

## Rationale

### Towards an Improved Governance in the Mediterranean Beyond Territorial Sea 15-16 March 2004

The legal workshop on Towards an Improved Governance in the Mediterranean beyond Territorial Sea was organised by the IUCN Centre for Mediterranean Cooperation in collaboration with IUCN Environmental Law Programme (ELP) and IUCN Global Marine Programme (GMP). The workshop was sponsored by Total and hosted by the IUCN Centre for Mediterranean Cooperation in Malaga, Spain.

The workshop brought together eminent legal and scientific experts from academic and professional background with stakes in sustainable uses and conservation of the marine biodiversity in the Mediterranean.

The meeting was the first opportunity for the sub-group of the IUCN CEL Specialist Group (SG) on Ocean Law and Governance<sup>1</sup> to meet.

The objectives of the meeting were to:

- Enable this regional sub group recently set up to identify legal issues to address in priority for sustainable use and conservation of marine biodiversity in the Mediterranean
- Identify a process for development of the sub group

#### **The lack of an integrated legal framework ensuring effective conservation and sustainable use of marine resources and ecosystems**

Mediterranean States have not declared their Economic Exclusive Zones beyond their territorial seas<sup>2</sup> in the Mediterranean Sea. As a result most of this "semi enclosed sea" falls under the high seas regime, making the Mediterranean Sea one of the most interesting laboratories for strengthening governance and international law of the oceans. The Mediterranean experience deserves to be highlighted at the global level to build additional support to global discussions on improving ocean governance and the conservation and sustainable use of marine resources beyond national jurisdiction.

We know that biodiversity is only conserved through the effective implementation of an adequate set of rules and regulations ensuring conservation of marine biodiversity and sustainable exploitation of marine resources in an integrated manner. Why is it then that scientific and general experts agree that marine biodiversity in the Mediterranean is increasingly being degraded because of unsustainable practices, unsustainable exploitation, and unsustainable management of marine resources in spite of the existence of an elaborated legal framework for fisheries management and marine conservation in the Mediterranean?

Mediterranean States (that are Party to the relevant Conventions) bear obligations pertaining to the conservation of the environment (including marine) and sustainable development in general. Besides, there are a wide range of different legal instruments addressing different issues.

#### *Tackling unsustainable fisheries, driftnet and deep sea trawling issues and relevant legal tools*

- The United Nations *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (Adopted on 4 August 1995, into force in November 2001)<sup>3</sup> sets out principles for the conservation and management of those fish stocks. The Agreement elaborates on the fundamental principle that States should cooperate [in the Mediterranean through the General Commission for Fisheries in the

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<sup>1</sup> IUCN Specialist Group on Ocean Law and Governance was approved by the Commission on Environmental Law on December 2003.

<sup>2</sup> Some have. The issue will be discussed in the workshop.

<sup>3</sup> [http://www.un.org/Depts/los/convention\\_agreements/texts/fish\\_stocks\\_agreement/CONF164\\_37.htm](http://www.un.org/Depts/los/convention_agreements/texts/fish_stocks_agreement/CONF164_37.htm)

Mediterranean] to ensure conservation and promote the objective of the optimum utilization of fisheries resources both within and beyond the exclusive economic zone. *The instrument is very interesting but is the membership and functioning of the Mediterranean Fishery Organization adequate?*

- The FAO *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas* was adopted in November 1993 and entered into force on 24 April 2003<sup>4</sup>. Each Party shall take such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures (art. 3). Article 6 of the Agreement requires Parties to exchange information on vessels authorized by them to fish on the high seas, and obliges FAO to facilitate this information exchange. *To our knowledge only four Mediterranean countries are Party plus the European Community.*
- The FAO Code of Conduct for Responsible Fisheries, adopted 31 October 1995<sup>5</sup>, sets out principles and international standards of behaviour for responsible practices with a view to ensuring the effective conservation, management and development of living aquatic resources, with due respect for the ecosystem and biodiversity. The Code recognizes the nutritional, economic, social, environmental and cultural importance of fisheries and the interests of all those concerned with the fishery sector. The Code takes into account the biological characteristics of the resources and their environment and the interests of consumers and other users. States and all those involved in fisheries are encouraged to apply the Code and give effect to it. International plans of action (IPOAs) are voluntary instruments elaborated within the framework of the Code of Conduct for Responsible Fisheries. Four IPOAs have been developed to date including the International Plan of Action to Prevent, Deter, Eliminate, Illegal, Unreported and Unregulated Fishing. *These sets of instruments are voluntary and it is important to maximise their acceptance by the fishing community.*

