

ICP-9 HIGHLIGHTS: MONDAY, 23 JUNE 2008

The ninth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (Consultative Process or ICP) opened on Monday, 23 June 2008, at UN headquarters in New York. Delegates convened in plenary in the morning, addressing organizational matters and exchanging views on concerns and actions needed. In the afternoon, a discussion panel was held on maritime security and safety, which addressed an overview of threats to maritime security, and their impacts and responses, with a focus on piracy and armed robbery against ships.

PLENARY

OPENING: Co-Chair Amb. Paul Badji (Senegal) highlighted the importance of ICP-9 as a framework for exploratory thought and reflection on the theme of maritime security and safety. He challenged delegates to abandon preconceptions and encouraged ideas to flow freely.

Co-Chair Lori Ridgeway (Canada) stressed the significance of the Consultative Process for ocean practitioners, and how delegates can demonstrate leadership to solve complex problems. Noting that a system of governance is needed to maximize the opportunities and minimize the risks of globalization, she highlighted the linkages between maritime security and safety, and sustainable development. She stressed that the Voluntary Trust Fund to facilitate participation of developing countries and panelists in future ICPs is depleted and will need to be replenished.

Nicolas Michel, Under-Secretary-General for Legal Affairs and UN Legal Counsel, noted the importance of maritime security and safety for the international community, the shipping industry, global trade and all those who work at sea. Stressing the need for an effective legal regime, he highlighted the unique opportunity for ICP-9 to address issues such as piracy and armed robbery against ships, transnational organized crime and the training of seafarers.

Co-Chair Ridgeway introduced the meeting agenda, which was adopted without amendment (A/AC.259/L.9).

EXCHANGE OF VIEWS ON AREAS OF CONCERN AND ACTIONS NEEDED: Antigua and Barbuda, for the G-77/CHINA, acknowledged the importance of ICP-9, stressing that consensus must be reached by its conclusion. He recalled the importance of integrating social, economic and sustainable development considerations into maritime security and safety, and suggested the Co-Chairs adopt a deadline for reaching consensus on recommendations to be submitted to the General Assembly.

Slovenia, for the EU, stressed that action is needed to enhance the effectiveness of the international legal framework and recommended that discussions focus on piracy and armed robbery at sea, and problems related to rescue at sea. The EU, with NORWAY and the REPUBLIC OF KOREA, expressed support for UN Security Council resolution 1816 (2008) concerning piracy off the coast of Somalia. NORWAY highlighted the important role of the International Maritime Organization (IMO) in fighting piracy and armed robbery, and expressed concern with acts of terrorism at sea, threats of proliferation of weapons of mass destruction, people rescued at sea and refugee issues. He then proposed that ICP-10 focus on illegal, unreported and unregulated (IUU) fishing.

Noting that the ICP's mandate is up for renewal, BRAZIL emphasized that as a condition, the Consultative Process should reinstate its original objective and concentrate on issues relevant to the sustainability of oceans. SURINAME underscored maritime security and safety as a global issue, which necessitates cooperation from flag, port and coastal states at all levels.

JAPAN discussed its efforts to combat piracy and armed robbery against ships in the Malacca and Singapore Straits, including enhanced capacity building by providing Indonesia with patrol vessels and information sharing through the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). CANADA highlighted the interconnectedness of security and safety issues, the need for increased information sharing and capacity building, namely for developing countries, and that regional efforts are proving beneficial.

The BAHAMAS emphasized effective cooperation and coordination to ensure unimpeded transport of commodities, as well as protection of fragile marine ecosystems, and called for technical and financial assistance to enable developing countries to enhance capacity to implement maritime instruments. The REPUBLIC OF KOREA noted recent abductions off the coast of Somalia had included some of its nationals, and said social stability and economic growth depend on efforts to ensure maritime security and safety.

MALAYSIA regretted that the concept of "human security" had not been internationally agreed on, said ICP-9 should not be used to legitimize concepts that have not gained universal acceptance. He noted that the Straits of Malacca, once prone to piracy attacks, were now safer as a result of a tripartite agreement between relevant states. NIGERIA noted a recent conference on improving maritime safety, which recommended, *inter alia*, establishing interagency information centers and cooperation between navies of the Gulf of Guinea states.

SOUTH AFRICA emphasized that the lack of maritime security and safety around the coast of Africa negatively impacts stability, human security and economic development. He added

that the challenges associated with poverty, underdevelopment, political instability and lack of up-to-date hydrographical charts are linked to the problems of maritime security and safety. TANZANIA highlighted that increasing security of ships in the Western Indian Ocean will enhance trade in the region as well as ensure humanitarian aid.

NEW ZEALAND identified challenges to ICP-9, which include, *inter alia*, the full exploration of linkages between work at the regional and international levels and identification of ways to enhance effectiveness of the legal framework. The US highlighted that maritime safety is a component of maritime security and that all nations benefit from a safer maritime regime. He emphasized the need to cooperate in a consistent manner with UNCLOS, noting the importance of information sharing and capacity building.

BARBADOS said the shipment of nuclear waste is one of the greatest threats to the marine environment in the Caribbean, calling for a ban on its transport, voiced concerns that the Secretary General's Report does not adequately present this threat, and hoped ICP-9 would consider the challenges faced by the smallest and most vulnerable countries.

