THE ECOLOGICAL AND FISHERIES PROTECTION ZONE (ZERP) IN CROATIA
NOTE

Content:

Although the creation of the Ecological and Fisheries Protection Zone (ZERP) by Croatia is justified as a fisheries resources management measure, its scope goes further than this. There are interferences with border disputes that are serious obstacles to concluding technical agreements. The question of the ZERP has become a priority in the negotiations for the accession of Croatia to European Union.
This note was requested by the Chairman of the European Parliament’s Committee on Fisheries.

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The ecological and fisheries protection zone (ZERP) in Croatia
1. Introduction

Although the creation of the Ecological and Fisheries Protection Zone (Zaštićeni ekološko-ribolovni pojas, ZERP in Croatian) by Croatia is justified as a fisheries resources protection measure, its scope goes even further. There are interferences with border disputes and rhetorical nationalism is creating serious obstacles to the conclusion of technical agreements. The question of the ZERP has become a priority issue in the negotiations for the accession of Croatia to the European Union.

The 1994 Croatian Maritime Code had already provided for the establishment of broad jurisdiction. The ZERP was created on the initiative of the Croatian Peasant Party, which was part of the government coalition in 2003.

The decision to create the Ecological and Fisheries Protection Zone (see Annex II) was published on 3 October 2003 under the Government of Ivica Račan. It entered into force a year later, but excluded the EU Member States from its scope of application. Since 1 January 2008 the zone has been fully in force, even for EU Member States.

With the creation of the ZERP, Croatia extended its jurisdiction to the high seas, with 23 870 km², beyond its territorial waters (31 757 km²).

The boundaries of the ZERP go beyond Croatian territorial waters. They were established according to the Treaty concluded in 1968 between Italy and the Federal Socialist Republic of Yugoslavia and the Treaty concluded in 2001 between Croatia and the Federal Republic of Yugoslavia. According to the 1968 Treaty, the ZERP would reach the Italian/Croatian halfway line on the bed of the continental shelf in the Adriatic.

In principle, the ZERP should guarantee all countries the freedom of navigation and overflight and the freedom to lay submarine cables and pipelines. For fisheries, the ZERP system would provide for the conclusion of agreements with other states to fish the remainder of the total allowable catch, which would be set in order to preserve living resources. The ZERP would allow the Croatian authorities to exercise powers in relation to protecting a vulnerable marine environment and the exploitation of fisheries resources.

Even though the law of the sea allows for the extension of maritime jurisdictions, Croatia’s pretensions go beyond the Community acquis and raise considerable problems with resource management and fisheries monitoring.
At the time of writing this note there have not been many incidents inside the ZERP. On 3 January 2008 the Croatian navy intercepted an Italian trawler with three fishermen and it was taken to the port of Vis. In fact, it appears that this incident was not directly related to the ZERP as the Italian trawler was reportedly inspected in Croatian territorial waters. On 6 February 2008 the Turkish cargo ship *UND Adriyatik* caught fire right on the border of the ZERP. This incident was seen in Croatia as being a test of the effectiveness of the ZERP.

Slovenia and Italy both see the creation of the ZERP as an issue to be resolved prior to any detailed discussion of the options for the management and conservation of fisheries resources. Despite this, the perception of the creation of the ZERP is very different in each of the states bordering Croatia. Italy attaches a great deal of importance to the potential economic effects of restrictions on fisheries. Before the establishment of the ZERP the value of the Italian fleet’s catches in the zone was estimated at 300 million euros, 10 times the value of the Croatian catches. Federcoopesca estimates that a third of the value of Italian catches comes from the ZERP.

Slovenia, meanwhile, wants to maintain its historical access for a limited number of fishing vessels with very restricted possibilities in Croatian territorial waters, along the north-western part of Istria.

In fact, Slovenia’s annual catches amount to around 1 000 tonnes, 40% of which is caught in international waters. Of the 165 boats in the Slovenian fleet, only 23 are longer than 12 metres. The potential access problems would affect these 23 boats and catches of around 400 tonnes per year.

