



United Nations
Environment
Programme



Distr.
RESTRICTED

UNEP/IG. 56/INF. 5
3 June 1985

Original : ENGLISH

Fourth Ordinary Meeting of the Contracting
Parties to the Convention for the Protection
of the Mediterranean Sea against pollution
and its related protocols

Genoa, 9 - 13 September 1985

THE UNITED NATIONS LAW OF THE SEA CONVENTION AND THE REGIONAL LEGAL
INSTRUMENTS FOR THE PROTECTION OF THE MEDITERRANEAN SEA
AGAINST POLLUTION

(Document prepared at the request of the Contracting Parties)

This information document was prepared by a consultant, Prof. Budislav Vukas.
The views expressed in this document are not necessarily those of the
United Nations Environment Programme

TABLE OF CONTENTS

	page
1. INTRODUCTION	2
2. GLOBAL, REGIONAL AND SUBREGIONAL LEVEL OF CO OPERATION; BASIC PROBLEMS OF CO-ORDINATION	4
3. THE LOS CONVENTION AND CUSTOMARY INTERNATIONAL LAW	8
4. DIFFERENT SOURCES AND TYPES OF POLLUTION	14
5. GENERAL PROVISIONS	18
6. CONCLUSIONS AND RECOMMENDATIONS	20
7. FOOTNOTES	22

1. INTRODUCTION

The United Nations Convention on the Law of the Sea (LOS Convention) having been signed (Montego Bay, 10 December 1982), the Extraordinary Meeting of the Contracting Parties to the Barcelona Convention (Athens, 10-13 April 1984) recommended that the Secretariat of the Mediterranean Unit study "the relevant provisions of the Law of the Sea Convention, in particular those constituting customary international law, and their bearing on the co-operation of States in the framework of the Mediterranean Action Plan and the Barcelona Convention...".^{1/} As this recommendation contains the terms of reference for the present study, the main characteristics of the undertakings on the global and regional level indicated in the mentioned recommendation should be pointed out at the very beginning of this analysis.

1.1. The Status of the Relevant Instruments

The LOS Convention, although widely accepted, is not yet in force. As of 9 December 1984, the Convention has been signed by 159 States, but ratified by only 14. Egypt is the only Mediterranean State to have ratified the Convention, with the exception of Albania, Israel, Syria and Turkey; it has been signed by the rest, including the European Economic Community.^{2/} As 60 ratifications or accessions are needed for the entry into force of the LOS Convention (Art. 308, para.1), and as not all the controversies concerning the international sea-bed area have been resolved, an early entry into force of the LOS Convention is still uncertain.

Thus, for the time being there can be no question of a direct application of the provisions of this Convention; its provisions are obligatory only as far as they reflect customary international law. However, the obligation on the basis of Article 18 of the Vienna Convention on the Law of Treaties (1969) should not be neglected: signatory States are obliged to refrain from acts which would defeat the object and purpose of the LOS Convention until they make their intention of not becoming a party into force of the Convention, provided that such entry into force is not unduly delayed.

On the other hand, the Mediterranean Action Plan (MAP) was adopted in February 1975, and in the subsequent decade has been implemented. The Convention for the Protection of the Mediterranean Sea against Pollution and the two Protocols approved simultaneously (Barcelona, 16 February 1976), conceived as the legal framework for the co-operative regional programme, entered into force on 12 February 1978. The Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources (Athens, 17 May 1980) entered into force on 17 June 1983; only the Protocol concerning Mediterranean Specially Protected Areas (Geneva, 3 April 1982) has not yet entered into force.^{3/}

1.2. The Scope of the LOS Convention and the Mediterranean Co-operation

The scopes of the LOS Convention and the regional Mediterranean co-operative programme are not identical and overlap only partially. The object of the Third UN Conference on the Law of the Sea (UNCLOS III) was to codify and progressively develop the law of the sea in general.^{4/} MAP and the Mediterranean legal instruments do not directly deal with many of the law of the sea questions, e.g. regulation of navigation, delimitation of maritime zones, right of access of land-locked States to and from the sea, etc. On the other hand, the co-operation of the Mediterranean States is much broader than the relations of States regulated by the law of the sea. Their co-operation as regards development and management of the resources of the Mediterranean extends to economic and social questions even beyond those strictly related to the exploration, management and exploitation of the natural resources of the sea, and relates not only to the sea areas, but also to the Mediterranean coasts.

This study will deal only with those questions relating to the overlap of the LOS Convention's provisions and the Mediterranean norms and activities. Thus, all provisions of the LOS Convention which deal with problems not relevant for the Mediterranean co-operation will not be included in the present study. For example, we shall leave out the régime of the Area - the sea-bed and the ocean floor and subsoil thereof, beyond the limits of national jurisdiction - as, according to Article 76 (Delimitation of the continental shelf) of the LOS Convention, there is no sea-bed and sea-bed subsoil beyond the limits of national jurisdiction of the Mediterranean coastal States. Further, the legal status of the archipelagic waters is of no interest for the Mediterranean as, under the LOS Convention, only "archipelagic States" are entitled to extend their sovereignty over archipelagic waters; according to the definition of "archipelagic States" (Art.46/a/), no such State exists in the Mediterranean.

The majority of the LOS Convention's provisions are relevant for the Mediterranean as well as for all other seas and oceans. However, for the purpose of this study not all are of the same relevance; in fact, they can be divided into three groups:

a) principles determining the extension and the régimes of particular maritime zones (territorial sea, exclusive economic zone, etc.); the legal status of each of these zones represents a framework determining specific provisions concerning different activities.

b) provisions dealing with questions related to the protection and preservation of the sea stricto sensu: navigation; marine scientific research; exploration and exploitation, conservation and management of natural resources, etc.

c) specific provisions on the protection and preservation of the marine environment.

As the five existing Mediterranean legal instruments deal with questions the bulk of which can be defined as "the protection and preservation" of the Mediterranean, it is the foregoing category c) of the LOS Convention's provisions that is of primary interest to this study. Although the majority of such provisions are contained in Part XII of the LOS Convention, some are to be found elsewhere in the Convention

1.3. Limits of the Present Study

MAP, the Barcelona Convention (BC) and related Protocols, were not concluded in a legal vacuum. The 1958 Geneva Conventions on the Law of the Sea and many global conventions on the protection of the marine environment preceded the establishment of the Mediterranean co-operation; other global treaties have been concluded simultaneously with these regional actions. Furthermore, some customary law principles have also been developed independently of UNCLOS III and the LOS Convention.

For the purpose of this study, and in accordance with the mentioned recommendation of the Extraordinary Meeting of the Contacting Parties to the Barcelona Convention, only the relation of the LOS Convention with the Mediterranean activities will be analysed. Other international rules will be taken into account only as regards the conclusions concerning the customary nature of some of the LOS Convention's provisions.

