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Regional Activity Center for Specially Protected Areas

International legal instruments applied to the conservation of marine biodiversity in the Mediterranean region and actors responsible for their implementation and enforcement

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Acronyms

ACCOBAMS	Conservation of Cetaceans in the Black Sea, Mediterranean Sea and contiguous
CBD	Convention on biological Diversity
CITES	Convention on International Trade in Endangered species of Wild Fauna and Flora
CFP	Common Fisheries Policy of European Union
COFI	Food and Agriculture Committee on Fisheries
CMS	Convention on the Conservation of Migratory Species of Wild Animals
EEZ	Economic Exclusive Zone
FAO	Food and Agriculture Organization
GFCM	General Fisheries Commission for the Mediterranean
ICJ	International Court of Justice
ISA	International Seabed Authority
MARPOL	International Convention for the Prevention of Pollution from Ships
MAP	Mediterranean Action Plan
MPA	Marine Protected Area
ICCAT	International Commission for the Conservation of Atlantic Tunas
IMO	International Maritime Organization
IUU	Illegal, Unreported and Unregulated Fishing
PSSA	Particularly Sensitive Sea Area
RAC-SPA	Regional Activity Centre for Specially Protected Areas
RFMO	Regional Fisheries Management Organization
SOLAS	International Convention for Safety of Life at Sea
SPAMI	Specially Protected Areas of Mediterranean Interest
UCH	Underwater Cultural Heritage Convention
UNCLOS	United Nations Convention on the Law of the Sea

Introduction

This report entitled 'Legal issues on territoriality of the Mediterranean Sea' was elaborated for RAC-SPA within the framework of the project entitled 'Identification of possible SPAMIs in the Mediterranean areas beyond national jurisdiction'. It focuses in the effectiveness derived of maritime boundaries to establish SPAMIs in areas beyond national jurisdiction in the Mediterranean Sea and provides analyse of the relevant provisions in international and regional treaties and corresponding soft law. Finally it gives information concerning subsequent actors responsible for the implementation and enforcement of the conservation measures.

The report is a preliminary synthesis that will be reviewed during the Second Phase of the Project and will used as support documentation to elaborate a draft approach concerning the institutional and legal setups required for the establishment and management of SPAMIs in ABNJ.

The Mediterranean Sea is an enclosed or semi-enclosed in the sense of the Article 122 of the United Nations Convention on the Law of the Sea[1], surrounded by twenty one States[2]. Fishing activities are the most pressing threat to open ocean and deep seabed biodiversity. In fact, overfishing and the unfettered use of destructive fishing practices have reduced many fish stocks well below sustainable levels. Shipping activities also has negative impacts on marine wildlife and habitats through noise, accidental spills of oil or the deliberate, operational discharge of wastes, chemical residues and ballast water as well as the use of anti-fouling paints.

For the purpose of this report marine protected area (MPA) can be defined as "*Any area of intertidal or subtidal terrain, together with its overlying water and associated flora, fauna, historical and cultural features, which has been reserved by law or other effective means to protect part or all of the enclosed environment*"[3]. Marine protected areas are now widely accepted as an important tool to conserve marine biological diversity and productivity, including ecological life support systems. This report focuses on the legal aspects concerning the establishment of Specially Protected Areas of Mediterranean Interest (SPAMIs) in the water column and on the seabed beyond national jurisdiction, in the same sense as used in the United Nations Convention on the Law of the Sea (UNCLOS)[4].

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[1] Article 122 of UNCLOS "For the purposes of this Convention, "enclosed or semi-enclosed sea" means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States.", see also "The Mediterranean: An enclosed or semi-enclosed Sea?, in Budislav Vukas, The Law of the Sea : Selected Writings, Martinus Nijhoff Publishers, Leiden/Boston, 2004, pp. 281- 289.

[2] Albania, Algeria, Bosnia-Herzegovina, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, Syria, Tunisia, Turkey.

[3] IUCN (2004) TEN-YEAR HIGH SEAS MARINE PROTECTED AREA STRATEGY: A ten-year strategy to promote the development of a global representative system of high seas marine protected area networks (Summary Version), as agreed by Marine Theme Participants at the Vth IUCN World Parks Congress, Durban, South Africa (8–17 September 2003) IUCN, Gland, Switzerland, p. 2.

[4] The UNCLOS defines in its article 86 the high sea as "…all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State."

Part I
International legal instruments applied to the conservation of marine biodiversity in the Mediterranean region

Thereafter it will the relevance of international and regional institutions, instruments and legal regimes that may offer similar tools and options. In both (global and regional) sections, it will examine both hard and soft-law instruments and authorities, and will separately identify instruments and processes that might serve as exemplars for a legal framework or other instrument or arrangement for the creation SPAMIs Beyond national jurisdiction.

A - The global international instruments

There is currently no international governance framework for regulating and coordinating high seas marine protected areas. Large variety of international instruments is applied to the protection and conservation of the biological diversity in the high Sea.

1. United Nations Convention on the Law of the Sea (UNCLOS)

The UNCLOS, adopted by the Third United Nations Conference on the Law Of the Sea on 10 December 1982 and entered into force in 16 November 1994[5], establish a modern framework for ocean governance, specifying rights of access but also duties to conserve living resources and protect and preserve the marine environment. Measures taken are to include those necessary to protect rare and fragile ecosystems, the habitat of rare and endangered spices and other forms of marine life.

The especially regime of EEZ in the UNCLOS, allowed coastal State significant rights in a large maritime space that was classified as high seas. In a 200 nautical miles of EEZ from the baselines, coastal State exercises sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living. The coastal State was also provided with jurisdiction to protect and preserve maritime environment. In the EEZ, the other States enjoy the freedoms of navigation and overflight and the laying of submarine cables and pipelines and other internationally lawful uses of the sea related to these freedoms (Art.58, 1).

Article 192 of the LOS Convention established the general duty for all States to “preserve and protect the environment”. In addition the UNCLOS recognized that certain ecosystems were more sensitive to harmful effects of human activities than others requiring additional protective measures. Accordingly, article 194(5) specifically required that States, in taking measures to prevent, reduce and control pollution of marine environment “shall include those [measures] necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other form of marine life”. Furthermore, the general duty to preserve and protect the environment, under article 192, was not restricted to any specific marine area but rather is extended to and encompassed marine spaces beyond national jurisdiction of the coastal states.

Part VII of the UNCLOS specifically addressed to the high seas. Articles 87 announce a non-exhaustive list of freedoms on the high seas. It also preserved the rights of third party States. Article 89 of the UNCLOS emphasized the res nullius status of the high seas in declaring that no State could validly purport to subject any part of the high seas to its sovereignty.

[5] Annex 13: Chronological list of Mediterranean States parties to the United Nations Convention on the law of the sea.

The UNCLOS provisions on the high seas included a separate section on "conservation and management of the living resources of the high seas"[6], requiring States to co-operate with each other in the conservation and management of the living resources in the areas of the high seas[7]. Furthermore, article 120 extended the rights to limit, regulate or prohibit the exploitation of marine mammals more strictly than allowed under Part V of the UNCLOS on EEZ. Consequently, article 120 provided a foundation for the high seas regulation of marine mammals based upon co-operation among States and international organizations. States bordering enclosed or semi-enclosed seas were also exhorted to co-operate and co-ordinate their activities in the sea in regard to inter alia, the management, conservation, exploration and exploitation of the living resources of the sea[8].

With regards to the seabed beyond national jurisdiction, the Convention declares that its resources ("solid, liquid or gaseous mineral resources in or beneath the seabed") are part of the "common heritage of mankind."[9] In this connection, the International Seabed Authority (ISA), in conjunction with those Parties undertaking activities involving the seabed[10], is empowered to take measures, *inter alia*, to ensure effective protection of the marine environment, including its flora and fauna[11]. The ISA, in connection with its general authority to oversee and control exploration and exploitation of seabed resources, is authorised to disapprove such activities, where they will take place in areas where "substantial evidence indicates the risk of harm to the marine environment from such activities[12].

Part IX of the 1982 Law of the Sea Convention exhorts states bordering semi-enclosed and enclosed seas, such as the Mediterranean, to cooperate and coordinate in the exercise of their rights and duties (article 123), including the management of living marine resources, protection of the marine environment and scientific research.

2. United Nations Fish stocks Agreement

The 1995 UN Fish Stocks Agreement[13] was adopted on 4 August 1995 by United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (24 July- 4 August), entered into force on 11 December 2002[14]. Its scope of application includes areas beyond national jurisdiction[15]. The Agreement is based on the international co-operation between all States. Article 7 (a), while recognizing the right of nationals of States to fish (straddling stock) in high seas in the adjacent high sea of coastal State, further obligates States to co-operate to take necessary measures for the conservation of stock in adjacent high seas.

To ensure effective implementation of the Convention a requirement was included for the establishment of regional and sub-regional fisheries management organizations[16].

In addition, coastal States and States fishing on the high seas are obligated to take conservation measures using best scientific evidence[17], minimize pollution[18], protect biodiversity[19] and implement and enforce effective monitoring control and surveillance[20].

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[6] Section 2 of Part VII of UNCLOS.

