

UNEP - Mediterranean Action Plan

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Summer 2005

**Report on the Future Perspectives from  
Adoption of a Protocol  
on Integrated Coastal Area Management  
to the Convention  
for the Protection of the Marine Environment  
and the Coastal Region of the Mediterranean**



**Report on the Future Perspectives  
from the Adoption of a Protocol  
on Integrated Coastal Area Management  
in the Framework of the Convention for the Protection  
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## **1. Introduction and problems**

The Mediterranean sea is an enclosed maritime region. Most of the Mediterranean resources consist of aesthetic, cultural and natural assets which are now increasingly facing degradation and loss in their original value. The coasts of the Mediterranean basin are the main areas witnessing degradation of both the marine and inner ecosystems<sup>1</sup>. Because of human activities engaged in coastal areas, woodlands, wetlands, marshes, sand dunes, estuaries, rivers, deltas are increasingly being spoiled in their ecological, aesthetic and cultural functions. Although climate change entails both the rise in the level of the sea and the erosion of dunes and coastal amenities, human activities are the main factors resulting in the destruction of the marine and land coastal ecosystems.

Negative impacts of human activities in the marine environment have long been dealt with by Mediterranean states. Nevertheless, since the first half of 1970s Mediterranean States have shown political mistrust in joining forces and adopting a international legal framework to foster States' environmental responsibility. On the other hand, scientists fought hard to persuade governmental representatives that the nature of socio-economic development Mediterranean countries were likely to support demanded that States, to either acquire or improve technical and legal tools for the adaptation and the minimization of negative impacts of human activities in the environment. It was only at the end of 1970s that governments of the Mediterranean States realised that "*socio-economic trends, combined with poor management and planning of development, are the root of most environmental problems, and that meaningful and lasting environmental protection is inseparably linked to social and economic development*"<sup>2</sup>.

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<sup>1</sup> UNEP/MAP, *State and Pressures of the Marine and Coastal Mediterranean Environment*, Conclusions and Recommendations of the Joint EEA/UNEP-MAP Report, Ministerial Meeting of the Contracting Parties of the Barcelona Convention, Malta, October 1999

<sup>2</sup> Action Plan for the Protection of the Marine Environment and the Sustainable Development of the Coastal Areas of the Mediterranean (MAP Phase II), pg. 1.

Despite subsequent adoption of an action plan, a treaty and further protocols, human activities on the coast are still being authorized by States and competent authorities without taking into account their negative impacts on related ecosystems. Therefore, implementation of legal measures and acquisition of technology still rests on the goodwill and on the degree of development of States. For instance, lack of adoption of the most appropriate sewage treatment plants by Mediterranean States is one of the main causes of progressive environmental degradation of the coastal and the marine environment. What is more, the absence of planning and management schemes is leading to an uncontrolled growth in the extension of urban centres towards the coasts. Nowadays, 40 per cent of people in the Mediterranean basin live in coastal cities and everyday are engaged in activities established in coastal areas. Most of these activities – intensive agriculture, aquaculture, tourism – are increasingly generating massive water pollution, waste, decline of renewable natural resources, loss of biological diversity and disappearance of wetlands<sup>3</sup>.

To make things worse, all Mediterranean States fall short of uniform technical standards addressing to the management of coastal areas. This mostly depends on the fact that European Union's (EU) laws are based on high demanding technical criteria whose acquisition is economically challenging for developing countries. Therefore, implementation of common guidelines and recommendations on sewage plants has been poor and contradictory so far. For instance, the Strategic Action Programme to Address pollution from Land-Based Activities recommends that Mediterranean cities and urban agglomerations exceeding 10.000 inhabitants adopt by the year 2005 sewage plants including second treatment<sup>4</sup>. Such a target is rather at odds with the requirements of the European Council directive, 21 May 1991, n. 60, concerning Urban Waste Water Treatment. Indeed, the directive requires EU member States to build sewer plants for each urban agglomeration whose population rate stands above 2000 inhabitants. Further considering that many cities on the coast have a small population average in winter, they nevertheless are host of huge tourism inflows during the summer. As a consequence, it is evident that EU directive seems to be the most appropriate in solving problems related to carrying capacity of most of the coastal urban agglomerations of wealthier Mediterranean countries.

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<sup>3</sup> UNEP/MAP, *Feasibility Study for a Regional Legal Instrument on Integrated Coastal Area Management*, UNEP(DEC9/MED IG.157Inf.9, 2 October 2003, pg. 2

<sup>4</sup> UNEP/MAP, *Strategic Action Programme – Guidelines preparation of National Action Plans for the reduction of Pollution of the Mediterranean from Land Based Sources*, UNEP(DEC)/MED/GEF WG.245/3, 2004, pg. 9

## **Expectations from the Adoption of the ICAM Protocol**

Taking into account previous considerations, what is at stake with the adoption of a protocol (the protocol) on Integrated Coastal Area Management (ICAM) is the need to overcome developmental issues and to provide coasts with proactive environmental protection. Indeed, it is almost ten years now since Mediterranean countries realized that recommendations and guidelines on Best Available Techniques (BATs) and Best Environmental Practices (BEPs) for the abatement of land-based pollution and water and waste treatment fall short to comprehensively address both environmental and developmental issues. Recommendations and guidelines are after all soft-law instruments; implementation fully depends on the availability of technical resources and on discretion<sup>5</sup> of governmental and local authorities. Although in 1992 Mediterranean States agreed to support ICAM, the process towards adoption of a legal framework for the Mediterranean basin have not stepped further so far. On the one hand, all guidelines and recommendations referring to ICAM still mirror those technical guidelines addressing to land based sources of pollution, waste and water treatment. On the other hand, it was only through Coastal Area Management Programmes (CAMPs) that in the last fifteen years meaningful progress on ICAM have been achieved.

Financed by the Mediterranean Environmental Technical Assistance Programme (METAP), CAMPs allowed those States involved in the programmes to strengthen both administrative and technical capacity. In fact, CAMPs provided authorities of a few Mediterranean countries with training on both environmental impact assessments and proactive methodologies intended to integrate traditional strategies with innovative schemes for the protection of wetlands, water and land management. Despite CAMPs good examples of integrated management practices in Egypt, Algeria, Italy, Slovenia and Greece, ICAM success still relies on the administrative culture of each country, on the legal schemes States base their decisions and on the availability of financial resources<sup>6</sup>. Therefore, many countries still do not display a satisfactory legal framework for integrated management of coastal areas. For instance, in some countries laws and regulations on coastal areas are patchy and based on a single-issue approach. Most of the Mediterranean countries still fall short of planning schemes that integrate land use changes and negative impacts following human activities in coastal areas. Neither laws nor regulations have regard to all ecological interfaces that play a significant role in the evolution and maintenance of coastal ecosystems. Not even to say that each Mediterranean state adopted different coastal legislation – in so making adoption of a “*overall strategic vision on ICAM in the Mediterranean*” more and more challenging<sup>7</sup>.

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<sup>5</sup> UNEP/MAP, *Feasibility Study*, pg. 2

<sup>6</sup> Cocossis, H., Henocque, Y., *Livre Blanc sur la Gestion des Zones Côtières en Méditerranée*, UNEP/PAP/RAC, 2001

<sup>7</sup> Cocossis, H., Henocque, Y., *Livre Blanc*, pgs. 34-35

It was only at the Thirteenth Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention) that States decided to engage in a process leading to the negotiation of a protocol on ICAM. The objective of the protocol is to trigger all Mediterranean countries to adopt uniform laws addressing to the management of both the marine and land parts of the coasts in a integrated manner – said it shortly, to “*break the barrier between land and sea*”. With this in mind, the scope of the ICAM protocol is comprehensive because not only shall it strengthen provisions established in previous protocols but even it shall harness land and sea ecosystems with human activities on the coast. Once adopted, this protocol will be the first example ever of a international agreement on ICAM.

Following studies of experts working for both the UNEP/MAP and PAP/RAC centres – and meetings of Contracting Parties – the model law is likely to be adopted is a intermediate legal framework disclosing few binding provisions and general principles while at the same time providing States with outstanding and innovative coastal management schemes. Owing to such a model law, States will adopt common strategies and national plans and programmes with a view to gradually step technical capacity building and adoption of a uniform legal regime on coastal areas. As a consequence, negotiating parties seem to support a programmatic legal framework rather than a command and control treaty.

As it will be further assessed in this report, this approach discloses advantages and disadvantages. On the one hand, the protocol displays flexible provisions – in so giving States the opportunity to define and delimitate coastal areas according to ecologic, economic and geo-morphologic characters of their coastal areas. Furthermore, the protocol provides non-binding provisions in other fields – such as the implementation of Environmental Impact Assessment procedures, the adoption of development and land use plans covering both marine and land coastal areas, the creation of specific zones for the protection of natural resources, the organization and organization of local administrative units and the establishment of public participation schemes in decision making procedures<sup>8</sup>. While some of these undertakings may prove momentous in enhancing exchange of good management practices and capacity building between all Mediterranean States, some others may hinder significantly adoption by few countries of by-law management practices.

On the other hand, the protocol provides meaningful obligations ensuring active management and protection of seashores – such as the obligation for states to encourage the adoption of measures to prevent construction of human settlements on a specifically chosen surface area of 100 meters from the coast; to systematically report and assess the status of the coastal environment, to engage in transboundary impact assessments; to agree upon and to further adopt strategies, plans and programmes and to prompt observatories, networks and inventories.

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<sup>8</sup> UNEP/MAP, *Feasibility Study*, pgs. 51-54

Therefore, it is expected that the protocol will shape in a legal framework those recommendations enclosed on the 1999 Joint EEA/UNEP-MAP Report – namely;

- a) to develop national and Mediterranean widely co-ordinated plans and legislations for environmental management and infrastructure development for coastal zones;
- b) to introduce flexible but effective measures for coastal areas protection from threats resulting from sea and inland transport, coastal works, urban development and economic activities;
- c) to promote the implementation of the provisions of the Convention for the Protection of Biodiversity and to further enhance the provisions of the Specially Protected Areas protocol;

Taking the view to assess both the legal and technical evolution of the Barcelona Convention (the Convention) and its protocols (the Barcelona system), this report is aimed at proposing an assessment of the ICAM draft protocol. The report tries to answer the question on how the legal provisions, general principles and management approaches enclosed in the ICAM protocol contribute in the evolution of those legal and technical measures established in the Barcelona system. In so doing, it tries to assess the new responsibilities Mediterranean States have in preventing, and where possible eliminating, controlling and reducing, negative impacts arising out of human activities and natural degradation affecting Mediterranean coastal areas. In Section 2, the report examines both the international and regional legal context in which the notion of ICAM evolved. In Section 3, a detailed analysis of its legal obligations, general principles and management approaches is put forward, comparing each provision of the protocol with those of both the Barcelona system and of international and regional conventions having either a direct or indirect link with the ICAM draft protocol. A conclusion will follow.

## 2. THE HISTORICAL BACKGROUND

### 2.1 The International Law Context. Earlier Declarations

The Stockholm declaration is the landmark towards the adoption of sustainable policy by both States and international organizations. In the early 1970s, it set the ground to consider the environment as an element integrating each aspect of human life – namely economic, cultural, geographical and ecological aspects. Though not legally binding, the Stockholm declaration was momentous for coastal States of the Mediterranean basin to engage in negotiations leading to the adoption of an action plan and eventually of a regional convention for the prevention of pollution.

In the follow up of the Stockholm declaration, planning and development projects begun addressing to the conservation of nature and wildlife (pr. 4). States undertook to adopt measures for the rational use of natural resources integrating national development planning schemes (pr. 13). In turn, the need to build up rational planning schemes at national level required States to reconcile the “*conflict between the needs for development and the need to protect and improve the environment*” (pr. 14). Finally, principle 15 recommended States to adopt urban planning schemes to both prevent environmental harm and to pursue an equal distribution of both environmental, economic and social benefits.

Although these principles are still to be implemented by the majority of Mediterranean states, principle 21 contributed significantly in fuelling negotiations towards the adoption of a regional legal regime in the Mediterranean basin. Indeed, this principle set forth a obligation of *jus cogens* owing to which States are required to both use natural resources and to engage in human activities without in so causing environmental damage to “*other States*” or “*in areas beyond the limits of national jurisdiction*”<sup>9</sup>. As a consequence, principle 21 prompted Mediterranean states to adopt an action plan and to step forward the first ever regional convention for the prevention of pollution within and outside their national boundaries. Nevertheless, two factors hampered this process. In the first place, the delimitation of States sovereignty in the maritime area was not in force until the adoption of the United Nations Convention on the Law of the Sea (UNCLOS). Although the delimitation of the maritime area was already a matter of *jus cogens*, both access and exploitation of natural resources kept being unregulated in the Mediterranean basin.

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<sup>9</sup> This principle was not new. It derived from the final decision of the *Trail Smelter* case. The principle is now widely considered a rule of international consuetudinary law.

The second related – and it is still of actuality – to the fact that most of the pollution in the Mediterranean basin originated from land-based sources and from unrestrained human pressure on coastal areas. Following this latter concern, northern Mediterranean states realised that provisions to be agreed upon in a future regional convention could not be evenly implemented by southern Mediterranean countries – namely because those countries did not possess enough financial resources to acquire technology and planning schemes to control, manage and reduce land-based pollution.

Both development and environmental issues came at the forefront of negotiations with a view to set the most appropriate ground for the adoption of a regional convention enclosing common environmental responsibilities. Eventually, UNCLOS provided a global framework owing to which both these issues would have been overcome. With regard to delimitation of sovereignty, UNCLOS inscribed coastal states as the main actors involved in the management of the marine environment, though not the only ones.

As it appears from the text of the convention, coastal states and inland countries are equally entitled to both access and exploit natural resources. Therefore, the obligation to prevent, control and reduce pollution now addresses to inner and coastal States – i.e. those parties that UNCLOS generally refers as “the States”. In addition, UNCLOS sets forth a rule of state responsibility that is transboundary in scope – i.e. the obligation for States to prevent, reduce and control pollution of the marine environment so as “*not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another*” (Art. 195).

All considered that these obligations may prove of difficult implementation by developing States, UNCLOS displays both general and specific obligations on cooperation. In the first place, the convention requires States to cooperate in adopting “*global and regional rules, standards and recommended practices*” in proportion to both their economic capacity and development conditions with a view to prevent, reduce, control pollution from land-based sources (Art. 207(4)). It further specifies that not only States do have a obligation to cooperate in implementing regulations and standards, but even that States do not have equal commitments to prevent, reduce and control pollution of the marine environment (Art. 207(4), final line).

Secondly, UNCLOS Arts. 202-203 require developed states to cooperate for both the transfer of technology and the training of personnel in developing countries. What is relevant in UNCLOS is, nevertheless, that both general and specific duties on cooperation not only do commit coastal states but even inland countries. As a consequence, even those states not directly involved in the management of the marine environment are obliged to cooperate in adopting “*global and regional rules, standards and recommended practices*” and to provide developing countries with the transfer of technology and the training of personnel.



All in all, both UNCLOS provisions and the principles of Stockholm declaration considerably contributed to both solving issues relating to the delimitation of maritime area of the Mediterranean basin and to enhance cooperation between developed and developing countries in the implementation of the provisions of the Convention and its protocols. Furthermore, it may be well stated that UNCLOS set the path towards integrated management of the marine environment. For the obligations to cooperate equally address to both inland and coastal States, countries whose rivers, lakes, estuaries may harm the marine environment of other coastal States are compelled to adopt measures to prevent and reduce pollution (Artt. 66, 201(1))<sup>10</sup>.

## 2.2 From UNCLOS to the 1992 Rio Declaration

Both UNCLOS and Stockholm are only a blueprint of a process that led all states to adopt in 1992 a more comprehensive global strategy following which sustainable development acquired a prominent environmental significance. In the follow up of Rio, the quest for “*the creation of new levels of cooperation among States, key sectors of societies and people, with the goal of establishing a new and equitable global partnership*” entailed more demanding responsibilities for wealthier States implementing regional, sub-regional and national environmental measures. Henceforth, environmental protection demands States to adopt both national and local sustainable development policies<sup>11</sup>.

As a consequence, Rio Principle 2 is more demanding than Stockholm principle 21 – in so recognizing States as not only having a responsibility in the exploitation of natural resources, “*following the adoption of environmental policies*”, but even in stepping economic growth. In contrast to UNCLOS and the Stockholm Declaration, Rio is more detailed in recognizing responsibilities of both developed and developing countries in achieving the goals of economic growth and environmental protection. Never the less – with a view to achieve a rational and equal use of natural resources and the prevention of environmental damage – developed States share the heaviest burden in implementing specific commitments of conventions while developing countries have the responsibility to “*cooperate in a spirit of global partnership to conserve, restore and protect the health of the Earth’s ecosystem*” in proportion to their economic, technical and financial resources<sup>12</sup>. This is what stands under the name of common but differentiated responsibility – i.e. a principle that adds to those of integration and cooperation.

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<sup>10</sup> IUCN, *The Law of the Sea: Priorities and Responsibilities in Implementing the Convention*, A Marine Conservation and Development Report, 1995

<sup>11</sup> Principle 4 of the Rio Declaration

<sup>12</sup> Principle 7

Following Rio's, not only cooperation is intended to ensure uniform implementation of obligations of international and other regional conventions but even to provide developing countries with opportunities to build up and acquire technology to engage in economic activities that do not harm the environment. By virtue of this principle, environmental protection and cooperation are now inseparable commitments – and recommendations of Chapter 17 of Agenda 21, “protection of the oceans, all kind of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources” strongly emphasize them.

Rio Declaration entailed a number of practical consequences for State parties of regional agreements. In the first place, conventions adopted after Rio increasingly demand that states adopt measures based on an ecosystem approach and to support integrated management of the environment. Therefore, environmental protection is to be ensured not only for single ecotypes but even for interactions between ecosystems and the physical environment. Secondly, by virtue of the principle of common but differentiated responsibility developing States are given an opportunity to access technical equipment for the implementation of treaties requiring high technical and scientific expertise of national authorities – namely “surveys of marine biodiversity, inventories of endangered species and critical marine and coastal habitats, establishment and management of protected areas, support of scientific research and dissemination of its results”. Finally, by virtue of the principle of integration all policies adopted by State parties of regional and sub-regional environmental agreements should take equally into account the need of society to engage valuable economic activities and those cultural, ecological and geo-morphological values that are likely to be threatened by those activities. This latter principle in turn implies that individuals and social groups should participate those decision making procedures concerning all human activities likely to have adverse social, environmental and economic effects.

Following Stockholm, UNCLOS and Rio, the evolution of the approaches to the environmental protection of marine environment led States to consider both the coastal and the marine environment as a unique dynamic system – wherein the balance of ecological, economic and social interactions play an important role in the achievement of the objectives of sustainable development. Owing to this evolution, guidelines of chapter 17 of Rio's Agenda 21 recommend States to adopt “*land, water use and siting policies, implementation of integrated coastal and marine management, sustainable development plans, preparation of coastal profiles identifying critical areas, development patterns, user conflicts and specific priorities for management*”. The complexity of interactions between ecologic, cultural, social and economic factors that constitute coastal areas increasingly demands States to support environmental protection not only at a macro but even at a micro level. Henceforth, cooperation is not only thought to be promoted between States but even among institutions at a international, regional, sub-regional and local level.

