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Note on the legal framework for the protection of marine biological diversity in Mediterranean Sea areas beyond national jurisdictions (BBNJ) or for which the limits of sovereignty or jurisdiction have not yet been defined

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List of Acronyms:

ACCOBAMS	Agreement on the Conservation of Cetaceans in the Black Sea, Mediterranean Sea and Contiguous Atlantic Area
ASCOBANS	Agreement for the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas
BBNJ	Marine Biodiversity in areas beyond beyond national jurisdiction or in areas where the limits of national sovereignty or jurisdiction have not yet been defined
CIESM	Mediterranean Science Commission
CBD	Convention on the Biological Diversity
CMS	Bonn Convention on the Conservation of Migratory Species of Wild Animals
EBSA	Ecologically and Biologically Sensitive Area
EEZ	Exclusive Economic Zone
EU	European Union
FAO	Food and Agriculture Organization of the United States
GFCM	General Fisheries Commission for the Mediterranean
ICCAT	International Commission for the Conservation of Atlantic Tunas
ICJ	International Court of Justice
ICZM	Integrated Coastal Zone Management
IWC	International Whaling Commission
MARPOL	International Convention for the Prevention of Pollution from Ships
MPA	Marine Protected Area
IMO	International Maritime Organization
ITLOS	International Tribunal for the Law of the Sea
IUU	Illegal, Unreported and Unregulated Fishing
MAP	Mediterranean Action Plan
OSPAR	Convention for the Protection of the Marine Environment of the North East Atlantic
PAP/RAC	Priority Actions Programme/Regional Activity Center
PSSA	Particularly Sensitive Sea Area
RAC/SPA	Regional Activity Center for Special Protected Areas
REMPEC	Regional Marine Pollution Emergency Response Center for the Mediterranean Sea
RFMO	Regional Fisheries Management Organization
SPA	Specially Protected Area
SPAMI	Specially Protected Area of Mediterranean Importance
TFEU	Treaty on the Functioning of the European Union
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Programme
UNGA	United Nations General Assembly
VME	Vulnerable Marine Ecosystem

Contents

Introduction

This document aims to give an overview of the applicable law and the relevant institutional instruments at regional level concerning the protection of marine biological diversity in areas of the Mediterranean Sea beyond the limits of national jurisdiction (BBNJ) or for which the limits of national sovereignty or jurisdiction have not been defined yet. The stake is to provide elements for a better understanding of the legal framework to facilitate its analysis. Legal sources are also introduced for a practical purpose. This work should eventually allow to bring in the issue of political and governance instruments that could be developed, including among them the marine spatial planning.

1. Areas «beyond national jurisdiction or where the limits of national sovereignty or jurisdiction have not been defined yet » in the Mediterranean Sea

To get a more comprehensive picture about the legal status of marine areas within the Mediterranean, it is advisable to refer to the first part of the Scovazzi's Note performed on behalf of the UNEP-MAP-RAC/SPA, 2011.[1] The main aspects of this work, with proper updating where necessary, are exposed herein below.

1.1. General rules relating to maritime delimitation

According to the international law, the space in the sea is divided into two main categories: the areas **within the limits of national jurisdiction** and the areas **beyond the limits of national jurisdiction**.

The marine space within the limits of national jurisdiction comprises the waters and the seabed related to some extent to the sovereignty or the sovereign rights of a coastal State. Thereupon, the United Nations Convention on the Law of the Sea (Montego Bay, 1982; UNCLOS) distinguishes several subcategories of areas under national jurisdiction:

- The **marine internal waters** are located on the landward side of the baselines.

- The **territorial sea** is linked *ipso jure* to the territorial sovereignty of the coastal State. It covers the marine area from the baselines to a limit of 12 nautical miles (UNCLOS, art. 3).

- The **contiguous zone** is an area where the coastal State may claim the exercise of sovereign rights regarding sanitary, fiscal, criminal, custom and immigration

[1] UNEP-MAP-RAC/SPA. 2011. Note on the establishment of marine protected areas beyond national jurisdiction or in areas where the limits of national sovereignty or jurisdiction have not yet been defined in the Mediterranean Sea. By Scovazzi, T. Ed. RAC/SPA, Tunis: 47pp.

competences. It extends from the limit of the territorial sea to 24 miles from the baselines (UNCLOS, art. 33).

- The **Exclusive Economic Zone** (EEZ) where the coastal State may claim the exclusive right for the exploration and the exploitation of marine resources over 200 miles from the baselines (UNCLOS, art. 57 and 58). The opening of a fishing zone or of an ecological protection zone constitutes a partial claim for the EEZ rights.[2]

- The **continental shelf** is the extension of the coastal State's terrestrial territory under the sea. It comprises the submarine seabed and its subsoil beyond the limits of territorial sea. Within 200 miles from the baselines, it is related *ipso jure* to the sovereign rights on natural resources. The coastal State may extend it where allowed by the geomorphological reality, either over 350 miles from the baselines or over 100 miles from the 2 500 metre isobaths, by submitting the relevant information to the Commission on the Limits of the Continental Shelf (UNCLOS, art. 76 et 77).

Beyond the limits of national jurisdiction, the UNCLOS distinguishes:

- The **high seas** are composed by the waters not comprised within the national jurisdiction areas. They are open access and use to all States (UNCLOS, art. 87).

- The « **Area** » means the seabed and its subsoil beyond the limits of the continental shelf. It is submitted to the special regime of the common heritage of mankind (UNCLOS, Part XI).

1.2. Maritime boundaries in the Mediterranean

Covering more than 2.5 million square kilometers of waters surrounded by 46 000 kilometers of coast, the Mediterranean Sea gathers twenty-two coastal States[3] along three continents and comprising about 500 million people. One of the characteristics of this semi-enclosed sea is that none of its coasts is located at a greater distance than 400 miles from the closest opposite or adjacent coast. In other words, if each riparian State would claim its entire EEZ, all waters would be under the national jurisdiction and most of the EEZ areas would be overlapping. This geographical feature entails two direct consequences: first, there is no Area in the Mediterranean Sea. The totality of the seabed and of the subsoil of the sea is under the national jurisdiction of the riparian States. Second, in most cases, the extension of a coastal State's jurisdiction will affect the neighboring States interests, hence the importance to avoid

[2] According to the adage *in maiore stat minus*, States can use only some of their rights. Del Vecchio Capotosti, A. « In Maiore Stat Minus : A Note on the EEZ and the Zones of Ecological Protection in the Mediterranean Sea », *Ocean Development and International Law*, vol. 39, N°3, july 2008, pp. 287-297.

[3] Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, Syria, Tunisia, Turkey and Palestine, since its recognition as observer a non-member State of the United Nations on 1 October 2015.

unilateral decisions and to get the extension recognized by agreement with the concerned neighboring countries.[4]

By now, since all coastal States have not claimed yet their rights beyond the territorial sea, a large proportion of the marine areas remains under the high seas regime. However, some extensions of the national jurisdiction areas have not been subject to delimitation agreement. Given this lack of recognition, there are some marine areas in the Mediterranean where the limits of national sovereignty or jurisdiction are not clearly defined. Furthermore, the conclusion of such agreements may be complicated by geographical features. In that context, the application of the « first-come-first-served » principle, which is typical of the high seas strictly speaking, appears to be inapropriate in the Mediterranean. That is why some observers consider the Mediterranean Sea is a transitional sea toward an EEZ regime.[5] Thus, a concerted approach of the maritime delimitation of the coastal States jurisdiction should be emphasized as well as possible in order to limit conflicts and to support a consistent and sustainable use of the Mediterranean Sea.

