

Governance of the Mediterranean Sea

Outlook for the Legal Regime

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Acknowledgements

Much of the information contained in this document comes from the book “Marine Specially Protected Areas, the General Aspects and the Mediterranean Regional System”, edited by Tullio Scovazzi (1999). We would like to extend our thanks to Alain Bonzon for his important contribution, as well as to Tullio Scovazzi, David VanderZwaag, Tomme Young and Lee Kimball.

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This publication has been made possible in part by funding from Total.

Published by: IUCN Centre for Mediterranean Cooperation, Malaga (Spain), 2005



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Citation: Claudiane Chevalier (2005). Governance of the Mediterranean Sea. Outlook for the Legal Regime. IUCN-Med, Málaga (Spain).

ISBN: 2-8317-0862-1, 2005

Cover design by: Pedro Molino / Diseño, Creatividad y Comunicación

Layout by: Pedro Molino / Diseño, Creatividad y Comunicación

Produced by: IUCN Centre for Mediterranean Cooperation

Printed by: Gráficas Galán, Vilal del Río, Córdoba (Spain)

Available from: IUCN CENTRE FOR MEDITERRANEAN COOPERATION
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Campanillas 29590 Málaga, España
Tel: +34 952 02 84 30, Fax:+34 952 02 81 45

A catalogue of IUCN publications is also available
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219c Huntingdon Road, Cambridge CB3 0DL, United Kingdom
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<http://www.iucn.org>

The text of this book is printed on Cyclusprint (100 g/m2), recycled, non-chlorine

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List of acronyms

GFCM	General Fisheries Commission in the Mediterranean
IUU	Illegal, Unreported and Unregulated fishing
UNCLOS	United Nations Convention on the Law of the Sea
ZPE	Ecological Protection Zone
EEZ	Exclusive Economic Zone
EPFZ	Environmental Protection and Fisheries Zone
FPZ	Fisheries and Protection Zone

Introduction

The Mediterranean is a semi-enclosed sea¹ surrounded by 21 countries². It is characterized by a number of distinctive features with important implications for the conservation and management of fisheries. One of these features is the general restraint shown by coastal States in exercising their rights to extend national jurisdiction over waters in the Mediterranean. While most States have established territorial waters, few have claimed an exclusive economic zone (EEZ), a fishing zone or a prevention of pollution zone extending beyond these waters. As a result, the high seas in the Mediterranean lie much closer. The existence of a large area of high seas requires a high level of cooperation between coastal States to ensure the sustainable utilization of fisheries resources, and conservation of marine biodiversity.

After briefly reviewing the basic principles and rules related to the establishment of maritime zones, as embodied in the United Nations Convention on the Law of the Sea (UNCLOS), this chapter examines the legal status of Mediterranean waters.

I. Maritime Zones of the Coastal State

From a legal standpoint, the marine realm falls into different areas, each having its own legal regime, as specified by the UNCLOS. The Convention, adopted on 10 December 1982 in Montego Bay, Jamaica, provides the general framework governing the establishment and delimitation of maritime zones³. It stipulates that the sovereignty of any coastal State extends to an adjacent belt of sea, called the territorial sea, whose breadth can extend up to a limit not exceeding 12 nautical miles. Sovereignty conferred upon coastal States is not confined to the water column, but also extends to the air space over the territorial sea, as well as to its bed and subsoil. Sovereignty must be exercised in accordance with the UNCLOS and other rules of international law (Articles 2 and 3). It further sets out the rules and methods to be applied to determine the baselines from which the breadth of the territorial sea should be measured (normal and straight baselines)⁴ and lays

¹ The concept of semi-enclosed sea is defined under Article 22 of the United Nations Convention on the Law of the Sea as "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".

² Note that there are actually 22 countries bordering the Mediterranean Sea as the United Kingdom possesses three territories in the region, namely Gibraltar and the two sovereign base areas of Akrotiri and Dhekelia in the island of Cyprus. However, the United Kingdom has not been included in this paper for the purpose of this study.

³ The UNCLOS entered into force on 16 November 1994, 12 months after the date of deposit of the sixtieth instrument of ratification or accession in accordance with the provisions of Article 308.

⁴ The UNCLOS provides two distinct methods for determining the baselines from which the breadth of the territorial sea is to be measured. It varies according to the geographical configuration of the coastline. Where the coastline is regular and there is no island along the coast, the normal baseline, which is the low-water line along the coast, is used to establish the territorial sea (Article 5). However, in localities where the coastline is deeply indented or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines may be employed (Article 7).

down the rules to be followed to draw up the boundaries of the territorial sea between States with opposite or adjacent coasts (Article 15)⁵.

The UNCLOS recognizes the right of coastal States to claim an exclusive economic zone (Article 57). Unlike its authority in the territorial sea, however, a coastal State does not have full sovereignty over its EEZ, but rather delimited sovereign rights (see section on EEZ). If every coastal State declared its full (up to 200 n.m.) EEZ, there would be no waters of the Mediterranean that were not included.

Unlike the EEZ, the continental shelf exists *ipso jure* and does not depend on occupation, effective or notional, or on any express proclamation by coastal States. According to Article 76 of the UNCLOS, the legal continental shelf comprises the sea-bed and subsoil of the submarine areas that extend beyond the territorial sea throughout the natural prolongation of the land territory to the outer edge of the continental margin⁶ (physical continental shelf, slope and rise), or to a distance of 200 n.m. from the baselines, where the outer edge of the continental margin does not extend up to 200 n.m.. In the context of the Mediterranean basin where no point is located more than 200 n.m. from the nearest land or island, States do not have a legal continental shelf extending beyond 200 n.m.. As with the EEZ, the whole Mediterranean seabed becomes an area to be eventually allocated to coastal States, once the maritime boundaries with opposite and adjacent States are established under international law. In most cases, the outer edge of the coastal State's legal continental shelf would be the line of delimitation with opposite and adjacent States.