### **2.3 The Mediterranean Regional Context**

The 1994 Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean is a regional framework agreement establishing general principles and obligations for the protection of the marine environment in the Mediterranean basin. The Convention establishes both general principles and obligations, while its protocols systematically regulate different sources of pollution and in particular; pollution of the sea by dumping from ships and aircrafts or incineration at sea, prevention of pollution from ships and, in cases of emergency, pollution from the Mediterranean sea, pollution from land-based sources and activities, specially protected areas and biological diversity in the Mediterranean, pollution resulting from exploration and exploitation of the continental shelf and the sea-bed and its subsoil and pollution by transboundary movements of hazardous wastes and their disposal. Although not all protocols have so far been adopted by Mediterranean States, the convention-protocol approach is of capital importance in the evolution of the Barcelona system. Indeed, the convention-protocol approach is a dynamic model that gives parties to the Convention the chance to negotiate and to further adopt measures to both regulate new sources of pollution and to explore new patterns in environmental management. In this respect, each protocol may oblige Mediterranean states with the adoption of different management schemes, limits, guidelines and legal obligations. It is owing to such a dynamic nature that the Convention requires Mediterranean states to show a real interest before acceding the Barcelona system. Therefore, the Convention requires that States wishing to become parties to the Barcelona system adopt at least one protocol (Art. 23 old text;. Art. 29).

Similarly to UNCLOS, the Barcelona system provided innovative provisions addressing to different sources of pollution of the marine environment. Nevertheless, provisions set forth in the old version of both the Barcelona Convention and its related protocols did not focus on the protection of ecosystems and mirrored a static approach to environmental management. Therefore, the coastal area was considered as a land portion whereby few provisions of the Barcelona system had both a indirect and singled application. Following UNCLOS and Rio's Agenda 21, State parties prompted a significant evolution of the Barcelona system. In so far as it concerns UNCLOS, not only did it contribute to the delimitation of states sovereignty in the Mediterranean basin but even in adding the Convention with relevant provisions concerning cooperation, prevention of pollution from rivers, canals and other watercourses and a ecosystem approach. On the other hand, Chapter 17 of Rio's Agenda 21 was of relevant inspiration for Mediterranean States to adopt a new Action Plan (MAP II), to step forth a ecosystem based approach and integrated management of natural resources. Furthermore, States plied to adopt recommendations of Rio's Agenda 21 (Agenda MED 21).

Agenda MED 21 displays some relevant recommendations regarding financing, economic activities having an impact on the marine environment and coordination of national competent institutions. Therefore, few recommendations are intended to trigger developed Mediterranean States towards the use of the debt of developing countries to finance in those states environmental protection programmes and sustainable development plans. Moreover, recommendations are even addressed to Mediterranean States to ensure that decision making centres at national, regional and local level coordinate their decisions for the adoption of conservation measures. Finally, Agenda MED 21 recommends Mediterranean States to consider coastal areas as like as dynamic systems and to encourage the adoption by national, regional and local authorities of a comprehensive coastal management approach to assess social, economic and environmental impacts of land-based sources of pollution, dumping of waste, tourism activities and water and soil resources. Since the paragraphs of MAP II on energy policy, tourism, transport, urban management and the environment, water resources and soil provide meaningful references to the protection of coastal natural resources, strategies of active urban policies, financial instruments and participation mechanisms address to coastal areas as a natural asset whose protection and management concern all level national authorities. These strategies are resumed in the paragraph 1.4 of the MAP II on ICAM. As it clearly appears, coastal areas are increasingly gaining momentum within the Barcelona system.

It is owing to those developments that both measures and policies for environmental management are now increasingly deserving attention of national authorities not only for those activities that are engaged within coastal areas but even for those that are either directly or indirectly connected to the coast. As Chapter 17, Agenda 21 suggests, both the need to guarantee states with opportunities to develop their economies and to manage marine and coastal areas *“requires new approaches at the national, sub-regional, regional and global levels, approaches that are integrated in content and are precautionary and anticipatory in ambit”* (17.1). It is owing to both these reasons that the Feasibility Study for a Legal Instrument on Integrated Coastal Area Management in the Mediterranean defines the approach to coastal areas as Integrated Coastal Areas Management (ICAM) – i.e. *“a continuous, proactive and adaptive process of resource management for environmentally sustainable development in coastal areas”*.

ICAM aims at achieving cross-sector cooperation, the protection of biodiversity and the rational use of coastal resources. In regard to cross-sector cooperation, ICAM addresses to different sources of pollution and activities. Therefore, ICAM embraces land-based activities, such as agriculture and aquaculture, seabed activities having negative impacts to the inland waters of the coastal states, dumping of wastes from ports, from ships and installations.

Cross sector cooperation further requires Mediterranean developed States to elaborate jointly with developing Mediterranean countries the most appropriate planning methodologies to be applied to all activities likely to affect coastal ecosystems. With reference to both protection of biodiversity and rational use of coastal resources, ICAM is meant to discipline and manage activities having a impact on wetlands, to regulate fisheries, to manage littorals, rivers and land areas whereby construction of roads and harbours is likely to take place.

As it appears from such a brief summary on the evolution of the Barcelona system, the process of negotiation leading to the adoption of a protocol on ICAM may represent an important step towards the achievement of the goals of a stable and sustainable development in the Mediterranean basin. With this in mind, coastal areas demand a coherent legal framework. That is a treaty owing to which not only Mediterranean states are given the opportunity to engage in vital economic activities in the field of tourism, commerce, fishing and services, but even to commit to protect environmental assets belonging or connected to coasts. Nevertheless, these objectives are not easily achievable. In the first instance, because ICAM demands Mediterranean States to engage in relevant expenditures to both develop and transfer Best Available Techniques and Best Environmental Practices for coastal structures. It is noteworthy to further notice that most of the countries of the South Mediterranean still find it financially challenging to develop adequate coastal zone planning and management schemes. Secondly, it is only recently that the amended version of the Convention entered into force. While those protocols to the Convention that may be relevant for the implementation of ICAM still did not enter into force – namely the land-based, the dumping and the offshore protocols.

Although financial limits may be overcome through projects and programs for capacity building supported by the GEF and METAP, those related to the adoption of both the amended Convention and its protocols appear to be more challenging. Indeed, Mediterranean States do not have a legal obligation to report on the implementation of provisions of those protocols that still await entry into force. Even though States may decide to adopt regulations and measures according to the provisions of the revised Convention and protocols, both the Secretariat of the Convention (UNEP/MAP) and other Mediterranean States will not be able to further propose and recommend innovative solutions for the reduction of impacts of human activities on both the coastal and the marine environment. What is at risk is then that those recommendations and guidelines enclosed in Chapter 17 of Agenda 21, Agenda MED 21 and MAP II will be completely disregarded by the majority of Mediterranean States. This risk further entails that the majority of Mediterranean States may face significant delays in both developing and adopting tools to prevent pollution and to manage human activities to be engaged in coastal areas. That is to say that the protocol on ICAM remains a simple proposal.

### 3. LEGAL ASSESSMENT OF THE ICAM PROTOCOL

#### 3.1 General Principles

##### A. Intergenerational Equity

The undertaking of Mediterranean States to adopt proactive and preventive approaches is stated in the preamble of the Convention. As a guiding principle of the Barcelona system, it requires States to pledge to “*consider the environment as a common concern and interest*” – that is to adopt policies and measures based on the principle of intergenerational equity<sup>13</sup>. By virtue of the principle of intergenerational equity Mediterranean States should use and manage natural resources taking into account the needs of present and future generations. The principle further entrusts States with a duty to preserve natural resources regardless their geographical location. Therefore, State have a clear responsibility in the use, protection and conservation of marine and land natural resources. In implementing such a principle, Mediterranean States have additional responsibilities; not only to avoid the transfer of pollution to other states but even to implement policies that allow both long-term and a rational distribution of benefits. Both these responsibilities further demand Mediterranean states to adopt precautionary approaches to the management of natural resources under conditions of scientific uncertainty.

Although previous protocols do not display any similar pledge, the 2<sup>nd</sup> paragraph of the preamble of the draft protocol expressively considers the coastal zone as “*the common and cultural heritage of the peoples of the Mediterranean*”. This paragraph further displays that contracting parties pledge to “*use coastal zones resources judiciously for the benefit of present and future generations*”. Both these objectives are further specified in the text of the draft protocol. For instance, Art. 5, “General Principles and Objectives of Integrated Management”, paragraph i, shall require parties to adopt policies on both use and management of coastal resources that take into consideration the needs of local populations. Moreover, paragraph j shall demand parties to integrate those “*traditional practices of local populations that are compatible with the sustainable use of natural resources*” in the policies for the preservation of coastal ecosystems.

With a view to ensure that parties implement general principles enclosed in Art. 5(i),(j), the participation of “*the territorial communities and public entities concerned*” in “*the various phases of the formulation and implementation of coastal strategies, plans and programmes*” (Art. 12) shall be momentous. Nonetheless, as it will be addressed in the section concerning Environmental Impact Assessments (EIAs), the protocol does not recognize any stance for EIAs to be undertaken at local level.

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<sup>13</sup> The Vienna Convention on the Law of the Treaties states that interpreters can take into account the preambles of the treaties to determine their objects and purposes (Art. 10).

Despite its narrow scope, however, the integration of both the traditional knowledge and traditional activities of coastal populations in the formulation and implementation of coastal strategies, plans and programmes will help States and local authorities in the adoption of management practices based not only on scientific parameters but even on local knowledge<sup>14</sup>. As a consequence, participatory procedures that allow integration of traditional knowledge of local communities in the implementation of coastal strategies, plans and programmes shall be valuable when planners and decision makers will be faced with the challenging task of designing solutions to restore coastal zones subject to massive erosion. With this in mind, some authors suggest that with a view to help local planners and administrators to restore both the aesthetical and the ecological value of landscapes, local communities may provide agencies with their direct experiences on the historical and ecological features of those places<sup>15</sup>.

In addition, both the preamble and the text of the draft protocol seem to display enough scope for Mediterranean states to implement not only measures for adaptation<sup>16</sup> but even to halt and reverse processes of coastal degradation caused by uncontrolled human pressure. This approach provides some relevant elements of innovation in the Barcelona system. As a consequence, while both Art. 5(j),(i) and 12 of draft protocol offer opportunities for Mediterranean States to adopt practices for restoration and reclamation that fully integrate traditional knowledge of local communities, Art. 18 of the SPA protocol only refers to “*the traditional subsistence and cultural activities of [...] local populations*” as a limit to the establishment of Special Protected Areas (SPAs). The scope of both provisions seems to be different, indeed. The former provision allows traditional knowledge of local communities to shape national strategies, plans and programmes. The latter measure takes into consideration “*traditional subsistence and cultural activities of [...] local populations*” as a limit to the right of Mediterranean states of establishing SPAs<sup>17</sup>.

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<sup>14</sup>Bradbury, J., Rayner, S., *reconciling the Irreconcilable*, in Abaza, H., Baranzini, A.(Eds.), *Implementing Sustainable Development – Integrated Assessment and Participatory Decision-Making Processes*, Edward Elgar Publishing, Ltd. For UNEP, Cheltenham, 2002, pgs. 25-26

<sup>15</sup> Darvill, T., *Landscapes: myth or reality?*, in Jones, M., Rotherdam, I.D. (Eds.), *Landscapes – Perception, Recognition and Management*, Conference Proceedings, Sheffield Hallam University, 1996, pgs. 9-18; and Jones, M., *The Concept of Cultural Landscape: Discourse and Narratives*, in Palang, H., Fry, G. (Eds.), *Landscape Interfaces, Cultural Heritage in Changing Landscapes*, Kluwer Academic Publishers, 2003, pgs. 21-51

<sup>16</sup> Art. 4(1)(e) UN Framework Convention on Climate Change

<sup>17</sup> See also Annex I of SPA Protocol, Common Criteria for the Choice of Protected Marine and Coastal Areas that Could Be Included in the SPAMi List, Paragraph B(2)(f) and D(3)

## B. The Precautionary Principle

### B.1 Contents and the Listing Approach based on Regulatory Defaults

Although the precautionary principle is inscribed in the Convention as a general obligation (Art. 4(3)), Hansson argues that the principle is not prescriptive in scope<sup>18</sup>. Likewise principle 15 of Rio Declaration, its content is argumentative<sup>19</sup>. As a consequence, it is not a principle entailing legal obligations for decision makers but rather a “*base to motivate arguments in favour of both pre-emptive decisions and policies*”. Paragraph asserts;

3. *In order to protect the environment and contribute to the sustainable development of the Mediterranean Sea Area, the Contracting Parties shall:*
  - a) *apply, in accordance with their capabilities, the precautionary principle by virtue of which where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing **cost-effective measures** to prevent environmental degradation;*

The principle inscribed in the Convention does not oblige parties to take preventive measures in case of threats of serious or irreversible damage under conditions of scientific uncertainty. With this in mind, paragraph 3 refers only to cost-effective measures to be adopted by parties to prevent environmental degradation. Despite lacking meaningful legal enforceability, significant application of precautionary principle has so far been ensured by scientists and experts through regulatory defaults. Regulatory defaults consist in assumptions used “*in the absence of adequate information and to be replaced when such information is obtained*”. Regulatory defaults are applied by scientists and decision makers when there is scientific uncertainty over the toxicity of persistent substances discharged into the sea. Therefore, regulatory defaults are displayed through blacklisting substances whose knowledge over their eco-toxicological persistence is poor<sup>20</sup>. These lists are attached to the 1980 and 1996 Land-Based protocol; to the Annex of the 1978 and 1995 Dumping protocol (Paragraphs A and C); to Annex I and II of the 1994 Offshore protocol.

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<sup>18</sup> Hansson, S.O., Rudén, C., Sandin, P., *The Role of Precaution in Marine Risk Assessment*, Background Paper for the NewS Policy Forum, Javea, Spain, pg 4-9 available in [www.infra.kth.se/~cr/NewS/precaution\\_marine.pdf](http://www.infra.kth.se/~cr/NewS/precaution_marine.pdf)

<sup>19</sup> Principle 15 of Rio Declaration; “in order to protect the environment, the precautionary approach **shall be widely applied** by States **according to their capabilities**. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing **cost-effective measures to prevent environmental degradation**”

<sup>20</sup> Petersen, A.C., *The Precautionary Principle, Knowledge Uncertainty, and Environmental Assessment*, Paper for NOB/NIG workshop “Knowledge Uncertainty”, 30-31 October 2002, Erasmus University, Rotterdam, pg. 14, available at [www.uitgezocht.nl/VU/Docs/Precautionary\\_Principle.pdf](http://www.uitgezocht.nl/VU/Docs/Precautionary_Principle.pdf)



In contrast with previous protocols, regulatory defaults have not been displayed in the draft protocol in a systematic way. Nor obligations for States to either prohibit or authorize specific activities have been clearly established. On the one hand Art. 7(c-g) “Protection and Use of the Coastal Zone” attempts to provide a descriptive list enclosing specific conducts that are likely to result in damages to the coastal environment. On the other hand provisions set forth in Art. 8 “Economic Activities” paragraphs 1 to 6, display few binding provisions and general criteria drafted in ambiguous terms.

Inclusion of annexes in the protocols integrating lists based on regulatory defaults becomes critical when national and local authorities will be faced with enduring uncertainty over the impacts of public works (harbours) and aquaculture plants. This approach appears to be even justified by the commentary on the draft protocol that recommends that the implementation of precautionary policies be based on rational decisions. As outstanding doctrine underlines<sup>21</sup>, Environmental Impact Assessments procedures (EIAs) may provide decision makers and planners with a scheme allowing rational decisions to be taken, according to the precautionary principle. In this regard, the commentary of the draft protocol suggests Mediterranean states to develop indicators on the impact of tourism on coastal areas that integrate environmental impact studies and local planning schemes<sup>22</sup>. All these elements submit that in order for States to implement adequate environmental impact studies and planning schemes technical guidelines should be provided in the protocol as a base to address decisions.

Put in this way, both Art. 7 and 8 do provide only indirect reference to those guidelines that are available in the Barcelona system<sup>23</sup>. Indeed, Art. 8 grasps short insights from the 1995 FAO Code of Conduct for responsible Fisheries and those related guidelines adopted in the Barcelona system. As it is even the case for agriculture and industry, Art. 8(1) falls short of reference to further guidelines drafted by experts<sup>24</sup>. What seems to run counter the object of the draft protocol is especially the lack of lists based on regulatory defaults defining BATs and BEPs or enclosing specific ecotypes of coastal landscapes to be taken into account by planners and competent authorities in assessing the impacts of human activities.

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<sup>21</sup> Davies, P.G.G., *European Union Environmental Law – An Introduction to Key Selected Issues*, Ashgate Editors, Aldershot, 2004

<sup>22</sup> UNEP/MAP, *Draft Protocol on the Integrated Management of Mediterranean Coastal Zones – Comments, final version*, pgs. 31- 34

<sup>23</sup> See also UNEP/MAP/PAP, *Guidelines for Carrying Capacity Assessment for Tourism in the Mediterranean Coastal Areas*, Split, 1997; UNEP/MAP/PAP, *Conceptual Framework and Planning Guidelines for Integrated Coastal Area and River Basin Management*, Split, 1999; UNEP/MAP/MEDPOL, *Guidelines for the Application of Best Environmental Practices (BEPs) for the Rational Use of Fertilizers and the Reduction of Nutrient Loss from Agriculture for the Mediterranean Region*, Technical Report series, 143, 2004

<sup>24</sup> See: UNEP/MAP/MEDPOL, *Guidelines for the Application of Best Environmental Practices (BEPs) for the Rational Use of Fertilizers and the Reduction of Nutrient Loss from Agriculture for the Mediterranean Region*, Technical Report series, 143, 2004, Annex 8, pg. 130.

All these issues considered, it is expected that lists displaying specific guidelines addressing to States' authorities be included in annexes adding to the protocol. For instance, these lists should provide clean operation methods; ecological characters of ecosystems inhabiting coastal landscapes; environmentally friendly management systems for tourism establishments; prohibition of certain fishing techniques; technical criteria for water distribution and purification; impact assessment schemes.

## B.2 Environmental Assessments

Despite both Chapter 17 of Rio's Agenda 21 and Agenda MED 21 recommending states to implement EIAs at both the national and local level, the draft protocol does not set forth obligations fostering adoption of these procedures by national authorities. While Art. 17 "Environmental Assessments" encourages Mediterranean states to implement assessment procedures such as Strategic Environmental Assessments (SEAs), some authors infer that EIAs may prove the most appropriate tools in preventing conflicts on land uses at a local level<sup>25</sup>. In addition, implementation of EIAs procedures in decision making processes at local level is supported by legal scholars not only to evaluate impact of human activities in ecologically sensible areas but even for the assessment of risks that are likely to occur on those buffer areas surrounding protected areas<sup>26</sup>. Although SEAs can be considered of proven utility to ensure that potential cumulative impacts of several activities on coastal areas are assessed at a earlier stage than EIAs, they nevertheless fail to provide participation schemes that allow the public to "*systematically set out ideas about land-cover change*"<sup>27</sup>. If not integrated with a second tier of assessments (EIAs), the implementation of SEAs do not allow local administrators to fully appreciate the impacts of human activities on coastal areas<sup>28</sup>.

