

The Significance of International Legislation in Integrated Coastal Zone Management

Kıyı Alanı Yönetiminde Uluslararası Tüzel Düzenlemelerin Önemi

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Abstract

The pressure and deterioration created by unsustainable development activities are still threatening fragile ecosystems of the coastal zones at a global scale. This study aimed to conceptually handle integrated coastal zone management as a proposed solution to the global problem. Following an analysis pertaining to the progress in the conceptual framework, the study discusses the respective legislation developed within the multi-lateral international relations system. The discussion includes an analysis of the basic principles and mechanisms that such legislation is based on. Legislative instruments are assessed in terms of their levels - global or regional- as well as their direct or indirect involvement of coastal zone management.

Keywords: Coastal management; area zone, legislation, conventions, arrangements.

Conceptual Framework

Conceptually speaking, since mid-1960s various terminology including: “coastal zone management”, “coastal area management”, “shore management”, “coastal resources management”, “sea-use planning”, “coastal management”, “cross-sectorial, integrated coastal area planning” are utilized to express the governance and management of human activities in coastal zones. Since 1990s, however, the terms “integrated coastal zone management” (ICZM) and “integrated coastal area management” (ICAM) are now preferred by both academics and practitioners and appear to be the terms most commonly used in the literature. Although these terms seem to substitute for each other and aim at the same objective, it is a known fact that they contain some differences in terms of approach and practice. (Meltzer, 1998). “The term coastal zone would refer to the geographic area defined by the enabling legislation for coastal management, while coastal area would be used more broadly to refer to the geographic area along the coast that has not yet been defined as a zone for management purposes” (Scialabba, 1998). While the USA, Canada and the World Bank prefer to refer to this concept as ICZM, United Nations organizations and programs such as the UNEP and FAO tend to use the term ICAM. In integrated coastal management, referring to the space in question as *zone* or *area* does not create any difference in the context of the desirable global or common objective.

In Integrated Coastal Management (ICM), the common objective : “...is to improve the quality of life of human communities who depend on coastal resources while maintaining the biological diversity and productivity of coastal ecosystems. Expressed in this way, the goal of ICM is clearly consistent with national and international commitments to sustainable development for all environments (terrestrial and marine), from the headwaters of catchments (watersheds) to the outer limits of exclusive economic zones (EEZ), whether or not they are subject to multiple jurisdiction.” (GESAMP, 1996).

In the last four decades, ICZM has remarkably developed not only in the fields of academic studies and the implementation thereof, but also

the practice at global, regional and national levels. One can easily argue that the progress achieved in the conceptual definition, characteristics, principles and technical instruments of the ICZM have had a positive effect on the development of its institutional and legislative dimensions. Nevertheless, although there appears to be an international political will in favor of sustainable development in coastal zones, the challenges in practice make one wonder whether this concept is able to achieve its objective as an effective instrument and whether it is adequately supported by necessary legislative and institutional tools.

Literature offers various conceptual definitions for ICZM. Certain definitions suggest that this concept: "...is a resource management system which employs an integrative, holistic approach and an interactive planning process in addressing the complex management issues in the coastal area" (Meltzer, 1998). On the other hand, the European Union definition concerning ICZM reads as follows: "...a continuous process with the general aim of implementing sustainable development in coastal zones and maintaining their diversity. To this end, it aims, by more effective management, to establish and maintain optimum (sustainable) levels of use, development and activity in coastal zones, and eventually to improve the state of the coastal environment" (Gibson, 1999). As defined by the Mediterranean Action Plan: "Coastal zone management is an activity within the broad field of resource management. Resource management may be defined as a conscious process of decision-making whereby natural and cultural resources are allocated over time and space. This allocation aims to optimize the attainment of stated objectives of a society, within the framework of its technology, political and social institutions, and legal and administrative arrangements" (UNEP/MAP, 1994). According to another definition, ICZM "is a dynamic and continuous process of administering the use, development, and protection of the coastal zone and its resources towards common objectives of national and local authorities and the aspiration of different resource user groups" (Meltzer, 1998). On the other hand, some argue that "the overall purpose of ICZM is to maximize the benefits provided by the coastal zone and to minimize the conflicts and harmful effects of activities upon each other. Its goal has been defined as the production of the optimal mix of products and services from a coastal system, with

'optimal' being the mix that results in maximum social " (OECD, 1993).

