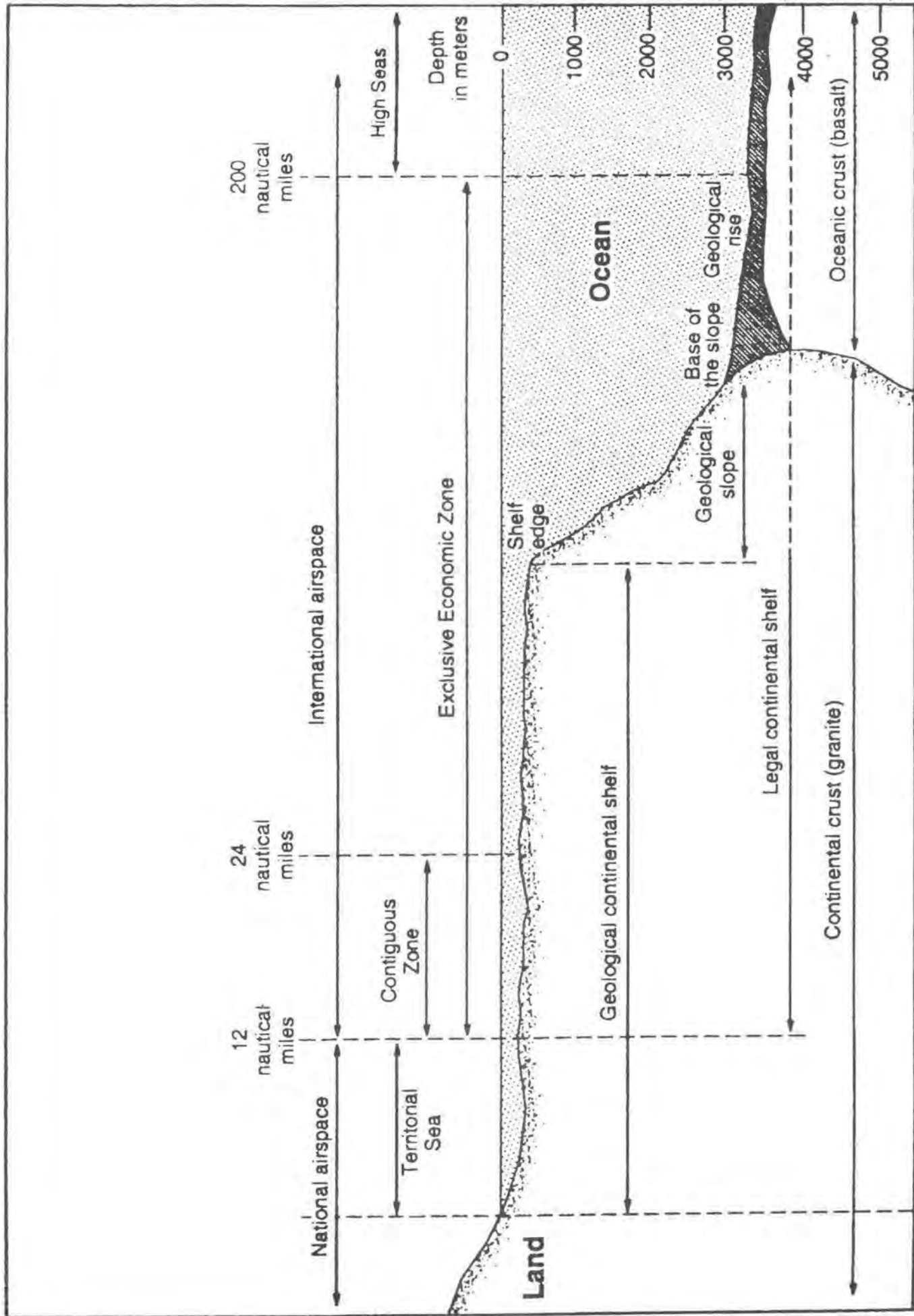
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The Legal Regimes and Geomorphologic Regions

1 Background

The United Nations Convention on the Law of the Sea 1982 (the Law of the Sea Convention) provides a comprehensive legal framework to regulate all activities concerned with the use and protection of the oceans. The Convention has a number of implications for the activities of the South Pacific Regional Environment Programme (SPREP) and its member States. One important characteristic of the region covered by SPREP is the extremely large area of maritime jurisdiction resulting from claims of 200 mile zones. SPREP itself is a product of international concerns to protect the marine environment - being the South Pacific component of the United Nations Environment Programme (UNEP) Regional Seas Programme. The Convention for the Protection of the Natural Resources and Environment of the South Pacific Region (SPREP Convention) and its related Protocols reflect the commitment of SPREP member States to protect the marine environment of the South Pacific region. The Law of the Sea Convention will play a crucial role in this effort.

As the primary environmental organisation in the South Pacific, SPREP would need to adopt measures to foster the implementation of the environmental obligations in the Law of the Sea Convention by its member States. It also means that the activities of SPREP have to address provisions of the Law of the Sea Convention.

In realising the increasing significance of the Law of the Sea Convention for its mandate and activities, SPREP commissioned this report with the following terms of reference.

1.1 Terms of Reference

The Terms of Reference for the consultancy states as follows:

This consultancy requires a review of SPREP's Action Plan and Work Programme in relation to the provisions of the Law of the Sea Convention. This Convention encompasses various aspects of human related activities which include fisheries, sea mining, shipping, coastal zone matters, marine life, pollution, etc. Its implementation has consequences for the work programme of several organisations based in the South Pacific: SPREP, Forum Fisheries Agency (FFA), South Pacific Applied Geoscience Commission (SOPAC), to name a few.

Within SPREP's mandate, SPREP members are likely to call for assistance from SPREP in order to implement the Convention, or for information on what would be the consequences at the local level of joining the Convention. Therefore SPREP needs to get a clear idea of what expectations the countries in the region will have in terms of advice (analysis of the Convention, scope, etc in relation to SPREP's mandate). Equally as important is to identify relevant ways to respond to these requests through an evaluation of SPREP's Work Programme and Action Plan.

It is therefore required for the consultant:

- To identify areas of specificity;
- To produce a report on how SPREP's Action Plan and Work Programme intersect with the Law of the Sea Convention; and
- To prepare practical proposals on how to possibly adjust future SPREP Action Plans in order to take into account the Law of the Sea Convention.

2 *The Main Provisions of the Law of the Sea Convention: A Brief Overview*

The United Nations Convention on the Law of the Sea was negotiated during the Third Law of the Sea Conference (UNCLOS III) from 1974 to 1982. The Convention came into force in November of 1994. As at 21 March 1996, the Convention had been ratified by 87 States. The Convention is one of the most complex treaties in the history of international relations. It purports to devise a comprehensive legal framework for the conduct and regulation of all marine sector activities. It also provides a framework for the settlement of disputes arising from conflicting ocean activities and States' interests at sea.

The Convention is divided into 17 parts and nine annexes, containing provisions governing, *inter alia*, the limits of national jurisdiction over ocean space; access to the seas; navigation protection and preservation of the marine environment; sustainable management of marine living resources; non-living marine resources exploitation; marine scientific research; and the settlement of disputes.

Parts II - VI of the Convention deal with areas of national jurisdiction. These Parts identify the limits of the various maritime zones of jurisdiction and specify the legal rights of States within each. These different maritime areas include internal waters (Art. 8(1)), territorial sea (Art. 2), contiguous zone (Art. 33), exclusive economic zone (EEZ) (Art. 55), continental shelf (Art. 76), the high seas (Art. 86), and sea-bed beyond national jurisdiction (referred to as the "Area" in the Convention) (Art. (1)(1), and Art. 137). The Convention does not specifically treat the airspace as a distinct zone, but provides that the sovereignty of States over their land territory, internal waters, and territorial sea extends to the airspace above these maritime zones.

