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The UNEP/MAP – Barcelona Convention System: Environmental
Governance and Cooperation in the Mediterranean.

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Introduction

The topic of this dissertation is the UNEP/MAP – Barcelona Convention System, and the main aim of this analysis is to investigate the UNEP/MAP - Barcelona Convention System, on account of its innovative features and vulnerabilities to discuss the effectiveness of the regional institutional framework for environment protection of the Mediterranean.

In order to attempt to evaluate the effectiveness of the UNEP/MAP – Barcelona Convention System in safeguarding the Mediterranean environment, this dissertation focuses on describing the historical evolution of the framework, its actual legal and institutional configuration and lastly innovative features and vulnerabilities of the framework. This is discussed respectively in Chapter 1, 2 and 3 of this dissertation.

In relation to Chapter 1, an historical perspective is embraced. Indeed, while the debate related to climate change and environment protection has become pivotal in the recent years, this has not always been the case. International environmental legislation has evolved over time, and relevant pieces of legislation enable us to consider the historical contexts and the conceptual framework that characterised evolution and progress of international environmental law. Indeed, the latter has demonstrated to be a dynamic subject: updated technological and scientific methodologies that enable increasingly specific pollution measurements methods, the relevance of the public debate, the public's political pressure, innovative concepts and principles of international environment legislation have shaped the drafting of increasingly innovative documents of international environmental law. Due to this, embracing an historical perspective is necessary and useful to define which have been the aspects that led to the establishment and influenced the institution of the UNEP/MAP – Barcelona Convention System, which is the subject of this dissertation.

These preliminary considerations enable us to define the object and the aim of this first chapter. To describe the historical evolution of the UNEP/MAP – Barcelona Convention System, the international, global context in which the programme has been developed will be analysed, to determine the influence the international context played in the conceptualization and the drafting of the latter. In relation to this, the Stockholm Declaration and the Rio Declaration will be considered, and the influence these had on the UNEP/MAP – Barcelona Convention System will be discussed and analysed accordingly. In addition to this, the environmental issues that boosted cooperation among the Mediterranean countries will be discussed. Moreover, the PHASE I of MAP will be briefly described, considering the legal, scientific, institutional and financial, and integrated management component of the MAP – PHASE I.

The objective of the second Chapter of this dissertation is to illustrate the legal and institutional framework of the UNEP/MAP – Barcelona Convention System.

To begin with, the international legal framework in relation with the Law of the Sea in the Mediterranean will be described. Indeed, the legal component of the MAP lies on provisions that derive from the Law of the Sea. Subsequently, the amendments to the 1976 Barcelona Convention will be described in detail. Indeed, the amendatory process initiated after the Rio conference in 1994 made the alignment of the regional framework with international environmental law necessary. The 1976 Barcelona Convention has been replaced by a more complex, integrated and efficient framework legal instrument that defines the common guidelines for environmental cooperation in the Mediterranean. In relation to this, the specific provisions of the seven Protocols to the 1995 Barcelona Convention will be analysed. The modification, the scope, the provisions of the Protocols will be described, in order to draw a full picture of the legal component of the UNEP/MAP – Barcelona Convention System.

In the following section, the institutional framework of the UNEP/MAP – Barcelona Convention System will be discussed. The competencies and the duties of the Meeting of the Parties ('MOP'), the Compliance Committee and the Mediterranean Commission on Sustainable Development ('MCSD') will be scrutinised.

Additionally, the role of the MEDPOL and the six Regional Activity Centres will be discussed. These serve the aims of the legal framework defined by the Barcelona Convention and the Protocols and act as operative organs of the whole MAP system.

Lastly, the Mediterranean Trust Fund will be described, since it enables to support the activities of the whole MAP infrastructure through mandatory and voluntary contributions versed by the CPs.

The main aim of the last Chapter of this dissertation is to discuss innovative features and vulnerabilities of the UNEP/MAP – Barcelona Convention System.

In relation to the innovative features, two main aspects that ensured in the past - and ensure in the present - the functioning of the framework for environmental safeguard in the Mediterranean are discussed. Firstly, the role played by the ecologic epistemic community in promoting cooperation in the early stage of the establishment of the MAP will be discussed. Indeed, the Mediterranean Sea Area is historically characterised by conflict and confrontation among bordering countries that have been overcome during the negotiation of the MAP and the Barcelona Convention thanks to the influence that the scientific community had in stressing the necessity to face growing environmental degradation in the Mediterranean. Secondly, the application of the Ecosystem Approach ('EcAp') will be described. It is a comprehensive approach the CPs to the Barcelona Convention have embraced and that hugely influences the policy making process in the area. It is an innovative approach

toward environmental decision-making process and policy development since it is based on the attempt to consider possible undesired effects environmental policies may have on the environment. In order to do so, it is necessary to study and assess the peculiarities of the specific ecosystem in which the policies are implemented, which is the objective of the implementation of the EcAp. The EcAp is based on the concept of Good Environmental Status ('GES'), that is a flexible concept that adapts to the different ecosystems considered.

As a matter of fact, Mediterranean environmental cooperation is not producing desired effects. The 2020 Mediterranean Assessment Report ('MAR 1') report and the 2020 State of the Environment ('SoED') report will be considered, since these alert on the critical and degraded state of the environment in the Mediterranean. The conclusions of these reports assess that the framework for environmental protection in the area is lacking, since the situation has been critically aggravating in the last decade. Indeed, while being innovative and cooperative in theory, in practice the UNEP/MAP – Barcelona Convention System lacks effective implementation. In fact, the huge differences among the North and South share of the Mediterranean still emerges and this weakens the effectiveness of the regime. Indeed, some Mediterranean States lack sufficient State capacity to promote environmental policies. In contrast, European countries have to face increasing legislation and obligation in relation to maritime resource safeguard the EU is implementing in the area. Additionally, the framework is vulnerable since the legal instruments envisaged have been adopted with delays from the CPs. While these have binding nature, their effectiveness is weakened by States' unilateral incapability to meet their obligations.

Lastly, the financial contributions of the CPs to the Mediterranean Trust Fund will be considered, in order to assess whether the States of the Mediterranean effectively contribute to the financial obligations.

CHAPTER 1

1. THE HISTORICAL DEVELOPMENT OF ENVIRONMENTAL COOPERATION IN THE MEDITERRANEAN: THE INFLUENCE OF GLOBAL ENVIRONMENTAL LAW

1.1 The evolution of international environmental law: from the early stage until the Stockholm conference

The issue of environment protection, and the consequential transmission of this debate into political and legislative measures has an historical starting point that can be distinguished. Indeed, while the necessity to protect the earth is a principle embraced by some of the most ancient religions – for example, the Judeo-Christian – the actual definition of a primal legislative framework for the safeguard of the environment can be dated back to the 20th century¹. In the early stage of development of international environmental legislation, the attention was mostly given to protection of flora and fauna. The main reason boosting these first regulatory attempts was to ensure the safeguard of some resources that were destined to commerce and business, e.g., the birds useful to agriculture² or whales³. In addition, these conventions were limited in scope and regional coverage, since these referred only to specific regions of the world, like the United States and Canada, Africa, the Western hemisphere, and the North Pacific⁴. Only during the 60s a more developed discussion related to environment will be entangled, focusing in particular on oil pollution and the nuclear energy, and conventions were drafted to face these issues⁵. Notwithstanding, these conventions were not particularly developed, and some of the most relevant principles of environmental law were still not included in the legal text, despite their relevance had already been recognised previously in the past⁶.

¹ WEISS (2011: 2).

² International Convention on the Protection of Birds Useful to Agriculture, Paris, 19 March 1902.

³ International Convention for the Regulation of Whaling, Washington, 2 December 1946.

⁴ Convention for the Protection of Migratory Birds in the United States and Canada, 7 December 1916; Washington Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, Washington, 12 October 1940; Tokyo International Convention for the High Seas Fisheries of the North Pacific Ocean, Tokyo, 9 May 1952; African Convention on the Conservation of Nature and Natural Resources, Algiers, 15 September 1968.

⁵ Bonn Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil, Bonn, 9 June 1969; Vienna Convention on Civil Liability for Nuclear Damage, Vienna, 21 May 1963.

⁶ e.g.: the principle of not to cause transboundary harms had been mentioned for the first time during the *Trail Smelter* Arbitration in 1941 (Arbitration award of United States v. Canada, 11 March 1941, *Trail Smelter Case*).

As a matter of fact, concern related to the necessity of safeguarding the natural ecosystem increased during the whole decade. The main reason that caused an increased interest in environmental issues during the 60s was the concrete realisation of the degraded condition of some natural ecosystem and resources. Some events in particular contributed to the apprehension that encouraged cooperation: seven hundred people lost their lives due to air pollution in London in 1962, oil spilling accidents in Ohio and the United Kingdom occurred in the same period, huge mortality was registered for some species of animals due to oil contamination, droughts in desertic regions caused starvation, the poisoning of some people by mercury uncontrolled release by chemical company in Japan⁷ were some of the catalytic events that contributed to the awareness of the negative consequences human activity has on the environment. Consequently, during the 60s the public debate was mostly related to environment degradation, and open criticism to bad and unwise management of resources. An example of this critical debate is the article published by the explorer Jack Cousteau in the New York Times in 1970. Indeed, while nowadays there is a general and common acknowledgement of the environment situation, in that period such article shed light upon the degraded conditions of marine resources in particular⁸. Indeed, the ocean explorer stated that between 30% and 50% of oceans had been damaged by anthropogenic activities⁹. The critical situation was common among different Seas, the Mediterranean, the Indian Ocean, and the Red Sea, according to Cousteau. The article written by the explorer enabled us, some decades after, to acknowledge the urgency felt by governments and civil society that promoted the realisation of more concrete instruments of environment legislation in that period.

In this context, the role played by the UN is particularly relevant. It has served as arena of debate for the global community and as institutional pillar to support the drafting and implementation of conventions and guidelines that supported members States for environmental management¹⁰.

Nonetheless, during the decades prior to the Stockholm conference – which is considered the first watershed in environmental legislation – the role the UN played was quite limited. Singularly, there is no mention of environment or sustainable development in the UN Charter. Therefore, the management of environmental issues was a duty some UN organs dealt with. For example, in the Food and Agriculture Organisation (‘FAO’) was in charge of the safeguard of natural resources, however this provision was quite limited in scope¹¹.

It was only by the end of the 60s that the UN took serious and global action to face environment degradation. A pivotal role in proposing the establishment of a global initiative for the environment was initiated by the Swedish

⁷ CHASEK (2020: 1-2).

⁸ MEAD (2021: 1).

⁹ COUSTEAU (1971: 13).

¹⁰ CONCA (1995: 3).

¹¹ CONCA (1995: 6).

delegation to the UN¹². The latter considered the UN system a favourable institutional context in which a global discussion on environment safeguard may be entangled¹³.

Indeed, in 1968-1969 the UN General Assembly convened the first global conference on Human Environment to be held in Stockholm in June 1972¹⁴. 134 delegates met in the Swedish capital and concurred on the necessity to urgently face “the lack of common principles to guide and inspire people for the preservation and enhancement of human environment”¹⁵.

The conference’s innovative features emerged in different aspects. The highly formal and rigid UN conference formats were abandoned, especially thanks to the allowed presence of NGOs and environmental organisations, that were involved in official proceedings and consciousness-related activities¹⁶. Demonstrations, petitions, and civil forums were organised aiming at influencing the official working of the summit, ensuring the involvement of the civil society in the Stockholm conference process¹⁷.

From a legislative and institutional point of view, the heredity of the Stockholm Conference concretised in the drafting of the Stockholm Convention on the Human Environment, the Stockholm Action Plan, and the establishment of the United Nation Environment Programme (‘UNEP’), which is the first UN programme directly invested with the duty to deal with environmental issues¹⁸. Accordingly, the fragmented framework that characterised UN activity in environment related issues had been finally

¹² GRIEGER (2012).

¹³ GRIEGER (2012).

¹⁴ In this regard, two resolutions of the General Assembly are particularly relevant: Resolution of the UN General Assembly, 3 December 1968, A/RES/2398 (XXIII), *Problems of the Human Environment*, which enables to understand why the GA decided to convene the 1972 UN Conference on Human Environment. Indeed, as the declaration mention, technological development and scientific knowledge empower humankind to face the endangering situation of impairment of human environment. Furthermore, Resolution 2581 (XXIV) defines the aims of the conference: “to serve as practical means to encourage, provide guidelines for, actions by Government and International organisations designed to protect and improve the human environment and to remedy and prevent its impairment, by means of international co-operation” (Resolution of the UN General Assembly, 15 December 1969, A/RES/2581 (XXIV), *United Nations Conference on the Human Environment*).

¹⁵ Report of the UN Conference on Human Environment, 1973, A/CONF.48/14/Rev.1, *on the UN Conference on Human Environment of Stockholm, 5-16 June 1972*.

¹⁶ CONCA (1995: 3).

¹⁷ GRIEGER (2012).

¹⁸ It is relevant to consider that the UNEP has a different normative status *vis-à-vis* other independent agencies of the UN, since it is a “programme”. Indeed, the UNESCO, FAO or the WHO are autonomous agencies of the UN. The reasons explaining these aspects consider the interdependency of environmental issues and the conflictual context in which the programme has been established. More precisely, it was acknowledged that the interdependency nature of environmental issues would have been best managed with co-operating and co-ordinating functions a programme can establish, instead of autonomous actions that characterised the mandate and agenda of the other UN specialised agencies. In addition, the drafting of a treaty for the establishment of an agency for the environment was considered too complex to be reached, due to the conflictual context between developed and developing countries that characterised the whole Stockholm institutional framework (FREESTONE: 1994, 197).

abandoned, and cooperation and environment diplomacy finally integrated in the UNEP activity.

The Stockholm Declaration on Human Environment is a relatively brief document containing the first 26 principles related to environment protection the global community has ever developed and agreed on. Nevertheless, the conceptualization of such principles and the drafting of the declaration had not been an unchallenging task. Indeed, the higher the representation, the higher the necessity to counterbalance contrasting interests among the participants. It was thus necessary to conceptualise – prior to the conference – innovative strategies to find a common ground between environment and development. Indeed, the Stockholm framework has been the first context in which developed and developing countries interests clashed considering the relation between environment protection and economic development. The main forum in which the developing world environmental interests were “articulated and objectively analysed” had been during the Founex meetings, which were preparatory forums of debate held between regionally representative groups of economists¹⁹.

It is crucial to mention that developing countries were less willing to comply with the innovative aspects, principles and concepts that characterise environment cooperation. These felt threatened by the possibility that developed country may take advantage of the necessity to face environmental degradation to restrict and control their future development; in addition, they faced developmental problems that were deemed more relevance than the environment, like poverty, fragility public health systems, illiteracy²⁰. In this confrontational context the Founex Report on Development and Environment has been drafted, proposing a bridging conceptualization of the link between environment and development that would have ensured developing countries right to develop, and enforced environmental legislation²¹.

The main acknowledgement that emerged from this comparison lies in the consideration that developed and developing countries are affected differently from environment degradation: while developed countries face the environmental consequences of uncontrolled industrial development,

¹⁹ MANULAK (2016: 7). *e.g.*: Innovative discourse in relation with the concept of development and the efficiency of the instruments used to measure it was set up. In particular, the unreliability of the GNP as an economic indicator of national progress was recognised. It was recognised GNP did not consider wealth distribution among the population and living conditions of the disadvantaged groups of the society. This is a crucial aspect to consider in order to elaborate development policies. MANULAK (2016: 8)

²⁰ CHASEK (2020: 2-3).

²¹ The content of the Founex Report is however more comprehensive than has been mentioned above. As a matter of fact, it specifies the environmental side effects of some economic activities - like industry, agriculture, transport, human settlements –, contributing to a primary attempt to define which are the consequences human activity has on natural resources. In addition, it defines possible strategies developing countries may embrace in order to formulate environmental strategies. *e.g.*: it is recommended to quantify the quantity and quality of natural resources that the country is willing to make disposal of, and to attempt to determine a time frame for the exhaustion of the latter (Report of the UNEP, 1981, Executive Series 1, *In Defence of the Earth: The Basic Texts on Environment*).

developing countries face the consequences of underdevelopment – poor water, housing, sanitation, and nutrition – which are exacerbated by bad environmental management²².

Moreover, it has been recognised that the link between environment and development is country-specific and may not be defined through global and unified environmental standards. Indeed, environmental cooperation inaugurated in Stockholm would have embraced different level of integration, in order to ensure compliance from developed and developing countries²³. As a matter of fact, it has been this new conceptualization of the relationship between development and environment that ensured developing countries' compliance to the Stockholm process, and the innovative framework that emerged from the Founex meetings – the Founex Report on Environment and Development – profoundly influenced the evolution of environmental legislation.

Nevertheless, confrontation emerged even during the drafting of the declaration itself. The intergovernmental working group of the Conference's Preparatory Committee was entrusted with the drafting of the Declaration. As a matter of fact, the intergovernmental nature of the working group obstacles the drafting activity, since there were contrasting positions among the States in relation with the degree of specificity of the declaration. Differences in sensibility related to environmental action, State capabilities, development strategies widely differ among States, and in the primordial context of environmental cooperation this degree of difference markedly shaped the drafting of the declaration since it was preferred for the latter to maintain the nature of non-legally binding document²⁴. When the draft of the intergovernmental working group was presented to the conference, numerous modifications were proposed. For example, due to the requests of China and Brazil, some principles were eliminated, while other included²⁵.

Another example enables us to better comprehend the complex diplomatic context in which the declaration was developed, since the Soviet bloc boycotted the event. The main reason laid in the Western countries willing to adopt the "Vienna Formula", that allowed the participation of only UN members to the preparatory work of the conference. Due to this, East Germany was excluded, while West Germany was not. In 1971 the GA abruptly the Vienna formula and allowed the participation of both blocks, however the Soviet one did not take part in the final conference in the end²⁶.

Notwithstanding, the Stockholm declaration was finally drafted, and it is considered one of the most relevant pieces of legislation in environmental international law. Indeed, some of the most relevant principles of current

²² COREA (1972: 81).

²³ Report, *In Defence of the Earth: The Basic Texts on Environment*.

²⁴ HANDL (2012: 2-3).

²⁵ e.g.: Principle 26 on nuclear weapons was included at the Plenary's meeting while it was not present in the draft Declaration presented by the Intergovernmental Working Group (HANDL, 2012: 2-3).

²⁶ CHASEK (2020: 4).

environmental law find their conceptual roots in the abovementioned declaration.

More specifically, the principle of Prevention of Environmental Harms is stated in Principle 2: it refers to the necessity of safeguarding flora, fauna and natural ecosystems and States' duty in this regard²⁷. Accordingly, this responsibility is counterbalanced by State sovereignty over national natural resources, which is recognised as a principle of customary international law²⁸. Indeed, the sovereignty right of States to make use of the resources that are present within their borders is expressed in Principle 21²⁹.

Furthermore, the Stockholm declaration affirms (Principle 23) States' duty to face environmental degradation and promote environmental safeguard, however in respect with their capabilities and without prejudice of the normative obligations³⁰.

As it has been previously mentioned, the Stockholm process posed the bases of one of the most intricate questions related to environmental governance: the balance between development and environment protection. Indeed, the "rights to development", and the restrictions of this right had become a friction point between developing and developed countries. The former ones do not want their economic development to be restrained by strict environmental practices, while the latter are more able and willing to decouple development from uncontrolled resource exploitations. In the end, in the declaration the conflictual situation has been solved through Principle 8, that states the *essentiality* of ensuring "economic and social development", giving more relevance to economic development vis-à-vis environmental safeguard in the end³¹. This decision derived from the attempt to avoid developing countries' boycotting of the whole Stockholm process and to ensure their compliance.

Moreover, scientific cooperation, and the necessity to coordinate development planning between States is defined in the Stockholm declaration in principle 13-15 and 17-18. These aspects encompass the principle of Procedural Safeguard.

Moreover, Principle 22 refers to liability and compensation regime, to ensure compensation for the "victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction"³².

Despite the efforts of the participants to find a common ground of understanding in relation with the new subject of environmental law, the final

²⁷ Report of the UN Conference on Human Environment, A/CONF.48/14/Rev.1.

²⁸ HANDL (2012: 4).

²⁹ HANDL (2012: 4).

³⁰ HANDL (2012: 5).

³¹ Until Stockholm, the relationship between economic development and environment protection can be considered "mutually exclusive". It will be the conceptualization of sustainable development during the 1992 Rio Process that would actually solve the problem to find a balance between exploitation of resources needed to develop and environmental safeguard. During the Stockholm process it has been given major relevance to ensure economic development, instead of environmental protection.

³² Report of the UN Conference on Human Environment, A/CONF.48/14/Rev.1.

declaration has not been immune to critics. For example – and most relevantly – the content of the Stockholm Declaration has been criticised for its human-centric approach³³. Indeed, Handl underlines that Principle 1-2, 5 and different preambular parts charge the declaration with an instrumentalist approach to the environment³⁴, which is contrary to an effective sustainable and omni-comprehensive management of natural resources.

In addition to the declaration, the Stockholm Action Plan had been drafted³⁵. This was based on numerous recommendations that were directed toward governments and institutions, with the aim of defining a common path to face global environmental degradation. The 109 recommendations have been recollected considering three main areas: environmental assessment, environmental management and supporting measures.

More precisely, the first area “Earthwatch” considers evaluation review, research, monitoring, information exchange recommendations to be followed in order to face environmental degradation. The aim is to ensure general guidelines in relation with pollution assessment programmes. The second category considers how to ensure the adoption of planning strategies that “takes into account the side effects of man's activities” and “protect and enhance the human environment for present and future generations”³⁶. Lastly, educational, financial and organisational recommendations are grouped in the third and last section of the Action Plan³⁷.

The relevance of these documents played a crucial role in the further development of international environmental law. The Stockholm process would have shaped the following decades of environmental cooperation and legislation, and the definition of Action Plans provided instruments for immediate action to face environmental degradation³⁸. In addition, during the Stockholm conference the United Nations Environmental Programme was founded, concretizing the UN role in environment-related issues.

1.1.2 The regionalisation of environment management: the UNEP and the Regional Seas Programme

After the drafting of the Stockholm Declaration on Human Environment and the Stockholm Action Plan, it was necessary for the UN to ensure the institutional follow-up of the principles and guidelines for environment protection defined on paper. To do so, the United Nations Environment Programme was established through resolution 2997 (XXVII)³⁹, in which the

³³ HANDL (2012: 3).

³⁴ HANDL (2012: 4).

³⁵ Report of the UN Conference on Human Environment, A/CONF.48/14/Rev.1.

³⁶ Report of the UN Conference on Human Environment, A/CONF.48/14/Rev.1.

³⁷ Report of the UN Conference on Human Environment, A/CONF.48/14/Rev.1.

³⁸ This aspect is particularly relevant for what concerns monitoring and scientific assessment programmes for pollution measurement and control (CHASEK, 2022: 4).

³⁹ Resolution of the UN General Assembly, 15 December 1972, A/RES/27/2997, *Institutional and financial arrangements for international environmental cooperation*.

UNGA decided for the establishment of the UNEP Governing Council⁴⁰ and defined functions and responsibilities of the latter. The UNEP would “serve as a focal point for environmental action and coordination within the United Nations system”⁴¹.

To do so, the UNEP had to develop a dynamic approach that may fit the specificities and complexities of international environmental cooperation, on different fronts. Indeed, the UNEP embraced legal, scientific assessment, coordinating, and supporting activities that may ensure States’ compliance to the newly developed international framework for environment protection⁴².