Slovenia’s operational programme for the European Fisheries Fund provides for the implementation of measures to ‘temporarily halt fishing activities’. These measures are aimed at reducing the fishing effort of the Slovenian vessels that are normally active in international waters and could be affected by the Croatian ZERP. Slovenia considers that this situation would only be temporary.

Slovenia, whose coast is only 46.6 kilometres long, is involved in a border and maritime access dispute with Croatia. According to Slovenia, the ZERP is linked to the border dispute over the Bay of Piran.

The Slovenian Government, which has been accused of being weak in defending national interests, has repeatedly said that the issue should be dealt with at EU level. The Prime Minister, Mr Janša, has said that it is up to Croatia to take the next step by implementing the 2004 agreement, or by putting forward a new proposal. Mr Janša has announced that Slovenia would not take advantage of its EU presidency, but that the presidency should nevertheless not be an obstacle to defending Slovenia’s interests. Slovenia has blocked the opening of the fisheries chapter of Croatia’s negotiations for accession to the European Union.

A fresh moratorium does not appear to be sufficient for Italy and Slovenia to enter into new negotiations. Restructuring of the protection zone focusing on the Pomo/Jabuka Pit would be justified from a scientific point of view and make it pointless to maintain the ZERP.

The room for manoeuvre available to the new Croatian Government led by Ivo Sanader is very limited. The creation of the ZERP has very broad political support in Croatia. The Croatian Liberal Social Party (HSLS), the Croatian Peasant Party (HSS) and the Democratic Centre support the ZERP. The Croatian Democratic Union (HDZ), Prime Minister Ivo Sanader’s party,
The ecological and fisheries protection zone (ZERP) in Croatia has a more nuanced position, invoking the possible reactions of the European Union. A revocation of the ZERP would not be easy, given that the alliance of the Croatian Liberal Social Party and the Croatian Peasant Party is in favour of it. Even though this alliance only has 8 members of parliament out of a total of 153, it is assured a solid position in the government, in which it is guaranteed a majority. Croatian public opinion is very much in favour of maintaining the ZERP.
2. Legal issues associated with the ZERP

In order to create the ZERP, Croatia used as a basis the Montego Bay Convention on the Law of the Sea, and the Croatian Government informed the United Nations of its decision before the zone was implemented (see Annex III). Nevertheless, Croatia did not comply with Article 123 of the United Nations Convention on the Law of the Sea on the consultation of neighbouring countries.

The EU’s technical regulations are, in general, more strict than Croatian regulations. Consequently, EU fishermen should not have any problem complying with Croatian standards.

Nevertheless, it appears that Croatia wants to remain in control and limit access in the future, while the Community acquis provides for unrestricted access to Exclusive Economic Zone for Member State vessels.

Chapter III of Regulation (EC) 1967/2006 concerning the conservation of resources in the Mediterranean stated that the Member States had to define for the first time, before 31 December 2007, the protected zones and any management measures to be applied in those zones, both within the waters under their jurisdiction and outside them. Regarding protected national zones, Article 7 states that ‘when a proposed fishing protected area within the territorial waters of a Member State is liable to affect the vessels of another Member State, it shall be designated only after the Commission, the Member State and the Regional Advisory Council concerned have been consulted’.

Croatia claims that the creation of the ZERP is justified by the general guidelines of the Community Action Plan for the conservation and sustainable exploitation of fisheries resources in the Mediterranean, adopted in December 2002 by the EU Agriculture and Fisheries Council. It mentions the prospect of the establishment of new fishery protection zones in the Mediterranean basin. It also states that the ecological protection zone created by France in the Mediterranean in April 2003 is a precedent for the ZERP.

Croatia is also invoking other precedents concerning the extension of jurisdiction in the Mediterranean such as the Fisheries Protection Zone (Spain), the Exclusive Fisheries Zone (Malta), the Reserved Fisheries Area (Algeria), the Fisheries Area (Tunisia), the Exclusive Economic Zone (Morocco, Egypt, and all the countries bordering the Black Sea) and the Extended Territorial Waters (Syria).