The Appendix Table[6] outlines the delimitation of national jurisdiction among the mediterranean countries, including the legal sources and the existing international delimitation agreements, and precising the status of the delimited areas.

2. The comprehensive legal framework

The Convention on the biological diversity (CBD) defines the biological diversity as « *the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems* ». This definition involves a complex set of relations whithin life and its natural environment, which is challenging to protect through an efficient regime. Indeed, such regime has to deal with both territorial logic of the law of the sea, fixity of the maritime boundaries and freedom of the high seas.

2.1. Customary rules of the law of the sea

The freedom of the high seas is not unlimited. It is exercised « *under the conditions laid down by this Convention and by other rules of international law* » (UNCLOS, art. 87, para. 1).

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[4] The international recognition of the maritime delimitation has been underlined by the International Court of Justice (ICJ): « *The delimitation of sea areas has always an international aspect ; it cannot de dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal State is competent to undertake it, the validity of the delimitation with regard to other States depends upon international law.* » International Court of Justice, *Report of judgments, advisory opinions and orders, Fisheries Case (United Kingdom v. Norway),* judgment of december 18th, 1951, p. 20. What is more, the rule of the EEZ delimitation by way of international agreement is reaffirmed in the article 74 of the UNCLOS.

[5] Scovazzi, *op. cit.*, p. 8.

[6] *Infra* p. 24.

First, this principle is limited in the international law of the sea by the general obligation to protect and preserve the marine environment (UNCLOS, art. 192). This provision does not distinguish between areas within the limits of national jurisdiction and those beyond these limits. Moreover, the obligation is set out regardless the consideration of damages to a third State.[7] Then it is applicable to the entire marine space. However, its general nature does not allow by itself to prescribe specific protection measures. The implementation of this obligation necessitates to formulate more precise rules.

Secondly, the obligation to protect the marine environment is exercised in relation with the international cooperation : « *States shall cooperate on a global basis and, as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features* » (UNCLOS, art. 197).

This provision confers to the duty to cooperate in the context of the law of the sea a large scope with a certain degree of precision. By underlining the necessity to take into account the specificity of regional features, it emphasizes the role of regional organizations for the implementation of international cooperation to protect the marine environment.

The duty to cooperate was recognized by international jurisprudence as « *a fundamental principle in the prevention of pollution of the marine environment*. »[8] Plus, some precisions were provided in the field of international law of the environment: notably, cooperation implies an obligation of good faith in the negotiations for the conclusion of an agreement,[9] along with a duty to inform States that could be affected in case of a critical issue.[10]

Despite that the UNCLOS does not directly deal with the concept of biological biodiversity, some of its provisions indirectly providing a protection against the ocean biodiversity's damages by the mean of the conservation of marine living resources[11] and the prevention of the marine pollution.

2.2. Conservation of marine living resources

In the fishing sector, States have the obligation to adopt all necessary measures for the conservation of the living resources of the high seas with respect to their own nationals

[7] Consequently, the scope of the obligation to protect the marine environment is larger than the scope of the customary principle of non-harmful use of the territory (*sic utere tuo ut alienum non laedas*) according to which the activities undertaken under the jurisdiction or the control of a State shall not have negative transboundary effects on the territory of another State.

[8] International tribunal for the law of the sea (ITLOS), *The MOX plant case (Irland v. United Kingdom),* Order, 3 December 2001, para. 82.

[9] ICJ, *Pulp mills on the River Uruguay (Argentine v. Uruguay)*, judgment, Report 2010, para. 145.

[10] ICJ, *Corfu channel (United Kingdom c. Albania)*, judgment, Report 1949, p. 22.

[11] The inclusion of the biological diversity in the field of the « living resources » as meant by UNCLOS is discussed in doctrine. For example, Yoshifumi Tanaka seems to be in favour of such inclusion (Tanaka, Y. *The International Law of the Sea*, Cambridge University Press, 2nd ed. 2015, 550 pp., p. 317).

(UNCLOS, art. 117). For this purpose, they shall maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, considering the best scientific evidence available and the relevant environmental and economic factors, including the special requirements of developing States (art. 119, para. 1(a)). States whose nationals exploit identical biological resources or biological resources in the same area shall negotiate to take the necessary measures for the conservation of the living resources concerned. They shall, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end (art. 118).

Yet, it appears that the distance-related criterion from the coastal State's baselines according to which the law of the sea defines the jurisdiction areas is not always consistent with the marine ecosystems space. To compensate the limits of this territorial approach, the UNCLOS provides specific rules relating to the migratory species and to straddling fish stocks (from a jurisdiction zone to another). But these provisions are weakly binding and do not prescribe a precise cooperative mechanism, with the exception of the requirement to use competent international organizations.[12] Besides, the species approach can also be deficient as it protects only a limited number of species[13] and it does not take into account the biological and ecological interactions between and among species and marine ecosystems.

The UNCLOS legal framework has been thus completed through an approach oriented toward a better awareness of marine ecosystems. In 1995, the United Nations General Assembly (UNGA) adopted the Agreement for the implementation of the provisions of the UNCLOS relating to the conservation and management of fish stocks that move within and beyond EEZs (straddling stocks) and highly migratory fish stocks (Fish stocks Agreement). This Agreement precises the modalities of international cooperation to manage the concerned stocks in areas beyond the limits of national jurisdiction. It specifies detailed conditions to implement the precautionary approach[14]: developing data collection and research programmes to assess the impact of fishing on target and non-target species, sharing the best scientific information available, setting stocks-specific reference points according to the best information available and taking measures to ensure that these reference points will not be exceeded (art. 6, para. 3).

Faced with the overfishing issue, The FAO has settled a regulation following the ecosystem-based approach.[15] The recognition of « *the complex inter-relationship between fisheries and*

[12] A list of the « competent or relevant international organizations under the UNCLOS » has been published by the Division for Ocean Affaires and the Law of the Sea Office of Legal Affairs (UNDOALOS, *Law of the Sea Bulletin*, N°31, 1996, p. 79.). The list notably includes the Food and Agriculture Organization of the United States (FAO), the United Nations Environment Programme (UNEP) and the International Whaling Commission (IWC).

[13] For example, the UNCLOS does not mention species living in the deep sea which are particularly vulnerable given the stability of their natural environment, making them highly sensitive to external perturbations.

[14] The precautionary approach is defined in the Principle 15 of the Rio Declaration on environment and development (1992): « *Where there are threats of serious irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation* ». However, such risk must be qualified. Yet the qualification of the seriousness or the irreversibility is a complex operation given that it is based not only on scientific indicators but also on political, economic and social considerations. This complexity makes the precautionary principle hardly opposable.

[15] The ecosystem-based approach is defined under the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention) as « *the comprehensive integrated management of*

other components of the marine ecosystems » has been expressed in the 2001 Reykjavik Declaration. It also states that « *sustainable fisheries management incorporating ecosystem considerations entails taking into account the impacts of fisheries on the marine ecosystem and the impacts of the marine ecosystem on fisheries* » (para. 10). The FAO has adopted in 1995 a Code of Conduct for Responsible Fisheries, thereafter completed by Guidelines. Among those the Guidelines for the management of deep-sea fisheries in the high seas establish criteria relating to the identification of vulnerable marine ecosystems (VME). States and international organizations are called upon to take protection measures with respect VMEs.[16]

Some conventional instruments in the law of the environment have an important role for conservation and sustainable management of the marine species. Such is the case of the International Convention for the Regulation of Whaling (Washington, 1946), which appoints the International Whaling Commission (IWC) to adopt a regulation for this purpose, including the adoption of restrictive quotas and the creation of sanctuary zones where the commercial hunt is prohibited. Another example is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 1972) which regulates or prohibits the trade of the species listed in its appendix.

