

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

**Discussion panel. Implementation of the Consultative Process, including a
review of its achievements and shortcomings in its first nine meetings**

**Provisional notes for the oral presentation by Agustín Blanco-Bazán, Senior Deputy
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Since 1959, the International Maritime Organization (IMO), the sole UN specialized agency exclusively devoted to maritime affairs, has developed comprehensive multilateral treaties and recommendations regulating technical measures, designed to improve the safety of shipping and to prevent marine pollution from ships. The most important IMO treaties are implemented worldwide by States representing together between 95 and 99 per cent of the gross tonnage of the world's merchant fleet.

The basic jurisdictional framework governing the adoption and implementation of IMO safety and antipollution treaties and recommendations is the United Nations Convention on the Law of the Sea (UNCLOS). IMO is the competent international organization referred to in UNCLOS in connection with the development of global shipping rules on safety of navigation and prevention of marine pollution. A comprehensive study on the implications of UNCLOS for the work of IMO is published in the IMO website: www.imo.org (follow the links "legal/UNCLOS and IMO/implications of UNCLOS for IMO). This study is updated every two years in close consultation with DOALOS.

UNCLOS is framework treaty, or "umbrella convention" because most of its provisions are not self-executing and accordingly can only be implemented through other treaties, such as the treaties adopted by IMO. You will therefore understand that from the point of view of IMO the importance of the ICP should be evaluated in connection with the progressive implementation of UNCLOS through IMO operative regulations.

Throughout nine sessions, the ICP has provided IMO with a unique opportunity to highlight, in a UN Forum, the main features and the impact of its work in accordance with UNCLOS; and this during vital years following UNCLOS' entry into force. The implementation of UNCLOS through IMO treaties and recommendations has been highlighted year after year at the ICP against the background of challenges such the catastrophic environmental consequences of the Prestige incident, the implications of the terrorist incidents of 9/11 in the field of prevention and suppression of crimes at sea, and the escalation to a critical phase of the piracy in waters off Somalia. Examples of the responses provided by IMO within the framework of UNCLOS to these challenges are:

- the amendments to MARPOL Convention and to antipollution liability and compensation rules;
- the development of the International Ship and Port Security Code (ISPS Code);

- the adoption of amendments to the IMO prosecution and extradition treaty, the SUA Convention;
- the recent development of a counter-piracy strategy in line with reports to the ICP in 2007 and 2008.

Aside from its prompt reactive attitude towards critical situations such as those mentioned, IMO has been able to report to the ICP the implementation of UNCLOS principles through a steady *proactive* attitude aimed at ensuring safer navigation and cleaner seas. Particular examples of this proactive attitude are provisions on the following issues:

- Long range identification and tracking of ships (LRIT);
- Voluntary IMO Member State Audit Scheme;
- Ship recycling; and
- Prevention of air pollution, in general and in particular pollution from Green House Gasses (GHG).

I emphasize here the relationship between these activities and UNCLOS because I consider this to be of particular importance within the context of the ICP. Only in the context of UN meetings such as the ICP can States, IGOs and NGOs exchange views regarding the challenges posed by the ever-changing circumstances to which UNCLOS must apply. In this regard the ICP offers a real opportunity to develop what is vital for the life of any treaty, in this case UNCLOS, namely a deliberating body to discuss the features of its effective implementation in the face of ever changing circumstances. In the case of UNCLOS and its relationship with IMO activities, IMO has been able to report to the ICP continuous and steady developments, like those listed above, which are changing forever the character of maritime commercial navigation. Who would have thought ten years ago that international rules would be adopted regulating the right of coastal States to request information from ships navigating 1000 miles from the coast, or rules regulating the boarding in the high seas of ships suspected of being engaged in terrorism or other unlawful acts? Or who would have thought that UNCLOS regulations on piracy and IMO anti-piracy guidelines would become the subject matter of Security Council resolutions under chapter VII of the UN Charter?

Discussions held at this forum have indeed served to test UNCLOS' capacity to adapt to changing times.

The exchanges of views held at the ICP meetings on these and other issues, and the elements adopted at these meetings, have provided the background for the adoption of the yearly General Assembly resolutions on Oceans and the Law of the Sea and on Fisheries.

The fact that the “elements” adopted by the ICP serve as the basis or recommendations to be included in these resolutions, has been of particular importance to enhance the propagation of IMO’s work in the UN. Before the establishment of the ICP, IMO did not have an opportunity to comment on recommendations related to its purview which would be then included in General Assembly resolutions. At the ICP, IMO has been able to inform the UN of its priorities. In turn, these priorities have been reflected in the elements adopted at the ICP meetings. Following these meetings IMO has been able to participate in further consultations as regards the final incorporation of ICP elements into draft General Assembly resolutions.

The preceding paragraphs explain the usefulness of the ICP to IMO and, I assume, to States IGOs and NGOs alike.

This usefulness could be enhanced through a review of ICP’s methods of work bearing in mind the following suggestions:

- Given that the purpose of the creation of the ICP was the facilitation of the work of the General Assembly, subjects to be addressed by the ICP should be more closely related to the implementation of recommendations contained in General Assembly resolutions. In this way, the progress of this implementation could be better monitored between sessions of the General Assembly.
- The substantive time of the ICP agenda should be devoted to elaboration of conclusions on the elements to be adopted, rather than to discussion panels of a too general, scholarly or informative kind. This kind of panels are more appropriate in educational workshops and side events, rather than in an intergovernmental deliberating body such as the ICP, where basic knowledge should be taken for granted in the elaboration of recommendations.
- UN specialized agencies and other intergovernmental bodies should be able to speak on matters of direct concern to them, not only during initial deliberations but also during the discussion and approval of the final elements. It should not be forgotten that IGOs provide useful referential information and advice to ensure that ICP elements do not overlap with activities undertaken in other fora.

I suppose that the evaluation of the past does not preclude references to the changes that have inevitably occurred since our last meeting, of which the following:

- IMO has adopted the Hong Kong Convention on the Recycling of Ships. The treaty aims at ensuring that ships, when being recycled after reaching the end of their operational lives, do not pose unnecessary risks to human health and safety, or to the environment.
- The IMO Safety Committee has just adopted revised guidelines on combating piracy and armed robbery at sea which include recommendations to Governments, shipowners and ship-operators and crews. A new circular on piracy and armed

robbery include best management practices to deter piracy which have been developed by industry organizations with additional guidance for ships engaged in fishing. The IMO Assembly is expected to adopt by the end of the year amendments to the Code of practice for the investigation and suppression of piracy. IMO has further sponsored the adoption of Djibouti Code of Conduct to enhance cooperation amidst the coastal States of East Africa to suppress piracy; and finally,

- the IMO Maritime Environment Protection Committee (MEPC) will hold a decisive meeting in July to foster measures to control and reduce the adverse impact on the environment of Green House Gasses (GHG) from ships.

The importance of discussing these and other developments not, only at IMO but also within a UN forum. explains the usefulness of the ICP meetings.
