

Stakeholders Workshop

State environmental compliance and enforcement in the Mediterranean Sea

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National Research Council of Italy
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Sharing responsibilities for environmental protection and living resources conservation of the Mediterranean Sea

II Session h 14.30-17.00

The Italian EPZ as a tool for the implementation of the Barcelona RSC

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Good evening to everybody,

It is a great pleasure for me to attend this stakeholder workshop. I would like to thank all the organizers for kindly inviting me to this important event, in particular the Chair of the Coast Action Maresafenet, Gemma Andreone.

I am particularly pleased to give a speech regarding the substantive aspects of the establishment of the Italian Ecological Protection Zones as a tool for the implementation of the Barcelona Regional Sea Convention.

Exclusive Economic Zones (EEZ) and Ecological Protection Zones (EPZ)

Let me start by focusing on what are the main differences between Exclusive Economic Zones (EEZ) and Ecological Protection Zones (EPZ).

As it has been well underlined in the previous speeches, in the Exclusive Economic Zones (EEZ) a coastal State has been given sovereign rights for the purpose of exploring and exploiting,

conserving and managing the natural resources. In the Ecological Protection Zones (*EPZ*), *as a minus*, a coastal State has been given sovereign rights only for the purpose of conserving and managing the natural resources. The coastal State has specific management responsibilities, especially as concerns the living resources of the zone. In the light of these management responsibilities, a coastal State which has claimed an Exclusive Economic Zone or an Ecological Protection Zone cannot pursue a policy of inaction with respect to its living resources.

The Italian EPZ within the Mediterranean Countries

Another thematic issue that should be addressed in my speech is the Italian EPZ within the Mediterranean Countries declarations.

Hereinafter a summarized framework of the situation in the Mediterranean area, gradually changed, until the proclamation during the last period by the majority of the coastal States of either Exclusive Economic Zones or Fishery Zones, as well as the recently emerging regime of Ecological Protection Zones and combinations of ecological and fishery zones:

- **Spain** Royal Decree No. 1315/1997, of 1 August **1997**, establishing a **Fisheries Protection Zone in the Mediterranean Sea**;
- **French EPZ** declared in **2004** and soon to be formally **converted into** a full-fledged **Economic Exclusive Zone**;
- The **Ecological Protection Zone and Continental Shelf** was declared by the Republic of **Slovenia** with Act 22 October **2005**;
- **Croatia** adopted a decision to establish **a zone for both fishing and ecological purposes** in **2003**, which implementation was postpone with regard to Member States of the European Union;
- **Libya**, in **2005**, established a **fisheries protection zone** whose limits extend seaward for a distance of 62 n.m. from the external limit of the territorial sea;
- **Tunisia, Malta, Algeria** declared a **fishing zone beyond the limit of the territorial sea**;
- **Morocco**1981, **Egypt** 1983, **Syria** 2003, **Cyprus** 2004, **Tunisia** 2005, **Libya** 2009, **Lebanon** 2011 declared an Exclusive Economic Zone (**EEZ**).

While **Fishing Zone** or **Ecological Protection Zone** are not mentioned in the UNCLOS, they are compatible with international law, also on the basis of the general principle that the right to do less is implied in the right to do more (*in maiore stat minus*); encompassing only some of the rights that can be exercised within the EEZ.

The Mediterranean may be considered today as a sea in transition towards a generalized EEZ regime, but some high seas areas still exist within this semi-enclosed sea.

In this panorama, **Italy** has not established an Exclusive Economic Zone (EEZ), but has adopted on 8 February **2006** Law No. **61** on the establishment of an **Ecological Protection Zone** beyond the outer limit of the territorial sea.

With law 61 the Italian jurisdiction in its EPZ is related to protection and preservation of marine environment (other than archeological and historical heritage).

The first of the implementing enactments is **Decree of the President of the Republic of 27 October 2011, No. 209**, which establishes an Ecological Protection Zone in the Nord-west Mediterranean Sea, Ligurian and Tyrrhennian Seas (*DPR 27 ottobre 2011, n. 209 'Regolamento recante istituzione di Zone di protezione ecologica del Mediterraneo nord-occidentale, del Mar Ligure e del Mar Tirreno'*).

In this defined area are to be applied, also with respect to foreign flagged ships and to foreign nationals within the EPZ, the rules of international, European and national laws related to:

- prevention, response and control of all kinds of marine pollution

including

- pollution from ships and ballast tanks;
- pollution by dumping of waste;
- pollution as a result of exploration and exploitation of the sea-bed and subsoil (the so called 'offshore activities');
- pollution of atmospheric origin;
- protection of biodiversity and in particular marine mammals.

EPZ within the Barcelona RSC

Another issue I would like to address is the Italian EPZ within the Barcelona system. Even if the Mediterranean Action Plan and the Barcelona Convention and its related Protocols under United Nations Environment Programme's umbrella is the only regional sea system to provide coastal States with a legal basis for some environmental protection in the high seas, thanks to its Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean; it is important to highlight its rules concerning the application of Contracting Parties' laws on environmental protection also beyond the outer limit of the territorial sea.

