



HIGHLIGHTS FROM THE FOURTH MEETING OF THE CONSULTATIVE PROCESS: TUESDAY, 3 JUNE 2003

The fourth meeting of the Open-ended Informal Consultative Process on Oceans and the Law of the Sea (Consultative Process) held a Discussion Panel on safety of navigation throughout the day. Participants heard four presentations on electronic navigational charts, the International Hydrographic Organization (IHO), the Baltic Marine Environment Protection Commission (Helsinki Commission - HELCOM), and the International Maritime Organization (IMO). Discussions covered a wide range of topics, including: capacity building for the production of nautical charts; maritime delimitation; flag State implementation; and the establishment of protected areas.

DISCUSSION PANEL A

ELECTRONIC NAVIGATIONAL CHARTS: Presentation: Richard West, Consortium for Oceanographic Research and Education, presented the advantages of electronic navigational charts (ENCs) over paper and raster charts, highlighting the reduction of environmental degradation and risks associated with the sea transport of dangerous cargoes. He outlined various applications of ENCs and said worldwide application of ENCs requires equipment, internationally standardized data, and capacity building.

Discussion: In the ensuing discussion, several delegates noted the importance of nautical charts for navigational safety. Delegates addressed, *inter alia*, the role of ENCs in delimitating maritime boundaries and monitoring ecosystems, the development and advancement of ENCs, and capacity building.

On the use of ENCs in maritime delimitation negotiations, the IHO said hydrographic positioning and depth standards needed to be agreed upon. JAMAICA underscored the importance of ENCs for maritime delimitation in semi-enclosed seas. PORTUGAL noted the benefits of using ENCs to adjust equidistance lines and consider equitable factors.

On the role of ENCs in ecosystem monitoring, West explained that ENCs are more accurate and allow for faster updating of data than paper charts. IHO noted the potential for ENCs to monitor ecosystems and indicate coral reefs efficiently.

On the development and advancement of ENCs, West noted that the transition from paper to electronic charts is costly and that no date has been set for imposing the worldwide use of ENCs. Peru, on behalf of the PERMANENT COMMISSION OF THE SOUTH PACIFIC and PANAMA, said the development and standardization of ENCs should be addressed within the framework of specialized maritime agencies. JAMAICA called for regional and international assistance and training to develop standardized ENCs, and urged developing codes of conduct for the use of

collected data. In response to PORTUGAL's concern regarding the need to ensure standardized formats, West stressed the issue of training over the proliferation of formats, explaining that software can address different formats. The IHO stressed the need to ensure worldwide continuous coverage by ENCs.

NORWAY and PORTUGAL stressed the importance of capacity building and establishing navigational administrations within developing countries, and identified finding donors as the main obstacle. PORTUGAL said capacity building should be carried out within the IHO framework. The RUSSIAN FEDERATION highlighted the need for updated data, operational national hydrographic systems, and exchange of navigational nautical information at the national and international levels.

INTERNATIONAL HYDROGRAPHIC ORGANIZATION: Presentation: Kenneth Barbor, IHO, reported on the organization's technical programmes and capacity building initiatives relating to the production of nautical charts. He said accurate nautical charts contribute to lessening the occurrence of maritime accidents, protecting the marine environment, and improving the quality of life at sea. Highlighting relevant provisions of the International Convention for the Safety of Life at Sea, he said States are obligated to produce and disseminate nautical charts. He outlined IHO's organizational structure, highlighting its regional commissions and encouraging non-member States to actively participate in these commissions.

Discussion: In subsequent discussions, delegates addressed, *inter alia*, constraints of and approaches to capacity building, IHO membership, and cultural perspectives in the production of nautical charts. Many countries also elaborated on capacity building programmes for the production of nautical charts.

On constraints to capacity building, many delegations highlighted securing funds as the key challenge. PORTUGAL stressed the need to follow-up training with practical experience. Several countries, including CANADA and the US, noted the obstacles faced by developing countries in producing and maintaining nautical charts, and supported regional approaches to and cooperation in collecting and disseminating hydrographic information. Recalling the World Summit on Sustainable Development's focus on partnerships, BELGIUM inquired about initiatives undertaken by the IHO to collaborate with the shipping and insurance industries. Barbor said the IHO had not been proactive but is currently reconsidering its involvement with industry.

On IHO membership, NORWAY questioned whether providing capacity building should be tied to membership. Barbor said the IHO extends its assistance to non-members as it believes that provisions for navigational safety are paramount.



Recognizing the knowledge of some indigenous peoples regarding nautical information on the sea, NEW ZEALAND asked whether such cultural perspectives have been considered in the IHO's training programmes and activities. Barbor that ENCs have the capability to include indigenous knowledge, but said the IHO has not accounted for such information.

HELSINKI COMMISSION: Presentation: Anne Christine Brussendorff, HELCOM, presented on measures undertaken by HELCOM to increase navigational safety and reduce environmental risks in the Baltic Sea. She highlighted: routing measures; use of pilots and ENCs; hydrographic surveys; port State controls; traffic monitoring; phasing out of single hull tankers; involvement of the maritime industry; and the possible designation of the Baltic Sea as a Particularly Sensitive Sea Area (PSSA) under IMO.