[7] Article 117 and 118.

[8] Article 137.

[9] Article 136 of UNCLOS.

[10] These provisions apply to "the Area" – a term defined under UNCLOS to mean "the sea-bed and ocean floor and subsoil thereof beyond the limits of national jurisdiction." UNCLOS, Article 1.1(1).

[11] Article 145 of UNCLOS.

[12] Article153 and 162.2(x), and see Article 165.2(l) and Article 17.2(f) of Annex III to the Convention of UNCLOS

[13] The Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks.

[14] Annex 14: Chronological List of Mediterranean States parties to the UN fish stocks Agreement.

[15] Article 3 (1).

[16] Article 8.

[17] Article 5 (b).

The UN fish Stocks Agreement includes enforcement measures, such as the right of authorized inspectors to board and inspect fishing vessels in the high seas in an area that falls under the ambit of a sub-regional or regional fisheries management organization or arrangement[21].

3. United Nations Convention on Biological Diversity (CBD)

The International Convention on Biological Diversity[22] adopted in Rio de Janeiro in 1992. The stated objectives of the CBD are the conservation of biodiversity, the sustainable use of components of biodiversity, and the equitable sharing of benefits derived from genetic resources. Protected area is defined as "a *geographically defined area which is designated or regulated and managed to achieve specific conservation objectives*" (Art. 2.), and also provides that parties shall "*establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity*" (Art. 8, a).

The CBD distinguishes between in-situ conservation, namely the conservation and sustainable use of biodiversity in its natural environment, and ex-situ conservation. It expressly mandates the establishment of protected areas and recognizes that the conservation of biological diversity is a common concern of humankind and an integral part of the development process.

The Convention's scope specifically extends both to marine and terrestrial areas within the limits of national jurisdiction, and to processes and activities beyond the limits of national jurisdiction. Although the CBD's provisions do not apply to areas beyond national jurisdiction, per se, they do apply to countries individually in regard to national activities that may adversely impact biodiversity wherever it is located. In areas beyond national jurisdiction the CBD applies to processes and activities carried out under a Party's jurisdiction or control. Thus CBD Parties are, for example, responsible for monitoring activities under their control where those activities have significant adverse impacts on high seas ecosystems. The CBD also underlines the need for Parties to cooperate for the conservation and sustainable use of biodiversity in areas beyond national jurisdiction. With respect to the marine environment the CBD is to be implemented consistently with the rights and obligations of States under the law of the sea.

To take further steps deemed necessary for its implementation, the CBD established a Conference of the Parties (COP). The second COP in Jakarta, Indonesia identified the conservation and sustainable use of marine biodiversity as an early priority for action and in 1995 adopted the 'Jakarta Mandate on Marine and Coastal Biological Diversity'. The seventh Conference of the parties (COP) adopted the target to develop a global network of marine and coastal protected areas by the year 2012 and established an Ad Hoc Open-ended Working Group on Protected Areas whose mandate includes the exploration of options for cooperation for the establishment of marine protected areas beyond the limits of national jurisdiction.

In May 2008, the Ninth Conference of the Parties (COP 9), adopted scientific criteria for the identification of Ecologically and Biologically Significant Area (EBSAs), in the global marine realm, the criteria are specially designed to apply to open ocean and deep seabed areas including marine areas beyond national jurisdiction[23].

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[18] Article 5 (f).

[19] Article 5 (g).

[20] Article 5 (1).

[21] Article 20 (1).

[22] Annex 15: Chronological List of Mediterranean States Parties to the CBD Convention.

[23] The Seven CBD EBSA criteria adapted include: 1. Uniqueness or rarity; 2. Special importance for life history of species; 3. Importance for threatened, endangered or declining species and/or habitats; 4. Vulnerability, fragility, sensitivity, slow recovery; 5. Biological productivity; 6. Biological diversity; 7. Naturalness

4. International Convention for the Regulation of Whaling

The International Convention for the Regulation of Whaling was agreed in 1946 at Washington, to ensure the proper and effective conservation of whale stocks. It applies to factory ships, land stations and whale catches under the jurisdiction of the Parties to the Convention and to all waters in which whaling is carried out. It established an International Whaling Commission[24], composed of member States to organise scientific studies and investigations and to collect, analyse and disseminate data. The Commission's main task is to review and revise as necessary the measures laid down in the Convention. It can fix the limits of open and closed waters, designate sanctuary areas, prescribe seasons, catch and size limits for each species of whale as well as prohibit types and methods of fishing.

5. Convention on International Trade in Endangered Species of Wild Fauna and Flora

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)[25] is an international treaty which aims to ensure that the international trade in specimens of wild animals and plants does not threaten their survival[26]. The import and export of species covered by CITES has to be approved by the national authorities of the Member States in accordance with the rules and regulations laid down by the Convention.

Species are listed in three Appendices resulting in different levels and types of protection. Among the marine listings are many species of cetaceans, marine turtles, seahorses, corals and commercial marine fishing species such as basking sharks. The 'introduction from the sea' of any species included in Appendix I or II requires the prior grant of a certificate from the Management Authority of the State of Introduction. Introduction from the sea is defined as the transportation of a species into a State taken in the marine environment outside national jurisdiction. This restriction does not apply to species included in Appendix II when they are taken by ships registered in a State, which is also Party to another treaty affording protection to that species and proceeding CITES, such as the International Convention for the Regulation of Whaling.

6. Convention on the Conservation of Migratory Species of Wild Animals

The Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention) aims to protect terrestrial, marine and avian migratory species throughout their range[27]. Range is defined as all the areas of land or water that a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route. For species in danger of extinction, listed in Appendix I, the Range States must work toward taking a variety of conservation and restoration measures.

With regard to migratory species in unfavourable conditions, included in Appendix II, Range States are encouraged to enter into international agreements. The CMS provides guidelines for such agreements and serves as an umbrella mechanism for their review.

Several agreements on marine species have been concluded, some of them addressing the establishment of protected areas as a conservation measure. Range States include States whose vessels are engaged in fishing for protected species on the high seas. The CMS requires these States to prohibit the taking of Appendix I species. To the extent that activities undertaken within national jurisdiction may endanger the species beyond national jurisdiction, the Range State should also control these effects. Range States should conserve and restore important habitats and prevent and remove obstacles to migration. At its fifth meeting the Conference of the Parties

[24] The Mediterranean States members to the International Waling Commission are: Croatia, Cyprus, France, Greece, Israel, Italy, Monaco, Morocco, Slovenia, and Spain.

[25] Signed at Washington D.C. on 3 March 1973, amended at Bonn on 22 June 1979, entered into force on 13 April 1987.

[26] Annex 16: Chronological List of Mediterranean States Parties to the CITES.

[27] Annex 17: Chronological List of Mediterranean States Parties to the CMS.

also decided that Parties should designate protected areas, in close co-operation with other Range States so that a network of critical sites is established throughout the migration route of Appendix I species.

7. Convention on the Protection of the Underwater Cultural Heritage (CPUCH)

The UNESCO Convention on the Protection of the Underwater Cultural Heritage[28] was adopted on 2 November 2001[29]. The Convention entered into force on 2 January 2009. The different part of the convention applied to underwater cultural heritage both within and beyond national jurisdiction. The State Parties have responsibility to protect the Underwater Cultural Heritage in the Area[30]. The PUCH Convention defines underwater cultural heritage as all traces of human existence having a cultural, historical or archaeological character which has been partially or totally under water for at least 100 years. Shipwrecks and other historical or cultural objects can attract the settlement of species and protective measures taken under the PUCH Convention may have the added benefit of protecting the associated biodiversity. The protection of the cultural heritage in situ can be considered as criteria of the implementation of high sea marine protected area. The Convention provides, also, a detailed state cooperation system. The protection of the underwater cultural heritage provides also protection for marine ecosystems.

B- Specific international conventions applied beyond national jurisdiction under international organization

International rules and regulations concerning maritime safety, the efficiency of navigation and the prevention and control of marine pollution from ships have been developed under the auspices of the International Maritime Organization (IMO). The IMO provides machinery for cooperation among governments. Its rules and standards are widely recognized as minimum standards applicable to all vessels both within and beyond national jurisdiction. The IMO is considered the competent international body to establish special protective measures in defined areas where shipping presents a risk.

To date it has negotiated more than forty conventions, as well as adopted non-binding codes, recommendations and guidelines.

1. International Convention for the Prevention of Pollution from Ships

Adopted in 1973 as modified by the Protocol of 1978 (MARPOL). MARPOL provides regulations aimed at preventing and minimizing pollution from ships, and regulates both operational and accidental discharges. It also provides for the designation of Special Areas where more stringent discharge rules apply in respect of oil, noxious liquid substances, and garbage from ships. Special Areas are defined as areas where, for technical reasons relating to their oceanographic and ecological condition and to their sea traffic, the adoption of special mandatory methods for the prevention of sea pollution is required[31]. The 1973 Convention identified the Mediterranean Sea, the Black Sea, and the Baltic Sea, the Red Sea and the Gulfs area as special areas. The Mediterranean sea was identified as special in Annex I and Annex V in 2 November 1973[32]. The

[28] http://www.unesco.org/culture/laws/underwater/html_eng/convention.shtml

[29] Annex 18: Chronological List of Mediterranean States Parties to the UCH convention.