The effectivity of the conservation framework of the biological resources in the high seas remains weak due to the limited control, whereas the flag State responsibility is sometimes obstructed because of some practices such as flag of convenience, flag change and illegal, unreported and unregulated fishing (IUU), which is considered by the FAO as one of the most serious threats to the sustainability of worldwide living marine resources.

2.3. Protection of the marine environment

Marine environment's pollution constitutes a growing threat to species, ecosystems and human health. According to a large definition, it covers both existing and potential adverse effects and it includes biological resources and marine fauna and flora into the marine environment.[17]

The UNCLOS prescribes to States the adoption of measures to prevent, reduce and control pollution of the marine environment from any source (art. 194, para. 1). They are called to ensure that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention (para. 2). International cooperation is essential to apply this requirement insofar

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human activities based on the best available scientific knowledge about the ecosystem and its dynamics, in order to identify and take action on influences which are critical to the health of marine ecosystems, thereby achieving sustainable use of ecosystem goods and services and maintenance of ecosystem integrity » (OSPAR Commission, Biodiversity Committee, Dublin, 20-24 january 2003, Report, BDC 03/10/1-F, annexe 13).

[16] UNGA, Resolution 64/72 (2009), para. 113.

[17] Pollution of the marine environment is defined as « *the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities* » (UNCLOS, art. 1er, para. 1(4)).

as pollution spreads in the sea through winds and marin currents. In addition, the international jurisprudence underlined that « *in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage* ».[18]

There are six sources of marine pollution: land-based marine pollution, pollution from seabed activities within national jurisdiction, pollution from activities in the Area, dumping at sea, vessel-source marine pollution and pollution from the atmosphere. The rules that appear to be the most relevant to the mediterranean areas in the high seas are those relating to vessel-source pollution, dumping at sea and pollution from seabed activities, even if the other sources of pollution can also have an impact on the marine environment in high seas areas.

Several conventional instruments have been adopted under the auspices of the International Maritime Organization (IMO): the 1996 Protocol to the International Convention on the Prevention of Marine Pollution by Dumping of Wastes (London, 1972) has set a principle of prohibition to dump wastes in the sea, excepted those enumerated in appendix[19] ; the International Convention for the Prevention of Pollution from Ships (MARPOL ; London, 1973, amended in 1978) provides in appendix criteria for the creation of special zones where stricter standards are applicable[20] ; the International Convention on Oil Pollution, Preparedness, Response and Cooperation (1995) ; the International Convention for the Control and Management of Ships' Ballast Water (2004).

Furthermore, the IMO adopted many resolutions, such as the withdrawal plan of single-hull oil tankers, the establishment of a condition assessment scheme on ships and Guidelines for the identification and designation of Particularly Sensitive Sea Areas (PSSA)[21] : whether it is within or beyond the limits of national jurisdiction, a zone can be qualified as a PSSA if it is threatened by the international shipping activities and the hydrographical, meteorological or oceanographical conditions, and if it fulfills certain criteria.[22] PSSAs are proposed by member States and associated with protection measures in the field of shipping. They are examined by the IMO Marine Environment Protection Committee. The only designated PSSA in the Mediterranean is the Strait of Bonifacio since 2011 which is comanaged by France and Italy.

Some other political instruments follow a programmatic and less formal approach. The Montreal Guidelines for the Protection of the Marine Environment against Pollution from Land Based Sources (1985), along with the Washington Declaration and the Global Programme of Action for the Protection of the Marine Environment from Land-Based

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[18] ICJ, *Gabcikovo-Nagymaros Project (Hungary/Slovakia),* judgment, Report 1997, p. 78, para. 140.

[19] In the mediterranean framework, the revised Dumping Protocol has adopted the same system in 1995 but it has still not entered into force.

[20] The entire Mediterranean Sea is considered as a special zone under the Appendix I (Regulations for the Prevention of Pollution by Oil) and V (Prevention of Pollution by Garbage from Ships).

[21] Resolution A.720(17), 6 November 1991 revised par by Resolutions A.927(22) and A.982(24).

[22] The PSSA fulfills at least one ecological criteria (uniqueness or rarity, critical habitat, dependency, representativeness, diversity, productivity, spawning or breeding grounds, naturalness, integrity, fragility, bio-geographic importance), three social, cultural and economic criteria (social or economic dependency, human dependency, cultural heritage) or three scientific and educational criteria (research, baseline for monitoring studies, education).

Activities (1995) were adopted under the aegis of the UNEP. Moreover, the Agenda 21 adopted at the Rio Conference of the United Nations that took place from 3 to 14 june 1992 details a set of measures and initiatives to undertake in the chapter 17 relating to the protection of the marine and coastal environement and to the sustainable use of the marine living resources.

In general, the global framework relating to the marine environment protection remains weakly binding in the high seas. The flag State has the full and exclusive competence with respect to the ship. Its approval is required for any interception of the ship by a third State which suspects a violation of the international law.[23] The regional action may enhance here again the implementation and compliance of the protection framework, while adapting it to the specific ecological conditions of the region in consideration of the risk of marine pollution.[24]

2.4. Preservation of marine biological diversity

According to the UNCLOS article 194, paragraph 5, measures taken in accordance to the part XII relating to protection and preservation of the marine environment shall include those « *necessary to protect and preserve rare or fragile ecosystems as well as habitat of depleted, threatened or endangered species and other forms of marine life* ». It seems that no other provision in this Convention specifically targets the preservation of the marine biological diversity, which relies more importantly on the environmental law.

The legal protection of the biological diversity was dedicated by the 1992 Rio Conference on the environment and the development with the creation of the CBD. This instrument covers all components of biodiversity, including the marine biodiversity, and it applies to processes and activities undertaken in areas within the limits of national jurisdiction or under the control of any Contracting Party (art. 4). As a result, the CBD is applicable beyond national jurisdiction solely in accordance with the law of the flag State.

Aiming at the *in-situ* conservation of the biodiversity, the article 8 of the CBD prescribes the establishment for a « *system of protected areas or areas where special measures need to be taken to conserve biological diversity* ». Regarding the marine environment, on the other hand, the CBD shall be applied in accordance with rights and obligations resulting from the law of the sea. The UNCLOS provides a legal basis to the creation of marine protected areas (MPA) within a EEZ (art. 211), but remains silent on their creation beyond the national jurisdiction. Yet, silence is not an interdiction as long as the creation of a MPA beyond the limits of national jurisdiction is applied in keeping with the cooperation principle without affecting other rules of the law of the sea. Thus, there is no contradiction from a legal view to the possibility of creating MPAs located partially or entirely in high seas areas, as it is the case of refuge areas under the IWC and special areas under MARPOL.

[23] The flag State's authorization to a third State to incercept and control the ship must be express with a precise scope (European Court of Human Right, *Medvedyev and others v. France*, N°3394/03, 29 March 2010).
[24] In that sense, it should be noted that the Mediterranean basin is particularly exposed to the risk of marine pollution given its semi-enclosed sea condition.

