

SUMMARY OF THE TENTH MEETING OF THE UNITED NATIONS OPEN-ENDED INFORMAL CONSULTATIVE PROCESS ON OCEANS AND THE LAW OF THE SEA: 17-19 JUNE 2009

The tenth meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP-10 or Consultative Process) took place from 17-19 June 2009, at UN Headquarters in New York. The meeting brought together over 350 representatives from governments, intergovernmental organizations, non-governmental organizations and academic institutions.

During the meeting, plenary sessions were held on Wednesday, Thursday and Friday to address: the implementation of the outcomes of the Consultative Process, including a review of its achievements and shortcomings in its first nine years; issues that could benefit from attention in the future work of the General Assembly on oceans and the law of the sea; and consideration of the outcome of the meeting. The Secretary-General's report on "Oceans and the law of the sea" (A/64/66) provided the basis for discussion.

The discussion panel on the implementation of the outcomes of the Consultative Process, including a review of its achievements and shortcomings in its first nine years met on Wednesday and Thursday to consider the ICP's: mandate, objectives and role; outcomes and their implementation; and format and methods of work.

Following the plenary discussions on Friday, Co-Chairs Amb. Paul Badji (Senegal) and Amb. Don MacKay (New Zealand) drafted and distributed a Co-Chairs' summary report for consideration. Co-Chair Badji emphasized that the report was not designed to serve as recommended elements for the General Assembly, but a summary of plenary and panel discussions on the ICP's: mandate, objective and role; outcomes and their implementation; format and methods of work; and issues that could benefit from future attention. After delegates suggested minor amendments to the report, and with no objections concerning its overall substance, delegates were able to forward

the summary of ICP-10's discussions to the General Assembly for consideration at its 64th session under the agenda item, "Oceans and the law of the sea."

A BRIEF HISTORY OF THE LAW OF THE SEA AND THE CONSULTATIVE PROCESS

On 1 November 1967, Malta's Ambassador to the UN, Arvid Pardo, asked the nations of the world to recognize a looming conflict that could devastate the oceans. In a speech to the General Assembly, he called for, "an effective international regime over the seabed and the ocean floor beyond a clearly defined national jurisdiction." The speech set in motion a process that spanned 15 years and saw the creation of the UN Seabed Committee, the signing of a treaty banning nuclear weapons on the seabed, the adoption of a declaration by the General Assembly that all resources of the seabed beyond the limits of national jurisdiction are the common heritage of mankind, and the convening of the Stockholm Conference on the Human Environment. These were some of the factors that

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led to the convening of the Third UN Conference on the Law of the Sea during which the UN Convention on the Law of the Sea (UNCLOS) was adopted.

UNCLOS: Opened for signature on 10 December 1982, in Montego Bay, Jamaica, at the Third UN Conference on the Law of the Sea, UNCLOS sets forth the rights and obligations of states regarding the use of the oceans, their resources, and the protection of the marine and coastal environment. UNCLOS entered into force on 16 November 1994, and is supplemented by the 1994 Deep Seabed Mining Agreement and the 1995 Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA).

GENERAL ASSEMBLY RESOLUTION 54/33: On 24 November 1999, the General Assembly adopted resolution 54/33 on the results of the review undertaken by the UN Commission on Sustainable Development at its seventh session on the theme of, "Oceans and seas." In this resolution, the General Assembly established an open-ended informal consultative process to facilitate the annual review of developments in ocean affairs. The General Assembly decided that the Consultative Process would meet in New York and consider the Secretary-General's annual report on oceans and the law of the sea, and suggest particular issues to be considered by the General Assembly, with an emphasis on identifying areas where intergovernmental and interagency coordination and cooperation should be enhanced. The resolution further established the framework within which meetings of the Consultative Process would be organized, and decided that the General Assembly would review the effectiveness and utility of the Consultative Process at its 57th session.

ICP-1 to 3: The first three meetings of the Consultative Process identified issues to be suggested and elements to be proposed to the General Assembly, and highlighted issues that could benefit from attention in its future work. The first meeting of the Consultative Process (30 May-2 June 2000) held discussion panels addressing fisheries, and the impacts of marine pollution and degradation. The second meeting (7-11 May 2001) focused on marine science and technology, and coordination and cooperation in combating piracy and armed robbery at sea. The third meeting (8-15 April 2002) held discussion panels on the protection and preservation of the marine environment, capacity building, regional cooperation and coordination, and integrated oceans management.

ICP-4 and 5: The fourth meeting of the Consultative Process (2-6 June 2003) adopted recommendations on safety of navigation, the protection of vulnerable marine ecosystems, and cooperation and coordination on oceans issues. The fifth meeting (7-11 June 2004) adopted recommendations on new sustainable uses of oceans, including the conservation and management of the biological diversity of the seabed in areas beyond national jurisdiction.

ICP-6 and 7: The sixth meeting of the Consultative Process (6-10 June 2005) adopted recommendations on fisheries and their contribution to sustainable development, and considered the

issue of marine debris. The seventh meeting (12-16 June 2006) enhanced understanding of ecosystem-based management, and adopted recommendations on ecosystem approaches and oceans.

