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## FEASIBILITY STUDY FOR A REGIONAL LEGAL INSTRUMENT ON INTEGRATED COASTAL AREA MANAGEMENT

### 1. EXECUTIVE SUMMARY

#### Background for the Feasibility Study

1. The Mediterranean Action Plan is the first regional programme of UNEP, developed within the framework of the Convention on the protection of the Mediterranean Sea or Barcelona Convention. The Regional Activity Center for the Priority Actions Programme (PAP/RAC) in Split has been selected to undertake reflection and promotion of the concept of "integrated coastal area management". This has resulted in extensive work on guidelines, white papers, best practices, experimental programmes, seminars, workshops. These activities and documents have been useful to Mediterranean States in better understanding the concept and requirements of ICAM and have contributed, although still insufficiently, to control the development of coastal areas.

2. Coastal areas, as a shared vulnerable and threatened heritage, are an issue of national interest for all Mediterranean countries, having multiple international impacts, in terms of the land-based marine pollution and as regards the protection of biological diversity and coastal landscapes. Coastal areas are of particular interest as sites favoured by constantly greater mass tourism and impacted by significant increases in permanent populations. This is why sustainable development of coastal areas has now become a priority for all States Parties to the Barcelona Convention, and a priority topic for the Mediterranean Commission on Sustainable Development (MCSD).

3. The inclusion of the "marine environment" concept in the Convention on the Law of the Sea in 1982, establishing the interdependence between the sea and the coastal areas, and the international character granted to the issue of ICAM in Chapter 17 of the Rio Agenda 21 in 1992, the amendments to the Barcelona Convention and protocols in 1995, have extended the scope of application of the Convention and related protocols to include the coastal areas. The title of the Convention has been changed to: Convention on the protection of the marine and coastal environment, leading the States to "promote" integrated coastal area management. In view of these modifications, the 12<sup>th</sup> meeting of the Contracting Parties to the Barcelona Convention, held in Monaco on November. 14-17, 2001, approved a recommendation (II-C-4) to prepare a feasibility study "concerning a regional legal instrument on the sustainable management of coastal areas".

#### Justification for a regional legal instrument

4. The study demonstrates the need for a regional legal instrument, at both the technical and environmental levels, as well as from a legal standpoint, under the condition that the instrument in question should be a binding one, rather than a "soft" instrument, since it would be more appropriate than simple status quo.

#### *a) Environmental justification*

5. In view of the most recent diagnostics, it appears that the state of coastal areas in the Mediterranean is particularly alarming: erosion and desertification, water pollution (100 black spots identified in 2001), waste, decline of renewable resources, loss of biological diversity, disappearance of wetlands, destruction of landscapes. Causes have also been identified: tourism, increased populations, intensive agriculture, land pressures, absent or unapplied planning. New risks must be highlighted, such as: higher sea levels, floods, tornadoes, changes in water temperatures and saline content.

6. Despite partial and very local efforts in ICAM, under the leadership of MAP, of the Euro-Mediterranean partnership and of the EU, and despite numerous recommendations, guidelines, white papers and seminars on ICAM, coastal states remain powerless to face current evolutions. Regional cooperation is also limited by the lack of data, of relevant indicators, of regional strategic vision of the future of coasts, of means to convince States to comply with the objectives and principles laid out in “soft” documents, of monitoring procedures for the recommendations of the MCSD task force on ICAM.

7. This situation requires more than just awareness enhancement and information on ICAM. It requires the “promotion” of integrated management, based on foreign and international initiatives (often incomplete and devoid of legal framework), where the appropriate methodology has been developed. This stems from the Council of Europe and its model law in 1999, from the OECD and its recommendation in 1992, from the EU and its recommendation in 2002. The objective is the implementation of coastal zone management, which is environmentally sustainable, socially responsible and adapted to cultural realities. Any strategy must include the marine and land components of the coasts, based on a global rather than a sectorial vision, supported by coordination mechanisms for institutions and decisions. This implies governance based on the information and involvement of all stakeholders, on impact assessment studies of plans and works impacting the marine environment and the coastal areas, regular monitoring of progress, analysis of successes and failures, and close cooperation between local authorities and the State, demonstrating the common determination of Mediterranean States. The challenge involves a new form of management applied to complex and vulnerable territories. Can a regional legal instrument contribute new elements and thus become a value-added component?

#### ***b) Legal justification***

8. All reports and assessments on ICAM initiatives unanimously agree on the significant absence of legal framework in this field. While legislation covering coastal areas exists in many States, only a few have the legal instruments adapted to integrated management at the territorial (breaking the barriers between land and sea) and institutional levels, as well as from the standpoint of global strategy and programme development and decision-making. Community law, which applies to marine and land coastal areas, is itself dispersed in different sectors, while the 6<sup>th</sup> action programme encourages ICAM, without proposing any new or specific legal instruments. This is why the European Parliament and Council made a recommendation in May 2002, to stimulate the implementation of an ICAM strategy. A regional legal instrument for the Mediterranean would allow the legal formalisation of the good intentions expressed by stakeholders and would constitute a decisive step towards the protection of the globally accepted interdependence of marine and coastal ecosystems. It is to be noted that the European Community, Party to the Barcelona Convention, has accepted the 1995 amendments to the Convention in its decision of October 22, 1999, thus acknowledging the legal basis for a protocol and the resolve in favour of the inclusion of coastal areas to the field of application of the Barcelona Convention.

9. Coastal areas have regularly been taken into account in the international law of the sea, in particular since Chapter 17 of the Rio Agenda 21 (1992) has emphasised the positive contribution of such territorial integration to sustainable development.

10. Finally and essentially, the Convention itself serves as legal basis for the formulation of a regional legal instrument on coastal areas. The Convention amended in 1995, bears on the protection of the marine environment and the coastal areas, considered therein as undissociable, and the States must comply with the general obligations stated under article 4, which include “the obligation to promote ICAM”. Paragraph 5 of article 4 establishes the legal basis for the adoption of protocols, ensuring the application of the Convention. Therefore, a protocol on coastal areas would in fact only be, from a legal standpoint, the manifestation of

compliance with the Convention. and more specifically, the legal expression of its implementation.

**c) Choosing a regional legal instrument over a new Recommendation**

11. Since the adoption of Phase II of MAP in 1995, coastal areas are at the heart of the policies put forward to the Contracting Parties of the Barcelona Convention. These policies are translated into many guidelines, recommendations, action plans, and white papers, which are only in fact "soft" laws, not binding for the States. Such instruments are characterised by their simplicity and flexibility. They can be adopted and modified without specific procedures. But they remain optional, and their application is voluntary and unbinding for States. They often precede the conclusion of an international agreement.

12. It appears obvious that no real progress would be achieved in the field with new ICAM recommendations or guidelines alone, since these would only be repetitions of what already exists, close to stagnation or regression, highlighting once again the lack of effectiveness and implementation of adopted documents. Only specialists are aware of these documents and everything has already been written on these issues. Time has now come to take one further step, ensuring more effective application in the field. To this end, the only truly viable legal instrument is the adoption of a legally binding regional legal instrument. This involves a specific and more official procedure, covered in the Convention. e.g. a diplomatic conference convened at the request of 2/3 of the Contracting Parties and entry into force after the remittal of at least 6 instruments of ratification, acceptance or approval.

13. The adoption of a new regional legal instrument would confirm the concrete, scaleable scope of the Barcelona system, that has always been a precursor in its field. A regional legal instrument for coastal areas would be an innovation in international law, in view of the fact that there have been unsuccessful attempts, but no *ipso facto* precedent of regional initiatives. The implementation of such a completely novel legal instrument for international cooperation would carry obvious political weight for the Mediterranean and could serve as a model for other regional seas.

14. After years of research and case studies, this would be synonymous with the institutionalisation of mechanisms to ensure implementation by the Contracting Parties, and would stimulate the States and local authorities to better apply existing rules. Once the ICAM policy becomes official and is published, it will then become real for civil society, scientific communities and economic players.

15. Finally, the adoption of a regional legal instrument must not necessarily be considered as a constraining framework. The content of international treaties can be more or less specific and flexible. In States where advanced coastal area legislation exists, there will be no need of further measures; the other States are invited to include in their legislation a limited number of principles, objectives and instruments for integrated management. This flexibility is particularly required for the Mediterranean, in view of the differences in development between States and expertise attributed to local authorities. This is why the feasibility study describes three options, as concerns the content of the future regional legal instrument.

**d) The drawbacks of status quo**

16. The choice of a regional legal instrument rather than that of a new recommendation would also demonstrate the political resolve to establish means to combat coastal deterioration. This choice presupposes doing away with the worst scenario, i.e. lack of action. The decision to do nothing for coastal management would be disastrous in the short and long term. It is utopia to wait for States to voluntarily adopt guidelines for ICAM in their national legislation, although this solution is more comfortable in the short term. It is well known that

rapid deterioration of coastal areas is an on-going process, despite pilot initiatives and projects which have always remained quite local. Protected areas are not under threat, but the unprotected areas (sand dunes, estuaries, wetlands, deltas, coastal landscapes) are submitted to the most dire pressures.

17. If new collective and global measures are not taken, to set shared protection objectives for all States, deterioration will continue, and will impact the long term economic and social development of the region as a whole. Without clear regional strategies, uncontrolled competition will lead to increased pressures on some areas, encouraged by the inertia of authorities and generalised *laissez-faire*. Chaotic, uncontrolled development would trigger irreversible situations in the Mediterranean environment. In the long term, the cost of the absence of mandatory rules and control would be much higher, making all talk of sustainable development useless.

### **The three options of a future protocol**

18. Considering the above, it is obvious that a regulatory framework is necessary. This is what is called, in generic terms, a protocol. The protocol appears as the best-suited legal instrument, both in form and substance. In substance, it would be a new step in the continuous evolution of the Barcelona system. "Soft" law instruments (recommendations, white papers,...) have already lost their illustrative and pedagogical impact and their modification would have no concrete bearing. In the form, the Barcelona Convention is by nature an evolving and operational system. ICAM is one of the general obligations for the Parties to the amended Convention, and the development of a protocol is the normal legal route to ensuring the application of the Convention.

19. There is no single model for a protocol, particularly in the highly complex field of coastal areas. Thus, three options are proposed in the feasibility study:

- A. a protocol with general minimal content or framework protocol;
- B. a more complete and detailed protocol, to better cover the issues;
- C. an intermediate protocol.

These options are not mutually exclusive and a combination of all three can be examined. The drawbacks and advantages of these options are covered below.

#### **A Protocol with general minimal content or framework protocol**

20. This protocol should examine the targeted objectives, as well as the general principles of integrated management. It could be completed at a later date or supported by annexes, for further specification. It will give more extensive definitions of coastal areas than those found in the amended Convention. or protocols, bearing in mind that art. 13 of the amended Convention stipulates that any protocol can extend the targeted geographical scope of application. The instruments for integrated management will be explained in detail, giving States the necessary breadth for adaptation to their requirements (inter-institutional coordination, global planning, information and involvement of all stakeholders). The protocol will also cover some specific fields of action, such as management of natural resources, erosion, risks. It will develop the principle of *ad hoc* trans-border cooperation and monitoring and assessment mechanisms.

21. The extreme flexibility of such a protocol makes it very attractive. It will serve to pave the way for ICAM, without adding more constraints, and without requiring extensive modification of national legislation. The added value of the protocol is self-evident, since it officially promotes integrated management within a binding instrument. The cost of implementation is minimal and States retain their freedom to adapt it at their own pace. More specific elements could be formulated in optional or less stringent terms by using

expressions found in the framework Convention, such as: as far as possible, or within a reasonable timeframe.

22. However, there is a risk that the added value of this option may only be limited to a formal level. If the content is too vague and flexible, and if it is limited to principles for fear of the hostile reaction of some States, it may be considered as a recommendation, disguised as a protocol, and the substance is then closer to that of a "soft" instrument. If the protocol does not take into account operational instruments, it will be insufficient to trigger the required stimulation. The cost, complexity and solemn character of its adoption would then be out of proportion with respect to its real added value in improving the current status.

## **B. A more complete and detailed protocol**

23. This option is not geared towards replacing the existing national legislation. International cooperation, in this case, is geared towards the materialisation of existing international directives, by clearly determining the targeted objectives, the applicable principles, and the monitoring mechanisms to develop. The definition of coastal areas will be more explicit and include minimal geographical scopes and their potential extensions by the States, on the basis of criteria listed in annex. Although the delimitation of coastal areas is the responsibility of each State, the Parties will be required to proceed with it and inform the Organisation. The delimitation will be publicised to enhance awareness of the public and stakeholders as to the specific features of the territory involved. Inventories will be mandatory and renewed every five years, to globally cover the coastal areas and assess evolutions on the basis of specific indicators. These inventories will be the tools applied to national and regional strategies.

24. The Parties will be expected to commit to cooperating in the development of regional strategies, in setting sustainable development targets for marine and land coastal areas. They will also be required to approve sustainable tourism development strategies. The implementation of these strategies will be facilitated by action plans and support programmes, based on the mechanisms highlighted in art. 15 of the amended Protocol relative to the protection of the Mediterranean sea against pollution from land-based sources and activities. The directives of regional strategies will be materialised through national global plans for sea and land use.

25. The protocol should lead the States to implementing national structures favourable to integrated management, through intersectorial institutional coordination and through cooperation between marine and land authorities. The States will be required to seek the best level of coordination between State institutions and territorial collectivities. The impact assessment study will be applied to coastal area plans and to the activities impacting coastal areas. An *ad hoc* scientific mechanism, shared by the Parties, will ensure the relevance of assessments and be useful to the authors of the impact studies. As regards trans-border impact studies, cooperation between States will be based on specific mechanisms. Finally, specific provisions shall be used to determine free access to shores, protection against erosion, use of natural resources, protection of wetlands and dunes, protection and management of coastal landscapes, prevention of natural risks and pollution, protection of the subaquatic cultural coastal heritage. Other provisions will stipulate the information and participation conditions required for the implementation of new governance, as well as the control, monitoring and assessment mechanisms, to ensure proper compliance with the obligations included in the protocol.

26. In drafting the protocol, special attention must be awarded to avoiding replication with the provisions of other protocols. However, risks are limited in so far as the terms used in existing provisions are general and will benefit from the more specific and extensive terms of the coastal area protocol.

27. States may initially consider this protocol as too ambitious and detailed, which may be detrimental to its implementation. Applied to a part of the territory only, such a treaty would be exceptional. This is not the case however, as similar treaties already exist, for specifically delimited and vulnerable areas, such as the Alpine Convention of 1991, where it must be noted that 4 Parties out of 8 are also Parties to the Barcelona Convention. The cost of the implementation of the coastal area protocol will be far from negligible, but it must be compared with the social and environmental cost of the absence of protocol. Its application will entail undeniable national legislative and institutional reforms, but these will be variable according to the status of integrated management in each country.

28. It seems, however, that a detailed protocol is the ideal solution. It optimises and gives legal scope to the internationally assessed methods for ICAM, by satisfying the repeated demands for more stringent legal frameworks. The complexity of coastal areas requires equally complex standards. This is very probably the prerequisite for effectiveness, under the condition that States are convinced of the urgent need to act in favour of sustainable coastal area development. The economic advantage of such a protocol is quite certain, in so far as the development in the area involved could then be better controlled and its existence preserved, particularly as concerns tourism and marine activities. The domino effect of this protocol would induce all States to modify their legislation and local practices. This instrument would allow more consistent policies, now that the negative impact of fragmented actions has been highlighted. The protocol could then become the logical extension of the past efforts of the Barcelona system in ensuring real sustainable development.

### **C. The intermediate protocol**

29. This option can, by definition, be considered as a combination of options A and B, described above. The difference is in the more or less detailed formulation applied to its content. Without going into details at this stage, it can be considered that this option covers the provisions of the framework protocol, considered as minimal provisions, while it does not require the inclusion of all the provisions stated in the detailed protocol. Some degree of flexibility will be included so as to obtain acceptance of a common protocol by the largest number of States, without jeopardising the operational content of the text. The general justifications described also apply to this option.

30. Presented as a compromise, this option could be considered as the most practical solution. It might seem contradictory to accept the principle of a legally binding protocol, requiring that the States take more seriously into account the threats on the coastal areas, while refusing to fully implement the envisaged measures. Of course, there are risks in choosing this option, essentially due to the fact that this intermediate solution is a reduced version of the detailed protocol, considered heretofore as the most adequate. But, keeping in mind the socio-economic and political situation in the region, the choice of the intermediate solution could weaken the impact of the protocol, by limiting the effectiveness of the integrated management process and its dynamics. If the mechanism which is considered today as the most appropriate solution is covered at length, the protocol may be depleted of its potential, and this may have a negative effect on the synergies with other Conventions and protocols.

31. As a conclusion to this summary:

- A protocol on integrated and sustainable coastal area management in the Mediterranean is now a necessity and the time has come to apply it.
- It should be as detailed as possible to establish the legal framework for the methodological requirements of integrated management for the complex sea-land area.
- This protocol is a legal requirement to promote complete and efficient implementation of the Barcelona Convention and its protocols.

- This protocol is a novelty and must be carefully drafted to take into account existing Conventions and protocols, assessments of the different initiatives and national legislation.
- The content of the protocol may be more or less flexible, while remaining binding.
- Nonetheless, the content must be substantial enough to allow concrete application and to stimulate the Parties and all social and economic stakeholders.

In view of the above, the C option, i.e., the intermediate protocol, seems to be the most feasible at this stage.

## 2. INTRODUCTION

The 12<sup>th</sup> meeting of the Contracting Parties to the Barcelona Convention and its Protocols, held in Monaco from November 14 to 17, 2001, approved recommendation II-C-4, inviting the Parties to “work on a feasibility study of a regional legal instrument on sustainable coastal area management”. This initiative is a follow-up to a large number of initiatives, activities and recommendations, underscoring the need to take into account the vulnerability of coastal areas in the sustainable development policies of the Mediterranean, by taking note of the multiple and complex issues encountered by the Parties to the Barcelona Convention and its protocols in the field of coastal area management.

This initiative also legally prepares the implementation of the commitment of the Contracting Parties of the Barcelona Convention, as amended on June 10, 1995. At the time, the Parties stressed the significance of granting special status to coastal areas in their reports on the protection of the Mediterranean against pollution. The title of the Convention. was significantly modified to read: “Convention on the protection of the marine environment and coastal areas”, and furthermore, art. 4-3-e of the amended Convention states new specific obligations for the Parties to “commit to promoting ICAM, by taking into account the protection of areas of ecological and landscape interest as well as the rational use of natural resources”.

Differences in terminology can be immediately observed between the text of the amended Convention and that of the recommendation adopted by the Parties in Monaco. These differences are not in themselves an issue, they are simply the expression of the various wordings used to describe new ideas. The mandate selected in Monaco mentions “sustainable” management rather than “integrated” management, but it is well-known that integrated management must necessarily be sustainable, and management can only be sustainable if it is integrated. Both concepts are necessarily linked. For purposes of clarity, the text of this report will refer to the expression used in the Convention itself, i.e.: integrated management.

As regards the area covered, the Convention. alludes to “coastal areas”, whereas the Monaco recommendation uses the terms “coastal zones”. Here again, this is a minor difference which can probably be explained by the translation nuances between French and English. The term “coastal zone” will be used, based on the undifferentiated use of the two expressions in the conventional Barcelona system<sup>1</sup> and in view of the global use of “coastal” in the English text<sup>2</sup>. The usual terminology for the Council of Europe and for the European Community is “coastal zone”. MAP and PAP/RAC also use “ICAM”, a wording which will be applied in this case<sup>3</sup>.

### 2.1. General presentation of coastal zone management in the Mediterranean

Coastal areas, throughout the Mediterranean, face severe pressures and problems which threaten coastal resources and undermine the viability of economic activities. The significance of the coastal areas is widely recognized as well as the need to act in the immediate future since pressures on this fragile environment are becoming more and more intense. Population growth in the south shores, changing agricultural production systems

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<sup>1</sup> “littoral” in the title and in art. 1-2 and 4-3-e of the amended convention; “coastal zone” in articles 2-1, 5-1 and 9-1 of the protocol on specially protected areas

<sup>2</sup> with slight differences however as to the qualification of the coastal space under consideration which, in English, is “region” in the title of the amended convention, “areas” in art. 1-2, and becomes “zones” in art. 4-3-e

<sup>3</sup> or the French abbreviation GIZC, which corresponds to the English “integrated coastal area management” (ICAM) or to “integrated coastal zone management” (ICZM). ICAM will be used in this study.

towards more intensive and resource demanding uses in the north but also lately in the south, industrial development and expanding transport infrastructure but mostly expanding tourism lead to increasing concentration of population and economic activities in coastal areas. As a consequence, Mediterranean coastal areas experience:

- Coastal urbanization, mainly as a result of population concentration, uncontrolled tourism development and growth of recreational activities (secondary houses). This is evident in most of the countries of south Mediterranean but also of the north, like Greece and Italy. The uncontrolled and rapid land development coupled with land speculation has detrimental effects on the coastal environment and landscape. It has encouraged the abandonment and loss of agricultural land and therefore of traditional activities, while it contributed to increased pressures on the ecosystem leading to habitat loss. Reduction of scarce coastal resources like water has been another impact of this process. Soil erosion and desertification is already a rather acute problem for the majority of the Mediterranean countries. Furthermore the destruction of natural shoreline defenses and the reduction of river sediment supply relate to rapid and extended urban development.
- Pollution is also a critical problem. Lack of appropriate infrastructure has resulted to severe localized pollution problems. According to the recently published White Paper (PAP/RAC, 2001a) "around 100 priority hot spots have been identified in 19 Mediterranean countries". Industry and urban centers are the main sources of pollution. Taking into account the very slow seawater renewal time, it is understood that the uncontrolled disposal of solid waste will continue to impact the area in the very long future.
- Decrease of renewable and non-renewable resources and in certain cases loss of non-renewable resources, coupled with alteration of key ecological processes represent a critical problem, if not a threat for the sustainable development of the area. Fish catches are decreasing due to overexploitation. Water resources are limited, often overexploited so as to satisfy increased demands in water consumption for agriculture or tourism. Overexploitation and consequent salinization of underground water aquifers is a common pattern throughout the Mediterranean basin, particularly in the south and in most, if not all islands. This has also resulted in the dramatic decrease of water inputs into the Mediterranean Sea and consequently in the dramatic reduction of sediment load. Deforestation has also played a significant role in the modification of the hydrological cycle which constitutes a major problem in the region
- Increasing environmental and other risks due to climate change and sea level rise and consequently increased occurrence of droughts, floods, storms, changes in soil erosion and desertification process, coastal erosion, changes in seawater temperature and salinity and biological diversity reduction.
- Increasing threats to cultural identity, heritage and diversity of the area due to external (e.g. globalization) and internal factors (e.g rapid urbanization of coastal areas with consequent impacts on traditional socio-economic structures). Natural and man-made landscapes have deteriorated significantly in several places.

