A contribution to the interpretation of legal aspects of the Protocol on Integrated Coastal Zone Management in the Mediterranean

July 2012

Context of the Protogizc project

This report is part of the project on "Challenges and opportunities for implementing the Protocol on ICZM in the Mediterranean" (Protogizc), led by the Institute for Sustainable Development and International Relations (IDDRI) and co-funded by the French Ministry of Ecology (Programme Liteau) and the Priority Actions Programme Regional Activity Centre (PAP/RAC) of the Mediterranean Action Plan (MAP) – United Nations Environment Programme (UNEP). Adopted in January 2008 by the Contracting Parties to the Barcelona Convention, the Protocol on Integrated Coastal Zone Management in the Mediterranean (ICZM Protocol) is the first supra-State legal instrument aimed specifically at coastal zone management. Previously, coastal zones were still governed in a fragmented way by international law, while the rare instruments aimed at transcending sectoral policies and guiding national systems towards integrated coastal management were confined to the realm of soft law. As Mediterranean coastal zones have been on an unsustainable development path for the last few decades, the application of this new legal tool is of vital importance for the future of the Mediterranean Basin. The Protogizc project is therefore devoted to the specific issues, both theoretical and operational, raised by the entry into force of the text of the Protocol. Making a detailed analysis of the Protocol's provisions – their contents, their normative scope, etc. – the aim of the research is to study the perspectives for implementing the Protocol, focusing particularly on four case studies (Croatia, France, Italy and Lebanon) whose comparison is interesting on several counts. The goal of this project is to make it easier to gradually create the conditions for implementing the Protocol, in various fields ranging from the legal framework to capacity building (administrative and legal staff, etc.), the use of regional planning documents (cadastres, land-use plans, etc.) and the integration of climate change issues in planning and ecosystem protection decisions.

The drafts were presented at various meetings that contributed with important inputs to the elaboration of this report: technical *ad hoc* meetings (May 2011, PAP/RAC; Protogizc Steering Committee meetings involving several key actors from the Mediterranean; and a meeting organised within the framework of the MedPartnership project in Croatia in September 2011).

Acknowledgments

The authors would like to thank all those who kindly contributed to the preparation of this report by providing information and insights. Special thanks go to PAP/RAC staff, and in particular Marko Prem, Zeljka Skaricic, Daria Povh, Branka Baric and Marina Markovic, as well as Michel Prieur (University of Limoges, France) and Gojko Berlengi (UNDP) for their comments on earlier versions of this document. The project team would also like to express their gratitude to the Protogizc Steering Committee members that contributed significantly with their guidance, including Corina Artom (Liguria Region, Italy), Fabrice Bernard (Conservatoire du littoral, France), Tatiana Hema (Mediterranean Action Plan), Yves Henocque (Ifremer), Bernard Kalaora (Littocéan / Liteau), Marijana Mance Kowalsky (Ministry of Environment, Croatia), Alessio Satta (Sardinian Coastal Conservation Agency, Italy) and Ivica Trumbic (MedPartnership).

Citation of the report

For bibliographic purposes, this report may be cited as follows: Rochette J., Wemaëre M., Billé R., du Puy-Montbrun G., (2012), A contribution to the interpretation of legal aspects of the Protocol on Integrated Coastal Zone Management in the Mediterranean, UNEP, MAP, PAP/RAC, 72 p. + annexes.

Authors

- Julien Rochette, IDDRI
- Matthieu Wemaëre, Attorney at Law, Paris and Brussels Bar Associations
- Raphaël Billé, IDDRI
- Guillaume du Puy-Montbrun, Sciences Po

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LIST OF ABBREVIATIONS

APAL	Agence Nationale pour la Protection du Littoral (Tunisia)
CAMP	Coastal Area Management Programme
CELRL	Conservatoire de l'Espace Littoral et des Rivages Lacustres (France)
CJEU	Court of Justice of the European Union
COP	Conference of Parties
CZM	Coastal Zone Management
EC	European Community
EIA	Environmental Impact Assessment
EU	European Union
FAO	Food and Agriculture Organization
FP7	Seventh Framework Programme for Research and Technological Development of the European Union
ICZM	Integrated Coastal Zone Management
IADB	Inter-American Development Bank
ICAM	Integrated Coastal Area Management
IOC	Intergovernmental Oceanographic Commission (of UNESCO)
IPCC	Intergovernmental Panel on Climate Change
IUCN	International Union for Conservation of Nature
MAP	Mediterranean Action Plan
MCSD	Mediterranean Commission on Sustainable Development
MSFD	Marine Strategy Framework Directive
MSSD	Mediterranean Strategy for Sustainable Development
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
OJEU	Official Journal of the European Union
PAP/RAC	Priority Actions Programme Regional Activity Centre
PCA	Protected Coastal Area
SEA	Strategic Environmental Assessment
SER	Society for Ecological Restoration
TEEB	The Economics of Ecosystems and Biodiversity
TEU	Treaty on European Union
TFEU	Treaty on the functioning of the European Union
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
WWF	World Wildlife Fund

PART I.
INTRODUCTION

1. The roots of the Mediterranean ICZM Protocol

The establishment of the concept of Integrated Coastal Zone Management (ICZM) within the Mediterranean regional system, with the adoption of the Protocol on Integrated Coastal Zone Management in the Mediterranean in January 2008, and its entry into force on 24 March 2011, is a result of two interconnected developments, one regional and the other global.

At the regional level, the Mediterranean Sea has had its own legal system for over 30 years, as a result of cooperation between the 21 States[1] that border this semi-enclosed sea. In the early 1970s, the newly created United Nations Environment Programme (UNEP) made the oceans a priority action area[2] and advocated the adoption of a regional approach (Rochette and Billé, 2012), specifically mentioning the Mediterranean Sea. It was in this context that the 1975 Mediterranean Action Plan (MAP) was drawn up, with the adoption of the Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona Convention) taking place a few months later, in February 1976. As any framework agreement, the Convention provides general terms and conditions and an overall direction for countries to follow. However important such principles may be, they remain insufficient and too general to lead to decisive actions. This is why the Parties committed to negotiating specific agreements. Today, seven sectoral protocols translate the principles set out in the Convention in various strategic fields: dumping, prevention and emergency, pollution from land-based sources, specially protected areas and biodiversity, offshore activities, movements of hazardous wastes – and most recently ICZM.

From the mid-1990s, changes in the international legal framework further to the Rio Summit (Kiss, 1993) and to the entry into force of the United Nations Convention on the Law of the Sea (Beurier and Cadénat, 1994), led the Mediterranean States to consider adjusting the cooperation system (Just Ruiz, 1995; Scovazzi, 1996). The revision of the Barcelona Convention in 1995 was initially terminological, reflecting the expansive scope of the amended text. The Convention was then called the "Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean". The geographical application of the text was henceforth extended to "coastal areas as defined by each Contracting Party within its own territory[3]", opening up possibilities for the regional regulation of Mediterranean coastal zones. Thus, the extension of the application of the Convention to coastal zones revealed the new importance granted to these areas. This trend is also supported by MAP Phase II, which contains specific references to ICZM: "Management strategies for the Mediterranean coastal regions should ensure that limited and fragile resources are used in a sustainable manner by means of planning and regulations to conserve their ecological value and to promote activities to improve the quality of life of the coastal populations. Integrated coastal area management requires understanding of the links existing between coastal resources, their use and the mutual impact of development and environment (…). Integrated coastal area management should gradually become the standard approach for tackling the problems affecting Mediterranean coastal areas". An important milestone within the MAP system was the creation of the Mediterranean Commission on Sustainable Development (MCSD). Its first working group was established to deal with ICZM and proposed "Recommendations for ICZM in the Mediterranean" that were adopted by the Contracting Parties to the Barcelona Convention. From

[1] Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Monaco, Montenegro, Morocco, Slovenia, Spain, Syria, Tunisia and Turkey. The European Union is also a Contracting Party to the Barcelona Convention.

[2] See UNEP, Report of the governing council on the work on its first session, 12-22 June 1973, United Nations, New York, 1973 and UNEP, Report of the governing council on the work on its second session, 11-22 March 1974, United Nations, New York, Decision 8(II).

[3] Article 1-2.

the mid-1990s, ICZM therefore became a key reference of the Barcelona system due to the fact that alongside the aforementioned regional changes, the concept also saw global development and high semantic success beginning in the 1970s (Billé, 2004).

Thus, following the US Coastal Zone Management Act (1972), different coastal management initiatives were launched not only in the US but in many countries, often under the impetus of international donors. Known as the "Coastal Area Management Programmes" (CAMPs), being coordinated since 1990 by PAP/RAC, they were still limited in scope, but nevertheless laid groundwork for the emerging debate (Cicin-Sain and Knecht, 1998). At the same time, from the early 1980s, researchers in the field of coastal zones increasingly used the concept of integration, like their colleagues specialising in other fields of environmental management. In this regards, we can mention the seminal works of Underdal (1980), Sorensen (Sorensen et al., 1984) or Cicin-Sain and Knecht (1985), which nevertheless differ somewhat in their use of the term integration and its meaning. In July 1989, 28 of the most eminent coastal management specialists from 13 different countries gathered for 5 days in Charleston (USA) and succeeded in stabilising a common vocabulary based on a number of fundamental concepts (Sorensen, 1993).

From then on, the ICZM debate was fuelled and directed by the preparations for the United Nations Conference on Environment and Development in Rio (UNCED, June 1992). In 1991, FAO (FAO, 1991) and OECD (OECD, 1991) published the first two official documents advocating and describing ICZM. Finally, the Rio Conference saw ICZM move from the field of research into that of public policies and their associated international recommendations. Thus, chapter 17 of Agenda 21 insists on the importance of the oceans and coastal areas for the ecological balance of the planet and highlights the sustainable development opportunities provided by coastal areas. This vision is based on the need to adopt new approaches to coastal zone management that are "integrated in content and are precautionary and anticipatory in ambit". In particular, the text indicates that "each coastal State should consider establishing, or where necessary strengthening, appropriate coordinating mechanisms (…) for integrated management and sustainable development of coastal and marine areas and their resources, at both the local and national levels." For many observers, the contents of the text was too vague and general. However, as underlined by Cicin-Sain and Knecht (1998), "broad international consensus was reached on major problems in the ocean and coastal arenas and on principles to guide concerted action to address these problems. The UNCED process also gave political legitimacy to the concept of integrated ocean and coastal management, underscoring the importance of "integration" in the process, something that heretofore had been argued mainly by academics". On that basis, ICZM was more and more broadly adopted from 1992 onwards and integrated into numerous international initiatives. It thus became a reference concept for the Coastal Zone Management subgroup of the Intergovernmental Panel on Climate Change (IPCC, 1992), for the Parties to the Convention on Climate Change (1992) and the Convention on Biological Diversity (1992), for the Programme of Action for the Sustainable Development of Small Island Developing States (1994), the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (1995), the International Coral Reef Initiative (1995) and, as previously mentioned, the revised version of the Barcelona Convention, whose article 4-3e calls for Contracting Parties to "commit themselves to promote the integrated management of the coastal zones, taking into account the protection of areas of ecological and landscape interest and the rational use of natural resources". Finally, the different stages of preparation for "Rio+10" (Bernal and Cicin-Sain, 2001; Pullen et al., 2001) and the Johannesburg Earth Summit itself (September 2002), reasserted the key role granted to ICZM in the sustainable development of coastal zones. At the same time, and further to chapter 17 of Agenda 21, which gives few precisions as to the implementation of ICZM, there was a significant increase in the number of guidelines and other forms of feedback published by or with the support of different international organisations, including the World Bank

(World Bank, 1993; Post and Lundin, 1996), FAO (Clark, 1992; Scialabba, 1998), UNESCO (Hénocque et al., 1997; Denis and Hénocque, 2001), UNEP (Brachya, Juhasz, Pavasovic and Trumbic, 1994; UNEP, 1995b; Hatziolos et al., 1998; UNEP/MAP/PAP, 1999), OECD (OECD, 1993a, b, 1997), the European Commission (1999), the Council of Europe (1999), the Inter-American Development Bank (IADB, 1998), IUCN (Pernetta and Elder, 1993) and WWF (Wilcox, 1994).

Finally, from the viewpoint of implementation, two major options have emerged over the last years: (i) a project-based approach using experimentation (or learning by doing), with a primarily local scope, whose "proliferation", identified by Sorensen as early as 1993 (Sorensen, 1993), has continued ever since (Billé, 2006; Garnaud and Rochette, 2012); (ii) an approach based on legal instruments, underpinned by the aforementioned international commitments, binding or otherwise, which are slowly being deployed at the regional and national levels insofar as the translation of a concept such as ICZM is problematic for legal science.

2. A brief history of the Protocol[4]

A prosperous scientific context and appropriate organisation of the negotiations enabled the development and adoption of the ICZM Protocol.

2.1. A prosperous scientific context

The vitality of the Mediterranean Action Plan has played a key role in making the ICZM Protocol possible. It can be seen almost daily in the production of scientific research by its standing bodies. For instance, from the mid-1990s, the issues relating to sustainable development in Mediterranean coastal areas were central to the studies and reports published under the regional system. This means that the results of the CAMPs were always the focus of reports and the overall process itself was subject to assessment (UNEP/MAP/PAP/METAP, 2002; PAP/RAC, 2001). Studies were also carried out on the national legislation**s** (Prieur and Ghezali, 2000; Gabbay, 2000; Randic and Trumbic, 1999) and general reports published about the implementation of ICZM. In 1995, for example, the "Guidelines for integrated management of coastal and marine areas with particular reference to Mediterranean basin" discussed common problems and conflicts in coastal areas, explained the concept and stages of the ICAM process, and underlined the necessary institutional, legal and financial arrangements. In 2001, the "Coastal Area Management in the Mediterranean" provided planners and decision makers with knowledge from examples of implementing ICAM (UNEP/MAP/PAP, 2001b). In the same year, a White Paper was published (UNEP/MAP/PAP, 2001), as a product of a thorough screening and analysis of a number of studies, statements, workshop reports and manuals, most of them elaborated in the framework of the MAP.

In addition to the aforementioned studies, a number of conferences, seminars and workshops were organised, facilitating information exchange between representatives of the Contracting Parties. At the same time, still existing scientific ties were developed across the Mediterranean community, fostering debates about issues at stake in coastal zone management and giving birth to the idea of an ICZM Protocol.

2.2. The negotiation process

At their November 2001 meeting, the Contracting Parties stated that a feasibility study should be developed, concerning "a regional protocol on the sustainable management of coastal zones[5]". From

[4] This section draws on Billé and Rochette, 2010.

this also proceeded a large number of seminars and workshops on the project. In September 2002, the 1st Expert Meeting on Feasibility Study for the MAP Protocol on ICZM in the Mediterranean was held in Athens. The participants of the meeting concluded that it would be best not to set before the States a protocol with detailed contents. This led to the review of a range of possibilities, from a "no protocol" to a "rigid protocol", which itself gave rise to three options: a protocol with general contents, a protocol with detailed contents and a so-called "intermediate protocol". In February 2003, a second Expert Meeting adopted the final version of the feasibility study and argued in favour of an intermediate protocol. In the same vein, the September 2003 Meeting of National Focal Points (NFPs) concluded that it would be opportune to issue a protocol with content detailed enough to be concretely enforced and thereby stimulate the States in their national legislations. Having gained support of the Contracting Parties at their 13th Ordinary Meeting in Catania in November 2003[6], the idea was followed by forming a drafting committee and initiation of Protocol's development.

Three stages can be distinguished in the drafting process of the ICZM Protocol for the Mediterranean: (1) the initiative for the drafting of the text, (2) the initial drafting of the text and (3) the negotiation on the text of the Protocol:

1. The idea of the Protocol was first promoted by one State, France, which sought to convince its partners that such an initiative would be timely. The Contracting Parties entrusted PAR/RAC to prepare a Feasibility Study first.
2. In 2003, a non-governmental expert group was entrusted with drawing up the text, under the leadership of Professor Michel Prieur. Two very broad consultative workshops were organised to which various stakeholders participated (in Cagliari, in May 2004 and in Oristano, in June 2005, both Sardinia, Italy). The final draft was then presented to the Parties in 2005. The text then served as a foundation for negotiations between the State representatives.
3. At their 14th Ordinary Meeting in Portoroz, Slovenia, the Contracting Parties established a governmentally designated group with a task to develop a draft text of the Protocol with a view for possible approval by the 15th Ordinary Meeting of the Parties. The Working Group met five times (in Split, in April 2006; in Loutraki, in September 2006 and February 2007; in Split, in June 2007; and in Loutraki, in December 2007).

2.3. Adoption, ratifications and entry into force

This was a lengthy negotiation process: each provision suggested by the experts in the text of the Protocol was thus subject to a review by the national delegations so that a consensus could emerge and lead to the Protocol's adoption on 21 January 2008[7]. It was signed by 14 States and by the European Commission. A process of ratification and transposition of the Protocol started by many Contracting Parties. After six notifications of ratification were submitted to the Depositary, the Protocol entered into force on 24 March2011[8].

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5 UNEP/MAP, Report of the 13th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea Against Pollution, Monaco, 14-17 November 2001, UNEP(DEC)/MED IG.13/8, Athens, 2001, Annex IV Recommendations, II.C.5.

6 Catania Declaration, Point 1.5.

7 Final Act of the Conference of Plenipotentiaries on the Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Madrid, 21 January 2008.

8 After ratification by Slovenia (25 September 2009), France (28 September 2009), Albania (18 February 2010), Spain (17 June 2010) and Syria (30 September 2010) and the European Union Conclusion (13 September 2010), the Mediterranean ICZM Protocol entered into force on 24 March 2011.

The main stages preceding the adoption and entry into force of the ICZM Protocol are presented in the table below.

Table 1: Main steps towards the Mediterranean ICZM Protocol

Emergence of ICZM issues in the Mediterranean	From 1978: implementation of ICZM trough the Coastal Area Management Programmes (CAMPs) From 1990: ICZM projects funded by the Mediterranean Environmental Technical Assistance Program (METAP) From 1996: 12 ICZM pilot projects implemented in the framework of the European demonstration programme on ICZM Publications on ICZM (Guidelines, 1995; Good Practices Guidelines, 2001; White Paper, 2001; For a Sound Coastal Management in the Mediterranean, 2002 ; etc) 1995: Revision of the Barcelona Convention and its extension to coastal zones; MCSD Recommendations for ICZM
Political consensus on a regional instrument	2001: COP 12 asks to prepare a feasibility study for a regional protocol on sustainable coastal management 2003: Publication of the feasibility study, demonstrating the need for a regional legal instrument and proposing 3 possible scenarios 2003: COP 13 asks for the preparation of a regional ICZM legal framework
Consultation and drafting processes	2003-2005: Consultation of regional stakeholders organised by PAP/RAC 2003: First meeting of the drafting committee 2005: Presentation of the "zero-draft" protocol
Negotiating process	2006-2007: 5 meetings of the working group of experts designated by the Contracting Parties
Adoption and entry into force of the Protocol	21 January 2008: Adoption of the ICZM Protocol 24 March 2011: Entry into force of the Protocol

2.4. A major legal innovation

Aimed at establishing a common framework for ICZM in the Mediterranean Sea, the Protocol on ICZM in the Mediterranean constitutes the first supra-State legal instrument specifically aimed at coastal zone management. Previously, coastal areas were governed in a fragmented manner by international law: sometimes a coastal zone was covered by protective measures set out in a text with a broader material or geographical scope; sometimes an activity, a habitat or a species specific to this area was covered by sectoral regulations (Prieur, 1984). Furthermore, the rare instruments aimed at moving beyond sectoral policies and guiding the national systems towards integrated coastal management remained confined to the realm of soft law. The Protocol is therefore an innovative instrument in several respects. First, it marks an important shift forward from the regulation of coastal zones by international law, moving beyond the simple framework of recommendations in favour of binding legal obligations. Second, it dramatically alters the traditional field of inter-State cooperation, moving into disciplines (administrative law, urban planning law, laws covering coastal economic activities, etc.) that were previously governed only by national laws.

3. Implementing the ICZM Protocol, a challenge for the Mediterranean coastal zones

There is general agreement that over the last few decades the Mediterranean coastal zones have set out on an unsustainable development path (Benoît and Comeau, 2005). The intensive shift of societies and economic activities towards the coast – a global phenomenon that is particularly acute in the Mediterranean – has a major impact on the integrity of natural ecosystems and on all associated ecosystem services. Faced with this situation, ICZM is acknowledged as a key tool for implementing sustainable development in coastal zones (Hatziolos*et al*., 1998). Signed in January 2008 by 14 of the 22 Parties to the Barcelona system, now ratified by 7 Parties (France, Slovenia, Albania, Spain, the European Union, Syria and Montenegro) and entered into force on 24 March 2011, the Mediterranean ICZM Protocol thus aims to give even greater support to the Mediterranean States in achieving sustainable development.

Nevertheless, a legal text, especially when it is drawn up at the international level, is above all the result of an often long and complex negotiation process, which gradually leads to each of its provisions being drafted. It is therefore the outcome of a series of compromises that progressively bring somewhat differing positions together until the States are united around a common vision. Consequently, this kind of legal instrument is often difficult to decipher: made up of a number of articles, divided into several different sections, sometimes referring to other instruments, and full of considerable editorial nuances, it requires a careful reading and in-depth analysis if its subtleties are to be understood. Moreover, even if the Protocol must be seen as a "monolithic" document – e.g. the Parties cannot pick and choose the articles they wish to apply but must implement the whole text in good faith – the heterogeneity of its provisions must be underlined. Last, beyond the North-South divide which is often a centre stage, it is important to note that some Mediterranean States are also members of the European Union (EU) and this belonging to two legal systems (European and Mediterranean) also raises several questions.

This report therefore aims at providing a legal and technical analysis of the Protocol in order to facilitate its understanding by a large range of stakeholders, beyond the sole lawyers, and help the States to identify methodologies for its implementation. It is however a non-negotiated analysis of a long-negotiated text: it is therefore undoubtedly subjective, though always written in good faith.

4. Report outline

The report proceeds as follows. Part II analyses the ICZM Protocol with the aim to reconcile its substantial rationality with the logic of the negotiation process which led to the final text. It proposes to reshuffle individual provisions entailed in various parts of the Protocol into four main bundles: section I gathers provisions dealing with the adaptation of coastal-related sectoral policies and the regulation of coastal activities; section II gathers those addressing governance processes; section III gathers provisions that relate to strategic planning; and section IV those relating to regional cooperation. A specific and detailed analysis of article 8-2 is provided in annex I. Part III then analyses the legal scope of the Protocol's provisions, distinguishing between obligations of result, obligations of conduct, and other types of obligations. These provisions are then analysed in face of EU law so as to explore how much overlap, synergies and contradictions there is in practice. Part IV concludes on (i) the key role of States in adapting the regional legal framework; (ii) the sometimes underestimated though crucial role of regional and urban planning documents for ICZM implementation; (iii) the need to progressively adjust governance patterns, as a cross-cutting concern; and (iv) the necessity to promote an ambitious implementation of the ICZM Protocol, beyond a strictly legal transcription.

PART II.
ANALYSIS OF THE MEDITERRANEAN ICZM PROTOCOL: AT THE CROSSROADS BETWEEN THE RATIONALITY OF PROVISIONS AND THE LOGIC OF NEGOTIATIONS

The text of the ICZM Protocol is broken down into seven parts: Part I: General provisions; Part II: Elements of ICZM; Part III: Instruments for ICZM; Part IV: Risks affecting the coastal zone; Part V: International cooperation; Part VI: Institutional provisions; and Part VII: Final provisions. It would have been straightforward – and consensual – to follow the existing architecture for the following analysis, going through each part and provision one after the other. However, this report takes another option which is to reshuffle the various provisions in four main building blocks, for two reasons.

First, the existing parts and their contents are rather heterogeneous, which is only usual after such a long and sometimes thorny negotiation process. Provisions pertaining to a same issue or to a similar kind of instruments are typically spread over several different parts, which makes the task of stakeholders difficult when they try to appropriate the contents of the text in light of their daily activity. Second, it was deemed stimulating for the purpose of analysis to confront the contents of the Protocol to a more theoretical approach to ICZM which the report's authors have developed building both on existing literature and on several decades of field experiences and pilot experiments. According to this approach, ICZM covers four main areas:

1. The adaptation of coast-related sectoral policies and regulation of coastal activities: this may include strengthening broader environmental policies for fragile coastal ecosystems, applying more stringent norms to agriculture or building, promoting codes of good practice for aquaculture or off-road driving, etc.;
2. Governance processes: institutional coordination, public participation, access to justice…
3. Spatial planning: urban, regional and marine spatial planning;
4. Regional cooperation: exchange of experiences, transboundary issues…

The Mediterranean ICZM Protocol is very comprehensive and synthesizes the essence of ICZM. Therefore, it comes as no surprise that all provisions can fit into this four-pronged framework, while being distributed nicely over these four categories. The framework which is used here arguably respects the spirit of the Protocol and the willingness of the negotiation Parties – for which purpose preparatory work[9] and negotiation reports[10] have been intensively used. At the same time, it ambitions to offer a

[9] In particular: UNEP/MAP, (2005), Draft Protocol on the integrated management of Mediterranean coastal zones, Meeting of MAP Focal Points, Athens (Greece), 21-24 September 2005, UNEP(DEC)/MED WG.270/5, 21 June 2005, 56p; UNEP/PAP-RAC, (2005), Report of the consultative workshop on draft protocol on integrated management of Mediterranean coastal zones, 24-25 June 2005, Torregrande-Oristano, Italy, Split, PAP/RAC. 76p; UNEP/PAP-RAC, (2004), Report of the regional stakeholders' forum on ICAM: Towards new Protocol, 28-29 May 2004, Cagliari, Italy, PAP/RAC, 154p; UNEP/PAP-RAC, (2003), Feasibility study for a legal instrument on integrated coastal area management in the Mediterranean, Split, PAP/RAC, 62p.

[10] UNEP/MAP, Report of the Fifth Meeting of the Working Group of Experts Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Loutraki, Greece, 10-11 December 2007, UNEP(DEPI)/MED WG.324/4, 18 December 2007, 31p; UNEP/MAP, Report of the Fourth Meeting of the Working Group of Experts Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Split, Croatia, 13-16 June 2007, UNEP(DEPI)/MED WG.318/4, 6 September 2007, 53p; UNEP/MAP, Report of the Third Meeting of the Working Group of Experts Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Loutraki, Greece, 12-15 February 2007, UNEP(DEPI)/MED WG 305/4, 16April 2007, 51p; UNEP/MAP, Report of the Second Meeting of the Working Group of Experts

clearer structure to stakeholders in need to decipher the text and find at a glance where specifically their own concerns are dealt with.

Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Loutraki, Greece, 6-9 September 2006, UNEP(DEPI)/MED WG.298/4, 5 October 2006, 44p; UNEP/MAP, Report of the First Meeting of the Working Group of Experts Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Split, Croatia, 27-29 April 2006, UNEP(DEPI)/MED WG.287/4, 29 May 2006, 38p.

SECTION I:
ADAPTATING COAST-RELATED SECTORAL POLICIES AND REGULATING COASTAL ACTIVITIES

The Protocol defines ICZM as "a dynamic process for the sustainable management and use of coastal zones, taking into account at the same time the fragility of coastal ecosystems and landscapes, the diversity of activities and uses, their interactions, the maritime orientation of certain activities and uses and their impact on both the marine and land parts[11]". Integrated management therefore particularly implies taking into account the interrelationships that exist between uses of the sea and coastal zones and the environment that they potentially affect. In this sense, ICZM aims to address the "implications of development, conflicting uses, and interrelationships between physical processes and human activities" (Cicin-Sain and Knecht, 1998). From a methodological viewpoint, the aim is thus to go beyond the sectoral approach and to make coastal management coherent by striving to achieve an articulated approach to all of its components: this is one of the fundamental dimensions of integration, a term stemming from the Latin *integrare*, which means "to reinstate something" or "to make something whole".

