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From sundering seas to arenas of cooperation: applying the regime of enclosed and semi-enclosed seas to the Adriatic

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Abstract
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Keywords
sundering, regime, semi, seas, arenas, cooperation, enclosed, applying, adriatic

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FROM SUNDERING SEAS TO ARENAS FOR COOPERATION: APPLYING THE REGIME OF ENCLOSED AND SEMI-ENCLOSED SEAS TO THE ADRIATIC

OD MORA KOJA RAZDVAJAJU DO ARENA ZA SURADNJU: PRIMJENA REŽIMA ZATVORENOG I POLUZATVORENOG MORA NA JADRAN

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The law of the sea provides the international legal basis for the coastal states of the Adriatic Sea to claim zones of maritime jurisdiction off their shores and divide the Adriatic Sea between them. The same international law of the sea obligates the Adriatic littoral states to cooperate in a variety of ways, notably by establishing a special regime applicable to enclosed and semi-enclosed seas such as the Adriatic. This paper explores the maritime jurisdictional claims allowed under international law and claimed in the Adriatic in particular. The implementation of the regime of enclosed and semi-enclosed seas in the Adriatic context is then explored.
Keywords: maritime cooperation, maritime claims, semi-enclosed sea, oceans governance, law of the sea

Pravo mora biti međunarodna pravna osnova za obalne države na Jadranu na temelju kojeg mogu zahtijevati područja jurisdikcije na moru uz svoje obale te međusobno podijeliti Jadransko more. Isti međunarodni zakon o moru obvezuje jadranske obalne države da surađuju na različite načine, posebice pri uspostavljanju posebnih režima koji se primjenjuju u zatvorenim i poluzatvorenim morima poput Jadranskog. Ovaj rad analizira zahtjeve za jurisdikcijom na moru koje dopušta međunarodno pravo i posebice stvarne pretenzije u Jadranu. Primjena režima zatvorenog i poluzatvorenog mora u kontekstu Jadrana također se razmatra u radu.
Ključne riječi: pomorska suradnja, pretenzije na moru, poluzatvoreno more, upravljanje oceanima, pravo mora

Introduction

The traditional, terrestrially-dominated view of the oceans, in both state-centric geopolitics and international law, is that they separate countries and peoples – the "sundering seas" of popular culture. Alternatively, the seas may be said to unite, offering arenas for maritime cooperation that transcends international boundaries and forges distinct marine regions and sub-regions. International law encourages, and in some circumstances requires, states to work together to achieve common goals. The Adriatic marine sub-region presents a unique challenge. In particular, the Adriatic is a semi-enclosed sea bounded by another semi-enclosed sea – the Ionian, to the south of which lies an enclosed sea – the Mediterranean. No other ocean area of the world presents this array of features and is, at the same time, the meeting point of continents and many cultures.

This paper primarily examines the international law, but also geopolitical and policy imperatives which influence ocean governance and marine protection in the Adriatic sub-region. Particular reference is made to obligations to cooperate under relevant international law including the

International Law of the Sea (see below) and other agreements such as the Convention on Biological Diversity of 1992.[1] The general rules of international law are also considered. Developing trends towards marine regionalism in the larger Mediterranean thorough, for example, the Greater Mediterranean Fisheries Council, to which all six states belong, are also highly relevant to this brief study. The important aspect of these obligations to cooperate is that these are functionally-based requirements, i.e., dictated by the needs of optimum ocean management, biodiversity protection, and the preservation of the marine environment. However, the precise requirements to implement these obligations – to bring about a closer union between marine science and international law - are often not fully delineated. Further, the need for and, arguably, the obligation to effect ecosystem-wide trans-boundary cooperation tends to be opposed to traditional geopolitical and sovereignty imperatives.

The paper begins with an overview of the spatial/zonal divisions in maritime jurisdiction generally and in the Adriatic context in particular, and explores some of the key factors influencing oceans governance in the Adriatic. It goes on to examine the impact of the regime of enclosed and semi-enclosed Seas on the Adriatic, suggesting ways in which the littoral states could work together to meet their mutual obligations. Finally, the implications of the relationship between the Adriatic marine sub-region and neighbouring semi-enclosed and enclosed seas are considered.

The territorial imperative at sea

The history of international law since the Peace of Westphalia[2] in 1648 has been in large part characterised by the gradual ascendancy and eventual supremacy of the territorial State concept. States have therefore traditionally been the primary actors in international law (Lauterpacht, 1975: 489). The dominant role of bounded territorial States in international relations has, however, been subject to concerted criticism and challenge. Despite contemporary critiques of territorial states, in large part prompted by considerable impacts and influences of globalisation, it is clear that such entities have not by any means withered away and remain as key actors and fundamental building blocks of the international legal system.

International law requires states to possess a "defined territory", together with a permanent population, government and the capacity to enter into international relations with other States.[3] Indeed, there is virtually no area of land worldwide that has not succumbed to what has been termed the "progressive triumph of territorial temptation" and claimed as part of the territory of one State or another (Oxman, 2006: 830).[4]

This territorial imperative, so familiar on land, has over time progressively advanced offshore. Prior to the mid 20th century coastal state jurisdiction rarely extended more than three nautical miles (M) offshore. This scenario has been transformed such that vast swaths of the world's oceans are now subject to some form of coastal state sovereignty or sovereign rights. The first unambiguous assertion of rights beyond narrow territorial sea limits came through the United States Presidential Proclamation on the Continental Shelf of 1945 – often termed the "Truman Proclamation" – whereby the United States exerted jurisdiction over continental shelf areas located adjacent to but seawards of its, then three nautical miles wide, territorial sea limits.[5] The Truman Proclamation was an important catalyst for a process generally termed 'creeping coastal state jurisdiction' through which coastal states sought to exert jurisdiction over maritime spaces and resources increasingly distant from their shores.