Part VII of the Convention deals with the high seas. The particular jurisdictional feature of the high seas is a bundle of rights known as the "freedom of the high seas."

Part VIII of the Convention, comprising only one article (Art. 121) deals with islands. It defines an island as "a naturally formed area of land, surrounded by water, which is above water at high tide". It allows the creation of a territorial sea, contiguous zone and EEZ around islands which can sustain human habitation or have economic life of their own.

Part IX of the Convention addresses enclosed and semi-enclosed seas. This part calls for cooperation among States bordering enclosed and semi-enclosed seas to cooperate in the management and conservation of the environment of such seas.

Part X of the Convention (Arts. 124-132) creates conditions for access to the sea by land-locked States. The Convention requires that such States shall have the right of access to and from the sea for the purpose of exercising the rights granted to all States on the sea. It also calls for a more favourable treatment of such States in respect to customs charges and other duties during their transit through the ports of coastal States.

Part XI of the Convention and Annexes III and IV to the Convention regulate the regime governing exploration and exploitation of mineral resources of the deep sea-bed beyond coastal State jurisdiction. These provisions were the more controversial aspects of the Convention and prevented several industrial countries from ratifying the Convention. Part XI introduces Environmental Impact Assessments (EIAs) and other systems of management which are both innovative, concrete and necessary for the protection of the marine environment of the high seas from deep sea-bed mineral exploitation.

Part XII, consisting of 46 articles, is the first attempt in international law to provide a comprehensive framework of measures to protect the marine environment. This part imposes an obligation on all States to protect and preserve the marine environment. It enjoins States to enact appropriate legislation to give effect to their obligations.

Part XIII introduces a separate and specific regime applicable to marine scientific research. This is complemented by the inclusion of Part XIV which encourages States to develop and transfer marine technology to other States.

Part XV establishes a regime for the resolution of disputes in relation to the use of the oceans. It provides several options for States to resolve their disputes. These options include:

- the International Tribunal on the Law of the Sea Convention;
- the International Court of Justice;
- Arbitration in accordance with Annex VII to the Law of the Sea Convention; and
- Special Arbitration in accordance with Annex VIII to the Law of the Sea Convention.

Since the conclusion of the Convention in 1982, other international instruments have supplemented the provisions of the Convention. These include: Agenda 21 (especially Chapter 17), 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* (United Nations, August 1995); the *Code of Conduct for Responsible Fisheries* (FAO, October 1995); the *Global Programme of Action for the Protection of the Marine Environment from Land-based Activities* (UNEP, November 1995); and the *Jakarta Mandate on Coastal and Marine Biodiversity* adopted at the Second Session of the Conference of Parties to the Convention on Biological Diversity (UNEP, November 1995).

3 *Maritime Zones of Jurisdiction*

For jurisdictional and regulatory purposes, the Convention divides the oceans into zones of jurisdiction. This section of the report describes the major zones of jurisdiction. Special emphasis will be placed on the environmental provisions in each of these zones.

3.1 *Internal Waters*

The internal waters comprise all the waters on the landward side of the territorial sea baseline (Art. 8). Such waters include rivers, bays, ports and other coastal waters lying landward of the territorial sea baseline. In internal waters, States have sovereignty and therefore have the right to adopt laws and regulations in relation to the protection of the marine environment from vessel-sourced marine pollution (Art. 8). The Convention recognises the authority of the port State to enact their own regulations relating to vessel source pollution as a condition of entry of foreign vessels into the port (Art. 211(3)). These regulations also apply to offshore terminals (Art. 211(3)).

3.2 *Territorial Sea*

Under the Convention, the territorial sea cannot extend beyond 12 nautical miles measured from the territorial sea baseline. The Convention gives to coastal States sovereignty in the territorial sea similar to that which they exercise on land (Art. 2(1)). The sovereignty of the coastal State extends

to the sea-bed and subsoil of the territorial sea (Art. 2(2)). The coastal States' sovereignty in the territorial sea is subject to the right of innocent passage of foreign vessels (Art. 17). The right of innocent passage is however subject to the important qualification that a vessel cannot engage in any act of 'wilful and serious pollution' contrary to the Convention (Art. 19 (2) (h)). A vessel may not undertake a course of action which does not have a direct bearing on passage (Art. 19 (2) (l)). Innocent passage in the territorial sea is also subject to the right of a State to adopt laws and regulations relating to innocent passage for the preservation of the environment and the prevention, reduction and control of pollution (Art. 21(1)(f)); and also the conservation of the living resources of the sea (Art. 21(1)(d)). The right of coastal States to adopt laws and regulations in the territorial sea for the prevention, reduction and control of marine pollution from vessels are also affirmed in Chapter XI of the Convention (Art. 211(4)).

3.3 Archipelagic Waters

One of the unique features of the Convention relates to the special regime of archipelagic waters. Part IV of the Convention allows Archipelagic States to claim archipelagic waters by drawing straight baselines joining the outermost points of the outermost islands and drying reefs of the archipelago "provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1" (Art. 47 (1)). The archipelagic State may also designate internal waters within the archipelagic waters. The other zones of jurisdiction, namely, the territorial sea, contiguous zone, EEZ and continental shelf, are measured from the archipelagic baseline.

As in the territorial sea, foreign vessels enjoy innocent passage through the archipelagic waters. The Convention also recognises the right "archipelagic sea lanes passage" by all ships through the sea lanes designated by the archipelagic State through the archipelagic waters (Art. 53). The archipelagic State has full sovereignty in its archipelagic waters, subject to the rules on innocent passage and archipelagic sea lanes passage. The powers of the archipelagic State over environmental regulation are similar to those in the territorial sea. SPREP member States entitled to claim archipelagic waters include, Fiji, Papua New Guinea, Solomon Islands and Vanuatu.

3.4 Contiguous Zone

Under the Convention, the contiguous zone cannot extend more than 24 nautical miles from the territorial sea baseline (Art. 33). The enforcement powers of the coastal State in the contiguous zone are limited to the infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea.

3.5 Exclusive Economic Zone

The exclusive economic zone (EEZ) cannot extend more than 200 nautical miles seaward from the territorial sea baseline (Art. 56). In the EEZ a coastal State has sovereign rights to explore and exploit, conserve and manage the natural resources (Art. 56 (1) (a)). The coastal State also has jurisdiction to protect and preserve the marine environment in the EEZ in limited circumstances (Art. 56 (1) (b) (iii)). These are discussed later in this report (see section 6.4.6 to 6.5). The adoption of laws and regulations relating to pollution from foreign vessels in the EEZ of a coastal State is permitted only for the purposes of enforcement (Art. 211(5)). Unlike the provisions in the territorial sea, coastal State requirements regarding pollution from foreign ships in the EEZ must conform

to, and give effect to generally accepted international rules and standards established through the competent international organisations or a general international conference (Art. 211(5)). The Convention also provides for circumstances in which coastal States may take special anti-pollution measures for foreign ships in particular areas of their respective EEZs. These measures may only be taken by coastal States with the approval of a competent international organisation (Art. 211(6)). The International Maritime Organization (IMO) is generally recognised as the competent international organisation.

3.6 *Continental Shelf*

The Convention defines the continental shelf of a coastal State as the “sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baseline from which the breadth of the territorial sea is measured, where the outer edge of the continental margin does not extend up to that distance” (Art. 76 (1)). In any case, a coastal State cannot extend its continental shelf beyond 350 nautical miles from the territorial sea baseline.