ICP-8: The eighth meeting (25-29 June 2007) discussed issues particularly related to marine genetic resources. Delegates were unable to agree on key language referring to the relevant legal regime for marine genetic resources in areas beyond national jurisdiction and, as a result, no recommendations were adopted. However, a Co-Chairs' summary report was forwarded to the General Assembly for consideration.

ICP-9: The ninth meeting (23-27 June 2008) adopted recommendations on the necessity of maritime security and safety in promoting the economic, social and environmental pillars of sustainable development.

ICP-10 REPORT

On Wednesday, 17 June 2009, Patricia O'Brien, Under-Secretary-General for Legal Affairs and UN Legal Counsel, opened the meeting, 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, Under-Secretary-General for Economic and Social Affairs Sha Zukang, 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 improvement and continued relevance. He hoped for a successful meeting. He 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.

DISCUSSION PANEL ON THE OUTCOMES OF THE CONSULTATIVE PROCESS, INCLUDING A REVIEW OF ITS ACHIEVEMENTS AND SHORTCOMINGS IN ITS FIRST NINE MEETINGS

MANDATE, OBJECTIVES AND ROLE OF THE CONSULTATIVE PROCESS: On Wednesday afternoon, Alan Simcock (UK), former Co-Chair of the ICP, explained the background to the establishment of the Consultative Process, and the way in which its role, objectives and mandate were developed. On the ICP's mandate, Simcock emphasized that it needed to: be consistent with the United Nations Convention

on the Law of the Sea (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 its resolutions under the agenda item, "Oceans and the law of the sea." He concluded that while ICP grew out of a focus on sustainable development, the forum has always considered additional topic areas, including maritime safety and security, and should continue to do so.

Satya Nandan, Chair of the West and Central Pacific Fisheries Commission, presented on the relationship between ICP and the General Assembly. He cited numerous examples where the 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, the ICP has served the international community as a device to bring complex ocean affairs into the mainstream.

In the ensuing debate, participants discussed: the history of the title of the Consultative Process, noting it was a balance between formulations that attempted to refer to UNCLOS without interpreting the convention; the placement of development issues within the ICP; and the intent of the voluntary trust fund as a means to assist inclusive representation and identification of panelists.

In response to Nandan's presentation, delegates: agreed that previous ICP sessions have addressed enforcement and compliance elements of illegal, unreported and unregulated (IUU) fishing, but did not consider its causes and the impacts on local fishing communities; suggested posting the ICP Co-Chairs' report on the DOALOS website for comments from delegations; and emphasized the important role of UN-Oceans on UN system coordination. A more detailed summary of these presentations and discussion is available at: <http://www.iisd.ca/vol25/enb2557e.html>

OUTCOMES OF THE CONSULTATIVE PROCESS AND THEIR IMPLEMENTATION: On Wednesday afternoon, Agustín Blanco-Bazán, Senior Deputy Director, International Maritime Organization (IMO), stressed that the ICP has been particularly useful for IMO to share its priorities with the UN and to comment on recommendations to be included in General Assembly resolutions. For improving the usefulness of the ICP, he suggested the need for a closer relationship between the subjects addressed at the ICP and the recommendations to the General Assembly; less time devoted to informative or scholarly panels; and greater use of intergovernmental bodies to provide information and advice throughout the meeting.

On Thursday morning, Matthew Gianni, Political and Policy Advisor to the Deep Sea Conservation Coalition, outlined discussions from past ICP sessions that facilitated the creation and implementation of General Assembly resolution 61/105 of 2006, relating to, *inter alia*, the management of high seas bottom fisheries. He said despite the adoption of instruments

to implement the resolution by some states, there is still much to be done to assure full implementation. He highlighted issues, including flags of convenience and noncompliance and anthropogenic sources of ocean noise, requiring additional and urgent attention from ICP. He emphasized that ICP facilitates a detailed and efficient debate on oceans issues in the General Assembly.

Sebastian Mathew, Programme Adviser for the International Collective in Support of Fishworkers, highlighted outcomes of the Global Conference on Small-Scale Fisheries in 2008, and suggested that sustainable fisheries can be realized if development and human rights of fishing communities are secured. He suggested the ICP recommend that the General Assembly adopt a resolution reaffirming the human dimensions of sustainable development of the oceans and seek greater coherence between integrated ocean management and human rights instruments.

Olajide Adeleke Ayinla, Executive Director of the Nigerian Institute for Oceanography and Marine Research, said sustainable marine resource management in developing states requires scientific and managerial capacity building. He identified a lack of participation of recipient governments and poor coordination among donors as some of the reasons for the lack of success of capacity-building programmes.

Andrew Hudson, Deputy Coordinator, UN-Oceans, elaborated on capacity-building programmes of UN-Oceans members that support the implementation of ICP outcomes.

During the subsequent discussion, some delegates stressed that: living marine resources on the high seas should be treated as common heritage of mankind; misinterpretations of General Assembly resolution 61/105 of 2006 during the ICP could lead to conflicting interpretations of exclusive jurisdiction of coastal states on continental shelves; limited attention has been given to social issues and sustainable development; many developing countries lack capacity for monitoring and enforcement of deep sea trawling; capacity-building efforts need to be prioritized and followed up upon; many issues will require broader agency involvement and coordination to be effectively addressed; the ICP can provide guidance, but implementation is up to member states; and there is a need for increased access to UN-Oceans' documents. A more detailed summary of these presentations and discussions is available at: <http://www.iisd.ca/vol25/enb2557e.html> and <http://www.iisd.ca/vol25/enb2558e.html>

FORMAT AND METHODS OF WORK OF THE CONSULTATIVE PROCESS: On Thursday afternoon, delegates addressed issues pertaining to: sustainable development, capacity building, agreed elements, and access to the Secretariat's report. On sustainable development, Argentina, supported by Canada and India, stressed that topics of each ICP should be framed in a way that includes the sustainable development perspective.