[1] *Convention on Biological Diversity*, Rio de Janeiro, June 5, 1992, in force December 29, 1993.

[2] Comprising the Treaty of Osnabrück (May 15, 1648) and Treaty of Münster (October 24, 1648). See, *The Articles of the Treaty of Peace, Sign'd and Seal'd at Munster, in Westphalia, October the 24th, 1648*, in *A General Collection of Treatys, Declarations of War, Manifestos, and other Public Papers, Relating to Peace and War, Among the Potentates of Europe, from 1648 to the present Time* (London; Printed by J. Darby for Andrew Bell in Cornhill, and E. Sanger at the Post-house in Fleet Street, 1710): 1-38. See also: Israel, 1967.

[3] This definition is set forth in Article 1 of the Montevideo Convention on the Rights and Duties of States, opened for signature December 26, 1933, 165 LNTS 19 (entered into force December 26, 1934).

[4] A rare exception to this near-comprehensive trend is the large unclaimed sector in the Antarctic.

[5] See: Presidential Proclamation No.2667 "Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf", September 28, 1945, Federal Register 12303; 59 US Stat.884; 3 C.F.R. 1943-1948 Comp., p. 67; XIII Bulletin, Department of State, No. 327, September 30, 1945, p. 485. A Proclamation was also made in respect of fisheries jurisdiction seaward of the US territorial sea limit.

To a large extent the trend towards creeping coastal state jurisdiction was brought under control through the negotiation of the 1982 United Nations Convention on the Law of the Sea (hereinafter "LOSC" or "the 1982 Convention") (United Nations, 1983). The 1982 Convention was the culmination of a nine-year negotiation and drafting process through the Third United Nations Conference on the Law of the Sea (UNCLOS III). Importantly, the 1982 Convention accorded the states the primary role. Thus, maritime claims can only be advanced by States and such a State requires land territory and a coastline in order to make such claims under the dictum that "...the land dominates the sea and it dominates it by the intermediary of the coastal front" (Weil, 1989: 50). The privileged role accorded to states with respect to maritime jurisdictional claims is perhaps unsurprising, given that international law of the sea was codified by states themselves.

The key achievement of the 1982 Convention was agreement on spatial limits to national claims to maritime jurisdiction (Prescott, Schofield, 1995). In accordance with the terms of the 1982 Convention, maritime claims are predominantly defined as extending to a set distance from baselines along the coast. Determining the baselines location is therefore a fundamental prerequisite for defining the limits of maritime jurisdiction. The 1982 Convention provides for multiple different types of baseline that may be claimed for different types of coastal circumstances (Carleton, Schofield, 2001: 26-47). Under usual circumstances, in accordance with Article 5 of LOSC, the coastal state will possess "normal" baselines, which coincide with "the low-water line along the coast as marked on large-scale charts officially recognized by the coastal state." Where coastal geography is complex, straight baselines may be employed in accordance with Article 7 of LOSC. Specifically, straight baselines may be applied in localities "where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity" (LOSC, Article 7(1)).

Waters landward of baselines, for instance within claimed straight baselines, are considered to be internal waters of the coastal state. Seawards of baselines along the coast, the 1982 Convention provides that the breadth of a coastal state's territorial sea is not to exceed 12 M (LOSC, Articles 3 and 4). Prior to that, the issue of the appropriate territorial sea breadth had been a particularly contentious one, so the LOSC definition of a 12 M territorial sea limit represented a significant breakthrough. LOSC also provides that coastal states may claim a contiguous zone out to 24 M from its baselines (LOSC, Article 33(2)). Additionally, and significantly, the concept of the exclusive economic zone (EEZ) gained general international acceptance. According to Article 57 of LOSC, the EEZ "shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured". As most coastal states claim a 12 M territorial sea, the breadth of the EEZ is typically 188 M seaward of territorial sea limits. The concept of the continental shelf, as illustrated by the 1945 Truman Proclamation, predated the 1982 Convention. However, the 1982 Convention refined the rules relating to the continental shelf, provided for the definition of the limits of so-called 'extended continental shelf' areas beyond 200 M from the coast, where the continental margin extends that far offshore (Cook, Carleton, 2000). The complex and contentious issues related to the determination of extended continental shelf limits are not, however, of concern to the Adriatic littoral states. This is because the geographical configuration of the Adriatic Sea and the proximity of the Adriatic coastal states to one another preclude the existence of such extended continental shelf areas in the Adriatic Sea.

It is important to note, however, that the rights and obligations of coastal states vary considerably between these various zones of maritime jurisdiction. Crucially, coastal states have sovereignty over certain maritime zones but only specific "sovereign rights" over others. Maritime zones under the sovereignty of coastal states include internal waters landwards of baselines, archipelagic waters within archipelagic baselines (not applicable in the Adriatic context) and the territorial sea. Foreign vessels do, however, retain the right of "innocent passage" through territorial waters (LOSC, Article 17). The right of non-suspendable "transit passage" also exists though straits used for international navigation (LOSC, Article 38). The Strait of Otranto, linking the Adriatic Sea to the rest of the Mediterranean Sea clearly constitutes such a strait.