Beyond national zones, the UNCLOS reiterates the so-called freedom of the high seas principle, indicating that the high seas are open to all States, whether coastal or landlocked. High seas freedoms should be exercised under the conditions laid down by the UNCLOS and by other rules of international law.

Information relative to national maritime zones is summarized in Annexes 1 and 2 of this document. Annex 1 compiles information on the extent of States' territorial seas, economic zones, fishing zones, ecological zones and continental shelves; Annex 2 specifies the legislation establishing these various maritime zones.

⁵ The median line rule is generally applied to determine the extent of the territorial sea between States with opposite or adjacent coasts. A median line is drawn between the two States every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.

⁶ Regarding the limits of the continental shelf beyond 200 nautical miles, States party to the UNCLOS are required to submit information to the Commission on the Limits of the Continental Shelf set up under Annex II of the Convention. Limits established by the coastal state are based on the Commission's recommendations. Only two states have made submissions to date (Russian Federation, Brazil) and others are in the process of preparing them. The Russian Federation actually made the first submissions (See DOALOS (UN Division of Oceans Affairs and Law of the Sea) website where the UN Commission on the Limits of the Continental Shelf documentation can be found).

Territorial Seas

Most Mediterranean States have established a 12-mile territorial sea. A few countries, namely Greece and Turkey in the Aegean Sea⁷, still rely on narrower limits. Due to the complex political and geographical situation, the very possibility of extending the territorial sea beyond the 6-mile limit is still disputed by the two countries. In the case of the Aegean Sea, application of the median line rule provided under Article 15 of the UNCLOS is politically sensitive as too many islands are on both sides of the median line. Bosnia and Herzegovina and Slovenia, two newly independent States, have limited access to the Adriatic Sea, with the geographical features of the coastline making it very difficult, if not impossible, for both States to establish any substantial territorial sea.

Treaties for the delimitation of the territorial sea were concluded between Turkey and the Soviet Union (now Russia) on 17 April 1973; between France and Italy on 28 November 1986 with regard to the strait of Bonifacio between Corsica and Sardinia; between Italy and Yugoslavia on 10 November 1975 with respect to the gulf of Trieste⁸; between Turkey and Bulgaria on 4 December 1997 as regards the determination of the lateral boundary of their territorial seas in the mouth of Mutludere/Rezovska River and between the two States; and more recently between Croatia and Bosnia and Herzegovina on 30 July 1999.

Exclusive Economic Zones

Mediterranean States have so far been reluctant to proclaim EEZs, or at least to give effect to such a claim in the Mediterranean. Among the reasons behind the choice of delaying the establishment of EEZs may be the existence of difficult problems of delimitation still to be settled in this relatively narrow sea, and the desire of most States to preserve basin-wide access to fisheries. From a legal point of view, however, there is nothing to prevent Mediterranean States from establishing an EEZ if they wish to do so⁹. At least three Mediterranean States have taken steps towards the establishment of such a zone.

In the EEZ, the coastal State has sovereign rights “for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed, and of the seabed and its subsoil; and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.”¹⁰

⁷ Note that Turkey’s territorial sea in the Black Sea extends to 12 nautical miles.

⁸ On 31 July 1992, Slovenia declared its succession to Yugoslavia in the treaty of Osimo and Italy “took note with satisfaction” of the decision made by Slovenia (communiqué in GURI, No. 211 of 8 September 1992). Under Article V of the Constitutional Decision by Parliament of Croatia of 25 June 1991 the State boundaries of Croatia are the internationally recognized boundaries of the former Yugoslavia in the part which relates to Croatia.

⁹ Part V of the UNCLOS, in particular articles 56, 58, 60 to 63.

¹⁰ In addition, the coastal state has jurisdiction as provided in the UNCLOS with regard to the establishment and use of artificial islands, installations and structures; marine scientific research; and the protection and preservation of the marine environment.

The coastal State shall have due regard for the freedom of navigation of other States (and of the laying of cables and pipelines). At the same time, in keeping with its sovereign rights over EEZ resources, its rights with regard to foreign vessels are limited to powers to investigate, inspect, arrest and undertake judicial proceedings against foreign vessels, insofar as is necessary to ensure compliance with national regulations adopted in conformity with the UNCLOS's Article 73. Its rights and obligations to enforce measures taken to protect and preserve the marine environment in the zone are spelled out in some detail in the UNCLOS (Part XII, notably sections 6 and 7).

In 1981, Morocco proclaimed a 200 n.m. EEZ, which in principle applies without distinction to both Atlantic and Mediterranean waters off the Moroccan coasts. However, Morocco has not yet enforced its EEZ legislation with regard to Mediterranean waters. Morocco has not yet entered into negotiations with neighbouring countries to define the extent of its EEZ in the Mediterranean¹¹.

In ratifying the UNCLOS on 26 August 1983, Egypt declared that it “will exercise as from this day the rights attributed to it by the provisions of Parts V and VI of the UNCLOS in the EEZ situated beyond and adjacent to its territorial sea in the Mediterranean and the Red Sea”, and that it “undertakes to establish the outer limits of its EEZ in accordance with the rules, criteria and modalities laid down in the UNCLOS”¹². As far as can be established, it appears that the Egyptian declaration has not as yet been followed by implementing legislation.