The above issues need to be considered in the broader socio-economic and institutional context of the area.

### **2.1.1. National level**

Control of coastal development is a major issue in the Mediterranean basin, since in most of the countries a high percentage of population lives on the coast and many economical

activities are located there. In some countries there is specific legislation to control coastal development. Several actions can be evidenced such as Coastal Zone Management Plans, special Agencies for the protection and management of the coastal zone, surveillance and monitoring systems, tourism development controls -including economic instruments for the promotion of alternative forms of tourism.

However, the burden for integrated coastal area management, from an institutional perspective, worldwide, falls at the national level in spite of the fact that many problems might be regional or local in character. Responses vary on the basis of the particularities of the development stage, institutional context and environment/development issues..It is evident that there are more than one ways to ICAM. There are few examples of comprehensive coastal management policies at the national level in the Mediterranean and even fewer applications. Yet, problems in coastal areas still persist. National coastal policies in Mediterranean countries are typically more prescriptive than facilitative. They rely on traditional roles of government vs. governance. Process rather than outcome-oriented approaches and participatory management could offer a way forward.

In our times of globalisation, national administrative systems, in spite of their fundamental regulatory role, are more and more seeking partners at sub-national or local levels (or even Regional) that offer specific competitive advantages. At local level a variety of initiatives exist (CAMPs, etc) with varying performances, successes and failures. It is necessary that Mediterranean communities develop and function as strong, co-operative and inventive partners in the decision-making processes of coastal management. Although many problems of coastal areas are highly localized there is strong ground to support shared action.

Shared action requires a common framework so it is necessary to develop a vision of the future for the Region

### **2.1.2. International level**

Among other world Regions, the Mediterranean is probably the most advanced in terms of developing cooperation in ICAM. Collaboration is established on the strong basis of the Mediterranean Action Plan and recently in the context of other fora, especially the Euro-Mediterranean Partnership. So the regional level is very important in the Mediterranean and is likely to remain so in the future.

During the past years, ICAM has been promoted in a systematic way through various national and international initiatives in the context of the Mediterranean Action Plan and the Mediterranean Commission on Sustainable Development, the Mediterranean Environmental Technical Assistance Program, the European Union and the Euro-Mediterranean Partnership. CAMP projects and EU Demonstration projects on ICZM are some of the attempts to implement such initiatives.

These concerns have led to the preparation of "Guidelines for Integrated Coastal Area Management in the Mediterranean" (UNEP, 1997), "Formulation and implementation of CAMP projects: Operational manual" (UNEP/MAP, 1999), and "Assessment of Integrated Coastal Area Management Initiatives in the Mediterranean: Experiences from METAP and PAP" (MAP/METAP, 1998). Similar initiatives have been also undertaken in the European context as presented in "Towards an European Strategy for ICZM" and "Lessons from the European Community Demonstration Program in ICZM".

### **2.1.3. Gaps to more effective ICAM**

Integrated Coastal Area Management is a dynamic and continuous process, which facilitates dialogue among interested parties and supports co-operation, which is the basis for the co-ordination of actions. Co-operation among regional partners on ICAM has been established.

In addition there are several activities promoting ICAM but this does not necessarily mean that they are coordinated. Overall although the Mediterranean cooperation at a Regional level is advanced in many respects as compared to other world regions in terms of breadth and longevity there are still hindrances to more effective ICAM. These gaps can be identified in all different steps of the ICAM process, starting from data and information management, planning, management, decision-making, monitoring, evaluation and implementation. In particular:

- In spite of an early concern with coastal areas in the Mediterranean and a qualitative approach in outlining such dynamics, there is no accurate basis for estimating the extent of the problems as a basis for regional level policy making.
- ICAM related indicators are not developed and there is no mechanism or established process to utilize them in a policy-making process taking a long-term perspective.
- A strategic view of the Mediterranean is still missing. ICAM still lags behind not in terms of general goals and intentions but in terms of effective interventions given the importance of coastal areas in the Mediterranean and the complexity of their problems.
- In spite of advanced state of cooperation in defining goals and principles there are no mechanisms of pursuing national administrations to adopt them except in the form of very formal and administratively cumbersome procedures (as is the case with Protocols).
- Within the regional level, there are no mechanisms to ensure follow-up by Contracting Parties of the recommendations on integrated coastal area management.
- In spite of regional level relative consensus there is little evidence of corresponding concerns at national level.

## **2.2. Experience learnt from other regions**

ICAM has become a major subject of interest in land development and environmental protection policies. The European Coastal Area Charter, adopted in Crete on October 8, 1981 states: "the existence of political borders separating the elements of a natural coastal area is in itself justification for the coordination of development plans". It adds: "cooperation should be mandatory in the case of the impact assessment studies on large implantations in border regions"<sup>4</sup>. There is obviously no distinction between marine and coastal environments in the case of marine and land pollution. This geographical and ecological aspect is the basis for national policies and international initiatives. The trans-border character of coastal areas is self-evident to the stakeholders and explains the need for a legal framework on the international scale.

There are several initiatives at the strictly national level as well as the international level. These are, for the most part, incomplete and unsatisfactory, in view of the fact that the related legal framework is usually insufficient, which serves to further reinforce the need for the Mediterranean region to establish an innovative and adapted legal scheme.

At national level, Sorensen, in 1990, had identified over 140 examples of ICAM projects (Sorensen, 1993). In the Mediterranean, PAP/RAC has identified over 70 initiatives. We present hereafter an example of a project undertaken in France, and the lessons learnt by the Council of Europe in its model national law. In France, since 1983, legislation involves a

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<sup>4</sup> European Coastal Area Charter, as adopted by the plenary Conference on peripheral marine regions of the EEC, with the representatives of the institutions of the European Community and of the Council of Europe and approved by resolution of the European Parliament, on June 18, 1982.

territorial planning document, bearing on the marine area and adjacent land areas<sup>5</sup>, and optimisation of the sea use. The first of these integrated coastal zone planning documents refers to the Mediterranean. It was approved by decree on April 20, 1995 for the area of the Pond of Thau and its marine area. It covers the salty pond of Thau, the port and city of Sete, nine neighboring communes and a marine area spreading to 3,000 nautic miles at sea. Based on the determination of the purpose of the different areas in question and on the examination of the compatibility of usage between the economic and social stakeholders in the region, the scheme, legally applied in municipalities, makes recommendations and establishes the framework for some of the local activities. This has entailed lengthy negotiations and consultation meetings with the public and private stakeholders involved. It is an interesting example of territorial integration between sea, rivers and land, which makes it possible to ignore the internal legal and administrative boundary between the public marine domain of the State and the private territory of the local collectivities. However, this is limited in time. Furthermore, a recent official report has alerted the public authorities to the fact that: "coastal areas are a threatened national heritage, and if we are not careful, non renewable assets and resources will be wasted. Indeed, the brutality and amplitude of social changes along our coasts are triggering many conflicts of use. They are also jeopardising the social, cultural and economic identity of the coastal areas. They highlight the democratic deficit in protecting this environment..."<sup>6</sup>. This is a lucid observation which applies to almost all Mediterranean States.

Drawing on the lessons learnt from the difficulties national authorities encountered in ICAM, the Council of Europe in 1999, developed a model law on sustainable management of coastal areas and a European code of conduct applicable to coastal areas (Council of Europe, 1999). This "soft" instrument should be a source of inspiration for national legislation. It specifies the legal content of the ICAM concept, by emphasising the legal content of integration at territorial and institutional levels, as well as at the level of planning and decision-making authority. The document covers a whole range of fundamental issues: knowledge and delimitation of coastal areas, financial incentives and instruments, land ownership, free access to shores, leisure activities, protection of vulnerable ecosystems and natural space, fight against erosion and pollution, public information and involvement. Art. 17 and title 17 as well as art. 80 to 83 are dedicated to international cooperation on trans-border coastal areas. Trans-border coastal area management plans are recommended, through the association of populations, in compliance with the principle of equal access and non-discrimination. The need for international actions in this field has been requested for many years by the Council of Europe and the OECD.

In its Resolution of October 26, 1973 (73-29) relative to the protection of coastal areas, the Committee of Ministers of the Council of Europe considered the need for " international concerted action, at universal and regional scale, in view of the solidarity of the marine environment" and in point 16, invited the States to:

*"closely cooperate when they share adjacent coastal areas so as to:*

- *harmonise regulations and coordinate actions in the protection of sites, flora, fauna and pollution prevention*
- *to undertake wherever appropriate, common actions such as the management of international parks or sharing means of surveillance and pollution prevention".*

The OECD, in its Recommendation C(92)114 of July 23, 1992 on ICAM (OECD,1992)

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<sup>5</sup> article 57 of the law of January 7, 1983, relative to the sharing of expertise between communes, departments, the regions and the State, to establish "sea optimisation schemes" See J.M. Lannuzel, "sea optimisation as an experience in integrated coastal policy, L'Harmattan, Paris 1997, p.81

<sup>6</sup> Report of the National Council on Land Planning and Development by M. Alduy and Ms. Bersani, Paris, July 9, 2003 (See Le Monde, July 10, 2003, p.11)

expressed its wish that:

*“international cooperation on issues of shared or common coastal area management must be reinforced by the existing international coastal area management organisations or by organisations with extended authority, by developing and ensuring the application of an integrated action plan, compatible with other initiatives in this field”.*

On the international scale, we could mention the case of the sea of Wadden and the demonstration programme of the EU.

The Sea of Wadden is a marine and coastal area, extending from the Netherlands, Germany and Denmark. These three States have established cooperation since 1978 with a tripartite conference, a shared secretariat and working groups<sup>7</sup>. Operating on the basis of relatively informal intergovernmental agreements, they adopted in 1997, an integrated management plan for the Sea of Wadden, setting common objectives. But this is only a political agreement. Priority actions entail: landscapes and culture, water and sediments, wetlands, beaches and dunes, estuaries, marine areas (up to 3 nautic miles from base lines), rural zones, birds, marine mammals. Since 1999, there exists an international draft convention to transform this plan into sustainable and legally guaranteed action; this would be the first regional convention on ICAM.

On the basis of a resolution of the Council of the E.U. dated May 6, 1994 to develop a community strategy for ICAM, the European Commission launched in 1996, a wide-ranging demonstration programme. This programme was based on 35 local and regional projects, which were mostly national, but sometimes trans-border, and therefore international. Amongst these, 12 programmes involved the Mediterranean. The following practical observations were drawn from these case studies:

- insufficient and inadequate information on the state of coastal areas and on the real impact of human activities on the ecology of coastal areas
- insufficient coordination between the authorities and administrations involved
- insufficient participation and consultation of stakeholders

The European Community was able to develop a European strategy for the future, on the basis of this experience, which gave rise to a Recommendation by the European Parliament and Council, dated May 30, 2002 (European Parliament, 2002)<sup>8</sup>. Concerted European action plans seem necessary if ICAM is to be properly implemented (point 14). This is now urgent in view of the increasing pressures on coastal resources, the growth of coastal populations and the development of infrastructures close to the coastal areas (point 15). The targeted objective covers sustainable development goals:

*“It is essential to implement ICAM in an environmentally sustainable, economically fair, socially responsible and culturally adapted format, to preserve the integrity of this important resource, while taking into account traditional local activities and usage, which do not represent a threat to the sensitive natural areas and to the state of conservation of the wild flora and fauna species of the coastal areas”.*

The strategy is based on the approach to ecosystems and sustainable management of the natural resources of marine and land components in coastal areas, while improving the coordination between measures taken to monitor the sea-land interaction, which is the key to integrated territorial management. According to the Recommendation, the States must

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<sup>7</sup> web site: <http://www.irwc.ribeamt.dk>

<sup>8</sup> Recommendation relative to the implementation of an ICAM strategy in Europe, May 20, 2002, JOCE, L148, June 6, 2002

proceed with a full national inventory prior to developing one or several national strategies, according to the principles listed in Chapter II.

Chapter V of the Recommendation is dedicated to cooperation and usefully contributes to preparing the Draft Protocol to the Barcelona Convention. It expressly invites Member States to implement the existing conventions with non-Member States located along the coasts of the same regional sea, to derive the best coordination mechanisms for trans-border measures. This constitutes a specific reference to the Mediterranean Sea, as a regional sea covered by an international convention, where the European Community and 4 of its Member States are Parties. The existing conventions, including the Barcelona Convention, are covered in paragraph 2 of Chapter V. They are considered as the best means to establish cooperation with the Community institutions and with the interest groups, to develop a common approach on ICAM.

The aim of this Community Recommendation was not standardisation since, as we will see in Section 3 hereafter, community law covers the coastal areas through several community directives on both the land and marine environment. The purpose of this Recommendation is therefore to suggest methodological orientations to assist States in the development of their national strategies. This is why the decision made by Parties to the Barcelona Convention, which include the European Community itself, to develop a regional legal instrument on coastal areas, appears to be both the implementation of the obligations stipulated in the Barcelona Convention for the coastal areas, and the implementation of Chapter V of the Recommendation dated May 30, 2002, on regional seas. The future Protocol will necessarily have to be based on the principles of the above Recommendation.

### **3. JUSTIFICATION FOR A REGIONAL LEGAL INSTRUMENT**

There exists ample justification for a regional legal instrument dedicated to ICAM, examined hereunder:

- I. Technical justification as regards the state of the coastal environment and its ongoing deterioration despite MAP.
- II. The success of activity reports, recommendations and white papers represents the expression of significant requirements on the part of the States, but these instruments are no longer sufficient.
- III. Legal justification as regards national legislation
- IV. Legal justification as regards community laws
- V. Legal justification as regards international legislation
- VI. Legal justification as regards the application of the Barcelona Convention and Protocols

#### **3.1. Technical justification as regards the state of the coastal environment and its ongoing deterioration despite MAP**

##### **3.1.1. Existing conditions and pressures on the Mediterranean coastal areas**

<b>Features</b>	<b>Unit</b>	<b>Data</b>
Coastline total length	thousand km	45.0
Coastline island length	thousand km	17.7
MEDITERRAEAN coastal region, surface	million km <sup>2</sup> /million sq m	1.5/0, 579
Urbanisation	% of the coastline	65
Coastal population, total Mediterranean, 1980	million inhabitants	84.5
Coastal population, total Mediterranean, 2000	million inhabitants	123.7
Coastal population, total Mediterranean, 1980/2000 increase	%	46

Population pressure, 2000 (residents and tourists)	thousands per km of coastline	5,700 to 6,600
Population pressure, 2025 (residents and tourists)	thousands per coastline km	11,000 to 12,200
Power plants: existing/planned/total – Mediterranean	no.	112/43/155
Power plants: existing/planned/total – north	no.	60/4/64
Power plants: existing/planned/total – south	no.	52/39/91

Over centuries of civilization, countries have developed intensive and complex patterns of exchange and development, concentrating their populations and their economic activities in coastal towns along the Mediterranean coastlines.

The development of human activities on the Mediterranean coasts generates long-standing waste, causing pollution. It is expected that the substances discharged at sea over the last decades in specific areas, will pollute both the surface and deeper waters over a long period of time. Pollution can often be highly concentrated in some areas. Approximately 101 priority hot spots have been identified by 19 Mediterranean countries. Although there are still many polluted sites in the Mediterranean, the hot spots are the most heavily polluted by domestic or industrial contaminants.

Pollution from domestic or industrial contaminants has a negative impact on marine areas and is responsible for the deterioration of marine ecosystems, the loss of biological diversity and the depletion of living marine resources. Disappearance and deterioration of wetlands (from 3 million hectares in the Roman era down to 200,000 hectares by 1994, i.e. a shrinking of 93%) are considered as serious threats to many water bird species, particularly those found along the Mediterranean coastline.

Today, the long-term natural and human-induced changes in the hydrological cycle are a region-wide issue for the Mediterranean, seriously jeopardising the environment-development balance, especially as regards the importance of water resources in many countries. The issues are the degraded water quality, due to increased saline content and depletion of underground water resources; the reduction in river sediment supply, contributing to coastal erosion; the destruction of natural shoreline defences -such as sand dunes and coastal ridges- by coastal urban development and the overpumping of groundwater which may cause enhanced subsidence due to the lowering of piezometric surfaces of confined aquifers and compaction. In addition, associated risks of drought and/or flooding cause damages to coastal development.

Coastal urbanisation is representing the bulk of population growth and hence economic activity in the Mediterranean region with important consequences. The general result is spatial imbalance in development between strong coastal areas, heavily populated and characterised by high intensity of land use and consumption and abandonment of weaker inland areas with lower density and a less dynamic economy. A spatial "re-equilibrium" phase of the Mediterranean can be probably evidenced in an embryonic stage around the basin leading to spread of development from coastal urban centres to hinterland rural areas. Emerging new economic activities such as aquaculture are responsible for the deterioration of the coastal environment. In most cases these activities are in conflict with existing or future activities, as for example the tourism and recreation. Coastal urbanization is also related with intensive use of land in coastal areas leading to land-use conflicts but also increasing artificialization of the Mediterranean coastline.

Most of the above issues are interrelated, providing for a rather complex grid of relationships. However one may identify coastal urbanization as a rather critical process, responsible to a great extent for the deterioration of the coastal environment both of the terrestrial and the

marine part of the coastal areas and for the increased conflicts often observed. Urbanization is however a rather complex socio-economic process requiring early action through planning and careful land-use management.

### **3.1.2. Anticipated changes**

"Futures for the Mediterranean Basin: The Blue Plan", published in 1989, presents a set of basin-wide "scenarios" on possible prospects until 2025 for population and urbanization, for five economic sectors (agriculture, industry, energy, tourism and transport), and for interactions with natural resources and the environment (soil, forests, water, coastal regions and the sea).

The key points of the different scenarios are:

- A reference tendency scenario **T1**, basically reflecting the extension of the current situation.
- a first scenario less favourable than the reference one, called aggravated tendency **T2**, reflecting the slow growth of the world economy and affecting practically all sectors. There would be little funding for environmental protection resulting in late and insufficient individual measures within a framework of poorly-applied regulations with delays at every level. Population and urban growth would attain their maximum level, with towns suffering from poorly-run services and serious sanitary conditions. In such a scenario, it is likely, if not certain, that social or geopolitical disruption would result well before the year 2025, as indicated by certain events today, and a reorientation of policies and behaviour, i.e. a change in scenario would be necessary.
- A second scenario, called moderate tendency **T3**, reflecting an economic recovery at a global level. Although the legislative and financial means and the technical tools for environmental protection would be more easily available, this scenario proved to be the most threatening for the environment because of the increased level of activity in all economic sectors and the delay in application of measures, which will rather aim to fight pollution than prevent it. In this type of development lacking environmental concern, pressure on the coastal zone would be particularly serious since the majority of activities would be concentrated there, creating serious conflicts of uses. Serious economic breakdown and irreversible ecological damage could result from such a situation (UNEP/MAP/BP, 1989).

These two extreme scenarios show development problems, particularly for the countries to the south and east of the Mediterranean Basin, in an internationally competitive climate. Both result in unstable situations, either by the increasingly deteriorating socio-economic conditions in a certain number of countries, thus encouraging geopolitical instability in the Mediterranean Basin, or by accelerating degradation of the environment and natural resources.

To break up these tendencies, it is obvious that international cooperation is necessary. In addition to international cooperation, the alternative scenarios are also distinguished by a completely different approach to environmental problems such as internalisation of protection costs and decision-making, less centralisation but better coordination of activities, greater involvement of local communities in decision-making and management, etc.

### **3.1.3. Coastal issues and need for ICAM**

It is evident that the Mediterranean coastal areas face complex social, economic and environmental problems which demand special attention. They require long-term interventions and mobilization at all levels of administration.

In the Mediterranean it became apparent early that problems of environmental quality in the marine environment are linked to the human activities many of which are concentrated along the surrounding coastal areas. So, environmental protection was linked early to the control of human activities in coastal areas. **Integrated Coastal Area Management (ICAM)** has been widely recognized as a coherent framework to organize actions for managing coastal areas.

