

## Minutes

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

This part consists of a chronological summary of the discussions held during the workshop. The workshop was split into 4 main sessions and an opening session. Each session included the presentations of technical papers.

#### ***OPENING SESSION***

On Monday, 15 May, the wide range of participants (from academic and institutional background), largely Mediterranean (experts were coming from 9 Mediterranean countries and 4 other countries) were welcomed by the opening speech of Jamie Skinner, Director of the IUCN Centre for Mediterranean Co-operation. He noted the many potential objectives and results that may come from the workshop.

John Scanlon, Head of IUCN's global Environmental Law Programme (which is headquartered in Bonn, Germany) introduced IUCN and gave an overview of IUCN as an organizations, and of the various components of its operations, policy and activities. He noted a number of important opportunities for the presentation and furtherance of the results of this workshop, and the programme and plans that will be developed here. Among these, some of the most important are the IUCN World Conservation Congress, the IUCN Academy of Environmental Law, and the work of IUCN in policy forums at global and regional levels.

Professor David VanderZwaag, Chair of the Specialist Group on Ocean Law and Governance (SGOLG) of the IUCN Commission on Environmental Law, gave an overview of the specialist group's overall objectives regarding the challenges of ocean governance as well as the SGOLG's plans and programme for the coming year. (ToR is attached in Annex). A potential strong area of interest has already been identified, namely, evaluating and comparing the work of Regional Fisheries Management Organisations (RFMOs) in various regions, including the Mediterranean, and providing critical inputs for the intergovernmental review process of the UN Fish Stocks Agreements (FSA) scheduled for 2006. He further welcomed the formal launching of the Mediterranean Marine Law Sub-group which will be guided by this workshop and is expected to cooperate with the ocean initiatives in other regions (including most prominently the Black Sea).

Carl-Gustaf Lundin, Head of the IUCN Global Marine Programme, noted the contribution of Total, in support of this workshop and the key work of the Mediterranean Centre on this issue. He also presented a discussion of some of the events leading to this workshop. He cited

- the various marine and biodiversity related targets from the plan of implementation of the World Summit on Sustainable Development;

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- the Málaga International workshop on high seas Marine Protected Areas, on 15-17 January, 2003;
- the World Parks Congress in Durban (August 2003)

and other progress that has been noted recently or is coming, both in the Mediterranean and globally (key workshops, COP-7 of the CBD, UNICPO, and the General Assembly's decision to table international ocean governance issues in November this year.)

Perhaps most important, IUCN has been directly contacted by the Global Environmental Facility and requested to develop some proposals for direct action in the development of marine protected areas.

Finally, he gave an overview of key publications, including especially Achieving Sustainable Fisheries, and International Ocean Governance.

Jamie Skinner gave a brief overview of the Centre for Mediterranean Co-operation and its mission and activities. One of its most important new developments has been the commencement of implementation of the Memorandum of Understanding between IUCN and the Barcelona Convention. He noted that the workshop combines both legal and scientific experts (including issues of high seas governance, natural resource management, and nature conservation) to ensure that our activities "reflect Mediterranean reality." For similar reasons, the selection includes a mix of governmental and non-governmental representatives (although all are acting in personal capacity) to ensure that we do not move into the realm of wishing, without acknowledging the political realities and "the possible."

It is not essential for the group to choose action. However, if there is something useful to be done and there is a network that sees a path forward, IUCN will be more than happy to help.

He closed by thanking the Total as well as the government of Andalusia for their support of this meeting and the wider involvement of the Centre for Mediterranean Co-operation in these issues.

Professor Tullio Scovazzi, CEL member and participant in the work leading to this workshop, presented some key issues as a basis for the workshop's discussions. He noted that the high seas is progressively disappearing in the Mediterranean, as a consequence of the extension of coastal State jurisdiction beyond 12 n.m. by a number of Mediterranean countries. There is no point in the Mediterranean which is located beyond 200 n.m. from the nearest land or island. Yet the attitude of "EEZ-phobia" of some Mediterranean countries seems now less acute than it was in the past.

The extension of coastal State jurisdiction does not detract from the need to strengthen international cooperation for the protection of the Mediterranean marine environment and the sustainable exploitation of its living resources. In the field of protection of the environment, the instruments belonging to the so-called "Barcelona system" have a very advanced content, especially after the updatings of 1995. The new 1995 Protocol on marine biodiversity allows for the establishment of "specially protected areas of Mediterranean interest" (so-called SPAMIs) in any Mediterranean space, including the high seas. One high seas SPAMI, that is the 1999 sanctuary for the protection of marine mammals, has already been established by France, Italy and Monaco.

In the field of fisheries, the role of the General Fisheries Commission for the Mediterranean (GFCM) should be improved, especially as regards the crucial question of allocation of

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quotas. In the field of protection of the underwater cultural heritage, a Mediterranean regional convention, based on the 2001 UNESCO Convention, seems an appropriate step for the near future.

An essential element to be taken into consideration in developing Mediterranean regional cooperation is that any measures agreed upon by coastal States should not be undermined through resort to flags of convenience.

He concluded that the tasks of this workshop was to examine the issues and problems to be addressed and to present some proposals to make progress

The floor was then given to the audience and Josette Beer Gabel addressed the issue of IUCN's organisation and methods of work and means of optimising its work. In response, John Scanlon briefly presented IUCN organisational structure and functioning and highlighted a major event for the Union, the IIIrd World Conservation Congress next November 2004 in Bangkok, which sets direction for IUCN's work for the next 4 years to come, and reminded that CEL members are invited to input.

The workshop was divided in four sessions:

### ***LEGAL STATUS OF THE MEDITERRANEAN SEA AND NATIONAL INITIATIVES OF EXTENSION OF JURISDICTION***

The first substantive session, chaired by Elie Jarmache, Law of the sea officer at Ifremer HQ and senior lecturer in international law at the Institut d'Etudes Politiques, focused on the current trends in the Mediterranean Sea. On the one hand, the high seas still covers most of the Mediterranean Sea. On the other hand, there is an obvious trend in recent years, with several Mediterranean coastal states (Spain, France, Croatia and others) extending their jurisdiction beyond the outer limits of the territorial sea, in line with the UN Law of the Sea Convention.

When introducing the session's speakers, the Chairman noted the importance of the development of a new term "governance" to address ocean law issues, as a indicator of a new priority that has been given to these issues.

Professor Haritini Dipla, University of Athens, then turned to her presentation of the current regime in the Mediterranean.

She first presented the general trend of the Mediterranean consisting in a dual regime: on the one hand, the soil and subsoil of the sea, consisting entirely of continental shelf, and on the other the waters, in which the coastal states have diversified claims. The seabed is thus entirely under national jurisdiction, whereas in the waters there remains a zone of high seas. Up to now there are only three States that have proclaimed an EEZ, although other coastal states are in the process of proclaiming Fisheries protection zones and, following the recent ecological disasters, marine Environment protection zones.