The Maritime Code of Croatia, adopted on 27 January 1994, contains several provisions on the EEZ¹³. However, application of these provisions is conditional upon the decision by the Croatian Parliament to proclaim such a zone¹⁴. The Republic of Croatia has undertaken steps towards establishing a zone of ecological protection and fisheries (see 2.4)¹⁵.

Spain and France have proclaimed a 200 n.m. EEZ off their coasts, but have indicated that it is not applicable to Mediterranean waters.

By its EEZ Law of 2 April 2004, Cyprus proclaimed an EEZ in which rights and jurisdictions foreseen in the UNCLOS shall be exerted, and whose limit shall not extend beyond the 200 n.m. from

¹¹ Given the geographical configuration of the Alboran Sea, Morocco cannot claim a 200 n.m. EEZ. Consequently, the outer limit of its EEZ should be determined in accordance with the provisions of Article 11 of Law No 1-81 of 8 April 1981, which states that “the delimitation must be effected in accordance with the equitable principles laid down by international law, through bilateral agreements between States, the outer limit of the Exclusive Economic Zone shall not extend beyond a median line every point of which shall be equidistant from the nearest points on the baselines of the Moroccan coasts and coasts of foreign countries opposite to Moroccan coasts or which border them”.

¹² This declaration can be consulted on the United Nations website at: www.un.org.

¹³ See Articles 33 to 42 of the Maritime Code of 1994.

¹⁴ See provisions of article 1042 of the Croatian Maritime Code of 1994.

¹⁵ Recently, the British news magazine, *The Economist*, featured a story on the relationship between Slovenia and Croatia, in which it reported Croatia's intention to claim an EEZ in the north-eastern part of the Adriatic Sea. See, *Hey, that's my bit of sea*, in *The Economist*, 30 August 2003, p. 22.

the baselines from which the breadth of the territorial sea is measured. The Law affirms that rights and duties shall be exerted in a manner compatible with the provisions of the UNCLOS, and further details, in Articles 7 and 8, the existing obligations pertaining to conservation of living and non living resources. These articles further contain penal provisions in case of infringement.

It further adds, under Article 11, that further regulations may be adopted to “(...) serve all or some of the following purposes: (a) the preservation of the living resources of the EEZ; (b) the protection of the environment in this zone; (c) with reference to foreign vessels, the regulation of fishing areas, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used; (d) the regulation of matters pertaining to marine scientific research; (e) the authority to board foreign vessels to inspect, arrest and confiscate, as appropriate to ensure compliance with the laws and regulations adopted to safeguard the relevant sovereign rights of the Republic; and (f) licensing procedures for rights to be enjoyed in the EEZ”.

Fishing Zones

In the Mediterranean, there are four countries, namely Algeria, Malta, Spain and Tunisia, that have claimed fishing zones extending beyond their territorial waters.

In 1994, Algeria claimed an exclusive fishing zone (“zone de pêche réservée”), beyond its territorial sea and adjacent to it, which extends 32 n.m. from the western maritime border and Ras Ténés and 52 n.m. from Ras Ténés to the eastern maritime border¹⁶.

Malta has claimed a 25 n.m. exclusive fishing zone since 1978¹⁷.

In 1951, Tunisia claimed an exclusive fishing zone that is bordered for about half of its length by the 50-m isobath¹⁸. Use of this criterion to delimit a maritime zone is unique in international practice. Because of the shallow waters in the region, the external limit of this fishing zone is a line the points of which are located, in certain cases, as far away as 75 n.m. from the Tunisian coast, and only 15 n.m. from the Italian island of Lampedusa. The Tunisian fishing zone encompasses the rich bank called “Il Mammellone”, which has traditionally been exploited by Italian fishermen, and is considered as an area of the high seas by Italy.

More recently, Spain, by Royal Decree No 1315/1997 of 1 August 1997 as modified¹⁹, claimed a 37-mile wide fisheries protection zone measured from the outer limit of the territorial sea²⁰. The fisheries protection zone is delimited according to the line which is equidistant (median line) from

¹⁶ Article 6 of Legislative Decree of 28 May 1994.

¹⁷ See Section 3 subsection (2) of Act No XXXII of 10 December 1971 as modified by Section 2 (b) of Act No XXIV of 21 July 1978.

¹⁸ See Article 3 (b) of Decree of 26 July 1951 as modified by Law No 63-49 of 30 December 1963.

¹⁹ Boletín Oficial del Estado n. 204 of 26 August 1997, p. 25628. It was modified by Royal Decree No 431/2000 of 31 March 2000.

²⁰ 49 nautical miles from the baselines used to measure the breadth of the territorial sea. See map in Annex 1.

the opposite coast of Algeria and Italy and the adjacent coast of France. No fisheries protection zone is established in the Alboran Sea, off the Spanish coast facing Morocco. Interestingly, it is argued, in the preamble of the Royal Decree, that extension of jurisdiction over fisheries resources beyond territorial waters is a necessary step to ensure adequate and effective protection of fisheries resources, particularly in view of the increased fishing intensity (red tuna) in recent years by ships flying non Mediterranean flags.