Under the Convention, coastal States exercising their sovereign rights in the continental shelf must ensure that the marine environment is protected in accordance with the provisions outlined by the Convention in Part XII. In connection with sea-bed activities, associated establishments and use of off-shore installations and man-made structures, the Convention requires that States should adopt laws, regulations and any other necessary measure to prevent, reduce and control pollution of the marine environment (Art. 208). The steps taken by States in this regard must not be any less effective than those provided by international rules, standards and recommended practices and procedures (Art. 208). The rules and standards which States must implement are those of competent international organisations and diplomatic conferences (Art. 214). Coastal States are also required to establish, through competent international organisations and diplomatic conferences, additional rules, standards and recommended practices and procedures to ensure protection of the marine environment from sea-bed activities (Art. 208(5)).

3.7 *High Seas*

The concept of the High Seas under the Convention is quite complicated. For non-resource activities, the high seas begin after the territorial sea. For resource purposes, the high seas begin after the EEZ. The particular jurisdictional feature of the high seas is a bundle of rights known as the “freedom of the high seas”. The freedom of the high seas include, (a) freedom of navigation; (b) freedom of overflight; (c) freedom to lay submarine cables and pipelines; (d) freedom to construct artificial islands and other installations; (e) freedom of fishing; and (f) freedom of scientific research. The Convention emphasises that the freedom of the high seas has to be exercised with due consideration for the rights of States in the enjoyment of their high seas freedom and with respect to activities on the deep sea bed (Art. 87).

3.8 *The Area*

Part XI of the Convention and Annexes III and IV to the Convention and the *Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982* (Agreement) establish the regime governing exploration and exploitation of mineral resources of the deep sea-bed beyond coastal State jurisdiction. Environmental protection in the “Area” is subject to the provisions of the Convention and the Agreement. The Convention

recognises that the Council will adopt rules, regulations and procedures to ensure the effective protection of the marine environment from harmful effects of deep sea-bed mining activities (Art. 145, Annex II and Art. 17).

The environmental provisions in the Convention are enhanced by the Agreement which requires that all applications for approval of plans of work shall be accompanied by an assessment of the potential environmental impacts of the proposed activities and a programme for oceanographic and baseline environmental studies (section 1(7) of the Annex to the Agreement). The Agreement also requires the International Seabed Authority to adopt rules, regulations and procedures on marine environmental protection as part of its early functions prior to the approval of the first plan of work for exploitation (section 1(5)(g) of the Annex to the Agreement).

4 *Agenda 21 and the Law of the Sea Convention*

The Convention was concluded almost a decade before the United Nations Conference on the Environment and Development (UNCED) in Rio de Janeiro, 1992. By the time of the Rio Conference, the Convention was regarded as being insufficient to deal with many of the environmental problems in the marine environment. Consequently, Agenda 21 provides the policy content for the implementation of the Convention at the domestic level. This was done by elaborating on mechanisms at the national level that will facilitate the implementation of the resources and environmental aspects of the Convention. What this means is that the implementation of the environmental aspects of the Convention must be done within the framework suggested by Chapter 17 of Agenda 21.

In marine environmental management terms, Agenda 21 marked the beginning of a new order by recognising that ocean activities cannot be pursued without regard for the environmental consequences. What Agenda 21 attempted to do was to reconstruct the process of implementing the provisions of the Convention on resource management. Unlike the jurisdictional approach taken under the Convention, Chapter 17 of Agenda 21 is aimed at an ecosystem approach to ocean management. Thus, Chapter 17 entitled *Protection of the Oceans, All Kinds of Seas, Including Enclosed and Semi-enclosed Seas, and Coastal Areas and the Protection, Rational Use and Development of their Living Resources*, recognises that “[t]he marine environment - including the oceans and all seas and adjacent coastal areas - forms an integrated whole that is an essential component of the global life-support system and a positive asset that presents opportunities for sustainable development”. Chapter 17 calls for new approaches to marine and coastal area management and development, at the national, sub-regional, regional and global levels. What emerges from Chapter 17 is that marine resource management and the protection of the oceans as a whole are inseparable.

In broad terms, Chapter 17 requires that States must recognise and deal with several limitations which hinder the full attainment of the potential benefits from the oceans and their resources by adopting an integrated approach to the management of the marine environment. Chapter 17 identifies these limitations and provides a policy guide for effectively dealing with national deficiencies on short and long term bases. Agenda 21 also implicitly recognises that current limitations to marine resource management have arisen as a result of the inadequacies in the Convention framework, the piece-meal legislative mechanisms adopted by States to deal with environmental matters, and also the fact that States often lack resources and expertise to adequately manage the marine environment.

5 *The South Pacific Regional Environment Programme (SPREP)*

SPREP is the “intergovernmental organisation responsible for environmental matters in the South Pacific region.” The members of SPREP consist of twenty-two Pacific Island countries and territories: American Samoa, Cook Islands, Federated States of Micronesia, Fiji, French Polynesia, Guam, Kiribati, Republic of the Marshall Islands, Republic of Nauru, New Caledonia, Niue, Northern Mariana Islands, Palau, Papua New Guinea, Pitcairn, Solomon Islands, Tokelau, Kingdom of Tonga, Tuvalu, Republic of Vanuatu, Wallis and Futuna and Western Samoa; and four developed countries: Australia, France, New Zealand and the United States of America.

The objectives of SPREP are, “to promote cooperation in the South Pacific region and to provide assistance in order to protect and improve its environment and to ensure sustainable development for present and future generations” (Art. 2 (1), Agreement Establishing SPREP). These objectives are to be achieved through Action Plans adopted by SPREP from time to time. The first Action Plan and Work Programme of SPREP are detailed in the *1991-1995 Action Plan for Managing the Environment of the South Pacific Region*. The Action Plan is based on nine Programme Activities. These include:

- Conservation of Biological Diversity
- Climate Change
- Environmental Management and Planning
- Coastal Management and Planning
- Prevention and Management of Pollution
- Planning and Response to Pollution Emergencies
- Environmental Education and Training
- Environmental Information
- Regional Environmental Concerns

6 *Aspects of the Law of the Sea Convention relevant to SPREP's Action Plan*

Not every aspect of the Convention is relevant to the activities and programmes of SPREP. The specific aspects of the Convention which impact on SPREP's activities are the Parts and Provisions which impose some environmental obligation. This part of the report identifies these aspects of the Convention.

6.1 *General Obligation to Protect the Marine Environment*

The Convention is the most comprehensive marine environmental treaty in existence. The framework developed in Part XII of the Convention is intended to encourage all Parties to take their environmental obligations seriously and to cooperate to address issues of common and pressing concern. Article 192 of the Convention specifically provides that “States have the obligation to protect and preserve the marine environment”. Article 193 reminds States that they have the sovereign right to exploit their natural resources pursuant to their environmental policies but that this has to be carried out in accordance with their duty to protect and preserve the marine environment. In honouring their general obligations to protect and preserve the marine

environment, States also have a duty to use the “best practicable means at their disposal and in accordance with their capabilities” (Art. 194). The Convention calls for cooperation on global and regional basis in formulating and elaborating international rules, standards and recommended practices and procedures for the protection and preservation of the marine environment.

It is important that the provisions of the Convention on marine pollution be read together with Chapter 17 of Agenda 21. Whilst the Convention outlines the regulatory and enforcement measures that States must take to protect the marine environment, Chapter 17 of Agenda 21 provides the policy content to the Convention framework by requiring the adoption of precautionary and anticipatory measures such as:

- environmental impact assessments;
- clean production techniques;
- construction and/or improvement of sewage treatment facilities;
- quality management criteria for the proper handling of hazardous substances; and
- a comprehensive approach to damaging impacts from air, land and water.