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<sup>25</sup> See Resolution 3.3, 1990 Guidelines on Wise use, Paragraph 5;

**5. Actions to address problems at particular wetland sites**, including:

(a) integration from the outset of environmental considerations in planning of projects which might affect the wetland (including full assessment of their environmental impact before approval, continuing evaluation during their execution, and full implementation of necessary environmental measures). The planning, assessment and evaluation should cover projects upstream of the wetland, those in the wetland itself, and other projects which may affect the wetland, and should pay particular attention to maintaining the benefits and values listed in 3b above;

(b) regulated utilization of the natural elements of wetland systems such that they are not over-exploited;

(c) establishment, implementation and, as necessary, periodic revision of management plans which involve local people and take account of their requirements;

<sup>26</sup> Farrier, D., Tucker, L., *Wise Use of Wetlands under the Ramsar Convention; a Challenge for Meaningful Implementation of International Law*, Journal of Environmental Law, n. 12, 2000, pgs. 22-25; 35-41

<sup>27</sup> Haines-Young, R.H., *Environmental Accounts for Land Cover: their contribution to state of the environment reporting*, Transactions of the Institute of British Geographers, n. 24, 1999

<sup>28</sup> Davies, P.G.G., *European Union Environmental Laws*, Ashgate Editors, Aldershot, 2004, pg. 179

As it clearly appears, the draft protocol does not display provisions that will possibly allow states and local authorities to assess environmental impacts at a local level. In contrast, it supports an approach that is rather limited to those data on the average of coastal changes that usually are made available to competent governmental authorities through statistics. As a consequence, local authorities and planners will be set apart from those evaluations regarding the impacts of human activities on coastal areas. Haines-Young<sup>29</sup> suggests that “*while net statistic data on the land cover areas can supply planners with the information on the condition of the natural ecosystems of a given state or region*”, statistics are not alone valuable to assess “*the quality and sustainability of the changes landscapes are going to face*” at a local level. This approach contrasts with those adopted by both the Land-Based (LBS) and the SPA protocols and with those recommendations on ICAM adopted at both the European and Global level.

In the first place, the LBS protocol requires that national and regional action plans and programmes for the reduction of emissions from point sources are based on guidelines, standards or criteria that integrate “*local ecological, geographical and physical characteristics [...], and the real absorptive capacity of the marine environment*” (Art. 7(2)). In addition, when preparing action plans, programmes and measures for the implementation of the protocol, parties should establish priorities “*for action on the basis of the relative importance of their impact on public health, the environment and socio-economic and cultural conditions*” (Annex I, 3<sup>rd</sup> preamble). Although this protocol does not explicitly endorse EIAs, it nevertheless provides national and local authorities with useful criteria to assess impacts of land-based emissions at local level. Secondly, the SPA protocol requires parties to continuously monitor “*ecological processes, habitats, population, dynamics, landscapes as well as the impact of human activities*” (Art. 7(2)(b)). Furthermore, it demands parties to include in planning measures “*the active involvement of local communities and populations*” (Art. 7(2)(c)).

Thirdly, while Chapter III of the EU Recommendation of the European Parliament and the Council, 30 May 2002, on the Integrated Coastal Zone Management in Europe adopts a policy-oriented strategy to assess measures for sustainable management of coastal zones, it partially endorses locally-based approaches. Therefore, while Member States are recommended to consider in their planning policies Coastal Zone Management “*a long-term perspective which will take into account the precautionary principle and the needs of present and future generations*”, Chapter II, paragraph d, suggests those states to integrate in the ICAM policies “*the local specificity and the great diversity of European Coastal zones*”. Finally, the 1992 Recommendation of the OECD Council on the Integrated Coastal Zone Management explicitly supports Environmental Assessments to be undertaken at both the policy and local levels<sup>30</sup>.

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<sup>29</sup> Haines-Young, R.H., *Sustainable Development and Sustainable Landscapes; Defining a New Paradigm for Landscape Ecology*, Fennia, n. 178, 2000, pgs. 7-14

<sup>30</sup> OECD, *Recommendation of the Council on ICZM*, C(92)114/FINAL, 1992

The recommendation suggests OECD members to adopt policy instruments including “*Environmental Assessment incorporating economic and social criteria*” and “*participation of public in decision-making at an early stage of policy formulation and project assessment*” in a view to prevent “*conflicting uses and pressures on coastal zone resources*”. As a consequence, the OECD Council Recommendation seems to provide all level authorities with decisions that are rational and more sensitive to those land uses and landscape changes that coastal areas support at a local level.

Apart from criticisms, further provisions in the draft protocol may offer Mediterranean States that are not members of the EU significant chances to implement EIAs according to OECD suggestions. Therefore, Art. 5(1)(a) of the protocol maintains that “the Coastal Zone shall be managed [...] *through a global and concerted approach*”. Admitting that States are bound to implement EIAs according to customary international law<sup>31</sup>, contracting parties shall be bound to resort to EIAs if Coastal Zone is to be managed through a concerted approach. As a consequence, States shall have at least a chance to put in place EIAs procedures that incorporate economic and social criteria and participation of public in decision-making at an early stage of policy formulation and project assessment. Even so, the choice whether governmental departments or local authorities should implement SEAs or EIAs risks to rest on those criteria established by poor or absent national laws. Stemming from these latter considerations, it could be desirable that Art. 17 of the draft protocol be integrated with commitments that at least require EIAs to be undertaken at local level. As a consequence, Art. 17(1) could be reviewed as follows; “*taking into account the fragility of coastal zones, the impact studies for public and private works and activities which may affect the environment of the coastal zone shall take into consideration the regional and local specificity [instead of specific sensitivity] of the coastal environment*”.

### C. The Polluter Pays Principle

The Polluter Pays Principle (PPP) may provide multilateral and regional treaties with useful criteria allowing both governmental and local authorities to identify and qualify liability of public and private stakeholders engaging in economic activities. At the outset, it sets standards of conduct for States, private enterprises and other actors that either support or carry out investments likely to entail significant environmental harm<sup>32</sup>. Secondly, it requires States and public authorities to hold these actors responsible for environmental harm. Therefore, PPP obliges those liable for environmental damage to restore or compensate loss in those cases in which either preventive or precautionary measures have not been adequate to avoid harm.

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<sup>31</sup> Marong, Alhaji B.M., *From Rio to Johannesburg: Reflections on the Role of International Legal Norms in Sustainable Development*, Georgetown International Environmental Law Review, n. 16, 2003

<sup>32</sup> For instance, *Trail Smelter* case was the leading case in establishing obligations for States to control emissions throughout its national territory, and to either remediate or compensate damages caused to other States.

The PPP puts in place a regime of environmental responsibility that not only is thought to identify liability of competent authorities but even requires those conducting polluting activities to prevent significant damage<sup>33</sup>. Even though the White Paper of the Commission of the European Communities on Environmental Liability infers that “*liability is only effective where polluters can be identified, damage is quantifiable and a casual connection can be shown*”<sup>34</sup>, the PPP provides incentives for more responsible behaviour by firms and managers because “*liability [is] focused on the operator in control of the activity that caused the damage*”<sup>35</sup>. Therefore, an effective system of controls to be established by States may ensure that potential polluters will be cautious and take all measures to avoid damage to the environment. Nevertheless, liability of those charged of conducting and controlling harmful activities does not exempt States from a duty to “*ensure[ing] effective decontamination and restoration or replacement of the environment in cases where there is a liable polluter*”<sup>36</sup>.

The Barcelona system is conducive to considering both States and polluters directly liable for environmental damages subsequent to their activities. Nevertheless, the Convention and its protocols are above all concerned with State responses to damages rather than with liability of single polluters. Despite Art. 4 of the Convention “General Obligations” dealing with a notion of responsibility that aims at establishing a obligation for the polluters to cover the costs of “*pollution prevention, control and reduction measures, with due regard to the public interest*”, the protocols only display few provisions explicitly addressing to environmental liability of polluters. Similarly, the draft protocol establishes limited obligations that are mostly transboundary in scope.

As a consequence, both the Land-Based and the Specially Protected Areas protocols charge States parties to enact response measures for pollution originating from “*a watercourse which flows through the territories of two or more Parties or forms a boundary between them*” (Art. 11, Land-Based protocol) and to approve national contingency plans that “*incorporate measures for responding to incidents that could cause damage or constitute a threat to the specially protected areas*” (Art. 7(3), SPA protocol). Owing to the nature of pollution both the Land-Based and the SPA protocols deal with, the implementation of obligations for pollution prevention and protection should not be a duty of the States alone but even of natural and juridical persons engaging activities on coastal areas. Since such a duty relies on an obligation of *jus cogens*<sup>37</sup>, Art. 235 of UNCLOS also recognizes a duty for States to ensure “*prompt and adequate compensation in respect of damage caused by pollution[...] by natural or juridical persons under their jurisdiction*”(Art. 235(2)).

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<sup>33</sup> OECD, *Guiding Principles Concerning International Economic Aspects of Environmental Policies*, Recommendation C(72)128, 1972

<sup>34</sup> Commission of European Communities, *White Paper on Environmental Responsibility*, COM(2000) 66 final, 2000, pg. 3

<sup>35</sup> Commission, *Idem*, pg. 3

<sup>36</sup> Commission, *Idem*, pg. 12

<sup>37</sup> Birnie, P.W., Boyle, A.E., *International Law and the Environment*, Oxford University Press, Oxford, 2002, pgs. 118-125

In supporting such an obligation of *jus cogens*, the Offshore protocol sets forth clear provisions on responsibility addressing to single polluters. Indeed, protocol demands the competent authority of States to put in place “*at the operator’s expense, such action or actions as may be necessary to remedy the operator’s failure to act*” those procedures required for the removal of installations (Art. 20). Moreover, both Art. 26(4) and Art. 27(2)(a)(b) refer explicitly to the obligation of States to put in place laws and regulations ensuring a thorough response by operators for damages caused or likely to originate from exploration and exploitation of the Continental Shelf, the Seabed and its Subsoil. These measures require the operator “*to pay prompt and adequate compensation*” and “[*to*] *have and maintain insurance cover and other financial security*”. Similarly, the Emergency protocol establishes specific responsibilities for both masters of ships and persons in charge of sea ports to report accidents to the competent State authorities, to REMPEC and the competent Organization (Art. 9(2)(3)).

The draft protocol does not put forward any such obligations. According to Hassan, innovative institutional mechanisms for ICZM are to be adopted by States to achieve an effective control of both Land-Based sources of marine pollution and the competitive uses of coasts and oceans<sup>38</sup>. Nevertheless, the draft protocol does not support responsibility of either single polluters or authorities for remedial of damages to the coastal environment occurred under national jurisdictions. It rather commits States to engage in consultations, negotiations and to implement transboundary impact assessments in cases in which activities are likely to cause harm to bordering States (Art. 25(a)(b)(d)).

Although two provisions of the draft protocol seem to provide scope for both remediation and compensation measures, these are not supported by obligations addressing to single polluters<sup>39</sup>. For instance, protocol endows States to adopt “*mechanisms for the acquisition or expropriation of land for public ownership and any control of human development*” (Art. 18(1)) and to “*impose rights of way on properties*” (Art. 18(2)) to ensure preservation of areas that are not urbanized. Certainly, States and competent authorities shall be obliged to either acquire or expropriate land once human activities prove to contaminate the coastal environment. Nevertheless, there is nothing in the provision indicating who will bear the costs of remediation once lands have been acquired or expropriated.

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<sup>38</sup> Hassan, D., *International Conventions Related to Land-Based Sources of Marine Pollution Control: Applications and Shortcomings*, Georgetown International Environmental Law, n. 16, 2004, notes 112-115

<sup>39</sup> It is worth noting that the draft protocol **neither** provides any obligation for remediation of damages addressing to those polluters that do not enact transboundary impact assessments for contiguous coastal areas. Recalling transboundary issues concerning the regulation for the protection of the ozone layer as a common concern of mankind; Lawrence, P.M., *International Legal Regulation for Protection of the Ozone Layer: Some Problems of Implementation*, Journal of Environmental Law, n. 1, 1990, pgs. 50-51. Still the Montreal protocol and the 1979 Long Range Transboundary convention lack of specific standards of due diligence to be enforced once States are caught not to comply with their requirements. Likewise, it becomes difficult for affected Mediterranean States to seek compensation of damages caused by a private person or by a competent authority of another Mediterranean country being it party or not to any of the Barcelona protocols.

One could probably infer that economic and financial instruments (Art. 19) may well support polluter's liability for the remediation and compensation of contaminated lands. It is undeniably difficult, however, that protocol will oblige States and authorities to impose taxes and charges to the potential contaminator "*intended to dissuade and prevent activities damaging the coastal zone, the product of which shall be assigned to the maintenance and management of coastal areas*" (Art. 19(2)). At the outset, because the imposition of taxes and charges is a matter of exclusive sovereignty of States – that is why Art. 19(2) is drafted in a soft-law fashion. Secondly, because funds for the management and the maintenance of coastal areas are not adequately managed often because taxes and charges are subject to condemnation by governments and local authorities<sup>40</sup>. Finally, because the majority of Mediterranean coastal States rely on economic activities engaged on coastal areas.

Those issues should not be underestimated, indeed. As it clearly appears from a NGO report<sup>41</sup>, both governments and local authorities appear to have huge discretion in deciding the uses to whom to designate lands on coastal areas. It stems from these considerations that in some realities the need to build further tourism infrastructures on coastal areas (such as harbours) led port authorities to have huge discretion in managing both public lands on coastal areas and financial funds. Although most of these projects are financed through European funds requiring EIAs, port authorities do not often comply with these obligations. As it is the case for Galicia and Catalonia in Spain, damage not only result on destruction of coastal ecosystems but even of fishing banks and reefs<sup>42</sup>. By the same token, funds for remediation are increasingly being used to regenerate sand dunes bordering natural sites hosting habitats of Community's interest. As it is reported below in Section 3, 3.2, paragraph F.4 of this report, the practice of beach nourishment may result in negative impacts for coastal ecosystems unless it is supported by adequate assessment of sediments diversion.

Local authorities exercise huge discretion even with reference to the planning of hotels and golf courses connected to both natural parks, sites and habitats of European importance. The new urban plan for Sanlúcar de Barrameda in Spain is a example of how local authorities may even dismiss judicial obligations to compensate land extension illegally deforested to give way to the construction of a hotel and a golf course<sup>43</sup>. Similarly, the case of the discharges of a Spanish mill producing fertilizers (Fertiberia) in Andalusia was the main factor to eradicate marshes in the Huelva province. This case evoking the Doñana and the Santoña marshes emergency is the result of the reckless behaviour of competent authorities.

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<sup>40</sup> This opinion contrasts with that of the comment on Art. 19 of the ICAM draft protocol in UNEP/MAP, *Draft Protocol on the Integrated Management of Mediterranean Coastal Zones – Comments, final version*, pg. 45; see also UNEP/MAP, *Report on the Meeting on Legal and Management Instruments for the Protection of the Mediterranean Coasts*, Sevilla/Cabo de Gata, 12-15 December 2001, UNEP(DEC)/MED WG.195/1

<sup>41</sup> Greenpeace, *Informe sobre la Situación del litoral Español – Destrucción a toda Costa*, Julio 2005 available at <http://www.greenpeace.es>

<sup>42</sup> Greenpeace, *Idem*, pg. 18 and 61

<sup>43</sup> Greenpeace, *Idem*, pg. 21

Drawing upon these issues, it is expected that negotiators be more sensitive to agree upon obligations to enforce responsibility of single polluters within national boundaries. Together with innovative provisions on Economic and Financial Instruments and transboundary responsibility of coastal States, it could be expected that the draft protocol be added with provisions intended to both limit discretion and strengthen enforcement capacity of local authorities. It is nevertheless difficult that negotiating parties approve such provisions. What negotiators may realistically achieve is a provision addressing directly to the potential polluters. This provision may consist of a obligation for socio-economic actors to either anticipate compensation of cleared land with afforestation or regeneration of habitats to be displayed in other areas of the coast before activities are engaged. Both these provisions will add substance to both Art. 18 art 19 of the draft protocol.

### **3.2 Obligations**

#### **A. Common but Differentiated Responsibility**

Though common but differentiated responsibility and cooperation should be considered as general principles for the scope of this report, they are nonetheless a source of obligations to be implemented by State parties. Indeed, these principles significantly contribute to the success of both global and regional conventions. Bearing in mind that that the Mediterranean basin is not only a geographical area but even a region with lasting economic and social inequalities, cooperation is momentous in providing less developed States with opportunities to implement the provisions of the Barcelona system. Not only this, but even principles through which all States may contribute to achieve the objectives of sustainable development as established throughout the Barcelona system. Herein, provisions on cooperation not only do oblige States bordering closed or semi-enclosed seas but even all those countries that may contribute to prevent, control and reduce pollution in the environment.

According to UNCLOS Art. 123, most of the obligations concerning cooperation in the enclosed sea regions regard coordination of implementation of measures for the protection and preservation of the marine environment as well as scientific research and management of the living resources. Within the framework of cooperation, UNCLOS displays comprehensive obligations addressing to developed States – in so helping less developed countries to meet those commitments. Therefore, UNCLOS Art. 202 displays provisions for States to provide assistance to developing countries in many areas – namely scientific and technical training of personnel (i), participation in international programmes (ii), equipment and facilities supplying (iii), capacity and manufacture building for equipment (iv), developing facilities for research, monitoring, educational and other programmes (v). All these commitments are furthered in the Barcelona system



due to the momentous evolution that both the Convention and its protocols witnessed since UNCLOS was negotiated and further adopted.

It is clear, however, that the Convention does not display any provision on differentiated implementation of obligations for developing Mediterranean countries. This may sound strange for a regional system tackling issues concerning transboundary pollution. Contrary to the United Nation Framework Convention on Climate Change (UNFCCC), all claims leading negotiators to agree on differentiated treatment for less developed countries have not persuaded Mediterranean states to inscribe in the Convention specific obligations addressing to developed countries – i.e. to provide commitments on reporting emissions inventories, monitoring and screening. As a consequence, both the Convention and the protocols do not provide commitments for implementation of differentiated targets and timetables as instead the 1985 Vienna Convention for the Protection of the Ozone Layer and its protocols<sup>44</sup> and the 1979 Convention on Long Range Transboundary Air Pollution and related protocols<sup>45</sup>.

