THE REGIONAL DIMENSION OF ENVIRONMENTAL GOVERNANCE: THE CASE OF THE MEDITERRANEAN SEA

REGIONALNA RAZSEŽNOST OKOLJSKEGA UPRAVLJANJA: PRIMER SREDOZEMSKEGA MORJA

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ABSTRACT

The so-called Barcelona system, composed of a framework Convention and seven Protocols, is a notable instance of fulfilment of the obligation to co-operate for the protection of a semi-enclosed sea. While presenting several innovative aspects, the legal instruments applying to the protection of the Mediterranean environment are consistent with the general principles and objectives of the United Nations Convention on the Law of the Sea to which they bring an added value. The Protocols relate respectively to pollution by dumping from ships and aircraft or incineration at sea, pollution from ships, pollution from land-based sources and activities, specially protected areas and biodiversity, pollution from exploration and exploitation of the continental shelf, the seabed and its subsoil, pollution by transboundary movements of hazardous wastes and their disposal, and integrated coastal zone management. A notable remark is that UNEP Mediterranean Action Plan is broadening its scope. At their 2009 meeting, the parties adopted the Marrakesh Declaration which aims at promoting a better regional environmental governance, especially to meet the future challenges of climate change. The parties declared themselves also concerned by the serious threats to the environment that are confronting the Mediterranean, including the destruction of its biodiversity, adverse effects on the countryside, coastline and water resources, soil degradation, desertification, coastal erosion, eutrophication, pollution from land-based sources, negative impacts related to the growth of maritime traffic, the over-exploitation of natural resources, the harmful proliferation of algae or other organisms, and the unsustainable exploitation of marine resources.

IZVLEČEK

Tako imenovani Barcelonski sistem, ki sestoji iz okvirne konvencije in sedmih protokolov, je pomemben primer izpolnjevanja obveznosti do sodelovanja pri zaščiti polzaprtega morja. Pravna orodja, ki zadevajo zaščito sredozemskega okolja z vrsto inovativnih pristopov, so sicer v skladu s splošnimi principi in cilji Konvencije Združenih narodov o Zakonu o morju in ji prinašajo dodano vrednost. Protokoli zadevajo onesnaževanje z odpadki, odvrženimi z ladij in letal ali njihovim sežiganjem na morju, ladijsko onesnaževanje, onesnaževanje z viri in dejavnostmi s kopnega, posebna območja varstva in biotsko pestrost, onesnaževanje zaradi raziskovanja in izkoriščanja celinske police, morskega dna in njegovega podtalja, onesnaževanje zaradi čezmejnega prevažanja nevarnih odpadkov in njihovega odlaganja, in celostno upravljanje obalnega pasu. Pri tem pa je pomembno, da sredozemski akcijski načrt UNEP-a (Okoljskega programa Združenih narodov) širi svojo pristojnost. Države podpisnice Barcelonske konvencije so na svojem 9. rednem srečanju, ki je potekalo leta 2009 v Maroku, sprejele tako imenovano Marakeško deklaracijo, katere cilj je pospeševanje boljšega regionalnega okoljskega upravljanja in še posebno spoprijemanje s prihodnjimi izzivi klimatskih sprememb. Države podpisnice so hkrati izrazile veliko zaskrbljenost zaradi resne

ogroženosti sredozemskega okolja, vključno z uničevanjem njegove biotske raznovrstnosti, škodljivimi posledicami za njegovo pokrajino, obalo in vodne vire, degradacijo tal, dezertifikacijo, obalno erozijo, evtrofikacijo, onesnaževanjem s kopenskimi viri, negativnimi učinki, povezanimi z morskim prometom, pretiranim izkoriščanjem naravnih virov, škodljivo bujno rastjo alg in drugih organizmov, in netrajnostnim izkoriščanjem morskih virov.

1. THE IMPLEMENTATION OF A GENERAL OBLIGATION AT THE REGIONAL LEVEL

The Mediterranean is a regional sea surrounded by the territories of twenty-two States[1]. The bordering countries, all of which have ancient historical and cultural traditions, differ as far as their internal political systems and levels of economic development are concerned. Highly populated cities, ports of worldwide significance, extended industrial areas and renowned holiday resorts are located along the Mediterranean shores. Important routes of international navigation pass through the Mediterranean waters, which connect the Atlantic and the Indian Oceans through the strait of Gibraltar and the Suez Canal. The Mediterranean region is an area of major strategic importance and, in certain cases, of high political tension. The protection of the Mediterranean environmental balance, which is particularly fragile because of the very slow exchange of waters, is of a particularly serious concern.

As regards the legal framework applying to the Mediterranean environment, under the United Nations Convention on the Law of the Sea (Montego Bay, 1982)[2], "States have the obligation to protect and preserve the marine environment" (Art. 192)[3]. To this aim, they are bound to co-operate on a global and, as appropriate, regional basis in formulating and elaborating international rules, standards and recommended practices and procedures, taking into account characteristic regional features (Art. 197)[4]. These general obligations must be fulfilled through the adoption, individually or jointly, of measures addressing pollution from all sources, such as the operation of ships, land-based activities, exploitation of the sea-bed, dumping of wastes.

In general terms, an obligation to co-operate implies a duty to act in good faith in pursuing a common objective and in taking into account the requirements of the other interested States. In practice, such an obligation can have several facets (information, consultation, negotiation,

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[1] Spain, the United Kingdom (as far as Gibraltar and the sovereign base areas of Akrotiri and Dhekelia are concerned), France, Monaco, Italy, Malta, Slovenia, Croatia, Bosnia and Herzegovina, Montenegro, Albania, Greece, Cyprus, Turkey, Syria, Lebanon, Israel, Egypt, Libya, Tunisia, Algeria, Morocco. This paper does not consider the Black Sea, a semi-enclosed sea connected to the Mediterranean by the straits of Dardanelles and Bosphorus.

[2] Hereinafter: UNCLOS.

[3] The UNCLOS also provides that States are bound to take measures "necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life" (Art. 194, para. 5).

