Chapter 9

Neptune's Turn: Maritime Policy during the Maltese Presidency

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It was not surprising that Malta included initiatives in the maritime sector in its six-month presidency priorities. As an island state at the centre of the Mediterranean Sea, Malta could hardly sidestep the sector. The justification for its inclusion was couched in much broader political terms: that the EU was increasingly becoming dependant on the seas and hence the need to further strengthen the maritime sector under the EU Integrated Maritime Policy (IMP). In the words of the "Maltese Priorities", the oceans offered "a diverse spectrum of innovative research and commercial activities that could be developed into high value-added job opportunities in line with the Blue Growth Initiative towards growth and competitiveness".²⁶⁷ In this respect, the Maltese Priorities mentioned two concrete steps: international ocean governance aiming to secure "political endorsement on the way forward on a more coherent, comprehensive and effective EU policy to improve the international ocean governance framework and the sustainability of our oceans"; and the launching of the Western Mediterranean Initiative (Government of Malta, 2017).

In its appraisal of the performance of the Maltese presidency of the Council of the EU in the maritime sector, the newspaper *Politico* gave Malta a 10/10. The same source described as a "crowning achievement" a political agreement reached on technical measures to limit fishing (Politico, 2017). This agreement was reached on 11 May 2017, when according to a Council statement, "the Agriculture and Fisheries Council agreed on a common position on a proposal for new rules on the conservation of fishery resources and the protection of marine ecosystems, often referred to as 'technical measures'."²⁶⁸ The decision is intended to permit the modernization of existing rules on how and where fishermen fish and regulate the landing of fisheries resources, technical specifications of fishing gear and measures to protect depleted fish species.²⁶⁹

This chapter assess the work of the Maltese Presidency of the EU Council in the maritime sector. It will not dwell on the technical decisions reached, many of which became EU law after the Maltese presidency, but will focus instead on other achievements that strongly impact future EU policy

²⁶⁷ Government of Malta, 2017.

²⁶⁸ Council of the EU, 2017b.

²⁶⁹ Ibid.

development such as Ocean Governance. Ocean Governance covers several activities such as the legal framework based on treaties, customary international law, general principles considered the norm by many states as well as decisions of international courts to mention a few. It includes policies pursued at global and regional levels, their implementation, governing institutions, environmental protection of the oceans, economic activity on the seas and much more.

As a small state with rather limited diplomatic and financial resources which it could dedicate to the Presidency, Malta managed to achieve significant results in coordinating the development of maritime policy during its Presidency, certainly more than just the conclusion of difficult technical dossiers which is also an achievement in its own right: it laid the ground work for far reaching maritime policy developments if the initiatives approved during the presidency are followed through. How can we explain this? My initial take is that Malta felt quite at home in maritime policy because its very existence depends so much on the maritime sector and over several decades it has gathered enough experience and knowledge to help it navigate this policy framework well. The second reason is that over the years, Malta has managed to accumulate a reservoir of expertise in the maritime sector which helped it in no small way in achieving its objectives during the presidency.

Ocean Governance

In March 2017, Malta's foreign minister, Dr George Vella, expanded further on the Maltese ambitions in the maritime sector during a speech he gave at the International Maritime Law Institute (IMLI) at the University of Malta. Minister Vella said that apart from Blue Growth, Malta was aiming to secure a political endorsement at the level of the EU, on how to proceed on international ocean governance "in ensuring the sustainable use of oceans and how best to develop a more coherent, comprehensive and effective EU policy to improve this framework".²⁷⁰ He also stressed the importance of the Western Mediterranean Initiative, progress on nautical tourism, the prioritisation of maritime transport in the EU agenda grounded in the accepted principle that the sector is a global industry regulated at world level. The Minister also said that Malta wanted to prioritise other objectives such as ship safety, the protection of life at sea, living and working conditions, health and safety standards of seafarers.²⁷¹

A few weeks later, on 24th March 2017, the Council of the EU adopted conclusions on "International ocean governance: an agenda for the future of our oceans."²⁷² It is important to highlight here, that a Joint communication

²⁷⁰ Vella, 2017.

²⁷¹ *Ibid*.

²⁷² Council of the EU, 2017a.

by the High Representative of the EU for Foreign Affairs and Security Policy and the European Commission on "International ocean governance: an agenda for the future of oceans" which was published on 10 November 2016, had paved the way for the Council declaration. This type of declaration is of a non-binding nature but gives policy directions and a framework to guide future EU action in this field. Hence, though the progress made during Malta's EU presidency may be underrated because the groundwork was prepared before the Maltese presidency, it is nevertheless important that the dossier was successfully closed.

The 2017 Council declaration is significant because it identifies a number of fronts on which the EU and its member states need to take urgent action, beginning by stepping up their efforts to protect the oceans from adverse pressures. The declaration makes several major policy proposals which are already deeply rooted in the EU law, (the *acquis communautaire*) policies and practice. The declaration:

- upholds UNCLOS and all treaties and initiatives concluded at the multilateral level to protect the oceans;
- stresses the need for all EU member states to abide by them;
- highlights the importance of the social dimension, particularly support for jobs in the maritime sector;
- calls on the Commission to propose initiatives to the Council to develop Ocean Partnerships with key international partners, as a means of improving global governance and policy coherence vis-à-vis the oceans;
- encourages the EU and its member states to use development aid to strengthen global governance of the oceans in a sustainable and integrated approach;
- calls for more effort to strengthen maritime security; emphasizes the need to address climate change effects on the oceans and protect the ocean environment by controlling pollution. In this case, it emphasized the need to prevent marine litter, banning micro-plastics and stopping illegal or unregulated fishing;
- highlights the protection of biodiversity;
- proposes the boosting of marine and maritime research and innovation activities in Horizon 2020 and its successor programme.

The declaration opens a broad front that requires a lot of energy to implement and several policy initiatives in the different sectors mentioned in the coming years. But in the end, most of the policies and measures listed have to be implemented by governments who are notoriously dexterous for slipping their legal harness. This applies to the EU member states who have a very bad history when it comes to the unsustainable exploitation of fishery resources and to the non-member states over which the EU has no jurisdiction to compel them to adhere and implement agreed measures. Strengthening research and innovation – and cooperation with civil society as the declaration proposes, can increase knowledge about the problems posed and help mobilise international public opinion to pressurize governments into action. The role of public opinion is itself complex with several ramifications as we find in a resolution on ocean governance approved by the European Parliament on the 16^{th} January 2018 which stressed:

"that improving transparency, public accessibility of information, stakeholder involvement and the legitimacy of UN organisations, including public accountability of country representatives at international bodies such as the International Maritime Organisation (IMO) and the International Seabed Authority (ISA) is a matter of priority in addressing existing shortcomings in the governance framework." ²⁷³

Ocean governance has a special place in Malta's history. In 1967, just three years after gaining independence from the United Kingdom, Malta's Permanent Representative at the UN, Arvid Pardo, made a statement at the UN General Assembly calling for the resources of the oceans of the deep sea bed to be declared as the "common heritage of mankind".

The proposal led to the start of the UN Conference on the Law of the Sea, culminating in the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The common heritage was meant to prevent an anarchic scramble for the resources of the deep seabed, which could only benefit those states which had the power and technological capabilities to take advantage of the situation. Later, in the 1982 UN Convention on the Law of the Sea, the deep sea bed was defined as "the area" comprising the "seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction".²⁷⁴ Pardo had passionately argued that declaring the natural resources of the deep seabed as Common Heritage of mankind would help bridge the economic gap separating the developing and developed States and thus reduce the propensity for international conflict. A 1970 UN General Assembly (UNGA) Resolution further elaborates the operational principles of "the area", mainly: (i) "non-appropriation" meaning that no "states or persons, natural or juridical, and no "state shall claim or exercise sovereignty or sovereign rights" over it; (ii) all activities within it were to be governed by an international regime which was yet to be established; (iii) all exploitation of resources was to be carried out for the benefit of mankind as a whole; (iv) "the area" was to be reserved exclusively for peaceful purposes; (v) benefits were to be shared equitably by all states and (vi) states were to protect the marine environment and conserve the natural resources of the area.²⁷⁵

²⁷³ European Parliament, 2017.

²⁷⁴ UN Convention on Law of the Sea.

²⁷⁵ United Nations General Assembly, 1970.

Malta also participated in the 1975 UN Environmental Programme's (UNEP) Mediterranean Action Plan (MAP) for the Protection of the Mediterranean Sea against pollution which was based on the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution signed that same year. Concluded between the European Economic Community and sixteen Mediterranean littoral states, MAP grew out of UNEP's Regional Seas Programme and was intended to serve as a model for similar plans for the other oceans. In 1995, MAP was replaced by the Action Plan for the Protection of the Marine Environment and the Sustainable Development of the Coastal Areas of the Mediterranean (MAP Phase II). Malta participated in this initiative from the start. A Regional Oil Combatting Centre (ROCC) was established in Malta in 1976 and in 1989 it was transformed into a Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC).

The EU has seen a steady and consistently growing interest in a holistic approach to the maritime sector since 2007 when the European Commission published the 'Blue Paper' setting out the parameters of an integrated maritime approach.²⁷⁶ The integrated approach is based on the notion that the EU can reap better results by coordinating its maritime policies in order to exploit the many and diverse resources of the oceans while at the same time safeguarding their long-term sustainability. This major step forward in the EU's maritime policy occurred under the guidance of European Commissioner Joseph Borg (2004–2010). Commissioner Borg had indicated two priorities at the start of his stint as Commissioner: setting the European Union on the path towards a European Maritime Policy which would increase the coherence and co-ordination between the EU's sea-related policies and activities, "extend and optimise the range of benefits that (are) derived from maritime activities without threatening the integrity of the resource base: the sea itself."277 The second objective which was closely linked to the first was to secure "the ecological, economic and social sustainability of the European fishing and aquaculture industry".²⁷⁸

The current EU Commissioner for the Environment, Maritime Affairs and Fisheries (2014–2019), Karmenu Vella, summarizes his priorities in an antonymic way which however show continuity with the efforts of his predecessors: protecting Europe's environment while maintaining competitiveness; creating sustainable jobs while safeguarding resources; implementing the new Common Fisheries Policy and "leading the task with the EU's global partners, of defining the management and governance of (our) planet's oceans."²⁷⁹ However, beyond this, there is a point to be made

²⁷⁶ European Commission, 2007.

²⁷⁷ Borg, 2009 Archives.

²⁷⁸ *Ibid*.

²⁷⁹ Commissioner Vella, 2017.

that physical geography can mould the political culture of a state in a certain way so that certain forms of behaviour tend to recur. The fact that Malta is an island explains its maritime "bent". But it also shows that to a greater extent than is immediately apparent, that its political culture has been conditioned by this fact of its physical geography which may explain policy continuity in the maritime sector.

The Blue Economy

The Blue Economy has become the cornerstone of EU maritime policy and not surprisingly the concept has also been gaining interest in research and academic analysis, though it has not so far made perceptible inroads. The definitions of Blue Growth vary a lot, according to what they include and leave out, but a familial resemblance has already emerged that safeguards its integrity, namely that the diverse definitions have not rendered the concept vague, ambiguous and useless as an analytical tool. Peter Ehlers said that the Blue Economy covers "the traditional maritime industry: maritime transportation as the core of maritime industry, including port services and shipbuilding, as well as fisheries, and also the exploitation of oil and gas from the seas. These sectors are still gaining in importance."²⁸⁰ However, he also highlights the European Commission's identification of five newer areas of activities that hold a lot of promise for further growth of the Blue Economy, namely aquaculture, coastal and maritime tourism (blue tourism) marine biotechnology (blue biotechnology), ocean energy (blue energy) and Seabed mining. Many of these are already key important contributors to Malta's economy, with tourism alone contributing just under 15% to Malta's GDP in 2017, and 26% if the indirect and induced effects are taken into account²⁸¹

The Blue Economy is predicted to continue expanding in the next 15 years. However, it should not be assumed that it will generate only positives. There are bound to be unintended consequences, as well as costs. Many of the sectors have reciprocal negative effects: the development of offshore activities affects maritime transport, coastal development restricts coastal fishing; acqua culture, coastal and marine tourism, marine renewable energy and recreational fisheries compete for limited coastal space. In a word, the development of the Blue Economy can further stress the Mediterranean ecosystem and the outcome of these developments cannot be predicted with precision.²⁸² With a rapidly expanding population around the Mediterranean coast and the effects of climate change the pressures can only increase. The other problem is that when confronting Mediterranean challenges, the EU cannot operate alone but must secure the active

²⁸⁰ Ehlers, 2016.

²⁸¹ World Travel and Tourism Council, 2017.

²⁸² Piante and Ody, 2015.

cooperation of the non-EU Mediterranean states. Of itself, this produces additional political challenges that require time and effort to implement.

Much to its credit, the Maltese Presidency did not focus exclusively on the beneficial effects of Blue growth. During the Presidency, the European Commission organized a Ministerial Conference in Malta on sustainable fishing in the Mediterranean which took place on the 29th and 30th March. This conference managed to secure the participation of 22 ministers from the 23 littoral states. The conference endorsed the Malta MedFish4Ever Declaration, another piece of soft law which however, was the only possible accord that could be secured from this multilateral initiative. Again the importance of this declaration is that it establishes a set of political and policy objectives which need to be monitored for compliance in the years to come. Over 90% of Mediterranean fish stocks assessed are over-exploited, and despite recent efforts the situation is not improving. Managing fish stocks is complicated by the fact that many of them are shared with non-EU countries. The Declaration will be useful in the EU's diplomatic efforts towards the sustainable and balanced management of Mediterranean fish stocks to convince all the littoral states of the urgent need of its implementation. The Malta meeting followed other gatherings on the same problem which took place in Brussels (April) and Catania (February) the previous year, both of which were addressed by Commissioner Vella.

The European Ministers responsible for Blue growth met in Valletta on 20th April 2017. This was an Informal Ministerial meeting which did not focus exclusively on Blue Growth but also on ocean governance, innovation and nautical tourism. It was co-chaired by Commissioner Vella. The final Declaration adopted by the ministers dwelt mainly on the "positives" of the Blue Economy, but attention was also drawn to certain worrying aspects that required more work such as "the value of healthy and productive oceans for the blue economy", the need to maintain sustainability and improve ocean governance.²⁸³ Sustainability was the key word of the declaration, appearing no fewer than 16 times in the document.

The ministers called on the EU Member States "to identify potential gaps and challenges, mainly those posed by climate change and insularity, to ensure that the outermost, peripheral, coastal and island regions are offered adequate growth opportunities and benefit from all the relevant funding streams without prejudice to any future discussions. Innovative actions in those regions should respond to those challenges and inefficiencies by facilitating access to markets and services such as e-health, water adequacy, energy efficiency, promotion of circular economy, as well as research to increase the

²⁸³ Valletta Declaration, 2017.

knowledge base on relevant strengths and weaknesses, including on coastal erosion, desertification and ocean acidification."²⁸⁴

The declaration is useful because it is a springboard for the further development of the EU's 2012 Blue Growth Strategy.²⁸⁵ It maps out a number of policy initiatives and further studies that the EU needs to embark on in the future to ensure that the conditions for blue growth are strengthened and the environment and ecosystem of the oceans, including the Mediterranean, are safeguarded. It encourages action to meet other serious challenges, some of them already known, such as the need for marine spatial planning and measures against the negative effects of climate change. It underlines the importance and role of innovation and research, skill improvement of the workforce, the circular economy, the role of regional authorities, the strengthening of business and trade links.

The Blue Economy in the Western Mediterranean Basin

On the 19th April 2017, the Commission published a Communication on the sustainable development of the blue economy in the Western Mediterranean (European Commission, 2017). This communication was the work of Commissioner Vella and Johannes Hahn, Commissioner for European Neighbourhood Policy and Enlargement Negotiations. For the proposed actions to be put into effect, the EU has to cooperate with non-member countries in the region. However, cooperation and dialogue between both shores of the Western Mediterranean is not a novelty.

The creation of the Arab Maghreb Union in 1989 and the start of the EU's New Mediterranean Policy in 1990 led to the launching of the 5+4 Dialogue, the brain child of French President Francois Mitterrand, involving France, Italy, Portugal and Spain on the northern shore and Algeria, Libya, Mauritania, Morocco and Tunisia on the southern shore. Malta joined this informal dialogue from 1990 as an associate member but became a full member soon after, for which reason the dialogue became the 5+5.²⁸⁶ It is perhaps the informality of this dialogue and the tenacity with which it has been supported by all the participating states at various stages that has kept it alive. The dialogue's progress has not been linear and it has withstood several storms and friction. For example, problems between Algeria and Morocco over the Western Sahara have often rocked it. The imposition of UN sanctions on Libya in 1992 which lasted until they were lifted in 2004 also raised serious obstacles as did the 2001 Gulf War. Regular ministerial meetings have more or less been the norm since the one held in Oran, Algeria in 2004.

²⁸⁴ *Ibid*.

²⁸⁵ European Commission, 2012.

²⁸⁶ Rome Declaration, 1990.

The first summit of the heads of state and of government of the 5+5 took place in Tunis in 2003 and the second in Malta in 2012. Over the years, the dialogue has evolved and expanded its remit to include other areas in addition to the foreign ministers' meetings, a process which began in 1995. Migration was added in 2002, an inter-parliamentary dialogue in 2003, defence in 2004 and tourism in 2006. In 2007 transport was also added, followed by education in 2009 and the environment in 2010.²⁸⁷ The last foreign ministers' conference met in Algiers in January 2018. At the meeting it was decided that Malta would succeed France in assuming, for the next two years, the northern co-presidency of the 5+5 Dialogue, a position it had held in 2005. It is also relevant to observe that the 5+5 work closely together within the ambit of the Union for the Mediterranean (UfM) to which all the ten countries belong and in collaboration with the UfM's secretariat.

This brief foray into the 5+5 or as it is increasingly referred to, the Western Mediterranean Forum, was needed to show as succinctly as possible the several links of cooperation that link the countries on the two shores of the Western Mediterranean and why this sub-region has all the necessary conditions to successfully complete the proposed initiatives included in the Communication on the sustainable development of the Blue Economy in that sub-region. However, it would be foolish to believe that these links of interdependence are sufficient for the success of the project. The devil is usually in the details and it is these that will make or break the initiative. One thing is certain that the EU and its member states will have to sweat a lot to make it work.

In the Communication the EU proposes several goals, actions and targets summarized in the diagram below. The targets are very ambitious and depend a lot on efficient implementation at national level.

After the Maltese Presidency of the Council of the EU, the Western Mediterranean states meeting in Naples in November 2017 approved the governance and management structure of the initiative. It was decided that the political direction would continue to be provided by the ministerial meetings and that a WestMed Steering Committee be established to act as the main decision-making body. The Steering Committee is composed of one or two national representatives (it is up to the state concerned to decide how many to appoint), the European Commission and the UfM Secretariat.²⁸⁸ The Steering Committee is co-chaired by a member from a Maghreb state and another from the EU (European Commission, 2017b).

²⁸⁷ Dialogue, 5+5.

²⁸⁸ Naples Declaration, 2017.

Conclusion

Six months are not a century and it places natural limitations and restraints on a small country presidency like Malta's. It is always difficult to assess the success or failure of a presidency in a particular policy area considering that many dossiers are initiated before the presidency begins and major political agreements achieved at Council level during the presidency may become hard law only after the presidency's term has ended. This is certainly Malta's experience in the maritime field. In our assessment Malta managed to do a lot and the "technical" agreement reached in limiting fishing in order to conserve fish species in the long-term merits a lot of attention because it managed to unblock a stalemate that had lasted for some years.

On 22nd March 2018, as a follow up on the MedFish4ever Declaration of 2017, the *General Fisheries Commission for the Mediterranean* (GFCM) on which 23 Mediterranean littoral states and the EU, including states of the Black Sea, are represented and which is authorized to adopt binding recommendations on the conservation and management of fishery resources in the region under its purview, issued a set of proposals whose objective is to restore and preserve healthy fishing stocks.²⁸⁹ According to a press statement issued by the European Commission, "The measures ... cover, *inter alia*, a joint inspection and surveillance scheme for the Strait of Sicily and management plans for Turbot in the Black sea, Red coral in the Mediterranean and Blackspot seabream in the Alboran Sea. The measures also set out new fishing restricted areas in the Adriatic Sea and the Strait of Sicily."²⁹⁰ Another objective of the proposals is to change and implement a number of EU legal instruments to implement the decision.

However, moving beyond the practical management of fisheries resources and their conservation for enjoyment of future generations of consumers and the fishing industry, the Maltese Presidency also chalked important achievements in completing key Council declarations which serve as a springboard for future policy developments particularly in global governance and the Western Mediterranean.

Approaches to the Blue Economy and blue growth – which lie at the heart of maritime policy – were also clarified further and boosted by the Maltese Presidency which was alert to the inherent challenges they posed. The traditional and newer forms of economic activities in the Blue Economy can

²⁸⁹ The *General Fisheries Commission for the Mediterranean* (GFCM) is established under the provisions of Article XIV of the FAO Constitution. Its parties – 24 in all – include 9 Mediterranean states, 3 Black Sea states, the European Union and Japan. Partners: the EU and the following member states Bulgaria, Croatia, Cyprus, France, Greece, Italy, Malta, Romania, Slovenia, Spain; the non-EU states: Albania, Algeria, Egypt, Israel, Lebanon, Libya. Monaco, Montenegro, Morocco, Syria, Tunisia and Turkey; and Japan.

²⁹⁰ European Commission, 2018.

lead to benefits, but these sectors also create externalities to each other which need to be mitigated. Hence, for example, a more intensive use of coastlines increases competition for space and calls for spatial management. Unmanaged growth in the Blue Economy can lead to negative consequences.

Lastly, the Western Mediterranean initiative was successfully launched which aims at creating a macro-region in that sub-region linking 10 countries from both shores of the Mediterranean Sea. This was another presidency milestone.

Ocean governance, maritime policy and maritime affairs are of growing importance for the present and future of the world. The maritime sector is a complex one which can only be fully understood - if at all - by a cross and approach several fronts inter-disciplinary on tackling economic. environmental and political problems. The marine environment is increasingly being placed under enormous pressure by man-made, humaninduced problems stemming from misuse of resources and the negative impacts of climate change. As a maritime state, an island state, Malta was able to transmit clearly, diligently and successfully its sensitivities toward this sector and using its first-hand knowledge of the issue it was able to overcome the drawbacks of smallness and lead.

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DIAGRAM GOALS, PRIORITIES AND TARGETS BLUE ECONOMY WESTERN MEDITERRANEAN		
GOALS	PRIORITIES	TARGETS
A safer and more secure maritime space	Cooperation between coastguards Maritime safety and response to marine pollution	Full coverage of Automatic Identification System by 2018 aiming to share more maritime traffic monitoring data at regional level; Border surveillance strengthened by involving neighbourhood countries in the Seahorse Mediterranean Network by 2018.
A smart and resilient blue economy	Strategic research and innovation Maritime clusters development Skills development and circulation Sustainable consumption and production (maritime transport, ports, maritime and costal tourism, marine aquaculture)	 Western Mediterranean countries included in the BLUEMED Initiative and in its Strategic Research Agenda by 2017; 25 % increase in certified eco-ports and marinas by 2022; 20 % increase in sustainable aquaculture production value by 2022; 20 % increase in off-season tourist arrivals by 2022.
Better governance of the sea	Spatial planning and coastal management Marine and maritime knowledge Biodiversity and marine habitat conservation Sustainable fisheries and coastal community development	 100 % of the waters under national jurisdiction and 100 % of coastlines to be covered by Maritime Spatial Planning and Integrated Coastal Management and their implementing mechanisms by 2021; At least 10 % of the coastal and marine areas to be covered by marine protected areas and other effective area-based conservation measures by 2020; 20 % reduction in marine litter on beaches by 2024; Southern Mediterranean countries to be included in EMODNET by 2020; All States equipped with adequate legal framework and human and technical capabilities to meet their fisheries control and inspection responsibilities as flag, coastal and port States by 2020; 100 % of key Mediterranean stocks24 to be subject to adequate data collection, scientifically assessed on a regular basis and managed through a multiannual fisheries plan by 2020.