In the Spanish fishing zone:

- (1) all ships flying non EU flags are excluded (unless authorised);
- (2) the Spanish regulation 1626/94 applies;
- (3) control of fishing activities is exerted by Spanish authorities.²¹

Building on the Spanish approach, the European Union, in a 2002 document laying down a Community Action Plan for the conservation and sustainable exploitation of fisheries resources in the Mediterranean²², advocated the declaration of fisheries protection zones of up to 200 n.m to improve fisheries management in the Mediterranean. It stressed the fact that establishment of fisheries protection zones would facilitate control, and would contribute significantly to fighting against illegal, unreported and unregulated (IUU) fishing. The document emphasized the need to build a consensus through wide consultation and involvement of all countries bordering the Mediterranean basin, if such an undertaking is to be successful and effective. To achieve this, a common approach should first be agreed upon by Community Member States and, subsequently, by all countries in the region. Recently, France indicated that it adhered to this approach, and that the legislation to declare a 50-mile fisheries protection zone off its Mediterranean coast was in the process of being drafted²³.

While declaration of fisheries protection zones will have legal implications for jurisdiction over fisheries resources, it will not affect jurisdiction over, *inter alia*, mineral or fossil resources, nor high seas navigation nor any other high seas rights in this area. Unlike broader sovereign rights conferred upon the coastal State in the EEZ, those enjoyed by it in a fishing zone are restricted to the exploration, exploitation, management and conservation of fisheries resources²⁴. The effect of establishing fisheries protection zones will be to reduce the area of high seas fishing, and thus to modify access rights to certain fisheries. Loss of access to fishing grounds that were previously part of the high seas could be overcome through the conclusion of bilateral fisheries access agreements. In areas where the extension of national jurisdiction may have seriously detrimental social and

²¹ VIGNES D., CATALDI G. and CASADO RAIGON R.: *op. cit.*

²² See Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament laying down a Community Action Plan for the conservation and sustainable exploitation of fisheries resources in the Mediterranean Sea under the Common Fishery Policy*, COM (2002) 535 final, Brussels, 9 October 2002.

²³ Information was communicated during the European Union First Preparatory Meeting for the Ministerial Conference on Mediterranean Fisheries to be held in Venice, Italy, from 25 to 26 November 2003, which took place in Athens, Greece, from 19 to 20 June 2003.

²⁴ National definition may be narrower than this.

economic effects on other States or their nationals, mitigating measures may be worked out through, for instance, recognition of historical fishing rights for vessels from specified States²⁵.

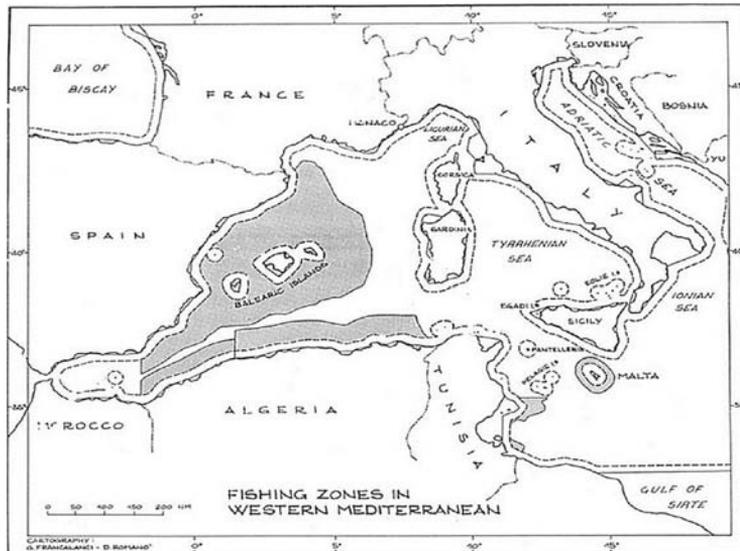


Figure 1: Fishing zones of the Western Mediterranean (Source Pr Scovazzi)

Zones of Ecological Protection

Whereas there is no official definition of a zone of ecological protection, it can be defined as a zone for marine biodiversity and fisheries conservation, and the protection of the marine environment.

One country, namely France, has declared an Ecological Zone (“Zone de protection écologique”, ZPE)²⁶ allowing it to implement and enforce laws and regulations regarding marine pollution in the zone, in conformity with the UNCLOS, even though no EEZ has been declared.

The reasoning behind this action is that such a designation would enable the coastal State to assert some portion of the rights and controls it could apply if it declared an EEZ. Specifically, with this designation France has decided to exercise its EEZ jurisdiction to protect and preserve the marine environment.

²⁵ Devising such measures would be in line with the provisions of Article 62.3 of the LOSC on utilization of living resources in the EEZ, which stipulates that: “(I)n giving access to other States to its Exclusive Economic Zone under this article, the coastal State shall take into account all relevant factors, including the need to minimize economic dislocation in States whose nationals have habitually fished in the zone, or which have made substantial efforts in research and identification of stocks.”

²⁶ By decree No 2004-33 of 8 January 2004 published in the J.O No 8 of 10 January 2004 page 844.