[4] Part IX of the UNCLOS, relating to enclosed or semi-enclosed seas, confirms that international co-operation in several fields, including the protection of the environment, is particularly suited in the case of countries surrounding the same regional sea. The Mediterranean fully fits the definition of enclosed or semi-enclosed sea, namely "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". (Art. 122).

joint participation in preparing environmental impact assessments or emergency plans), depending on the different instances.

As remarked by the International Court of Justice, "the parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation (...); they are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it"[5].

The obligation to co-operate applies to both the global and the regional basis. While general concerns need to be faced on a world scale, regional or sub-regional treaties are the best tool to take into account the peculiarities of a specific marine area. The number of treaties, which have so far been concluded to protect the marine environment, is ever increasing. In many regional seas, both treaties having a worldwide scope and treaties having a regional (or even sub-regional) scope are applicable at the same time. It often happens that the same subject matter (for example, pollution from dumping) is regulated by two or more treaties and that complex legal questions of coordination arise[6].

Luckily enough, the UNCLOS, the only global treaty on the law of the sea, specifies that its provisions on the protection of the environment are without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously which relate to the protection and preservation of the marine environment, and to agreements which may be concluded in furtherance of the general principles set forth in the UNCLOS itself (Art. 237, para. 1). It adds that specific obligations assumed by States under special conventions, with respect to the protection and preservation of the marine environment, should be carried out in a manner consistent with the general principles and objectives of the UNCLOS (Art. 237, para. 2).

While presenting several innovative aspects, the legal instruments applying to the protection of the Mediterranean environment, belonging to the so-called Barcelona system, are consistent with the general principles and objectives of the UNCLOS, to which they bring an added value.

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[5] Para. 85 of the judgment of 20 February 1969 on the *North Sea Continental Shelf* case. In another case, the International Tribunal for the Law of the Sea found that the parties were bound, as a provisional measure, to enter into consultations with regard to possible consequences arising out of the commissioning of a nuclear plant (para. 89 of the order of 3 December 2001 on the *MOX Plant* case). The Tribunal confirmed that the duty to co-operate is a fundamental principle in the prevention of pollution of the marine environment under the UNCLOS and general international law (*ibid.*, para. 82).

[6] As provided for in the 1969 Vienna Convention on the law of treaties, the legal tools for tackling the problem of potentially overlapping treaties derive from the combination of different criteria (*ratione temporis*, *ratione personae* and *ratione materiae*, to speak in Latin). A conflict between treaties arises only if two successive treaties have been concluded by the same parties and regulate in a different way the same subject-matter. From a logical point of view and assuming, for the sake of simplicity, that all the parties to the earlier treaty are also parties to the later one, the following questions need to be addressed: *a*) whether the provisions of two different treaties relate to the same subject-matter; *b*) if so, whether one of the two treaties specifies that it is subject to the other; *c*) if not, whether the two provisions in question are really incompatible, considering that the special rules (with respect to their subject matter or their territorial application) prevail over the general ones; *d*) finally, if the provisions in question remain incompatible, those of the later treaty prevail.

2. THE BARCELONA SYSTEM

The Barcelona system[7] is a notable instance of fulfilment of the obligation to co-operate for the protection of a semi-enclosed sea[8].

On 4 February 1975, a policy instrument, the Mediterranean Action Plan (MAP), was adopted by an intergovernmental meeting convened in Barcelona by the United Nations Environment Programme (UNEP). One of the main objectives of the MAP was to promote the conclusion of a framework convention, together with related protocols and technical annexes, for the protection of the Mediterranean environment. This was done on 16 February 1976, when the Convention on the Protection of the Mediterranean Sea against Pollution and two protocols were opened to signature in Barcelona. The Convention, which entered into force on 12 February 1978, is chronologically the first of the so-called regional seas agreements concluded under the auspices of UNEP.

In the years following the Rio Conference on Environment and Development (1992), several components of the Barcelona system underwent important changes. In 1995, the MAP was replaced by the "Action Plan for the Protection of the Marine Environment and the Sustainable Development of the Coastal Areas of the Mediterranean (MAP Phase II)". Some of the legal instruments were amended. New protocols were adopted either to replace the protocols which had not been amended or to cover new subjects of cooperation. The present Barcelona legal system includes a framework convention and seven protocols, specifically:

a) the Convention on the Protection of the Mediterranean Sea against Pollution which, as amended in Barcelona on 10 June 1995, changes its name into Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean[9] (the amendments entered into force on 9 July 2004);

b) the Protocol for the Prevention of the Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft (Barcelona, 16 February 1976; in force from 12 February 1978), which, as amended in Barcelona on 10 June 1995, changes its name into Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea[10] (the amendments are not yet in force[11]);

c) the Protocol Concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency (Barcelona, 16 February

[7] On the Barcelona system see RAFTOPOULOS, *Studies on the Implementation of the Barcelona Convention: The Development of an International Trust Regime*, Athens, 1997; JUSTE RUIZ, *Regional Approaches to the Protection of the Marine Environment*, in *Thesaurus Acroasium*, 2002, p. 402; RAFTOPOULOS & McCONNELL (eds.), *Contributions to International Environmental Negotiation in the Mediterranean Context*, Athens, 2004; SCOVAZZI, *The Developments within the "Barcelona System" for the Protection of the Mediterranean Sea against Pollution*, in *Annuaire de Droit Maritime et Océanique*, 2008, p. 201.

[8] Other treaties, that do not belong to the Barcelona system, are relevant for the Mediterranean marine environment, such as, the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (Monaco, 1996; so-called ACCOBAMS) and, on the sub-regional level, the Agreement between France, Italy and Monaco on the protection of the waters of the Mediterranean shore (Monaco, 1976; so-called RAMOGE).

[9] Hereinafter: the Convention.

[10] Hereinafter: the Dumping Protocol.

[11] The amendments will enter into force on the thirtieth day following the receipt by the depositary of notification of their acceptance by three fourth of the parties to the amended protocol.