On capacity building, transfer of technology and means of implementation, Brazil provided an analysis of the agreed elements submitted to the General Assembly by the ICP, which were incorporated by resolutions, noting that only a small fraction of them pertained to capacity building, transfer of

technology and means of implementation. Ghana highlighted that before asking for assistance, states need national plans of action on capacity building.

On agreed elements, Canada stressed that they should not be the sole measure of success. The UK asked whether the ICP will be more effective by providing the General Assembly with issues to be negotiated or ready-made text from a “natural consensus.”

On access to the Secretariat report, Gabriele Goettsche-Wanli, DOALOS, in response to information requests on which intergovernmental agencies are active on oceans issues, informed delegates that the Secretariat provides an annual report to the General Assembly, which is available online. A more detailed summary of this discussion is available at: <http://www.iisd.ca/vol25/enb2558e.html>

PLENARY

IMPLEMENTATION OF THE OUTCOMES OF THE CONSULTATIVE PROCESS, INCLUDING A REVIEW OF ITS ACHIEVEMENTS AND SHORTCOMINGS IN ITS FIRST NINE MEETINGS:

This agenda item was addressed on Wednesday and Thursday. Delegates considered issues pertaining to: the value of ICP-10's focus on review; the ICP mandate and sustainable development; the status and role of the ICP; and improving ICP operations.

The value of ICP-10's focus on review: The EU called for ICP-10 to involve reflection and self-criticism, with Japan calling for non-politicized discussions, based on standards of scientific knowledge and structured by the framework of UNCLOS. Mexico said ICP-10 can help overcome the difficulties of previous meetings and urged for special attention to the needs of developing countries. Brazil stressed that ICP-10 should not consider the renewal of the ICP mandate, but rather identify means to make it effective and useful for all. The Group of 77 and China (G-77/China) said ICP-10 should consider the ICP's contribution to capacity building and technology transfer, and address the need for developing country expert participation.

The ICP mandate and sustainable development: IUCN noted the opportunity the ICP served for exploring the ecosystem approach, with the Sierra Club noting that the ICP was critical for highlighting the impacts of anthropogenic sources of ocean noise. Greenpeace said the ICP should promote cooperation and coordination on oceans, focusing on environmental sustainability and achieving the Millennium Development Goals.

The G-77/China highlighted the lack of interaction with the Commission on Sustainable Development (CSD) and, supported by South Africa, Kenya, Brazil, Trinidad and Tobago, and Argentina, called for the ICP to follow its original sustainable development mandate. Argentina suggested that if the ICP is to continue, then its agenda must attend to sustainable development in a direct manner.

The status and role of the ICP: In noting the benefits of the ICP, Andrew Hudson said it is a transparent, multi-stakeholder forum linked to the General Assembly that serves as an awareness raising mechanism for building the oceans agenda. Norway and the US expressed satisfaction with the ICP's role as an arena for discussion that saves time in negotiations

at the General Assembly, with Canada and the Republic of Korea noting that the General Assembly resolutions and debates have reflected the ICP's discussions. The EU, IUCN and the Sierra Club said the ICP serves as a unique and open venue for discussing ocean issues. The International Ocean Institute highlighted that the ICP brings attention to persistent and emerging challenges in ocean governance. New Zealand and Greenpeace said the ICP must continue to have an open-ended and integrated approach to all aspects of ocean affairs. The Russian Federation noted that the ICP has enhanced understanding of marine issues and should continue under its original mandate and be extended for the regular three-year period.

Argentina and Brazil agreed that the ICP has enhanced communication between states and non-governmental organizations (NGOs), but noted that this is not the only forum where this occurs. Argentina cautioned that the ICP is incorrectly perceived as a *de facto* negotiating forum and should not be interpreted as such, recommending instead that the ICP take advantage of its open-ended nature to facilitate discussion, information exchange and inter-agency cooperation. Brazil noted that the pursuit of agreed elements distracted from a focus on sustainable development and the promotion of cooperation and coordination to protect the marine environment.

The UN Food and Agriculture Organization (FAO) highlighted the significant overlap between topics considered by the ICP and FAO's core functions, but noted that ICP outcomes have supported the FAO's work. Norway stressed that the ICP is not to blame for the lack of progress of the ICP on particular topics, emphasizing the responsibility of states in this process. The FAO lamented the limited capacity and political will for translating commitments into policy measures.

On the ICP's role in improving cooperation and coordination, the US emphasized that past ICP meetings have helped identify areas for enhanced coordination and cooperation. Brazil expressed support for the ICP as a means for improving coordination and cooperation on sustainable development. Iceland said the Consultative Process has exceeded initial expectations, highlighting its contributions to addressing 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.