In 2004, the Conference of the Parties to CBD, through the Decision VII/5, have underlined the urgent need to improve conservation and sustainable use of biodiversity in marine areas beyond national jurisdiction, and they advocated that international cooperation should support the work undertaken in order to define appropriate mechanisms for the establishment and the effective management of MPAs outside of national jurisdiction. In 2008, Parties adopted the « Scientif criteria for identifying ecologically or biologically significant marine areas in need of protection in open-ocean waters and deep-sea habitats » (EBSA criteria; Decision IX/20).[25] The Decision also determined scientific guidance for selecting EBSAs to establish a representative network of MPAs. Thereafter, the Conference met in Nagoya in 2010 and adopted the Strategic Plan for Biodiversity 2011-2020, determining the Aichi Biodiversity Targets for this period. Among these objectives, there are the sustainable management and use of biological resources through the application of the ecosystem-based approach (Strategic goal B – Target 6) and the conservation of at least 10 per cent of coastal and marine areas by means of ecologically representative and well connected systems of protected areas (Strategic Goal C – Target 11).

The biological diversity also concerns the exploration of genetic resources related-activities,[26] which are regulated by the Protocol to the CBD on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Nagoya, 2010). However, the application of the Protocol to the resources located in areas beyond the limits of national jurisdiction seems not to be established.[27]

In the end, the comprehensive framework relating to marine biodiversity beyond the limits of national jurisdiction is significant and even abundant, considering that it encompasses many provisions related to biological resources management and exploitation, control and prevention against the marine pollution. However, the enforcement of this framework is delicate because the obligations are often stated through a general and abstract formulation which does not really allow to enforce them. Some instruments seek to detail the terms and conditions to enforce these rules but most of the time they are non-binding and simply expose guidelines suggested to States. Even when certain rules fulfill the double condition of the binding nature and the clarity of the prescription (such as IMO regulation), it remains difficult to ensure the effectivity of the law in high seas areas.

[25] These criteria are enumerated at the Annex I of the Decision IX/20.

[26] Some organisms living in the deep sea appear particularly interesting to scientific research.

[27] The Nagoya Protocol applies to genetic resources that are under the scope of the CBD article 15. This article is exclusively applicable to « *the genetic resources that are provided by a Contracting Party that are countries of origin of such resources or by the Parties that have acquired the genetic resources in accordance with this Convention* » (para. 3). Considering the free access to the genetic resources beyond national jurisdiction, is the Contracting Party accessing to these resources submitted to the same obligations than if it had acquired them on its own territory? The principles developed in the Protocol rely on a territorial logic: on the one hand, each Contracting Party facilitates the access to genetic resources within its own territory, and on the other hand, the benefits of the utilization of such resources are shared with the country of origin (and/or with the concerned local communities). Such rules seem to be inapplicable to resources in the high seas areas (which are not part of mankind common heritage, unlike resources from the Area). The debate could then concern the statute of genetical resources in the high seas (the CBD consider that protection of the biological diversity as a « common concern of mankind ») in order to determine whose the benefits of their utilization should be shared with.

3. The regional Mediterranean framework

Identifying regional seas within the worldwide ocean helped to develop a reinforced cooperation and to foster the implemention of the international rules at regional level. In the Mediterranean especially, a coordinated management is much needed to meet the challenges resulting from the overexploitation of natural resources, degradation of the marine environment, demographic pressure and territorial tensions.

3.1. The Barcelona system

In February 1975, the riparian States and the European Community adopted the Mediterranean Action Plan under the UNEP Regional Seas Programme, in order to support, coordinate and strengthen policy capacities relating to the protection of the Mediterranean basin environment. On this institutional basis, the Convention for Protection of the Mediterranean Sea against pollution was concluded on 16 February 1976 then was modified in 1995 as the Convention for the Protection of the Marine Environment and the Coastal Mediterranean (Barcelona Convention). These amendments entered into force on 9 July 2004. The Barcelona Convention constitutes the framework treaty to the seven additional Protocols that were adopted in various fields linked to the protection of the marine environment in the Mediterranean.[28]

3.1.1. The Convention

The Barcelona Convention gathers the 21 mediterranean riparian States,[29] along with the European Union (EU). It applies to the totality of the Mediterranean Sea[30] including areas

[28] The seven following Protocols are:
1) The Protocol for the Prevention of Pollution in the Mediterranean Sea by Dumping from Ships and Aircraft (Dumping Protocol), adopted on 16 February 1976 and amended in 1995 (amendments are not yet in force);
2) The Protocol concerning Cooperation in Preventing Pollution in case of Emergency, adopted on 16 February 1976 and replaced in January 2002 by the Protocol concerning Cooperation in Preventing Pollution from Ships and, in cases of Emergency, Combatting Pollution of the Mediterranean Sea (Prevention and Emergency Protocol), which has entered into force in 2004;
3) The Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities (LBS Protocol) adopted on 17 May 1980 and amended on 7 March 1996;
4) The Protocol concerning Specially Protected Areas adopted on 1 April 1982 and replaced on 10 June 1995 by the Protocole concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA-BD Protocol). The amendments entered into force on 12 December 1999;
5) The Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (Offshore Protocol), adopted on 14 October 1994 and entered into force on 24 March 2011;
6) The Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal (Hazardous Wastes Protocol), 1 October 1996, entered into force on 18 December 2007;
7) The Protocol on Integrated Coastal Zone Management in the Mediterranean (ICZM Protocol), adopted on 21st January 2008 and entered into force on 24 March 2011.

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

beyond the limits of national jurisdiction and those for which the territorial delimitation has not yet been defined. Its geographical coverage may be extended to the littoral as it is defined by each Party within its own territory. Plus, a Protocol may extend its spatial coverage beyond the Convention's one.

Considering the outcome of the Rio Conference, the Convention commits the Parties to apply the precautionary principle and the polluter pays principle and to conduct environmental impact assessments for projects that are likely to cause significant adverse effects on the marine environment (art. 4, para. 3). It provides that competent authorities of the Parties shall give to the public a right to appropriate access to information on the environmental state and to participate in decision-making processes related to its field of application (art. 15).[31] Nevertheless, the Convention must be applied in accordance with the rules of international law, especially the UNCLOS provisions, and this application shall not affect the sovereign immunity of warships or other ships owned or operated by a State while engaged in government non-commercial service (art. 3, para. 5).

According to the article 10, « *The Contracting Parties shall, individually or jointly, take all appropriate measures to protect and preserve biological diversity, rare or fragile ecosystems, as well as species of wild fauna and flora which are rare, depleded, threatened or endangered and their habitats, in the area to which this Convention applies.* » The Convention also promotes scientific cooperation and access to and transfer of environmentally sound technology. Moreover, it engages the Parties to provide a technical assistance in consideration to the special needs of developing countries of the region.

The adoption of additional Protocols is decided by the Meeting of the Contracting Parties by consensus upon request of two thirds of the members. The amendments are voted by a three-quarters qualified majority of the Parties of the concerned Protocol. As Compliance control, the Meeting also monitors the implementation of the Convention on the basis of periodical reports submitted by the Parties to the Secretariat (UNEP coordination in Athen). It may recommend, when appropriate, to take necessary measures for compliance. A dispute settlement mechanism is provided in the Annex A.

3.1.2. The SPA-BD Protocol

The SPA-BD Protocol aims to preserve the biological diversity of the Mediterranean Sea as delimited in the Barcelona Convention. The Protocol also applies to the seabed and the subsoil of the sea, along with terrestrial coastal areas designated by each of the Parties, including westlands. This large geographical coverage allows for a better protection of some migratory species such as the marine mammals. The legal system of the Protocol relies on two approaches: the protection of certain species of flora and fauna on the one hand, and the

[30] « 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 Cap 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 » (Barcelona Convention, article 1).

[31] However, the right of the public to effective access to the justice is not mentioned.

protection of the environment of specific areas for their particular natural or cultural value on the other.

