

ICP-10 HIGHLIGHTS: WEDNESDAY, 17 JUNE 2009

The tenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (Consultative Process or ICP) opened on Wednesday, 17 June 2009, at UN Headquarters in New York. Delegates convened in plenary in the morning, addressing organizational matters, and a general exchange of views on the implementation of the outcomes of the Consultative Process, including a review of its achievements and shortcomings in its first nine meetings. In the afternoon, a discussion panel was held which included presentations on ICP's: mandate, objectives and role; and outcomes of the Consultative Process and their implementation.

PLENARY

OPENING: Patricia O'Brien, Under-Secretary-General for Legal Affairs and UN Legal Counsel, welcomed participants to ICP-10, introduced the new UN Division for Ocean Affairs and the Law of the Sea (DOALOS) Director, Serguei Tarassenko, and highlighted the Consultative Process's important role in helping the international community address complex oceans issues, saying this can only continue if those involved have confidence in the process.

Noting that fisheries employ over 40 million people globally with the majority of these individuals in developing countries, Sha Zukang, Under-Secretary-General for Economic and Social Affairs, emphasized the need for urgent fisheries reform with sustainable development in mind, especially in light of global climate change, and the diminishing supply of certain fish stocks, including bluefin tuna and cod.

Co-Chair Amb. Paul Badji (Senegal) welcomed and thanked all participants involved in the Consultative Process for helping it reach its tenth year of existence. In noting the difficulty of reviewing the effectiveness and utility of the Consultative Process due to its complex and numerous themes, he underscored that this effort is vital for its enhancement, improvement and relevance. He hoped for a successful meeting, and then introduced the meeting agenda (A/AC.259/L.10).

Co-Chair Amb. Don MacKay (New Zealand) noted the opportunity ICP-10 presents for a thorough review of the strengths and weaknesses of the Consultative Process and opportunities for improvement. The agenda was adopted without amendment.

GENERAL EXCHANGE OF VIEWS ON THE IMPLEMENTATION OF THE OUTCOMES OF THE

CONSULTATIVE PROCESS, INCLUDING A REVIEW OF ITS ACHIEVEMENTS AND SHORTCOMINGS IN ITS FIRST NINE MEETINGS: Sudan, for the G-77/CHINA, highlighted the lack of interaction with the Commission on Sustainable Development and, supported by SOUTH AFRICA, KENYA, BRAZIL, TRINIDAD AND TOBAGO, and ARGENTINA, called for ICP to focus on its original sustainable development mandate. He said ICP-10 should consider its contribution to capacity building and technology transfer, and address the need for developing country expert participation, but he highlighted that the voluntary trust fund is depleted. He called for open and timely communication between the co-chairs and delegations.

Sweden, for the EU, called for ICP-10 to be based on reflection and self-criticism. He said the ICP has served its original purpose, highlighting the strong participation of civil society. JAPAN called for non-politicized discussions, based on standards of scientific knowledge, which rest within the existing framework of UNCLOS.

ICELAND said the Consultative Process has exceeded initial expectations, highlighting its contributions to addressing illegal, unreported and unregulated (IUU) fishing and biodiversity. KENYA said despite previous multilateral and national deliberations, complex issues remain to be tackled, including IUU fishing, piracy in the western Indian Ocean sub-region, and safe ocean navigation.

ARGENTINA suggested that if the ICP is to continue, then its agenda must go further than merely recognizing sustainable development in a formal manner. He cautioned that ICP is incorrectly perceived as a *de facto* negotiating forum and should not be interpreted as such. Instead, he recommended that ICP take advantage of its open-ended nature to facilitate discussion, information exchange and inter-agency cooperation.

NEW ZEALAND underscored its strong support for the ICP and UNCLOS, saying that the Consultative Process should continue its work as a forum for discussion on ocean affairs with wide participation, emphasizing its informal character as a key element. BRAZIL noted that the agreed elements have led to extensive negotiations, thus deviating from the main focus of the process on sustainable development and the promotion of cooperation and coordination to protect the marine environment. She expressed support for the ICP as a means of identifying opportunities for better coordination and cooperation on sustainable development.

CANADA expressed strong support for the ICP and welcomed its review as an opportunity for growth. She also

underscored that the General Assembly resolutions have reflected the ICP's discussions, and highlighted that the topics should continue to be based on sustainable development.

The US recalled the mandate of the ICP, emphasizing that past ICP meetings have achieved the goals of *inter alia*: facilitating the review by the General Assembly of developments in oceans affairs; and identifying areas for enhanced coordination and cooperation.

MEXICO said ICP-10 provides the opportunity to overcome the challenges of previous meetings and urged for special attention to the needs of developing countries. NORWAY expressed satisfaction with ICP's role as an arena for discussion that saves time in negotiations at the General Assembly. He stressed that the process is not to blame for the lack of progress of the ICP on particular topics, emphasizing the responsibility of states in this process.

The RUSSIAN FEDERATION noted that ICP has enhanced understanding of marine issues and should continue under its original mandate and be extended for the regular three-year period.