This does not however imply abandoning sectoral policies, since ICZM is intended to bring them into line rather than to replace them (Cicin-Sain and Knecht, 1998) – which would not be possible anyway since policies are, and will remain, essentially sectoral. Thus, integrated management "is not a substitute for sectoral planning, but avoids fragmentation by focusing on the linkages between different sectors" (Council of Europe, 1999). In this respect and in order to make the global approach coherent, it is particularly important to strengthen and adapt environmental (1) and risk management (2) policies to the specific nature of coastal zones, as well as to regulate sectoral activities having an influence on the evolution of coastal zones (3).

1. Preserving natural and cultural heritage

1.1. General principles

1.1.1 Preserving coastal ecosystems

Following on from its preamble, which recognises that Mediterranean coastal zones are "common natural and cultural heritage (…) and that they should be preserved", the ICZM Protocol includes several provisions on the preservation of marine and coastal ecosystems.

[11] Article 2f.

Preserving coastal ecosystems and resources (5b, 5c, 5d, 8-1, 8-3c)

"The objectives of integrated coastal zone management are to (…) preserve coastal zones for the benefit of current and future generations" (5b) and to "ensure preservation of the integrity of coastal ecosystems" (5d).
"The objectives of integrated coastal zone management are to (…) ensure the sustainable use of natural resources, particularly with regard to water use" (5c).
"The Parties shall endeavour to ensure the sustainable use and management of coastal zones in order to preserve the coastal natural habitats, landscapes, natural resources and ecosystems" (8-1).
"The Parties shall also endeavour to ensure that their national legal instruments include criteria for sustainable use of the coastal zone. Such criteria, taking into account specific local conditions, shall include, inter alia, the following: (…) ensuring that environmental concerns are integrated into the rules for the management and use of the public maritime domain" (8-3c).

Traditionally, a significant conflict exists between the need for immediate use of coastal resources and the necessity to ensure their long-term safeguard (Post and Lundin, 1996). Here, the reference to "future generations" (5b) encourages the States to step back from short-term considerations and to take the long term into account in their coastal management policies.

Application of the ecosystem approach (6c)

"The ecosystems approach to coastal planning and management shall be applied so as to ensure the sustainable development of coastal zones" (6c).

For the understanding and implementation of the ecosystem approach, the States can refer to the studies conducted by the meetings of the technical experts on the application of the ecosystem approach by MAP[12].

Preventing damage to the environment and restoration (6j)

"The Parties shall be guided by the following principles of integrated coastal zone management: (…) Damage to the coastal environment shall be prevented and, where it occurs, appropriate restoration shall be effected" (6j).

A major component of many international commitments (Chapter 17 of Agenda 21, the Jakarta Mandate of the Convention on Biological Diversity, etc.), the preservation of marine and coastal biodiversity is one of the fundamental goals of ICZM, and it is therefore not surprising that the Protocol gives this area special attention. The provisions on this issue are cross-cutting in nature: first, they apply to the whole coastal zone as defined by the text, and second, they concern all activities conducted within this area. This is a transposition of the provisions under the Barcelona Convention itself, whose Article 10 provides that "the Contracting Parties shall, individually or jointly, take all appropriate measures to protect and preserve biological diversity, rare or fragile ecosystems, as well as species of wild fauna and flora which are rare, depleted, threatened or endangered and their habitats, in the area to which this Convention applies".

Interestingly though, article 6j of the Protocol adds an obligation to restore the coastal environment when damage has not been prevented. According to TEEB (2009), "ecological restoration is defined as "the process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed" and is "intended to repair ecosystems with respect to their health, integrity, and self-sustainability" (International Primer on Ecological Restoration, published by the Society for Ecological Restoration (SER) International Science and Policy Working Group 2004). In a broader context, the ultimate goal of

[12] Meetings reports available at www.unepmap.org.

ecological restoration, according to the SER Primer, is to recover resilient ecosystems that are not only self-sustaining with respect to structure, species composition and functionality but also integrated into larger landscapes and congenial to "low impact human activities".

1.1.2 Preserving cultural heritage

Preserving cultural heritage (13-1)

"The Parties shall adopt, individually or collectively, all appropriate measures to preserve and protect the cultural, in particular archaeological and historical, heritage of coastal zones, including the underwater cultural heritage, in conformity with the applicable national and international instruments" (13-1).

***In situ* conservation (13-2)**

"The Parties shall ensure that the preservation in situ of the cultural heritage of coastal zones is considered as the first option before any intervention directed at this heritage" (13-2).

Conserving underwater cultural heritage (13-3)

"The Parties shall ensure in particular that elements of the underwater cultural heritage of coastal zones removed from the marine environment are conserved and managed in a manner safeguarding their long-term preservation and are not traded, sold, bought or bartered as commercial goods" (13-3).

These provisions set out in Article 13 are inspired by the UNESCO Convention on the Protection of the Underwater Cultural Heritage (Scovazzi, 2010), which particularly invites the States to cooperate at the regional level[13], to foster *in situ* conservation[14] and to prohibit the commercial exploitation of underwater cultural heritage[15].

1.1.3 Preserving landscapes

ICZM and landscapes (2f)

"Integrated coastal zone management means a dynamic process for the sustainable management and use of coastal zones, taking into account at the same time the fragility of coastal ecosystems and landscapes, the diversity of activities and uses, their interactions, the maritime orientation of certain activities and uses and their impact on both the marine and land parts" (2f).

The definition of ICZM proposed by the Protocol largely follows in the footsteps of research already conducted on this concept for many years: classically, it underlines the general objective of sustainable development, the dynamic nature of the process and the diversity of economic activities and uses linked to coastal areas. On the other hand, the reference to landscapes is more original and, to our knowledge, is only found elsewhere in the Model Law on Sustainable Management of Coastal Zones proposed by the Council of Europe in 1999[16]. This reference to landscapes first refers to the Barcelona Convention, which mentions the protection of areas of landscape interest as one element of the promotion of integrated management[17]. Some sectoral protocols also include landscape protection as one of the

[13] Article 6.

[14] Article 2-5.

[15] Article 2-7 of the Convention thus provides that "underwater cultural heritage shall not be commercially exploited".

[16] Article 1.

[17] Article 4-3e.

general obligations for the Parties; this is the case, for example, of the Protocols concerning pollution from land-based sources (Annex IIE1-c) and specially protected areas and biological diversity (Articles 4d, 6i and 8-2). In the case in point, the ICZM Protocol establishes a general principle – that of preserving coastal landscapes – and invites the States to adopt specific instruments.

Preserving coastal landscapes (5d, 8-1)

"The objectives of integrated coastal zone management are to (…) ensure preservation of the integrity of coastal ecosystems, landscapes and geomorphology" (5d).
"(…) the Parties shall endeavour to ensure the sustainable use and management of coastal zones in order to preserve (…) landscapes (…)" (8-1).

Adopting specific instruments (11-1)

"The Parties (…) shall adopt measures to ensure the protection of coastal landscapes through legislation, planning and management" (11-1).

The provisions of the Protocol that concern landscapes are largely in keeping with the European Landscape Convention, signed in Florence on 20 October 2000. This text applies to the entire territory of the Parties and includes land and inland and maritime waters. Its substantive scope – the landscape – is defined as "an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors[18]". The Parties undertake in particular to "co-operate in the consideration of the landscape dimension of international policies and programmes[19]". By including an article on landscapes, the ICZM Protocol is thus consistent with the objectives set by the Florence Convention, whose Article 9 provides that "the Parties shall encourage transboundary co-operation on local and regional level and, wherever necessary, prepare and implement joint landscape programmes".

1.2. Preserving specific vulnerable ecosystems

1.2.1 Ecosystems covered by the Protocol

In addition to the general principles on the preservation of natural, cultural and landscape heritage, the Protocol also includes several provisions on the protection of specific coastal ecosystems. The grounds for this special protection granted to certain habitats are based on different criteria: (i) geographical, linked to proximity to the sea (marine habitats, estuaries), (ii) environmental, for vulnerable habitats that are not necessarily immediately adjacent to the coast (forests, wetlands), and (iii) cultural, economic, geographical and environmental in the case of islands.

Preserving wetlands and estuaries (10-1)

"(…) The Parties shall: (a) take into account in national coastal strategies and coastal plans and programmes and when issuing authorizations, the environmental, economic and social function of wetlands and estuaries; (b) take the necessary measures to regulate or, if necessary, prohibit activities that may have adverse effects on wetlands and estuaries; (c) undertake, to the extent possible, the restoration of degraded coastal wetlands with a view to reactivating their positive role in coastal environmental processes" (10-1).

Mediterranean wetlands – deltas, lagoons and marshes, etc. – host some exceptional biodiversity and provide numerous ecosystem services. Particularly threatened by socio-economic development (drainage, urbanisation, pollution, climate change, etc.), they are given special attention in the ICZM

[18] Article 1a.
[19] Article 7.

Protocol, which provides for their preservation and, to the extent possible, their restoration. These provisions follow on from the Ramsar Convention of 1971, whose goal is "the conservation of wetlands and waterfowl[20]". Here, the Protocol requires the States to take into account the specific nature of wetlands and estuaries in their coastal policy and to regulate or even prohibit activities that may affect their integrity.

Adopting measures for the preservation of marine species and habitats (10-2a)

"The Parties (…) adopt measures to ensure the protection and conservation, through legislation, planning and management of marine and coastal areas, in particular of those hosting habitats and species of high conservation value" (10-2a).

The Protocol addresses the conservation of marine and coastal areas via the dual issue of habitats and species. For the Mediterranean European Union Member States, this provision calls for linkages with the implementation of the Natura 2000 network, on land and at sea. In general, the determination of "habitats and species of high conservation value" should be based on the inventories provided for in Article 16.

Adopting measures for the preservation of coastal forests and woods (10-3)

"The Parties shall adopt measures intended to preserve or develop coastal forests and woods located, in particular, outside specially protected areas" (10-3).

Preserving and rehabilitating dunes (10-4)

"The Parties undertake to preserve and, where possible, rehabilitate in a sustainable manner dunes and bars" (10-4).

This provision, which requires the States to preserve and rehabilitate dunes and bars, may be implemented in different ways, including (i) by moving coastal urbanisation back beyond zones containing dunes[21], (ii) by regulating the movement of pedestrians and vehicles, especially in the tourist season, or (iii) by setting up the appropriate facilities.

Preserving the island environment (12)

"The Parties undertake to (…) promote environmentally friendly activities in such areas" (12a).
"The Parties undertake to (…) take into account the specific characteristics of the island environment and the necessity to ensure interaction among islands in national coastal strategies, plans and programmes and management instruments, particularly in the fields of transport, tourism, fishing, waste and water" (12b).

As the Mediterranean includes 162 islands of over 10 km^2 and almost 4,000 smaller islets, the text encourages special management of these areas, taking into account their specific characteristics. This does not necessarily imply the development of strategies, plans and programmes particular to these areas, but means that their specific nature must at least be taken into consideration in programme-based instruments. This provision is of particular importance for the Mediterranean States which, like Greece or Croatia, include many islands.

[20] Article 4-1.

[21] See Annex 1.

1.2.2 Protection "outside specially protected areas"

Where wetlands, estuaries, marine habitats and coastal forests and woods are concerned, the Protocol provides for protection whether or not they are classed as specially protected areas. This is a key provision aimed at encouraging the States to ensure the systematic protection of these habitats, irrespective of the possible establishment of protected areas. This provision thus requires rules for protecting such ecosystems to be included in positive law. In France, for example, Article L 146-6 of the *Code de l'Urbanisme* (Urban Planning Code) lays down a similar obligation, guaranteeing the protection of certain ecosystems solely based on their "remarkable nature", wherever they are located in the coastal zone. More broadly, Article 8-3a asks the States to identify and delimitate "outside protected areas, open areas in which urban development and other activities are restricted or, where necessary, prohibited".

1.3. Knowledge of coastal zones

Since furthering knowledge of coastal systems is a key condition for the development of management policies, the Protocol includes an article on monitoring and observation mechanisms and networks.

Mechanisms for monitoring and observation (16-1)

"The Parties shall use and strengthen existing appropriate mechanisms for monitoring and observation, or create new ones if necessary" (16-1).

Preparing and updating inventories (16-1, 16-3)

"The Parties shall (…) prepare and regularly update national inventories of coastal zones which should cover, to the extent possible, information on resources and activities, as well as on institutions, legislation and planning that may influence coastal zones" (16-1).
"With a view to facilitating the regular observation of the state and evolution of coastal zones, the Parties shall set out an agreed reference format and process to collect appropriate data in national inventories" (16-3).

Participating in a Mediterranean coastal zone network (16-2)

"In order to promote exchange of scientific experience, data and good practices, the Parties shall participate, at the appropriate administrative and scientific level, in a Mediterranean coastal zone network, in cooperation with the Organization" (16-2).

1.4. Land management

The Protocol urges the Parties to use land policy instruments in the protection of coastal ecosystems.

Formulating land policy (20-1)

"Parties shall adopt appropriate land policy instruments and measures, including the process of planning" (20-1).

Adopting land policy instruments appears here as an obligation of result. The term "appropriate" should be understood here in terms of the goal of the Protocol (Article 1)and its objectives (Article 5).

Using tools such as protection agencies (20-2)

"Parties may inter alia adopt mechanisms for the acquisition, cession, donation or transfer of land to the public domain and institute easements on properties" (20-2).

This provision is directly inspired by the mechanism set up in France through the *Conservatoire de l'Espace Littoral et des Rivages Lacustres* (CELRL - French coastal protection agency). A public institution created in 1975[22], the *Conservatoire* conducts a coastal land acquisition policy, and can acquire land situated in coastal districts as defined by the law of 1975 and in coastal municipalities as set out in law N°86-2 of 3 January 1986[23]. Since 2002, the *Conservatoire* also has the authority to operate in the public maritime domain, especially in zones adjacent to its own land, with the aim of ensuring integrated coastal zone management. Thus, with a view to integrating land and marine areas, the CELRL may now act on the foreshore, beaches or mangroves and may be given portions of the public domain by the State for a duration of 30 years. As the property belonging to the organisation is part of the public domain, the land acquired benefits from consolidated legal protection. In January 2011, land belonging to the *Conservatoire du Littoral* covered 138,000 hectares, or over 1,200 km of coastlines and 600 natural sites. Tunisia, with the *Agence Nationale pour la Protection du Littoral*[24] (APAL – National agency for coastal protection) and the region of Sardinia, with the Sardinian Coastal Conservation Agency (Rochette, 2010), also have similar land policy mechanisms.

2. Addressing risk

2.1. Integrating the "risk" dimension in coastal policies

Reference to the risks facing coastal zones first appears in the preamble to the Protocol, with the Parties declaring themselves "worried by the risks threatening coastal zones due to climate change, which is likely to result, *inter alia*, in a rise in sea level, and aware of the need to adopt sustainable measures to reduce the negative impact of natural phenomena". In this regard, it is important to recall that Article 4-1e of the United Nations Framework Convention on Climate Change (UNFCCC) urges the States to "cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management". More broadly, the authors of the first draft Protocol[25], and the experts charged with negotiations[26], were well aware of the need to link ICZM to risk prevention.

Taking risk into account in the implementation of ICZM (5e)

"The objectives of integrated coastal zone management are to: (…) prevent and/or reduce the effects of natural hazards and in particular of climate change, which can be induced by natural or human activities" (5e).

Integrating the "risk" dimension in the ICZM national strategy (22)

"Within the framework of national strategies for integrated coastal zone management, the Parties shall develop policies for the prevention of natural hazards" (22).

[22] Law N°75-602 of 10 July 1975 creating the *Conservatoire de l'Espace Littoral et des Rivages Lacustres*, a public administrative body, JO of 10 July 1975 p.7126 (Article L 322-1ss of the Environmental Code).

[23] Law N° 86-2 of 3 January 1986 on the planning, protection and development of coastal areas, JO of 4 January 1986.

[24] Law N°95-72 of 24 July 1995 creating the *Agence de Protection et d'Aménagement du Littoral* (APAL).

[25] MAP/UNEP, Report of the Second Meeting of the Working Group of Experts Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Loutraki, Greece, 6-9 September 2006, UNEP(DEPI)/MED WG.298/4, §78.

[26] MAP/UNEP, Draft Protocol on Integrated Coastal Zone Management in the Mediterranean, Meeting of MAP Focal Points, Athens, Greece, 21-24 September 2005, p. 24.

According to the Protocol, the integration of the risk issue is an objective of ICZM which shall be translated into special policies.

2.2. Tools for integrating risks in coast-related sectoral policies

Establishing a coastal setback zone (8-2)

"(...) The Parties:
a) Shall establish in coastal zones, as from the highest winter waterline, a zone where construction is not allowed. Taking into account, inter alia, the areas directly and negatively affected by climate change and natural risks, this zone may not be less than 100 meters in width, subject to the provisions of subparagraph (b) below. Stricter national measures determining this width shall continue to apply.
b) May adapt, in a manner consistent with the objectives and principles of this Protocol, the provisions mentioned above: 1) for projects of public interest; 2) in areas having particular geographical or other local constraints, especially related to population density or social needs, where individual housing, urbanisation or development are provided for by national legal instruments" (8-2).

In the spirit of the authors of the Protocol, "with regard to the coastal fringe where building is not permitted (…) the relevance of the principle lies not only in the concern to protect an area of ecological and landscape interest which is very fragile due to the land-sea interface, but also the necessity to prevent natural risks resulting from the rise in sea levels related to climate change, thereby giving effect to the Convention on Climate Change[27]". For a detailed analysis of Article 8-2, see Annex 1.

Vulnerability and hazard assessments (22)

"The Parties (…) shall undertake vulnerability and hazard assessments of coastal zones" (22).

Although the notions of risk, hazard, vulnerability, etc. are subject to heated debates among specialists and disciplines (Magnan, 2009), it is often admitted that hazard assessment evaluate the potential extreme event *per se*, whereas vulnerability assessments combine the hazard assessment with an evaluation of its impacts on a given territory.

Adopting prevention, mitigation and adaptation measures (22, 23-1)

"The Parties shall (...) take prevention, mitigation and adaptation measures to address the effects of natural disasters, in particular of climate change" (22).
"In conformity with the objectives and principles set out in Articles 5 and 6 of this Protocol, the Parties, with a view to preventing and mitigating the negative impact of coastal erosion more effectively, undertake to adopt the necessary measures to maintain or restore the natural capacity of the coast to adapt to changes, including those caused by the rise in sea levels" (23-1).

The impact of climate change will vary across Mediterranean coastal regions: it will therefore be necessary to undertake vulnerability studies of coastal zones in order to develop robust adaptation strategies and measures. Major recent efforts at downscaling and regionalising climate scenarios (Navarra and Tubiana, 2011) are leading to a better understanding of what adaptation means in practice and how it can be implemented (see e.g. Billé *et al*., 2011).

[27] MAP/UNEP, Draft Protocol on Integrated Coastal Zone Management in the Mediterranean, Meeting of MAP Focal Points, Athens, Greece, 21-24 September 2005, p. 29.

Respecting carrying capacity as a tool for preventing risks (6b)

"All elements relating to hydrological, geomorphological, climatic, ecological, socio-economic and cultural systems shall be taken into account in an integrated manner, so as not to exceed the carrying capacity of the coastal zone and to prevent the negative effects of natural disasters and of development" (6b).

For an analysis of the carrying capacity concept, see 3.1.2.

Preliminary assessments (6i, 23-2)

"Preliminary assessments shall be made of the risks associated with the various human activities and infrastructure so as to prevent and reduce their negative impact on coastal zones" (6i).
"The Parties, when considering new activities and works located in the coastal zone including marine structures and coastal defence works, shall take particular account of their negative effects on coastal erosion and the direct and indirect costs that may result" (23-2).

These provisions echo Article 19 of the Protocol, providing for the use of environmental assessments, and invite the States to make preliminary assessments of risks in the development of coastal activities, infrastructure and works.

Anticipating coastal erosion (23-3)

"The Parties shall endeavour to anticipate the impacts of coastal erosion through the integrated management of activities, including adoption of special measures for coastal sediments and coastal works" (23-3).

This article translates a longstanding concern for many Mediterranean countries (see e.g. Özhan, 2002), although a wealth of successful sediment management experiments is available around the Basin. The CONSCIENCE project[28] recently published up-to-date "Guidelines for Implementation of Sustainable Coastal Erosion Management in local and regional initiatives".

3. Regulating coastal activities

3.1. Reconciling coastal activities and preservation of ecosystems

3.1 1 General principles applicable to all coastal activities

Mediterranean coastal zones are particularly threatened by the diversity and intensity of uses they endure, both on land and at sea. Coastal development is seen not only in the high concentration of populations, both permanent and seasonal, in coastal zones, but also in the considerable growth in economic and recreational activities in these areas. This phenomenon is clearly not without consequences for coastal ecosystems and the ICZM Protocol therefore calls for regulation of these many activities by subjecting their development to certain general principles.

[28] Concepts and science for coastal erosion management, EU's 6th Framework Programme for Research (FP6), http://www.conscience-eu.net/.

Respecting the principle of balance (5a, 6h)

"The objectives of integrated coastal zone management are to (…) facilitate, through the rational planning of activities, the sustainable development of coastal zones by ensuring that the environment and landscapes are taken into account in harmony with economic, social and cultural development" (5a).
"The Parties shall be guided by the following principles of integrated coastal zone management: (…) the allocation of uses throughout the entire coastal zone should be balanced, and unnecessary concentration and urban sprawl should be avoided" (6h).

In order to reconcile the development of coastal zones and environmental protection, the Protocol encourages the application of a "principle of balance". These provisions, set out in Articles 5a and 6h, imply careful management of these zones with a view to reconciling the development of human activities and the preservation of natural landscapes and areas. In France, this "principle of balance" is laid down in Article L 146-2 of the *Code de l'Urbanisme*, a provision stemming from the *Loi Littoral*. Compliance with the principle of balance by no means implies prohibiting any new urbanisation. However, it does mean that this urbanisation must not exceed a certain threshold, at the risk of compromising the achievement of other priorities, which are also legitimate. This threshold is defined here by the "carrying capacity" (see 3.1.2).

Providing for freedom of access to the sea and along the shore (8-3d)

"The Parties shall also endeavour to ensure that their national legal instruments include criteria for sustainable use of the coastal zone. Such criteria, taking into account specific local conditions, shall include, inter alia, the following: (…) providing for freedom of access by the public to the sea and along the shore" (8-3d).

The Protocol invites the States to recognise and provide freedom of access by the public to the sea and along the shore. This provision particularly implies: (i) taking this requirement into account in the localisation of coastal activities, whether economic or recreational, and (ii) organising this access, especially by instituting easements.

Addressing activities that require immediate proximity to the sea (6g, 9-1a)

"The multiplicity and diversity of activities in coastal zones shall be taken into account, and priority shall be given, where necessary, to public services and activities requiring, in terms of use and location, the immediate proximity of the sea" (6g).
"The Parties shall (…) accord specific attention to economic activities that require immediate proximity to the sea" (9-1a).

As Mediterranean coastal zones are facing a growing number of conflicting uses, a result of the phenomenon of coastal development, the Protocol proposes a method for regulating these disputes, by promoting the development of activities requiring immediate proximity to the sea. Some Mediterranean States already use this concept where setback zones are concerned, providing for derogations for this type of activity – essentially traditional coastal activities.

Careful management of natural resources (9-1b)

"The Parties shall (…) ensure that the various economic activities minimize the use of natural resources and take into account the needs of future generations" (9-1b).

Managing water resources and waste (9-1c)

"The Parties shall (…) ensure respect for integrated water resources management and environmentally sound waste management" (9-1c).

Adapting the coastal and maritime economy (9-1d)

"The Parties shall (…) ensure that the coastal and maritime economy is adapted to the fragile nature of coastal zones and that resources of the sea are protected from pollution" (9-1d).

3.1.2 Specific tools to be used

In addition to the aforementioned general principles, the Protocol provides for the implementation of specific tools, aimed at reconciling the development of coastal activities and the preservation of ecosystems.

Defining indicators of the development of economic activities (9-1e)

"The Parties shall (…) define indicators of the development of economic activities to ensure sustainable use of coastal zones and reduce pressures that exceed their carrying capacity" (9-1e).

Taking into account the carrying capacity of coastal zones (6b, 18-3, 19-3)

"The Parties shall be guided by the following principles of integrated coastal zone management: (…) All elements relating to hydrological, geomorphological, climatic, ecological, socio-economic and cultural systems shall be taken into account in an integrated manner, so as not to exceed the carrying capacity of the coastal zone and to prevent the negative effects of natural disasters and of development" (6b).
"Coastal plans and programmes, which may be self-standing or integrated in other plans and programmes, shall specify the orientations of the national strategy and implement it at an appropriate territorial level, determining, inter alia and where appropriate, the carrying capacities and conditions for the allocation and use of the respective marine and land parts of coastal zones" (18-3).
"The environmental assessments should take into consideration the cumulative impacts on the coastal zones, paying due attention, inter alia, to their carrying capacities" (19-3).

Like the White Paper on Coastal Zone Management in the Mediterranean (UNEP/MAP/PAP, 2001) or the UNEP Guidelines for Integrated Coastal Area Management (UNEP/MAP, 1995), the Protocol calls for the use of the concept of "carrying capacity" in the development of coastal policy. This capacity should be assessed at the level of homogeneous portions of the coast and may be understood as the development threshold that an area cannot exceed without irremediably going against environmental objectives and/or adversely disturbing the socio-cultural or socio-economic equilibrium of the human communities present.

Promoting codes of good practice (9-1f)

"The Parties shall (…) promote codes of good practice among public authorities, economic actors and non-governmental organizations" (9-1f).

The promotion of codes of good practice draws on various international experiences such as the European Aquaculture code of conduct[29] (1998) prepared by the Federation of European Aquaculture Producers. Its primary goal is to promote the responsible development and management of a viable European aquaculture sector in order to assure a high standard of quality food production while respecting environmental considerations and consumers' demands. In 2005, Croatia elaborated its own

[29] http://www.aquamedia.info/consensus/

guidelines for marine aquaculture[30]. Another well-known example is the FAO Code of conduct for responsible fisheries[31] adopted in 1995.

Taking into account the sensitivity of the environment in studies of environmental impact assessment for projects (19-1)

"Taking into account the fragility of coastal zones, the Parties shall ensure that the process and related studies of environmental impact assessment for public and private projects likely to have significant environmental effects on the coastal zones, and in particular on their ecosystems, take into consideration the specific sensitivity of the environment and the inter-relationships between the marine and terrestrial parts of the coastal zone" (19-1).

Using strategic environmental assessment of coastal plans and programmes (19-2)

"In accordance with the same criteria, the Parties shall formulate, as appropriate, a strategic environmental assessment of plans and programmes affecting the coastal zone" (19-2).

Environmental assessment and carrying capacity (19-3)

"The environmental assessments should take into consideration the cumulative impacts on the coastal zones, paying due attention, inter alia, to their carrying capacities" (19-3).