Concerning the species approach, each Party shall identify in its territory the threathened or endangered species. It then adopts regulation and measures in order to ensure a favourable state of conservaton, prohibiting if necessary, activities having adverse effects on these species or their habitats (art. 11, para. 2). Furthermore, Parties shall consult each other to adopt cooperative measures to protect the species listed in the Annexes II and III. They have the obligation to prohibit the destruction of and damage to the habitat of the species included in the List of Endangered or Threathened Species (Annex II) (art. 12, para. 3), whereas they only shall « take appropriate measures » to protect species included in the Annex III relating to the List of Species whose Exploitation is Regulated (regulation without prohibition). Moreover, the Protocol prohibits the introduction of non-indigenous or genetically modified species that may have harmful impacts on the ecosystems, habitats or species (art. 13).

Regarding the spatial approach, the Protocol makes a distinction between the Specially Protected Areas and the Specially Protected Areas of Mediterranean Importance (SPAMI). Only SPAMIs can be established partly or wholly on the high sea (article 9, para. 1b)). SPAMIs are registered in the SPAMI List which « *may include sites which are of importance for conserving the components of biological diversity in the Mediterranean ; contain ecosystems specifics to the Mediterranean area of the habitats of endangered species ; are of special interest at the scientific, aesthetic, cultural or educational levels* » (art. 8, para. 2).

To create a SPAMI partly or wholly situated on the high sea, a proposal must be submitted by two or more neighbouring Parties concerned. The proposal must include information on the area's geographical location, physical and ecological characteristics, legal status, management plans and the means for their implementation, as well as a statement justifying its Mediterranean importance (art. 9, par 3). [32] The National Focal Points shall examine the conformity of the proposal with the common guidelines and criteria of the SPAMIs.[33] Then the inclusion of the area in the List is decided by the Meeting of the Parties by consensus.

The SPAMI status creates two obligations: first, the Parties concerned must adopt protection and management measures related to the SPAMI; and second, the Parties as a whole shall respect these measures (art. 9, para. 5). For this reason, the SPAMI system enables the development of a MPAs regional network based on cooperation between the concerned neighbouring Parties and on compliance by all Parties of the special management measures that have been taken. Today, 34 sites have been included in the SPAMI List. Concerning the relation of this network with third States, those are simply invited to cooperate in order to ensure the implementation of the Protocol, as long as the Parties implement it with respect to the international law (art. 28).

To prevent the risk of legal conflicts that may result from the application of management measures in high seas areas (such risk is important considering the transitional statute of the

[32] The SPAMI's status is added up to an existant legal status of the MPA. Then, in the case of an ABNJ, an agreement between the concerned Parties to create the MPA's legal status appears to be a condition for the inclusion of the area into the SPAMI List.

[33] These common guidelines and criteria are stipulated in the Annex 1 of the Protocol.

Mediterranean high seas), a compatibility clause stipulates that nothing in the Protocol nor any action or activity intervening on its behalf, shall prejudice the rights and claims of any State relating to the law of the sea, nor can they authorize either assertion or contestation of a sovereignty claim (art. 2, para. 2 et 3).

The Regional Activity Centre for Specially Protected Areas (RAC/SPA) facilitates the administration of the Protocol and has a key role for its implementation: it ensures the exchange of informations, coordinates programmes relating to monitoring and research, assists the cooperation for the creation and management of SPAs and for the conservation of protected species. It also helps the funding and implementation of the assistance programmes to developing countries in the field related to the Protocol. The linkage between the RAC/SPA and the Contracting Parties relating to the scienfic and technical aspects is ensured by the national Focal Points.

3.1.3. Relevant provisions within the other Protocols

The Prevention and Emergency Protocol applies to any « pollution incident » resulting from ships or other installation in the Mediterranean Sea, including the high seas. It aims to protect the marine environment and « related interests » of coastal States, which include notably, *inter alia*, the conservation of biological diversity and the sustainable use of marine and coastal biological resources (article 1, d)). The Protocol sets provisions relating not only to the reaction of the Parties in the event of accident (for instance the notification procedure and having an emergency plan), but also the prevention against pollution incident through measures like the diffusion and exchange of information, environmental assessment related to the risks resulting from the use of seaways. In this context, the Regional Marine Pollution Emergency Response Center for the Mediterranean Sea (REMPEC), which is based in Malta and co-administrated by the UNEP and the IMO, facilitates the exchange of informations, assists the Parties to implement their requirements and monitors compliance. Beyond the limits of national jurisdiction, each Partie is responsible of its national and must ensure that its ship confronted to a pollution incident immediately informs the REMPEC and any other Party that may be affected, and that it applies an emergency plan. More generally, the Prevention and Emergency Protocol provides the requirement to implement international regulations to prevent, reduce and control marine pollution from ships, in particular regulations adopted under the aegis of the IMO.

The Offshore Protocol regulates the activities concerning exploration and/or exploitation of mineral resources in the seabed and its subsoil.[34] These activities are submitted to a prior authorization delivered by the competent authorities of the Contracting Party under which jurisdiction or control the so-called activities are undertaken. Yet, the conditions for this authorization shall be strengthened in the case where activities are undertaken in a protected area as defined by the SPA-BD Protocol or in any other area established by a Party and in furtherance of the goals stated therein. Indeed, according to the article 21 of the Offshore

[34] It is applicable to the Mediterranean Area as defined by the Barcelona Convention, including the continental shelf and the seabed and its subsoil, along with waters on the landward side of the baselines up to the freshwater limit in the case of watercourses. Plus, any Party can include in the Protocol area wetlands or coastal areas of its territory.

Protocol, the Parties shall take special measures to prevent, abate and control pollution arising from activities in these areas. It should be noticed that this provision not only applies to protected areas under the SPA-BD Protocol but more broadly to those pursuing the same objectives. Such provision, thus, could have a significant value for the purpose of marine biodiversity protection beyond the national jurisdiction.

Otherwise, provisions of the other Protocols seem to have little or no use for this purpose. Despite some relevant provisions existing in the Dumping Protocol,[35] the amendments have still not been entered into force. The Hazardous Wastes Protocol provides obligations relating to the prior consent of the State of import and to the notification by the State of export to the State of transit when the ship crosses the territorial sea. However, the areas beyond the national jurisdiction are not concerned by these provisions. The LBS Protocol, by definition, applies to the various types of pollution arising from the terrestrial or coastal territory of the Parties (air pollution, solid or liquid wastes from agricultural, industrial or domestic activities). The same idea can be applied to the ICZM Protocol which defines the coastal zone as the area between the external limit of the territorial sea and the landward limit of the coastal zone as defined by Parties for their own territory (ICZM Protocol, art. 3, para. 1).

Yet, although the ICZM Protocol is not applicable to the BBNJ, it could be still implemented in relation with the Protocol SPA-BD in consideration of the BBNJ. Indeed, the integrated coastal zone management (ICZM) described in this Protocol relies on the ecosystemic approach (article 6, c)), which takes into account interactions between the coastal biodiversity and the BBNJ. In addition, this ICZM promotes a comprehensive management through the cross-sectorally coordination (article 6, e)). The ICZM Protocol provides the establishment of a Common regional framework in order to facilitate this approach by harmonizing national policies with the technical assistance of the Priority Actions Programme/Regional Activity Center (PAP/RAC) (art. 18 and art. 32, para. 1).

3.2. Other relevant Mediterranean instruments

3.2.1. The General Fisheries Commission for the Mediterranean

The General Fisheries Commission for the Mediterranean (GFCM) was created in 1949 under the auspices of the FAO. Its founding agreement has been successively amended in 1963, 1976, 1997 and 2014. The current version of the Agreement came in the wake of the FAO Code of Conduct for Responsible Fisheries. It is applicable to both Mediterranean Sea and Black Sea. The objective is to « *ensure the conservation and sustainable use, at the biological, social, economic and environmental level, of living marine resources, as well as the sustainable development of aquaculture in the area of application* » (art. 2).