This fragmented practice leads to delimitation issues. Most of the delimitation agreements in the Mediterranean concern the territorial sea, some of them the continental shelves and only one the EEZ (Egypt/Cyprus). Most of the agreements are effected by

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applying the method of medial line (in case of opposite coasts) or equidistance (in case of adjacent coasts).

In many cases, delimitation is obstructed by geographical and/or political difficulties (e.g. Greece/ Turkey). In some cases, negotiations have been suspended (Spain / Morocco). In others, difficulties concern the different nature of the zone to be delimited (e.g. Spanish Fishing zone/ the French environmental protection zone), whereas in others, in deciding whether or not to project on the waters the median line decided upon for the continental shelf.

In any case, new claims will give rise to the necessity of concluding new delimitation agreements. The existing practice of the Mediterranean States shows that they are more and more concerned about biodiversity issues and try to respond through cooperation (e.g. 2002 Tunisia/Algeria Agreements on maritime boundaries).

She finally questioned the issue of the relevance of the notion of 'limits' or "lines" in regard to ecological concerns, in view of the factors and objectives to be achieved through cooperation.

Professor Saïd Ihraï, University of Mohammed V, Morocco discussed the specific manner in which the designation of an EEZ for Morocco has been opened, and the particular problems with Spain over Mediterranean spaces, particularly with islands in the Mediterranean which Morocco considers to be within its jurisdictional rights in claiming an EEZ for. One important issue is the involvement of the EU on behalf of Spain in this connection.

The EEZ concept as conceived by Montego Bay, has envisioned this as a manner of protecting and addressing the financial and economic rights and needs of all countries, especially the African and other countries which have particular needs and whose use of the oceans shall be very important to livelihoods and national economies. This means that Morocco does not have the option of backing down from these issues of maritime delimitation. The primary attention has been focused on the Atlantic negotiations, and the Mediterranean issues are currently in suspended animation.

As regards the legislation, in 1973, Morocco declared a fishing zone in both Atlantic and Mediterranean. A later 1981 law superceded this with the EEZ, but its nature and management is still more of a fishing zone than an EEZ.

Professor Ihrai then highlighting that the equity position is legally predominant, but some are also favoring equidistance, concluded that there can be a basic equidistant line, with adjustments to recognise particular situations. The Arab League has recommended creating of these zones as a tool for improving economic conditions.

In addition, the “continental shelf” aspect of this area (the possibility of oil exploration) must also be considered. Equidistance may lead to assertion of Morocco’s rights in this area.

Finally, environmental issues have become very important in the Kingdom since about 1984. All the key texts relevant to marine conservation issues have been ratified by

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Morocco, and it is party to all of the relevant regional conventions, as well, although it has not yet signed the last set of protocols, etc. This is possibly coming soon.

Morocco has gone beyond these, having taken on board all protective instruments on marine environmental issues.

Fisheries resources are very important and critical to Morocco. Also the problem of sovereignty (islands) with Spain is very important for this reason. Spain's claim on islands includes two that are less than 200 metres from the Moroccan coast. Morocco did not sign the convention because of the island problem.

The Chair, Elie Jarmache, mentioned that many years have elapsed since the Nairobi Conference. After the initial work of the Latin American's, the Africans kept the issue moving forward. However, now since the 1970's, there are strong tensions between the objective of sustainable development and economical development.

Daniel Silvestre, Sécretariat Général de la Mer in France, discussed the situation leading to the creation of the Zone of Ecological Protection in the Mediterranean.

In addition to the interesting legal constrictions, France was involved in two critical environmental marine disasters (the *Erika* and the *Prestige* accidents). In both instances surveillance disclosed the discharge of sludge, etc. from these vessels. Because there was no zone under French protection in the Mediterranean, it was not possible to address the problem by penalising offenders. There are a great many of these problems, and the net amount of this type of discharges is very large. French surveillance (joint overflights with the UK) have indicated that 1 ship in 10 is making such illegal discharges. Extrapolating this to the Med, suggests about 60 000 illegal discharges each year, and at least  $\frac{1}{5}$  of these are hydrocarbons which have particularly harmful impacts.

Setting up the ZPE was a means of implementing UNCLOS environmental protection which was our particular objective (we were not trying to exercise sovereignty – “wanted to claim duties rather than rights.”) Wanted to implement national law under the MARPOL convention, including to other flag vessels, etc..

Overflights also indicated that pollution is occurring outside the 12nm zone, and here we have little control. Arrangements to apply fines to these kinds of transgressions were already in place, but these needed to extend beyond the Territorial Sea.

This also related to the operation of French flag vessels in the ZPE area. France could be penalised for these actions, but the right to compel action was less. It was thus possible to directly compel vessels into French ports and release them only on payment of fines. We will soon have radar vessels, etc., enabling us to take action against night time violators.

Demarcation has been based on Montego Bay principles subject to certain adjustments; the Spanish claim of fishing rights is currently somewhat problematic. Spain and Italy are the only countries that can take a similar approach, and that have the technical and legal capacity to exercise similar authority.

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Dr. Davor Vidas, Director of Marine Affairs and Law of the Sea Programme at the Fridtjof Nansen Institute, Norway, spoke about Croatia's recently proclaimed "Ecological and Fisheries Protection Zone" in the Adriatic Sea. He explained that this zone is, in effect, an EEZ under the UN Law of the Sea Convention, but reduced to certain functions only: 1) sovereign rights, including conservation and management of living resources; 2) jurisdiction for marine environmental protection; and 3) jurisdiction regarding scientific research. While Croatia proclaimed this "crippled" EEZ in October 2003, this was done with postponed implementation until October 2004, to facilitate arrangements with neighbours and EU.

Both the unusual name of the zone and one-year postponement in implementation was an attempt to meet concerns of those who criticised the proclamation of this EEZ as being "unilateral". While there can be no doubt on the legal validity of Croatia's EEZ (indeed, some 130 coastal states have proclaimed EEZs and similar zones world-round, even around uninhabited tiny sub-Antarctic islands), the critique of unilateralism was a political one. It was motivated by three main concerns.

The first concern has been related to Adriatic fisheries, where Italy is the main fishing nation, harvesting some 200,000 t. per year (while the current Croatia's catch is around 20,000 t, and Slovenian fishery is negligible, around 2,000 t.). The problem is, however, that once Croatia's EEZ is implemented, most of the Adriatic fish stocks will, from one perspective, fall on the "wrong side". From that perspective, it might have looked as Italy will retain fishing boats, while Croatia will have fish. This economic interest was one reason while Croatia's zone was labelled "unilateral", despite several rows of prior consultations held with Italy.

The second reason for "unilateralism" was purely political: a wider concern by the EU that proclaiming an EEZ in the Adriatic Sea might have a triggering effect for other parts of the Mediterranean, where marine delimitation disputes may prove more complex.

And the third reason for calling the Croatian EEZ unilateral had not much to do with the zone itself, but with Slovenia's concern related to delimitation of its territorial sea with Croatia, originating in the Bay of Piran. Slovenia therefore argued that Croatia's zone "prejudices" this delimitation. While this argument is difficult to understand in terms of geography and international law, it was put forward in a timely political context. Yet, ahead of Croatia proclaiming the zone, Slovenia refused political consultations.