Environmental assessments are appropriate mechanisms for preventing the degradation of biodiversity and ensuring coastal activities are compatible with the preservation of ecosystems. Consequently, Article 19 envisages the use of assessments through two types of instruments: (i) environmental impact assessments (EIAs) for public and private projects likely to have significant environmental effects on the coastal zone, and (ii) strategic environmental assessments (SEAs) for plans and programmes that are likely to significantly affect the integrity of ecosystems. In addition to the environmental section, the Protocol also calls for prior assessment of risks associated with different human activities and infrastructure[32].

3.2. Regulating specific activities

Some coastal activities are covered by specific provisions with a view to achieving better management and more systematic reconciliation with requirements for preserving ecosystems.

Subjecting activities to authorisation (9-2ei, 9-2f)

"The Parties agree (…) to subject to prior authorization the excavation and extraction of minerals, including the use of seawater in desalination plants and stone exploitation" (9-2ei).
"The Parties agree (…) to subject such infrastructure, facilities, works and structures to authorization so that their negative impact on coastal ecosystems, landscapes and geomorphology is minimized or, where appropriate, compensated by non-financial measures" (9-2f).

The Protocol subjects excavation and extraction activities as well as infrastructure, energy facilities, ports and maritime works to prior authorisation. The implementation of this obligation requires, *inter alia*, the organisation of administrative procedures to this effect.

[30] Guidelines to Marine Aquaculture Planning, Integration and Monitoring in Croatia, Zagreb, 2005.
[31] http://www.fao.org/fishery/code/en
[32] See 3.2 below.

Regulating, restricting and prohibiting activities (8-3b, 8-3e, 9-2)

"Limiting the linear extension of urban development and the creation of new transport infrastructure along the coast" (8-3b).
"Restricting or, where necessary, prohibiting the movement and parking of land vehicles, as well as the movement and anchoring of marine vessels, in fragile natural areas on land or at sea, including beaches and dunes" (8-3e).
"The Parties agree (…) to regulate aquaculture by controlling the use of inputs and waste treatment" (9-2cii).
"The Parties agree (…) to regulate the extraction of sand, including on the seabed and river sediments or prohibit it where it is likely to adversely affect the equilibrium of coastal ecosystems" (9-2eii).
"The Parties agree (…) to regulate or, where necessary, prohibit the practice of various sporting and recreational activities, including recreational fishing and shellfish extraction" (9-2diii).

Several marine and coastal activities must therefore be regulated in order to limit or remove their footprint on natural areas and resources. Regulating, restricting or prohibiting these activities implies adopting and implementing laws governing either the activities themselves, or their development within a given coastal zone.

The Protocol first requires limiting the linear extension of urban development and the creation of new transport infrastructures along the coast. It also binds the States to regulate the movement and parking of land vehicles: this provision invites the States to adopt a regulation to restrict or prohibit the movement and parking of vehicles within fragile natural areas, such as beaches, dunes or forests. Similarly, maritime traffic must be regulated in order to avoid the degradation of marine ecosystems. By way of example, the anchoring of vessels in areas with high concentrations of Posidonia sea grass (risk of degradation) or invasive species (risk of propagation) should be prohibited. Since the Protocol remains vague as to the type of navigation concerned, it may be considered that these provisions apply to commercial, scientific research, sailing, and military vessels subject to the provisions of Article 4-2.

Aquaculture, an activity which has increased in the last few years and which has potential strong impacts on the coastal and marine environment, is also covered by specific provisions. The Protocol indeed requires the States to regulate the use of inputs (drugs, vitamins, feed, etc.) as well as waste treatment.

Since sand extraction may have adverse effects on the marine and coastal environment (turbidity of water that is harmful to benthic fauna and flora, changes to currents, increase in coastal erosion, etc.), it must be regulated as well.

Finally, tourism is also covered by specific provisions. This activity, which is an important source of revenue for the Mediterranean Basin (UNEP/MAP – Blue Plan, 2009), contributes to biodiversity depletion by fostering the artificialisation of land and marine areas, the degradation of sites of special interest, the introduction of non-native species or the over-exploitation of natural resources. It has considerable impacts on different ecosystems such as coastal dunes (construction of hotels and other infrastructure, trampling, etc.), wetlands (drainage, waste water, solid waste, competition with tourist water consumption, etc.), underwater vegetation (coastal development, artificial beaches, sailing, etc.), coralligenous algae, and coastal forests, and also endangers the survival of several species such as marine turtles (tourist presence on beaches during laying season), monk seals, or different species of cetaceans, birds and fish (high demand for certain species such as groupers, swordfish and tuna). Nature tourism itself, if poorly regulated, may have adverse effects due to the (excessive) number of visitors it brings to natural areas, especially to small islands and other fragile areas when the carrying capacity is exceeded. The Protocol therefore encourages sustainable coastal tourism and the regulation of sporting and recreational activities.

Guaranteeing compatibility between the development of activities and the preservation of natural, cultural and landscape heritage (9-2)

"The Parties agree (…) to guarantee a high level of protection of the environment in the location and operation of agricultural and industrial activities so as to preserve coastal ecosystems and landscapes and prevent pollution of the sea, water, air and soil" (9-2a).
"The Parties agree (…) to take into account the need to protect fishing areas in development projects" (9-2bi).
"The Parties agree (…) to encourage sustainable coastal tourism that preserves coastal ecosystems, natural resources, cultural heritage and landscapes" (9-2di).
"The Parties agree (…) to promote specific forms of coastal tourism, including cultural, rural and ecotourism, while respecting the traditions of local populations" (9-2dii).
"The Parties agree (…) to conduct maritime activities in such a manner as to ensure the preservation of coastal ecosystems in conformity with the rules, standards and procedures of the relevant international conventions" (9-2g).

Without giving specific indications as to methods of implementation, the ICZM Protocol thus imposes on several maritime and coastal activities a development that is compatible with the preservation of natural, cultural and landscape heritage.

Security and defence (4-4)

"Nothing in this Protocol shall prejudice national security and defence activities and facilities; however, each Party agrees that such activities and facilities should be operated or established, so far as is reasonable and practicable, in a manner consistent with this Protocol" (4-4).

National security and defence activities are encouraged to be developed in the respect of the Protocol.

Academic literature (Cicin-Sain and Knecht, 1998) and international organisation documents (Agenda 21, Chapter 17) have always stressed the importance of institutional and organisational arrangements and processes in the implementation of ICZM. The Protocol therefore includes several provisions on governance methods for coastal zones, aimed at (1) consolidating integration mechanisms, and (2) ensuring information and public / stakeholder participation.

1. Consolidating integration mechanisms

Throughout the Protocol, we find the five dimensions of integration identified by Cicin-Sain and Knecht in 1998: spatial integration (1.1), intersectoral integration (1.2), intergovernmental integration which we choose to name "institutional integration" here for better clarity, (1.3), science-management integration (1.4) and international integration (1.5).

1.1. Spatial integration

Historically, terrestrial and marine areas have been approached as separate entities. However, "the coastline does not separate two foreign worlds, the land and the sea, but unites two environments that interact at the physical level and, increasingly, at the economic level" (Bonnot, Y., 1995). Spatial integration therefore implies going beyond this restrictive approach in order to reconstitute the unity of the land-sea ecosystem. Consequently, it is necessary to determine an appropriate field of intervention, transcending the traditional administrative units, which are unsuited to geographical realities, in order to take into account the interrelationships between land and marine habitats and activities. The concept of the homogeneous function zone (Council of Europe, 1993), or the coherent management unit (IOC/UNESCO, 1997), is useful to this approach: it serves to extend the coastal zone according to environmental criteria (the influence of drainage basins, the existence of sources of pollution in hinterland areas, etc.) but also to socio-economic criteria (development projects, living and employment areas that benefit from the influence of the sea, etc.). The definition of the coastal zone put forward by the European Union in 1996 – "the coastal zone is defined as a strip of land and sea of varying width depending on the nature of the environment and management needs" – perfectly reflects this approach. Nevertheless, recent legal developments at the EU level, like the Water Framework Directive and the Marine Strategy Framework Directive, sometimes raise concern about land-sea integration. It is then all the more important to notice that the Protocol calls for the unity of the land-sea ecosystem to be taken into account.

Taking into account the unity of the land-sea ecosystem (2e, 2f, 6a, 7-1b)

"Coastal zone" means the geomorphologic area either side of the seashore in which the interaction between the marine and land parts occurs (…)" (2e).
"Integrated coastal zone management" means a dynamic process for the sustainable management and use of coastal zones, taking into account (…) the maritime orientation of certain activities and uses and their impact on both the marine and land" (2f)".
"(…) the Parties shall be guided by the following principles of integrated coastal zone management: the biological wealth and the natural dynamics and functioning of the intertidal area and the complementary and interdependent nature of the marine part and the land part forming a single entity shall be taken particularly into account" (6a)"
"(…) the Parties shall: organize appropriate coordination between the various authorities competent for both the marine and the land parts of coastal zones in the different administrative services, at the national, regional and local levels" (7-1b)".

Geographical coverage of the Protocol (3-1, 3-2)

"1. The area to which the Protocol applies shall be the Mediterranean Sea area as defined in Article 1 of the Convention. The area is also defined by:
(a) the seaward limit of the coastal zone, which shall be the external limit of the territorial sea of Parties; and
(b) the landward limit of the coastal zone, which shall be the limit of the competent coastal units as defined by the Parties.
2. If, within the limits of its sovereignty, a Party establishes limits different from those envisaged in paragraph 1 of this Article, it shall communicate a declaration to the Depositary at the time of the deposit of its instrument of ratification, acceptance, approval of, or accession to this Protocol, or at any other subsequent time, in so far as:
(a) the seaward limit is less than the external limit of the territorial sea;
(b) the landward limit is different, either more or less, from the limits of the territory of coastal units as defined above , in order to apply, inter alia, the ecosystem approach and economic and social criteria and to consider the specific needs of islands related to geomorphological characteristics and to take into account the negative effects of climate change".

Articles 3-1 and 3-2 on the geographical coverage of the Protocol also reveal the necessity for the States to take into account the specificity of the coastal zones, and in particular to implement spatial integration. This geographical coverage of the Protocol – i.e. the area where its provisions must be implemented – is both precise and flexible.

First, Article 3-1 binds the States to implement the Protocol's provisions (a) at sea, until the limits of the territorial sea, (b) at land, on the "competent coastal units". The seaward limit does not require specific developments: it corresponds to the limit of the territorial sea, which can extend up to 12 nautical miles according to UNCLOS. As far as the landward limit is concerned, the Protocol refers to the "competent coastal units" which are "the municipalities in several Mediterranean States, or other corresponding units in other States in the region, such as wilayas and counties[33]".

However, in order to adapt to specific national and local conditions, and in particular to apply the ecosystem approach, Article 3-2 authorises States to establish different limits from those envisaged in Article 3-1. Provided they declare it to the Depositary, the States can decide to implement the Protocol (a) on a marine area smaller than the whole territorial sea, (b) on a terrestrial area smaller or wider than the territory of the coastal units. At land, it means that the geographical coverage of the Protocol can be smaller than a coastal city or include one or several other municipalities which, "although not on the sea

[33] UNEP/MAP, (2005), Draft Protocol on the integrated management of Mediterranean coastal zones, Meeting of MAP Focal Points, Athens (Greece), 21-24 September 2005, UNEP(DEC)/MED WG.270/5, 21 June 2005, p.24.

coast, forms part of a population centre or an important component of a coastal ecosystem (such as a wetland located near to the sea)[34]". The underlying objective of Article 3-2 is to encourage the States to consider the coastal zone not only in terms of an administrative frontier, but also according to ecological, social and economic approaches. This flexibility granted by Article 3-2 therefore aims at implementing the Protocol on a relevant area, determined by several criteria (administrative, ecological, social, economic, etc.) and concepts (including the ecosystem approach and spatial integration).

1.2. Intersectoral integration

As the coastal zone is the hub of many different activities and the meeting point of several jurisdictions, the coordination of public decision-making processes and bodies is a major challenge highlighted in the Protocol.

Ensuring intersectoral coordination (5f, 7-2)

"The objectives of integrated coastal zone management are to: (…) achieve coherence between public and private initiatives and between all decisions by the public authorities, at the national, regional and local levels, which affect the use of the coastal zone" (5f).
"Competent national, regional and local coastal zone authorities shall, insofar as practicable, work together to strengthen the coherence and effectiveness of the coastal strategies, plans and programmes established" (7-2).

The Protocol thus calls for establishing intersectoral coordination by striving to achieve coherence between the different policies implemented in coastal zones, from agriculture to tourism, and from extractive activities to transport. In this sense, "ICZM differs from the earlier form of CZM in that it attempts a more comprehensive approach taking account of all of the sectoral activities that affect the coastal zone and its resources and dealing with economic and social issues as well as environmental/ecological concerns" (Post and Lundin, 1996). Specific structures can help to achieve this objective of intersectoral integration. By gathering the different sectors involved in coastal zones management, ICZM Committees, be they formally instituted (Egypt, Syria) or not (Croatia) and whatever their names (e.g. *Conseil national de la mer et des littoraux*, in France) have the potential to make this intersectoral coordination easier.

Declaration of the principle of participation (6d, 14-1)

"Appropriate governance allowing adequate and timely participation in a transparent decision-making process by local populations and stakeholders in civil society concerned with coastal zones shall be ensured" (6d).
"With a view to ensuring efficient governance throughout the process of the integrated management of coastal zones, the Parties shall take the necessary measures to ensure the appropriate involvement (…) of the various stakeholders" (14-1).

In the same vein, stakeholder participation in decision-making processes is also a way to ensure increased intersectoral integration: it is true as far as private decision making is concerned, but also to better inform sectoral public decisions with intersectoral considerations.

1.3. Institutional integration

In addition to intersectoral coordination, the authors of the Protocol found it necessary to give special attention to institutional integration, since "all the international and national documents and reports, as

[34] UNEP/MAP, (2005), Draft Protocol on the integrated management of Mediterranean coastal zones, Meeting of MAP Focal Points, Athens (Greece), 21-24 September 2005, UNEP(DEC)/MED WG.270/5, 21 June 2005, p.24.

well as the various experiments in integrated coastal zone management, emphasize the difficulties which arise out of the dispersion of responsibilities for the coastal zone between a multitude of services and administrative units[35]". Thus, the Protocol invites the States to ensure administrative coordination between the competent authorities in the coastal zone and to strengthen links between the competent administrative departments in coastal and marine areas.

Ensuring institutional coordination (6e, 7-1a, 7-1b, 7-1c)

"Cross-sectorally organized institutional coordination of the various administrative services and regional and local authorities competent in coastal zones shall be required" (6e).
"The Parties shall (…) ensure institutional coordination, where necessary through appropriate bodies or mechanisms, in order to avoid sectoral approaches and facilitate comprehensive approaches" (7-1a).
"The Parties shall (…) organize appropriate coordination between the various authorities competent for both the marine and the land parts of coastal zones in the different administrative services, at the national, regional and local levels" (7-1b).
"The Parties shall (…) organize close coordination between national authorities and regional and local bodies in the field of coastal strategies, plans and programmes and in relation to the various authorizations for activities that may be achieved through joint consultative bodies or joint decision-making procedures" (7-1c).

The matter of creating a special authority for this task is not settled by the text, which only mentions the use of "appropriate bodies or mechanisms". Numerous studies nevertheless advocate the creation of a special ICZM authority and press for institutional coordination. Thus, in 1995, UNEP called for the "designation of a *lead agency* for coastal management at the national level (…). The role of the lead agency is to be a facilitator for bringing together various agencies involved in ICAM and stimulating a dialogue between them". Likewise, Article 27 of the Model Law on Sustainable Management of Coastal Zones of the Council of Europe provides that at national level, "in order to facilitate integrated coastal-zone management, a clearly identified ministry, inter ministerial committee or national coastal-zone agency shall be responsible for giving impetus to and co-ordinating the action of the various authorities in charge of coastal zones". However, in the spirit of the authors of the Protocol, "this does not necessarily involve the merger of administrative services, but particularly the reduction of administrative barriers and the organization on a permanent basis of appropriate co-ordination so as to achieve territorial integration with regard to the land-sea division[36]". This may be achieved by creating an institution specifically for this purpose, or by using an authority or mechanisms that already exists.

1.4. Science-management integration

Adopting science-based decisions (15-3)

"The Parties shall provide for interdisciplinary scientific research on integrated coastal zone management and on the interaction between activities and their impacts on coastal zones (…). The purpose of this research is, in particular, to further knowledge of integrated coastal zone management (…) and to facilitate public and private decision-making" (15-3).

This article is in line with what has progressively become a principle of sustainable development, in particular areas like fisheries management. It is crucial in that the Mediterranean region has a wealth of scientists in all fields and disciplines relevant to ICZM, while scientific knowledge has too often been

[35] MAP/UNEP, Draft Protocol on Integrated Coastal Zone Management in the Mediterranean, Meeting of MAP Focal Points, Athens, Greece, 21-24 September 2005, p. 26.

[36] MAP/UNEP, Draft Protocol on Integrated Coastal Zone Management in the Mediterranean, Meeting of MAP Focal Points, Athens, Greece, 21-24 September 2005, p. 26.

ignored in decision-making. Implementation of this article may build on the on-going PEGASO[37] project, which aims among others at integrating "scientific, policy, managerial and societal views and attitudes towards ICZM governance in the Mediterranean and the Black Sea regions". In particular, the strategic line of WP2 is to construct an "ICZM governance platform to support the development of integrated policies for the coastal, marine and maritime realms of the Mediterranean and Black Sea Basins". It already conducted an inventory of Mediterranean research institutions, science capacity in ICZM work, scientific projects and scientific literature[38] which may prove helpful with regard to article 15-3.

1.5. International integration

For Cicin-Sain and Knecht, integration is also defined between countries whose respective actions affect the coastal zones of their neighbours. A number of provisions on strengthening regional cooperation refer to this dimension of integration, especially those relating to transboundary cooperation for coastal strategies, plans and programmes (Article 28) and to transboundary environmental assessments (Article 29). For a detailed analysis of these provisions, see section IV on regional cooperation.

2. Information, participation and the right to legal recourse

For many, the intrinsic nature of integrated management demands the active participation of stakeholders (UNEP/MAP, 1995; Council of the European Union, 2002; OECD, 1993). The idea of citizen participation in public affairs – *res publica* – refers to the Rousseauist theory of direct democracy. Representative democracy was in fact set up for practical reasons while the ideal of direct citizen participation persisted. In this sense, the right of citizens to environmental information recently emerged, recognised by international law[39] and increasingly associated with a real right to participate. In this regards, the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, adopted in June 1998 in the framework of the United Nations Economic Commission for Europe, is considered as a key reference in terms of environmental democracy. Article 15 of the Barcelona Convention already sets out certain provisions on information and participation, which are supplemented here by the ICZM Protocol. In this matter, the Protocol is not very precise regarding the mechanisms and procedures for ensuring the application of the information, participation and access to justice. For more precision and possible options, Parties can refer to the Aarhus Convention and its implementation guide[40]. Besides, it is crucial to recall that the Protocol's provisions must be implemented in conformity with the Decision IG.19/6 "MAP/Civil society cooperation and partnership" adopted during the COP 16, held in Marrakesh, Morocco, on 3-5 November 2009 and which recognises the active and constructive role of NGOs. This Decision and the related Code of conduct for MAP Partners gives rights and responsibilities to NGOs, including in terms of information and participation.

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[37] People for Ecosystem-based Governance in Assessing Sustainable development of Ocean and coast, funded by the European Union under FP7 (Grant agreement n°244170).

[38] See Pegaso project Deliverable 2.3 "Report on science capacity", August 2011.

[39] From Principle 10 of the Rio Declaration to EU law (Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJEC L-041 of 14 February 2003 p.26), the right to environmental information is now largely recognised in international law.

[40] This document is available at: http://live.unece.org/fileadmin/DAM/env/pp/acig.pdf

2.1. Information

2.1.1 Beneficiaries of information

The ICZM Protocol provides for a right to information for "populations and any relevant actor" (Article 3-3). Who exactly these populations and relevant actors may be remains to be determined. In any case, the contents of this particularly broad provision of the Protocol and the spirit that prevailed during negotiations call for the broadest definition possible of the populations and actors benefiting from the right to information.

2.1.2 Scope of information

Providing information on the Protocol (3-3)

"Each Party shall adopt or promote at the appropriate institutional level adequate actions to inform populations and any relevant actor of the geographical coverage of the present Protocol" (3-3).

Providing information on strategies, plans and programmes (14-2)

"With a view to ensuring such participation, the Parties shall provide information in an adequate, timely and effective manner" (14-2).

Providing information based on education and awareness-raising (15-1, 15-2)

"The Parties undertake to carry out, at the national, regional or local level, awareness-raising activities on integrated coastal zone management and to develop educational programmes, training and public education on this subject. 2. The Parties shall organize, directly, multilaterally or bilaterally, or with the assistance of the Organization, the Centre or the international organizations concerned, educational programmes, training and public education on integrated management of coastal zones with a view to ensuring their sustainable development" (15-1, 15-2).

Providing information on research (15-3, 16-4)

"The Parties shall provide for interdisciplinary scientific research on integrated coastal zone management and on the interaction between activities and their impacts on coastal zones. To this end, they should establish or support specialized research centres. The purpose of this research is, in particular, to further knowledge of integrated coastal zone management, to contribute to public information and to facilitate public and private decision-making" (15-3).
"The Parties shall take all necessary means to ensure public access to the information derived from monitoring and observation mechanisms and networks" (16-4).

Although the Protocol grants populations the right to information in several fields, it leaves it up to States to determine the mechanisms and procedures for ensuring the application of this right. In this regard, the Aarhus Convention is more precise. Indeed, the text binds the States Parties to ensure that, in response to a request for environmental information, public authorities make such information available to the public including copies of the actual documentation containing or comprising such information and without an interest having to be stated[41]. More broadly, the Convention asks the States to ensure that "environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunications networks[42]". Moreover, whereas the ICZM Protocol urges the States to provide information in a "timely manner", the Aarhus

[41] Article 4-1.

[42] Article 5-3.

Convention specifies that information shall be made available "at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request[43]".

2.2. Participation

2.2.1 Principle of participation

Declaration of the principle of participation (6d, 14-1)

"Appropriate governance allowing adequate and timely participation in a transparent decision-making process by local populations and stakeholders in civil society concerned with coastal zones shall be ensured" (6d).
"With a view to ensuring efficient governance throughout the process of the integrated management of coastal zones, the Parties shall take the necessary measures to ensure the appropriate involvement (…) of the various stakeholders" (14-1).

2.2.2 Beneficiaries of participation

Article 15-2 of the Barcelona Convention provides that "the Contracting Parties shall ensure that the opportunity is given to the public to participate in decision-making processes relevant to the field of application of the Convention and the Protocols, as appropriate". The ICZM Protocol specifies beneficiaries of participation as being "the territorial communities and public entities concerned; economic operators; non-governmental organizations; social actors" (14-1). Special mention is also given to the inhabitants of islands in order to ensure their participation "in the protection of coastal ecosystems based on their local customs and knowledge" (12a).

2.2.3 Scope of participation

Ensuring participation in the formulation and implementation of coastal strategies, plans and programmes (14-1)

"With a view to ensuring efficient governance throughout the process of the integrated management of coastal zones, the Parties shall take the necessary measures to ensure the appropriate involvement in the phases of the formulation and implementation of coastal and marine strategies, plans and programmes or projects, as well as the issuing of the various authorizations, of the various stakeholders (…)" (14-1).

This provision on means of participation has been "carefully worded to show the availability of a mix of political and legal methods[44]". As with the right to information, the mechanisms aimed at ensuring participation are left to the discretion of States. Once again, provisions of the Aarhus Convention could inspire Mediterranean States when implementing the Protocol. For example, article 6-3 of the Aarhus Convention states that the "public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making". Furthermore, "each Party shall ensure that in the decision due account is taken of the outcome of the public participation" (article 6-8).

[43] Article 4-2.

[44] MAP/UNEP, Report of the Second Meeting of the Working Group of Experts Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Loutraki, Greece, 6-9 September 2006, UNEP(DEPI)/MED WG.298/4, §78.

2.3. The right to legal recourse

Recognising and providing for a right to legal recourse (14-3)

"Mediation or conciliation procedures and a right of administrative or legal recourse should be available to any stakeholder challenging decisions, acts or omissions, subject to the participation provisions established by the Parties with respect to plans, programmes or projects concerning the coastal zone" (14-3).

Experience of environmental matters shows that this issue of providing citizens for a right to legal recourse is crucial. In France for instance, recourses from individuals and associations have unquestionably been conclusive in ensuring the implementation of the *Loi Littoral*. Nevertheless, this right is not granted in all Mediterranean States.

Theoretically, it might be feared that the Parties will opt for a series of *ad hoc* amendments to their domestic laws for the application of the Protocol, without any guarantee of coherence in the approach to coastal issues. Since the deployment of strategic action conducted at the State level is the best safeguard against this, the Protocol imposes several obligations on States in this matter. This is an important acknowledgement of the position of States in the implementation of ICZM and of the role of planning in this process. Thus, "while bottom-up participation is an important component of successful coastal zone management, national policies guide the development of sectoral objectives as well as plans and investment strategies associated with the use of coastal areas and their natural resources" (Commission of the European Communities, 1999).

1. National ICZM strategy

1.1. General objective: formulating or strengthening a national ICZM strategy

Formulating or strengthening a national strategy for ICZM (18-1)

"Each Party shall further strengthen or formulate a national strategy for integrated coastal zone management (…) in conformity with the integrated management objectives and principles of this Protocol" (18-1).

This provision is seen by many as the "core of the Protocol[45]", requiring the States to adopt an ICZM Strategy. It is important to underline that the study of the negotiation meetings leads to conclude that the "national strategy for ICZM" (Article 18-1), the "national strategy" (Article 18-2) and the "national coastal" strategy (Article 10-1a) designate the same document, despite the utilisation of these three different terms.

Formulating or strengthening a national strategy for ICZM consistent with the Mediterranean Strategy for ICZM (17, 18-1)

"The Parties undertake to cooperate for the promotion of sustainable development and integrated management of coastal zones, taking into account the Mediterranean Strategy for Sustainable Development and complementing it where necessary. To this end, the Parties shall define, with the assistance of the Centre, a common regional framework for integrated coastal zone management in the Mediterranean to be implemented by means of appropriate regional action plans and other operational instruments, as well as through their national strategies" (17).

"Each Party shall further strengthen or formulate a national strategy for integrated coastal zone management and coastal implementation plans and programmes consistent with the common regional framework" (18-1).

The drafting of Article 17 of the Protocol calling for the adoption of a Mediterranean ICZM strategy has led to considerable debates. Some saw such a document as necessary in order to establish a "common vision", while others expressed their "strong doubts", fearing "a lot of extra work", questioning its "added value" and stressing that "it could be highly detrimental for coastal zones requiring urgent

[45] MAP/UNEP, Report of the Second Meeting of the Working Group of Experts Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Loutraki, Greece, 6-9 September 2006, UNEP(DEPI)/MED WG.298/4, §104.

action if countries had to wait until completion of a Mediterranean Strategy for ICZM before starting work on their national strategies[46]". The PAP/RAC is charged with overseeing the formulation of this strategy, which should begin over the next few months. The form of this strategy is however not determined by the Protocol: it can therefore be a self standing document or a part of another one, like the Mediterranean Strategy for Sustainable Development (MSSD), for example.