Even though the Barcelona system put in place general obligations for parties to “*adopt programmes and measures which contain, where appropriate, time limits for their completion*” (Art. 4(4) Convention); to apply the precautionary principle according to their capabilities (Art. 4(3)(a)); to apply the PPP with due regard to the public interest (Art. 4(3)(b)); to “*draw up and implement plans for the reduction and phasing out of substances that are toxic, persistent and liable to bioaccumulate arising from land-based resources*” (Art. 8); to develop and adopt “*management plan*” (Art. 7(2)(a) SPA protocol); to “*implement, individually or jointly, national and regional action plans and programmes, containing measures and timetables for their implementation*” (Art. 5(2) LBS protocol); to “*take, individually or through bilateral or multilateral cooperation, all appropriate measures to prevent, abate, combat and control pollution[...]*” resulting from offshore activities (Art. 3 Offshore protocol), both the Convention and the protocols demand Mediterranean States to meet commitments independently from their socio-economic conditions. Consequent to this strategy, it is rather indirectly that parties accomplish commitments in proportion to their economic and technical capability.

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<sup>44</sup> Both these instruments display different reporting obligations, timetables, production and emission targets for developed and developing countries. See for instance the provisions of the amended 1987 Montreal protocol Artt. 2 and 6. Also, Art. 2(8) on Joint Implementation, Art. 5, Art. 7 and Art. 10A on Technology Transfer. The UNFCCC Convention and the Kyoto protocol took inspiration from the 1987 Montreal protocol, both setting emission targets, timetables and differentiated obligations. See for instance Artt. 2., 3, 4(1),(2), (3), (4), (5) and 12(3) of UNFCCC and Art. 2, 3, 4, 6,9, 12, 16 and 16 bis of the Kyoto protocol.

<sup>45</sup> See the 1994 UN ECE Sulphur Protocol Artt. 1(12), 2(1), 2(2) and Annex II, 2(3), 2(7). See further provisions of the 1991 Protocol Concerning the Control of Emissions of Volatile Organic Compounds, the 1988 “Sofia” Protocol.

As a consequence, priorities in adopting action plans, programmes and measures for the elimination of pollution from land-based resources and activities depend on the impact those measures may have on, inter alia, socio-economic conditions (Annex I, third paragraph LBS Protocol). Furthermore, Art. 7(2),(3) LBS protocol displays that all Parties while adopting common guidelines and action plans, programmes and measures to eliminate pollution from Land-Based resources shall integrate in those measures “*the economic capacity of the Parties and their need for development*” and “*the capacity to adapt and reconvert existing installations, the economic capacity of the parties and their need for development*”. Similarly, Annex I, Section D, paragraph 3 of the SPA protocol requires that “*protection, planning and management measures must be based on an adequate knowledge of the elements of the natural environment and of the socio-economic and cultural factors that characterize each area*”. Finally, the Offshore protocol Annex III, paragraph D, advises parties to take into account the availability and feasibility of, inter alia, “*d) Appropriate low waste technologies*”. As opposed to these provisions and guidelines, the draft protocol does not contain any specific reference on differentiated responsibility of parties.

## **B. Cooperation**

Despite Barcelona system lacking significant provisions addressing to differentiated implementation of either reporting or targeted obligations, it nevertheless displays a handful of measures covering assistance for both developed and developing countries. To begin with, the Convention draws on general themes for cooperation that are further specified in each protocol (Art. 13). Cooperation mainly concerns the fields of science and technology, exchange of data and other scientific information as well as research, access and transfer of environmentally sound technology and clean production processes. By virtue of this provision, parties to the Convention and to the protocols undertake to provide assistance to developing countries in the fields of technology as well as in other possible areas (Art. 13(3)). Since adoption of MAP II and the Agenda MED 21 has added the Barcelona system more substance in so far as it concerns both the protection and integrated management of areas that are rich in biodiversity<sup>46</sup>, adoption of lists and guidelines are not alone sufficient in prompting South Mediterranean States to cooperate in the scientific and technological sectors covered by the protocols.

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<sup>46</sup> French, V.B., *New Trends for Eliminating Land-Based pollution in the Mediterranean Sea*, in Cataldi, G (Ed.), *La Méditerranée et le Droit de la Mer à l'Aube du 21<sup>ème</sup> Siècle*, Extrait, Bruylant, Bruxelles, 2002, pg. 290. MAP II subsection 3.2.1 recommends parties to develop technical guidelines for the implementation of measures adopted and to assist developing countries.

Henceforth, cooperation in the Mediterranean basin not only is thought to ensure that assistance to developing countries in both the technical and scientific fields is made more attractive for developed States but even to trigger South Mediterranean countries to acquire innovative management techniques for the protection of biological resources whose exploitation is becoming increasingly important for their economies<sup>47</sup>. This issue has yet been reported in Section 1, pg. 3 of this Report.

Secondly, coordination and planning represent a key benchmark owing to which parties may individually or jointly undertake to exchange technology, experiences and know-how for progressive elimination of emissions from land-based sources (Art.5(2) LBS protocol), to preserve biological diversity and to support sustainable use of marine and coastal biological resources (Art. 3(4) SPA protocol). Plans may consist of national and regional action plans or programmes that commit national authorities to set up timetables and objectives for reduction of pollution. Besides, plans and programmes are both elaborated and implemented in concert with developing countries to provide these parties with assistance in “*reducing or, as appropriate, phasing out inputs of pollutants from land-based sources*” (Art. 10 LBS protocol). Similarly, SPA protocol demands parties to assist developing countries through formulating, financing and implementing programmes of assistance in the management of SPAs (Art. 22(1)).

Among the provisions on coordination, the most relevant are those concerning mutual cooperation and assistance displayed in the SPAs protocol. The SPAs protocol sets forth a clear obligation for all Mediterranean states to elaborate and further implement programmes “*to coordinate the establishment, conservation, planning and management of specially protected areas [...]*”(Art. 21(1)). As a consequence, both the adoption and implementation of measures for the protection and the management of SPAs and SPAs of Mediterranean Importance (SPAMIs) demand States to coordinate their action once listing procedures have been completed. Owing to this obligation, coordination of the management of protected areas further demands States to prompt technical expertise at local and regional level. Therefore, the obligation for wealthier Mediterranean States to provide South Mediterranean countries with “*the training of scientific, technical and management personnel*” through programmes (Art. 21(2)) is not only deemed to enhance coordination between States parties to the protocol but even to ensure capacity building of competent authorities of developing States dealing with the management of biodiversity in SPAs and SPAMIs.

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<sup>47</sup> Franch, V.B., *La Protección Internacional de Zonas y Especies en la Región Mediterránea*, Revista del Departamento de Derecho Internacional Publico, Facultad de Derecho de Universidad de Navarra, Vol. XIII, 1997, pg. 34

Though further protocols do not display comprehensive provisions, coordination is aimed at further calling on all Mediterranean states to provide reciprocal information with respect to “*measures taken, of results achieved and, if the case arises, of difficulties encountered in the application*”. This undertaking is established in both the Offshore (Art. 25) and the Hazardous Wastes Protocols (Art. 11). Over and above, the Hazardous Waste protocol sets forth some relevant provisions on both institutional and administrative coordination for “*the effective prevention and monitoring of illegal traffic in hazardous wastes*” (Art. 9(8)). These latter provisions commit States to exchange information, to provide assistance in the field of capacity building and to enhance mechanisms for both the prevention and monitoring of illegal traffic.

### **B.1 North-South Cooperation and the Protocol. Focus on Coordination**

Despite provisions on cooperation, planning and coordination being comprehensive in scope, it is worthwhile highlighting that the Barcelona system does not oblige States to transfer clean technology and environmental practices to developing countries. Since Art. 13(1) of the Convention only displays that “*Contracting Parties undertake as far as possible to cooperate directly [...] in the fields of science and technology and to exchange data as well as other scientific information*”; (2) “*Contracting Parties undertake to promote the research on, access to and transfer of environmentally sound technology, including clean production technologies*”; and (3) “*Contracting Parties undertake to cooperate in the provision of technical and other possible assistance in fields relating to marine pollution, with priority to be given to the special needs of developing countries*”, Mediterranean States are given huge discretion in choosing the most appropriate strategy for both the transfer of technology and know-how to eliminate marine pollution.

Protocols even include few more provisions displaying light commitments for all Mediterranean countries. Thus, the Offshore protocol displays that “*the Parties shall, where appropriate, cooperate in promoting studies and undertaking programmes of scientific and technological research for the purpose of developing new methods*” to prevent, abate, combating and control pollution (Art. 22); the LBS protocol displays “*to this end, the Parties shall, in particular, endeavour to...a) Exchange scientific and technical information...c) Promote access to, and transfer of, environmentally sound technology*” (Art. 9); the SPA protocol submits that “*the Parties shall encourage and develop scientific and technical research relating to the aims of this protocol*” (Art. 20(1)); the Hazardous Waste protocol requires that “*the Parties shall cooperate as far as possible in scientific and technological fields related to pollution from hazardous wastes*” (Art. 8(1)).

What stands behind weak commitments is probably the challenging and never achieved objective of persuading developed negotiating States to commit on technology transfer. Such issues render the formulas used in the above mentioned provisions closely related to those established in the conventions on the protection of the Atmosphere – namely the 1985 Vienna Convention for the Protection of the Ozone Layer, the 1979 Convention on Long Range Transboundary Air Pollution and in the UNFCCC.

Therefore, weak commitments are often the result of negotiations that led negotiating parties to a compromise owing to which both developed and developing countries agreed to not impose an undue pressure on States sovereignty<sup>48</sup>. This compromise is twofold in scope; on the one hand it is probably thought to protect technology and know how from disclosure. Such a purpose is clearly stated in Art. 4(2) of the 1985 Vienna Convention that requires Parties to enact transfer of technology and know-how accordingly to their national laws, regulations and practices. On the other hand, negotiating parties might have agreed upon weak provisions with the aim not to impose approaches that are incompatible with socio-economic, cultural and environmental conditions of developing countries.

Be as it may be, weak commitments call attention to some relevant developmental issues that concern the transfer and use of technology and know how to developing States. For developing States display obsolete technology to control, prevent, abate and eliminate pollution it may be argued that these countries are faced with high costs to substitute or destroy such technology. Put in those terms, developed countries prefer to maintain low transfer costs while ensuring that up-to-grade technology do not constrain the process of economic growth of developing States - “*so as not to harm existing economic structures*”<sup>49</sup>. As a consequence, it has been argued that developed States find it more convenient to spend far less resources in upgrading technology and reducing pollution in developing countries for early reductions “*are less expensive until the utility of the last reduction equals the advantages in reducing emissions*”<sup>50</sup>.

On the other hand, developed States may opt to not only avoid high costs resulting from the transfer of brand new technology but even to cut additional expenditures related to the transfer of know how. Therefore, instead of committing to comprehensive obligations entailing enduring training, developed States would rather support developing countries in transferring last-not-latest technology and engage in regional financial programmes for short-medium term training. It is probably true, then, that Mediterranean States agreed upon a “*package deal*” owing to which developed states have often abstained from negotiating binding provisions that would have resulted in a kind of blank cheque covering full costs of pollution reductions<sup>51</sup>.

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<sup>48</sup> Fraenkl, A., *The Convention on Long-Range Transboundary Air Pollution: Meeting the Challenge of International Cooperation*, Harvard International Law Journal, n. 30, 1989. pg 465-467

<sup>49</sup> Gündling, L., *Multilateral Cooperation*, pg. 22

<sup>50</sup> Fraenkl, A., *The Convention*, pgs. 468-469

<sup>51</sup> These considerations have been extended to the Barcelona system following insights in Bodansky, D., *The United Nations Framework Convention on Climate Change: A Commentary*, Yale Journal of International Law, n. 18, 1993, pgs. 524-533

With only few exceptions, the draft protocol Part IV “International Cooperation” displays provisions whose formulas contain weak commitments for parties. Therefore, Part IV displays that parties “*undertake to cooperate*”, “*undertake to promote*”, “*undertake to organize coordination*”, “*shall endeavour to coordinate*” and “*may adopt, where appropriate*”. Given the intermediate nature of the draft protocol, it should not be expected more from negotiating parties. Nevertheless, provisions on cooperation and coordination as displayed in the protocol feature more detailed and rather new contents.

Therefore, Art. 20 “Training and Research” provides detailed undertakings for all Mediterranean states to promote training of scientific, technical and administrative personnel in the fields of integrated coastal zone management at a local level. It is in virtue of this provision that it may be expected Mediterranean countries to overcome weakness of the formulas such as those displayed in both paragraph 2, “*parties undertake, directly or with the assistance of the Centre or the international organizations concerned, to promote scientific and technical research into integrated coastal zone management, particularly through the exchange of scientific and technical information*” and in Art. 21, “*The Parties undertake[...] to cooperate for the provision of scientific and technical assistance, including access to environmentally sound technologies and their transfer*”. Furthermore, in providing meaningful detail on the personnel to whom training shall be addressed, Art. 20 adds substance to the Barcelona system in so evolving in respect to the formula adopted by Art. 7(2),(f) SPA protocol – i.e. “*2. Measures should include for each protected area... f) the training of managers and qualified technical personnel, as well as the development of an appropriate infrastructure*”.

In displaying more features for capacity building of Mediterranean coastal authorities, the draft protocol will prove momentous for successful implementation of national strategies, plans and programmes (Art. 20(1)). Once the Mediterranean Strategy on Integrated Coastal Area Management will be adopted, this provision is of value for setting priorities for transfer of technology and information to local or national authorities. Owing to these priorities, governments and local agencies will not be left unacquainted in deciding the kind of technology and information to be exchanged and transferred at a regional level for the adoption of uniform standards on ICAM. Therefore, this provision is intended to provide States with opportunities to pre-empt some of the major obstacles in supporting adoption of uniform strategies, plans and programmes on coastal area management – namely overlapping and conflict between coastal authorities or cultural differences on management patterns<sup>52</sup>.

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<sup>52</sup> Cocossis, H., Henocque, Y., *Livre Blanc*, supra note 6

With a view to both bring to life and put into practice national and Mediterranean strategies on ICAM, the draft protocol deserves further detailed provisions on coordination. As agreement on uniform management standards and exchange of information and know-how are both elements necessary for regional treaties to work, Arts. 20 and 22 “Exchange of Information and Demonstration Projects” encourage parties to put in place specialized centres at both the national and regional level. Innovating upon the Emergency and SPA protocols<sup>53</sup>, the strategy both Arts. 20 and 22 put forward will provide States with a opportunity to coordinate, control and monitor activity of either national or local level centres in concert with PAP/RAC. The PAP/RAC centre will provide these centres with up-to-date training on coastal management strategies, guidelines and assessment of progress on ICAM national practice. Furthermore, PAP/RAC will facilitate exchange of information on technology and know how between States. These provisions add scope to the draft protocol, as information exchange is not alone sufficient to implement multilateral treaties<sup>54</sup>.

It should not sound odd thus that the draft protocol envisages a clear obligation (Art. 22(2)) in between such soft law commitments (Art. 22(1)). Therefore, the undertaking of parties to establish specialized centres and to exchange both information and technology (Art. 22(1)) demands all Mediterranean States to show a real interest in the implementation of the protocol (Art. 22(2)). As a consequence, once a party to the protocol decides to establish either national or local specialized centres – and to further exchange information and technology – it shall be obliged to put in place “*a) coastal indicators; b) establish and maintain up-to-date assessments of the use and management of coastal zones and c) carry out demonstration projects of integrated coastal zone management*” (Art. 22(2)).

Despite this scheme not being much different from those displayed in previous protocols – and particularly in the SPAs protocol – it nevertheless provides more substantive requirements for all States to systematically adopt measures on ICAM. This latter statement appears to be more true especially considering that “*up-to-date assessments of the use and management of coastal zones*” and “*demonstration projects of integrated coastal zone management*” (Art. 22(b),(c)) even demand to be implemented by South Mediterranean States once assistance in the fields of training and research and the transfer of environmentally sound technologies will be supplied. Moreover, as both these provisions will be momentous for UNEP/MAP and the PAP/RAC to evaluate the progress of States in implementing provisions of the protocol, it is of all consequence that should not be considered in isolation from obligations on institutional duties.

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<sup>53</sup> See SPA protocol Arts. 11(7), 20(3), 21(1), (2)

<sup>54</sup> Similar considerations have been supported in regard to state responsibility in the framework of the 1985 Vienna Convention, in Gündling, L., *Multilateral Cooperation*, pgs. 23-24

In effect, it is in implementing these provisions that the PAP/RAC will be provided with additional tasks to those of reporting and monitoring on “*the state and evolution of integrated coastal zone management*” and “*the effectiveness of the measures taken and the problems encountered in their implementation*” (Art. 27(1)). By virtue of these provisions, not only this Centre will be entrusted by UNEP/MAP to carry out research, organization and coordination, but even to coordinate technical assistance, evaluation of environmental assessments, emergency and transboundary cooperation, preparation of demonstration projects and coastal indicators (Art. 28).

### C. Transboundary Cooperation

Although Art. 24 “Transboundary Cooperation” contains the undertaking for parties “*to coordinate national coastal strategies, plans and programmes for the management of contiguous coastal zones*”, it further discloses a binding provision requiring Mediterranean States to coordinate functions of both local and regional authorities once strategies, plans and programmes on integrated coastal area management (Art. 16) will be adopted by States and activities on contiguous coastal areas will be engaged. The reason in differentiating binding scope may be that negotiating parties intended to avoid implementing further obligations on coordination of strategies, plans and programmes for human activities having a light impacting nature on contiguous coastal zones. Nonetheless, parties will be required to show real commitment in the minimization of transboundary impacts of such activities once contiguous coastal States adopt national strategies, plans and programmes. Therefore, it is not wrong to assume that this provision will add scope to the obligation established in Art. 22(2).

Although similar provisions have been yet displayed within previous protocols, they are not as much detailed in scope. For instance, the SPAs protocol demands States to agree upon with other countries – be they or not parties to it – common measures for the protection, recovery, management of threatened, endangered and migratory species (Artt. 5(2),(3) and Artt. 11(4), (7)). Herein, lack of express reference to coordination between local and regional authorities deserves attention to the effectiveness of agreements that are likely to be adopted by States to coordinate management of bordering SPAs (Art. 11(4)). According to De Klemm – on both the effectiveness of Annex II agreements of the Bonn Convention and conservation of natural habitats in Ramsar – if negotiation and implementation of agreements for the management of bordering habitats is left to competent ministerial departments alone, the result may be that local authorities of bordering coastal States will adopt conservation schemes that may result to be incompatible in the long term. This strategy will favour loss of both habitats and species ranging between either borders<sup>55</sup>.

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<sup>55</sup> De Klemm, C., *The Problem of Migratory Species in International Law*, Green Globe Yearbook, n. 67, 1994, pgs. 69-71



Grasping useful experience from implementation of both the Bonn and Ramsar conventions, agreements for the protection and recovery of habitats and migratory species – as those displayed in Art. 11(4) of SPA protocol – may prove effective when costs and economic benefits are equally shared between bordering states authorities<sup>56</sup>. In contrast to the commitments of SPAs protocol, the draft protocol will provide bordering local and regional authorities of contiguous coastal States with the opportunity to communicate and exchange plans, programmes and strategies adopted at both the ministerial and local levels. This scheme proves effective for the purpose of developing common projects and programmes on conservation of both natural habitats and coastal protected areas. Furthermore, it will reasonably allow contiguous authorities to adopt and monitor progress of Memoranda of Understanding (MoU) according to financial capacity and to the ecological character of the coasts.