Such a simplification of this analysis is required in order to provide a clear picture of the impact of the LOS Convention - a new instrument of outstanding relevance in the field. The limited scope of this study should not be interpreted as an underestimation of other conventional or customary international rules.^{5/}

2. GLOBAL, REGIONAL AND SUBREGIONAL LEVEL OF CO-OPERATION: BASIC PROBLEMS OF CO-ORDINATION

2.1. Relation of the LOS Convention to Other Treaties on the Protection and Preservation of the Marine Environment

Article 311 of the LOS Convention contains the general provisions on the relation of the Convention to other conventions and international agreements. It establishes the predominance of the LOS Convention over all other international obligations undertaken by States Parties to the LOS Convention as it: a) prevails, as between States Parties, over the 1958 Geneva Conventions on the Law of the Sea; b) alters their rights and obligations arising from other agreements not compatible with the new Convention; c) restricts their liberty to conclude agreements modifying or suspending its provisions.

However, it would appear that these general rules are not applicable to the relation of the provisions of Part XII to other conventions on the protection and preservation of the marine environment. Namely, it has been provided in Article 311, para. 5 that the provisions of that Article "shall not affect international agreements expressly permitted or preserved by other articles of this Convention". Further, Article 237 (Part XII) deals with "Obligations under other conventions on the protection and preservation of the marine environment". Although some aspects of paragraph 5 of Article 311 are not clear, there is no doubt that Article 237 is lex specialis in relation to Article 311 as concerns the relation of the provisions of Part XII to other international rules in the field. Nevertheless, Article 311 is also relevant in the framework of the present study as not all the LOS provisions having a bearing on the Mediterranean co-operation are included in Part XII.

In paragraph 1 of Article 237, it has been provided that the provisions of Part XII are without prejudice to the specific obligations assumed by States under special conventions and agreements concluded previously and to agreements which may be concluded in furtherance of the general principles set forth in the Convention. This rule is in accordance with the concept of the LOS Convention as an "umbrella treaty" in its environmental provisions. The Convention contains only basic, general principles on the protection of the marine environment, while provisions dealing with particular sources of pollution, with the protection of different seas and with specific questions in relation to the protection of the seas should be embodied in special international instruments. In accordance with this concept, under Article 197 States have to co-operate "in formulating and elaborating international rules, standards and recommended practices and procedures" for the protection and preservation of the marine environment. States shall co-operate on a global and, as appropriate, on a regional basis; in formulating international norms they shall take into account characteristic regional features. Their co-operation can be direct or through competent international organizations. The Barcelona Convention and its related Protocols are an anticipation of the quoted LOS Convention's provisions; new Protocols and other possible legal instruments would represent the implementation of Article 197 of the LOS Convention.

However, the concept of the "umbrella treaty" also has another aspect: it envisages the LOS Convention as a set of environmental provisions of a higher value than other international rules, at least as between States Parties to the LOS Convention. This results from the requirement that all future international rules, standards, recommended practices and procedures be "consistent with the Convention" (Art. 197) and from the provision that "specific obligations assumed by States under special conventions... should be carried out in a manner consistent with the general principles and objectives of this Convention" (Art. 237, para.2). This last provision is vague, as it seems to be inconsistent with the content of paragraph 1 of the same Article and could affect obligations of States Parties to the LOS Convention towards third States (for whom this Convention is res inter alios acta).

In the relation between the LOS Convention and the Mediterranean legal instruments the vagueness of Article 237 can be of little harm. This is to the merit of the drafters of the Barcelona Convention who, in Article 3, paragraph 2, provided that:

"Nothing in this Convention shall prejudice the codification and development of the Law of the Sea by the United Nations Conference on the Law of the Sea..., nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction."

This clear-sighted and generous provision of the Barcelona Convention has to be interpreted as a recognition of the predominance of the provisions of the LOS Convention over the Mediterranean rules on sea protection. Thus, any real incompatibility between the global and regional provisions should be resolved in favour of the LOS Convention's provisions. However, as the two sets of environmental provisions were formulated almost at the same time, for the same purposes and partially by the same States, it is to be expected that no serious discrepancies exist between them.

As some of the coastal Mediterranean States have not yet shown their intention to become parties to the LOS Convention, and as its entry into force is not expected within the next two or three years, the relation between the UNCLOS and Mediterranean solutions is, for the time being, more complicated; possible problems should at present be resolved by reference to customary international law (see infra p. 14).

For its part, the Barcelona Convention also establishes a hierarchy of legal instruments : its "Contracting Parties may enter into bilateral or multilateral agreements including regional or subregional agreements..., provided that such agreements are consistent with this Convention and conform to international law" (Art.3, para.1).

2.2. The Mediterranean Sea Area

The Mediterranean Sea Area, to which the Barcelona Convention and its related Protocols apply, refers to the "maritime waters of the Mediterranean Sea proper including its gulfs and seas..." (Art. 1, para. 1 of the BC). The geographical coverage of the Mediterranean legal instruments does not include either the Marmara Sea or the Black Sea.

There is also another limit to the "maritime waters of the Mediterranean Sea" under Article 1 of the BC. These waters do not include internal waters of the Contracting Parties, subject to different provisions of related Protocols.

Thus, the Land-Based Sources Protocol application extends to waters on the landward side of the baselines from which the breadth of the territorial sea is measured and to saltwater marshes communicating with the sea (Art. 3). The Protocol on Specially Protected Areas also applies to waters on the landward side of the baselines, including wetlands or coastal areas designated by each of the Parties (Art. 2).

As in relation to all other seas and oceans, the LOS Convention introduces many changes in the allocation of marine areas of the Mediterranean to the coastal States. The extension of the territorial waters to 12 nautical miles has been confirmed, and the contiguous zone may be extended up to 24 miles from the baselines. Notwithstanding the considerable depth of the Mediterranean Sea, on the basis of Article 76 all its sea-bed and subsoil thereof can be considered the continental shelf of the coastal States.

As far as the Mediterranean is concerned, the main innovations brought about by the LOS Convention are the establishment of the exclusive economic zone (Part V) and the adoption of special provisions on enclosed or semi-enclosed seas (Part IX). Although, for the time being, only a few States have adopted legislative measures in order to establish their exclusive economic zones in the Mediterranean (Egypt, France, Morocco, Spain),^{6/} it is improbable that this sea could be an exception to the general practice of States, according to which the vast majority have already proclaimed their exclusive economic zones.^{7/} The establishment of the exclusive economic zones of all the Mediterranean coastal States would almost entirely eliminate the high seas régime from the Mediterranean Sea as the economic zone includes the sea-bed and its subsoil, as well as the superjacent waters, up to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured (Art. 56 and 57).

Under the régime of the exclusive economic zone, the coastal States have jurisdiction with regard to the protection and preservation of the marine environment (Art. 56, para. 1/b/iii). On the basis of this general principle, specific rights and duties of the coastal States in adopting and enforcing their laws and regulations and enforcing international rules in respect to pollution of the zone from sea-bed activities, dumping and pollution from vessels have been dealt with by numerous provisions of Part XII.