Improving ICP operations: India suggested that future ICP sessions should produce reports reflecting the range of opinions expressed. Indonesia recommended that themes for future sessions should be decided when its mandate is renewed, and called for the outcome of the meeting to be a concise statement by the Co-Chairs, reflecting factual deliberations of the ICP. Australia suggested that topic selection be a standing ICP agenda item to be recommended to the General Assembly. The Ocean Policy Research Foundation suggested that deciding topics and panelists well in advance could facilitate meeting preparation and NGO consultation. The G-77/China called for open and timely communication between the Co-Chairs and delegations.

On the ICP trust fund, DOALOS Director Tarassenko noted that the current balance, US\$66,894.82, does not cover demands. He urged delegations to make contributions to support panelists and delegations from developing countries. Trinidad and Tobago stressed the need to increase trust fund contributions. The Republic of Korea agreed and noted its contribution to the trust fund in 2008. Australia noted that the ICP has been most effective when capital-based experts are included on panels and on delegations. IUCN highlighted the capacity-building aspect of presentations by invited scientific experts. Tanzania reiterated the call for increased capacity building and transfer of technology for developing countries to help with the implementation of UNCLOS.

ISSUES THAT COULD BENEFIT FROM ATTENTION IN THE FUTURE WORK OF THE GENERAL ASSEMBLY ON OCEANS AND THE LAW OF THE SEA:

On Friday morning, delegates considered issues that could benefit from attention in the future work of the General Assembly on oceans and the law of the sea. Suriname, with Venezuela and Iran, supported the G-77/China's position that the focus of the ICP should be sustainable development. Venezuela emphasized that social and economic aspects should be considered by the ICP, stressing the need to focus on: tackling poverty; the impacts of climate change; and enhancing coordination and cooperation. Malaysia emphasized that the ICP is not supposed to be a negotiating process, and that it should retain its open-ended, informal and consultative nature. Palau, for the Pacific Small Island Developing States, described the ICP as an invaluable process for elaborating on emerging issues relating to the law of the sea, and stressed the serious threats posed by climate change to sustainable development.

IUCN highlighted topics to discuss at future ICP sessions, including: the effects of climate change on marine biodiversity; the development of environmental impact assessment procedures covering activities that may cause harmful changes to the marine environment; and ocean acidification. The Secretariat of the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic Area hoped to raise attention to the issues of, *inter alia*: sea noise and its impact on sea life, including fisheries; and marine protected areas for cetaceans and on the high seas. The North East Atlantic Fisheries Commission (NEAFC) said the General Assembly should address issues that are global in nature, not national or regional, and noted the lack of representation of Regional Fisheries Management Organizations (RFMOs) at the ICP, saying it could be due to limited resources and duplication of work in other fora. The Permanent Commission for the South Pacific hoped the ICP's mandate would be extended for an additional two years, saying the ICP can continue to improve. The Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection called for continuation of the Consultative Process and said they would contribute their expert advice or participate whenever called upon.

Co-Chair MacKay turned the discussions towards how to make the Consultative Process more effective, including on: the need to incorporate more lead time for the appointment of

Co-Chairs and the selection of panelists; and the selection of themes. Sweden, for the European Union (EU), and supported by Canada, the US and Mexico, said the General Assembly could give the ICP a multi-year mandate that includes topics to consider, while also requiring ICP sessions to discuss emerging and urgent issues. Argentina opposed a multi-year mandate, arguing, rather, that discussions should focus on the next ICP and processes for selecting its topic. Mexico, supported by Tanzania, suggested that two-year Co-Chair appointments would improve ICP operations.

On the selection and definition of ICP topics, Argentina, supported by Brazil, Australia, Canada, Mexico and the US, said information on proposed topics and the aspects of these topics needs to be widely disseminated before ICP sessions to enhance meeting preparations, inclusiveness and transparency. Australia, supported by the US, said each ICP session could propose future topics for consideration by the General Assembly.

Tanzania called for contributions to the trust fund and, supported by Mexico, urged for concrete attention to sustainable development in ICP topics. Co-Chair MacKay suggested that the Co-Chairs could write to countries asking for trust fund contributions to facilitate more participation in the ICP. He also noted that panelists are easier to secure on generic rather than specific issues and with trust fund assistance.

CONSIDERATION OF THE OUTCOME OF THE MEETING:

A Co-Chairs' summary report of ICP-10's discussions was prepared during Friday's lunch break. The report synthesized the entire meeting's discussions on ICP's: mandate, objectives and role; outcomes and their implementation; format and methods of work; and future work and issues it could benefit from addressing. After calling the afternoon session to order at 3:25 pm, Co-Chair Badji announced a brief suspension to allow time for copying and distribution of the document, and to give delegations time to review the summary, after which the session resumed. Co-Chair Badji opened the floor for comments, emphasizing that the report is, "intended for reference purposes only and not as a record of the discussions."

On the ICP's mandate, objectives and role, perspectives were provided on: the uniqueness of the forum for general discussions on, and cooperation and coordination around, comprehensive issues related to oceans and the law of the sea to inform the General Assembly; the importance of adding value to other oceans fora and not providing legal interpretations; and the importance of the forum as the lone venue within the UN system for considering oceans and seas from the perspective of sustainable development.