With regards to significantly broader zones of coastal state maritime jurisdiction, namely the continental shelf and exclusive economic zone (EEZ), coastal states enjoy specific, largely resource-oriented, sovereign rights rather than full sovereignty. Otherwise high seas freedoms, for example with respect to navigation and overflight for vessels and aircraft belonging to other states, are preserved with these zones. In this manner the

1982 Convention sought to balance and reconcile the competing forces of the coastal states' territorial temptation to exert ever greater jurisdiction offshore with the interests of maritime powers and the general international community, with respect to access to and use of ocean spaces.

Adriatic maritime claims and boundaries

As outlined in the preceding section, LOSC provides a generally accepted legal framework governing maritime jurisdictional claims. At the time of writing LOSC boasted 162 parties comprising 161 states plus the European Union. All six Adriatic states are parties to the 1982 Convention. Both Italy and the former Yugoslavia signed and ratified the 1982 Convention.[6] Albania, for a long time a non-party to the Convention, acceded to it on June 23, 2003. Whereas the Adriatic formerly boasted only the three above-mentioned littoral states, the maritime political geography of the Adriatic sub-region was considerably complicated by the territorial and geopolitical fragmentation of Yugoslavia. Following the dissolution of Yugoslavia, Bosnia and Herzegovina, Croatia, Montenegro and Slovenia have all formally become parties to the 1982 Convention in their own right.[7] LOSC therefore provides the appropriate backdrop for a discussion of maritime jurisdiction, cooperation and governance in the Adriatic context.

The Adriatic Sea constitutes a long but relatively narrow gulf aligned generally from the northwest to its only access via the Strait of Otranto in the southeast. In the past the Adriatic was bordered by only three states – Italy, Yugoslavia and Albania. Following the disintegration of Yugoslavia, the Adriatic now separates Italy to the west and north from an eastern shoreline divided among the former Yugoslav states of (from north to south), Slovenia, Croatia and Montenegro, together with Albania to the southeast. In terms of coastal geography, the western (Italian) shores of the Adriatic are relatively uncomplicated in comparison to the Adriatic's eastern shores, which are characterised by a profusion of islands and embayments. In consequence, it has been calculated that even though Italy dominates the western side of the Adriatic Sea, it only constitutes 15 per cent of the Adriatic shoreline (Vidas, 2009: 5). In contrast, Italy is responsible for the vast majority of seaborne trade and resource use, especially fishing in the Adriatic. For example, it is estimated that approximately 75 per cent of the Adriatic's commercial shipping docks are located in Italian ports (Vidas, 2009: 5). This imbalance in marine uses necessarily results in uneven contributions to the environmental problems that afflict the Adriatic, notably ship-sourced pollution and over-fishing (Vidas, 2010). Indeed, it has long been recognised that the Adriatic is a sea under stress, especially in light of its compact, semi-enclosed nature featuring limited exchange of waters with the wider Mediterranean Sea. The Northern Adriatic has been highlighted as a marine "dead zone" of long standing, impacted by land-based sources of marine pollution, which is partially a result of excessive nitrogen loading (UNEP, 2006). The marine environment in the Sea as a whole is highly likely to come under further threat as industrial development and tourism increase. The marine living resources of the Adriatic will, likewise, continue to be threatened unless over-fishing is brought under control.

With respect to baselines claims, normal baselines are employed by Italy for the majority of the western shoreline of the Adriatic Sea. Italy has, however, used straight baselines (see below) to front parts of its Adriatic coastline, for example in the Gulf of Trieste and linking the island of Tremiti to the mainland as well as closing the Bay of Manfredonia. As a consequence of its complex coastal geography, Yugoslavia was one of the first states to adopt straight baselines, doing so in 1948, and further extending its system of straight baselines in 1965. The vast majority of Yugoslavia's coastline and straight baselines system was inherited by Croatia following the breakup of Yugoslavia. Of note in this context is that Bosnia and Herzegovina's narrow corridor to the sea at Klek-Neum falls within Croatia's straight baseline system. For its part, Albania claimed straight baselines along the majority of its coastline from 1970 (modified in 1976 and reconfirmed in 1990), despite the fact that the Albanian coastline is relatively uncomplicated. Albania's straight baseline claims have therefore caused international protests (Roach, Smith, 1994: 55).

[6] Italy signed the Convention on December 7, 1984 and became a party to it on January 13, 1995. The former Socialist Federal Republic of Yugoslavia signed the Convention on December 10, 1982 and formally ratified it on May 5, 1986.

[7] Bosnia and Herzegovina succeeded to the Convention on January 12, 1994, Croatia did so on April 5, 1995 and Slovenia on June 16, 1995. Montenegro became a party to the Convention on October 23, 2006 through a definitive signature (United Nations, 2011).

All six of the Adriatic littoral states claim 12 M breadth of territorial seas, which is consistent with LOSC. Significant progress was also made at a relatively early stage in terms of the delimitation of territorial sea (1975) and continental shelf boundaries (1968) between Italy and Yugoslavia. The maritime delimitation line between Italy and Yugoslavia has been inherited by the post-Yugoslavia successor states, so that Italy-Slovenia, Italy-Croatia and Italy-Montengro sections of the Italy-Yugoslavia maritime boundary lines now exist instead. Albania and Italy were also able to conclude a continental shelf delimitation agreement in 1992 which extends southwards of the Strait of Otranto and into the Mediterranean Sea. However, maritime boundary delimitation in the eastern Adriatic, that is, among the former Yugoslav states and between Albania and Montenegro still remains a largely unresolved issue and disputes persist, notably between Croatia and Slovenia (Blake et al., 1996; Klemenčić, Schofield, 2002).