#### **D. Transboundary Impact Studies and Strategic Assessments**

In contrast to Art. 24, the draft protocol displays a clear obligation for all Mediterranean States to engage in transboundary impact studies and strategic assessments (Art. 25). Though provision will not oblige States to prevent transboundary harm, it encloses specific obligations demanding States to act in respect of both the good-faith and non-discrimination principles. Therefore, protocol sets forth obligations and parameters that shall oblige parties to conduct EIAs and SEAs according to due diligence, good faith and non-discrimination (Art. 25). In addition, the provision shall require States, regional and local authorities to act with due diligence and good faith in adopting national plans and programmes. Herein, it clearly appears that obligations envisaged in Art. 25 may widen the scope of Art. 17 on Environmental Assessments.

What is significant, in effect, is that draft the protocol will require States, regional and local authorities to have due regard to specific factors before approving activities, plans and programmes that are likely to result in polluting the environment of other States. Owing to these factors, the draft protocol will demand States to conduct high profile assessments in so preventing them from implementing weak laws on EIAs and SEAs<sup>57</sup>. With this in mind, draft protocol's Transboundary Impact Studies and Strategic Assessments will add the Barcelona system with relevant provisions of the 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary context. Following a thorough analysis of the article, it may well be stated that the draft protocol furthers Espoo's strategy in a regional context – in so making its provisions closer to those of Rio's Principle 5.

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<sup>56</sup> See for instance De Klemm, C., *Idem*, pgs. 71-72; 74-76

<sup>57</sup> Knox, J.H., *The Myth and Reality of Transboundary Environmental Impact Assessment*, American Journal of International Law, n. 96, 2002, notes 156 and notes 166-168

Obligations set forth in the provision appear to be more demanding than those put in place in Art. 26(2),(4) Offshore protocol. Although Offshore protocol displays a obligation for States to take into account any adverse environmental effects of activities that “*are being envisaged or carried out*” in the maritime area, it nevertheless puts forward only a broad commitment without in so providing specific requirements for countries conducting such activities (Art. 26(2)). The only measures to be put in place by States concern notification to both the REMPEC and other countries of a imminent danger or damages occurred within their jurisdiction. In addition, owing to weak formulation of Art. 26(4) (“*Parties shall endeavour*”, “*where appropriate*”), Offshore protocol does not commit parties to grant equal access to both administrative proceedings and information to people affected by pollution in other States (Art. 26(4)).

In contrast, the draft protocol displays an obligation for States to cooperate “*to assess the environmental impact of activities, plans and programmes that are likely to cause a significant adverse effect to the coastal zones of other States or the marine environment of the Mediterranean Sea*” (Art. 25(1)). Though apparently broad in nature, the article establishes a threshold (significant adverse effect) owing to which contiguous coastal States shall be obliged to engage in notification, exchange of information and consultation before any activity is approved. Furthermore, the draft protocol shall require States to notify States likely to be affected information on the content of plans, programmes and activities before their approval (Art. 25(1)).

In implementing the principle of non-discrimination, States shall have a duty to inform both the public concerned and NGOs of activities, plans and programmes subject to EIAs and SEAs. The duty of States to inform the public shall be restricted to a “*due time*” – that is a time lag that allows both public considerations and counterproposals to be taken into account before activities, plans or programmes are approved by national authorities (Art. 25 (c) and (a)). Eventually, concerned States shall have to submit to the State of origin “*within a reasonable time*” observations and counterproposals to be transmitted to the competent national authority. In demanding States to engage in consultations before the approval of activities, plans and programmes, not only Art. 25(b),(c) will put in place a strong participatory mechanism but even will provide countries with a decisional scheme owing to which decisions shall be concerted with all levels national authorities of interested States with due account of reciprocal economic and social interests.

By virtue of this provision, all Mediterranean States shall adopt laws on both EIAs and SEAs that ensure participation in their national decision making processes of both concerned authorities and public of affected States (principle of equal access). Therefore, this obligation in turn entails that access to environmental information shall **not** be granted according to conditions enclosed in national laws but rather in relation to the draft protocol's specific requirements. Owing to these requirements, it is not wrong to expect parties to equate laws and procedures on EIAs and SEAs to those criteria enclosed in this provision<sup>58</sup>.

Further criteria are even displayed, owing to which States shall be required to take in due account in their assessments and subsequent documentation "*the specific sensitivity of coastal zones, their carrying capacity and their inter-relationship between the maritime and land areas*" (Art. 25(1)(b)). In satisfying these criteria, parties of the draft protocol shall be more constrained in balancing their own economic interests once the bordering State decides to participate to EIAs and SEAs. Therefore, in adding national laws and procedures with further criteria the draft protocol will result in enhancing standards of protection and in addressing special focus on protection of coastal ecosystems<sup>59</sup>.

It is worth adding, however, that by giving States chances to negotiate "*the potential transboundary impact of the proposed activity and appropriate measures to reduce and eliminate this impact*", consultations would offer States opportunities to jeopardize implementation of TEIAs (Art. 25(1)(d)). On the one hand, it may be that entering into consultations to reduce and eliminate transboundary impacts will provide States with chances to make parties' legislation better suited to specific risks. On the other hand, loopholes ("*where appropriate*") will offer States too huge a discretion to bargain available standards or to impose to other countries low profile criteria. This latter concern seems to be more true when considering that the consultant State may appeal to such a clause before a final decision is taken by its authorities. This statement appears to be even more appropriate with reference to those consultations that may be engaged between Member States of the European Union and other Mediterranean countries.

As a conclusion of this paragraph, it is worth adding some considerations on Art. 23 "Natural Disasters". For the provision has been established to tackle emergency situations that are likely to be caused by natural disasters, this provision shall encourage parties to adopt measures that are deemed to prevent further damage on coastal areas and to prompt humanitarian and technical assistance to local communities.

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<sup>58</sup> See, with this respect, Section 3: 3.1, B.2 "Environmental Assessments" in this Report

<sup>59</sup> Knox, J.H., *idem*, notes 149-152

Despite Art. 23 being inspired to UNCLOS Arts. 198 and 199, the provision is intended to call on all Mediterranean States to cooperate in tackling emergency situations affecting the whole coastal areas. On the one hand, the draft protocol innovates upon previous international and regional regimes for it will prompt assistance to coastal states for natural disasters occurring in both the marine and land areas. On the other hand, the draft protocol shall require parties to integrate emergency measures in national strategies, plans and programmes (Art. 5(d)).

As it will be reported above, the provision will be of momentous implementation. This is especially true all considering that integration of emergency measures in national strategies, plans and programmes may impulse parties to the protocol, national focal points, local and regional authorities to express their views on the safety of urban and coastal plans. Owing to the scientific evidence that most of the consequences of natural disasters that involve both bordering and coastal areas are worsened by massive building and consequent soils waterproofing, the provision may prove strengthening enforceability of prohibitions to build on both the coastal fringe and other connected areas (Art. 7(a), (b)).

In addition, Art. 23(3) displays undertakings by Mediterranean States to cooperate for the provision on an urgent basis of *"all humanitarian and technical assistance in response to a natural disaster affecting the coastal zones of the Mediterranean Sea"*. Furthering a bottom-up approach, the provision is intended to guarantee States and local coastal communities not only with a intergovernmental intervention (PAP/RAC Centre) but even with direct and immediate contribution of NGOs. In so doing, the protocol integrates emergency measures as established within the Barcelona system in so displaying for the first time ever a humanitarian law provision within a environmental law framework.

## **E. Institutional Framework**

In contrast to the static approach supported by the Convention, the draft protocol envisages a global strategy owing to which both horizontal and vertical coordination between land and coastal authorities<sup>60</sup> is encouraged. Following support of such a strategy, national focal points will be demanded additional competences. As a consequence, not only national focal points shall be required to assess implementation of scientific and technical aspects of plans, programmes and strategies adopted at national level but also to evaluate those plans and programmes to be adopted and implemented at both the regional and local level. Furthermore, the draft protocol shall invite States to empower existing authorities with a view to ease top-down and bottom-up institutional arrangements.

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<sup>60</sup> This provision has been drafted according to Agenda MED 21, Chapter XVII, paragraphs 10-11, 1994

Owing to such a global strategy, even the Convention secretariat will be ostensibly charged with further competences. These additional competences will require UNEP/MAP to increase in expertise and allow adequate coordination with the PAP/RAC centre. As a consequence, both the MAP structures will further integrate the Convention with additional legal, technical and scientific information available at both the regional and the local levels.

All these aspects considered, the draft protocol displays obligations for States to set up horizontal coordination between “*the various maritime and land authorities in the different administrative services competent in coastal zones, at both the regional and local levels*” (Art. 6). In particular, Art. 6(3) displays a relevant provision on coordination between “*national authorities and local and regional bodies*” in so establishing vertical coordination. This approach differentiates in scope from that provided in Art. 6(4) – whereby local and regional bodies play a relevant role in setting close administrative partnership. Coordination between maritime and land authorities together with vertical coordination and close administrative partnership are new in scope. Relevant regional agreements neither contain such an approach nor make reference to local authorities as those entities to be involved in the protection of the coastal environment.

In requiring both horizontal and vertical coordination at both the national and local levels, the draft protocol draws upon some relevant guidelines adopted in the framework of both the UNEP and the Ramsar Convention – i.e. the UNEP *Guidelines for Integrated Management of Coastal and Marine Areas*<sup>61</sup> and guidelines n. 2.7 and 2.8 of Resolution VIII.4<sup>62</sup>. What is worth highlighting here is that both guidelines not only would lead Mediterranean States to show real commitment in breaking management barriers between land and sea areas, but also to set up concerted administrative procedures (Art. 6(4)) for the implementation of coastal plans and programmes.

Taking hold of these guidelines, these provisions unfold new opportunities for all States to put in place negotiating procedures that entrust regional and local authorities with the implementation of national strategies, plans and programmes. With this in mind, the Slovenia CAMP provides valuable examples of both coordination and negotiating procedures supporting ministerial and local authorities in the adoption and development of management schemes for coastal protected areas, sustainable tourism, spatial planning, awareness raising and training programmes<sup>63</sup>. All in all, the scope of these procedures is not only to provide training and institutional empowerment at the national and the regional levels but even to enhance and promote public participation, environmental awareness and new management approaches.

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<sup>61</sup> Brachya V., Juhasz F., Pavasovic A., Trumbic I., *Guidelines for Integrated Management of Coastal and Marine Areas with Special Reference to the Mediterranean Basin*, Split, Croatia, PAP/RAC (MAP-UNEP), 1994, pg. 24

<sup>62</sup> 8<sup>th</sup> Meeting of the Conference of the Contracting Parties to the Convention on Wetlands, *Wetlands, Water, Life and Culture*, Resolution n. VIII.4, Guidelines 2.7 and 2.8, available in [http://www.ramsar.org/res/key\\_res\\_viii\\_04\\_e.doc](http://www.ramsar.org/res/key_res_viii_04_e.doc)

<sup>63</sup> Slavko. M., *Camp Slovenia*, November 2005, PPP available in <http://www.unepmap.gr>, pgs. 14-38 on projects.

Despite few Slovenia CAMP projects entailing challenging development – in particular for the lengthy implementation of those SEAs and EIAs procedures by still inexperienced regional and local authorities<sup>64</sup> – they nevertheless allow both regional and local authorities to exchange information and to set out priorities for plans and programmes to be adopted at the local level. The strategy those projects put forward is further aimed at giving both the regional and local authorities timely instruments to further engage in coordination and to help these structures in solving regional and local conflicts on environment/spatial planning<sup>65</sup>. Therefore, it may well be stated that the CAMP Slovenia shall provide a unprecedented benchmark owing to which national, regional and local authorities will not be left unaware on those steps to be undertaken in engaging forthcoming strategies, plans and programmes of the protocol.

The institutional framework put forward in the draft protocol will contribute in both integrating and enhancing those strategies yet envisaged in the Dumping protocol (Art. 10 and 12), in the Land-Based protocol (Art. 6) and in the Emergency protocol (Art. 4(1)). It will further enhance implementation of provisions addressing to coordination between local authorities, non-governmental organizations and socio economic actors as displayed in the Emergency protocol (Art. 3(2)). Finally, it will improve coordination as envisaged in the SPA protocol (Art. 7(4)).

## **F. Commitments on Coastal Zone protection and Use**

### **F.1 Protection and Use of Coastal Zones**

Although Art. 7 “Protection and Use of the Coastal Zone” does put in place flexible obligations for parties, it nevertheless shall be considered momentous in providing all Mediterranean states with a list of provisions owing to which parties may prompt proactive measures<sup>66</sup>. These provisions shall not be implemented separately from the general principles established in Art. 4 of the Convention; in particular, from those displayed in paragraph 3(e). Indeed, the principle of Integrated Coastal Area Management (Art. 4(3)(e) Convention) demands parties to fulfil two commitments – namely to protect areas of ecological and landscape interest and to make rational use of natural resources. According to both these commitments, the cap of Art.7 of the draft protocol shall require parties to ensure that various coastal uses do not threaten “*coastal habitats, landscapes, natural resources and ecosystems*”.

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<sup>64</sup> Slavko, M., *Idem*, pg. 24, especially with regard to vulnerability assessment, the conception of detailed spatial arrangement of the coastal strip, the adoption of the guidelines for municipal spatial planning documents and the definition of measures to be implemented at regional level.

<sup>65</sup> Slavko, M., *Idem*, pg. 8

<sup>66</sup> UNEP/MAP, *Draft Protocol – Comments*, pgs. 29-30

Therefore, both the Convention Art. 4(3)(e) and Art. 7 of the draft protocol shall require States not only to adopt legislation for the defence of coastal fringes but also for granting protection to those marine and terrestrial habitats, landscapes and natural resources that are linked with those habitats and landscapes lying within the seaward and the landward limit of territorial seas. Owing to such comprehensive requirements, parties shall be further committed to adopt coastal plans and programmes entailing specific prohibitions and duties. In so far as duties are concerned, parties have both a obligation “to identify and delimit [...] natural areas”, to establish “specially protected areas” (Art. 7(b)) and to further “establish, as from the highest winter waterline, a land fringe” whose width “may not be less than 100 metres” (Art. 7(a))<sup>67</sup>. On the other hand, states shall be prevented from engaging and carrying out building and other activities within the coastal land fringe (Art. 7(a)) and those protected and natural areas (Art. 7(b)). It appears clear that the draft protocol supports an approach that does not differentiate protection between coastal protected areas and other natural areas connected thereto.

In fulfilling these obligations, parties may grasp useful insights from those guidelines set forth in the Report of the Third Meeting of the Standing Committee to the 1979 Berne Convention on the Conservation of European Wildlife and Natural Habitats. According to these guidelines, a systematic establishment of nature reserves shall be helpful in ensuring parties with meaningful conservation of both the marine and terrestrial habitats. Furthermore, Lyster<sup>68</sup> infers that the maintenance of buffer areas to be added to protected areas makes protection of ecosystems more effective. All these planning and management strategies are further confirmed by prohibitions set in the Recommendation 16 of the convention<sup>69</sup>. Stemming from these guidelines and the interpretation of legal scholarship, parties to the draft protocol shall have meaningful references for taking hold of these management strategies that have never been adopted for the protection of coastal ecosystems in the Mediterranean basin<sup>70</sup>.

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<sup>67</sup> Despite the provision appearing advanced in scope, it nevertheless represents a compromise. In contrast to the draft protocol, yet in 1994 HELCOM (Commission to the 1992 Helsinki Convention) Recommendation 15/1 (*Protection of the Coastal Strip*) suggested parties to consider a distance between 100 and 300 meters from the main waterline landwards and seawards for a protected coastal strip to be established outside urban areas and existing settlements. This latter measure seems to be more realistic in scope in so far as it takes into consideration the nature and landscape values of the coasts. Furthermore, the recommendation appears to be in line with those laws establishing obligations on protected areas. See for instance in Italy the regime of protection for Coastal Lands (Law n. 490/1999) granting protection to contiguous lands and natural assets whose breadth is 300 metres from the seashore winter line, in Caravita, B., Rodomonte, M.G., *Beni Paesaggistici*, in Caravita, B.(Ed.), *Diritto dell'Ambiente*, Bologna, Il Mulino, 2005, pg 256.

<sup>68</sup> Lyster, S., *International Wildlife Law: an Analysis of International Treaties Concerned with the Conservation of Wildlife*, Cambridge, 1985, pgs. 136-137

<sup>69</sup> Council of Europe, Convention on the Conservation of European Wildlife and Natural Habitats, Recommendation No. 16 (1989) of the Standing Committee on Areas of Special Conservation Interest, paragraph 3(d).

<sup>70</sup> Mediterranean countries have always been unfriendly with the protection of both protected habitats and those surrounding natural areas that stand within coastal areas. See for instance the *Laganas Bay case*, case C-103/00, Commission of the European Communities v Hellenic Republic; see even criticisms forwarded in the Greenpeace report, pgs. 20-22, note 41 in this Report

Furthering an examination of previous protocols, there is not available reference to analogous commitments and prohibitions for activities that affect coastal ecosystems. In supporting a black-grey listing strategy addressing to ships, aircrafts, platforms and man-made structures at sea, the Dumping protocol only indirectly commits parties to prevent pollution on coastal areas (Art. 2). Therefore, guidelines enclosed in the Annexes address to single aspects of coastal environment – namely amenities, spawning, nursery and fishing areas (Annex, B(1)) and areas of special importance for scientific and conservation purposes (Annex, C(3)).

Similarly, both Art. 1(1)(d)(iv and v) and Art. 9(1)(b) of the Emergency protocol refer to the protection of coastal “related interests” as those concerning both human activities and cultural, aesthetic, biological values that are secondary to those of industrial and commercial importance engaged in coastal areas. Despite the Land-Based protocol being the most detailed in nature in so far as it concerns guidelines and criteria addressing to specific sectors of activity (Annex I(A)), States are nevertheless demanded to implement action plans, programmes and measures whose coverage is limited to “*Brackish waters, coastal salt waters including marshes and coastal lagoons, and ground waters communicating with the Mediterranean sea*” (Art. 3(d)). Finally, the SPA protocol does not provide any reference to measures of management and protection that oblige States to establish buffer areas surrounding SPAs. In contrast, the SPA protocol displays a regime of protection limited to coastal wetlands (Art.2(1)) and more generally to those “*biological processes contributing to the maintenance of those ecosystems*” of SPAs (Art. 3). Recalling the above remarks on both the cap of Art. 7 and the general principle on ICAM, it may well be affirmed that both Arts. 7(a) and (b) are instrumental to prevent the protocol from being an unsuccessful commitment exercise.