The jurisdiction of coastal States with regard to the protection and preservation of the marine environment is, without doubt, one of the most valuable elements of the régime of the exclusive economic zone; all claims arguing against the establishment of the economic zone of the Mediterranean coastal States disregard this precious component of the exclusive economic zone régime. To what extent the economic strengthens the position of coastal States in their efforts to protect the sea will be illustrated later, in relation to different sources of pollution.

Although the definition of enclosed or semi-enclosed seas (Art. 122) leaves much to be desired, there is no doubt that both the Mediterranean itself and its constituent seas can be considered enclosed or semi-enclosed seas. States bordering an enclosed or semi-enclosed sea are called upon to co-operate with each other in the exercising of their rights and in the performance of their duties under the Convention. Among the fields in which coastal States should co-operate is "the co-ordination of the implementation of their rights and duties with respect to the protection and preservation of the marine environment" (Art. 123/b/). The co-operation of coastal States can be direct or through an appropriate regional organization. It is provided that the coastal States shall endeavour to invite, as appropriate, other interested States or international organizations to co-operate with them in the furtherance of the provisions of Article 123.

Co-operation of States bordering an enclosed or semi-enclosed sea is only recommended in the LOS Convention ("should co-operate"). However, to this recommendation the phrase that States "shall endeavour...to co-ordinate" their activities has been added. Taken all together, it cannot be said that this duty of coastal States is entirely devoid of legal force. Although States are not obliged to co-ordinate their activities, it can be claimed that acts rendering impossible any attempt to establish such co-ordination (e.g. by systematically rejecting any negotiations on the protection of the marine environment of an enclosed or semi-enclosed sea) would represent a violation of the Convention. Thus, there is a sui generis legal obligation (a bona fide obligation, according to T. Scovazzi^{8/}) in relation to the co-operation concerning the living resources, the marine environment and marine scientific research.

Having in view the existing co-operation of the Mediterranean States, at least in relation to the protection and preservation of the Mediterranean waters, the foregoing discussion on the legal nature of the duty of States under Article 123 the basis of Article 123/d/, other States (especially land-locked States from the region) and international organizations should be involved in the Mediterranean co-operation.

2.3. Regional and Subregional Co-operation

Besides the request of Article 123 relating to States bordering enclosed or semi-enclosed seas, the LOS Convention provides for regional co-operation in relation to all seas and regions. States should co-operate on a regional basis "in formulating and elaborating international rules, standards and recommended practices and procedures" (Art. 197), in promoting studies, undertaking programmes of scientific research and encouraging the exchange of information and data acquired on pollution of the marine environment (Art. 200), etc. Apart from these general provisions on regional co-operation, such a co-operation in relation to the establishment of international rules and the harmonization of national policies has been provided for in relation to particular sources of marine pollution. Thus, it can be concluded that regional co-operation has been envisaged by States participating at UNCLOS III as an important level of international co-operation in the field of the protection and preservation of the marine environment, almost equally important as the global level.

There is no definition of the notion "region" either in relation to the environmental provisions or elsewhere in the LOS Convention. As at the time of UNCLOS III the UNEP's Regional Seas Programme was under way (besides regional actions in the Baltic and the North East Atlantic), it would be natural, at least as regards environmental issues, to conform the use of the term "region" in the LOS Convention to the sense given within the UNEP activities. However, the Barcelona Convention, a regional instrument par excellence, complicates the picture. Namely, it provides that "the Contracting Parties may enter into bilateral or multilateral agreements, including regional or subregional agreements, for the protection of the marine environment of the Mediterranean Sea against pollution..." (Art. 3, para. 1). In view of this provision it is difficult to define the agreements concluded between some Mediterranean States: Italy and Yugoslavia (1974), France, Italy and Monaco (1976), Greece and Italy (1979)^{9/}; are they regional or subregional agreements under Article 3, paragraph 1 of the Barcelona Convention?

It is interesting to note that in relation to the provisions on marine protection and preservation (Part XII), no mention has been made of subregional co-operation in the LOS Convention. Such a level of co-operation has, however, been referred to in relation to the conservation of the living resources (Art. 61).

2.4. Definitions

The definitions of "pollution of the marine environment", although elaborated almost at the same time, are not identical in the BC (Art. 2) and in the LOS Convention (Art. 1, para. 1/4/). The first difference lies in the geographical coverage of the Barcelona Convention; as the Mediterranean Sea Area under the Convention does not include "internal waters of the Contracting Parties" (Art. 1, para. 2), only in the LOS Convention are estuaries mentioned as part of the marine environment. The Barcelona Convention is also more restrictive in relation to the deleterious effects of pollution: the LOS Convention prevents the introduction into the marine environment not only of substances or energy which will result in deleterious effects, but also that "which... is likely to result" in the same. In addition, "harm to marine life" and hindrance of "other legitimate uses of the sea", besides fishing, have been added to those deleterious effects already mentioned in the Barcelona Convention.^{10/}

There are differences also between the definition of dumping in the LOS Convention (Art. 1, para. 1/5/) and that in the Mediterranean Dumping Protocol (Art. 3, para. 3). Besides deliberate disposals of wastes or other matter from vessels and aircraft, the LOS Convention includes disposals from "platforms or other man-made structures at sea".

As all the definitions contained in Article 1 of the LOS Convention are given "for the purposes of this Convention", the same being true for the definitions contained in Article 2 of the BC and Article 3 of the Dumping Protocol, there can be no real incompatibility between the global and regional definitions, as each of them applies in relation to the provisions of the treaty where the definitions has been inserted. However, it is the impression of this author that the broader UNCLOS definitions for the existing and future co-operation of the Mediterranean States are more adequate.

3. THE LOS CONVENTION AND CUSTOMARY INTERNATIONAL LAW

3.1. The LOS Convention as a Codification of Customary Law

The relation of international treaties with customary international law is twofold: they reflect existing customary law and they influence the creation of new customary rules. Our task being to determine which relevant provisions of the LOS Convention "constitute customary international law" therefore, we have to ascertain both the provisions which codify previously existing customary law and those for which it could be claimed that they have caused the establishment of new customary rules. Although any research in the field of customary international law is based on more or less subjective criteria and incomplete and inconclusive data, there are valid reasons for engaging in such an analysis of both aspects of the relation of the LOS Convention to customary international law.

A basic indication of the link between the Convention and customary law can be found in the seventh preambular paragraph of the LOS Convention, where the States participating in UNCLOS III qualified the content of the Convention as "the codification and progressive development of the law of the sea...". In accordance with these familiar terms (Art. 13/1//a/) of the UN Charter and their interpretation in Article 15 of the Statute of the International Law Commission, the qualification given by the drafters of the Convention means that the Convention contains both rules which represent the more precise formulation and systematization of existing customary law (codification) and new rules of international law, regulating new topics, further developing or revising the existing rules (progressive development).