Claims to the water column overlying the continental shelf have proved especially problematic and controversial. In keeping with the practice of most Mediterranean states, none of the Adriatic coastal states has claimed an EEZ (continental shelf rights are inherent, EEZ rights are not, and must therefore be claimed expressly). That said, in October 2003, Croatia declared an "Environmental and Fisheries Protection Zone" based on the EEZ regime (Vidas, 2009, 2010). However, pressure on the part of other Adriatic states, notably EU members Italy and Slovenia, led Croatia first to delay implementation of the zone and ultimately to discontinue its application to EU countries (Vidas, 2009, 2010). The EU member states, Slovenia in particular, sought to link Croatia's withdrawal of its new maritime zone in the Adriatic to its EU candidature. The issue of Croatia and Slovenia's ongoing boundary disputes, including the disputes over their maritime boundary, was also intimately connected to these debates (Vidas, 2010). Despite their evident opposition to Croatia's EEZ-like maritime claims in the Adriatic, this did not prevent both Italy and Slovenia from advancing their own claims to "ecological" zones, applicable to the Adriatic waters, in 2005 and 2006. It is notable that Slovenia's unilaterally defined "ecological zone" overlaps with maritime areas claimed by Croatia and is therefore intimately linked to ongoing Croatia-Slovenia territorial and maritime boundary disputes. It has also been observed that Italy's "ecological protection zone" does not apply to fishing activities, so that "no progress was made regarding management and conservation measures for the heavily depleted Adriatic fish stocks" (Vidas, 2010). Given the absence of EEZ claims in the Adriatic Sea, EEZ boundaries are unsurprisingly similarly absent.

The cooperative imperative at sea

Governments sometimes view maritime cooperation with suspicion, if not outright hostility. It appears to compromise the unilateral exercise of the coastal state rights in waters subject to its jurisdiction. This unilateralism was a marked feature of the law of the sea in its development, from 1945, as evidenced by the Truman Proclamation. From 1945 to 1975, or thereabouts, it was generally accepted that state rights extended only to the seabed and its subsoil, principally for the exploration and exploitation of oil and gas. But some countries had also been pushing jurisdiction over the superjacent water column, demanding the exclusive right to control fishing there. As the global momentum behind exclusive fishing zones gathered pace, the coastal states began to take a keener interest in marine environmental quality. The preservation of fish habitats was now a matter of increasing state concern. In addition, from the 1960s on, the international community began to take an interest in environmental protection in general, and the threat to the oceans was highlighted by tanker disasters and the realisation that land-based sources of marine pollution were poisoning significant areas of hydrospace.

The vast broadening of both the nature and the extent of coastal state rights and obligations in adjacent waters was to culminate in the EEZ regime, which forms Part V of the 1982 Convention, though the environmental provisions contained in Part XII must also be mentioned with regards to the subject. As noted above, EEZs are still not implemented in the Adriatic Sea though steps have been taken to establish environmental or ecological zones instead. For present purposes, let us suppose that the primary issues at stake here are fish and water-borne pollutants. The most obvious difference between these two and hydrocarbons is that they are not spatially confined. Both can migrate from one state's zone of jurisdiction to another. Further, if the states concerned are littorals of an enclosed or semi-enclosed sea, the waters and everything swimming or suspended in them are "trapped" there and the exchange with the oceans is severely limited. Recognition of this reality led the drafters

of the 1982 Convention to create special rules applicable to enclosed and semi-enclosed seas of which the Adriatic is surely one.

The regime of enclosed and semi-enclosed seas

Rules applicable to the littoral states bordering enclosed and semi-enclosed seas and definitions of their marine features made their first appearance in international law as Part IX of the 1982 Convention:

PART IX
ENCLOSED OR SEMI-ENCLOSED SEAS

Article 122
Definition

For the purposes of this Convention, "enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.

Article 123
Co-operation of States bordering enclosed or semi-enclosed seas

States bordering an enclosed or semi-enclosed sea should co-operate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization:

a) to co-ordinate the management, conservation, exploration and exploitation of the living resources of the sea,
b) to co-ordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment,
c) to co-ordinate their scientific research policies and undertake where appropriate joint programmes of scientific research in the area,
d) to invite, as appropriate, other interested States or international organizations to co-operate with them in furtherance of the provisions of this article.

It cannot be doubted that the Adriatic falls within the scope of Article 122, as do the several marine areas with which it is linked. What, then, is the nature and extent of the obligations set out in Article 123? The first point to make is that the framers of the 1982 Convention considered that ocean areas falling within the scope of Article 122 would be subject to a special regime of some sort. In other words, they were not merely "adjacent coastal state waters" like, say, the Bay of Biscay or the Norwegian Sea, to take two random examples.

We mention this first because international lawyers are often too quick to move to a "nature and extent" examination of obligations in play without spending much time, if any, in considering why these duties exist in the first place. This flies in the face of an approach to legal interpretation which requires at least some appreciation of the context in which a rule or rules were produced. What, in a word, is the "purpose" to be achieved? Which good goal is being promoted; which undesirable result is being avoided? The purposive approach to legal interpretation sometimes requires much of the lawyer. First and foremost, arguably, should be the knowledge that she or he alone may not appreciate the full significance of a legal provision because the context is elusive. It may be obvious to a marine scientist, or ecologist, or fisheries manager, but not to the lawyer. Similarly, the legal context may elude experts in other disciplines. This should not surprise us, but it does illustrate why interdisciplinarity is so crucially important in works such as this.

