

ICP-11 HIGHLIGHTS: MONDAY, 21 JUNE 2010

The eleventh meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (Consultative Process or ICP-11) opened on Monday, 21 June 2010, at UN Headquarters in New York. Delegates convened in plenary in the morning, addressing organizational matters and a general exchange of views on capacity building in ocean affairs and the law of the sea, including marine science. In the afternoon, a discussion panel was held on the same topic.

PLENARY

OPENING: Thomas Stelzer, Assistant Secretary-General for Policy Coordination and Inter-Agency Affairs, Department of Economic and Social Affairs, opened ICP-11 and described the importance of capacity building in ocean affairs and sustainable development, including its ability to: enable states to effectively implement the UN Convention on the Law of the Sea (UNCLOS); strengthen capacities of developing countries to achieve Johannesburg Plan of Implementation commitments; develop the marine scientific and technological capacity of developing countries; and enable cooperation among stakeholders.

Co-Chair Amb. Paul Badji (Senegal) noted the “new footing” of ICP-11 as it follows ICP-10, where participants took stock of the Consultative Process’s work thus far. He hoped for a successful meeting and called on parties to sufficiently replenish the Trust Fund.

Co-Chair Amb. Don MacKay (New Zealand) underscored that capacity building is at the heart of all states’ abilities to benefit fully from UNCLOS and is fundamental for the full implementation of the Convention for both developing and developed states. He encouraged an interactive discussion.

Patricia O’Brien, Under-Secretary-General for Legal Affairs and the UN Legal Counsel, noted: capacity building’s significance for helping states comply with UNCLOS; that outcomes of capacity-building activities lack a comprehensive needs assessment; and her hope that ICP-11 would create a common understanding of capacity-building needs, and identify opportunities and possible ways forward.

Co-Chair MacKay introduced the meeting agenda, which was adopted without amendment (A/AC.259/L.11).

GENERAL EXCHANGE OF VIEWS ON CAPACITY BUILDING IN OCEAN AFFAIRS AND THE LAW OF THE SEA, INCLUDING MARINE SCIENCE

Yemen, for G-77/CHINA, urged in-depth discussions at ICP-11 that reflect the perspectives of developing countries, particularly on the need for capacity building in respect to Article 76 of UNCLOS on the delineation of the outer limits

of the continental shelf. Australia, for the PACIFIC ISLANDS FORUM, supported by PALAU, said targeted national capacity building is vital for small island developing states (SIDS). He called for strengthened capacity to implement monitoring, control, and surveillance to combat illegal, unregulated, and unreported (IUU) fishing, and highlighted Pacific Island Forum activities on capacity building, including training for high seas boarding and inspection procedures.

Underlining the finances committed by developed countries at Copenhagen, Spain, for the EU, pointed to many existing sources for guidance on capacity building, such as the seven programme areas for capacity building identified in Chapter 17 of Agenda 21, and reviewed various EU activities, cautioning that given the financial crisis, better identification of capacity-building targets is needed.

AUSTRALIA explained that it assists its neighbors with capacity building by helping with, *inter alia*, science for delineating the outer limits of the continental shelf. PALAU stressed that science-based decision making requires open access to information, such as from the Regional Fisheries Management Organizations (RFMOs), and called for a performance review of RFMOs. CHILE stressed that capacity building needs to include human, financial, institutional and other dimensions if it is to advance sustainable development.

TRINIDAD AND TOBAGO, supporting G-77/CHINA, said that even though its ocean legislation involves surveillance, the region remains vulnerable to IUU from developed-country fleets. He also stressed the challenges presented by climate change, including sea-level rise and coral bleaching. MEXICO said Part XIV of UNCLOS, on development and transfer of marine technology, and the UN General Assembly resolutions 64/71 and 64/72, provide guidance on capacity building, and introduced topics for consideration, including: training for energy development in marine areas; production of ocean charts; and prioritization of marine conservation in areas of national jurisdiction over areas beyond national jurisdiction.

NORWAY emphasized that her country’s marine policy focuses on an integrated ecosystem based approach, and that a cross-sectoral approach is key to achieving this. She also highlighted the importance of regional cooperation, noting work with the Commission of the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) and the North East Atlantic Fisheries Commission. JAPAN said the prosperity of the international community relies on the peaceful and successful management of the ocean and highlighted her country’s capacity building programmes in the area of marine science, including those of the Japan Agency for Marine-Earth Science and Technology.

INDIA said since capacity building varies widely across regions, opportunities in this area need to be identified based on existing capacity building arrangements, and capacity building

priorities need to be identified in developing states. CHINA said financial, scientific and human resources are the foundation of capacity building. He underscored that developing countries are central to this discussion and that priorities should be established by the developing countries, not the international community.

NEW ZEALAND highlighted its capacity building assistance in the South Pacific region, noting that capacity building needs to be aligned and integrated with existing policies to avoid duplication of efforts. ARGENTINA noted that the sustainable use of oceans depends on marine science and transfer of technology, and underscored the importance of South-South cooperation as an innovative tool for enhancing capacity building. He said developing states' needs can only be defined by the developing states themselves, and that ICP-11 is the appropriate venue for beginning this work. MALAYSIA expressed support for UN programmes on capacity building, including the Intergovernmental Oceanographic Commission (IOC) programmes on enhanced cooperation and transfer of technologies. She urged the implementation of new approaches and best practices to improve coordination and implementation of innovative solutions. The US said capacity building is essential for the implementation of UNCLOS, but noted limited information on capacity building and on the specific needs of developing countries. She hoped to learn from ICP-11 about capacity building needs, and new approaches to accomplish the capacity building goals within UNCLOS.

