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United Nations-Nippon Foundation Fellowship Alumni Newsletter— Asia-Pacific Chapter

The 10th meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP)



Source: Earth Negotiation Bulletin, IISD

The 10th meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP) was recently held at the UN Headquarter in New York. The agenda for the meeting was basically to review the achievements and shortcomings of the ICP over its first nine meetings. To put it another way - what has the ICP contributed to conservation and management of the worlds' oceans, should it continue and if so in what form? When the UN General Assem-

bly (UNGA) adopted the resolution which led to the final negotiations for UNCLOS they talked about the problems of ocean space as closely interrelated and needing to be considered as a whole. The ICP is really the only body within the UN System which can do this; which can look at oceans in an integrated and holistic way. And this is important - particularly given that integrated and ecosystem based management continues to evolve as the modern norm in global and domestic oceans management. While the fate of the ICP will ultimately rest with the UNGA, it looks like it will continue. And that, for an ex co-chair of this process, and

one with an abiding interest in the oceans is a very good thing! One of the greatest benefits I saw from the ICP was the ability to engage with civil society - the sectoral managers, scientists, academics, users, intergovernmental and non governmental organization.

And if you're still not convinced of the value of a body such as ICP then look back at the history of the global debate on biodiversity beyond national jurisdiction and the so called fishing practice of bottom trawling. Where would these issues be without a forum such as ICP. Can it be improved probably. Should it continue certainly.

Philip Burgess
ICP Co-Chair

(2003, 2004, 2005)

Editorial - sharing for changing

We passed the steps of changing the team to conduct the newsletter publishing. So, this

newsletter is the first one that approves the incentive of the team. However, the team effort is still needed to maintain the productive publication and also to maintain the networking cooperation. Whoever we are, diplomat, biologists, lawyers, the anthropologists and so on, we share the same world and the same oceans. Thus, some issues from other corners on the earth may influence with others. Therefore, lets share the changing of the world from your corners to make it better for all.

Climate change, pollution, overexploitation, disputes among coastal States are some issues among other determinants that effect our mother oceans, there are no more spaces for us to step back from the situations only if we cooperate to take some pressure off from our mother oceans. So, lets share the feeling of concern and responsibility by sharing the situations from your side.

Thus, one thing that the team needs from its members is to keep an alert mind and to keep your eyes open, and then bring the issues to the front. This newsletter is always available for your sharing.

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ICP-10: Enhancing the Participation of Developing Countries in the Informal Process

In the context of maritime and oceans affairs, the issue of sustainable development is a pervasive theme for developing countries that sets them apart from developed nations and lies at the basis of their successful counteraction of maritime threats. Accordingly, whereas developing and developed nations share many of the same substantive concerns such as IUU fishing, maritime security issues, climate change and biodiversity, developing nations inevitably view these matters through the lens of development, capacity building and technology transfer, for without these their accomplishment of substantive goals are near impossible.

As was emphasised during its tenth meeting in June of this year entitled, *“Taking Stock: tenth year review of the achievements and shortcomings of the Informal Consultative Process”*, the original mandate of the ICP expressly incorporated the three pillars of sustainable development. This Process was therefore intended, *inter alia*, to ensure the inclusion of the sustainable development perspective. To this end, the ICP Trust Fund was established in order to facilitate the participation of experts from the developing world. However, during the 10th Meeting delegations from developing nations highlighted the lack of inclusion of such experts as one of the shortcomings of the nine previous sessions of the Process. The three main issues that were identified during the Meeting as the causes of this situation were the depletion of the Trust Fund and

insufficient replenishing contributions, late identification of suitable experts, and delays in the issue of visas to experts engaged to present at the forum. As such, it was emphasised that countries, in particular developed countries, must contribute to the Fund in order to secure the inclusion of presenters from the developing world. It was also suggested that developing countries could assist in the timely identification of experts by providing the forum with a comprehensive list of professionals from their countries or regions with competence in a cross-section of areas. Such a list would enable more immediate identification of suitable presenters following the selection of the topic for discussion and permit the issue of invitations with sufficient notice that invited experts would be in a position to accept. With invitation and acceptance communicated in a timely fashion, early application for and acquisition of visas would also be more likely. The tenth ICP itself saw the inclusion of, among its panel of experts, Mr. Olajide Ayinla, Executive Director and Chief Executive Officer of the Nigerian Institute for Oceanography and Marine Research. Mr. Ayinla’s presentation was entitled, *“Capacity Building in Ocean Science among Developing Nations: Outcomes of the Consultative Process and their Implementation”* wherein he discussed the reasons for the failure of capacity building initiatives regarding oceans sciences to significantly enhance capacity in developing countries.