TRINIDAD AND TOBAGO highlighted the need to increase trust fund contributions and enhance technology transfer and capacity building. INDIA suggested that future ICPs should produce reports reflecting the range of opinions expressed.

DISCUSSION PANEL ON THE IMPLEMENTATION OF THE OUTCOMES OF THE CONSULTATIVE PROCESS MANDATE, OBJECTIVES AND ROLE OF

CONSULTATIVE PROCESS: Presentations: Alan Simcock, former Co-Chair ICP (UK), explained the background to the establishment of the Consultative Process, and the way in which its role, objectives and mandate were developed. On ICP's mandate, Simcock emphasized that it needed to: be consistent with UNCLOS; occur in an open-ended, informal and consultative manner; further clarify the nature of the cooperation and coordination needed, bearing in mind the needs of the different regions of the world; and propose elements for the consideration of the General Assembly in relation to Assembly resolutions under the agenda item, "Oceans and the law of the sea." He concluded saying that ICP grew out of the emphasis in the 1990's on the need for sustainable development, yet said the forum has always been concerned with additional areas – law of the sea, safety, and security - and thus serves as a justification for addressing these issues.

Satya Nandan, Chairman of the West and Central Pacific Fisheries Commission, presented on the relationship between ICP and the General Assembly. He cited numerous examples where ICP has advanced oceans issues, such as the establishment of the *Ad Hoc* Open-ended Informal Working Group to Study Issues Relating to the Conservation and Sustainable Use of Marine Biological Diversity Beyond Areas of National Jurisdiction, following ICP-5. He concluded that with regular review by the General Assembly, ICP has served the international community as a device to bring complex ocean affairs into the mainstream.

Discussion: On the history behind the title of the Consultative Process, Simcock said it was a balance between formulations that referred to UNCLOS without interpreting the convention. On the incorporation of development issues into ICP, he emphasized that sustainable development, in all its forms, runs through the "whole texture of the process and does not have a single home." On the assurance of inclusive representation for the future, he stressed the role of the trust fund and the challenge of identifying suitable panelists in a timely manner. On the dissatisfaction of some states with the development of the ICP as a forum for negotiation, Simcock said he perceived the movement towards

negotiations to be a result of: the relative success of the process in encouraging some parties to tackle issues directly; the emergence of more challenging issues into the agenda; and a tension between some delegations wishing to use the process to advance positions with others preferring to negotiate in other fora. ARGENTINA welcomed Simcock's analysis, recounting that early meetings had no prior expectation for agreed elements. SOUTH AFRICA re-emphasized the need for states to understand the role of the agreed elements.

On the continuing problem of IUU fishing, Nandan highlighted the need for it to be reconsidered by the ICP in the future. He agreed with BRAZIL that previous ICPs have addressed enforcement and compliance elements of IUU fishing, but have not considered its causes and the impacts on local fishing communities. On the ICP report prepared by the co-chairs, Nandan suggested posting it on the DOALOS website for comments from the delegations. On UN system coordination, Nandan emphasized the important role of the UN-Oceans. On achieving a balance between integration and duplication, he noted the role of the UN in overseeing an integrated approach to oceans issues. Simcock cited a number of examples where the ICP has seemed to enhance cooperation. On capacity building and technology transfer, Nandan said there is a need to identify the technology needed before seeking assistance.

FAO said the ICP helped advance the adoption of the International Plan of Action (IPOA) to Prevent, Deter and Eliminate IUU fishing and outlined the FAO activities under the IPOA. ARGENTINA questioned whether the IPOA-IUU can be attributed to the ICP. NORWAY said ICP's consensus elements can help advance discussions within the General Assembly, with EGYPT noting that the consensus elements, rather than expediting negotiations, create burdens for delegates when issues are renegotiated by the General Assembly.

OUTCOMES OF THE CONSULTATIVE PROCESS AND THEIR IMPLEMENTATION: Presentation: Agustín Blanco-Bazán, Senior Deputy Director, International Maritime Organization, stressed that ICP has been particularly useful for IMO to share its priorities with the UN and comment on recommendations to be included in General Assembly resolutions. For improved usefulness of ICP, he suggested the need for a closer relationship between the subjects addressed at ICP and the recommendations to the General Assembly resolutions; more substantive time of the agenda devoted to discussion on the elements to be adopted rather than informative or scholarly panels; and allowing intergovernmental bodies to provide referential information and advice throughout the meeting.

IN THE CORRIDORS

After nine years of far ranging and insightful discussions on ocean affairs, it was time for delegates to turn a critical eye on themselves and examine the Consultative Process. With this in mind, delegates arrived at ICP-10 with strong views on where the ICP sails smoothly, faces rough waters, and forges uncharted seas. Many questioned how the ICP addresses its original sustainable development mandate. Formal and informal discussions suggested that a key contentious issue would be the products of ICP meetings, with some questioning whether the ICP should prepare agreed elements for the General Assembly's annual sessions on, "Oceans and the law of the sea." It remains to be seen if delegations will agree whether the existing process is satisfactory, or a revision of procedures is necessary. Interestingly, few seemed to question the original mandate, but confidence in the future of the ICP is far from unanimous.