Neither of the above concerns had focused on the real need for an improved environmental protection and resource management in the Adriatic. As far as Croatia is concerned, its main economy – tourism – relies on a clean, still preserved marine environment along its 5835 km long coastline. Having felt consequences of war, its fisheries industry is now in recovery; yet country's fishing capacity is still well below the potential for sustainable fishing.

As far as the Adriatic Sea at large is concerned, it faces two major global trends. The first trend is an increasing illegal, unregulated and unreported (IUU) fishing here, recently also by long-distant fleets. Joint interest of Adriatic states is to introduce legal means for improved control, such as EEZ, in a response to IUU fishing being the major challenge to sustainable fishing.

The second global trend exceeds the first. While the Mediterranean fishing is still below 2 percent of global fishing, some 25 percent of world oil is transported through the Mediterranean. In near future, this figure is likely to increase, enabled by integration of regional oil pipelines. Several such projects will use Croatia as an oil transport country, due to a unique deep-water port there (Omisaalj) and an under utilised oil pipeline (Adriatic pipeline). This will, however, introduce a major change in the Adriatic Sea, with Omisaalj becoming an export port for oil, instead import only, as so far. Croatia, like other Adriatic coastal states, will thus face issues such as ballast water, increased pollution control need, etc.

With an economy largely based on tourism, Croatia is first in line to be affected by such major global trends. But those new trends and challenges should also be of concern to other Adriatic countries – they clearly have a joint interest in protecting the Adriatic Sea. This large picture has so far been lost, mainly due to local and limited political interest prevailing. The problem, however, is not in Croatia's new zone, but in real and major threats to the Adriatic Sea.

Tullio Scovazzi, with assistance from Irini Papanicolopulu, discussed the extension of coastal State jurisdiction in the seas surrounding Italy and showed a number of relevant maps.

He reviewed the present national legislation as regards internal maritime waters, territorial sea (with emphasis on the 2003 Syrian legislation which reduced the extent of the territorial sea from 35 to 12 n.m.), contiguous zones, fishing zones, ecological zones (with emphasis on the sui generis measures taken in 2003 by Croatia and France), exclusive economic zones.

He also mentioned some of the settled and the pending issues of maritime boundaries between adjacent or opposite States. The problems of delimitation are likely to increase if exclusive economic zones are proclaimed by the Mediterranean States. For instance, it may be asked whether, in the case of the already existing continental shelf boundaries, the line which has previously been negotiated for the seabed should ipso facto become also the boundary of the superjacent waters. The answer is far from being clear and may depend on the peculiarities of each case (such as the date of the previous continental shelf agreement, the geographic, economic and environmental considerations, etc.). It may also be asked what rules apply to the delimitation between two different sui generis zones, such as a fishing zone and an ecological zone, if they overlap for a considerable extent of waters (as in the case of the present zones of Spain and France)

Professor José Juste Ruíz, University of Valencia, described the Spanish declaration of its Fisheries Protection Zone (FPZ).

This regime was based on a law from 1998 relating to Spain's Atlantic waters, which authorised further work including on the Mediterranean. The decree was enlarged, in part to protect the red tuna, which was in decline, necessitating protection. (Overfishing was caused by non-Mediterranean countries' vessels fishing in those waters.) Similarly, Spain wanted to forbid driftnetting, but it could not do so outside the 12 mile limit.

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Another question raised by Professor Juste is the management and control for conservation, this was also a reason behind the creation of the FPZ. There is a community regulation from 1994 that envisages minimum provisions for protecting fishing, and these are part of the reason for the creation of protected zones in their jurisdiction. However, these are not exclusion provisions, relating to vessels from other countries.

There have been a few problems with later legislation, some of which was drafted badly, and does not address third-country vessels in Spanish waters and the FPZ, and do not remember the red tuna protections.

New measures in other states, go beyond “biological resources” to consider conservation matters, and scientific research. Spain may need to revise its actions to go into these further matters.

In conclusion, there is a need to think about the possibility of taking a new comprehensive and collective look to the overall issue of addressing governance of the med and protection and conservation of its resources, natural and cultural.

For time constraints, the questions were left for the following session.

### ***CONSERVING THE MEDITERRANEAN THROUGH THE ESTABLISHMENT OF A COHERENT AND REPRESENTATIVE NETWORK OF MARINE PROTECTED AREAS INCLUDING IN THE HIGH SEAS***

The Mediterranean is puzzled of different legal regimes (each regime corresponds to a degree of powers that the interested States can exercise over them) and as a result, a marine protected area can have different legal status applying including the high seas regime. The 1995 Protocol on Specially Protected Areas and Biodiversity in the Mediterranean organizes for the establishment of a Mediterranean network of protected areas in the high seas through a list of specially protected areas of Mediterranean Importance (SPAMI), inscribed by consensus of the Parties. However, support to the Protocol needs to be strengthened and issues of opposability of SPAMI to non-Barcelona States (as well as of other instruments to third Parties) will be of strong interest here.

This session chaired by Professor Habib Slim, University of Tunis, aimed at discussing and finding ways to promote an effective network of marine protected areas in the Mediterranean high seas.

Professor Josette Beer-Gabel, University of Paris I, made a presentation on the Ligurian sanctuary for marine mammals in the Mediterranean. The sanctuary was created by the Rome Agreement which Parties are France, Monaco and Italy on 25 November 1999 and it is of particular interest mainly for two reasons: (1) its strong legal base and (2) its geographical scope comprising the high seas.

After presenting the conventions addressing protection of marine mammals in the Mediterranean, she then focused on the conservation of marine mammals in the Ligurian Sanctuary. Because of the increasing human activities in the region, there was a growing



need to establish a zone of protection extending in the high seas to ensure the conservation of these threatened marine species. She further noted that if States are entitled to exercise jurisdiction in international waters over their own flags (article 117 of UNCLOS pertaining to conservation and management of biological resources in the high seas), international law nowadays does not enable any effect regarding the freedom of the seas enjoyed by third States. However, she pointed out the particular character of the ACCOBAMS agreement, the Barcelona Protocol of 1995 and the Ligurian sanctuary, which creates effect regarding freedom of navigation of third States. With these three agreements, we move from the mere application of measures in the high seas on flag's state to a situation of "taking hold" of the high seas. Indeed, the three Parties are authorised under the Agreement to implement the provisions of the Agreement on flag's third states situated in the international waters of the sanctuary, which can create some frictions with third States.

She then highlighted an important aspect of the Rome agreement in that it is directly operational: the agreement creates the sanctuary and sets important obligations born by the three Parties regarding conservation of marine mammals and prevention of pollution (article 6 and 7), The legal regime applicable in the sanctuary is particularly interesting in that it focuses on protection of the sites itself and therefore goes beyond the traditional measures of prohibition of capture of species but is much wider and embraces the objective of conservation of the ecosystem of these marine mammals. She cited that under article 4, Parties bear a binding and heavy obligation to "ensure a favourable state of conservation by protecting marine mammals and their habitat from indirect or direct negative impacts from human activities". She added that this provision gives an excellent legal definition of a marine sanctuary. Parties also bear other prohibitions and obligations (deliberate capture or intentional disturbance of marine mammals, detention and use of drift net, regulation of tourist activities pertaining to whale watching, national strategy to cope with marine pollution from the shore). Parties bear also an obligation to cooperate to regulate the question of marine contests.