The scientific and technical literature reveals the reason for the existence of the Part IX regime. Enclosed and semi-enclosed seas are discrete ecosystems, often threatened precisely because their waters are "trapped" between the littoral land-masses. The Black Sea waters, for example, are subjected to stresses and pressures different from the Sea of Azov to the Northwest, not to mention the Adriatic. Effluents and pollutants are carried into it by major rivers such as the Danube and the Dnieper. The same can be said of the Rhine, of course, but the waters of the North Sea are linked with those of the Atlantic. Scientists agree that enclosed and semi-enclosed seas require special treatment since many are under threats which more open marine areas do not face.

Article 123 attempts to provide a platform on which enclosed and semi-enclosed littorals can work together for the common good. Can we define this "common good"? The answer, we would argue, lies in obeying another basic rule of legal interpretation: place a provision in a treaty in the context of the agreement as a whole, do not isolate it and place it under an interpretative microscope.

Applying this to Part IX of the 1982 Convention requires us to consider the goals of that treaty as a whole. The latter may be summarised as: sustainable development promotion, environmental protection and preservation, recognition of inalienable state rights over natural resources subject to their jurisdiction. The point is that the rights and obligations must be read and considered together. Exercising a right is not justification for breaching an obligation.

With this in mind, we can see that Article 123 singles out three areas of activity as candidates for cooperation: living resource exploration and exploitation, marine environmental protection, and the pursuit of marine scientific research. Since the mid-1970s, more and more coastal states came to agree that they had exclusive rights to control fishing within 200 M of their coast. A number of countries resisted this development in international law, but with hindsight, it is clear that this rearguard action could only delay, not prevent, the emergence of this rule.[8] UNCLOS III was at work during this decade drafting the 1982 Convention, and developments in state practice were codified and developed into the regime of the EEZ, to be found in Part V. This new focus on state responsibilities and, especially, implementing the detailed regime for sustainable development of fisheries resources resulted in a considerable broadening of marine resource managers' task. This has obvious implications for policy-making (i.e. coming up with one relating to matters hitherto virtually unregulated, at least for some states). But what if the fisheries policies pursued by one state are incompatible with those followed by a neighbour, especially a co-littoral of an enclosed or semi-enclosed sea? The results might be disastrous, hence the need for cooperation, and by no means solely within the ambit of Part X of the 1982 Convention.

The extensive scientific literature on various aspects of enclosed and semi-enclosed marine environments points to the importance of marine information-sharing between littorals and contributes to the inform policy and law-making. To take a hypothetical example, suppose that a semi-enclosed sea, all of which is within 200M of a coastline (that is within the EEZs or fishing zones of the littorals, should they choose to claim one), is bounded by the territory of three states. Furthermore, all maritime boundaries have been delimited, so that the spatial extent of rights and responsibilities is known and acknowledged. Let us assume further that State A has no capacity for marine scientific research, State B is more able to conduct such activities, but only up to a point. State C, on the other hand, has research programs of international standard. Since each has absolute rights to control such activities within its own sector, and can, if so minded, make it difficult (if not impossible) for others to do so, information on their shared ecosystem can never be complete unless they agree to cooperate. Such cooperation might take any number of forms, such as joint marine scientific research projects undertaken by experts from all three countries, with the consent of their governments. The three states may commission experts from elsewhere to carry out the work if they are unwilling to trust each other. This is not the point, of course: the goal is to further scientific marine research in the shared ecosystem in a manner which will advance inform policy-making by the three littorals in ways which might not otherwise have been possible.

Similar functional arguments can be made with regards to promotion of preservation and protection of the marine environment.[9]

Environmental protection in enclosed and semi-enclosed seas

Part XII of UNCLOS constitutes a codex for marine environmental protection but is, essentially, a framework which guides state actions with regards to legislation, monitoring and enforcement. Its provisions were to be expanded very considerably by another instrument resulting from the 1992 UNCED, namely Agenda 21, Chapter 17 of which is devoted to "Protection of the Oceans, all kinds of Seas, including Enclosed and Semi-enclosed Seas and Coastal Areas and the Protection and Rational

[8] The United States was a vociferous opponent, as was the United Kingdom, but both in time faced the reality of the situation and adjusted their own claims accordingly. Thailand was another leading opponent, and this prevented Thai ratification until 2011, many years after other major coastal states in East and Southeast Asia had become parties, and began participating in the work of the various Convention bodies, something Thailand effectively denied itself. This is a good example of the unfortunate consequences of adopting official policies based on willful blindness.

[9] The discussion of environmental cooperation here draws on Ian Townsend-Gault, "Maritime Cooperation in a Functional Perspective", to be published in a collection of research studies undertaken as part of the Maritime Energy Resources in Asia project of the National Bureau of Asian Research, Seattle and Washington D.C., to be published late in 2011.

Use and Development of their Living Resources".[10] The Chapter has 137 articles, dealing with the following programme areas:

a) integrated management and sustainable development of coastal areas, including exclusive economic zones,
b) marine environmental protection,
c) sustainable use and conservation of marine living resources of the high seas,
d) sustainable use and conservation of marine living resources under national jurisdiction,
e) addressing critical uncertainties for the management of the marine environment and climate change,
f) strengthening international, including regional, cooperation and coordination, and
g) sustainable development of small islands.