On outcomes and their implementation, delegates noted, *inter alia*, that the ICP: met its goals of facilitating the annual review by the General Assembly of developments in ocean affairs; is effective in drawing attention to key issues on oceans and the law of the sea; increased global, regional and national awareness and implementation of important ocean issues and actions discussed; and should include a mechanism to coordinate capacity building.

On format and methods of work, delegates noted that, *inter alia*, the ICP: should delineate how to select the topic, its aspects and how it is addressed; needs to focus on topics falling within its mandate, while not preventing it from addressing sustainable development issues in a more comprehensive manner; minimizes an overlap of work by obtaining briefings from ocean-related intergovernmental organizations; and notes the trust fund is depleted and requires ongoing contributions.

On issues that could benefit from attention in the future work of the ICP, delegates highlighted: IUU fishing, piracy and armed robbery; oceans and climate change; climate change as it relates to security and survival, particularly for low-lying coastal areas and island nations; and preservation of the marine environment and the protection of living resources. Other cross-cutting issues were mentioned, including: capacity building and the transfer of appropriate technology; anthropogenic ocean noise; marine protected areas; multi-term ecosystem management mechanisms to address and prevent species decline and extinction; and ocean acidification and its effects on food security.

The EU, supported by G-77/China, Brazil, the United Nations Environment Programme, South Africa, Egypt, Trinidad and Tobago, Indonesia and Tanzania, thanked the Co-Chairs for a comprehensive document and suggested that the report will act as a form of institutional memory. Argentina pressed for the inclusion of some parties' conditional support for the continuation of the ICP based on the need for procedural and substantive changes. South Africa expressed concern that discussions were moving towards negotiations and noted his unease with the inclusion of conditional support for the ICP. Egypt stressed that no delegation asked for deletion of text, and that all viewpoints should be expressed.

Following general discussion to improve the coherence and ensure that the text reflected ICP-10's discussions and seeing no objections, Co-Chair Badji took it that the delegates accepted the general tenor of the Co-Chairs' summary report and said the report will be forwarded to the President of the General Assembly.

CLOSING PLENARY

In closing, Co-Chair MacKay said the review topic of ICP-10 was a very timely and insightful decision of the General Assembly, which led to constructive reflection on how to move the process forward to the benefit of all member states. He also thanked participants for their cooperation and underlined the valuable suggestions on working methods, noting that these will be explored in preparation for ICP-11. Co-Chair Badji closed the meeting at 5:00 pm.

A BRIEF ANALYSIS OF ICP-10

For the first time in the 10-year history of the UN Open-ended Informal and Consultative Process (ICP or Consultative Process), delegates arrived at UN Headquarters not to discuss a specific issue on ocean affairs, but to examine the Consultative Process itself. To do this, delegates looked to the past to determine the future.

Twenty-seven years have passed since the adoption of the United Nations Convention on the Law of the Sea (UNCLOS). Considered by many to be the "constitution for the oceans," UNCLOS established "that the problems of ocean space are closely interrelated and need to be considered as a whole." With UNCLOS as a backdrop, the 1992 United Nations Conference on Environment and Development devoted Chapter 17 of Agenda 21 to the "Protection of the oceans, ... seas, coastal areas and the protection, rational use and development of their living resources." It was within this context that the General Assembly established the ICP in 1999, responding to a request of the Commission on Sustainable Development (CSD) for a more integrated approach to legal, economic, social and environmental aspects of marine management.

The ICP has met annually since its first meeting in 2000, addressing topics such as, fisheries, marine pollution, piracy and armed robbery at sea, ecosystem approaches, and marine genetic resources, and has been considered an important forum for discussing emerging issues in ocean affairs. However, as the Consultative Process sessions matured, many states began to feel that it was straying from its original mandate on ocean affairs from a sustainable development perspective. In addition, many states felt the need to review the procedural aspects of the ICP's work, due to concerns that their perspectives were not adequately represented in the ICP's outcomes for the General Assembly. As a result, the General Assembly proposed this year's ICP theme to be "The implementation of the outcomes of the Consultative Process, including a review of its achievements and shortcomings in its first nine meetings."

Despite the initial concerns of a number of participants that the ICP was facing termination, it quickly became apparent that the process itself was not in danger and delegates turned their attention to the matter at hand, even though one delegate stressed that their support for the ICP was conditional. The three days of panel presentations and plenary sessions provided an opportunity for participants to emphasize both the strengths and weaknesses of the Consultative Process and complete a Co-Chairs' summary report to submit to the 64th session of the General Assembly. This brief analysis will review the pivotal discussions that took place during the meeting, emphasizing the past successes, the current challenges and the future prospects for the Consultative Process.

SUCCESSSES – FULL SPEED AHEAD

During the past decade the ICP has acted as a unique forum on ocean affairs. Many delegates emphasized that its open-ended, informal and consultative characteristics have resulted in an inclusive process, open to parties and non-parties to UNCLOS, nongovernmental organizations (NGOs) and intergovernmental organizations. This has contributed to increased transparency, cooperation and coordination within the international oceans community. Indeed, a number of delegates pointed out the important role of the ICP as a forum to raise emerging issues on ocean affairs that could not have been foreseen when UNCLOS was adopted, such as marine genetic resources in areas

beyond national jurisdiction discussed at ICP-8. In addition, by addressing emerging issues, the ICP can raise awareness and further commitments in other fora.