More precisely, it is possible to define four main aspects that exemplifies UNEP role:

- 1) Development of international and regional conventions, guidelines, and strategic policies to face marine pollution and to protect the area involved⁴³.
- 2) Scientific assessment of pollution and the degrading impact it has on the environment and human health.
- 3) Support in coordinating activities for protection, development, management of marine and coastal resources.
- 4) Education and training programmes aimed at supporting countries in the development of the Regional Programme⁴⁴.

Point four exemplifies one of the main innovations that shaped the UNEP approach toward environmental cooperation, which is the regionalisation of the latter⁴⁵. Indeed, the UNEP developed specific approaches and methodologies to coordinate and support States to face environmental degradation in different regions of the world. This approach enabled the UNEP to develop strategies to face the global problem of environment – that fostered the Stockholm process – through regional-specific strategies.

The most relevant example of the regionalisation is the Regional Seas Programme co-ordinated by the UNEP, which has been considered as the “crown jewel” of environment diplomacy⁴⁶. In addition, the topic of this thesis – the UNEP/MAP (Mediterranean Action Plan) / Barcelona Convention

⁴⁰ The GC is the decision-making body of the UNEP, and 58 countries are represented, which are divided considering regional distribution criteria. African states are 16, Asians are 13, 6 Eastern European, 13 Western Europe and Others, 10 from Latin America and the Caribbean. The headquarters are in Nairobi, and the UNEP has been the first programme of the UNEP to be headquartered in a developing country.

⁴¹ Resolution of the UN General Assembly, A/RES/27/2997.

⁴² PETSONK (1990: 6-7).

⁴³ The UNEP coordinated and supported the drafting of many important conventions related to environmental safeguards: the 1979 Convention of Migratory Species of Wild Animals, the 1985 Vienna Convention and 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

⁴⁴ Resolution of the UN General Assembly, A/RES/27/2997.

⁴⁵ BLISS-GUEST & KECKES (1982: 44-45).

⁴⁶ HULM (1983: 10).

System – has been the first Regional Sea Programme developed by the UNEP, and it is nowadays the most advanced.

The reasons that explain why the Mediterranean has been given such a high degree of attention can be recognised considering the historical context in which the Stockholm process began. Indeed, as previously mentioned, one of the main reasons that favoured the beginning of the Stockholm process was the acknowledgement of the critical environmental conditions of oceans and seas. Due to this, ocean and marine resources protection has been one of the pivotal areas around which the UNEP initial interest centred. In point of fact, the very first Decision of the UNEP's Governing Council (Decision 1(I)), stressed the necessity to face with urgency oceans critical condition⁴⁷. In the same decision, the Council singled out “regional activities” for the protection of the marine environment⁴⁸ and established the Regional Seas Programme, a complex, numerous and differentiated plan for coordinated marine resources management and pollution assessment. As a matter of facts, the conceptual framework in which the regionalisation of ocean and seas governance has been developed consider the necessity to recognise peculiarities of regional ecosystems and environments, to develop effective measures that may fit the characteristic of specific geographic regions⁴⁹. For example, management of land-based pollution, fisheries practices, and coastal degradation suits best regional approach instead of generalized global perspective⁵⁰. In this context, the concern related to the state of the environment in the Mediterranean played a crucial role.

Since the establishment of the UNEP in 1972, eighteen regional seas programmes have been developed. These are coordinated from the Global Meetings of the Regional Seas Conventions and Action Plans organised by the UNEP. Nowadays, fourteen of the eighteen regional seas programmes have been established under UNEP auspices, and of these seven regional programmes are directly administered by the UNEP, that provide secretariat and coordinating functions. The seven remaining programmes are non-UNEP administered. Four remaining programmes are independent; however, these participate in the Annual Global Regional Seas Coordination Meeting. The Regional Seas Programmes that participate in the Global Meetings are defined in Table 1⁵¹.

⁴⁷ MEAD (2021: 2).

⁴⁸ THACHER (1977: 310).

⁴⁹ It is relevant to consider that the conceptualization of the Regional Seas Programme considers a new type of regionalism, which detaches from continental and traditional territorial outlook. The Mediterranean exemplifies such an innovative approach, since it reaches three different continents (Africa, West Asia, and Europe) (SAND 1987: 229).

⁵⁰ In addition, explicit reference to the promotion of regional coordinated action were made in the Stockholm Action Plan itself, so the UNEP embraced the guidelines set during the conference (MEAD 2021: 2).

⁵¹ MEAD (2021: 4).

	Convention	Year adopted	Year entered into force	No. of States
UNEP Administered				
Mediterranean	Barcelona	1975/1995	1978/2004	22
Western and Central Africa	Abidjan	1981	1984	22
Wider Caribbean	Cartagena	1983	1986	28
Eastern Africa	Nairobi	1985	1996	10
East Asian Seas	None	1984 (revised 1993)	Action plan in force	9
North West Pacific	None	1994	Action plan in force	4
Caspian Sea	Tehran	2003	2006	5
Non-UNEP Administered				
Regional Organisation for the Protection of the Marine Environment (ROPME)	Kuwait	1978	1979	8
South East Pacific	Lima	1981	1986	4
Red Sea and Gulf of Aden	Jeddah	1982	1985	8
Pacific	Noumea	1986	1990	19
Black Sea	Bucharest	1992	1994	6
South Asian Seas	None	1995	Action plan in force	5
North-East Pacific	Antigua	2002	2010	8
Independent Regional Seas Programmes				
Baltic Sea	Helsinki	1974/1992	1980/2000	10

Northeast Atlantic	Oslo-Paris	1974/78/92	1998	16
Antarctic	Antarctic Treaty/Commission for the Conservation of Antarctic Living Resources	1959/1980	1961/1982	32
Arctic	Arctic Council Protection of the Arctic Marine Environment Working Group			8

Notwithstanding that these programmes widely differ in terms of membership and geopolitical implications involved in the process, the UNEP supported and coordinated the development of such programmes following a precise methodology. Indeed, it concretely developed guidelines for the definition of a similar format that may ensure stable and reliable steps States could follow in order to build a regional framework for environment protection, considering legal, scientific assessment and coordinated management features⁵².

Firstly, the UNEP acts as facilitator and coordinator enabling the establishment of an open forum of debate in which States of the region meet, discuss, debate, and confront to attempt agreeing on common ground strategies to face the environmental issues of the region⁵³.

Secondly, the UNEP proposes the drafting of an Action Plan⁵⁴, that encompasses the considerations emerged from the meetings, and formulates possible strategies for the States to embrace. Governments are involved in the formulation of the region-specific Action Plan, and national agencies are entitled from national authorities to put into action the strategies defined.

⁵² Report of the UNEP, 1982, Regional Seas Reports and Studies No. 15, *Guidelines and principles for the preparation and implementation of comprehensive action plans for the protection and development of marine and coastal areas of regional seas*.

⁵³ In addition, for what concerns economic funding, States of the different area are expected to assume increasing responsibility of the financial support that is necessary to put into action the Programmes. Notwithstanding, the UNEP allows for initial financial support until the environmental assessment and managerial capabilities of the States are deemed sufficient for the development of the Regional Programme, (BLISS-GUEST & KECKES 1982: 44-45).

⁵⁴ MREMA (2016: 348).

Generally, Action Plans are not binding, soft-law instruments, according to International Law. Notwithstanding, the Action Plans developed by the UNEP in the Regional Seas Programme are legally binding instruments, subject to ratification or accession and adopted by a meeting of plenipotentiaries of the Member States. Indeed, it is crucial to clarify the misleading terminology implied in order to understand the effective relevance that these instruments play for regional environmental cooperation, and for the accountability and enforcement that may derive for it. Even if some Action Plans remain soft-law instruments, other have been adopted through legislative process that is typical of legally binding international treaties (MREMA, 2016: 347).

These national agencies are called Regional Activity Centres ('RACs'), and these are funded by the national governments. Particularly, the RACs are entitled with the actual implementation of the different strategies encompassed by the regional AP⁵⁵.

In the end, the Action Plan is adopted and in some specific cases opened for signature, ratification, and accession⁵⁶. The Action Plans formulated calls for the further drafting of legally binding regional framework conventions, enriched by area or pollution type-specific protocols⁵⁷.

The Mediterranean Action Plan – and the legal counterpart, the Barcelona Convention – has been the first Regional Seas Programme to be developed. Nowadays it is the most updated and innovative framework for regional environment protection and has inspired the development of all the programmes that succeeded its establishment in 1974⁵⁸.

Notwithstanding this, as previously mentioned, the reasons that enabled cooperation in the Mediterranean were mostly related to the recognition of the critical environmental condition in the Mediterranean. In the following paragraphs the peculiar features of the Mediterranean region will be analysed.

1.2. The Mediterranean region: what made cooperation possible?

1.2.1 Crucial level of tangible pollution and Mediterranean peculiarities

Determining the level of pollution of the Mediterranean region had been considered crucial to develop effective counter-pollution strategies. Institutionalized framework has been developed from the MAP to define, study, and measure the level of pollution of the Mediterranean through MED POL Phase I, which will be discussed more in detail in the following section. However – and almost paradoxically – it has been the awareness of the crucial environmental condition of the area due to tangible examples of pollution that fostered cooperation, even before measurement strategies were put into action: oil sinks, tar balls on the surface, open air industrial discharge, ecosystem disruption, and algae blooms, put government and the civil

⁵⁵ MREMA (2016: 350).

⁵⁶ This provision reflects the international law norms in relation with Conclusion and Entry into Force of Treaties, (Part II, Section 1. Conclusion of Treaties) of the Vienna Convention on the Law of the Treaties. In particular, articles 11-15 defines the instruments by which States consent to be bound by a treaty (signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed) (Vienna Convention on the Law of Treaties, Vienna, 23 May 1969).

⁵⁷ In addition, the conventions are drafted considering the same aspects: definition of geographical coverage, general provisions, general obligations followed by specific provisions for specific kind of pollution, provisions for institutional arrangements (MREMA 2016).

⁵⁸ MEAD (2021: 6).

societies face to face with the consequences of uncontained pollution in the Mediterranean⁵⁹.

When discussing pollution in the region, it is crucial to make an historical consideration: being the Mediterranean, an area of huge commercial significance and human presence, it has been polluted for centuries. Early agricultural wastes, sewage, plankton blooms causing huge fish mortality were recorded many decades before the 70s. What has changed is the typology of pollutants. Indeed, Osterberg recognises three fundamental reasons why pollution in the Mediterranean has increased until becoming an unsustainable pressing issue. Firstly, the level of pollution increased especially due to urbanisation and increasing human occupation of coastal zones, growing naval commerce, rising pressure on fisheries. Secondly, pollutants discharged in the sea nowadays are chemicals, and not only nature-derived, like agricultural wastes were in the past. These chemicals cannot be absorbed by the marine environment and are toxic for the ecosystem.

Lastly, unwise and unsustainable management of resources in general has unbalanced the natural equilibrium of the regional ecosystem itself that cannot hold the pressure of the presence of these toxic elements anymore⁶⁰.

In addition to this, some characteristic features of the Mediterranean region itself put the ecosystem into a disadvantaged position: the Mediterranean Sea is an almost enclosed sea, and water circulation average time is about 80 years. This distinctive hydrological feature of the sea means practically two things: heavy pollutants easily settle on the bottom – making them harder to be collected and discharged – and water circulation takes so long that pollutants that lay on the surface remain enclosed in the coastal zone for decades before being “discharged” somewhere else⁶¹.

As Saliba points out, it has been the acknowledgement through tangible example of pollution in the Mediterranean Sea that has initiated a “ecologist warning” period in the area that encouraged intervention to face regional environmental issues⁶². The following phase – as Saliba recognises – has been characterised by individual State activism to face the damaged areas⁶³. However, individual action for environmental related issues is ineffective.

In 1969 the General Fisheries Commission for the Mediterranean drafted the first comprehensive report on the state of pollution in the Mediterranean, which was published in 1972. The report concluded that the most polluting source is land-based domestic and industrial waste. Indeed, 90% of sewage entering the Mediterranean Sea is not treated or bad-treated⁶⁴.

In point of fact, Mediterranean governments acknowledged that the situation was so critical that it was possible to face it only through a joint response: this explains why they were more willing to cooperate. In fact, the Mediterranean

⁵⁹ THACHER (1977: 311).

⁶⁰ OSTERBERG (1977: 310).

⁶¹ SALIBA (1978: 171-173).

⁶² SALIBA (1978: 171-173).

⁶³ SALIBA (1978: 14).

⁶⁴ THACHER (1977: 311)

littoral states decided put major efforts in co-operative counter pollution strategies: due to this, the Mediterranean Action Plan ('MAP') was developed by the UNEP in 1974, in order to articulate a comprehensive framework to establish stable cooperation between governments and the UN specialised agencies for the environmental management of the Mediterranean Region⁶⁵.

1.2.2 The pressing issues of increasing population: contrasting interests in the Region

In addition to the peculiar ecosystemic condition of the Mediterranean, the situation was aggravated by the increasing human presence in the region. This problem is crucially relevant for the 18 littoral States for two main reasons: firstly, the increasing population of the Mediterranean States has been concentrating on the coastal zones – for reasons mostly related to commerce opportunities and closeness to marine natural resources – exacerbating ecosystem's possibility to absorb the increasing pressure on coastal ecosystems⁶⁶. Secondly, the increasing population patterns differentiated between the North shore and the South shore of the Mediterranean. Acknowledging the link between economic development and population increase, Pavasonic explains that while the overbuild and overpopulated Northern Mediterranean countries were yet in the 1980s exhausting their possibilities to economically develop, in that same period Southern countries just started developing according to the same business principles embraced from the Northern countries decades before. The two shores of the Mediterranean were at different stages of their development and these differences caused different environmental problems for the two shores of the Mediterranean. Indeed, while the developed North has to reconcile the highly living standards – and the consequential intense exploitation of resources – with sustainable practices, the developing South has to ensure its future development detaching from the unsustainable practices of the past. In addition, the South was willing to ensure the control of their own resources, face poverty and the need to increase economic development, quality life and income opportunities⁶⁷. In point of fact, the same problems faced at global level during the Stockholm process between developed and developing countries, reverberate even at regional, Mediterranean level.

As a matter of fact, the contrasting interests created a risk for coordinated management of resources, making cooperation in the Mediterranean complex to be ensured. In relation to this, it has been recognised that the Mediterranean countries “face a number of smaller collective goods problems that impeded coordinated national action to control pollution”⁶⁸. Both political and economic disparities complicated the negotiation of the MAP framework. For

⁶⁵ SALIBA (1978: 176).

⁶⁶ THACHER (1977: 308).

⁶⁷ PAVASONIC (1996: 135-136).

⁶⁸ HASS (1989: 379).

example, conflicting interests exacerbated in relation with the degree of control to be ensured for land-based pollutants: while North countries were willing to put most of the LBS of pollutants under control, South countries felt threatened by these stringent policies since they considered these as a way for the North countries to control their development⁶⁹. Another example relates to the introduction of emissions caps: lacking national industrial base, Algeria, Tunis, Libya, and the Maghreb countries contested the measure, since it would have restrained their future industrial expansion⁷⁰.

As a matter of fact, contrasting interests and political and economic differences had to be faced in order to ensure the institutionalisation of the UNEP/MAP. Indeed, governmental approval was necessary to ensure compliance and the funding mechanism of the programme, which could not exist without national and governmental economic intervention.

It is possible to assert then that “balance” is the crucial keyword that enables us to understand the rationale that guided the development of the MAP.

To balance contrasting interests, a huge degree of relevance was given to scientific data and documentation assessing the state of the environment in the Mediterranean⁷¹. Indeed, in the preparatory phase of the Programme, the relevance of the scientific assessment was enforced by the fact that it was assigned to and developed by international and external committees: the General Fisheries Council for the Mediterranean (‘GFCM’) which is under the Food and Agriculture Organization (‘FAO’), the Intergovernmental Oceanographic Commission (‘IOC’) of the United Nations Educational, Social and Cultural Organization (‘UNESCO’), and the Intergovernmental Maritime Consultative Organization (‘IMCO’) co-ordinated pollution assessment programmes in the Mediterranean. This enabled the shared scientific evidence to counterbalance political disagreements⁷². Indeed, as Thacher points out, what has been wisely avoided has been a “premature politicisation of the problem”⁷³.

To conclude, the urgency felt due to tangible pollution evidence and the independent scientific assessment evidence enabled Mediterranean countries to overcome contracting interests and made the establishment of a co-operative framework for environment protection in the region possible. The first phase of the MAP will be now described.

1.3. The UNEP/MAP – Barcelona Convention System: phase one.

⁶⁹ HASS (1989: 379).

⁷⁰ KÜTTING (1994: 233-234).

⁷¹ The crucial role played by the ecologic epistemic community will be more in detail discussed in the last Chapter.

⁷² THACHER (1977: 310).

⁷³ THACHER (1977: 308).

The first time when the Mediterranean was explicitly mentioned in UNEP official documents, was during the second session of the GC of UNEP, held in Nairobi in March 1974. In that decision, it was stated that “high priority should be given to supporting activities to protect living resources and prevent pollution in the Mediterranean”⁷⁴. Following this path, in 1976 the Intergovernmental Meeting on the Protection of the Mediterranean (28 January - 4 February 1975)⁷⁵ was held in Barcelona and the MAP was approved. At the meeting, seventeen States were represented⁷⁶, and the MAP entered into force in 1978 when it was ratified and accepted by all the MSs and the European Community (‘EC’). With the attendance of Albania in 1985, all eighteen littoral States are now parties to the convention.

The main aims of the MAP - PHASE I were to measure and control marine pollution, support States in developing national environmental policies, enforce CPs to develop updated strategies for development and improve ability to allocate resources efficiently⁷⁷. Furthermore, the MAP conceptual framework was crucially connected with the aim of improving cooperation among developed and developing countries in the area, and to formulate environmental policies that may reconcile the contrasting interests previously discussed. Indeed, as Vallega points out, the MAP has enabled the establishment of an arena in which precursory aspects of sustainable development – to reconcile economic development with environment protection – started to be discussed⁷⁸.

In addition, the MAP has enabled and enforced cooperation between the UNEP and other intergovernmental and national organisations, which is a crucial element to ensure reliable scientific assessment and cooperation in environmental related issues, which are characterised by interdependency of different factors and governance levels.

It is significant to preface that the MAP underwent a relevant process of rationalisation after the 1992 and the promulgation of the Rio Declaration. Indeed, the latter is considered a turning point for global environmental legislation, and it influenced regional environment legislation. Consequently,

⁷⁴ Report of the Governing Council of the UNEP, 22 June 1973, A/9025, *on the work of its first session*.

⁷⁵ Final Act of the Governing Council of the UNEP, 24 March 1976, 61/Add.3, *Final Act of the Conference of plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea, 2-16 February 1976*.

⁷⁶ The State members represented were Algeria, Egypt, France, Greece, Israel, Italy, Lebanon, Libyan Arab Republic, Malta, Monaco, Morocco, Spain, Syrian Arab Republic, Tunisia, Turkey, Yugoslavia. In addition, Albania and Cyprus were invited but were not present.

Observers for the following States members were also present: the Union of Soviet Socialist Republic, the United Kingdom of Great Britain and Northern Ireland, the United States of America (Final Act of the Governing Council of the UNEP, 61/Add.3).

Moreover, there were representative of different actors: United Nations bodies (ECA, ECE, EWA, UNDP), Specialized Agencies (FAO, UNESCO-IOC, WHO, IBRD, WMO, IAEA), Intergovernmental Organisations (ALECSO, ICSEM, OAU, OECD) (Final Act of the Governing Council of the UNEP, 61/Add.3).

⁷⁷ MASSOUD et al. (2003: 879).

⁷⁸ VALLEGA (1995: 254).

MAP Phase I will be described straightway, while the features of the MAP PHASE II will be illustrated in the following Chapter, after describing the progress derived from the Rio Declaration.

As previously mentioned, the MAP PHASE I can be considered as the first attempt to rationalise environmental cooperation in the Mediterranean. It is possible to define some common principles that clarifies the Action Plan – supporting the CPs, ensuring scientific assessment, and increasing cooperation at different levels. However, to define an explicit strategy to follow it was necessary to rationalise these principles into projects – defining timelines, actors involved and the relationship among them, geographical limitations, and steps to be followed in the progress. For this purpose, the Action Plan for the Mediterranean agreed in Barcelona defines four main components according to which the first attempt to exercise environmental cooperation for Regional Sea safeguard was concretised.

The different features of the MAP PHASE I are:

1. Integrated planning of the development and management of the resources of the Mediterranean Basin.
2. Co-ordinated programme for research, monitoring, and exchange of information and assessment of the state of pollution and the protection measures.
3. Framework convention and related protocols with their technical annexes for the protection of the Mediterranean environment.
4. Institutional and Financial implications of the Action Plan⁷⁹.

Accordingly, the MAP defines these features through sectorial approach. The components of the MAP PHASE I – the integrated planning, the scientific assessment, the legal and the institutional and financial – are interdependent, however these have been elaborated considering the general aspects of the MAP mentioned above. These will be described in the following paragraphs.

1.3.1 The Legal component: the 1975 Barcelona Convention

In the first place, it is paramount to describe the legal component of the MAP. The following year of the establishment of the MAP, the Convention for the Protection of the Mediterranean Sea against Pollution (hereinafter called the Barcelona Convention) and the first two related Protocols (the “dumping” and the “emergency” protocols)⁸⁰ were adopted by the Conference of

⁷⁹ Report of Intergovernmental Meeting, 1975, UNEP/WG. 2/5, *on the Protection of the Mediterranean*.

⁸⁰ Convention for the protection of the Mediterranean Sea against pollution (with annex and Protocol for the prevention of pollution of the Mediterranean Sea by dumping from ships and aircraft and Protocol concerning co-operation in combating pollution of the Mediterranean Sea by oil and other harmful substances in cases of emergency), Barcelona, 1976.

Plenipotentiaries of the Mediterranean Coastal States for the Protection of the Mediterranean Sea (Barcelona, 12 - 16 February 1976). A few years later, two other protocols were adopted: the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources (1980) and the Protocol Concerning Mediterranean Specially Protected Areas (1982). All the coastal States of the Mediterranean – except Albania, that will accede to the agreement in 1989 – and the European Community signed the Convention.

It is labelled as a framework convention since only general policy framework is defined, while specific and precise provisions to face different pollution problems are clarified though annexed protocols⁸¹.

The structure of the 1975 convention is similar to the other conventions stipulated under the Regional Seas Programme of the UNEP⁸². Precisely, geographical coverage, general provisions and general undertakings are defined. It is relevant to acknowledge that the framework convention of the convention exemplifies in the language used: the same terminology, namely “to take all appropriate measure”, is used in Art. 1 of the General Undertaking section, as well as in the articles 5, 6 and 7. Indeed, these articles are dedicated to pollution from ships, resulting from exploration and exploitation, and land based sources, which are the areas in which the Protocols have been adopted. Furthermore, Monitoring (Art. 10), Scientific and Technological co-operation (Art. 11), Liability and Compensation (Art.12), Institutional Arrangements (art.13), Meetings of the Contracting Parties (art 14), Adoption of Additional Protocols (Art. 15), Amendments to the Convention or Protocols (Art. 16), Annexes and Amendments to Annexes (Art.17), Rules of Procedure and Financial Rule (Art. 18), Special exercise of voting rights (Art. 19), Reports (Art. 20), Compliance Control (Art. 21), Settlements of disputes (Art. 22), Relationship between the Convention and the Protocols (Art. 23), Signature (Art. 24), Accession (Art. 26), Entry into force (Art. 27), Withdrawal (Art. 28), Responsibilities of the depositary (Art. 29) are defined in the following sections⁸³.