1.2. Contents of the national strategy

Formulating or strengthening a national strategy for ICZM including certain elements (10-1a, 12b, 18-2, 22)

"The national strategy, based on an analysis of the existing situation, shall set objectives, determine priorities with an indication of the reasons, identify coastal ecosystems needing management, as well as all relevant actors and processes, enumerate the measures to be taken and their cost as well as the institutional instruments and legal and financial means available, and set an implementation schedule" (18-2).
"The Parties shall take into account in national coastal strategies (…) the environmental, economic and social function of wetlands and estuaries" (10-1a).
"The Parties undertake to (…) take into account the specific characteristics of the island environment and the necessity to ensure interaction among islands in national coastal strategies (…)" (12b).
"Within the framework of national strategies for integrated coastal zone management, the Parties shall develop policies for the prevention of natural hazards" (22).

A simple reference to the strengthening or adoption of a national ICZM strategy would undoubtedly have been insufficient. Indeed, it would then be possible to consider a political declaration made at the end of an inter-ministerial meeting on coastal zones, a communication note of just a few lines prepared in high places, or an official speech presented by an environment minister as an example of a national strategy. Article 18-2 therefore sets out important requirements as to the minimum content of this strategy: (i) analysis of the existing situation; (ii) objectives; (iii) priorities; (iv) identification of ecosystems needing management; (v) identification of relevant actors and processes; (vi) measures to be taken and their cost; (vii) institutional instruments and legal and financial means available, and (viii) an implementation schedule. However, the form that this strategy must take remains to be determined. Could it be an administrative document, a ministerial report or a political declaration? Negotiation meetings provide little clarification on this and the authors of the first draft Protocol themselves had no preconceived ideas[47]. Regarding financial means available, Article 21 adds that "for the implementation of national coastal strategies and coastal plans and programmes, Parties may take appropriate measures to adopt relevant economic, financial and/or fiscal instruments intended to support local, regional and national initiatives for the integrated management of coastal zones".

Defining indicators for the implementation of the national coastal strategy, plans and programmes (18-4)

"The Parties shall define appropriate indicators in order to evaluate the effectiveness of integrated coastal zone management strategies, plans and programmes, as well as the progress of implementation of the Protocol" (18-4).

[46] MAP/UNEP, Report of the Second Meeting of the Working Group of Experts Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Loutraki, Greece, 6-9 September 2006, UNEP(DEPI)/MED WG.298/4, §96-99.

[47] "Whatever form they take, national strategies (…)": MAP/UNEP, Draft Protocol on Integrated Coastal Zone Management in the Mediterranean, Meeting of MAP Focal Points, Athens, Greece, 21-24 September 2005, p. 42.

For the definition of indicators, the Parties can refer to a broad literature on this issue (European Union Working Group, 2004; IOC, 2006). The main difficulty lies in striking a balance between indicators of processes (efforts) and of results (Olsen, Lowry, Tobey, 1999; Billé, 2007).

1.3. Formulation procedure

Participation in the formulation and implementation of the national coastal strategy, plans and programmes (14-1)

"(…) the Parties shall take the necessary measures to ensure the appropriate involvement in the phases of the formulation and implementation of coastal and marine strategies, plans and programmes (…) of the various stakeholders, including: the territorial communities and public entities concerned; economic operators; non-governmental organizations; social actors; the public concerned. Such participation shall involve inter alia consultative bodies, inquiries or public hearings, and may extend to partnerships" (14-1).

For an analysis of the provisions on participation, see Section II above.

Transboundary cooperation for the coordination of the national coastal strategy, plans and programmes (28)

"The Parties shall endeavour (…) to coordinate, where appropriate, their national coastal strategies, plans and programmes related to contiguous coastal zones. Relevant domestic administrative bodies shall be associated with such coordination" (28).

2. Coastal plans and programmes as tools for implementing national strategies

2.1. Form of coastal plans and programmes

"Coastal plans and programmes" are established as instruments for implementing a national strategy.

Formulating or strengthening coastal plans and programmes (18-1)

"Each Party shall further strengthen or formulate (...) coastal implementation plans and programmes" (18-1).

Formulating or strengthening coastal plans and programmes to implement the national strategy (18-3)

"Coastal plans and programmes (…) shall specify the orientations of the national strategy and implement it (…) determining, inter alia and where appropriate, the carrying capacities and conditions for the allocation and use of the respective marine and land parts of coastal zones" (18-3).

Coastal plans and programmes are in particular dedicated to specify and implement the national ICZM strategy. Article 18-3 provides indications as to the form that these coastal plans and programmes may take:

Form of coastal plans and programmes (18-3)

"Coastal plans and programmes (…) may be self-standing or integrated" (18-3).

The Protocol therefore simply specifies that plans and programmes may be "self-standing or integrated". Thus, "coastal plans and programmes may be conceived specially for integrated coastal

zone management and be set out in a specific document, or they may be conceived and integrated into strategies, plans and programmes of which the objectives or coverage are broader than mere coastal matters. In this latter case, they would be integrated into an overall environmental strategy or a land-use or urbanism plan[48]". In other words, these coastal plans and programmes may take the form of (i) a document specific to coastal zones, setting out methods for implementing the national ICZM strategy at an appropriate territorial level, or (ii) a section on coastal zone management within an existing document. It should be stressed that the notion of "coastal plans and programmes" nevertheless remains somewhat vague. Could these be ICZM projects or programmes, as classically understood in academic literature and within international organisations? (Billé and Rochette, 2010) Are these plans and programmes necessarily binding and opposable to local urban planning documents? Can the planning documents adopted at the national, regional or local level be considered as coastal plans and programmes? We believe that this intentionally broad formulation makes it possible to include all projects and documents, whether binding or not, aimed at implementing national ICZM strategies. However, we feel it is important to underline here that the use of regional planning documents, whatever the scope of their application, appears to be the most appropriate means of ensuring the application of many of the provisions of the Protocol, including: (i) the principle of balance, (ii) spatial integration, (iii) intersectoral integration, (iv) respecting carrying capacity, (v) taking into account the need for proximity to the sea, and (vi) establishing a coastal setback zone.

2.2. Formulation procedure

Participating in the formulation and implementation of the national coastal strategy, plans and programmes (14-1)

"(…) the Parties shall take the necessary measures to ensure the appropriate involvement in the phases of the formulation and implementation of coastal and marine strategies, plans and programmes (…) of the various stakeholders, including: the territorial communities and public entities concerned; economic operators; non-governmental organizations; social actors; the public concerned. Such participation shall involve inter alia consultative bodies, inquiries or public hearings, and may extend to partnerships" (14-1).

Transboundary cooperation for the coordination of the national coastal strategy, plans and programmes (28)

"The Parties shall endeavour (…) to coordinate, where appropriate, their national coastal strategies, plans and programmes related to contiguous coastal zones. Relevant domestic administrative bodies shall be associated with such coordination" (28).

Strategic environmental assessment of coastal plans and programmes, as appropriate (19-2)

(…) the Parties shall formulate, as appropriate, a strategic environmental assessment of plans and programmes affecting the coastal zone" (19-2).

The procedure for formulating coastal plans and programmes is the same as the one for national ICZM strategies, although the Protocol invites the Parties to make a prior strategic assessment, if necessary.

[48] MAP/UNEP, Draft Protocol on Integrated Coastal Zone Management in the Mediterranean, Meeting of MAP Focal Points, Athens, Greece, 21-24 September 2005, p. 42-43.

Inter-State cooperation is a founding and fundamental principle of international environmental law, and is of particular importance where enclosed or semi-enclosed seas are concerned[49]. The Protocol therefore contains several provisions aimed at encouraging and strengthening regional cooperation on ICZM, including with NGOs (32-2).

1. Principle of cooperation

1.1. Obligation to cooperate

The Barcelona Convention itself sets out this principle of cooperation by providing for the exchange of scientific data and information[50] as well as the transfer of technology[51]. The Convention also organises a system of assistance in the implementation of the legal obligations adopted: its Article 13-3 thus invites the Contracting Parties to "cooperate in the provision of technical and other possible assistance in fields relating to marine pollution (…)". Following on from these provisions, the ICZM Protocol establishes an obligation to cooperate, urging in particular to the development of a transboundary cooperation.

Strengthening regional cooperation for ICZM (1)

"(…) the Parties shall establish a common framework for the integrated management of the Mediterranean coastal zone and shall take the necessary measures to strengthen regional co-operation for this purpose" (1).

Transboundary cooperation (11-2, 28, 29-1, 29-2, 32-1d)

"The Parties undertake to promote regional and international cooperation in the field of landscape protection, and in particular, the implementation, where appropriate, of joint actions for transboundary coastal landscapes" (11-2).
"The Parties shall endeavour, directly or with the assistance of the Organization or the competent international organizations, bilaterally or multilaterally, to coordinate, where appropriate, their national coastal strategies, plans and programmes related to contiguous coastal zones. Relevant domestic administrative bodies shall be associated with such coordination" (28).
"Within the framework of this Protocol, the Parties shall, before authorizing or approving plans, programmes and projects that are likely to have a significant adverse effect on the coastal zones of other Parties, cooperate by means of notification, exchange of information and consultation in assessing the environmental impacts of such plans, programmes and projects, taking into account Article 19 of this Protocol and Article 4, paragraph 3 (d) of the Convention" (29-1).
"To this end, the Parties undertake to cooperate in the formulation and adoption of appropriate guidelines for the determination of procedures for notification, exchange of information and consultation at all stages of the process" (29-2).
"The Organization shall be responsible for coordinating the implementation of this Protocol. For this purpose, it shall receive the support of the Centre, to which it may entrust the following functions: (…) upon request, to assist the Parties (…)to coordinate, when appropriate, the management of transboundary coastal zones pursuant to Article 28" (32-1d)

[49] United Nations Convention on the Law of the Sea, Article 123.
[50] Article 13-1.
[51] Article 13-2.

1.2. Special instruments for cooperation

Exchange of information (23-4, 27-1, 27-2)

"The Parties undertake to share scientific data that may improve knowledge on the state, development and impacts of coastal erosion" (23-4).
"The Parties undertake, directly or with the assistance of the Organization or the competent international organizations, to cooperate in the exchange of information on the use of the best environmental practices" (27-1).
"With the support of the Organization, the Parties shall in particular: (a) define coastal management indicators, taking into account existing ones, and cooperate in the use of such indicators; (b) establish and maintain up-to-date assessments of the use and management of coastal zones; (c) carry out activities of common interest, such as demonstration projects of integrated coastal zone management" (27-2).

Articles 23 and 27 aim to foster regional cooperation for the exchange of scientific data and information on the use of best environmental practices. This provision reformulates an obligation laid down in Article 4-4b of the amended Barcelona Convention, under which the Contracting Parties are required to "utilize the best available techniques and the best environmental practices (…)". Moreover, by providing for the implementation of "demonstration projects of integrated coastal zone management", the Protocol encourages the pursuit of ICZM projects such as the Coastal Area Management Programmes (CAMPs) conducted by the PAP/RAC, for example. Furthermore, it is not to be hoped that the entry into force of the Protocol will mark the end of these projects. On the contrary, the implementation of new projects could support the application of the legal obligations established by the Protocol: this unquestionably invites Mediterranean stakeholders to ensure a more systematic linkage between ICZM projects and the normative framework (Billé and Rochette, 2010).

Cooperation on training and research (25)

"The Parties undertake, directly or with the assistance of the Organization or the competent international organizations, to cooperate in the training of scientific, technical and administrative personnel in the field of integrated coastal zone management, particularly with a view to: (a) identifying and strengthening capacities; (b) developing scientific and technical research; (c) promoting centres specialized in integrated coastal zone management; (d) promoting training programmes for local professionals" (25-1).
"The Parties undertake, directly or with the assistance of the Organization or the competent international organizations, to promote scientific and technical research into integrated coastal zone management, particularly through the exchange of scientific and technical information and the coordination of their research programmes on themes of common interest" (25-2).

Although this is a classical approach to Mediterranean cooperation – formulated in particular in the Protocols concerning Pollution from land-based sources[52], specially protected areas and biological diversity[53] and the offshore Protocol[54] – the strengthening of national capacities, especially through staff training and the development of research, is a key condition for the effective implementation of the legal obligations established and, more generally speaking, for the application of ICZM.

[52] Article 10-2.
[53] Article 22-2.
[54] Article 24-2.

Scientific and technical assistance (26)

"For the purposes of integrated coastal zone management, the Parties undertake, directly or with the assistance of the Organization or the competent international organizations to cooperate for the provision of scientific and technical assistance, including access to environmentally sound technologies and their transfer, and other possible forms of assistance, to Parties requiring such assistance" (26).

Technical assistance to States in the application of the Mediterranean ICZM Protocol presents three challenges. First, it classically implies enabling Parties to establish a legal and institutional framework that is favourable to the implementation of ICZM and which, in order to do so, meets the requirements set out in the Protocol. In addition to including the provisions of the Protocol in domestic legal systems, the States must also be assisted in applying this law. The adoption of a standard and its effective application are in fact separate issues. Finally, in view of the heterogeneity of laws and legal cultures characteristic of the Mediterranean Basin, assistance in the application of the Protocol may help to formulate concepts that are interpreted in the same way across the whole of the regional community.

2. Fields of regional cooperation

2.1. Cooperation on strategic planning in the region

Cooperation for the definition of a Mediterranean Strategy for ICZM (17)

"The Parties undertake to cooperate for the promotion of sustainable development and integrated management of coastal zones, taking into account the Mediterranean Strategy for Sustainable Development and complementing it where necessary. To this end, the Parties shall define, with the assistance of the Centre, a common regional framework for integrated coastal zone management in the Mediterranean to be implemented by means of appropriate regional action plans and other operational instruments, as well as through their national strategies" (17).

For an analysis of the provisions concerning the Mediterranean ICZM strategy, see Section III, 1 above.

Cooperation for the implementation of transboundary environmental assessments (29)

"Within the framework of this Protocol, the Parties shall, before authorizing or approving plans, programmes and projects that are likely to have a significant adverse effect on the coastal zones of other Parties, cooperate by means of notification, exchange of information and consultation in assessing the environmental impacts of such plans, programmes and projects, taking into account Article 19 of this Protocol and Article 4, paragraph 3 (d) of the Convention" (29-1).

"To this end, the Parties undertake to cooperate in the formulation and adoption of appropriate guidelines for the determination of procedures for notification, exchange of information and consultation at all stages of the process" (29-2).

The provisions of Article 29 follow on from the Convention on Environmental Impact Assessment (EIA) in a Transboundary Context, adopted in Espoo in 1991. In particular, the Convention lays down the general obligation of States to consult one another on all major projects under consideration that are likely to cause a significant adverse transboundary environmental impact. Here, the Protocol calls for the formulation of guidelines in order to organise regional cooperation in this field.

Cooperation for the coordination of coastal strategies, plans and programmes (28)

"The Parties shall endeavour, directly or with the assistance of the Organization or the competent international organizations, bilaterally or multilaterally, to coordinate, where appropriate, their national coastal strategies, plans and programmes related to contiguous coastal zones. Relevant domestic administrative bodies shall be associated with such coordination" (28).

2.2. Cooperation in certain specific fields

The Protocol invites the Parties to initiate and develop regional cooperation in certain specific fields.

Cooperation for environmental education (15-2)

"The Parties shall organize, directly, multilaterally or bilaterally, or with the assistance of the Organization, the Centre or the international organizations concerned, educational programmes, training and public education on integrated management of coastal zones with a view to ensuring their sustainable development" (15-2).

Participating in a Mediterranean coastal zone network (16-2)

"In order to promote exchange of scientific experience, data and good practices, the Parties shall participate, at the appropriate administrative and scientific level, in a Mediterranean coastal zone network, in cooperation with the Organization" (16-2).

Coordinating equipment for detection, warning and communication concerning major natural disasters (24-2)

"The Parties undertake to coordinate use of the equipment for detection, warning and communication at their disposal, making use of existing mechanisms and initiatives, to ensure the transmission as rapidly as possible of urgent information concerning major natural disasters. The Parties shall notify the Organization which national authorities are competent to issue and receive such information in the context of relevant international mechanisms" (24-2).

Cooperation for the protection of landscapes (11-2)

"The Parties undertake to promote regional and international cooperation in the field of landscape protection, and in particular, the implementation, where appropriate, of joint actions for transboundary coastal landscapes" (11-2).

Common programmes on the protection of marine habitats (10-2b)

"The Parties (…) undertake to promote regional and international cooperation for the implementation of common programmes on the protection of marine habitats" (10-2b).

Promoting cooperation for disaster management (24)

"The Parties undertake to promote international cooperation to respond to natural disasters, and to take all necessary measures to address in a timely manner their effects" (24-1).
"The Parties undertake to promote mutual cooperation and cooperation among national, regional and local authorities, non-governmental organizations and other competent organizations for the provision on an urgent basis of humanitarian assistance in response to natural disasters affecting the coastal zones of the Mediterranean Sea" (24-3).

The tsunami that hit Asia on 26 December 2004 showed the world the fragility of coastal zones and their exposure to natural disasters. It also reminded us that the Mediterranean Sea could be concerned by

this type of event (Santorini, 1650 BC; Crete, 365 BC; Rhodes, 1303; Algiers, 1365; Calabria, 1783; Liguria, 1887; Messina, 1908; Amorgos, 1956; Nice, 1979; Boumerdès, 2003, etc.) and that preventive measures are therefore essential, not only in the case of tsunamis, but more generally speaking for earthquakes, including underwater ones, volcanic eruptions or landslides that could cause tidal waves. The ICZM Protocol thus provides for cooperation both upstream (detection, warning) and downstream (humanitarian assistance) of future natural disasters affecting Mediterranean coastal zones.

3. Declaration, notification, and information

Four times, the ICZM Protocol provides an obligation of declaration, notification or information. That is the case for the implementation of Article 3-2 relating to the geographical coverage, the national adaptations of the coastal setback zone width, the coordination mechanism in place for this national ICZM strategy and the national authorities competent in terms of detection, warning and communication for natural disasters. Besides, like the other Mediterranean Protocols, Article 31 of the ICZM Protocol creates a system of reporting.

Geographical coverage of the Protocol (3-1, 3-2)

"The area to which the Protocol applies shall be the Mediterranean Sea area as defined in Article 1 of the Convention. The area is also defined by:

(a) the seaward limit of the coastal zone, which shall be the external limit of the territorial sea of Parties; and

(b) the landward limit of the coastal zone, which shall be the limit of the competent coastal units as defined by the Parties" (3-1).

"If, within the limits of its sovereignty, a Party establishes limits different from those envisaged in paragraph 1 of this Article, it shall communicate a declaration to the Depositary at the time of the deposit of its instrument of ratification, acceptance, approval of, or accession to this Protocol, or at any other subsequent time, in so far as:

(a) the seaward limit is less than the external limit of the territorial sea;

(b) the landward limit is different, either more or less, from the limits of the territory of coastal units as defined above , in order to apply, inter alia, the ecosystem approach and economic and social criteria and to consider the specific needs of islands related to geomorphological characteristics and to take into account the negative effects of climate change" (3-2).

For specific comments on the contents of this Article, see Section II, 1.1.

Adaptation of the coastal setback zone width (8-2)

"(...) The Parties:

a) Shall establish in coastal zones, as from the highest winter waterline, a zone where construction is not allowed. Taking into account, inter alia, the areas directly and negatively affected by climate change and natural risks, this zone may not be less than 100 meters in width, subject to the provisions of subparagraph (b) below. Stricter national measures determining this width shall continue to apply.

b) May adapt, in a manner consistent with the objectives and principles of this Protocol, the provisions mentioned above: 1) for projects of public interest; 2) in areas having particular geographical or other local constraints, especially related to population density or social needs, where individual housing, urbanisation or development are provided for by national legal instruments"

(c) Shall notify to the Organization their national legal instruments providing for the above adaptations" (8-2).

For specific comments on the contents of this Article, see Annex 1.

Coordination mechanism for the implementation of the National ICZM Strategy (18-1)

"Each Party shall further strengthen or formulate a national strategy for integrated coastal zone management and coastal implementation plans and programmes consistent with the common regional framework and in conformity with the integrated management objectives and principles of this Protocol and shall inform the Organization about the coordination mechanism in place for this Strategy" (18-1).

Authorities competent in terms of detection, warning and communication for natural disasters (24-2)

"The Parties undertake to coordinate use of the equipment for detection, warning and communication at their disposal, making use of existing mechanisms and initiatives, to ensure the transmission as rapidly as possible of urgent information concerning major natural disasters. The Parties shall notify the Organization which national authorities are competent to issue and receive such information in the context of relevant international mechanisms" (24-2).

Reports (31)

"The Parties shall submit to the ordinary Meetings of the Contracting Parties, reports on the implementation of this Protocol, in such form and at such intervals as these Meetings may determine, including the measures taken, their effectiveness and the problems encountered in their implementation" (31).

PART III.
ANALYSIS OF THE LEGAL SCOPE OF THE ICZM PROTOCOL'S PROVISIONS FROM A MEDITERRANEAN AND EUROPEAN UNION PERSPECTIVE

INTRODUCTION

The Mediterranean ICZM Protocol constitutes the first supra-State legal instrument specifically aimed at coastal zone management. In accordance with its binding nature, it has to be implemented, as a whole, by Mediterranean States Parties. However, various provisions bind Parties in contrasted ways. Moreover, the conclusion of the Protocol by the EU on 13 September 2010 also has legal consequences that must be understood and underlined. Section I is therefore dedicated to an analysis of the legal scope of the Protocol's provisions in the framework of the Mediterranean regional system. Section II aims at analysing the legal scope of the ICZM Protocol in face of EU Law, determining why and to what extent the EU must implement its provisions. This section also sets out the specific obligations of Member States in relation to the other Parties to the ICZM Protocol, taking into account its articulation with the Community Acquis.

SECTION I:
LEGAL SCOPE OF THE ICZM PROTOCOL'S PROVISIONS

Introduction

According to the Vienna Convention on the Law of Treaties, especially its Article 2§1(a), the ICZM Protocol is a treaty. It is a binding instrument, which must be implemented in good faith (Article 26) and as a whole. Thus, the Protocol must be seen as a "monolithic" document: State Parties cannot pick and choose the articles they wish to apply, but must implement all of its provisions. This instrument has indeed an internal coherence, which must be respected and preserved through the complete, good faith implementation of its different components, in accordance with the rules of international law.

By highlighting this requirement, the aim is not to sidestep the heterogeneity of the provisions of the Protocol. "A simplistic idea is that a standard either is or is not, and that when it exists, it is the same for all. The international system does not submit to this seemingly evident demand: for the same point, at the same time, different rules may coexist" (Weil, 1992). In accordance with the age-old principle of *Pacta Sunt Servanda*, codified in the Vienna Convention on the Law of Treaties of 1966, the provisions adopted through an instrument of international law are mandatory and commit the States, which must apply them "in good faith". Over the last few decades, the spectacular development of international law has nevertheless resulted in new complexity, leading in particular to notable distinctions regarding the legal scope of the provisions adopted. During negotiation meetings, the States are therefore increasingly attentive to the drafting of articles and pay special attention to the assessment of their degree of commitment. This is reflected, for example, in discussions on the use of the present tense or the conditional, which is no minor grammatical consideration, since it determines the legal scope of an article or provision. Thus, while the conjugation of an action verb in the present tense commits the Parties to an "obligation to do", the legal scope of the same provision is entirely different if the conditional is used or if the prescriptive nature of the present tense is altered by expressions such as "to the extent possible", "insofar as practicable" or "as appropriate". This heterogeneity of the legal scope of treaty's provisions cannot be ignored: it reflects the very will of States to grant different degrees of normativity to the provisions of the text. The ICZM Protocol is no exception to this rule. In the case in point, inter-State negotiations have produced a protean text whose provisions vary in terms of their legal scope. This is why some provisions can be deemed weak or not precise enough: but they all are the maximum consensus that was possible among 21 countries and the EU in region of contrast and sometimes political tensions. In particular, as underlined in introduction, the long and difficult negotiation of the Protocol started from the feasibility study, going for an intermediate option between a very detailed legal instrument and a vague, hardly constraining one.

The legal scope of a treaty's provision can first be determined by making a distinction between an obligation of conduct and an obligation of result. The former is usually understood as an obligation under which the debtor – the State in international law – must employ its best efforts to achieve the goal in question; it, therefore, differs from the latter, under which the debtor commits to achieving a specific result or objective. This is a classical distinction, widely admitted by the doctrine.

However, beyond this classical distinction, one cannot deny that international treaties often contain very vague provisions "which seem more like requests made to the Parties, guidelines suggested to them, incentives to behave in a certain way, than like actual legal obligations" (Daillier *et al.*, 2009). Such provisions thus provide the States with an important room for manoeuvre in terms of implementation.

The “infinite variety of international law” (Baxter, 1980) means that “though formally binding, the vagueness, indeterminacy, or generality of [some treaties’ provisions] may deprive them of the character of "hard law" in any meaningful sense” (Boyle, 1999). That is particularly the case in the field of international environmental law where many legal provisions are elusive (Maljean-Dubois, 2010). For some authors therefore, soft law “may concern the form, i.e. when norms are expressed in forms which do not belong to any recognized category; and, secondly, when a norm is a part of a treaty but has such a vague normative context that its effects may not exert binding effects upon the parties” (Fitzmaurice, 2001). In this last case, “it is the content of the treaty provision which is decisive in determining whether it is hard or soft, not its form as a treaty” (Boyle, 1999). At all times, the history of negotiations must be kept in mind to understand the actual willingness of negotiating Parties.

There are, nevertheless, heated debates regarding the characterisation of this kind of provisions and, particularly, the drawing of the precise contours of the soft law concept (Gruchalla-Wesierski, 1984; Duplessis, 2007; Shaffer and Pollack, 2010). That is why the term “other type of provisions” will be used in this report to designate vague and imprecise provisions which do not impose, in themselves, obligations of conduct nor of result. In any case, it is crucial to underline that, even vague, imprecise or “soft” – whatever the adjective used – such provisions do not thereby cease to be legal norms (Weil, 1983) and are, therefore, binding. Here, the question raised by the contents of the provision deals with the degree of constraint involved, not its binding nature.

This section, therefore, aims at informing the Parties of their level of commitment by highlighting the nuances in the legal scope of the Protocol’s provisions: obligations of result (1), obligations of conduct (2) and “other types of provisions” (3) will be successively discussed and illustrated by a few examples. However, this study does not provide a comprehensive analysis of the legal nature of each provision of the text: classifying provisions is so thorny and prone to debate that it is meaningless if not conducted in a collective way by a group of experts with diverging opinions and mandated to do so.

1. Obligations of result

By accepting an obligation of result, a State commits to achieving a specific result or objective. This is a firm commitment towards a precise result, which is clearly specified in the text. Monitoring compliance with the obligation is clearly made easy, as it is based on the “comparison between the result achieved and the one expected of the State” (Daillier *et al*., 2009). Article 5 of the Emergency Protocol provides, for example, that “the Parties shall develop and apply (…) monitoring activities covering the Mediterranean Sea area in order to prevent, detect and combat pollution, and to ensure compliance with the applicable international regulations”. In this case, which is typical of an obligation of result, States commit to a precise result: the development of monitoring activities. In the same way, Article 2 of the Ramsar Convention imposes a specific obligation on States: “each Contracting Party shall designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance”. The ICZM Protocol includes several obligations of result.

Subjecting certain activities to prior authorisation (9-2e, 9-2f)

“The Parties agree (…) to subject to prior authorization the excavation and extraction of minerals, including the use of seawater in desalination plants and stone exploitation” (9-2ei).
“The Parties agree (…) to subject such infrastructure, facilities, works and structures to authorization (…)” (9-2f).