In terms of direct impacts, some highlighted the contribution the ICP has had on informing national and international discussion on marine policy, and on influencing General Assembly resolutions on “Oceans and the law of the sea” and “Sustainable fisheries.” In this regard, a few delegations and NGOs were encouraged by General Assembly resolution 61/105 of 2006, which referred to outcomes from ICP-7 on ecosystem approaches. This produced a series of recommendations to regional fisheries management organizations (RFMOs) and states that resulted in restrictions on bottom trawling in vulnerable ecosystems beyond areas of national jurisdiction, for example in the northwestern Pacific region.

BACK TO THE NAVIGATIONAL CHARTS

A major issue tackled at ICP-10 was whether or not the Consultative Process has upheld its original mandate to address ocean affairs from a sustainable development perspective. Some delegates called for greater consideration of the social pillar of sustainable development that has been lacking in previous sessions, while others cautioned that this should be balanced with due consideration of the environmental and economic dimensions. Although no one questioned the importance of sustainable development in the Consultative Process, there was some concern that developing countries’ repeated desire to examine each theme through the lens of sustainable development may unnecessarily constrain discussions. Even so, one delegate highlighted the fact that if sustainable development issues are not properly tackled, environmental protection can never be achieved. Many hoped for more discussion on how sustainable development can best be integrated into future meetings, including an emphasis on the identification of areas where intergovernmental and inter-agency coordination and cooperation could be enhanced.

ICP-10 identified specific shortcomings of previous meetings with respect to sustainable development. In light of this, some delegates reinforced that future ICP sessions should prioritize discussions on issues such as: traditional fishing communities’ livelihoods; the need for national plans of action on capacity building; the prioritization and evaluation of capacity-building programmes; and the need for investment in capacity building and transfer of technology.

STEERING THE SHIP

Many delegates expressed concerns over the impact of procedural issues on the efficacy of previous ICP sessions. At ICP-10 delegates addressed the shortcomings of past practice in, *inter alia*: selection of the ICP’s themes; preparation of pre-meeting information; selection of Co-Chairs; and the use of the trust fund to enhance participation of developing countries. No consensus was reached on these procedural issues. However, a number of viable options were reflected in the Co-Chairs’ summary report, thus leaving decisions on these issues to the

General Assembly. Nevertheless, significant progress was made on the most contentious element, which revolved around the form of ICP outcomes.

Anyone who has attended the ICP sessions in recent years knows how they often reached a bottleneck and lost momentum due to negotiations over draft elements to be forwarded to the General Assembly. Consequently, some delegations were resentful of attempts to force consensus on draft elements. ICP-10 reaffirmed that the Consultative Process should be a forum for discussion and not negotiation, and confirmed that a lack of agreed elements to present to the General Assembly following each session does not necessarily constitute failure. Most delegations felt the difficulties of negotiating agreed elements countered the consultative characteristic of the ICP, and several delegations expressed concern that this exercise could incorrectly be perceived as an interpretation of UNCLOS. On the other side, those that supported the idea of forwarding a set of agreed elements to the General Assembly cited the fact that it facilitated clearer, faster discussions at the General Assembly, and strengthened the ICP’s potential impacts.

While delegates agreed that ICP-10’s output would be a Co-Chairs’ report, their discordant perspectives on appropriate outcomes for future ICP sessions seem to be based on a lack of agreement on what the General Assembly actually wants from the Consultative Process, that is whether it should provide a draft of agreed elements or a Co-Chairs’ summary report incorporating ICP’s discussions. In the end, delegates agreed to transmitting any “natural consensus” that emerges from the ICP as well as any Co-Chairs’ summary report to the General Assembly in order to maintain the informal and consultative nature of the process.

PULLING INTO PORT

In the end, the ICP was reinforced as a unique and inclusive forum for discussion on emerging issues on ocean affairs, in conformity with UNCLOS, with the power of influencing General Assembly resolutions and promoting coordination and cooperation among different sectors under the aegis of sustainable development. Many delegates left the meeting satisfied with the constructive discussions and the “natural consensus” that emerged on the importance of sustainable development to ICP’s future work. However, tangible results from these discussions remain to be seen.

The General Assembly, when it convenes for its 64th session, will receive a Co-Chairs’ summary report from ICP-10 that only reflects the meeting’s discussions, instead of forwarding specific recommendations. The report includes perspectives on, *inter alia*, future themes for the ICP, Co-Chair selection, and meeting preparation, setting ICP-10 in stark contrast to previous sessions given its focus on internal review rather than on specific ocean issues. It remains to be seen, therefore, how the General Assembly will interpret the Co-Chairs’ summary report and resolve important discussions surrounding the focus, format and methods of future ICP sessions.

Ideally, clearer guidance from the General Assembly on issues discussed at ICP-10 will enhance the future operations of the Consultative Process and, therefore, its relevance. Participants’

satisfaction with the outcome of the discussions within the General Assembly surrounding the renewal of the ICP mandate in 2010 and ICP-11 will depend on whether this transpires. Either way, ICP-10 showed that cooperation and coordination – one of the tenets of the ICP – was a primary reason that this process will probably continue for years to come, confirming one delegate's statement that "the oceans should unite people, rather than separate them."