The 1975 convention has been criticised due to different aspects even before the beginning of the amendment process following Rio in 1992.

For example, the positive feature of flexibility is counterbalanced by the lacking specifications in relations with the adoption of national legislation to absorb the international agreement into national jurisdictional system, the interaction and integration with stakeholders, NGOs, civil associations and broadly speaking the citizenships of the coastal states, which were not mentioned⁸⁴. Furthermore, the Convention was “less ICM-oriented than the MAP”⁸⁵. Indeed, specific provision to include the principle of integrated

⁸¹ PAVASONIC (1995: 142).

⁸² It has been discussed in the previous paragraphs that the UNEP provided guidelines to follow for the establishment of Action Plans and Conventions in the different Regional Seas Programmes.

⁸³ Convention for the protection of the Mediterranean Sea against pollution, Barcelona, 1976.

⁸⁴ PAVASONIC (1995: 147).

⁸⁵ PAVASONIC (1995: 147).

coastal management (ICM) - which was one of the principal features of the MAP – is lacking in the Convention. In fact, the lacking legal anchorage in the convention did not enable the evolution of an effective co-operative framework for the management of coastal resources in the Mediterranean and the enforcement of the system. To counterbalance this problem, the principle of ICM became one of the most relevant aspects of MAP PHASE II and the 1995 Barcelona Convention. However, it was necessary to wait for the global environment legalisation to innovate and for the regional environmental legislation to follow the path. This, as mentioned, will happen after the 1992 Rio Declaration on Environment and Development.

1.3.2 The integrated management component: the Blue Plan and the PAPs.

As it has been described, the integrated management component of coastal resources developed more concretely during MAP PHASE II. Notwithstanding, two Regional Activity Centre (RACs), namely the Blue Plan (BP) and the Priority Area Programme Regional Activity Centre (PAP/RAC)⁸⁶ have been established in the framework of the Regional Centres supporting the MAP - PHASE I institutional framework.

The PAP/RAC will have a more concrete mandate after the emission of the Integrated Coastal Zone Management Protocol in 2008, since it will be carried by the realisation of ICZM approach toward marine resources.

In contrast, the BP immediately started its work. The peculiar element of the BP focus is the future-oriented and the forecasting feature on which it is grounded. Precisely, the aim of the project was to define a comprehensive analysis of possible future scenarios in the Mediterranean Sea Area, principally considering the relations between environment and development. In order to do so, it has been necessary to conceptualise and analyse different interactions of numerous aspects of the development and environmental components. For example, the possible effects of agricultural improvement on soil degradation⁸⁷. The reason explaining such an approach was to qualify the consequences of effective – or ineffective – environment safeguarding strategies. It was generally acknowledged that some strategies to face environment degradation affected economic development⁸⁸. It has been

⁸⁶ The mandate of the Regional Centres, their location, activities and duties will be analysed in depth in the second Chapter. Indeed, it will be considered the actual institutional framework of MAP PHASE II, instead of MAP PHASE I that is outdated.

⁸⁷ BATISSE (1988: 4).

⁸⁸ This conceptualization will be overtaken by the principle of sustainable development, that actually does not consider environment and development as mutually exclusive. In contrast, the grounding of the concept of sustainable development is to ensure economic and social wellbeing through strategies, policies and natural resources management that enable environment protection. It will be necessary to wait until the Rio conference in 1992 for the principle of sustainable development to see the light. A more elaborated discourse on the

discussed above how this contrast has been a point of friction between developed and developing countries in both global and regional contexts. The BP aim was to articulate possible scenarios in order to avoid undesired effects in the development of these strategies, and to qualify the outcomes of the MAP. Accordingly, in the MAP it is requested to “develop and applicate rational technique from the point of the economy, ecology and health” and to “take the environment into consideration in development projects”. In order to do so, it is specified that inclusion of developing countries in the region will be ensured, to “enable all countries to undertake activities in those fields themselves and to participate fully in regional activities”⁸⁹.

The BP has been originally submitted by France to the UNEP, and it was adopted by the Conference of the plenipotentiaries to the Barcelona Convention in 1977⁹⁰.

The conclusions of the assessment programme of the BP can be summarised in two main statements: the environmental and developmental issues on the North and South region of the Mediterranean widely different, and that the phenomenon of the littoralization – the growing concentration of population and economic related activities on the coastal states – will affects the whole region⁹¹.

Even if nowadays these conclusions may appear at first sight obvious, it has not been the case when these were firstly defined. Remarkably, these concepts would have shaped the evolution of the MAP PHASE II in the following decades, since the differences between North and South will be more concretely elaborated, and much more will be done to ensure integrated coastal zone management.

1.3.3 The scientific component: MED POL PHASE I and II

Considering the scientific component of the MAP, MSs agreed on several fields related to pollution assessment in which baseline studies were necessary. The UNEP presented a proposal to the Intergovernmental Meeting of the Mediterranean Countries to articulate such projects that have been defined through the Coordinated Pollution Monitoring and Research Programme in the Mediterranean (‘MEDPOL’).

influence of Rio on the UNEP/MAP – Barcelona Convention System will be entangled in the following paragraphs.

⁸⁹ More precisely, the MAP requests to the Executive Director of the UNEP to draft an inventory of the developing countries in the region, with the aim of define how to elaborate co-operation programmes (Report of Intergovernmental Meeting, 1975, UNEP/WG. 2/5, *on the Protection of the Mediterranean*, Annex V, pp. 1-2).

⁹⁰ ANTOINE (1977: 333).

⁹¹ The consequences of littoralization are that human activities – agriculture, industry, energy consumption, tourism – concentrate on the coastal area (BATISSE, 1988: 3).

The main aim of the MED POL is to effectively acknowledge the state of the environment of the Mediterranean and to provide a reliable scientific baseline for the implementation of the other components of the MAP⁹².

As a matter of fact, the first assessment of the state of the environment in the Mediterranean was drafted by the General Fisheries Commission for the Mediterranean ('GFCM') in cooperation with the International Commission for the Scientific Exploration of the Mediterranean ('ICSEM'). The report was published in 1972 and it acknowledged that the most relevant source of pollution in the region derived from land-based sources. It was stated that the lack of adequate treatment for industrial and domestic wastes was the main reason that affected the environment. Notwithstanding the fundamental relevance of this document, it was acknowledged by the MSs that the pollution assessment produced was not sufficiently comprehensive. In order to develop effective counter-pollution strategies, it was necessary to measure the different typologies of pollutants and define what the causes of the degradation were. Due to this, MED POL was established. It operated in conjunction with national and international institutions, the UNEP and UN specialised agencies.

The seven pilot projects have been defined considering the areas of intervention identified in the Action Plan:

1. MED-I: Baseline studies and monitoring of oil and other petroleum hydrocarbons in marine waters - Intergovernmental Oceanographic Commission ('UNEP/IOC') / World Meteorological Organization ('WMO').
2. MED-II: Baseline studies and monitoring of heavy metals, particularly mercury and cadmium, in marine organisms - UNEP/FAO(GFCM).
3. MED-III: Baseline studies and monitoring of DDT, PCBs and other chlorinated hydrocarbons in marine organisms - UNEP/FAO(GFCM).
4. MED-IV: Research on the effects of pollutants on marine organisms and their populations - UNEP/FAO(GFCM).
5. MED-V: Research on the effects of pollutants on marine communities and ecosystems - UNEP/FAO(GFCM).
6. MED-VI: Coastal transport problems of pollutants - UNEP/IOC.
7. MED-VII: Coastal water quality control - UNEP/WHO⁹³.

In addition to these seven pilot projects, six others have been established, however some have never been fully implemented:

⁹² Report, UNEP - Mediterranean Action Plan (MAP) - MED POL, 1986, No. 9, *Co-ordinated Mediterranean Pollution Monitoring and Research Programme (MED POL - PHASE I), Final Report 1975 – 1980*.

⁹³ Report of the UNEP, 1984, Regional Seas Report and Studies No. 23, *Co-ordinated Mediterranean Pollution Monitoring and Research (MED POL) – Phase I: Programme Description*.

8. MED POL -VIII: Biogeochemical Studies of Selected Pollutants in the Open Waters of the Mediterranean.
9. MED POL IX: Role of Sedimentation in the Pollution of the Mediterranean Sea.
10. MED POL X: Pollutants from Land-Based Sources in the Mediterranean.
11. MED POL XI: Intercalibration of Analytical Techniques and Common Maintenance Service.
12. MED POL XII: Input of Pollutants into the Mediterranean Sea via the Atmosphere.
13. MED POL XIII: Modelling Marine Systems.

The establishment of the MED POL started with preparatory activities. The International Workshop on Marine Pollution in the Mediterranean was held in Monaco in September 1974, and it aimed at identifying priority areas of intervention to face pollution and outlined the pilot projects necessary. It was funded by the UNEP and other UN agencies⁹⁴. Furthermore, it was established an evaluating programme to acknowledge the institutional capabilities of the research centres that would have collaborated to the data collection programme for pollution assessment. Indeed, the implementation of phase I of the MED POL was carried out by the UNEP Regional Seas Programme Activity Centres ('RS/PAC')⁹⁵. National research centres - designated by governments - collaborated in the development of programmes through financial contributions and collecting data. These were subsequently reported to the UN special body assigned to the specific MED POL projects, that validated and controlled the data and reported it to the RS/PAC.

The MED POL PHASE I can be considered the first attempt to establish a co-ordinated, accountable, reliable, and efficient pollution monitoring framework in the Mediterranean. As a matter of facts, it was necessary to prolong the MED POL – establishing MED POL PHASE II – since in the first phase different obstacles did not enable an effective pollution assessment programme⁹⁶. Optimistic results were obtained concerning MED POL II

⁹⁴ The UNEP and the specialised agencies contributed differently: FAO (GFCM) 2.8% (equivalent to 1,000 US dollars), IOC 11.2% (equivalent to 4,000 US dollars), ICSEM 16.6% (equivalent to 6,000 US dollars) and UNEP 69.5 (equivalent to 25,109 US dollars) (Report, *Co-ordinated Mediterranean Pollution Monitoring and Research Programme (MED POL - PHASE I), Final Report 1975 – 1980*).

⁹⁵ The Inter-Agency Advisory Committee had the aim of co-ordinating the pilot projects (Report, *Co-ordinated Mediterranean Pollution Monitoring and Research Programme (MED POL - PHASE I), Final Report 1975 – 1980*).

⁹⁶ e.g.: attempts to uniform the data collection processes were insufficient, and it had been impossible to make use of some data sources collected. Furthermore, cooperation with some local authorities was lacking, and some did not enable data collection or usage, since these were deemed as strictly local relevance by the local authorities.

(Baseline studies and monitoring of heavy metals, particularly mercury and cadmium, in marine organisms - UNEP/FAO(GFCM)⁹⁷.

In 1981 the CPs to the Barcelona Convention terminated MED POL PHASE I and established MED POL PHASE II, a long-term programme for pollution monitoring and research. The programme was formulated by the UNEP acting as Secretariat in conjunction with the actors involved in MED POL PHASE I. The main aim of the new project was to ensure the effectiveness of the Barcelona Convention by assisting States in “prevent, combat and abate pollution in the Mediterranean Sea Area”. It has been developed considering the inefficiencies of the predecessor to ensure the long-term feature of the programme. Crucial relevance has been given to monitoring programmes, in order to provide continuous data inflow on the state of the environment in the Mediterranean.

1.3.4 Institutional and financial implications

Considering financial implication, the text of the MAP - PHASE I did not elaborate to a great extent. It is decided that the Executive Director of the UNEP “should work within the budgetary and institutional framework and within the method of work established by the Governing Council”⁹⁸. Furthermore, in the MAP it is stated that that the minimum allocation cost rationale should be used for the staff payments and other administrative costs⁹⁹.

The institutional framework of the MAP - PHASE I should be developed considering “co-ordinating mechanism which use – to the greatest extent possible – existing international organizations” to interact with “national institutions through the appropriate authority of the country”, according to the MAP¹⁰⁰. Accordingly, the Regional Activity Centres (RACs) were established, as previously mentioned.

Furthermore, it is relevant to consider that during MAP PHASE I, the institutions have been defined considering two main aspects: the necessity to delineate the UNEP role in Mediterranean issues, and to act as a secretariat of the Bureau of the Convention¹⁰¹. The MAP institutions are the Co-ordinating Unit, the Regional Activity Centres (RACs) and the Mediterranean Trust Fund¹⁰².

⁹⁷ The results will be updated considering the assessment of MED POL PHASE II ((Report, *Co-ordinated Mediterranean Pollution Monitoring and Research Programme (MED POL - PHASE I), Final Report 1975 – 1980*).

⁹⁸ Report of Intergovernmental Meeting, 1975, UNEP/WG. 2/5, *on the Protection of the Mediterranean, Annex V*.

⁹⁹ *Supra*.

¹⁰⁰ *Supra*.

¹⁰¹ VALLEGA (1995: 254).

¹⁰² These organs will be described and discussed in the following chapters, considering the updated and amended UNEP/MAP – Barcelona Convention System.

1.4. The UNCED as second watershed in international environmental law

1.4.1 The Rio Process and the principles of international environmental law

The establishment of MAP - PHASE I has been pivotal in setting the first steps toward environmental cooperation in the Mediterranean. However, environmental law is dynamic, and it is subject to many different sources of influence, like the historical context in which it develops, the technological innovations that ensure a more efficient scientific assessment for pollution measurement, and it is influenced by the general socio-economic context. Indeed, it has been coherent for the Mediterranean countries to amend the MAP and the Barcelona Convention System according to the innovative principles and concepts emerged from the Rio Process, that after Stockholm is considered as the second watershed in international environmental law.

The 1992 Rio United Nations Convention on Environment and Development ('UNCED') set the conceptual grounds and the legal framework on which the actual environmental international agreements have been built.

As a matter of fact, the Stockholm framework appeared insufficient - after ten years from its establishment – to face the growing problems related to unwise management of natural resources. Indeed, a long-term strategy to ensure intergenerational equity was still lacking. Furthermore, differences among developed and developing countries were exacerbating, since both groups did not abandon business as usual practices, and the relationship between economic growth and the necessity to safeguard the environment remained unsolved.

Due to this, in 1982, the UNGA set in motion a new path for international environmental law, aimed at enforcing cooperation among the international community. Though resolution 37/729, the UNGA clarified the “principles for conservation by which all human conduct affecting nature is to be guided and judged” which were emerged from the drafting of the World Charter for Nature report¹⁰³. The latter is considered a symbolic and emblematic statement of the necessity felt to update the existing environmental law framework and to improve environmental cooperation, in order to face the problems that the Stockholm process had not solved.

One common feature that characterised both Rio and Stockholm conference is that prior to the beginning of the process, decisive relevance has been given to scientific assessment, or at least to the development of a common background knowledge that could once and for all set the basis for negotiations.

¹⁰³ Resolution of the UN General Assembly, 29 October 1982. A/RES/37/7, *World Charter for Nature*.

The successor of the Founex Report can be considered the Brundtland report. The latter was published by the commission charged by the UNGA¹⁰⁴ with the drafting of a comprehensive report on the environmental problems of the incoming millennium. The World Commission on Environment and Development – the Brundtland Commission – initiated its mandate in 1983. It was formed by 21 independent representatives of developed and developing countries who had the objective of defining a “global agenda for change, without bankrupting the resources for the future generation”¹⁰⁵. In 1987 the WCED published the report entitled *Our Future*, which can be considered an attempt to comprehensively define the causes and possible strategies to face the global problem of environment degradation, considering different aspects of human development. The document played a pivotal role in guiding the following debate during the UNCED, since it defined the link between environmental protection and human development considering causes, consequences and possible solutions to the problems described¹⁰⁶.

The legacy of the Brundtland report set the basis for the United Nations Conference on Environment and Development (‘UNCED’), set up by the UNGA in 1988 to “elaborate strategies and measures to halt and reverse the effects of environmental degradation”^{107 108}. 176 States, 50 intergovernmental organisations convened in Rio de Janeiro in 1992 to attend the UNCED.

The Rio conference is considered “comparable to major multilateral peace conferences, such as the 1815 Vienna Congress or the 1919 Versailles Conference” in terms of diplomatic history¹⁰⁹, since it prominently improved international environmental law¹¹⁰.

¹⁰⁴ Resolution of the UN General Assembly, 19 December 1983, A/RES/38/161, *Process of preparation of the Environmental Perspective to the Year 2000 and Beyond*.

¹⁰⁵ UDAPUDI ET AL. (2015: 68).

¹⁰⁶ The *Our Future* Report is divided into three main parts. In the first part, Common concerns are described, and the causes of environmental degradation are discussed. Furthermore, it nominates and clarifies for the first time the principle of sustainable development, which will be the guiding one of the whole Rio process, and it is considered the most relevant inheritance of the UNCED. Part II defines Common Challenges, namely possible areas in which environmental problems may exacerbate pre-existing critical conditions: increasing population and management of human resources, food security, ecosystems development and protection, energy procurement, industrial development, and urban management. Part III is entitled Common Endeavours, and it elaborates on the management of areas of particular interest – Oceans, Space and Antarctica – and the relationship between Peace, Security, Development and Environment. Lastly, it proposes a common action strategy for institutional and legal change. The Report ends with a Call for Action directed towards governments, civil associations, and institutions to face the challenges described.

¹⁰⁷ Resolution of the UN General Assembly, 20 December 1988, A/RES/44/228, *UN Conference on Environment and Development*.

¹⁰⁸ In addition to the Brundtland report, another pivotal document had been developed prior to the convocation of the UNCED. The Caring for the Earth Strategy elaborated on the concept of sustainable development considering two main aspects, namely: how to ensure sustainable living, and how to translate the guiding principle of sustainable development into practice (UDAPUDI et al., 2015: 68).

¹⁰⁹ SAND (1993: 209).

¹¹⁰ SAND (1993: 209).

In addition, the most relevant concept that derived from the Rio process is the principle of sustainable development, that clarifies that development should meet the necessities of the present generation without “compromising the ability of future generations to meet their own needs”¹¹¹. Indeed, what had been initiated in Stockholm continued in Rio, and a brand-new perspective was proposed to ensure a stable conceptual framework to define strategies for a sustainable path for growth.

In facts, the Rio process has been the culmination of an innovative path that concretised into four different documents:

- The United Nations Framework Convention on Climate Change (‘UNFCCC’)¹¹².
- The Convention on Biological Diversity¹¹³
- The Rio Declaration on Environment and Development¹¹⁴
- Agenda 21¹¹⁵.

The legal nature of these documents is different. Precisely, both the UNFCCC and the Convention on Biological Diversity are formal multilateral treaties, and these are legally binding for the signatories¹¹⁶. The establishment of legally binding procedures for facing climate change never happened before Rio. The legacy of the UNFCCC has influenced the future development of climate change related issues, with MSs forced to comply with the decisions made at Rio. The Kyoto Protocol, the Paris Agreement setting the limit of 1.5° C to global temperature raising, and the COP27, which is taking place while this work is being written, are the continuation of the process initiated in Rio through the UNFCCC.

It is relevant to point out that the conventions are framework agreements, avoiding the codification of specific features of the legal regime while defining the general guidelines to follow to legislate on specific issues. It enables the establishment of a dynamic and flexible legal framework, that facilitates the drafting of future, specific and binding “protocols” that would

¹¹¹ Report of the World Commission on Environment and Development, 1987, *Our Common Future*.

¹¹² United Nations Framework Convention on Climate Change (‘UNFCCC’), Rio de Janeiro, 1992.

¹¹³ United Nations Convention on Biological Diversity, Rio de Janeiro, 1992.

¹¹⁴ Report of the UNCED, 12 August 1992. A/CONF.151/26, *Rio Declaration on Environment and Development, Annex I*.

¹¹⁵ Agenda of the UN, 1992, *United Nations Conference on Environment & Development, AGENDA 21*.

¹¹⁶ The UNFCCC was adopted in New York (the United Nations Headquarters) in May 1992. In accordance with Article 20, it was open for signature at Rio de Janeiro from 4 to 14 June 1992, and thereafter at the United Nations Headquarters, from 20 June 1992 to 19 June 1993. The Convention received 166 signatures. In accordance with art. 22, the Convention is subject to ratification, acceptance, approval or accession by States and regional economic integration organisations.

The Convention on Biological Diversity was adopted in 1992 in Nairobi during the fifth session of the Intergovernmental Negotiating Committee, but it was opened for signature at Rio until June 1992 and remained open at the UNHs until June 1993.

ensure more effective definition of strategies^{117 118}. The provisions for the development of specific protocols are specified in both the conventions¹¹⁹, and these can be considered as “building blocks” or “intermediate agreements” for the development of future legislation in relation to CC and Biological Diversity¹²⁰.

In contrast, both the Rio Declaration and the Agenda 21 are not binding legal instruments. Notwithstanding this, their relevance for the codification of principles and strategies in environmental issues has been crucial¹²¹.

In particular, the most relevant principles of international environmental law have been conceptualised, defined, and specified in the Rio Declaration. 27 principles have been defined, and these represent the result of a balanced attempt to find common grounds among developed and developing countries. Indeed, while some principles were essential for developing countries to be defined (“right to development”¹²², poverty alleviation¹²³ and “common but differentiated responsibilities”¹²⁴), some have been embraced in order to

¹¹⁷ SAND (1993: 213).

¹¹⁸ Sand highlights that the framework convention approach has become a common and general accepted technique to codify international environmental legislation. As a matter of fact, the first framework convention even adopted has been the 1974 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution and its related protocols (SAND, 1993: 213).

¹¹⁹ Art 17 for the UNFCCC (UNFCCC, 1992). and Art 28 for the Biological Diversity Convention (International Convention, *Convention on Biological Diversity*).

¹²⁰ SAND (1993: 214).

¹²¹ These have been endorsed by the UNGA through Res. A/RES/47/190, that highlighted the declaratory and exhortatory value of the documents (Resolution of the UN General Assembly, 22 December 1992, A/RES/47/190, *Report of the United Nations Conference on Environment and Development*).

¹²² Principle 3 states: “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”. This principle perfectly exemplifies the compromise that had to be negotiated between developing and developed countries in relation with the concept of development itself. On one hand, the right to develop for developing countries has been recognised, however it is limited by the necessity to ensure intergenerational equity, which encompasses the definition of sustainable development. As mentioned in the previous paragraphs, the concept of sustainable development is the most relevant innovation that characterised the Rio progress, as well as the future innovations of international environmental law (MOLINARI, 2015: 139).

¹²³ Principle 5: “All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development”. The principle reflects the relevance given to intergenerational equity, which derives from the meaning assigned to the term “sustainable” in the Brundtland report. Indeed, it is clarified that “sustainable” means in practice “durable”, “long-lasting” (emphasis added) to ensure future generations may benefit from the same level of wealth. This concept was introduced with the attempt to eradicate poverty. Accordingly, the link between poverty eradication and environmental safeguard lies in the UN Charter, since the improvement of standards of living is one of the main pillars around which the UN system developed (TAKHMINA & GOLAV, 2015: 181).