Discussion: FINLAND expressed concern over increasing maritime traffic and noted a joint project in the Baltic Sea area for vessel traffic management, including mandatory reporting and traffic separation schemes. Responding to JAPAN's question on how HELCOM ensures compliance by non-member States, Brussendorff explained that the sensitivity of the Baltic Sea area is recognized within IMO, as the Baltic Sea benefits from relevant designation under the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78).

INTERNATIONAL MARITIME ORGANIZATION: Presentation: Gaetano Librando, IMO, listed the measures taken by the IMO on maritime safety following the 11 September terrorist attack. He mentioned proposals recently submitted for IMO consideration, including on: accelerating the phasing out of single hull tankers and designating sensitive marine areas. Concerning places of refuge for vessels in distress, he noted the fragile balance between the duty of States to provide assistance and their right to regulate access to their port. He further noted the central role of the IMO and its Technical Cooperation Committee and Subcommittee on Flag Implementation in the enforcement of UNCLOS.

Discussion: In the ensuing discussion, participants considered flag State implementation, measures undertaken by the EU in the aftermath of the *Prestige* accident, and PSSAs.

On flag State implementation, the INTERNATIONAL CHAMBER OF SHIPPING (ICS) and NORWAY stressed that IMO is the only competent body to address flag State enforcement. The WORLD WIDE FUND FOR NATURE called for the creation of a temporary body to address this issue, while the US said a new implementing agreement was not needed. The US stressed the need for greater cooperation to achieve consistent implementation of existing rules by flag States, and for the formulation of a list of flag State obligations. She proposed that the Consultative Process recommend to the General Assembly that it, *inter alia*, calls on flag States to establish effective maritime administrations or refrain from registering new ships. ITALY stressed that flag States operating open registries engage their international responsibility and, with BRAZIL, urged clarifying the legal consequences of non-compliance by flag States. The BAHAMAS underscored that it has always taken its flag State responsibilities seriously. Noting that many shipping accidents and loss of life at sea result from the failure of flag States to implement their obligations, the EU stressed the need to enforce existing rules, promote a safety culture, and called for a genuine link between a ship and a flag State.

ICS said the pre-emptive measures taken by the EU in the aftermath of the *Prestige* oil spill were contrary to UNCLOS and MARPOL 73/78, and expressed concern regarding their impact on navigational safety. IMO said it was the only forum with the mandate to address single hull tankers and opposed any regional regime. The EU noted that while flag States bear the primary responsibility for ensuring safety at sea under UNCLOS, coastal and port States also bear some responsibilities, and said freedom of navigation has to accommodate emerging environmental concerns.

He highlighted actions to establish a globally harmonized regime for single hull tankers, including the EU proposal to amend relevant MARPOL 73/78 provisions. NEW ZEALAND welcomed the proposal to phase out single hull tankers but, with NORWAY, raised concern over their diversion from EU waters to other seas as a result of the adoption of the recent EU measure. The INTERNATIONAL OCEANOGRAPHIC COMMISSION noted that pollution from oil spills only contribute to 12% of all oil input into the seas each year, and highlighted that most oil pollution at sea arises from regular oil operations and extraction.

On PSSAs, NORWAY recognized that UNCLOS does not allow the designation of protected areas covering the whole Exclusive Economic Zone, and clarified that it only contemplated establishing protected areas in parts of the Bering Sea. She added that the designation of protected areas in the high seas is not envisaged by UNCLOS, and that such designation should not infringe on the freedom of navigation. AUSTRALIA recalled that PSSAs require IMO approval.

IN THE CORRIDORS

As the first Discussion Panel kicked off, deliberations on navigational safety were not confined to the suggested focus on capacity building in the production of nautical charts. Flag State implementation, PSSAs and the recent measures adopted by the EU in the wake of the *Prestige* accident were among issues that attracted much attention. In relation to flags of convenience, some delegates noted that as long as legal consequences of non-compliance regarding flag States' responsibilities are not clearly established, discussions would remain unproductive. Concerns were also raised regarding PSSAs. Several delegates feared that the establishment of such areas would restrict freedom of navigation on the high seas and right of passage through territorial seas. One delegate, who supported the establishment of PSSAs, stressed that these differ from Marine Protected Areas (MPAs), for which clear criteria and definition are still needed. Questions remain regarding what the appropriate forum would be to define such criteria.

While EU measures adopted following the *Prestige* disaster sparked criticism from several delegates who stressed that these measures contradict the freedom of navigation and conflict with UNCLOS provisions relating to the adoption of environmental measures more stringent than international standards, a delegate noted that the inconsistency may only be temporary, since the IMO is likely to adopt the EU's proposal to further accelerate the phasing out of single hull tankers.

Several delegates welcomed the newly adopted G-8 Action Plan on Marine Environment and Tanker Safety, which commits the G-8 States to, *inter alia*, address the lack of effective flag State control of fishing vessels, establish networks of MPAs by 2012, and accelerate the phasing out of single hull tankers and the introduction of a code on flag State responsibilities.

THINGS TO LOOK FOR TODAY

DISCUSSION PANEL A: Delegates will convene from 10:00 am-1:00 pm in Conference Room 1 to conclude the Discussion Panel on safety of navigation. Participants will hear a presentation from the French Hydrographic Service.

DISCUSSION PANEL B: The Discussion Panel on the protection of vulnerable marine ecosystems will take place from 3:00-6:00 pm in Conference Room 1. Participants will hear presentations and engage in discussions on, *inter alia*, threats to such ecosystems, and frameworks and management approaches for their protection.