6.2 Obligation to Cooperate Globally and Regionally

The Convention recognises the need for global and regional cooperation to protect and preserve the marine environment. To this effect, Article 197 imposes obligations on States to cooperate on a global and regional basis in formulating and elaborating international rules, standards and recommended practices and procedures for the protection and preservation of the marine environment.

6.3 Obligation to Undertake Monitoring and Environmental Assessment

The Convention imposes obligations on States to undertake Environmental Impact Assessment of proposed projects which are likely to pollute the marine environment. The Convention provides that when States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment and shall communicate reports of the results of such assessments to competent international organisations, which would, in turn, make the results available to all States (Arts. 205 and 206). The Convention does not define what constitutes “significant” or “substantial” environmental effects. These terms have to be interpreted in accordance with the precautionary principle under the Rio Declaration.

6.4 Specific Pollution Prevention Obligations

Part XII of the Convention imposes a legal obligation on States to adopt laws, regulations, and any other measures which will prevent, reduce, or control marine pollution from certain specific sources. The main obligations are summarised below.

6.4.1 Marine Pollution from Land-based Sources

States are under obligation to deal with pollution from sources originating from land-based and sea-bed activities through the adoption of national legislation and by cooperating at global and regional levels (Art. 207).

6.4.2 Pollution from Sea-bed Activities Subject to National Jurisdiction

Coastal States are obliged to adopt laws and regulations to prevent, reduce and control pollution of the marine environment arising from, or in connection with, sea-bed activities subject to their national jurisdiction. This obligation also applies to artificial islands, installations and structures under their jurisdiction. States are required to cooperate with competent international organisations to develop rules, practices and procedures to this effect (Art. 208).

6.4.3 Pollution from Activities in the Area

The Convention calls for the establishment of international rules, standards and recommended practices and procedures to prevent marine pollution from activities in the "Area". The Convention also imposes a complimentary obligation on States to adopt national legislation to control activities in the "Area" of vessels, installations, structures and devices flying their flags, of their registry or operating under their authority (Art. 209).

6.4.4 Pollution from Dumping

The Convention calls for the adoption of international regulation and national laws to deal with marine pollution caused by dumping. The Convention requires that national legislation must ensure that dumping is not carried out without the permission of the national competent authority. Dumping in the territorial sea, the EEZ or on the continental shelf may not be carried out without the express prior approval of the coastal State (Art. 210).

6.4.5 Pollution from Vessels

Generally, the Convention creates a favourable regime for shipping. Vessels of all States have a right of innocent passage through the territorial sea of another State. Such vessels also have the right of archipelagic sea lanes passage through the archipelagic waters and transit passage through straits used for international navigation. For navigation purposes, all areas of the sea outside the territorial sea are considered as high seas and therefore free for navigation, subject to the environmental provisions of the Convention.

The Convention attempts to balance the uses of the sea for shipping and the protection of the marine environment by regulating pollution from vessels. The Convention imposes obligations on States to promulgate international rules and standards and national laws and regulations to control vessels in their zones of jurisdiction or flying their flag. States which establish particular requirements for the prevention, reduction and control of pollution of the marine environment as a condition for the entry of foreign vessels into their ports, or internal waters are required to publicise such regulations and to notify the competent international organisations. Extensive powers of enforcement are also granted to coastal States over vessel-source pollution (Art. 211).

6.4.6 Pollution From or Through the Atmosphere

The Convention calls for the prevention of pollution from or through the atmosphere. It recognises the adoption of national and international rules to combat this source of pollution.

6.5 Enforcement of Coastal State Anti-pollution Laws

The Convention grants considerable powers to coastal States to enforce their laws and regulations to protect the marine environment. It also prescribes the conditions under which such enforcement powers are to be exercised. The provisions of the Convention dealing with enforcement of pollution rules and standards can be found in Articles 213-222. Coastal States are

entitled to enforce their anti-pollution laws in their maritime territory, internal waters, archipelagic waters and territorial sea in relation to land-based sources of pollution, dumping and discharges within the limits of the EEZ. Article 218 also grants port State jurisdiction. This Article provides that when a vessel flying the flag of another State is voluntarily within a port or at an offshore terminal of the coastal State, the coastal State may institute proceedings in respect of a discharge within the limits of the coastal State's EEZ in violation of applicable international rules.

In accordance with international law, the Convention grants sovereign immunity to warships and other public vessels used on government non-commercial service from the enforcement powers of the coastal State. However, each State has the obligation to adopt appropriate measures to ensure that such vessels comply with the applicable standards (Art. 236).

6.6 Relationship with Other Conventions

According to Article 237 of the Law of the Sea Convention, the provisions of Part XII 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. However, the obligations under such special conventions are to be carried out in a manner consistent with the general principles laid down in the Law of the Sea Convention.

7 Conservation of Marine Living Resources

The Convention also makes provisions to ensure the conservation of the living resources of the sea. Under the Convention, coastal States have sovereignty over the living resources in the territorial sea and archipelagic waters and sovereign rights for the purposes of exploring, exploiting, conserving and managing the natural resources of the seabed, subsoil and super-jacent waters in the EEZ. Coastal States also have jurisdiction "with regard to other activities for the economic exploitation and exploration of the EEZ, such as the production of energy from the water, currents and winds."

The Convention imposes obligations on coastal States with respect to the management and conservation of the living resources of the sea. In the EEZ in particular, the Convention obliges coastal States to "ensure through proper conservation and management measures that the maintenance of the living resources in the EEZ is not endangered by over-exploitation" (Art. 61 (2)). Coastal States are empowered to enact conservation laws and regulations in their EEZs and require that nationals of other States fishing in the EEZ shall comply with the conservation measures of the coastal State. Finally, the Convention permits coastal States to undertake a wide range of enforcement measures in the exercise of their sovereign rights to explore, exploit, conserve and manage the living resources in the EEZ. Such measures include boarding, inspection, arrest and judicial proceedings (Art. 62 (4)).

On the high seas, all States enjoy the freedom of fishing, subject only to the qualification that the freedom shall be exercised with due regard for the interests of other States in their exercise of the freedom of the high seas (Art. 87 (2)). The Convention makes it clear that all States have the duty to take measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas. The Convention also imposes an obligation on States whose nationals fish on the high seas to cooperate with other interested States to conserve the living resources of the high seas (Art. 118).

The provisions of the Convention on fisheries conservation and management on the high seas have now been supplemented by Chapter 17 of Agenda 21 and the provisions of the 1995 *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 Stock*. This Agreement which is not yet in force, requires cooperation between coastal States and distant water fishing nations in the management of straddling and highly migratory fish stocks. It also requires the application of the precautionary approach to fisheries management and calls for measures to be taken to preserve marine biodiversity.

8 *Intersection of the 1991-1995 SPREP Action Plan with the Law of the Sea Convention*

This section identifies and examines the 1991-1995 SPREP Action Plan areas that have Law of the Sea Convention implications. The programmes that have direct Law of the Sea Convention implications include:

- Programme 1 Conservation of Biological Diversity;
- Programme 2 Climate Change;
- Programme 4 Coastal Management and Planning;
- Programme 5 Prevention and Management of Pollution;
- Programme 6 Planning and Response to Pollution Emergencies; and
- Programme 7 Environmental Education and Training.

8.1 *Programme 1: The Conservation of Biological Diversity*

This Programme is aimed at “the protection of the high level of biological diversity and species endemism that currently exists within the region and to promote the ecologically sustainable utilisation of the region’s biological resources”. The objectives of the Programme are stated in broad terms. The Programme does not distinguish between the terrestrial and marine environments of the South Pacific region. The Programme also identifies specific marine issues for attention. These include the promotion of the conservation and sustainable utilisation of wetlands and coral reefs; and the identification and assessment of the environmental, social and economic impacts of unsustainable resource use practices in relation to fishing. Other activities of SPREP under this Programme also deal specifically with marine issues such as endangered species protection and conservation in national reserves.