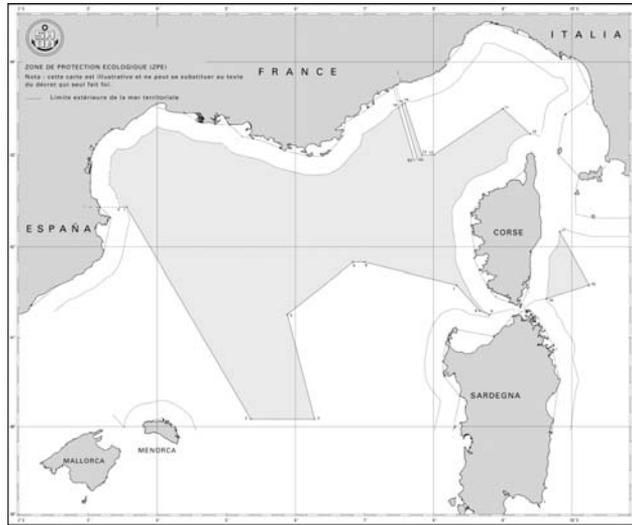


Figure 2: French Zone of Ecological Protection

More recently, the Republic of Croatia declared on 3 October 2003 a Zone of Ecological Protection and Fisheries (ZEPF) that should come into force in the future, although Croatia has decided to hold off the actual implementation of this declaration. The extended jurisdiction will enable Croatian authorities to exercise those competencies which are allowed by international law to protect vulnerable marine ecosystems in order to ensure efficient and sustainable use of fisheries resources.

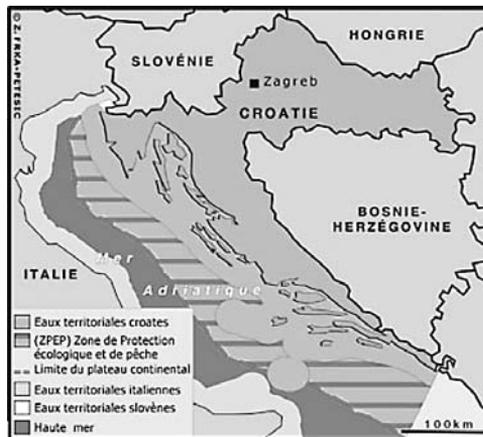


Figure 3: Zone of Ecological Protection and Fisheries of the Republic of Croatia (http://www.amb-croatie.fr/actualites/adriatique_croatie_zep.htm)

Continental Shelves

First of all, it is important to point out that the sovereign rights of a coastal State over the continental shelf are inherent, exclusive and functional. The coastal State does not need to declare its continental shelf, unlike the process required with an EEZ. The continental shelf, by legal definition, extends up to 200 n.m. from the baseline of the territorial sea, and therefore does not correspond to the geographic continental shelf. All parts of the Mediterranean seabed are within the continental shelves of its coastal States.

These sovereign rights are exclusive in the sense that if the coastal State does not explore the continental shelf, or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State (UNCLOS, art. 77.2)

The sovereign rights of the coastal State are also functional, although they are limited to the purposes of exploring the continental shelf and exploiting its natural resources. These include the “mineral and other non-living resources of the seabed and subsoil, together with living organisms belonging to sedentary species; that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed, or are unable to move except in constant physical contact with the seabed or the subsoil.”²⁷ Non-sedentary species – species within the water column – are not exploitable under the regime applicable to the continental shelf²⁸.

The UNCLOS regime concerning scientific research tempers coastal State exclusivity slightly; the rules for the shelf are identical to those applicable within the EEZ up to 200 n.m., and if the legal shelf extends beyond 200 n.m., coastal State rights are further tempered²⁹.

The UNCLOS states that the rights do not undermine the status of freedom of navigation of superjacent waters in EEZ or high seas³⁰.

Continental shelf delimitation to clarify the application of Article 77 is often done in agreement with the neighbouring States. In the Mediterranean, there are several complex delimitation issues pending. For instance, the long-term dispute between Greece and Turkey on the delimitation of coastal zones in the Aegean Sea has not yet been resolved³¹. The delimitation between Spain and

²⁷ Article 77, Paragraph 4 of the UNCLOS.

²⁸ In addition, on its continental shelf, the coastal State has the exclusive right to construct, authorise and regulate artificial islands, installations and structures as specified in the UNCLOS, to authorise and regulate drilling and to excavate tunnels to exploit the subsoil. (articles 80 and 60, 81, 85, UNCLOS).

²⁹ Article 246, UNCLOS. The ruling issued by the ICJ on 11 September 1976 rejected a request for conservation measures during litigation between Greece and Turkey on the *Continental Shelf of the Aegean Sea*. The Court considered that there was insufficient proof of irreparable damage caused by exploratory missions by a Turkish oceanographic vessel.

³⁰ Nor all States' rights to lay submarine cables and pipelines on the continental shelf subject to specified coastal State rights (Article 79 of the UNCLOS)

³¹ On 19 December 1978, the International Court of Justice deemed it did not have the competence to entertain an appeal by Greece concerning the delimitation of the continental shelf in the Aegean Sea (ICJ, *Reports*, 1978, p. 3). Regarding the Aegean Sea dispute see Aldo Chircop, Andre Gerolymatas, John O. Iatrides (eds), *The Aegean Sea after the Cold War: Security and Law of the Sea*. Saint. Martin's Press: New York, 2000.

Morocco proves highly complex owing to the existence of Spanish enclaves and small islands along the Moroccan seaboard. Negotiations between France and Italy for a complete maritime delimitation have yet to overcome the geographical problems of the presence of islands and the concave/convex configuration of the coastlines. As in any other semi-enclosed sea, the involvement of more than two States further complicates several delimitation issues. For the time being, Monaco and Bosnia Herzegovina are the only Mediterranean States to have settled their maritime boundaries. There are numerous countries in the region, on the other hand, that have not yet concluded any agreements at all in this respect.³²

II. The High Seas in the Mediterranean

For geopolitical reasons, very few Mediterranean States have declared an EEZ. Legal scholars, including T. Scovazzi, consider much of the Mediterranean Sea to be subject to the high seas status under the UNCLOS³³.