UPCOMING MEETINGS

61ST INTERNATIONAL WHALING COMMISSION

MEETING: This meeting will take place from 22-26 June 2009, in Madeira, Portugal. For more information, contact: IWC Secretariat; tel: +44-1223-233-971; fax: +44-1223-232-876; e-mail: secretariat@iwcoffice.org; internet: <http://www.iwcoffice.org/meetings/meeting2009.htm>

19TH MEETING OF STATE PARTIES TO THE

UNCLOS: This meeting of states parties to the UN Convention on the Law of the Sea will take place from 22-26 June 2009 at UN Headquarters in New York. For more information, contact: DOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: <http://www.un.org/Depts/los/>

SECOND JOINT MEETING OF THE TUNA RFMOs:

This meeting will take place from 29 June - 3 July 2009, in San Sebastian, Spain. For more information, contact: Roberto Cesari, Directorate-General for Fisheries and Maritime Affairs, European Commission; tel: +32-2-299-42-76; fax: +32-2-295-57-00; e-mail: roberto.cesari@ec.europa.eu; internet: <http://www.tuna-org.org/>

SIXTH INTERNATIONAL FISHERIES OBSERVER AND MONITORING CONFERENCE:

This meeting, sponsored by the NOAA Fisheries Service and Pacific States Marine Fisheries Commission, will take place from 20-24 July 2009, in Portland, Maine, USA. For more information, contact Dennis Hansford, Conference Chair; e-mail: Dennis.Hansford@noaa.gov; internet: <http://www.ifomc.com/>

WESTERN AND CENTRAL PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL – 145TH

MEETING: This meeting will take place from 22-25 July 2009, in Kona, Hawaii. For more information, contact: Mark Mitsuyasu, Fisheries Programme Officer; tel: +1-808-522-6040; fax: +1-808-522-8226; e-mail: Mark.Mitsuyasu@noaa.gov; internet: <http://www.wpcouncil.org/>

COMMISSION ON THE LIMITS OF THE

CONTINENTAL SHELF – 24TH SESSION: This meeting of the Commission will take place from 10 August - 11 September 2009, at UN Headquarters in New York. The meeting will include meetings on the technical examination of submissions at the Geographic Information System laboratories and other technical facilities of the Division. For more information, contact: DOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: <http://www.un.org/Depts/los/>

FAO TECHNICAL CONSULTATION ON IUU FISHING:

The Technical Consultation to draft a legally binding instrument on port state measures to prevent, deter and eliminate IUU

fishing is scheduled to take place from 24-28 August 2009 in Rome, Italy. For more information, contact: David Doulman, FAO; fax: +39-065-705-6500; e-mail: david.doulman@fao.org; internet: <http://www.fao.org/fishery/en>

UN AD HOC WORKING GROUP OF THE WHOLE TO RECOMMEND A COURSE OF ACTION TOWARDS THE ESTABLISHMENT OF A REGULAR PROCESS FOR GLOBAL REPORTING AND ASSESSMENT OF THE STATE OF THE MARINE ENVIRONMENT, INCLUDING SOCIO-ECONOMIC ASPECTS: This meeting will take place from 31 August - 4 September 2009, at UN Headquarters in New York. For more information, contact: DOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: <http://www.un.org/Depts/los/>

64TH SESSION OF UN GENERAL ASSEMBLY: The 64th session of the UN General Assembly is tentatively scheduled to hold informal consultations: on the draft resolutions on "Oceans and the Law of the Sea" from 28 September - 2 October 2009, and 9-13 November; and on sustainable fisheries, including the UNFSA and UN Convention on the Law of the Sea, from 15-18 September and 16-23 November 2009. For more information, contact: DOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: http://www.un.org/Depts/los/reference_files/calendar_of_meetings.htm

NORTHWEST ATLANTIC FISHERIES

ORGANIZATION ANNUAL MEETING: This meeting will take place from 21-25 September 2009, in Bergen, Norway. For more information, contact: Barbara Marshall, Information Officer; tel: +1-902-468-5590; fax: +1-902-468-5538; e-mail: bmarshall@nafo.int; internet: <http://www.nafo.int>

ASIA PACIFIC FISHERIES COMMISSION

EXECUTIVE COMMITTEE – 72ND SESSION: This meeting is scheduled to take place from 23-25 September 2009 in Seoul, Republic of Korea. For more information, contact: Simon Funge-Smith, Secretary APFIC; tel: +66-2697-4149, fax: +66-2697-4445; e-mail: simon.fungesmith@fao.org; internet: <http://www.apfic.org>

SOUTH EAST ATLANTIC FISHERIES

ORGANISATION – SIXTH ANNUAL MEETING: This meeting will take place from 5-8 October 2009, in Swakopmund, Namibia, and will be preceded by a meeting of the Scientific Committee. For more information, contact: Ben van Zyl, Executive Secretary, SEAFO; tel: +264-64-220387; fax: +264-64-220389; e-mail: info@seafo.org; internet: <http://www.seafo.org>

