

Are ICZM Protocols the new silver-bullet for sustainable coastal development?

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1. INTRODUCTION

Because “not every international environmental problem needs to be dealt with on a global level” (Alhéritière, 1982), the regionalization of international environmental law has emerged as one of the most important legal trends over the last decades. In the field of marine environment, this movement has been taking place mostly within the UNEP regional seas programme.

Noteworthy, the regulation of coastal management stood apart from this movement for a long time. However, recent developments in ICZM implementation demonstrate an increasing interest for a regional regulation through the adoption of *ad hoc* protocols within regional seas frameworks. Adopted in January 2008 and entered into force in March 2011, the Mediterranean ICZM Protocol is the first of its kind and constitutes, as of today, the only supra-State legal instrument specifically aimed at coastal zone management. It is however unlikely that the Mediterranean ICZM Protocol remain isolated. The attractiveness of such a new kind of instrument seems to be increasing, as demonstrated by the recent decision of the Parties to the Nairobi Convention to follow the path of the Barcelona Convention¹. The Black Sea is also more informally now looking at the opportunity to develop such a protocol. It appears timely, therefore, to start drawing some early lessons from the most advanced cases, that is the Mediterranean and Western Indian Ocean (WIO). In a global context of scarce financial resources and of a certain reluctance to develop new international environmental agreements, it is especially crucial to identify key conditions under which ICZM Protocols may actually make a difference.

2. THE MEDITERRANEAN AND WESTERN INDIAN OCEAN ICZM PROTOCOLS

UNEP Regional Seas Programme, initiated in 1974, traditionally promotes the development of a framework convention complemented by sectoral protocols. Since the 1970s, the topics of regional protocols and actions have developed along lines paralleling global environmental protections. In a first phase, legal instruments organising regional cooperation in combating pollution by oil and other harmful substances

1. Nairobi Convention COP Decision CP 6/3: Strengthening Integrated Coastal Zone Management in the Western Indian Ocean Region, 2010.

from ships as well as fighting against pollution from land-based sources and activities were adopted. This dynamic gradually expanded to encompass biodiversity conservation, particularly through the creation of protected areas. If Vallega noted in 2002 that the regional approach has “been marked by a lack of consistency of the legal framework with the prospect of operating sustainable management programmes”, regional seas protocols have nevertheless, more recently and in a still limited way, taken on goals beyond the sole protection of environment, including socioeconomic development. The first step in this new direction came with the 2008 adoption of the Mediterranean Protocol on Integrated Coastal Zone Management (ICZM) and it is with a similar ambition that WIO States are currently elaborating an ICZM Protocol.

In both regions, the regional approach to ICZM first developed on a project basis, from the mid-1980s. The combined effect of these various projects helped to establish the concept of ICZM in the two regions and raised national awareness of the need for sustainable management of coastal zones. However, as demonstrated in the contexts of development aid (Lecomte, 1986) or ICZM (Billé & Rochette, 2010a), this project-based approach has some considerable limitations. It is therefore both thanks to the pilot projects carried out and in response to their limits that the idea of an ICZM protocol gradually took roots in the two regions.

The November 2001 Meeting of Contracting Parties to the Barcelona Convention marked a decisive milestone by calling for the elaboration of a feasibility study concerning a “regional protocol on the sustainable development of coastal zones”. The road toward regional regulation of ICZM was thus opened up and, after the feasibility study was conducted and eventually discussed in 2003 (UNEP/MAP, 2003), a “zero-draft” elaborated in 2005 and negotiation meetings organized from 2006 to 2008, the Protocol was finally adopted on 21 January 2008 and entered into force in March 2011.

Meanwhile, other regional frameworks were considering the possibility of developing a similar instrument. This was the case of the Western Indian Ocean (WIO) regional system, governed by the Nairobi Convention adopted in June 1985. A feasibility assessment was first conducted and published in March 2010 (Billé & Rochette, 2010b). Based on this assessment, the Conference of the Parties (COP), meeting in Nairobi in April 2010, officially

launched the Protocol development process³. Since September 2010, the content of the future Protocol is discussed by WIO States within the Ad-hoc Legal and Technical Working Group for the drafting of the ICZM Protocol to the Amended Nairobi Convention.