Although "codification" has been mentioned as one of the achievements embodied in the Convention, there are few instances of genuine codification accomplished within the framework of UNCLOS III. This could be asserted only of some principles embodied in Part XII, where provisions have been elaborated on the basis of previously concluded special conventions and agreements, such as the 1972 Stockholm principles, States' practice, etc. At this Conference States were eager to bargain for new rules, and the only real reason for mentioned "codification" in relation to the LOS Convention is the fact that the text of three of the 1958 Geneva Conventions, in which customary law had been codified, was taken over. But if we compare the 1958 Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas and the Convention on the Continental Shelf with the corresponding parts of the new Convention, we notice that only particular articles, and not integral régimes, have been transferred unchanged to the new Convention.

3.2. The Creation of New Customary Law on the Basis of the Work of UNCLOS III and the LOS Convention

The reversed relation between customary and conventional law is the one where treaty solutions form the essence on which general customary rules are developed. The phenomenon of rules set forth in a treaty becoming binding on third States as customary rules of international law has been confirmed by scholarly writings, judicial decisions and by the Vienna Convention on the Law of Treaties (Art. 38).^{11/} The International Court of Justice (ICJ) also confirmed the acceptability of such a development in the North Sea Continental Shelf Cases.^{12/} In the Court's opinion, in order to pass into the general corpus of international law, the provision concerned should "be of a fundamentally norm-creating character such as could be regarded as forming the basis of a general rule of law".^{13/} Besides that characteristic, for such a transformation of a conventional rule, the Court requires a demonstration of the wide acceptance of the new rule which can sometimes be expressed in only a short period of time. It seems that in the Court's view acceptance by the international community would be manifested either by "a very widespread and representative participation in the Convention..., provided it included that of States whose interests were specially affected"^{14/} or when "State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked; - and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved".^{15/}

Because of the present status of the Convention, only one of the elements required by the ICJ - the possible "fundamentally norm-creating character" of the Convention's provisions - could not exist. 159 signatures and only 14 ratifications do not demonstrate "a very widespread and representative participation in the Convention"; the other two elements - States' practice and opinio juris sive necessitatis - are also lacking.

As the method explained by the ICJ could create customary rules only in the years following the entry into force of the LOS Convention, it is important to note that the Court also recently confirmed the possibility of the creation of customary rules before the entry into force of the Convention, even before its signature or adoption. The parties to the Tunisia/Libya Continental Shelf Case asked the Court to take into account the "new accepted trends" expressed at UNCLOS III concerning the delimitation of maritime zones; the Court stated that it "would have had proprio motu to take account of the progress made by the Conference even if the Parties had not alluded to it in their Special Agreement; for it could not ignore any provision of the draft convention if it came to the conclusion that the content of such provision is binding upon all members of the international community because it embodies or crystallizes a pre-existing or emergent rule of customary law."^{16/} Commentators agree that some of the main innovations in the law of the sea agreed upon at UNCLOS III (e.g. the 12 mile territorial sea or the exclusive economic zone régime) already form part of the corpus of customary international law.^{17/}

3.3. Provisions of Part XII Constituting Customary International Law

On the basis of the foregoing general remarks concerning the relation of customary law and the LOS Convention, it is obvious that the provisions taken over from the 1958 Geneva Conventions can be considered as representing customary international law. Such provisions mostly deal with "classic" topics of the law of the sea; protection and preservation of the marine environment was almost ignored in the Geneva Conventions. Thus, a comparison between the results of UNCLOS I and UNCLOS III can be of little help in the search for customary international rules in the field. What remains are other global and regional environmental treaties, the principles adopted at the 1972 UN Conference on the Human Environment, States' practice, general principles of international law concerning co-operation of States and neighbourly relations (droit de voisinage) and national legislation and international adjudications.

Besides that, the content and formulation of the LOS Convention's provisions are themselves in many instances a reliable guide in such an analysis; the majority of the provisions of Part XII are clearly formulated as duties of States Parties to be performed once the Convention enters into force.

Although it must be stressed again that all such assessments are subjectively determined, and that in proclaiming some rules as being customary law we have to proceed with extreme caution, it is possible to claim such in respect of some provisions of the LOS Convention. An additional support for such assertions can be the fact that the following provisions have been accepted without causing major problems at the Conference, and that States have not made any declaration or statement in relation to them while signing or ratifying the Convention.

3.3.1. General Provisions

The basic principle of Part XII of the LOS Convention, as well as of customary law in the field (Principle 7 adopted at the 1972 Stockholm UN Conference on Human Environment)^{18/} is expressed in Article 192:

"States have the obligation to protect and preserve the marine environment".

A State's sovereign right to exploit its natural resources is also affirmed in the Convention; it has been said that this right must be exercised in accordance with State's environmental policies and their duty to protect and preserve the marine environment (Art. 193 - Stockholm Principle 21).^{19/} States shall take all necessary measures to carry out their basic duty in relation to the marine environment; to this end they shall use "the best practicable means at their disposal" and they shall take measures "in accordance with their capabilities..." (Art. 194, para. 1). It is important to underline that the drafters of the LOS Convention have taken into account the differences that exist between States. The main consequence to be derived from this provision is the possibility of differentiating between developed and developing States in relation to the interpretation and application of some of the provisions of this Convention, as well as in regard to future national and international actions in the field. Moreover, some of the environmental provisions in the Convention have already been stipulated, taking into account the special needs of developing States. Scientific and technical assistance has to be provided for such countries. States Parties to the Convention shall promote programmes of scientific, educational, technical and other assistance to developing States for the protection of the marine environment (Art. 202/a/). The duties to provide appropriate assistance for the minimization of the effects of major incidents and to provide appropriate assistance concerning the preparation of environmental assessment are obligatory upon all States Parties, especially in relation to developing States (Art. 202/b//c/). Furthermore, for the purpose of abating pollution, developing States shall be granted preference in the allocation of appropriate funds and technical assistance by international organizations and in the utilization of their specialized services (Art. 203).

All these provisions that take into account the specific situation of developing States represent the implementation of Stockholm Principles 11 and 23 requiring that "the environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries", that it is necessary to meet "the possible national and international economic consequences resulting from the application of environmental measures" and that it will be essential to consider "the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries".^{20/}

On the basis of the foregoing considerations, it is plausible to claim that the "double standard" applied in relation to developed and developing States has become a general, customary principle of environmental law. The LOS Convention has incorporated this principle more thoroughly into its provisions than the Mediterranean legal instruments; only in Article 11, paragraph 3 of the BC (Scientific and technological co-operation) and in the Land-Based Sources Protocol (fifth preambular paragraph) have the differences in levels of development between the coastal States as well as the economic and social imperatives of the developing countries been taken into account.

This appears more justifiable at the global level where the gap between the most developed and the least developed States is very large. At the level of the Mediterranean, where such gap is much less pronounced, the coastal States are striving for common standards, and rely on international co-operation to facilitate their task.