She highlighted that the Rome Agreement is emblematic of the evolution of international environmental law which aims at going beyond the mere objective of species conservation towards a more integrated approach: areas conservation which constitutes the ecosystem in which species depend on to live and develop. Finally, she concluded that the inscription of the Sanctuary on the SPAMI list (foresaw in the Rome Agreement) put the obligation for the Parties to the Protocol to implement the Agreement measures.

Marianne Laudato, of the Office de l'Environnement pour la Corse (France) presented the evolution of the Corsican region's actions in the area of coastal and marine environmental conservation since 30 years as well as the project of International Marine Park in the mouths of Bonifacio.

She started her intervention by giving an overview of the initiatives of the region in the area of environmental conservation. She highlighted the trend of the region to progressively adopt a wider perspective taking into consideration the marine environment. In this regard, specific regulations (natural reserves, regulation for biotope protection, fisheries cantonment areas) were enacted which resulted in for example strengthening collaboration with fisheries professionals in the field of management and conservation of fisheries.

She then presented the efforts made (at regional, national and bilateral levels with Italy) in the field of conservation of the mouths of Bonifacio's zone. This particularly sensitive zone has experienced, since 1992, many initiatives aiming at obtaining a international protection regime of these coastal and marine zones. These efforts led to the adoption of an adequate legislative and regulatory framework applicable in Corsica in line with international instruments (Convention of Montego Bay) for the conservation of important and sensitive marine habitats dealing in particular with risks resulting from the heavy maritime traffic existing in this area.

Marianne Laudato, then considered these initiatives in the international context of Protocol on SPA and biodiversity.

Ever since 1992, the Office de l'Environnement de la Corse, has been developing means of transboundary cooperation to put in reality a project initiated under an INTERREG programme: the creation of an international marine park in the mouths of Bonifacio. The first step of this project enabled the creation of marine protected areas on both sides of the strait (Natural Reserve of the Mouths of Bonifacio on the Corsican side and National Park of the Archipel of La Maddalena on the Sardinian side). Today, the management and organizational plan of the Natural Reserve of the Mouths of Bonifacio (French component of the futur International Marine Park) is under development. As such, a debate was also engaged on the different legal solutions available that would better promote the creation of a transboundary cooperation.

Claudiane Chevalier, IUCN Centre for Mediterranean Co-operation spoke about international legal (shipping) aspects of the project transboundary international marine park in the Mouths of Bonifacio that goes beyond the Corsica and Sardegna perspectives. She noted the various factors, including weather conditions, that both make shipping through the region more dangerous and threat to the important and rare ecosystem. In addition, the governments of France and Italy have a keen interest in protecting this area.

The question of limiting/suspending passage of ships through the straits is difficult at international law. But the primary states have indicated that they will manage this passage, including limiting the navigational rights of their own vessels, and attempting (although without legal authority) to limit the passage of other vessels.

In order to put an end to these threats, the countries have begun to seek IMO designation of the area as a PSSA. Decision in 1998 by the Committee of Maritime Safety to the effect that it will not allow suspension of navigation mandatorily, but it is possible to control the routes and monitor the passage. As a result, there has been a sharp decrease in the number of ships passing through this area, and the system of permissions and fees for such passage is being developed.

There are still some gaps in the system. Until Italy has adopted similar protections, some may be able to evade these requirements by going through the Italian part of the area.

She then concluded by saying that the project of transboundary marine park acted as a accelerating and facilitating factor with regard to settlement of shipping issues before the

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IMO and international cooperation and which in turn contributed to the consolidation of the project.

Aref Fakhry, IMO International Marine Law Institute, presented the Particularly Sensitive Sea Areas and other special protective regimes in the Mediterranean. He noted the zonation possibilities relating to particular kinds of pollution and activities. Rather than re-discussing the protections under fisheries and protection zonation, he turned to the questions of biodiversity at the global regional and national levels.

The CBD, for example considers the needs for marine protected areas as part of its broad mandate for the creation of protected areas (art. 8). The Barcelona Convention and the SPA and Biodiversity Protocol (the latter being designed specifically to address this requirement in the marine biome) enable the creation of SPAMIs and create a relatively broad requirement to comply with them.

Annex I and V of MARPOL both include the Mediterranean as a “special area” where pollution protection is particularly needed. However, in Annexes II, III, IV and VI, special areas do not yet include the Mediterranean.

PSSAs are areas that need protection through action by IMO because of both its importance, its fragility, and the particular kinds of threats to and sensitivities of the area. There are currently 6 PSSAs designated, but none are in the Mediterranean. Guidelines exist, and the process of designating such areas involves consideration of and respect for all of the interests of coastal states, flag states and other stakeholders.

National zonation is a separate issue - but has been discussed in other presentations.

Coherence of these schemes: There is a measure of overlap here, and there are in some cases, competing norms, with proliferation leading to confusion. But there are also gaps, since in many places no state has taken any steps to claim a right/duty to protect and promote conservation in particular parts of the Mediterranean

Finally Aref Fakhry noted that it could be recommended to have a better alignment with UNCLOS, better co-ordination in the regional activities, and reconfiguration of development aid to enhance capacity.

Professor Habib Slim, then left aside his casquette of chairman to speak about the use of the SPAMI as a mean for formation of a customary norm for the region. He explained the manner in which the overall concepts for oceans have been carved and interpreted in the context of the Mediterranean, which is really an enclosed/semi-enclosed sea and necessitates an entirely different level of negotiation.

The current situation of negotiations and activities could lead to difficult and possibly undesirable effects. But we can also see that the legal regime should not hamper the navigational freedoms. It is accepted that the sovereign rights involved are resource related and not conferring rights of geographic exclusivity.

As a consequence of the threats of ecological disasters, and the strong impact they have had on public opinion, there is a serious interest in and support for the development of

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controls. It is noted again that the Med has the largest concentration of petroleum shipping, an extraordinary number of vessels operating under flags of convenience, and a consequent enormous level of ballast water discharge that is uncontrolled/unenforced.

Problems of the need for action and protection, balanced against the concerns of “creeping jurisdiction.”

The various “forms of exclusive zones” (fishing zones, environmental zones, true EEZs, etc.) need to be recognised as possible bases for some actions, where they are the most appropriate to particular needs.

He noted that about 5 Med countries have not yet ratified Montego Bay. Finally referring to the notion of wild and wise norm of customary law developed by Professor Dupuy, he noted that it could be a bit adventurous to state the existence of a norm of customary law however, we could maybe be witnessing the development of a wild norm of customary law in comparison to a wise norm of customary law.