Another argument used by the Croatian Government in favour of establishing the ZERP is that of protecting the coastline and the tourist industry from the risk of oil slicks after the sinking of the Prestige.
3. The Slovenian-Croatian dispute

The question of the ZERP is directly linked to the border dispute between Croatia and Slovenia. Less than 1% of the Slovenian-Croatian border is now under dispute relating to the division of the Bay of Piran and the position of the border at the mouth of the Dragonja.

The dispute also concerns the demarcation of the territorial waters of the two countries as far as the Italian waters. Croatia is claiming the application of the provisions of the UN Convention on the Law of the Sea, according to which the Bay of Piran should be divided along the middle line, equidistant from the Croatian and Slovenian coasts. The result of this would be locking Slovenian territorial waters between Croatian and Italian territorial waters. Slovenian waters would have no contact with the high seas. This would not, however, affect the passage of Slovenian vessels that have a right of free passage guaranteed by international legislation.

Since 1993 Slovenia has demanded control of almost all of the Bay of Piran and the creation of a corridor through Croatian territorial waters to the high seas. Croatia rejects the Slovenian proposal as it would have the disadvantage of depriving Croatia of its only border with Italy.

The bilateral fisheries agreement between Slovenia and Croatia has never been implemented. However, until Slovenia joined the European Union, a code of conduct allowed Slovenian fishermen to fish in Croatian waters, in particular for demersal species. Since Slovenia joined the EU, the majority of these fishing opportunities have been suspended.
4. Chronology of the crisis

In the course of 2004, Italy, Slovenia and Croatia met four times (in Trieste on 12 February, in Portorose on 11 March, in Pola on 7 April and in Brussels on 4 June) in the presence of the Commission, in order to find a solution to the dispute.

The agreement concluded at the meeting of 4 June 2004 states that Croatia shall not apply any aspect of the ecological and fisheries protection zone to EU Member States until a joint solution has been found in accordance with the Community *acquis* and taking into consideration the neighbouring EU Member States. Consequently, the Croatian Parliament established an exception for fishing boats from EU Member States.

At the June 2004 European Council Croatia was awarded the status of candidate country. This Council also recorded in its conclusions a political agreement between Croatia, Italy and Slovenia concerning the suspension of the application of the ZERP to European Union vessels. This suspension was also mentioned in the context of the accession negotiations.

Council Decision of 13 September 2004 made it a short-term priority to ‘**work to find definitive solutions to pending bilateral issues, in particular border issues with Slovenia, Serbia and Montenegro and Bosnia and Herzegovina without taking unilateral initiatives. Resolve all issues arising from the unilateral declaration of the protected “Ecological and fishing zone” in the Adriatic’**.

In its 2006 report on the ‘**Accession Partnership with Croatia**’, the EU did not include the issue of the ZERP among its major priorities, merely inviting Croatia to continue to apply the tripartite agreement concluded in 2004.

The Croatian Parliament reviewed its position and on 15 December 2006 established a moratorium for boats from EU fishing fleets until 1 January 2008. Despite the calls from the General Affairs Council on 10 December 2007 and despite the commitments made in 2004, Croatia maintained the limit on the moratorium at 1 January 2008.

On 12 February 2008, the Council updated the conditions imposed on Croatia with a view to its accession to the EU and the list of priorities was reviewed¹. Croatia therefore needs to step up its efforts to resolve the question of the ecological and fisheries protection zone (ZERP).

5. The ZERP and the negotiations for Croatia accession’s to the EU

Council Decision of 13 September 2004 on the principles, priorities and conditions contained in the European Partnership with Croatia set the short-term priority, among others, to ‘work to find definitive solutions to pending bilateral issues, in particular border issues with Slovenia, Serbia and Montenegro and Bosnia and Herzegovina without taking unilateral initiatives. Resolve all issues arising from the unilateral declaration of the protected “Ecological and fishing zone” in the Adriatic.’ Under these circumstances it is clear that unilateral actions relating to the implementation of the ZERP could have a negative effect on the accession negotiations.