Apart from the principle stated in Article 192, some other general principles of environmental law have also been codified in the LOS Convention: the duty of States to take all necessary measures to ensure that pollution arising from incidents or activities under their jurisdiction or control (a) does not spread beyond those areas, and (b) that it does not cause damage to other States and their environment (Art. 194, para. 2). Furthermore, States are obliged not to transfer damage or hazards from one area to another, or to transform one type of pollution into another (Art. 195).

They are also obliged to take all measures necessary to protect the marine environment from pollution resulting from the use of technologies under their jurisdiction or control, and from the introduction of species to a particular part of the marine environment, to which they may cause significant and harmful changes (Art. 196).

3.3.2. Co-operation of States

Contrary to Section 1 (General provisions), other Sections do not contain so many principles and provisions which could easily be qualified as customary law. As concerns Section 2 (Global and regional co-operation), however, this could be claimed in relation to the duty of States to co-operate in formulating and elaborating international rules and standards (Art. 197), based on Principle 21 of the Stockholm Declaration 21/, and consolidated by the conclusion of more than one hundred bilateral, subregional and global treaties on environmental protection.

Another provision contained in Section 2 which has, in our view, also acquired the nature of customary international law is the obligation of each State to notify other States of imminent or actual damage if it deems them likely to be affected by such (Art. 198). Such a duty has also been inserted in the Mediterranean Emergency Protocol (Art. 8, para. 2/a/).

Closely linked with Article 198 is another general obligation of States and competent international organizations to "co-operate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage" (Art. 199).

The rest of Section 2, as well as Sections 3 (Technical assistance) and 4 (Monitoring and environmental assessment), is composed of provisions representing programmes of co-operation of States Parties upon the entry of the Convention into force. However, some of them are derived from those provisions which do constitute customary international law.

3.3.3. Sources of Pollution

Three Sections of Part XII deal with specific sources of pollution: Section 5 (International rules and national legislation to prevent, reduce and control pollution of the marine environment), Section 6 (Enforcement) and Section 7 (Safeguards).

Section 5 represents a detailed elaboration of the already mentioned principle of Article 197, requiring States to co-operate, directly or through competent international organizations, in adopting international rules and standards. This duty has been dealt with specifically in relation to each source of marine pollution.

The Convention envisages that the protection and preservation of the marine environment be regulated not only by international law, but by national legislation as well. The right of States to adopt laws and regulations has been provided for in relation to all sources of pollution, but the relation of national to international law is determined in different ways.

In relation to some other sources of pollution national legislation must not be "less effective" than international rules (e.g. in relation to dumping - Art. 210, para. 6); in relation to some other sources of pollution national laws and regulations shall be adopted "taking into account internationally agreed rules, standards and recommended practices and procedures" (e.g. in the case of pollution from or through the atmosphere - Art. 212, para. 1), etc.

The duty of States to adopt laws and regulations to prevent, reduce and control pollution of the marine environment is nothing more than an important element of the already mentioned general obligation of States to protect and preserve the marine environment (Art. 192). The specific details concerning the relation of municipal with international law are, for the time being, conventional rules needing further acceptance by States in order to acquire the status of customary law.

As far as the provisions on enforcement (of national and international rules) are concerned, they can be considered as the application in the field of marine protection of the general rules relating to the competence of States in respect of ships flying their flag and maritime zones under their jurisdiction. However, these general rules have, in Part XII, been amplified by some additional new elements. A special study and extreme caution would be necessary in order to distinguish customary rules from new provisions concerning enforcement with respect to pollution from ships. However, it is obvious that more innovations have been adopted in respect to the enforcement by port States (Art. 218) than with regard to the enforcement by flag States (Art. 218) and coastal States (Art. 220).

The foundation of one provision in customary law has been expressly mentioned. Namely, it has been stressed that the rights of States to take and enforce measures beyond the territorial sea in order to avoid pollution arising from maritime casualties are based on customary and conventional international law (Art. 221). In making such an assertion the drafters of the LOS Convention did not state anything new as these rights of the coastal States are not only contained in the 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, but also confirmed as customary law by a Resolution of the Institut de Droit International adopted at its Edinburgh Session in 1969.^{22/}

In relation to safeguards to be applied in the exercise of the powers of enforcement against foreign ships (Section 7), only a few principles can be pointed out as belonging to customary international law: the duty to avoid adverse consequences for foreign vessels or the marine environment in the exercise of the powers of enforcement (Art. 225), the duty not to discriminate in form of in fact against vessels of any State (Art. 227) and in relation to the provision on liability for damage or loss arising from unlawful or exaggerated enforcement measures (Art. 232).

3.3.4. Other Issues

Of the remaining four Sections (8-11), only Section 9 (Responsibility and liability) and Section 10 (Sovereign immunity) contain principles of customary law.

Two of the principles contained in Article 235 represent customary law. States are responsible for the fulfillment of their international obligations concerning marine protection as well as being liable for such in accordance with international law. Besides the duty to implement the existing law, they shall further develop international law on responsibility and liability.

Non-application of the LOS Convention's provisions regarding the protection and preservation of the marine environment to warships and other vessels or aircraft owned or operated by a State and used only on government non-commercial service (Art. 236) is a reflection of the general principle of the sovereign immunity of such ships and aircraft.

4. DIFFERENT SOURCES AND TYPES OF POLLUTION

4.1. Introduction

A comparison of the LOS Convention's provisions and the Mediterranean rules is possible only in relation to those sources of pollution and other topics that either the Barcelona Convention or the related Protocols address through an elaborating regulation. Thus, no comparison is possible in relation to pollution from ships; the LOS Convention dedicated several articles to law-making and enforcement in relation to pollution from ships, while the Mediterranean States only undertook to "take all measures in conformity with international law" and "to ensure the effective implementation in that Area of the rules which are generally recognized at the international level relating to the control of this type of pollution" (Art. 6 - BC). The stressing of "rules which are generally recognized at the international level" (mentioned only in relation of pollution from ships) is an indication of the appreciation of the predominance of general over regional solutions in relation to pollution from ships.

In relation to the pollution from sea-bed activities, the Contracting Parties to the Barcelona Convention undertook the obligation to take "all appropriate measures to prevent, abate and control pollution... of the continental shelf and the sea-bed and its subsoil". Although somewhat vague, this formulation, on the basis of the extension of the continental shelf régime under Article 76 of the LOS Convention (200 miles from the baselines), covers all the sea-bed and subsoil of the Mediterranean. The increasing activities of the Mediterranean States in exploring and exploiting the Mediterranean sea-bed daily render more urgent the need for the adoption of a special protocol on pollution resulting from sea-bed activities.