[30] Article 11 of the Convention on the PUCH. The “Area” means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction. (Article 1, §5).

[31] In Annexes I , Regulation 1, 11) “*Special area* means a sea area where for recognized technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic the adoption of special mandatory methods for the prevention of sea pollution by oil is required.

[32] For Annex I it was in effect from 2 October 1983 and for Annex V it was in effect from 1 May 2009.

Annex I defines Mediterranean Sea Area as: "*the Mediterranean Sea proper including the gulfs and seas therein with the boundary between the Mediterranean and the Black Sea constituted by the 41° N parallel and bounded to the west by the Straits of Gibraltar at the meridian of 005°36' W".*

2. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (London Convention)

The London Convention and the 1996 Protocol thereto aims to control and prevent all sources of marine pollution caused by the deliberate disposal of wastes or other matter at sea. It differentiates between matter whose dumping is prohibited (listed in Annex I) and others which require a permit. Issuance of a permit requires consideration of various factors including the characteristics of the proposed dumping site. Under the London Convention, States with common interests in protecting the marine environment in a given geographical area are to enter into regional agreements. Parties must also co-operate in the development of procedures for the effective application of the Convention on the high seas, including procedures for reporting dumping by vessels or aircraft.

The London Convention will eventually be replaced by the 1996 Protocol, which entered into force on 24 March 2006. The Protocol provides a more restrictive approach and prohibits all waste dumping except for materials listed in Annex 1, such as dredged materials, sewage sludge, and fish processing wastes, vessels and platforms, inert, inorganic geological material, organic materials of natural origin and carbon dioxide streams from carbon dioxide capture processes for sequestration in sub-seabed geological formations. In implementing the Protocol Parties must also apply a precautionary approach and take appropriate preventative measures when there is reason to believe that matter introduced into the marine environment is likely to cause harm even when there is no conclusive evidence to prove a causal relation between inputs and their effects.

From the outset, the London Protocol was developed as a self-contained treaty, rather than as a set of amendments to the London Convention 1972 and, when it was negotiated, Parties agreed that:

1 The Protocol would supersede the Convention as between Parties to the Protocol which are also Parties to the Convention (Article 23); and

2 a Party to the Convention deciding to also become a Party to the Protocol would not be required to denounce the Convention.

3. Regulations of the International Seabed Authority

The International Seabed Authority (ISA) was established under UNCLOS to organise and control all activities on the seabed and the ocean floor beyond areas of national jurisdiction (the Area). ISA has the responsibility of ensuring that effective measures are taken in connection with mining and exploration activities, including effective protection of the marine environment. To this end ISA must adopt appropriate rules and regulations on the prevention, reduction and control of pollution and the protection of natural resources, flora and fauna. These rules and regulations are binding on all Parties to UNCLOS. UNCLOS indicates first that ISA is responsible for mining and extraction of minerals (polymetallic nodules are one, crust also and methane could be other one). One set of regulations established by ISA are the Regulations for Prospecting and Exploration for Polymetallic Nodules in the Area. Polymetallic nodules are non-living porous, concretionary objects of various sizes and shapes containing valuable metals such as nickel, manganese, copper and cobalt. They are found in thin discontinuous superficial layers on the floor of the ocean, occurring at depths of 5,000 meters. Under the Regulations any exploration and exploitation activities need to be approved by ISA.

Applicants must carry out an environmental impact assessment, monitor the effects of their work and comply with all terms and decisions of ISA.

With the application for exploitation rights a Contractor is required to propose areas to be set aside and used exclusively as impact reference zones and preservation reference zones. The

regulations define impact reference zones as areas which are representative of the environmental characteristics of the Area to be used for assessing the effect of each contractor's activities in the Area on the marine environment. Preservation reference zones are areas in which no mining may occur to ensure representative and stable biota of the seabed in order to assess any changes in the flora and fauna of the marine environment.

The ISA is also in the process of drafting regulations on prospecting and exploration for polymetallic sulphides and cobalt-rich ferromanganese crusts in the Area. Of the draft's regulations, nine are concerned with the protection and preservation of the marine environment. This includes the application of the precautionary approach as well as the establishment of environmental baselines for monitoring and reporting.

Difficulties to the application of the international rules by States arise from the limited capacity of states and political considerations to ratify an international instrument.

4. Food and Agricultural Compliance Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas

The 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas 1993 (FAO Compliance agreement)[33] applies to all fishing vessels that are used or intended for fishing on the high seas. It sets out Flag State responsibilities to ensure that a fishing vessel flying its flag and engaged in high seas fishing complies with international conservation and management measures. The Flag State may only authorise its vessels to fish on the high seas if it can effectively exercise its responsibilities under the Agreement. Restrictions are placed on issuing an authorization for high-seas fishing to any vessel that has undermined international conservation and management measures. The Agreement also provides for arrangements whereby Port States may take investigatory measures to establish whether a fishing vessel sitting voluntarily in one of its ports has violated the Agreement's provisions.

Each Flag State must maintain a record of vessels entitled to fly its flag and authorized by it to fish on the high seas. This information must be made available to the Food and Agricultural Organization (FAO) which then circulates it to all Parties. The Agreement also requires State Parties to cooperate in exchanging information on fishing vessel activities in order to assist Flag States to identify any of their vessels engaged in activities that undermine international conservation and management measures. The FAO has established a High Seas Vessel Authorization Record in order to develop a comprehensive, centralized database on vessels authorized to fish on the high seas.

C. International soft-law instruments

Specialized United Nations organizations had elaborated recommendations and guidelines that applied for the marine spaces under and beyond national jurisdiction. These instruments contain specific dispositions that can be important for SPAMIs beyond national jurisdiction.

1. IMO's Particular Sensitive Sea Areas (PSSAs)

The International Maritime Organization (IMO) adopted a protective mechanism for vulnerable marine areas against harmful shaping activities by the "Particularly Sensitive Sea Area" (PSSA). According to the IMO a PSSA, is "*a comprehensive management tool at the international level that*

[33] http://www.fao.org/DOCREP/MEETING/003/X3130m/X3130E00.HTM

provides a mechanism for reviewing an area that is vulnerable to damage by international shipping and determines the most appropriate was to address that vulnerability"[34]. The designation of a PSSA has no legal significance because the concept is created by non-binding IMO Assembly resolution and is not set forth in a convention.

- ***Guidelines for the Identification of Particularly Sensitive Sea Areas (PSSAs)***

They were adopted by the Assembly of the International Maritime Organization (IMO), under Resolution[35] A. 720 (17) on 6 November 1991. Procedures for identification of PSSA and the adoption of associated protective measures were set forth under IMO Assembly resolution A. 885 (21) of 25 November 1999, in 2002, the resolution was superseded by resolution A. 927 (22) to update and simplified the guidelines. The last revision of the Guidelines was adopted in 1 December 2005 under resolution A. 982 (24).

As defined in the Guidelines, "*A PSSA is an area that needs special protection through action by IMO because of its significance for recognized ecological, socio-economic, or scientific attributes where such attributes may be vulnerable to damage by international shipping activities.*" As designation *per se* does not introduce legally binding requirements, protective measures such as special reporting routeing or discharge measures, would need to be introduced and approved separately by IMO. In order for the area to be identified as a PSSA, it must meet one of the three criteria listed in the guidelines; ecological, socio-economic or scientific criteria. These criteria may apply for the designation of a PSSA in the territorial sea or in the areas beyond territorial sea, as in the EEZ of the coastal states or in the high seas[36].

The application for PSSA designation may be submitted by one or several States jointly that have common interest in particular area. The associated protective measures for PSSA includes actions, as designation of an area as Special Area under MARPOL, adoption of ships' Routeing and reporting systems near or in the area under the international convention for the Safety of Life at Sea (SOLAS) and in accordance with the General Provisions on Ships' Routeing and the Guidelines and Criteria for Ship Reporting Systems and development and adoption of other measures aimed at protecting specific sea areas against environmental damage from ships, provided that they have an identified legal basis. The IMO notes that "*examples of activities that might be considered inappropriate PSSA are mineral and oil exploration and extraction, large wind farm developments, commercial fishing activity and military training and exercises*".

PSSA must be distinguished of another IMO mechanism for the protection of marine area, Special Area Which is regulated by MARPOL convention. IMO Assembly resolution A.927 (22) adopted on 29 November 2001 defined Special Area as "*a sea area where for recognized technical reasons in relation to its oceanographically and ecological conditions and to the particular character of its traffic, the adoption of special mandatory methods for the prevention of sea pollution by oil, noxious liquid substances, or garbage, as applicable, is required."*, A Special Area may encompass the maritime zone of several States, or even an entire enclosed or semi- closed area such as the Mediterranean Sea.

For the designation of Special Area, one of the criteria in each categories in the guidelines must be satisfied[37]. The following categories are: Oceanographic conditions, ecological conditions and vessel traffic characteristic. Whereas in order to be identified as a PSSA, the area must meet just one of the criteria established in the guidelines. The criteria are defined as ecological; social, cultural and economic; or scientific and educational. In addition to meet at least one of the criteria, the area should be at risk from international shipping activities. It seems that conditions for designation of Special Areas are more restrictive than those established for PSSA.