¹²⁴ Principle 7: “States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities.” The conceptual roots of the principle of common but differentiated responsibilities date back to the Stockholm convention, however it has been the anchorage of this principle to the concept of sustainable development that innovates the system of environment cooperation from Rio

ensure the compliance of developed countries (public participation¹²⁵, the “precautionary approach¹²⁶” and the polluters pays principle¹²⁷).

Agenda 21 defined the strategies to put into action to define a common path for global partnership for sustainable development. It is stated that the international economy plays a crucial role in supporting the transition toward more sustainable practices. Indeed, the relationship between trade and environment should be review in order to ensure sustainable development of developed and developing countries¹²⁸.

1.4.2 The adaptation of the MAP-PHASE I to Rio: steps toward MAP PHASE II.

onward. Precisely, it enables countries to define *their own path* (emphasis added) of sustainable development, in order to ensure that the transition toward a more sustainable development path would not affect or restrain least developed countries vis a vis industrialized one. It allows countries to differentiate, to put into action strategies that may better fit their socio-economic conditions, sensibilities, industrial development, and it empowers the sovereign states to define their strategy for sustainable development. However, the principle defines that no actor is excluded from the duty to face environmental degradation, and it clarifies that whether the environmental problems are not faced collectively, it would not be possible to ensure a sustainable path of growth and management of resources. The responsibility is “common”; however the strategy is “differentiated” (CULLET, 2015: 229).

¹²⁵ The definition of the public participation principle in the Rio Declaration has been the final conjunction of a dynamic process aimed at ensuring more public participation in environmental related issues, at different normative levels. Indeed, it had been recognised in the Stockholm Declaration, in the 1982 World Charter for Nature as well as in the EU law. Indeed, it is necessary to acknowledge that the Rio process happened during a period of huge political change – the Berlin Wall fell, and the Cold War ended – and in that period a revitalised debate on democratisation, participation of civil society and human rights increased. This spirit is exemplified in this principle, that clarifies state’s duty in ensuring access to information concerning the environment, access to public participation, and access to justice (EBESSON, 2015: 287).

¹²⁶ Principle 15 states that “lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”. The precautionary approach inaugurated through principle 15 states that inaction to face environmental degradation is not justified even in cases of scientific uncertainty related to the negative consequences of human activity on the environment. The principle has its conceptual roots in the debate related in the UNEP GC in relation with marine environment, which in most of the times is damaged irretrievably. Due to this, it was decided that precautionary actions for environmental safeguard or to avoid environmental degradation should precede precise scientific assessment (CANÇADO TRINDADE, 2015: 403).

¹²⁷ The polluter pays principle (Principle 16) states that environmental costs should be internalised. It reflects the attempt to define an international strategy that would ensure pollution control, in order to decrease the economic burden of the States. Notwithstanding, the PPP has been contested since guidelines on how to define who is the polluter, and the amount that should be paid – to whom? – to compensate for the environmental degradation caused has not been clarified. Indeed, the environmental justice feature of the principle is blurred by lacking clarification on how to proceed and ensure its implementation (SCHWARTZ, 2015: 429).

¹²⁸ UDAPUDI ET AL., 2015: 69.

As a matter of fact, the innovation that happened at Rio at global level needed to be trickled down at regional level in order to ensure its effectiveness. Regional agreements cannot remain antiquated in relation to global commitments. Due to this, the revision process of the UNEP/MAP – Barcelona Convention System began in 1993. More specifically, that year in October the Eighth Ordinary Meeting of the Barcelona Convention Contracting Parties was held in Antalya to ensure the alignment of the regional instruments with the innovative features of Rio. The first step of the process has been the establishment of the MED 21 Conference on sustainable development in the Mediterranean, held in Tunis on November 1st, 1994¹²⁹. During the Tunis conference, the Agenda MED 21 was drafted. The document mirrors the concept elaborated in Agenda 21 drawn up in Rio¹³⁰. It recognised indeed the innovations of the Rio process, and the “worldwide consensus and political commitment” reached to make “sustainable development a reality of the 21st Century”¹³¹. The document is divided into four sections: Social and economic aspects, Conservation and management of resources, Strengthening the role of the main sectors of society and Implementation. It recognises the relevance of the Mediterranean region as pilot area in which environmental cooperation is necessary, and it is defined as a “eco-region”¹³². However, Marchisio recognised that the stance the Mediterranean countries defined during the Tunis meeting did not endorse completely the principles of the Rio declaration. More specifically, no mention has been made to the concept of common but differentiated responsibilities, which would have facilitated the definition of a shared and common ground for cooperation among the North and South share of the Mediterranean. In addition, the Mediterranean countries stressed the importance of enforcing “environmental” law, instead of embracing the truly innovative concept of the Rio process, that is sustainable development.

Notwithstanding, the Tunis conference has been only the initial step of a process that profoundly revised the UNEP/MAP – Barcelona Convention System. The second important event has been the Conference of Plenipotentiaries in 1995 held in Barcelona¹³³, which:

¹²⁹ MARCHISIO (1996: 264).

¹³⁰ It is stated in the Agenda MED 21 that the articulation of the Agenda 21 in independent chapters results from the mandate given by the UNGA, in 1988, with respect to the Rio Conference (Agenda of the Conference MED 21 on sustainable development in the Mediterranean, 1 November 1994, MED21/PC2/Rev 3, *Agenda Med 21*, p. 6).

¹³¹ *Agenda Med 21*, pp. 7.

¹³² It may be possible to consider that this terminology reflects the approach embraced by the UNEP in the development of the Regional Seas Programme that considers a new type of regionalism. As it has been discussed in para 1.2, environmental cooperation may transcend traditional strategic and cooperative alliances among countries, bringing at the same table of negotiations actors that would never cooperate in different areas. Indeed, sharing common natural resources or ecosystems brings countries to re-define regionalism.

¹³³ Final Act of the Conference of the Plenipotentiaries, 9-10 June 1995, UNEP(OCA)/MED IG. 6/7, *Final Act of the Conference of the Plenipotentiaries on the Convention for the Protection of the Mediterranean Sea against Pollution, to the Protocol for the Prevention of*

- Amended the 1975 Barcelona Convention and changed the name into Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean¹³⁴.
- Adopted two additional protocols, the Dumping from ships and aircraft protocol (“Dumping protocol”¹³⁵); the Specially Protected Areas protocol (SPA protocol¹³⁶).
- Adopted the Barcelona Resolution on the Environment and Sustainable development in the Mediterranean Basin¹³⁷, with Appendix I defining the Action Plan for the Protection of the Marine Environment and the Sustainable development of the Coastal Areas in the Mediterranean (MAP Phase II¹³⁸).

It is relevant to point out that during the Barcelona meeting in 1995, the Agenda MED 21 had not been adopted in the end¹³⁹. This proposed a broader and more comprehensive approach toward the principle of sustainable development, integrated coastal management and it defined more specifically areas that could have been included in the MAP-PHASE II¹⁴⁰.

The amendments to the Barcelona Convention and the Protocols will be described in detail in the next chapter. It is however interesting to presume that it had enlarged the scope, the contributions and the actions requested to MSs in Mediterranean environmental cooperation.

The Barcelona Resolution on Sustainable Development in the Mediterranean Basin enabled the establishment of different innovative elements of the MAP – PHASE II¹⁴¹. More precisely, it defines the objective of the updated version of the MAP, and clarifies the necessity to establish a Mediterranean

pollution of the Mediterranean by Dumping from Ships and Aircrafts and on the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean.

¹³⁴ Final Act, UNEP(OCA)/MED IG. 6/7, *Resolution II, Annex I*.

¹³⁵ Final Act of the Conference of the Plenipotentiaries, UNEP(OCA)/MED IG. 6/7, *Resolution II, Annex II*.

¹³⁶ Final Act of the Conference of the Plenipotentiaries, UNEP(OCA)/MED IG. 6/7, *Resolution III*.

¹³⁷ Final Act of the Conference of the Plenipotentiaries, UNEP(OCA)/MED IG. 6/7, *Resolution I, Annex I*.

¹³⁸ Final Act of the Conference of the Plenipotentiaries, UNEP(OCA)/MED IG. 6/7, *Appendix I*.

¹³⁹ VALLEGA (1995: 256).

¹⁴⁰ e.g.: freshwater management, desertification and urban management - which are closely relevant for sustainable development – were mentioned in the Agenda MED 21 but excluded from MAP – PHASE II (VALLEGA, 1995: 259).

It is relevant to consider that even if the Agenda MED 21 proposed a broader perspective toward environmental cooperation in the Mediterranean that in the end has not been completely endorsed in the MAP – PHASE II, it is possible that this could be used as a guiding conceptual framework to be used in the future to amend and improve the MAP – PHASE II.

¹⁴¹ As a matter of fact, the effective incorporation of the Rio principles is more evident in the MAP – PHASE II than in the Agenda MED 21, that stands as a non-binding, declaratory statement of commitments.

Commission on Sustainable development, setting the basis for the definition of the mandate, representativeness, and scope.

In addition, it may be relevant to consider which are the conceptual points stressed in the Resolution. As a matter of fact, one of the first acknowledgements of the MSs are the “differences in socio-economic development still existing among the Mediterranean coastal states”. It may be relevant to stress again the crucial problem of finding a common ground for cooperation among the North shore and the South shore of the Mediterranean. This is a global problem that perfectly exemplifies the Mediterranean region, and it may be considered as one of the main obstacles to stable, efficient, functional cooperation in environmental related issues. Furthermore, it is recognised that “greatly intensified action” is necessary to the “state of the environment quality of the Mediterranean”.

In addition, the Resolutions calls on the Coordinating Unit to conclude the process of preparing the additional protocols to the Barcelona Convention. The implementation of the MAP PHASE II, as well as the amended legal components, the seven Protocols, and the updated scientific components will be the subject of the following Chapter. The actual legal, institutional, financial and scientific components of the MAP PHASE II will be described and analysed.

CHAPTER 2

2. THE LEGAL AND INSTITUTIONAL FRAMEWORK OF THE UNEP/MAP – BARCELONA CONVENTION SYSTEM

SECTION I

2.1 THE LEGAL FRAMEWORK: THE LAW OF THE SEA, THE AMENDED BARCELONA CONVENTION AND THE PROTOCOLS

2.1.1 The International Legal Regime in the Mediterranean

On international level, there are numerous instruments that define the normative framework for the protection of the marine environment, biodiversity, fisheries and fishing activities¹⁴². Indeed, the Barcelona Convention lays and is built upon norms and principles that have been priorly defined at global level. As a matter of facts, different international regimes overlap in the Mediterranean region. Indeed, while the Barcelona Convention and the UNEP/MAP system have been developed to ensure environmental safeguard of the region, the normative framework it has established is connected with general norms of the Law of the Sea. Indeed, prior to defining the regional normative framework in relation with the convention, the international legal status of the Mediterranean according to the Law of the Sea will be described.

The most notable international treaty on the use of the sea in the United Nations Convention on the Law of the Sea ('UNCLOS')¹⁴³, and it has been ratified by most Mediterranean countries¹⁴⁴. The Convention was adopted in 1982, and it prescribes the general legal regime for the definition and institution of marine boundaries, which vary according to the breadth of the border. In addition, rights and duties of the States in relation with the different zones administered are defined in the convention¹⁴⁵.

Notwithstanding the global character of the convention, the UNCLOS sets out specific provisions for regional administration of maritime zones. Indeed, it calls upon States to consider "characteristics regional features"¹⁴⁶ for the

¹⁴² For example, the United Nation Convention on the Law of the Sea, the MARPOL convention, the Basel Convention.

¹⁴³ United Nations Convention on the Law of the Sea, New York, 1982 (Hereinafter: 'UNCLOS').

¹⁴⁴ Israel, Syria, and Turkey are not part of the UNCLOS. Furthermore, Libya has signed the convention, however, has not formally confirmed its compliance to the UNCLOS through accession, succession or ratification.

¹⁴⁵ Indeed, Articles 2 and 3 of the Convention specify that State's sovereignty rights are recognised in accordance with UNCLOS and other international treaties.

¹⁴⁶ CHIRCOP (1991: 8).

safeguard of the marine environment. In addition, the convention stresses the pivotal necessity for States to cooperate in relation with the definition of marine boundaries, and the protection of marine resources, flora and fauna that are present in the different marine zones and in specific regions of the world¹⁴⁷.

In the Mediterranean Sea area, the regional approach for sea management and the cooperative feature that is stressed in the convention may theoretically perfectly merge. In relation to this, it has been recognised that the Mediterranean falls under the definition of semi-enclosed sea that is provided in the convention in Articles 122¹⁴⁸. The recognition of Mediterranean as semi-enclosed sea enforces cooperation among coastal states, since the following Article calls coastal States of enclosed or semi-enclosed seas to cooperate for the management of living resources, the implementation of their rights and duties, for scientific research and for the involvement of other States and IOs in areas related to the convention¹⁴⁹. Therefore, the Mediterranean Sea Area is a regional, geographical zone that - according to the international legal regime defined through the UNCLOS - cooperation is possible, necessary, and encouraged. Indeed, it is undoubtable that coastal States of the Mediterranean have been inclined toward cooperation for the safeguard of the coastal and marine environment of the zone, as it has been previously discussed, and the Mediterranean Action Plan and the Barcelona Convention have been established even before the entry into action of the UNCLOS¹⁵⁰. Notwithstanding, coastal States of the Mediterranean have been in practice reluctant to comply with the UNCLOS provisions, and the delimitation of precise maritime boundaries, and the different zones of jurisdiction have not been negotiated or specified by most of the Mediterranean countries. The delimitation of maritime boundaries in the Mediterranean is complex, due to the peculiar geopolitical context of the region. In the following paragraphs the legal maritime zones of the Mediterranean will be described, in order to evaluate the effectiveness of the coastal States application of the UNCLOS in the area.

According to the UNCLOS, the sovereignty of every coastal State extends externally from the land over the sea for a maximum 12 n.m. breadth zone, which is defined as territorial sea¹⁵¹. States sovereignty in the territorial sea is

¹⁴⁷ UNCLOS, Article 118, 197, 242.

¹⁴⁸ ADI (2009: 60).

More specifically, the definition of enclosed or semi-enclosed sea is the following: "a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States" (Article 122, UNCLOS).

¹⁴⁹ UNCLOS, Article 123.

¹⁵⁰ ADI (2009: 60).

¹⁵¹ The internal delimitation of the territorial sea is the coastal boundary of the marine coast at low tide. However, whether the marine coast is too indented to be defined, States are entitled to use the base line method to conjunct the points of the coast to make the internal baseline for the definition of the territorial sea more harmonious (RONZITTI 2016:144). Several Mediterranean countries have defined through legislative measures the breadth of the territorial sea considering

restricted only by the right of inoffensive passage and civil and penal jurisdiction to be ensured for the transit of foreign ships. Most Mediterranean countries have established 12 n.m. territorial sea and different treaties have been ratified for the delimitation of the latter¹⁵². A peculiar case is the disputed territorial sea in the Aegean Sea between Greece and Turkey. Indeed, the two countries have defined shorter territorial seas (6 n.m.)¹⁵³, since the extension of the territorial seas in the Aegean Sea beyond 6 n.m. is sensible to different geopolitical questions¹⁵⁴.

In addition to the territorial sea, the UNCLOS grants the possibility to define a contiguous zone. Some Mediterranean States have established contiguous zone, mostly for immigration, fiscal, sanitary, and custom considerations¹⁵⁵. Indeed, the delimitation of the 24 n.m. of the contiguous zone depends on State's declaration, while the territorial sea is automatically recognised as the extension of the sovereignty of the State over the sea, considering even the air space above the territorial sea and the subsoil beneath¹⁵⁶.

Furthermore, State's "inherent¹⁵⁷, exclusive¹⁵⁸ and functional"¹⁵⁹ sovereignty over the continental shelf has been recognised in the UNCLOS. The latter comprises the "seabed and subsoil that extend beyond the territorial sea throughout the natural prolongation of the land territory to the outer edge of the continental margin"; whether the outer edge does not extend over 200 n.m., the continental shelf has such breadth. In the Mediterranean, no State has a continental shelf extending beyond 200 n.m., since no place is located at such distance from the closest land or island¹⁶⁰. Indeed, the delimitation of the continental shelf must be solved through international agreements between

joining points on the mainland or the islands., In particular: Albania, Algeria, Croatia, Cyprus, Egypt, France, Italy, Libya, Malta, Morocco, Montenegro, Spain, Tunisia and Turkey (SCOVAZZI 2018: 302-303).

¹⁵² Turkey and Russia, France and Italy in relation with the strait of Bonifacio; Italy and former Yugoslavia, in respect to the gulf of Trieste; Croatia and Bosnia (CHEVALIER 2005: 43)

¹⁵³ Greece 6 n.m, while Turkey 6 n.m. in the Aegean Sea, but 12 n.m. in the other seas (SCOVAZZI, 2018: 303)

¹⁵⁴ The UNCLOS provides a method for the resolution of contested borders between States which is the application of the median line rule (Article 15). However, there are too many islands which are under the jurisdiction of the counterpart to enable Greece and Turkey to apply the rule (CHEVALIER 2018: 43).

¹⁵⁵ In particular: Algeria, Cyprus, Egypt, France, Malta, Morocco, Spain, Syria and Tunisia. Furthermore, Algeria, Cyprus, France, Italy and Tunisia have established archaeological contiguous zones, which extend for 24 n.m. (SCOVAZZI 2018: 303).

¹⁵⁶ RONZITTI (2016: 121).

¹⁵⁷ The coastal State does not need to enact legislation and to declare its continental shelf, it means it exists *ipso jure* (CHEVALIER 2018: 42).

¹⁵⁸ The exclusivity of the State's right on the continental shelf defines that only the coastal States is empowered with exploration or exploitation activities of the shelf. Other States may put into action similar activities only with the consent of the sovereign State (CHEVALIER 2018: 43).

¹⁵⁹ State's rights of exploitation and exploration are functionals meaning that these are limited to mineral and non-living organisms, and sedentary living organisms CHEVALIER (2018: 49). Fisheries, for example, are not exploitable under the continental shelf regime.

¹⁶⁰ CHEVALIER (2018: 42).

States, due to the peculiar geological condition. As a matter of facts, numerous Mediterranean States have concluded bilateral agreements for the delimitation of the continental shelf¹⁶¹. It has been acknowledged that the non-conflictual and mostly economic reasons that influenced Mediterranean States willingness to define continental shelf regime has made the implementation of the latter harmonious and stable¹⁶².

In Part V of UNCLOS, the regime to define exclusive economic zones ('EEZs') is described, and State's right to establish the latter is recognised. The EEZ can be extended up to 200 n.m. and States can exercise limited sovereign rights, which are defined on the UNCLOS¹⁶³.

Until now, Algeria, Croatia, Cyprus, Egypt, France, Israel, Lebanon, Morocco, Syria and Tunisia have declared an EEZ in which they have sovereign rights over fishing and non-fishing resources¹⁶⁴. Most of the Mediterranean countries have been reluctant to establish EEZs, and it is relevant to point out that if every Mediterranean State would declare its EEZs up to the maximum extension possible, there would be no water in the Mediterranean excluded from State's jurisdiction. This aspect is crucially pertinent to the environmental protection of the Mediterranean. Indeed, according to the convention the States have jurisdiction over the "protection and preservation of the marine environment" – among other aspects¹⁶⁵ – when defining the EEZs. As a matter of fact, the reasons behind the lacking delimitation of EEZs in the Mediterranean may be explained considering two aspects: delimitation is complex most of the time due to the closeness of States in the area, which makes the emergence of disputes and conflict more probable. Secondly, States may be less willing to define their EEZs since it would private them the basin-wide access to fisheries in the area¹⁶⁶. Indeed, while the delimitation of the EEZs enforces States control over the area, as a consequence it makes the States accountable for the management of the resources, and - as it is specifically asserted in in the definition of EEZs - the "protection of the marine environment" should be ensured. In point of fact, it has been asserted that most of the Mediterranean waters are under the high sea regime, which are zones of the sea that are beyond the State's national jurisdiction. According to Article 87 of the UNCLOS, States – coastal and landlocked – are granted different freedoms in high sea, among which navigation, fishing, laying of submarines and island and other installations construction¹⁶⁷. Notwithstanding, freedoms granted in the high seas are not

¹⁶¹ Between the 70s and the 80s the following States have defined marine boundaries in relation with the continental shelf: Italy and Tunisia; Italy and Spain; Greece and Italy; France and Monaco; Libya and Malta; and Libya and Tunisia (CHEVALIER 2018: 48-49)

¹⁶² CAPOTOSTI (2009: 288).

¹⁶³ UNCLOS, Article 55.

¹⁶⁴ Study of the Directorate General for Internal Policies of the EP - Policy Department B, 2010, PE 431.602, *Jurisdictional Waters in the Mediterranean and Black Seas*, p. 28.

¹⁶⁵ UNCLOS, Article 56.

¹⁶⁶ (CHEVALIER 2018: 43).

¹⁶⁷ In addition, States are free to overflight and entangle in scientific research programmes (UNCLOS, Article 87).

unrestrained, and the conditions defined by the UNCLOS have to be respected (Part XII), and general obligations in relation with preservation of marine living sea resources have to be considered (Part VII, Section 2)¹⁶⁸. The actor that is vested with the responsibility to ensure the compliance to the international regime in the high sea zone is the flag State, that has exclusive jurisdiction over the compliance of the vessels flying their flag in the high sea. According to Article 217, flag States have to ensure their vessels observe international rules and standards, and national law in relation to vessel-derived pollution. Regardless, this provision has demonstrated to be insufficient to ensure the effective compliance of the States to the Convention, since some do not control their flag ships behaviour in the high seas¹⁶⁹.

In point of fact, the delimitation of the EEZs would make the Mediterranean States responsible for the management of resources in the water under their jurisdiction. In contrast, the high seas regime provides a more flexible system for the exploitation of resources. Indeed, while the whole Mediterranean seabed and subsoil fall under the jurisdiction of different States due to the delimitation of continental shelves, most of the water spaces are under the high seas regime, which means these are beyond State's jurisdiction. In practice it means that living resources of the water that may be exploited by numerous Mediterranean States as well as non-Mediterranean States are in the sea and above the subsoil that are under national jurisdiction¹⁷⁰. The Mediterranean Sea has thus a peculiar international legal status, according to the UNCLOS provision. It is unclear how effective management of resources may be ensured and environmental cooperation can be enforced, in a situation where the delimitation of maritime boundaries - defining in practice jurisdiction and consequential accountability - is so complex and insufficient.

In addition, the definition of maritime boundaries in the Mediterranean has become more complex due to the unilateral action of some States that have established some maritime zones which are not mentioned in the UNCLOS; in particular, the fishing zone and the ecological zone. However, their establishment is compatible with the convention due to the international law principle that the "right to do less is implied in the right to do more"¹⁷¹. Notwithstanding, there is no common and generally accepted definition of fishing or ecological zone. Algeria, Malta, Spain have established fishing zones that extend beyond their territorial waters. In particular, it is relevant to consider that the delimitation of the fishing zone has influence over fishing resources present in the area. However, the lack of codification of the jurisdictional significance of the fishing zone, makes accountability and protection of living resources blurred. More specifically, while the proclamation of fishing zone makes the coastal States accountable and responsible for the resources contained in the area¹⁷², the unilateral action of

¹⁶⁸ Convention on Biological Diversity, Rio de Janeiro, 1982, Article 5.

¹⁶⁹ Convention on Biological Diversity, Article 6.

¹⁷⁰ *Jurisdictional Waters in the Mediterranean and Black Seas*, 2010, p. 72.

¹⁷¹ SCOVAZZI (2018: 303).