#### *Tackling the protection of cetaceans and relevant legal tools*

- The Agreement that creates the Ligurian Sea Cetacean Sanctuary was signed on 25 November 1999<sup>6</sup>. The transboundary protected area was inscribed by consensus as a Specially Protected Area of Mediterranean Importance (SPAMI) in 2001. The area covers a portion of the high seas and raises the question of *how (and at what level) the protected area's controls might be imposed on ships and others whose flag-state is not a party to the Barcelona Convention or the new SPA and Biodiversity Protocol.*
- The Agreement on the Conservation of Cetaceans In the Black Sea, Mediterranean Sea and contiguous Atlantic area is a cooperative tool for the conservation of marine biodiversity of Mediterranean and Black Seas<sup>7</sup>. The purpose is to reduce the threat to Cetaceans in Mediterranean and Black Sea waters and improve knowledge of these animals. It is the first binding Agreement enabling the Med and the Black Sea to work together on a matter of general interest. It requires States to implement a detailed conservation plan for Cetaceans, based first on respect of legislation banning the deliberate capture of Cetaceans in fishing zones by their flag vessels or those subject to their jurisdiction, on measures for minimizing incidental capture and, finally, on the creation of protected zones, important for the feeding, breeding and birthing of Cetaceans. This approach combines both the protection of threatened species and the institution of reinforced geographic protection. Governments are also undertaking to assess and manage the interactions between humans and Cetaceans, conducting research and continuous monitoring, developing programmes to inform, train and educate the public and setting up emergency response

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<sup>4</sup> <http://www.fao.org/Legal/treaties/012t-e.htm>

<sup>5</sup> <http://www.oceanlaw.net/texts/faocode.htm>

<sup>6</sup> [http://www.tethys.org/sanctuary\\_text.htm](http://www.tethys.org/sanctuary_text.htm)

<sup>7</sup> <http://www.accobams.mc/Accob/Wacco.nsf/Fram1FrDown?OpenFrameSet>

measures. *However, the Agreement has not been ratified by all Mediterranean States. How can we encourage greater participation?*

- Other international instruments of broader scope are also relevant to the protection of cetaceans, particularly when captured or killed outside of national jurisdiction. These include CITES and the International Convention for the Regulation of Whaling (IWC). While many cetaceans and other marine species are identified as protected under CITES, the particular situation of whales is the focus of an almost perennial controversy under that convention and the IWC. Perhaps the most important new development in the field of ocean conservation and sustainable use was the groundbreaking decisions at the last CITES COP to find synergies between the work of FAO on responsible fisheries and that of CITES on promoting sustainability of the use of dwindling stocks of marine fish and other species. *Although the IWC situation adds complexity, it is hoped that similar collaborations can eventually support the creation of consistent and effective international programmes of action on cetaceans and fisheries and other maritime activities that affect them.*

#### *HSMPAs and relevant legal tools*

- The Protocol on Specially Protected Areas and Biodiversity in the Mediterranean was signed on 10 June 1995 and entered into force on 12 December 1999. Parties shall take all appropriate measures with a view to protecting those marine areas which are important for the safeguarding of the natural resources and natural sites of the Mediterranean Sea Area, as well as for the safeguarding of their cultural heritage in the region (art.1). The Protocol organizes for the establishment of Mediterranean network of protected areas in the high seas through a list of specially protected areas of Mediterranean Importance, inscribed by consensus of the Parties. *However, the Protocol is not widely ratified by all Mediterranean States and the issue of "applicability" of SPAMI to non Barcelona States is of strong interest. The Ligurian Sanctuary is the first SPAMI covering a high sea zone.*
- There are many provisions of the UN Convention on the Law of the Sea (Montego Bay, 1982, entry into force, 1994) (including Articles 117-118, and 192-194.5) which suggest that governments (and through them, their flag vessels and others) have an obligation to support where possible the efforts of other countries to conserve marine biodiversity and ecosystems. *These provisions serve as a strong basis for a claim that countries should pay heed to other countries' decisions to designate areas like the Ligurian sanctuary which are partly outside of national jurisdiction, as protected areas, or to propose other kinds of conservation or natural-resource-management-based controls.*

As we see, there are many international instruments relevant to the conservation and sustainable use of marine resources in the Mediterranean and there is a huge gap when it comes to the control and enforcement of their implementation in the Mediterranean.