Each programme area is structured more or less identically. The "Basis for Action"– the "why" – is laid out followed by the "Objectives" of the relevant section. The required "Activities" are then specified[11], followed by "Means of Implementation".[12]

Chapter 17 applies to all ocean areas, but there are some provisions particularly applicable to enclosed and semi-enclosed seas. Programme Area C, *Sustainable use and conservation of marine living resources of the high seas*, includes under sub-heading C, *International and regional cooperation and coordination*, the following:

> States should, where and as appropriate, ensure adequate coordination and cooperation in enclosed and semi-enclosed seas and between subregional, regional and global intergovernmental fisheries bodies.[13]

The same provision appears in Programme Area D, *Sustainable use and conservation of marine living resources under national jurisdiction*, under sub-heading C, *International and regional cooperation and coordination*.[14] As to when such coordination and cooperation may be "appropriate", a better question might be to ask if the time might ever come when states working together for purposes such as those under discussion would be "inappropriate". One answer to the first question might proceed from the underlying theme of Agenda 21, and confirmed by reviews of progress with implementation, to the effect that states are not discharging their responsibilities to the level required. There are many and various reasons for this, but Agenda 21 makes it clear that there is no reason why a state lacking capacity in one form or another should shoulder its burdens in isolation, unless it so desires.

As the next section of the paper will show, the Adriatic Sea countries, in common with other Mediterranean littorals, have decided not to follow the unilateral path regarding fisheries cooperation. There are also joint environment initiatives, such as the Adriatic - Ionian Initiative, examining environmental aspects of sustainable development in the Adriatic and Ionian Seas region.[15] One of the stated objectives of this Initiative is to promote stability in the context of European integration, but this is far from incompatible with the goals of environmental and resource protection and the pursuit of marine scientific research - to the contrary.

Adriatic fisheries cooperation

The justification for inter-state cooperation is surely apparent from the discussion above, but what about the language of Article 123? To some legal commentators, phrases such as "states should cooperate" and "states shall endeavour" are somewhat weak. "Should" is not the same as "shall", never mind "must", while "shall endeavour" suggests only that a "best efforts" obligation is entailed. If enclosed and semi-enclosed cooperation is so important, why is the language not stronger? One reason may lie in the fact that the Regime of Part IX marks the debut of the enclosed and semi-enclosed seas as rules of international law. In addressing the territorial sea and continental shelf, the framers of the Convention could draw

[10] Chapter 17 is to be found in Section Two of Agenda 21 – Conservation and Management of Resources for Development: the text if available at http://www.un.org/esa/dsd/agenda21/index.shtml.
[11] This might include Management-related Activities, Data and Information, and International and regional cooperation and coordination.
[12] Including Financing and cost evaluation, Scientific and Technical matters, Human Resource Development, and Capacity Building.
[13] Agenda 21, paragraph 17.59.
[14] Ibid. paragraph 17.89.
[15] For more details, see: http://www.esteri.it/MAE/EN/Politica_Estera/Aree_Geografiche/Europa/Balcani/IAI.htm.

on the agreements reached in Geneva in 1958, as well as decades of state practice, international jurisprudence, and a vast store of literature. It is not so with the enclosed or semi-enclosed sea.

The better approach, we argue, is for states to be guided by the scientific and technical experts in interpreting and applying Part IX. The foundations for this in the Adriatic have been laid. In 1949, the General Fisheries Council for the Mediterranean was approved by the Food and Agriculture Organisation of the United Nations (FAO) pursuant to Article XIV of its Constitution. The 1949 Agreement was revised in 2004 to create a regional fisheries management organisation, the General Fisheries Commission for the Mediterranean (GFCM), and this instrument remains in force today.[16] Article III(e) of the 2004 Agreement requires the Commission "to encourage, recommend, coordinate and, as appropriate, undertake research and development activities, including cooperative projects in the areas of fisheries and the protection of living marine resources".[17] The principles behind the 2004 Agreement are impeccable: the Preamble makes specific reference to the 1982 Convention, Chapter 17 of Agenda 21, and the 1995 FAO Code of Conduct on Responsible Fisheries.[18] Furthermore, it will be noted that Article III(e)(2) requires the Commission to apply the precautionary principle in discharging its obligations.

In 1999, the FAO established the AdriaMed Project (Scientific Cooperation to Support Responsible Fisheries in the Adriatic Sea), originally funded by Italy and, since 2007, by the European Commission.[19] All six Adriatic states participate in the initiative. The web-site of the Project summarises its mandate thus:

a) to develop a common cognitive basis to support international processes aimed at fishery management,
b) to reinforce the scientific coordination among the different institutions interested in fishing activity, and
c) to establish a permanent network among the main institutions present in the Adriatic that are involved in fishery management activities.

Further, it is intended that the Project shall:

> assist the participating countries in the formulation and realisation of management strategies through common research and multidisciplinary analysis undertaken in partnership with the fishing industry sector.[20]

It is clear that these objectives are wholly in keeping with the aspirations, if not requirements, of Article 123 of the 1982 Convention. They are also in accord with Chapter 17 of Agenda 21,

[16] *Agreement for the Establishment of the General Fisheries Commission for the Mediterranean*, in force April 29, 2004. For more on the GFCM, and the composition and extensive mandate of the Commission, see: www.gfcm.org.