8.1.1 *Law of the Sea Convention Implications for the Biodiversity Programme*

The Convention does not deal comprehensively with biodiversity protection. This is because the Convention was negotiated before biodiversity protection became a significant international environmental issue. However, some aspects of the Convention address the species aspect of biodiversity. For example:

Article 61 (2): “The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation...”

Article 61 (3): "Such measures (in Article 61 (2)) shall be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield..."

Article 61 (4): "In taking such measures, the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened."

Article 194 (4) provides that States shall take measures necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

In practice, the provisions of the Law of the Sea Convention on biodiversity should be read together with the United Nations Convention on Biological Diversity 1992 (Biodiversity Convention) which applies equally to the terrestrial and the marine environments. In relation to the marine environment, the Law of the Sea Convention does not specify which zones of jurisdiction its obligations relate to. The broad nature of Article 4 of the Biodiversity Convention would suggest that minimally, the obligations cover activities from the internal waters to the EEZ and the continental shelf. Article 5 of the Biodiversity Convention also requires cooperation among States Parties to implement the Biodiversity Convention in respect of areas beyond national jurisdiction.

Despite the fact that the Biodiversity Convention applies to the marine environment to date, the domestic implementation of the Law of the Sea Convention has focused largely on the terrestrial environment. Recent efforts at the international level have begun to address this imbalance. At the Second Conference of the Parties (COP2) to the Convention on Biological Diversity held in November 1995, the issue of the conservation and sustainable use of marine biological diversity was discussed at length following the *Coastal and Marine Issues Report* by the Scientific and Technical Advisory Body. A major concern were the effects of physical alteration, destruction and degradation of habitats and pollution of the marine environments on biodiversity. Sectoral activities such as construction and mining in coastal areas were identified as activities which must be included in integrated marine and coastal area management plans.

In particular, the Report recommended that "Parties should, where appropriate and practical, prevent physical alteration, destruction and degradation of vital habitats, including spawning areas, nurseries of stocks of living marine resources." Developments at COP2 suggest that the regulation of resource activities in the marine environment will become a critical issue in the implementation of the Biodiversity Convention.

The Resolution at the end of COP2 in November 1995 also affirmed the importance of marine biodiversity in the general effort to conserve and protect biodiversity. The Resolution recommended "the use of integrated marine and coastal area management as the most suitable framework for addressing human impacts on marine and coastal biological diversity and for promoting conservation and sustainable use of this biodiversity". The Resolution encourages "Parties to establish and/or strengthen where appropriate, institutional, administrative, and legislative arrangements for the development of integrated management of marine and coastal ecosystems, plans and strategies for marine and coastal areas, and their integration within national development plans". The Conference of the Parties also resolved to request the Executive Secretary, in consultation with the United Nations Office for Ocean Affairs and the Law of the Sea Convention, to undertake a study of the relationship between the Convention on Biological Diversity and the

United Nations Convention on the Law of the Sea with regard to the conservation and sustainable use of genetic resources on the deep sea-bed (*Report of the Second Meeting of the Conference of the Parties to the Convention on Biological Diversity*, November 1995).

Another significant development was that the Conference of the Parties invited international and regional bodies responsible for legal instruments, agreements and programmes which address activities relevant to the conservation and sustainable use of marine and coastal biodiversity to review their programmes with a view to improving existing measures and developing new actions which promote conservation and sustainable use of marine biological diversity (*Report of the Second Meeting of the Conference of the Parties to the Convention on Biological Diversity*, November 1995). SPREP needs to respond to this request.

The developments at COP2 would suggest that the protection and conservation of marine biodiversity is going to form an integral aspect of the implementation of the Law of the Sea Convention in the years ahead. In view of this, it is recommended that SPREP adopt a strategy to implement specific marine biodiversity programmes. This is particularly important for SPREP because of the significance of the sea for most of its member States.

In practice, the implementation of the Law of the Sea Convention to protect and preserve marine biodiversity will require a number of precautionary measures which may impact on certain activities in the marine environment (see Elliot A. Norse (ed) *Global Marine Biological Diversity: A Strategy for Building Conservation into Decision-Making*, Island Press, Washington DC 1993 pp 87-154). Such activities would include:

- over-exploitation of living marine resources;
- incidental catch of marine species;
- logging mangrove forests;
- construction of shoreline structures;
- beach re-nourishment;
- channelisation;
- dredging and filling;
- offshore mining, oil and gas operations;
- trawling;
- shipping activities such as anchoring, trampling and visitation;
- siltation from land-based activities; and
- introduction of alien species into the marine environment.

Some of these "threatening processes" are already regulated under the Law of the Sea Convention. These include:

- over-exploitation of living marine resources;
- incidental catch of marine species;
- offshore mining, oil and gas operations;
- trawling;
- shipping activities such as anchoring, trampling, and visitation, and
- introduction of alien species.

In the South Pacific, many of these “threatening processes” are controlled by other organisations in the region. The relevant organisations and their activities are discussed later in this report (section 9). It is important that SPREP coordinates its marine biodiversity activities with these organisations.

8.2 Programme 2: Climate Change

The goal of this programme is to “develop and implement a regional programme to assist members [of SPREP] to understand and avoid or mitigate the potential adverse impacts of global environment changes, especially climate change, and to contribute to international efforts to limit human-induced climate change through appropriate measures”. Among the objectives of this programme include:

- Encourage and coordinate activities relating to the science of climate change and the determination of measures to avoid or mitigate the impact of these changes; and
- Encourage and coordinate the development and implementation of response options to minimise the region’s contribution to the causes of human-induced climate change (for example, through energy conservation).

8.2.1 The Law of the Sea Implications for the Climate Change Programme

The Convention pre-dated current international efforts to deal with the impacts of climate change. However, the Convention has a number of provisions which directly address climate change issues. The provisions of the Convention which require parties to prevent the release of toxic, harmful or noxious substances from or through the atmosphere (Art. 194 (3)(a)) and the requirement that States generally prevent pollution of the marine environment from or through the atmosphere (Art. 212(1)) are directly relevant to SPREP’s Climate Change Programme.

The Convention is also directly relevant to climate change from an energy perspective. The Convention grants to coastal States sovereign rights to explore and exploit the petroleum resources in their continental shelf. Offshore hydrocarbons are an important global energy resource, however, they contribute to the enhanced greenhouse effect. At the same time, the oceans also afford many promising opportunities for generation of renewable energy that will impact less on the environment than the traditional fossil fuel energy sources. Article 56(1) of the Convention concerning the EEZ, allow coastal States to claim sovereign rights for the purpose of exploring and exploiting the natural resources in the EEZ. The natural resources also include the production of energy from the water, currents and winds. Many factors suggest that global interest in renewable, non-polluting sources of ocean energy will grow in the Twenty-first century.

Almost all the activities associated with production of ocean sourced energy occur in the areas of the sea under coastal State sovereign rights and are therefore governed by the provisions of the Convention on the continental shelf and the EEZ. Ocean thermal energy development should, therefore be an integral part of any long term climate change programme. In the South Pacific, SOPAC has a mandate to develop ocean energy. Already, SOPAC has initiated some activities in this regard. SPREP should consider some collaboration with SOPAC on the issue of ocean energy as part of its Climate Change activities.

It is also generally agreed that the Law of the Sea Convention has to be read together with the United Nations Framework Convention on Climate Change (UNFCCC). The Climate Change Convention makes a link with the Law of the Sea Convention. Article 4 of the Climate Change Convention requires that States “...develop and elaborate appropriate and integrated plans for coastal zone management”.