In both cases provided for in Articles 9-2e and 9-2f, the State Party to the Protocol undertakes to subject the activities mentioned – excavations, extraction of minerals, infrastructure, facilities, and works – to

prior authorisation. Monitoring compliance with these provisions will, therefore, consist in determining whether the State has in fact set up procedures of this kind.

Preparing and updating inventories (16-1)

"The Parties shall (…) prepare and regularly update national inventories of coastal zones" (16-1).

Here, State Parties to the Protocol are obliged to establish – if they have not already done so – national inventories of coastal zones and to regularly update them. Monitoring compliance with this provision will, therefore, concern not only the actual existence of these inventories, but also the organisation of procedures and mechanisms aimed at ensuring they are updated.

Formulating a national strategy for ICZM (18-1, 18-2)

"Each Party shall further strengthen or formulate a national strategy for integrated coastal zone management (…)" (18-1).
"The national strategy, based on an analysis of the existing situation, shall set objectives, determine priorities with an indication of the reasons, identify coastal ecosystems needing management, as well as all relevant actors and processes, enumerate the measures to be taken and their cost as well as the institutional instruments and legal and financial means available, and set an implementation schedule" (18-2).

The Protocol requires the States to formulate or strengthen a national strategy for ICZM, whose contents is specified by the text. Consequently, monitoring compliance with obligations must focus on these two elements: the existence of a strategy as required by Article 18-1 on the one hand, and the inclusion in this strategy of the elements provided for in Article 18-2, on the other. It should be added that the "objectives" of the national strategy must be compatible with the other provisions of the Protocol, especially the "objectives of ICZM" as defined by Article 5 of the Protocol, and with the Barcelona system more generally.

Formulating coastal plans and programmes (18-1, 18-3)

"Each Party shall further strengthen or formulate (…) coastal implementation plans and programmes (…)" (18-1).
"Coastal plans and programmes (…) shall specify the orientations of the national strategy and implement it (…) determining, inter alia and where appropriate, the carrying capacities and conditions for the allocation and use of the respective marine and land parts of coastal zones" (18-3).
"Coastal plans and programmes (…) may be self-standing or integrated" (18-3).

Through Article 18-1, the States undertake to strengthen or formulate coastal plans and programmes, which specify the orientations of the national strategy. The Protocol also states that the plans and programmes may be "self-standing or integrated". Consequently, although the obligation is precise, the provisions of Article 18 nevertheless leave it to States to determine the form that these "coastal plans and programmes" may take.

2. Obligations of conduct

Observation of recent developments in international law reveals that the instruments elaborated at the supra-State level often tend to impose on States obligations of conduct rather than of result. This is especially true for anticipatory and preventive provisions. There are many examples within other

Mediterranean Protocols. The best illustration of this is the general wording, used by the Convention[55] and by certain protocols[56], stipulating that the States must take "all appropriate measures to prevent, abate, combat and control" the different types of pollution. The use of the term "appropriate measures" or "necessary measures" reflects a level of obligation lower than an obligation of result. Many examples of obligations of conduct are found within the ICZM Protocol as revealed by the utilisation of phrases such as "to ensure", "to promote", "to endeavour, "undertake to the extent possible" or "as appropriate".

Formulating codes of good practice (9-1f)

"The Parties shall (…) promote codes of good practice among public authorities, economic actors and non-governmental organizations" (9-1f).

The States are not committed to adopting specific and existing codes of good practice, but more modestly to "promoting" such codes as an instrument.

General Principles of ICZM (Article 6)

"In implementing this Protocol, the Parties shall be guided by the following principles of integrated coastal zone management:
(a) The biological wealth and the natural dynamics and functioning of the intertidal area and the complementary and interdependent nature of the marine part and the land part forming a single entity shall be taken particularly into account.
(b) All elements relating to hydrological, geomorphological, climatic, ecological, socio-economic and cultural systems shall be taken into account in an integrated manner, so as not to exceed the carrying capacity of the coastal zone and to prevent the negative effects of natural disasters and of development.
(c) The ecosystems approach to coastal planning and management shall be applied so as to ensure the sustainable development of coastal zones.
(d) Appropriate governance allowing adequate and timely participation in a transparent decision-making process by local populations and stakeholders in civil society concerned with coastal zones shall be ensured.
(e) Cross-sectorally organized institutional coordination of the various administrative services and regional and local authorities competent in coastal zones shall be required.
(f) The formulation of land use strategies, plans and programmes covering urban development and socio-economic activities, as well as other relevant sectoral policies, shall be required.
(g) The multiplicity and diversity of activities in coastal zones shall be taken into account, and priority shall be given, where necessary, to public services and activities requiring, in terms of use and location, the immediate proximity of the sea.
(h) The allocation of uses throughout the entire coastal zone should be balanced, and unnecessary concentration and urban sprawl should be avoided.
(i) Preliminary assessments shall be made of the risks associated with the various human activities and infrastructure so as to prevent and reduce their negative impact on coastal zones.
(j) Damage to the coastal environment shall be prevented and, where it occurs, appropriate restoration shall be effected" (6).

Article 6 of the Protocol may raise several questions as to the legal scope of its provisions. The use of "shall" could in fact imply the formulation of obligations of result. However, since these provisions belong to an article on the "principles of ICZM" and are preceded by "the Parties shall be guided", we

[55] Article 4-1 of the Barcelona Convention, original and amended.

[56] Article 1 of the amended Dumping Protocol; Article 4 of the Emergency Protocol; Article 5 of the Hazardous Wastes Protocol; Article 3 of the Offshore Protocol.

can consider that these are first and foremost obligations of conduct, in other words objectives that the States must work towards.

All of these provisions are legally binding: the States are unquestionably obliged to implement them. As far as monitoring compliance with these obligations is concerned, the question will be to determine whether the State has adopted the expected conduct (Daillier *et al*., 2009). However, it does not thereby guarantee the outcome[57] since the States are in fact given some leeway to implement these obligations

3. Other types of provisions

Here are mentioned examples of obviously imprecise and vague provisions provided by the ICZM Protocol.

Using tools such as protection agencies (20-2)

"Parties may inter alia adopt mechanisms for the acquisition, cession, donation or transfer of land to the public domain and institute easements on properties" (20-2).

Article 20-2 illustrates how negotiation meetings sometimes tend to transform the legal scope of a provision. Indeed, in the draft Protocol presented in March 2005, the text used as the basis for negotiations imposed a clear obligation of result on States: "(…) States Parties shall adopt mechanisms for the acquisition of land for public ownership, the cession to public domain and the control of any new urban development[58]". The three years of negotiations led to the addition of the words "may *inter alia*", thereby reducing the level of States' commitment.

The right to legal recourse (14-3)

"Mediation or conciliation procedures and a right of administrative or legal recourse should be available to any stakeholder challenging decisions, acts or omissions, subject to the participation provisions established by the Parties with respect to plans, programmes or projects concerning the coastal zone" (14-3).

The use of "should" here aims at lowering the legal scope of this provision.

Conclusion

The Mediterranean ICZM Protocol is a component of international environmental law and largely corresponds to its general characteristics. This is especially true of the legal scope of rules. Indeed, the ICZM Protocol is above all the result of an often long and complex negotiation process, which has gradually led to each of its provisions being drafted. It is therefore the outcome of a series of compromises that have progressively brought somewhat differing positions together until States are united around a common vision. Consequently, if some provisions of the Protocol are clear and precise, binding the States to achieve a specific result or undertake a defined effort, others are unquestionably vaguer, leaving the States an important room for manoeuvre regarding their implementation. Inter-State negotiations have produced a protean text whose provisions vary in terms of their legal scope, but is to be implemented in good faith in its entirety.

[57] ICJ, Judgment of 4 June 2008, Certain Questions of Mutual Assistance in Criminal Matters, §123.

[58] MAP/UNEP, Draft Protocol on Integrated Coastal Zone Management in the Mediterranean, Meeting of MAP Focal Points, Athens, Greece, 21-24 September 2005.

Preliminary remarks: the EU and coastal zone management

The Treaty of Rome of 1957 contained no provision giving the European Community a direct competence to deal with environmental matters. During the Paris Summit of 1972, the Governments of the nine Member States adopted a declaration stressing the need to protect the environment and inviting the Community institutions to establish programmes of action. Two provisions of the Treaty were then used as the legal basis for Community intervention: Article 100 concerning the approximation of laws in Member States to avoid distortions of competition, and Article 235, under which the Community institutions may take the appropriate measures to attain the objectives of the Community even if the Treaty has not explicitly provided the necessary powers. Already the first environment action programme of the European Community addressed marine pollution and the need to protect coastal areas[59]. Similarly, despite the lack of any legal value, the European Coastal Charter adopted by the plenary session of the Conference of Peripheral Maritime Regions on 8 October 1981 in Chania (Crete), helps to increase awareness of the importance of coastal areas (Dejeant-Pons, 1987). Noting the urgency of acting in favour of coastal areas, in 1982 the European Parliament approved the "strategy proposed by the Charter[60]", and thereby encouraged the implementation of a "Community programme on the integrated development of coastal zones[61]". The Single European Act of 17 February 1986 introduced an environmental objective of the Community, in order to "preserve, protect and improve the quality of the environment, to contribute towards protecting human health, and to ensure a prudent and rational utilization of natural resources". These provisions were supplemented by the Treaty of Maastricht of 7 February 1992, which made the protection of the environment a cross-cutting dimension thanks to the "integration principle" requiring that environmental considerations must be integrated into all EC policies. The Treaty of Amsterdam of 2 October 1997 introduced an important amendment to the Treaty establishing the European Community, by including an Article 2 which aims at promoting of a harmonious and sustainable development of economic activities and a high level of protection of the environment. It is within this specific legal framework that Community initiatives for coastal protection have gradually developed.

Many sectoral regulations address coastal zones-related issues in relation to their territorial or substantive scope. Thus, coastal areas are governed in an incidental manner through policies relating to

[59] For example, the first programme (1973-1976) deals extensively with marine pollution and also includes a paragraph on "Environment problems specific to coastal areas": Declaration of the Council of 22 November 1973, OJ C-112 of 20 December 1973, Title II Chapter 2. Similarly, the second programme (1977-1981) confirms that the work carried out under the first programme "has resulted in the formulation of principles for the integrated development of coastal regions" and that "every effort should now be made to ensure that these principles are suitably implemented at community level": Resolution of 17 May 1977 on the continuation and implementation of a European Community policy and action programme on the environment, OJ C-139 of 13 June 1977, p.25. The third programme (1982-1987) uses the term "integrated management" for the first time, without however explaining it: Resolution of 7 February 1983 on the continuation and implementation of a European Community policy and action programme on the environment, OJ C-46 of 17 February 1983, point 26.

[60] European Parliament, Resolution of 18 June 1982 on the European Coastal Charter, OJ C-182 of 19 July 1982, point 4.

[61] Ibidem, point 8-II-a.

fisheries, water, health, the prevention of marine pollution and the protection of natural areas, etc. As from the 90s, however, the EC has progressively focused on the preservation of this area. For example, the Council Resolutions of 1992 and 1994 called upon the development of a specific policy concerning coastal zones[62] and of a strategy at Community level[63]. This strategy was drawn up in September 2000[64] and supplemented in 2001 and 2002 by two recommendations, in particular the so-called ICZM Recommendation[65]. The latter requested the European Commission to present an evaluation report to the Council and the European Parliament. This evaluation, and policy directions for the further promotion of ICZM in Europe were presented by the Commission in its Communication of 7 June 2007 (COM (2007) 308 final).

At the European Council meeting held in Lisbon on 13 and 14 December 2007, the EC adopted a key Strategy on integrated maritime policy, which led to the adoption of Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy ("Marine Strategy Framework Directive"). The conclusion of the ICZM Protocol on 13 September 2010 by the EU takes place within this important policy framework on ICZM on the one hand, and in relation to integrated maritime management, including marine spatial planning, on the other.

Within this context, the following developments discuss the relationships between the ICZM Protocol and EU Law since the first has been incorporated into the second after its conclusion by the EU and its Member States. Firstly, this note analyses the legal consequences of the integration of the Protocol into EU Law in taking account of the distribution of competences to take action on ICZM between the EU and its Member States (1). Secondly, this note attempts to determine if all matters covered by the ICZM Protocol are effectively covered already by the EU Acquis and, if not, how and if the EU should take appropriate measures to ensure the effectiveness of the provisions laid down by the ICZM Protocol in the EU legal order and compliance with international commitments taken by the EU and its Member States (2).

1. Integrating the ICZM Protocol into the EU legal order

1.1. Procedure for integrating the ICZM Protocol into the EU legal order

Under Article 24 of the Barcelona Convention, the EC has been authorised to conclude the Convention and its additional protocols alongside the Member States. The EU (formerly EC) is now a Contracting Party to the Barcelona Convention and to some of its protocols[66]. Since the Treaty of Lisbon entered into

[62] Council Resolution of 25 February 1992 on the future Community policy concerning the European coastal zone, OJ C-59/1 of 6 March 1992.

[63] Council Resolution of 6 May 1994 on a Community strategy for integrated coastal zone management, OJ C-135/2 of 18 May 1994.

[64] Communication from the Commission to the Council and the European Parliament on Integrated Coastal Zone Management: A Strategy for Europe, Commission of the European Communities, Brussels, 27 October 2000, COM (2000) 547 final.

[65] Council of the European Union, European Parliament and Council Recommendation concerning the implementation of Integrated Coastal Zone Management in Europe, Brussels, 14 December 2001, 000/0227 (COD); Council of the European Union, European Parliament and Council Recommendation concerning the implementation of Integrated Coastal Zone Management in Europe, 30 May 2002, 2002/413/EC, OJ of 6 June 2002.

[66] Council Decision 77/585/EEC of 25 July 1977 concluding the Convention for the protection of the Mediterranean Sea against pollution and the Protocol for the prevention of the pollution of the Mediterranean Sea by dumping from ships and aircraft; Council Decision 81/420/EEC of 19 May 1981 on the conclusion of the Protocol concerning cooperation in combating pollution of the Mediterranean Sea by oil and other harmful

force in December 2009, the EU has acquired legal personality and can therefore conclude international agreements, notably through the procedure set out in Article 218 of the Treaty on the functioning of the European Union (TFEU), which also applies to mixed agreements. Article 218§6 TFEU provides for the consent of the European Parliament prior to the conclusion of any agreement, especially in fields with policies to which the ordinary legislative procedure applies within the EU[67]. This is the case for the ICZM Protocol with regard to fields like environment, the internal market, tourism, etc. The Council then adopts a Decision concluding the agreement, which specifies the procedure for ratification and for the deposit of the instruments of ratification, which is usually done at the same time by the EU and its Member States for mixed agreements.

This Decision was adopted by the Council on 13 September 2010: it is the Council Decision 2010/631/EU concerning the conclusion, on behalf of the European Union, of the Protocol on Integrated Coastal Zone Management in the Mediterranean to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean. Now that the Protocol is in force, it is integrated into EU Law entailing legal implications for both the EU and its Member States in light of the distribution of competences for the matters covered by the ICZM Protocol.

1.2. Nature of the ICZM Protocol from the viewpoint of EU law

The ICZM Protocol may be considered to be an international treaty pursuant to the provisions of the Vienna Convention on the Law of Treaties, especially its Article 2§1(a). Indeed, it is an international agreement in written form, governed by international law, concluded between one or more third States or an international organisation, with Parties including the European Union and one or more Member States. For the EU and its Member States, the ICZM Protocol is a mixed agreement in that it covers issues that fall within both EU competence and the national competence of the Member States. However, the joint participation of the EU and one or more Member States in the ICZM Protocol implies accepting obligations that are inseparable. Indeed, joint agreements require the joint exercise of competences that are, in principle, shared. They reveal, at the international level and therefore with regard to the other Contracting Parties, the distribution of competences between the EU and its Member States[68]. Thus, both the EU and the Member States must take care not to encroach upon each other's competences and to cooperate in fields in which they have shared competences. However, the

substances in cases of emergency; Council Decision 83/101/EEC of 28 February 1983 concluding the Protocol for the protection of the Mediterranean Sea against pollution from land-based sources; Council Decision 84/132/EEC of 1 March 1984 on the conclusion of the Protocol concerning Mediterranean specially protected areas; Council Decision 1999/800/EC of 22 October 1999 on concluding the Protocol concerning specially protected areas and biological diversity in the Mediterranean, and on accepting the annexes to that Protocol (Barcelona Convention); Council Decision 1999/802/EC of 22 October 1999 on the acceptance of amendments to the Convention for the Protection of the Mediterranean Sea against Pollution and to the Protocol for the Prevention of Pollution by Dumping from Ships and Aircraft (Barcelona Convention); Council Decision 2004/575/EC of 29 April 2004 on the conclusion, on behalf of the European Community, of the Protocol to the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution, concerning cooperation in preventing pollution from ships and, in cases of emergency, combating pollution of the Mediterranean Sea.

[67] In the past, the European Parliament was simply consulted.

[68] It should be noted that for the approval of amendments to the Protocol for the protection of the Mediterranean Sea against pollution from land-based sources, which were adopted during the Conference of Plenipotentiaries in Syracuse in 1996, the Commission stressed that the scope of the aforementioned Protocol "at least partly, covers areas of Community competence" and invited the Council to "ensure that the conclusion of these international agreements neither conflicts with, nor alters the scope of, current Community law". These amendments were approved by the European Community following the adoption of Council Decision 1999/801/EC of 22 October 1999.

integration of a mixed agreement into EU Law only has implications for the provisions that fall within EU competence, whether exclusive or shared.

In accordance with the established case law of the Court of Justice of the European Union, the provisions of a mixed agreement form an integral part of the EU legal order once they have entered into force[69]. These mixed agreements also have "the same status in the EU legal order as purely Community agreements, as these are provisions coming within the scope of EU competence[70]. Moreover, the Court recalled in the Kupferberg case "that the effects within the EU of provisions of an agreement concluded by the EC (now the EU) with a non-member country may not be determined without taking account of the international origin of the provisions in question[71]".

Finally, it should be recalled that the mixed agreements in force do not necessarily need to be transposed by an instrument of secondary EU law to be fully integrated into the EU legal order if the agreement or a provision within the agreement has a direct effect (CJEU, Case C-213/03, 15 July 2004). This follows from the monistic approach[72] taken by the European treaties as interpreted by the Court of Justice of the European Union (CJEU). Consequently, as soon as a mixed agreement is integrated into the EU legal order, in other words on the day the approval decision adopted by the Council enters into force, or on the twentieth day following that of its publication in the Official Journal of the European Union (OJEU)[73], the Member States must meet their obligations under the treaty in question in accordance with EU law, while complying with the rules of international law.

1.3. Distribution of competences between the EU and its Member States

1.3.1 Rules on the distribution of competences

The Treaty of Lisbon finally clarifies the distribution of competences as well as the conditions under which shared competences are exercised. Article 2§1 TFEU stipulates that when the Treaties confer to the EU an exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts. In the case in point, for the fields covered by the ICZM Protocol, we note that the conservation of marine biological resources under the common fisheries policy, the competition rules necessary for the functioning of the internal market and common commercial policy are all the exclusive competence of the EU (Article 3 TFEU). Article 2§2 TFEU provides that when the Treaties confer to the EU a competence shared with the Member States in a specific area, the Union and the Member States may legislate. The EU and its Member States therefore exercise this shared competence by applying the principles of subsidiarity and proportionality. Thus, the EU will only act if shared action is seen as being more effective than that of the States acting separately. The Treaty of Lisbon has clarified the point that Member States shall only exercise their competence "to the extent that the Union has not exercised its competence" or "to the extent that the Union has decided to cease exercising its competence".

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69 EJC, Haegeman, Case 181/73, 30 April 1974 ; ECJ, Demirel, Case 12/8, 30 September 1987 ; CFI, Opel Austria v. Conseil, Case T-115/94, 22 January 1997 ; ECJ, Syndicat professionnel coordination des pêcheurs de l'étang de Berre et de la région v. EDF, Case C-213/03, 15 July 2004.

70 ECJ, Commission v. Ireland, Case C-117/00, 19 March 2002.

71 ECJ, Hauptzollamt Mainz v. Kupferberg, Case 105/81, 26 October 1982. The Court hereby refers to the general rules of international law. In the Kupferberg case, as in others, the Court thus systematically recalls the application of the *Pacta sunt servanda* principle (Article 26 of the Vienna Convention on the Law of Treaties), under which there must be bona fide performance of every agreement.

72 EU law confers rights and obligations which should be protected by national courts and which can be invoked by individuals. Similarly, International Law is incorporated into the EU legal order without transformation.

73 See Article 297 TFEU.

The matters of shared competence are now clearly listed in Article 4 TFEU. With regard to the matters covered by the ICZM Protocol, we note in particular that environmental protection (including climate mitigation and adaptation to its negative effects), the internal market, social policy, transport, trans-European networks for transport and energy, consumer protection, public health, energy (energy efficiency, supply security, development of renewable energies, etc.), economic, social and territorial cohesion, and agriculture and fisheries (excluding the conservation of marine biological resources) are all matters of shared competence. As for research, technological development and space – matters which are implicitly covered by Article 25 of the ICZM Protocol, the EU has a competence to define and implement programmes[74] to support research, such as the Seventh Framework Programme for research and technological development (FP7) of the EU.

1.3.2 Applying these rules to fields covered by the ICZM Protocol

Article 1 of the ICZM Protocol provides that "the Parties shall establish a common framework for the integrated management of the Mediterranean coastal zone and shall take the necessary measures to strengthen regional co-operation for this purpose". The Protocol is based on international cooperation and a strategy for sustainable development. Clearly, it therefore has an environmental focus insofar as the objectives concerning the rational planning of activities and the sustainable development of coastal zones must ensure that the environment and landscapes are taken into account, especially by guaranteeing the sustainable use of natural resources, preserving the integrity of coastal ecosystems, and preventing or reducing the effects of natural hazards and in particular of climate change on coastal zones[75].

In addition to these general objectives pursued by ICZM, the Protocol also contains numerous provisions concerning the protection of the environment, especially natural habitats and biodiversity, laying down:

- A goal to pursue through implementing measures:
  - the protection and conservation of marine and coastal areas, in particular of those hosting habitats and species of high conservation value (10-2a);
  - the preservation or development of coastal forests and woods located, in particular, outside specially protected areas (10-3);
  - the sustainable preservation and/or rehabilitation of dunes and bars (10-4);
  - careful use of natural resources by activities in coastal zones, minimising the use of natural resources and taking into account the needs of future generations (9-1b).
- A result to achieve:
  - the preservation of coastal natural habitats, landscapes, natural resources and ecosystems (8-1);
  - the implementation of integrated water resources management and environmentally sound waste management approaches (9-1c).
- Implementing measures to meet the environmental objectives pursued by ICZM:
  - integrating criteria for sustainable use of coastal zones into national legal instruments (8-3c);
  - applying the principles of the prevention of damage to the environment and restoration (6j);
  - taking into account in national coastal strategies and coastal plans and programmes and when issuing authorizations, the environmental, economic and social function of wetlands and estuaries (10-1a);
  - regulating and/or prohibiting activities that may have adverse effects on wetlands and estuaries (10-b);

[74] See Article 4§3 TFEU.

[75] See Article 5 of the ICZM Protocol.

- restoring degraded coastal wetlands with a view to reactivating their positive role in coastal environmental processes (10-1c);
- promoting environmentally friendly activities and taking special measures to ensure the participation of the inhabitants in the protection of coastal ecosystems based on their local customs and knowledge (12a).

Reading these provisions supports the view that environmental protection is the centre of gravity of the ICZM Protocol. It is therefore logical that the legal basis of the Council Decision N 2010/631/EU concerning the conclusion, on behalf of the European Union, of the Protocol on ICZM is Article 192 §1 TFEU, which provides for the adoption of EU measures for the purposes of protecting the environment in accordance with Article 191 TFEU conferring on the EU a competence shared with the Member States in this field.

However, the ICZM Protocol lays down other obligations relating to other fields, which must be taken into account in order to determine what the EU and the Member States must each do to effectively implement it. Agriculture, fisheries (excluding the conservation of marine biological resources, which fall within the exclusive competence of the EU, see Article 6 TFEU), and tourism are the other fields covered by the ICZM Protocol for which the EU and its Member States have shared competence. Civil protection is also addressed by the ICZM Protocol: under Article 196 TFEU indeed, the EU may encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters. The protection of cultural heritage, covered by Article 13 of the ICZM Protocol, falls within the competence of the Member States, but the EU may take measures to support actions at national level, in accordance with Article 6 TFEU.

The principle of subsidiarity applies to all matters of shared competence[76]. According to this principle, the EU should not take action (except in the areas which fall within its exclusive competence) unless it is more effective than action taken at national, regional or local level. It is closely bound up with the principles of proportionality, which require that any EU action should not go beyond what is necessary to achieve the objectives pursued by the Treaties. In order to ensure an effective implementation of the ICZM Protocol by the EU and its Member States, it is therefore important to identify those aspects of the ICZM Protocol which are matters of EU competence (whether exclusive or shared) and, for matters of shared competence, to check whether the EU has already exercised its competence. This implies examining the contents of the EU Acquis of acts (Directives, Decisions and Regulations) to establish whether it already creates rights and duties making it possible to effectively meet the obligations laid down in the ICZM Protocol. The principles of subsidiarity and proportionality enshrined in the Treaties must be taken into account in this analysis. Indeed, if the Acquis is insufficient to ensure the full and effective implementation of the Protocol, the European Commission must then propose complementary measures at EU level, if this is identified as the best level of intervention to do so. This is the subject of the paragraph 2.3.1 of this section.

2. The legal implications of integrating the ICZM Protocol into EU Law

2.1. General principles

2.1.1 Position of the Protocol in the EU legal order

EU law includes a system of norms that do not all have the same legal value, and which therefore follows a hierarchy. The successive Treaties (of Paris, Rome, Single European Act, Maastricht,

[76] See articles 5§3 and 12 TFEU.

Amsterdam, Nice and Lisbon), incorporated acts (protocols and conventions annexed to the treaties) and accession treaties form the primary law. They are at the top of the hierarchy of norms in the EU legal order. All acts adopted by the European institutions must be adopted in accordance with the treaties, and are therefore known as secondary law. External agreements between the EU and third countries – such as the ICZM Protocol, agreements between Member Countries and those concluded between a Member Country and third countries – must also comply with the Treaties. They are of lesser value than the EU Treaties, but higher than secondary law in accordance with Article 218 TFEU[77]. All these norms form the so-called "EU Acquis". The hierarchy of norms implies that the EU must ensure that the EU Acquis is in line with the provisions of the ICZM Protocol in areas falling within its exclusive or shared competence (when this competence has already been exercised).

2.1.2 Good faith performance

Under Article 216 TFEU, international agreements concluded by the EU are binding upon the institutions of the EU and on its Member States. As discussed above, they form an integral part of the EU legal order as soon as they enter into force. Once approved, the Protocol must therefore be applied in good faith by the EU and its Member States, in accordance with the *Pacta sunt servanda* principle set out in Article 26 of the Vienna Convention. This implies that the Parties to a treaty must comply with the rules of international law to which they have agreed, with regard to the other non-EU Contracting Parties, but also with regard to third countries (see Article 35-2 of the ICZM Protocol). The principle of good faith resulting from the concept of legitimate expectations is a general principle of EU Law[78].