A dynamic process, ICZM is "a coordinated strategy developed and implemented for the allocation of environmental, social, cultural, and institutional resources to achieve the conservation and sustainable multiple use of the coastal zone" (Meltzer, 1998). The common characteristic of all environmental models implemented in coastal zones is that all are based on a systematically integrated socio-economic planning strategy. In this context, the planning strategy, like in the systematic approach, should be based on a new notion that perceives planning as a process and primarily handle the specific problems of the zone in question rather than the conventional planning model based on the instrument-objective relation. This means that the deterioration in environmental cycles must be considered as a system, and, thus, the interaction and interdependence of all developments and processes causing the degradation should be handled as a whole in order to accomplish the desired flexible approach to planning. (Algan, 1995).

In fact, all these definitions as their common feature illustrate that ICZM contains aspects of integration, coordination and planning. This integration and coordination in the application area should involve horizontal and vertical interdisciplinary action by the economic sectors, the official and non-official center in charge of coastal zones and resource management as well as regional and local organizations with management tasks. In ICZM programs the most significant general and common characteristics are the presence of a continuous and dynamic process that continues over time, the necessity of creating multi-sectorial policies, the inclusion of one or more management strategies and a geographical boundary with seaward and inland limits. The most important organizational characteristic of the ICZM is the need to involve all relevant social actors in each stage of the application. The active and sustained participation of the interested public and the stakeholders enable reconciliation in decisions for the utilization and allocation of coastal areas which may prevent the probability of potential conflict situations. The concept of an integrated approach to the management of coastal areas is intentionally broad and has four elements: geographical, temporal, sectorial, political/institutional. Geographical because it takes account of interrelationships and interdependencies (physical, chemical, biological, ecological) between the terrestrial, estuarine, littoral and offshore components of coastal

regions; temporal because it supports the planning and implementation of management actions in the context of a long-term strategy; sectorial because it takes account of interrelationships among the various human uses of coastal areas and resources as well as associated socio-economic interests and values; political/institutional, because it provides for the widest possible consultation between government, social and economic sectors and the community in policy development, planning, conflict resolution and regulation pertaining to all matters affecting the use and protection of coastal areas, resources and amenities (GESAMP, 1996).

The most important global level regulation in terms of illustrating the international consensus in political will, the UNCED Agenda 21 (Paragraph 17.5 of Programme A of Chapter 17), states that the ICZM should have the objectives to:

- “provide for an integrated policy and decision-making process to promote compatibility and a balance of uses;
- identify existing and projected uses of coastal areas and their interactions;
- concentrate on well-defined issues; apply preventive and precautionary approaches in planning and implementation;
- promote the application and development of methods that reflect changes in value resulting from uses of marine and coastal areas, including pollution, marine erosion, loss of resources and habitat destruction;
- provide access, as far as possible, for concerned individuals, groups and organizations to relevant information and opportunities for consultation and participation in planning and decision-making at appropriate levels”(UN, 1994).

Legislation is certainly one of the most effective application instruments to achieve the objectives in an ICZM program. Since almost all human activities concentrate on the coasts, it is not surprising to come across numerous legislation authorizing a series of units and fields including urban construction plans, land (soil) use, agriculture, fishing, tourism, industrial and energy investments as well as economical sectors, besides marine life, fresh water resources, forests, flora and fauna, and even air, solid and liquid domestic and industrial waste, noise and transboundary environmental pollution. In such cases, it is rather natural to observe that the coastal zone management is fragmented amongst all these various legislation, and, thus amongst the authorized agencies and organizations. On the