8.3 Programme 4: Coastal Management and Planning

Programme 4 of the 1991-1995 SPREP Action Plan is aimed at coastal management and planning. The Programme is aimed at promoting "a comprehensive, multi-sectoral, integrated approach to the use and conservation of coastal areas, habitats and resources." Programme 4 recognises the importance of coastal areas and near shore waters to Pacific Island peoples, cultures and economies and the increasing threat posed to the coastal areas through human activities. Programme 4 recognises, by implication, the relationship between the sea and the coastal area. In the Pacific, this relationship is a crucial one because in many specific cases, an entire country may be described as a coastal zone.

8.3.1 The Law of the Sea Implications for the Coastal Management Programme

The Convention does not directly regulate coastal zone activities. However the Convention is directly relevant to coastal management in several ways. These include the provisions of the Convention on land-based marine pollution; the requirement for protection of fragile or threatened areas; dumping of wastes; and pollution from or through the atmosphere. As noted already, provisions of the Convention deal with protection of the marine environment from land-based pollution. It requires that States should adopt laws and regulations to prevent the entry of pollutants from land into the marine environment. This would also include pollutants entering the sea from rivers and estuaries.

The Convention specifically requires that States should take the necessary measures to protect fragile ecosystems (Art. 194(5)). Some coastal zone areas, particularly those surrounded by estuaries and mangroves are fragile. The Convention also obliges States to adopt laws and regulations to protect such marine environments from pollution.

The provisions of the Convention relating to dumping impose obligations on States to prevent pollution of the marine environment by dumping. The phrase 'pollution of the marine environment' is broadly defined by the Convention to include, "...introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities" (Art. 1(4)). This broad definition would cover pollution of the coastal area and lead to the conclusion that dumping activities around the coastal zone areas should be restricted. The same points can be made in relation to pollution from or through the atmosphere.

The weak provisions of the Convention in relation to coastal activities have been supplemented by Chapter 17 of Agenda 21. Agenda 21 recognised that development activities on coastal areas impact significantly on the marine environment. To address the impact of coastal zone activities on the health of the oceans, Chapter 17 commits States to an integrated management and sustainable development of coastal areas and the marine environment under their sovereignty and sovereign rights. This is to be achieved by the implementation of a number of policy objectives, including:

- the integration of policy and decision-making processes;
- awareness of current and potential uses of the coastal area and the interactions of activities in such areas;
- the application of preventive and precautionary approaches in project planning and implementation;
- devising ways to reflect changes in the value of coastal and marine areas;

- the promotion and development of national resource and environmental accounting methods that reflect changes in value resulting from the various uses of coastal and marine areas including pollution, marine erosion, resource depletion and habitat destruction; and
- consultation with concerned individuals, groups and organisations and their involvement in the planning and decision making processes.

The Convention provides the basis for SPREP to integrate its coastal programme with specific marine-related activities.

8.4 Programme 5: Prevention and Management of Pollution

This Programme recognises that marine pollution is a significant problem in the South Pacific. Specific aspects of the objectives of this programme address marine pollution issues. For example Programme 5.10 recognises the need for SPREP to assist its members to:

take all appropriate measures to prevent, reduce and control pollution of the area covered by the SPREP Convention, whether caused by discharge from vessels, land-based sources, sea-bed activity, discharge into the atmosphere, or dumping.

SPREP's marine pollution programmes are supplemented by the SPREP Convention and related Protocols which aim to protect the Pacific marine environment from pollution.

8.4.1 The Law of the Sea Convention Implications for Pollution Management

It is clear that the Convention is very significant for marine pollution prevention and management. As outlined above, the Convention provides detailed rules on the prevention of marine pollution from all sources. The Law of the Sea Convention also outlines the jurisdictional powers of coastal States in their various maritime zones of jurisdiction over polluting vessel. For example, it provides a regime for port state controls, which is an important practical step to ensure compliance with international maritime safety and marine pollution conventions. The Convention is, therefore, most directly relevant to SPREP's mandate to prevent and manage pollution in the region.

8.5 Programme 6: Planning and Response to Pollution Emergencies

This programme recognises the need to take contingency measures to deal with pollution incidents in the region. The Programme foreshadows a draft regional contingency plan to implement the SPREP Convention Protocol concerning *Cooperation in Combating Pollution Emergencies* in the South Pacific.

8.5.1 The Law of the Sea Convention Implications for Pollution Emergencies

Some provisions of the Convention intersect with planning responses to marine pollution emergencies. The Convention gives prominence to the role of the competent international organisation. At the global level, the IMO is generally regarded as the competent international organisation. At the South Pacific regional level, SPREP would also qualify as a regional "competent organisation". The relevant provisions of the Convention that should be noted by SPREP include the following:

Article 198 which deals with notification of imminent or actual pollution damage: "When a State becomes aware of cases in which the marine environment is in danger or imminent

danger of being damaged or has been damaged by pollution, it shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations”.

Article 199 which deals with contingency plans against pollution: “In the cases referred to in article 198, States in the area affected, in accordance with their capabilities, and the competent international organizations shall cooperate, to the extent possible, in eliminating the effects of pollution and preventing or minimising the damage. To this end, States shall jointly develop and promote contingency plans for responding to pollution incidents in the marine environment”.

Appropriately, Programme 6 should not be separated from Programme 5 which deals with pollution prevention. Planning in response to pollution emergencies should be seen as an integral aspect of pollution prevention. Such an integration will be consistent with the framework recommended by Chapter 17 of Agenda 21.

8.6 Programme 7: Environmental Education and Training

This programme area recognises the importance of education in environmental protection. It is aimed at providing support to schools, universities, other institutions and researchers. The programme also recognises the need for non-formal environmental education for groups involved in environmental management activities, including government departments, conservation bodies, industry and Non-Government Organisations (NGOs) and individuals.

8.6.1 The Law of the Sea Convention Implications for Environmental Education and Training

The Convention identifies education as an integral aspect for the implementation of the environmental provisions of the Convention. The principal provision on this issue is Article 202 which calls for the provision of technical and scientific and educational assistance to developing countries for the protection and preservation of the marine environment.

9 Activities of Other Organisations in the Region

Although SPREP is the primary organisation in the region responsible for environmental matters, there are also a number of other organisations in the region which, although do not have a direct environmental focus, coordinate activities that might overlap with some of SPREP’s activities. The relevant organisations include:

- the South Pacific Applied Geoscience Commission (SOPAC);
- the Forum Fisheries Agency (FFA);
- the South Pacific Forum; and
- the South Pacific Commission (SPC).

This section reviews briefly the activities of these organisations and identifies the areas where SPREP would need to cooperate with these organisations.

9.1 The South Pacific Applied Geoscience Commission (SOPAC)

SOPAC is an independent intergovernmental regional organisation based in Suva, Fiji. The objectives of SOPAC include the following (see SOPAC, 1993 *Annual Report Summary* and

Article 2 of the *Agreement Establishing the South Pacific Applied Geoscience Commission*):

- provide information on the physical environment of coastal areas to assist with resource and environmental management, coastal protection works, and with planning and implementation of coastal development projects;
- study geological hazards;
- investigate the resource potential for land, coastal and deep-sea minerals including construction materials, phosphates, cobalt-rich crusts, manganese nodules, polymetallic sulphides, and detrital minerals such as gold;
- assess and promote the hydrocarbon, wave and geothermal energy potential of the region;
- assess the water resources of the region;
- coordinate marine geological and geophysical research being carried out in the region and manage the resulting data on behalf of the member countries; and
- train member country nationals and improve the institutional capabilities of member countries in the application of geoscience to the management and development of their non-living resources and coastal zones.