It is obvious that almost all coastal areas produce or support multiple products and services. Also, coastal resources cannot be used exclusively by any interest group. Furthermore, sediment, sea and air can transfer local impacts to wider areas creating a complex of spatial, economic, social and environmental relationships. As a result, sectoral solutions are inadequate and usually transfer the problem between resources, products and services, different communities and adjacent areas. As pressures increase, problems and conflicts must be addressed properly and effectively. Mechanisms, adapted to the complexity of coastal areas, have to be created within specific economic and social systems to ensure that all environmental costs are incorporated in decision-making and not passed on to other areas or to future generations. In other words, there is a great need to bring the sectoral activities together in order to achieve a commonly acceptable coastal management framework. In spite of MAP pressures, it did not encounter a great success until now.

The complex and close interdependence of activities and resources explains why the sectorial approach has not proved efficient in managing coastal areas. What is perceived as effective and appropriate in some cases may well be detrimental in others. Therefore, it has been recognised that the effective management of coastal areas should be based on the analysis of individual activities and their impacts on the environment, but also on the combined cross-effects and their influence on coastal resources.

ICAM is a continuous, proactive and adaptive process of resource management for environmentally sustainable development in coastal areas. The overall objective of integrated coastal management is to provide for the best long term and sustainable use of coastal resources and for perpetual maintenance of the most beneficial coastal environment. Resource management and environmental conservation, which provide the motivation for ICAM are not incompatible with economic growth. In fact, enhanced long term economic development can and must be the overall driving force of ICAM. Specifically, ICAM aims to:

- Strengthen sectoral co-operation, i.e. through training, legislation.
- Preserve and protect the productivity and biological diversity of coastal ecosystems, through preventing habitat destruction, pollution and overexploitation.
- Promote rational development and sustainable the relationships between coastal resources, their uses and the impacts of development on economy utilisation of coastal resources.

Fundamental to ICAM is a clear understanding of the relationship between the society and the environment. Since coastal resources can be used at the same time by various economic sectors and social actors, the clarification and comprehension of all their uses and relationships is essential. Also for ICAM to succeed, a broad context of involvement of major actors and interest groups is essential. The participatory process must focus on facilitating horizontal and vertical dialogue, agreements and compromises between all parties and actors involved in the harnessing and exploitation of coastal resources, in a comprehensive and integrated manner.

ICAM is not a matter of governments alone but a complex process of concerted action involving many actors with different roles and responsibilities. Within this context new modes of governance need to be introduced. In this sense appropriate collaborative mechanisms need to be established, along with role assignment, monitoring of progress, etc. NGOs,

associations and other agents, private sector actors are among the key actors that need to participate in ICAM.

### **3.2. Activity reports, recommendations and white papers: the expression of a significant requirement on the part of the States**

Due to increasing concentration of populations and activities in the coastal areas, the 1992 UN Conference on Environment and Development held in Rio pointed out to coastal areas as areas of special concern, promoting new integrated approaches to coastal and marine areas management (see Chapter 17.1. A).

In accordance with the Rio recommendations, the Mediterranean states adopted important instruments which are based on the experience within the Blue Plan and especially the Priority Action Programme. Those instruments define objectives of integrated coastal area management in the Mediterranean and bring recommendations and guidelines for their realisation.

#### **3.2.1. Within the framework of the Barcelona Convention**

The Contracting Parties to the Barcelona Convention and Protocols, have adopted or approved the following instruments on integrated coastal area management (ICAM):

- The Mediterranean Action Plan (MAP) Phase II (UNEP/MAP, 1995);
  - para.1.4;
  - Annex I - Barcelona Resolution on the Environment and Sustainable Development in the Mediterranean Basin, para.13;
  - Annex II - Priority Fields of Activities for the Environment and Development in the Mediterranean Basin (1996-2005), para.3.
- Recommendations on the Integrated and Sustainable Management of Coastal Zones (UNEP/MAP, 1997), the Mediterranean Commission for Sustainable Development (MCSD);

#### **3.2.2. Within the Euro-Mediterranean context**

In the framework of the environmental component of the Euro-Mediterranean Partnership (EuroMed), established in Barcelona in 1995, the Short and Medium Term Priority Environmental Action Programme - SMAP (European Commission, 1999) was adopted by the the Euro-Mediterranean Ministerial Conference on the Environment, held in Helsinki in 1997. The relevant Declaration describes the SMAP in more detail (para. 1.2 -introductory part, and para.2.2., Annex I, ad 4 and Annex B.).

#### **3.2.3. At the subregional level**

At the subregional level, the Adriatic Action Plan should be mentioned. It was adopted at the meeting of the Ministers for the Environment within the framework of the Adriatic and Ionian initiative, held in Zadar (Croatia) on 6 june 2003. (para. 4, point 4) (Ministry of Environment, Croatia, 2003).

#### **3.2.4. Guidelines**

Although not pertaining directly to the category of instruments adopted or approved by the Contracting Parties to the Barcelona Convention and related protocols, important documents devoted to the topic of integrated coastal area management, elaborated under the auspices of the PAP/RAC should also be mentioned. Those documents analyse the existing global, regional and national documents and instruments, offer possible strategies and develop in

detail recommendations contained in the instruments adopted or approved by the Contracting Parties to the Barcelona Convention and related protocols. The most important of these documents are the following:

- Guidelines for Integrated Management of Coastal and Marine Areas with particular reference to Mediterranean Basin (UNEP, 1995);
- Conceptual Framework and Planning guidelines for integrated coastal area and river basin management (PAP/RAC, 1999);
- White Paper: Coastal Zone Management in the Mediterranean (PAP/RAC, 2001);
- Good Practices Guidelines for Integrated Coastal Area Management in the Mediterranean (PAP/RAC, 2001);

### **3.2.5. Results of regional seminars and workshops**

Several meetings and seminars were organised by PAP/ RAC and other MAP components, to inform and explain integrated coastal area management to the Contracting Parties:

- Workshop on policies for sustainable development of Mediterranean coastal areas, Santorini Island, 26-27 April 1996;
- Seminar on territorial prospective in the Mediterranean and the approach by actors, 7-9 November 1996, Sophia Antipolis;
- Coastal Areas Management Programme: Improving the Implementation, Malta, 17-19 January, 2002;
- Legal and management instruments for the conservation of the Mediterranean coasts,, Mallorca, 6-8 June 2002.

This last seminar reached, *inter alia*, the conclusion that: "it would be desirable to add a Protocol to the Barcelona Convention, relative to integrated coastal area management" (UNEP/MAP, 2002, p.5).

In spite of the advanced stage reached in defining goals and principles of integrated coastal area management in the instruments adopted or approved by the Contracting Parties to the Barcelona Convention and related protocols, there are at present no mechanisms which would ensure that they will be applied at national levels by the Mediterranean coastal states. Those instruments are only of recommendatory nature, pertaining to the category of the "soft law" instruments and not obliging the states which adopted or approved them. Therefore, they are of limited value in enhancing the level of national regulation and in harmonizing national legislation.

Thus, at present a set of detailed guidelines exist, which reflect the useful experience gained in the projects within the Mediterranean Action Plan. Even if they may help and guide States and other interested entities to implement ICAM at the domestic level, they have no official status and lack of effectiveness and of follow up.

At this stage there are three possibilities for further action. The first is a better implementation of existing guidelines on integrated coastal area management on a voluntary basis. The second is the adoption of a new "soft law" instrument in which the existing as well as new guidelines and recommendations, elaborated in accordance with the latest practical experience, would be brought together. The third possibility is the adoption of a binding

("hard law") instrument in which the content of the existing guidelines and recommendations would be incorporated. The advantages and shortcomings of these options are elaborated in chapters 5, 6 and 7.

### **3.3. Legal justification as regards national legislation**

Despite the complexity and seriousness of the coastal area problems in the Mediterranean, the overview of the national legislation of the Mediterranean coastal states shows that the complex coastal issues are not sufficiently addressed in the legal area (UNEP/MAP/PAP, 2000).

Most Mediterranean countries have developed basic legislation which only refers to regulations applicable to one segment of coastal area only, i.e. public maritime domain, with some additional provisions on land use and urban planning. Most national legislations reveal the same weaknesses: a sectorial approach to regulation which leads to sector overlaps, too many stakeholders involved in implementation and no coordination of efforts or cooperation across sectors.

Even in the few countries where specific legislation exists for coastal area management issues, it does not encompass the integrated view of coastal area management. There are no legal codes or regulations dedicated to the different aspects of coastal area management and the existing legal framework is applied indiscriminately to each aspect (public maritime domain, land use and urban planning, ports, fishing, pollution prevention, etc)<sup>9</sup>. Thus, national legislation is in fact only a partial response to the complex problems of coastal areas which is often inadequately implemented.

There are at present numerous obstacles to effective legal regulation of integrated coastal area management at national level.

One of the general obstacles is limited influence of environmental concerns in development planning in many Mediterranean coastal states in which primacy is given to development needs. Generally, there is no adequate data on coastal activities and processes, their interaction and impact on the environment.

Although all Mediterranean coastal states regulate land use planning, these plans rarely comprise the marine part of the coastal area. In general it could be said that interaction of land and sea, coast and hinterland is not sufficiently addressed in the national legislation.

Numerous human activities which take place at the coast are traditionally taken as separate in legal regulation and no "horizontal integration" exist.

Distribution of responsibilities among competent national ministries is not adequate and planning and administrative levels are not integrated and coordinated.

Despite recommendation on the public participation contained in the amended Barcelona Convention, in most Mediterranean countries national legislation do not contain adequate incentive to enhance the level of public participation in the issues related to integrated coastal area management. The level of cooperation between civil society, government and private sector is not satisfactory.

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<sup>9</sup> Law 2003-346 dated April 15, 2003 is an innovation, as it leads to the establishment of an environmentally protected site along the coasts of France, where there will be no exclusive economic area and where the authority of France in the field of marine environment protection and conservation will be maintained, according to international law.

Although the coastal area management is primarily concern of the Mediterranean coastal states, coastal area management problems do not have only national significance but also have a strong regional dimension. Having in mind importance of coastal area management for the whole Mediterranean region, especially as far as protection of sites of ecological and landscape value are concerned, regional level action is essential. It should promote a regional instrument which would require basic common content for the subsequent national legislation.

Having in mind diversity of national coastal areas and policies, such regional instrument must offer flexible framework which would take into account specific national situations. At the same time, it should ensure that minimal, regionally agreed, requirements for successful integrated coastal area management are satisfied in the national legislation.

Consequently, it would be essential that the regional incentive ensures that national legislation of the Mediterranean countries contain adequate definition of the coastal area, and that all relevant activities which are carried out in coastal areas are comprised within the integrated coastal area management. Of equal importance is to ensure "vertical" integration between governmental levels (local, provincial, national) as well as "horizontal" integration between governmental sectors responsible for different activities. Regional instruments should also set forth the basic objectives of integrated coastal area management, identify the fields of priority actions, and envisage means of prompt response to critical situation. Issues of transboundary cooperation and public participation should also be addressed.

### **3.4 Legal justification as regards community laws**

Community laws already apply to coastal areas, through the legal provisions on the environment and fishing activities, in so far as the scope community law application is national, and covers inland and territorial waters. Within the framework of the common fishing policy, community waters extend to include the exclusive economic zone. However, Spain is the only Member State to have created a fishing zone.

The scope of the area depends greatly on the specifics of the related policies (Blanquet and de Grove-Valdeyron, 2001). In the case of fishing, 12 nautic miles are often the limit associated to "coastal area"<sup>10</sup>, while many other regulations are applicable to the areas over or under 12 miles. Annex 1 to regulation n° 3760/92 establishes the community framework for fishing and fish-farming and determines geographical areas for each Member State, where free access is restricted to between 3 and 12 nautic miles<sup>11</sup>. Regulation n° 4028/86 deals with the protection of coastal areas through the use of artificial structures to restore the halieutic populations<sup>12</sup>. Decisions made on that basis link the issue of fish-farming to that of coastal development, by referring to the conflicts of usage in coastal areas:

*"the development of fish-farming is hindered by constraints related to space and particularly by the fierce competition for coastal land; policies must be developed to identify the sites best-suited to this naturally integrated activity, and to undertake coastal area treatment projects."*<sup>13</sup>

As concerns water policies, the framework Directive on Water, dated October 23, 2000<sup>14</sup> gives a fairly restrictive definition of coastal waters, as waters "located below a line from which all points are distant by one nautic mile beyond the point closest to the basis line used to measure the width of the territorial waters and which extend, in some cases, to the outer

<sup>10</sup> For fishing within the 12 mile coastal area (Regulation n° 894 /97 - April 29, 1997, JOCE n° L 132 May 23, 1997, p.1)

<sup>11</sup> regulation n° 3760/92 - December 20, 1992, JOCE n° L 389 - December 31, 1992

<sup>12</sup> regulation n° 4028/86, JOCE,n° L 376 -December 31, 1986

<sup>13</sup> decision n° 92/71 of the Commission - December 20, 1991, JOCE n° L 29 - February 5, 1992

<sup>14</sup> JOCE n°L 327 - december 22, 2000

limit of transition waters"; transition waters are "massive volumes of surface waters, near river mouths, partially saline due to their proximity with coastal waters, but which are fundamentally influenced by fresh water". The hydrographic district defined by the directive clearly establishes the link between land and sea, since it is described as "a land and sea zone, comprising one or several hydrographic basins as well as underground waters and associated coastal waters". It must be stressed that the framework directive on Water was expressly developed to assist the Community and the member States to fulfill their obligations, as stated in the Barcelona Convention and in the Athens Protocol on land-based pollution. (point 21).

In more general terms, the European Environment Agency stipulates that the priorities of the European Observatory network should include "the protection of coastal areas and the marine environment."<sup>15</sup>

While the community directives have, by definition, a bearing on the territorial seas, with some exceptions, the effects of some directives target more directly the coastal areas. This is the case of the directives on bathing water<sup>16</sup>; on the control of the discharge of substances in the water, to better protect the sea and coastal environment<sup>17</sup>. This also includes the directive relative to quality requirements for conchylicol water<sup>18</sup>, which applies to "coastal waters and brackish waters defined by the member States as in need of protection and improvement to ensure that shellfish live and grow".

Protection of species and habitats is closely linked to the protection of coastal areas, through the directives on wild bird species, dated April 2, 1979<sup>19</sup> and in the Natura 2000 directive of May 21, 1992 on the conservation of natural habitats<sup>20</sup>. In the 1979 directive, the issue was the protection of migrating species, amongst which the water birds, "in the geographical area at sea and on land" of its application (art. 4-3). Furthermore, article 4-2 of the directive refers the Ramsar Convention on wetlands and underscores the importance of wetlands, particularly those of international significance. The directive on habitats and on the establishment of a European ecological network is geared to apply to both the "terrestrial and aquatic zones" (art. 1-b) and lists the Mediterranean among the five biogeographical zones. The zones of the Natura 2000 network, considered of community interest<sup>21</sup>, must therefore be located in the coastal areas of the member States, both on land and at sea. The annex to the 1992 directive on habitats, lists which types of habitats are considered as being of community interest, such as "coastal habitats and halophic vegetation" under 23 categories: marine water and tidal environments, estuaries, large creeks and shallow bays, reefs, cliffs, etc. The annex also includes "sea dunes", such as "the mobile dunes of the coastline". Coastal zones are indeed one of the priorities of the Natura 2000 network. In compliance with these dispositions, a British court has judged that the 1992 directive applies quite necessarily and naturally to the continental shelf within the 200 nautic miles whereas the English transposition act only covered the 12 miles of territorial sea. It is the nature of the protection of cetaceans which convinced the Court to create an ecologically viable territory, in conformity with the spirit of the habitats Directive<sup>22</sup>. In parallel, the threats on coastal wetlands were the subject of communications from the Commission, based on which the European Parliament adopted a resolution inviting the Commission take "all necessary measures to protect coastal wetlands, submitted to strong destructive pressures, to honor its commitment to protect

<sup>15</sup> Regulation n° 1210/90 - May 7, 1990 modified in Regulation n° 933 /1999 - April 29, 1999

<sup>16</sup> directive n° 76/ 160 - december 8, 1975, JOCE n° L 031 -february 5, 1976

<sup>17</sup> directive n° 76/464 – May 4, 1976, JOCE n° L 129 - may 18, 1976 on pollution from dangerous substances discharged in the marine environment of the Community

<sup>18</sup> directive n° 79/923 – october 30, 1979, JOCE n° L 281 - November 10, 1979

<sup>19</sup> directive n°79/409 – April2, 1979, JOCE, n° L 103 – April 25, 1979

<sup>20</sup> directive n° 92/43 – May 21, 1992, JOCE n° L 206 - July 22, 1992.

<sup>21</sup> Specially protected areas under the Bird Directive and special zones of conservation under the habitats directive

<sup>22</sup> Queen's bench division, 1999

ecologically sensitive coastal zones against potential pollution from oil tankers or vessels transporting other dangerous substances<sup>23</sup>.

Coastal areas are also covered in the directive on major accidents, where it is stipulated that the Commission be informed of such occurrences, which may have significant or long-term damaging effects on surface water or marine habitats, both at sea and in coastal areas. Annex VI of the Seveso II directive describes as having environmental impact any significant or long-term damage to zones located at a distance of 2 km or more from a delta or at a distance of 2 km or more from a coastal area or from the sea<sup>24</sup>.

Coastal areas are also mentioned in documents on waste, concerning the choice of dumping sites, which must take into account the existence of coastal waters or of protected natural areas<sup>25</sup>.

The need to seriously take into account the environment was highlighted in the directive on the impact assessment of private and public works and projects<sup>26</sup>. This important directive necessarily applies to the coastal zones where projects are scheduled (listed in annex), such as merchant ports, marinas, fishing ports, fish-farming, coastal and sea works, extraction of underwater minerals. Before establishing impact study application thresholds and criteria, Annex 3 of the 1997 directive strongly emphasises the need to take into account the sensitivity of the geographical areas which will be impacted by the projects, as well as the load capacity of the environment. This is why special attention is given to "wetlands and coastal areas".

Article 3 of the Treaty of the Creation of the European Community sets legal obligation to include the environment in all community policies. It is therefore not surprising that community law as a whole is concerned with the vulnerability of coastal zones. Within the framework of communication on the reinforcement of the EU's Mediterranean policy, the Committee of Regions demanded that greater attention be paid to the environmental impacts of human settlements and of the excessive concentration, in space and time, of tourist flows<sup>27</sup>. This preoccupation, specific to the Mediterranean, further pleads in favour of a new legal instrument for this regional sea, to support and strengthen the existing sustainable development systems. It seems that the EU can only support this initiative as it has expressed its favourable position as concerns the sustainable use and management of land and sea, as per point 14 of the 6<sup>th</sup> Community Action Programme for the Environment<sup>28</sup>.

The 6<sup>th</sup> action program was approved under article 175 para. 3 of the Treaty of the Creation of the European Community, and is much more binding than past programs, as it grants specific 10-year status to coastal areas (until 2012). The coastal areas are included in the strategies regarding the environmental objectives laid out in article 3 of the décision of July 22, 2002. Article 3-10 recommends:

*"promoting best practices for sustainable land development, to take into account specific regional conditions for the best implementation of ICAM, and promoting best practices and supporting networks conducive to exchanges of experience in sustainable development, particularly for urban areas, the sea, the coasts and the wetlands."*

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<sup>23</sup> JOCE n° C 20 - January 20, 1997, p. 179, point 11

<sup>24</sup> annex VI of directive n° 96/82 - December 9, 1996, JOCE n° L 10 - January 14, 1997

<sup>25</sup> annex 1 of directive n°99/31 - April 26, 1999, JOCE n°L 182 - July 16, 1999

<sup>26</sup> directive n° 85/337 - June 27, 1985 modified by directive n° 97/11 - March 3, 1997 (JOCE n° L 175 - July 5, 1985 & n° L 73 - March 14, 1997)

<sup>27</sup> proposal of November 15, 1995, JOCE n° C - April 29, 1996, p.12

<sup>28</sup> decision n° 1600/2002 of the European Parliament and Council - July 22, j 2002, JOCE n° L 242 - september 10, 2002

As regards the four objectives and priority fields of action, coastal areas are listed under "nature and biological diversity". Article 6 – 2- g of the decision of July 22, 2002 states the need to:

*"promote sustainable use of seas and the conservation of marine ecosystems, including sea beds, estuaries and coastal areas, through special attention to the implementation of ICAM in the areas most valuable for biological diversity."*

This priority objective shall be reached by applying existing global and regional conventions and strategies as well as by the complete implementation of the relevant community instruments.

The 6<sup>th</sup> action program is thus the confirmation of the determination expressed under the Recommendation of May 30, 2002 relative to the implementation of ICAM in Europe. A regional legal instrument specifically designed for the Mediterranean would then be a model and an illustration of the concrete application of the best practices mentioned above. The legal formalisation of best practices in coastal area management through a regional legal instrument would be an important step towards ensuring the protection of the interdependent marine environment and coastal areas.

This new step would be the logical result of the approval by the EU of the amendments to the Barcelona Convention of June 10, 1995, by decision of the Community on October 22, 1999<sup>29</sup>. The fact that the European Community approved the 1995 amendments gives further legal justification for a regional legal instrument on ICAM, to comply with the objectives stated in article 4-3- e of the amended convention.