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[34] IMO Doc. MEPC/Circ.398.

[35] Resolutions adopted by IMO are not treaties and cannot have the legal effects of treaty provisions.

[36] List of the PSSA see Annex N°19

[37] A.22/Res.927, Annex1, para.2.3.

The associated protective measures that can be taken in Special Area are limited to prevention of sea pollution under MARPOL 73/78. The measures that could be taken in the Special Areas must be established in the existing instruments. While for the PSSA, the protective measures may include "*any measure that is already available in an existing instruments or any measure that does not yet exist but that should be available as a generally applicable measure and that falls within the competence of IMO"*.

Designation of a marine area as PSSA offered a large variety of protective measures than measures taken in Special Area. In other word the application for designation of the Mediterranean Sea as PSSA, enforce the protection measures established by the existing instruments of Special Area. The designation of MPA beyond national jurisdiction can be associated to the designation of the same area as PSSA by IMO, which gives coastal states the possibility to adopt additional protective measures. A "join proposals" by two or more Mediterranean countries in common area can be formulated. It should contain integrated measures and procedures for co-operation between the jurisdictions of the proposing Governments.

The IMO's Particularly Sensitive Sea Area designation is a potentially important tool for marine protected areas beyond national jurisdiction and for straits used for international navigation.

2. FAO regulations

- ***Code of Conduct for Responsible Fisheries***

The FAO Committee on Fisheries (COFI) at its Nineteenth Session in March 1991 called for the development of new concepts which would lead to responsible, sustained fisheries. Subsequently, on 1992 Cancun (Mexico) Conference on responsible fishing called FAO to prepare an international Code of Conduct for responsible fishing. Technical consultations were held from 1992 to 1995 lead to adoption of on 31 October 1995 by FAO Conference. The Code is voluntary, non binding in sense that members and non-members of FAO are encouraged to apply it, without legal obligation.

The Code provides principles and standards applicable to the conservation, management and development of all fisheries.

The general principals of this Code with regard to the implementation of high sea marine protected areas are:

- Protection and rehabilitation of all critical fisheries habitats in marine (6.8).
- Within their respective competences and in accordance with international law, including within the framework of subregional or regional fisheries conservation and management organizations or arrangements, States should ensure compliance with and enforcement of conservation and management measures and establish effective mechanisms, as appropriate, to monitor and control the activities of fishing vessels and fishing support vessels (6.10).
- States authorizing fishing and fishing support vessels to fly their flags should exercise effective control over those vessels so as to ensure the proper application of this Code. They should ensure that the activities of such vessels do not undermine the effectiveness of conservation and management measures taken in accordance with international law and adopted at the national, subregional, regional or global levels (6.11).
- States should, within their respective competences and in accordance with international law, cooperate at subregional, regional and global levels through fisheries management organizations, other international agreements or other arrangements to promote conservation and management, ensure responsible fishing and ensure effective conservation and protection of living aquatic resources throughout their range of distribution, taking into account the need for compatible measures in areas within and beyond national jurisdiction (6.12).

The Code provides some principles for fisheries management such as:

- For transboundary fish stocks, straddling fish stocks, highly migratory fish stocks and high seas fish stocks, where these are exploited by two or more States, the States concerned, including the relevant coastal States in the case of straddling and highly migratory stocks, should cooperate to ensure effective conservation and management of the resources (7.1.3).
- Fishing States shall cooperate with Coastal States members of regional or subregional fisheries management organization, by becoming a member of such organization or a participant in such arrangement, and actively participate in its work (7.1.4).

States should apply the precautionary approach widely to conservation, management and exploitation of living aquatic resources in order to protect them and preserve the aquatic environment.

The Code provides management measures applied to the high sea, concerning vessels, capacity fishing, fishing gear and methods and practices. (7.6).

For the implementation of principals and standards, the code provides that States should establish an effective framework at the local and national level, for fisheries resource conservation and fisheries management measures, appropriate sanctions should be taken. At the regional level, States should cooperate directly or through subregional and regional fisheries management organizations and arrangements.

- ***International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IUU)***

The FAO's Ministerial Meeting on fisheries held on March 1999, declared that FAO "will develop a global plan of action to deal effectively with all forms of illegal, unregulated and unreported fishing including fishing vessels flying "flags of convenience" through coordinated efforts by States, FAO, relevant regional fisheries management bodies and other relevant international agencies such as the International Maritime Organization (IMO), as provided in Article IV of the Code of Conduct". After Expert Consultation and FAO Technical Consultation, the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing was adopted by the Consultation on 23 February 2001 with a request that the report be submitted to the Twenty-fourth Session of FAO Committee on Fisheries (COFI) for consideration and eventual adoption. COFI approved the International Plan of Action, by consensus, on 2 March 2001. In doing so, the Committee urged all Members to take the necessary steps to effectively implement the International Plan of Action.

The International Plan of Action (IPOA), define illegal, unreported and unregulated fisheries. With regard to HSMPA, can be considerate illegal fisheries, activities conducted by vessels flying the flag of States that are parties to a relevant Regional Fisheries Management organization (RFMOs) operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

The IPOA, is non banding instruments for States, it has been elaborated within the framework of the FAO Code of Conduct for Responsible Fisheries. The objective is to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures. For the implementation of measures States should respect relevant norms of international law in particular UNCLOS and implement fully and effectively all relevant fisheries instruments. National legislation should take measures to prevent, deter and eliminate IUU fishing and plan of action should be adopted. States should take measures consistent with international law in relation to vessels without nationality on the high seas involved in IUU fishing.

The IPOA encouraged States to coordinate and cooperate directly or through relevant regional fisheries management organizations or arrangements to prevent, to deter and eliminate Illegal, Unreported and Unregulated Fishing.

- ***International Guidelines for the Management of Deep-sea Fisheries in the High Seas***

The FAO *International Guidelines for the Management of Deep-sea Fisheries in the High Seas* was adopted on 29 August 2008 through a Technical Consultation held in Rome in two sessions (4–8 February and 25–29 August 2008). Non Binding document, it was elaborated to assist States and regional fisheries Resolution 61/105 concerning responsible fisheries in the marine ecosystem management organizations and arrangements (RFMO/As) in sustainably managing deep-sea fisheries and in implementing the United Nations General Assembly (UNGA) concerning responsible fisheries in the marine ecosystem.

The Guidelines include standards and criteria for identifying vulnerable marine ecosystems in areas beyond national jurisdiction and identify the potential impacts of fishing activities on such ecosystems, in order to facilitate the adoption and the implementation of conservation and management measures by RFMO/As and flag States.

The International Guidelines define Vulnerability of Marine Ecosystems (VMEs) as "*the likelihood that a population, community, or habitat will experience substantial alteration from short-term or chronic disturbance, and the likelihood that it would recover and in what time frame. These are, in turn, related to the characteristics of the ecosystems themselves, especially biological and structural aspects.*"[38] (point14).

The Guidelines contain a list of criteria for the identification of vulnerable marine ecosystems in area beyond national jurisdiction as: uniqueness or rarity; Functional significance of the habitat; Fragility; Life-history traits of component species that make recovery difficult; Structural complexity.

The Guidelines encourage cooperation between Flag States and RFMO/As to conduct impact assessments to establish if deep-sea fishing activities are likely to produce significant adverse impacts in a vulnerable area.

States should adopt and implement national legislation and measures aimed at preventing, deterring and eliminating IUU fishing and should cooperate with RFMO/As to take action related to IUU vessels and their listing.

Guidelines for Deep-sea fisheries in the High seas also provide different tools for management and conservation that can be used for vulnerable marine ecosystems (63), including:

- closing of areas to deep-sea fisheries where Vulnerable Marine Ecosystems are known or likely to occur, based on the best available scientific and technical information;
- refraining from expanding the level or spatial extent of effort of vessels involved in deep-sea fisheries and
- Reducing the effort in specific fisheries.

States and RFMO/As should develop and adopt fishery management plans for specific deep-sea fisheries.

The Annex listed examples of potentially vulnerable species groups, communities and habitats, as well as features that potentially support them for example:

> I. Some coldwater corals and hydroids, e.g. reef builders and coral forest including: stony corals (Scleractinia), alcyonaceans and gorgonians (Octocorallia), black corals (Antipatharia) and hydrocorals (Stylasteridae);
>
> ii. Some types of sponge dominated communities;
>
> iii. Communities composed of dense emergent fauna where large sessile protozoans (xenophyophores) and invertebrates (e.g. hydroids and bryozoans) form an important structural component of habitat; and
>
> iv. Seep and vent communities comprised of invertebrate and microbial species found nowhere else (i.e. endemic).

[38] International Guidelines for the Management of Deep-sea Fisheries in the High Seas, §. 14.

3. Declaration of the UN Conference on Environment and Development

The Declaration on the UN Conference on Environment and Development (Rio Declaration) was the final document to come out of the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992. It was adopted by 172 governments to guide future sustainable development and comprises a series of principles defining the rights and responsibilities of States.