The unanimous view at the tenth ICP Meeting was that the ICP is a unique forum within the UN system that focuses entirely on oceans affairs, combining the elements of informal discussions on cross-cutting topics with multidisciplinary expertise, open participation of all relevant stakeholders including NGOs, and the identification of areas in which coordination, cooperation and capacity building should be enhanced at the intergovernmental and interagency levels. These unique features of the forum have the ability to provide an advantageous platform to developing countries and should in this respect be maximised to its greatest potential. Developing countries should in particular do what they can through the forum to elevate their experts to the international stage and contribute the developing perspective with much greater frequency. The outcome of the tenth Meeting did not result in specific agreed elements as in the case of previous meetings but States seemed prepared to address these and other highlighted shortcomings for future Meetings.

Aleeza Moseley

Present Fellow 2009-2010

ICP-10: Sharing



Source: Francois B.

Regarding my participation on the 17-19 June 2009 ICP, I would like to say that, it was a wonderful experience to share an international issues with other colleagues from all over the world. Unfortunately, in my specifically case, I couldn't stay for the meeting of the States Parties which took place on 22-26 June 2009. However, I could feel the atmosphere around those issues.

During this meeting, the ICP, I also could understand the role of all countries, group of

countries or regions in the issues related with Ocean Affairs and Law of the Sea.

Let me take this opportunity to appreciate and congratulate the DOALOS trust fund which enable me to be in New York to attend the meeting.

Izildo Ferreira

Alumni 2008-2009

ICP-10 Experience

On attachment with the Global Forum on Oceans, Coasts and Islands Secretariat, I was able to travel to New York during the week of 15-19 June 2009, which coincided with the ICP-10 sessions. The Global Forum had its Bi-annual Steering Committee Meeting on 16th June at the Explorer's Club in New York, and I found this to be a useful learning experience in considering international negotiations and issues from the perspective of NGOs and lobby groups. The Global Forum also organised a side event to the ICP sessions with the theme being the importance of strengthening the link between climate and oceans, coasts and islands in the climate negotiations. The event generated views and comments from a diverse group of participants that

included a number of delegates from various countries, other NGOs, and interest groups such as the International Federation of Shipmasters Association.

Although I was not able to observe many of the ICP sessions as I'd hoped to, the overall experience was both interesting and informative. The process of exchanging views during plenary session gave insights to the concerns of different States, but what I found most interesting was the informal conversations/negotiations that took place in the corridors outside the conference room.

I also got to meet a few Fellows from previous years (Izildo Ferreira, Robert Kibiwot, Natasha Turnquest), along with another from this year's group: Aleeya Moseley.

I look forward to meeting up with more of the Fellows later this year in New York. Many thanks to Francois for the sneak peek tour of the DOALOS offices!



Source: Francois B.

Anama Solofa

Present Fellow 2009-2010

The Nineteenth Meeting of States Parties to United Nations Convention on the Law of the Sea



Source: Francois B.

The Nineteenth Meeting of States Parties to United Nations Convention on the Law of the Sea took place in New York from 22nd to 26th June 2009.

In this year's Meeting, apart from the financial and administrative issues discussed in every meeting of the States Parties, there were two issues that attracted the participant's attention since they departed significantly from the Provisional agenda.

Firstly, the Chinese delegation proposed to include a supplementary item in the agenda of the Meeting related to Article 121 of the Convention regarding the Re-

gime of islands and the International Seabed Area as common heritage of mankind.

Despite the fact that the Chinese proposal enjoyed some support by a number of delegations, the proposal did not have the necessary consensus of the participants of the Meeting. Many delegations, for different reasons, did not wish to discuss Article 121 of the Convention in a Meeting of States Parties.

Secondly, the Kenyan delegation referred to the formula contained in Annex II (Statement of Understanding concerning a specific method to be used in establishing the outer edge of the continental margin) contained in the Final Act of the Third United Nations Conference on the Law of the Sea. According to the interpretation given by the Kenyan delegation, such formula to establish the outer limits of the extended continental shelf was not addressed only to States located in the Bay of Bengal, but it could also be used by other States outside that region. As with the Chinese

proposal on Article 121, the Kenyan proposal did not enjoy the support of other delegations present at the Meeting and, therefore, no decision was made with regard to that issue either.

In summary, during the Nineteenth Meeting of States Parties to United Nations Convention on the Law of the Sea and unlike previous recent meetings, some delegations brought up substantive issues to be discussed by the rest of the participants. Unfortunately for those delegations, there seems to be unwillingness by other delegations to discuss such issues in a States Parties Meeting.