### **3.5. Legal justification as regards international law**

#### **3.5.1. Legal justification for a regional legal instrument on coastal zones with regard to international environmental law and to the international law of the sea**

While a treaty specifically dedicated to integrated coastal area management (ICAM) would be an innovative step, there are several provisions in international instruments relating to the environment or the sea which provide a basis for a normative action related to the coastal area. Some relevant instances are hereunder presented.

##### **a) The Rio and Johannesburg Instruments**

Action Programme "Agenda 21" (Rio de Janeiro, 1992) calls for new integrated approaches to coastal area management at the global, regional and national levels. In Agenda 21, integrated management of coastal and marine areas is considered as one of the main components of the concept of sustainable development. It is a tool which can both enhance the welfare of coastal communities and maintain ecological integrity and biological diversity (paras. from 8.2 to 8.12 and from 17.3 to 17.17).

The Implementation Plan of the World Summit on Sustainable Development (Johannesburg, 2002) again stresses the need to promote the implementation of Agenda 21 "through its programme on integrated management and sustainable development of coastal areas" (para. 30, b). States are invited to "implement integrated coastal area management plans, including through the promotion of sustainable coastal and small –scale fishing activities and, where appropriate, the development of related infrastructure" (para. 30,g). They should also "strengthen regional cooperation and coordination between the relevant regional organizations and programmes, the UNEP regional seas programmes, regional fisheries management organizations and other regional science, health and development

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<sup>29</sup> See JOCE n°L.322 - December 14, 1999.

organizations (para. 30, f). To face the dangers posed by land-based activities, States are also requested to draw up strategic plans for the sustainable development of coastal and marine resources, with particular emphasis on areas which are subject to accelerated environmental changes and development pressures (para. 33, c).

A number of partnership initiatives described in the World Summit on Sustainable Development relate to oceans, coasts and islands. Particularly relevant for the Mediterranean are A21 (Adriatic Sea Forum - Local Agenda 21 for Adriatic Sea Region), led by the city of Ancona, Italy, and involving municipalities from Albania, Bosnia-Herzegovina, Croatia, Greece, Italy, Slovenia and Serbia-Montenegro, and ADRICOSM (Adriatic Sea Integrated Coastal Areas and River Management System Pilot Project), led by the Italian Ministry of Environment and Territory and involving 19 research and academic institutions from Croatia, France, Italy and Slovenia (Cicin-Sain et al, 2002, p.26).

## **b) Treaties Relating to the Environment**

### Convention on Wetlands

Under the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar, 1971) the boundaries of wetlands to be included in the List of Wetlands of International Importance "may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six metres at low tide lying within the wetlands" (art. 2, para. 1). The Parties are required to formulate and implement their planning so as to promote the conservation of the wetlands included in the List (art. 3, para. 1).

The Conference of the Parties is competent to make recommendations regarding the conservation, management, and wise use of wetlands and their flora and fauna (art. 6, para. 2). In 2002, the Conference of the Parties adopted the "principles and guidelines for incorporating wetland issues into integrated coastal zone management" (resolution VIII. 4).

### Convention on Biological Diversity

The Parties to the Convention on Biological Diversity (Rio de Janeiro, 1992) are bound to "develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity" and to "integrate, as far as possible and as appropriate, the sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies" (art. 6). Plans or other management strategies are to be developed to rehabilitate and restore degraded ecosystems and promote the recovery of threatened species (art. 8, f). The concept of "biological diversity" covers terrestrial, marine and other aquatic ecosystems.

In 1995, the Conference of the Parties to the Convention adopted Decision II/10 on Conservation and Sustainable Use of Marine and Coastal Biological Diversity. It encourages Parties "to establish and/or strengthen, where appropriate, institutional, administrative, and legislative arrangements for the development of integrated management of marine and coastal ecosystems, plans and strategies for marine and coastal areas, and their integration within national development plans" (para. 3). The use of integrated marine and coastal area management is seen as "the most suitable framework for addressing human impacts on marine and coastal biological diversity and for promoting conservation and sustainable use of this biological diversity" (para. 2). Decision II/10 invites international and regional bodies responsible for legal instruments, agreements and programmes, including secretariats of regional agreements for the conservation of the marine environment, to develop new actions which promote conservation and sustainable use of marine biological diversity (para. 13). This invitation may well cover also a future Mediterranean regional legal instrument on ICAM. Annex I to the Decision specifies that the crucial components of integrated marine and

coastal area management are relevant sectoral activities, "such as construction and mining in coastal areas, mariculture, mangrove management, tourism, recreation, fishing practices and land-based activities, including watershed management".

In 1998, The Conference of the Parties adopted Decision IV/5, containing a multi year programme of work for the conservation and sustainable use of marine and coastal biological diversity. The programme includes, as one of its four elements, the implementation of integrated marine and coastal areas management.

#### Convention on Climate Change

Recognizing in the preamble that countries with low-lying coastal areas are particularly vulnerable to the adverse effects of climate change, the United Nations Framework Convention on Climate Change (New York, 1992) provides that all Parties shall "develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture" (art. 4, para. 1, e).

#### Convention to Combat Desertification

The United Nations Convention to Combat Desertification (UNCCD) is aimed at those countries experiencing serious drought and / or desertification, particularly in Africa (Paris, 1994) includes among the general obligations of the Parties the duty to "adopt an integrated approach addressing the physical, biological and socio –economic aspects of the processes of desertification and drought" (art. 4, para. 2, a) and to "strengthen subregional, regional and international cooperation (art. 4, para. 2; e). The Convention provides a broad definition of "land", which is intended to mean "the terrestrial bio – productive system that comprises soil, vegetation, other biota, and the ecological and hydrological process that operate within the system" (art. 1, e), and considers "soil erosion caused by wind and / or water " as an aspect of land degradation (art. 1, f).

Annex IV to the Convention is specifically devoted to regional implementation for the Northern Mediterranean. It lists among the particular conditions of the Northern Mediterranean the "unsustainable exploitation of water resources leading to serious environmental damage, including chemical pollution, salinization and exhaustion of aquifers" (art. 2, f) and the " concentration of economic activity in coastal areas as a result of urban growth, industrial activities, tourism and irrigated agriculture " (art. 2, g). Art. 4 of the Annex binds affected country Parties of the Northern Mediterranean region to " prepare national action programmes and a, as appropriate, subregional, regional or joint action programmes ". Other annexes to the Convention relate to Africa (Annex I) and Asia (Annex II). Both continents include also Mediterranean countries.

The conclusion can be reached that the negotiation and adoption of an instrument relating to ICAM in the Mediterranean is also a way to abide by the obligations arising from the UNCCD.

#### European Convention on Landscape

The European Convention on landscape (Florence, 2000) includes in its scope of application land, inland water and marine areas (art. 2). The Parties undertake, inter alia, to establish and implement landscape policies aimed at landscape protection, management and planning (art. 5, d). They also undertake to co-operate in the consideration of the landscape dimension of international policies and programmes and to recommend, where relevant, the inclusion in them of landscape considerations (art. 7). Transfrontier cooperation on local and regional level and the preparation and implementation of joint landscape programmes is encouraged (art. 9).

Landscape is certainly an important component of any integrated coastal area management strategy. The amended Barcelona Convention mention the protection of areas of landscape

interest as an element to promote for the integrated management of the coastal zones (art. 4, 3, e). Landscape is also mentioned in several Barcelona Protocol: Emergency (art. 1, d. IV "aesthetic value of the area"; Land-based Sources (Annex II, E, 1, c) "impact on aesthetics"; Protected areas and Biological Diversity (art. 4,d,"sites of aesthetic interest"), (art. 6, e, "safeguarding the landscape"), (art. 8, 2, "sites of special interest at the aesthetic level"); Exploration and Exploitation of the Continental Shelf and the Seabed (Annex III, E, 1,c," pollution impact on aesthetics").

### **c) Treaties Relating to the Sea**

The United Nations Convention on the Law of the Sea (Montego Bay, 1982; so-called UNCLOS) focuses on the problems of ocean and sea spaces and does not specifically address issues related to the coast. Art. 194, para 5, of the Convention, according to which the measures taken to protect and preserve the marine environment "shall include those necessary to protect and preserve rare and fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life" has a general scope of application. It applies to any kind of vulnerable marine and coastal ecosystems, wherever they are located. UNCLOS also covers coastal areas, such as estuaries (art. 1-4), river mouths (art. 9), bays (art. 10), ports (art. 11), land-based pollution (art. 207). The expression "coastal area" is found in art. 211-1 et 211-7 and art. 221. The article on pollution from sea carriers defines the "marine environment" concept as including the "coastal area" which may impact "the related interests of coastal States". The purpose of UNCLOS is the protection of the marine environment, as is specified in the Preamble on the ecological unity of the marine environment and the need for a global strategy which states: "Aware that the issues here are closely related and require global coverage".

More than by the UNCLOS, the needs of coastal areas are taken into consideration by a number of conventions applying to some regional seas. The UNCLOS does not prejudice the specific obligations assumed by states under special agreements concluded previously which relate to the protection and preservation of the marine environment. Nor does it prejudice agreements which may be subsequently concluded in furtherance of the general principles set forth in the UNCLOS itself (art. 237, para. 1).

Besides the Barcelona Convention and its Protocols, the following regional or sub-regional instruments, not applying to the Mediterranean, may be recalled as being of some interest for the coastal zone management.

- 1) The HELCOM Commission, managing component of the Helsinki Convention on the Baltic Sea (1974), is directly in charge of dealing with the issues of coastal areas through several Recommendations (e.g., that of October 22, 1996 on specific planning for coastal areas).
- 2) The Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region (Kingston, 1990), concluded with the framework of the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena de Indias, 1983), applies not only to the marine environment within 200 n.m. of the Atlantic coasts of the Parties, but also to "waters on the landward side of the baseline from which the breadth of the territorial sea is measured and extending, in the case of watercourses, up to the fresh water limit" and to "such related terrestrial areas (including watersheds) as may be designated by the Party having sovereignty and jurisdiction over such areas" (art. 1, c). A specific provision (art. 6) is devoted to the planning and management regime for protected areas.
- 3) The Protocol Concerning Protected Areas and Wild Fauna and Flora in the Eastern African Region (Nairobi, 1985), concluded within the framework of the Convention for the Protection, Management and Development of the Marine and Coastal Environment of the

Eastern African Region (Nairobi, 1985), applies to the marine and coastal environment falling within the jurisdiction of the Parties and to their coastal areas and internal waters related to the marine and coastal environment (art. 1, a).

- 4) The Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific (Lima, 1981), applies to the belt of sea and the coastal area within the 200-mile maritime area of sovereignty and jurisdiction of the Parties and, beyond that area, the high seas up to a distance within which pollution of the high seas may affect that area (art. 1). The Convention binds the Parties to adopt all appropriate measures to prevent, reduce and control the erosion of the coastal area resulting from the activities of man (art. 5). Within the framework of the Convention a Protocol for the Conservation and Management of Protected Marine and Coastal Areas of the South-East Pacific (Paipa, 1989) has been concluded. The Protocol also applies to the coastal zone, "where interaction between land, sea and the atmosphere is ecologically apparent", as determined by each Party in accordance with the relevant scientific and technical criteria (art. I).
- 5) The Convention for cooperation in the Protection and sustainable development of the marine and Coastal Environment of the Northeast Pacific (Antigua Guatemala, 2002) provides that the Parties shall, inter alia, "encourage the integrated development and management of coastal areas and shared water basins, taking into account the protection of areas of ecological and scenic interest and the sustainable use of natural resources" (art. 5, para. 6, d). The parties are bound to adopt measures aimed at "improvement as necessary of their environmental impact assessment of installations and activities that it is thought may affect marine and coastal areas" (art. 6, para. 2, b), "the application of prevention and precaution criteria to the uses and development of activities that may affect the marine and coastal resources of the region" (art. 6, para. 2, e), the identification of marine and coastal areas that are vulnerable to the action of the extreme natural phenomena or events and a rise in sea level" (art. 6, para. 2, f) and the "identification of marine coastal areas vulnerable to man –made activities" (art. 6, para. 2, g)

A specific provision (art. 7) is devoted to erosion of coastal areas. Another rather detailed provision (art. 10), composed of five paragraphs, addresses the issue of integrated management and sustainable development of the marine and coastal environment (CNP, 2002).

- 6) The Black Sea biological diversity and Landscape Protection Protocol (Sofia, 2002) to the Convention on the protection of the Black Sea against Pollution (Bucharest, 1992) applies to the Black Sea waters, the seabed and its subsoil up to the freshwater limit and to the coastal zone designated by each Contracting Party, including wetlands. Under art. 7, the Parties "shall encourage introduction of intersectorial interaction on regional and national levels through the introduction of principles and the development of legal instruments for integrated coastal management, seeking ways to ensure sustainable use of natural resources and promotion of environmentally friendly human activities in the coastal zone". An advisory group on the development of common methodology for integrated coastal zone management is established as a subsidiary body of the Commission on the protection of the Black Sea against Pollution (art. 10, para. 2).

#### Treaties applying to the Mediterranean but not belonging to the Barcelona System

- 7) On the sub-regional level, the Agreement between Italy and former Yugoslavia on Cooperation and combat against pollution of the Adriatic Sea Waters and coastal zones (Belgrade, 1974) is presently applied by Croatia, Italy and Slovenia<sup>30</sup>. It provides for the

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<sup>30</sup> Another sub –regional instrument is the Agreement between Greece and Italy on the Protection of the Marine Environment of the Ionian Sea and its Coastal Zones (Rome, 1979).

setting up of a Commission which is entrusted with a broad range of technical and advisory competences. In the last years, the Commission has devoted its attention to a number of main topics, including the elaboration of a "Master Plan" for the Adriatic Sea, whose purpose is to identify proposals and directives for the ecologically sustainable development of economic activities concerning the Adriatic Sea, with special regard to ports and tourism.

- 8) Again on the sub-regional level, the Agreement between France, Italy and Monaco on the protection of the waters of the Mediterranean shore (Monaco, 1976; known as the RAMOGE agreement) applies to the territorial seas and marine inland waters located between two specified meridians along the continental shore of the three contracting Parties. The Agreement establishes an international commission having the authority to carry out research activities and studies, provide advice and submit proposals to the governments of the Parties on any question relating to marine pollution, and promote cooperation between the competent administrative entities of the three countries. The Parties are presently studying the possibility to amend the RAMOGE Agreement in order, *inter alia*, to extend its application to the coastal land zone, as defined by each of them. Decision on the proposed amendments is expected to be taken in June 2003.
- 9) Under the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic Area (Monaco, 1996; so-called ACCOBAMS), the parties shall, *inter alia*, "endeavour to establish and manage specially protected areas for cetaceans corresponding to the areas which serve as habitats of cetaceans and / or which provide important food resources for them" (Annex II; art. 3)<sup>31</sup>.

### **3.5.2. Legal justification for a regional legal instrument on coastal zones with regard to the Barcelona Convention and its protocols**

The so-called "Barcelona legal system", composed of the 1976 Convention and its Protocols, is a notable instance of fulfillment of the international obligation to co-operate for the protection of the marine environment in a regional sea. In the last decade, the Barcelona legal system underwent important changes in several of its components. The Convention and some of its protocols were amended in 1995 and 1996. New protocols were adopted to either replace the protocols which had not been amended or cover new fields of cooperation.

#### **Coastal Management in the Convention**

The teams who amended the Barcelona legal system were fully aware of Agenda 21 and the importance of coastal area and coastal management. It is not by chance that the words "Coastal Region" were added to the name of the Convention itself (Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean).

The Convention provides that, besides covering the maritime waters, its application "may be extended to coastal areas as defined by each Contracting Party within its own territory" (art. 1, para. 2). It also stipulates that any protocol to the Convention "may extend the geographical scope of that particular Protocol" (art. 1, para. 3). Neither of these provisions existed in the original text of the Convention. In particular, art. 1, para. 3, can pave the way for a future regional legal instrument on ICAM, applying to both the coastal waters and the coastal land belt.

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<sup>31</sup> One specially protected area for cetaceans was established by the Agreement on the Creation of a Mediterranean Sanctuary for Marine Mammals, done in 1999 in Rome by France, Italy and Monaco. The sanctuary includes waters which have the status of marine internal waters, territorial sea and high seas and are located between the continental coasts of France, Monaco and Italy and the islands of Corsica and Sardinia.

In the updated Convention, the provision on general obligations of the Parties (art. 4) has been completely redrafted. Among the actions to be carried out by the Contracting Parties to protect the environment and contribute to the sustainable development of the Mediterranean, the Convention now sets forth an obligation to

*"commit to promoting integrated management of the coastal zones, taking into account the protection of areas of ecological and landscape interest and the rational use of natural resources" (art. 4, para. 3, e)."*

Because the promotion of the integrated management of the coastal zones is listed among the general obligations of the Convention, it ensues, under art. 4, para. 5, of the Convention ("The Contracting Parties shall cooperate in the formulation and adoption of Protocols, prescribing agreed measures, procedures and standards for the implementation of the Convention"), that a specific instrument on this subject is not only allowed, but also envisaged as a logical step forward within the Barcelona system.

### Coastal Management in Some Protocols

- 1) The geographical coverage of the Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (Barcelona, 1995), which has replaced the previous protocol of 1982, has been enlarged to encompass, *inter alia*, "the terrestrial coastal zones designated by each of the Parties, including wetlands" (art. 2). It is clearly stated that the Protocol aims at safeguarding "representative types of coastal and marine ecosystems" (art. 4, a), as well as the "biological diversity and the sustainable use of marine and coastal biological resources" (art. 3, para. 4), which shall be integrated into the relevant sectorial and intersectorial policies. The coastal belt as a natural unity is covered in art. 7, para. 4. It provides that "when specially protected areas covering both land and marine areas have been established, the Parties shall endeavour to ensure the coordination of the administration and management of the specially protected area as a whole".

Parties making proposals for inclusion of an area in the List of Specially Protected Areas of Mediterranean Importance (the SPAMI List) shall submit an introductory report, including the management plan of the area (art. 9, para. 3). The existence of an integrated coastal management plan is considered as a favourable factor for the inclusion of the area in the SPAMI List (Annex I, para. B, 4, e). Other specific requirements applying to planning are specified in para. D of Annex I.

At the XII<sup>th</sup> Meeting of the Contracting Parties (Monaco, 2001) the first twelve SPAMIs were inscribed in the List, namely the island of Alborán, the sea bottom of the Levante de Almería, cape of Gata-Nijar, Mar Menor and the oriental coast of Murcia, cape of Cresus, the Medas islands, the Coulembretes islands (all proposed by Spain), Port-Cros (proposed by France), the Kneiss islands, La Galite, Zembra and Zembretta (all proposed by Tunisia), and the French-Italian-Monegasque Sanctuary for marine mammals (jointly proposed by the three States concerned). With the exception of the sanctuary, which mostly covers high seas areas, all of the SPAMIs are located along the coast or in or around islands.

- 2) Art. 1, para. 3, of the Convention, allowing the extension of the geographical scope of any protocol, has been used in the case of the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities (Athens, 1980; amended in Syracuse in 1996). In addition to marine waters, the Protocol also applies to the "hydrologic basin" of the Mediterranean Sea Area (art. 3), this being "the entire watershed area within the territories of the Contracting Parties, draining into the Mediterranean Sea Area"(art. 2).

The Protocol takes into account the objectives laid down in the Global programme of Action for the protection of the Marine Environment from land-Based Activities (GPA), adopted in Washington on 3 November 1995 by a UNEP intergovernmental Conference. The GPA aims at preventing the degradation of the marine environment by land-based activities, as well as facilitating its recovery, by assisting States in taking actions individually or jointly within their respective priorities and resources. Marine areas considered as vulnerable include, inter alia, critical habitats, wetlands, seagrassbeds, coastal lagoons, habitats of endangered species, shorelines, coastal watersheds, estuaries.

- 3) Under the Protocol Concerning Pollution Resulting from Exploration and Exploitation of the Continental Shelf, the Seabed and Its Subsoil (Madrid, 1994), the Parties "may also include in the scope of the Protocol, wetlands or coastal areas of their territory" (art. 2, para. 2). The Protocol requires that operators in charge of installations falling within the jurisdiction of a Contracting Party have contingency plans to combat accidental pollution (art. 16, para. 2).
- 4) The Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea (Valletta, 2002), which is intended to replace the previous 1976 protocol, aims at preventing or combating pollution incidents which pose or may pose a threat to the marine environment, the coastline or related interests. The "related interests" are broadly defined as concerning, among others:
  - (i) *maritime activities in coastal areas, in ports or estuaries, including fishing activities;*
  - (ii) *the historical and tourist appeal of the area, including water sports and leisure activities;*
  - (iii) *the health of the coastal population;*
  - (iv) *the cultural, aesthetic, scientific and educational value of the area;*
  - (v) *the conservation of biological diversity and the sustainable use of marine and coastal biological resources" (art. 1, d).*

One of the main obligations of the Parties is to maintain and promote contingency plans, either individually or through bilateral or multilateral cooperation, (art. 4, para. 1). In particular, pollution emergency plans are required for ships flying the flag of Parties, as well as ports, handling facilities and offshore installations located under the jurisdiction of Parties (art. 11).