[35] The Dumping Protocol, which is applicable to Mediterranean Sea as a hole, prohibits the dumping of wastes or other matter, with the exception of those listed in paragraph 2 of the article 4 (dredged material, fish waste or organic materials resulting from the processing of fish and other organisms…). It also prohibits incineration at sea.

Gathering 23 member countries,[36] the GFCM adopts a binding regulation relating to the management of the Countracting Parties fisheries.[37] This regulation includes notably multi-year management plans on an ecosystem-based approach of fishing, along with the creation of fishing restrictive areas in order to protect vulnerable marine ecosystems (VME).[38] The strong institutional machinery of the GFCM enables to set up an effective normative framework for the conservation and sustainable management of the living resources.[39]

The GFCM regularly assesses the state of marine biological resources. It is also competent to take measures against the IUU fishing. Moreover, it undertakes or participates to activities for research and development, including cooperative projects in the field of fishing and marine living resources conservation. In that sense, the article 16 of the Agreement precises that « *the Commission shall cooperate with other international organizations and institutions in matters of mutual interest.* [It] *shall seek to make suitable arrangements for consultation, cooperation and collaboration with other relevant organizations and institutions, including entering into memoranda of understanding and partnership agreements.* » The GFCM collaborates thereupon with the International Commission for the Conservation of Atlantic Tunas (ICCAT). According to an informal agreement, the GFCM applies the decisions relating to tuna stocks adopted by the ICCAT.

3.2.2. The Agreement on the Conservation of Cetaceans in the Black Sea, Mediterranean Sea and Contiguous Atlantic Area

The Agreement on the Conservation of Cetaceans in the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS) was adopted in Monaco in 1996 under the auspices of the Bonn Convention on the Conservation of Migratory Species of Wild Animals (CMS). The Agreement is applicable to waters of the Mediterranean Sea, Black Sea and the contiguous Atlantic area at west of the Gibraltar Strait, along with Spain and Portugal's EEZs, since its revision in 2010. It comprises the Mediterranean riparian States, except Israel and Turkey. The ACCOBAMS establishes the principle of prohibition of any deliberate taking of the concerned species. An exception is provided in case of emergency or, after having obtained the advice of the Scientific Committee, for the purpose of non-lethal *in situ* research aimed at maintaining a favourable conservation status for cetaceans.

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[36] Albania, Algéria, Bulgaria, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Romania, Slovenia, Spain, Syria, Tunisia, Turkey, European Union and Japan (but not Morocco, Montenegro and Bosnia and Herzegovina).

[37] However, any Countracting Party might not apply a recommendation if it submits a reasoned objection within 120 days from the date of notification. If such case happens, another Party can oppose the recommendation within the additional period of 60 days. If more than a third of the Parties submit objections, the other Parties are released from the obligation to apply this recommendation (Agreement for the Establishment of the GFCM, article 13, para. 3 and 4).

[38] Three VMEs have been determined by the GFCM within the Mediterranean Sea: the Eratosthemes Seamount (Recommendation CGPM/2006/3), the Nile delta area cold hydrocarbon seeps (*ibid*) and the east of the Gulf of Lions (Recommendation CGPM/33/2009/1).

[39] The monitoring of decisions implementation is ensured by the submission of annual reports by each Countracting Party. In addition, a non-compliance mechanism has been provided (Rules of procedure of the GFCM, article XIX) along with a procedure for the settlement of disputes (article XVIII).

The Agreement secretariat maintains close ties with the Secretariat of the Barcelona Convention. Indeed, the RAC/SPA acts as its subregional coordination unit for the Mediterranean area. Furthermore, a memorandum of understanding has been signed in February 2016 in order to reinforce the institutional coordination, especially in areas beyond the limits of national jurisdiction. The cooperation is also embodied through the exchange and diffusion of information. For instance, ACCOBAMS carried out in 2012 a study on the impact of underwater noise with the collaboration of the Agreement for the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas (ASCOBANS) and the Convention on the CMS.

3.2.3. The Pelagos Sanctuary

In 1999, France, Monaco and Italy concluded in Roma a subregional agreement for the establishment of a sanctuary of marine mammals in the Corso-Liguro-Provençal Basin which encompasses a highly rich marine biodiversity. This sanctuary is the largest MPA in the Mediterranean (87 500 km²) and it is the only one partially located beyond the limits of national jurisdiction (46 371 km² of waters in the high seas). The PELAGOS Agreement has set out a tripartite management system of the protected area. The Parties prohibit any deliberate taking of the marine mammals (except in emergency case and for the purpose of scientific *in situ* research), along with motor vehicles, and they shall take measures to prevent marine pollution. They follow the implementation of the Agreement and the conservation state of populations through regular meetings. In areas beyond the limits of national jurisdiction, each Party is competent to comply with the Agreement with respect to its nationals and, in accordance with the international law, to ships under the flag of a third State (article 14, para. 2). Since the Sanctuary has been included into the SPAMI List, the Countracting Parties of the SPA-BD Protocol shall legally comply with the protection measures adopted under the PELAGOS Agreement.

3.2.4. The Mediterraean Science Commission

This organization was created in 1919. It is competent in the field of marine and environmental research in the Mediterranean Sea and the Black Sea. [40] Bringing together many researchers from national institutions of member States,[41] the Mediterranean Science Commission (CIESM) is an important forum for scientific dialogue and it contributes to data sharing and formation of a common scientific basis.

4. The law of the European Union

[40] The large search field of CIESM can be foreseen through the six committee it comprises: Marine geosciences, Ocean Physics and climate, Marine biochemistry, Microbiology and marine biotechnology, Living resources and marine ecosystems, Coastal systems.

[41] CIESM members are Algeria, Croatia, Cyprus, Egypt, France, Germany, Greece, Israel, Italy, Lebanon, Malta, Monaco, Morocco, Portugal, Romania, Russian Federation, Slovenia, Spain, Switzerland, Syria, Tunisia, Turkey and Ukraine.

Among the twenty-eight EU Member States, eight are riparians of the Mediterranean Sea.[42] The EU law is applicable in areas within the limits of national jurisdiction of any Member State and to persons under its control or authority. The EU exercises a shared competence with its Members in the field of the protection of the environment (TFUE, art. 192), the maritime transport (art. 100) and the energy (art. 194). Plus, it has an exclusive competence in the fisheries management (art. 43) through its Common Fisheries Policy.[43]

The instruments of the EU to protect the biodiversity are the Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (« Habitats » Directive) and the Directive 2009/147/EC of 30 November 2009 on the conservation of wild birds (« Birds » Directive). The Habitats Directive aims to set up a coherent European ecological network of special areas of conservation (Natura 2000 network), including MPAs selected on the basis of criteria determined in the Annex I (Natural habitats types of community interest whose conservation requires the designation of special areas of conservation) and II (Animal and plant species of community interest whose conservation requires the designation of special areas of conservation). In these areas, the Members shall adopt special measures to the biodiversity management and conservation. Any plan or project likely to have a significant effect on the site shall be subject to an environmental impact assessment (art. 6). En 2016, 898 Natura 2000 sites have been established in the Mediterranean Sea, covering 2,37% of its surface.[44]

To exercise its various competences within the sea in a consistent manner, the EU developed an integrated maritime policy based on a global and multisectoral approach of the maritime activities, seeking to achieve the sustainable development by mean of the « blue economy ».[45] The Directive 2008/56/EC of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) introduces the Mediterranean Sea as divided into four subregional areas (the Western Mediterranean Sea, the Adriatic Sea, the Ionian Sea and the Central Mediterranean Sea, and the Aegean-Levantine Sea). The Mediterranean is then considered as a management unit for which each Member State is engaged to elaborate a strategy for the marine environment applicable within its own marine waters. To this end, it endeavours to coordinate its policy with other States policies developed in the region, including the concerned third countries, by using, where practical and appropriate, the regional institutional cooperation structures.