¹⁷² *Jurisdictional Waters in the Mediterranean and Black Seas*, 2010, p. 73.

the Mediterranean States nullifies possibilities for cooperation and the consequential definition of maritime boundaries, and put the common resources of the Mediterranean under a jurisdiction that does not have the same legal value of other typologies of maritime zones that have been collectively negotiated and agreed in the UNCLOS, like the EEZ.

The ecological protection zone has the same ambiguous juridical value of the fishing zone. Even in this case, there is no general definition for the ecological protection zone, however it is considered as an area for biodiversity and marine safeguard¹⁷³. France and Slovenia have defined a zone for ecological protection, especially considering the necessity to enforce anti-pollution mechanism¹⁷⁴. In addition, Italy has proclaimed a zone of ecological protection, however a different normative framework has been defined vis-à-vis France and Slovenia¹⁷⁵. In relation to this, the delimitation of zones of ecological protection that have different normative value cannot in practice ensure resources are efficiently safeguarded. International compliance mechanisms are not present and resources that are common in peculiar geographical zones - like the Mediterranean - may be put under protection in some zones that are adjacent to areas where the same legal regime is not applied. This is particularly relevant for fishing and marine resources, for example, that are mobile, and may be protected in one coastal zone, while threatened just some kilometres away, outside national jurisdiction.

The heterogeneous delimitation of maritime zones has created “jurisdictional asymmetry” in the Mediterranean, which is completely insufficient to ensure environmental safeguard in the area.

Firstly, the unilateral action of some states in the establishment of zones of jurisdiction that are not specified in the UNCLOS – however compatible with the latter – has created a framework of fragmented jurisdiction where management of sea resources does not seem to be efficiently applicable. It means that the exercise of sovereign rights and duties over maritime issues is not the same among bordering States and their maritime zones of jurisdiction. Secondly, the high degree of fragmentation does not facilitate cooperation among Mediterranean countries, in practice detaching from the provisions of the UNCLOS prescribing the necessity for States bordering regional seas to ensure partisanship in different areas related to the use of the sea. Lastly, being most of the Mediterranean Sea area under the high sea regime, most of human activities in the area are not prescribed by specific national regulations, that would ensure prescriptive and executive power of enforcement in relation to the area¹⁷⁶. Furthermore, the UNCLOS framework for marine resources safeguard in the high sea is more flexible than national or regional regulations, and – as it has been previously discussed – cases of flag ship vessels noncompliance with the UNCLOS regime happened. Moreover, the high sea

¹⁷³ CHEVALIER (2018: 47).

¹⁷⁴ CHEVALIER (2018: 48).

¹⁷⁵ *Jurisdictional Waters in the Mediterranean and Black Seas*, 2010, p. 70.

¹⁷⁶ *Jurisdictional Waters in the Mediterranean and Black Seas*, 2010, p. 70.

regime makes the Mediterranean an open sea even for non-Mediterranean states. Due to this, it is possible that the efforts of the Mediterranean states for marine resources preservation may be nullified by non-Mediterranean States environmental-harmful behaviour.

According to international law in relation to the use of the sea, the Mediterranean area is not a zone where cooperation has been ensured. However, the lack of codification of general provisions has been compensated by substantial regional cooperation. The Barcelona Convention is the normative instrument that concretely defines the legal framework for environmental cooperation in the Mediterranean. In the following section, the 1995 amended Barcelona convention and the seven protocols will be analysed, to shed light over the legal framework of the regional Mediterranean environmental law.

2.1.2 The Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols.

The process of amendment of the 1975 Barcelona Convention made the legislative component of the MAP PHASE II more developed and comprehensive in both terms and scope. In the following paragraphs, the amendments to the 1975 Convention and its Protocols will be analysed, in order to describe the actual legislative framework in which environmental cooperation in the Mediterranean is exercised.

In 2004 the amended Barcelona Convention entered into force for the 21 coastal states of the Mediterranean, and the European Union.

First of all, the title of the Convention has been amended from “Convention for the protection of the Mediterranean Sea against pollution”, to Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols”. The title itself clarifies that the enlargement of the scope of the amended convention concretizes at geographical level, and in relation with the kind of actions that the CPs are going to implement. Indeed, the geographical area involved changed from the Mediterranean Sea to the Marine Environment and the Coastal Region of the Mediterranean Sea Area¹⁷⁷. Furthermore, while in the 1975 convention the action was limited to counter pollution, the amended convention enlarged the scope of the environmental protection activity in the area, defining that the whole Marine Environment and the Coastal areas will be safeguarded.

Furthermore, it has been previously discussed that the main reason explaining the beginning of the amendment process of the Barcelona Convention has been the necessity to ensure the alignment of the regional legislation with the 1992 Rio process outcomes. Indeed, the most relevant legacy of the latter has been the concept of sustainable development, which finally answered the relationship between economic development and environmental protection.

¹⁷⁷ LANOVOY (2016: 205).

These were considered mutually exclusive areas of intervention, until during the Rio conference it has been acknowledged that economic development has to ensure intergenerational equity and respect of natural ecosystems. This concept is clarified early in the preamble of the amended Barcelona Convention, in which the “responsibility to preserve and sustainably develop the common heritage for the benefit and enjoyment of present and future generations”¹⁷⁸ is endorsed.

Another reason explaining the endorsement of the amendment process emerge in the recognition of the “international conventions” insufficiency in relations with the peculiar environmental context of the Mediterranean¹⁷⁹.

The amendments to the 1975 Barcelona Convention have profoundly affected the capacity of the normative instrument to ensure effective environmental cooperation in the Mediterranean. The general obligations set out in the convention are supported by specific obligations that are defined in the annexed Protocols¹⁸⁰. In addition, it is distinctive to consider that only some parts of the convention have been amended. These are: the geographical scope of the convention, general provisions and obligations, the institutional provisions and some aspects related to scientific cooperation and the liability and compensation regime.

In particular, Article 1 of the amended Barcelona Convention clarifies the modified geographical coverage. Indeed, while priorly the latter specifically excluded the internal waters of the coastal States¹⁸¹, it now states that it is up to the CPs to define the geographical area to which the Convention applies. Indeed, the definition of geographical coverage passed from excluding some areas from the field of reference of the convention, to give CPs opportunity to define autonomously the application of the Convention, allowing the possibility to include internal waters as well as coastal areas. In addition, para. 3 has been added to Article 1, defining that the application of the Protocols “extend the geographical coverage to which that particular Protocol applies”¹⁸².

Furthermore, amended Article 2 expanded the definition of pollution. Indeed, it is stated that pollution implies man activities, such fishing or *other legitimate use of the sea* - directly or indirectly polluting the marine environment, *including estuaries*, which results, or is *likely to result*, in environmental degrading effects on the environment¹⁸³. The expansion of the

¹⁷⁸ Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols, Barcelona, 1995 (Hereinafter: Barcelona Convention, 1995), Preamble.

¹⁷⁹ Barcelona Convention, 1995, Preamble.

¹⁸⁰ LANOVOY (2016: 205).

¹⁸¹ Article 1 para. 2, Convention for the protection of the Mediterranean Sea against pollution (with annex and Protocol for the prevention of pollution of the Mediterranean Sea by dumping from ships and aircraft and Protocol concerning co-operation in combating pollution of the Mediterranean Sea by oil and other harmful substances in cases of emergency), Barcelona, 1976 (Hereinafter: Barcelona Convention, 1975).

¹⁸² Barcelona Convention, 1995, Article 1 para. 3.

¹⁸³ Barcelona Convention, 1995, Article 2, para. A.

definition of pollution is particularly relevant for two main reasons: firstly, CPs decided to embrace the same definition of pollution UNCLOS¹⁸⁴, which is the most relevant document in relation with the use of the sea at global level. Indeed, it exemplifies the willingness of the CPs to ensure the compliance of the Barcelona Convention with the global legal instruments that provide a general framework for conceptual definitions of issues related to use of the sea and the consequential influence these have on environment legislation. Indeed, the UNCLOS is particularly exhaustive in relation to the definition of pollution. The main action causing damage may be direct or indirect, geographically located in the marine area or in estuaries and it may be the result of fishing as other legitimate use of the sea, like marine transport for tourism, or commercial activities.

Besides, relevant amendments have been agreed in relation with Article 3, defining general provisions. Indeed, the provision formalising the necessity for CPs to act “in conformity with international law” has been subsequently included¹⁸⁵. In addition, it has been expanded the possibility for CPs to stipulate agreements related to different areas: the scope of the agreements to which CPs may pledge themselves considers “promotion of sustainable development, the protection of the environment, the conservation and preservation of natural resources”, while priorly treaties could have been concluded only in relation with “protection of the marine environment of the Mediterranean Sea”¹⁸⁶. In addition, it has been stated that the CPs should make use of existing organisations and to take individual or joint initiatives to encourage the implementation of the convention and the protocols. Furthermore, para. 5 of Article 3 prescribes the “sovereign immunity of warships or other ships owned or operated by a State while engaged in government non-commercial service”, without prejudice to the State's obligation to ensure compliance with the convention and the protocols¹⁸⁷. The inclusion of this provision related to the governance of vessels-source pollution in the Mediterranean Sea Area is particularly relevant. Indeed, it is possible to assert that the amended document is more dynamic and evolved in respect with the latter since the legacy with the Law of the Sea (‘LOS’) normative framework has been established. In particular, the adoption of the same definition of pollution and alignment with the LOS provisions in relation with international shipping demonstrate¹⁸⁸.

Additionally, amendments to Articles 4 and 5 are distinctly meaningful.

Article 4 title has been amended from “general undertaking” to “general obligations”, stressing the binding nature of the convention. According to para. 1, the CPs

¹⁸⁴ UNCLOS, Article 1, para. 4.

¹⁸⁵ Barcelona Convention, 1995, Article 3, para. 1.

¹⁸⁶ Barcelona Convention, 1995, Article 3, para. 2, 3, 4.

¹⁸⁷ Barcelona Convention, 1995, Article 3, para. 5.

¹⁸⁸ RAFTOPOULOS (2011: 14).

“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*”¹⁸⁹.

The insertion of the formula “to the fullest extent eliminate” will be echoed in different articles of the convention, and it prescribes an important step in the evolution of the legislative framework. Indeed, while preventing, abating and combating pollution entail avoiding carrying out future actions that could cause damage to the environment, the elimination of pollution implies the fulfilment of actions that should - to the fullest possible extent - eliminate the existing pollution in the area. In addition, paragraph 2, Art. 4 has been changed. The CPs clarified more specifically their obligation in relation with the implementation of the convention: they undertake to implement the MAP, to ensure sustainable development and to embrace the recommendations of the Mediterranean Commission on Sustainable Development¹⁹⁰, which has been introduced during MAP PHASE II. Indeed, the general objective of the convention is not only to protect the regional environment from pollution, but to develop technical programmes and procedural actions to contribute to the sustainable development of the Area¹⁹¹.

Furthermore, para. 3 Art. 4 of the amended convention nominate and include into the Mediterranean legislative framework the environmental principles that emerged from Rio. The CPs pledge to apply the precautionary principle¹⁹² and the polluters pays principle¹⁹³. Additionally, the article states the necessity to ensure cooperation and exchange of information and consultation¹⁹⁴. Besides, some operative principles defining the pattern to follow in order to ensure environmental safeguard in the area are defined; in particular, the necessity to promote environmental impact assessment¹⁹⁵ procedures in order to estimate the possible environmental negative consequences of activities performed under State’s jurisdiction. Furthermore, the integrated coastal zone management principle is introduced. The latter calls for unified and co-operative action to administer, protect and safeguard natural resources and ecosystem in shared environment, like in the case of the Mediterranean Sea Area¹⁹⁶.

In addition, precise directives have been given to CPs for the implementation of the convention and the protocols: to set specific time limits¹⁹⁷, and to make

¹⁸⁹ Barcelona Convention, 1995, Article 4.

¹⁹⁰ Barcelona Convention, 1995, Article 4, para. 2.

¹⁹¹ MARCHISIO (1996: 260).

¹⁹² Barcelona Convention, 1995, Article 4, para. 3(a).

¹⁹³ Barcelona Convention, 1995, Article 4, para. 3(b).

¹⁹⁴ Barcelona Convention, 1995, Article 4, para. 3(d).

¹⁹⁵ Barcelona Convention, 1995, Article 4, para. 3(c).

¹⁹⁶ Barcelona Convention, 1995, Article 4, para. 3(e).

¹⁹⁷ Barcelona Convention, 1995, Article 4, para. 4(a).

use of best available techniques, best available practices, and environmentally sound technologies for the development of programmes. Lastly, Article 4 has been enhanced with two last provisions related to the necessarily formulation and adoption of specific protocols¹⁹⁸, and the promotion of programmes related to the provisions contained in the Convention and the principles expressed¹⁹⁹. It is possible to assert that the amendments to Article 4 have defined in detail the obligations CPs have to comply with. These have been described in particular, not only at operational level but even at conceptual level, clarifying which should be the principles and steps that should guide the actions necessary to implement the convention and the protocols.

Articles 5, 6, 7, 8, 9, 11 are related to the protocols supplementing the convention. Respectively, the articles make reference to the provision to take “all appropriate measure to prevent, abate and to the fullest possible extent eliminate pollution” from dumping²⁰⁰, ships²⁰¹, exploration and exploitation of the continental shelf and the seabed and its subsoil²⁰², land-based sources²⁰³ and transboundary movement of hazardous wastes and their disposal²⁰⁴; lastly, Article 9 makes reference to cooperation in cases of emergency²⁰⁵. To all these articles the formula “to the fullest possible extent eliminate” has been added to the original formulation of the provisions. Indeed, it reinforces the necessity not only to avoid pollution, but to counter the existing environmental degradation situation of the Mediterranean Sea.

It is pertinent to consider that no amendments have been proposed for the monitoring system, defined in Article 12. The pollution monitoring system of the MAP - Barcelona Convention system is the MEDPOL. In the previous Chapter the evolution of MEDPOL PHASE I and II has been discussed²⁰⁶. The actual MEDPOL framework will be described in the following paragraphs of this Chapter, when the MAP Components will be analysed.

During the process of revision of the convention, some new articles have been added. Among these, Article 11 on Transboundary Movement of Hazardous Wastes and their disposal, Article 10 on Conservation of Biological Diversity, Article 14 on Environmental Legislation and Article 15 on Public Information and Participation. It is possible to assert that most of these latest additions are the manifestation of Rio’s process influence on regional environmental legislation. In relation to this, it is relevant to recall the influence of the Convention on Biological Diversity, which is one of the most relevant outcomes of the Rio conference. The influence emerged in Article 10 of the Barcelona Convention. In addition, it has been discussed in the previous

¹⁹⁸ Barcelona Convention, 1995, Article 4, para. 5.

¹⁹⁹ Barcelona Convention, 1995, Article 4, para. 6.

²⁰⁰ Article 5 pollution caused by incineration at sea has been added to the convention during the 1995 amendment process, since it was not present in 1975 convention.

²⁰¹ Barcelona Convention, 1995, Article 6.

²⁰² Barcelona Convention, 1995, Article 7.

²⁰³ Barcelona Convention, 1995, Article 8.

²⁰⁴ Barcelona Convention, 1995, Article 11.

²⁰⁵ Barcelona Convention, 1995, Article 9.

²⁰⁶ See Chapter 1, para. 3.3 The scientific component: MED POL PHASE I and II.

Chapter the emphasis given during the Rio process to public information and public participation, which is one of the principles of environmental legislation that have been states in the Rio Declaration on human environment (Article 15 of the amended Barcelona Convention)²⁰⁷.

Additionally, Article 14 on environment legislation states that CPs pledge to “adopt legislation implementing the Convention and the Protocols” and that “the Secretariat may, upon request from a Contracting Party, assist that Party in the drafting”²⁰⁸. This provision has consistent weight. Indeed, it obliges CPs to ensure compliance to the convention and the protocols through the promulgation of national legislation. In contrast, it is relevant to point out that not all the amendments to the convention have enlarged and empowered the legislative framework it establishes, according to the perspective of the author of this thesis. This aspect is related in particular to Scientific and Technical Cooperation²⁰⁹ the Liability and Compensation regime²¹⁰. In particular, para. 2 of Article 13 on Scientific and Technical cooperation of the 1975 convention called for the “coordination of national research programmes related to all types of pollution in the Mediterranean”. However, this provision has been eliminated. In point of fact, the amended paragraph does not consider the necessity to merge national projects of research, implying that CPs should sponsor unilateral projects of research. It is possible that the amended provision concerning the development of coordinated programmes related to all typologies of pollution was considered too ambitious to be implemented. Notwithstanding this, the merging of coordinated different national programmes of research would have ensured enforced cooperation in relation with scientific aspects of environmental cooperation, and it would have ensured a shared know-how and it would have probably facilitated the sharing of best practices in relation with the scientific component of the MAP.

Furthermore, even the Liability and Compensation regime has been amended downwardly, according to the author. The provision stating CPs should define common guidelines for the determination of liability and compensation “as soon as possible”, has been eliminated. As a consequence, no timeline has been specified for the liability and compensation definition. In addition, it was priorly stated that liability and compensation regime would have been applied for “violations of the provisions of this Convention and applicable protocols”²¹¹, which is a provision that is not present anymore in the amended version. It is only stated that liability and compensation apply for “damage resulting from pollution of the marine environment in the Mediterranean Sea Area”²¹². Indeed, there is no specific provision related to the non-compliance with the convention or the protocols anymore.

²⁰⁷ See Chapter 1, para. 4.1 The Rio Process and the principles of international environmental law.

²⁰⁸ Barcelona Convention, 1995, Article 14.

²⁰⁹ Barcelona Convention, 1995, Article 13.

²¹⁰ Barcelona Convention, 1995, Article 16.

²¹¹ Barcelona Convention, 1976, Article 12.

²¹² Barcelona Convention, 1995, Article 17.

Additional relevant amendments to the convention are related to institutional arrangements. In particular, Article 17 defines more specifically the duties of the UNEP acting as a secretariat to the convention: to convene and prepare meetings of the CPs, to receive, consider and reply to enquiries and information of the CPs, to “receive, consider and reply to enquiries and information from nongovernmental organisations and the public when they relate to subjects of common interest or to activities carried out at the regional level”²¹³, to execute the services assigned to by the convention and the protocols, to report to CPs in relation with the fulfilment of the convention and the protocols and to enhance coordination. The provision related to nongovernmental organisation and the public’s enquiries has been added anew during the amendment process. Even in this case it is possible to assert the endowment of the Rio process.

The last relevant amendment to the 1976 Barcelona Convention is related to Article 18, on the Meeting of the Contracting Parties. Indeed, it has been added that the MOP can make recommendations on the adoption of protocols²¹⁴, form working groups to solve issues emerging in relation with the convention²¹⁵, undertake any additional action deemed relevant for the implementation of the Convention²¹⁶ and lastly the MOP can approve the Programme Budget²¹⁷.

The following provisions to the Convention have not been amended. These consider the role of the Bureau²¹⁸, that shall be composed by CPs representatives, elected considering geographical distribution; the role of the non-voting observers, that can be any other State, IOs or NGOs²¹⁹; provisions related to annexes and amendment process²²⁰; rules of procedure and financial rule²²¹; special exercise of voting right²²², reporting system²²³, compliance control²²⁴ and settlement of disputes²²⁵, the relationship between the convention and the protocol²²⁶ and lastly, signature²²⁷, ratification, acceptance

²¹³ Barcelona Convention, 1995, Article 17, para. IV.

²¹⁴ Barcelona Convention, 1995, Article 18, para. iv.

²¹⁵ Barcelona Convention, 1995, Article 18, para. v.

²¹⁶ Barcelona Convention, 1995, Article 18, para. vi.

²¹⁷ Barcelona Convention, 1995, Article 18, para. vii.

²¹⁸ Barcelona Convention, 1995, Article 19.

²¹⁹ Barcelona Convention, 1995, Article 20.

²²⁰ Barcelona Convention, 1995, Article 21, 22, 23.

²²¹ Barcelona Convention, 1995, Article 24.

²²² Barcelona Convention, 1995, Article 25.

²²³ Barcelona Convention, 1995, Article 26.

²²⁴ Barcelona Convention, 1995, Article 27.

²²⁵ Barcelona Convention, 1995, Article 28.

²²⁶ Barcelona Convention, 1995, Article 29.

²²⁷ Barcelona Convention, 1995, Article 30.

or approval²²⁸, accession²²⁹, entry into force²³⁰, withdrawal²³¹, responsibilities of the depositary²³².

2.1.2.1 The Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea

As it has been previously mentioned, the general provisions of the convention in relation with dumping from ships and aircrafts find their specific definition in annexed protocol. The amendment process initiated in Barcelona in 1995 has interested even the Protocol for the Prevention of the Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft (Barcelona, 1976 and in force from 1978), and the title has been changed in Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea²³³. However, the amendments to the 1975 protocols have not entered into force yet, and similarly Algeria, Bosnia and Herzegovina, Greece, Israel, Lebanon, Libya and Montenegro have not ratified, accepted, or approved the amendments yet. In contrast with the previous version of the Dumping protocol, two main aspects emerge: firstly, the protocol has been enforced by the inclusion of the prohibition of incineration at sea²³⁴. Secondly, the underlying logic of the protocol changed. Indeed, while in the previous version dumping at sea was generally allowed except for some wastes that were detailly listed and that could not be discharged, the amended protocol prohibit the practice in general, listing some wastes or other matters that may be discharged at sea²³⁵. In particular, dredged materials, fish waste or organic materials, vessels, platforms or other man-made structures at sea²³⁶, inert geological material can be discharged at sea, complying with some agreed provisions included in the protocol. Indeed, it is stated that even if the dumping of these materials is permitted, special permission by the national authority should be granted before the discharge²³⁷.

²²⁸ Barcelona Convention, 1995, Article 31.

²²⁹ Barcelona Convention, 1995, Article 32.

²³⁰ Barcelona Convention, 1995, Article 33.

²³¹ Barcelona Convention, 1995, Article 34.

²³² Barcelona Convention, 1995, Article 35.

²³³ Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea, Barcelona, 10 June 1995 (hereinafter: Dumping Protocol). The amended Protocol has not yet entered into force.

²³⁴ Dumping Protocol, Article 7.

²³⁵ SCOVAZZI (2018: 308).

²³⁶ To the discharge of this categories limited by the provision that it should be ensured that material that may cause pollution had been removed prior to the dumping, without prejudice to the Protocol concerning Pollution Resulting from Exploration and Exploitation of the Continental Shelf, the Seabed and its Subsoil (Article 2, para d, Dumping Protocol).

²³⁷ Dumping Protocol, Article 5.

It is particularly relevant to consider that the Dumping Protocol list of prohibited or restricted substances is more comprehensive than the one included in the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter²³⁸ (the ‘London Convention’). Indeed, it is possible to assert that in this peculiar case, the regional legislation has successfully overcome inconsistencies of international legislation. Notwithstanding, the Dumping Protocol provisions are likely to overlap with the International Convention for the Prevention of Pollution from Ships (MARPOL), since in the latter a specific provision in relation with the Mediterranean Sea Area has been included²³⁹. Nonetheless, few Mediterranean countries have endorsed the MARPOL²⁴⁰, and the Dumping Protocol plays a prominent role for dumping and incineration at sea regulation in the regional sea.

2.1.2.2 Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea

The Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea²⁴¹ (in force since 2004) has replaced the previous Protocol concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency (in force from 1978).