First, very few of them are truly Mediterranean in nature. Even though, their scope of application can cover areas beyond national jurisdiction, when it comes to enforcement, there is no effective mechanism in charge of enforcing them in the high seas.

Second, even within the areas of national jurisdictions, most instruments relevant to the Mediterranean are not signed or ratified by all Mediterranean States. This highlights a big gap as regards cooperation between coastal States that needs further cooperation.

#### **A Mediterranean particularity: the legal context**

The Mediterranean is a semi-enclosed sea surrounded by 22 littoral countries that differ greatly as far as their internal political systems and levels of economic development are concerned.

The maritime zones of domestic interest, as defined in the United Nations Convention of Montego Bay, are the territorial sea, the contiguous zone, the exclusive economic zone, the straits used for international navigation and the continental shelf.

Because for geopolitical reasons, almost no Mediterranean States has declared an Exclusive Economic Zone (EEZs), most of the Mediterranean Sea (approximately 80%) falls under the high seas regime, according to the Convention on the Law of the Sea (Montego Bay, 1982).

In the high seas, all States (whether coastal or land-locked), enjoy a certain number of freedoms, including: (a) freedom of navigation; (b) freedom of overflight; (c) freedom to lay submarine cables and pipelines; (d) freedom to construct artificial islands and other installations; (e) freedom of fishing; and (f) freedom of scientific research.

The legal gap in the high seas is widely known; each State is in charge of implementing international regulations on its national subjects and cannot enforce them on non nationals. However, the concept of freedom of the sea is to be understood in the non-absolute context of the present range of maritime activities, conflicting uses and interests. Recognized authors indeed consider that there is a "trend of the weakening of the traditional principle of freedom of the sea". It has to be reminded that:

- High seas freedoms shall be exercised with due regard for the interests of other States
- All States bear a general obligation of customary international law to protect the marine environment (art. 192) and cooperate in good faith (art. 123 UNCLOS)

There is a current trend of Mediterranean coastal States to declare an extended jurisdiction beyond their traditional 12 nm of territorial seas on specific topics:

- Prevention of marine pollution  
*Zone of Ecological Protection (France)* in the Mediterranean (décret n°2004-33 of 8 January 2004 establishing a zone of ecological protection in the Mediterranean published in the J.O n° 8 of 10 January 2004 page 844). It was created in conformity with the Convention on the Law of the Sea (UNCLOS). This zone will enable France to implement laws and regulations regarding marine pollution and apply coercive measures in this zone where no EEZ has been declared.
- Management of fisheries  
*Fisheries Protection Zone (Spain)* is 49 nm distant from the baseline in which the coastal State enjoys an exclusive right of fishing. If its exploitation capacity is inferior to the fixed total admissible captures, it can authorize other coastal States of the region to exploit the rest (Decree 1315 of August 1997).  
*Zone of Exclusive Fisheries (Malta)* is 25 nm distant from the baseline (Act No. XXIV of 1978 of July 1979)  
*Zone of Reserved Fisheries (Algeria)* is 32 nm between the western maritime border and Ras Tenes and 52 nm between Ras Tenes and the eastern maritime border. (Decree N. 94-13 of June 1994).  
*Fishing Zone (Tunisia)* is 12 nm from Algerian border to Ras-Kapoudia; from Ras Kapoudia to Libyan border, the 50 meter isobath. (Law 62-35 of October 1962).
- Management of fisheries and prevention of marine pollution  
*Zone of Ecological Protection and Fisheries (Croatia)*. (declared in 3 October 2003 but will come into force next year). The extended jurisdiction will enable Croatian authorities to implement their competences which are allowed by international law in the area of protection of vulnerable marine ecosystems in order to ensure in a efficient manner a sustainable use of fisheries resources.

### **Improving governance in the high seas: the momentum**

The recommendations concerning conservation of biodiversity beyond national jurisdiction from the World Summit on Sustainable Development (WSSD), the United Nations General Assembly (UNGA)<sup>8</sup>, the Fifth World Parks Congress (WPC), and the 7<sup>th</sup> Conference of the Parties to the Convention on Biological Diversity can help to chart a new course for the high seas.