DISCUSSION PANEL ON CAPACITY BUILDING IN OCEAN AFFAIRS AND THE LAW OF THE SEA, INCLUDING MARINE SCIENCE

ASSESSING THE NEED FOR CAPACITY BUILDING IN OCEAN AFFAIRS AND THE LAW OF THE SEA, INCLUDING MARINE SCIENCE: Presentations:

Phillip Saunders, Dalhousie University, provided the legal history of capacity building in the law of the sea, noting that it was inherent and justified in the "grand bargain" of UNCLOS as it was vital for, *inter alia*, implementing the Convention effectively and creating an equitable basis for sharing the benefits of sustainable development. Saunders said that since the time of UNCLOS's adoption, the problems of capacity building are better understood. However, he said it remains difficult to find enforceable obligations in this area. He noted progress in capacity building as demonstrated by the Secretary-General's report, which defines capacity building as multifaceted, multi-sectoral and multi-institutional, and closed by emphasizing the continuing importance of dedicated financing arrangements and "soft" capacity assistance, such as integrated management.

Åsmund Bjordal, Norwegian Institute of Marine Science, presented on the need for capacity building in marine science and sustainable fisheries management. He said the four pillars of sustainable fisheries management are: science, fisheries legislation, control of fishing activities, and violation sanctions. He underscored the need for capacity building relating to the conversion of scientific knowledge to management advice, and discussed Norway's Nansen Program, on strengthening the knowledge base for and implementing an ecosystem approach to marine fisheries in developing countries, including through capacity building.

Su'a N. F. Tanielu, Director-General, Pacific Islands Forum Fisheries Agency (FFA), presented on the Pacific SIDS' perspective on capacity building. He noted that substantial tuna catches by distant water fleets occur within Pacific SIDS' exclusive economic zones (EEZs), and highlighted the need for further capacity and resources in the region. He also discussed the role of the Assistance Fund under Part VII of the Fish Stocks Agreement (UNFSA) in strengthening the capacity to conserve, manage and develop fisheries and to participate in high seas fisheries.

Discussion: Responding to a question on shortfalls with data reporting, Bjordal said that even straightforward fisheries statistics are very poor and clarified that capacity is competency plus the means to act. On ranking states on their compliance with the UN Food and Agriculture Organization Code of

Conduct for Responsible Fisheries and the value of discussing these rankings as part of capacity building, he underscored that this discussion raises valuable debate about the Code. On the Nansen Program, he said requests are run through the FAO and requests increasingly come from regional bodies, such as Large Marine Ecosystem projects. Responding to a question on social demand, he said too many small-scale fishermen will still over-exploit resources, and called for government to create alternative employment.

Concerning the Assistance Fund under Part VII of UNFSA, Tanielu said voluntary contributions are problematic and suggested raising assessed contributions to the Fund. On fishing by distant water fleets in the EEZs of the FFA member states, he said they wanted these activities phased out, either through partnerships or the development of domestic capacity. On capacity building tailored to community needs, he said community needs are time sensitive, and cautioned that new technologies can increase costs for developing countries' fisheries. On the development aspirations of SIDS, he suggested a strategy of maximizing economic benefits resulting from sustainable harvesting of resources.

On the science-policy interface, Saunders said the work of the FFA is an important complement to the RFMO in the region and stressed that science-based decision-making can create barriers for smaller countries. Responding to a question on technology transfer across sectors, Saunders recognized conflicts between international legal regimes and national intellectual property law, but said new legal texts would consider the same regimes. Responding to a question on the role of flag states, he noted some RFMOs are adding flag state obligations, but domestic enforcement within EEZs is still often necessary.

ICELAND suggested increasing value through better handling and processing of catches. The US said although catches of many species should be decreasing, room must be made for the aspirations of developing countries.

NEW APPROACHES, BEST PRACTICES AND OPPORTUNITIES FOR IMPROVED CAPACITY BUILDING IN OCEANS AND THE LAW OF THE SEA:

Presentation: Nicole Glineur, Programme Manager, Global Environment Facility (GEF), presented on GEF's International Waters Learning Exchange and Resource Network, an initiative that aims to strengthen international waters management and to promote capacity building and technology transfer.

Discussion: In response to Co-Chair MacKay's question on countries' access to the programme, Glineur said the easiest means of access is through its website (<http://www.iwlearn.net/>). Responding to a comment on climate change, she noted that all GEF projects have a climate change dimension, either in the form of adaptation or mitigation. On the process for the generation of such projects, she said all countries have allocations and can decide on how they use this allocation.

IN THE CORRIDORS

Delegates filed into the North Lawn Building Monday morning ready to begin work on the widely agreed need for enhanced capacity building to better implement UNCLOS and ocean protection. While the Gulf of Mexico oil spill is a stark reminder of the topic's salience, the ongoing global economic crisis provides a potential brake on the enthusiasm. Indeed, delegates learned that the Trust Fund created to help developing countries participate in the ICP is low, and calls were made for careful targeting of available funds. Against this gloomy economic backdrop, the meeting's main challenge may become the identification of targeted, long-term and sustained capacity building strategies that effectively promote developing states' abilities to implement UNCLOS and further their development needs. Monday's smooth proceedings may portend a measure of success to come.