The amended Emergency protocol has not been ratified, accepted or approved by Albania, Bosnia and Herzegovina, Egypt, Libya, and Tunisia.

Indeed, CPs preferred to draft a new document instead of amending the previous one, since the two instruments widely differ. In particular, the Emergency Protocol covers areas that do not consider only emergency situations. For example, Article 15 of the Emergency Protocol outlines a precautionary approach toward environmental risks of maritime traffic.

In general, it is possible to identify four main features of the Emergency Protocol. Firstly, the relevance given to international regulations and international institutions in relation with pollution from ships prevention, reduction and control. In particular, in the preamble the promotion of

²³⁸ Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, London, 1972.

²³⁹ International Convention for the Prevention of Pollution from Ships, 1973, London (hereinafter: ‘MARPOL’).

²⁴⁰ These Mediterranean countries have adopted the MARPOL: France, Greece, Israel, Italy, Lebanon, Malta, Spain, Syrian Arab Republic, Tunisia. Indeed, Albania, Algeria, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, Libya, Monaco, Montenegro, Morocco, Slovenia, Türkiye, and the European Union are CPs to the Barcelona Convention but have not ratified the MARPOL.

²⁴¹ Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea, Valletta, 25 January 2002 (hereinafter: Emergency Protocol). The Emergency Protocol entered into force in 2004.

compliance with international legal framework is recognised and the UNCLOS relevance for maritime issue administration is acknowledged²⁴². Secondly, the protocol stresses the pivotal role of the International Maritime Organization (‘IMO’) for cooperation and prevention of pollution, in conjunction with the REMPEC, that is the Regional Activity Centre that deals with emergency management in the Mediterranean Sea Area²⁴³. Thirdly, it has been deemed necessary to ensure the participation of local authorities and NGOs and lastly it has been stated the application of the Emergency Protocol without prejudice of other international legal frameworks in the area²⁴⁴. Additionally, Article 6 and 9 of the Barcelona convention are respectively related to pollution for ships and cooperation during pollution emergencies, and these are general provisions contained in the convention which are related to the adoption of the Emergency Protocol. In particular, Article 6 specifies provisions related to pollution from ships, stating that CPs “shall take all measures in conformity with international law to prevent, abate and combat pollution of the Mediterranean Sea Area caused by discharges from ships”. Additionally, the duty CPs pledge to observe in relation with the provisions of Article 9 contemplates the necessity to respond to the emergency and limit the damage to the environment, and to notify to the UNEP secretariat whether other CPs may be affected by the emergency in question²⁴⁵.

2.1.2.3 Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities.

The Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities²⁴⁶ has amended the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources (in force from 1983).

The amended protocol was adopted in 1996 and the amendments entered into force in 2008. However, Algeria, Bosnia and Herzegovina, Egypt, Lebanon, Libya have not accepted, ratified or approved the amendments.

According to the preamble, the protocol implements Article 4 paragraph 5 of the Barcelona Convention, referring to the promotion of programmes for sustainable development and protection, conservation and rehabilitation of the environment in the area. Furthermore, it refers to Article 8 that calls CPs to “prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area”, and to phase out substances that are “toxic, persistent and liable to bioaccumulate arising from land-based sources”²⁴⁷.

²⁴² Emergency Protocol, Preamble.

²⁴³ The role of the REMPEC will be discussed in the following section of this Chapter.

²⁴⁴ RAFTOPOULOS (2011: 6).

²⁴⁵ LANOVOY (2016: 209).

²⁴⁶ Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities, Syracuse, 7 March 1996 (hereinafter: the LBS Protocol).

²⁴⁷ More specifically, Article 8 determines that land-based pollution may originate within the territory of the CPs, directly or indirectly (rivers, canals or other watercourses, including

The LBS protocol regulate the discharge of materials originating from the “rivers, coastal establishments or outfalls, or emanating from any other land-based sources and activities within” the territory of the CPs²⁴⁸, prioritising “substances that are toxic, persistent and liable to bioaccumulate”²⁴⁹. Moreover, the protocol covers and regulates the discharge of man-made offshore structures which are under CPs property however not related to exploration or exploitation activities of the continental shelf and its subsoil²⁵⁰. In addition to the provision related to the priority attention to be given to toxic substances, the geographical scope of the protocol has been amended. Article 3 refers indeed to the whole hydrological of the Mediterranean Sea Area²⁵¹. Furthermore, the LBS protocol is particularly relevant since it defines the guidelines to establish a framework to develop - individually or jointly - national or regional plans to face land-based pollution in the area²⁵². Article 15 specifies the steps to follow for the adoption of action plans: the latter should have a short or medium-term timeline and should be adopted by two-third majority of the CPs. Furthermore, the support of the UNEP secretariat and other technical bodies may be requested for the formulation of these strategies²⁵³.

The reason explaining CPs willingness to insert provision related to the definition of future and more specific programmes – instead of directly adopting them through the protocol – can be explained considering that it was preferred to leave to developing countries more space for the definition of the guidelines. Indeed, it was necessary to ensure the compliance of the latter to the protocol, that even if prescribes a procedural machinery that has specific time frame and obligatory nature, it has a general approach to the issue. Indeed, the willingness to ensure developing countries acquiescence emerges in Article 10, which asserts the promotion of “programmes of assistance to developing countries”²⁵⁴. It is possible to assert that the procedural principle to adopt a framework approach considering the relationship between the Barcelona Convention and the protocols has been partially abandoned in the LBS protocol. Indeed, it demonstrates the necessity to ensure flexibility in the normative framework that could ensure the compliance of CPs having widely different interests, necessities and capabilities. Notwithstanding, in the author’s view, this approach may be inefficient to ensure the compliance to common and general legally binding provisions, in practice almost nullifying their application of producing a scenario in which CPs acts unilaterally.

underground watercourses, or through run-off), or pollution can be transported by the atmosphere.

²⁴⁸ LBS Protocol, Article 1.

²⁴⁹ LBS Protocol, Article 1.

²⁵⁰ LANOVOY (2016: 209).

²⁵¹ LBS Protocol, Article 3.

²⁵² LBS Protocol, Article 5.

²⁵³ LBS Protocol, Article 15.

²⁵⁴ CORNELL (1980: 332).

Unilateral action is not efficient nor auspicious in relation with environmental-related issues.

2.1.2.4 Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean

The Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean²⁵⁵ was adopted in 1995 and replaced the Protocol Concerning Mediterranean Specially Protected Areas, adopted in 1982.

The protocol entered into force in 1999, and Bosnia and Herzegovina, Greece, Israel, Lebanon, Libya have still not ratified, accepted or approved the amendments.

The geographical scope of the SPA protocol has been amplified in contrast to the previous protocol: indeed, while before the protocol covered only the territorial seas of the CPs, in the amended protocol the whole Mediterranean Sea is considered, in particular: the seabed and its subsoil, the territorial coastal areas designated by each party to the protocol and the waters, the seabed and its subsoil on the breadth from the baseline of the territorial sea up to the freshwater limit, in case of watercourses²⁵⁶. The reason behind the extension of the geographical scope of the protocol consider the necessity to safeguard marine living and migratory species that are likely to cross artificial borders and legal jurisdiction²⁵⁷. The SPA protocol is particularly detailed, since it is divided in five parts: general provisions, protection of areas, protection and conservation of species, provisions common to protected areas and species, institutional provisions, final provisions. Part II defines the guidelines for the establishment of SPAs and SPAMIs areas. Both aim at providing the establishment of areas having special regimes for the safeguards of ecosystems, endangered or disappearing habitats, and sites of particular importance. More specifically, the SPAMI list considers zones which are peculiarly, eco-systematically and scientifically, aesthetically or culturally relevant for the Mediterranean area²⁵⁸. In addition, notwithstanding the proposal for the establishment of SPA or SPAMI area is unilateral or bilateral - and based on cooperative nature among the specific parties involved - the definition of such zones has *erga omnes* effect. In practice, obligation to safeguards and to comply with the provisions of the protocol for the protection of the area falls on all the CPs²⁵⁹. However, the definition of a new type of marine boundary was likely to be aggravated from the complex situation in relation with the delimitation of marine jurisdictional areas in the Mediterranean according to the Law of the Sea. Indeed, it has been previously

²⁵⁵ Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean, Barcelona, 10 June 1995 (hereinafter: SPA Protocol).

²⁵⁶ SPA/BD Protocol, Article 2.

²⁵⁷ SCOVAZZI (2018: 310).

²⁵⁸ SPA/BD Protocol, Article 8.

²⁵⁹ SCOVAZZI (2018: 311).

discussed that the area lies in “jurisdictional asymmetry” in relation with the application of the UNCLOS. Notwithstanding, this obstacle has been overcome considering two aspects that are defined in Article 2 of the protocol: it has been decided that international cooperation should not be prejudged by legal questions still opened, and these pending questions should not postpone the application of the provisions of the protocol and the definition of the SPAMI list in particular²⁶⁰.

Relevantly, the protocol embodies the spirit of the Rio process considering different aspects: firstly, the concept of sustainable development as a guiding principle for environmental cooperation is expressly embraced in the reference to the precautionary principle, the common but differentiated principle and the Convention on Biological Diversity in the preamble of the protocol. In addition, paragraph 2 of Article 3 calls for protection, preservation and management in an environmental and sustainable way of the SPAs. Indeed, since no definition of the term “sustainable” is provided in the protocol, the definition provided in Article 2 of the Rio convention is implied²⁶¹. Since the 21st meeting of the COPs to the Barcelona Convention (2019), there are 39 sites included in the SPAMI list. The Pelagos Sanctuary for marine mammals is established in high sea areas.

2.1.2.5 The 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

The 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 was adopted in 1994 and it entered into force in 2011²⁶².

Notwithstanding this, Algeria, Bosnia and Herzegovina, Egypt, France, Greece, Israel, Italy, Lebanon, Malta, Monaco, Montenegro, Slovenia, Spain, Turkey have still not accepted, ratified or approved the amendments. It defines the legal regime to ensure operations of exploitation or exploration of the continental shelf and the seabed and its subsoil that are carried out by operators complying with the protocol’s guidelines. Indeed, the preamble states that the general objective of the protocol is to avoid pollution of the Mediterranean Sea area, deriving from exploitation or exploration activities. In order to ensure exploitation and explorations activities do not have harmful effects on the environment, competent national authorities grant authorizations to operators to effectuate determined actions. It is CPs’s duty to ensure operator’s respect of the protocol and the specific provisions that

²⁶⁰ SCOVAZZI (2018: 310).

²⁶¹ MARCHISIO (1996: 266).

²⁶² 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, Madrid, 14 October 1994 (hereinafter: the Offshore Protocol).

defined in the authorization. In particular, the operator can be a private person, natural or juridical; however, the term indicates both operators holding an authorization and persons who in practice control activities however not holding any authorization from the national authority²⁶³. In addition, the parties have to ensure that the activities implemented on the seabed within their jurisdiction have been previously authorised²⁶⁴. Indeed, Section II of the Seabed protocol defines the legal framework for the definition of the authorization regime. Articles 4, 5, 6 and 7 respectively define: the general principles for the granting of the authorization (installations compliance with international law, operators technical competence, cases of refusal of the authorization), requirements (projects submission, environmental impact assessment provisions, precise definition of the geographical area and others), granting of the authorizations (time validity, imposition of measures to ensure risk avoidance, notifications in case of renewal), and the sanction regime. Indeed, CPs are called to ensure adequate compensation in case of breach of obligation, non-observance or non-fulfillment of the conditions specified in the protocol or in the authorization²⁶⁵.

The protocol was integrated in 2006 by the Mediterranean Offshore Action Plan. The latter has been endorsed through Decision IG.22/3, and it defines some measures to set up a regional governance framework to ensure the implementation of the Action Plan, to define offshore standards that have regional implementation, ensure monitoring and reporting system²⁶⁶.

2.1.2.6 The Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal

The Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal²⁶⁷ entered into force in 2008 and it was adopted in 1996.

Most of the Mediterranean countries have not still accepted, approved or ratified the Hazardous Wastes protocol. Indeed, the only countries that have formally endorsed it are Albania, Malta, Montenegro, Morocco, Syrian Arab Republic, Tunisia, and Turkey.

The reason justifying the drafting of the protocol has been clarified in the preamble: the objective is to protect “human health and marine environment

²⁶³ SCOVAZZI (2018: 312).

²⁶⁴ SCOVAZZI (2018: 312).

²⁶⁵ Offshore Protocol, Article 7.

²⁶⁶ Decision of the IG, 9-12 February 2016, 22/3, *Mediterranean Offshore Action Plan in the framework of the 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*.

²⁶⁷ Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal, Izmir, 1 October 1996 (hereinafter: the Hazardous Wastes protocol).

from the dangers posed by hazardous wastes”²⁶⁸. In order to do so, Article 5 defines the general obligation to reduce and eliminate the transboundary movement, the disposal and generation of hazardous wastes. In addition, the protocol stresses the necessity to enforce cooperation in order to apply such provision effectively: in the preamble it is stated the relevance of principle 14 of the Rio Declaration, that calls for international cooperation in relation with transfer and relocation of environmental harmful substances. Furthermore, the protocol expressly prohibits export and transit of hazardous wastes to developing countries²⁶⁹, accounting for the latter lacking expertise and capabilities to effectively manage hazardous wastes. Finance and technical assistance toward developing countries is stated in Article 10 of the protocol²⁷⁰. The Hazardous Wastes protocol directly responds to the Basel Convention provision of defining regional instruments for the management of transport and relocation of hazardous wastes that may bring “added value” to the Basel convention framework²⁷¹, Article 11 of the Basel convention indeed rationalise CPs may conclude bilateral, multilateral, or regional agreements on condition that these “do not derogate from the environmentally sound management” regime prescribed by the Basel convention for the transboundary movement of hazardous wastes²⁷².

In point of fact, the Wastes protocol brings “added value” to the legal regime for the management of transboundary movement of hazardous wastes in the Mediterranean vis-à-vis the Basel convention in four ways: firstly, the Waste protocol encompasses radioactive wastes, which are excluded from the Basel convention framework. Secondly, the Waste protocol has enlarged the scope of safeguard in relation with hazardous wastes since it includes products that do not perfectly fit the definition of waste²⁷³. Thirdly, a stricter “environmental governance regime” has been established, since the prohibition to export and transit of hazardous wastes toward developing countries has been linked with the principle to ensure public participation and access to information for the public²⁷⁴. Lastly, the Waste protocol has answered to an interpretation problem of the Basel convention, related to the passage of foreign ships transporting hazardous wastes through the territorial sea of another party to the convention. Indeed, the wording of the convention has left unsolved the relationship between right and freedom of navigation and the provision stating the necessity to notify priorly and in writing notify to the transit and import

²⁶⁸ Hazardous Wastes Protocol, Preamble.

²⁶⁹ Hazardous Wastes Protocol, Article 5 para. 4.

²⁷⁰ Hazardous Wastes Protocol, Article 10.

²⁷¹ SCOVAZZI (2018: 313).

²⁷² Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Basel, 1989, Article 11.

²⁷³ In particular, these products are defined in Article 3(d): “hazardous substances that have been banned or are expired, or whose registration has been cancelled or refused through government regulatory action in the country of manufacture or export for human health or environmental reasons, or have been voluntarily withdrawn or omitted from the government registration required for use in the country of manufacture or export”.

²⁷⁴ RAFTOPOLOUS (2011: 13).

State the passage in their maritime jurisdictions. The Waste protocol has solved this open question through article 6, para. 4 and the “notification without authorization” scheme: only the prior written notification by the exporting state transiting in the territorial sea is necessary. According to this provision, exporting States preserve their freedom of navigation, however the coastal State's right to be previously notified of the passage of hazardous wastes is recognised²⁷⁵.

In addition to these provisions, the protocol has annexed lists of categories of hazardous wastes, and it calls CPs to define through national legislations other products that may require peculiar requirement for transboundary movement²⁷⁶. Moreover, particular provisions related to illegal trafficking²⁷⁷, the duty to reimport²⁷⁸ and the provisions for scientific regional cooperation²⁷⁹ are included in the protocol.

2.1.2.7 The Protocol on Integrated Coastal Zone Management in the Mediterranean

The Protocol on Integrated Coastal Zone Management in the Mediterranean²⁸⁰ was adopted in 2008 and entered into force in 2011.

The following States have not accepted, approved or ratified the protocol: Algeria, Bosnia and Herzegovina, Cyprus, Egypt, Greece, Italy, Libya, Monaco, Tunisia and Turkey.

The ICZM is the first protocol that has even been adopted in relation to safeguarding coastal zones. Indeed, it is stated in the preamble of the said protocol that the latter are considered Mediterranean Sea common natural and cultural heritage” and that should be preserved for the benefit of the “people of the Mediterranean”, present and future. Furthermore, it is recognised the pressure on the coastal zones due to increasing human presence, climate change and biodiversity loss.

Article 1 of the protocol defines the general obligation, which is to “establish a common framework for the integrated management of the Mediterranean coastal zone and shall take the necessary measures to strengthen regional cooperation”. The ICZM precisely aims at establishing a framework for stable and efficient cooperation that could ensure the common management of coastal resources. It is possible to assert that it is the most cooperation-oriented protocol of the whole Barcelona Convention framework. After having specified some relevant definitions for the purposes of the protocol, Article 3 defines the geographical scope of the latter: the integrated management zone extends externally until the limit of the territorial sea of the CPs, while the

²⁷⁵ SCOVAZZI (2018: 314).

²⁷⁶ Hazardous Waste Protocol, Article 4.

²⁷⁷ Hazardous Waste protocol, Article 9.

²⁷⁸ Hazardous Waste protocol, Article 7.

²⁷⁹ Hazardous Waste protocol, Article 8.

²⁸⁰ Protocol on Integrated Coastal Zone Management in the Mediterranean, Madrid, 21 January 2008 (hereinafter: the ICZM protocol).

landward limit shall be defined by the national authorities²⁸¹. The definition of the geographical scope is particularly relevant for the definition of a 100-metres zone where it would not be possible to construct. The exceptions to this provision are related to public projects interests and areas where - due to geographical or local constraints - “individual housing, urbanisation or development” are allowed by specific national legal instruments.

The concept of integrated coastal management comprehends different aspects. In relation to this, Article 5 and Article 6 are particularly relevant for the definition of the principle applied at the coastal zones of the Mediterranean. Article 5 defines the objectives of the ICZM approach, among which: the rationalisation of activities and resources, in order to ensure their preservation according to a sustainable development approach; preservation of ecosystems, prevention or reduction of effects of alternated natural hazards, due to climate change; coherent definition of public and private policies in relation to coastal zones management²⁸². Additionally, Article 6 accounts to the consideration of the land territory and the marine environment of the coastal area as a single entity; the necessity to jointly consider hydrological, geomorphological, climatic, ecological, socioeconomic and cultural element to define integrated management; the ecosystem approach; transparency, accountability and time-framing definition in governance; cross sectoral institutional coordination. The ICZM Protocol constitutes a “complex integrated, contextual and interdisciplinary, proactive multilateral response”²⁸³.

²⁸¹ ICZM Protocol, Article 3, para. 1.

²⁸² ICZM Protocol, Article 5.

²⁸³ RAFTOPOULOS (2011: 18).

SECTION II

2.2 THE INSTITUTIONAL FRAMEWORK: INSTITUTIONAL GOVERNING BODIES, THE MAP COMPONENTS AND THE MEDITERRANEAN TRUST FUND.

2.2.1 The institutional governing bodies: the MOPs, the Compliance Committee, and the Mediterranean Commission on Sustainable Development

2.2.1.1 The MOP competencies and the reporting system under the Barcelona Convention

Article 18 of the 1995 Barcelona Convention defines in detail the competencies of the Meeting of the Contracting Parties ('MOPs'). The MOPs to the Barcelona Convention meet generally once every two years, however it is provided that extraordinary meetings may be held upon request of the Organization²⁸⁴ or of any CPs, only if at least two CPs solicit the request.

The most relevant aim of the MOPs is to "keep under review the implementation of this Convention and the protocols"²⁸⁵. Article 18 specifies different aspects of the main aim of the MOPs. Indeed, the MOPs have the duty to review the "inventories" of the CPs or competent international organisations, which assess the state of the environment in the Mediterranean. Furthermore, the MOPs have to consider the reports of the CPs, in relation with Article 26 of the convention. The latter defines that CPs shall report to the organisation the legal measures implied for the application of the convention in their national legal regime, considering the effectiveness of measures embraced²⁸⁶.

Additionally, the MOPs are vested with amendatory power in relation with annexes to the protocols and the convention²⁸⁷, faculty of making recommendations in relation with adoption of additional documents or any amendment to the convention, establishment of working groups, Programme Budget approval, consideration and undertaking of additional actions²⁸⁸.

In addition to the provisions specified in Article 18, Article 27 defines that it is the MOP's competence to assess compliance to the convention. In order to do so, the MOPs take into account the periodical reports mentioned in Article 26 of the convention. In case of noncompliance, the MOPs are requested to

²⁸⁴ Barcelona Convention, 1995, Article 18 para. 1. It is relevant to remind that the Organization is the Secretariat to the Barcelona Convention, whose functions are carried by the UNEP.

²⁸⁵ Barcelona Convention, Article 18 para. 2.

²⁸⁶ Article 26, Barcelona Convention, 1995.

²⁸⁷ Article 23 of the convention clarifies the framework to be followed for amendment of annexes to the Convention.

²⁸⁸ Barcelona Convention, 1995, Article 18 para. 2.

advance recommendations to ensure CPs full acceptance of the convention and the protocols²⁸⁹. The reporting system defined in Article 26 was included in the Barcelona Convention priorly to the amendment process of 1995. However, subsequently - in the nineties - more specific provisions have been endorsed²⁹⁰. In particular, during the 13th ordinary MOP, it has been decided to establish Working Group of Legal and Technical Experts, nominated to encourage the implementation of the convention and the protocols, and the conformity with the provisions²⁹¹. Initially, the Working Group was constituted by six experts nominated by the CPs, in accordance with the principle of geographical distribution. Subsequently, the representativeness and the scope of the Working group was enlarged: all CPs to the convention were represented and it has been asked to produce the draft document for the establishment of Procedures and Mechanisms on Compliance, in order to define the legal regime for non-compliance of the Barcelona Convention²⁹². These will be described in the following section.

2.2.1.2 The Compliance Committee and the Compliance framework of the Barcelona Convention and its protocols

The Compliance Committee is formed by fourteen members elected by the MOPs; seven alternate while the other seven are stable members. Requisites to be nominated are to be a national of the CPs to the convention, and to possess “recognized competence in the matters dealt with by the Barcelona Convention and its Protocols and in relevant scientific, technical, socio-economic, legal or other fields”²⁹³. The aspects the MOPs consider for the nomination are equitable geographical distribution, rotation, and balanced scientific, legal, and technical competencies²⁹⁴. The members are appointed for two rounds of MOPs, in practice for four years. Lastly, the members shall serve in their “individual capacities and shall act objectively”²⁹⁵, considering the interests of the Mediterranean Sea area, in relation with the provisions of the Barcelona convention and its protocols.

In relation with the compliance system of the Barcelona convention, it is necessary to consider that the function of the MOPs and the Compliance Committee are intertwined. Indeed, while the main function of the Compliance Committee is to examine potential cases on noncompliance of the

²⁸⁹ Barcelona Convention, 1995, Article 27.

²⁹⁰ PAPANICOLOPULU (2009: 157).

²⁹¹ PAPANICOLOPULU (2009: 156).

²⁹² PAPANICOLOPULU (2009: 156).

