



HIGHLIGHTS FROM THE FOURTH MEETING OF THE CONSULTATIVE PROCESS: WEDNESDAY, 4 JUNE 2003

The fourth meeting of the Open-ended Informal Consultative Process on Oceans and the Law of the Sea (Consultative Process) concluded the Discussion Panel on safety of navigation, and began the Discussion Panel on the protection of vulnerable ecosystems. In the morning, participants heard a presentation on the use of nautical charts. In the afternoon, participants convened for presentations on the Arctic ecosystem, and the state of the world's fisheries. Each presentation was followed by discussions.

DISCUSSION PANEL A

NAUTICAL CHARTS: Presentation: Yves Desnoës, HYDROGRAPHIC AND OCEANOGRAPHIC OFFICE OF THE FRENCH NAVY, presented the advantages of electronic nautical charts (ENCs) and, noting that hydrographic information in developing countries is fragmented or outdated, called on governments, donors and the International Hydrographic Organization (IHO), to achieve better ENC coverage. He stressed the need for the International Maritime Organization (IMO) and IHO to clearly define their tasks, and said the benefits drawn from greater ENC coverage outweigh the cost.

Discussion: In subsequent deliberations, delegates addressed safety of navigation, protection of the marine environment, capacity building, and flag State implementation.

Many delegations stressed the link between safety of navigation and the protection of vulnerable marine ecosystems. CANADA highlighted the convergence between navigational safety, fishing, environmental protection, and human rights, and the balance between flag, coastal and port States' responsibilities. She called for, *inter alia*, an integrated coherent domestic agenda, regional cooperation, global specialized agencies, and using model audit schemes. SPAIN welcomed the international assistance received after the *Prestige* oil spill, and said the measures it adopted as a result of the accident were provisional and in accordance with the precautionary principle. FRANCE, URUGUAY and PORTUGAL noted that in awaiting the adoption of adequate international norms, coastal States are allowed to adopt precautionary and preventive measures. ITALY said international customary law on State responsibility determines the consequences of flag States' non-compliance, and noted that unilateral action is justified against ships that violate international rules. NORWAY underscored that UNCLOS does not allow for environmental precautionary measures against ships that meet international standards, and said the Consultative Process should not

legitimize such contradictory measures. NEW ZEALAND reiterated its concern over the diversion of single hull tankers to other waters as a consequence of the measures adopted by the EU, highlighting that such measures are likely to raise inspection costs. MEXICO supported establishing a compensation mechanism for environmental damage and, supported by ARGENTINA and FIJI, stressed the need to address the transport of dangerous goods, particularly radioactive substances. The RUSSIAN FEDERATION and others condemned regional and unilateral measures, particularly those that impede commercial navigation. CHINA noted the importance of freedom of navigation and the protection of the marine environment, and called for balancing both objectives within the framework of international law.

On capacity building for the production of nautical charts, MEXICO highlighted that publication of hydrographic studies provides better geographic knowledge and facilitates the establishment of priority areas, thereby advancing implementation of the Convention on Biological Diversity's Jakarta Mandate on the Conservation and Sustainable Use of Marine and Coastal Biodiversity. He suggested that the General Assembly consider, *inter alia*, emphasizing the protection of the marine environment when addressing capacity building for the production of nautical charts, and encouraging international efforts to increase training in the use of nautical charts for maritime delimitations. IHO noted ongoing efforts to incorporate dynamic information, including data related to sensitive environments, in the development of nautical charts. Responding to JAPAN regarding ways to develop ENCs, Desnoës said new technologies already exist to improve ENCs, but that human capacities still need to be strengthened.

On flag State obligations, several States stressed the need for a definition of a genuine link. AUSTRALIA said such a link is crucial to resolving the problem of illegal, unreported and unregulated (IUU) fishing and, with NEW ZEALAND, supported the US recommendation that the General Assembly calls on flag States to establish effective maritime administrations or cease registering new ships. LITHUANIA, PORTUGAL, the REPUBLIC OF KOREA and SPAIN urged flag States to effectively control their vessels. FRANCE, SPAIN and CANADA supported developing an agreement on flag States' obligations. The REPUBLIC OF KOREA called for strengthening port State control and establishing a task force to address IUU fishing. ARGENTINA supported the establishment of a monitoring mechanism operated by port States to offset gaps in flag State implementation. JAPAN said IMO was the competent body to define flag State responsibilities and criteria for a genuine link. NORWAY encouraged IMO's and the Food and Agriculture Organization's (FAO) efforts in this

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regard, and called for the adoption of a recommendation on this issue by the Consultative Process. NEW ZEALAND and AUSTRALIA suggested that the Consultative Process endorse FAO's ongoing work on criteria for establishing a genuine link, rather than initiate a new process of negotiations.

DISCUSSION PANEL B

PROTECTION OF THE ARCTIC ENVIRONMENT:

Presentation: Olav Orheim, Norwegian Polar Institute, outlined key environmental challenges faced by the Arctic environment, highlighting IUU fishing, the accumulation of persistent organic pollutants, oil operations, the increase of sea transport of oil and nuclear waste, the high potential for elevated levels of radioactivity, and climate change. He described Norwegian management approaches to these challenges in the Barents Sea, including: the application of the ecosystem approach and the precautionary principle; sustainable development; and shared responsibility. He called for enhanced international cooperation to address IUU fishing, and urged the adoption of a binding instrument to curb mercury levels.

