



PERMANENT MISSION OF THE REPUBLIC OF INDONESIA  
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The Permanent Mission of the Republic of Indonesia to the United Nations presents its compliments to the Secretariat of the United Nations (Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs) and with reference to the Secretariat's note dated 19 December 2008 regarding the tenth meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS), has the honour to submit herewith Indonesia's comprehensive information on the implementation of the outcomes of the first nine meetings of the UNICPOLOS for the forthcoming tenth meeting of UNICPOLOS discussions on the "implementation of the outcomes of the UNICPOLOS, including a review of its achievements and shortcomings, in its first nine meetings" which will be held from 17 to 19 June 2009.

The Permanent Mission of the Republic of Indonesia to the United Nations avails itself of this opportunity to renew to the the Secretariat of the United Nations (Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs) the assurances of its highest consideration.



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## INDONESIA'S INPUT FOR STOCK TAKING EXERCISE UPON A DECADE OF INFORMAL CONSULTATION PROCESS

The Government of the Republic of Indonesia attaches great importance to the Informal Consultative Process established in 1999 by resolution 54/33 upon the recommendation of the Commission on Sustainable Development (E/CN.17/1999/20 *paras* 38.d - 45). We consider that the informal consultation has contributed significantly to facilitating the annual review by the Member States of the United Nations of developments in ocean affairs and the law of the sea, thereby allowing the enhancement of coordination and cooperation at the intergovernmental and inter-agency levels. Equally important is that the Process will also ensure that the law of the sea can further develop the potential benefit of the sea.

The Government of the Republic of Indonesia is mindful of the rationale behind the establishment of the informal consultation process, which is, essentially, sustainable development. The recommendation of the Commission on Sustainable Development in 1999, which paved the way for the establishment of this process, is a testament.

Indonesia considers that a decade of the consultative process is opportune for reflecting on what can be done at the global level to further promote the effective implementation of the 1982 United Nations Convention on the Law of the Sea (the Convention). Whilst it is essential to remain focused on the social, environmental and economic dimensions of sustainable development in relation to the use of oceans, Indonesia is of the view that UNICPOLOS, nevertheless, should not lose the focus to discuss, in a comprehensive manner, any other issues relating to ocean affairs. This becomes even more relevant in the light of technological developments that were unforeseen at the time that the international community sealed their agreement to the Convention and State's unilateral practice that might implicate existing norms and customary law of the sea as attested to and codified in the Convention.

For this consideration, Indonesia is of the view that some of the pertinent issues need to be reflected in future discussions when the international community renews the informal consultation process, as follows:

- (a) *Responsible fisheries and illegal, unregulated and unreported fisheries (A/55/274 - UNICPOLOS I)*

In the last few decades, the international community has developed various mechanisms to curb illegal, unreported, and unregulated fishing



(IUU fishing) practices. While the United Nations Fish-Stock Agreement in 1995 serves as a legal foundation for flag states to exercise the main responsibility to control vessels flying their flags fishing on the high seas, most regulations introduced by the relevant institutions on the matter are in the form of a code of conduct or soft law, such as the FAO Compliance and Code of Conduct for Responsible Fisheries.

In addition to existing measures, States need to set out a plan of action at the national and regional levels, complementary to FAO's initiative. Therefore, effective measures in combating IUU fishing should address the criminal nature of such acts. This is because the dynamic and widespread development of illegal, unreported, unregulated fishing practices are inter-related with the growing economic interdependence which has promoted the trans-border crimes.

Such crimes are transnational in nature where they are committed, planned or controlled in more than a single country, and have direct effects in another State, or committed by groups working in more than one State. These crimes may be driven by a motivation for maximum financial or material benefits. Therefore, the transnational dimension of illegal, unreported, unregulated fishing practices should be explored further, so that these illegal practices can be defined as serious crime punishable under the regime of the United Nations Convention on Transnational Organized Crime (UNTOC).

In addition, Indonesia believes that the international community needs to focus on additional measures to curb such illegal acts, *inter alia* through port state measures. Such concerted efforts are necessary should in order to achieve witness effective cooperation at the global level because illegal, unreported, unregulated fishing practices threaten the viability and sustainability of fish stocks resources worldwide and are a major impediment to the sustainable management of fisheries.