contrary, the very nature of ICZM requires a holistic approach to the coastal zones including its ecological and economical hinterland, and needs to ensure horizontal and vertical integration and coordination amongst all relevant sectors and social actors. In order to be able to accomplish the objectives of ICZM, there needs to be legislative support to its principles including the precautionary principle; the principle of preventive action; the polluter pays principle; responsibility not to cause transboundary environmental damage; rational and equitable use of natural resources and public participation; while accomplishing its objectives requires the involvement of certain legislative mechanisms such as guiding the exercise of administrative discretion, changing rights to own and use coastal resources; establishing marine and/or coastal protected areas; and environmental impact assessment (Scialabba, 1998). Due to the comprehensiveness and complexity of the structure of ICZM programs, they need to be soundly equipped with legislative basis and arrangements particularly at the implementation stage. (UNEP/MAP, 1996; METAP, 1991).

International Legislation

Many of the issues, sectors and resources that integrated coastal zone management address must have an international dimension. Several countries border the same sea, river or lake and need to adopt common policies for the management of a common resource. On the other hand, the actions of one country may cause transboundary environmental impacts in the coastal area of another and require an international solution. Moreover, global warming and climatic change are common problems that impact all the coastal zones on the planet. Although some of the international legislation on ICZM are in the form of globally or regionally binding formal conventions or agreements which contain direct or indirect provisions for this concept, others are in the form of voluntary, non-binding, informal, non-legally binding agreements or understandings amongst stakeholders which cover direct or indirect regulations concerning the protection of coastal zones.

At the Global Level

There are a number of global international conventions or non-binding international instruments with relevance to coastal areas including;

- the Convention for the Protection of the World Cultural and Natural Heritage (Paris, 16 November 1972);
- the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, 2 February 1971);
- 1982 United Nations Convention on the Law of the Sea (UNCLOS);
- the Convention on Biological Diversity (Rio de Janeiro, 5 June 1992) and the 1995 "Jakarta Mandate" adopted by the second Conference of the Parties to the Convention on Biological Diversity;
- the United Nations Framework Convention on Climate Change (New York, 9 May 1992) and the 1997 Kyoto Protocol;
- the Rio de Janeiro Declaration on Environment and Development of 16 June 1992; Agenda 21 concluded on 16 June 1992 at Rio de Janeiro (particularly Chapter 8, and Chapter 17, which deals with the protection of oceans, seas and coastal areas);
- the non-legally binding Authoritative Statement of Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests, concluded on 13 June 1992 at Rio de Janeiro;
- World Bank Noordwijk Guidelines for Integrated Coastal Zone Management (1993);
- Report of the World Coast Conference (IPCC, 1994);
- UNEP Global Program of Action for the Protection of the Marine Environment from Land-Based Activities (November 1995) which 110 nations signed as a non-legally binding agreement;
- UN Agreement on Straddling Fish Stocks and Highly Migratory Fish (1995);
- FAO Code of Conduct for Responsible Fishing (1995).

At the Regional Level

Regional conventions may also be relevant, particularly those concluded under the UNEP Regional Seas Programme which also cover the Mediterranean and Black Sea marine and coastal environment. The legislation concluded under this Program which have particularly importance for Turkey, as a party, are:

- 1992 Bucharest Convention on the Protection of the Black Sea Against Pollution (which came into force in 1994) and its related Protocols; 1993 Odessa Ministerial Declaration on the Protection of

the Black Sea; Strategic Action Plan for the Rehabilitation and Protection of the Black Sea (İstanbul 1996);

1976 Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution (which came into force in 1978) and its related Protocols and 1995 Barcelona Convention amending it, Barcelona Convention for the Protection of the Marine Environment and Coastal Region of the Mediterranean and the Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (has not been enacted yet); 1985 Genoa Declaration on the Second Mediterranean Decade; 1990 Nicosia Charter on Euro-Mediterranean Cooperation Concerning Environment in the Mediterranean Basin; 1992 Cairo Declaration and Specific Actions Programme on Euro-Mediterranean Cooperation on Environment in the Mediterranean Basin; 1994 Tunis Declaration and Mediterranean Agenda 21 (Med 21); 1995 Mediterranean Action Plan Phase II, Barcelona Resolution, Priority Fields of Activities for Environment and Development in the Mediterranean Basin (1996-2005) and establishment of the Mediterranean Commission on Sustainable Development (MCSD) in 1996 (Algan 1995; MAP/PAP 1999).