Some of the members of SOPAC are also members of SPREP. The current members of SOPAC are: Australia, Cook Islands, Federated States of Micronesia, Fiji, Guam, Kiribati, Marshall Islands, New Zealand, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu and Western Samoa.

Many aspects of the activities of SOPAC will have implications for the Convention. The offshore and coastal zone activities of SOPAC, such as petroleum exploration and assessment, deep sea mineral exploration and resource assessment, sea floor maps and wave energy assessment, may have wider implications for marine pollution and the conservation of marine biodiversity. SPREP will need to cooperate with SOPAC on the following marine environmental issues:

- marine pollution;
- destruction of marine habitats as a consequence of sea-bed mining activities;
- loss of biological diversity; and
- coastal zone degradation.

9.2 *The Forum Fisheries Agency (FFA)*

FFA which is based in Honiara, Solomon Islands, was established by the South Pacific Forum Fisheries Agency Convention in 1979. The members of the FFA include the members of the South Pacific Forum and other States. Other territories in the region may be admitted to membership on recommendation of the FFA Committee (Article II, FFA Convention).

The objective of FFA is to promote intra-regional coordination and cooperation with respect to managing and conserving the fisheries resources in the EEZ of the parties. In particular, the Secretariat is charged with the following responsibilities:

- collect, analyse, evaluate and disseminate to Parties relevant statistical and biological information with respect to the living marine resources of the region and in particular the highly migratory species;
- collect and disseminate to Parties relevant information concerning management procedures, legislation and agreements adopted by other countries within and beyond the region;
- collect and disseminate to Parties relevant information on prices, shipping and marketing of fish and fish products;

- provide, on request, to any Party technical advice and information, assistance in the development of fisheries policies and negotiations, and assistance in the issue of licences, the collection of fees or in matters pertaining to surveillance and enforcement; and
- seek to establish working arrangements with relevant regional and international organisations, particularly the South Pacific Commission.

Some of the activities of the FFA will have implications for SPREP programmes. These include, in particular, issues relating to marine biodiversity. As noted above, some of the processes that threaten marine biodiversity arise from fishing operations. With this in mind, the recently concluded *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*, provides that in order to conserve straddling and highly migratory fish stocks, States must protect biodiversity in the marine environment (Art. 5). This calls for cooperation and collaboration between FFA and SPREP.

9.3 *The South Pacific Forum Secretariat*

The current Work Programme of the Forum Secretariat encompass a number of the Convention issues. In particular, the Marine Division of the Forum Secretariat, formed in 1987, has a mandate to coordinate the Forum Maritime Programme. The objective of the Maritime Programme is to facilitate and coordinate human resource development activities to strengthen national capacity. The Programme focuses on the development of an integrated regional maritime plan compatible with international standards and the provision of maritime legal services to member countries to meet their modern maritime needs. There is also a special focus on improving shipping services within the region. The Forum Secretariat collaborates with the IMO on shipping issues and relevant IMO international maritime conventions.

The above activities of the Forum Secretariat* are directly related to the control and regulation of marine pollution from vessel sources. In this respect, the Forum Secretariat is a very important organisation in the region as far as the practical implementation of the vessel source pollution provisions of the Convention are concerned.

9.4 *The South Pacific Commission (SPC)*

The SPC's marine related activities concentrate on fisheries development issues. There are two components of the Commission's fisheries programme. The first is the Coastal Fisheries Programme which provides support to the development and management of domestic inshore and coastal fisheries. The Programme covers resource assessment, training, capture and post-harvest issues. The second is the Oceanic Fisheries Programme which is an integrated programme of fishery data collection, synthesis, analysis and scientific research.

The fisheries programme of the SPC relates to the implementation of the fisheries provisions and biodiversity issues relevant to the Convention. The Coastal Fisheries Programme component also intersects with coastal zone management issues. SPREP will need to collaborate with the SPC on these issues.

* These activities are to be transferred to the South Pacific Commission.

10 *The Waigani Convention 1995*

The *Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region* (the Waigani Convention) was adopted in Port Moresby, Papua New Guinea, in September 1995. The dual aim of the Waigani Convention are:

- (a) to ban the importation of hazardous and radioactive wastes (as defined by the Convention) from outside the Convention Area to Pacific Island Developing Parties; and
- (b) ensure that any transboundary movements of hazardous wastes within the Convention Area are controlled in an environmentally sound manner.

At the time of writing this report, the Waigani Convention is not yet in force. (The Waigani Convention will enter into force thirty days after the deposit of the tenth instrument of ratification or accession (Art. 24)).

10.1 *Relationship Between the Waigani Convention and the Law of the Sea Convention*

The Waigani Convention establishes a clear relationship between it and the Law of the Sea Convention. According to Article 4(3) of the Waigani Convention, each Party to the Law of the Sea Convention is required to reaffirm the commitments under the Law of the Sea Convention which require it to prohibit dumping of hazardous wastes at sea. Furthermore, the Convention Area under the Waigani Convention is defined to include not only the land territory, but also the internal waters, territorial sea, continental shelf, archipelagic waters and the EEZs of States Parties (Art.1). The Law of the Sea Convention, therefore, provides the broader legal framework for the Waigani Convention.

10.2 *The Waigani Convention and SPREP Activities*

The Waigani Convention establishes a Secretariat and assigns the Secretariat a number of functions to facilitate the implementation of the Convention (Art. 14 (1) and (2)). The functions of the Secretariat are to be carried out by SPREP (Art. 14 (3)). Apart from the administrative functions of SPREP, the Waigani Convention is directly linked to some of SPREP's Programmes that are impacted upon by the Law of the Sea Convention. The Programme areas of particular significance include Conservation of Biological Diversity; Coastal Management and Planning; and Prevention and Management of Pollution. What this means is that the successful achievement of the objectives of the Waigani Convention would, at the same time, enhance the implementation of some of SPREP's Programmes.

11 *Practical Guide to meeting Law of the Sea Convention Requirements*

The task of implementing the provisions of the Convention is a heavy burden on all coastal States. This is more so with developing coastal States who lack information, technical advice and trained personnel to develop comprehensive legal, administrative and policy responses to implement the Convention.

There are two broad ways in which SPREP can take practical action to meet the requirements of the Convention. The first is to assist its members to implement the Convention. In the final analysis, the objectives of the Convention can only be realised when States are willing to implement or are capable of implementing the provisions of the Convention. The second strategy is for SPREP to address marine issues more specifically in its Action Plan and identify specific measures to implement such measures.

11.1 Actions at the Domestic Level

The actions that SPREP members need to take at the Domestic Level to implement the Convention are outlined below.

11.1.1 Need for Ratification of the Law of the Sea Convention by SPREP Members

The Convention is important for all the SPREP member States and Territories. The sea provides them with significant benefits in terms of living and non-living resources, biodiversity, transportation, etc. Despite this, some members of SPREP have not yet ratified the Convention. As at 21 March 1996, only 8 members of SPREP entitled to ratify or accede to the Convention had done so. These are Australia, Cook Islands, Federated States of Micronesia, Fiji, Marshall Islands, Nauru, Western Samoa and Tonga.

At present, some of the provisions of the Convention, such as the navigational regime and the resource provisions in the EEZ and continental shelf, are being implemented as customary international law. However, this process produces uncertainty. There are also many parts of the Convention which are new and have not yet become customary international law. The provisions of the Convention on the protection of the marine environment are examples of this.

Under international law, a treaty does not impose rights and obligations on States in the absence of ratification or accession. Given the importance of the Convention for the regulation of marine sector activities, especially the protection of the marine environment and the opportunities it provides SPREP members to control and manage the resources in the EEZ and the continental shelf, ratification of or accession to the Convention would be a very important practical step to take.