The Rio Declaration provides that States enjoy sovereignty over their natural resources but have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond national jurisdiction. The Rio Declaration recognises the common but differentiated responsibilities of States to protect the environment in view of their different contributions to global environmental degradation. Measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus. Where there are threats of serious or irreversible damage, lack of full scientific certainty is not to be used as a reason for postponing cost-effective measures to prevent environmental degradation.

4. Agenda 21

Agenda 21 is a non-binding document; it's the Action programme adopted in Rio de Janeiro by the 1992 United Nations Conference on Environment and Development (UNCED), it identifies full range of issues that must be addressed in an integrated or interrelated way, in order to ensure the health, stability and sustainability of the ecosystems, species and the global environment. It was a major step forward, in that it constituted the first generally agreed statement that these issues must be addressed through integrated comprehensive management utilising the principles of sustainable development at all levels, from the most localised to the planetary. Critical components of such management must include:

- inventory of resources and threats,
- science-based precautionary planning,
- public participation in all levels planning and decision-making;
- integration of planning/implementation comprehensively across all affected sectors,
- recognition of the economic value of biological and natural resources and utilisation of economic factors and motivations as incentives to sustainable management and use,
- devolution of implementing authority to the lowest appropriate levels,
- improved data-development and –sharing processes, and
- continuous monitoring that feeds back into flexible management processes.

These principles are directly applied to the conservation and management of the oceans. In Chapter 17 of Agenda 21, which calls on States to apply them in co-operative action with regard to conservation of living resources, including specifically the protection and restoration of endangered marine species and the preservation of habitats and other ecologically sensitive both in areas under national jurisdiction and in the high seas[39]. In particular, "States should identify marine ecosystems exhibiting high levels of biodiversity and productivity and other critical habitat areas and provide necessary limitations on use in these areas, through, inter alia, designation of protected areas" (para. 17.86).

[39] "States commit themselves to the conservation and the sustainable use of marine living resources on the high seas. To this end, it is necessary to: (...) e) Protect and restore marine species; f) Preserve habitats and other ecologically sensitive areas" (Para. 17.46, e, f).

D. Regional instruments

Regarding regional agreements and instruments, several offer particular potential to the protection of living marine resources, the regional fisheries management organisations (RFMOs) and species-specific regional conservation agreements. Other regional instruments, institutions and initiatives are specialized devoted to the creation and management of protected areas in the Mediterranean Sea.

1. Barcelona Convention and the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean

In 1975, 16 Mediterranean countries and European Community adopted Mediterranean Action Plan (MAP). The MAP was the first-ever plan adopted as a Regional Seas Programme under United Nations Environmental Program (UNEP) umbrella. "*The main objectives of the MAP were to assist the Mediterranean countries to assess and control marine pollution, to formulate their national environment policies, to improve the ability of governments to identify better options for alternative patterns of development, and to optimize the choices for allocation of resources*."[40]

In 1976, these Parties adopted the Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention). In 1995, the Action Plan for the Protection of the Marine Environment and the Sustainable Development of the Coastal Areas of the Mediterranean (MAP Phase II) was adopted by the Contracting Parties to replace the Mediterranean Action Plan of 1975. At the same time the Parties adopted an amended version of the Barcelona Convention of 1976, renamed Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean[41].

The Barcelona Convention scope covers all maritime spaces of the Mediterranean Sea, which are under sovereignty or jurisdiction of the coastal States or in the high sea, it include also gulfs and coastal areas. The geographical scope Barcelone Convention 95 is all Mediterranean Sea as defined in Article 1 "*the Mediterranean Sea Area shall mean the maritime waters of the Mediterranean Sea proper, including its gulfs and seas, bounded to the west by the meridian passing through Cape Spartel lighthouse, at the entrance of the Straits of Gibraltar, and to the east by the southern limits of* the Straits of the Dardanelles between Mehmetcik and Kumkale lighthouses."

Actually the Barcelona Convention has given rise to seven Protocols addressing specific aspects of Mediterranean environmental conservation:

- Dumping Protocol (from ships and aircraft);
- Prevention and Emergency Protocol (pollution from ships and emergency situations);
- Land-based Sources and Activities Protocol;
- Specially Protected Areas and Biological Diversity Protocol;
- Offshore Protocol (pollution from exploration and exploitation) ;
- Hazardous Wastes Protocol ;
- Protocol on Integrated Coastal Zone Management (ICZM).

[40] http://www.unepmap.org/index.php?module=content2&catid=001001002

[41] The 22 contracting Parties to the Barcelona Convention are: Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, the European Community, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, Syria, Tunisia, and Turkey.

- Specially Protected Areas and Biological Diversity Protocol

The Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean was adopted by the contracting parties at the Conference of Plenipotentiaries held in Barcelona from 9 to 10 June 1995. This Protocol replaced the Protocol concerning Mediterranean Specially Protected Areas (adopted on 3 April 1982, in Geneva) which was in force since 23 March 1986. It also includes annexes which were adopted by the Meeting of Plenipotentiaries held in Monaco on 24 November 1996, the Protocol entered into force on 12th December 1999. The main objectives of the Protocol is the conservation and the sustainable use of biological diversity in the Mediterranean, by establishing Specially protected areas in the marine and coastal zones subject to the sovereignty or jurisdiction of the Parties. The Parties shall cooperate in transboundary specially protected areas. The Parties shall take protection measures in the Specially Protected areas, with regard to the rules of international law.

The Protocol applies to all the maritime waters of the Mediterranean, irrespective of their legal condition (be they maritime internal waters, historical waters, territorial seas, exclusive economic zones, fishing zones, ecological zones, high seas), to the seabed and its subsoil and to the terrestrial coastal areas designated by each of the Parties.

To avoid the difficulties arising from the fact that many maritime boundaries have yet to be agreed upon by the Mediterranean States concerned, the Protocol includes two very elaborate disclaimer provisions (Art. 2, paras. 2 and 3). The idea behind such a display of juridical devices is simple. On the one hand, the establishment of intergovernmental cooperation in the field of the marine environment shall not prejudice all the legal questions which have a different nature; but, on the other hand, the very existence of such legal questions (whose settlement is not likely to be achieved in the short term) should not jeopardize or delay the adoption of measures necessary for the preservation of the ecological balance of the Mediterranean.

The Protocol provides for the establishment of a list of Specially Protected Areas of Mediterranean Interest (SPAMI List), The SPAMI List may include sites which "*are of importance for conserving the components of biological diversity in the Mediterranean; contain ecosystems specific to the Mediterranean area or the habitats of endangered species; are of special interest at the scientific, aesthetic, cultural or educational levels*"[42].

The procedures for the listing of SPAMIs are specified in detail in the Protocol (Art. 9).

For example, as regards the areas located partly or wholly on the high seas, the proposal must be made "*by two or more neighbouring parties concerned*" and the decision to include the area in the SPAMI List is taken by consensus by the contracting parties during their periodical meetings.

The Protocol is completed by three annexes, which were adopted in 1996 in Monaco, namely the Common criteria for the choice of protected marine and coastal areas that could be included in the SPAMI List (Annex I), the List of endangered or threatened species (Annex II), the List of species whose exploitation is regulated (Annex III).

Actually twenty one sites have been put on the SPAMI List, thanks to RAC/SPA's technical and/or financial support.

Other Protocols of the Barcelona system could contribute to the protection of the areas beyond national jurisdiction.

[42] Article 8, para.2. of the Protocol.

- ***Protocol for the prevention of pollution of the Mediterranean Sea by dumping for ships and aircraft***

The Protocol for the prevention of pollution of the Mediterranean Sea by dumping for ships and aircraft, adopted on 1976 and amended on 1995, applies to "dumping" as defined as:

a. "*any deliberate disposal at sea of wastes or other matters from ships and aircrafts;"*

b. *"and any deliberate disposal at sea of ships or aircraft*."[43]

The Protocol applies to all the Mediterranean Sea within areas under national jurisdiction and areas beyond national jurisdiction as defined in Convention.

- **Protocol on the Prevention of pollution of the Mediterranean Sea by transboundary Movements of hazardous wastes and their disposal[44]** done at Izmir on 1st October 1996.

The Protocol defines "*Transboundary movements"* as *"any movement of hazardous wastes from an area under the national jurisdiction of one State to or through an area under an area under the national jurisdiction of another State or to or through an area not under the national jurisdiction of any State, provided at least two states are involved in the movement*"[45].

Parties to the Protocol shall take all appropriate measures to prevent, abate and eliminate pollution of the protocol area. Also Parties shall take the appropriate measures to reduce to a minimum the transboundary movement of hazardous wastes.

- ***Protocol concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea[46]***

The cooperation of all Coastal States is important to prevent pollution from ships and to respond to pollution incident. The Parties shall cooperate:

(a) to implement international regulations to prevent, reduce and control pollution of the marine environment from ships; and

(b) to take all necessary measures in cases of pollution incidents[47].

The Parties shall also take measures in conformity with international law to prevent the pollution of the Mediterranean Sea Area from ships in order to ensure the effective implementation in that Area of the relevant international conventions in their capacity as flag State, port State and coastal State, and their applicable legislation[48].