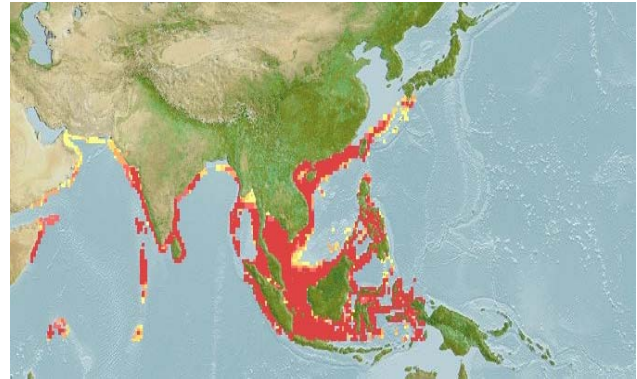
Raul Curriel

Present Fellow 2009-2010

Pelagic fish Tagging Programme in South East Asia: Report from Thailand



Source: www.dailynews.co.th



The Indopacific mackerels and Round Scads Distribution
Source: www.fishbase.org

The Indopacific mackerels and Round Scads are very important pelagic fish resources in Thailand and the South East Asian Region. This group of fish are migratory species, they migrate to spawn and nurse their babies. So, their migration and relevant data are very important to support measures to conserve this fish for sustainable use in the long run. To ensure efficiency of their conservation and management, Thailand and the other seven ASEAN member coastal States including Brunei, Cambodia, Indonesia, Malaysia, Burma, the Philippines and Vietnam have cooperated to establish the tagging commercial pelagic fish program in 17 areas in both the South China Sea and the Andaman Sea. The data gathered from the

program will be the base for analyzing pelagic fish populations and sub-populations; it will lead to effective cooperative administration among coastal States in Asia and the South East Asia. The tagging is the well-known acceptable method used to monitor the migration of fish and this project has been supported by the Marine Fishery Resources Development and Management Department, South East Asian Fisheries Development Center (MFRDMD, *SEAFDEC*) (Malaysia); it has been supported financially by the Government of Japan. The total number of tagged fish in this region has been more than 15,000. In Thailand, this project has been operated by Department of Fisheries in Trad, Songkla,

Ranong and Satun Provinces where they border neighboring countries; 4,000 fish were tagged and released. Fishers who catch the tagged fish and give them back to responsible officers will get gift vouchers. The recaptured fish will provide fishing grounds, fishing gears, fish sizes and other relevant biological data which will be combined with the time of tagging and releasing. Thus, the migration track of the fish will be discovered; the received information will be used to establish the effective cooperative management of such species in this region.

Sampan Panjarat
Alumni 2007-2008

EVENT REPORT: ABLOS Seminar in Bali



On 3-4 August 2009 the Advisory Board on the Law of the Sea (ABLOS) organized a seminar on Technical Aspects of the United Nations Convention on the Law of the Sea (TALOS) in Bali. One alumni and one current fellows participated in the seminar by presenting papers. Andi Arsana, an alumni of 2007-2008 presented a paper on the latest development of extended continental shelf in Asia Pacific. Meanwhile, Sora Lokita, a current fellow, presented a paper on the use of archipelagic baseline in maritime boundary delimitation.

Andi Arsana
Alumni (2007-2008)

Fisheries management vs. fisheries exploitation in India

The issues pertaining to marine fisheries in India are not unique to the country, but common to the most tropical developing countries and need to be addressed through proper policy support. Some of them directly aim at food security, environmental sustainability, economy and livelihood of the marginal fisherfolk. The State Governments as well as the Central Government through different Ministries, which unfortunately play varied roles, govern the fisheries sector in India. Therefore, the need for an integrated national policy on marine fisheries becomes immediately obvious, particularly in the present context of over-exploitation in the shallow coastal water,

under utilization in the off-shore/oceanic zone, sectoral conflicts, economic waste, under employment and protein food contribution to the nutritional basket of the country. Recent trends in both artisanal and small-scale fisheries in the country have been disturbing and indicate the need for implementation of sound management programmes. In fact, such management for the coastal marine fisheries is long overdue. The catches and earnings of fisherfolk have been declining. Resource scarcity and the dearth of new income opportunities have combined to make life difficult for small-scale fisherfolk. In the trawl fishery, on the other hand, average sizes of species have

been falling and the species composition is changing, indicating the need for a pragmatic approach and good management. To sustain this production and to ensure that the major fisheries do not suffer any irreparable damage, improved management measures, based on community participatory approach are needed without further loss of time.