1976; in force from 12 February 1978), which has been replaced by the Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea (Valletta, 25 January 2002[12]; in force from 17 March 2004);

d) the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources (Athens, 17 May 1980; in force from 17 June 1983), which, as amended in Syracuse on 7 March 1996, changes its name into Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities[13] (in force from 11May 2008);

e) the Protocol Concerning Mediterranean Specially Protected Areas (Geneva, 1 April 1982; in force from 23 March 1986), which has been replaced by the Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (Barcelona, 10 June 1995[14]; in force from 12 December 1999);

f) the Protocol Concerning Pollution Resulting from Exploration and Exploitation of the Continental Shelf, the Seabed and its Subsoil (Madrid, 14 October 1994[15]; in force from 24 March 2011);

g) the Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal (Izmir on 1 October 1996[16]; in force from 18 December 2007);

h) the Protocol on Integrated Coastal Zone Management in the Mediterranean (Madrid, 21 January 2008[17]; in force from 24 March 2011).

The updating and the additions to the Barcelona legal system show that the parties consider it a dynamic body capable of being subject to re-examination and improvement, whenever appropriate[18]. Each of the new instruments contains important innovations, which will be reviewed hereunder. The protocols even display a certain degree of legal imagination in finding constructive ways to address complex environmental problems.

3. THE CONVENTION

The Convention, as amended in 1995, retains its character of a framework treaty that has to be implemented through specific protocols. It also retains what in 1976 was seen as a major innovation, that is the possibility of participation by the European Economic Community (now the European Community, EC) and by similar regional economic groupings at least one member of which is a coastal State of the Mediterranean Sea and which exercise competence

[12] Hereinafter: the Emergency Protocol.
[13] Hereinafter: the Land-Based Protocol.
[14] Hereinafter: the Areas Protocol.
[15] Hereinafter: the Seabed Protocol.
[16] Hereinafter: the Wastes Protocol.
[17] Hereinafter: the Coastal Zone Protocol.
[18] The Barcelona system also includes some “soft law” instruments . For instance, on 18 January 2008, the meeting of the parties to the Convention, held in Almeria, adopted a set of Guidelines for the Determination of Liability and Compensation for Damage resulting from Pollution of the Marine Environment in the Mediterranean Sea Area.

in fields covered by the Convention (Art. 30). In fact, the EC is a party to the Convention and some of its protocols, together with seven Mediterranean States which are members of this organization (Cyprus, France, Greece, Italy, Malta, Slovenia and Spain).

In 1995, the geographical coverage of the Convention was extended to include all maritime waters of the Mediterranean Sea, irrespective of their legal condition[19]. However, the sphere of territorial application of the Barcelona legal system is flexible, in the sense that any protocol may extend the area to which it applies. For example, and for obvious reasons, the Seabed Protocol applies also to the continental shelf, the seabed and its subsoil. The Land-Based Protocol applies also to the "hydrologic basin" of the Mediterranean Sea Area, this being "the entire watershed area within the territories of the Contracting Parties, draining into the Mediterranean Sea Area". The application of the Convention may also be extended to "coastal areas as defined by each Contracting Party within its own territory", as it was recently done with the Coastal Zone Protocol.

The amended text of the Convention recalls and applies to a regional scale the main concepts embodied in the instruments adopted by the 1992 Rio Conference (the Declaration on Environment and Development and the Programme of action "Agenda 21"), such as sustainable development, the precautionary principle, the integrated management of the coastal zones; the use of best available techniques and best environmental practices, as well as the promotion of environmentally sound technology, including clean production technologies. For the purpose of implementing the objectives of sustainable development, the parties are called to take fully into account the recommendations of the Mediterranean Commission on Sustainable Development, a new body established within the framework of the MAP, Phase II.

A new provision (Art. 15) relates to the right of the public to have access to information on the state of the environment and to participate in the decision-making processes relevant to the field of application of the Convention and the protocols. Nothing, however, is said as regards the equally important question of access of the public to justice.

Compliance with the Convention and the protocols, as well as with the decisions and recommendations adopted during the meetings of the parties, is assessed on the basis of the periodical reports that the parties are bound to transmit to the UNEP at regular intervals[20]. Such reports, which are examined by the biannual meetings of the parties, relate to the legal, administrative or other measures taken by the parties, their effectiveness and the problems encountered in their implementation. The meeting of the parties can recommend, when appropriate, the necessary steps to bring about full compliance with the Convention and the protocols and to promote the implementation of decisions and recommendations (Arts. 26 and 27). Specific reporting obligations are found in the protocols (see, for example, Art. 23 of the Areas Protocol).

In 2008, the Meeting of the parties adopted the procedures and mechanisms on compliance and established a compliance committee. The objective is "to facilitate and promote compliance

[19] Taking into consideration the present multiform legislation of Mediterranean States, such waters can have the legal condition of maritime internal waters, territorial seas, fishing zones, ecological protection zones, exclusive economic zones or high seas.

[20] The secretariat functions are carried out by the UNEP (Art. 17), through the UNEP/MAP, located in Athens.

with the obligations under the Barcelona Convention and its Protocols, taking into account the specific situation of each Contracting Party, in particular those which are developing countries"[21].

4. THE DUMPING PROTOCOL

The Dumping Protocol applies to any deliberate disposal of wastes or other matter from ships or aircraft, with the exception of wastes or other matters deriving from the normal operations of vessels or aircraft and their equipment which are considered as pollution from ships. The protocol, as amended in 1995, presents two major changes with respect to the previous text.

First, the protocol applies also to incineration at sea, which is prohibited (Art. 7). It is defined as "the deliberate combustion of wastes or other matter in the maritime waters of the Mediterranean Sea, with the aim of thermal destruction and does not include activities incidental to the normal operations of ships and aircraft".

Second, the protocol is based on the idea that the dumping of wastes or other matter is in principle prohibited, with the exception of five categories of matters specifically listed, such as dredged materials, fish waste, inert uncontaminated geological materials. The original protocol was based on the idea that dumping was in principle permitted, with the exception of the prohibited matters listed in Annex I (the so-called black list) and the matters listed in Annex II (the so-called grey list), which required a prior special permit. The logic of the original text is thus fully reversed in order to ensure a better protection of the environment[22].