On the high seas, all States (whether coastal or landlocked) enjoy certain freedoms. They are set out in the UNCLOS Article 87, and comprise, *inter alia*, the freedom of navigation and the freedom of fishing. Exercise of the latter is subject to the conditions laid down in Articles 116-120. These provide that States have the right for their nationals to engage in fishing on the high seas subject to: (a) their treaty obligations; (b) the rights and duties as well as the interests of coastal States provided for in, amongst others, Article 63, paragraph 2, and Articles 64 to 67³⁴; and (c) the provisions of section 2 of Part VII of the Convention on the high seas, including obligations to conserve living resources of the high seas, to cooperate with other States in conserving and managing these resources, and to conserve and manage marine mammals³⁵.

For high seas enforcement, however, it is incumbent upon each State to apply international laws on matters within its jurisdiction. For example, the flag State is required to monitor and control how well its flag vessels comply with various obligations. This obligation remains extremely difficult in practice.

Nevertheless, the concept of freedom of the sea should not be considered in absolute terms, but rather in the context concerning us, namely the diverse controversial maritime activities, uses and interests. Eminent authors consider that there is a real “tendency towards a weakening of the traditional principle of freedom of the sea.”

³² Bilateral agreements on the continental shelf are currently in effect between the following States: Italy and Yugoslavia (Rome, 8 January 1968); Italy and Tunisia (Tunis, 20 August 1971); Italy and Spain (Madrid, 19 February 1974); Greece and Italy (Athens, 24 May 1977); France and Monaco (Paris, 16 February 1984); Libya and Malta (Valletta, 10 November 1986); and Libya and Tunisia (Benghazi, 8 August 1988). The latter two agreements put into practice the rulings pronounced by the International Court of Justice on 3 June 1985 and 24 February 1982, respectively. Another agreement was signed on 18 December 1982 by Albania and Italy, but it has not yet entered into effect. In the Black Sea, Turkey and Bulgaria entered into an agreement on 4 December 1997 on the demarcation of the continental shelf between the two States.

³³ Montego Bay, 1982.

³⁴ Articles 63 paragraph 2, 64, 65, 66 and 67 deal, respectively, with straddling stocks, highly migratory species, marine mammals, anadromous stocks and catadromous stocks.

³⁵ See Articles 117 to 120.

It must be recalled that:

- Freedoms of the high seas shall be exercised with due regard for the interests of other States in exercising their high seas freedoms;
- Exercise of these rights must recognise particular obligations, including, for example, the general responsibility to protect and preserve the marine environment (Article 192), obligations to conserve and manage high seas living resources (Articles 116-120), and cooperation in good faith among bordering States (Articles 100, 118, 123 and elsewhere).

However, recent initiatives undertaken in the Mediterranean presage an in-depth modification of the legal systems in coastal Mediterranean States. It is necessary to consider how such a modification could affect the legal status of the Mediterranean.

III. Possible Scenarios

As has been seen, the coastal State can limit itself, and choose to exercise only its rights relative to “the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil”.

The multiplication of current unilateral initiatives, in which countries selectively adopt some of the rights available in EEZs, may raise some interesting possibilities, but also many legal challenges. Such an approach could create a patchwork of different legal regimes, leaving gaps and causing other confusion. Moreover, uncertainty regarding unresolved maritime boundaries between opposite and adjacent States will continue to complicate a coherent approach.

The creation of a harmonised system could be accomplished through:

- (1) coordination (and duplication) of the various environmental protection zones (functionally, partial declarations of EEZ rights); or
- (2) the multilateral negotiation of a collective designation or common framework for national designations.

(1) Unifying Existing Initiatives

Legal scholars consider that States bordering an enclosed or semi-enclosed sea are under an obligation to cooperate in good faith in order to deal with common problems³⁶. In general, an obligation to cooperate implies a duty to act in good faith in pursuing an objective, and take into account the requirements of other interested States. The International Court of Justice brought refinement in the definition of the obligation to co-operate.³⁷

³⁶ According to Article 123, States bordering an enclosed or semi enclosed sea like the Mediterranean “should co-operate with each other in the exercise of their rights and in the performance of their duties under this Convention. To this end they shall endeavour, directly or through an appropriate regional organization”, to co-ordinate their activities with respect to fisheries, protection of the environment, and scientific research. See SCOVAZZI, *op. cit.*

³⁷ “the Parties are under an obligation to enter into negotiations with a view to arriving at an agreement, and not only

A harmonised ecological regime could be achieved through a process promoting:

1. coordination of existing unilateral initiatives;
2. direct strengthening of regional commitments and arrangements for environmental protection

Such harmonisation could be promoted by developing models of EEZ ecological / continental shelf laws. For example, a model set of environmental rules for the different economic activities, subject to national jurisdiction under the EEZ regime, could be further developed within the framework of the Barcelona Convention. Also, a unified approach to fisheries, biodiversity conservation and mineral resources development could be adopted, building on initiatives under several regional institutions.

(2) ...Or Developing a New One?

It would also be wise to consider having a multilateral negotiation of a collective designation, or a common framework for national designations. The Barcelona Convention may provide an appropriate multilateral framework³⁸ for examining these options.

Regardless of the approach, the objective of developing a common set of environmental rules that could be applied throughout the Mediterranean is undeniable³⁹.

With respect to maritime boundary delimitation, such a multilateral process might facilitate the need to determine boundaries for the purposes of fisheries conservation and management beyond the territorial sea, and possibly other aspects of marine biodiversity conservation.