The principle of good faith implies an obligation to ensure the effectiveness of the Protocol, and to guarantee its implementation in a coherent manner with existing EU Law, in order to avoid any conflict of norms. In this respect, it should be noted that Council Decision of 29 April 2004 approving the Protocol concerning cooperation in preventing pollution from ships and, in cases of emergency, combating pollution of the Mediterranean Sea, clearly states that the European Community must avoid "any incoherence with Community legislation already in force in the areas covered by the Protocol". The same should apply to the Council Decision approving the ICZM Protocol on behalf of the EU and to other measures that may be taken by the EU to guarantee the effective implementation of obligations incumbent upon it under the ICZM Protocol.

2.1.3 General competence of the Court

In accordance with the Demirel[79] and Hermès cases[80], the CJEU is competent to interpret or rule on the provisions of the ICZM Protocol in the sense that "mixed agreements concluded by the EC and its Member States with non-member countries have the same status in the EU legal order as purely Community agreements in so far as the provisions fall within the scope of Community competence" (Hauptzollamt Mainz[81], Demirel, Commission v. Ireland[82], and Etang de Berre[83] cases).

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77 See Judgment of the ECJ, International fruit Company, Joined Cases C-21 to 24/72, 12 December 1972.

78 CFI, Greece v. Commission, Case 231/04, 17 January 2007.

79 ECJ, Demirel, Case C-12/86, 30 September 1987

80 ECJ, Hermès, Case C-53/96, 16 June 1998.

81 ECJ, Hauptzollamt Mainz v. Kupferberg, 26 October 1982.

82 ECJ, 30 May 2006, Commission v. Ireland, Mox Plant.

83 ECJ, 7 October 2004, C-239/03, Commission of the European Communities v. French Republic.

2.2. Obligations incumbent upon Member States for the implementation of the Protocol

2.2.1 States concerned by the obligations to implement

The EU Member States that have ratified the Protocol have an obligation to implement it under international law, and must perform it in good faith. From a broader perspective, the Member States must comply with obligations arising from an agreement concluded by the EU in accordance with the principle of sincere cooperation, under which: "Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives[84]".

In the Etang de Berre case regarding the application of the Athens Protocol of 17 May 1980 concerning the protection of the Mediterranean Sea against pollution from land-based sources, the Court noted that "there is a Community interest in compliance by both the Community and its Member States with the commitments entered into under those instruments[85]". The application of the provisions in question – if these are contained in a mixed agreement concerning an area largely covered by EU Law – must fall within the EU framework and implies compliance with a duty of loyalty. However, the Member States are only subject to this duty of loyalty in light of the distribution of competences and the principle of the primacy of EU Law over national law[86]. Consequently, given that the agreements concluded by the European Union form an integral part of the EU legal order, and with no need for internal reception or transposition measures, the States concerned by the Protocol that decide not to ratify it, as well as the other Member States not concerned by the Protocol, will be compelled to meet the obligations it contains on account of its integration into EU Law and by application of the latter[87], rather than by application of international law.

For candidate countries to EU accession that have ratified the ICZM Protocol, the effect is almost the same as for States that are already members of the EU, but later in time regarding the effects of EU Law (and, therefore, the control the CJEU may have), which will only begin to apply from the date specified in the Accession Treaty: indeed, Article 49 TEU and the Copenhagen criteria condition accession on the adoption of the EU Acquis (implying the approximation of laws). Chapter 27 of the Accession Partnership[88] covers the environmental Acquis, which will soon include the ICZM Protocol, and determines priority areas for the candidate country, bearing in mind that this country must have integrated the Acquis in its entirety on the date of accession (with, however, the possibility of obtaining derogations or extensions for the adoption and/or implementation of certain pieces of EU legislation). Since the ICZM Protocol, approved by the EU, has entered into force, it forms an integral part of the Acquis that the candidate countries must adopt. In other words, for candidate countries that have ratified the ICZM Protocol, there is an implementation obligation under international law (the Barcelona system and customary international law) and in accordance with the Accession Partnership (as regards

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84 Article 4§3 TUE.

85 ECJ, Commission of the European Communities v. French Republic, C-239/03, 7 October 2004.

86 ECJ, Costa v. Enel, Case C-6/64, 15 July 1964.

87 Unless the Member State has expressed reservations that have been annexed to the Protocol itself or invokes safeguard clauses during the adoption of the approval decision by the EU.

88 By way of example, for Croatia, see Council Decision of 12 February 2008 and the progress report of November 2010.

the EU), which also applies to the adoption of national measures for the transposition of the EU policies and measures that the EU considers necessary for its own implementation.

Finally, for the peripheral Mediterranean regions of some Member States that are not directly concerned by the ICZM Protocol, such as Gibraltar which is part of the United Kingdom, it is necessary to refer to the relevant provisions of the European Treaties. As regards Gibraltar, it should be noted that Declaration N°55 made by the United Kingdom and annexed to the TFEU according to the European Treaties applies to Gibraltar as a European territory for which a Member State is responsible from the viewpoint of external relations (in this case the United Kingdom). This echoes the position of the United Kingdom in the Accession Treaty to the European Community of 1972, where Gibraltar is considered as a special territory of the Member State. Gibraltar has its own parliamentary and regulatory institutions, like Scotland, Wales and Northern Ireland. It must adopt the legislation needed to implement EU Law. Consequently, from a legal viewpoint the United Kingdom, as the State responsible for external relations, should in theory ratify the ICZM Protocol and Gibraltar should implement it from the viewpoint of both international law (within the limits of its territorial waters, which extend three nautical miles) and European law. But given the territorial disputes still ongoing with Spain, it is nevertheless unlikely that this will happen all the more since the United Kingdom has not even ratified the Barcelona Convention. In any event, Gibraltar must comply with the provisions of the ICZM Protocol pursuant to EU law.

2.2.2 Implementation of the Protocol and its monitoring by the Court

The Member States must ensure that any preceding or subsequent national measures do not conflict with the provisions of the Protocol on the one hand, and with the EU Acquis on the other. In addition, they are required to take measures to implement the ICZM Protocol in national law, failing which they will be in breach of their obligations under international law and also under EU Law, into which it is now incorporated. For many years, the Court has had the opportunity to stress that, in accordance with the principle of sincere cooperation, Member States' compliance with international EU commitments is an obligation towards the EU, which assumes responsibility for the effective implementation of the agreement creating it[89]. Consequently, if a Member State is in breach of its obligations under the provisions of the ICZM Protocol, the Commission may launch an infringement procedure against that State on the basis of Article 258 TFEU, as Guardian of the Treaties pursuant to Article 17 TEU[90], or even an action for non-implementation of judgments pursuant to Article 260 TFEU, which may result in sanctions (lump sum and/or financial penalties) being imposed on the Member State[91]. Proceedings are launched by the Commission either on its own initiative, after having checked the conformity of national implementing measures or on the basis of complaints registered by individuals at the Commission Secretariat General. The Commission may also use other sources of information to launch infringement procedures, in particular petitions and oral/written questions submitted by members of the European Parliament.

Furthermore, another important effect of the integration of the Protocol is that it enables any individual to submit a complaint before its national judge for breach of the Protocol's provisions by a Member State[92]. Moreover, even if the State has not adopted measures for implementing the agreement in

89 ECJ, Hauptzollamt Mainz v. Kupferberg, Case C-104/81, 26 October 1982.

90 ECJ, Commission v. Irlande Usine MOX, Case C-459/03, 30 May 2006.

91 Article 260(3) TFEU.

92 ECJ, Syndicat professionnel coordination des pêcheurs de l'étang de Berre et de la région v. EDF, Case C-213/03, 15 July 2004 ; ECJ, 7 October 2004, C-239/03, Commission of the European Communities v. French Republic.

question, its provisions may have a direct effect. This follows a doctrine developed by the Court of Justice of the European Union according to which the provisions of EU (primary and secondary) Law that are clear, precise and unconditional enough to be considered justifiable can be invoked and relied on by individuals before national courts. For instance, with regard to a provision of a mixed agreement, the Court has ruled that it is directly applicable when "regard being had to its wording and to the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure". For that reason, it is important to determine whether the provision in question is in itself suitable for application, which is confirmed whenever it does not require any subsequent measure in order to produce effects[93], in particular when it confer rights on individuals.

From the above, it is clear that the integration of the ICZM Protocol into the EU legal order entails obligations under EU Law, and not just under international law. Non-compliance with these obligations could be sanctioned by the Court of Justice of the European Union, which should reinforce the effectiveness of the Protocol within the EU, not only from a legal viewpoint but also in practical terms, through the coherent articulation of its provisions within the EU Acquis.

2.3. Obligations incumbent upon the EU for the implementation of the Protocol

2.3.1 The need for coherence between secondary EU Law and the provisions of the Protocol

The EU must meet its international commitments. It must implement the ICZM Protocol and to do so, it must take implementation measures in strict compliance with the rules regarding competence, especially if the EU Acquis does not enable the EU to meet all of its obligations under the ICZM Protocol. For the purpose of this study, the EU Acquis has been analyzed in order to ascertain whether it is sufficient to guarantee the effective application of the Protocol in areas falling within the competence (exclusive or shared) of the EU. Main results of this kind of "legislative gap analysis" can be presented as follows:

- Objective of the ICZM Protocol: by approving the ICZM Protocol through Decision N° 2010/630/EU, the EU accepts to participate in the common framework established for the integrated management of the Mediterranean coastal zone.
- Definitions provided by for the purpose of implementing the ICZM Protocol: such definitions do not exist literally speaking in the EU Acquis. The transposition of definitions such as coastal zone and ICZM would however contribute to develop a common understanding and a uniform interpretation of the Protocol among all its Contracting Parties.
- Geographical coverage: the definitions provided for the Water Framework Directive are indeed relevant to designate the waters of Member States' territory, but the EU Acquis seems to be more specific with regard to the limit of coastal zones as defined by the ICZM Protocol which refers to the territorial sea of Contracting Parties (12 miles or less for those States having a smaller territorial sea). This delimitation is a matter of shared competence, which should be exercised in order to make sure that the EU will implement properly the ICZM Protocol on the entire EU territory and in a consistent manner with the geographical scope of measures taken by other Contracting Parties.
- Preservation of rights: it does not seem necessary to adopt EU measures to ensure the respect of Article 4, the provisions of which can be applied by both the EU and its Member States on the basis of the Council Decision n° 2010/630/EU.

[93] See Demirel case, recalled in the Opinion of Mr Advocate General Ruiz-Jarabo Colomer in case C-431/05, Portugal v. Council.

- Objectives of integrated coastal zone management: a number of Treaty provisions and secondary EU legislation are relevant for the ensuring that the objectives pursued by the ICZM Protocol can be effectively met by the EU, in particular the Water Framework Directive, the Integrated Marine Framework Directive, the Wild Birds and Habitats Directives and related nature protection Regulations. One may consider that the objective that aims at achieving coherence between public and private initiatives and between all decisions by the public authorities, at the national, regional and local levels, which affect the use of the coastal zone can also be met through the provisions of the Environmental Impact Assessment and Strategic Environmental Assessment Directives. However, this should be carefully checked when scrutinizing the more operational provisions of the ICZM Protocol.
- General principles of integrated coastal zone management: usually, general principles are not prescriptive; they only aim at guiding the actions of Contracting Parties when implementing the Protocol provisions. In that respect, one should recognize that the principles laid down by the Water Framework and Integrated Marine Framework Directives are relevant to guide the EU and its Member States in doing so. However, as a matter of coherence, the EU could specify how these principles should be used for the development and implementation of national strategic plans to be set up in accordance with Article 18 of the ICZM Protocol.
- Protection and sustainable use of the coastal zone: the EU Acquis does not provide for sufficient measures to require from Member States the establishment of zones where construction is not allowed.
- Economic activities: the ICZM Protocol lists a number of activities to be carefully followed up if not controlled by competent authorities which should do in conformity with the objectives and principles set forth in Articles 5 and 6 of this Protocol; there seems to be no need to transpose the provisions of Article 9 of the ICZM Protocol, but any implementing tool used or developed by the Member States to organize these economic activities on coastal zones should be designed in a way that respects fully these provisions in a consistent and, where applicable, in a coordinated manner, in particular for the definition of indicators of the development of economic activities to ensure sustainable use of coastal zones and reduce pressures that exceed their carrying capacity, and for the promotion of codes of good practice among public authorities, economic actors and non-governmental organizations. Because many of the listed activities are regulated at EU level for the good functioning of the Internal Market, EU intervention makes full sense in that respect.
- Specific coastal ecosystems are effectively covered by the Wild Birds and Habitats Directive. However, there is a need to define more precisely how the EU is going to do with a view to preventing the disappearance of wetlands and estuaries beyond the creation and management of protected areas (Special zones of conservation and Special zones of protection) and the EU Acquis is obviously to complete enough to address the protection of dunes, coastal forests and woods as well as islands. As for the cultural heritage, the Member States may invoke the principle of subsidiarity to justify that the natural and cultural patrimony would be better managed at national level rather than by the EU.
- Participation, awareness raising and assessment of impacts are issues well regulated by the EU Acquis.
- Land policy is obviously a national competence in the first place. However, a number of EU environmental legislation has been prepared and/or adopted for protecting soils and underground waters.

Obviously, the EU Acquis does not provide for an obligation to establish National coastal strategies, plans and programmes that address all the elements referred to in Article 18 of the ICZM Protocol, and in a way that would ensure conformity with the objectives and principles set forth in its Articles 5 and 6.

International cooperation between the EU and Third Parties, whether Contracting Parties to the ICZM Protocol or not, would be greatly facilitated by the means foreseen by the TFEU and TEU, including the new external action services.

2.3.2 Study on the coherence between secondary EU Law and the provisions of the Protocol

Main findings of the examination of the EU Acquis are:

- Integrated Coastal Zone Management is one component of the EU Integrated Maritime Policy as endorsed by the European Council held in Lisbon on 13 and 14 December 2007.
- As it provides for an integrated approach to coastal zone management, the ICZM Protocol covers a broad range of policies for which the EU and the Member States share competence to adopt implementing measures. Obviously, the centre of gravity of the ICZM is about environmental protection and conservation.
- A number of EU legislations are relevant for the implementation of the ICZM Protocol, in particular the Marine Strategy Framework Directive, the Water Framework Directive, the Habitats and Wild Birds Directives, the Environmental Impact Assessment and Strategic Environmental Assessment Directives, the EU legislation implementing the Aarhus Convention.
- It is important to consolidate the ICZM approach in a coordinated manner throughout the EU (and not just in the Mediterranean). It would be useful to encourage integration between terrestrial and marine planning, in a way that any legislative direction on marine spatial planning should build on the ICZM. In this context, it must be noted that not all Member States have marine spatial planning or even adequate legislation to develop ICZM. Finally, solutions must be found for the management of cross-border coastal areas.
- However, the ICZM Protocol covers a broad range of provisions which will need to be implemented by different levels of intervention and administration, having regard to the principles of subsidiarity and proportionality.
- While it is appropriate for the Union to act in support of integrated coastal zone management, bearing in mind, *inter alia*, the cross-border nature of most environmental problems and the need to ensure coherence with the EU Acquis, the Member States and their relevant competent authorities will be responsible for the design and implementation on the coastal territory of certain detailed measures laid down in the ICZM Protocol.
- In some cases, the EU Acquis does not provide for sufficient measures to implement the ICZM Protocol, such as for the establishment of zones where construction is not allowed (Article 8). However, it seems that both the Commission as well as the Council and the Parliament are of the opinion that this particular measure should be left to the discretion of Member States in accordance with the principle of subsidiarity (see recital 9 of the Decision n° 2010/631/EU concerning the conclusion, on behalf of the European Union, of the Protocol on Integrated Coastal Zone Management in the Mediterranean to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean).

Conclusion.
Next steps: How to fill in the gaps

The European Commission has launched a review of the EU ICZM Recommendation, with a view to a follow-up proposal by the end of 2011. An impact assessment is conducted to explore the need and options for future EU action and to assess potential social, economic and environmental consequences that new initiatives proposed by the European Commission may have.

Given the need for coherent planning of coastal and maritime areas, the impact assessment for a follow-up to the EU ICZM Recommendation is conducted in conjunction with the assessment of possible future action on marine spatial planning.

At this stage, the key questions are: a) Has the EU already exercised its competence on ICZM? and b) Is the EU level the best for intervention to implement the ICZM Protocol? The European Commission is now trying to give clear answers to these two questions, in order to decide what EU action to take in the coming months.

On a), the non-legally binding nature of the ICZM Recommendation of 2002 is not an argument that would help support the view that the EU has not exercised its competence in the field of ICZM. The approval of the ICZM Protocol by the EU through the adoption of the Council Decision N° 2010/631/EU formally signals to both the international community and the Member States that the EU wishes to exercise its competence in this field. And the EU has already exercised its competence in the field of marine spatial planning which is required under the Marine Strategy Framework Directive (MSFD), a field closely related to ICZM.

On b), the following arguments may be put forward by the Commission to support EU action for the implementation of the ICZM Protocol:

- ICZM implementation delivers clear benefits, especially in understanding, governance, transparency and efficiency of coastal planning and management.
- Coastal environmental processes are trans-boundary in nature and can be better managed in the context of a common EU framework for ICZM.
- Coastal zones are vulnerable to the impacts of climate changes, which can be better addressed in the context of a common EU framework for ICZM.
- Coastal zones are of strategic importance to the EU economy and they constitute a common natural and cultural resource. A common EU framework for ICZM facilitates development opportunities and improves effectiveness of preservation measures.
- Coastal planning decisions often have consequences for coasts in neighbouring countries. ICZM requires institutional coordination, coherent planning of land and sea part of coastal zone, integration of interests (social, economic and environmental). A common EU framework for ICZM facilitates the cross-border coordination of such planning.
- Coastal planning and management systems are very complex and are in some cases based on EU legislation, e.g. nature conservation. A common EU framework for ICZM would provide more clarity and a better level-playing field for businesses and citizens who invest and work in coastal zones.
- Sustainable development remains an important EU objective, and it is crucial to strike a balance between protection of environment and development in a harmonized manner throughout the EU.
- Specific tools or instruments could be developed to enhance cooperation among the Member States such as spatial planning, for setting out a vision for coastal development, or shared information systems.

In the end, the Commission will look forward to identifying the best instrument to implement the ICZM Protocol, while taking into account the subsidiarity principle enshrined by the TFEU. One option is to put forward a proposal for a Directive on ICZM that would aim at filling the gaps for implementing the ICZM Protocol while consolidating the ICZM approach throughout the entire EU territory in a way that ensures consistency with marine spatial planning, for instance the spatial and temporal control measures foreseen by the MSFD mentioned above, as well as with measures to adapt to the negative impacts of climate change.

To be acceptable for (all) Member States, it is likely that such a proposal for an ICZM Directive would focus before all on the development of long term national ICZM strategies (balance between development and environment allowing some flexibility) while leaving the choice of implementing measures to Member States' discretion.

PART IV.
CONCLUSION

The first aim of this study was to offer an analytical rather than literal reading of the ICZM Protocol. Through the "deconstruction" of its structure and an in-depth study of the spirit in which provisions were negotiated, this report proposes an alternative, user-friendly architecture based on a substantial rationality (the subject of provisions) rather than directly following the result of winding negotiations. While always trying to stick to the original spirit and contents of the Protocol, this report articulates our analysis around four main areas: (i) adapting coastal-related sectoral policies and regulating coastal activities, (ii) governance processes, (iii) strategic planning and (iv) regional cooperation. The report then addresses the crucial issue of the legal scope of the Protocol's provisions and of their implementation both in the Mediterranean and European regional systems. The result of this study remains – inevitably and intentionally – both dense and relatively lengthy. We did not want to sacrifice the complexity of the Protocol, which is inherent to the majority of international legal instruments but even more so here given that the subject, ICZM, is a vast one and that the instrument, a legal text specifically focusing on coastal zones, is innovative.

Consequently, how should the Protocol in general and this study in particular be understood? How should this many-sided, sometimes even redundant text be approached in order to extract its essential substance? In reality, as the perception of the coastal zone depends above all on the position of the person observing it, all stakeholders concerned will adopt their own interpretation of the text, according to their interests and fields of competence. Scientists will note, for example, that the State must not only stimulate research on ICZM, but also examine any findings in order to adopt the most appropriate decisions possible. Managers, on the other hand, will remember that a "Mediterranean coastal zone network" will soon be set up, while experts on natural disasters will see coastal zones as a field of investigation to be explored.

All stakeholders involved in coastal issues will therefore find which Protocol provisions more specifically address their concern, whether this is a sector, a type of habitat or an instrument, etc. However, beyond these specific aspects, we would like to provide here several avenues for a more global reading of the text and to open up perspectives regarding the methods for its implementation. Clearly, this is not about pretending that only one method exists for applying the provisions of the Protocol. The national situation at the time of ratification (legal, political, economic, institutional, etc.), as well as the internal structure of each State (centralised, decentralised, regionalised, etc.), will largely condition the methods for implementing the Protocol. It is nevertheless possible here to identify major stages that all States will have to go through, one way or another, when the text enters into force in their national systems.

Adapting the legal framework: the major role of the State

When the Protocol enters into force for a Mediterranean State, the first fundamental stage for national authorities consists in adapting their domestic legal framework to the requirements set out in the text. This is one of the major objectives of international law – to impose new obligations on States and to prescribe legal developments to this end. Consequently, in each State concerned, studies should be made to determine which normative changes are needed to ensure the domestic legal system is in keeping with the provisions of the Protocol. In this respect, special attention should be given to the sectoral policies identified in this study, since the Protocol calls for the regulation of numerous coastal activities on the one hand (urban development, tourism, aquaculture, agriculture, etc.), and for the preservation of biodiversity in general and of certain ecosystems in particular, on the other.

Here, it is important to stress that the States are the primary subjects of international law. The first developments and modifications needed must therefore target above all the national legal framework. In decentralised States, regional authorities will clearly be able to take advantage of the competences

transferred to them to adapt their normative system and participate in the implementation of the Protocol. However, this will by no means exempt the State from making the necessary changes to the national legal system. In a strongly decentralised State for instance, the adaptation of the sole regional legal framework would be insufficient.

Implementing legal provisions: the importance of regional and urban planning documents

Once the provisions of the Protocol have been integrated into the domestic legal system, the key issue of their implementation must be addressed. In this respect, regional and urban planning documents constitute special instruments for the implementation of the text. Here, this remark goes beyond the literal analysis of the Protocol, which makes a broader reference to "coastal plans and programmes", but experience shows that regional and urban planning documents unquestionably have added value if (i) they are part of a strategic planning activity and (ii) their planning contents is imposed when issuing individual authorisations for the implantation of activities or constructions. Drawn up by the State or by regional / local authorities, at national or sub-national level, these documents should therefore be the mainspring of the application of many provisions of the Protocol, from the regulation of coastal activities to compliance with the principle of balance, from spatial integration to respect for carrying capacity, and from the establishment of coastal setback zones to the preservation of biodiversity. Consequently, it is first necessary to determine whether the national legal system enables national and / or sub-national authorities to formulate regional and urban planning documents. If this is not the case, the domestic legal system should be modified in order to allow it. If this possibility is already provided for by the law, it is then necessary to determine whether existing planning and urban documents can be used to adapt and regulate sectoral policies and activities mentioned in the text and to apply, in a broader manner, the ICZM principles and objectives identified by the Protocol. Can such documents, at least in theory, provide for measures to preserve biodiversity, regulate, restrict or prohibit the activities mentioned in the Protocol, and impose the integration of risk in planning policies? If this is not the case, then the legal system itself must be modified in order to make it possible. In a second step, the system of regional and urban planning documents itself will have to be organised. It includes, among other, the use of mapping instruments, the creation of data bases relating to the areas at stake, the training of experts and the implementation of procedures dedicated to the elaboration of the documents and to the enforcement of their contents. It is important to underline that, even if the form of coastal plans and programmes, and the authority competent to adopt them, are not specified by the Protocol, sub-national authorities are specifically targeted by the Protocol implementation since their roles are extensively highlighted in the text (5f, 6e, 7c, 7-2, etc.).

Adapting governance patterns as a cross-cutting concern

The issue of coastal governance patterns appears in a cross-cutting manner, first in the stage of adapting the legal system, and second in its implementation, through regional planning documents in particular.

Indeed, governance processes should first be at the heart of discussions on adapting the domestic legal framework: the law can help to more effectively take into account the governance requirements identified by the Protocol. Spatial integration, for example, may be facilitated by a legal modification enabling a regional planning document to cover both the land and marine parts of the coastal zone. Institutional integration may also be supported by the creation of an agency or body specially charged with forging links between the various administrations involved in coastal zones. This necessity to use

the law is even more evident for issues linked to information and participation, whose implementation requires the use of procedures and mechanisms that can only be legally established.

Nevertheless, the implementation of ICZM in general, and of its governance dimension in particular, must be guided by certain principles whose application is not necessarily guaranteed by the modification of the domestic legal system alone. This is the case, for example, of intersectoral integration, science-management integration and institutional coordination: the effective application of such obligations requires changes of behaviour that the law can only stimulate but not guarantee. It is therefore in the implementation stage, especially through the adoption of regional and urban planning documents that a special effort must be made to this end. The national and sub-national authorities must keep in mind all of these principles in the application of legal provisions. This calls, in particular, for consolidating communication on the issue and making efforts in the training of experts involved in this implementation stage.

Implementing beyond the sole legal transcription

The above is a reminder that the implementation of integrated management must be guided by certain principles whose application cannot be assessed by studying the legal system alone. Issues such as sectoral policy coherence, land-sea integration or institutional coordination require a functional analysis of the management system. Likewise, only an analysis of this kind will make it possible to determine to what extent the actual management system – the result of all interventions in coastal areas – reflects a real application of the law and of its intention. There may in fact be a considerable discrepancy between the existence of a legal standard and its implementation. Analysing coastal zones management systems will thus allow identifying opportunities – a legal tool specific to coastal zones, dynamic local authorities, an institutional structure specifically focusing on coastal management, etc. – and barriers – failure to apply the law, compartmentalized administrative departments, intersectoral disputes, etc. – to the implementation of ICZM. Conclusions may then be drawn on the dimensions of integration that have already been effectively addressed and on those that will be at the heart of efforts to implement the Protocol.

Based on the study of the provisions of the Protocol provided here, as well as on in-depth analyses of national legal and management systems, conclusion will be drawn on how the Protocol can be implemented in each of the national and local systems studied. This will be all the more crucial as early findings of the Protogizc project (see e.g. Rochette and du Puy-Montbrun, 2011) indicate that the Protocol *per se* may not have a strong impact on legal systems of a number of Mediterranean countries – especially in EU Member States or acceding countries. The States and stakeholders will have to be convinced that implementing the Protocol should not be a legal issue only.

ANNEX.
COASTAL SETBACK ZONES IN THE MEDITERRANEAN:
A STUDY ON ARTICLE 8-2 OF THE MEDITERRANEAN ICZM PROTOCOL

1. Introduction

1.1. The 100 metre setback zone, an emblematic provision of the ICZM Protocol

According to Article 8-2 of the ICZM Protocol, the Parties:

a) Shall establish in coastal zones, as from the highest winter waterline, a zone where construction is not allowed. Taking into account, inter alia, the areas directly and negatively affected by climate change and natural risks, this zone may not be less than 100 metres in width, subject to the provisions of subparagraph (b) below. Stricter national measures determining this width shall continue to apply.
b) May adapt, in a manner consistent with the objectives and principles of this Protocol, the provisions mentioned above:
   1) for projects of public interest;
   2) in areas having particular geographical or other local constraints, especially related to population density or social needs, where individual housing, urbanisation or development are provided for by national legal instruments.
a) Shall notify to the Organization their national legal instruments providing for the above adaptations.