5. THE LAND-BASED PROTOCOL

The Land-Based Protocol applies to discharges originating from land-based points and diffuse sources and activities. Such discharges reach the sea through coastal disposals, rivers, outfalls, canals or other watercourses, including groundwater flow, or through run-off and disposal under the seabed with access from land.

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[21] See PAPANICOLOPULU, *Procedures and Mechanism on Compliance under the 1976/1995 Barcelona Convention on the Protection of the Mediterranean Sea and its Protocols*, in TREVES, PINESCHI, TANZI, PITEA, RAGNI & ROMANIN JACUR (eds.), *Non-Compliance Procedures and Mechanisms and the Effectiveness of International Environmental Agreements*, The Hague, 2009, p. 155.

[22] On the world level, the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Wastes and Other Matter (London, Mexico City, Moscow, Washington, 1972) introduces a similar reversal of the logic followed in the parent convention. It is also based on the assumption that the parties shall prohibit the dumping of any wastes or other matter with the exception of those listed in an annex. In the 2000 report on Oceans and the law of the sea by the United Nations Secretary-General, the 1996 Protocol was seen as a "milestone in the international regulations on the prevention of marine pollution by dumping of wastes" and "a major change of approach to the question of how to regulate the use of the sea as a depository for waste materials" (U.N. doc. A/55/61 of 20 March 2000, para. 159). The same words could be said about the Mediterranean Dumping Protocol as well.

The Protocol, as amended in 1996, takes into account the objectives laid down in the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities, adopted in Washington in 1995 by a UNEP intergovernmental conference. The Programme is designed to assist States in taking individual or joint actions leading to the prevention, reduction and elimination of what is commonly regarded as the main source (about 80%) of pollution of the marine environment[23].

As already said[24], the amended protocol enlarges its application to the "hydrologic basin of the Mediterranean Sea Area". To face land-based pollution of the sea, action must primarily be taken where the polluting sources are located, that is on the land territory of the parties. The Land-Based Protocol provides that parties shall invite States that are not parties to it and have in their territories parts of the hydrological basin of the Mediterranean Area to cooperate in the implementation of the protocol. But a party cannot be held responsible for any pollution originating in the territory of a non-party State.

With the aim of eliminating pollution deriving from land-based sources, the parties "shall elaborate and implement, individually or jointly, as appropriate, national and regional action plans and programmes, containing measures and timetables for their implementation" (Art. 5, para. 2). The parties shall give priority to the phasing out of inputs of substances that are toxic, persistent and liable to bioaccumulate (Art. 1). These kinds of substances were not specifically mentioned in the original protocol.

The amended protocol was the subject of extensive negotiations – not only among the parties but also between the non-governmental environmentalist organizations and the organizations representing the chemical industry – as regards the crucial question on how to implement the obligation "to prevent, abate, combat and eliminate to the fullest possible extent pollution". Finally the following solution was found satisfactory by everybody. On the one hand, the environmentalists accepted that their initial request, that is an absolute ban by the year 2005 of any kind of discharge and emission of substances which are toxic, persistent and liable to bioaccumulate, would be impossible to achieve because of its serious economic and social repercussions. On the other hand, the chemical industry agreed to be bound by measures and timetables having a legally obligatory nature, provided that they were related to specific groups of substances and were adapted to the specific requirements of the different instances.

The procedural machinery to achieve what was agreed upon is embodied in Art. 15. It provides that the meeting of the parties adopts, by a two-thirds majority, the short-term and medium-term regional plans and programmes, containing measures and timetables for their implementation, in order to eliminate pollution deriving from land-based sources and

[23] The Global Programme of Action strongly encourages action on a regional level as crucial for successful actions to protect the marine environment from pollution from land-based activities: "This is particularly so where a number of countries have coasts in the same marine and coastal area, most notably in enclosed or semi-enclosed seas. Such cooperation allows for more accurate identification and assessment of the problems in particular geographic areas and more appropriate establishment of priorities for action in these areas. Such cooperation also strengthens regional and national capacity-building and offers an important avenue for harmonizing and adjusting measures to fit the particular environmental and socio-economic circumstances. It, moreover, supports a more efficient and cost-effective implementation of the programmes of action" (para. 29).

[24] *Supra*, para. 3.

activities, in particular to phase out inputs of substances that are toxic, persistent and liable to bioaccumulate. These measures and timetables become binding on the 180th day following the date of their notification for all the parties, which have not notified an objection. The result is a mechanism that is intended to be both realistic and effective.

Major changes were also made with respect to the annexes. Annex I relates to the "Elements to be taken into account in the preparation of action plans, programmes and measures for the elimination of pollution from land-based sources and activities". It provides that in preparing action plans, programmes and measures, the parties "will give priority to substances that are toxic, persistent and liable to bioaccumulate, in particular to persistent organic pollutants (POPs), as well as to wastewater treatment and management". It lists nineteen categories of substances and sources of pollution, which will serve as guidance in the preparation of action plans, programmes and measures, including, as first entry, the organohalogen compounds and substances which may form such compounds in the marine environment[25]. Annex II relates to the "Elements to be taken into account in the issue of the authorizations for discharges of wastes" and Annex III to the "Conditions of application to pollution transported through the atmosphere". Finally, Annex IV gives the "Criteria for the definition of best available techniques and best environmental practice"[26].

6. THE AREAS PROTOCOL

Several international policy instruments stress that marine protected areas are one of the means to put into effect the principle of sustainable development. For example, the Implementation Plan adopted by the World Summit on Sustainable Development (Johannesburg, 2002) invites States to "develop and facilitate the use of diverse approaches and tools, including (...) the establishment of marine protected areas consistent with international law and based on scientific information, including representative networks by 2012".

Among the relevant legal instruments, the 1982 United Nations Convention on the Law of the Sea provides that the measures to be taken for the protection of the marine environment include "those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life" (Art. 194, para. 5).

In the case of the Mediterranean, the 1995 Areas Protocol is very different from the previous 1982 protocol, and formally distinct from it[27]. The new protocol is applicable to all the marine

[25] Priority is given to Aldrin, Chlordane, DDT, Dieldrin, Dioxins and Furans, Endrin, Hexachlorobenzene, Mirex, PCBs and Toxaphene.