(b) *Economic and Social Impacts of Marine Pollution and Degradation, especially in Coastal Areas (A/55/274-UNICPLOLOS 1)*

International cooperation to address marine pollution and degradation of the marine environment shall be conducted based on Part XII of UNCLOS 1982. This can be affected through integrated approach, bringing together the different economic sectors involved, including but not limited to promoting investment of private sector financial institutions, international financial institutions as well as multilateral and bilateral donors. It is important that this process is conducted in an inclusive way that involves

all stakeholders and cross-sectoral levels. It should also adopt the ecosystem approach.

The international community needs to address, in a comprehensive manner, the degradation of the marine environment posed by international shipping activities and land-based pollution. In light of this, designation of marine protected areas and their accompanying tools, such as particularly sensitive sea area (PSSA) should be promoted so as to minimize the adverse economic and social impacts of the degradation of the quality of the marine environment for coastal communities. The environmental degradation caused by destructive fishing practices, including IUU fishing, needs also to be taken into consideration at the global level when formulating corresponding measures. This is due to fact that such irresponsible fishing practices undermine the concerted efforts to ensure the sustainability of fish stocks for future generation.

In addition to the anthropogenic process, the informal consultations should also focus on the adverse impact of climate to the marine environment. Attention should be paid to the dynamic relationship between oceans and climate change. This is because some marine ecosystems, such as coral reefs, which serve to sink carbon, have suffered heavily due to abrupt changes of global temperatures.

(c) *Coordination and cooperation in combating piracy and armed robbery at sea (A/56/121 - UNICPOLOS II)*

Recent developments have shown that piracy and armed robbery at sea continue to be of international concern. Violent acts of piracy and armed robbery against vessels pose a serious threat to the safety of international navigation and commercial trade. The alarming rate of such illegal acts in some regions has even provoked a linkage between acts of piracy and terrorism. Such erroneous attempts, however, contradict the legal definition of piracy whereby private end or economic motivation behind acts of piracy is a prerequisite for the application of universal jurisdiction.

Whilst stressing its impact on commercial navigation, the international community tends to overlook the fact that acts of piracy also pose a danger to the legitimate interest of fishermen of littoral states who fish in the nearby high sea. Just as piracy threatens international navigation, it frightens fishermen whose livelihoods depend heavily on fishing activities.



Curbing acts of piracy shall be based on international law, in particular UNCLOS 1982. It is significant to underline preventive measures, anchored on improving the national capacity for enforcement actions, including training of personnel. Of equal importance is the reporting mechanism: reporting directly to the coastal state near where such incidents occur would facilitate a prompt response. In this regard, ship owners and masters of ships should be encouraged to report incidents and threats of piracy and armed robbery against ships directly to the appropriate authorities of the coastal state which would then relay the information to the International Maritime Organization.

Complementing this effort, States in the region need also to cooperate and ensure adequate arrangements to facilitate exchange of information so as to keep each other abreast of situations which pose a threat to safety of navigation and the activities of fishermen.

(d) *Protection and Preservation of the Marine Environment (A/57/80-UNICPOLOS 3)*

The protection of the environment and sustainable management of straddling and highly migratory fish stocks shall be consistent with national laws and regulations of respective states and international laws. Whilst recognizing the importance of compatibility of measures, Indonesia believes that the application of Conservation Management Measures (CMM) shall not prejudice jurisdiction, sovereignty and sovereign rights of coastal States.

Similarly, the application of the CMM needs to ensure that the potential benefit will be shared among member states in an equitable manner. Indonesia is of the view that the CMM shall take into account special characteristics of waters under the jurisdiction of some coastal states which provide a dynamic environment of spawning ground for juveniles of highly migratory stocks to grow. This is because the imposition of such measures will bring benefits in the long run for all States noting the freedom of fishing in the high seas. Contrary to this, the short term impacts will directly affect the livelihood of coastal communities as they are required to restrain them from fishing activities which might jeopardize the juvenile. In light of this, the consultative process should promote the inclusion of rewards for environment services in the mechanism of conservation measures.