According to this Directive, each Member had to establish an initial assessment of the environmental status of its marine waters and an economic and social analysis of the use of those waters and the cost of degradation of the marine environment.[46] Subsequently it had to define targets to achieve a « good environmental status »,[47] then to elaborate a monitoring programme. Within six months of receiving the notification of these elements, the

[42] Croatia, Cyprus, France, Greece, Italy, Malta, Slovenia and Spain.
[43] Regulation (EC) n°2371/2002, art. 9.
[44] Brochure of the updated 2016 version « Status of Marine Protected Areas in the Mediterranean » (MedPAN and RAC/SPA). This version has not yet been published but the brochure is available on MedPAN website : http://www.medpan.org/mediterranean-mpa-status;jsessionid=F961E7FAB8B2E6B340F859A1CC78F3AA
[45] Commission Communication « An integrated maritime policy for the European Union » (COM(2007) 574 final).
[46] This initial assessment had to be achieved at the latest 15 July 2012 (art. 5, para. 2 a)).
[47] In accordance with the criteria defined in the Annex II of the Directive.

Commission has been in charge of assessing whether they meet the requirements of the Directive. The deadline of this phase has been set on 15 July 2014. Since then, the programmes of measures shall be implemented and updated in order to achieve the defined objectives by 2020.[48]

In keeping with the Marine Strategy Framework Directive, the Directive 2014/89/EU of 23 July 2014 establishing a framework for maritime spatial planning aims to the elaboration of national plans by the Member States to « *contribute to the sustainable development of nergy sectors at sea, of maritime transport, and of the fisheries and aquaculture sectors, and to the preservation, protection and improvement of the environment, including resilience to climate change impacts* » (art. 5, para. 2). The maritime spatial planning is thus developed as a transversal instrument for harmonization of maritime activities. The setting-up of those plans obeys to minimum requirements such as public participation, use of the best available data and cooperation within a marine region or a subregional zone among Member States but with the concerned third countries as well as possible. Those plans should set out at the latest 31 March 2021 and afterwards be examinated by the European Parliament and the EU Council every four years.

The EU maritime policy in the Mediterranean involves close links with the third States not only under the European neighbourhood policy, but also by the means of the competent regional and international organizations. In that respect, the EU is a Countracting Party to the Barcelona Convention and to six of its Protocols.[49] It also participates to other organizations that play an important role in the region, such as GCFM and IMO. Consequently, although the European regulation is binding only within the limits of Member States national jurisdiction, the development of an integrated maritime policy and a maritime spatial planning at the regional level under an ecosystem-based approach seems to be oriented toward a management approach of the sea as a consistent whole. Hence the EU is brought to reinforce its linkage with the Mediterranean third States in the development of its strategy in order to coordinate cross-border actions and to ensure that activities existing beyond the limits of national jurisdiction are compatible with the achievement of the goals of its maritime policy.

5. Conclusion

[48] Measures shall be implemented in accordance with the EU legislation and principles, such as the obligation to carry out an environmental impact assessment, the public information and participation, the principle of subsidiarity. They include notably the creation of MPA based on the Habitats Directive (92/43/EEC) and the Birds Directive (79/409/EEC).

[49] Decisions 77/585/EEC, 81/420/EEC, 83/101/EEC, 83/132/EEC, 2004/575/EC et 2010/631/EU. The EU is not Party to the Hazardous Wastes Protocol, the only one that has not entered into force.

Considering its geographic and political features, the Mediterranean Sea comprises a large proportion of areas beyond the limits of national jurisdiction or for which the limits of national sovereignty or jurisdiction have not been defined yet. Those areas are exclusively related to the high seas regime given that the seabed is under the national jurisdiction of a riparian State or another. The international law provides a legal framework to protect the BBNJ not only through general customary obligations, but also by establishing more precise rules concerning the field of the conservation of marine living resources under fisheries activities and the prevention and control of the pollution of the marine environment by ships and other installations in the sea. This legal framework also allows the adoption of area-based measures of conservation such as MPAs.

Yet there are not many universal rules being at the same time sufficiently binding and precise to be really effective in the high seas area where the flag State is the only one to be competent to ensure the implementation of the law. This condition of effectivity implies a strengthened cooperation through regional instruments. In the Mediterranean, the Barcelona Convention is applicable to all marine waters and its SPA-BD Protocol protects the BBNJ through a double approach by species and by zones. Protection measures are also taken under other sectoral instruments like GFCM, IMO and ACCOBAMS.

Thus, the normative framework of BBNJ protection in the Mediterranean appears quite complete. But it suffers from the weak linkage among the existing institutional instruments in the implementation of law, which brings sometimes to a lack of consistency or to an overlapping of the applicable rules that can lead to conflicting situation. Such weakness is even more problematic in areas beyond the limits of national jurisdiction where the poor control, added to poor information and communication, hampers compliance of the applicable rules.

The major challenge for the region is thus to enhance exchange and coordination among sectoral policies in order to conduct the various maritime activities in a consistent and sustainable manner for the marine environment. The technical guidance can partially resolve this issue (for instance by converging standards and methods relating to the environmental impact assessments), but in the present context, solutions should be developed primarily with regard to governance and good practice guidance, as political instruments.

6. Appendix

Marine areas declared by States as under national juridiction in the Mediterranean*

Table elaborated on the basis of the Database on maritime space published by the United Nations Division for Oceans Affairs and the Law of the Sea (DOALOS). The designations employed and the presentation of the material in this document do not imply the expression of any opinion whatsoever on the part of RAC/SPA and UNEP concerning the legal status of any State, territory, city or area, or of its authorities, or concerning the delimitation of their frontiers or boundaries.

COUNTRIES **	Extent of the territorial sea	Contiguous zone	Exclusive economic zone (EEZ) total or partial	Relevant legislation	Maritime boundary delimitation agreements	Remarks***
Morocco	12 n. m.	Declared	EEZ	Dahir N°1-81-179 of 8 April 1981		(16/01/2009)
Algeria	12 n. m.	Declared Archeological contiguous zone	Fishing zone covering, to the west, 32 n. m. from the Moroccan border to Ras Tenes, and to east, 52 n. m. from Ras Tenes to the Tunisian border	Decree N°84-181 of 4 August 1984 Legislative decree N°94-13 of 28 May 1994 Presidential decree N°04-344 of 6 November 2004	Provisional understanding on the delimitation of maritime boundaries with Tunisia (11 February 2002)	(8/06/2010)
Tunisia	12 m. m.	Declared Archeological contiguous zone	Fishing zone (from Ras Kapoudia to the Libyan border delimited according to the crieterion of the « 50 meters isobath ») EEZ (modalities for the implementation of the law are not yet specified)	Bey Decree of 26 July 1951, confirmed by the law N°73-49 of 2 August 1973 Decree N°73-527 of 3 November 1973 Law N°2005-60 of 27 June 2005	Delimitation of the continental shelf with Italy (20 August 1971) Accord with Libya on 8 August 1988 to implement the judgment of the ICJ rendered on 24 February 1982 Provisional understanding on the delimitation of maritime boundaries with Algeria (11 February 2002)	(8/06/2010)
Libya	12 n. m.		Fishing zone (62 n. m. from the limits of territorial sea) EEZ (delimitation to be defined by agreement with concerned neighbour States)	General People's Committee Decisions N°37 of 24 February 2005 and N°105 of 21 June 2005 Decision N°260 of 31 May 2009	Agreement with Malta on 10 November 1986 to implement the judgment of the ICJ rendered on 3 June 1985 Agreement with Tunisia on 8 August 1988 to implement the judgment of the ICJ rendered on 24 February 1982	(19/09/2011)
Egypt	12 n. m.	Declared	EEZ (no delimitation indicated)	Presidential decree N°27 of 9 January1990 Note verbale submitted to the United Nations on 2	Delimitation of the EEZ with Cyprus (17 February 2003)	Turkey's objection to the EEZ agreement with Cyprus (4 October 2005)