In conclusion, not only the international instruments relating to the law of the sea or the environment, but also the Barcelona system itself pave the way for the drafting of a new protocol on ICAM. Such a new instrument could both comply with the legal requirements of the Barcelona Convention and meet the actual need for a coherent sustainable development of the Mediterranean region. In fact, ICAM, which is now regulated in a fragmentary way in several among the instruments of the Barcelona system, deserve to be dealt in a specific and comprehensive manner.

### **3.6. Justification with regard to the application of the Barcelona Convention and related Protocols**

#### **3.6.1. From a technical standpoint**

The MAP, adopting the MCSD recommendations on ICAM in 1997, has outlined the major steps that can be taken, namely to:

*"Strengthen or establish legislative tools, regulations and property management leading to controlling urbanisation and protecting the most precious natural sites. This entails:*

- *providing plans for land development and management for coastal areas subjected to strong pressure,*
- *avoiding generalised urbanisation too close to coasts and the building of roads parallel and close to coastlines that promote this kind of urbanisation*
- *identifying the most remarkable coastal sites (such as wetlands, sand dunes, and so forth) and implementing measures that ensure their protection."*

It is necessary to adopt Integrated Coastal Area Management widely across the Mediterranean and in that respect, special efforts at the Regional, national and local levels are needed. Although in principle there is consensus on this issue, efforts accomplished are not commensurate with the speed of change and the severity of the problems. The rapid transformation and increasing complexity of the Mediterranean coastal areas impose the need for further effort.

Integrated Coastal Area Management (ICAM) thus involves a range of coastal planning, day-to-day coastal resources management and support activities (applied research, monitoring, education, law, institutional capacity building and finances) that must be coordinated in order to address issues of real concern. The process of coastal management involves policy (programme or plan) formulation, implementation, result monitoring and evaluating, and, where appropriate, revising both the policy and the implementation measures to ensure that the issues of concern are effectively addressed.

The development of an integrated coastal area management approach will require a binding framework, and will need successive project generations.

Attention to the issue of coastal management is the first step and a wareness on the subject must then be enhanced. Dialogue needs to be fostered amongst stakeholders. Co-operation can then be promoted, followed by co-ordination of activities. Finally, integration can become reality. The implementation of this process requires a framework, which can only stem from a binding Protocol.

### **3.6.2. From a legal standpoint**

Coastal urbanisation in the Mediterranean has entered a phase of rapid expansion, reaching a state of hyper-development, due to increasing population growth, industrialization and other kinds of uncontrolled economic development, including tourist activities. Especially after the adoption, in 1995, of MAP Phase II (Action Plan for the Protection of the Marine Environment and the Sustainable Development of the Coastal Areas of the Mediterranean), coastal areas have become the central pillar of most policies recommended to the Contracting Parties of the Barcelona Convention in their efforts towards achieving sustainable development.

The focus of MAP has gradually shifted from a sector-based approach aimed at pollution control to integrated coastal area planning and management, considered as key in finding adapted solutions. In MAP Phase II, "Integrated Coastal Area Management" is one of the main components of sustainable development in the Mediterranean, targeting clear and specific objectives (para. I.1.4). To this end, the enactment of the relevant legislation at the national and sub-national level is envisaged, *inter alia*.

While integrated management of the coastal area takes place at the national and sub-national levels, it also has a Mediterranean regional dimension. In several cases, the questions to be addressed through ICAM are not confined within the political boundaries set forth by neighbouring countries. Coastal areas in a regional sea are a common natural and cultural heritage that should be managed and preserved for the sake of present and future generations. Without interfering with established national and sub-national competences, the need to develop and adopt a coordinated regional policy within the framework of a legal instrument seems hardly questionable.

As already stated, it appears that many aspects of ICAM are already addressed, although in a rather fragmentary way, through existing legal instruments of the Barcelona legal system. Some of the objectives of ICAM, as set forth by MAP Phase II, are already covered by specific Protocols. For instance, "preservation of the biological diversity of coastal ecosystems" falls under the Protocol on specially protected areas, while "prevention and elimination of pollution from urban, industrial, tourist, agricultural and aquaculture sources, solid and liquid waste" mostly falls under the Land-Based pollution Protocol, but also under other instruments, such as the Protocol on pollution from ships, the Protocol on seabed, the Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea (Barcelona, 1976, amended in 1995) and the protocol on the prevention of pollution of the Mediterranean sea by Transboundary Movements of Hazardous Wastes and their Disposals (Izmir, 1996).

What is however lacking is a specific legal tool to address in a coherent way the issue of "coastal planning to resolve the competition between urbanization, industrialization, tourism, transport, agriculture and aquaculture, and the preservation of ecosystems for future generations". Such an instrument could fill the still existing gaps (for example, as regards sustainable management of coastal areas not falling under the regime of protected areas or protected landscapes). It could also harmonize and develop in a systematic way, without however changing their substance, all the provisions having a bearing on sustainable coastal management which are scattered in the sectoral protocols.

In fact, in the case of the Mediterranean basin, the drafting of a legal instrument on sustainable coastal management can be considered as a physiological development of an already advanced system of environmental protection in a regional sea area.

#### **4. RISK OF A STATUS QUO**

To take into account coastal areas into the Barcelona system not being something new, one of the future options could be to rely on existing means at the regional level towards integrated coastal area management. These involve the Guidelines for ICAM and a number of pilot actions such as CAMPs. This would imply that essentially it is up to the States (Contracting Parties) to adopt the guidelines in national level policy (special legislation, planning or environmental legislation or guidelines, etc.) or special programmes for the coastal areas (national, regional or local).

This "voluntary" basis of promoting ICAM has some advantages, in the sense that it is a flexible way to adjust to the institutional and political particularities of each State/coastal area. It allows for different paces of adoption and different interpretations in the sense varying emphases on the principles, mechanisms and tools employed. This an approach to minor adjustments rather than to major restructuring of institutional arrangements. Politically it is acceptable, in that it does not disrupt existing patterns.

However, the status quo solution might produce extremely negative environmental effects on the Mediterranean coastal areas for several reasons:

- The coastal areas in the Mediterranean are rapidly deteriorating as the existing mechanisms of coping with their complex problems become less effective. The socio-economic forces lead to an increasing concentration of activities, population and infrastructure along the Mediterranean coasts –including rapid artificialization of the coastline- and the prospects are that such processes are likely to become more intensive in the future (both from the tourism sector forecasts and the anticipated urbanization in general). As a consequence the impacts on the natural environment are likely to be particularly adverse, evidenced in terms of pollution, biotope losses, resource degradation (i.e. water, etc.), etc. It is not so much the areas for special

protection which are at stake since these are likely to be protected anyway, although the counter pressures might be stronger, but it is mostly the non-protected areas, open spaces, nature sites (i.e. sand dunes, estuaries, river deltas, sea shore landscapes, etc.).

- The structure of national and local economies (dependence on intense agricultural development, industry and mass tourism) encourages to a great extent intensification of the use of natural resources. This coupled with planning deficiencies; inexistent infrastructure and weak implementation of regulation will further encourage deterioration of coastal ecosystems and resources. The promotion of organic farming is still marginal, while the development of the service sector (with the exception of tourism) is still weak.
- An eventual worsening of conditions in the Mediterranean coastal areas is likely to affect eventually their prospects for development as well, since much of development opportunities around the Mediterranean are much relying on the good state of the environment and natural resources (clean beaches, etc.). So leniency, which could result from the status quo option, is likely to undermine economic and social development opportunities at the national and regional level.
- This would put a lot of pressure at the national level to cope with such problems as most Mediterranean coastal areas are competing for the same types of markets (i.e. agriculture, tourism, transport, etc.). Overall, in the absence of regional level special arrangements competition is likely to lead to intensification of pressures in some areas, eventual relaxation of guidance and control systems at the national level to cope with economic and social development challenges. Environmental conditions are likely to worsen further. Already most Mediterranean States are not exemplary in terms of enforcement and implementation of laws.
- Addressing to an eventual worsening of conditions in the Mediterranean coastal areas is likely to increase the pressures on the States to cope with such problems and most Mediterranean States or regions are not ready to do this. The costs of non-regulation or limited enforcement are much higher in the end. The financial resources needed exceed the capacities of most States and international/national donors are only interested in some aspects of investments (normally with some economic return) not necessarily covering several management activities of the coastal areas.
- In addition, the political power of environment Ministries in relation to more traditional line Ministries (such as Agriculture, Public Works, etc.) is weaker and since much of the task to adopt and implement ICAM guidelines will fall on Environment Ministries, prospects are not high for convincing the others. This is a general weakness in the Region and is one of the major causes of concern as to the existing arrangements for ICAM, through voluntary adoption. It might be easier on very narrow tasks easily conceivable from every Ministry, such as nature protection or pollution control, but for cross cutting policy areas such as ICAM this is almost an impossibility. One of the basic reasons for that is that sectoral Ministries do not necessarily allow such infringement (regulating economic activities which is their established domain)..and there is a lot of inertia in that, even at the highest political level.
- Another important issue is the political-administrative culture in Mediterranean areas where there is a reliance at the central administration (top-down, command and control type). That leaves all the burden on States (central administrations) to cope with issues such as ICAM in which other world regions benefit from the presence and initiatives of lower level administrations as well, sharing the burden. In most Mediterranean coastal areas all the burden is on the shoulders of the State administration and States do not have the human, organizational or financial resources to cope alone with such issues. The situation worsens if one thinks of the tremendous diversity of environment-development problems across the Mediterranean coastal areas underlining the necessity for fine-tuning policies and mobilizing different structures for different problems. This would mean that certain areas around the Mediterranean would be more successful than others but this would not necessarily be better overall.

- It is not only a matter of the willingness or the capacity of the States which is at stake but also the absence of the civic society which internationally has a key role in supporting ICAM. In most Mediterranean States there are strong pressures from the bottom-up against regulation and enforcement, a reality which if combined with the limited effectiveness from the top-down leads to a chaotic uncontrolled development mostly felt where the pressures are stronger: the coastal areas. It is rather unlikely that such a "deadlock" is likely to be resolved by adopting on a voluntary basis regional level guidelines.

Overall the risk of status quo is the most likely to lead to a serious decline in environmental conditions and reduction of development prospects in the long-term in the Mediterranean Region.

## **5. THE RANGE OF POSSIBLE LEGAL INSTRUMENTS**

In the legislation of several Mediterranean countries, the issue of ICAM is already clearly identified and actions are proposed and carried out. In view of the existing solid basis of experience, research, planning, and legislation, it appears that the moment has come to adopt a regional legal framework in which common standards for the harmonisation of national actions are developed and the essential elements of ICAM identified (such as definition of coastal area, objectives of ICAM, activities to be included, coordination between responsible domestic authorities, means of financing and implementation, etc.).

From a legal perspective, a regional legal framework for ICAM in the Mediterranean could take the form of:

- recommendations, guidelines, action plans or other type of "soft law" instruments;
- a binding ("hard law") instrument, having the status of an international treaty.

The existing guidelines could be incorporated and further developed in both of these instruments (UNEP, 1997 and PAP/RAC, 2001b). But the choice of the most appropriate form should be based on careful consideration as to the feasibility of the action and the aims to be achieved.

### **5.1. Soft Law Instruments**

At both the national and international level, soft law approaches are based on voluntary and non-binding commitments, as an alternative to instruments which set forth binding obligations. To speak about soft law seems a contradiction in terms, as it is within the very nature of a legal framework to be both authoritative and prescriptive (Birnie and Boyle, 1992). Nevertheless, soft law instruments, however they are designated (recommendations, declarations, resolutions, codes of conduct, guidelines, common criteria, standards, etc.), are commonplace in international law, given the lack of a supranational body with legislative and enforcement authority.

Soft law instruments can be adopted by governments or international organizations more quickly than international treaties and can be revised or amended without cumbersome procedures. In principle, the main advantages of this approach are simplicity and flexibility. There are however serious weaknesses, given the lack of mechanisms and legal guarantee that States will comply.

Soft law instruments have a written form and are articulated in a set of abstract norms. But they leave a broad margin of discretion on how and when to conform to their requirements. While treaties, once they have been ratified and have entered into force, are binding in their prescriptions, States retain control over the degree of their commitment to soft law

instruments. By adopting certain soft law instruments, States may be led to subscribe principles that they would have rejected if laid down in a treaty context.

Declarations of principles (such as the 1992 Rio Declaration) and broad policy instruments (such as Agenda 21 or the Mediterranean Action Plan itself) are among well known instances of soft law instruments. Due to their flexibility, this kind of instruments are frequent in the field of international environmental law, where regulation may have a burdensome impact on economic activities and consumption patterns (this seem to occur in the specific case of ICAM). Resort to a soft law instrument may also take place where States are not yet convinced that scientific evidence is sufficient to support precise legal commitments (this does not seem the case of ICAM).

In some cases, soft law instruments adopted at the international level are also addressed to entities different from States (local authorities, the private sector, the public in general, etc.). Where commercial actors are involved, the level of effectiveness understandably depends to a certain extent on self-interest. Hence, decision on whether to utilise soft-law might be the result of:

- identification of the affected groups;
- determination of their perception of their self-interest with regard to the matters on which voluntary co-operation is sought, and
- evaluation of the extent to which a greater understanding of the long-term values of sustainable use and management of coastal areas and resources can change that perception (Young, 2003).

The use of a soft law instrument may be a first step in a process leading, in due time, to the formalization of broad principles through the conclusion of an international treaty. But not all soft law instruments necessarily become hard law.

The amended Barcelona Convention allows for the adoption of soft law instruments. The Parties are bound to "individually or jointly take all appropriate measures (...) to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area and to protect and enhance the marine environment in that Area so as to contribute towards its sustainable development" (art. 4, para. 1). They are also required to "adopt programmes and measures which contain, where appropriate, time limits for their completion" (art. 4, para. 4, a). Both this provisions, due to their general wording, give a broad margin of discretion in choosing the most appropriate ways and instruments to reach the objective. The meetings of the Contracting Parties, which can be either ordinary or, where deemed necessary, extraordinary, is the appropriate forum to consider and undertake any action that may be required for the achievement of the purposes of the Convention and its Protocols (art. 18, para. 2, vi).

Soft law instruments can also be adopted by the Mediterranean Commission on Sustainable Development, established under MAP Phase II as a forum for open dialogue and consultation with all relevant partners on policies for promoting sustainable development in the Mediterranean basin. The Commission is entrusted with the task of advising on activity programmes and formulating the necessary recommendations for Contracting Parties.

However, after careful consideration of all the relevant aspects, it does not seem that resort to a soft law approach would be the best way to achieve the objective of addressing the subject of ICAM within the Barcelona legal system and to "upgrade" the principles already outlined in PAP/RAC guidelines to the level of an official governmental instrument.

The effectiveness of a soft law approach is questionable due to a number of factors which play a role in the case of the Mediterranean coastline, namely:

- a) the high level of degradation combined with the growing risk of losing both valuable natural components and socio-economic opportunities;

- b) the need to provide a clear legal framework to avoid divergent and inconsistent actions that could be taken at the national and local levels;
- c) the opportunity to offer effective incentives to private stakeholders;
- d) the low probability of self-compliance by economic interests which can in the short term be affected by the introduction of an effective ICAM policy.

In consideration of these factors, it follows that the adoption of a soft law instrument could only be envisaged as a first and transitional steps towards a hard law instrument, if it were ascertained that a more advanced solution is not immediately feasible for political considerations.

Models of integrated coastal management have been developed by MAP for many years and critical mass of experience, reflected in detailed, but perhaps "toothless" guidelines, has been gained. The adoption of another soft law instrument, mostly incorporating existing guidelines, would bring little progress, especially as far as the critical question of implementation is concerned. It could even be said that a further soft law instrument would be perceived as a phase of stagnation or mean a step backward, being the evidence of the lack of political will to set forth effective tools of implementation. Through any soft law instrument expectations would be created without offering means for their realization.

## 5.2. A Binding Instrument

To envisage the adoption of a treaty, which under the Barcelona legal system is likely to take the form of a protocol to the Convention, seems a more appropriate way to address the subject of ICAM. A number of considerations lead to this conclusion.

- A. A binding instrument which provides for mechanism to ensure its implementation by Contracting Parties, would be a more appropriate solution and would probably be seen as a natural step forward in the Mediterranean legal system. After years of research, discussion and experiences, a legally binding instrument on ICAM could promote coherent standards of policy and implementation at the domestic level. The governments of Mediterranean countries and, depending on their responsibilities, the relevant local authorities, would be stimulated to enact new implementing legislation and planning or revise the existing rules and programmes.
- B. There is a widespread perception, not only among officials of States and local entities, but also within the scientific community and the civil society, including non-governmental organizations active in the field of the environment, that ICAM needs to be addressed in an effective way and under a robust legal and uniform framework. For example, the participants to the Second Seminar on Legal and Management Instruments for the Conservation of the Mediterranean Coast, convened by UNEP/MAP (Mallorca, Spain, 6-8 June 2002) reached, *inter alia*, the conclusion that "it will be desirable to adopt a Protocol related to the Barcelona Convention on Integrated Coastal Area Management" (UNEP/MAP, 2002).
- C. An important reason towards the choice of a protocol is the fact that also international treaties can have a broad and flexible content. They can provide for general commitments in the form of common uniform standards that the Parties are bound to reach. While the Contracting Parties which already have followed advanced models in their domestic legislation are not required to take further action<sup>32</sup>, the Parties which still need to proceed on the way of ICAM are required to introduce in their legal systems a number of minimum standard provisions. This kind of approach may prove to be

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<sup>32</sup> It is however obvious that these Parties are bound not to repeal the advanced legislation they have adopted. This is explicitly provided for in several instruments belonging to treaty law or European Community law.

particularly suitable in the case of the Mediterranean coastal area, where different types and level of environmental legislation coexist and the competences granted to local entities vary from one country to the other.

- D. The recent updating of the Barcelona legal system shows that the Parties consider it as a dynamic body capable of being subject to re-examination and improvement, where appropriate. Each of the instruments of the updated Barcelona legal system contains important innovations and shows a certain degree of legal imagination in finding innovative approaches to address common concerns. To a certain extent, the Mediterranean instruments have anticipated possible legal developments and trends of cooperation in other marine areas where regional seas programmes have been established under the UNEP sponsorship. To enter into a completely new field of legal cooperation and to address the concern of sustainable coastal management, which is shared in many areas of the world, could become an attractive step also from the political point of view. It could set forth a model of integration that, originating within the Mediterranean area and the Mediterranean countries (with the important addition of the European Union), has the potentiality of being followed, *mutatis mutandis*, also in other regional seas and areas.

Yet, the minimum common standards to be embodied in a future Mediterranean binding legal instrument on ICAM should not be limited to the stage of banalities and should have a sufficient degree of legal precision to be distinguished from a mere list of recommended objectives. Although worded in more or less flexible terms, the aim of a hard law instrument is to set forth a number of obligations and corresponding rights that the Parties consider suitable to reach a common goal.

As regards the most appropriate type of instrument, only two possibilities may be reasonably envisaged: either an annex or a new protocol to the Barcelona Convention (it is evident that any amendments to the already existing instruments of the Barcelona Convention could not specifically address the issue of ICAM with the required specificity).

The adoption of an annex to the Convention is not the usual way to deal with substantive additions to the Barcelona legal system. The only annex to the Convention adopted so far (and at the same time as the Convention itself) is devoted to the procedural subject of arbitration. As regards the procedures for adoption, an annex to the Convention is to be considered as its integral part (art. 23, para. 1). The adoption of a new annex is submitted to a procedure (art. 23, para. 3), which requires, *inter alia*, a three-fourths majority vote by the Contracting Parties (that means 16 out of 21 Parties). It enters into force for all Contracting Parties which have not notified the depositary that they are unable to approve it.

Like other regional seas programmes, also the Barcelona legal system is composed of a framework instrument (the Convention) and additional protocols (six for the time being) which elaborate in detail and at the appropriate time the general obligations set forth by the Convention. As stated in art. 21, the Contracting Parties may adopt additional protocols, at a diplomatic conference convened by UNEP at the request of two thirds of them. The adoption of a seventh protocol on ICAM would better fit into the basic structure of the Mediterranean legal system.

Under art. 33, para. 3, a protocol enters into force, except if otherwise provided, following the deposit of the sixth instrument of ratification. This could lead to a relatively timely entry into force of a future ICAM Protocol, with respect to those States which have ratified it<sup>33</sup>.

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<sup>33</sup> For example, the Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean, signed in 1995, entered into force in 1999.

## 6. PRESENTATION OF PROTOCOL OPTIONS

It appears therefore that a Protocol is the most appropriate legal tool for reasons of substance and form. As regards substance, the protocol will allow going one step further in the effectiveness of the many documents developed until now in the Barcelona system as concerns ICAM. The white papers and recommendations are no longer as potent an illustration or pedagogical instrument as they were in the past, and their redrafting or updating may only remain a pointless exercise, devoid of any real effect to combat the increasing threats to the Mediterranean coastal areas, if not linked to a more potent legal instrument such as protocol. As far as form is concerned, the Barcelona Convention is the most appropriate operational tool to deal with current issues. Integrated coastal area management is one of the general obligations of the Parties to the amended Convention (art.4 para. 3e). This leads to the fact that the preparation and adoption of a Protocol constitutes the obvious legal route towards ensuring the application of the Convention, as specified by its art.4 para.5.

The choice of a protocol which firmly justifies the need to include Mediterranean coastal areas in all protection programs for the marine environment is not necessarily limited to one option. Indeed, although binding, an international agreement may be drafted according to several potential scenarios, depending on the position taken by Member States to detail or not the corresponding measures, procedures and standards. It is therefore quite conceivable that a Protocol on the integrated management of coastal areas is viable, even if the content is the combination of several options.

Three options will be examined:

- A. The framework Protocol or general content Protocol listing a certain number of principles and rules, but serving to essentially demonstrate the existence of the actual determination to contribute legal strength to the current guidelines and recommendations on ICAM.
- B. The more detailed version of said Protocol, with more extensive and precise content than the first example, while still limited to the concerns of integrated coastal area management and conservation goals.
- C. An intermediate Protocol, formulating the main principles and only covering the most important measures.

These three options are presented separately for purposes of clarity, but can be combined in a fourth option.

### A Protocol with general content

Under the option of a protocol with general content (or framework Protocol), the Parties are required to comply only with the core elements of ICAM. This kind of instrument should set forth the basic principles and priority objectives of ICAM and identify a number of measures to be taken by all the Parties, taking into account that States may be hesitant to undertake burdensome obligations relating to their territory and to introduce completely new principles in their domestic legal systems. Such a protocol should be flexible enough to be adapted to all the various and specific situations existing along the coasts of the Mediterranean countries. Nevertheless, Parties shall be left free to establish in their national legislation<sup>34</sup> standards that are more advanced or stringent (as regards the level of protection of the environment) than those resulting from the Protocol.

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<sup>34</sup> The term national legislation should be intended in a broad sense, including European Community legislation.

The core elements of ICAM can be determined as follows. This does not exclude that other elements are also envisaged in the framework Protocol, although in the form of recommendations or objectives to be achieved in due time<sup>35</sup>.

### **1. General Definition of Coastal Area**

There is no common practice among the Mediterranean countries as regards the definition of the coastal area. Nor does art. 1, para. 2, of the Barcelona Convention provide a definition of the "coastal areas" to which the application of the Convention may be extended.

As a consequence of the influence of traditional land-use planning, which does not apply to the sea, the present measures of national planning mostly focus on the terrestrial part of the coastal area. This usually includes a narrow coastal strip, consisting of the seashore up to the high tidal waters, where a strict regime of use applies (public maritime domain). However, the geographical coverage of the ICAM Protocol must be broader, in order to reflect the close connections existing between the land and the marine portions of the coastal belt and to stress the need of integrated planning and regulation of all activities related to this belt as a whole.

Among the possible options, it would be preferable to set forth rules on the geographical scope of the protocol, to determine how far landward and how far seaward it will apply. On land, the limits of application should be determined by the Parties at the time of ratification. The Parties should take into account both the coastal and marine areas (estuaries, marshes, etc.) and a series of criteria could be specified in an annex to the Protocol<sup>36</sup>. The possibility of an extension of the ICAM Protocol to river basins should be excluded, as it would enlarge its application to areas too remote from its specific and primary aim.

At sea, the Protocol should include both the maritime internal waters<sup>37</sup> and the whole extent of the territorial sea, including the seabed, up to the maximum limit of 12 nautical miles<sup>38</sup>. Certain oceanic countries might consider that the coastal area extends as far as 200 n.m.. from the shore, corresponding to the external limit of the exclusive economic zone. However, the geographical characteristics of the Mediterranean lead to the exclusion of such a broad concept of coastal area, which would cover the whole extent of Mediterranean waters<sup>39</sup>.

### **2. Main Principles of ICAM**

While a definition of some key concepts, such as ICAM, is required, not all concepts need to be defined, especially in the case of a framework Protocol<sup>40</sup>. In general, the expression ICAM describes a regulatory framework for all activities in the coastal areas. It is not a substitute for sectorial planning, but focuses on the relations between specific activities, to establish more comprehensive goals. The Protocol could include an explanatory definition of ICAM.

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<sup>35</sup> In this case, the conditional mood should be used in drafting the relevant provisions.

<sup>36</sup> The experiences drawn from the CAMP projects should be taken into account in the formulation of the criteria.

<sup>37</sup> The United Nations Convention on the Law of the Sea (Montego Bay, 1982) provides that "waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State" (art. 8, para. 1). The criteria for the drawing of the baseline are specified in arts. 5, 6, 7, 9 and 10.

<sup>38</sup> Most Mediterranean countries (but not all of them) have established a 12-mile territorial sea.

<sup>39</sup> There is no point in the Mediterranean which is located more than 200 n.m. from the nearest land or island.

<sup>40</sup> In the case of definitions, the old maxim *omnis definitio in iure... periculosa est* (Digesta, book 50, title 17, fragment 202) should be remembered. A glossary having an explanatory nature could be added as an annex to the ICAM Protocol.

The framework Protocol should also set forth the basic objectives of ICAM, as a system of coastal governance which relies on broad principles, such as approaches to sustainable environmental development and ecosystem protection<sup>41</sup>.

### **3. Inter-Institutional Co-ordination**

In most countries, authority is shared by ministries, based on the traditional distinction between terrestrial (land-use planning, public works, agriculture, etc.) and maritime (navigation, fisheries, etc.) affairs. Local authorities within regions, provinces or municipalities are also entrusted with a number of competences, especially in the field of urban planning.

The framework Protocol will not specify which national authorities are in charge of ICAM or how authority is shared between central and local entities<sup>42</sup>. It will however set a general obligation to the Parties to clearly identify the role of the public authorities involved and to ensure a high level of inter-institutional coordination to avoid sector-based approaches and the risk of overlaps or gaps.

The building of the institutional capacity and the provision of the human resources necessary to respond to the interlinked and sometimes conflicting elements of ICAM should also be mentioned as an aim to be achieved in a reasonably short term. Attention could be also given to the possibility to convene periodic national and local conferences on the results of ICAM, where experiences can be shared and information exchanged by the competent public authorities.

### **4. Sea and Land Use Planning and Control**

While almost the entire Mediterranean coastline is covered by land-use plans, the marine part of the coastal zone is seldom integrated in such planning. The framework ICAM Protocol would require that integrated programmes and plans be prepared for the whole coastal zone in order to address both the marine and terrestrial areas of coastal zones together. Programmes and plans should be adopted at different levels, starting from a national strategic plan, and approved by authorities at levels above those who make the plans.

The main components of planning, including environmental impact assessments or studies and strategic environmental assessments, and the main activities involved (such as prevention of pollution from all sources, coastal erosion, protected areas, water resources, natural disasters, carrying capacity of coastal areas, fisheries, transport, agriculture, aquaculture, tourism, recreation, marinas, mining on land and offshore, archaeological areas, urbanization, industrial areas, waste management, artificial platforms, coastal landscape, etc.) should be specified in the framework Protocol or, as it seems preferable, in one of its annexes.

Freedom of access to the sea by the public should be considered as a rule. Parties should also be bound to define a narrow coastal belt where new constructions or developments are prohibited. Local traditional activities that do not present a threat to sensitive natural areas should be maintained and promoted, especially if they belong to the national intangible cultural heritage.

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<sup>41</sup> See, for instance, the principles listed in Chapt. II of the Recommendation of the European Parliament and of the Council of 30 May 2002 concerning the implementation of Integrated Coastal Zone Management in Europe (Off. Journ. Eur. Comm. No. L 148 of 6 June 2002).

<sup>42</sup> It is even doubtful whether a full-scale Protocol could provide these specifications either, as they belong to the sphere of domestic jurisdiction of the Contracting Parties.

## **5. Natural Resources Management**

Coastal zones possess a rich biological diversity. The framework Protocol will ensure planning and control on the use of coastal resources and monitoring about the extent of human pressure on them. Means for diverting pressure from the coast to the hinterland should be envisaged. Fields of priority actions could also be identified (for example, as regards areas subject to several and actual conflicting uses or zones of environmental, economic or social significance, like islands, deltas, wetlands, dunes, etc.).

## **6. Nature Protection**

The ICAM framework Protocol will provide for the inclusion in national planning and legislation of provisions on the protection of sites of ecological and landscape value and on the preservation of the biological diversity of coastal ecosystems. Critical habitats for living marine resources should be an important criterion for the selection of marine and coastal protected areas. As required by art. 7, para. 4, of the 1995 Mediterranean Specially Protected Areas Protocol, "when specially protected areas covering both land and marine areas have been established, the Parties shall endeavour to ensure the coordination of the administration and management of the specially protected area as a whole".

A recent workshop has stressed the need to find better means to address the linkages existing between marine protected areas and ICAM:

*"If managed in isolation, individual coastal and marine protected areas will remain vulnerable to natural resource development and exploitation occurring outside - in particular overfishing, alteration and destruction of habitats, and water pollution. Therefore, protection of coastal and marine areas - species, habitats, landscapes, and seascapes - needs to be integrated into spatial development strategies for larger areas, under the umbrella of ICM [= integrated coastal management], that should incorporate a specific strategy for nature conservation coordinated with other actions for intergovernmental and intersectoral coordination. The ICM framework itself should be conceived as part of a national strategy for sustainable development"* (Cicin-Sain and Belfiore, 2003, p.30).

## **7. Risk Management**

Parties will be bound to draw up special plans (so-called contingency plans) to face the risks of natural disasters and to integrate them in the general planning for the coastal zone. The risks should cover a broad range of issues, such as the effects of potential climate change and sea level rise, the dangers of environmental degradation of anthropogenic origin (land-based pollution, spills of oil and other harmful substances, etc.), increased coastal erosion, flooding. Means of prompt intervention should be put in place, taking advantage, where appropriate, of existing international instruments, such as the 2002 Protocol on pollution from ships.

## **8. Public Participation**

As also provided for by art. 15 of the Barcelona Convention, Parties to the ICAM framework Protocol shall give to the public, including non-governmental organizations, appropriate access to information on the state of the coastal environment, activities likely to affect it and measures taken in accordance with the Protocol. The public shall also be given the opportunity to participate in decision-making processes relevant to ICAM through instruments such as public enquiries, hearings or consultations.

Means of participation by the general public and its various associations can only stimulate a sense of civic responsibility in facing of the challenges of ICAM. However, given the various content of different national legislation applying in this field, a specific provision on the right of

individuals to bring court actions to oppose planning decisions should only be included in the full-scale Protocol.

### **9. Transboundary Co-operation**

A specific provision will call the States to cooperate for the planning in coastal areas located in the vicinity of an international border to establish mechanisms for better coordination of responses to cross-border issues.

### **10. Technical and Financial Co-operation**

As also envisaged by art. 13 of the Barcelona Convention, the ICAM framework Protocol shall include provisions on international cooperation, either directly or through international organizations, in the fields of exchange of data and scientific information, training, financial and technical assistance, carrying out of pilot projects, with priority to be given to the special needs of Mediterranean developing countries.

### **11. Monitoring and Reporting**

Under the framework ICAM Protocol, Parties will establish appropriate means to assess compliance with ICAM requirements, such as monitoring, inspection and reporting procedures. Their results should be open to public scrutiny. At the international level, the Parties to the ICAM Protocol should be bound to periodically submit reports at the meetings of the Parties.

### **12. Other Elements to be Considered**

Besides the elements which constitute its core, it is open to discussion whether and, if so, to what extent an ICAM framework Protocol should regulate other aspects which can perhaps find a more appropriate place in a full-scale Protocol. Among such aspects, the use of the so-called economic instruments for the private sector (market-based measures, financial incentives and tax reductions or exemptions, subsidized credits, voluntary agreements) or the public sector (eco-taxes, user fees) should be considered as an alternative or an addition to traditional command-and-control methods<sup>43</sup>.

## **B Detailed Protocol**

The close link between sea and coastal area protection described in Chapter 17 of Agenda 21 implies a whole series of actions to cover the development of all potential activities which may impact coastal areas. The issue here is not that an international agreement should in any way replace the national legislations, and international cooperation will only serve to highlight the directions to set the measures to apply, and the required controls.

It is obvious that the content of the detailed protocol will be integrally covered within the framework Protocol. There will be no specification, in this feasibility study, on the exact wording to be used, particularly as concerns verb forms to describe the degree to which the Parties to the Protocol shall be legally bound (i.e., must, should, could...).

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<sup>43</sup> In some of the literature on economic instruments for environmental management there is a general view that economic instruments are by definition better than command or control measures. Such a blanket statement cannot be accepted, since the efficacy of instruments depends, in broad terms, on a series of factors, such as the political will of the national authorities, the economic policy of the country, its institutional capability and socio-economic setting.

## **1. General Definition of the coastal area**

A Protocol on coastal areas should be useful in coming to a common definition which entails neither a standard nor an international delimitation. The States remain free to determine which coastal surface falls under the Convention and Protocols. However, a protocol dedicated to coastal areas must include precise definitions, on the basis of pre-selected criteria and impose a basic scope of application for the member States.

The definition of the coastal area must help in determining the geographical stakes of the new regional policies to implement, and the scope of territorial application of the Protocol.

Integrated coastal areas means both land and sea, along the coasts, including salty marshes and wetlands in contact with the sea.

Option A must necessarily include inland waters and the territorial seas.

On land, the existing legislation refers to the “public maritime domain” which must be covered by the Protocol. But the coastal fringe is not limited to the coastlines themselves, they must at least extend to comprise seaside communes and encompass all activities and territories having direct impact on the marine environment. The relevant criteria will be selected according to specific geographical, ecological and economic factors, and listed in annexes to the Protocol. This should allow the States to also define the additional coverage of territories adjacent to seaside communes, so as to include the communities established near estuaries and deltas, located downstream from transition waters. The monitoring body should be informed of such extensions, and will assess whether the criteria in annex are properly taken into account. It could be decided that the surface covered inland must in all cases, extend at least over 2 km, measured from the high sea line. Beyond that distance, the Parties could include catchment areas in the scope of application of the Protocol.

Experience acquired within the framework of CAMPs reveals that such integrated management projects cover highly variable coastal area surfaces according to the specific issues to tackle. In some instances, the surfaces of coastal areas are considerable (10 to 20 km in Egypt, 60 km in Algeria, 12 to 25 km in Tunisia, approximately 10 km in Albania, 8 km in Lebanon). It therefore seems very reasonable to take into account the assumptions relative to seaside communes of limited size.

## **2. Principles and objectives of ICAM**

The wording used in the definition of integrated management should highlight sustainable development and use and include the protection of biological and ecological balance in the coastal areas and landscapes.

A preamble to the Protocol could clearly establish the Mediterranean coastal areas as the natural and cultural heritage of the region's populations, without any discrimination towards any of the cultures this may involve. Traditional general principles could also be recalled, such as prevention, precaution, polluter-pay, integration of the environment and development, information, participation. Other principles, more specific to coastal areas could be developed, such as: equal sharing of resources by local populations, in-depth development, accounting for the different uses of coastal areas, giving priority to sea-related activities, free access to shores, etc.

These principles should be supported by the description of the objectives of the Protocol and of the regional strategy chosen by the Parties within the framework of international cooperation for ICAM. The economic, environmental, social, cultural and touristic importance of coastal areas must be emphasised.

The so-called “principles” found in chapter II of the Recommendation of the European Parliament and of the Council dated May 30, 2002 relating to the implementation of an ICAM strategy in Europe may apply, when they effectively correspond to actual principles, and not only to simple directions for action.

### **3. General Obligations**

A detailed Protocol should describe the obligations of the Contracting Parties in taking the required legislative and administrative measures to implement ICAM and reach the global objectives, as set forth in the Protocol. The obligations of States include preventive environmental protection and close monitoring of the marine and coastal environment<sup>44</sup>.

International cooperation will be made mandatory for States, in the case of such activities as inventories, regional strategies, research, exchange of legal, scientific and technical information, transborder cooperation, particularly as concerns the preparation of sustainable development and management plans or programs, monitoring activities and networks, defining common criteria. International cooperation between coastal stakeholders will also be encouraged.

### **4. Delimitation of coastal areas**

The delimitation of coastal areas may fall under the authority of national bodies, but Party States must comply with the provisions of the protocol on the determination of the land and sea surface covered. This delimitation could be the subject of a publication, and the Organisation (as understood under article 2b of the amended version of the Barcelona Convention) and local collectivities informed so as to enhance the awareness of the population and local stakeholders to the existence of an innovative and concretely identifiable space. It would also be advisable that the delimitation is included in the general and sectorial development plans as the territorial template for all projects in the coastal areas.

### **5. Inventory**

The States must be required to draw up an extensive global inventory of the coastal areas listing economic and cultural establishments, natural spaces, landscapes, whether protected or not, the stakeholders, the institutions and the legislation, the categories of which are specified in an annex to the Protocol. This inventory would be quite useful in gaining further knowledge on the coastal areas and would facilitate the definition of regional and national strategies. It should cover all territorial levels, and involve the following: fishing, fish-farming, transport, energy, resource management, protection of species and habitats, cultural and historical heritage, employment, tourism, leisure activities and sports, industries, mines, agriculture, waste, education. The inventory must be drawn up over the next five years and be updated every five years.

The Protocol will set the framework for the establishment of networks between national organisations in charge of the inventory, so as to improve knowledge on the coastal areas and facilitate monitoring. The concept of the inventory is included in the Recommendation of the European Community of May 30, 2002 relative to the integrated coastal area management strategy.(chapter III, national inventory).

### **6. Implementing institutional coordination**

As indicated above, it is not the responsibility of a protocol, no matter how detailed, to determine which local or national authorities are competent in the field of integrated coastal

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<sup>44</sup> According to the European Court of Justice, this obligation is an essential mission for the State, case C- 343/95, decree of March 18, 1997, Diego Cali& Figli, I. 1588

area management. It should, however, lead the States to implement national integrated management structures and to establish institutional integration. An obligation should be given to the States to establish institutional coordination between land and sea authorities, with the support of intersectorial coordination capacities, via an *ad hoc* body or through coordination missions entrusted to the Ministry for the Environment. The States will be free to choose State or local coordination mechanisms, according to their administrative and territorial systems of organisation. These mechanisms will greatly serve sustainable development by preventing contradictory decisions, replication, purely sectorial approaches, by promoting many initiatives and by involving all stakeholders. It could also be suggested that there be only one entry point to authorisations and monitoring of coastal areas.

The coordination bodies will be supported by a multidisciplinary advisory group of scientific and university experts specialised in land and coastal issues, to advise the decision-makers. To further assist the success of such coordination, it should be mandatory that States institute an advisory body, competent in matters of ICAM, at national or local level, involving all public and private stakeholders in ICAM projects.

### **7. Participation of territorial collectivities**

Within the institutional framework of each State, and according to the principles of subsidiarity and local autonomy, the Protocol should incite the States to seek the best possible form of cooperation and coordination between State institutions and territorial collectivities, located within the scope of the geographical implementation of the Protocol. It is indeed necessary to grow synergy and to involve all entities playing a part in the development and implementation of ICAM policies. Integrated management will also be further facilitated by encouraging local collectivities to partake in general or specific development and management projects.

### **8. Regional ICAM Strategy in the Mediterranean**

The States commit to cooperating on the development of the regional ICAM strategy, which will set the sustainable development targets for both terrestrial and maritime coastal areas in the Mediterranean. The ICAM Secretariat or specialised Centers will be responsible for preparing and monitoring this regional strategy.

The regional strategy must be approved by the meeting of the Parties. The Parties will have the obligation to adopt and apply all action plans, programs and measures required for the implementation of the regional strategy, as stated in article 15 of the amended Protocol on the mechanisms dedicated to the protection of the Mediterranean Sea against pollution from land-based sources and activities.

Coastal environment indicators will also be developed, to set the targets of national planning activities and to monitor activities and processes in coastal areas.

### **9. National Strategies and Plans for the development and use of land and sea space**

The Parties will prepare national strategies and plans for the development and use of coastal areas, as covered in the Protocol, within their legislative and regulatory frameworks. The integrated management plans will stem from the regional strategy, and be adapted to give a more formal character to CAMPs. They will need to cover both land and sea, and the Parties will decide whether they are to be developed by the State and/or by local collectivities. They must however always include all decision-makers, whatever the administrative levels. As global plans, they will cover all fields of activities in coastal areas, as determined in an annex to the Protocol, and determine zoning of the coastal areas to better spread activities and uses. These documents should be mandatory for all national and local authorities, as well as to private individuals, concerning conditions for land use and other activities or projects.

National strategies will take into account the recommendations of Chapter IV of the European Community Recommendation of May 30, 2002.

### **10. Environmental impact assessment studies**

The environmental impact assessment studies are value-added tools for prevention and sustainable development and will have to play a key role in the protocol. They will be carried out before strategies and related documents are prepared, for general regional strategies; for regional strategies on sustainable tourism in the Mediterranean; and for national plans on the development and use of coastal areas, at sea and on land. The environmental impact assessment studies will also apply to all projects and activities listed in annex to the Protocol, which may significantly impact the environment, in specially protected areas and buffer zones.

The Protocol will set forth the minimal content for environmental impact assessment studies, according to the community directive of 1985 modified in 1997, to the 2001 directive on impact studies for plans and programs, and according to the Kiev Protocol of 2003 on trans-border plans and programs.

An *ad hoc* mechanism, common to Party States, could be created, to ensure the scientific monitoring of impact studies, upon request from the Secretariat, from the Protocol steering Center, from a State, from an NGO serving as observer for the BC. This could lead to the obligation to complete or modify the impact study concerned, thus making it impossible for the States to make legal decisions during the revision period. The scientific monitoring team could also assist Parties in undertaking the impact studies, whenever necessary.