3. EXPECTED BENEFITS OF A REGIONAL REGULATION ON ICZM

3.1. Filling the gaps in national legal frameworks

One of the primary goals of an ICZM Protocol, a legally binding instrument by nature, is to consolidate States’ legal frameworks. That was one of the essential purpose of the elaboration of such a regional instrument in the Mediterranean (UNEP/MAP, 2003) and the WIO (Billé & Rochette, 2010b) regions.

In the Mediterranean, it is unquestionable that the Protocol now into force does provide for the strengthening of the national coastal legal systems (Rochette *et al.*, 2011) – to an extent depending on national legal patterns. The protection of specific ecosystems (Article 10), the establishment of a coastal setback zone (Article 8-2), or the regulation, restriction and prohibition of certain activities (Articles 8-3 and 9-2), for example, must be incorporated in States Parties’ legal systems if not already in there.

The process leading to the elaboration of an ICZM Protocol in the WIO is grounded in a same ambition. The still limited use of environmental assessments, the lack or limitations of cadastres and land planning documents in many States, the absence of risks management strategies or the weakness of institutional coordination mechanisms are serious obstacles to integrated coastal management in the region. As suggested in the feasibility assessment⁴ (Billé & Rochette, 2010b), States are currently heading towards the development of an “Overarching +” type Protocol pursuing a dual goal: (1) consolidating the general framework for coastal management systems, as well as (2) managing those sectoral issues considered to be of greatest importance for the region.

2. Report of the 12th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its Protocols, Monaco, 14-17 November 2001, UNEP(DEC)/MED IG.13/8, Annex IV, Recommendation III.C.

3. Nairobi Convention COP Decision CP 6/3: Strengthening Integrated Coastal Zone Management in the Western Indian Ocean Region.

4. The feasibility assessment proposed four possible options: (i) a “flexible” Protocol listing general principles of ICZM and proposing methods for their implementation; (ii) a “hard” Protocol regulating a large number of coastal issues; (iii) an “overarching” Protocol, focusing on the political, legal and institutional structures; and (iv) an “overarching +” Protocol, covering not only the general structure of ICZM but also certain crucial issues for the region.

3.2. Strengthening the institutional and administrative frameworks in place or emerging

An ICZM Protocol provides support for the stakeholders pushing for ICZM implementation. In the WIO for example, most countries have now formally created National ICZM Committees. They are in particular devoted to promote ICZM implementation and, in this regard, to provide legal and technical advice to policy-makers. Nevertheless, it is obvious that their activities are often hindered or even annihilated by the relatively considerable weight of other sectors. A regional legally-binding instrument will hence support and strengthen existing national frameworks while providing more political weight and legitimacy to ICZM promoters in their daily inter-sectoral work. In this sense, an ICZM Protocol is a powerful advocacy tool, as illustrated in the Mediterranean where the ICZM Protocol is now in force. In France for example, the *Loi Littoral* adopted in 1986 is regularly attacked by elected representatives who criticise the rigidity of the text; thanks to the Protocol, and its ratification by France, its advocates have another major argument to provide in the discussion. Besides, the approval of the Protocol by the European Union has provided greater influence to the partisans of a European binding approach to ICZM, currently in discussion (Rochette *et al.*, 2011).

3.3. Rationalizing efforts

Another benefit that can be expected from an ICZM Protocol is a more rational and consistent organization of efforts. Indeed, such Protocols are powerful methodological instruments which can drive regional initiatives, therefore avoiding dispersion of efforts. Once into force, an ICZM Protocol becomes the key reference on which most, if not all, coastal initiatives should lean. In the Mediterranean for example, Coastal Areas Management Programmes (CAMPs) are now fully oriented towards the implementation of the Protocol's provisions. WIO States expect a Protocol to motivate international donors to get more involved in ICZM issues, to avoid the dispersion of projects while mobilizing resources for Protocol implementation. More broadly, the adoption of an ICZM Protocol can also reemphasize the need to implement existing protocols – all the more so as ICZM is supposed to head coastal sectoral issues – and to launch discussions on strengthening the regional system itself.

There are therefore many advantages in adopting a regional, legally binding instrument on ICZM. Nevertheless, the track record of regional seas framework in general and protocols in particular has to be kept in mind at all times: they too often remain paper agreements with no or little concrete implications. It would thus be foolish to yield to a trend dictating that each regional sea should follow

the Mediterranean model, as a matter of principle. ICZM Protocols shall bring significant added value to regional sustainable development equations only if they respond to real needs and above all if the conditions for their smooth elaboration and effective implementation are met.

