

Kristian Turkalj*

ABSTRACT:

How to improve marine resources conservation and management in the Mediterranean?

The 1982 United Nations Convention on the Law of the Sea constituted a major political and legal achievement. While linked to the moment when it was adopted, and thus reflecting the balance of interests of that time, as a framework document – a “Constitution for the Oceans” – it is nevertheless subject to a process of evolution and progressive development. It soon became apparent, for instance, that the provisions of the 1982 UN Convention related to fisheries, especially on the high seas and in relation to straddling fish stocks and highly migratory fish stocks, required to be supplemented by an adequate jurisdictional regime. The risk of lack of effectiveness threatened the UNCLOS regime for fishing on the high seas where the principle of the freedom of fishing governs, with the primacy of flag state jurisdiction. However, those principles do not mean that everything should be permitted, with adverse consequences of increase in high seas fishing to overall fisheries conservation and management. Practice has shown that the high seas fisheries provisions of the UNCLOS left too much to be desired. Introduction of the post-UNCLOS legal instruments, such as the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement, represented the global response to that situation.

Regionally, the Mediterranean Sea and the fisheries carried out here are characterised by a number of distinctive features with important implications for the conservation policy. These features include: its status of a semi-enclosed and enclosed sea, relative extension of national vs. international waters, straddling and shared fish stocks, specifics of Mediterranean fishing activities, lack of scientific information, as well as a number of other considerations. Some of these features are not exclusive to the Mediterranean, yet some are more pronounced in this region.

In the Mediterranean Sea, a large number of the coastal states have as yet not claimed a zone of extended jurisdiction, contributing to serious problems for sustainable management of the Mediterranean marine resources. However, it has become obvious that Mediterranean fisheries resources can no longer sustain such rapid and – due to the lack of adequate jurisdiction and control – often uncontrolled exploitation. Thus, the Mediterranean is in the need of improved approaches to fisheries management, which would embrace conservation and environmental considerations of today, and not of the past. Efforts should today focus on the establishment of principles for responsible fisheries activities, taking into account all their relevant biological, technological, economic, social, environmental and commercial aspects. The current insufficient knowledge regarding the state of the fisheries resources should not serve as an excuse for postponing the necessary management measures; the precautionary principle should apply here.

* Kristian Turkalj, Mission of the Republic of Croatia to the European Union, Brussels. This abstract is prepared in personal capacity; accordingly, the views expressed in this abstract are the author’s personal views only, and can not be attributed to the Republic of Croatia, or interpreted as official views whatsoever.

Despite all the existing problems, which mainly depend on the high seas regime of the most of the Mediterranean Sea, the European Community has seen the potential to play a major role in the establishment of a sound Mediterranean fisheries regime. The Community must continue to take the lead in implementing an effective conservation and management system for the Mediterranean fisheries. However, the Community leadership in this area can not work without true cooperation with non-EU Mediterranean states. Special circumstances of distinct sub-regions in the Mediterranean, and accordingly the somewhat special situation of states there, should duly be taken into account.

On the one hand, the existence of a large area of high seas, such as in the Mediterranean, does not facilitate implementation of cooperatively agreed measures in the fields of fisheries and protection of the environment; thus, the involvement of national jurisdiction is vital. On the other hand, the success of any effort of regional cooperation depends on whether all the States concerned are parties to the relevant agreement, and implement it in good faith. Thus, while the regional cooperation should cover all of the Mediterranean marine areas, it cannot be efficiently implemented if no national jurisdiction is responsible for day-to-day implementation of cooperatively agreed measures – and this is the problem of the current, prevailing high-seas Mediterranean.

If the Mediterranean marine living resources are to be rationally managed and conserved, there is a need for major change. Current global instruments built on UNCLOS, such as the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement, provide a global framework; and the 2001 FAO Action Plan to combat IUU fishing offers a tool-box for all states. The basic approach contained in the latter – the combined and synergic approach of coastal, port and flag states and regional organizations, with due regard for developing countries' situation – is today acutely needed for the Mediterranean. No effective measures for combating IUU fishing in the Mediterranean could be implemented without being initially based on regulation, implementation and control through zones at national level.

It looks as this is the approach recently adopted also by the European Community, in its 2002 Action Plan for the conservation and sustainable exploitation of fisheries resources in the Mediterranean Sea. Moreover, similar conclusion was reached during the Ministerial Conference for the sustainable development of fisheries in the Mediterranean, held in Venice, November 2003. While suggesting a coordinated national approach, there is an increasing understanding that effective measures can not be implemented on the currently prevailing high seas in the Mediterranean.

Any regime in the Mediterranean Sea, based on the EEZ regime as provided for by the UN Law of the Sea Convention, should not be seen as an instrument for excluding other Mediterranean states from fisheries. Rather, an EEZ-based regime in the Mediterranean should be understood as an instrument of moderation of otherwise gaping disparities in capabilities and interests. At the same time, while obviously necessary, an extended national jurisdiction regime in the Mediterranean remains an insufficient step towards the efficient management and sustainable development of fisheries. Therefore, any extension of national jurisdiction, anywhere in the Mediterranean, has to be followed up by cooperatively agreed regional and, where appropriate, sub-regional measures.

The regional cooperation of the Mediterranean coastal states currently has a perspective of an improved regional arrangement. **The GFCM agreement**, in the aftermath of the Venice Conference, provides a framework for regional cooperation on the conservation and management of marine living resources. Adoption of Mediterranean-wide management measures would certainly contribute to better management of those fishery resources. One can, however, have serious doubts in the success of that cooperation, if it was to continue relying solely on a general duty to cooperate – instead of concrete responsibilities and interests of the Mediterranean states to implement in practice cooperatively agreed measures in the zones under their national jurisdiction.