COMMISSION FOR THE CONSERVATION OF SOUTHERN BLUEFIN TUNA – 16TH MEETING: This meeting will take place from 20-23 October 2009, in Jeju Island, Korea. For more information, contact: Robert Kennedy, Executive Secretary, CCSBT; tel: +61-2-6282-8396; fax: +61-2-6282-8407; e-mail: rkennedy@ccsbt.org; internet: <http://www.ccsbt.org>

CONVENTION ON THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES – 28TH ANNUAL MEETING: This meeting will take place from 26 October - 6 November 2009, in Hobart, Australia. This will be

accompanied by a meeting of the Scientific Committee. For more information, contact: Denzil Miller, Executive Secretary; tel: +61-3-6210-1111; fax: +61-3-6224-8744; e-mail: ccamlr@ccamlr.org; internet: <http://www.ccamlr.org>

NORTH PACIFIC ANADROMOUS FISH COMMISSION – 17TH MEETING: This meeting will take place from 2-6 November 2009 in Niigata City, Japan. For more information, contact: the Secretariat; tel: +1-604-775-5550; fax: +1-604-775-5577; e-mail: secretariat@npacfc.org; internet: <http://www.npacfc.org>

NORTH EAST ATLANTIC FISHERIES COMMISSION ANNUAL MEETING: This meeting will take place from 9-13 November 2009, at NEAFC Headquarters in London, UK. For more information, contact: NEAFC Secretariat; tel: +44-207-631-0016; fax: +44-207-636-9225; e-mail: info@neafc.org; internet: <http://www.neafc.org/neafcmeeting/722>

INTERNATIONAL COMMISSION FOR THE CONSERVATION OF ATLANTIC TUNA – 21ST MEETING: This meeting will take place from 9-15 November 2009, in Recife, Brazil. The meeting will be preceded by a working group on sport and recreational fisheries and a compliance committee meeting. For more information, contact: ICCAT Secretariat; tel: +34-914-165-600; fax: +34-914-152-612; e-mail: info@iccat.int; internet: <http://www.iccat.int/>

THIRD MEETING ON INTERNATIONAL COOPERATION ON MIGRATORY SHARKS UNDER THE CONVENTION ON MIGRATORY SPECIES: This meeting is tentatively scheduled for November 2009, in Manila, Philippines. For more information, contact: CMS Secretariat; tel: +49-228-815-2401; fax: +49-228-815-2449; e-mail: secretariat@cms.int; internet: <http://www.cms.int/>

EAST ASIAN SEAS CONGRESS 2009: This Congress will take place from 23-27 November 2009, in Manila, Philippines. This Congress will be organized around the theme: “Partnerships at Work: Local Implementation and Good Practices.” For more information, contact: EAS Congress Secretariat; tel: +63-2-929-2992; fax: +63-2-926-9712; e-mail: info@pemsea.org; internet: <http://pemsea.org/eascongress>

WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION – 6TH SESSION: This meeting is provisionally scheduled for 7-11 December 2009, in Papeete, Tahiti. For more information, contact: WCPFC Secretariat; tel: +691-320-1992; fax: +691-320-1108; e-mail: wcpfc@wcpfc.int; internet: <http://www.wcpfc.int>

FIFTH GLOBAL CONFERENCE ON OCEANS, COASTS, AND ISLANDS (GLOBAL OCEANS CONFERENCE 2010) – ADVANCING INTEGRATED OCEAN GOVERNANCE AT NATIONAL, REGIONAL, AND GLOBAL LEVELS: This conference will be addressing the challenges and opportunities posed by the emerging international consensus on a new climate regime and its effects on oceans, coasts and small island States. The conference will be held on 3-7 May 2010, at UNESCO Headquarters, Paris, France. For further details, contact: Dr. Miriam C. Balgos, Program

Coordinator, tel: +1-302-831-8086; fax: +1-302-831-3668; e-mail: mbalgos@udel.edu; internet: <http://www.globaloceans.org>

INFORMAL CONSULTATIONS FOR STATES PARTIES TO THE UN FISH STOCKS AGREEMENT – NINTH ROUND: This meeting is provisionally scheduled to take place from 15-29 March 2010, at UN Headquarters in New York. For more information, contact: DOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: <http://www.un.org/Depts/los/>

UNFSA REVIEW CONFERENCE: The UNFSA Review Conference is expected to resume in May 2010, at UN Headquarters in New York. The dates will be determined by the 64th session of the UN General Assembly. For more information, contact: DOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: <http://www.un.org/Depts/los/>

ELEVENTH MEETING OF THE INFORMAL CONSULTATIVE PROCESS OF THE LAW OF THE SEA: This meeting is expected to take place in the summer of 2010, at UN Headquarters in New York. For more information, contact: DOALOS; tel: +1-212-963-3962; fax: +1-212-963-5847; e-mail: doalos@un.org; internet: <http://www.un.org/Depts/los/>

GLOSSARY

CSD	Commission on Sustainable Development
DOALOS	UN Division for Ocean Affairs and the Law of the Sea
FAO	Food and Agriculture Organization of the UN
ICP	UN Open-Ended Informal Consultative Process on Oceans and the Law of the Sea
IMO	International Maritime Organization
IUU	Illegal, Unreported and Unregulated Fishing
NEAFC	North East Atlantic Fisheries Commission
RFMO	Regional Fisheries Management Organization
UNCLOS	UN Convention on the Law of the Sea
UNFSA	1995 Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks