The Enforcement in the Mediterranean of United Nations Resolutions on Large-Scale Driftnet Fishing

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I. Large-Scale Driftnet Fishing

As described in United Nations General Assembly Resolution 44/225 of 22 December 1989, fishing with large-scale pelagic driftnets is "a method of fishing with a net or combination of nets intended to be held in a more or less vertical position by floats and weights, the purpose of which is to enmesh fish by drifting on the surface or in the water". "Large-scale driftnet fishing" has been defined as "a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing"1.

This method of fishing is considered highly indiscriminate and wasteful. In addition to targeted species of fish, non-targeted fish, marine mammals, sea birds and turtles may also become entangled in large-scale pelagic driftnets, either in those in active use or in those that are lost or discarded2.

1 This article is based on a paper presented at a Conference on "The Magnuson-Stevens Act: Sustainable Fisheries for the 21st Century?", held at Tulane University, New Orleans, United States. - Section 206c, 2, of the Magnuson-Stevens Fishery Conservation and Management Act of the United States (Public Law 94-265), as amended by 11 October 1996.

2 On driftnet fishing see M. Savini, "La réglementation de la pêche en haute mer par l'Assemblée Générale des Nations Unies — A propos de la Résolution 44/225 sur les grands filets maillants dérivants", AFDI 36 (1990), 777 et seq.; FAO Legislative Study 47, The Regulation of Driftnet
In the case of driftnets, the basic instrument is Resolution 46/215 of 20 December 1991, according to which the United Nations General Assembly unanimously recommended a moratorium by 31 December 1992 on all large-scale pelagic driftnet fishing, as regards the high seas of the world's oceans and seas, including enclosed and semi-enclosed seas. This recommendation has been reaffirmed several times, most recently by General Assembly Resolution 51/36 adopted on 21 January 1997.

The prohibition of large-scale driftnets is embodied in a number of regional treaties relating to specific seas and in several pieces of domestic legislation. One of the most interesting examples of legislation in this field has been enacted by the United States. The High Seas Driftnet Fisheries Act (United States Public Law 102-582 of 2 November 1992) aims at affirming the policy of the United States to, inter alia, "secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation".

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3 The preamble of the resolution recognizes that "a moratorium on large-scale pelagic driftnet fishing is required, notwithstanding that it will have adverse socio-economic effects on the communities involved in high seas pelagic driftnet fishing operations" and notes that "the grounds for concerns expressed about the unacceptable impact of large-scale pelagic driftnet fishing ... have been confirmed and that evidence has not demonstrated that the impact can be fully prevented".

4 By this resolution the General Assembly "reaffirms the importance it attaches to compliance with its resolution 46/215, in particular to those provisions of the resolution calling for full implementation of a global moratorium on all large-scale pelagic driftnet fishing on the high seas of the world's oceans and seas, including enclosed seas and semi-enclosed seas".

5 See notes 52 and 53.

6 The act is based on the precautionary principle: "Members of the international community have reviewed the best available scientific data on the impacts of large-scale pelagic driftnet fishing, and have failed to conclude that this practice has no significant adverse impacts which threaten the conservation and sustainable management of living marine resources" (Section 2 lit. (a), 3).

7 If applied to the Mediterranean, the United States legislation on high seas driftnets presents a strange peculiarity. As it refers to the marine areas "beyond the exclusive economic zone of any nation" this legislation