The absence of universal participation in the Convention in the region will provide difficulties in developing a regional response to marine environmental issues. In this respect, SPREP should give serious consideration to encouraging and assisting its members to ratify the Convention and to adopt appropriate policies and legislation to implement the provisions of the Convention dealing with the protection of the marine environment.

11.2 Adoption of Appropriate Legislation

Many of the provisions of the Convention are "umbrella" provisions, stated in relatively general terms and intended to provide a framework of principles for more detailed regulation through domestic legislation. The provisions of the Convention on the protection of the marine environment fall into this category. Thus several provisions of the Convention simply impose obligations on States to adopt appropriate legislation or regulation to flesh out the principles laid down in the Convention. For example, the Convention requires States to tackle marine pollution through the adoption of national legislation (although, it must be recognised that legislation alone will not curb marine pollution). Similarly, national legislation is required to manage and conserve living marine resources and to protect fragile ecosystems and threatened or endangered species.

Many of the SPREP member States which have ratified the Convention have domestic legislation which is inconsistent with the provisions of the Convention. Some of the States also have no legislation at all to implement the provisions of the Convention.

The implementation of the Convention requires review and adaptation of relevant domestic legislation and enactment of new laws where the existing legislation is inadequate. One practical way in which the objectives of the Convention can be realised is for the States in the region, which have ratified or acceded to it, to implement its provisions through appropriate domestic legislation. In many cases, this will require a review of existing legislation. Although any new legislation must be suitable to the circumstances of each particular State, it must also reflect the provisions of the Convention.

11.3 Specific Marine Issues in SPREP Programmes

SPREP also needs to address specific marine issues in its programmes. These are identified below.

11.3.1 Capacity Building

The provisions of the Convention are very complex, the degree of complexity varying from Part to Part. In particular, the obligations in relation to the protection of the marine environment are extremely complex.

Generally, knowledge of the Convention and the practical aspects of its implementation at the domestic level are inadequate in many countries. Most States in the South Pacific would face considerable difficulties in developing the capacity to fulfil their obligations under the Convention. SPREP can play a crucial role in assisting its members to develop their capacity in the implementation of the relevant aspects of the Convention.

Currently a large number of environmental education and training programmes are organised by SPREP. However, none of these seem to address the specific requirements of the Convention. The implementation of the Convention at the national level also requires capacity building which does not appear to be receiving much attention in the region (with the possible exception of the Marine Studies Programme at the University of the South Pacific). To promote the implementation of the Convention at the national level, SPREP would need to work closely with its member States to develop domestic capacity. This may include the provision of technical assistance to develop legislation and appropriate domestic policies and training in understanding the rights and obligations under the Convention.

Chapter 37 of Agenda 21 provides a useful framework for capacity building. SPREP should consider identifying issues relating to the implementation of the Convention as integral aspects of its Capacity 21 Programme. Capacity building in respect of the Convention can be accommodated under Programme 7 of the 1991-1995 SPREP Action Plan. Specific training programmes can address:

- basic introduction to the Convention in general, focusing on the rights and obligations of States under the Convention;
- aspects of the Convention dealing with marine environmental protection;
- the resource provisions of the Convention and their interaction with the wider environmental provisions; and
- the marine environmental enforcement provisions of the Convention.

SPREP would also need to consider preparing simple language fact sheets outlining the relevant aspects of the Convention, including the rights, responsibilities and benefits arising from participation in the Convention.

11.3.2 Focus on Specific Marine Issues in SPREP Programmes

SPREP was established within the framework of UNEP's Regional Seas Programme. The 1991-1995 SPREP Action Plan was developed, at least in part, in response to the marine environmental issues at the time SPREP was set up. However, at the time of its establishment, many of the marine environmental issues currently being addressed by the international community were not considered critical. The imperative to adopt comprehensive and integrated measures to protect and preserve the marine environment has emerged as a critical issue in environmental protection since the 1991-1995 SPREP Action Plan was adopted. To implement the environmental aspects of the Convention and Chapter 17 of Agenda 21, future SPREP Action Plans would need to take into account other marine environmental issues in the region and develop comprehensive strategies to address them. The specific issues which will require further attention are identified below.

11.3.2.1 Marine Biodiversity Protection

Marine biodiversity protection has become one of the critical issues in the implementation of the Convention. In the 1991-1995 SPREP Action Plan, there is no distinction between terrestrial and marine biodiversity. Generally, given that marine biodiversity issues are very complex to grapple with than terrestrial ones, there is a danger that without a specific marine biodiversity programme, SPREP member States may ignore marine issues. Generally, given the significance of the sea for SPREP member States, the increasing ocean-based activities in the region (such as fishing, mining and coastal zone development), coupled with the recent emphasis being placed on marine biodiversity protection by the Conference of the Parties to the Biodiversity Convention, SPREP would need to focus a lot more on the protection of marine biodiversity.

11.3.2.2 Climate Change

The Climate Change Programme of SPREP would also need to be looked at within the context of the Convention. It is important that SPREP member States are encouraged to see the protection of the marine environment and climate change as interrelated.

11.3.2.3 Coastal Management

The protection of the coastal zone and marine environmental protection are intricately linked. At present, this linkage is not reflected in Programme 4 of the 1991-1995 SPREP Action Plan. Instead of separate programmes which distinguish between the oceans and the coastal zone, a practical approach will be to adopt an integrated marine and coastal programme based on Chapter 17 of Agenda 21.

11.4 Monitoring and Coordinating Functions of SPREP

The Convention recognises that the protection of the marine environment can only be achieved through cooperation among States. Thus, several provisions of the Convention call for cooperation among States at the global and regional levels in policy development, harmonisation of legislation, research and information exchange to achieve the objectives of the Convention. For example:

Article 194 (1): "States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source...and shall endeavour to harmonise their policies in this connection."

Article 200: "States shall cooperate, directly or through competent international organizations, for the purpose of promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data required about pollution of the marine environment."

Article 201: "...States shall cooperate, directly or through competent international organizations, in establishing appropriate scientific criteria for the formulation and elaboration of rules, standards and recommended practices and procedures for the prevention, reduction and control of pollution of the marine environment".

As the principal environmental organisation in the region, SPREP has been given a specific mandate under the Law of the Sea Convention to monitor and coordinate the development of regional responses to aspects of the Convention relevant to its work. SPREP currently coordinates efforts for a number of international conventions such as the London Convention; the Framework Convention on Climate Change; the Convention on Biological Diversity; the Montreal Protocol; the Basel Convention; Ramsar; CITES and the World Heritage Convention (*1994/95 SPREP Annual Report*) and the Waigani Convention (when it enters into force). Currently, the Law of the Sea Convention is not one of the conventions whose implementation SPREP coordinates. Given the significance of the Law of the Sea Convention for SPREP's activities, it is desirable that SPREP adds the Law of the Sea Convention to the list of conventions it coordinates. This will enable the organisation to play a leading role in the implementation of the Law of the Sea Convention in the region.

There is a need to develop a regional strategy for the implementation of the Law of the Sea Convention. This will be consistent with the provisions of the Convention requiring regional cooperation in its implementation. Many other organisations (such as FFA, SOPAC and the South Pacific Forum) also deal with aspects of the Convention. It will be necessary to coordinate efforts with these organisations to develop programmes and share responsibilities in the implementation of the Convention. SPREP is the appropriate organisation to coordinate this effort. As a start, SPREP should consider calling a meeting of all the relevant organisation to discuss aspects of the Convention relevant to their operations and to develop a coordinated strategy for implementation, including ratification, review of national legislation, and capacity building.