Other measures, such as the Bonn Convention on the Conservation of Migratory Species of Wild Animals (1979) and cooperative agreements concluded under the Bonn Convention include the Agreement on the Conservation of Seals in the Wadden Sea 1990, the Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas 1991 (ASCOBANS) and the Agreement on the Conservation of Small Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area 1996 (ACCOBAMS); Council of Europe Bern Convention on the Conservation of European Wildlife and Natural Habitats (1979); UN/ECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context (1991), and UN/ECE Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998) are relevant to ICZM because they concern the role of authorities and the public in administrative decisions affecting the environment. Besides the Bern Convention which indirectly covers coastal zone management, the Council of Europe continues its efforts for direct legislative arrangements that foresee integrated coastal zone management. "The Council of Europe, has drafted a Proposal for a Model Law on Sustainable Management of Coastal Zones, together with a draft

European Code of Conduct for Coastal Zones, although neither of these has yet been approved. The purpose of model laws is to provide a standard text that States can use as a basis for national legislation” (Gibson, 1999).

One of the major regional legislation activities is conducted by the OECD. On 23 July 1992, the Council of the OECD adopted at its 787th session a set of recommendations to its Members on integrated coastal zone management. In making these recommendations, the OECD Council reiterated that coastal zones and the oceans are areas where improved policy integration is necessary through integrated resource management strategies and comprehensive land use planning (OCDE, 1993). This “Recommendation contained the following essential elements;

- A Recommendation to set specific policy objectives for the coasts and their resources, to enhance coordination of government strategies, and to strengthen the integration of sectorial policies;
- Recommendations on instruments for coastal zone management that Member Countries should employ;
- Specific recommendations focusing on fisheries, tourism and international waters” (OECD, 1997).

Some other OECD recommendations relative to the coastal area management including; Recommendation of the Council on Principles concerning Coastal Management of 12th October 1976 [C(76)161(Final)]; Recommendation of the Council on Environment and Tourism of 8th May 1979 [C(79)115]; Recommendation of the Council on the Assessment of Projects with Significant Impact on the Environment of 8th May 1979 [C(79)116]; Recommendation of the Council on Water Resource Management Policies: Integration, Demand Management, and Groundwater Protection of 31st March 1989 [C(89)12(Final)]; Recommendation of the Council on the Use of Economic Instruments in Environmental Policy of 31st January 1991 [C(90)177/FINAL]; and OECD/DAC Guidelines No. 9: Guidelines for Conservation and Sustainable Use of Tropical and Sub-Tropical Wetlands(1996) have addressed the interrelationships between the condition of coastal and marine environments and human activities. On the other hand, the OECD Council adopted in April 1998 a new Recommendation on Environmental Information [C(98)67] which promotes implementing cost-effective means of collecting

environmental information; establishing institutional arrangements to facilitate the coordination, integration and exchange of such information; access to environmental information and information dissemination efforts; and integration of the domestic information systems into a broader international framework (OECD, 1997). These principles are specifically important examples of the emphasis on the participatory approach which needs to underlay all environmental management and integrated coastal zone management programs.