[17] More specifically, Article III(e)(1) requires the Commission to:

(a) to keep under review the state of (Adriatic fisheries) resources, including their abundance and the level of their exploitation, as well as the state of the fisheries based thereon;
(b) to formulate and recommend, in accordance with the provisions of Article V, appropriate measures:
(i) for the conservation and rational management of living marine resources, including measures:
- regulating fishing methods and fishing gear,
- prescribing the minimum size for individuals of specified species,
- establishing open and closed fishing seasons and areas,
- regulating the amount of total catch and fishing effort and their allocation among Members,
(ii) for the implementation of these recommendations;
(c) to keep under review the economic and social aspects of the fishing industry and recommend any measures aimed at its development;
(d) to encourage, recommend, coordinate and, as appropriate, undertake training and extension activities in all aspects of fisheries;
(e) to encourage, recommend, coordinate and, as appropriate, undertake research and development activities, including cooperative projects in the areas of fisheries and the protection of living marine resources;
(f) to assemble, publish or disseminate information regarding exploitable living marine resources and fisheries based on these resources;
(g) to promote programmes for marine and brackish water aquaculture and coastal fisheries enhancement;
(h) to carry out such other activities as may be necessary for the Commission to achieve its purpose as defined above.

2. In formulating and recommending measures under paragraph 1(b) above, the Commission shall apply the precautionary approach to conservation and management decisions, and take into account also the best scientific evidence available and the need to promote the development and proper utilization of the marine living resources.

[18] This document is available at: http://www.fao.org/docrep/005/v9878e/v9878e00.htm.

[19] For more information, consult www.faoadriamed.org.

[20] Loc. Cit.

and the developing international understanding concerning functional maritime cooperation.

Topics with which the Project is involved include Adriatic fishery shared resources, Adriatic social and economics fishery sciences, Adriatic fishery statistics and information systems, and Adriatic fishery management. Project activities include:

- the realisation of a computerised communications network,
- the coordination of research and scientific activities,
- the organisation of meetings, working groups, workshops and training sessions on specific issues,
- the creation of an archive of information on national and regional fisheries (covering the whole Adriatic Sea region),
- the running of specific assistance and consultancy programmes,
- the permanent cooperation with the GFCM SAC and CAQ,
- the establishment of an international forum for the discussion of issues related to Adriatic Fisheries,
- the review and appraisal of existing fishery legislation in the AdriaMed countries.

These activities will require the participation of experts from a broad range of disciplines, including marine science, information technology, and law. The expected results are summarised as follows:

- the existence of a scientific information network pertinent to the shared fisheries resources of the Adriatic Sea and their management,
- the continuation of a process of cooperation and coordination in the various key areas (data collection; dissemination of information; biological, statistics, economic and social research and analysis; institutional networking and strategic planning),
- the application of standard methodologies for the collection organisation and treatment of data, the evaluation of biological resources and the identification and analytical use of socio-economic indicators, and
- the creation and maintenance of a stable and coordinated communications network between experts in the field (administrators, researchers, fishing industry representatives and professional fishworkers).

Finally, the beneficiaries of the Project are expected to include:

> ...the fishery policy makers and managers whose analytic capabilities are enhanced by the availability of improved information and monitoring systems. Similarly the various research institutes, fishworkers' associations and industry organisations will benefit. Further beneficiaries will be all those whose livelihood depends on maintaining sustainable fishery resources, something which will be ensured by sound management policies resulting from regional technical and scientific cooperation.

The above summary shows clearly the links between the three prongs of enclosed and semi-enclosed sea cooperation. Fish live in the marine environment, the health of which is of crucial importance to them, and marine scientific research is required to inform governments as to the health of either or both. From this survey it appears that the six Adriatic countries have taken steps to establish a mechanism which should be of inestimable value in the discharge of fisheries management responsibilities. It should be stressed that AdriaMed is a step towards achieving the goals of optimum management, sustainable development and environmental protection laid down in the 1982 Convention. It enriches the management toolbox available to governments, but it is for them to adopt the measures required for implementation. Measuring the extent to which the results of the initiative are actually influencing and determining the course of law, policy and management practices of the Adriatic states, however, goes beyond the scope of this paper. But any assessment of such practices should include an examination of the extent to which the cooperative ethic broadly conceived is adhered to and supported by the littorals.

While the AdriaMed initiative and experience outlined above provides some cause for optimism regarding maritime cooperation in the Adriatic, there are also certain countervailing trends. For example, Vidas (2010) has highlighted the slow progress made this far in discussions among the Adriatic littoral states with respect to formulating a proposal to the International Maritime Organization (IMO) that the Adriatic be declared a particularly sensitive sea area (PSSA) (Vidas, 2010). Despite the fact that the Adriatic sub-region would appear to be extremely well-suited to PSSA status, it appears that "stalemate" has been reached on some issues related to the Adriatic PSSA proposal (Vidas, 2010).