Having heard a series of highly valuable and technical presentations in the last two sessions, the participants were given the opportunity to ask questions and make comments regarding the various issues and concepts presented:

Tullio Scovazzi elaborated on the question of protection of whales in the Mediterranean. He stressed the need to address the question on a regional basis, considering the many shortcomings of the 1946 Whaling Convention. He insisted on the merits of the 1996 Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS), as well as the 1999 Sanctuary Agreement between France, Italy and Monaco, which can be applied also when the three Parties will establish their exclusive economic zones and does not create obstacles to navigation. Habib Slim added that is also a way to encourage ratification of the Barcelona Convention and the new protocol, as the “SPAMI-able” sites include many in jurisdiction or potential EEZ of countries that are not yet parties....

Giuseppe Notarbartolo di Sciara commented on the relationship between ACCOBAMS and the Sanctuary, as well as the SPA and Biodiversity protocol. Neither of these instruments was available in the year that the first work on the Sanctuary negotiations. There is another key cetacean feeding ground that has recently been discovered in the Med (between Sicilia and Tunisia) which should be created under ACCOBAMS and possibly SPAMI too. Possibly a joint designation between Tunisia and Italy as a transboundary SPAMI, and also high seas if there is still any high seas in the Mediterranean by that time.

Addressing the issue of responsibility, Professor José Juste Ruíz mentioned that it would be too much to demand proof both that a crime has been committed but also damage has been caused. What about a case of violation without significant damage? It was said that with regards to “serious damage” – the MARPOL designation of the Mediterranean as “special” suggests that a lower absolute level of harm is still “serious.” We have the necessary legal means to act, now, and will take action to address these concerns with regard to visiting ships, especially as regards ballast water and other violations. Daniel

Silvestre highlighted that capabilities at the national level should be developed by all countries (detection equipment)

Jamie Skinner asked about how the regime of the SPAMI can be applied to ships in passage, including those that are not flag vessels of the Coastal state. Habib Slim highlighted in his answer that the coastal state's rights in the case of "innocent passage" are very limited. Daniel Silvestre said that a SPAMI is a multilateral act that is part of the regional agreement, and would seem to be binding on the States-Parties to that regional agreement. Each State's compliance with this would require national implementation. Another step for further implementation would be getting IMO designation. Tullio Scovazzi recalled Art. 28 of the Mediterranean SPA Protocol, relating to the relationship with third Parties. Irini Papanicolopulu added that it could be legally possible that two or more states have rights to claim their EEZ collectively by agreement (in consistence with international law) and mentions that indeed if a States can do this unilaterally under international law, it should be possible multilaterally.

Chedly Rais, UNEP Mediterranean Action Plan raised the question of whether a body exists in the Mediterranean that can advise and facilitate the creation of ecological and fishing or exclusive economic zones (whatever types of extensions of authority/sovereignty/etc.) and suggested the creation of such a body. Habib Slim then suggested that perhaps the GFCM – the General Fisheries Commission or maybe the Barcelona system should take this on. Lilia Khodjet El Khil, REMPEC highlighted that the IMO was the only body competent to regulate in this manner.

Aref Fakhry, International Maritime Law Institute, raised the issue of the distinction between maritime and anti-pollution authorities in the ZPE. Daniel Silvestre said that in an EEZ, the coastal state has no competence to take action on passage by shipping and highlighted the relevance of IMO's action. Indeed, when the ships do not follow the routes they can be punished assuming only they get IMO designation. However, the illegal discharges are subject to article 4 of MARPOL, and coastal state can impose sanctions.

Professor Ihrai discussed the final question of Professor Dipla's presentation, noting that it is likely that these discussions on environmental zone delimitation will probably relate to the same area as the ultimate EEZ or other demarcation.

It was then felt that the debate should focus on the very governance issue and in this regard discussions should integrate the relevant international agenda. Last November 2003 the EU ministerial conference declaration (Venice) called for an enhanced coordination with regards to fisheries jurisdiction in the Mediterranean. The forthcoming Marseille (May 2004) meeting, called for by France at the WSSD, is also a major event involving key stakeholders and experts where progress on the issue of governance in the Mediterranean should be made.

Habib Slim summed up by saying that the challenge of governance was to conciliate two antagonistic attitudes of States with regards to exclusive economic zones: minimalist and maximalist States.

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Josette Beer-Gabel noted that the even though third States are not obliged by SPAMI measures; the Barcelona Protocol contains provisions legitimising a certain kind of effect on third States. The provision calling on a cooperation of Parties with third States under the Barcelona Protocol (1995) obliges Parties to implement SPAMI measures when cooperating with Third States.

Summing up, the Chair concluded that the long cultural, legal and social history and evolution in this region creates many different approaches and we need to find a common way forward.

## **ROLE OF INSTITUTIONS AND INTERNATIONAL AND REGIONAL PROCESSES**

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The session chaired Professor José Juste Ruíz by aims at discussing the potential role of stakeholders in improving governance in the Mediterranean.

It has to be noted that the European Commission DG Fisheries could not attend for external reasons and expressed strong interest in following the workshop outcomes.

Alain Bonzon, FAO, General Fisheries Commission in the Mediterranean gave a description of the GFCM. He began with a description of the multiple overlays of responsibility for fisheries controls, including all levels of global soft and hard law, global institutions, regional soft and hard law and institutions (including especially ICCAT and GFCM) as well as national levels and direct agreements and subnational levels as well as private compliance and activities.

In particular, the Mediterranean has two regional fisheries organisations, as well as a broad range of institutions and organisations for environment, and the various economically mandated organisations (IGOs) such as the EU and the Black Sea Commission.

The governance of fishing in the Mediterranean is clearly designed around management of fishery/marine resources.

Reform of the GFCM: As one of the oldest fishing management organisations (formed under FAO auspices in 1949), it has a long history of addressing environment and sustainability questions. It was reconstituted in 1976 as an RFMO.

Its mandate is already very broad – management of coastal resources, straddling stocks, aquaculture development, co-operation (training, TT, market monitoring). It has a membership consisting of all 22 riparian countries, 2 black sea countries, +Japan and the EC. Currently a great need for effective management would be to add the other Black sea countries.

The 1997 reforms of the GFCM recognised UNCLOS, UNCED (Ag. 21), FAO CCRF and other instruments, as well as “new” (since 1976) concepts such as PP and focus on scientific evidence. The reform was also intended to improve the scientific body (broadened to include not only biology, but also economics, social, environmental and statistics.) The Committee now meets yearly, as well. It also created autonomy of the

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Commission (including budgetary). Membership of the EU and similar organisations was important addition.

After showing the current committee and working group structure, Bonzon suggests the need for a legal working group. He also discussed the ICCAT/GFCM co-operation through the Committee on Aquaculture, and its networks including SELAM (Social, Economic and Legal Aspect of Aquaculture) .