- (e) *Capacity building, regional cooperation and coordination, and integrated ocean management, as cross cutting issues to address ocean affairs, such as marine science and the transfer of technology, sustainable fisheries, the degradation of the marine environment and the safety of navigation (A/57/80 - UNICPOLOS III)*

The ocean vitally provides invaluable resources for the income, wealth and livelihoods of the world populations, particularly coastal communities that depend heavily on these resources. Consequently, the sustainable use of the ocean is essential to enhancing food security and alleviating poverty for present and future generations.

One of the pressing problems is the degradation of marine resources and their ecosystems due to marine and land-based pollution, increased pressures on ecosystems from unsustainable fishing practices, physical alteration of ocean and population growth. Nowadays, climate changes also pose adverse impacts to the marine ecosystem.

Indonesia is pleased that various forum have been established to address aspects of, or activities relating to ocean affairs, e.g. IMO for ensuring safety of navigation, and FAO for ensuring sustainable use of fish stocks – be it in the water within national jurisdictions or beyond – in addition to the regular process of State parties meeting to the UNFSA. Such a process, however, should not prevent the international community from using a holistic approach in addressing cross-cutting ocean issues. This is particularly relevant when addressing marine environmental issues, such as the impact of climate change to the oceans.

In this regard, it is essential to reiterate the need for better ocean management and coordination at all levels to incorporate relevant principles enshrined in the 1982 UNCLOS, the United Nations Framework Convention on Climate Change and its Kyoto Protocol, and the United Nations Conference on Environment and Development. Such management should be based on reliable scientific data and provide mechanism for exchange information leading to the transfer of technology.

- (f) *Safety of navigation, including capacity-building for the production of nautical charts (A/58/95 - UNICPOLOS IV)*

The production of nautical charts to all coastal States is required under Chapter V of the International Convention for the Safety of Life at Sea (SOLAS) to ensure the safety of navigation. Every coastal State is required



to provide nautical charts which consist of its hydrographic charts, cartography, and a maritime safety information network, based on the principles of the 1982 UNCLOS and other relevant regulations, to ensure the safety of navigation.

The International Hydrographic Organization, in this regard, should develop a procedure to strengthen capacity building in order to assist developing coastal States to produce an adequate nautical chart. In order to make it efficient, the capacity building effort should be made through tailor-made functional assessments, technical assistance, project developments and financial support.

(g) *Protection of Vulnerable Marine Ecosystem (A/58/95-UNICPOLOS 4)*

Protection of vulnerable marine ecosystems is needed so as to ensure the sustainable development of the oceans, including, *inter alia*, maintaining their productivity and biodiversity, as well as vulnerable marine and coastal areas under the jurisdiction or beyond the national jurisdiction of a certain coastal state.

A coastal state is authorized to take some necessary measures to protect and preserve its vulnerable marine ecosystem. These measures are including but not limited to the designation of particularly sensitive sea area (PSSA) with associated protected measures (APM) based on IMO rule and UNCLOS 1982. Another measure is in the form of the establishment of marine protected area (MPA) either within waters under national jurisdiction of a coastal State, or in connection with other MPAs through the framework of the MPAs network.

A sea area can be designated as PSSA because of the significance of its ecological, socio-economic, or scientific attributes where such attributes may be vulnerable to damage by international shipping activity. This will promote the responsibility of the user state to recognize the significance of the area for the protection of vulnerable marine ecosystem as they navigate through the water within national jurisdiction of other.

In relation to the MPA, there is a trend in the establishment of a network of MPAs across national borders in order to protect migratory species. To ensure legal certainty, the establishment of co-management of adjacent MPAs needs to take into consideration the unresolved marine boundaries in the area. This is because each MPA operates under national laws and the jurisdiction of respective States; thus raising the problem of compatibility in the harmonization process of laws.

For the high seas, the establishment of an MPA shall be conducted based on verified scientific knowledge so as to avoid the adverse impacts toward the freedom of high seas. In addition, such establishment shall take into account the interest of a coastal state with adjacent EEZ.

*(h) New Sustainable uses of oceans, including the conservation and management of biological diversity of the seabed in area beyond national jurisdiction (A/59/122-UNICPLOLOS 5)*

Indonesia supports any effort to improve governance of deep-sea fisheries resources and better protection of deep-sea vulnerable marine ecosystems and associated biodiversity of the seabed in areas beyond national jurisdiction. This is to include the application of the state responsibility principle in exploiting such marine resources.