Ansy Mathew, N. P.

Alumni 2007-2008

Socio-economic status of fishermen in India



Fishing villages all along the coastal waters in India are almost similar in their underdevelopment. Marine fisheries provide substantial employment to human resources both in the production and post harvest sectors. The labour force employed in marine fishery sector has shown a steady increase over the past two decades. Competition among fisherman for increasing catch continuously promotes structural changes in the coastal economy. Although the total marine fish landings have increased, the catch per

unit of operation and per capita production of labour steadily declined over the years. In spite of the decline in per capita production, different types of fishing units are sustaining due to the increase in price levels of almost all the varieties of marine fish. Intensive mechanization in the marine sector has led to increase in production but in the process marginalized the traditional sector.

Rights to fisheries and implementation of policy instruments

Some of the important interdisciplinary fixes or solutions to diverse problems observed in fisheries can complement each other. This can be achieved through methodical allocation of the rights pertaining to fisheries and simultaneous implementation of policy instruments to correct for market failures and equity

concerns. So fishermen rights may be protected and policy instruments to correct market failures and equity concerns may be implemented.

Social justice with resource management

A combination of measures and prolonged cooperation between Governmental and non-Governmental parties is called for. It is needed to address social justice issues in conjunction with resource management. During the resource management social justice issues are not addressed properly. So participation from fishermen for resource management is lacking. In order to get the participation from fishermen, social justice issues are to be addressed with resource management.

Ansy Mathew, N. P.

Alumni 2008-2009

Reviving the Genuine Link Concept

Article 4 of the 1958 HSC and Article 90 of the United Nations Convention on the Law of the Sea 1982 codify the customary rule of freedom of navigation by stating that every State “[...]has the right to sail ships flying its flag on the high seas.” In the wake of this freedom to allow ships to sail under its flag lie certain corollary issues. Indeed, the sovereignty enjoyed by the flag state in registering ships and allowing them to be endowed with its nationality is not an absolute one, but is tempered by the requirement laid down under the two Conventions for the need for flag states to establish a “genuine link” with those ships.

The “genuine link” requirement was added by the International Law Commission in the draft articles on the Regime of the High Seas as the Commission wished to make it clear that the grant of its flag to a ship cannot be a mere administrative formality, with no accompanying guarantee that the ship possess a real link with

its new State. "On the other hand, there is the sensitive sovereignty issue, whereby flag states are free to prescribe the conditions upon which they wish to register ships and allow same to operate. Questioning the prerogative of the flag state in granting the right to ships to fly its flag is tantamount to questioning the sovereignty of the State in question.

The international community has up to now been reluctant to ascribe a definition to the concept, and attempts to do so in the past has failed, as evidenced by 1986 Convention on the Conditions for Ship Registration prepared under the aegis of UNCTAD and which is up to now still dead letter. Even the International Tribunal for the Law of the Sea, departing from the decision in the *Nottebohm Case* ruled in the *Saiga No.2 Case* that the *raison d'être* of the “genuine link” provision under the relevant Conventions is only to secure effective implementation of flag state duties and not to serve as

basis to question the discretion of flag states to set their own individual criteria – however lax these may be - for registering and managing ships plying their flags.

However, in view of the growing concern of the international community to enhance security, including in the maritime sector, it is time to revive the concept of “genuine link”. Indeed, requiring flag states to ensure beneficial ownership and management identification and accountability, coupled with the application of corporate governance and customer due diligence principles to those corporate vehicles through which beneficial ship owners succeed in creating an almost impenetrable cloak of anonymity would substantially lessen the threat of shipping being either used as a threat or being the target of potential terrorists.

Vanita Hosanee

Present Fellow 2009-2010

Bangkok Climate Change Talks - 2009



Source: UNFCC

Photo: Jan Gales

Climate Change is the common hot issue for the humankind that waits for cooperation and appropriate urgent actions for mitigating from the international level.

Thailand has signed the agreement of cooperation with United Nations Framework Convention on Climate Change (UNFCCC) to be the joint-host country holding the Bangkok Climate Change Talks 2009 during 28 September to 9 October at the United Nations Conference Center, United Nations, Bangkok. The story of the meeting had formed since Thailand ratified the UNFCCC on

28 December 1994. According to the 3rd Conference of the Parties: COP, 1996 in Tokyo Japan or known as Kyoto Protocol to the 13rd (COP13) known as Bali Action Plan, the long run of cooperation of action plan have been established under the Ad Hoc Working Group on Long-term Cooperation Action under the Convention (AWG-LCA) and Ad Hoc Working Group on Further Commitment for Annex I Parties under the Kyoto Protocol (AWG-KP). And then in December 2008 the COP14 agreed to hold the Bangkok talk 2009 which in one among 4

of the meetings during the year. This conference increases the crucial public realization whatever Government official, NOGs, or private sectors. In 2012 the Kyoto Protocol to prevent climate changes and global warming will expire. To keep the process on the line there is an urgent need for a new climate protocol.