Discussion: Responding to CANADA's question on addressing the interests and rights of local communities, Orheim said the issue was highly politicized in Norway, but added that a law addressing this matter was currently being discussed in parliament. The US highlighted the use of regional approaches in fulfilling WSSD commitments.

STATE OF THE WORLD'S FISHERIES: Presentation:

Daniel Pauly, University of British Columbia, presented on the status and trends of the world's fisheries. He said, contrary to the previously held view based on flawed FAO datasets that global marine catch has held relatively constant over the past decade, fish stocks and catches have been in fact declining. He outlined this overall decline, explaining that it is caused by overfishing. He noted how traditional fishing grounds in the Northern hemisphere had been overfished, and highlighted the increase of fishing activity in deep waters and the Southern hemisphere. Pauly further explained the negative impacts of aquaculture and mariculture, underlining the significant amount of fishmeal consumed by the aquaculture industry. Noting that many countries rely on fish for food security and revenue, and that none of the world's oceans are free from fishing, he urged an ecosystem approach and establishing marine protected areas (MPAs) to stop the decline and promote the restoration of fish stocks.

Discussion: In the ensuing discussion, delegates considered issues relating to, *inter alia*, the ecosystem approach, MPAs, and IUU fishing.

NORWAY stressed that the ecosystem approach should be applied to the marine ecosystem as a whole. PORTUGAL enquired about the appropriate institutional framework to implement measures based on the ecosystem approach. Pauly said although ecosystems are complex, they rebuild themselves if left alone and stressed that all species should be taken into account in fisheries management.

Responding to ITALY's question regarding destructive fishing techniques, Pauly pointed to dredging and trawling, noting that they not only result in bycatch, but also destroy the seafloor. He also identified driftnet and longline fishing as destructive practices, but said changing techniques alone would not solve the fishing crisis, stressing that overfishing would also need to be addressed. NORWAY said overfishing is a greater problem within Exclusive Economic Zones (EEZs) than in the high seas.

NEW ZEALAND, the US and others expressed support for MPAs. Pauly underscored that MPAs both protect fish and increase catches. He urged discontinuing fishing subsidies, and illustrated

how fishing is, on average, fuel inefficient, requiring 1.6 tons of fuel to catch every ton of fish. JAPAN called for the creation of an international organization to ensure that MPAs are respected. Replying to BRAZIL's question, Pauly discouraged the use of temporary MPAs, but said seasonal closures could be used in fishing grounds. NORWAY underlined that definitions for protected areas within CBD and UNCLOS were not congruent.

On MPAs in the high seas, NORWAY said their creation contradicts UNCLOS and, with JAPAN, underlined the principle of freedom of the high seas. ITALY noted that, with France and Monaco, it had established MPAs in the Mediterranean in accordance with UNCLOS. Pauly called for the creation of a new legal regime for the high seas to allow for its zoning, and CANADA raised the question of fisheries management governance in the high seas.

On IUU fishing, Pauly estimated that over half the world's fish catch is from IUU fishing. He highlighted the challenges involved in addressing IUU, noting that FAO was not positioned to implicate rogue States. The SEYCHELLES noted that many small developing States reap revenues from issuing fishing licenses, and highlighted the lack of resources for monitoring MPAs, if they are to be set up. Pauly suggested collaboration with large NGOs that can raise awareness at the international level.

On implementation of relevant instruments, CANADA, the US and JAPAN called on all States to ratify, implement, and enforce fisheries management agreements. Pauly recommended that fishing vessels carry black boxes to enable fishing authorities to locate them. He also stressed the need for political will to enact the necessary measures to solve the fisheries crisis, noting that not all stakeholders can be accommodated.

IN THE CORRIDORS

As the second Discussion Panel broached the topic of protecting vulnerable marine ecosystems, many delegates commended the quality of the afternoon's scientific presentations, and noted that such presentations were needed in intergovernmental fora. Pauly's talk on fisheries, which touched upon highly sensitive issues, including the management and subsidization of the fishing industry, and the establishment of protected areas, generated both appreciation and criticism. Entrenched positions on the sacrosanct principle of freedom of the high seas expectedly created resistance to establishing MPAs in such areas. However, one delegate was optimistic that progress was slowly being made towards their acceptance, recognizing that this step forward had to be taken with the assurance that such MPAs are established within the UNCLOS framework.

Many delegates also expressed concern regarding the problem of IUU fishing. To resolve the crisis of depleting fish stocks, some countries appeared to prefer tackling the problems of IUU fishing and overfishing within EEZs, rather than establishing MPAs in the high seas.

Reflecting on the Consultative Process itself, one delegate expressed satisfaction with the openness, quality and focus of the discussions, noting that the informal setting seems to favor progress on delicate issues.

THINGS TO LOOK FOR TODAY

DISCUSSION PANEL B: The Discussion Panel on protection of vulnerable marine ecosystems will continue to meet from 10:00 am-1:00 pm, and from 3:00-6:00 pm in Conference Room 1. Participants will hear presentations and engage in discussions on coral reefs, near-shore habitats in the Pacific, and sea mounts.