The environmental impact assessment studies will have to carry out in-depth analysis of the vulnerability of ecosystems in coastal areas and meet the objectives of sustainable coastal area management. Frontier States will be invited to conclude bilateral agreements specifying transborder consultation and participation procedures.

### **11. Free access to coastlines**

Free access to coastlines will be organised through the appropriate national legislation and regulations. Passage rights for pedestrians could be applied. Local derogations could be granted, in the case of topographical particularities, or for reasons of environmental protection, existing constructions or more stringent public interests. The traffic and parking of engine-powered vehicles are prohibited on dunes and beaches selected by the national authorities, according to the results of prior scientific studies on the vulnerable surroundings.

### **12. Incentives and financial instruments**

Sustainable coastal area development will be encouraged through financial instruments and other incentives to support public and private initiatives at local level. The qualitative improvement or rehabilitation of existing zones of activities will be preferred to the creation of new ones. Such incentives will be granted if the management plans are properly implemented. The impact studies will be assessed by the *ad hoc* body described under point 10.

### **13. Protection of sea shores**

The conservation of the coastal fringe and the natural state of shores will be of special interest. The States will be required to prohibit in their legislation the building of dams, use of stones, drainage and artificialisation of dams, and encroachment of the coastal areas, of the public maritime domain, of marshlands and wetlands, except in cases where the mandatory

impact studies deem such projects as justified to protect against sea movements, erosion, public safety or maintenance of existing works.

In order to protect biological diversity and landscapes in coastal areas, the States will prohibit construction, other works or road networks over a minimum distance of 100 m inland and at sea, measured from the highest point at sea. This measure will also apply to temporary and transportable constructions as well as to trailers and camp grounds.

In some cases, when the impact studies demonstrate that there is a requirement for public safety or for public services, the related constructions may be exceptionally authorised.

#### **14. Management of natural resources**

The use of natural resources, such as sand, gravel, seaweed, shells, etc. will need to take into account the ecological requirements of the environment and be preceded by an impact assessment study.

Particularlry sensitive areas can be classified as such by the States (deltas, dunes; wetlands, wooded areas) and will fall under special conservation measures against erosion, uncontrolled use or deterioration.

The public authorities may impose measures such as the protection of land cover or reforestation, to maintain soil stability.

#### **15. Protection of coastal wetlands**

Coastal wetlands will be protected as per the RAMSAR Convention. Their purpose will not be modified, except when environmental interests are at stake.

#### **16. Protection of dunes**

The States will need to take protection and conservation measures for the dunes, by controlling access and through soil stabilisation projects.

#### **17. Natural spaces**

Existing natural spaces must be protected, either as protected areas under the Protocol on specially protected areas, or through their integration in development projects, such as leisure parks or urban green spaces.

Both on land and at sea, these natural spaces will be covered by integrated management to maintain sustainable protection of coastal areas and biodiversity.

Teams in charge of managing and maintaining these natural spaces must be involved in the preparation of plans, programs and decisions which may impact both these sites and their surroundings.

#### **18. Protection and management of landscapes**

State legislation and regulations will need to specifically take into account the landscape value of coastal areas, regardless of whether or not they are listed as protected areas. Under article 4-3-e of the amended Convention and different protocols, the integration of landscapes is an obligation for the Parties. The protocol on coastal areas will specify the objectives and means to ensure the implementation of effective coastal and marine landscape protection and management, on the basis of the European Convention on Landscapes of 20 octobre 2000. This implies that landscapes will be integrated into coastal

development plans, and objectives will be set to assist stakeholders in maintaining the quality of the areas. The impact studies will be required to assess impacts and when impact studies are not a requirement, they will be replaced by landscapes evaluation studies.

Landscape policies in coastal areas will entail procedures to involve the general public, the local and regional authorities, as well as other stakeholders particularly in the case of activities in tourism, sports and leisure.

### **19. Tourism**

Tourism is one of the main resources of the Mediterranean coastal areas and it seems fitting that the Protocol set the objectives and detail the instruments favorable to sustainable tourism. This constitutes an opportunity to give legal scope to existing declarations and charters on sustainable tourism and to make the Mediterranean the very first mass tourism site to apply legal obligations, as stated, for instance, during the Quebec summit and resulting declaration on ecotourism of 22 may 2002 (Quebec Declaration, 2002).

The Parties will be called upon to develop and approve regional sustainable tourism strategies, by seeking and facilitating the involvement of all stakeholders, in particular the local populations. These strategies will serve as basis for the national policies covering sustainable development initiatives in coastal areas.

A certification and ecolabel system in the Mediterranean should be established in order to encourage tourism professionals and local collectivities in their efforts towards sustainable coastal tourism, based on common international criteria.

All activities and projects on coastal tourism will be examined within the framework of environmental impact assessment studies, as per a specific list of tourism-related activities, in the annex described under point 10.

A national body will be in charge of coordinating and controlling the balance between the development of tourism and the carrying capacity of coastal areas. To facilitate this task, all projects in this field will be covered in the carrying capacity assessment (CCA) section of the impact studies.

### **20. Protection against natural disasters**

As regards the combat against risks of floods, erosion, landslides, increase of sea level, emergency plans will have to be developed, bilaterally in transborder areas.

### **21. Protection against pollution**

The Protocol should impose a certain number of obligations to support the States in their control over risks of pollution. In some cases, the Protocol should require specific programs or measures, or refer to existing instruments, such as the Protocol on pollution stemming from land-based sources and activities. In this instance, the Protocol will serve as the framework establishing the legal basis for potential future involvement of the Organisation, if required in the future by the States.

Programs or measures are particularly important for sanitation networks and treatment plants. The Protocol should include provisions to prohibit the discharge at sea of untreated household and industrial waste.

National measures, reinforced by stringent supervision, are necessary to protect the cleanliness of beaches and the quality of bathing water.

Non-dangerous household and industrial waste shall be covered under elimination programs, to be collected, sorted and recycled. But, in this instance, the protocol can only make suggestions to the local authorities in charge.

In the case of dangerous waste, article 5-2 of the Izmir Protocol of 1 October 1996 relative to the prevention of pollution in the Mediterranean from transborder transport and elimination of dangerous waste, includes a provision on the general obligation to reduce to the minimum or even cease all production of dangerous waste. Specific rules could be drafted as regards temporary and definitive storage in the coastal areas.

## ***22. Protection of the subaquatic cultural coastal heritage***

Based on the UNESCO Convention of 6 November 2001 on the protection of the subaquatic cultural heritage, the Parties should take the most appropriate measures to protect this heritage, entrusting the Organisation with the adoption of the relevant programs and measures.

The Parties could also decide to draft specific agreements on the issue, at regional scale, a position which is encouraged in article 6 of the UNESCO Convention

## ***23. Participation of the general public and access to courts***

The participation of the general public is covered in the Barcelona Convention and its Protocols, but should be further reinforced in the protocol on coastal areas, since it applies more to land than to sea and is therefore a topic of greater interest to land-based populations. Reference could be made to the principles and mechanisms laid out under the Aarhus Convention.

After having examined 35 draft demonstration programs, the European Commission concluded that: "participation in integrated coastal area development is an essential element. Projects have demonstrated the value of such participation in the improvement of coordination and consultation activities. Authorities, NGOs and the public should benefit from individual training, capacity building and institutional reinforcement. Participation requires support from institutions at all levels"(Graham, 2001).

The general public, and NGOs, should be given appropriate access to information, so as to partake in the development and monitoring of the regional strategies, described under point 8 and 19. Such participation in the decisions of the Organisation would be a legal innovation in conformity with international practices and the recommendations of the Aarhus Convention.

Participation should also be an obligation at national level, in the case of decisions relative to plans, programs, projects and works. Procedures shall be prepared to allow public participation in the impact studies.

In compliance with the Aarhus convention, public participation in environmental activities can only be allowed, if there are procedures granting access to administrative or legal recourse. Such recourse must appear in the Protocol, to give the general public control over all stages of ICAM.

## ***24. Transborder cooperation***

Transborder cooperation in coastal areas is extremely limited. (Council of Europe, 1998). The Protocol will include provisions to facilitate transborder cooperation for integrated planning of coastal areas, mainly between local collectivities, according to the Framework Madrid Convention of the Council of Europe on transborder cooperation between collectivities and territorial authorities, of 21 may 1980. The Protocol, subject to a provision allowing opposition

from the States if need be, could then serve as a legal document having value of agreement between States, to facilitate future ICAM agreements between local collectivities.

Transborder cooperation should include participation and information sharing and exchange as regards environmental impact assessment. It will be organised on the basis of the Espoo Convention of 1991 on transborder impact assessment studies and of chapter V of the Recommendation of the European Communities of 30 may 2002.

### **25. Technical and financial cooperation**

A provision will be included in the Protocol as was the case in the Framework Protocol, on international technical and financial cooperation, with special emphasis on the needs of the developing Mediterranean countries. It should be further strengthened for coastal areas through the specific duties attributed to the Protocol monitoring Center, which could be the PAP/RAC, already involved in this field. The Center would be responsible for the collection and dissemination of information, in cooperation with NFPs and with European Environment Agency, for multidisciplinary training, technical and financial assistance, pilot and test projects.

### **26. Control, monitoring, assessment**

The implementation of an ICAM strategy in the Mediterranean will require specific provisions in the protocol on control, monitoring and assessment. The States will regularly report to the organisation. An expert committee should be given visiting rights to examine the reports on site, as is the case with the permanent committee of the Bern Convention, and should make their observations to the Parties.

The reports will include specific information on the ecological state of the coastal areas and an assessment of the strategies, policies and legal measures implemented and applied, having direct or indirect impact on coastal areas. And according to Chapter Vi of the Recommendation of the European Communities of 30 may 2002, they will also entail the assessment of the potential impact in the future of the strategy or strategies on the state of coastal areas.

The examination of observations could lead to specific assistance being granted to States finding difficulties in complying with their obligations.

The reports and observations are available to the general public.

### **27. Institutional Mechanisms**

Each party State will name a national focal point or correspondent for coastal areas, in charge of relations with the organisation that will appoint an Activity Center for coastal areas (PAP/RAC).

A scientific advisory committee will be created, specialised in inventories and impact assessment studies.

The parties will entrust all secretariat duties to the Organisation.

## **C Option for an intermediate protocol**

By definition, this option can be envisaged as a compromise between the framework protocol and the detailed option. This is why the more or less precise wording of provisions will make the difference.

It does not seem necessary at this stage, to repeat the provisions detailed above, and we will only mention those provisions which will be discarded, since all the provisions of the framework protocol would apply to the intermediate protocol.

### **1. General definition of the coastal area**

It is only optional to extend the scope of application to the territories near seaside communities.

### **2. Delimitation**

There exists no institutional procedure on this issue.

### **3. Institutional coordination**

This requirement applies in all cases, but the creation of an advisory body composed of all ICAM stakeholders could be made optional.

### **4. National strategies and development and use plans for marine and land space**

The plans would not be considered as mandatory for the States.

### **5. Regional Mediterranean Strategy for coastal areas**

### **6. Environmental impact assessment studies**

Environmental impact assessment studies would only be considered as one of the general obligations, as shown in article 4-3-c of the amended Convention, without precise wording in the protocol as regards the list of activities and plans under study. There will be no description of the detailed procedures for transborder impact studies or mention of the specific conditions relative to public participation.

### **7. Strategic environmental assessment**

### **8. Free access to the coastline**

Proclamation of the free access principle in coastal areas, without mandatory support measures. Regulations limiting the circulation of vehicles along the shores are not mandatory.

### **9. Incentives and financial instruments**

No regulations apply to the granting of financial aid based on the respect for the environment if supported by the positive results of impact studies.

### **10. Protection of seashores**

The protocol would only list general principles, without mentioning legal prohibition of projects impacting the seashores or wetlands. It would not formally require that States prohibit construction on a specifically chosen surface area of 100 meters, but would only encourage them to do so.

### **11. Management of natural resources**

No obligation to create specific zones for the protection of natural resources.

## **12. Landscape**

No direct obligation to set landscape quality objectives, and no requirement to present landscape studies in the absence of impact studies.

## **13. Tourism**

No specific regional strategy for sustainable tourism. It would be a part of the overall regional strategy for sustainable tourism. No ecolabel for tourism in the Mediterranean.

## **14. Combat against pollution**

The protocol would only highlight general principles, without formal constraints or obligations.

## **15. Public Participation**

The protocol would not impose on States the need to grant access to recourse on issues in coastal areas.

## **16. Transborder Cooperation**

Although encouraged, transborder cooperation would not grant local collectivities the authority to conclude local ICAM agreements.

## **17. Control and monitoring**

Under the intermediate protocol, reports and assessments are mandatory, but this would not entail the creation of an ad hoc mechanism or of an expert group to make observations to the States confronted with difficulties in complying with their obligations.

# **7. ASSESSING THE RELEVANCE OF THE OPTIONS PROPOSED**

## **7.1. Assessment Criteria**

The alternative options to be considered are:

1. Protocol with general content or framework protocol
2. Protocol with detailed content or complete protocol
3. Intermediate protocol

These options represent the pessimistic, the optimistic and the realistic/middle ground solution, respectively.

While it is not possible, in view of the short timeframe and in view of the essentially legal expertise of the consulting team, to proceed with a full and rigorous scientific assessment of the probable impact of these three types of protocol, we will nonetheless proceed with a general appraisal of the relevance of these three options.

There are some key criteria of appreciation, which can be used as a framework of evaluation for each option. These relate to added value (to MAP, environmental international treaties and synergy with other treaties or instruments), contribution to environmental protection, economic impacts, political and social acceptability:

### **1. Added value as to:**

- a. *the Barcelona Convention system including MAP objectives.* Elements of the ICAM approach are to a certain extent introduced to existing system (Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean, Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities, the Protocol concerning pollution resulting from exploration and exploitation of the continental Shelf, the Seabed and its Subsoil and the Protocol concerning cooperation in preventing pollution from Ships and in cases of emergency combating pollution of the Mediterranean sea). The adoption of a Protocol for ICAM (particularly of a complete one) will provide significant added value to the MAP system, rendering it as a pioneer in regional cooperation for environmental protection and sustainable development. Since the adoption of such a Protocol will require significant mobilization of resources while it will -no doubt- encourage some restructuring of the national systems (e.g so as to ensure the promotion of the integration concept which is a key element of ICAM) MAP can draw significant benefits, strengthening its role, upgrading its structures, gaining significant benefits at the international fora.
- b. *environmental international treaties.* The possibility of introducing institutional provisions regarding ICAM in the Mediterranean region will no doubt have a positive impact at an international and national level as well. So far treaties related to the environment, such as the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar, 1971), Convention on Biological Diversity (Rio de Janeiro, 1992) or the United Nations Framework Convention on Climate Change (New York, 1992) address mostly thematic issues -independently of their significance-. Through the implementation of an institutional framework for ICAM (particularly of a *complete Protocol*) in the Mediterranean, a thematic (actual a cross thematic issue) will be addressed, and the promotion of ICAM at the Regional level, will encourage cooperation cross themes. All issues addressed in existing environmental international treaties are essential components of ICAM, since the protection of natural areas and the combat of sea level rise due to climate change are among the key challenges for all coastal nations. Within this context the formulation of an ICAM policy framework in a form of a Protocol will undoubtedly strengthen international environmental governance but also the abilities of countries in the Region to comply effectively in a coordinated manner with their international environmental obligations.
- c. *Synergy with other treaties/instruments (international):* Synergy with other (non exclusively environment related) international treaties and other instruments would be also significant. In an analogous manner with international environmental governance, the existence of a coherent framework of ICAM is likely to benefit the Region and the Contracting Parties individually to implement other agreements of international significance, as for example in marine transport, trade, etc. ICAM has a cross sectoral focus ensuring the harmonization of sector specific actions capturing the complementarities and synergies involved. In this respect the existence of an agreed framework (Protocol) could provide a sound platform of action (and implementation of agreements) in multi-sectoral and cross border issues

In a synthetic view what would be the added value in the existing system, limited so far to broad and specific Guidelines for Integrated Coastal Area Management? The three above criteria refer not only to the "image" (symbolic value) of each option within MAP and across the Regional Seas and other International initiatives of ICAM but also as a horizontal activity which could provide synergies for fulfilling already undertaken obligations and activities. This essentially reflects the different opportunities across the various scenarios to coordinate MAP activities and improve synergies and effectiveness across the board, because of ICAM. Such synergies can be also sought in terms of other international Conventions and obligations of Mediterranean states.

## **2. Contribution to Environmental Protection**

This criterion reflects the opportunity losses from anticipated developments (conflicts, problems of environmental deterioration, resource losses, etc.) as a consequence of each option. Essentially this criterion addresses to the necessity to look into the system from a long-term sustainable development perspective. Of particular interest are the environmental impacts of each option. Which one of these would succeed in slowing down and eventually - hopefully in the near future- leaving off environmental deterioration? Environmental impacts will no doubt have in all cases significant socio-economic repercussions. An effective adoption of a complete Protocol will no probably have more positive impacts since it includes specific provisions for the protection of a critical zone, of natural resources, of sand dunes, natural areas, landscapes, etc. as several of the problems/issues faced have a regional or cross border character and their confrontation is greatly facilitated by a common framework of commitments.

## **3. Economic Impacts**

This reflects on the eventual benefits and opportunity costs in terms of development incurred by the adoption of a common platform for ICAM. Across sectors there might be negative externalities involved from a sectoral perspective, either in terms of conflicts over the use of resources and the impacts on the environment in general or gaps and lack of coordination. As ICAM is a multi-sectoral activity it enables the building of complementarities and synergies among actions in various sectors therefore leading to lesser costs and the realization of benefits from coordinated action. By contrast the lack of a coherent framework could lead to an intensification of conflicts at the expense of sectoral development reducing the opportunities for overall development. The weak option is obviously worse off as compared to the other two options in this case. Economic impacts from not introducing any policy measures for ICAM need also to be carefully considered. The economic impacts of a 'laissez faire' scenario need to be carefully evaluated vis a vis the costs for adopting politically demanding measures.

## **4. Political acceptability**

This criterion refers to the anticipated reactions at a political level towards each option. What could be the political acceptance for each one of the alternatives? This will depend highly not only on existing pressures for problem solving in coastal areas (a kind of a bottom-up process), but also on the 'nature' of the policy and decision making process around the Mediterranean. In regard to the former, the pressure is mounting but there are no critical issues –or even perceived as critical- which could drive towards a harder solution. Regarding the latter policymaking systems around the Region are highly degree centralized at the nation-state level resulting to top-down decisions (with some exception of the EU member states which experiment decentralization and devolution of central systems, not always in a consistent manner, strengthening of the role of the regions). Regional level decisions are implemented in a slow manner, as evidenced by the advancement in recent Protocols. Experience demonstrates low response in implementing binding decisions at the Regional level, which are expected to have concrete impact on the national regulatory context (e.g. amended Barcelona Convention is still to be ratified and actually be implemented by several states, which are reluctant although they have signed the Convention in the first place). It should be noted though that there is a long experience from the cooperation at the Regional level as well as of acceptance of various decisions aiming at the protection and management of common and valuable resources. This can serve as an ideal platform to promote further cooperation among Regional partners. Within this context the adoption of a more 'formal' decision, of the type of a complete Protocol or even an intermediate Protocol, which could built on the Guidelines need not to be excluded. Furthermore the criterion of political acceptance will highly depend on the following criterions (requirements for adaptation, requirements for implementation and financial requirements). Increased requirements will

only inhibit political acceptance of the 'harder' solutions, unless benefits are clearly stated, evenly distributed, arising not only in the longer run but also on the short term.

## **5. Social acceptability**

Even if political acceptance was secured in the first place, what would be the requirements for such an adaptation not only at national but also at regional level? How distant could be the threat of the abolition of this acceptance in practice? Are the prerequisites too many indicating a long lasting process for the implementation of such a Regional decision? In all cases there are several factors that need to be considered. The absence of key stakeholders particularly from the private sector and the environmental sector (NGOs) whose participation would be essential in all cases will undoubtedly have negative effect, especially in cases where suggested activities are more on a voluntary base. Furthermore local communities are in most cases unable to undertake the task of ICAM, that is implementing at the local level planning and management guidelines to achieve the sustainable development of their coasts. Administrative and organizational structures at local, even at higher levels are rather weak. Adaptation may be requested at a regional level, as existing structures may not be sufficient. Last but not least pressure for coastal development, mostly from the part of local communities and generally from the part of land owners, who see land development as the only option towards immediate economic prosperity, is expected to continue, complicating as a result the implementation of any decision which will foresee restrictions for land development. Therefore the adoption of a framework Protocol can be a more realistic solution while it can serve as a preparatory step towards the implementation of a 'full-scale' ICAM process.

In addition to the above axes of appreciation there could be other considerations included to reflect the *Conditions* associated with pursuing one option versus another. As noted already so far coastal management has mainly been implemented through land use planning and provisions for environmental protection. Could the suggested option be integrated within existing approaches so as to maximize impact? What would be the necessary institutional arrangements in that case? As regards to central level systems each alternative option has different pre-conditions in terms of organizational requirements, meaning the ease of adapting to new tasks or the margins which are available within administrations (Environment or Planning Ministries to cope with the demanding tasks of mobilization, coordination, concertation etc of ICAM) In addition this criterion reflects also the capacities of Environment (weak) Ministries to pursue others (sectoral ones) to cope with demands generated by one of the options. Given recent developments in European institutional framework (adoption of EIA and SEA, adoption of the Framework Directive for integrated water resources management, the Recommendation of the European Parliament and the Council on Integrated Coastal Zone Management), one may argue that the adoption of a complete Framework by those partners who are also member of the EU cannot be excluded.