The European Union, on the other hand, conducts political and regulatory activities for coastal zone management besides implementing some demonstration projects. The Fifth Community Programme of Policy and Action on the Environment and Sustainable Development; the Communication COM95/511 on the Integrated Management of Coastal Zones, the directives on the Conservation of Wild Birds, (79/409/EEC); on the Conservation of Natural Habitats and of Wild Fauna and Flora (92/43/EEC, amended by Council Directive 97/62/EC) and Integrated Pollution Prevention and Control Directive 96/61/EC qualify as the general political and regulatory integrated coastal zone management legislation of the European Union. The Environmental Impact Assessment Directive 85/337/EEC (adopted 1985 and substantially amended in 1997), Directive 90/313/EEC on Freedom of Access to Information on the Environment, the Bathing Water Directive 76/160/EEC, the Dangerous Substances Directive 76/464/EEC, the Shellfish Waters Directive 79/923/EEC, the Urban Waste Water Treatment Directive 91/271/EEC, the Nitrates Directive 91/676/EEC, however, might be considered as other arrangements that define the necessary measures in coastal areas and facilitate, although indirectly, the implementation of ICZM (Gibson, 1999).

Conclusion

In the implementation of ICZM programs, the significance of legislative arrangements find gradually increasing acceptance at both global and regional levels. Post-Rio developments, which ensured a general consensus on the global level goals of the ICZM concept, helped the impetus in the adoption of implementation oriented legislative arrangements that enable regional level enacting within the multi-lateral international relations system. In fact, the developments within the scope of the Mediterranean Action Plan resulting in the

modification of the Barcelona Convention, Strategic Action Plan for the Rehabilitation and Protection of the Black Sea, the common principles and policies identified by the Council of Europe, OECD and the European Union for their member states, are the tangible fruits of these developments. Coastal Areas do not only qualify as common resources at the national level but also the international level. Therefore, it requires the collaboration of various actors at both national and international levels. The environmental problems that coastal zones, as the areas most affected by global environmental issues like climatic change, are expected to elevate in the years to come. In our globe, the most populated areas are the coastlines. Only in China 30 million live on coastal areas which are more than half a meter below the sea level. Scenarios on the probable impacts of climatic change on economy, demography, society and the environment predict that only one meter elevation of the sea level is likely to affect a total of 5 million square kilometers of coastal zones at a global scale leading to catastrophic consequences. In such a case, some small island states will not exist anymore. Furthermore, approximately 120 million Bangladeshis will be left homeless, one fifth of Egypt's habitable land will be lost, 50% of the projected populations of highly populated coastal metropolitans like Jakarta, Bombay, Karachi and Rio de Janeiro will become displaced and 40 million more environmental refugees will join the already existing ones (UNFPA, 1991). If only 0.5% of the 6 billion people on the globe are obliged to migrate due to environmental reasons caused by climatic change, we will end up with 30 million environmental refugees, and if this ratio reaches 1%, then 60 million refugees will be generated. In this context, one might expect significant progress in the developments in international legislation designed to combat the problems impacting coastal zones which might be translated into national policies and legislative acts enabling improvements in the relative inaction of national governments for ensuring the sustainability of these common resources.

Turkey does not have a specific national regulation for the ICZM. Despite the availability of various provisions in the laws and regulations pertaining to environmental protection, there is not any national legislation that includes the concept of integrated coastal zone management. All coasts are under the power and rule of the state according to Article 43 of the Constitution. The same constitutional article recognizes priority public interests for benefiting from the shores of the seas, lakes and rivers as well as sea and lake coastal zones; and

the conditions and possibilities of benefiting from these places are regulated by legislation. Articles 35 of the Constitution on the right of ownership and 56 on the environment, Civil Law (Article 641), Municipal Law Number 1580 (Article 19), and the global provisions of the Environment Law and Construction Law qualify as broadly generalized legislation for the ownership and protection of coastal zones. Law number 3086 on Coasts adopted in 1984 and canceled in 1986 and replaced by Law number 3621 on Coasts and its implementation directives enforced in 1990 appear as basic legislation that define the guidelines for the utilization and protection of the coasts in Turkey. On the other hand, some articles of Law 3621 were overruled by the Court of Constitution in 1991. These overruled articles were revised by Law 3830 in 1992, which has been in force since. However, none of these laws are drafted in line with ICZM concepts or principles.