He examined the objectives and approaches of the GFCM which has both biome and economic objectives (Focus on Demersal and small pelagic fisheries in the Mediterranean). The Nordic approach (input control using capacity analyses has been difficult to apply to small pelagic of the GFCM which has both biome and economic objectives (Focus on Demersal and small pelagic fisheries in the Mediterranean)

In conjunction with ICCAT, it has looked at large pelagic species – focused on output control (quotas)

Medium and short-term priorities – accurate knowledge (database), management of selected shared stocks, improved statistical data and information, reinforcing sub-regional approach, strengthening regional co-operation, and consolidation of GFCM restructuring with regards to its budgetary autonomy.

GFCM tools for “governance for sustainability”:

- Promotion of multidisciplinary research
- Need to set up systems for managing capacity
- Data collection,
- IUU research
- Etc.

Decision-making process has still some weaknesses. He notes that consensus requirement is slow and leads to few final discussion. Does the tendency toward systematic consensus inhibit management decision-making?

Other challenges are the need for a “user-friendly objection procedure”, and the need to clarify accountability.

He notes the need to consider voting, evaluations of prior decisions, and the involvement of high-level policy makers, within the GFCM as well.

The main limit for functioning has been the reduction of its financial means. This coincided with the increase of demand. And a growing need to finance participation by national scientists in GFCM meetings and activities.

Chedly Rais, UNEP Mediterranean Action Plan presented the Barcelona system, as a potential basis for better governance of the Mediterranean.

He first presented the components of the system (i) Action Plan of the Med., (ii) the Barcelona Convention and protocols, (iii) the Mediterranean Commission for Sustainable Development – a solely consultative Commission, but important) and (iv) its Regional Activity Centres. It is all under the UNEP (regional seas programme), to ensure maximum value in co-ordination and buy-in.

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He noted the development time-line of this system 1975 to present, including a focus on the particular protocols.

He mentioned the coverage – only riparian states, to the straits of the Bosphorus and Gibraltar.

The convention has been extended to the seabed and subsoil, and enables a country to declare that part of its land area is covered by the convention. It has 22 parties (most recent Serbia and Montenegro.)

He queried – is Barcelona soft-law? And if so, is this a problem?

He described several particular action plans for specified species, including monk seals, marine turtles, cetaceans, marine vegetation, cartilaginous fishes, bird species, and an action plan concerning species introduction and invasive species.

SPAMIs can be based on conservation but other reasons may also be relevant. There is no limit on the number of SPAMIs that are possible. The parties feel that this should be guided by a strict standard, and should be geographically represented. It is also important that they be managed, so that only those areas with good action plan and management regime may be accepted...

The main point to remember is that the Mediterranean lacks practical experience in managing the high seas.

He concluded with an outline of the strategic programme, which begins with analysis and evaluation of trends, status and threats, first at national and then at regional levels. The plan has identified several priorities and actions that can then be undertaken, and calls for co-ordination and synergy.

Lilia Khodjet El Khi, REMPEC, presented a discussion of ballast water and sludge discharge issues, including especially the invasives and petroleum problems.

She described the many issues that have been addressed in IMO conventions (on petro-impregnated discharges and ballast water), noting that although their treatment of ballast water issues is not directly regional, they recognise the concepts of special areas and PSSAs.

She noted the problems with MARPOL regulation 7348, and particularly the problems related to harbour installations, and tried to dispel the misconception that they are too technical or costly to be useful.

Enforcement obstacles – problems of detection (need for surveillance, lack of authority (EEZ declaration), she noted also the difficulties with enforcement of direct “port state controls” due to standards and other problems.

The Ballast Water Convention’s adoption process was very difficult. She discussed the “shape and structure” of the instrument. Of course the provisions are focused on protection of coastal environments by directing protections to areas within 200 nm of the coast (beyond which the discharge is okay) if the depth is greater than 200 mtrs. There



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are 2d choices where the combination cannot be found, including regionally designated discharge areas.

She then looked at the Med Action Plan she looked particularly at the legal issues – she was particularly interested in the Protocol on Critical Situations (adopted Jan 2002) in the Med., which includes both accidental and operational pollution. It includes provisions for receiving water facilities, and a monitoring system.

She then discussed the Centre (REMPEC) that is designed to implement the protocol.

Dr. Henning von Nordheim, Bundesamt für Naturschutz – German Federal Agency for Nature Conservation (BfN), presented a discussion of the OSPAR and HELCOM experiences in the establishment of MPAs in Territorial Sea and EEZs. In addition to other regional and global conventions that have an important impact on the north-east Atlantic and the Baltic Sea, the most important instruments are the

- OSPAR Convention
- Helsinki Convention
- EU Birds and Habitats Directive

He identified the BfN publications Skripten 22 (Legal regulations in maritime areas) and 43 (Vilm HSMPA workshop pub), and 79 (on GR of the Deep Sea)

He then described the outcome of the 2003 OSPAR/HELCOM joint ministerial meeting, in which the creation of a “network of well managed MPAs by 2010 was decided. This includes some reference to the creation of such system in the territorial seas, the EEZ and in the high seas (beyond 200nm). It is expected

- to create guidelines for management plans
- to assess the effectiveness of the MPAs
- to examine the question of ecological coherence
- to co-ordinate with other forums (Barcelona system, IUCN, RFMOs etc.)
- inclusion of relevant stakeholders (nice english phrase including lots of different groups, both commercial and non-.
- Establishment of a marine pa working group

Objectives:

- conservation
- prevention of degradation
- protect and conserve representative group of areas of OSPAR and Baltic.

Note that this extends down to the mouth of Gibraltar .

Significant components of this region, however, are outside of national EEZs. It operates as if EEZs have been declared, even if formal designation has not yet occurred. It also does not worry about what you call it (environmental zone or fisheries zone is also an EEZ from their perspective.) Regardless of what you do, once you have such a zone, OSPAR says that you also have a clear responsibility to take environmental and conservation protection measures.

He then turned to the situation of the Baltic – a semi-enclosed sea. Although not all have declared EEZs the boundaries are agreed, and all are treated as having such. It is noted

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that many MPAs in the area, with focus under HELCOM being on the areas beyond 12 nms. Many have not been fully agreed up to now, but the Ministerial Declaration should give impetus and basis for going forward.

He identified the following lessons that could be learned from the HELCOM/OSPAR experience

1. It is important to establish an implementation group (legal and scientific) to implement MPA activities as a first step.
2. Co-ordinate the identification process of the most important (high priority – hot-spot) areas in your region. Need not identify all areas.
3. Sound selection criteria must exist and be transparently available. This must be the basis for selection.
4. coverage of all types of areas, including terrestrial seas, EEZ and HS (if any).
5. Start with areas that are easy – non-controversial, legal support, etc. –
6. need a timeframe (with milestones) for this process, otherwise the debates will go on forever...
7. Importance to have a legally binding instrument of some sort for each area.

He ended with a short description of the proposed German MPAs in its EEZ, which encompass more than 20% of its EEZ in OSPAR area, and more than 30% of its Baltic EEZ. He showed guidelines on identification, management and then nature of management decisions and activities in these areas.

Deirdre Exell Pirro, International Court for Environmental Justice, made a brief presentation on the work of her organisation in conjunction with IUCN in further informing judges and judicial officials in environmental issues.