4. CONDITIONS FOR SUCCESS

4.1. On the regional and national contexts

Experience shows that development of an ICZM Protocol must be preceded by a strong anchorage of the ICZM concept in the region. In this regard and as already asserted, the multiplication of ICZM projects helps in establishing ICZM in the technical, scientific and political regional community. Also crucial is the development of relevant scientific and technical studies, as well as the organization of a number of conferences, seminars and workshops. In both the Mediterranean and WIO regions, it is the sum of initiatives that created the “ICZM culture” which then allowed giving birth to the idea of an ICZM protocol.

Beyond this essential propitious scientific and political “atmosphere”, experience also demonstrates that the process is facilitated when there are political “champions” to support and boost the negotiations, to convince potentially reluctant States and to push, when necessary, the negotiation pace. This role was played by France in the Mediterranean, by Mauritius and the Indian Ocean Commission (IOC) in the WIO.

4.2. On the drafting and negotiating processes

An official decision of the Contracting Parties must first be taken to launch the process towards the development of a Protocol.

The negotiating process then needs to be designed to allow sufficient time for negotiation while not risking to get stuck. This means first of all that this process should not start from a white page but be grounded on a “zero draft”. However, no zero-draft can realistically be developed by experts if general expectations have not been stated: this implies that Parties need to define a shared vision of the would-be protocol before any drafting and negotiating process is launched. This involves “placing the cursor” quite accurately on what type of ICZM Protocol should be developed. In the Mediterranean and the WIO, the feasibility study played an important role in preparing this crucial step.

During technical discussions and political negotiations, it is no less crucial to avoid the disconnection between the few States' representatives participating in the meeting and other stakeholders, be they from

national administrations, NGOs or private sector, both at regional and national levels. The secretariats of the Barcelona and Nairobi conventions encouraged this, not only during the discussion by enabling a variety of stakeholders to attend the meetings, but upstream as well, by organising workshops on the very idea of the Protocol. This need for information also means that efforts must be done at the national level so that progress in discussions be widely disseminated and therefore known beyond the sole States' representatives participating in the meetings.

4.3. On future support to implementation

Thinking about the future implementation of a legal instrument is never premature. Indeed, a lack of anticipation increases the risk of developing a useless "paper protocol".

In most cases, regional seas conventions secretariats are focused on administrative and financial issues and do not have the internal resources to provide technical and legal assistance for regional instruments' implementation. This is why some regional seas have established "regional activity centres" (RACs). In that regard, the Mediterranean and the Caribbean, where respectively 6 and 4 RACs have already been created, are among the most advanced regions. Generally, RACs carry out three main tasks: (i) they provide States with relevant data to adopt science-based decision, through publications, white papers, reports, etc.; (ii) they strengthen regional cooperation in a specific field, by organizing conferences and workshops; (iii) they provide technical assistance for a Protocol implementation.

However, such institutional structures do not exist in all regional seas. In the WIO, especially through overseas development assistance. for instance, the regional system is indisputably experiencing functional difficulties. Following the feasibility study's conclusions, discussions are thus being held about ways to consolidate the regional system and to anticipate the implementation of the future ICZM Protocol. Despite undeniable financial issues, it appears that as in many other developing regions there is actually funding available in the in the WIO, especially through overseas development assistance. The key question is therefore the way such funding is channelled – a qualitative more than a quantitative issue.

CONCLUSION

Regional seas have a mixed track record of delivering change, and the current international mood is rather unfavorable to developing new international environmental agreements when the overall rationality and efficiency of the existing legal system

raises concerns. Identifying critical conditions for success around the regional and national context, the drafting and negotiating process, as well as anticipated support to implementation thus proves absolutely essential especially in the developing world, where the density of the legal system is often inversely proportional to its effectivity.

The key message is that however seducing ICZM protocols may be, they are no silver-bullets for overcoming barriers to ICZM implementation. Their very development is time- and resource-intensive, and it has a significant political cost. They go against the stream as they regulate at the regional level subjects such as urban and regional planning which are typically of national competence. Other regional seas should carefully consider the nature of the problems they want to solve, as well as the context in which a would-be ICZM protocol might be developed and implemented, before embarking in the adventure. ■

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