*United Nations Informative Consultative Process of the Law of the Sea 4*

UNICPOLOS 4 last met on 2-6 June 2003. Addressing management tools for the protection of vulnerable marine ecosystems, UNICPOLOS noted in its final report (Document A/58/95)<sup>9</sup> to the General Assembly 58, that marine protected areas on the high seas areas were to be established in the Mediterranean Sea in accordance with article 194 of UNCLOS.

The General Assembly requested the Secretary-General, in its resolution 58/240, to convene the fifth meeting of the Consultative Process in New York from 7 to 11 June 2004. It recommended that, in its deliberations on the report of the Secretary-General on oceans and the law of the sea at its meeting, the Consultative Process should organize its discussions around the following areas: New sustainable uses of the oceans, including the conservation and management of the biological diversity of the seabed in areas beyond national jurisdiction; as well as issues discussed at previous meetings.

The 7<sup>th</sup> Conference of the Parties to the Convention on Biological Diversity met in Malaysia (Kuala Lumpur) from 9 to 20 and 27 February 2004.

In its decision on Marine and Coastal Biological Diversity<sup>10</sup>, the Conference of Parties made some initial steps toward natural resource management in the oceans, including noteworthy reference to marine protected areas beyond national jurisdiction. This action came in response to a strong call from NGOs and others for the Parties to recognize that international collaborative efforts are essential to protect the 64 percent of the world's oceans beyond national jurisdiction.

The CBD COP7 also adopted several important decisions to encourage international collaboration in support of marine and coastal protected areas (MPAs), including some which are directed at areas beyond national jurisdiction. In particular, the Executive Secretary of the CBD has been asked to collaborate with the UN Secretary General and relevant bodies to identify mechanisms to establish and manage MPAs, and, through an open-ended working group to address a great many key issues relevant to marine and coastal protected areas. Within that mandate, the working group is asked *inter alia* to "explore options for cooperation for the establishment of marine protected areas in marine areas beyond the limits of national jurisdiction, consistent with international law, including the United Nations Convention on the Law of the Sea (UNCLOS), and based on scientific information." In this connection, the decision also strongly

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<sup>8</sup> In its 2003 Resolution on Oceans and Law of the Sea, paragraphs 51 and 52, (A/58/L.19, 23 December 2003), the United Nations General Assembly:

- *"Reiterates its call for urgent consideration of ways to integrate and improve, on a scientific basis, the management of risks to the marine biodiversity of seamounts, cold water coral reefs and certain other underwater features; and*
- *Invites the relevant global and regional bodies, in accordance with their mandate, to investigate urgently how to better address, on a scientific basis, including the application of precaution, the threats and risks to vulnerable and threatened marine ecosystems and biodiversity beyond national jurisdiction; how existing treaties and other relevant instruments can be used in this process consistent with international law, in particular with the Convention, and with the principles of an integrated ecosystem-based approach to management, including the identification of marine ecosystem types that warrant priority attention and to explore a range of potential approaches and tools for their protection and management; and requests the Secretary-General to cooperate and liaise with these bodies and to submit an addendum to his annual report to the fifty-ninth session of the General Assembly, which describes the threats and risks to such marine ecosystems and biodiversity in areas beyond national jurisdiction as well as details of any conservation and management measure in place at the global, regional, sub-regional, or national levels addressing these issues" (emphasis added).*

<sup>9</sup> <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N03/409/70/PDF/N0340970.pdf?OpenElement>

<sup>10</sup> UNEP/CBD/COP/7/L.31 (Document attached)

encourages Parties to collaborate with other Parties and relevant partners through the UN Informal Consultative Process on Oceans and the Law of the Sea, and specifically qualifies its application to matters “consistent with international law and based on scientific information.”

*Ministerial conference on the sustainable development of fisheries in the Mediterranean  
Venice, 25-26 November 2003*

The specific characteristics of the Mediterranean region require both the countries bordering the Mediterranean and the Contracting Parties to the General Fisheries Commission for the Mediterranean (GFCM) to conduct their action on fisheries in a concerted and multilateral manner. Progress has been made but there is still much work to be done. It is indeed essential that all the countries bordering the Mediterranean co-operate to create a system for managing these shared resources.

