

Governance of the Mediterranean Sea

Outlook for the Legal Regime

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conservation through
collaboration

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Français

English

Español

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

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.

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 Mote 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 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, *in er 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.

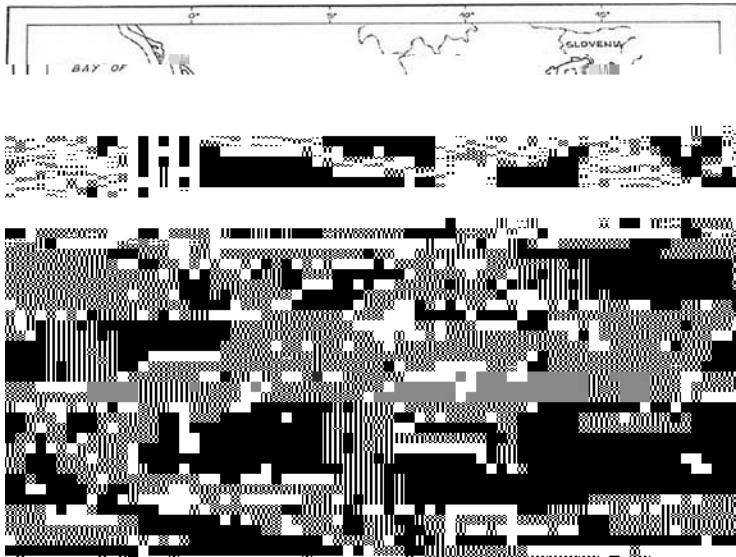


Figure 1: Fishing zones of the Western Mediterranean (Source Pr Scovazzi)

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

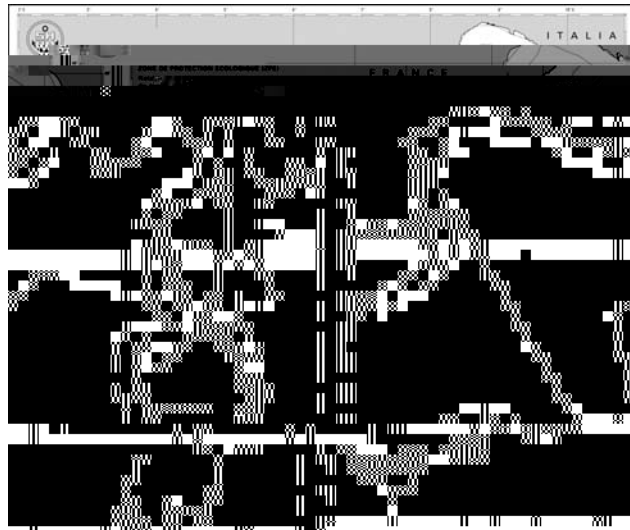


Figure 2: French Zone of Ecological Protection

More recently, the Republic of Croatia declared on 3 October 2003 a Zone of Ecological Protection and Fisheries (ZEPPF) 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.

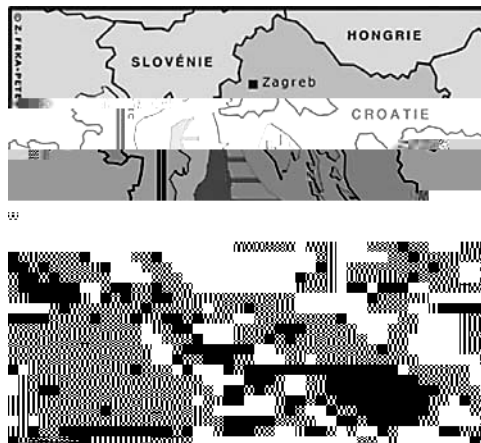


Figure 3: Zone of Ecological Protection and Fisheries of the Republic of Croatia (http://www.amb-croatie.fr/actualites/adriatique_croatie_zepf.htm)

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 involve-

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

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.

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 role

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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).

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)			