Therefore, the Bangkok Climate Change talks are the crucial steps before the conference in Copenhagen 2009 when the parties of the UNFCCC meet for the last time on a Government level before the climate agreement needs to be renewed. The Climate Conference in Copenhagen (6-18 December, 2009) is essential for the worlds climate and the Danish Government. UNFCCC is putting hard effort in making the meeting in Copenhagen a success ending up with a **Copenhagen Protocol** to prevent global warming and climate changes (Copenhagen, 2009).

Sampan Panjarat
Alumni 2007-2008

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***Building capacity in ocean affairs
and the law of the sea***

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- www.un.org/depts/los/nippon/
- www.nippon-foundation.or.jp/
- www.unfalumni.org/

Next Issue:

- *Maritime Cultural Heritage*
- *Tuna Resource in the Indian Ocean*

Contribution: This newsletter is open for all who has the same or relate field of interest: *Ocean Affairs and the Law of the Sea.*

Please contact the editor for your contribution: spanjarat@yahoo.com

Disclaimer: The views expressed in this news letter are solely those of the author(s) of each contribution(s) and do not necessarily represent those of the Fellowship Alumni, any Government, the United Nations, or TheNippon Foundation of Japan. Responsibility for any errors and/or omissions lie with the contributor(s).

Letter from former representative: Welcoming and supporting our New Representative



Source: <http://madeandi.staff.ugm.ac.id>

In September 2009, we, the alumni of the UN-Nippon fellowship, made an important decision by appointing a new representative. Sampan Panjarat (Alumni 2007-2008) was elected to replace me as the former representative. Being the very first representative for the alumni, I have some stories to tell. The position, to me, was a great and unique experience. No matter how often I chaired organisation in my adult life, being a representative for the UN-Nippon alumni was different and did give me invaluable experience.

Frankly speaking, working with people who are located in different continents could be really challenging. In addition, this position required me, as an alumni representative, to work with alumni members, some of whom I have not even met in person. It was not very easy to collaborate with people that you do not know really. The only thing that unites us, as far as I am concerned, is the “UN-Nippon alumni” label. The challenge in collaborating with all alumni, in my opinion, is the real test of the strength of our alumni building.

I realized that accepting the task to be an alumni representative equals to accepting a responsibility that could be really big, if you do care. However, if you don't, it can be nothing. A representative holds a position with no formal mandate and, especially, with no salary. There is no formal guidance that can bring you into trouble if you do not follow certain rules. While there can be a lot of things to do, you know that you cannot force anyone in the alumni organisation to help you. You can of course send a lot of emails but you should anticipate that the response you receive may not the one you expected. All you can do is smile and be patient. This, once again, can be a real challenge for an alumni representative. However, once you have been able to measure your energy and secure support from some of the alumni, working can be really fun. Small things you have accomplished can bring you a great satisfaction. My suggestion to our new representative, Sampan, is be SMART with your target: Specific, Measurable, Attainable, Realistic, and Timed.

When I was faced with a task that I had to finished, I often questioned myself “what is it for?” “Why would I do this?” Furthermore I sometimes asked a question “what bad thing can happen if I don't do this?” Most of the time I found a good answer that “nothing bad will happen” It is true that, finishing a newsletter has nothing to do with my PhD thesis. Unfinished alumni website will not affect my career as a lecturer and Researcher. “In short, more often than not that I could not find good [realistic] reasons to finish a task as an alumni representative. I was often tempted to just ignore everything and say “go to h*!”. However, by not doing anything I was not happier either. There is a time before sleeping when the ideals and honesty came to me and questioned “is it what you are really happy with? Doing nothing and being ignorant?” This question often brought me new spirit that drove me to do something.

I understand that each of us has our main goal and priority in life and career. I am not in the position to tell you what to do and what not to do about our alumni organisation. However, once we say “yes” and pledge a commitment, we cannot avoid responsibility. Our alumni network is a new building that needs us to take care. It is in the early stage of history. Someday, someone might ask “where were you when the history took place?” Let's us welcome our new leader, new representative. No matter how small it might be, we can take our part to support.

Andi Arsana

The Former Representative (2007-2008)