A major requirement to achieve is the establishment of a multilateral system for the management of fish resources to achieve sustainable exploitation of these resources, in particular of straddling, highly migratory and other shared fish stocks. The Venice Ministerial Conference<sup>11</sup> aimed to establish specific policy guidelines which must pave the way for concrete action. These guidelines will also allow for the fleshing out of the ideas expressed in 1994 and 1996 to consolidate the basis for multilateral action and co-operation in order to safeguard the Mediterranean's invaluable shared heritage.

### **IUCN's action**

To assist in efforts to implement these commitments, IUCN, together with WWF International and WCPA have developed a joint high seas initiative. As part of this initiative, we have i) convened an Experts Workshop on High Seas Marine Protected Areas (Malaga, Spain, 15-17 2004); ii) participated in a variety of global meetings including the United Nations Informal Consultative Process on Oceans and the Law of the Sea (New York, USA, 2-6 June 2003) and the High Seas Biodiversity Conservation Governance Workshop (Cairns, Australia, 16-20 June 2003); iii) initiated the development of a high seas coalition to reach out to additional partners and stakeholders; and iv) organized a session on high seas biodiversity conservation at the 5h World Parks Congress (Durban, South Africa, 8- 17 September 2003).

At the World Parks Congress (September, 2003), marine theme experts recognized the urgency of establishing at least five high seas marine protected areas by 2008 and encouraging the use of available mechanisms to make progress towards the goal of a system of high seas marine protected area networks by 2012 that is globally representative<sup>12</sup>.

*IUCN WWF WCPA 10 year strategy (summary)*

The WPC Marine Theme participants additionally elaborated a ten-year strategy to promote the development of a global representative system of high seas marine protected area networks<sup>13</sup>.

*The Specialist Group (SG) for Ocean Law and Governance of the IUCN Commission of Environmental Law*

In December 2003, the IUCN Commission on Environmental Law approved the establishment of the Specialist Group (SG) for Ocean Law and Governance. The Specialist Group's overall objective is to support biodiversity conservation and sustainable uses of the world's oceans through law and policy initiatives. The SG seeks to coordinate activities with existing IUCN ocean-related projects and programs (particularly the Marine Programme, initiatives by the Environmental Law Centre, and IUCN's regional & country work, including regional and coordination offices, national committees, and regional conservation

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<sup>11</sup> Declaration of the Conference (in attached document)

<sup>12</sup> Fifth World Parks Congress Recommendation 5.23, Durban, South Africa (September 2003) ([iucn.org/themes/wcpa/wpc2003](http://iucn.org/themes/wcpa/wpc2003)).

forums), with the research and educational efforts of the Environmental Law Academy and with marine environmental protection initiatives of NGOs such as the International Ocean Institute. The SG encourages the establishment of working groups in accord with member interests and IUCN priorities with the first sub-group focusing on Mediterranean ocean issues.

#### *The Mediterranean Marine Law Specialist Group*

The objective of the MMLSG in consistence with the CEL SG is to strengthen legal and institutional arrangements in the Mediterranean; promote the integration of regional fisheries and marine environmental protection mechanisms; and compare regional experiences and approaches to fisheries management and marine conservation in order to facilitate cross-regional learning and progressive developments in regional cooperation.

In this regard, this Workshop is the first opportunity for the members of this network to meet together, identify the legal issues impeding an adequate management of marine resources in the Mediterranean and decide on the way forward to address the legal gaps. It aims at achieving a wide range of objectives including:

- Discussing legal means to improve fisheries management and marine conservation in the Mediterranean (including providing legal clarification on a list of specific marine issues);
- Launch a process, through the drafting of a Strategy, aimed at setting the path for further work, exploring and implementing measures or possibilities for fostering integrated management of Mediterranean marine resources as a tool for conservation of important ecosystems;
- Strengthening relationship between legal experts (in particular through the Mediterranean Marine Law Specialist Group) and relevant organizations/ actors and further developing this network.

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This workshop has a wide range of objectives:

- The main objective is to identify the legal issues impeding marine biodiversity conservation and sustainable fisheries.
- It further seeks to launch a process for improving the governance in the Mediterranean Sea associating all relevant stakeholders

It aims at facilitating cross-regional learning and progressive developments in regional cooperation and international fora.

The workshop will be the first opportunity for the members of the Mediterranean working group on marine law (MMLSG) set up by the IUCN Centre for Mediterranean Cooperation to meet, and identify a programme of work for achieving marine biodiversity conservation and sustainable fisheries in the Mediterranean in consistence with the Environmental Law Programme and the Global Marine Programme.