

**United Nations Informal Consultative Process on Oceans  
and the Law of the Sea**

**Implementation of the outcomes of the Consultative Process, including  
a review of its achievements and shortcomings.**

**Statement of Ambassador Satya N. Nandan (Panelist)**

**Segment 1**

**Mandate, objectives, role and outcomes of the Consultative Process**

I would like to thank the Co-chairs for inviting me to make a presentation at this tenth anniversary review of the achievements and shortcomings of the Informal Consultative Process on Oceans and the Law of the Sea.

A review of the operation of the ICP is opportune at this time now that we have seen and experienced its work for ten years. This is of course, not the first review of the work of this body since we have undertaken a mini review prior to each extension of the mandate of the Consultative Process by the General Assembly.

In establishing the Informal Consultative Process in its resolution 54 /33 the General Assembly endorsed the recommendation made to it by the Commission on Sustainable Development contained in the Commissions decision 7/1 of 1999.

It should be recalled that, in recommending the establishment of the ICP, the CSD had confirmed that:

“The General Assembly is the appropriate body to provide the coordination that is needed to ensure that an integrated approach is taken to all aspects of oceans issues, at both the intergovernmental and inter-agency levels.”

It was recognized that there was a need for the General Assembly to “give more time for the consideration and the discussion of the Secretary-General’s report on oceans and the law of the sea and for the preparation for the debate on this item in the plenary.” The primary role of the ICP in this context was to “promote a comprehensive discussion of that report and to identify particular emerging issues that would need to be considered by the General Assembly.”

In light of the fact that the role of the General Assembly is to promote coordination of policies and programmes, it was considered that the “General Assembly should work to strengthen the existing structures and mandates within the United Nations system” and that therefore the exercise “should not lead to the duplication and overlapping of current negotiations and particular debates taking place in specialized forums.”

From the mandate it is quite clear therefore that the objective of the ICP is to look for emerging issues which need to be discussed as we proceed to implement the provisions of the 1982 Convention on the Law of the Sea at national, regional and global levels. For this reason it is

essential that we must select subjects where specific issues or concerns have arisen and where an exchange of views would help us better understand the issues and enable us to come to agreement as to how best to address those issues and so that we make appropriate recommendations to the General Assembly.

In some cases it is not possible to go beyond getting a better understanding of the issues and elucidation of the problem. In other cases, in-depth discussion has yielded ideas as to how to move forward in addressing the problems and has led to possible solutions which have been reflected in the resolutions of the General Assembly and in decisions of other fora.

For example, following the sixth meeting of the ICP, when the subject of the impacts of destructive fishing practices on vulnerable marine ecosystems was considered, the agreement reached on how to address this harmful practice was reflected in the resolution of the General Assembly, which in turn has influenced the decisions taken through many of the regional fisheries organizations and arrangements responsible for conservation and management of fisheries.

On the other hand, in the case of the subject of the conservation and management of the biological diversity of the seabed in areas beyond national jurisdiction, considered at the fifth meeting, the outcomes of the discussion in the ICP led to a decision by the General Assembly to convene an open-ended working group on the subject, which met in 2006 and 2008, and also to action being taken in other relevant bodies, such as the Convention on Biological Diversity, to promote better inter-agency cooperation in relation to the issue of biodiversity.

Important issues were addressed in discussions on this subject concerning the conservation of biodiversity and the code of conduct relating to marine scientific research in the seabed. The discussions in the ICP gave impetus to a number of initiatives to address this problem based on what can fairly be said was a broad agreement on some of the issues within this body. These were again reflected in the General Assembly resolution. However, there were aspects of the issue where broad agreement could not be reached, particularly those concerning the benefits that might accrue from exploitation of marine genetic resources. In this respect, for some delegations lack of agreement on the issue was a matter of disappointment and the issue remains open for them for further discussion. But the point I wish to emphasize is that without a forum of this kind we would not have been able to expose the differences in the prevailing views on this matter and to identify those areas where there were broad agreement.

This experience demonstrates that it would be wrong to expect the ICP to generate specific concrete outcomes in relation to every issue that is discussed. The very nature of the process is that it is intended to consider emerging issues that require consideration by the General Assembly. It is implicit that emerging issues are often the most difficult to address and to find a solution for. The purpose of the ICP is to provide an opportunity to discuss these issues in an informal setting, with the benefit of participation by experts and other intergovernmental organizations and NGOs, without being under pressure to come to a conclusion.

With respect to the question of whether the ICP has contributed to the strengthening of existing structures and mandates within the United Nations system, there are two issues. One is whether the agencies and bodies responsible for oceans-related matters have been represented and have been able to participate in the discussions, make presentations and to interact with delegations. Clearly they have participated and made important contributions to the discussions on the various issues in their mandates. Their participation has provided delegations with up to date information on the issues under discussion and they have also been able to take back with them the views and

opinions and interests of the other participants in this process who may not be part of their usual constituency. This also helps in the overall coordination of oceans issues both at the level of delegations who bring experts from relevant Ministries and the responsible agencies.