In July 2006, in its report to the Council, the Commission recommended that the fisheries chapter be opened in Croatia’s accession negotiations, with no prior conditions. The Council, with the exception of Slovenia, upheld this position. Slovenia demanded the prior condition of an agreement for mutual access to territorial waters in the Bay of Piran.

On 22 September 2006, Slovenia presented its prior conditions to Coreper for opening the negotiations on the fisheries chapter: ‘Croatia should engage constructively in regulating commercial sea fishing, in accordance with the agreement between the Republic of Slovenia and the Republic of Croatia on border traffic and cooperation and, finally, conclude an agreement with the European Commission on the content of the rules for implementing it.’ In the absence of such an agreement, the negotiations have been deadlocked since October 2006.

The Commission, acting as a facilitator, called on two experts (Swedish and Danish). In April 2007 the experts put forward a range of suggestions on arrangements for access to fisheries, as well as inspection and monitoring of fisheries within or outside territorial waters. These proposals were to be followed by the presentation of a wise men’s report.

Italy and Slovenia’s refusal to recognise the ZERP has created an obstacle to reaching an agreement, in particular on the monitoring system. Croatia has declared that there will be no limitation on the number of EU vessels that can fish in the ZERP, but the access conditions still need to be clarified. Croatia refused to take part in a high-level meeting that was proposed by the Commission.
6. A possible solution: the Pomo/Jabuka Pit

The Pomo/Jabuka Pit has been recognised as a critical habitat for demersal species and, in particular, for hake (*Merluccius merluccius*) and lobster (*Nephrops norvegicus*). In 2002 the GFCM had already recommended an increase in the mesh-size of nets or even the temporary closure of the area.

Both Slovenia and Italy are seeking to avoid any negative consequences of the Croatian ZERP. The two countries played an active part in the technical discussions with Croatia on the comparison of the technical rules in the Adriatic and on the protection of vulnerable fishing grounds in the Pomo/Jabuka Pit area in accordance with the CFP acquis. In order to move forward with the issue of the Pomo/Jabuka Pit, the Commission had organised bilateral meetings with Italy in July and September 2007, but the meetings were cancelled by Italy.

Throughout 2007 there were five technical discussions on the technical and monitoring measures for fisheries between Slovenia, Croatia, Italy and the Commission. During these discussions the participants agreed on the need to have a protected fisheries area in the Pomo/Jabuka Pit. This protected area would be partly in the Croatian ZERP and partly in international waters. The location, size and intensity, and the area closed to fishing within the protected area are to be decided. Also to be decided are the other technical measures outside the area closed to fishing, but still within the protected area and the monitoring system.

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ANNEX I: Map of the ZERP
ANNEX II: Decision on the extension of the jurisdiction of the Republic of Croatia in the Adriatic Sea

Pursuant to Article 1042 of the Maritime Code and on the basis of Article 55 of the United Nations Convention on the Law of the Sea, the Croatian Parliament, at its session of 3 October 2003, has adopted the

**DECISION ON THE EXTENSION OF THE JURISDICTION OF THE REPUBLIC OF CROATIA IN THE ADRIATIC SEA**

On the basis of the 1982 United Nations Convention on the Law of the Sea which establishes the right of coastal States to proclaim the exclusive economic zone, and Part V of the Convention which determines the sovereign rights and jurisdiction of coastal States, and rights of other States in this zone,

Keeping in view the 1994 Maritime Code which in Chapter IV (Articles 33 though 42) defines the exclusive economic zone of the Republic of Croatia and sovereign rights and jurisdiction which Croatia can exercise in it, and which in Article 1042 stipulates that the Croatian Parliament is to decide on the proclamation of the exclusive economic zone of the Republic of Croatia, and which states that the provisions of Articles 33 through 42 shall become applicable once the Croatian Parliament has decided to proclaim the exclusive economic zone,

Concerned about the fact that the living resources of the Adriatic Sea are seriously endangered,

Considering the fact that in the past several years the fishing pressure of non-Adriatic and non-Mediterranean States, including the use of the so-called industrial vessels, has been growing.