## **F.2 Effectiveness of Provisions. General Principles**

Some problems are likely to emerge by the use of terms in the provisions of the draft protocol and the Convention – in so raising doubts on the binding nature of both general principles and subsequent obligations. These doubts regard both the general principles and some core obligations of the draft protocol. With due reference to the formers, the paragraph concentrates on the principles of ICAM, sustainable and environmentally friendly development (Art. 5(1)(a)), sustainable management and use of coastal zones (Art. 2(f)) and consequent obligations. Admitting, for instance, that general principles are binding in scope, it should be expected that following provisions addressing to risky human activities contain either binding commitments or be integrated with guidelines that clarify vague formulas. Some of these reflections have already formed the object of the assessment of Section 3, paragraph 3.1 B of this report.



Therefore, it is worth noting that despite relevant efforts by negotiating parties to give both general principles and consequent obligations a binding nature, what the Convention instead makes clear is that States would rather implement ICAM in a programmatic fashion rather than through punctual requirements. As such, the obligation to “*promote ICAM*” (Art. 4(3)(e) Convention) entails that contracting parties are projecting commitments for implementation of strategies, plans and programmes in the future rather than in the present time. As of lacking binding nature in the present, ICAM principle allows States to design and implement measures that accomplish the principle of sustainable management and use of coastal areas (Art. 2(f) of the protocol) and the principle “*environmentally friendly development*” (Art. 5(a)) for the medium-long term.

Delivering commitments for spanned implementation of sustainable management practices may have positive significance that override naive conclusions over the intermediate binding nature of the protocol. In effect, in supporting a programmatic stance the ICAM principle demands States to rely on well established experience owing to which both policy and soft law instruments are in some cases better suited than simple command and control legislation. In this regard, the draft protocol displays both binding and non-binding provisions – in so offering more chances for States to make efforts in adopting more or less flexible measures that are better tailored to specific coastal issues in the future.

While the draft protocol may undeniably prove valuable in providing parties with flexible measures to step adoption of both adaptive and proactive measures on coastal areas management, it nevertheless fails to integrate the text with recommendations that guide state, regional and local authorities towards a prompt and lasting implementation of sustainable management and use practices and environmentally friendly development techniques. These conclusions appear to be more significant in the light of the formulas used in both Art. 7 (c-g) and Art. 8. As a consequence, while Art. 2(h) of the draft protocol defines coastal plans and programmes as “*any document with legal value having the purpose or effect, directly or indirectly, the **siting and development** of human settlements and activities*”, both Art. 7 and 8 do not put forward guidelines on specific forms of siting, settling and activities that are compatible with sustainable practices of coastal management and use. Despite the fact that activities enlisted in both Arts. 7(c-g) and 8 are the first cause of massive destruction of coastal ecosystems, it is a pity to notice that negotiating parties have missed the opportunity to agree upon integrating the text of the draft protocol with annexes enclosing further guidelines. For Art. 7(c-d) fall short of a clear binding scope, it would be valuable to shift these provisions in an annex attached to the protocol concerning development and planning. In so doing, both paragraphs c) “*linear extension of urban development*” and g) “*the creation of new roads along the coasts*” may be added with guidelines that instruct planners and authorities either on ecological or geological criteria or on alternatives<sup>71</sup>.

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<sup>71</sup> Fernandes, J. P., *Landscape Ecology and Conservation Management – Evaluation of Alternatives in a Highway EIA process*, Environmental Impact Assessment Review, N. 20, 2000

### F.3 Effectiveness of provisions on Coastal Protection and Use. Obligations

Recalling criticism in the previous paragraph, Art. 7(c-g) and Art. 8 “Economic Activities” of the draft protocol deserve cursory enunciations. Herein, the only measures States will enforce are those displayed in Art. 8(2) second line,(3)(b),(4)(a) – i.e. the obligation for all authorities of States to take into account in the process of approval of development projects “*the need to protect fishing, shellfish production and aquaculture areas*” and to grant prior authorization on those aquaculture activities that require the use of chemicals, feed additives and chemicals; to define carrying capacity indicators for tourism activities and to both authorize and prohibit extraction of sand whereby extractive activities “*are likely to adversely affect the equilibrium of coastal ecosystems*”.

In contrast to the binding nature of these provisions, further paragraphs are drafted in such a fashion as not offering significant advice to parties on how to make activities therein described sustainable. With this in mind, it will become rather challenging for States, authorities and all actors involved in economic activities to ensure uniform implementation of requirements provided in each of subparagraphs. Therefore, the same conclusions drew on Art. 7 (c-g) in the previous paragraph of this Report may be extended to provisions displayed in Art. 8 – namely for those paragraphs addressing to agriculture and industry, the construction of energy plants, ports, maritime infrastructure and works. Furthermore, even though implementation of Arts. 7(a-b) and 8(2)s.l.(3)(b),(4)(a) will be momentous for national focal points, the PAP/RAC centre, the Convention secretariat to assess implementation of the protocol in the future, lack of clarity and meaningful guidelines to be attached to those binding provisions may lead parties to dodge adoption of national laws and regulations.

Vagueness in the formulation of terms enclosed in these provisions will significantly affect overall implementation of the draft protocol. As ambiguity was even the object of increasing criticism in so far as it concerns core provisions of Ramsar convention, scholars disappointed the huge discretion States had in both modifying boundaries of wetlands and in engaging activities close to or on wetlands without in so committing towards preventive approaches of both land use and management<sup>72</sup>. Indeed, both the verb “*promote*” and the formula “*wise use*” as displayed in both Ramsar Art. 3(1) and 4(1) have been agreed upon by parties to discourage an “hands-off” approach to the conservation of wetlands – in so supporting management policy that would “*reassert the practical, utilitarian value of earth’s natural resources and to emphasise the need for their rational and sustainable utilization*”<sup>73</sup>. Herein, such an approach not only has been endorsed by States to ensure conservation of wetlands but even to characterise both the formulation and adoption of national planning measures (Art. 3(1)).

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<sup>72</sup> Farrier, D., Tucker, L., *Wise Use of Wetlands under the Ramsar Convention; a Challenge for Meaningful Implementation of International Law*, Journal of Environmental Law, n. 12, 2000

<sup>73</sup> Bowman, M.J., *The Ramsar Convention Comes of Age*, Netherlands International Law Review, n. 52, 1995

Although both the draft protocol and the Ramsar convention share common loopholes and problems in terms of clarity of obligations and principles, meetings of the parties in the latter have further clarified and enforced both the legal significance and the field of application of ambiguous provisions. Therefore, it stems from the adoption of Recommendation 3.3<sup>74</sup> – and from the implementation of further recommendations – that formulas such as “*to promote conservation*” and “*wise use*” now enclose specific criteria to be taken into account by States and authorities when assessing environmental impacts and developing human activities on or close to wetlands. In contrast to Ramsar, the Barcelona Convention does not provide any element to give the term “*rational use*” a content. In addition, meetings of the parties and MCSD recommendations have not clarified what “*environmentally friendly development*” means. It is of all evidence, then, that lack of significant guidelines on “*environmentally friendly development*” and “*rational use*” may not be helpful in overcoming loopholes of provisions displayed in Art. 7(c-g) and Art 8.

Further recalling some of the statements mentioned in Section 3, 3.1, paragraph B 2 of this report on Environmental Assessments, negotiating parties may resort to overcome ambiguous use of terms and uncertainties by adding further annexes to the protocol. As the realm of integrated coastal management in the Mediterranean basin now requires that most of the examined provisions be kept in a soft law fashion, it is expected that in future negotiations parties weave agreement to at least maintain hard law provisions in the body of the protocol while shifting those of either soft or uncertain nature in additional annexes. In pursuing this strategy, not only most of the above mentioned general principles and concepts will gain in clarity but also hard law provisions will emerge as those whose implementation deserves particular attention by States and authorities. For instance, the principle of environmentally friendly development may be ensured a detailed content in an annex dedicated to clean technology – in so associating this notion with the concepts of “Best Available Techniques”, “Best Environmental Practices” and “Clean Production Technologies”<sup>75</sup>. In addition, once ambiguous provisions set forth in Art. 7(c-g) and 8 have been shifted and integrated in the annexes related to EIAs, SEAs, planning and development, both the ICAM and the Sustainable Management and Use principles might be ensured more specific application. Useful references could be gathered from those provisions and criteria provided by E.U. Directives – such as the EIA and the IPPC directives<sup>76</sup>.

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<sup>74</sup> Recommendation 3.3, Annex: Definition of Wise Use, Third Meeting of the Contracting Parties, Regina, 1987. Wise use of wetlands means “*their sustainable utilization for the benefit of mankind in a way compatible with the maintenance of the natural properties of the ecosystem*”.

<sup>75</sup> It is worth mentioning the definitions available in both Annex IV Land-Based Pollution protocol and in UNEP/MAP, *Guidelines for the Application of Best Available Techniques and Best Environmental Practices in Industrial Sources of BOD, Nutrients and Suspended Solids for the Mediterranean Region*, MAP Technical Reports Series No. 142, Athens, 2004 – pg. 38 onwards

<sup>76</sup> Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control

#### F.4 Prevention of Coastal Erosion and Protection of Cultural Heritage

Some considerations need to be spent on both Art. 10 “Coastal Erosion” and Art. 11 “Cultural Heritage”. Both articles are separately examined in this report. Grasping from previous statements, it is worth highlighting that Art. 10 may well be considered as a landmark provision that resumes much of the scope of both Art. 7 and 8. On the one hand, both Art. 10(2) and (3) address to those activities included in Art. 7 and 8 and to those impacts of human activities that entail relevant modifications in the distribution of coastal sediments. On the other hand, these provisions will further impulse States and local authorities towards the adoption of measures for the prevention of both natural and human induced causes of coastal degradation<sup>77</sup>. All in all, the draft protocol will support parties in adopting measures of both adaptation and enhancement of coastal ecosystems likely to be affected by natural and human factors (Art. 10(1)).

According to the commentary of the draft protocol, the provision innovates upon as compared with programmes and plans to be adopted by States in the United Nations Convention on Desertification<sup>78</sup>. What indeed appears innovating is that in contrast to Annex I and IV of UNCCD, Art. 10(1) and (2) make indirect reference to both EIAs and special planning schemes as those tools owing to which States (and local authorities) undertake to assess both human induced and natural factors entailing degradation of coastal areas. With a view to provide authorities and planners with useful criteria on erosion factors to be considered in special plans and EIAs, it will be appropriate to add the draft protocol with additional guidelines that integrate those annexes on EIAs and SEAs and Planning and Development. This approach may prove useful, especially considering that agricultural activities and land clearing are the most relevant causes leading to desertification<sup>79</sup>. In addition, beach nourishment, damming and river works may prove threatening for coastal environment albeit negative effects are likely to be only evident in the long term<sup>80</sup>.

As it is clearly stated in Section 3, 3.1 paragraph B.2 on Environmental Assessments of this Report that both EIAs and SEAs will be crucial for both States and local authorities to avoid land use conflicts, additional guidelines may provide planners, managers and authorities with outstanding methods and criteria for the assessment of activities listed in Arts. 7(c-g) and Art. 8 that are likely to cause coastal erosion<sup>81</sup>.

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<sup>77</sup> National Institute of Coastal and Marine Management of the Netherlands, *A Guide to Coastal Erosion Management Practices in Europe: Lessons Learned*, EUROSION project, Directorate General Environment – European Commission, 2004

<sup>78</sup> UNEP/MAP, *Draft Protocol – Comments*, pg. 37

<sup>79</sup> Benoit, G., *Threat to Soils in Mediterranean Countries – Document Review*, UNEP/PLAN BLEU, Sophia Antipolis, 2003, pgs. 12 and 32

<sup>80</sup> National Institute of Coastal and Marine Management of the Netherlands, *A Guide*, pgs. 6 and 9

<sup>81</sup> UNEP/MAP/PAP, *Conceptual Framework and Planning Guidelines for Integrated Coastal Area and River Basin Management*, Split, 1999; UNEP/MAP/MEDPOL, *Guidelines for the Application of Best Environmental Practices (BEPs) for the Rational Use of Fertilizers and the Reduction of Nutrient Loss from Agriculture for the Mediterranean Region*, Technical Report series, 143, 2004

However, not only guidelines are worthwhile in integrating EIAs and SEAs processes but increasingly they acquire relevance in the monitoring process of both public and private works and activities. Therefore, while provisions on Strategic Planning and Implementation of National Action programmes of UNCCD Annex IV and I are solely concerned with setting basic criteria on the organisational strategies of land agencies<sup>82</sup>, guidelines addressing to erosion and desertification of coastal areas in the Mediterranean basin<sup>83</sup> disclose meaningful factors to be taken into account for both land and water resources management. These guidelines may prove effective in offering States and authorities the opportunity to adopt land use and management schemes that raise responsibility of users, project executors and entrepreneurs throughout performance of their activities.

Among these guidelines, it is worth highlighting those suggesting; “*Granting of legal land user rights and responsibilities for specific areas in order to resolve the problems of using common property above its carrying capacity (“tragedy of the commons”)*”, “*Pricing of land and water resources which considers the full cost of protection of the respective resources*” and “*Restriction of direct incentives to cases where there is no other alternative. The consequences of cash payments, food for work, free inputs, and other direct incentives have to be assessed before their application in order to avoid negative side effects*”<sup>84</sup>.

Both from planners’ and authorities points of view, guidelines may provide references addressing to priority areas – in so integrating those ambiguous provisions of both Art. 8 and 7(c-e) to be displaced in future negotiations in the annex concerning Planning and Development. In particular, guidelines on agronomic remedies and land rehabilitation in arid and semi-arid Mediterranean areas may be added to those provisions of Art. 8(1),(2) first line; guidelines on biological and ecological measures may be attached to those derived from Art. 8(4)(b and c); guidelines on projects of reforestation, watershed planning and land rehabilitation and protective measures may make the pair with those of Art. 8(6)(a-b); guidelines on socio-economic and physical remedies may integrate those in Art. 8(3)(a and c) and (5).

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<sup>82</sup> See, for instance, UNCCD, Annex IV, Regional Implementation Annex for the Northern Mediterranean;

**Art. 3:** 1 . National action programmes shall be a central and integral part of the strategic planning framework for sustainable development of the affected country Parties of the northern Mediterranean.

2. A consultative and participatory process, involving appropriate levels of government, local communities and non-governmental organizations, shall be undertaken to provide guidance on a strategy with flexible planning to allow maximum local participation, pursuant to article 10, paragraph 2 (f) of the Convention.

**Art. 6:** Affected country Parties of the region may include, in their national action programmes, measures relating to: (a) legislative, institutional and administrative areas; (b) land use patterns, management of water resources, soil conservation, forestry, agricultural activities and pasture and range management; (c) management and conservation of wildlife and other forms of biological diversity; (d) protection against forest fires; (e) promotion of alternative livelihoods; and (f) research, training and public awareness.

Despite including more elements, Annex I guidelines follow the same scheme of Annex IV Arts. 3 and 6.

<sup>83</sup> UNEP/PAP, *Guidelines for Erosion and Desertification – with particular reference to Mediterranean Coastal Areas*, Split, 2000

<sup>84</sup> UNEP/PAP, *Guidelines for Erosion and Desertification*, pg. 26

Over and above established criteria and methods, new guidelines based on the management experience of States and authorities may be adopted and added to one of the annexes of the draft protocol. All considered that Art. 10(2) and (3) are both conducive to considering “*maritime structures and coastal defence works*” and the consequent dearth or diversion of sediment factors increasing coastal erosion, these new guidelines will be particularly valuable in integrating those ambiguous commitments of Art. 7(c-e), Art. 8(4)(b,c) and Art. 8(6)(a,b). In so far as it concerns dearth and diversion of sediment, any additional annex on EIAs and SEAs should provide advice on integrating both procedures with coastal sediment transport and induced morphological changes. These guidelines should further suggest parties not to assess impacts of small and medium size projects in isolation but cumulatively with those of building of big infrastructures – such as new roads and harbours. In both these cases, impact on sediment processes should be assessed on an earlier stage of EIAs – in particular in the screening phase<sup>85</sup>. In addition to these guidelines, it is desirable that the annex concerning planning and development should enclose benchmarked guidelines on defence works based on the “*working with nature*” principle – in so deserving authorities preference to “*combining different types of coastal defence including hard and soft solutions, taking advantage of their benefits though mitigating their respective drawbacks*”<sup>86</sup>.

Some additional guidelines may prove significant in so far as it concerns beach reclamation and minimization of erosion resulting from artificial barriers. In particular, while the ambiguous provision of Art. 8(4)(b) “*The extraction of sand shall be regulated, and may be prohibited where it is likely to adversely affect the equilibrium of coastal ecosystems*” should cap a specific paragraph addressing to dunes works in the annex concerning Development and Planning, further guidelines are expected to refer to multifunctional technical designs which fulfil social and economical functions. These guidelines should address to sand nourishment associated with beach extension and coastal defence works and to recreational, social and economic activities that allow people to continuously monitor degradation<sup>87</sup>. These guidelines may prove even useful in defining the application of the principle of environmentally friendly activities to be engaged in to ensure special protection to islands and small islands (Art. 9(a and b)).

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<sup>85</sup> National Institute of Coastal and Marine Management of the Netherlands, *A Guide to Coastal Erosion*, pgs. 7-8; Council of Europe, Parliamentary Assembly, Recommendation 1630, *Erosion of the Mediterranean Coastline: implications for Tourism*, Standing Committee on Economic Affairs and Development, Doc. N. 9981, par. 3

<sup>86</sup> *Idem*, pgs. 11-12

<sup>87</sup> National Institute of Coastal and Marine Management of the Netherlands, *A Guide to Coastal Erosion*, pg. 15

With regard to the management of sediment, new guidelines could be drafted taking further insight from water use conflicts that arose from damming or works resulting in the modification of watercourses. Drawing upon the Nile basin Aswan High dam legacy<sup>88</sup>, it is desirable that guidelines on damming and energy installations provide advice to planners and authorities on remedies or technical devices to prevent dearth of sediment from causing soils sterility and the extinction of fish stocks. In integrating those issues in the annex on Development and Planning, ambiguous provisions of both Art. 8(4)(c) and Art. 8(5) may be added as a general principle followed by guidelines suggesting technical remedies associated to management of sediments addressing to damming and works.

Final considerations should be assessed with reference to Tourism and Sporting Activities on Coastal Areas. With a view to compensate lack of international binding provisions, the draft protocol provides States with a duty to define indicators of sustainable coastal tourism to be systematically monitored by the PAP/RAC centre Art. 8(3)(b). Despite establishing a control device addressing to a economic sector whose State sovereignty is undisputed, the draft protocol will play a significant role in defining carrying capacity and in setting limits and criteria. Thus, it is expected that a specific annex on tourism activities be further attached in so integrating recommendations grasped from the European Code of Conduct for Coastal Zones and further recommendations<sup>89</sup>. According to this proposal, it is worth considering that negotiating parties in next meetings agree on shifting in the annex on Tourism those ambiguous provisions of Art. 8(3)(a),(c),(d) while keeping legally binding commitments on coastal tourism in the body of the protocol. Therefore, paragraph a) may cap the annex while c) may integrate the framework with further guidelines. In particular, it is expected that specific guidelines grasp content from the Recommendation 1630 (2003) of the Standing Committee on Economic Affairs and Development of the Council of Europe – i.e. to suggest local authorities to put in place agreements with tourism service providers with a view to set a special fund whereby operators shall ensure that tourism development projects be compatible with the goals of coastline protection and restoration<sup>90</sup>.