In particular, she described a coming conference for judges in the Mediterranean region in Venice in June 2005. The aim of this event is to obtain from the governments progress in the implementation of existing environmental law for the protection of the sea (the domestic law of the single States, Community law and international law). A preparatory meeting is scheduled on 8 and 9 October 2004 in Venice. She called upon the participants to find out how this meeting's work could be fit into their work.

The floor was then given to the audience.

Habib Slim reminded that only Chapter VII of the UN Charter is mandatory and therefore the Barcelona Convention in spite of its obligatory nature cannot be enforced on Parties. Indeed, the Parties to the Barcelona system have chosen not to have any control procedure in the reporting mechanism of their compliance to the Convention. In fact the current system provides incentives for non-compliance (as an example he mentioned the human rights issues, in which publication of HR violations is based on required reports) This means that the worst publicity goes to those who meet their reporting responsibility. There is an incentive not to report. Josette Beer Gabel highlighted that these instruments are however of obligatory nature and therefore Parties bear obligation to transpose these obligations in their national law.

There followed a discussion of various issues of binding decision-making. Daniel Silvestre mentioned however that there were legal instruments, namely the UN LOS

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Convention, who had a sanction mechanism (International Tribunal of the Law of the Sea ITLOS), set up to give sanction to violations to the Convention.

Daniel Silvestre, further questioned of the future of the HELCOM and OSPAR conventions when all of the countries involved follow the EU legislative decision-making (apart from Russia – even Norway applies the EU provisions). Henning von Nordheim – HELCOM views this as the only way to keep Russia on board. Also HELCOM focuses on sub-regional issues (shipping in the Baltic). As for OSPAR – the need is much more convincing, in light of the coverage area (beyond EU regulatory authority – clear in EU documentation), plus the Norwegian/Iceland coastlines and EEZs are very large and co-ordination with them is essential – it is not clear how long they will stay outside the EU. But also, it is important not to ignore the value of sub-regional work.

Said Ihrai noted that only the flag-state can go to the tribunal. So the direct rights relating to ships is not directly relevant. He noted that the Med's many non-EU members can be assisted by the EU, and can then benefit in the use/application of some of the EU regulations and other key matters.

Meryem Hrouch raised the fact that we have not discussed fishery resources in detail. It is important that the EU common policy specifically excludes the Med. She noted the need for commercial measures.

Driftnetting issues and the manner in which states have adopted prohibitions on it is a good case study on this. Situation in the event that states have not controlled this. It is important for management of fisheries to be agreed upon not only between the countries, but also with the professionals.

Alain Bonzon came back to the question of the EU and its role in the Mediterranean. The GFCM and ICCAT have been working on this, and for a long time. It is important to take measures that are scientifically based and applied (bought in) by both government and industry. He noted the importance of the relationship and co-operation between GFCM and ICCAT. FAO started addressing drift net issue, and the EU composite regulation took it forward. He highlighted that enforcement is a key problem to address.

Kristian Turkajl (Mission of the Croatia Republic at the European Union) although not present contributed to the debate through communicating his abstract which was made available to participants: “How to improve marine resources conservation and management in the Mediterranean?”.

He reminds that international law is a global response to changing situations and as such, legal instruments including UNCLOS are subject to progressive developments. He reminded that some Mediterranean features are non specifically Mediterranean. Reminding that the precautionary principle has to be implemented, he highlights that efforts should focus on establishment of principles for responsible fisheries activities taking into account all relevant aspects of today's environmental considerations. Recognising the leading role of the EU; he considered that an adequate cooperation between the EU and non EU Mediterranean countries is of most importance. He adds that

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the main legal issue is the issue of implementation of instruments and that accent should be put on the duty of good faith of Parties.

Addressing the issue of an EEZ regime in the Mediterranean (as provided for under the UNCLOS), he states that such regime should not be seen as an instrument for excluding other Mediterranean states from fisheries. Rather, such regime should be understood as an instrument of moderation of otherwise gaping disparities in capabilities and interests. However he recognizes that such regime remains an insufficient step towards the efficient management and sustainable development of fisheries.

He adds that any extension of national jurisdiction should be followed up by cooperatively agreed regional and, where appropriate, sub-regional measures and mentions specifically the GFCM agreement which could, in the aftermath of the Venice Conference, provide a framework for regional cooperation on the conservation and management of marine living resources. However, he states, a mere general duty to cooperate has to be revisited (instead of concrete responsibilities and interests of the Mediterranean states to implement in practice cooperatively agreed measures in the zones under their national jurisdiction).

### ***WAY FORWARD AND CONCEPT DEVELOPMENT***

In the discussions that took place in the previous sessions, a certain number of issues/gaps were identified. This last session is aimed at identifying the actions needed to tackle these issues and set concrete actions to undertake together.

The Panel consists of Professor Tullio Scovazzi, Carl-Gustaf Lundin and John Scanlon, with Professor José Juste Ruíz.

Looking at how to take this forward, John Scanlon, first raised two issues that were put forward by Tullio Scovazzi in the opening session (i) factors impeding and impairing governance in the Mediterranean and (ii) finding a way forward. Questions of *content* and *process*: Content is very much regional, Process though is rather through global programmes with the lead by the Centre for Mediterranean Co-operation.

Tullio Scovazzi pointed out that two problems need to be address as regards the legal condition of the Mediterranean waters, as they could prevent the strengthening of regional cooperation in various fields, namely:

a) confusion and lack of coordination between the unilateral measures adopted by coastal States beyond the 12-mile limit (fishing zones, ecological zones, exclusive economic zones, etc.);

b) settlement of pending maritime boundaries.

Perhaps a regional forum of discussion, based on what UNICPOLOS (United Nations Informal Open-Ended Consultative Process on Oceans and Law of the Sea) is doing on a world scale, could be an appropriate instrument to pave the way to sensible solutions

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Nilufer Oral highlighted the need to make efforts in harmonising unilateral actions namely the issue of flags of convenience in the Mediterranean and establishment of the zones beyond territorial sea.

Josette Beer Gabel said that the legal tools exist and that the problem and the gap here is in the control of implementation and in the lack of integration of relevant legal frameworks. There is a need to ensure effectiveness of existing binding legal instruments by establishing measures to control implementation. A working group could examine control and surveillance measures in other seas, to see which of these ideas could be applied in the Mediterranean. It was added that the issue of surveillance and monitoring compliance is a greater issue than an inventory

Alain Bonzon added that what impeded good governance in the Mediterranean was the lack of an integrated legal framework. Currently in the Mediterranean, we can see a profusion of multi competency and there is a lack of understanding of the role, mandate and activity of each. Efforts should focus on clarifying and integrating processes and networks to identify a common integrated plan of action.

Said Ihrai pointed that the participation of the EU was central and that the economic agreements developed between the EU and Mediterranean partners should have an environmental dimension ie aimed at promoting sustainable fisheries.

Habib Slim added some concerns about EEZ phobia. Many states should come together to figure out what they are willing to do. We should find the fit between the Barcelona system and the GFCM. Possibly IUCN's convening function has a role here. It is important not to compartmentalise fishing and other issues in the Med.