In Turkey, environment scientists, agencies and officials in charge of environmental management in central and local authorities started to discuss ICZM as of early 1980s. We owe this development to various international conventions that Turkey has become a party to as well as the non-legally binding arrangements which have been adopted. Turkey, in fact, is a party to a major number of global and/or regional international conventions and non-legally binding arrangements mentioned above. Convention for the Protection of the World Cultural and Natural Heritage; Ramsar Convention, Convention on Biological Diversity Bucharest Convention and its related Protocols; Barcelona Convention and its related Protocols and Barcelona Convention amending it, Barcelona Convention for the Protection of the Marine Environment and Coastal Region of the Mediterranean and the Protocol Concerning Specialty Protected Areas and Biological Diversity in the Mediterranean (has not been enacted yet); Bern Convention are the international conventions that Turkey is a party of and that contain direct or indirect provisions for ICZM. Since Article 90 of the Constitution deems all procedurally enforced international conventions at the force of law, it is necessary for Turkey to adopt and enforce these conventions as a part of its national legislation. Moreover, Biological Convention's Jakarta Mandate-, Rio Declaration; Agenda 21; non-legally binding Authoritative Statement of Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests; Odessa Declaration; Rehabilitation and Protection of the Black Sea; Genoa Declaration- Nicosia Charter; Cairo Declaration;

Tunis Declaration and Mediterranean Agenda 21 (Med 21); Mediterranean Action Plan Phase II, Barcelona Resolution; OECD recommendations on Principles concerning Coastal Management (1976) and on integrated coastal zone management (1992) are ICZM containing international arrangements adopted by Turkey which means that besides the political commitments involved there is also a national liability to implement these as a matter of custom law and ethics.

In Turkey, therefore, all laws and regulations directly or indirectly related to ICZM and particularly Coast and Environment Laws need to be revised for harmonization with these international legislation and arrangements. However, up to date no such harmonization has either been completed or enforced. On the other hand, documents like the 7th Five Year Development Plan, the Environment Council, a-aft National Agenda 21 and National Environment Strategy.-Y, and 4,ction Plan involve political commitments that emphasize the need to employ an' integrated coastal zone management for the protection and utilization of Turkey's more than 10 thousand km coastline including the islands. Moreover, although pilot coastal zone management plans for Izmir, Iskenderun, Bodrum Peninsula, Mersin, Patara and Belek as well as a National Coastal Zone Management Policy and Strategies Report within the framework- of the Black Sea Environment Program have been prepared since early 1980s, none have been implemented yet. Turkey must identify and enforce the national policies and objectives for ICZM soon enough, due to both the international conventions at the force of law to which it is a party and other customarily binding international legislative documents to which it has committed. On the other hand, taking into consideration the fact that one of the most important criteria for the EU accession process is the environment legislation and its enforcement, it is needless to say that EU' s ICZM policies and practices have to be Turkey's basic guidelines for this purpose.

Özet

Duyarlı ekosistemler olan kıyı alanlarının sürdürülemez kalkınma faaliyetleri nedeniyle karşı karşıya olduğu baskı ve bozulmalar küresel bir sorun oluşturmaya devam etmektedir. Bu sorunlara bir çözüm olarak ortaya çıkmış olan entegre kıyı alanı yönetimi konusu bu çalışmada kavramsal olarak ele alınmıştır. Kavramsal çerçeveye ilişkin gelişmeler incelendikten sonra, çok taraflı uluslararası ilişkiler sistemi içerisinde, bu konuda

geliştirilen tüzel düzenlemeler araştırılmıştır. Bu düzenlemelerin dayandığı temel ilkeler ve mekanizmalar incelenmiştir. Tüzel araçlar, küresel ve bölgesel ölçekli olarak ve kıyı alanı yönetimine doğrudan veya dolaylı olarak yer verme durumlarına göre değerlendirilmiştir.

Türkiye de çevre bilimcileri 1980 den itibaren çevre konusunda araştırmalara başlamıştır. Türkiye'nin 10.000 km lik sahil şeridinde pilot bölgeler seçilmiş ve incelemeye alınmıştır.

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Received : 5.1.2000

Accepted :5.2.2000