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<sup>88</sup> Wiebe, K., *The Nile River: Potential for Conflict and Cooperation in the Face of Water Degradation*, Natural Resource Journal, n. 41, 2001

<sup>89</sup> The 1995 Charter for Sustainable Tourism, Recommendation of the Council of Europe 2 June 1997 on a Policy for the Development of Sustainable Environmentally Friendly Tourism in Coastal Areas; the Global Code of Ethics for Tourism; the Guidelines on Biodiversity and Tourism Development of the 7<sup>th</sup> Conference of the Parties to the Convention on Biological Diversity.

<sup>90</sup> National Institute of Coastal and Marine Management of the Netherlands, *A Guide to Coastal Erosion*, paragraph 7

Furthermore, it could be of useful reference for both States and local authorities to add the annex on Tourism with guidelines defining carrying capacity factors before decision is taken on tourism development plans – in so adding useful references to attitudes of local communities, civil society and local environment. Whenever uncertainty surrounds assessment of effects of tourism development projects in the environment, both the application of the precautionary principle and the principle of valorisation of inland beauties should be suggested to relieve pressures on coastal beaches<sup>91</sup>.

Not only reference to guidelines on the Management of Coastal Litter in the Mediterranean Region<sup>92</sup> will be momentous for both local authorities and economic actors, but even those of ACCOBAMS on Commercial Cetacean-Watching Activities in the Black Sea and Contiguous Atlantic Area may provide these actors with more comprehensive tools to guide sustainable tourism practices. Therefore, it is expected that the annex on Tourism add more substance to Art. 8(3)(d) displaying that “*Codes of good practice shall be formulated by the public authorities, the economic and social actors concerned and bodies representing sporting and recreational activities*”.

Finally, it should not be forgotten that coastal Mediterranean areas are host of high value historic treasures both lying underwater and on the coastal strip. Taking further into consideration both factors, the protocol establishes clear obligations to be accomplished by States acting as parties of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage and in implementing national legislations. These commitments provide that first option is in situ conservation before any intervention directed at his heritage is proposed. This way, in situ conservation is intended to preserve heritage from any removal that may prove damaging. The provision is added more strength in prohibiting States from allowing any form of commercial exploitation of underwater assets and, on the other hand, in committing parties to ensure long-term preservation once underwater heritage is removed from the marine environment. According to the thesis put forward in the next paragraph of this report, this provision is momentous for giving inventories and networks to be established and shared by States a wider scope than that of ecosystem protection. Therefore, the protocol innovates in considering protection of cultural heritage independently from any existing link between environmentally sound traditional activities and nature – as it is instead the object of protection in the SPA protocol (3<sup>rd</sup> paragraph of preamble, Annex I(A)(1)(a),(B)(2)(f)).

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<sup>91</sup> COMMITTEE FOR THE ACTIVITIES OF THE COUNCIL OF EUROPE IN THE FIELD OF BIOLOGICAL AND LANDSCAPE DIVERSITY, *European Code of Conduct for Coastal Zones*, Strasbourg, 1998, CO-DBP (99) 11, pg. 55, par. 11.4

<sup>92</sup> UNEP/MAP/MEDPOL, *Guidelines on the Management of Coastal Litter in the Mediterranean Region*, Technical Report series 148, 2004.



## **G. Commitments on Strategies, Plans and Programmes**

Not only an assessment of the innovating significance of the draft protocol should be addressed to its core provisions, but even to those mechanisms through which parties shall monitor its implementation. Those mechanisms are referred in the draft protocol as “Observatories, Inventories and Networks” (Art.14), “Mediterranean Strategy for Integrated Coastal Zone Management” (Art. 15) and “National Coastal Strategies, Plans and Programmes” (Art. 16). Since the scope of the draft protocol is mainly to provide States with a coherent ecosystem-based, pre-emptive, adaptive and proactive legal instrument, implementation of these provisions shall be assessed in the light of the general principles (Art.5) and of common strategies to be adopted at the regional and national levels.

Therefore, it is reasonable to state that albeit non binding in nature the Mediterranean Strategy will be momentous for the implementation of the protocol. At the outset, the Mediterranean Strategy on ICZM will significantly contribute in building States reciprocal acquaintance and trustworthiness, owing to the fact that parties shall implement the protocol in good faith. Secondly, regional strategies are among the mechanisms those ensuring that policy orientations are visible to State and non-state stakeholders – in so allowing both States and authorities to be held publicly accountable for adopting incoherent national measures and policies. Finally, strategies consist in policy orientations that adding to those guidelines considered earlier may contribute to further clarify and define general principles and concepts – i.e. the principles of “*rational use*” of coastal natural resources, “*environmentally friendly development*” and “*sustainable management and use of coastal areas*”.

After protocol entry into force, States will adopt the Mediterranean Strategy on ICZM according to those principles and objectives established in Art. 5 of the draft protocol and the Mediterranean Strategy on Sustainable Development (MSSD). With few exceptions, principles set forth in Art. 5 of the protocol are after all derived from those yet established in the 2005 (MSSD). Exceptions mainly regard Art. 5(g) enclosing the undertaking for States to “*ensure reduction to a minimum of waste generation and the environmentally sound disposal of waste*” and that of Art. 5(d) stating that “*the prevention and the management of risks and damage resulting from natural disasters and climate change shall be taken into account in the various integrated coastal zone management*”. Both the general principles established in the draft protocol (Art. 5) and objectives constitute leading criteria for a regional policy to be agreed upon by parties. Therefore, it is valuable that Art. 5(2) requires States to provide the public with appropriate information on these principles and objectives. In relying on diffusion of information economic stakeholders, NGOs, and the public are ensured a way in to make pressure for national policy change.

What indeed appears to be innovating the Barcelona system is that such a Strategy-based approach not only is intended to set out principles and objectives of regional significance, but even calls on States to further adopt national coastal strategies, plans and programmes based on the Mediterranean Strategy. It is significant thus that on the one hand the draft protocol demands States to adopt a national strategy for ICZM (Art. 16(1)) and, on the other hand, it requires all levels authorities to implement laws and regulations on siting and settling. (Art. 16(3)). It therefore follows that all administrative levels involved in the management of coastal areas shall be demanded to both adopt and implement plans and programmes that are coherent with both the ICZM Mediterranean Strategy<sup>93</sup> and the general principles of the draft protocol (Art. 5). That in turn implies adoption of a two tiered scheme owing to which parties to the draft protocol shall implement more detailed obligations than previous protocols require.

As both this scheme and principles involve that local authorities and States exchange relevant information and implement plans and programmes on settling and siting, States shall provide the secretariat (UNEP/MAP) with more detailed information on components of national strategy – i.e. description on development trends of coastal areas, indication of objectives and priorities and reasons of adopting a national strategy, social actors and processes involved, the lists of those measures to be taken and those financial means available (Art. 16(2)) at the national, regional and local levels.

Coherent implementation of strategies will even enhance horizontal and vertical coordination between national, contiguous and intergovernmental authorities (Arts. 6, 20 to 25). As yet stated in previous Sections<sup>94</sup>, not only the institutional framework of the protocol will oblige States to provide coordination between local and national authorities (Art. 6) but it will further require States to concert their action with PAP/RAC and the authorities of contiguous coastal States (Art. 24 and 25).

### **G.1 The Network-Inventory Strategy**

With the aim to ensure continuous monitoring of Strategies, Plans and Programmes the draft protocol enshrines specific obligations for parties to “*establish observatories and prepare and regularly update national inventories of coastal zone*” (Art. 14(1)). Furthermore, parties shall be required to establish – in cooperation with PAP/RAC – a network through which funnelling data gathered in national inventories (Art. 14(2)). As far as inventories are concerned, parties shall be demanded to enlist all elements that form Coastal Areas – including non protected areas (Art. 9(1)), wetlands and cultural sites. In compiling such inventories, a useful indication may come from paragraphs (1-5) of Art. 9 enclosing all ecological elements of coastal areas – coastal landscapes, wetlands and estuaries, coastal forests and woods, dunes, islands and small islands.

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<sup>93</sup> See in this respect, Section 3: 3.2, B, C and E

<sup>94</sup> Section 3: 3.2, B “Cooperation”, pg. 25; 3.2, C “Transboundary Cooperation” pg. 31

In addition, parties shall add the inventories with those activities and settlements that may affect coastal areas and those concerned plans and programmes. All elements shall be assessed at once, due to the fact that paragraphs in Art. 9 enclose criteria to identify natural assets, ecosystems and the related measures to be adopted therewith.

What may hinder progress of such a network-inventory exercise in the future is a cost/advantage analysis addressed by States and authorities to specific elements to be associated with the lists. According to Davies, the failure of Habitat's Directive Natura 2000 network is owed to EU Member States unacquaintance with listing natural areas whose protection may constrain development of economic activities in the future<sup>95</sup>. In addition, Nollkaemper alleges that the overall coherence of the listing procedure of the Natura 2000 network is threatened by the lack of specific criteria with whom to limit discretion of both States and the Commission in allowing building of infrastructures to take place within sites of community importance<sup>96</sup>.

Although it is too early to state on the success of such a strategy, the draft protocol does not contain any useful provision that will limit States and authorities discretion in listing ecologic elements, laws, authorities and criteria. The only provision that will possibly constrain discretion in listing habitats is displayed in the SPAs protocol and only addresses to modification of boundaries and the legal status of SPAMIs (Art. 10). The provisions provided in the SPAs protocol are shaped on those procedures of Ramsar convention – owing to which modification of boundaries, legal Status of wetlands and natural sites should be afforded consensus by all States parties. This procedure in turn entails that consensus should be based on the same criteria and guidelines owing to which both wetlands of international importance and SPAMIs are enlisted (Art. 9 and 16 SPAs). It could be expected that with a view to overcome lack of listing criteria, negotiating parties weave agreement to establish more specific and binding criteria than those provided in paragraphs of Art. 9.

In addition to cost/effectiveness analysis, other elements may hold back implementation of inventories and networks. According to the 2005 Report on the Implementation of the Convention and its Related Protocols (2002-2003), the reporting capability of States in case of multidisciplinary exercise depends on the capacity that each party holds in providing national authorities with effective reporting response and intersectoral cooperation<sup>97</sup>. Network and observatory-based systems will pressure States to organize advanced administrative structures, vertical and horizontal cooperation and coordination whose costs may prove unsustainable for those authorities of parties that do not display adequate human resources and technologies. However, it is hoped that provisions on cooperation and coordination as envisaged in Arts. 20-26 of the protocol may compensate these drawbacks.

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<sup>95</sup> Davies, P.G.G., *European Union Environmental Law*, pgs. 150-154

<sup>96</sup> Nollkaemper, A., *Habitat Protection in European Community Law*, *Journal of Environmental Law*, n. 9, 1997, pgs. 280-283

<sup>97</sup> UNEP/MAP, *Reports on the Implementation of the Convention for the Protection of the Mediterranean Environment and the Coastal Region of the Mediterranean, and its related Protocols (2002-2003)*, UNEP(DEC)/MED WG. 270/Inf. 5.

## H. Public Participation

Stemming from considerations set out in previous subsections of this report<sup>98</sup>, the draft protocol will oblige parties to adopt participatory mechanisms that are wide in scope. According to the literal interpretation of both the preamble and Art. 12, after the entry into force of the protocol coastal zones shall be considered as “*the common and cultural heritage of the peoples of the Mediterranean*”.

Both the preamble and the provision in turn entail that territorial communities, NGOs and associations will have a say not only in decision making processes but even on behalf of consultative bodies and during inquiries or public hearings<sup>99</sup>. Therefore, in application of the principles established in Art. 5(i) and (j), participatory mechanisms displayed in the protocol will offer an unprecedented opportunity<sup>100</sup> for both territorial communities and concerned authorities to integrate traditional knowledge of coastal communities in the formulation and implementation of coastal strategies, plans and programmes and in decision-making processes (Art. 12(1)).

Not only does the draft protocol put in place participation of local communities in decision making processes (Art. 12), awareness raising and education activities (Art. 13) but even displays relevant opportunities for arrangements to be adopted by local, regional authorities, scientific bodies and economic actors. Following adoption of principles contained in the 2002 Recommendation of the European Parliament and the Council on Implementation of ICZM in Europe<sup>101</sup> and the 1992 OECD Recommendation<sup>102</sup>, Mediterranean States will be further committed to organise authorities in such a way as to provide all peoples, related associations, scientific bodies and economic actors with relevant negotiating stance in those decision making processes that are likely to result in social, cultural, ecological and economic impacts (Art. 12(1)). Negotiations in decision making processes shall be forwarded by States and local authorities through ad hoc consultative bodies, inquiries or public hearings addressing to the issuance of authorizations, the formulation and implementation of coastal strategies, plans and programmes (Art.12(2)).

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<sup>98</sup> Section 3: 3.1, A “Intergenerational Equity”; 3.1, B.1 “Contents and the Default Listing” and B.2 “Environmental Impact Assessment”

<sup>99</sup> As required by Art. 10 of the Vienna Convention on the Law of the Treaties, both obligations stem from literal interpretation of Art. 12 in the light of statements enclosed in the preamble of the protocol

<sup>100</sup> With regard to considerations on the innovating significance of integrating traditional knowledge on ICAM, see pgs. 13 and 14, last paragraph of this report.

<sup>101</sup> 2002/413/EC, Chapter II, paragraph f.

<sup>102</sup> OECD, *Recommendation of the Council on ICZM*, C(92)114/FINAL, 1992

With particular reference to those provisions displayed in Art. 12, economic operators will have opportunities to establish environmental agreements with local authorities, NGOs and local communities for measures that are likely to be agreed upon to prevent environmental damage, to carry out land reclamation and restoration in cases of contamination and to solve land use conflicts<sup>103</sup>. In addition, these provisions will have an indisputable significance even in so far as protection of islands and small islands is concerned (Art. 9(5)(a)).

Although the draft protocol displays so far-reaching provision on public participation, it is worthwhile recalling that with the only exception of Transboundary SEAs the protocol does not provide any criteria on which stage of both authorization procedures and impact studies public participation shall be allowed<sup>104</sup>. According to the PAP/RAC Guidelines on ICAM, “*participation schemes should be based on a clear process/strategy through clear and agreed procedural guidelines*”<sup>105</sup>. Therefore, it is a pity to notice here that in missing the opportunity to integrate clear and agreed procedural guidelines, negotiating parties have not dealt with the issue of modernization of their coastal administrative structures. As a consequence, while Mediterranean States acceding the European Union are making efforts to equate both legislation and decision-making processes to EU Directives and principles, few countries are still set apart to decide whether public participation is worth being allowed. Adding lack of binding obligations on EIAs, the protocol risks to result in giving those States not supporting democratic participatory mechanisms an opportunity to further exclude local communities from deciding management practices that are compatible with traditional activities and knowledge on coastal areas<sup>106</sup>.

Lack of clear and agreed procedural guidelines addressing to all decision making processes will even result in constraining adoption and implementation of publicly accountable national strategies, plans and programmes. Therefore mediation, conciliation, administrative and legal recourses (Art. 12(2)) will not be given scope when they point at recognising peoples’ rights in conflict with the objectives of national strategies, plans and programmes on coastal areas management. In addition, while a Strategy-based approach argues for transparency and public accountability<sup>107</sup> of States, one may even allege that lack of precise and legally binding criteria addressing to participation may loose implementation of a uniform policy on public participation in the Mediterranean basin.

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<sup>103</sup> Useful references on Environmental Agreements may be found in Casabona, S., *Sticks and Carrots: Dalla Prescrizione alla Cooperazione. Note Minime sugli Accordi Ambientali in Europa*, in Mirando, A., *La Tutela Privatistica dei Beni ambientali e Culturali tra Prescrizione e Cooperazione*, CEDAM, 2005

<sup>104</sup> Lack of significant criteria runs counter proposals of OECD Recommendation, II

<sup>105</sup> UNEP/MAP/PAP, *Good Practices Guidelines for Integrated Coastal Area Management in the Mediterranean*, Split, 2001, pg. 23

<sup>106</sup> For instance, compare participatory mechanisms provided in the CAMP project for Israel with those of CAMPs in Malta and in Taranto (Italy) for the Posidonia Project, in UNEP/MAP/PAP, *Good Practices Guidelines*, pg. 22

<sup>107</sup> See related considerations in this Report in Section 3, 3.2, paragraph G, pg. 48

By contrast to these remarks, implementation of measures on awareness-raising, training, education and research as forwarded in the draft protocol will result in several advantages (Art. 13). At the outset, in providing awareness-raising, teaching and training activities on ICAM at both the national and local level, the draft protocol will enhance both horizontal and vertical coordination and exchange of information between national and local authorities (Art. 6(1) and (2)). Therefore, the establishment of training, information and research institutions (Art. 13(4)) may further enhance knowledge of administrative personnel that operate in all levels national coastal centres – in so facilitating adoption of measures thought to provide national focal points with “*a) coastal indicators; b) [...] assessments of the use and management of coastal zones and c)[...] demonstration projects of integrated coastal zone management*” (Art. 22(2)). Furthermore, these institutions may provide useful information and training for the preparation and implementation of public and private decisions.

Owing to the non-binding and flexible nature, Art. 13(4) innovates upon because it will facilitate local authorities to hold collaborations with research centres for the acquisition of technical parameters following 3D or 2D experiments on coastal erosion. Those experiments are somehow of a well established practice in Italy and are intended to foster partnership between Universities and local authorities. An example in this sense is the creation in Bari of the Laboratory on Research and Experimentation of Coastal Defense (LIC) that acts in close partnership with the Politecnico di Pisa and other public local authorities<sup>108</sup>.

Secondly, not only establishment of training and research institutions will result in improving coordination between national authorities but even in strengthening scientific, technical assistance (Art. 21) and exchange of information (Art. 22) between all level authorities of Mediterranean countries. Therefore, in funnelling data through networks (Art. 14(2)), both national and local authorities may easily provide developing countries with newly and up-to-grade environmental practices and environmentally friendly technologies. Thirdly, in ensuring continuous improvement of knowledge on ICAM practices for personnel working within-all-levels national authorities, Art. 13(1) favours adoption of up-to-grade criteria for the preparation and approval of national inventories (Art. 14(1)).