[26] The criteria listed in Annex IV of the Land-Based Protocol are literally taken from the Convention for the Protection of the Marine Environment of the North-East Atlantic (Paris, 1992; so-called OSPAR Convention). In fact, the State which proposed the criteria in question simply presented a photocopy of the relevant OSPAR annex. However, unlike the case of literary works, copying is by no means illegal in the process of drafting a legal text. In the case in question, copying was tantamount to paying tribute to the wisdom of the drafters of another regional sea treaty.

[27] The 1995 Areas Protocol implements the objectives set forth in Agenda 21. According to this instrument, States,

waters of the Mediterranean, irrespective of their legal condition, as well as to the seabed, its subsoil and to the terrestrial coastal areas designated by each party, including wetlands. On the contrary, the application of the 1982 protocol was limited to the territorial sea of the parties and did not cover the high seas. The extension of the geographical coverage of the instrument was seen necessary to protect also those highly migratory marine species (such as marine mammals) which, because of their natural behaviour, cross the artificial boundaries drawn by man on the sea.

The purpose to establish marine protected areas also on the high seas gave rise to some difficult legal problems due to the lack of territorial jurisdiction in these waters. As some coastal States have not yet established their exclusive economic zone, there are in the Mediterranean extents of waters located beyond the 12-mile limit of the territorial sea, which still have the status of high seas. However, if all coastal States proclaimed an exclusive economic zone, the high seas would disappear in the Mediterranean, as no point in this semi-enclosed sea is located more than 200 n.m. from the nearest land or island. Another delicate question was the possibility to establish marine protected areas in waters where the maritime boundaries have yet to be agreed upon by the interested countries. In the Mediterranean there are several cases where a delimitation of the territorial seas or other maritime zones is particularly complex because of the local geographic characteristics.

In order to overcome these difficulties, the new protocol includes two very elaborate disclaimer provisions (Art. 2, paras. 2 and 3), which have two important aims. First, the establishment of intergovernmental cooperation in the field of the marine environment cannot prejudice other legal questions, which have a different nature and are still pending, such as those relating to the nature and extent of marine jurisdictional zones or to the drawing of marine boundaries between adjacent or opposite States. Second, the very existence of such legal questions cannot jeopardize or delay the adoption of measures necessary for the preservation of the ecological balance of the Mediterranean.

The Areas Protocol provides for the establishment of a List of specially protected areas of Mediterranean importance (SPAMI List)[28]. 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". The procedures for

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acting individually, bilaterally, regionally or multilaterally and within the framework of IMO and other relevant international organizations, should assess the need for additional measures to address degradation of the marine environment. This should be done, inter alia, by taking action to ensure respect of areas which are specially designated, consistent with international law, in order to protect and preserve rare or fragile ecosystem (para. 17.30). Agenda 21 stresses the importance of protecting and restoring endangered marine species, as well as preserving habitats and other ecologically sensitive areas, both on the high seas (para. 17.46, *e*, *f*) and in the zones under national jurisdiction (para. 17.75, *e*, *f*). 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). On the protocol see SCOVAZZI (ed.), *Marine Specially Protected Areas - The General Aspects and the Mediterranean Regional System*, The Hague, 1999; BOU FRANCH & BADENES CASINO, *La protección internacional de zonas y especies en la región mediterránea*, in *Anuario de Derecho Internacional*, 1997, p. 33.

[28] The existence of the SPAMI List does not prejudice the right of each party to create and manage marine protected areas which are not intended to be listed as SPAMIs.

the establishment and listing of SPAMIs are specified in detail in the protocol. For instance, as regards an area 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.

Once the areas are included in the SPAMI List, all the parties agree "to recognize the particular importance of these areas for the Mediterranean" and – this is also important – "to comply with the measures applicable to the SPAMIs and not to authorize nor undertake any activities that might be contrary to the objectives for which the SPAMIs were established". This gives to the SPAMIs and to the measures adopted for their protection an *erga omnes partes* effect. As regards the relationship with third countries, the parties are called to "invite States that are not Parties to the Protocol and international organizations to cooperate in the implementation" of the protocol. 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. This provision aims at facing the potential problems arising from the fact that treaties, including the Areas Protocol, can create rights and obligations only among parties.

The Areas Protocol is completed by three annexes, which were adopted in 1996 in Monaco. They are 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), and the "List of species whose exploitation is regulated" (Annex III).

At the Meeting of the Contracting Parties held in 2001, the first twelve SPAMIs were inscribed in the SPAMI List, namely the island of Alborán (Spain), the sea bottom of the Levante de Almería (Spain), Cape Gata-Nijar (Spain), Mar Menor and the East coast of Murcia (Spain), Cape Creus (Spain), Medas Islands (Spain), Columbretes Islands (Spain), Port-Cros (France), the Kneiss Islands (Tunisia), La Galite, Zembra and Zembretta (Tunisia) and the French-Italian-Monegasque sanctuary for marine mammals (so-called Pelagos sanctuary, jointly proposed by the three States concerned and covering also high seas waters[29]). Other SPAMIs have subsequently been added, namely the Cabrera Archipelago (Spain) and Maro-Cerro

[29] On 25 November 1999 France, Italy and Monaco signed in Rome an Agreement on the creation in the Mediterranean sea of a sanctuary for marine mammals. This is the first international agreement ever adopted with the specific objective of establishing a sanctuary for marine mammals. The area covered by the sanctuary, which extends over 96,000 km2, includes waters which have the legal status of maritime internal waters, territorial sea, ecological protection zone and high seas. It is inhabited by the eight cetacean species regularly found in the Mediterranean, namely the fin whale (*Balaenoptera physalus*), the sperm whale (*Physeter catodon*), Cuvier's beaked whale (*Ziphius cavirostris*), the long-finned pilot whale (*Globicephala melas*), the striped dolphin (*Stenella coeruleoalba*), the common dolphin (*Delphinus delphis*), the bottlenose dolphin (*Tursiops truncatus*) and Risso's dolphin (*Grampus griseus*). In this area, the water currents create conditions favouring phytoplankton growth and abundance of krill (*Meganyctiphanes norvegica*), a small shrimp that is preyed upon by pelagic vertebrates. Under the agreement, the parties 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. 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. There is a direct connection between the Sanctuary Agreement and the Areas Protocol. As provided for in the former, as soon as the Areas Protocol "enters into force for them, the Parties will present a joint proposal for inclusion of the sanctuary in the list of specially protected areas of Mediterranean importance". This was actually done in November 2001 by France, Italy and Monaco.