4.2. Dumping

The difference in the definition of dumping between the LOS Convention and the Mediterranean Dumping Protocol has already been indicated (see supra p. 11). However, this difference has been narrowed by the Land-Based Sources Protocol which, besides land-based sources stricto sensu, also applies to "pollution discharges from fixed man-made off-shore structures which are under the jurisdiction of a Party and which serve purposes other than exploration and exploitation of mineral resources of the continental shelf and the sea-bed and its subsoil" (Art.4, para. 2).

The LOS Convention provides that dumping within maritime zones under the sovereignty or jurisdiction of the coastal State (territorial sea, exclusive economic zone, continental shelf) shall not be carried out without its express prior approval (Art. 210, para. 5). On the other hand, the Mediterranean Dumping Protocol applies to the Mediterranean Sea Area (Art. 2), which also includes the high seas of the Mediterranean. For this reason the participants of the 1976 Barcelona Conference invited the Parties to the Dumping Protocol to prevail upon other States (for whom the Protocol is res inter alios acta) to observe the basic provisions of the Protocol.^{23/} In order to be able to apply the Protocol to ships and aircraft of all States, the Mediterranean coastal States should proclaim their exclusive economic zones and thus submit all the Mediterranean waters to their respective jurisdiction.

There is one provision of the Dumping Protocol which requires special comment on the basis of the LOS Convention. Namely, Article 12 of the Protocol provides that States Parties shall, if they consider appropriate, report to any other State concerned "any incidents of conditions in the Mediterranean Sea Area which give rise to suspicions that dumping in contravention of the provisions of this Protocol has occurred or is about to occur". On the basis of Article 198 of the LOS Convention and Article 9, paragraph 2 of the Barcelona Convention, Article 12 of the Protocol should not be interpreted as giving States a discretionary power whether or not to report cases of imminent or actual damage: each State is obliged to notify other States of a case of damage of the marine environment if it deems them likely to be affected by such.

4.3. Pollution from Land-Based Sources

Contrary to dumping, there is no definition of pollution from land-based sources in the LOS Convention. It has only been said, in relation to national legislation, that land-based sources include rivers, estuaries, pipelines and outfall structures. Nevertheless, it is clear that the scope of application of the Mediterranean Land-Based Sources Protocol (Art. 4) overlaps with two other types of pollution under the LOS Convention. The application of the Protocol to pollution discharges from fixed man-made off-shore structures has already been mentioned (see supra p. 24).

On the other hand, the Mediterranean Protocol shall also apply to a segment of the pollution referred to in the LOS Convention as "pollution from or through the atmosphere" (Art. 212 and 222). Namely, Article 4, paragraph 1/b/ extends the application of the Protocol also to "pollution from land-based sources transported by the atmosphere".

It is with justification that the LOS Convention's provisions on pollution from land-based sources are qualified as "far from being satisfactory" (B. Kwiatkowska).^{24/} They are mild and vague in respect to law-making (Art. 207) and extremely concise and empty with regard to enforcement (Art. 213). In relation to land-based sources, and in contradiction to some other sources, States are obliged only to "endeavour to establish global regional rules, standards and recommended practices and procedures" (Art. 207, para. 4). As far as national legislation is concerned, it is required only that it "takes into account" international rules, which could be interpreted as meaning that national laws and regulations do not necessarily need to conform to international rules (Art. 207, para. 1).

There are few conditions for the adoption of subsequent international norms in the field. They have to take into account "characteristic regional features, the economic capacity of developing States and their need for economic development" (Art. 207, para. 4). They have to include rules designated to minimize the release of toxic, harmful or noxious substances, especially those which are persistent, into the marine environment (Art. 207, para. 5). The text of the Preamble (fourth paragraph), Articles 5-13 and the Annexes to the Mediterranean Protocol are in accordance with these conditions, which should never be overlooked in the implementation of the Protocol. Its Article 14 satisfies the last requirement of the LOS Convention: international rules, standards, recommended practices and procedures have to be examined from time to time as necessary (Art. 207, para. 4).

4.4. Pollution from or through the Atmosphere

Contrary to the LOS Convention (Art. 212 and 222), the Barcelona Convention does not specially mention the pollution of the marine environment from or through the atmosphere. However, the Land-Based sources Protocol extends its application "to pollution from land-based sources transported by the atmosphere". The conditions for the application of the Protocol to this type of pollution have to be defined in an additional annex to the Protocol. If judged by the small number of ratifications of the 1979 Convention on Long-Range Transboundary Air Pollution by the Mediterranean States, the adoption of such an annex could prove to be a difficult task.^{25/}

It has to be pointed out that the scope of "pollution transported by the atmosphere" is not identical with the air pollution envisaged by the LOS Convention. While the Convention mentions pollution of the marine environment both "from" and "through" the atmosphere, the Mediterranean Protocol relates only to this second part of the Convention's sphere of application, as it covers "pollution from land-based sources transported by the atmosphere".

Thus, it does not apply to pollution generated in the air space itself.

There is yet another sense in which the field of application of the LOS Convention is broader than the Land-Based Sources Protocol. Namely, while the Protocol restricts its application to the air space under the sovereignty of States Parties, the LOS Convention extends their obligations "to vessels flying their flag or vessels or aircraft of their registry". Although the Convention provides that States Parties shall endeavour to establish global and regional rules in relation to this source of pollution, as in relation to pollution from ships in general, it might be wiser to give priority to global on pollution of the atmosphere by vessels and aircraft.

4.5. Pollution Emergencies

Although there are no specific provisions in the LOS Convention dealing with emergencies in the same sense as the Mediterranean Protocol, there are some provisions in the Convention regulating similar subject-matters. However, as these global and regional to analyse their mutual compatibility.

Although expressed in different terms, the scope of Article 8 of the Mediterranean Protocol and Article 198 of the LOS Convention is the same: they both proclaim the duty of States to notify cases of sea pollution to all other States that might be affected by the damage of the marine environment. The provision on the co-operation of States in contingency planning is drafted in stricter terms in the LOS Convention ("shall" - Art. 199) than in the Mediterranean Protocol ("shall endeavour" - Art. 3).

Article 221 of the LOS Convention deals with a specific aspect of emergency: the right of the coastal State to take and enforce measures beyond its territorial sea in the case of maritime casualties. As with the whole provision, the definition of "maritime casualty" has been taken over from the 1969 International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (Art. 11, para. 1).

Several provisions of the Protocol represent an application and elaboration of the general principles of the LOS Convention; they concern: monitoring (Art. 4-Art. 204 LOS Convention); co-operation in eliminating or minimizing the effects of pollution (Art. 5 - Art. 199 LOS Convention); dissemination of information (Art. 6 and 7 - Art. 200 LOS Convention).

4.6. Specially Protected Areas

The idea of protecting some particularly vulnerable marine areas has led to two different kinds of specially protected areas. Under the 1982 Mediterranean Protocol, specially protected areas are "limited to the territorial waters of the Parties and may include waters on the landward side of the baseline from which the breadth of the territorial sea is measured and extending, in the case of watercourses, up to the freshwater limit". Such areas may also include wetlands or coastal areas designated by each of the parties (Art. 2).