The Parties shall inform the Regional Centre every two years of the measures taken for the implementation of this Article. The Regional Centre shall present a report to the Parties on the basis of the information received[49].

The Parties shall develop and apply, either individually or through bilateral or multilateral cooperation, monitoring activities covering the Mediterranean Sea Area in order to prevent, detect and combat pollution, and to ensure compliance with the applicable international regulations[50].

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[43] Article 3. 3, of the Protocol for the prevention of pollution of the Mediterranean Sea by dumping for ships and aircraft.

[44] Entered into force on 19 January 2008. States parties to the Protocol of Hazardous wastes: Albania, Malta, Montenegro, Morocco, Tunisia and Turkey.

[45] Article 1, f) of the Hazardous wastes protocol.

[46] Adopted 25 January 2002 in Malta, entered into force 17 March 2007.

[47] Article 1 of the Protocol concerning Cooperation in Preventing Pollution.

[48] Article 4, § 2 ibid.

[49] Article 4, §3. ibid.

[50] Article 5, ibid.

- ***Protocol for the Protection of Mediterranean Sea against pollution resulting from Exploration and Exploitation of the continental shelf and the seabed and its subsoil***[51]

The parties shall endeavour to maintain and promote, either individually or through bilateral or multilateral cooperation, contingency plans and other means of preventing and combating pollution incidents.

2. The Mediterranean Marine Mammals Sanctuary

On the 25 November 1999 France, Italy and Monaco, signed an "*Agreement on the creation in the Mediterranean Sea of a Sanctuary for Marine Mammals*"[52], which was adopted within the framework of the Convention on Migratory Species (CMS), followed by a declaration. This is the outcome of a negotiation which made its first step with trilateral declaration signed on 22 March 1993. The Sanctuary was inscribed in the SPAMI list on 2001; it's the first SPAMI which extend to the part of the high sea.

The Area covered by the sanctuary comprises spaces under sovereignty or jurisdiction of the three State Parties and a part of the high sea. The Mediterranean Sanctuary is established by international agreement adopted with specific objective to establish a sanctuary for marine mammals.

The parties to the Sanctuary Agreement undertake to adopt measures to ensure a favourable state of conservation for every species of marine mammal and to protect them and their habitat from negative impacts, both direct and indirect (Art. 4). They prohibit in the sanctuary any deliberate "taking" (defined as "hunting, catching, killing or harassing of marine mammals, as well as the attempting of such actions") or disturbance of mammals. Non-lethal catches may be authorized in urgent situations or for in-situ scientific research purposes (Art. 7, a).

As regards the crucial question of driftnet fishing, the parties undertake to comply with the relevant international and European Community regimes (Art. 7, b). This seems to be an implicit reference to European Community Regulation No. 345/92 of 22 January 1992, laying down technical measures for the conservation of fishery resources[53], which prohibits the use of driftnets longer than 2.5 km. This also seems to be an implicit reference to the subsequent European Council Regulation No. 1239/98 of 8 June 1998[54] which prohibits as from 1st January 2002 the keeping on board, or the use for fishing, of one or more driftnets used for the catching of the species listed in an annex.

The parties to the Sanctuary Agreement undertake to exchange their views, if appropriate, in order to promote, in the competent for a and after scientific evaluation, the adoption of regulations concerning the use of new fishing methods that could involve the incidental catch of marine mammals or endanger their food resources, taking into account the risk of loss or discard of fishing instruments at sea (Art. 7 c).

The parties undertake to exchange their views with the objective to regulate and, if appropriate, prohibit high-speed offshore races in the sanctuary (Art. 9). The parties will also regulate whale watching activities for purposes of tourism (Art. 8). Whale watching for commercial purposes is already carried out in the sanctuary by a certain number of vessels. There are promising prospects for the development in the sanctuary of this kind of activities, which are a benign way of exploiting marine mammals.

The parties will hold regular meetings to ensure the application of and follow up to the Sanctuary Agreement (Art. 12, para. 1). In this framework they will encourage national and international research programmes, as well as public awareness campaigns directed at professional and other users of the sea and non governmental organisations, relating inter alia to the prevention of

[51] Adopted on 14 April 1994, not yet in force.

[52] Entered into force on 21 February 2002, after its ratification by three countries.

[53] Official Journal of the European Communities No. L 42 of 18 February 1992.

[54] Official Journal of the European Communities No. L 171 of 17 June 1998.

collisions between vessels and marine mammals and communication to the competent authorities of the presence of dead or distressed marine mammals (Art. 12, para. 2).

Article 14 of the Sanctuary Agreement provide measures that can be take by the State Parties in the part of the Sanctuary under their sovereignty or jurisdiction and in the high sea. Article 14(2) gives the parties the right to enforce on the high seas provisions of the Sanctuary Agreement with respect to ships flying of third states "*within the limits established by the rule of international law*". This wording brings an element of ambiguity into the scheme, as it can be interpreted in two different ways.

Under the first interpretation, the parties cannot enforce the provisions of the Sanctuary Agreement in respect of foreign ships, as this action would be an encroachment upon the freedom of the high seas.

The second interpretation is based on the fact that all the waters included in the sanctuary would fall within the EEZs of one or another of the three parties if they decided to establish such zones. With the establishment of the sanctuary the parties have limited themselves to the exercise of only one of the rights which are included in the broad concept of the EEZ. However, the simple but sound argument that those who can do more can also do less ("*in plus stat minus*"), seems sufficient in order to conclude that parties can enforce rules applying in the sanctuary also in respect of foreign ships which are found within boundaries.

The sanctuary does not seem to be substantially affected by a future establishment of EEZ or other functional zones such as the Ecological Protection Zone. In this event, article 14 (2) of the Sanctuary Agreement would no longer apply and the matter of the enforcement could be fully covered by article 14 (1)[55].

To promote cooperation under the protection of the marine environment, the special provisions on the relationship with third states, shaped on the model of the 1959 Antarctic Treaty or on the 1995 UN Fish Stocks Agreement could be included also in the HSMPA.[56]

3. Agreement on the Conservation of Cetaceans in the Black Sea, Mediterranean Sea and contiguous (ACCOBAMS)

The Agreement on the Conservation of Cetaceans of Black Sea, Mediterranean Sea and Contiguous Atlantic Area[57], adopted under the framework of the Convention on Migratory Species (CMS). The geographic scopes covered by the Agreement include the high seas area. Article 1 (a) delineated the scope of the agreement to include all "*the maritime waters of the Black Sea and the Mediterranean and their gulfs and seas, and the internal waters connected to or interconnecting these maritime waters, and of the Atlantic area contiguous to the Mediterranean Sea west of the Straits of Gibraltar*".

For the purpose of the Agreement states Parties shall apply in the limits of their sovereignty or jurisdiction the conservation, research and management measures such as adoption and enforcement of national legislation, taking measures concerning fisheries activities, outside these waters in the high sea measures shall apply to any vessel under their flag or registered within their territory (Article III).

ACCOBAMS provides for the use of marine protected areas (MPAs) as a tool for the conservation of cetaceans, in the text of the Agreement, "*Parties shall take co-ordinated measures to achieve and maintain a favourable conservation status for cetaceans. To this end, Parties shall (…) cooperate to create and maintain a network of specially protected areas to conserve cetaceans."* (Article II, 1). Annex II "Conservation Plan", in Article 3 added that "*Habitat protection. Parties shall*

[55] Tullio SCOVAZZI, New International Instruments for Marine Protected Areas in the Mediterranean Sea (Chapter 5), in Anastasia Strati, Maria Gavouneli and Nikolaos Skourtos, Unresolved Issues and New Challenges to the Law of the Sea, Time Before and Time After, Martinus Nijhoff Publishers, Leiden/Boston, 2006, p.119.

[56] ibid., p. 120.

[57] Adopted on 24 November 1996, it entered into force on 1 June 2001.

endeavour to establish and manage specially protected areas for cetaceans corresponding to the areas which serve as habitats of cetaceans and/or which provide important food resources for them. Such specially protected areas should be established within the framework of the Convention for the Protection of the Mediterranean Sea against Pollution, 1976, and its relevant protocol or within the framework of other appropriate instruments".

The 3rd Meeting of the Parties to the ACCOBAMS (Dubrovnik, October 2007) adopted a specific resolution on MPAs for cetaceans that *(…) encourages Parties to contribute to the international effort to achieve the 2010 and 2012 targets set by the CBD (…) Recommends that the Parties give full consideration, and where appropriate cooperate to the creation of marine protected areas for cetaceans in areas of special importance for cetaceans in the Agreement coverage area, within the framework of the relevant Organizations, and invites non-Parties to do the same*.

In particular, 18 new areas have been recommended by the ACCOBAMS Scientific Committee for the creation of MPAs dedicated to the conservation of marine mammals in the Mediterranean, as summarized in the Figure (see annex)

To date, 16 Mediterranean countries are contracting parties to the ACCOBAMS agreement[58].

The Mediterranean countries that have not ratified the Agreement include Bosnia & Herzegovina, Egypt, Israel, Montenegro and Turkey. In addition, two MPAs dedicated to the conservation of marine mammals have been established in the Mediterranean:

- The Mediterranean Mammals Sanctuary cover part of the high sea;
- Lošinj Dolphin Reserve, established in 2006[59].