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<sup>108</sup> Convenzione tra il Comune di Mola di Bari ed il Politecnico di Bari - L.I.C. - per lo "Studio su modello fisico 3D della agitazione ondosa all'interno del bacino del porto di Mola di Bari e analisi sperimentale su modello fisico 2D della stabilità del profilo trasversale di una spiaggia con ripascimento artificiale; in <http://www.poliba.it/Ateneo/AttiAteneo/VerbalicDA/CDA2003/030415d.htm>; in addition see Pranzini, E., *Sinergia fra Amministrazioni Pubbliche e Università per lo Sviluppo del Modello Toscano*, pg. 99, in Cipriani, L. E., Regoli, C. (Eds.), *Il Piano Regionale di Gestione Integrata della Costa ai fini del Riassetto Idrogeologico*, Edifir, Firenze, 2004, in [http://www.rete.toscana.it/sett/pta/stato\\_ambiente/erosione\\_costiera/21145\\_cap\\_I\\_2b.pdf](http://www.rete.toscana.it/sett/pta/stato_ambiente/erosione_costiera/21145_cap_I_2b.pdf)

The draft protocol sets forth further obligations for States to support those management initiatives that shall offer local communities and the public concerned significant insights of sustainable uses of coastal resources (art. 13(2)). In addition, Art. 13(3) shall prompt parties to make available to local communities mechanism for the continuous assessment of coastal degradation. It may be argued that both those paragraphs may in the future deliver acquaintance on those management practices that are likely to be engaged autonomously by both land owners and other public/private actors. With this in mind, paragraphs 2 and 3 add scope to those provisions on public participation for they might allow experts working in different fields of knowledge to interact with local communities during enactment and implementation of both management and monitoring schemes. Taking hold of those guidelines adopted at the 1999 San José Ramsar Meeting, the implementation of both Art. 13(2) and (3) shall contribute to achieve, inter alia, these goals; to “*Ensure that persons acting as facilitators and coordinators are properly trained in participatory assessment and planning techniques and possess the necessary facilitation skills*”; and to “*Ensure that local and indigenous people learn participatory assessment and planning techniques so that they can be applied to other community concerns*”<sup>109</sup>.

Following assessment on Art. 13, it is now time to split its relevant provisions in two groups with a view to contrast them with those of the Convention and of previous protocols. In the first group, it is worth including those undertakings of the draft protocol on training of personnel and research institutions while in the second group, those provisions regarding bottom line management and monitoring schemes. As far as the first group is concerned, the Convention displays a general obligation for parties to allow public participation in decision-making processes, as appropriate (Art. 15(2)). The Emergency protocol only displays a duty for parties to exchange information on both the new ways and methods for preventing and combating pollution and on the new available technology of conducting monitoring (Art. 7(1)(f)). Likewise the Emergency protocol, the LBS protocol demands States to both engage and coordinate research programmes on “*inputs, pathways and effects of pollutants and on the development of new methods for their treatment, reduction and elimination*” and for the “*development of clean production processes*” (Art. 9(b)). Furthermore, the LBS protocol demands States to provide assistance to developing countries and as far as possible, in the fields of the training of scientific and technical personnel for the acquisition, utilization and production of appropriate technology and, as appropriate, of clean production technology (Art. 10(2)).

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<sup>109</sup> Ramsar Convention, Resolution VII.8, *Guidelines for Adopting and Strengthening Local Communities’ and Indigenous People’s Participation in the Management of Wetlands*, adopted at the 7<sup>th</sup> Meeting of the Conference of the Contracting Parties to the Convention on Wetlands (Ramsar, Iran, 1971), “*People and Wetlands: The Vital Link*”, San José, Costa Rica, 10-18 May 1999, III, 15(h),(k).

Similarly, the Offshore protocol obliges State parties to promote studies and programmes furthering scientific and technological research for both the development of new methods for pollution minimization and for the adoption of new measures of emergency response (Art. 22). In addition, Art. 24(2) refers, *inter alia*, to technical assistance to developing countries as the training of scientific, legal and technical personnel.

In contrast with standard provisions contained in these protocols, the SPA protocol requires States not only to provide managers and technical personnel with training but even to develop an appropriate infrastructure wherein all training and research activities shall be undertaken (Art. 7(f)). Moreover, SPA protocol requires parties to engage in consultations to both plan and undertake scientific and technical research for the management and the monitoring of effectiveness of measures adopted to manage and protect SPAs and species (Art. 20(1)). The provision on research further requires that parties are committed in exchanging directly or through the SPA/RAC centre information on research and monitoring programmes and to standardize scientific procedures (Art. 20(2)).

As far as the second group is concerned, Convention does not put in place any provision disclosing bottom line management and monitoring approaches. Relevant provisions are instead contained in the SPA protocol. To begin with, the SPA protocol calls on parties to allow active involvement of local communities and populations in the management of specially protected areas and to provide them with assistance in cases in which establishment of SPAs may affect their interests (Art. 7(c)). Secondly, in calling on States to finance activities that are compatible with the objectives of SPAs the protocol encourages implementation of community-based management schemes (Art. 7(d)). Thirdly, the protocol requires States to integrate traditional subsistence and cultural activities of local communities in the formulation of protective measures – in so committing local communities to continuously monitor state of protected areas and protected species (Art. 18(1)). Finally, the protocol requires States to provide the public with scientific information on the importance of preserving areas and species. Therefore, parties are even encouraged to spread information related to SPAs in education programmes (Art. 19(2)).

All in all, provisions displayed in the draft protocol add significant content to participatory, research, training and awareness raising mechanisms as displayed throughout the Barcelona system, and especially in the SPAs protocol. What indeed emerges from the comparative analysis is that the SPAs protocol is a landmark treaty allowing a thorough evolution to take place in the ICAM field. Therefore, it may be affirmed that adoption of SPAs protocol has had a breakthrough significance in the process leading to negotiations of the ICAM protocol.



### 3.3 Geographical Coverage

Geographical coverage of the draft protocol ranges from the maximum seaward limit of the territorial waters to the territorial limit of local administrative units of States parties (Art. 1(a),(b)). It clearly appears that in establishing these limits, negotiating parties avoided tackling historical contentions arising out of delimitation of sovereignty in both the Exclusive Economic Zone and the Continental Shelf. In addition, since the preamble of the draft protocol considers coastal zones as “*the common and cultural heritage of the peoples of the Mediterranean*”, the implementation of the protocol will not result in conflicts in the future.

This statement appears mostly true in those cases in which parties will raise exceptions on geographical coverage either when depositing instruments of ratification or at any other subsequent time (Art. 3(2)). Even though States will consider adopting limits beyond the seaward border that is closer to the shore (Art. 3(2)(a)) – or when factors such as ecosystem approach, population centres and specific situation of islands will lead countries to request either the extension or encroachment of limits (Art. 3(2)(b)) – variations shall be contained within confines of national jurisdiction. All in all, both provisions on the delimitation of the geographical coverage of the protocol (Art. 3(1),(2)) and on preservation of rights (Art. 4) will further contribute to assert and maintain reciprocal cooperation between parties.

Similar strategies have been displayed in the Convention and in previous protocols. Yet the Convention displays that States may extend implementation of its provisions and those of related protocols to coastal areas as defined by each contracting parties (Art. 1(2)). It further establishes that parties have discretion to extend geographical coverage of protocols (Art. 1(3)). Nevertheless, while the Convention provides limits to the discretion of States in extending limits of national territorial waters, it is less clear whether the protocols allow extension of States jurisdiction to the Exclusive Economic Zone (EEZ). As a matter of fact, delimitation of the EEZ in the Mediterranean Sea basin is still an ongoing process<sup>110</sup>.

Following comparison, it may well be stated that extension of geographical coverage of protocols is likely to occur from inward limits of States jurisdiction up to the coasts. Regardless issues concerning extension of States jurisdiction, geographical coverage of the LBS, SPAs and Offshore protocols offer meaningful stance for parties to implement legislation to prevent and further abate pollution affecting relevant features on coastal areas. In so far as it concerns the LBS protocol, implementation of plans and programmes even concerns coastal salt waters marshes, brackish waters, coastal lagoons and ground waters communicating with the Mediterranean Sea. In addition, the LBS protocol further aims at demanding States to implement measures to both prevent and abate discharges from fixed man-made offshore structures standing within territorial waters for purposes other than exploration and exploitation of mineral resources.

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<sup>110</sup> Chevalier, C., *Governance in the Mediterranean Sea: Legal Regime and Prospectives*, IUCN Centre for Mediterranean Cooperation, 2004, pgs. 7-10

The SPAs protocol focuses implementation on the terrestrial coastal areas and on wetlands. It further extends protection to physical assets that are momentous for the maintenance of both wetlands and SPAs ecosystems – i.e. the seabed and its subsoil within the landward side of territorial sea, and the watercourses up to the freshwater limits. Likewise both the LBS and SPAs protocols, the Offshore protocol provides parties with the opportunity to adopt measures displaying protection of wetlands and coastal areas when fixed offshore structures are disposed for mineral exploration and exploitation within territorial waters .

As it is evident that all these protocols show a landward, sensitive regulatory framework, it is not to be expected more than a single-issue/asset approach for reduction and abatement of pollution. In contrast, the draft protocol will require States to implement uniform strategies, plans and programmes covering all ecosystems and physical elements that stand in between the seaward limit of the coastal zone and the land limit of coastal administrative units.

Therefore, it may well be affirmed that the draft protocol makes the pair with those recommendations and guidelines adopted under Art. 15 of the 1992 Helsinki Convention<sup>111</sup>. Further recommendations and guidelines adopted by Contracting Parties provide a ecosystem approach covering both the Baltic Sea Area and its coastal ecosystems. In contrast to the OSPAR convention, this approach led Contracting Parties to adopt ICZM not limitedly to tourism activities and to cases in which landward environmental impacts affect the marine environment<sup>112</sup>, but to grant protection of those ecosystems and physical assets of both seaward and landward sides of coastal areas of the Baltic Sea<sup>113</sup>. Owing to these guidelines, the geographic scope of Helsinki Convention widened significantly – in so integrating protection of the Baltic coastal strip “*extending 3 kilometres landwards (as this zone is described in HELCOM Recommendation 15/1) from the mainland coast to the adjacent marine offshore areas*”<sup>114</sup>.

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<sup>111</sup> **Article 15 Nature conservation and biodiversity**

The Contracting Parties shall individually and jointly take all appropriate measures with respect to the Baltic Sea Area and its coastal ecosystems influenced by the Baltic Sea to conserve natural habitats and biological diversity and to protect ecological processes. Such measures shall also be taken in order to ensure the sustainable use of natural resources within the Baltic Sea Area. To this end, the Contracting Parties shall aim at adopting subsequent instruments containing appropriate guidelines and criteria.

<sup>112</sup> OSPAR Commission, *Ospar Background Document on Tourism*, 2003, pg. 25

<sup>113</sup> HELCOM, *Guidelines for the Identification of Coastal Ecosystems Influenced by the Baltic Sea and their Inland Limits as an Implementation of Art. 15 in the “Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992”*, Guidelines for Recommendation 15/1, 1994, 1.1 and Attachment

<sup>114</sup> HELCOM, *Implementation of Integrated Marine and Coastal Management of Human Activities in the Baltic Sea Area*, Recommendation 24/1, 2003, Attachment 2, a

Despite the draft protocol sharing with Helsinki Convention comprehensive geographical coverage, it nevertheless does not put forward any specific dimensional reference that restricts geographical coverage of the landward limit of the coastal zone. In contrast, protection of coastal land strip shall be ensured by States parties up to a distance that takes into account the ecosystem approach, location of population centres or the specific situation of islands (Art. 3(2)(b)). Therefore, it is expected that owing to such flexible criteria, municipalities, administrative units, island districts and local communities established further than three kilometres distance shall be considered responsible in both prompting and implementing regulations based on ICAM.

#### **4. Conclusions**

Adoption of the protocol on ICAM will be momentous for the overall evolution of the Barcelona system and for other regional regimes. In the first place, this is the first protocol to be adopted in a multilateral context covering ICAM in a systematic fashion. Following entry into force, it is hoped that other regional regimes grasp both the general principles and governance strategies as displayed in the text. Therefore, once laws and projects based on these principles and strategies shall be implemented in other regional regimes, it is expected that ICAM be considered as a principle of customary international law as well as those other schemes displayed in Agenda 21 of Rio Declaration on Environment and Development (EIAs and Participation Strategies).

In the Second place, the protocol will provide all Mediterranean States with a valuable framework due to which uniform legislation on the protection of the coastal environment shall be implemented by different administrative levels. The protocol is even valuable for translating in law management schemes that are grasped from science, sociology and other fields of knowledge. Such management patterns are multidisciplinary and require regional and local authorities to put in place practices and techniques that involve local communities, economic stakeholders, land owners and other organizations. This way, the protocol will render adoption of ICAM an attractive process in so offering local communities the opportunity to protect and conserve local ecosystems and to share economic benefits. As a consequence, not only plans and programmes shall be designed, adopted and further implemented by experts but even the public will have a decisional stance in these procedures.

Thirdly, the protocol will disclose comprehensive and innovative governance schemes. Owing to these schemes, all levels of governance shall be committed to adopting plans and programmes taking in due consideration both the national and the Mediterranean Strategy on Integrated Coastal Zone Management. Not only regional and local authorities shall have a duty to monitor implementation of coastal plans and programmes in the light of these strategies, but even to exchange relevant experience and legal, scientific and technical information with other national authorities.

Both land and coastal authorities will coordinate at the national, regional and local levels; therefore, joint consultative bodies and joint decision-making procedures will contribute significantly to promote strategies of coordination. In providing assistance to centres specialized in integrated coastal zone management to be established at either the national or the local level, the PAP/RAC Centre will be momentous in supporting functions of national, regional and local authorities with new coastal management practices and techniques and in facilitating exchange of information between all level national authorities. Furthermore, PAP/RAC will have a important task in ensuring that all concerned local, regional and national authorities display coherent inventories and monitoring schemes to check progressive and coherent implementation of plans and programmes. This latter function should not be underestimated, especially considering that listing criteria as enclosed in Art. 9 are not demanding in nature and that States are often unconfident towards adoption of network-inventories strategies.

The PAP/RAC Centre will further ensure that national strategies, plans and programmes be sound with those principles displayed in Art. 5 of the protocol and with the objectives of the Mediterranean Strategy on ICZM to be agreed upon after protocol entry into force. Therefore, both the Centre and the national coastal centres established in wealthier Mediterranean States will be momentous in providing all level authorities of South Mediterranean countries with the scientific and technical assistance required to overcome personnel and technical issues that may hold back implementation of ICAM. It is valuable that the draft protocol in fostering such comprehensive coordination and cooperation within Mediterranean provides scope to solve developmental problems and mistrust between North an South Mediterranean countries.

Finally, the protocol will be of value in prompting all States to agree upon a common strategy on ICZM. The strategy-based approach will provide Mediterranean States with a forum wherein common values, visions and objectives will be shared. Therefore, both the national focal points and governmental experts shall be entrusted with more comprehensive tasks than those demanded by the implementation of previous protocols. National reporting procedures shall require both these experts to submit to the Convention secretariat detailed information on the progress of national strategies and on the legal, scientific and technical implementation of all levels plans and programmes. Not only these experts shall be required to assess the overall coherence of strategies, plans and programmes in the light of the Mediterranean Strategy on ICZM, but even to represent and further propose to the contracting parties remedies to those scientific, technical and legal issues tackled by all level national authorities. As a consequence, the strategy-based approach will prove even useful in so far as it concerns remedies to be agreed upon by all Mediterranean States for problems relating to North-South cooperation and accountability of non-compliant States and authorities.

On the one hand, the Mediterranean Strategy on ICZM may establish responsibilities that pressure wealthier Mediterranean States to provide South Mediterranean countries with BATs, BEPs and training. Despite not legally binding, the Mediterranean Strategy argues for public accountability of those States that show enduring mistrust in transferring to developing countries up-to-grade technology and know how. In addition, whether or not those countries may decide to cooperate, the PAP/RAC Centre will supply training and technical assistance to those coastal centres of developing States facing lasting challenges. On the other hand, the strategy-based approach shall make available to the public, associations and economic actors the opportunity to monitor the overall coherence of regional and local plans and programmes.

Owing to these characteristics, it may be argued that the protocol will further improve and strengthen implementation of the Convention and of previous protocols. For the protocol is mainly intended to foster responsibility for States to protect both the seaward and landward side of the coastal areas, all level authorities shall be obliged to ensure protection of ecosystems from those human and natural factors entailing massive pollution and coastal erosion. Therefore, the protocol fosters responsibility of all level authorities in providing protection of both the marine and land ecosystems that are increasingly being threatened by Land-Based pollution (agriculture, aquaculture, lack of sewage plants, oil refineries and distribution plants), Dumping of waste from ships (harbours, liners and pleasure boats), Contamination, Siltation and Encroachment of wetlands, protected and surrounding natural areas (construction of harbours and coastal defence structures, buildings beyond the distance of 100-300 meters from the highest winter water line, building of public infrastructures along the coast, aquaculture and extractive activities). In supporting such a comprehensive and multi-sector regime, the protocol may even support and foster implementation of those relevant protocols that have not been adopted so far. As a consequence, local and regional coastal authorities of all Mediterranean countries may be provided by coastal specialized centres with technical training on up-to-grade sewage and water purification plants, on instructions and international standards to be supplied to port authorities, to ship personnel and to those responsible of the safety of offshore installations. Land authorities may be further instructed by coastal specialized centres on up-to-grade management techniques on water distribution for coastal wetlands, on standards and guidelines for agriculture, aquaculture, extractive activities, sand nourishment and infrastructure development (dams, routes, power stations and coastal defence works).

Despite the draft protocol providing significant potential for improving and innovating implementation of the Barcelona system and MAP II, it nevertheless falls short of clarity and of specific criteria ensuring uniform and lasting implementation of its provisions. As it has been stated yet in this Report, much of the provisions of the draft protocol have been drafted in a soft-law fashion. Even though flexible provisions conducive to the spanned implementation of sustainable management practices may allow authorities to step adoption of both adaptive and proactive measures that are specifically tailored to the evolution of coastal pollution, the draft protocol does not put forward meaningful guidelines that shall instruct planners and competent personnel to implement coherent plans and programmes. Adding to this concern, core obligations of the draft protocol addressed to preventing pollution from specific activities and to ensuring sustainable use and maintenance of ecosystems of coastal zones neither seem to forward obligations for States nor suggest comprehensive strategies. While EIAs procedures as displayed in the protocol seem to completely disregard assessment of environmental impacts at the local level, lack of regulatory defaults may hinder adoption and implementation of EIAs, SEAs.

With a view to overcome all these limits and to ensure that the protocol will not become a dormant treaty, it is to be hoped that negotiating parties in the next meetings either clarify the content of core ambiguous provisions of the draft protocol or weave agreement to adopt Annexes. These Annexes may address to; BATs, BEPs and Regulatory Defaults on Agriculture, Aquaculture and Waste (Annex I); EIAs and SEAs (Annex II); Development and Planning (Annex III); Tourism (Annex IV). These Annexes should enclose those ambiguous provisions of the draft protocol and further guidelines. Shifting ambiguous provisions in the Annexes will ensure that the protocol will gain in clarity, while maintaining binding provisions in the main text of the protocol may argue for unequivocal implementation of obligations. For the Barcelona system displays detailed guidelines both addressing to coastal areas and to specific sources of pollution, further criteria based on coastal management and scientific experiences of authorities dealing with sediment diversion may be included. Adding guidelines to Annexes may contribute to make the protocol an attractive treaty for all negotiating parties, planners, managers and all levels authorities.

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