²⁹³ Decision of the IG, 15-18 January 2008, 17/2, *Procedures and mechanisms on compliance under the Barcelona Convention and its Protocols*, para 8.

²⁹⁴ Decision IG 17/2, para. 9.

²⁹⁵ Decision IG 17/2, para. 11.

different legally binding acts²⁹⁶, it is MOP's jurisdiction to define sanctions. Moreover, the Compliance Committee may intervene at request of the MOPs, in cases of recurrence of noncompliance issues in relation with the provisions of Article 26 that have been previously described²⁹⁷. Lastly, at "any other issues requested" by the MOPs, the Compliance Committee may intervene. The procedure for the submission to the Compliance Commission make be endorsed by a Party on its own potential situation of noncompliance, or by a Party in respect of another Party's situation of non-compliance²⁹⁸. Indeed, the Compliance Committee has no jurisdiction to commence compliance procedures²⁹⁹. Submission for noncompliance should be addressed in writing to the Committee through the Secretariat³⁰⁰, and the Committee meet once a year or more in case of urgent matters³⁰¹. The Compliance Committee may decide not to undertake the compliance control in cases of anonymity, de minimis or manifest ill fondness³⁰².

Furthermore, it is stated that the Compliance procedure "shall operate without prejudice to the settlement of disputes provisions of Article 28" of the convention. The latter defines that to settle a dispute, Parties may solve it through negotiations or other peaceful means they are willing to imply. Annex A to the Barcelona Convention clarifies arbitration procedures, in cases in which States concerned are not able or willing to comply with the provisions of Article 28³⁰³.

The Proceedings for the Compliance shall be guided by the principle of "due process"³⁰⁴. Indeed, the State concerned is allowed to present its observation to the Committee, that in contrast should ensure the Party concerned has access to the information the Committee is making use of during the proceeding³⁰⁵. Furthermore, the State concerned has the possibility to consult and comment of draft findings of the Committee³⁰⁶. Indeed, the whole Compliance procedure is based on the principle of transparency. Additionally, it is stated that the compliance procedure should be "non-confrontational, non-judicial, transparent, cost effective and preventive in nature, simple, flexible,

²⁹⁶ Indeed, non-compliance has to be examined in relation with the convention, the protocols, decisions of the parties, strategic plans and time schedules application (PAPANICOLOPULU, 2011: 158).

²⁹⁷ Decision IG 17/2, Para 17(b).

²⁹⁸ Decision IG 17/2, para(s). 18 (1), (2).

This provision considers that prior to the submission, consultation between the Secretariat and the Party concerned have to be performed, and only if the matter has not been solved in three months the Compliance Committee should be advised.

²⁹⁹ Decision IG 17/2, para(s). 18 (1), (2).

³⁰⁰ Decision IG 17/2, para. 19.

³⁰¹ Decision IG 17/2, para(s). 12, 21.

³⁰² Decision IG 17/2, para. 21.

³⁰³ Barcelona Convention, 1995, Annex A.

³⁰⁴ Decision IG 17/2, para. 28.

³⁰⁵ Decision IG 17/2, para. 24.

³⁰⁶ Decision IG 17/2, para. 29.

and oriented in the direction of helping parties to comply with and implement the provisions”³⁰⁷.

Lastly, the Compliance Committee may undertake different measures to endorse compliance and to solve cases of noncompliance: to advise and to assist, to support the State concerned in drafting a case-specific action plan that could face the non-compliance issue emerged, and it can invite the Party to prepare reports to submit to the Committee in order to attest the development in relation with the adoption of the action plan³⁰⁸.

Particularly, special attention is given to the capacity of developing countries to efficiently comply with the legal system envisaged by the convention and the protocols. Paragraph 33 of Decision IG 17/2 specifies some measures that can be implemented by the Compliance Committee to support developing countries: facilitate compliance through capacity building, recommend specific policies, request the submission of reports in relation with the progresses achieved, publishment of cases of non-compliance³⁰⁹. It is relevant to consider indeed that the publication of the Committee findings is considered as a sanction the MOPs can impose on the State concerned³¹⁰. As a matter of facts, it is stated that the principle of confidentiality applies to transmission of information by the Party concerned³¹¹ and to the outcome of the process in general³¹².

Decision IG 17/2 defines the procedure to be followed in case of “serious, ongoing or repeated situation of non-compliance by a Party”. The compliance committee may, in particular: issue a caution or a report of non-compliance regarding that Party. Furthermore, the Compliance Committee has the possibility to initiate “any additional action that may be required for achievement of the purposes of the Convention and the Protocols”³¹³.

It is relevant to consider that during the last Conference of the Parties, held in December 2021 in Antalya (Turkey), Decision IG.17/2: *Procedures and mechanisms on compliance under the Barcelona Convention and its Protocols* has undergone a relevant process of amendment. However, the amendment will be discussed anew during the next Conference of the Parties, that will be held in December 2022. At the moment of writing of this dissertation, the Conference has not been held yet, and it is not possible to assert whether the amendments proposed will concretely be adopted in the future.

Notwithstanding, amendments proposed to the procedures and mechanism and to the rule of procedures of the compliance committee were numerous. These were proposed through Decision IG.25/2³¹⁴. Considering the

³⁰⁷ Findings and Conclusions of the First Meeting of the Working Group on Implementation and Compliance WG First Report, supra n. 9, Annex III, at 1.

³⁰⁸ Decision IG 17/2, para. 32.

³⁰⁹ Decision IG 17/2, para. 33.

³¹⁰ PAPANICOLOPULU (2009: 159).

³¹¹ Decision IG 17/2, para. 30.

³¹² PAPANICOLOPULU (2009: 157).

³¹³ Decision IG 17/2, para. 34.

³¹⁴ Decision of the IG, 7-10 December 2021, 25/2, *Compliance Committee*.

procedures, the objectives of the compliance mechanism and the mandate of the committee have been expanded³¹⁵, two articles have been added in relation with “enhancement of synergies” between the compliance committee and other agreements³¹⁶. In addition, for what concerns the rules of procedure, relevant amendments were proposed in relation with the membership of the committee and the procedures for handling communications. The rules of procedures were adopted during COP18, through Decision IG.21/1³¹⁷. Decision IG.25/2 clarifies the Programme of Work of the Compliance Committee for the Biennium 2022-2023. It has been agreed that between the 18th and the 19th Meeting of the Compliance Committee, the latter would “consider any submissions and/or referrals in accordance with Section V of the Procedures and Mechanisms on Compliance” and will deal with some general issues of compliance under the Barcelona Convention. In particular, the Compliance Committee is asked to consider Specific submissions under Section V, to deal with General issues of compliance under the Barcelona Convention and its Protocols and lastly to Enhance effectiveness of the compliance mechanism³¹⁸.

2.2.1.3 The Mediterranean Commission on Sustainable Development

The Mediterranean Commission on Sustainable Development (‘MCSD’) is the only Commission that has ever been established at regional level dealing with sustainable development³¹⁹. It was established in 1996, during the revisionary process of the UNEP/MAP-Barcelona Convention System after the Rio process, that has discussed in the previous Chapter³²⁰. Indeed, the establishment of the MCSD, the amendment process to the convention and the protocols, and the drafting of Agenda MED effectively concretized the process of alignment of the regional framework for the safeguard of the marine environment in the Mediterranean with the global regulation innovated during the Rio process³²¹.

The mandate of the MCSD is twofold. On one hand, it elaborates on the repercussions of unsustainable development on society, economy and environment, considering the Agenda MED 21, and it elaborates proposals to present to the CPs in relation with the decisions they endorse, which are

³¹⁵ Decision of the IG, 7-10 December 2021, 25/2, Annex II: *Programme of Work of the Compliance Committee for the Biennium 2022-2023*, para 5.

³¹⁶ Decision IG.25/2 para 37, 37 bis.

³¹⁷ Decision of the IG, 3-6 December 2013, 21/1, *Compliance Committee including renewal of members, the modification of the rules of procedure and the Programme of Work of the Compliance Committee*.

³¹⁸ Decision IG.25/2, Annex II, Programme of Work of the Compliance Committee for the Biennium 2022-2023.

³¹⁹ LE TELLIER (2017: 21).

³²⁰ See Chapter 1, para. 4.2 The adaptation of the MAP-PHASE I to Rio: steps toward MAP PHASE II.

³²¹ HOBALLAH (2006: 159).

evaluated by the MCSD itself. On the other hand, it has a more pragmatic role, since it aims at strengthening regional cooperation, and developing strategic policies to ensure the integration of sustainable development approach in intergovernmental decisions³²². It acts as an advisory body to the CPs and works through the secretarial support of UNEP/MAP³²³.

The MCSD is based on subdivision into working groups, that specialise their research area in relation with different questions of sustainable development that emerge. These act like regional-specialised think tanks, open to the participation of local authorities, business representatives, and NGOs. Furthermore, selected national and specifically qualified experts for every CPs compose the MCSD³²⁴. Every working group has a task manager, who priorly was a member of the MCSD³²⁵.

To better clarify the role of the MCSD, it is important to provide an example. Indeed, two peculiar areas of interest in which the challenge to ensure sustainable development in the Mediterranean is particularly relevant have been identified: tourism and water resources management. The MCSD has been working in relation with urbanisation processes in large cities of the Mediterranean, in which the complex relationship between growing population, access to clear water resources, quality of life and urban planning had to be aligned with sustainable development and long-term approach³²⁶.

In order to put into action its policies, the MCSD had to enforce the measurement and assessment component of the strategic planning guidelines it embraces. In practice, it was necessary to develop a comprehensive framework of indexes that may enable the assessment of the sustainability of development projects³²⁷. Between 1998 and 1999, 130 indicators were developed, which are called Sustainable Development Indicators (SDIs) for the marine environment of the Mediterranean Region. These consider population growth in the Mediterranean in coastal areas, density of solid wastes, coastal water quality, threatened species, existence of monitoring programmes and many others. These indicators support the MCSD in developing policies that could effectively face the complex developmental and environmental situation of the specific area involved. Moreover, other indicators providing information on the status (quality) of coastal waters and habitat are provided by indicators considering general quality of coastal waters, and quality of biophysical environment³²⁸. The formulation of these indicators considers national or country level geographical scale however some may be implied for smaller units³²⁹.

³²² HOBALLAH (2006: 158).

³²³ SCOLLUS & FERRAGINA (2010: 21).

³²⁴ HOBALLAH (2006: 159).

³²⁵ SCOLLUS & FERRAGINA (2010: 22).

³²⁶ CHABASON (1999: 108-109).

³²⁷ CASAZZA ET AL. (2002: 148).

³²⁸ CASAZZA ET AL. (2002: 149).

³²⁹ *Supra*.

In 2005, during the 14th COP to the Barcelona Convention and its Protocols, the first Mediterranean Strategy for Sustainable Development ('MSSD') has been endorsed³³⁰. The latter has been updated periodically, and the last version entails strategies for the period 2016-2025. The main aim of the MCSD and the drafting of the MSSD is to propose a change of paradigm in governance and development of innovative Mediterranean Environmental Policies³³¹. Indeed, it is deemed necessary to ensure a change in the governmental process, in order to embrace and ensure the implementation of the sustainable development principle. It is necessary to promote an innovative strategy for growth that could decouple economic success from environmental degradation. In order to do so, it is necessary to develop economic strategies that could consider and put into action such scope³³².

The Mediterranean Strategy for Sustainable Development 2016-2025 is defined in Decision IG.22/2³³³, which has been adopted at the 19th COPs in 2016. The most relevant concept highlighted in the MSSD is the approach grounded on investing in environmental sustainability to achieve social and economic development³³⁴. Indeed, the Strategy is based on the following approach: "a prosperous and peaceful Mediterranean region in which people enjoy a high quality of life and where sustainable development takes place within the carrying capacity of healthy ecosystems. This is achieved through common objectives, strong involvement of all stakeholders, cooperation, solidarity, equity, and participatory governance"³³⁵.

The Strategy is based on six guiding principles: Ensuring sustainable development in marine and coastal areas; Promoting resource management, food production and food security through sustainable forms of rural development; Planning and managing sustainable Mediterranean cities; Addressing climate change as a priority issue for the Mediterranean; Transition towards a green and blue economy; Improving governance in support of sustainable development³³⁶. These are articulated through national and regional action plans, that propose specific actions in relation with specific necessities³³⁷. Furthermore, the role of the MCSD in the implementation of the strategy is clarified, in collaboration and cooperation with the MAP System. In addition, countries are called to assimilate the MSSD into their national policies; the latter would serve as a "platform" to ensure cooperation between the different actors involved, in particular "intergovernmental and

³³⁰ Decision of IG, 27 June 2005, 16/7, *Mediterranean Strategy for Sustainable Development, A Framework for Environmental Sustainability and Shared Prosperity*.

³³¹ SCOLLUS & FERRAGINA (2010: 22).

³³² HOBALLAH (2006: 160).

³³³ Decision of IG, 9-12 February 2016, 22/2, *Mediterranean Strategy for Sustainable Development 2016-2025 [MSSD]*

³³⁴ Decision IG.22/2, para. 7.

³³⁵ *Supra*.

³³⁶ Decision IG.22/2, para. 9.

³³⁷ Decision IG.22/2, para. 10.

regional and sub-regional organisations”³³⁸, civil society, the private sector and the scientific community³³⁹.

Lastly, the MSSD specifies provisions in relation with the institutional structure that could enforce the establishment of sustainable development strategies³⁴⁰, the necessity to support the policies through conspicuous financial resources³⁴¹, and to develop a comprehensive monitoring system for the assessment of the implementation of the strategy, based on indicators that could facilitate the evaluation and effectiveness of the strategy³⁴².

2.2.2 The MAP Components: the MAP Coordinating Unit, MED POL and the Regional Activity Centres

2.2.2.1 The MAP Coordinating Unit

The MAP Coordinating Unit was established in 1979 and its headquarters were moved to Athens in 1982. The mandate of the Coordinating Unit is described in detail in Decision IG.17/5: Governance Paper³⁴³, that has been adopted during the 15th COPs, in Almeria (Spain) held in 2008.

According to Article 17 of the Barcelona Convention, the UNEP is vested with secretary functions to the convention and the protocols, and the MAP Coordinating Unit is the organ dealing with these duties.

The role played by the MAP Coordinating Unit is crucially relevant to ensure efficient performance of the UNEP/MAP - Barcelona Convention System. Indeed, it has enabled and enforced the trans nationalisation of environmental governance³⁴⁴, since it is possible to assert that the umbrella function of the Coordinating Unit is to define, ensure and strengthen governance of the regional framework for environmental protection in the Mediterranean Sea Area.

More specifically, the mandate of the MAP Coordinating Unit (‘Barcelona Convention / MAP Secretariat’³⁴⁵) is based on different functions it exhausts. First of all, it ensures the application of the legal framework of the UNEP/MAP Barcelona Convention System, and the functioning, cooperation and compliance of the CPs and other institutions to the MAP system³⁴⁶. Moreover, it is crucial to define that the role of the Barcelona Convention / MAP Secretariat is interviewed with the activities and duties of the RACs, the Regional Activity Centres, and with the MEDPOL - which will be described

³³⁸ Decision IG.22/2, para. 13.

³³⁹ Decision IG.22/2, para. 14.

³⁴⁰ Decision IG.22/2, para. 15.

³⁴¹ Decision IG.22/2, para. 16.

³⁴² Decision IG.22/2, para. 17.

³⁴³ Decision of IG, 15-18 January 2008, 17/5, *Governance Paper*.

³⁴⁴ VANDEEVER (1999: 19).

³⁴⁵ The Barcelona Convention / MAP Secretariat is also called MEDU, however only for internal communications.

³⁴⁶ Decision IG.17/5, p. 148.

in the following sections. Indeed, the Coordinating Unit enables stable policy dialogue among different actors: NGOs, the CPs and third countries, the CPs and the Barcelona Convention / MAP Secretariat through the National Focal Points³⁴⁷, other international institutions having similar goals, the RACs with the countries in which these are headquartered. Additionally, the Coordinating Unit reinforces relations with the other Regional Seas Programs, other secretariats of the international conventions which are relevant to the Mediterranean Sea Area, and with financial institutions that deal with environment and sustainable development in the region³⁴⁸.

In addition, Barcelona Convention / MAP Secretariat deals with publication of official document and press releases³⁴⁹.

Furthermore, the Barcelona Convention / MAP Secretariat prepares the high-level meetings of the different governing bodies of the MAP system, follows the implementation of the legal provisions of the convention and the protocols, warrants the development of the compliance mechanism and drafts the Work Programme. In relation to this, the Work Programme is decided for a five-year period, and it can be updated and specified through a secondary and biennial Programme of Work that is adopted by the MOP. In order to define the Work programme, the participation of the RACs is pivotal. These prepare proposals to be included in the Work Programme, which are scrutinised by the Coordinating Unit considering coherence, feasibility, and strategic aspects³⁵⁰. Consequently, the Coordinating Unit monitors the effective implementation of the Work Programme adopted, counsels the RACs and the MEDPOL and strengthen regional cooperation³⁵¹. The Coordinating Unit is entrusted with the duty to provide communications and updates in relation with the implementation of the Work Programme.

Lastly, the Coordinating Unit manages the Financial Issues related to the functioning of the MAP System. In particular, it ensures resources implied and spent are efficiently managed. It ensures contributions to be versed in the Mediterranean Trust Fund ('MTF') and checks for contributions received by RACs and MEDPOL from external resources. Moreover, the Coordinating Unit put into action fundraising activities and managed staff policies³⁵².

2.2.2.2 The Programme for the Assessment and Control of Marine Pollution in the Mediterranean ('MED POL'): the scientific component

The establishment of MED POL PHASE I and II have been described in Chapter I. It is relevant to consider that MED POL is the first operational

³⁴⁷ The National Focal Points are appointed by the country's authorities, and these serve to ensure dialogue and information sharing between the CPs and the RACs.

³⁴⁸ MASSOUD (2003: 880).

³⁴⁹ Decision IG.17/5, p. 148.

³⁵⁰ Decision IG.17/5, p. 154.

³⁵¹ Decision IG.17/5, p. 149.

³⁵² Decision IG.17/5, p. 150.

programme ever established by the MAP, and it deals with pollution assessment measurement, in general. The mandate of this component has evolved relevantly during the decades, mostly due to advancements of technologies implied for pollution assessment, and the consequential establishment of increasing specific and complex activities to be carried out by the MED POL, that is established in Athens, at the Coordinating Unit. The main fields of action in which the MED POL operates are related to assessment of the quality of the environment in the Mediterranean, the sponsorship of programmes aimed at facing pollution in the area with the aim of eliminating it, especially through the assistance to CPs for the implementation of National Action Plans ('NAPs'). These are national programmes CPs pledge to implement to reduce pollution and are based on policy framework definition and NAPs investment portfolio. In addition, both urban and industrial areas are included in the NAPs, as well as provisions to ensure technological and information sharing, public engagement, and sustainable financing³⁵³

Moreover, it shares information of the scientific findings it recollects on the Mediterranean environment and strengthen CPs capabilities for the areas in which it is involved³⁵⁴. Indeed, it is possible to define three major lines of action for the MED POL: pollution monitoring and assessment, pollution control policies and measures, capacity building and technical assistance³⁵⁵. The MED POL mandate refers particularly to the LBS, Dumping and Hazardous Wastes Protocol. Indeed, In relation with Article 15 of LBS protocol, the MED POL has intervened for the establishment of 10 Regional Plans addressing different causes of pollution in the Mediterranean, that develop measures to phase out from the usage of some materials or substances deemed dangerous for the environment. The Regional plan developed are legally binding regional measures for the CPs, and these address Persistent Organic Pollutants (POPs), marine litter, and wastewater.

2.2.2.3 The mandate of the Regional Activity Centres

The RACs are operational Centres headquartered in different countries of the Mediterranean Sea Area that put into action numerous functions in relation with peculiar areas of intervention, which are considered commonly functional to the interests of the whole Mediterranean CPs³⁵⁶.

These can be considered the “operational organs” of the UNEP/MAP - Barcelona Convention System. These institutions have been established with

³⁵³ Descriptive Publication by the UNEP/MAP – MED POL Programme, 2015, *MED POL Programme for the Assessment and Control of Marine Pollution in the Mediterranean*, published by wedocs.unep.org, available online, p. 5.

³⁵⁴ Decision IG.19.8, Annex II, p. 48.

³⁵⁵ Descriptive Publication by the UNEP/MAP – MED POL Programme, 2015, *MED POL Programme for the Assessment and Control of Marine Pollution in the Mediterranean*, published by wedocs.unep.org, available online, p. 3.

³⁵⁶ MASSOUD (2003: 880).

the aim of centralising activities related to the different areas and subjects covered by the complex legal framework of the MAP, however with the conception to decentralise the governance and institutional building of the Regional Sea programme in general. Every RAC deal with different aspects: biodiversity, emergency activities, integrated coastal zones and others that will be discussed in the following sections. Notwithstanding these operate autonomously in activities related to their specific components, they are intertwined and commonly contribute to the implementation of the whole UNEP/MAP - Barcelona Convention System.

Point 4 of Decision IG.17/5, defines the general principles to describe the mandate of the RACs. Indeed, it is states that the mandate of every RAC should “at a minimum” consider three aspects: definition of long-term goals for the fulfilment of provisions of the convention and the protocols; clarification of the governing principles in relation with cooperation with the MAP Coordinating Unit, the Focal Points, the MCS and the MOPs³⁵⁷.

Additionally, more specific provisions have been defined in the same decision. For instance, RACs are recommended to harmonise their mandates and to identify specific areas of intervention in relation with the collective and common objective of the UNEP/MAP System. Lastly, RACs are asked to ensure programmes developed under their auspices are exercised transparently, efficiently, effectively, and regularly³⁵⁸.

During the 16th Ordinary Meeting of the CPs, held in 2009 in Marrakesh (Morocco) more specific provisions in relation with the Mandate of the MAP Components have been adopted through Decision IG.19/5³⁵⁹. It is specified that the MAP Coordinating Units acts as guiding organs for the MAP Components, which implement the MSSD and support CPs in the definition of their National Strategy for Sustainable Development (‘NSSD’)³⁶⁰.

Additionally, the principle of common but differentiated responsibility, the principle of assistance, the prevention and precautionary principles, cooperation and partnership, and the ecosystem and participatory approaches are specifically mentioned as supplementary conceptual principles the MAP Components are requested to comply with while defining their programmes³⁶¹.

Decision IG.19/5 specifies some “operational principles” aimed at clarifying the work of the MAP components: firstly, it is stated that the biennial Programme of Work has to be formalised accordingly to the related provision included in the Governance Paper³⁶²; secondly, “consultation and

³⁵⁷ Decision IG.17/5, p. 151.

³⁵⁸ Decision IG.17/5, p. 151.

³⁵⁹ Decision of the IG, 3-5 November 2009, 19/5, *Mandate of the Components of the MAP*.

³⁶⁰ These will be described in Chapter 3.

³⁶¹ Decision IG, 19/5, p. 47.

³⁶² In particular, point 6 of Decision IG.17/5 defines in detail the logical framework the MAP Components have to follow for the drafting of the Programmes. For example, specifying Objective, Long-term follow-up of outputs, Indicator(s) to assess the results, its achievement; Rationale and Relationship to Convention, protocols, adopted strategies and Decisions of the Contracting Parties are among the points that are asked to consider (Decision IG.17/5, p. 153).

collaboration with all MAP Components” has to be ensured with the aim of ensuring efficiency and avoiding programme overlapping; thirdly, technical and scientific programmes have to be analysed consulting the Focal Points and the MAP partners, as appropriate. Lastly, funding has to be destined to priority actions³⁶³.

