EXTENSION OF COASTAL STATE JURISDICTION
AND ENVIRONMENTAL PROTECTION OF THE
ADRIATIC SEA

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 Arbitration Agreement (Slovenia-Croatia, 2009)

**Article 3: Task of the Arbitral Tribunal**

(1) The Arbitral Tribunal shall determine:

(a) the course of the maritime and land boundary between the Republic of Slovenia and Republic of Croatia;

(b) Slovenia’s junction to the High Sea;

(c) the regime for the use of the relevant maritime areas

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**Article 4: Applicable law**

The Arbitral Tribunal shall apply:

(a) the rules and principles of international law for the determinations referred to in Article 3(1)(a)

(b) international law, equity and the principle of good neighborly relations in order to achieve a fair and just result by taking into account all relevant circumstances for the determinations referred to in Article 3(1) (b) and (c).
ADRIATIC SEA

Croatia is the only State to have so far proclaimed an EFPZ (whose regime however is not applicable to Member States of the EU).

Slovenia has proclaimed a ZEP, while Italy has adopted a framework law for the adoption of a ZEP or more ZEPs along its coast. There has been no move by Albania or Montenegro to extend their jurisdiction in the Adriatic Sea.

Are there alternatives to the proclamation of maritime zones in the (Northern) Adriatic?
Biodiversity Protocol’ to the Barcelona Convention’

(Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean)

The Biodiversity Protocol has been in force since 1999 and all Adriatic States (with the exception of Bosnia and Herzegovina) and the EU are parties to it.

Its scope of application includes all maritime waters (including the high seas), the sea-bed and subsoil and the terrestrial coastal areas designated by each of the parties, including wetlands (Art. 2(1)).
An important achievement of the Biodiversity Protocol is the establishment of a *List of SPAMIs* which may contain sites which are...

……... of importance *for conserving the components of biological diversity in the Mediterranean*, therefore sites which contain ecosystems specific to the Mediterranean area or the habitats of endangered species;

….are of special interest at the *scientific, aesthetic or educational levels*’ and *which may be located wholly or partially on the high seas*. 
The importance of proclaiming a SPAMI lies also in the fact that within such an area State parties may adopt and enforce even such protective measures as for example the

…‘regulation of the passage of ships’; and/or

…’the regulation or prohibition of fishing, hunting, taking of animals and harvesting of plants or their destruction’.

This is particularly noteworthy as in certain cases such protective measures even exceed the competences which a coastal State is entitled to exercise in its EEZ.
Proposals for the inclusion in the SPAMI List may be however submitted by a State party alone only ‘if the area is situated in a zone already delimited, over which it exercises sovereignty and jurisdiction’.

Alternatively, if the area is located ‘partly or wholly on the high seas’ or in a disputed area ‘where the limits of national sovereignty and jurisdiction have not yet been defined’,

….the proposal has to be submitted by ‘the neighbouring parties concerned’.
These provisions, particularly if read together with the detailed ‘disclaimer’ provision embodied in Article 2(2) of the Biodiversity Protocol,

……..seem to provide Adriatic States with an important practical tool, enabling them to immediately protect areas of particular natural and/or cultural value also in the absence of a delimitation agreement and/or unilateral extension of jurisdiction.

Article 2(2)

Nothing in this Protocol […] shall prejudice the rights, the present or future claims or legal views of any state relating to the law of the sea, in particular, the nature and the extent of maritime areas, the delimitation of maritime areas between states […] as well as the nature and extent of the jurisdiction of the coastal State, the flag State and the port state.
The EU has been recently funding a project implemented by the (UNEP) RAC/SPA and which aims at identifying areas of ‘conservation interest’ on the Mediterranean high seas for potential inclusion in the SPAMI List.

An important outcome of the first part of the project was the compilation of the list of priority conservation areas located (partly or wholly) on the high seas, and likely to include sites that could be candidates for the SPAMI List.

It is particularly important that the list includes also the Central and Northern Adriatic as a possible area for the proclamation of a SPAMI.
Although the proclamation of a SPAMI may in itself represent a viable alternative to the unilateral extension of jurisdiction by coastal States (at least in the SPAMI area), it may be argued that the previous and/or contemporary extension of jurisdiction, particularly for environmental purposes (e.g. proclamation of ZEPs), may solve the main problem in relation with the implementation of the regime of the SPAMI on the high seas

……which appears to be its enforcement against States non-Parties to the Protocol (third States).
Such course of action seems to be ultimately in line with Article 28(2) of the Biodiversity Protocol which provides as follows:

The Parties undertake to adopt appropriate measures, consistent with international law, to ensure that no one engages in any activity contrary to the principles or purposes of this Protocol.
The inclusion of a certain ‘transboundary area’ into the SPAMI List may at least with regard to the part of the SPAMI located on the high seas temporarily, or in certain cases even permanently, override not only the potential problems related to the unilateral extension of jurisdiction by coastal States, but also the various problems involved with the delimitation of zones of sovereign rights and jurisdiction (overlapping claims) in the SPAMI area.

….and may furthermore substantially improve the protection and preservation of areas of particular natural and/or cultural importance in the Mediterranean