Gordo (Spain) in 2003, Kabyles Bank (Algeria), Habibas Islands (Algeria) and Portofino (Italy) in 2005, Miramare (Italy), Plemmirio (Italy), Tavolara – Punta Coda Cavallo (Italy) and Torre Guaceto (Italy) in 2008, Bonifacio Mouths (France), Capo Caccia – Isola Piana (Italy), Punta Campanella (Italy) and Al-Hoceima (Morocco) in 2009.

Also to ensure a more representative network of SPAMIs, the Parties to the Convention reaffirmed in the Declaration adopted on 4 November 2009 in Marrakesh "the necessity, at the Mediterranean level, of pursuing efforts to identify varied methods and tools for the conservation and management of ecosystems, including the establishment of marine protected areas and the creation of networks representing such areas in accordance with the relevant objectives for 2012 of the World Summit on Sustainable Development (...)". This would be particularly appropriate for the Adriatic Sea, where sub-regional co-operation has already been established under the 1974 Agreement between Italy and Yugoslavia on the Preservation from Water Pollution of the Adriatic Sea and the Coastal Zones that is today applicable to the successor States of the former Yugoslavia.

7. THE SEABED PROTOCOL

The Seabed Protocol relates to pollution resulting from exploration and exploitation of the seabed and its subsoil. Several of its provisions set forth obligations incumbent on the parties with respect to activities carried out by operators, who can be private persons, either natural or juridical. This kind of obligations is to be understood in the sense that each party is bound to exercise the appropriate legislative, executive or judicial activities in order to ensure that the operators comply with the provisions of the protocol. The definition of "operator" is broad. It includes not only persons authorized to carry out activities (for example, the holder of a licence) or who carry out activities (for example, a sub-contractor), but also any person who does not hold an authorization but is *de facto* in control of activities. The parties are under an obligation to exercise due diligence in order to make sure, within the seabed under their jurisdiction, that no one engages in activities, which have not previously been authorized or which are exercised illegally.

All activities in the Seabed Protocol area, including erection of installations on site, are subject to the prior written authorization by the competent authority of a party. Before granting the authorization, the authority must be satisfied that the installation has been constructed according to international standards and practice and that the operator has the technical competence and the financial capacity to carry out the activities. Authorization must be refused if there are indications that the proposed activities are likely to cause significant adverse effects on the environment that could not be avoided by compliance with specific technical conditions. This obligation can be seen as an application of the precautionary principle. Special restrictions or conditions may be established for the granting of authorizations for activities in specially protected areas.

The parties are bound to take measures to ensure that liability for damage caused by activities to which the protocol applies is imposed on operators who are required to pay prompt and

adequate compensation. They shall also take all measures necessary to ensure that operators have and maintain insurance cover or other financial security in order to ensure compensation for damages caused by the activities covered by the protocol[30].

8. THE WASTES PROTOCOL

The Wastes Protocol is applicable to a subject matter already covered, on the world scale, by the Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel, 1989). The Basel Convention allows its parties to enter into regional agreements, provided that they stipulate provisions which are not less environmentally sound than those of the Basel Convention itself. This mean that, to have some purpose, a regional instrument on movements of wastes should bring some "added value" to the rights and obligations already established under the Basel Convention. In the specific case, this occurs in three instances at least.

First, while the Basel Convention does not apply to radioactive wastes, the Wastes Protocol covers also "all wastes containing or contaminated by radionuclides, the radionuclide concentration or properties of which result from human activity".

Second, unlike the Basel Convention, the Wastes Protocol applies also to a particular kind of substances, which are properly to be considered products instead of wastes, as they are not intended for disposal. These are the "hazardous substances that have been banned or are expired, or whose registration has been cancelled or refused through government regulatory action in the country of manufacture or export for human health or environmental reasons, or have been voluntarily withdrawn or omitted from the government registration required for use in the country of manufacture or export".

Third, the Wastes Protocol clarifies an important question that was not settled in precise terms by the Basel Convention: what are the rights of the coastal State if a foreign ship carrying hazardous wastes is transiting through its territorial sea? The Basel Convention, which is applicable to both land and marine transboundary movements of hazardous wastes, provides in general that movements may only take place with the prior written notification by the State of export to both the State of import and the State of transit and with their prior written consent. However, as far as the sea is concerned, it contains a disclaimer provision which protects both the sovereign rights and jurisdiction of coastal States, on the one hand, and the exercise of navigational rights and freedoms, on the other. Because of its wording, this provision is open to different interpretations and, indeed, has been interpreted in opposite ways by States inclined to give priority to one or the other solution. In fact, under The Basel Convention, doubt remains as to whether the export State has any obligation to notify the coastal transit State or to obtain its prior consent. The alternative is reflected in two opposite schemes, namely "notification and authorization", on the one hand, and "neither notification, nor authorization", on the other.

The Wastes Protocol gives a definite answer to the question by providing for an intermediate solution, consisting of a "notification without authorization" scheme. The transboundary

[30] On the subject of liability and compensation, see *infra*, para. 11.

movement of hazardous wastes through the territorial sea of a State of transit may take place only with the prior notification by the State of export to the State of transit. The approach adopted by the Wastes Protocol strikes a fair balance between the interests of maritime traffic and those of the protection of the marine environment. On the one side, ships carrying hazardous wastes keep the right to pass, as their passage is not subject to authorization by the coastal State. On the other, the coastal State has a right to be previously notified, in order to know what occurs in its territorial sea and to be prepared to intervene in cases of casualties or accidents during passage which could endanger human health or the environment[31]. Yet transparency can only lead to cooperation, while attachment to secrets does not seem a promising way to ensure the protection of the marine environment.