4. European Union fisheries regulations

The Common Fisheries Policy (CFP) applied to all European States with or not Mediterranean coasts, in the limits of their jurisdiction, and with respect to vessels under the flag of a member State in the outside of the European waters (territorial waters and EEZ). The Common Fisheries Policy was reformed in 2002 to ensure sustainable exploitation of living aquatic resources. The reform introduced a precautionary approach to protect and conserve marine living resources, and to minimise the impact of fishing activities on marine eco-systems. New project of reform of the CFP was launched in 2009 by the Commission of European Communities[60], the new objectives of the CFP are to overcoming five structural failing in the Policy (overfishing capacities, focusing the policy objectives, Focusing the decision-making framework on core long-term principles, Encouraging the industry to take more responsibility in implementing the CFP, Developing a culture of compliance).

The conservation measures under the CFP set up rules for total allowable catches, limitation of fishing effort, technical measures (rules in relation to fishing gears and minimum landing sizes), and impose obligations to record and report catches and landings.

The CFP includes several measures to limit the environmental impact of fishing. Among them is the protection of non target species such as marine mammals, birds and turtles, juvenile fish and vulnerable fish stocks, the strategy to prevent by catches and eliminating discards, and the protection of sensitive habitats by the measures to eliminate destructive fishing practices.

The European Union adopted several measures for the protection of vulnerable marine ecosystems,

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[58] Annex 17 Mediterranean States Parties to the ACCOBAMS.

[59] Regulation of the 26th of July 2006, Ministry of Culture of the Republic of Croatia, UP/I-612-07/06-33/676, 532- 08-02-1/5-06-1. The Losinj Dolphin Reserve is protected as Special Zoological Reserve and as such is subject to the strictest type of protection regime. Initially, the area receives "preventive protection" with protection from the development of any new human activities, for a maximum of three years. This will allow the establishment of a management body and the preparation of a management plan for the permanent Reserve. After these three years the designation will become permanent through a Decree of the Government.

[60] Green Paper Reform of the Common Fisheries Policy, COM (2009) 163 final of 22/04/2009.

- ***Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea***[61]

This regulation was adopted to protect and conserve living aquatic resources and marine ecosystems and to provide for their sustainable exploitation. The management system provided for in this Regulation covers operations relating to the fishing of Mediterranean stocks carried out by Community vessels whether in Community waters or in international waters, by third country vessels in Member States fishing zones or by citizens of the Union in the Mediterranean High Sea. For the protection of the marine habitat, Regulation prohibits the use of:

- trawl nets, dredges, purse seines, boat seines, shore seines or similar nets above seagrass beds of, in particular, *Posidonia oceanica* or other marine phanerogams;
- trawl nets, dredges, shore seines or similar nets above coralligenous habitats and mäerl ;
- towed dredges and trawl nets fisheries at depths beyond 1 000 m[62].

State Members can establish fishing protected areas and taking management measures applied therein, both in waters under their jurisdiction and beyond where the protection of nursery areas, of spawning grounds or of the marine ecosystem from harmful effects of fishing requires special measures (Article 5). Fishing Protected Areas "*means a geographically-defined sea area in which all or certain fishing activities are temporarily or permanently banned or restricted in order to improve the exploitation and conservation of living aquatic resources or the protection of marine ecosystems*" (Article 2.2).

Fishing Protected Areas can be also designated by the Council occurring essentially beyond the territorial seas of Member States, concerning the types of fishing activities banned or authorised in such areas.

- Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing

The objective of this regulation[63] is to establish a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing.

The scope of this Regulation should extend to fishing activities carried out on the high seas and in maritime waters under the jurisdiction or sovereignty of coastal countries, including maritime waters under the jurisdiction or sovereignty of the Member States.

- Council Regulation (EC) No 734/2008 of 15 July 2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears

The regulation[64] organise the use of the bottom gears by Community fishing vessels in the outer limits of the jurisdiction of the State members.

In the *'vulnerable marine ecosystem' as defined as any marine ecosystem whose integrity (i.e. ecosystem structure or function) is, according to the best scientific information available and to the principle of precaution, threatened by significant adverse impacts resulting from physical contact with bottom gears in the normal course of fishing operations, including, inter alia, reefs, seamounts, hydrothermal vents, cold water corals or cold water sponge beds. The most vulnerable ecosystems are those that are easily disturbed and in addition are very slow to recover, or may never recover*

[61] Official Journal of European Union, L 409, 30.12.2006, pp. 11 – 85.
[62] Article 4 "Protected Habitats".
[63] Official Journal of European Union, L 286, 29/10/2008, pp. 1- 32.
[64] Official Journal of the European Union, L. 208, 30/07/2008, pp. 8- 13.

(Article 2.b), State shall identify areas that shall be closed to fishing with bottom gears, Member States shall implement these closures without delay in respect of their vessels and immediately notify the Commission of the closure.

- Natura 2000 network in the marine environment : Natura 2000 is a community-wide network of nature protection areas established under the Habitats Directive (92/43/EEC)[65]. The aim of the network is to assure the long-term survival of Europe's most valuable and threatened species and habitats. Natura 2000 Network includes land and marine sites (territorial sea, EEZ)[66]. Fisheries management measures under the CFP can be taken in the areas. Natura 2000 scope does not past the outer limits of national jurisdiction of the Member States.

5. Regional Fisheries Organizations in the Mediterranean Sea

The two important Regional Fisheries Management Organizations (RFMO) that play an important role in the conservation and management of the fisheries in the Mediterranean Sea are:

- ***General Fisheries Commission for the Mediterranean (GFCM)***

The General Fisheries Commission for the Mediterranean (GFCM) was established in 1949 under the auspices of the FAO to coordinate activities to promote the development, conservation, rational management and best utilization of living marine resources in the Mediterranean and Black Seas and connecting waters. It now has 24 Members[67]. A Sub- Committee on Marine Environment and Ecosystems advises the Scientific Advisory Committee of GFCM on issues relating to Marine Protected Areas.

During its 29th session of the GFCM held in Rome from 21-25 February 2005, the GFCM recommended to adopt a measure to ban trawling below 1,000 meters[68]. GFCM also banned driftnets, with the intent of making the whole Mediterranean driftnet free. In 2006, three ecologically important deep sea areas have been identified as sites of particular ecological interest following a decision adopted during the annual meeting in Istanbul. The recommendation of GFCM is to protect: (a) the deepwater coral reef off Capo Santa Maria di Leuca, Italy, in the Ionian Sea, which is home to the rare white coral, *Lophelia pertusa*; (b) a chemosynthesis-based ecosystem, offshore from the Nile Delta; and (c) the Eratosthenes seamount, south of Cyprus, which hosts rare coral species[69]. The deep sea sites of particular ecological interest identified by GFCM cover 15,666 km² that is 0.62% of the total area of the Mediterranean Sea. This resolution thus marked a significant step towards the emergence of the GFCM as an effective authority for fisheries management and the protection of marine environment and ecosystems in the international waters of the Mediterranean Sea.

According to recent scientific studies on deep-sea corals in the Mediterranean, coral diversity and abundance are higher in the unprotected shallower waters: the deepest known coral occurrence is 1 200 m[70].

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[65] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Official Journal of European Union, L 206 , 22/07/1992, pp. 0007 – 0050.

[87] The "Guidelines for the establishment of the Natura 2000 network in the marine environment. Application of the Habitats and Birds Directives." aims at facilitating the establishement of marine network of conservation areas under Natura 2000.

[67] Albania, Algeria, Bulgaria, Croatia, Cyprus, the European Union, Egypt, France, Greece, Israel, Italy, Japan, Lebanon, Libya, Malta, Monaco, Morocco, Romania, Serbia and Montenegro, Slovenia, Spain, Syria, Tunisia and Turkey.

[68] Recommendation GFCM/2005/1.

[69] Recommendation GFCM/2006/3.

[70] Taviami, M, Freiwald, A. and Zibrowius, H. 2005. "Deep coral growth in the Mediterranean Sea: an overview" In: Coldwater Corals and Ecosystems (eds. A. Freiwald and J.M. Roberts). Springer-Verlag, Berlin Heidelberg, pp. 137-156.

- ***International Commission for the Conservation of Atlantic Tunas (ICCAT)***

The International Commission for the Conservation of Atlantic Tunas is an inter-governmental fishery organization responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and its adjacent seas, it covers the Mediterranean Sea.

The organization was established by the Convention for the Conservation of Atlantic Tunas[71], adopted by the Conference of the plenipotentiaries on the Conservation of Atlantic Tuna, held at Rio de Janeiro (Brazil) in 1966. After the ratification processes the convention entered into force in 1968. The areas which the convention shall apply cover water of the Atlantic Ocean and the adjacent Seas including Mediterranean Sea.

Through the Convention, the Commission is responsible for the studies and management of tunas and tuna-like fishes in the Atlantic (Article IV). The Commission may, on the basis of scientific evidence, make recommendations designed to maintain the populations of tuna and tuna-like fishes that may be taken in the Convention area at levels which will permit the maximum sustainable catch. These recommendations shall be applicable only to the Contracting Parties[72]. The Convention is opened to signature by any government of any State which is a member of the United Nations or of any specialized Agency of the United Nations.