Aware of the fact that excessive exploitation of the living resources of the Adriatic Sea, due to the impossibility of applying the measures for planning, restricting and controlling the fisheries, mostly occurs in the part of the Adriatic under the high seas regime,

Convinced that the continuation of such practices endangers the sustainable management of fish stocks and their sustainable exploitation, and that it encourages illegal, unregulated and unregistered fishing, and that it is detrimental to the interests of the Republic of Croatia and all other Adriatic States,

Bearing in mind that, according to the definition contained in the United Nations Law of the Sea Convention (Article 122), the Adriatic Sea is an enclosed or semi-enclosed sea, which, because of its small size, is far more vulnerable to pollution than is the case with other seas,

Aware that a disaster, like the one involving the tanker “Prestige”, would have a devastating effect on the living resources of the Adriatic and would cause serious social and economic consequences to the coastal area of the entire Adriatic, including the Croatian economy in general and the Croatian tourism in particular,

Supporting the multilateral efforts aimed to ensure sustainable fisheries in the Mediterranean, as well as the main principles on which arrangements are being made for the Ministerial Conference on Sustainable Fisheries in the Mediterranean scheduled for November 2003 in Venice, in particular:
The ecological and fisheries protection zone (ZERP) in Croatia

- the sovereign right of every State to extend, in accordance with international law, its jurisdiction on the sea;
- the extension of national jurisdiction as a way of ensuring and controlling sustainable fisheries;
- a need for urgent action for protection both the fish stocks and the marine environment;
- co-ordination of measures taken by all coastal States in the field of research, management and fisheries control;
- resort to multilateral mechanisms in reaching these goals,

Believing that the extension of national jurisdiction in the Mediterranean will create conditions for sustainable fisheries, contribute to efficient prevention of illegal, unregistered and unregulated fisheries, and lay foundations for productive bilateral and multilateral co-operation of the Mediterranean States,

Reaffirming the sovereign rights and jurisdiction which the Republic of Croatia, in conformity with international law, is already exercising over its continental shelf,

Taking into account the interests of the Republic of Croatia to preserve traditional fisheries in the Adriatic as one of the principal preconditions for the development of tourism and as an incentive for the local population to remain on the islands,

As a prerequisite for long-term sustainable and rational management of the living resources of the sea and for appropriate protection of the marine environment of the Adriatic Sea, in accordance with Part V of the 1982 United Nations Convention on the Law of the Sea and pursuant to Article 1042 of the Maritime Code:

1. The Croatian Parliament hereby proclaims the content of the exclusive economic zone related to the sovereign rights for the purpose of exploring and exploiting, conserving and managing the living resources beyond the outer limits of the territorial sea, as well as the jurisdiction with regard to marine scientific research and the protection and preservation of the marine environment, whereby the ecological and fisheries protection zone of the Republic of Croatia is established as of today.

2. The Croatian Parliament reserves the right to proclaim, when it deems appropriate, the other elements of Chapter IV of the Maritime Code, in accordance with the United Nations Convention on the Law of the Sea.

3. The implementation of the legal regime of the ecological and fisheries protection zone of the Republic of Croatia shall commence twelve months after its establishment. As of that day, the implementation of Articles 33, 34 paragraph 1 (a), Articles 35, 41 and 42 contained in the Chapter IV Economic Zone of the Maritime Code, shall also commence. The said period shall be used for preparing the implementation mechanisms and for possible signing of agreements or making arrangements with interested States and the European Communities.

4. Without prejudice to the sovereign rights and jurisdiction of the Republic of Croatia, the ecological and fisheries protection zone of the Republic of Croatia protected in this manner, remains a sea area where all States shall enjoy freedoms, as guaranteed under international law, of navigation, overflight, laying submarine cables and pipelines, and other internationally lawful uses of the sea.