9. THE EMERGENCY PROTOCOL

The 2002 Emergency Protocol has replaced the previous 1976 protocol. As in the case of the Areas Protocol, the changes with respect to the previous instrument were so extensive that the Parties decided to draft a new instrument, instead of merely amending the old text. The adoption of a strengthened legal framework for combating pollution from ships is particularly important in view of the increasing maritime traffic and transport of hazardous cargo within and through the Mediterranean. The Emergency Protocol takes into account the lessons learned from the accident of the tanker *Erika* (1999).

It is true that pollution from ships is a typical field where regulation at the world level is mostly appropriate. All the technical rules, such as those relating to requirements in respect to design, construction, equipment and manning of ships, need to be adopted at a global and uniform level. Navigation, which is the traditional cornerstone of the regime of oceans and seas, would be impossible if different and conflicting provisions on technical characteristics of ships were adopted at the domestic or regional levels. Art. 211 of the UNCLOS, relating to pollution from vessels, explicitly refers to "generally accepted international rules and standards established through the competent international organization or general diplomatic conference". It would also be unrealistic to try to modify the allocation of enforcement powers among the flag State, the port State and the coastal State set forth in Arts. 217, 218 and 220 of the UNCLOS, which were the outcome of a difficult negotiation.

[31] The "notification without authorization" scheme of the Wastes Protocol is fully compatible with the international law of the sea, as embodied in the UNCLOS. Under the UNCLOS section on innocent passage in the territorial sea, passage must be innocent, i.e. "not prejudicial to the peace, good order or security of the coastal State" (Art. 19, para. 1). Any act of wilful and serious pollution contrary to the UNCLOS is incompatible with the right of innocent passage (Art. 19, para. 2, *h*). Foreign ships have the right to pass (Art. 17), but nowhere in the UNCLOS it is said that they have the right to pass secretly or covertly. Moreover, under Art. 22, paras. 1 and 2, of the UNCLOS some particularly dangerous ships, namely "tankers, nuclear-powered ships and ships carrying nuclear or other inherently dangerous or noxious substances may be required to confine their passage" to sea lanes designated or prescribed by the coastal State. An obvious question can be asked in this respect: how could a coastal State exercise its right to prescribe sea lanes for ships carrying noxious substances if it were not even entitled to know that a foreign ship is carrying these substances?

The Emergency Protocol acknowledges in the preamble the role of the International Maritime Organization (IMO), which is the competent international organization in the field of safety of navigation, and the importance of cooperating in promoting the adoption and the development of international rules and standards on pollution from ships within the framework of IMO. This is a clear reference to the various conventions, which have been concluded under the sponsorship of IMO[32] and to the competences that since longtime IMO has been exercising as regards safety of shipping (such as decisions on traffic separation schemes, ships reporting systems, areas to be avoided, etc.). All such instruments and competences are in no way prejudiced by the Emergency Protocol[33].

However, it is also true that regional cooperation, too, has a role to play in the field of pollution from ships. For instance, international cooperation for prompt and effective action in taking emergency measures to fight against pollution needs to be organized at the regional level. The first Emergency Protocol already provided for the setting up of an institutional framework for actions of regional cooperation in combating accidental marine pollution: the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC), which is administered by IMO (International Maritime Organization) and UNEP and is located in Malta.

The Emergency Protocol is not limited (as was the former instrument) to emergency situations. It also covers some aspects of the subject matter of pollution from ships and aims at striking a fair balance between action at the world and action at the regional level. For instance, Art. 15, relating to environmental risk of maritime traffic, provides that "in conformity with generally accepted international rules and standards and the global mandate of the International Maritime Organization, the Parties shall individually, bilaterally or multilaterally take the necessary steps to assess the environmental risks of the recognized routes used in maritime traffic and shall take the appropriate measures aimed at reducing the risks of accidents or the environmental consequences thereof".

The "added value" brought by the new Protocol may be found in several of its provisions. It covers not only ships, but also places where shipping accidents can occur, such as ports and offshore installations. The definition of the "related interests" of a coastal State that can be affected by pollution has been enlarged to include also "the cultural, aesthetic, scientific and educational value of the area" and "the conservation of biological diversity and the sustainable use of marine and coastal biological resources". A detailed provision on reimbursement of costs of assistance has been elaborated.

The Emergency Protocol sets forth a number of obligations directed to the masters of ships sailing in the territorial sea of the parties (including ships flying a foreign flag), namely: to

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[32] Such as the Convention for the prevention of pollution from ships as amended by the Protocol (London, 1973-1978; so-called MARPOL), the Convention on oil pollution preparedness, response and co-operation (London, 1990), the Convention on the control of harmful anti-fouling systems on ships (London, 2001) or the Convention for the control and management of ships' ballast waters and sediments (London, 2004).

[33] The Emergency Protocol also acknowledges "the contribution of the European Community to the implementation of international standards as regards maritime safety and the prevention of pollution from ships". The European Community has enacted a number of legal instruments relating to the control and prevention of marine pollution from ships which apply for its member States in addition to rules adopted under the aegis of IMO.

report incidents and the presence, characteristics and extent of spillages of oil or hazardous and noxious substances; to provide the proper authorities, in case of a pollution accident and at their request, with detailed information about the ship and its cargo and to cooperate with these authorities. The obligations in question, which have a reasonable purpose and do not overburden ships, do not conflict with the right of innocent passage provided for in the UNCLOS. The lessons arising from the *Erika* accident are particularly evident in the provision according to which the Parties shall define strategies concerning reception in places of refuge, including ports, of ships in distress presenting a threat to the marine environment.

10. THE COASTAL ZONE PROTOCOL

To confirm the dynamic character of the Barcelona legal system, a new protocol, relating to the integrated coastal zone management, was opened to signature in 2008. It addresses the increase in anthropic pressure on the Mediterranean coastal zones, which is threatening their fragile equilibrium and provides Mediterranean States with the legal and technical tools to ensure sustainable development throughout the shores of this regional sea[34]. It is the first treaty ever adopted, which is specifically devoted to the coastal zone.