Indonesia reiterates the importance of utilizing scientific evidence for sustainable development of biological diversity of the seabed in areas beyond national jurisdiction. Science serves as a valuable tool to make benefit of ocean resources for economic activities. Developing countries shall have access to science for development and sustainable development of marine resources through information-sharing and exchange of experiences, transfer of technology and capacity building. In relation to the exploration and exploitation of biological diversity beyond national jurisdictions, Indonesia believes that the common heritage of mankind provides the legal regime to govern the activities.

*(i) Fisheries and their contribution to sustainable development (A/60/99 - UNICPOLOS VI)*

There is no doubt that sustainable fisheries management has provided a positive contribution to food security, poverty alleviation, economic development and the social stability of coastal community worldwide. The major impediment of the sustainable management of fisheries is mainly caused by illegal, unreported, unregulated fishing. In addition, the unlawful damage to the marine environment caused by such activities as illegal dumping and the discharge of pollutants from vessels also poses a danger to the marine environment.

States, therefore, are encouraged to take robust surveillance and enforcement actions to strengthen long term conservation, management and sustainable uses of fisheries resources through combating IUU Fishing. Such supervision should be conducted through various



compliance mechanisms, such as flag state control, and by applying ecosystem approaches to ensure sustainability of fish stocks. The efficacy of such enforcement action has been hindered by the voluntary in nature of most regulations in relation to IUU Fishing.

Recent developments show that such voluntary mechanisms are inadequate to respond effectively to illegal, unreported, unregulated fishing practices. This approach depends on measures taken by individual States at the national level and close cooperation with other States. The lack of resources and technology in the developing countries has worsened the problem of illegal, unreported, unregulated fishing. Therefore the transnational dimension of illegal, unreported, unregulated fishing practices need to be exposed by using the legal framework of the United Nations Convention on Transnational Organized Crime (UNTOC).

**(j) *Ecosystem approaches and oceans (A/61/156 - UNICPOLOS 7)***

The objective of the ecosystem approach on ocean affairs is to sustain healthy management of marine and coastal ecosystem and their fisheries resources. The approach shall be undertaken by balancing environmental, economic and social values while also allowing the sustainable use of marine living resources.

The ecosystem approach shall be undertaken by means of a precautionary approach, and shall take into account the different stage of socio-economic development of each coastal state and its dependencies toward marine resources.

The ecosystem approach shall reflect also the fairness and equitability of all States. It should not impose additional burdens on developing coastal States, particularly those having the special characteristic of providing environmental services to ocean resources. Of equal importance is that the ecosystem approach shall also include capacity-building and transfer of green technology to developing countries.

**(k) *Marine Genetic Resources (A/62/169-UNICPOLOS 8)***

The utilization of marine genetic resources in areas beyond national jurisdictions needs to be governed under the regime of common heritage of mankind, as stipulated in Article 136 of the 1982 UNCLOS, and further detailed in Section 2. Thus, the exploitation of the genetic resources shall be conducted in a sustainable manner so as to meet the objective of Agenda 21 and the Johannesburg 2002 commitment.

The exploitation shall take into account different the levels of development between developed and developing countries. In line with the principle of common heritage of mankind, Indonesia stresses the importance of benefit sharing; equal access on a non-discriminatory basis; capacity building; and transfer of technology, taking into account the special needs of developing countries.

(l) *Maritime security and safety (A/63/174 - UNICPOLOS IX)*

The issue of maritime security and safety in general comprises a broad range of issues, especially regarding the interpretation of the nature of its threat which depends greatly on the national interests of each State. Some coastal States define maritime security from the traditional perspective while others use non-traditional approaches which include emerging criminals that use the sea to commit their illegal acts.

Recent threats have also shown that there should be a new vision of collective security for crimes which recognize no national boundaries, and that they must be addressed at all levels. Such threats go beyond the use of force, and extend to poverty, infectious disease, environmental degradation, and internal conflicts. Therefore, maritime security and safety issues should be dealt with holistically, considering the different characteristics of coastal States.

In the absence of a universal accepted definition of the notion of maritime security, the international community needs to use a comprehensive approach to address it. It must avoid the selective approach.

As a step forward, coastal States should develop a regional framework to assess maritime security threats in their area. Such a framework would also provide a forum for dialogue and cooperation on maritime security, to be followed by tactical and operational measures.