5. The ecological and fisheries protection zone of the Republic of Croatia comprises the maritime area from the outer limit of the territorial sea seaward up to its outer limit allowed under general international law. The outer limit of the ecological and fisheries protection
The ecological and fisheries protection zone (ZERP) in Croatia shall be determined through the delimitation agreements with the States whose coasts are opposite or adjacent to the Croatian coast.

6. Pending the conclusion of the delimitation agreements, the outer limits of the ecological and fisheries protection zone of the Republic of Croatia shall temporarily follow the delimitation line of the continental shelf established under the 1968 Agreement between the SFRY and the Italian Republic on Delimitation of the Continental Shelf, and, in adjacent delimitation, the line following the direction of and continuing the provisional delimitation line of the territorial seas, as defined in the 2002 Protocol on the Interim Regime along the Southern Border between the Republic of Croatia and Serbia and Montenegro.

7. The Republic of Croatia will closely co-operate with all Adriatic and other interested Mediterranean States in an effort to protect the Adriatic and the Mediterranean through a concerted action.

8. This Decisions shall become effective forthwith.

File No: 30201/0301/02

Zagreb, 3 October 2003

CROATIAN PARLIAMENT

PRESIDENT OF THE CROATIAN PARLIAMENT

Zlatko Tomčić

[signed]

The Permanent Mission of the Republic of Croatia to the United Nations offers its compliments to the Secretary General of the United Nations, in his capacity as guardian of the 1982 United Nations Convention on the Law of the Sea, and has the honour of informing him of the following:

The Croatian Parliament passed a decision on the extension of the jurisdiction of the Republic of Croatia in the Adriatic Sea on 3 October 2003. By means of this law of the Croatian Parliament, from this day forward, the Republic of Croatia’s ecological and fisheries protection zone has been established outside the external limits of Croatian territorial waters. The Republic of Croatia will, in its ecological and fisheries protection zone, in accordance with the United Nations Convention on the Law of the Sea and on the basis of the Exclusive Economic Zone regulations (Article 56), exercise its sovereign rights of exploration and exploitation, conservation and management of living resources outside the boundaries of its territorial waters, as well as jurisdiction over marine scientific research, and the protection and conservation of the marine environment. The implementation of the regulations established by this decision shall enter into force on 3 October 2004.

Without prejudice to the sovereign rights and jurisdiction of the Republic of Croatia, the ecological and fisheries protection zone of the Republic of Croatia remains a maritime zone in which all states shall have freedoms, as guaranteed under Article 58(1) of the United Nations Convention on the Law of the Sea: ‘…navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention’.

The Republic of Croatia’s ecological and fisheries protection zone covers a maritime area from the external limit of the territorial waters to the open sea up to its external authorised limit under general international law. The external limits of the Republic of Croatia’s ecological and fisheries protection zone shall be determined by delimitation agreements with the neighbouring states in accordance with Article 74 of the United Nations Convention on the Law of the Sea.

While awaiting the conclusion of the delimitation agreements, the external limits of the Republic of Croatia’s ecological and fisheries protection zone shall temporarily follow the delimitation line of the continental shelf established under the 1968 agreement between FYROM and the Italian Republic on the delimitation of the continental shelf, and, for the adjacent delimitation, the line along the direction and the continuation along the provisional delimitation of territorial waters, as defined in the 2002 protocol on the interim regulations along the southern border between the Republic of Croatia and Serbia and Montenegro.

A copy of the decision of the Croatian Parliament of 3 October 2003 on the extension of the jurisdiction of the Republic of Croatia in the Adriatic Sea, which was published in the Official Gazette of the Republic of Croatia No 157/2003, is enclosed, along with an English translation.
The list of the coordinates of the provisional external limits of the Republic of Croatia’s ecological and fisheries protection zone shall be submitted in good time to the Secretariat.

Yours faithfully,