Further dialogue and analysis is needed to overcome conflicts and build confidence in common approaches in order to make progress towards such a multilateral initiative. This approach would also have the effect of strengthening regional commitments and arrangements for biodiversity conservation in the Mediterranean, and improving governance in the Mediterranean for marine conservation by promoting a better integration of existing regional processes.

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" Decision of 20 February 1969 in the *North Sea Continental Shelf case* (ICJ, Reports, 1969, p.47). In another decision, relating to fisheries, the Court states that "it is one of the advances in maritime international law, resulting from the intensification of fishing, that the former laissez-faire treatment of the living resources of the sea in the high seas has been replaced by a recognition of a duty to have due regard to rights of other States and the needs of conservation for the benefit of all. Consequently, both Parties have the obligation to keep under review the fishery resources in the disputed waters, and to examine together, in the light of scientific and other available information, the measures required for the conservation and development, and equitable exploitation, of those resources" Decision of 25 July 1974 in the *Fisheries Jurisdiction Case* (ICJ, Reports, 1974, p. 32)

³⁸ UNEP Mediterranean Action Plan.

³⁹ A decision-making process would have to be agreed for establishing environmental rules, and enforcement rights and responsibilities would also have to be specified unless it's purely a flag state regime.

Conclusion

The legal status of the Mediterranean Sea, which proves relatively complex, renders the marine biodiversity conservation system divided and inadequate. Only with enhanced coordination efforts could the development of an integrated legal system for the conservation of marine biodiversity and sustainable fishing be possible.

National extensions for the protection of fisheries have been encouraged by Fisheries Ministers of European Union member States⁴⁰ and by the European Union since 1988⁴¹, and in particular more recently (2003) by the European Commission⁴². The Commission also appealed to the Mediterranean member States to act through the FAO General Fisheries Commission in the Mediterranean, and to reinforce its role⁴³.

While it is important for all coastal States of the Mediterranean to join in discussing fishing issues, they must also consider other uses of the Mediterranean, and seek to agree to a more unified, if not collective, approach for the conservation and sustainable use of the Mediterranean.

The IUCN Mediterranean Marine Law Specialist Group⁴⁴ held a workshop in Malaga in May 2004, exploring means to improve governance for marine biodiversity conservation in the Mediterranean Beyond Territorial Sea. After long discussions, the group made important recommendations⁴⁵. It was in particular advised to create a structure of an informal nature, able to act as a forum for addressing and preventing conflicts (assistance, determination of facts, mediation), and to develop compromise solutions. Such a recommendation was reiterated in the “Rendez-vous méditerranéen” of 17 May 2004.⁴⁶

⁴⁰ Spain, France, Italy, Greece, Malta, Cyprus, Slovenia.

⁴¹ Resolution of 26 October 1988 (JOCE, C 309 of 5 December 1988, p. 40) and Resolution of 20 January 1989 (JOCE, C 47 of 27 February 1989, p. 170) through which the European Parliament called for the conclusion of an international convention on the conservation of fisheries resources in the Mediterranean. The two previous diplomatic Conferences organized by the European Commission with Fishery Ministers (Heraklion in Crete in 1994 and Venice in 1996) resulted in the adoption of a “Solemn Declaration on conservation and management of resources in the Mediterranean”. On the Conferences, see CATALDI G.: op. cit.

⁴² Ministerial Conference of Venice, November 2003.

⁴³ The Council of the EU has been a member of the GFCM since 1998 (Decision of the Council No 98/416/CE of 16 June 1998 published to the JOCE, L 190 of 4 July 1998). It is to be noted that the GFCM underwent major reform in 1997, the objective of which was to strengthen its role as the central tool for cooperation in fishery matters and adapt cooperation to the current fishery international instruments. See RAVARES DE PINHO, op. cit.

⁴⁴ Thanks to the funding of the Total Corporation.

⁴⁵ The group, after long discussions, supported: (1) the need to raise awareness of the importance of the issue and instigate political will; (2) periodical conferences open to all States, inter-governmental organisations and non-governmental organisations in order to discuss and put forth proposals on maritime issues concerning the Mediterranean. Conclusions of the legal workshop of the IUCN in March 2004 on the governance of the Mediterranean beyond territorial seas are available on-line at www.iucnmed.org.

⁴⁶ Conclusions of the round table at the Mediterranean meeting in 17 and 18 May 2004, Le “Rendez Vous Méditerranée” which followed an initiative launched by President Chirac during the Earth Summit in Johannesburg in 2002, gathered some hundred figures in the spheres of science, to engage in sustainable development and dialogue among cultures of all the countries bordering on the Mediterranean Sea in order to open a tribune for reflection and free expression on the topic. The objective of the congress was to contribute to creating a Mediterranean strategy for sustainable development and to work towards the success of existing cooperation forums (Euro-Mediterranean Partnership, Mediterranean Action Plan) by reinforcing dialogue and joint reflection among coastal countries.