Representing the Barcelona organ, Chedly Rais said that although many international legal tools in the area exist, there is still not adequate *implementation*. He highlighted the need of *promoting training, capacity building* such as the ICEF and other activities are important. As such as a sub regional group, the MMLSG within the IUCN Commission has a definitive added value to bring. REMPEC experience shows that the failures in enforcement do not reflect a lack of political willingness so much as a lack of means, money, expertise. What should we do? Barcelona contains an express provision and fund to promote co-ordination between EU and other Mediterranean states.

Lilia Khodjet said that Legal experts do have a major role in implementation. With regard to marine issues, it is clear that the necessary tools exist (eg MARPOL). But the problem of implementation is difficult. There is a need to reflect these decisions in national legislation. Another problem is that of compliance, and determination of how to apply the legislation. The problem of implementation includes questions of sanctions.

One participant said that the legal instruments are "theory" – the problem is co-ordination among national focal points competence questions at national level is not the same as the assigned competence in the same issue in the international forum. The only body in the Mediterranean that can help with this is the IUCN office. What do the Mediterranean countries do? They regularly create 'declarations' – it seems important to do real, coordinated work at national levels.

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John Scanlon added that the work should not focus on more legal instruments, but national implementation and resulting harmonisation are needed. There is a great desire to address confusion and needs for implementation and harmonisation:

- Information accessible to lawyer and non-lawyer
  - o Providing information transparently about bilateral actions (Cyprus/Egypt, etc)
  - o Establishment of an appropriate regional forum
  - o Desire to provide training and the sharing of knowledge
- Role of IUCN through CMC as convenor and information exchange, etc.

Henning von Nordheim said that there is a need to have a clear idea of which human activity we want to control and how. There is a need to have a strategic approach when addressing the issue of implementation of instruments.

Going back to the need raised to have an inventory, a guide detailing relevant institutions in the Mediterranean, Jose Juste Ruiz put forward some more ideas.

(1) It is indeed necessary to make the information available to the States. It is also necessary to clarify the role of the Barcelona system in fisheries. It is necessary to go further in the cooperation between GFCM and the Barcelona System.

(2) It is necessary to make an inventory of control or monitoring measures in international legal instruments around the world to see if there are possible models for the Mediterranean (raised before)

(3) The training programmes (technical legal training). In particular, REMPEC has pointed out that means rather than will is the primary lack that causes lack of implementation and that efforts should more concentrate on improving capacity and training programmes.

Aref Fakhry supported the idea of the inventory as being important as well as investigating the possible means of enforcement already existing in other regions. Moreover, he said that there should be a better co-ordination between existing research and training centres in the various med countries and create a synergy of Mediterranean marine law centres.

Juan Antonio Camiñas highlighted that GFCM subcommittee of scientific commission has held meetings with RAC SPA relating to fisheries– however he pointed out that the participation of scientific experts is on a voluntary base and there is a lack of permanent system of cooperation. Issue was supported by Chedly Rais. He said that the co-operation between Barcelona and FAO should go beyond the mere statement of the need for this relationship. The relationship exists, has been better, and now needs to be built up.

Summing up the discussions, Elie Jarmache stated that the issues are the lack of implementation and harmonisation and proposed that one aim could be to examine these issues. He raised the idea that the debate should go beyond the regional system to the global assessment, trying to take out of the global programme and try to find benefits. Contribution of legal experts is only one element. Should we have different overlays, what are the economic costs for safeguarding biodiversity? Who/how to value it and preserve that value. He further put forward the essential need to have multi-dimensional approach. There us a need to move from a single-theme approach to a multidimensional approach. The difficulty is to know how to work with what exists. We have been studying fisheries for more than half a century. The rise of biodiversity issues is new –

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we don't know what this means. The genetic resource issues are new and have a major oceans component. This means we have other issues to address. The need to protect common regional interests, instead of always and only promoting national interests.

Jamie Skinner questioned the issue of how to improve effectiveness and control of compliance of binding instruments? Josette Beer Gabel said that to improve effectiveness, there is a need to address control/ surveillance mechanisms. What mechanisms exist (outside the marine environment sphere eg climate – such inventory has been done in the area of fisheries commissions) and how to use them. Such inventory of surveillance and control measures/ mechanisms at this level (beyond the marine environment level) would be a useful tool. The question of controlling implementation measures in the fisheries is particularly difficult because of the strong economical interests at stake. Efforts have to be made so that States stop considering fisheries as a monothematic problem (ie economic) and start implementing a plurithematic approach (taking into consideration biodiversity conservation).

Elie Jarmache added that more efforts should be made towards convincing States that when making their legitimate political decision, common interests are at stake. How to conciliate egoistic right to extend jurisdiction with permanent interconnection with neighbouring countries? He highlighted that there is a need to associate the Mediterranean issues and dimension in the debate at the global level.

Habib Slim suggested that from the debate it seems that the Mediterranean gives a feeling of fragmentation of legal regimes and above all lacks a global vision. The implementation situation is a key issue and it should be therefore suggested to focus on states parties' actions (leading to future work on surveillance and monitoring.) Josette Beer Gabel added that efforts should be directed in providing assistance to States to fulfil their legal obligations. Habib Slim further stated that IUCN could harness this information process that can give it a central role in working with the States. Multinational working group should also be multidisciplinary (with scientists, etc.) and this will help us to move forward.

This idea was supported by most participants of setting up a group to find solutions to improve implementation. There is a need to define what our aims are and what our role is – an important part of this is to be a conduit for decision-makers and decisions. Operation in collaborative multilateral fashion (“the essence of the Mediterranean and the regional seas”)

David VanderZwaag highlighted the need to look at the relationship between fisheries and the environment. He noted that a research priority might be to explore international (including FAO) experiences in trying to integrate fisheries and environmental considerations and in attempting to operationalize ecosystem-based management. Supporting the conceptual development of “principled oceans governance”, the new CEL Specialist Group strongly endorses regional efforts at the Mediterranean level to address management challenges beyond the territorial sea.

Carl-Gustaf Lundin then provided a picture of the international momentum to set some nice opportunities to achieve progress in the issue. He noted that the various instruments

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(Millennium Ecosystem assessment, the other assessment processes) IUCN is quite active in some of these. There are a number of meetings coming including:

- UNICPO (please approach us on this.)
- GA UNCLOS in early November will discuss measures to stop destruction of high seas habitats (moratorium or other measures for protection).
- The World Conservation Congress in November in Bangkok.

We have a study in process on seamount fishing. Several themes based on large marine ecosystem management, etc. (currently 18 or so LME management projects in process) In Geelong (Australia) at the end of the year – first international marine protected area meeting, to bring together large parts of the marine protected area community.

In this regard, as a first step before the WCC in Bangkok, which gives major directions to the IUCN, there will be a regional meeting (at the Med level) next June 2004 in Naples (Italy) where IUCN will discuss steps towards a better coordination between the SGOLG and MMLSG. As well, adoption of its work and officialisation of the structure of the MMLSG will be addressed.