According to Article 211, paragraph 6 of the LOS Convention, specially protected areas may be established in clearly defined areas of the exclusive economic zone of a coastal State. Besides the difference regarding the marine areas in which they can be established under the two instruments, there are differences in the specific reasons for proclaiming such areas, as well as in the competences of States and international organizations.

It is obvious that not only specially protected areas under the Mediterranean Protocol, but also such areas in the economic zones, will be attractive for the Mediterranean States once they establish their exclusive economic zones. A new Mediterranean instrument or an annex to the existing Protocol concerning protected areas in the economic zones could be envisaged.

Specially protected areas under the Mediterranean Protocol, as may be established in the territorial seas, fall within the sovereignty of coastal States. However, in establishing such areas and taking the measures provided for in Article 7 of the Protocol, the coastal States shall have to take into account the provisions of the LOS Convention concerning the right of innocent passage of foreign ships (especially Art. 19 and 21).

Provisions of the Protocol concerning co-operation, monitoring, exchange of information, scientific research and other general topics represent a concrete application of the relevant provisions of the LOS Convention.

5. GENERAL PROVISIONS

5.1. Monitoring

Monitoring is defined, in the LOS Convention (Art. 204, para. 1), as observation, measurement, evaluation and analysis of the risks or effects of pollution of the marine environment. The obligation of States to co-operate in monitoring activities is stated, in the LOS Convention, in weaker terms than in the Barcelona Convention ("States shall, consistent with the rights of other States, endeavour, as far as practicable..."- Art. 204, para. 1 of the LOS Convention).

More stringent is the individual obligation of States to keep under surveillance the effects of any activities under their jurisdiction "in order to determine whether these activities are likely to pollute the marine environment" (Art. 204, para. 1). Under the Barcelona Convention, the designation of competent national authorities for pollution monitoring has been envisaged only in the framework of the possible international arrangements for such (Art. 10, para. 2). Individual monitoring has been provided for in some of the related Protocols (Art. 4 of the Emergency Protocol; Art. 8 of the Land-Based Sources Protocol).

All the reports of the results obtained from the monitoring have to be published by the States Parties to the LOS Convention or submitted to competent international organizations (Art. 205) is no such obligation defined in the Barcelona Convention, which requires the Parties to report on measures adopted. The Protocol on Land-Based Sources requires the Parties submit information on data resulting from monitoring including information on quantities of pollutants discharged from their territories (Art. 13 /b/ and /c/).

5.2. Scientific and Technological Co-operation

The provisions of the Barcelona Convention and some of the Protocols on scientific and technological co-operation are looser than those of the LOS Convention (Art. 200-203). In several instances it has been said that States shall co-operate "as far as possible" (e.g. Art. 11, para. 1 of the BC). At the same time, the duty to take into special account the situation and needs of developing countries is stipulated more stringently in the LOS Convention (especially in Art. 203).

5.3. Responsibility and Liability

Under the LOS Convention there are three obligations of States in respect of responsibility and liability : a) to implement existing international law; b) to ensure that recourse is available in accordance with their legal systems for prompt and adequate compensation in respect of damage caused by persons under their jurisdiction; c) to develop further international law in the field. It is worth noting that it has not been specified , as in relation to some other issues, that international rules have to be adopted on a global as well as a regional basis.

The scope of the co-operation of States in the implementation and the further development of international law is very broad in the LOS Convention; it relates to "responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds" (Art. 235, para. 3). On the other hand, the Mediterranean States undertook "to co-operate as soon as possible" in establishing regional international law only in relation to the procedural aspect of the overall problem: "the formulation and adoption of appropriate procedures for the determination of liability and compensation for damage resulting from the pollution of the marine environment deriving from violations of the provisions of this Convention and applicable protocols" (Art. 12 of the BC).

5.4. Settlement of Disputes

Besides the necessary comparison of substantive provisions contained in the LOS Convention and the Mediterranean treaties, the provisions on the settlement of disputes should also be compared.

The situation in this field is clear: there can be no incompatibility between the global and regional provisions. Thus, Article 282 of the LOS Convention gives priority to the application of general, regional or bilateral agreements on procedures entailing a binding decision over the procedures provided for in the LOS Convention itself. Thus, if the Mediterranean States, parties to a dispute, agree to submit it to the arbitration procedure under Article 22 of the Barcelona Convention, or if that procedure is recognized as compulsory by them under Article 22, paragraph 3, then the provisions of the Barcelona Convention will apply. Naturally, this conclusion is valid only in relation to disputes pertaining to the interpretation or application of both the Barcelona and the LOS Conventions. The settlement of disputes concerning subject-matters not covered by the Barcelona Convention or the Protocols, just as the LOS Convention cannot automatically be applied in relation to disputes concerning the interpretation and application of specific obligations under the Barcelona Convention and the Protocols. However, Article 21 of the Statute of the International Tribunal for the Law of the Sea (Annex VI to the LOS Convention) provides for the possibility that any other agreement confer jurisdiction to the Tribunal.

5.5. Final Remark

A comparison of two sets of international rules, containing as many similarities but at the same time as many differences as the UNCLOS environmental provisions and the rules contained in the Mediterranean legal instruments, cannot be conclusive. There will be a permanent need to analyze and compare these global and regional rules in the course of their implementation. As Tullio Scovazzi said: "If a convention drafted by UNCLOS III enters into force, the relations between regional environmental and universally codified law could result in one of the most attractive fields for legal research." 26/

CONCLUSIONS AND RECOMMENDATIONS

On the basis of the study "The UN Law of the Sea Convention and the Regional Legal Instruments for the Protection of the Mediterranean Sea Against Pollution", the following relevant conclusions concerning the future activities of the Mediterranean States can be pointed out:

1. The Mediterranean States should consider the establishment of their respective exclusive economic zones, as under that régime the coastal States have jurisdiction with regard to the protection and preservation of the marine environment.

All coastal States are entitled to establish their economic zones even before the entry into force of the LOS Convention, as that régime has become part of customary international law; 90 States have already done so. The establishment of the exclusive economic zones would enable coastal Mediterranean States to implement the regional legal instruments also in respect of ships flying the flags of non-Mediterranean States.

2. Although in some of the Mediterranean legal instruments the difference between developing and developed States has been taken into account, in all the Mediterranean actions the capabilities of States should determine the measures they are obliged to take for the protection and preservation of the marine environment (Art. 194, para. 2 of the LOS Convention). International assistance and solidarity should eventually enable all Mediterranean coastal States to apply uniform environmental quality criteria.

3. The Mediterranean States should co-ordinate better their regional and subregional (bilateral) activities in conforming with the requirements of the LOS Convention and the Barcelona Convention.

4. As the LOS Convention requires States to establish global and regional rules, standards and recommended practices and procedures in relation to pollution from sea-bed activities subject to national jurisdiction (Art. 208) and pollution from or through the atmosphere (Art. 212), the Mediterranean States should at an early date consider the possibility of adopting regional rules on these subjects. However, in respect to pollution "from land-based sources transported by the atmosphere" they have already decided to adopt an additional annex to the Land-Based Sources Protocol.