Annexes

Annex 1: Claims to Maritime Jurisdiction by States Bordering the Mediterranean Sea

States	UNCLOS ratification, accession	Breadth of Territorial Sea in nautical miles	Breadth of EEZ in nautical miles
Albania	23 June 2003	12	
Algeria	11 June 1996	12	
Bosnia and Herzegovina	12 January 1994		
Croatia	5 April 1995	12	
Cyprus	12 December 1988	12	"shall not extend beyond the 200 n.m. from the baselines from which the breadth of the territorial sea is measured"
Egypt	26 August 1983	12 Limit not specified	
France ⁴⁷	11 April 1996	12	200 (not applicable in the Mediterranean)
Greece	21 July 1995	6 ⁴⁸	
Israel		12	
Italy	13 January 1995	12	
Lebanon	5 January 1995	12	
Libya	Signatory	12	
Malta	20 May 1993	12	
Monaco	20 March 1996	12	
Morocco	Signatory	12 Limit not specified in the Mediterranean	
Serbia and Montenegro	12 March 2001	12	
Slovenia	16 June 1995		
Spain	15 January 1997	12	200 (not applicable in the Mediterranean)
Syria		12	
Tunisia	24 April 1985	12	
Turkey		6 in the Aegean Sea 12 in the Black Sea	200 (in the Black Sea) N/A

Breadth of Fishing Zone in nautical miles	Breadth of Ecological Zone in nautical miles	Continental Shelf Outer limit No information available (N/A); up to delimitation with neighbouring States (DEL);
		N/A
32 or 52		DEL
		N/A
	(median line)	DEL
		depth of exploitability
		N/A
	NA	depth 200 m or exploitability
		depth 200 m or exploitability
		depth of exploitability
		depth 200 m or exploitability
		N/A
		N/A
25		depth 200 m or exploitability
		N/A
		depth 200 m or exploitability
		DEL
		N/A
49 (applicable only in the Mediterranean)		N/A
		200 depth 200 m or exploitability
Up to 50-m isobath off the Gulf of Gabès		N/A

⁴⁷ France has made publicly known its intention to declare a Fishery Protection Area in the Mediterranean.

⁴⁸ The extent of the territorial sea is fixed at 10 nautical miles for the purpose of regulating civil aviation (see Decree No 6 of 18 September 1931).

Annex 2: Maritime Zones in Mediterranean Coastal States

States	Territorial sea	EEZ	Fishing zone	Ecological Zones	Continental shelf
Albania	Decree No 4650 of 9 March 1970 as amended by Decree No 7366 of 9 March 1990				
Algeria	Decree No 63-403 of 12 October 1963		Legislative Decree No 94-13 of 28 May 1994		
Bosnia and Herzegovina					
Bulgaria	Law of 28 January 2000	Law of 28 January 2000			Law of 28 January 2000
Croatia	Maritime Code of 27 January 1994		Zone of Ecological Protection and Fisheries (declared on 3 October 2003 – not in force)		Maritime code of 27 January 1994
Cyprus	Law No 45 of 1964	Exclusive Economic Zone Law of 2 April 2004			Law No 8 of 5 April 1974
Egypt	Decree of 15 January 1958	Declaration on 26 August 1983		Presidential Decision No 1051 of 1958	
France Law No 71-1060 of 1971	Law No 76-655 of 16 July 1976 (not applicable in the Mediterranean)		Zone of Ecological Protection (Decree No 2004-33 of 8 January 2004)		
Greece	Law No 230 of 17 September 1936				Decree-Law No 142/1969 of 1969
Israel	Law No 5717-1956 of 1956 as amended by Law No 5750-1990 of 5 February 1990				Law of 10 February 1953

States	Territorial sea	EEZ	Fishing zone	Ecological Zones	Continental shelf
Italy	Navigation Code of 1942 as modified by Law No 359 of 14 August 1974				Act No613 of 1967
Lebanon	Legislative Decree No138 of 7 September 1983				
Libya	Law No 2 of 18 February 1959				
Malta	Act No XXXII of 10 December 1971 as modified		Act No XXXII of 10 December 1971 as modified by Act No XXIV of 21 July 1978		Continental Shelf Act of 29 July 1966
Monaco	Sovereign Ordinance No 5094 of 14 "February 1973				
Morocco ⁴⁹	Law No 1-73-211 of 1973	Law No 1-81 of 8 April 1981			
Romania	Act of 7 August 1990	Decree No 142 of 25 April 1986			
Serbia and Montenegro	Act of 23 July 1987				Act of 23 July 1987
Slovenia					
Spain	Law No 10/1977 of 4 January 1977	Law No 15/1978 of 20 February 1978 (not applicable in the Mediterranean)	Royal Decree No 1315/1997 of 1 August as modified by Royal Decree No 431/2000 of 31 March 2000		

⁴⁹ Article 10 of the Law No 1-81 of 8 April 1981 establishing a 200-mile Exclusive Economic Zone off Moroccan coasts states that provisions of the Law No 1-58-227 of 21 July 1958 (Code regulating research and exploitation of fossil resources) are applicable for the exploration and exploitation of resources located on the sea-bed of the Exclusive Economic Zone or subsoil thereof. The outer limit of the continental shelf may be found in this piece of legislation.

States	Territorial sea	EEZ	Fishing zone	Ecological Zones	Continental shelf
Syria	Loi n°28 du 19 novembre 2003 concernant l'Acte de définition des limites des eaux intérieures et de la mer territoriale.	Loi n°28 du 19 novembre 2003 concernant l'Acte de définition des limites des eaux intérieures et de la mer territoriale.			Loi n°28 du 19 novembre 2003 concernant l'Acte de définition des limites des eaux intérieures et de la mer territoriale.
Tunisia	Law No 73-49 of 2 August 1973		Decree of 26 July 1951 as modified by Law No 63-49 of 30 December 1963		
Turkey	Act No 2674 of 20 May 1982	Decree No 86/11264 of 17 December 1986 (not applicable in the Mediterranean)			