The most important consideration however in this context is the necessity to develop a Monitoring and Evaluation mechanism to pursue implementation. Each option is more or less demanding than the others on the MAP system. So there are serious implications for MAP system across the various options, implications/requirements which need to be carefully assessed in terms of the internal capacity of the system (given the existing structure and constraints) to fulfill provisions. A step-by-step approach (adoption of a Framework or an intermediate Protocol in the first place, while introducing changes that could support the implementation of a complete Protocol in a second phase) may be more advisable allowing for necessary restructuring, given that the rhythm of environmental deterioration will slow down.

Furthermore, financial issues can be also included. What would be the cost for the implementation of each alternative? Would that cost be relatively equal among partners? If not what would be the compensation measures to be adopted? The burden of each option is not equal on national/regional/local systems. This is a general condition which certainly

would weigh against one option or another. Guidelines are “lighter” in general since they are mostly voluntary. Other options will need considerations of financial assistance which has to be sought within MAP or each one of the Mediterranean States.

## **7.2. Criteria applied to the three options**

### **7.2.1. Criteria applied to the general content Protocol**

In the task of drafting an ICAM Protocol, a number of political and economic factors would suggest to follow a less ambitious strategy leading to the adoption of a framework instrument instead of a full-scale one.

Some States might be hesitant to undertake burdensome obligations relating to an important portion of their territory, to enter into the delicate field of inter-institutional coordination and to introduce new principles (such as the notion of integration) in their domestic legal systems. Most perplexities may be overcome if the proposed model of legal instrument is broad enough to allow margins of discretion and flexible enough to leave room for adequate time-frames.

Also a framework Protocol, while not being a fully satisfactory solution from an abstract point of view, would bring an added value to both the UNEP/MAP legal system, which commits Parties to promote the integrated management of the coastal zone (see Art. 4, para. 3 e, of the Barcelona Convention), and the system of treaties for the protection of the marine environment in general, where such a kind of instrument would fill an evident gap. It will establish evident synergies with other international treaties<sup>45</sup> and will implement one of the main long-term objectives of sustainable development within MAP Phase II, where ICAM is included among the main components of sustainable development in the Mediterranean and its objectives are clearly set forth.

The long and short term costs of a framework Protocol will be lower from the political, organisational and social point of view. There is little doubt that this factor would determine a stronger political acceptability of such an instrument.

However, also the simple consideration that, whenever possible, it is preferable to draw up advanced instruments should be taken into account in making a choice about the contents of the Protocol to be proposed to MAP Parties. Mediterranean coastal States could only benefit from an international support which would stimulate the development of their national legislation and policy towards the establishment of an advanced and effective system of ICAM. This could suggest the solution that the framework Protocol model be enlarged to include also elements that, while taken from a full-scale Protocol model, are expressed in the form of recommendations or objectives to be achieved as appropriate and within a reasonable time.

### **7.2.2. Criteria applied to the detailed protocol option**

States may, in a first instance, consider this detailed option as superfluous and inappropriate for coastal areas. The existing guidelines and soft law instruments could be sufficient to allow States to organise ICAM, if they wish. Furthermore, legislation on coastal areas varies greatly from country to country, and entails such complex institutional mechanisms that it seems utopic to attempt to apply common rules through a protocol.

In reality, as we have seen under Part 3, there is strong ground for justification for a protocol, insofar as ICAM is a concept which has already been included in the amended Convention,

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<sup>45</sup> See above, the paragraph on "Legal Justification for a Protocol on Coastal Zones with regard to International Law of the Sea and International Law of the Environment".

as one of the overall obligations of the States. It is not possible to separate the marine objectives of the Convention and Protocols from the issue of coastal areas: they are closely linked.

Furthermore, the complexity and vulnerability of coastal areas are such, that they require sophisticated and detailed instruments, rather than the simple repetition of existing guidelines. The protocol must be seen both as an opportunity to implement and improve the instruments for integrated management, and as a means to further complete and specify them. This is the only way to slow the pace of deterioration of the mediterranean coastal areas. The longer we wait before taking the required measures, the costlier, or even impossible it will be to prevent impending disaster or irreversible destruction.

Synergy with other conventions is obvious and has already been underscored. But, the real justification for Protocol on Coastal Areas is in the legal system of the Barcelona Convention. Without such a protocol, the existing rules would remain insufficient. If the Barcelona Convention and its protocols (which partially cover coastal area issues: specially protected areas, land-based pollution, dangerous waste, emergency situations) are to be effectively applied, they must absolutely be reinforced by protocols dedicated to actions of the States in coastal areas, without overlaps with existing instruments.

Since it is not traditional, either on an international scale or in the precedents of the Barcelona system to adopt framework protocols, this designation being reserved more specifically for Conventions, a detailed protocol can be considered as a normal protocol targeting complete coverage of issues at hand.

In the case of international cases on vulnerable terrestrial space, such as mountains, it is obvious that European States have reached a consensus on a Convention for the protection of the Alps, supported by many sectorial protocols. There are 8 Parties to this Convention, four of which are parties to the Barcelona Convention (France, Italy, Slovenia, European Community). The initial legal question is the significant difference in legislation between EU Member States and those outside the EU. These States are ready to comply with obligations concerning local authorities and land development, nature and landscapes, and tourism. The issue of the coastal areas in the Mediterranean may in that sense appear simpler to treat, since these areas are already integrated in specific legal frameworks and fall under the regulations of international conventions: sea and coastal areas. The complementary features of these areas are significant assets that the draft protocol must examine from the perspective of policy integration and sustainable development.

The economic advantage of this protocol is obvious, as it draws attention to zones of economic expansion, through tourism and sea-based activities. A strong legal framework would protect these assets for the future.

### **7.2.3. Criteria applied to the intermediate option**

Theoretically, an intermediate option seems to be the most acceptable. Politically, this could be the ideal solution in so far as it emphasises mutual trade-offs. In reality, option C is only an improved version of option A and a limited version of option B. However, it would bring more flexibility to the negotiation process, and more easily lead to an acceptable legal framework. However, ICAM implies global coordination of policies, since without support at the international scale, integration and protection initiatives will fail.

It can be seen as contradictory to accept a protocol which makes it legally binding for States to take better account of coastal areas and to maintain all ongoing pilot initiatives, while refusing to grant full application of the recommended measures. This may lead to limited commitment on the part of the States. However, a decisive factor would be the capability to create a substantial framework in such a protocol. While the mechanism under study is

unanimously considered as indispensable, if it is not fully applied it will deprive the protocol of its potential and of the inherent synergies with other conventions and protocols. This would probably reduce the risk of weakening the commitments of the states while safeguarding the effects of synergies.

## **8. JUSTIFICATION FOR THE SUGGESTED OPTION**

The legal analysis above leaves the choice between the three options open. Whatever the choice, it will certainly constitute progress, in line with the existing initiatives undertaken by the Parties to the Barcelona Convention. The options differ in degree, not in nature. In all instances, the fact that the States would have accepted the idea of a protocol is the demonstration of their new resolve to make progress in the combat against the ongoing deterioration of coastal areas and of the observation that soft law instruments, as well as directives and other white papers are no longer sufficient to positively impact the state of the coastal environment.

We have also seen that if nothing is done, or if status quo is maintained, as presented in Chapter 4, the impact would be highly negative, and may lead to regression.

For all these reasons, the authors of this report have clearly opted for version C, the intermediate protocol. Their choice is explained hereafter:

### **State of emergency**

The European Environment Agency has declared that coastal areas in Europe are facing greater on-going deterioration. There is an urgent need for appropriate monitoring and support systems, which are ecologically sustainable, economically fair, socially and culturally acceptable, and require a specific protocol to face all related challenges.

### Real added value

The framework protocol is limited to principles, but it does not contribute added value versus what exists, except from a formal standpoint. If the content is too flexible, it remains a soft law instrument. On the other hand, the detailed option protocol is probably too ambitious for the present socio-economic and political situation in the Mediterranean, and could be to a certain extent counter-productive. Intermediate protocol, however, provides a step further towards a fully operational instrument in the future. It would, certainly, be a positive move. Moreover, it will offer a certain level of flexibility, which could be used during the future process of negotiation about the final form of the protocol, the step that will allow for optimal answers to the needs of the Mediterranean states.

### Strong legal framework

International reports, by the EU, by the FAO, by UNEP, by the OECD or the Council of Europe, are unanimous in declaring that a strong legal framework is needed to support ICAM initiatives. States need assistance in imposing the indispensable coordination mechanisms and in overcoming the national administrative inertia and traditions. Soft law instruments are no longer enough; it serves no purpose to multiply the number of guideline documents devoid of any real scope, optional and known to a limited group of experts alone.

### A new driver for sustainable development

The Barcelona Convention has demonstrated the significant role it plays as driving force in the combat against pollution, in environmental protection and sustainable development in the Mediterranean, as confirmed by the evolution in the collective positions of the Parties, coastal collectivities and NGOs. A protocol dedicated to coastal areas will further strengthen this situation, through the legal and political scope granted to ICAM in the Mediterranean. The

solemn character of the protocol makes it a mandatory legal instrument, and one that is recognised and published in the Official Law Journals of each State, making it accessible to all national or local private and public stakeholders.

### Many new instruments for integrated governance of coastal areas

The Protocol is not limited to describing the principles for action covered in the white paper: its purpose is to specify and reinforce them. It adds particular provisions for coastal areas not protected under the Specially Protected Areas Protocol, which may need to be preserved for future generations. It enhances awareness of the coastal landscapes that are not yet protected; it imposes procedures for strategic impact studies and for impact studies on works in general; it reinforces participation; it imposes the establishment of a surface where constructions are prohibited (already exists in some States). It makes official the free access to the coastline; it encourages greater involvement from the local collectivities, in partnership with the State, for more integrated governance of coastal areas; and it imposes regional strategies for the Mediterranean coastal areas, comprising objectives and action plans to guide the States.

### A unique and innovative example of ocean-coastal area integration

It has been observed and regretted that international conventions and organisations for oceans and coastal areas lack coordination and are showing increasing fragmentation in their application (Mabudafhasi, 2001). The adoption of a Protocol on ICAM in the Mediterranean would prove otherwise: it would be the demonstration of the strong political impact that the MCSD has always considered as its priority. By choosing an intermediate, albeit fairly complete and detailed protocol on coastal areas, Mediterranean States will demonstrate that they are favour the coordination within the Barcelona system, and show the world their spirit of innovation and progress, through the first legal framework for the geographical and ecological integration of sea and land coastal areas in a regional sea.

### Strengthening and encouraging national initiatives

Mediterranean States have always been innovative in choosing solutions. After fifteen years of study and experience on the fundamental future challenges facing coastal areas in the Mediterranean basin, the adoption of a protocol is a logical result. The protocol may only, in the case of some States, be the official document comprising the existing rules and practices, while for others, it will serve to reinforce and encourage recent or ongoing legislative reforms, as well as experience in demonstration programs (European Community, MAP). In all cases, the Protocol will enhance national legislation and motivate administrations, local collectivities, private stakeholders and NGOs to better apply the regulations in coastal areas, in the spirit of sustainable development and integrated management.

## **9. CONCLUSIONS AND RECOMMENDATIONS**

### **9.1 A much needed and timely instrument**

In conclusion to this feasibility study, it is now obvious that a protocol on coastal areas is a necessity for several reasons:

- From the legal standpoint, as an indispensable tool for the implementation of the new contractual obligations of the Parties, as adopted in 1995, when the Barcelona Convention was amended, consisting in “promoting ICAM” and inserting the words “coastal area protection” in the title of the Convention itself.
- From the environmental standpoint, in so far as all scientific diagnosis have revealed ongoing deterioration of coastal areas, through uncontrolled land-based pollution, through the destruction of landscapes and biodiversity resulting from concentrated tourist activities and overuse of vulnerable natural resources, as an instrument to help mitigating marine and coastal pollution.
- From the economic standpoint, while the importance of environmental quality is increasing, too much leniency can, in the short term, lead to stagnation or regression in tourism, due to excessive artificialisation and growing quantities of waste.
- From the social standpoint, as local stakeholders are increasingly preoccupied with the threats hovering over coastal areas, as the consequence of climate changes, and of overpopulation in some of these coastal areas. It is now acknowledged that isolated, sector-specific policies are no longer compatible with sustainable development. New forms of local governance, protecting many legitimate interests, provide the necessary support for initiatives, with emphasis on participation and consultation, by favoring recourse to procedures, under the coordination of local and national authorities.
- From the political standpoint, the considerable progress accomplished in the Mediterranean Basin by the components of the Convention as well as by the MCSD, and the systematic integration of the issues of coastal areas in the implemented strategies and initiatives, are leading towards a new step in the integration of coastal areas into the Barcelona system, through a specific protocol.

The very idea of choosing a binding legal instrument rather than simple recommendations or white papers, is both the result of research, study and regional meetings on ICAM undertaken in the past, and the natural conclusion of the assessments on the scope and effectiveness of soft law instruments.

The unanimous conclusion of the pilot initiatives and reflections on ICAM has been that strong legal support instruments are now required. It would clearly set the objectives of general strategies, and coordinate stakeholders and legal instruments. Further evidence of this can be found in the bibliography (FAO, UNEP, OECD, World Bank, UNESCO, Council of Europe) and in the conclusions of the demonstration program of the European Community.

Initially, these instruments should be part and parcel of national legislation, but we have seen that these legislations are quite different and all too often not well-adapted to integrated management initiatives. Sustainable management of coastal areas in a common area like the Mediterranean today requires more than mere “quick-fix” solutions. The States are now aware of the fact that progress can only come from international pressure, not to replace national mechanisms by international ones, but to support and strengthen current or scheduled national reforms, for the improvement of integrated management. Coastal areas

are now a common theme for the Parties to the Barcelona Convention, and the time has come to create a legal framework for the guidelines and directions given until now. In this regard, the development of a regional ICAM strategy is a priority. The Declaration of the Contracting Parties to the Barcelona Convention, during their meeting in Monaco, November 14-17, 2001 prior to the Johannesburg Summit confirms that "action is required" at international and regional level, to facilitate ICAM. The States must demonstrate a shared resolve to implement the new instruments. This will require negotiating a protocol on ICAM in the Mediterranean.

The States have become familiar with the new strategy for ICAM through the initiatives for coastal areas, organised by MAP and PAP/RAC, to implement the guidelines given in Chapter 17 of Rio Agenda 21 of 1992, which had highlighted the need to closely link issues of the marine environment to those of coastal areas. But no matter how relevant these documents may be for the environmental management of complex and vulnerable territories, they could only lead to the current changes in the practices of the States and their local authorities. The work undertaken over the last 10 years and more, will have entailed information, education, awareness enhancement and experience in ICAM.

Today, the concept of ICAM and the related instruments greatly warrant a legal framework, at the international and national levels. In chapter V of the Recommendation of the European Parliament and Council of 30 May 2002, ICAM strategies are the main issue in the implementation of existing conventions between countries sharing the same regional sea. As shown above, the protocol on coastal areas is indeed the direct implementation of the amended Barcelona Convention.

Today, the idea of a treaty on coastal areas appears to be the most sensible choice, and should not be viewed as strange as it once was. In this regard, it is possible to mention the proposals for an international convention on coastal areas, as put forward during the conference on the Adriatic Sea (Kiss, Amato and Norberg, 1995). During this meeting, the General Director for the Environment of the Council of Europe, F. Albanese declared: "we are short of a binding instrument to promote sustainable development policies in the Mediterranean coastal areas. A report in 1995 by Adalberto Vallega, in his capacity as vice-president of the International Geographic Union, also examined the conceptual and technical bases for a protocol on coastal areas, in support of the amended Barcelona Convention. And a report of the Council of Europe in 1996, following an inventory of international and national initiatives, clearly concluded that "we are short of a binding instrument" (Council of Europe, 1999).

A protocol on coastal areas must be prepared in view of the upcoming entry in force of the amended Barcelona Convention, enhancing the urgent need for a legal instrument to comply with the obligations under article 4 – 3-e. Allowing for the time to prepare the protocol and to hold negotiations, it could be signed in 2006.

It has clearly been demonstrated that the solution of maintaining the status quo, as described in part 4, must be rejected. This would be akin to violating the political and legal commitments made by the States for ICAM, and would disappoint many Mediterranean countries, in the South in particular, which expect support from the Barcelona Convention in managing the common Mediterranean heritage of their coastal areas, under the best possible conditions for sustainable development. Furthermore, in view of the alarming observations on the state of the coastal environment, it would be impossible to be satisfied with just another recommendation in this field.

## **9.2 An innovative instrument**

The ICAM protocol now seems unavoidable, and its many innovative features should be described.

The territorial integration between land and sea is still not present in all national legislations, in the form of strategies, plans or programs, or other decisions, although it is encountered more and more frequently. It appears much more systematically in international law, and it is significant to observe how, gradually, all conventions on regional seas have extended their scope of application to inland waters, then to wetlands, then to land coastal areas, and to catchment areas.

There is nothing original *per se* in an international convention bearing on terrestrial space or on a part of such space: this is the case for all environmental conventions. We have mentioned the case of the complex and vulnerable territory covered in the Alpine Convention of 1991 and its many protocols. The actual scope of application is set as an obligation by the Convention and not left to the discretion of the Parties. What is more original is that the law of the sea has now penetrated inland whereas it traditionally was limited to the sea and that the same legal instrument should have a bearing on both land and sea. Although the Barcelona Convention and its protocols cover territorial integration as a prerequisite for ICAM, it still remains symbolic. As evidenced in the Protocol on Specially Protected Areas, which automatically applies to "terrestrial coastal areas", these areas must be clearly defined by the Parties. And it is well-known that, with one exception, this clear definition has been given. The scope of territorial application of the future protocol will have to be specified and imposed in the provisions of the text itself.

However, a protocol dedicated to coastal areas is an innovation, as no such document has ever existed, on the international scale. The most recent trend is the reinforcement of provisions on coastal areas, within the main text of the convention on regional seas, as demonstrated by the 2002 Convention on the sustainable protection and development of the marine and coastal areas of the North-Eastern Pacific, comprising 10 articles imposing the measures required for ICAM (despite the fact that there is no clear delimitation included in this text) (CNP, 2002). Furthermore, there are several provisions on ICAM in the 2002 protocol on the protection of biodiversity and landscapes in the Black Sea.

By deciding to dedicate a protocol to coastal areas, the Mediterranean States will act as pioneers and inspire other conventions on regional seas.

### **9.3 A flexible protocol**

The institutional and legal complexity which characterises coastal areas requires extreme flexibility in the protocol content, which is why an *à la carte* feasibility study is necessary. But the flexibility we describe must not be understood as undermining the value of the instrument as legally binding for the States. The content of such a binding instrument, whether it is a treaty or a protocol, can be more or less specific, such as in the case of framework conventions, which, under international law, lay down general but mandatory standards. The specifics and technical complexity of coastal legislation require flexibility. This is all the more justified that integrated management is an overall concept and must not interfere with such specific matters as urbanisation, which can not by definition be international. This does not preclude that principles of development should not serve as direct inspiration or framework for national regulations. An international document, such as regional strategies for coastal areas, serves as basis for purely local decisions.

The feasibility study presented here has purposely been realistic, to ensure the adaptability and flexibility of the content of the protocol, to constitute progress in an approach favorable to common sustainable development in the North and South Mediterranean.

### **9.4 A substantial and negotiable protocol**

The three options selected, to allow the Conference of the parties to choose according to their objectives and ambitions, are the following:

- A. General content protocol (or framework protocol)
- B. Detailed content protocol
- C. Intermediate protocol

Several assessment criteria have been applied to determine the advantages and drawbacks of each option. However, the assessment can not be considered as extensive for public policies, as this would have entailed the contribution of a scientific group of multidisciplinary experts, and would have required more time than the timeframe allotted.

These three options are not mutually exclusive: the detailed option applies to certain issues, while the more general content could be useful in other cases. This should allow for greater flexibility in negotiations on the content, under the express condition that different provisions are not in contradiction with or in opposition to the options retained. The compatibility of provisions will need to be clearly covered in the drafting of the protocol.

After the application of evaluation criteria, it is proposed to the Contracting Parties that they accept the intermediate protocol option and develop it to its final version through the consultation process at various levels of the Mediterranean Action Plan in the following years.

There are the two major reasons to choose the intermediate option:

- It is probable that the content of existing recommendations, white papers and guidelines highlight sufficient suggestions for progress and that the States have necessarily and implicitly approved. These documents determine principles of conduct in ICAM and can therefore be considered as equivalent to a framework protocol. The general, albeit soft, content of these documents have met with political consensus, which must be kept in mind when preparing a more binding instrument. This explains why we believe that the drafting of a general protocol would only serve to formalise and enhance the value of ideas that have already been largely accepted.
- Furthermore, mentalities have changed and the results yielded by many ICAM initiatives are a new step in the right direction, either through the adoption of a formal protocol or through the enhancement of the content in standards. The recommended option of the adoption of a substantial protocol signifies that its content is not just the legal translation of guidelines and white papers, but represents fundamental progress towards more effective and sustainable integrated management. Its effectiveness will be both the result of a binding content and of a content legally aligned with the practical and institutional requirements of ICAM.

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