5. The Mediterranean coastal States should co-operate in the establishment of specially protected areas under Article 211, paragraph 6 of the LOS Convention. In relation to the Mediterranean, not only IMO, but also UNEP (Co-ordinating Unit for the Mediterranean Action Plan) should be envisaged as the "competent international organization" (para. 6/a/). An annex to the Protocol Concerning Mediterranean Specially Protected Areas dealing with areas envisaged in Article 211, paragraph 6 could be elaborated.

6. On the basis of the duty of States to develop international law relating to responsibility and liability (Art. 235 of the LOS Convention), the Mediterranean States should carry out their promise to formulate and adopt appropriate procedures for the determination of liability and compensation for damage (Art. 12 of the BC). Substantive rules on responsibility and liability should be adopted primarily on a global level.

7. Although some of the environmental principles of the LOS Convention are not adequately reflected in the Barcelona Convention (e.g. Art. 198 - Notification of imminent or actual danger; Art. 199 - Co-operation in eliminating or minimizing the effects of pollution), no revision of the Mediterranean legal instruments in this respect is required. Namely, as such principles are part of customary international law, they are obligatory upon all Mediterranean States even if not specifically mentioned in the Mediterranean treaties.

8. There are differences in defining or resolving problems in the LOS Convention and in the Mediterranean instruments (e.g. differences in the definitions of pollution and dumping). Nevertheless, no changes in the regional Mediterranean instruments are necessary, because each definition and rule operates within a specific framework (global or regional); no real incompatibility exists between them.

9. As the European Economic Community (EEC) is one of the Parties to the Mediterranean legal instruments, the main principles of Annex IX to the LOS Convention (Participation by the International Organizations) should be applied also in relation to the participation of the EEC in the Mediterranean activities. Especially important for States Parties to the LOS Convention not members of the EEC would be the declarations and information specifying the matters governed by the Mediterranean legal instruments in respect of which competence has been transferred to the Organization by its Mediterranean member States (Art. 5 of Annex IX).

10. National legislation must not be "less effective" than international rules (Art. 210, para. 6) or must be adopted taking into account international rules (Art. 212, para. 1).

11. Measures should be taken to avoid pollution beyond the territorial sea.

12. Contingency plan should be developed jointly by interested States.

13. States should co-operate in developing procedures for the payment of adequate compensation through compulsory insurance or compensation funds, such as the proposed interstate guarantee fund such as the proposed interstate guarantee fund.

Footnotes

1. Report of the Extraordinary Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its Related Protocols, Doc. UNEP/IG. 49/5, 30 April 1984, p. 30.

2. Law of the Sea Bulletin, Office of the Special Representative of the Secretary General for the Law of the Sea, No. 4, Feb. 1985, p. 2 et seq.

3. Register of International Treaties and Other Agreements in the Field of Environment, UNEP, May 1984, Doc. UNEP/GG/INFORMATION/11, pp. 137-146.

4. See the seventh preambular paragraph of the LOS Convention.

5. It has been affirmed in the eighth preambular paragraph of the LOS Convention that "matters not regulated by this Convention continue to be governed by the rules and principles of general international law".

6. Law of the Sea Bulletin..., No. 2, Dec. 1983, No. 3, March 1984, p.14.
7. Ibid., No.2, Dec. 1983.
8. T, Scovazzi, "Implications of the new law of the sea for the Mediterranean", 5 Marine Policy, (1981), p.307.
9. Italy and Yugoslavia: Agreement on Co-operation for the Protection of the Waters of the Adriatic Sea and the Coastal Zones from Pollution (Belgrade, 14 February 1974); France, Italy and Monaco: Agreement Concerning the Protection of the Waters of the Mediterranean Shores (Monaco, 10 May 1976); Greece and Italy: Agreement on Co-operation for the Protection of Marine Environment of the Ionian Sea and Coastal Zones (Rome, 6 March 1979); for the texts: G. Allotta, La salvaguardia del Mediterraneo, documenti, Palermo, 1984.
10. See J.A. de Yturriaga, "Regional Conventions on the Protection of the Marine Environment", 162 Collected Courses of the Hague Academy of International Law, (1979), pp. 331-332.
11. L.B. Sohn, Cases and Other Materials on World Law (1950), p. 1008; G. Fitzmaurice in UN Doc. A/CN.4/130, pp.39 and 80-85; R.R. Baxter, "Treaties and Custom", 129 Collected Courses of the Hague Academy of International Law (1970), pp. 57-75; K. Marek, "Le problème des sources du droit international dans l'arrêt sur le plateau continental de la mer du Nord", 6 Revue Belge de Droit International, (1970), pp. 57 and 73.
12. I.C.J. Reports 1969, p.41, para. 70.
13. Ibid., p.42, para. 72.
14. Ibid., p.42, para. 73.
15. Ibid., p.43, para. 74. See also Marek, op. cit., pp. 58-59.
16. I.C.J. Reports 1982, p.38, para.24. See different qualifications of this conclusion of the Court in: T. Schweisfurth, "The Influence of the Third United Nations Conference on the Law of the Sea on International Customary Law", 43 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, (1983), pp. 576-577; R. Goy, "Les sources du droit et la Convention, droit conventionnel et droit coutumier", rapport général, Perspectives du droit de la mer à l'issue de la 3^e Conférence des Nations Unis, Société Française pour le Droit International, Colloque de Rouen, (1973), p. 44.
17. See: B. Zuleta, "Introduction" (to a special issue on the law of the Sea), 17 San Diego Law Review, (1980), pp. 520-521; B. Vukas, "The Impact of the Third United Nations Conference on the Law of the Sea on Customary Law", in: The New Law of the Sea, Selected and Edited Papers of the Athens Colloquium on the Law of the Sea, September 1982, Ed. by Ch. Rozakis and C.A.Stephanou (1983), pp. 40 at seq; Goy, op. cit.; pp.52-53.

18. Declaration of the United Nations Conference on Human Environment, A/CONF.48/14/Rev. 1, p.10.
19. Ibid., p.11.
20. Ibid., pp. 10 and 11.
21. Ibid., p. 11
22. Institut de Droit International, Session d' Edinbourg, 4-13 Septembre 1969, Résolutions adoptées par l'institute (Genève 1969), p.8.
23. Resolution 3 adopted by the 1976 Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea.
24. B.Kwiatkowska, "Marine Pollution from Land-Based Sources: Current Problems and Prospects", 14 Ocean Development and International Law, (1984), p.318.
25. In May 1984 the Convention was in force for the following Mediterranean States: France, Italy, Spain and Turkey and for EEC, Register of International Treaties and other Agreements in the Field of the Environment, op. cit., pp.173-174.
26. Scovazzi, op. cit., p.312.