The other very important result coming out of the deliberations here has been the requirement on the part of the agencies and bodies dealing with oceans to cooperate and to coordinate their activities in order to avoid overlaps. This forum has inspired the agencies and bodies to re-establish a cooperation mechanism known as the UN Oceans, which has led to greatly improved cooperation and the avoidance of overlaps. ICP should ensure that this effort does not lapse. UN Oceans has met regularly to exchange views and to inform each other of the various programmes being implemented by them. Moreover, there are a number of examples where they have in fact established mechanisms for joint implementation of particular projects, such as assistance during the aftermath of the Asian tsunami. Similar initiatives have resulted in inter-agency cooperation on issues relating to marine biodiversity and on marine environment in general, as well as the creation of what is known as the UN Atlas of the Oceans.

Co-Chairman,

It is in the nature of everything we do that from time to time we should stand back and ask ourselves: is it really worth it? Is it working as intended?

Generally speaking, this process has served the international community well.

If we examine the nine sessions that we have had and the discussions and the exchanges which have resulted we would appreciate that if we did not have a forum of this kind which could afford more time for the consideration and the discussion of some of the current issues in the Secretary-General's report on oceans and the law of the sea, many of the issues would have remained festering and certainly would not have been fully exposed to all of us. We are better aware of the issues than we would have been and as a result we have been able to take timely action in relation to some of them.

The ICP also served as a device to bring issues related to law of the sea and ocean affairs back into the mainstream. The fact is that we no longer have the time to discuss these issues in any depth during the General Assembly, when usually only one day is available for the item on law of the sea and ocean affairs and most of the time is consumed by prepared general statements by representatives of States. No time is available for an interactive discussion of the issues nor is it possible to benefit from presentations by experts and International Agency representatives since the General Assembly is not the appropriate forum for that.

In this context I should mention that some of us involved in the Law of the Sea matters foresaw the need for a forum outside the regular session of General Assembly soon after the entry into force of the Convention in 1994 and, as the records of the Assembly would show, made statements to that effect when the item on Oceans and the Law of the Sea was being considered. Our motivation was to bring back the law of the sea into the mainstream of UN activities. It had diminished in the attention paid by the General Assembly after the conclusion in 1982 of the Third UN Conference on the Law of the Sea with only half day allocated to it at that time. We felt that there was a need for more time to discuss in-depth the current issues relating to the law of the sea and in this way to avoid unilateral actions by States which might undermine the Convention. Furthermore, a discussion of issues especially those arising from the implementation of the Convention would encourage its uniform and consistent application in State practice and in this way strengthen the Convention. It would also facilitate much needed inter-agency coordination and cooperation. In this respect the initiative taken by the CSD in 1999 was timely and most welcome.

Nevertheless, there are always areas for improvement in the process.

Some of the topics on which discussion has taken place have been more fruitful than others. This points to the fact that we must be careful in the selection of the topics. In the past we have spent a lot of time and effort in reaching agreement on the issues to be considered at each meeting. One way to streamline the process would be to establish a list of potential or anticipated issues for consideration over a period of time, say three years, without the limitation of adding to the list any urgent matter that might need to be considered. We should as best as possible concentrate on emerging issues and current problems. Then it should be left to the judgment of the co-chairs to prioritise the list of issues following a brief exchange of views with delegations. This will save us all a considerable amount of time and, if I may say so, agony.

Experts play an important role in our discussions. The selection of the best possible experts is essential to the consideration of the issues as it provides everyone with the most up to date and reliable information on the topic in question. We have been fortunate in getting some outstanding experts on the different topics the ICP has addressed so far, and this must remain a priority as it not only enriches our discussions but provides us with the appropriate factual context. Every effort should be made to broaden the pool from which the experts are drawn and special effort should be made to bring in experts from developing countries, even if it requires additional funding, which we hope would be forthcoming as part of the cooperation among States.

Another matter which would improve our discussions would be to apply the rules of procedure more flexibly, since we are in an informal forum, so as to permit the representative of a competent agency on a particular issue to make short interventions if they have an observation to make or information to provide which would help the discussion without having to wait until the end of the list of speakers when such intervention often becomes irrelevant. This would encourage more interaction between delegations and the agencies concerned, which is one of the primary objectives of the process.

One of the matters which require careful reconsideration is the process of preparing a report on the work of each session of the ICP. As I have indicated earlier, it is not always necessary to reach a negotiated outcome in order for the meeting to be successful in achieving its objective. Ideally, the work of compiling a report should be left to the co-chairs on their own responsibility, with the assistance of the secretariat. They should prepare a factual summary to basically record the issues raised in the discussions, identifying where there has been agreement on specific recommendations and noting areas where there has not been broad convergence of views. Such a summary should not identify particular delegations but rather the issues which were discussed so that delegations can reflect on the issues discussed. This measure would maximize the time available for discussion and avoid the ICP participants from spending their Friday nights in the painful task of attempting to draft consensus reports, and moreover, without interpretation. My own experience has been, during the Preparatory Commission for the Law of the Sea, as well as in the current practice in the International Seabed Authority, that the chairman of each committee summarizes the proceedings of his or her committee, with the help of the secretariat, which is a procedure that is generally accepted and appreciated. It saves a lot of time for everyone and does not prejudice anybody's position with respect to the substantive issues as it reflects only the chairman's impression of the proceedings. The same method was used quite successfully during the Law of the Sea Conference by the committee Chairmen who conducted important negotiations in informal meetings.

I hope this statement would be helpful to you in your review process.