				May 1990		(12/01/2011)
Israel	12 n. m.		EEZ	Amending law N°5750-1990 of 5 February 1990 Note verbale submitted to the United Nations on 12 July 2011	EEZ delimitation with Cyprus (17 December 2010)	Lebanon's objections to the EEZ agremment with Cyprus (20 June 2011) and to the EEZ claim (3 September 2011 reiterated on 20 March 2017) (23/03/2017)
Palestine	12 n. m.	Declared	EEZ (unspecified delimitations)	Declaration of 31 August 2015		Non-member observer State of the United Nations, Palestine is Party to the UNCLOS since 2 January 2015 (1er/10/2015)
Lebanon	12 n. m.		EEZ (coordinates transmitted to the United Nations by note verbale on 14 July 2010)	Decree N°6433 of 1 October 2011	EEZ delimitation with Cyprus**** (17 January 2007)	Syria has objected to the Lebanon's EEZ demarcation (15 July 2014) Israel's objection to the southern maritime boundary (2 February 2017) (23/03/2017)
Syria	12 n. m.	Declared	EEZ	Law N°28 of 19 November 2003		(2/12/2011)
Cyprus	12 n. m.	Declared Archeological contiguous zone	EEZ	Laws of 2 April 2004, revised in October 2014	EEZ delimitation with Egypt (17 February 2003), Lebanon**** (17 January 2007) and Israel (17 December 2010)	Turkey's objection to the EEZ agreement with Egypt (4 October 2005) and Lebanon's objection to the EEZ agreement with Israel (20 Une 2011) Repeated incidents relating to offshore exploration activities in the area claimed by Cyprus as EEZ and objected by Turkey, which considers the seabed of this area as its continental shelf (10/04/2016)
Sovereign military bases of the United Kingdom of Akrotiri and	3 n. m.				Treaty of 16 August 1960 between the United Kingdom, Cyprus and Turkey	

Dhekelia						(7/02/2014)
Turkey	6 n. m. in the Eagean Sea and 12 n. m. eslsewhere			Law N°2674 of 20 May 1982	Treaty of 16 August 1960 between the United Kingdom, Cyprus and Turkey	(10/04/2017)
Greece	6 n. m.			Law N°230 of 17 September 1936	Delimitation of the continental shelf with Italy (24 May 1977) and with Albania**** (27 April 2009)	Dispute with Turkey on the delimitation of the continental shelf (Note verbale of 20 February 2013 to the United Nations) (11/01/2017)
Albania	12 n. m.			Decree N°7366 of 9 March 1990	Delimitation of the continental shelf with Italy (18 December 1992) and Greece **** (27 Aprill 2009)	(18/08/2009)
Montenegro	12 n. m.				Délimitation du plateau continental et de la mer territoriale avec l'Italie (succession aux accords conclus avec la Yougoslavie)	(22/06/2015)
Bosnia and Herzegovina	12 n. m.				Delimitation of the territorial sea boundaries with Croatia**** (30 July 1999)	(16/01/2009)
Croatia	12 n. m.		Ecological and fishing protection zone (including scientific research)	Decision of the Parliament of 3 October 2003, amended on 3 June 2004 (regime's implementation has been reported to a date later than the conclusion of a fishing agreement with the European Communities)	Delimitation of the continental shelf and the territorial sea with Italy (succession to the Yugoslavia) Maritime delimitation with Bosnia and Herzegovina**** (30 July 1999) Arbitration agreement with Slovenia to determine their maritime boundaries (4 November 2009)	Objection of Montenegro on the demarcation of the Ecological and fishing protection zone (Note verbale of 18 May 2015) (22/06/2015)
Slovenia	12 n. m.		Ecological protection zone	Law of 4 October 2005	Arbitration agreement with Croatia to determine their maritime boundaries (4 November 2009)	Objection of Croatia to the right of Slovenia in the Piran Bay. An arbitration commission has been designed in January 2012. The case is still pending. (5/01/2010)
Italy	12 n. m.	Declared Historical and	Ecological protection zone in the northwest, in the Ligurian Sea	Law N°61 of 8 February 2006 and Decree N°209 of 27	On the continental shelf: Croatia and Montenegro (having	

		archeological contiguous zone	and in the Tyrrhenian Sea Use of the continental shelf beyond the limits of the territorial sea and the contiguous zone (« zone C »)	October 2011 Decree of 27 December 2012	succeeded to Yugoslavia) (8 January 1968), Tunisia (20 August 1971), Spain (19 February 1974), Greece (24 May 1977), and Albania (18 December 1992) Other maritime boundaries agreements with Croatia and Montenegro (succession to Yugoslavia) (10 November 1975) (Annexe V), and with France (28 November 1986)	(9/05/2014)
Malta	12 n. m.	Declared	Fishing zone of 25 n. m. Possibility to expand the area and to conduct within it activities relating to scientific research, ecological protection and creation of artificial islands.	Law of 10 December 1971, amended in 1975, 1978, 1981 and 2002 Legislative act N° X of 26 July 2005.	Agreement with Libya to implement the ICJ judgment of 3 June 1985 (10 November 1986)	(12/07/2010)
Monaco	12 n. m.				Maritime delimitation with France (16 February 1984)	(16/01/2009)
France	12 n. m.	Declared Archeological zone	EEZ (replacing the Ecological protection zone created in 2004)	Law N°76-655 of 16 July 1976 (modified by the law N°2003-346 of 15 April 2003, then by the law N°76-655 of 16 July 2016) Decree N°2012-1148 of 12 October 2012	Maritime delimitations with Monaco (16 February 1984) and with Italy in the Strait Bonifacio (28 November 1986)	Objection of Spain to the EEZ demarcation (Note verbale to the United Nations of 23 October 2012) (22/11/2016)
Spain	12 n. m.		EEZ (replacing the fishing zone created in 1997)	Royal decree N°236/2013 of 5 April 2013	Agreement on the continental shelf with Italy (19 February 1974)	(6/09/2013)

* This table was elaborated to uptade the information contained in the technical note: UNEP-MAP-RAC/SPA. 2011. Note on the establishment of marine protected areas beyond national jurisdiction or in areas where the limits of national sovereignty or jurisdiction have not yet been defined in the Mediterranean Sea. By Scovazzi, T. Ed. RAC/SPA, Tunis: 47pp. Where appropriate, the updating was found in the UNDOALOS database. http://www.un.org/Depts/los/

** Countries are listed by geographic order, from south-west to north-west along the Mediterranean coast.

*** The dates mentioned in brackets indicate the up-to-dateness of the transmitted information to the UNDOALOS.

**** Those agreements do not seem to be entered into force.