Article 8-2a of the ICZM Protocol, laying down the establishment of a 100 metre setback zone in Mediterranean coastal areas, is undeniably a **flagship provision** of this new legal instrument that was adopted in January 2008. This article reveals how regional Mediterranean law in this case filters into the traditional sphere of domestic law to govern an area, regional planning, which is usually the sole competence of national and sub-national authorities. It also reflects the will of the Mediterranean States to resolutely commit to the protection of coastal ecosystems. This article was the **subject of heated debate** during negotiations due to the fact that its implementation raises many challenges for an integrated and sustainable management of Mediterranean coastal zones. It is therefore not surprising that the building ban is accompanied by possibilities for **adaptatio**n, to which the States remain particularly attached. As the Protocol is now entered into force, it seems necessary to study the precise content and scope of this emblematic provision of the Protocol in order to determine the exact obligations falling to States.

1.2. General considerations on coastal setback zones

Before making an analysis of Article 8-2 itself, it seems necessary to put the concept of the setback zone back in its general context and to briefly present its objectives as well as the use already made of this tool today in the Mediterranean.

1.2.1 Objectives of coastal setback zones

Coastal planning regulations are a major part of any integrated coastal zone management (ICZM) policy. In this respect, the establishment of coastal setbacks is proving to be a tool that meets many different policy objectives.

First, establishing setbacks of this kind clearly contributes to **biodiversity protection**. By preventing construction at the land-sea interface, which is by nature extremely fragile, setback zones ensure the protection of coastal species, ecosystems and habitats such as dunes, wetlands, sea grass meadows and coastal forests.

Second, establishing a setback zone helps to **maintain ecosystem services**. Indeed, oceans and coastal zones provide humankind with invaluable benefits through their associated ecosystems (Millennium Ecosystem Assessment, 2005). By contributing to the preservation of wetlands and estuaries, a setback zone helps, for example, to maintain the water purification functions provided by these special environments. A tool of this kind also helps to slow down the natural erosion of coastal systems: for instance, beach loss is considerably enhanced by coastal artificialisation, which can be prevented by a setback zone. Similarly, protecting dune ridges helps to stabilise the ground and thereby prevent erosion. Finally, by facilitating the public access to an area larger than the public maritime domain alone, the establishment of a setback zone helps to maintain the recreational services provided by this particularly attractive environment: by preventing excessive coastal artificialisation, it responds to the permanent and seasonal populations' "desire for nature".

The creation of setbacks is also proving to be a useful tool for the **adaptation of coastal zones to climate change**, by protecting populations against the risks of submersion and erosion and, as we have seen, by reducing pressure on biodiversity and ecosystem services that are already under considerable threat. Indeed, we know that climate change not only increases pressure on ecosystems that are already weakened by pollution, the destruction of habitats and the over-exploitation of natural resources, but also questions past – and sometimes present – development strategies in the light of the new physical conditions it imposes or points to.

Last, setbacks zone contribute to the **protection of landscapes**, from land and from sea.

1.2.2 Coastal setback zones, a well-entrenched tool in the Mediterranean

The establishment of setback zones is a tool that is increasingly used worldwide as part of coastal policies. In this respect, two options are commonly chosen: first, the "qualitative" option, which involves adapting building regulations to the specific circumstances of a coastal fringe. In California, for example, the construction setback line is not uniform, but is calculated according to two factors: first, "the length of life of the structure and the time path of exposure to coastal hazards (erosion and flooding)" (Hanak and Moreno, 2008), and second, the "quantitative" option, based on the establishment of a setback with a uniformly determined width for the whole of the national coastline. This second option is the one favoured in the Mediterranean, and we shall give several examples here, without providing an exhaustive list.

In **Algeria**, the Law of 1 December 1990 on urban and regional planning imposed a building ban on "a strip of 100 metres in width from the shoreline[94]". Article 18 of the Law of 5 February 2002 on coastal protection and development states that "this ban may be extended to 300 metres for reasons linked to the sensitive nature of the coastal environment". Although the law nevertheless authorises "buildings or activities requiring proximity to the sea", the decree intended to specify the application of this provision has yet to be adopted, which has resulted in many cases of misapplication of the text (Megfhour Kacemi and Tabet Aoul, 2007).

[94] Article 45.

In **Croatia**, the 2007 Physical Planning Act establishes a "protected coastal area[95] (PCA)", a zone "encompassing all islands, the continental belt 1 000 metres in width from the coastline and the sea belt 300 metres in width from the coastline[96]". Articles 50 and 51 ban new construction works within a belt from 70 to 100 metres from the coastline under certain conditions. Nevertheless, exceptions are provided for "construction works for utility infrastructure and underground power lines, accompanying facilities used for hospitality and catering and tourism purposes, construction works which by nature must be located on the coast (shipyards, ports, etc.) and for development of public areas[97]".

In **France**, the principle of protecting a continuous 100 metre strip was already set out in the National Planning Directive of 25 August 1979. Legislative confirmation by the Law of 3 January 1986 on coastal planning, protection and development, known as the *Loi Littoral*, clarified the principle, removing the numerous exceptions that existed under the previous regulation. Article L 146-4-III of the French Urban Planning Code thus provides that "outside urban areas, buildings and facilities are prohibited within a 100 metre coastal strip (…). A zoning and land use scheme may extend the coastal setback (…) to more than 100 metres when justified by the sensitivity of the environment or by coastal erosion". Although the general principle of a 100 metre setback zone is clearly established, it should be stressed that this development ban does not apply to "buildings and facilities necessary for public service or economic activities requiring proximity to the sea". This concept has been strictly interpreted by the administrative Courts, principally authorising facilities needed for the maintenance and development of traditional coastal activities (aquaculture, naval repairs, etc.[98]).

In **Israel**, the National Master plan for the Mediterranean Coast, adopted in 1983, aims to prevent development which is unrelated to the coast and to resolve conflicts of interest among land uses which require a coastal location. It includes a clause prohibiting development within 100 metres of the coastline, which may be extended, if necessary, according to the physical characteristics of the coast (UNEP/MAP/PAP, 2000).

In **Morocco**, the draft law on coastal protection and development establishes a setback zone of 100 metres, which may be extended when justified by the sensitivity of the environment or by coastal erosion. Exceptional authorisation may, however, be granted to "building projects of guaranteed economic interest".

In **Spain**, chapter II of Coastal Law 22/1988 of 28 July establishes a protection zone of 100 metres which may be extended to 200 metres upon agreement of the autonomous communities and the municipalities concerned. In this zone, the construction of establishments for residential use is prohibited. It should be noted that the application of this law was left in abeyance for a long time, leading the Spanish government to adopt in 2008 a strategy to recover land that has been illegally built upon in this zone.

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95 Article 48.

96 Article 49.

97 Article 51.

98 Consequently, the following requests were rejected: a sea spa centre (Administrative Court of Nice, 17 December 1987, Mouvement niçois pour la défense des sites et du patrimoine and others), a bar-restaurant (Council of State, 9 October 1996, Union départementale Vie et Nature 83), a car park (Council of State, 10 May 1996, Commune de Saint-Jorioz). On the contrary, exceptions were granted for aquaculture activities (Administrative Court of Rennes, 11 October 1989, Société pour l'étude et la protection de la nature en Bretagne), the construction of a lifeguard post (Administrative Court of Caen, 27 December 1990, Sahiguède), and the creation of two basins for the development of oyster-farming activities (Administrative Court of Rennes, 23 April 2003, Association Les amis de Locmiquel, de Baden et du golfe du Morbihan).

Finally, in **Turkey**, Coastal Law 3621/3830 provides for a 100 metre "shoreline buffer zone" in which facilities aimed at the protection of the shoreline or the use of the coast for the public interest may be built if authorised by a land use planning permit. This category of buildings includes piers, ports, harbours, berthing structures, quays, breakwaters, bridges, seawalls, lighthouses, boat lifts, dry berths and storage facilities, salt production plants, fishery installations, treatment plants and pumping stations.

Thus, the establishment of coastal setback zones is a measure that is increasingly being adopted in the Mediterranean. In this respect, **national legislations share three major elements**: (i) the institution of the general principle of a ban on building in a coastal strip that varies in width from country to country, (ii) the use of ecological and geographical considerations to justify the extension of this zone, and (iii) the definition of exceptions (or dispensations, etc.) that vary in scope and may or may not be well-defined.

Last, in those Mediterranean States that have not established coastal setback zones *strict sensu*, it should be pointed out that special attention is nevertheless often given to the areas closest to coastlines through consolidated legal protection. In **Egypt** for example, the 1994 Environment Law submits the construction of any establishment within 200 metres of the coastlines to the permission of the competent administrative authority, in coordination with the Environmental Affairs Agency[99]. In **Italy**, the Law on landscapes also calls for special attention to be given to the 300 metre strip by prohibiting, if need be, any new building[100].

1.3. Outline of the study

The study first examines the principle of the setback zone as provided for by the Protocol (section 2), discussing the details of Article 8-2a and debating its legal nature and normative strength. This section also analyses specific implications for European Union (EU) Member States. Section 3 then briefly elaborates on Article 4 concerning the "preservation of rights" and its implications for Article 8-2. Section 4 is dedicated to Article 8-2b; it analyses the conditions and actual meaning of the key word "adaptation", before looking into the notions of "public interest" and "geographical or local constraints", in light of existing experiences.

2. The principle of a 100 metre coastal setback zone

2.1. The content of the principle

2.1.1 The objectives attached to the establishment of a setback zone

It is first important to put Article 8-2 back into the broader context of the Protocol and to determine the exact objectives attached to the establishment of a setback zone.

Regional planning is traditionally a sovereign competence a State asserts over its territory. The ICZM Protocol nevertheless marks a shift away from this original approach and considerably disrupts the traditional field of inter-State cooperation, filtering into disciplines that were hitherto governed by domestic law alone: this is particularly true for regional planning and urban planning law, areas that are governed by some of the provisions of the Protocol. The text thus aims to establish a "common

[99] Article 73.

[100] Legge 8 agosto 1985, N° 431, Conversione in legge con modificazioni del decreto legge 27 giugno 1985, N° 312 concernente disposizioni urgenti per la tutela delle zone di particolare interesse ambientale, Gazzetta Ufficiale della Repubblica Italiana N° 197 del 22 agosto 1985 (Legge Galasso).

framework for the integrated management of coastal zones[101]", in other words to define common rules for coastal management. In this case, although some Mediterranean States have already included the establishment of setback zones in their legal system, the main objective of Article 8-2 is in fact **to set minimum requirements and common criteria** for the establishment of such zones.

Article 4-3-e of the Barcelona Convention requires States to "promote the integrated management of the coastal zones, taking into account the protection of areas of ecological and landscape interest and the rational use of natural resources". Echoing this provision of the framework convention, the ICZM Protocol recognises Mediterranean coastal zones as "common natural heritage (…) that must be preserved" and urges States to guarantee the protection of natural and landscape heritage[102]. Article 8-1 itself – which introduces the principle of the setback zone – concerns the preservation of "coastal natural habitats, landscapes, natural resources and ecosystems". We can therefore conclude that the establishment of a setback zone as provided for by the Protocol is part of the broader objective of **protecting natural heritage** in Mediterranean coastal zones.

Finally, for those who drafted the Protocol, the relevance of the principle of a setback zone "lies not only in the concern to protect an area of ecological and landscape interest which is very fragile due to the land-sea interface, but also the necessity to prevent natural risks resulting from the rise in sea levels related to climate change[103]". This acknowledgement of natural risks is in fact set out in Article 8-2a itself, which states that the coastal zone includes "areas directly and negatively affected by climate change and natural risks". Consequently, the establishment of a setback zone is also part of the broader goal of **preventing natural risks and adapting to climate change**, and is a major tool for achieving this goal.

2.1.2 The establishment of a setback zone as a tool for applying international treaties

We can consider that the three objectives attached to the establishment of a setback zone – setting common rules and criteria, protecting natural and cultural heritage, and preventing risks and adapting to climate change – echo certain international instruments laying down similar obligations.

First, the approximation of domestic laws by means of setting common rules is a direct consequence of regional cooperation on coastal issues - cooperation which is largely encouraged by international instruments. **Agenda 21**, resulting from the Rio Conference (1992), thus calls for cooperation on integrated coastal zone management, especially within a regional framework[104]. In the same way, the **Programme of Action adopted during the Johannesburg Summit** (2002) advocates the application of an integrated management of the oceans and coasts, suggesting the development of "regional programmes of action[105]" to achieve this.

The protection of natural and landscape heritage is also an obligation set out in numerous international treaties. The **United Nations Convention on the Law of the Sea** (UNCLOS), for example, establishes the obligation to protect the marine environment[106] and encourages regional cooperation to this end[107],

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[101] Article 1.

[102] Articles 5(b) and 5(d), for example.

[103] UNEP/MAP, Draft Protocol on the integrated management of Mediterranean coastal zones, Meeting of MAP Focal Points, Athens (Greece), 21-24 September 2005, UNEP(DEC)/MED WG.270/5.

[104] Chapter 17:Protection of the Oceans, all Kinds of Seas, Including Enclosed and Semi-enclosed Seas, and Coastal Areas and the Protection, Rational Use and Development of their Living Resources, 17.10.

[105] Plan of Implementation of the World Summit on Sustainable Development, 33-c.

[106] UNCLOS, Article 192.

[107] UNCLOS, Article 197.

especially in the case of enclosed or semi-enclosed seas[108]. The obligation to sustainably manage coastal zones and, more specifically, the establishment of coastal setback zones by States therefore clearly correspond to the objectives set out in UNCLOS. Since it concerns the protection of ecosystems, habitats and, more broadly speaking, biodiversity, it is also a tool for applying the **Ramsar Convention on Wetlands of International Importance** or the **Convention on Biological Diversity** and the Jakarta Mandate[109]. By including a section on landscapes, the ICZM Protocol and Article 8-2 also tie in with the objectives set by the **European Landscape Convention**, signed in Florence on 20 October 2000.

Finally, underlining in its preamble that States with low-lying coastal areas are particularly vulnerable to the adverse effects of climate change, the **United Nations Framework Convention on Climate Change** invites States to "cooperate in preparing (…) appropriate and integrated plans for coastal zone management[110]". The development of ICZM initiatives at the regional level, in particular through the establishment of setback zones, thus falls within the legal framework of the Convention[111].

The ICZM Protocol and especially Article 8-2 therefore respond for the Mediterranean region to several international treaties and political commitments. Consequently, it is important to draw States' attention to the fact that the establishment of a coastal setback zone, as provided for by the text, could be the subject of specific developments in the national reports required by certain conventions. This invites States to maximise the synergies between the different treaties to which they are party.

2.1.3 Calculating the setback zone

Article 8-2a specifies the method for calculating the 100 metre strip, which must be established "as from the highest winter waterline". The "highest winter waterline" is a reference to a standard of Roman origin codified in the Institutes of Justinian of 533, whose Book II title I defines the shoreline: "*est autemlitus maris quatenus hibernus fluctus maximum excurrit*", or the shore of the sea extends to the point attained by the highest tide in winter.

The application of this provision will first require the national authorities to accurately determine, according to the configuration of the area, the **precise point** reached by the highest winter tides. The plan of the setback zone must then be recorded and mapped in the **relevant planning documents**, especially those used as the basis for land use permits (especially building permits). Finally, the plan of the setback zone must be **regularly updated** according to changes in the coastline, whether due to erosion, progradation or sea level rise caused by climate change.

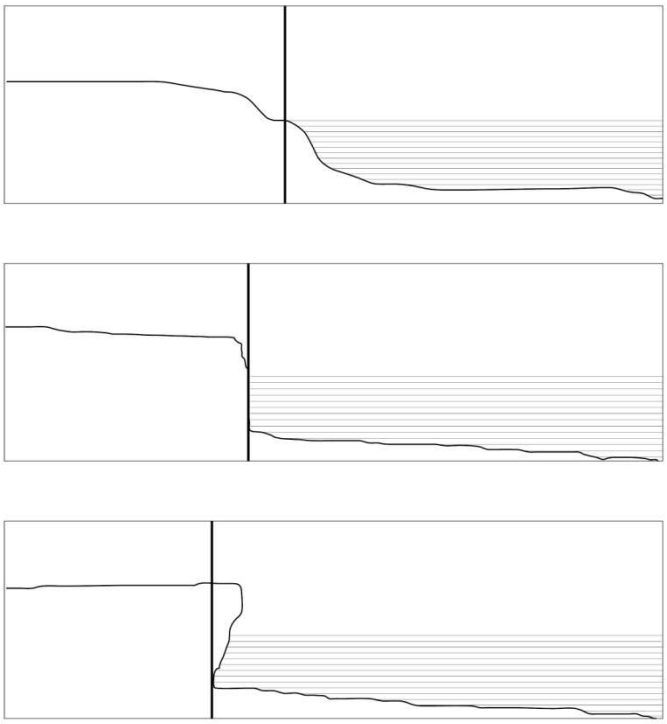
The delimitation of the highest winter waterline could be more complex in case of steep or cliff coastlines, where the waves directly hit the coastal mountains or cliffs. In France, courts consider that the starting point of the 100 metre setback zone is the vertical elevation of the point until which the highest waterline can stretch, without exceptional meteorological conditions (see figures below).

[108] UNCLOS, Article 123.

[109] CBD COP II, Decision II/10, Conservation and sustainable use of marine and coastal biological diversity, Jakarta, Indonesia, 6-17 November 1995, UNEP/CBD/COP/2/19.

[110] Article 4(e).

[111] For a more in-depth analysis of the links between ICZM and adaptation to climate change, see e.g. Rochette, Magnan and Billé, 2010.



2.1.4 Setback zone and existing urbanisation

Obviously, the principle provided by Article 8-2a does not affect the existing properties located within the 100 metre area: therefore, the implementation of this provision does not require the systematic demolition of the existing buildings.

Nevertheless, regarding the exposure of a coastal fringe to natural risks and taking into account the need for adaptation to climate change – all challenges mentioned in the ICZM Protocol – it could be necessary for States, in precise circumstances, to organise strategic retreat, i.e. move coastal installations further inland. Of course, it may be difficult to get the different players involved to accept this measure but there is mounting experience to show that the process can be understood. Similar strategies could also be developed to ensure the preservation of natural heritage or the public access along the shore.

What is a "construction"?

The ICZM Protocol does not precise the type of construction covered by the non-building principle, which therefore leaves States an important room for manoeuvre to interpret this notion. Since Article 8-2 does not identify a limitative list of constructions concerned (for instance housing, touristic accommodations, restaurants, etc.), this concept should however be interpreted widely. A possible approach to the "construction" as in Article 8-2 could be the permanence of the facility.

2.2. The content of the principle

2.2.1 An obligation of result

Paragraph 2 of Article 8 provides that the Parties "shall establish in coastal zones (…) a zone where construction is not allowed". The use of the verb "establish", an action verb used in the present tense, reveals beyond dispute the desire of those responsible for drafting the Protocol to subject States to an **obligation to produce results**. According to the principle of *Pacta sunt servanda*, codified in Article 26 of the Vienna Convention on the Law of Treaties, the Parties to the Protocol must therefore apply this

provision "**in good faith**" and refrain from taking measures that would reduce its scope and prevent the establishment of a 100 metre setback zone, subject to the provisions of Article 8-2b.

Stricter national measures determining the width of the setback zone "shall continue to apply". This means that the Protocol endeavours to set minimum rules for protection, but that States reserve the right to establish stricter rules.

2.2.2 Specific consequences for the Mediterranean EU Member States

From the viewpoint of the EU system, the ICZM Protocol is a mixed agreement: the Member States and the EU thus have shared competence for its implementation. In accordance with Article 216 of the Treaty on the Functioning of the European Union (TFEU), international agreements "concluded by the Union are binding upon the institutions of the Union and on its Member States". EU approval of the Protocol and its entry into force have therefore important consequences for the Mediterranean EU Member States.

The provisions of an international agreement form an integral part of the EU legal order as soon as the agreement enters into force[112]. This principle extends to the mixed agreements concluded by the EU and its Member States with non-member countries. Under Court of Justice of the European Communities (CJEC) case law, these agreements "have the same status in the Community legal order as purely Community agreements[113]". In the hierarchy of EU standards, an international treaty takes precedence over secondary EU law (regulations, directives and decisions). Finally, as EU law originates in a monistic approach, the EU does not necessarily need to adopt an instrument to transpose international agreements into EU law, at least where EU competence is concerned.

These effects of an international agreement that is duly approved by the EU and its Member States have several consequences, which have been confirmed by the CJEC since its **case law in the Etang de Berre case** on the applicability of the Athens Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources to the Barcelona Convention[114].

First, the Court considers that "in ensuring respect for commitments arising from an agreement concluded by the Community institutions the Member States fulfil, within the Community system, an obligation in relation to the Community, which has assumed responsibility for the due performance of the agreement". It therefore concludes that "there is a Community interest in compliance by both the Community and its Member States with the commitments entered into under those instruments". Consequently, if a Mediterranean EU Member State that is party to the Protocol fails to respect the provisions of the Protocol, the Commission may, on its own initiative or by declaring admissible a complaint brought by an individual, initiate proceedings for failure to fulfil an obligation against the State in question[115] or even for non-implementation of judgments for failure to fulfil obligations, and may then impose penalty payments[116].

Because the provisions of duly concluded international agreements are an integral part of EU law, the Court finds itself competent to rule on the proper application of an international agreement, whether

[112] CJEC, 30 April 1974, R. & V. Haegeman v Belgian State, Case 181/73; CJEC, 30 September 1987, Demirel, Case 12/86.

[113] CJEC, 19 March 2002, Commission v Ireland, Case C-13/00.

[114] CJEC, 15 July 2004, Syndicat professionnel coordination des pêcheurs de l'étang de Berre et de la region v Électricité de France (EDF), Case C-213/03.

[115] Article 256, TFEU.

[116] Article 260, TFEU.

mixed[117] or otherwise[118], by the EU Member States. It may therefore allow an action for failure to fulfil an obligation brought by the European Commission on the basis of Article 256 of the TFEU, as previously mentioned.

The Court rules that "a provision of an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure". In the Etang de Berre case, the Court thus used case law established since the aforementioned Demirel case of 1987, considering that Article 6-3 of the Athens Protocol on Pollution from Land-Based Sources "clearly, precisely and unconditionally lays down the obligation for Member States to subject discharges of substances listed in Annex II to the Protocol to the issue by the competent national authorities of an authorisation taking due account of the provisions of Annex III to the Protocol".

In this case, **it is important to ask whether the provisions of Article 8-2 of the ICZM Protocol may be regarded as being directly applicable**. Article 8-2a subjects the Contracting Parties to the Protocol to a "clear and precise obligation" to establish a setback zone from a fixed point – the highest winter waterline –, notwithstanding the fact that States may adapt the width of this zone for projects of public interest and in areas having particular constraints. Indeed, the obligation applies to the establishment of the zone. The fact that adaptations may be made to this zone does not call into question the principle of the establishment of the zone in the national law of the Contracting Parties.

A more complex issue is whether this clear and precise obligation is subject, in its implementation or effects, to the adoption of any subsequent measure, to use the Court's own terms. In the Etang de Berre case, the Court considered that the fact that the national authorities had room for interpretation (in the issue of authorisations taking due account of the provisions of Annex III to the Athens Protocol) in no way diminished the clarity, precision or unconditional nature of the prohibition laid down in Article 6-3 of the Athens Protocol.

In this case, the fact of being able to make adaptations in accordance with Article 8-2b does not call into question the unconditional nature of the obligation to establish a setback zone. Although the criteria for using coastal zones that must be included in national legal instruments pursuant to Article 8-3 to implement Article 8-2 leave States with room for interpretation, especially to take into account specific local conditions, this in no way diminishes the unconditional nature of the obligation to establish a setback zone. Finally, the obligation to notify the national instruments providing for the aforementioned adaptations pursuant to Article 8-2c does not subordinate the obligation to establish a setback zone. This is corroborated by both the purpose and nature of the ICZM Protocol – as they may be interpreted in light of Articles 5 and 6 – in other words to guarantee sustainable coastal planning, especially from the viewpoint of environmental protection. Moreover, for those States that have already established setback zones, the Protocol provides that stricter measures shall still apply.

If the need arises, it will fall to the national courts and, for EU Member States, to the CJEC, to acknowledge the **direct applicability of Article 8-2a**, if this matter is referred to them. This could well be the case, at least for the EU Member States, given the CJEC Etang de Berre case law.

The scope of the direct applicability is not without consequences for the due implementation of the ICZM Protocol and its monitoring. It lays down the recognition of an obligation to produce results for

[117] CJEC, 30 September 1987, Demirel, Case 12/86.
[118] CJEC, 30 April 1974, R. & V. Haegeman v Belgian State, Case 181/73.

States and, in accordance with the established case law of the Court[119], direct effect confers rights and obligations on individuals that the national and EU courts must enforce: this gives all concerned persons the possibility to rely on it before the national courts or within the framework of a complaint submitted to the Commission for non-compliance with EU law.

For the European member States that ratify the Protocol, this means that failure to establish a setback zone within a reasonable time from the Protocol's entry into force may result in the European Commission launching proceedings for non-compliance with EU law, even in the absence of EU measures to transpose the provisions of the Protocol. Moreover, beyond the measures provided for by the Protocol itself or by the Barcelona Convention concerning non-compliance with their provisions, a Member State may bring before the Commission an action for failure to comply against another Member State on the basis of Article 257 of the TFEU, for example in the case of non-compliance with the obligation to establish a setback zone at the meeting point of their respective borders.

3. Activities excluded from the field of application of the principle

3.1. An exemption concerning national security and defence activities and/or facilities

The "preservation of rights" provision (Article 4) directly concerns the implementation of Article 8-2 since its fourth point stipulates that "nothing in this Protocol shall prejudice national security and defence activities and facilities". Those activities and facilities can therefore be established and operated within the 100 metre strip and do not fall under the scope of Article 8-2.

3.2. A need for conciliation with the objectives of the Protocol

Nevertheless, according to Article 4-4, even those activities and facilities "should be operated or established as far as is reasonable and practicable, **in a manner consistent with this Protocol**". The Parties do not have to enact specific national legal instruments organising the establishment of such facilities and activities to be in compliance with the Protocol. However, numerous Mediterranean legislations already take into account the specificities of national defence and security facilities and activities along the seashore and grant them an exemption[120]. In France for example, this exemption is subject to "imperative technical necessities".

4. Adaptation to the principle

Aiming at integrated coastal zone management, the Protocol agrees with the idea that a complete building ban within the 100 metre strip from the highest winter waterline is unrealistic. However, contrary to some national legislations such as the French *Loi Littoral*, the Protocol does not specifically mention the non-application of the coastal setback zone in areas that are already built up. Therefore, the implementation of Article 8-2 requires a high level of flexibility. In the Mediterranean, many urbanised areas are indeed located along the coast and within the setback zones and future projects of considerable importance for the development of Mediterranean countries may require immediate proximity to the sea. The Protocol deals with this fact by adding an "adaptation clause" to Article 8-2a in Article 8-2b. Thus, the Parties "*may adapt [the implementation of the setback zone provision], in a*

[119] CJEC, 5 February 1962, Van Gend & Loos, Case 26/62.