The circumstances pertaining to one enclosed or semi-enclosed sea may differ very widely from another. Cooperation may be more crucially important in some as opposed to others: casual generalisations are apt to be unhelpful and misleading. States should also have regards for international law developments since 1982, notably the *Convention on Biological Diversity*, with its intensely science-based regime requiring the identification of areas of significant biological diversity, and the implementation of measures, including protected areas where required, to safeguard them. In this context, it is encouraging to note that in 2008, representatives of Albania, Bosnia and Herzegovina, Croatia, Montenegro, Serbia, and Slovenia signed a joint statement recognizing that

> "...a joint and coordinated effort is needed in efficient delivery of the Programme of Work on Protected Areas obligations. Transboundary cooperation between the Dinaric Arc countries regarding the Programme of Work on Protected Areas implementation, with the aim to create a well-managed and ecologically representative protected area network, is the key to safeguarding the Dinaric Arc eco-region's exceptional natural and cultural values and the "importance of regional cooperation to achieve transboundary sustainable management of the South-Eastern European region, including the Adriatic Sea, the Dinaric Alps and the Sava River Basin".[21]

The question posed above is equally relevant here: how ready are governments to generate and maintain the political will to take the necessary measures to achieve these admirable goals? Will they be ready to take what might prove to be hard choices between competing marine activities in the years ahead?

Conclusions

This paper has argued for a functionally-based approach to marine regionalism (or sub-regionalism) in the Adriatic, as with any other enclosed or semi-enclosed sea. The evidence shows that the littoral states have, at the very least, started down this road and it may be that the Adriatic will prove to be a model for cooperation in more contested marine spaces. This is not to imply that all will be plain sailing. Coastal states usually cannot avoid making hard choices between competing, that is incompatible, uses of the seas. Should a government approve a seabed gold mine in an area of outstanding biological diversity? Should oil and gas drilling be permitted in or near major fishing grounds? What are the consequences of banishing unsightly marine industries so that they do not offend the sensitivities of tourists? The political implications of such decisions will be readily apparent.

It is also the case that the Adriatic is not free of maritime jurisdictional and geopolitical disputes. Disputes over maritime delimitation, especially but not exclusively between Croatia and Slovenia persist, although, the fact that these neighbours are pursuing peaceful means of dispute resolution is to be welcomed. Further, contention over whether EEZs or analogous zones of jurisdiction can be established represents an unhelpful distraction from the urgent task of fostering and enhancing holistic maritime cooperation in the Adriatic Sea.

Maritime cooperation is urgently required in many parts of the world. If the Adriatic states can build on the excellent foundations already laid, it is no exaggeration to state that the results may well have an international impact. "Good news stories" in ocean affairs are relatively rare. It would be a welcome change to be able to report that, contrary to the prognostications of some, maritime cooperation can be seen as the norm, the expectation in state behaviour, where the little that is surrendered is of little or no importance set against what is gained.

[21] The statement was signed at the "Dinaric Arc High-level Event" which took place at the 9th Conference of the Parties to the CBD in Bonn, Germany,
See: http://www.unep.org/ecosystemmanagement/UNEPintheRegions/tabid/316/Default.aspx.

BIBLIOGRAPHY

Blake, G., H., Topalovic, D., Schofield, C., H. (1996): *The Maritime Boundaries of the Adriatic Sea*, Maritime Briefing, 1/8, Durham: International Boundaries Research Unit, 67.

Carleton, C., M., Schofield, C., H. (2001): *Developments in the Technical Determination of Maritime Space: Charts, Datums, Baselines, Maritime Zones and Limits*, Maritime Briefing 3/3, Durham: International Boundaries Research Unit.

Continental Shelf Limits, Cook, P. J., Carleton, C. M. (eds.), Oxford University Press, Oxford, 2000.

Klemenčić, M., Schofield, C. H. (2002): *Maritime Boundary Claims and Disputes in the Adriatic Sea*, in *The Razor's Edge: International Boundaries and Political Geography*, Schofield, C. H., Newman, D., Drysdale, A. (eds.), Kluwer Law International, London, 201-221.

Lauterpacht, H. (1975): *International Law: Collected Papers*, Cambridge.

Major Peace Treaties of Modern History: 1648-1967, Israel, F. L. (ed.), Vol. 1, Chelsea House Publishers, New York, 1967.

Oxman, B. H. (2006): *The Territorial Temptation: A Siren Song at Sea*, The American Journal of International Law, 100, 830-851.

Prescott, J. R. V., Schofield, C. H. (2005): *The Maritime Political Boundaries of the World*, Martinus Nijhoff Publishers, Leiden, Boston.

UNEP, *Further Rise in Number of Marine "Dead Zones"*, United Nations EnviroMent Programme Press Release of October 19 2006, available at <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=486&ArticleID=5393&l=en>.

United Nations (1983): *The Law of the Sea*, Montego Bay, December 10, 1982, in force November 16, 1994, *UN Document* UN/Doc.A/CONF.62/122 (New York: United Nations) in UNTS, vol. 1833, p.3, also available at <http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm>.

United Nations, *Status of the United Nations Convention on the Law of the Sea, of the Agreement relating to the implementation of Part XI of the Convention and of the Agreement for the implementation of the Convention relating to the conservation and management of straddling fish stocks and highly migratory fish stocks*, New York, updated to 21 July 2011, available at <http://www.un.org/Depts/los/reference_files/status2010.pdf>.

Vidas, D. (2009): *The UN Convention on the Law of the Sea, the European Union and the Rule of Law: What is Going on in the Adriatic Sea*?, International Journal of Marine and Coastal Law, 24/1, 1-66.

Vidas, D. (2010): *The Adriatic Today: Unsolved Issues and Challenges*, MEPIELAN Bulletin, December 2010, available at, <http://www.mepielan-ebulletin.gr/default.aspx?pid=18&CategoryId=4&ArticleId=51&Article=The-Adriatic-Sea-Today:-Unsolved-Issues-and-Challenges>.

Weil, P. (1989): *The Law of Maritime Delimitation - Reflections*, Grotius, Cambridge.