AUSTRALIA emphasized the importance of the Consultative Process as a forum for discussing marine issues in an integrated manner, highlighted the importance of ReCAAP for addressing piracy and armed robbery, and encouraged members to utilize the IMO Member State Audit Scheme. KENYA reiterated the call by the World Food Programme and IMO for greater cooperation between coastal, flag and other states to reduce incidences of piracy off the coast of Somalia.

DISCUSSION PANEL ON MARITIME SECURITY AND SAFETY

OVERVIEW OF THREATS TO MARITIME SECURITY, THEIR IMPACTS AND RESPONSES THERETO, WITH A FOCUS ON PIRACY AND ARMED ROBBERY AGAINST SHIPS: Presentations: Stuart Kaye, University of Melbourne, Australia, gave an overview of the various types of maritime security threats and international responses to these threats. He discussed piracy, maritime terrorism, trafficking of weapons, drugs and psychotropic substances, people smuggling, IUU fishing and damage to the marine environment. Kaye highlighted the challenges of: increasing levels of state participation in international agreements; greater flag state control and increased cooperation with coastal and port states; increasing information sharing and cooperation; and capacity building for greater compliance and enforcement by port, coastal and flag states.

Pottengal Mukundan, International Maritime Bureau (IMB), stressed the key role the IMB Piracy Reporting Centre has played in helping to control piracy worldwide over the past 17 years. He illustrated that the overall number of attacks has decreased in the last five years, highlighted piracy hotspots off the coasts of Somalia and Nigeria, and noted the success story of piracy control in the Malacca Straits due to regional cooperation.

Yoshiaki Ito, ReCAAP Information Sharing Centre (ISC) discussed the Asian experience in combating piracy and armed robbery at sea. He noted the three pillars of ReCAAP are information sharing, capacity building and engaging in cooperative arrangements, and highlighted the importance of designated member country focal points as inter-ministry points of contact for information exchange with the ISC. Ito said while the situation in piracy and armed robbery in Asia was improving, much work still remained.

Arif Havas Oegroseno, Department of Foreign Affairs, Indonesia, discussed experiences in addressing armed robbery in the Straits of Malacca and Singapore, and the evolution of institutional legal frameworks, first discussed by the littoral states – Singapore, Malaysia and Indonesia – in 1971. He said managing the Straits and any legal activity were the responsibility of the littoral states, and should not fall under international jurisdiction. He reviewed Indonesian unilateral

efforts, such as air and sea patrols and surveillance systems, and stressed, *inter alia*, that political stability on land reduces threats at sea. He also emphasized bilateral and trilateral measures such as coordinated patrols.

Nancy Karigithu, Kenya Maritime Authority, discussed Kenya's role in fighting piracy and armed robbery off the coast of Somalia. She noted the increasingly violent nature of piracy, including attacks on cruise ships, and the emergence of guns and drug cartels. She highlighted the lack of a negotiating partner in Somalia, as well as impacts on economies in the region and on food aid distribution. She said a recent regional meeting, *inter alia*, recommended increased joint patrols, and established an expert working group to further address this issue. She urged updating the legal framework to deal with piracy, and said peace and stability in Somalia are the only lasting solutions.

Discussion: On linkages between IUU fishing and maritime security, Oegroseno reinforced the interconnectedness between navigation safety, maritime security and environmental protection. Responding to a question on how coastal states receive reports from the IMB Piracy Reporting Centre, Mukundan emphasized that the Centre is transparent in its practices and that reports of attacks from ships are promptly passed to the relevant law enforcement agency.

On freedom of navigation, Oegroseno stated that Article 23 of UNCLOS on "foreign nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances," which have the right of innocent passage through territorial seas, constitute a challenge to coastal and archipelagic states.

On the effectiveness of UN Security Council resolution 1816 (2008), Karigithu noted the Transitional Federal Government (TFG) of Somalia's interest in working with regional partners, and said the resolution would send a warning message to pirates and armed robbers. Oegroseno said the resolution is only a temporary solution, until an effective government is established. On transferring lessons from ReCAAP, Ito noted ReCAAP's success depends on its regional component, but could be replicated in Somalia's case if there was regional cooperation. Mukundan said neighboring governments with naval forces should seek permission from the TFG to hunt down pirates in Somalia's territorial waters, until a central government is established.

On public and private sector involvement in combating piracy, Ito highlighted an example of ReCAAP's cooperation with IMB and a shipping association to develop a safety and response manual. Mukundan underscored that IMB has no interest in replacing any law enforcement agency. Mukundan emphasized the need to further explore jurisdictional problems for prosecuting pirates and armed robbers. Oegroseno highlighted the need for regional or bilateral legal infrastructures in order to effectively combat piracy and armed robbery.

Discussions also focused on zero tolerance for piracy and armed robbery attacks, navigational warning systems, and including social and environmental aspects of maritime security in discussions.

IN THE CORRIDORS

Within the opening hours of ICP-9, delegates were already agreeing that repeating last year's muddled ending to the Consultative Process, during which consensus was not reached, should be avoided at all costs, particularly in light of the fact that the General Assembly this year will consider whether to renew the ICP's mandate. However, undercurrents of disagreement were already bubbling to the surface on issues related to IUU fishing and whether it should even be discussed as linked to security and safety. Other participants noted the divergent organizational definitions of "security," with one forecasting interesting IGO statements on the issue later in the week. Only time will tell whether consensus will be reached on these issues.