[120] See for example Article L 146-6 of the French Urban Planning Code or Article 25(ter) paragraph 2 of the Tunisian Urban Planning Code.

manner consistent with the objectives and principles of the Protocol (…): 1) for projects of public interest, 2) in areas having particular geographical or other local constraints, especially related to population density or social needs, where individual housing, urbanisation or development are provided for by national legal instruments". These two adaptation hypotheses will be studied in the following pages, but first an analysis of their common framework is needed.

4.1. A common framework for adaptation conditions

4.1.1 Formal condition: a State-level text notified to the Organisation

Article 8-2c clearly stipulates that adaptation of the setback zone must be ruled by "national legal instruments". Adapting the width of the setback zone is, in others terms, **a State matter** that shall not be delegated to inferior levels of administration such as regions or municipalities. An adaptation cannot therefore be directly made by a sub-State authority.

This stipulation does not prejudice the type of national legal instruments, since the expression "legal instruments" cannot be interpreted as "legislative instruments". The notion of national legal instruments must be understood as an **act, at national level, by the legislative or regulatory power, which is binding and enforceable** against administrations, local authorities and citizens.

4.1.2 Substantial condition: adapting the width "in a manner consistent with the objectives and principles" of the Protocol

The whole of Article 8 is ruled by the **objectives and principles set out in Articles 5 and 6 of the Protocol**. The establishment of a 100 metre setback zone from the highest winter waterline is basically aimed at these principles and objectives. The same principles and objectives must be taken into account while adapting the width of the setback zone. This means, for example, that the **general objective of protecting coastal ecosystems and landscapes** must be respected when adapting the principle of Article 8-2a. ICZM is therefore a complex but homogenous policy and it can be considered that every objective and principle stated in Articles 5 and 6 of the Protocol must be globally taken into account when adapting the width of the setback zone. The challenge at hand is to follow these objectives and principles in a pertinent way during the process leading to the enacting of the national legal instrument providing for the adaptation of the setback zone.

4.1.3 Meaning of "adaptation"

Some authors have already noted that the use of the term "adaptation" is unusual within the framework of international law. T. Scovazzi (2010) thus asks: "**What is an "adaptation" to a treaty provision?** The answer is not clear".

Fundamentally, there is no doubt that the "adaptations" provided for in Article 8-2b indeed make it possible to **reduce the width of the setback zone** provided for in Article 8-2a.

Despite this possibility given to States, the Parties have nevertheless established the 100 metre zone as a specific area in which planning precautions must be guaranteed, pursuant to Articles 5 and 6 of the Protocol. This means, for example, that adaptations to the principle of the setback zone must be implemented in a moderate way, respecting the particular sensitivity of the area. In France, for instance, the non-application of the principle in areas that are already urbanised within the 100 metre strip does not authorise vast property developments: in fact, the principle of the "limited extension of

urbanisation[121]" applies, a concept that is evaluated according to the location of the planned urbanisation, the density of existing construction, and the specific configuration of the site, etc. The use of such precautions makes it possible to guarantee **special protection for the 100 metre strip**, over and above the potential applicability of the principle of the setback zone alone.

Furthermore, the notion of adaptation refers to the fact that although the setback zone may be reduced below 100 metres, it can also be extended beyond this width. While certain sites, such as small islands, may indeed necessitate a reduction of the setback zone, other geographical configurations, on the other hand, require its extension (coastal plains that are subject to considerable natural risks, for example).

4.2. Adaptation for "projects of public interest"

4.2.1 Common features of the notion of "public interest"

It is widely admitted that the notion of public interest, which is often connected with that of general interest, excludes any kind of action conducted in the sole interest of an individual or a group of individuals[122]. There is also no doubt that projects of public interest are projects aimed at ensuring **social and/or economic benefits for the community**. The notions of public interest and economic or social interest are not mutually exclusive. The economic or social nature of the public interest is in fact the core of the idea of adaptation for "projects of public interest" according to the Protocol, since Article 4-4 reserves the right of the Parties to establish or operate national defence and security facilities and activities.

The idea of public interest is often associated with that of national interest. From this perspective, adaptation under Article 8-2b should be opened strictly to State-operated projects (Sano, Marchand and Medina, 2010). The Protocol does not follow such a conception. Article 8 does not prejudice the **national or local nature of the public interest projects** to be conducted within the setback zone. It only requires that the adaptations be enacted in "national legal instruments". A local level-operated project of public interest seems to be compliant with the Protocol, which only requires that such a project be regulated at State level.

The notion of a "project of public interest" should not be confused with that of "**public services requiring, in terms of use and location, the immediate proximity of the sea**", which also exists in the Protocol. The second notion is more specific and narrower than the first one. The problem of the location of such "public services" must be disconnected from the "adaptation for projects of public interest". These services will be granted an ordinary dispensatory regime allowing them to settle along the seashore, whatever the local width of the setback zone. This dispensatory regime must respect the objectives and principles of the Protocol, which means at least that the location of public service activities and facilities must be: (i) motivated by an essential need to be near the seashore, and (ii) assessed beforehand in terms of its effect on the coastal environment. In the majority of European countries, public services generally benefit from exemptions from the special provisions for the coastal strip. After being authorised by the competent administration, they can settle within the established coastal setback. This is why "projects of public interest" are usually ruled by specific provisions, which must not be confused with those dedicated to public service activities and facilities. The French coastal

[121] Conseil d'État, 2 March 1998, Commune de Saint-Quay-Portrieux; Conseil d'État, 10 May 1996, Société du port de Toga SA and others; Conseil d'État, 14 January 1994, Commune du Rayol-Canadel; Administrative Court of Pau, 22 October 1991, Association Sauve plage Hossegor.

[122] Conseil d'État, (1999), *L'intérêt général*, Paris, La documentation française. On the notion of public utility: Conseil d'État, (2002), *L'utilité publique aujourd'hui*, Paris, La documentation française.

law provides a good example of how a national legal instrument could handle the settlement of public services within the setback zone. Article L 146-4-III para. 2 provides that the building ban in the coastal setback "does not apply to buildings or facilities necessary to public services or to economic activities requiring immediate proximity to the sea. Their construction is, however, submitted to a public inquiry following the modalities of law N°83-630 of 12 July 1983 on the democratisation of public inquiries and environmental protection". Projects of public interest therefore follow a different regime regarding their exceptional characteristics.

4.2.2 Examples of national legislations relating to projects of public interest

National legislations providing for a setback zone along the seashore do not always distinguish between the needs of economic activities and public services and the development of a project of public interest. Spain and France do make this distinction[123]. They provide an interesting illustration of the originality of an adaptation for a project of public interest.

In **Spain**, where public services and activities that require immediate proximity to the sea are usually permitted within the 100 metre coastal setback zone[124], exceptional dispensations for other kinds of activities or facilities may be granted by the government (*Consejo de Ministros*) for specific public use reasons (*razones de utilidad pública de bidamente acreditadas*).In such cases, the construction or modification of high-traffic roads and the deployment of high-voltage electricity networks are possible within the setback zone[125]. Moreover, in some parts of the setback zone – with the exception of coastal wetlands and specially protected areas – housing projects and industrial facilities that do not require immediate proximity to the sea may be established if they are of "exceptional importance" and if, for "specific economic reasons", it is more convenient to settle them along the coast.

The **French legislation** also grants a general exemption from the building ban within the 100 metre coastal strip for public services and activities that require immediate proximity to the sea. Their settlement must be preceded by a public inquiry[126]. Roads may also be built in such interest. Beyond the domestic and essential needs of those public services, the Code also provides that "facilities, buildings, the establishment of new roads and works necessary to maritime and air safety, national defence, civil security, and those necessary to the functioning of airports and public ports, with the exception of marinas, are not subject to the present section [which in particular provides for the 100 metre coastal

[123] The Turkish legislation (Coastal Law 3621/3830 from 1990 and 1992) provides for a 100 metre "shoreline buffer zone" in which facilities aimed at the protection of the shoreline or the use of the coast for the public interest may be built if authorised by a land use planning permit. This category of buildings includes piers, ports, harbours, berthing structures, quays, breakwaters, bridges, seawalls, lighthouses, boat lifts, dry berths and storage facilities, salt production plants, fishery installations, treatment plants and pumping stations. See Ahmet Sesli F. et al., (2009), Coastal legislation and administrative structures in Turkey, *Scientific Research and Essay*, Vol. 4. Algeria's coastal law provides for an adaptation of the min. 100 / max. 300 metre coastal setback in the interest of activities requiring immediate proximity to the sea, and does not distinguish between activities clothed or not with a public interest. Indeed, it seems that the interest of activities requiring immediate proximity to the sea is considered as a relevant public interest. Taking into account the needs of those activities, it is possible to create roads in the coastal zone where they are normally prohibited (within an 800 metre strip from the seashore, see Law 2002-02 of 5 February 2002 on the protection and development of the coast, Article 16. The Moroccan Draft Law on coastal protection and management provides for an exemption to the 100 metre coastal strip for "building projects of guaranteed economic interest". The Greek Land Planning Act n°2971/2001, which only provides for a 15 to 50 metre setback zone, authorises constructions for environmental and cultural reasons of public interest.

[124] Law 22/1988, Article 25(2).

[125] Article 25(3).

[126] Urban Planning Code, Article 146(4)(III) para. 2.

strip and the public inquiry prior to the exemption] when their localisation is an imperative technical necessity[127]". This provision shall not be considered equivalent to the stipulation of the fourth point of the clause on the preservation of rights; its scope is indeed wider. This text actually governs some of the most typical coastal "projects of public interest" that could, in a manner consistent with the objective of the Protocol, justify an adaptation of the width of the 100 metre setback zone, such as public ports (with the exceptions of marinas)[128]. The imperative technical necessity to which this text refers can be qualified taking urbanisation constraints into account[129].

4.2.3 The development of projects of public interest: experiences from EU environmental law

Beyond the ICZM Protocol, which became part of Community law, EU law does not include any other setback provisions. It has, however, produced a number of sectoral instruments for environmental protection and is developing expertise in the practice of adapting legal texts for public interest reasons.

In this context, the **Habitats Directive**, which aims to preserve natural habitats in the Union and to create the Natura 2000 network, may be considered as one of the most emblematic texts, setting out strong, efficient and preventive means of protection. In order to depart from these rules of protection, its Article 6-4 provides that: "if, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for **imperative reasons of overriding public interest**, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of *Natura 2000* is protected. It shall inform the Commission of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding **public interest**." The rationale of this provision is largely comparable to the one behind the ICZM adaptation clause for projects of public interest. This is why it may be useful to analyse the way European authorities use it.

In general, the case law of the **Court of Justice of the European Communities** identifies the public interest of a project particularly from the viewpoint of criteria concerning general interest, human health, public security and environmental protection[130]. In the more specific field of the Habitats Directive, the Commission moreover provides interesting guidelines for assessing the legality of operations conducted in the areas protected by this text. In its "**Guidance document on Article 6-4**[131]", the European Commission states that "it is reasonable to consider that the "imperative reasons of overriding public interest, including those of social and economic nature" refer to situations where plans or projects envisaged prove to be indispensable:

- within the framework of actions or policies aiming to protect fundamental values for the citizens' life (health, safety, environment);
- within the framework of fundamental policies for the State and the Society;

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[127] Article L.146(8) para. 1.

[128] It was recently ruled that the construction of a public hospital within the 100 metre strip could not be considered as a facility necessary to civil security: Administrative Court of Appeal of Nantes, 23 June.2009 N°08NT01439.

[129] See, for example, Conseil d'État, 29 December 1999, N°197720 (construction of a new road connecting a public port).

[130] CJEC, 28 February 1991, Commission/Germany [Leybucht], Case C-57/89.

[131] Guidance document on Article 6(4) of the "Habitats Directive" 92/43/EEC, January 2007, http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/guidance_art6_4_en.pdf

- within the framework of carrying out activities of economic or social nature, fulfilling specific obligations of public service".

The principles highlighted here by the Commission provide potential guidelines for designing projects that could correspond to the idea of the "projects of public interest" provided for by the Protocol.

4.2.4 The notion of public interest in light of the Protocol's provisions

From its conception to its implementation, the adaptation of the width of the setback zone for a project of public interest must be **guided by the objectives and principles of the Protocol**.

First of all, the project of public interest must be relevant regarding the "rational planning of activities[132]" and the "ecosystem approach to coastal planning[133]", and should basically result from the formulation of land use strategies, plans and programmes covering urban development and socio-economic activities as well as other relevant sectoral policies[134]. Fundamentally, such a project should concern facilities and activities requiring immediate proximity to the sea: port infrastructures and facilities essentially required for their normal functioning as well as coastal defence works could constitute obvious examples. But the list is open and could integrate facilities required by scientific research or by other coastal-related public interests (relevant activities are broadly listed in Article 9-2).

In any case, the decision must be made at the end of a specific "**assessment of the risks** associated with the various human activities and infrastructure so as to prevent their risk and reduce their negative impact on coastal zones[135]". This negative impact could consist in increasing coastal erosion[136] and overwhelming the carrying capacities of the affected coastal zone[137]. In this respect, Article 19 of the Protocol provides that "the Parties shall ensure that the process and related studies of **environmental impact assessment** for public and private projects likely to have significant environmental effects on the coastal zones, and in particular their ecosystems, take into consideration the specific sensitivity of the environment and the inter-relationships between the marine and terrestrial parts of the coastal zone". An adequate assessment method dedicated to the coastal zones is thus required at every level of the decision-making process. Indeed, assessment must be effective from the stage of coastal planning and programming to that of the specific conception of the project of public interest, as stated in Article 19-2: "in accordance with the same criteria, the Parties shall formulate, as appropriate, a strategic environmental assessment of plans and programmes affecting the coastal zones".

4.3. Adaptation for geographical or local constraints

Article 8-2-b-2 provides for a second possibility for adapting the principle of the 100 metre setback zone "in areas having particular geographical or other local constraints, especially related to population density or social needs, where individual housing, urbanisation or development are provided for by national legal instruments". Detailed analysis of this provision makes it possible to distinguish one condition and two grounds for the implementation of this Article.

[132] Article 5(a).
[133] Article 6(c).
[134] Article 6(f).
[135] Article 6(i).
[136] Article 23(2).
[137] Article 19(3) for example.

4.3.1 Condition for the adaptation

Article 8-2-b-2 provides that the two criteria may permit an adaptation to the principle "where individual housing, urbanisation or development are **provided for by national legal instruments**". This means that, on the basis of the two aforementioned basis, States may adapt the principle of the setback zone and, consequently, urbanise areas within the 100 metre strip where a **national legal instrument** provides for this.

This is a considerable relaxing of the principle, especially given that the two grounds for adaptation are themselves rather broad, vague and non-restrictive – cf. the use of the term "especially". The "good faith" application of Article 8-2 will nevertheless require States to scrupulously comply with the grounds for adaptation provided for by the text and to take into account the general objectives of the Protocol.

4.3.2 Grounds for adaptation

Adaptation to the principle of the setback zone is authorised in "**areas having particular geographical constraints"** or "**other local constraints**".

Adaptation in areas having particular geographical constraints

46,000 km long, the Mediterranean coast line is divided between rocky (55%) and sedimentary coasts (45%) and includes various types of landscapes. Therefore, the 100 metre setback zone principle cannot be implemented in the same manner along all the Mediterranean coasts. That is why the ICZM Protocol provides some possible adaptation for "particular geographical constraints". We will give here a few examples of geographical particularities which may influence the way of implementing the 100 metre setback zone.

First, it is important to remind that there are 162 **islands** of over 10 km^2 and 4 000 **islets** of less than 10 km^2 in the Mediterranean, which have their own specificities and constraints from a geographical, environmental, social and economic point of view (Benoit and Comeau, 2005). Even if each case remains specific, it should be stressed that the "geographical constraints" related to insularity can justify an adaptation of the 100 metre setback zones in two ways. First, it can justify narrowing the non-building area, especially when the geographical constraints are such that they make impossible the necessary development of urbanisation beyond the sole coastline. That is the case, for instance, in Greek Islands or in some Italy's Aeolian Islands where the urbanisation can only be developed next to the shore because of volcanoes (Figure 1). However, the insularity can also justify the extension of the coastal setback zone when vulnerable ecosystems are located beyond the 100 metre strip. Indeed, islands often provide habitats for endemic species: therefore, the application of the non-building principle until 100 metre does not justify a destruction of vulnerable ecosystems and can conversely invite States to widen this zone.

Figure 1:[138]
Stromboli Island, Italy, where the development of urbanisation is "constrained" by the specific geography of the area.

Made of beaches and dunes, **sandy coastlines** are "the most sensitive environment to coastal changes" (Sano *et al*, 2010), which invites to implement a setback zone carefully. In particular, the width of the ideal setback zone should be determined taking into account the current (biodiversity loss, coastal erosion etc) and future (climate change impacts) threats weighting on these vulnerable ecosystems (Nicholls and Hoozemans, 1996; Magnan, 2009; Magnan*et al*., 2009) (Figure 2). Besides, the unity of the sandy dunes should be taken into account in delimitating the non-building area: ecological (Paskoff, 1985) but also legal (Article 10-4 of the ICZM Protocol) basis justify the protection of the whole dune beds and not only the part located within the 100 metre zone (Figure 2). Dunes are important ecosystems, not only from a biological point of view but also in terms of protection from the sea (buffer zones), which should be preserved beyond the sole 100 metre zone (Figure 3).

Figure 2:[139]
In Thau (France), coastal erosion affecting a road located too close to the shore.

[138] Source: http://www.dinosoria.com/climatique/stromboli_05.jpg
[139] Source: http://www.thau-agglo.fr/IMG/pdf/Plaquette_Lido_De_grands_enjeux_un_grand_projet_1-2.pdf

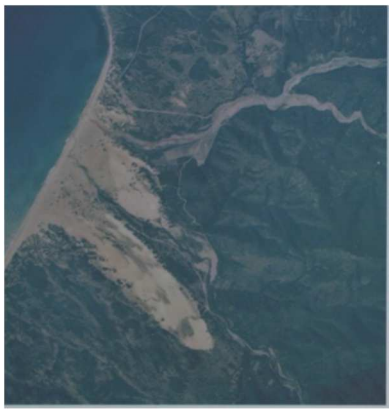

Figure 3:[140]
In the "dune di piscinas" in Sardinia (Italy), the dunes ecosystem is so important that the institution of the non-building zone in the sole 100 metre strip would not make any sense in terms of biodiversity protection: the zone where construction is not allowed could therefore be extended beyond 100 metres in order to respect the unity of the dunes ecosystem.

Figure 4:[141]
In this coastal fringe (South East of Djerba, Tunisia) dunes have been taken in consideration in urban planning, pushing back the buildings far from the coastline.

Figure 5:[142]
In Corfu (Greece), an example of urbanisation in a cliff exposed to erosion.

Figure 6:[143]
The geography of the Venice Lagoon exposes the city to a risk of submersion.

[140] Photo courtesy of Julien Rochette.
[141] Photo courtesy of Alexandre Magnan.
[142] Photo courtesy of Alexandre Magnan.
[143] Source : http://www.lapanse.com/venise/vues_du_ciel/satellite.html

Principally made of cliffs or mountains, **rocky coastlines** could also be areas of high vulnerability to erosion and natural hazards. Therefore, attention should be paid to the delimitation of the non-building zone which should be extended beyond 100 metre when the vulnerability of the area so requires. In particular, special studies should be conducted in order to determine precisely the rate of detachment of the cliff (Figure 4) and the exposure to natural hazards, especially mudslides. The same caution should be taken in planning **coastal lagoons**, particularly exposed to natural disasters and climate change impacts (Figure 6).

Geographical considerations can therefore justify adaptation to the 100 metre setback zone principle. Obviously, as the Mediterranean coasts are characterised by a high level of diversity, attention should be given to specific coastal fringes that could require narrowing or widening the non-building areas. Ideally, specific studies should be conducted in order to determine the most relevant setback zone width, taking specifically into account biodiversity protection, landscape preservation, natural hazards – all challenges mentioned in the ICZM Protocol. Adaptation to climate change, moreover, invites to plan coastal urbanisation with a long-term perspective: to this end, the utilisation of the "100 year setback zone" concept could be relevant, commanding strategic studies on sea level rise, coastal erosion, exposure to natural hazards and taking into account the geographical specificity of coastal fringes. Nevertheless, without relevant studies and data, it could be hazardous to use the adaptation possibilities provided by the Protocol to narrow the 100 metre width. Indeed, if this width is obviously arbitrary and not implementable uniformly along all the Mediterranean coasts, it is limited enough to allow agreement by most Mediterranean States, and significant enough to produce considerable effects in terms of biodiversity conservation, risk prevention and adaptation to climate change. Therefore, the precautionary principle invites not to decrease this width without conducting specific studies.

Adaptation in areas having "other local constraints"

Adaptations are also possible in areas having "other local constraints especially related to population density or social needs". This provision needs some clarifications in order to draw the frontiers of this particularly broad criterion which may justify the adaptation of the 100 metre setback zone principle.

In the Mediterranean, there is a particularly strong and increasing occupancy of the coastlines. The number of coastal cities of at least 10,000 inhabitants has almost doubled during the second half of the twentieth century. Thus, 30% of people in bordering countries live on the coast, which represents slightly more than 140 million people. In negotiating Article 8-2, it seems clear that States added the adaptation possibility for constraints related to population density in order not to stop the **development of coastal cities that are already densely populated and urbanised**. It means, for example, that when a coastal city is already saturated and the development is impossible elsewhere, the provision of Article 8-2-b-2 could justify the reduction, or even the non-implementation, of the 100 metre setback zone. Nevertheless, this adaptation will have to be in accordance with the other provisions of the Protocol, especially the ones dealing with the protection of natural heritage.

In addition to the domestic demographic pressure must be considered national and international tourists travelling within the Mediterranean basin - almost 218 and 145 million respectively. This increase of human pressure raises the issue of what is the most appropriate way to ensure the protection of coastal ecosystems. Indeed, in all Mediterranean countries, some places near the shore (beaches, cliffs with exceptional panorama, shoreline with cultural heritage, etc.) are known to be "hot spots" of tourism and are very popular during holiday season. Urbanisation in a non-built area located in the 100 metre fringe could therefore be useful in order to **limit the impacts of the touristic pressure on coastal ecosystems**: building a car park in a highly frequented area can, for example, prevent cars from parking on coastal grass or dunes and therefore help to preserve theses ecosystems.

According to the Protocol, "social needs" could also justify the adaptation of the 100 metre setback zone and therefore enable States to build in this sensitive area. In this regard, examples of traditional coastal activities can be given. Indeed, aquaculture or agriculture farms are plenty all along the Mediterranean coastlines and sometimes located in the 100 metre fringe without any other building around. In these important economic sectors, national legislations quickly evolve and impose new constraints, notably in the environmental field (sanitation, pollution control, waste management, etc.). In this context, the implementation of such legislations can require the extension of existing facilities or even the construction of new ones. Therefore, the provision of Article 8-2-b-2 referring to adaptation for "social needs" could be used to authorize, in the 100 metre zone, **the adaptation of coastal maritime activities to new environmental regulations**. For example, France adopted measures in that sense in 2004[144].

In conclusion, it is important to underline that this adaptation possibility related to "local constraints" should be interpreted with caution. Firstly, even if this provision is broad *de facto*, the implementation of Article 8-2 should not be diverted by a non-appropriate and systematic resort to the "local constraints". Secondly, the use of this adaptation possibility to limit the coastal setback zone must be done in accordance with other relevant provisions of the Protocol and, in particular, articles dealing with natural heritage protection, natural risks and environmental assessments.

5. Conclusion

5.1. The establishment of a 100 metre setback zone laid down as an obligation to produce results

Article 8-2a undeniably constitutes a binding provision of the ICZM Protocol, laying down the establishment of a 100 metre setback zone as a veritable obligation to produce results. The terminology used in the text, along with the spirit in which the negotiation of this article was conducted, demonstrates this without a doubt.

5.2. Broad possibilities for adaptation

Despite the declaration of the principle of the setback zone, States have considerable room for manoeuvre in the implementation of the obligation provided for in Article 8-2a. First, as the concept of "public interest" is not defined in the text, in practice its scope and content is only limited by any national provisions on the matter. While the spirit and the text of the Protocol, aiming at the establishment of a "common framework" for ICZM, theoretically invite States to define the concept in a relatively similar way, States nevertheless remain sovereign in the matter: consequently, the "public interest" may take different forms and be interpreted along different lines according to the national systems. In the same way, adaptations to the principle based on geographical criteria and local constraints leave States with considerable room for interpretation given the broad and non-restrictive terms used in the text in certain respects.

5.3. A 100 metre strip that is undeniably protected

However, despite the considerable possibilities for adaptation granted to States, the 100 metre strip remains well protected by the Protocol in general and by Article 8-2 in particular. Indeed, the "good faith" application of this article, as laid down in the Vienna Convention on the Law of Treaties, requires that States do not distort the content, scope or spirit of this provision. Moreover, beyond the principle

[144] Décret N° 2004-310 du 29 mars 2004 relatif aux espaces remarquables du littoral et modifiant le code de l'urbanisme.

of the setback zone, the negotiation meetings and the Protocol itself reveal the will to establish the 100 metre strip as a specially protected coastal area. This means that even in the case where adaptations to the principle are applicable, special attention must be given to this area. The general principles contained in Article 6 must be applied with care, especially the need to: (i) give priority "to public services and activities requiring, in terms of use and location, the immediate proximity of the sea", (ii) ensure the balanced allocation of activities and prevent "unnecessary concentration and urban sprawl", and (iii) make preliminary assessments "of the risks associated with the various human activities and infrastructure so as to prevent and reduce their negative impact on coastal zones".

5.4. The transposition of Article 8-2 into national law

Methods for the transposition of Article 8-2 depend above all on the national legal systems. Each State must therefore precisely study its positive law and determine whether or not legal adjustments are needed to comply with the provisions of the Protocol. The situation therefore depends on the case by case study of national legal systems. Nevertheless, at this stage it seems possible to assert that States will not be able to avoid making the establishment of a minimum 100 metre setback zone a general principle of coastal planning. The legal scope of Article 8-2a is such that we believe it is impossible, for a "good faith" application, to settle for a reinterpretation of the principle in the sole light of the adaptations authorised by Article 8-2b. The principle must take precedence over the adaptations that may nevertheless be made by the national systems, in accordance with the provisions of Article 8-2b.

5.5. The role of the Secretariat and the PAP/RAC in the implementation of Article 8-2

States are asked to "notify to the Organization their national legal instruments providing for the adaptations" mentioned in Article 8-2-b-2. The Secretariat of the Barcelona Convention will therefore receive the national transpositions of adaptations to the principle of the setback zone. It will undoubtedly then be necessary to conduct an in-depth analysis of these national instruments in order to precisely determine the range of adaptations provided for in national laws. Should these national laws propose a highly varied interpretation of Article 8-2-b-2, it is possible that the Secretariat might then attempt to encourage a shared vision by organising workshops or even adopting guidelines specifically focusing on this subject.

Moreover, as a centre specialising in ICZM issues, the PAP/RAC certainly has a role to play in the implementation of Article 8-2. First, it is undoubtedly in a position to reiterate, explain and promote this major provision of the Protocol. Perhaps it could also contribute to its application. Through the scientific and technical assistance mechanisms provided for by the Protocol[145], the Centre could first support States in the legal transposition of Article 8-2. Furthermore, while the prevalence of the project-based approach in the application of ICZM has certain considerable limitations, which the Protocol itself is in fact attempting to overcome (Billé and Rochette, 2010), the use of CAMP-type projects could also provide a relevant framework for facilitating the application of the provisions of Article 8-2, especially regarding the extension of the setback zone.

[145] Article 26.

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