With the establishment of the **Italian Ecological Protection Zones** beyond the outer limit of the territorial sea, the provision of the Barcelona Convention and its related Protocols are to be applied also in this area; in particular the following ones:

In general

(i) Art 1 of the Barcelona Convention which provides that

“the geographical coverage of the Convention is the Mediterranean Sea Area as the maritime waters of the Mediterranean Sea proper”

(ii) **Article 4 on general obligations** which provides that

“The Contracting Parties shall individually or jointly take all appropriate measures in accordance with the provisions of this Convention and those Protocols in force to which they are party to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area and to protect and enhance the marine environment in that Area so as to contribute towards its sustainable development”.

In particular in relation to

1. Prevention, response and control of all kinds of marine pollution

The reference is to

(i) BARC Article 8 on pollution from land-based sources

“The Contracting Parties shall take all appropriate measures to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area and to draw up and implement plans for the reduction and phasing out of substances that are toxic, persistent and liable to bioaccumulate arising from land-based sources”.

(ii) Even if not directly applicable, it is also related the application of the **Protocol for the protection of the Mediterranean Sea against pollution from land-based sources and activities (LBS Protocol, adopted in 1996 and entered into force 11 May 2008)**.

(iii) BARC Article 11 on pollution resulting from the transboundary movements of hazardous wastes and their disposal

“The Contracting Parties shall take all appropriate measures to prevent, abate and to the fullest possible extent eliminate pollution of the environment which can be caused by transboundary movements and disposal of hazardous wastes, and to reduce to a minimum, and if possible eliminate, such transboundary movements”.

(iv) the Protocol concerning the prevention of pollution of the Mediterranean Sea by transboundary movements of hazardous wastes and their disposal (**Hazardous Wastes Protocol, Adopted in 1996 entered into force 19 January 2008, not yet ratified by Italy**).

- **Art 1 on Definitions, letter k)** which states that area under the national jurisdiction of a State (referred for example to article 5) means also **marine area within which a State exercises administrative and regulatory responsibilities in accordance with international law in regard to the protection of human health or the environment**.

- **Art 5 on general obligation** which states that all appropriate measures shall be taken to: prevent, abate and eliminate pollution which can be caused by transboundary movements and disposal of hazardous wastes; to reduce to a minimum or eliminate the generation of hazardous wastes; to reduce to a minimum or eliminate the transboundary movement of hazardous wastes, even banning their import; to prohibit the export and transit of hazardous wastes to developing countries; to cooperate to prevent illegal traffic.

Concerning all the cases cited as a list of the included kinds of marine pollution:

2. Pollution from ships and ballast tanks

The reference is to

(i) BARC Article 6 on pollution from ships where is stated that:

*“The Contracting Parties shall take all measures in conformity with international law to **prevent, abate, combat** and to the fullest possible extent **eliminate pollution** of the Mediterranean Sea Area caused by discharges from ships and to ensure the effective implementation in that Area of the rules which are generally recognized at the international level relating to [ndr, and enhance] **the control of this type of pollution**”.*

(ii) the Protocol concerning cooperation in preventing pollution from ships and, in cases of emergency, combating pollution of the Mediterranean Sea (**Prevention and Emergency Protocol**, adopted in 2002 and entered into force 17 March 2004, **not yet ratified by Italy**).

- **Article 1** specifies that the geographical coverage to which the Protocol applies is the area of the Mediterranean Sea (so extended also to the Italian EPZ).

Shipping continue to play a leading role in assuring energy security, offering a more flexible resource than pipelines, and giving power utilities more control over energy flow. An important point is that the range of energy options available must meet the rigorous requirements of energy security.

3. Pollution by dumping of waste

The reference is to:

(i) BARC Article 5 on pollution caused by dumping from ships and aircraft or incineration at sea

*“The Contracting Parties shall take all **appropriate measures to prevent, abate** and to the fullest possible extent **eliminate pollution** of the Mediterranean Sea Area caused by dumping from ships and aircraft or incineration at sea”.*

(ii) the Protocol for the Prevention and Elimination of Pollution in the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea (**Dumping Protocol**, adopted in 1995 **but not yet in force**. It is in force since 1978 the 1976 Dumping Protocol).

4. Pollution as a result of exploration and exploitation of the sea-bed and subsoil

The reference is to:

(i) BARC Article 7 on pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil

*“The Contracting Parties shall take all appropriate measures to **prevent, abate, combat** and to the fullest possible extent **eliminate pollution** of the Mediterranean Sea Area **resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil**”.*

(ii) Protocol for the protection of the Mediterranean Sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil (**Offshore Protocol**, adopted in 1994 entered into force 24 March 2011, **not yet ratified by Italy**).

- **Art 2** on the **geographical coverage** to which the Protocol applies, specifying that **is the Mediterranean Sea Area including the continental shelf and the seabed and its subsoil**.