The ICAAT fixe annually the total of tuna catches allowed to each Member State.

The GFCM, played an important role to regulate the fisheries catches in the Mediterranean Sea, their importance can be for more interest in the management of the fishing in the SPAMI beyond national jurisdiction.

[71] For the text of the Convention see: http://www.iccat.int/Documents/Commission/BasicTexts.pdf.

[72] Mediterranean Contracting Parties to the ICAAT: Albania, Algeria, Egypt, European Union, Libya, Morocco, Syria, Tunisia, Turkey.

Part II
Actors responsible for the implementation and enforcement of the conservation measures

A- The States Parties to the Specially Protected Areas Protocol bear the obligations of the SPAMIs beyond national jurisdiction

The Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean, The procedures for the listing of SPAMIs are specified in detail in the Protocol (Art. 9). For instance, as regards the areas located partly or wholly on the high seas, the proposal must be made "by two or more neighbouring parties concerned" which and the decision to include the area in the SPAMI List is taken by consensus by the contracting parties during their periodical meetings.

Under article 9 (3) "Parties making proposals for inclusion in the SPAMI List shall provide the Centre[73]". With an introductory report containing information on the area geographical location, its physical and ecological characteristics, its legal status, its management plans and the means for their implementation, as well as statement justifying its Mediterranean importance". In the case of SPAMIs beyond national jurisdiction a joint introductory report must be presented by the concerning states which have common interests in the protection of the area. Annex I provides that "to be included in the SPAMI List an area will have to be endowed with a management plan. The main rules of this management plan are to be laid down as from the time of inclusion and implemented immediately. A detailed management plan must be presented within three years of the time of inclusion. Failure to respect this obligation entails the removal of the site from the List"[74].

Once the areas beyond national jurisdiction are included to SPAMI List, all contracting Parties agree "to recognize the particular importance of these areas for the Mediterranean", and consequently "to comply with the measures applicable to the SPAMIs and not authorize nor undertake any activities that might be contrary to the objectives for which the SPAMIs were established"[75]. This gives to the SPAMIs and the measures adopted for their protection an *erga omnes* effect, at least as far the parties to the protocol are concerned[76].

States Parties to the Protocol should harmonize their national legislation by creating the necessary legal and administrative framework for MPA, and common criteria for designation of MPA should be taken. Tunisia adopted a new law for marine and coastal protected Areas[77]

As regard the legal regime of protection of species harvested located on the sea floor from trawling practices, The Mediterranean sea bed fall under the jurisdiction of the riparian States as continental shelf. Living and non living resources associated to the continental shelf are inherent and exclusive, for the exploitation of this resources fishing vessels need authorization from the coastal state. Coastal States can adopt a legislation to protect its sedentary resources.

While legal provisions will be a necessary tool in addressing all four constraints, it will not be the limiting or determining factor if the management of these areas is supported.

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[73] The Centre is "Regional Activity Centre for Specially Protected Areas".

[74] Section D, paragraph 7.

[75] Article 8 (3) of the Protocol.

[76] Tullio Scovazzi, « New international instruments for marine protected areas in the Mediterranean Sea", in Anastasia STRATI, Maria GAVOUNELI and Nikolaos SKOURTOS (eds), Unresolved Issues and New Challenges to the Law of the Sea, Time Before and Time After, Martinus Nijhoff Publishers, Leiden/Boston, p. 114.

[77] Law n°2009-49 of 20 July 2009, JORT N° 58 of 21 July 2009, pp. 1965- 1969.

B- Third States and respect of the measures and instruments in the SPAMIs.

The question is, do coastal states have certain rights to impose practical measures on foreign ships belonging or having the flag of State non-Parties to the 1995 Protocol?

It's generally accepted that treaty rights and obligations are legally confined to Contracting Parties, and to third States only with their consent. This general rule, also known as the *pacta tertiis* principal, is laid down in Article 34 of 1969 Vienna Convention.

The State's consent expressed by ratifying or acceding to the Protocol implies that state accept that their vessels respect the measures taken in the specific area of SPAMI. The parties shall "*invite States that are not Parties to the Protocol and international organizations to cooperate in the implementation*" of the Protocol (Art. 28, para. 1). They also "*undertake to adopt appropriate measures, consistent with international law, to ensure that no one engages in any activity contrary to the principles and purposes*" of the Protocol (Art.28, para. 2).

The Protocol "invite State that are not Parties to the Protocol and international organizations to cooperate in the implementation" (Art 28 para 2). Parties shall "undertake to adopt appropriate measures, consistent with international law, to ensure that no ones engages in any activity contrary to the principles and purposes" of the Protocol (Art 28 para 2). In practice, Barcelona Parties are entitled to exercise some sort of "pressure" on third States to force them to comply.

Conclusion

The implementation of Specially Protected Areas of Mediterranean Interest (SPAMIs) beyond national jurisdiction presents a challenging for the Mediterranean States, and international community. As regard, the legal framework applied to the establishment of the SPAMI in the high sea, it consist of an assembled “puzzle” made up of pieces of international law, both soft and hard, and regional instruments adapted to the specific status of Mediterranean Sea as an enclosed or semi-enclosed sea. An appropriate instrument for the establishment of the SPAMIs in the high Sea was set for by the Protocol of Specially Protected Areas and Biological Diversity in the Mediterranean Sea; taking into account the new ecological approach which overcomes the artificial boundaries with respect to the freedoms guaranteed by the international law.

However, the recent development observed since the last decade, reflects the aspirations of the Mediterranean States to extend their jurisdiction to the maritime spaces beyond the external limits of the territorial sea. The acceleration of the movement will reduce considerably spaces under the regime of the high sea, if full-seize of exclusive economic zones were to be proclaimed and delimited by all the coastal States no areas of high seas would be left.

Under the difficulties related the delimitation of maritime boundaries between the States with opposite or adjacent coasts, and the more or less long period without appropriate protection, the SPAMIs can be viewed as an alternative solution to overcome the difficulties arising from the delimitation of maritime boundaries, the ASPIM could be considered as “provisional arrangement” to preserve the biological diversity in the Mediterranean Sea.

International Recognition of the Concept of High Seas Marine Protected Areas, could be for great interest for the protection of biological diversity in the high Seas. Cooperation between Mediterranean States and Competent International and regional Organization remain the key of the success of the implementation and management of SPAMIs beyond national jurisdiction.

Definition of concepts

Territorial Sea: (Part II, section 2 of the UNCLOS)

Territorial Sea is marine space beyond land territory and internal waters, not exceeding **12** nautical miles measured from base lines. The outer limit of the territorial sea is the line every point of which is at distance from the nearest point of the baseline equal to the breadth of the territorial sea. In territorial sea the coastal state exercises its sovereignty. The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil. Ships of third States whether coastal or not enjoy the right of innocent passage through the territorial sea.

Contiguous Zone: (Part II, Section 4 of the UNCLOS)

The contiguous zone may not extend beyond **24** nautical miles from the baseline from which the breadth of the territorial sea is measured.

In a zone contiguous to its territorial sea the coastal state may exercise the control necessary to:

(a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea;

(*b*) Punish infringement of the above regulations committed within its territory or territorial sea.

Economic Exclusive Zone: (Part V of the UNCLOS)

The EEZ covers an area beyond and adjacent to the territorial sea up to the limit of **200** nautical miles, from the base lines which the breadth of the territorial sea is measured. In this area, the coastal state that have claimed an EEZ, have **sovereign rights** over living and non-living resources as well as **jurisdiction** in respect of the establishment and use of artificial islands, installations and structures, marine scientific research, the protection and preservation of the marine environment.

The others states whether coastal or land-locked enjoy the freedom of navigation and overflight and the laying of submarine cables and pipelines and other internationally lawful uses of the sea related to theses freedoms.

The delimitation of exclusive economic zone between states with opposite or adjacent coasts shall be effected by agreement on the basis of International Law.

Continental Shelf: (Part VI of the UNCLOS)

The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of **200 nautical miles** from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. The rights are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

High Seas: (Part VII of the UNCLOS)

High seas is defined as including all parts of the sea that are beyond the exclusive economic zone, or the territorial sea of a State, or the archipelagic waters of an archipelagic State, synonym to "International Waters".

The high seas are open to all States, whether coastal or land-locked (**Mare liberum**).

Freedom of the high seas is exercised under the conditions laid down by the Convention of the Law of the Sea and by others rules of international law. It comprises, *inter alia*, both for coastal and land-locked States:

(a) freedom of navigation;

(b) freedom of overflight;

(c) freedom to lay submarine cables and pipelines, subject to

Part VI;

(d) freedom to construct artificial islands and other installations

permitted under international law, subject to Part VI;

(e) freedom of fishing, subject to the conditions laid down in

section 2;

(f) freedom of scientific research, subject to Parts VI and XIII.

The High Seas are all parts of sea (water column) beyond sovereignty or national jurisdiction of the coastal states.

No State may validly purport to subject any part of the high seas to its sovereignty.

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