The Coastal Zone Protocol defines "integrated coastal management" as "a dynamic process for the sustainable management and use of coastal zones, taking into the account at the same time the fragility of coastal ecosystems and landscapes, the diversity of activities and uses, their interactions, the maritime orientation of certain activities and uses and their impact on both the marine and land parts" (Art. 2, *g*).

The precise delimitation of the geographical coverage of the protocol gave rise to lengthy discussion during the negotiations. The question was finally solved in a both precise and flexible way (Art. 3). The seaward limit of the coastal zone is the external limit of the territorial sea[35]; the landward limit of the coastal zone is the limit of the competent coastal units as defined by parties. But parties may establish different limits, in so far as certain conditions occur.

Art. 6 of the protocol lists a number of general principles of integrated coastal zone management. For instance, the parties are bound to formulate "land use strategies, plans and programmes covering urban development and socio-economic activities, as well as other relevant sectoral polices"[36]. They shall take into account in an integrated manner "all elements relating to hydrological, geomorphological, climatic, ecological, socio-economic and cultural systems", so as "not to exceed the carrying capacity of the coastal zone and to prevent the negative effects of natural disasters and of development". The parties are also required to take into account the

[34] See *Report by the Coordinator for the 15th Meeting of the Contracting Parties*, doc. UNEP(DEP)/MED IG.17/3 of 21 November 2007, p. 7.

[35] Presently 12 n.m. for most Mediterranean States, with the exceptions of the United Kingdom (3 n.m.), Greece (6 n.m.) and Turkey (6 n.m. in the Aegean Sea).

[36] Art. 17 provides for the definition by parties of a common regional framework for integrated coastal zone management in the Mediterranean. Under Art. 18, parties are bound to formulate a national strategy for integrated coastal zone management and coastal implementation plans and programmes consistent with the common regional framework.

diversity of activities in the coastal zone and to give priority "where necessary, to public services and activities requiring, in terms of use and location, the immediate proximity of the sea".

Art. 8 of the protocol provides for the establishment of a 100-meter zone where construction is not allowed. However, "adaptations" are allowed "for projects of public interest" and "in areas having particular geographical or other local constraints, especially related to population density or social needs, where individual housing, urbanisation or development are provided for by national legal instruments". Other important obligations of the parties relate to "limiting the linear extension of urban development and the creation of new transport infrastructure along the coast", to "providing for freedom of access by the public to the sea and along the shore" and to "restricting or, where necessary, prohibiting the movement and parking of land vehicles, as well as the movement and anchoring of marine vessels in fragile natural areas on land or at sea, including beaches and dunes".

Some provisions of the protocol deal with specific activities, such as "agriculture and industry", "fishing", "aquaculture", "tourism, sporting and recreational activities", "utilization of specific natural resources" and "infrastructure, energy facilities, ports and maritime works and structure" (Art. 9, para. 2), as well as with certain specific coastal ecosystems, such as "wetlands and estuaries", "marine habitats", "coastal forests and woods" and "dunes" (Art. 10). Due emphasis is granted to risks affecting the coastal zone, in particular climate change (Art. 22) and coastal erosion (Art. 23).

11. CONCLUSIVE REMARKS

When it was originally drafted, the Barcelona system served as an example for the elaboration of other UNEP regional seas instruments. A similar role can be played also today, after the updatings and additions that it has undergone. The Barcelona system has been adapted to the evolution of international law in the field of the protection of the marine environment and has addressed concrete problems in clear and sensible ways. It is to be regretted that some of the new or updated protocols have taken too much time to enter into force. Governments are sometimes led by different reasons to balance environmental needs with other interests and may be hesitant to promptly endorse the most advanced instruments. But the fact remains that all the present new or updated instruments of the Barcelona system constitute effective tools to preserve a common natural heritage and to face the common concerns of the bordering States. They bring an added value to the general obligation to cooperate for the protection of the marine environment already embodied in the UNCLOS and in customary international law.

A notable remark is that UNEP Mediterranean Action Plan is broadening its scope. At their 2009 meeting, the parties to the Barcelona Convention adopted the Marrakesh Declaration, which aims at promoting a better regional environmental governance, especially to meet the future challenges of climate change. The parties declared "themselves concerned by the serious threats to the environment that are confronting the Mediterranean, including the destruction of its biodiversity, adverse effects on the countryside, coastline and water resources, soil degradation,

desertification, coastal erosion, eutrophication, pollution from land-based sources, negative impacts related to the growth of maritime traffic, the over-exploitation of natural resources, the harmful proliferation of algae or other organisms, and the unsustainable exploitation of marine resources".

The parties also considered that climate change is the major challenge that humanity will face in the next decades. Its impacts, in particular the rise in the level of the sea, the increase in temperatures, the acidification of marine waters and the modification of the economic and social equilibrium of coastal communities, will have significant consequences in the specific case of the Mediterranean, in which a great majority of the population is concentrated on the coastline. In this context, the parties declared themselves aware that "it is essential to reinforce regional co-operation to identify and assess the short- medium- and long-term impacts of, and vulnerabilities to, climate change in the Mediterranean region, and to design and implement the best adaptation and prevention options". Under the Marrakesh Declaration, the objective to promote better regional environmental governance in the Mediterranean region should be achieved through "an integrated approach that guarantees coherence between the various sectoral strategies and takes into consideration their impact on ecosystems", ensuring co-ordination among all regional institutions and initiatives.

With the Marrakesh Declaration, the prospects for the broadening of the scope of UNEP-MAP's activities seem promising. It is sometimes suggested that a Forum for Governance of the Mediterranean Basin be established as a periodical and open-ended machinery for the discussion and elaboration of rules and policies relevant for the management of the Mediterranean, as well as procedures to implement them[37]. The UNEP Mediterranean Action Plan could become a leading player in such machinery.

[37] See, for example, the study European Commission – EuropeAid Cooperation Office, *Study on the Current Status of ratification, Implementation and Compliance with Maritime Treaties Applicable to the Mediterranean Sea Basin*, Part 2, December 2009, para. 10.4 (published on the website http://ec.europa.eu/maritimeaffairs/mediterranean_en.html).

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