- **Art 3** on **general undertakings** stating that it shall be taken “*all appropriate measures to **prevent, abate, combat and control pollution resulting from** (ndr, offshore) **activities** (ndr, i.e. activities concerning exploration and/or exploitation of the resources in the protocol Area), *inter alia* by ensuring that the best available techniques, environmentally effective and economically appropriate, are used for this purpose, ensuring that all necessary measures are taken so that activities do not cause pollution”.*

More provisions concerns: the prohibition both of discharging sewage from installations (**art 11**) and of disposal into the Protocol Area of specified products and materials (**art 12**); the removal of any installation which is abandoned or disused (**art 20**); restrictions or conditions when granting authorizations for Mediterranean Specially Protected Areas of the SPA/BD Protocol (i.e. environmental impact assessment and the elaboration of special provisions on monitoring, removal of installations and prohibition of any discharge) (**art 21**).

5. Pollution of atmospheric origin

The reference is mainly to:

(i) BARC Article 8 on pollution from Land-Based Sources

“The Contracting Parties shall take all appropriate measures **to prevent, abate, combat** and to the fullest possible extent **eliminate pollution** of the Mediterranean Sea Area and **to draw up and implement plans for the reduction and phasing out of substances that are toxic, persistent and liable to bioaccumulate** arising from land-based sources. These measures shall apply also to pollution from land-based sources transported by the atmosphere”.

6. Protection of marine mammals and biodiversity

The reference is mainly to:

(i) BARC Article 10 on the conservation of Biological Diversity

“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”.

(ii) the Protocol concerning specially protected areas and biological diversity in the Mediterranean (**SPA/BD Protocol**, adopted in 1995 entered into force 12 December 1999).

- **Article 2** on **geographical coverage** which applies in “*the area of the Mediterranean Sea as delimited in Article 1 of the Convention*”, including the seabed and its subsoil.

Similarly should be mentioned the possibility, specified in **Article 5**, to **establish Specially Protected Areas also** in marine zones subject to State sovereignty or national jurisdiction (included EPZ).

(iii) the Protocol on Integrated Coastal Zone Management in the Mediterranean (**ICZM Protocol**, adopted in 2008, entered into force 24 March 2011, **not yet ratified by Italy**) which provides rules also for the protection and sustainable use of the coastal zone, ensuring that the maritime economy is adapted to the fragile nature and that resources of the sea are protected from pollution. In particular, **Article 3** on the **geographical coverage**, stating that the area to which the Protocol applies is the Mediterranean Sea, in the seaward limit of the coastal zone as the external limit of the territorial sea of Parties and even **beyond, if the State establishes a different one within the limits of its sovereignty** (as the EPZ and the Economic Exclusive Zone).

The Compliance Committee and its role within the implementation of Barcelona Convention and its obligations.

As an extra significant tool for the implementing of the Barcelona System, in 2008 **the 15th meeting of the Contracting Parties, followed by the 16th meeting in 2009, created** a special Committee based on Article 27 of the Barcelona Convention on the **compliance control: the Compliance Committee as an official subsidiary body** of the Convention and its Protocols and of the Meeting of the Contracting Parties.

The **role** of the Compliance Committee is to advise and assist the Contracting Parties in the implementation of its recommendations and those of the meetings of the Contracting Parties, in order to help them meet their obligations under the Barcelona Convention and its Protocols and, in general, facilitate, promote, monitor and ensure such compliance.

The Committee may take measures with a view to promoting compliance, make recommendations to the Meeting of the Contracting Parties, if it finds that such cases should be handled by the Meeting of the Contracting Parties.

The Meeting of the Contracting Parties may then decide further appropriate measures to bring about full compliance with the Convention and its Protocols.

Lately, with **Decision IG.21/1** the 18th Meeting of the Contracting Parties approved the addition of a paragraph to Decision IG. 17/2 2008 on Procedures and mechanisms on compliance **concerning the Committee's power of initiative**.

Section V "Procedure" of Decision IG.17/2 is hereby supplemented as follows:

"2a. Referral to the Committee on its own initiative

The Committee may examine, on the basis of the biennial activity reports or in the light of any other relevant information, any difficulties encountered by a Contracting Party in the implementation of the Convention and its Protocols. The Committee may ask the Party concerned to provide all additional information. The Party concerned shall have a period of two months to respond.

Paragraphs 24 to 30 and 32 to 34 shall apply, mutatis mutandis, in the case of referral to the Committee on its own initiative".

Conclusion

Summing up, all the mentioned provisions of the Barcelona Convention and its related Protocols - which detailed regulation of each activity on protection of the environment and prevention of pollution - shall be applied and implemented in the established Italian Ecological Protection Zones. The Compliance Committee of the Barcelona Convention will support Contracting Parties in their application and implementation, in order to help them meet their obligations under the Barcelona Convention and its related Protocols.

Thank you again for your attention and to MARSAFENET - COST ACTION for the organisation of this meeting as a good occasion to construct exchange experience and lessons learned by other Countries and related stakeholders for a better environmental protection and living resources conservation in the Mediterranean Sea.