It is relevant to consider that while the RACs mandate has been specifically differentiated, there are numerous areas in which the activities of the Centres overlap and intertwine. These are grouped in Table 2.

For the actions identified in the following table, two or more MAP Components will collaborate to achieve shared goals:

	CP RAC	INFO RAC	SPA RAC	PAP RAC	BLUE PLAN	REMPEC
MEDPOL	Implementation of art 5.1, 5.2, 5.3 of the LBS protocol.	Data management and presentation, reporting, public awareness, infoMAP node development, PRTR development and training.	Regional assessment of the state of the ecosystems, implementation of the assessment component of the Eco-system Approach project.	Marine pollution, LBS pollution component in CAMPs, marine pollution and Ecosystem Approach project.	Indicators and follow up of urban waste management and marine pollution component of MSSD and climate change, report on Environment and Development.	Pollutant load from shipping activities.
REMPEC	SPC regarding shipbuilding and ship recycling (including pleasure craft).	InfoMAP node development, state of play on EO technology, near real time data acquisition and sharing, awareness raising, educational and information activities.	Management of invasive species in the framework of the management of the BallastWater, management of Particularly Sensitive Sea Areas (PSSA), impact of shipping on marine and coastal biodiversity sensitivity mapping regarding protected marine and coastal flora and fauna, wild life protection in case of emergency.	Port infrastructure planning, including marinas, sensitivity mapping as regard contingency planning.	Implementation and follow up of the transport chapter of the MSSD, climate change, report on Environment and Development.	
BLUE PLAN	Follow up to water, energy sustainable cities, climate change, implementing MSSD (specifically water and energy priorities), report on Environment and Development.	Collection, compilation, management of data and statistics underlining MSSD indicators, Blue Plan Info System / MISED.	Assessment of services rendered by marine and coastal ecosystems, sustainable management of marine and natural coastal resources, climate change and Biodiversity, report on Environment and Development.	Follow up of various chapters of MSSD, development of land use planning tools adapted to coastal zone, climate change, indicators, prospective studies, report on Environment and Development, water resources, tourism development, urban and rural development participatory approaches.		
PAP RAC	Awareness raising and training on cleaner production, assessment and awareness raising on SPC for the coastal zone management.	Web site development, data management, dissemination activities, remote sensing, infoMAP node development, ICZM protocol reporting obligation.	Management of marine and coastal SPA Biodiversity component in CAMPs			
SPA RAC	Sustainable management of marine and coastal natural resources.	InfoMAP node protocol, data set on protected areas and biodiversity habitat, endangered species, research data and dissemination, data management, information and awareness raising, educational documentary on Mediterranean biodiversity.				
INFO RAC	Dissemination of material on SPC, educational kit.					

Table 2: MAP Components Synergy Table³⁶⁴

For what concerns funding, most of the Regional Activity Centres are funded by the Mediterranean Trust Fund. Only the Blue Plan Regional Activity Centre (‘BP/RAC’), the Clean Production Regional Activity Centre (‘CP/RAC’) and the Regional Activity Centre for Information and Communication (‘INFO/RAC’) are respectively funded by the MTF in

³⁶³ Decision IG.19/5, Annex II, p. 47.

³⁶⁴ Decision IG.19/5, Annex II, Appendix II, p. 57.

conjunction with the France Government, the Government of Spain and the Government of Italy³⁶⁵.

2.2.2.3.1 The Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea ('REMPEC')

The mandate of the REMPEC is to prevent and reduce pollution from ships and combat pollution in case of emergency. It is headquartered in La Valletta (Malta).

The legal framework in which the REMPEC functions have been established refers to Articles 4(1), 6 and 9 of the Barcelona Convention, the Emergency Protocol as amended in 2002, and the Regional Strategy for Prevention of and Response to Marine Pollution from Ships (2016-2021), adopted in 2016. Originally, the main aim of the REMPEC - established in 1976 - was to counter pollution by oil and to institute a regional information system aimed at supporting CPs during emergencies. Subsequently, the functions of the REMPEC have been enlarged since operations related to preventive actions to face pollution of ships started to be developed. The REMPEC is managed by the International Maritime Organization ('IMO') and the UNEP/MAP.

It is possible to analyse the REMPEC functions considering some peculiar aspects. In particular, the REMPEC assists the CPs in the development and improvement of national capabilities for ships pollution prevention and elimination "to the fullest possible extent", ensuring the compliance with regional and international legislation adopted in the field. Additionally, it promoted regional cooperation in relation with pollution prevention and emergency response, which is crucially relevant for the establishment of a regional framework for the exchange of information on operational, technical, scientific, legal and financial matters. Lastly, the REMPEC ensures CPs assistance by other Parties outside the region, in case of necessity³⁶⁶.

2.2.2.3.2 The Blue Plan Regional Activity Centre ('BP/RAC')

The Blue Plan was established in 1977, through Decision UNEP/IG.5/7 that defines in detail the objectives and the principles guiding the working of the BP/RAC. It is headquartered in Marseille, France.

The main aim of this regional cooperation centre is to put at disposal of the decision makers a clear picture of the environmental, economic and social condition of the Mediterranean Sea Area, in order to empower them with the necessary information to make decisions and develop policies that can ensure sustainable development in the area³⁶⁷. Indeed, yet in the 1977 long term objectives of the Blue Plan were defined: it was assigned with the duty to define the common problems the CPs were facing in the area and the

³⁶⁵ Decision IG.19/5, Annex II, Appendix I, p. 56.

³⁶⁶ Decision IG.19/5, Annex II, p. 49.

³⁶⁷ Decision IG.19/5, Annex II, p. 50.

interrelation among different areas; additionally, it was stated that BP/RAC duty was to assist CPs during the development of “appropriate decisions that would promote rational management of resources and sustainable development in the Mediterranean region”³⁶⁸.

The scope and mandate of the BP/RAC have been further developed in Decision IG.19/5. Firstly, the BP/RAC is responsible for data collection and analysis in relation with environmental, economic and social issues. This aspect is crucially relevant for what concerns the valuation of the relations existing among these aspects of development, with the aim of developing indices that could ensure more efficient assessment of the results of the policies implemented by the CPs in conjunction with the common objectives of UNEP/MAP - Barcelona Convention System. Indeed, the BP intervenes in relation with the drafting of prospective studies that could support the decision-makers. Lastly, the BP/RAC deals with publication and reporting³⁶⁹. The BP/RAC mandate refers to Article 4 of the 1995 Barcelona Convention. The latter defines the general obligation the CPs have to comply with. Particularly, the work of the BP/RAC can be considered related to para. 2 of Article 4, since it is stated the necessity to ensure development “meeting the needs of present and future generations in an equitable manner”; the latter is a direct reference to the sustainable development principle. Indeed, the main aim of the action envisaged by the BP/RAC is to support decision makers to develop sustainable development policies. In addition, it is possible to assert that the working of the BP/RAC reflects the necessity expressed in para. 3 (a) of Article 4, referring to precautionary principle. In fact, the prospective studies elaborated by the BP/RAC undoubtedly present reliable sources to evaluate the effects of policies, or the consequences of inactions in worst cases scenarios. Moreover, the prospective approach can be considered an aspect of environmental impact assessment programmes that are requested to develop in para 3(c) of Article 4.

2.2.2.3.3 The Priority Actions Programme Regional Activity Centre ('PAP/RAC')

The PAP/RAC was founded in 1980 through Decision UNEP/IG.5/7³⁷⁰, to support the development of the Integrated Planning component of the UNEP/MAP - Barcelona Convention System³⁷¹. Initially, the scope of the PAP/RAC was quite different in respect to the actual functions of the regional centre, based in Split (Croatia). Through Decision IG.5/7 it was agreed the PAP/RAC has the main aim to develop programmes related to intersectoral

³⁶⁸ Report of the IG, 15 June 1977, UNEP/IG.5/7: *The Blue Plan*, Agenda Item 8, para 29(a), (b), p. 7.

³⁶⁹ Decision IG.19/5, Annex II, p. 50.

³⁷⁰ Decision IG.5/7, para., p. 54.

³⁷¹ See Chapter 1, para. 3.2 The integrated management component: the Blue Plan and the PAPs.

planning in six different agreed fields, that were considered prioritising: protection of soil, management of water resources, marine living resources and management of fisheries and aquaculture, human settlement, tourism, soft technologies for energy, including solar energy. The PAP/RAC should have instituted “a permanent network of continuous cooperation among different Mediterranean coastal States”³⁷². As a matter of fact, the amendment process that interested the UNEP/MAP - Barcelona Convention System in 1995 influenced the definition of the PAP/RAC fields of action particularly. Indeed, the formalisation of the Integrated Coastal Zone Management Protocol, adopted in 2008, changed the mandate of the PAP/RAC, that has been assigned with the specific duty to support CPs in implementing the ICZM protocol. Indeed, the PAP/RAC “contribute to sustainable development of coastal zones and sustainable use of their natural resources”³⁷³. In particular, CPs are asked to comply with the provisions of Article 32 of the ICZM protocol: to define common regional framework for ICZM, to report of the state of development with the application of the protocol, to exchange information and to assist the CPs in relation with different aspects an to execute any other request as requested by the CPs³⁷⁴.

Specific duties have been defined for the PAP/RAC in Decision IG.19/8. It has been agreed that the regional centre has the main duty to support the Mediterranean coastal States in the implementation of the ICZM protocol. Indeed, specific provisions in relation to the protocol have been included in contrast to the vague mandate assigned to the PAP/RAC before the adoption of the ICZM protocol. Additionally, crucial relevance is given to sustainable development, and the PAP/RAC is requested to ensure the harmonisation of economic, social and cultural development with environmental preservation. Furthermore, the PAP/RAC assists CPs in the implementation of demonstration/pilot coastal management projects, like the Coastal Area Management Programme (‘CAMP’), enforces regional cooperation and raising-awareness activities and develops concrete ICZM methodologies³⁷⁵.

2.2.2.3.4 The Specially Protected Areas Regional Activity Centre (‘SPA/RAC’)

The SPA/RAC is based in Tunis, and it is operative since 1985, when the CPs decided to establish a regional centre aimed at ensuring the compliance with the 1982 Geneva Convention, in order to establish in the Mediterranean Sea Area Specially Protected Areas (‘SPAs’). The provisions of the Geneva Convention and the Convention on Biological Diversity adopted during the

³⁷² Decision IG. 5/7, para. 49, p. 13.

³⁷³ Decision of the IG, 3-5 November 2009, 19/8, “*Regional Plan on the elimination of Aldrin, Chlordane, Dieldrin, Endrin, Heptachlor, Mirex and Toxaphene in the framework of the implementation of Article 15 of the LBS Protocol*”, Annex II, p.51.

³⁷⁴ ICZM Protocol, Article 32.

³⁷⁵ Decision IG. 19/8, Annex II, p. 51.

Rio Conference were translated in the SPA/Biodiversity protocol, adopted in 1995. The SPA/RAC has been established through Decision IG.23/11, and it states that all CPs will contribute to the activities implemented by the SPA/RAC³⁷⁶. In addition, CPs are requested to meet their obligations in relation to Article 4 and 10 of the Barcelona Convention, the latter specifically determining CPs obligation to put into action activities aiming at safeguard “biological diversity, rare or fragile ecosystems, as well as species of wild fauna and flora which are rare, depleted, threatened or endangered in their habitats”³⁷⁷. Moreover, the activities of the SPA/RAC are specifically related to Article 9, 11(7) and 25 of the SPA/BD protocol. These respectively state the definition of the procedure for the establishment and listing of SPAMIs³⁷⁸, consultation and coordination of the CPs for the management of threatened or endangered species³⁷⁹, and lastly coordination of different activities for the implementation of the protocol³⁸⁰.

Indeed, the main activities of the SPA/RAC are determined by the duty to the protect and preserve the marine and coastal areas through a sustainable development approach, giving relevance to the natural and cultural value of the areas safeguarded and to the presence of threatened and endangered species of flora and fauna³⁸¹. In particular, the SPA/RAC deals with: research on Mediterranean biodiversity, mapping and monitoring activities, mitigation of unsustainable practices, assistance for sensitive areas, species and sites conservation, promotion of definition of SPAs and SPAMIs, according to the provisions of the SPA/BD protocol, mobilisation of financial resources³⁸².

Furthermore, the mission of the SPA/RAC aims at ensuring the compliance with the Strategic Action Programme for the Conservation of Biological Biodiversity in the Mediterranean Region (SAP BIO), adopted in 2003. The implementation of the latter has been evaluated during COP21, and it has been decided that the post-2020 SPA BIO will be action-oriented and more integrated international cooperation will be ensured to meet the objectives defined for biodiversity conservation in Mediterranean Area³⁸³.

³⁷⁶ Decision of the IG, 17-20 December 2017, 23/11, *Mediterranean Guide on Cooperation and Mutual Assistance in Responding to Marine Pollution Incidents*, Annex VI, Agenda item 6.3(c).

³⁷⁷ Barcelona Convention, 1995, Article 10.

³⁷⁸ SPA/BD Protocol, Article 9.

³⁷⁹ SPA/BD Protocol, Article 11, para. 7.

³⁸⁰ SPA/BD Protocol, Article 25.

³⁸¹ Decision IG.19/8, Annex II, p. 52.

³⁸² Decision IG.19/8, Annex II, p. 52.

³⁸³ Decision of the IG, 2-5 December 2019, 24/7, *Strategies and Action Plans under the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean, including the SAP BIO, the Strategy on Monk Seal, and the Action Plans concerning Marine Turtles, Cartilaginous Fishes and Marine Vegetation; Classification of Benthic Marine Habitat Types for the Mediterranean Region, and Reference List of Marine and Coastal Habitat Types in the Mediterranean*, Annex I.

2.2.2.3.5 The Regional Activity Centre for Cleaner Production ('CP/RAC')

The CP/RAC was founded through Decision IG.8/7 of the Extraordinary Meeting of the Contracting Parties, in which it is stated the Centre has the main duty to ensure cleaner production in the Mediterranean³⁸⁴. Subsequently, the mandate and the conceptual framework in which the activities performed by the CP/RAC enlarged. Indeed, it has developed a transversal approach toward Sustainable Production and Consumption ('SPC'), that involves different areas of interest. The activity of the CP/RAC refers to different protocols: Article 5 of the LBS protocol calls CPs to eliminate land-based sources of pollution³⁸⁵, Article 5.2 of the Hazardous Waste protocol obliges CPs to reduce and eliminate hazardous wastes³⁸⁶; Article 8 of the Offshore protocol determines that CPs have to "use the best available, environmentally effective and economically appropriate techniques and to observe internationally accepted standards" in relation with wastes, in order to diminish the risk of pollution³⁸⁷.

In particular, the CP/RAC is entrusted with different obligations: it researches the link between consumption patterns and environment degradation, in order to furnish to decision makers the knowledge necessary to develop effective policies. Additionally, it ensures the application of Best Available Techniques ('BAT'), Cleaner Production ('CP/RAC') and Best Environmental Practices ('BEP') in public and private programmes related to SCP. Consequently, it fosters mechanisms to integrate sustainable practices in consumption patterns development and lastly encourage the introduction of sustainable principles in lifestyles and criterias for consumption-production³⁸⁸. The Centre is based in Barcelona (Spain).

2.2.2.3.6 The Regional Activity Centre for Information and Communication ('INFO/RAC')

The mandate of the INFO/RAC is related to information sharing. Indeed, the Centre has the duty to ensure "adequate information and communication services and infrastructure technologies"³⁸⁹. Collaboration and cooperation in information sharing with other institutions and international bodies is deemed pivotal importance to establish a Shared Environmental Information System ('SEIS')³⁹⁰.

³⁸⁴ Report of the Extraordinary Meeting of the CPs to the Barcelona Convention, 1996, IG.8/7, Annex IV: *Approved Recommendations and Programme Budget for 1997*, p. 5.

³⁸⁵ LBS Protocol, Article 5.

³⁸⁶ Hazardous Wastes Protocol, Article 5, para. 2.

³⁸⁷ Offshore Protocol, Article 8.

³⁸⁸ Decision IG.19/8, Annex II, p. 53.

³⁸⁹ Decision IG.19/8, Annex II, p. 54.

³⁹⁰ *Supra*.

INFO/RAC puts into action the legal provisions related to Article 12 and 26 of the Barcelona Convention. Respectively, these refer to monitoring activity CPs pledge to put into action to assess pollution in the area³⁹¹, and Reporting System, since it is requested to CPs to transmit to the Organization reports related to legal, administrative measures and their effectiveness³⁹².

The functions of the INFO/RAC can be grouped into three main areas: information and communication technology; information sharing, communication, education, training and awareness-raising activities; and dissemination of results from environmental research and from innovative observation and monitoring technology.

In relation with the information and communication technology, INFO/RAC has the duty to develop “a common environmental and spatial data infrastructure and network services”, that is called InfoMAP and that is necessary to ensure internal and external communication among CPs, and between the CPs and the MAP Components, that can ensure the strengthening of the networking component of the system, to serve as coordinating platform. Secondly, the INFO/RAC works to ameliorate data collection and sharing, as well as corporate communication and involvement of the Mediterranean countries. In addition, it has been invested with the mandate to ensure long term collaboration among MAP institutions and between these and external institutions, NGOs, civil society and other actors. Consequently, the INFO/RAC ensures public participation through diffusion of relevant documents³⁹³.

Lastly, activities related to dissemination of results aim at contributing to the creation of a knowledge base that considers scientific assessment, environmental monitoring, and political action. In order to do so, the sharing of best practices in relation with environmental research is deemed crucially relevant³⁹⁴. The INFO/RAC is based in Rome.

2.2.3 The Mediterranean Trust Fund

The Mediterranean Trust Fund (‘MTF’) has been established in relation with Article 24 of the Barcelona Convention, that defines Rules of Procedure and Financial Rules. In particular, the Article states that the CPs are requested to prepare their financial rules in coordination with the Secretariat and to define their contributions to the Trust Fund³⁹⁵.

³⁹¹ Barcelona Convention, 1995, Article 12.

³⁹² Barcelona Convention, 1995, Article 26.

³⁹³ Decision IG.19/8, Annex II, p. 54.

³⁹⁴ Decision IG.19/8, Annex II, p. 55.

³⁹⁵ Barcelona Convention, 1995, Article 24.

The Trust Fund has been established through decision IG.14/9³⁹⁶. The latter defines that the Trust Fund should be subdivided into two sections, the first directly related to “Activities directly derived from the Convention for the Protection of the Mediterranean Sea against Pollution and its related protocols” and “Other activities agreed to as part of the Mediterranean Action Plan”. For what concerns the first section of the Trust Fund, it has been agreed that this should be based on contributions determined by the CPs, Mediterranean States that are not contracting Parties, voluntary contributions from States not mentioned in Article 24 and NGOs. In contrast, funds grouped under Section II are based on pledged contributions from the Mediterranean States and the EEC, and voluntary contributions from non-Mediterranean States.

In addition, it is relevant to consider that it has been agreed that contributions should be “proportionally distributed” among the two sections of the Trust Fund budget³⁹⁷, and no transfer of budget from one section to the other is feasible³⁹⁸. The budget is established for two calendar years, and the estimated budget is approved by the Intergovernmental Meeting of CPs. Indeed, it is the MAP Coordinating Unit to prepare the budget, however additional and supplementary funds may be submitted by the Executive Director during the second year of the financial calendar year³⁹⁹.

The 18th Meeting of the CPs has adopted the Financial Regulations Rules and Procedures for the Contracting Parties, its subsidiary bodies and the Secretariat of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean through Decision IG.21/15. It is stated that the financial rules adopted are the “Financial Regulations and Rules of the UN and the Financial Rules of UNEP as supplemented by the additional procedures”⁴⁰⁰, indeed the contributions versed by the CPs are defined in accordance with the UN scale of assessment. It is relevant to consider that in case CPs do not devolve their yearly contributions, they have to be notified by the Coordinator. The latter should clarify that the consequence of not versing the contribution is the loss of the voting right and that such noncompliance will be reported to the Bureau⁴⁰¹.

Additionally, it is stated that approved programme, financial statements and audit reports should be accessible to public and available online on MAP website⁴⁰².

³⁹⁶ Decision of the IG, 5-10 January 1979, 14/9, Annex IX: *Terms of Reference for the Administration of the Mediterranean Regional Trust Fund for the Protection of the Mediterranean Sea Against Pollution*.

³⁹⁷ Decision IG.14/9, Annex IX, para. 12.

³⁹⁸ Decision IG.14/9, Annex IX, para. 20.

³⁹⁹ Decision IG.14/9, Annex IX, para. 17.

⁴⁰⁰ Decision of the IG, 3-6 December 2013, 21/15, Annex II, *Thematic Decisions: Financial Regulations and Rules and Procedures for the Contracting Parties, its subsidiary bodies and the Secretariat of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean*, p. 235.

⁴⁰¹ Decision IG.21/15, Annex II, Procedure 2(d).

⁴⁰² Decision IG.21/15, Annex II, Procedure 7.

During COP22, the Programme of Budget for 2022-2023 was approved. Decision IG.25/19⁴⁰³ specifies in detail the allocation of financial resources to the different RACs, defining the singular contribution of the different CPs to the MTF.

⁴⁰³ Decision of the IG, 7-10 December 2021, 25/19, *Programme of Work and Budget for 2022-2023*.

CHAPTER 3

3. THE EFFECTIVENESS OF THE UNEP/MAP – BARCELONA CONVENTION SYSTEM: INNOVATIVE FEATURES AND VULNERABILITIES

3.1 Innovative features of the UNEP/MAP – Barcelona Convention System

3.1.1 The role of the ecologic epistemic community: overcoming conflictual relationships in the Mediterranean Area

Historically, the relations between Mediterranean States have been conflictual. Wars, revolutions, terrorism have characterized the area for decades. Divergences among countries have different nature: some conflicts emerged in relation with religious differences, territorial and maritime disputes, and revolutionary movements rose up. Among the numerous conflicts that broke out, the Lebanese civil war (1975-6), the Syrian – Lebanese (1979), the Israeli – Lebanese (1982), the ongoing Arab Israeli conflict are the most relevant to mention since they have profoundly shaped international relations and cooperation in the region. In addition, conflict have occurred even in relation with maritime boundaries, and some of these have been discussed in the previous chapter, in relation with the jurisdictional asymmetry of the maritime boundaries of the Mediterranean and the complex definition of jurisdictional zones in the area⁴⁰⁴.

Kliot identifies three spheres in which conflict among Mediterranean States boost: the definition of maritime and territorial boundaries, the employment of sea resources, and lastly in relation with other sovereign rights⁴⁰⁵. This multidimensional conflictual context has been exacerbated by the heterogenous level of development among States in the area. Indeed, these differences curbed the possibility to find a common ground for political alignment among the countries and made the establishment of peaceful relations difficult. Additionally, socioeconomic differences intensified due to the European integration process, and divergences among EU Member States and non-Member States aggravated over the decades⁴⁰⁶.

These differences reflect even when considering disposition toward cooperation of the Mediterranean States. Indeed, some countries have been more willing to entangle with cooperative projects, while other have adopted

⁴⁰⁴ See Chapter 2, Section I, para. 2.1 The International Legal Regime in the Mediterranean.

⁴⁰⁵ KLIOT (1989: 263).

⁴⁰⁶ CALIGIURI (2016: 90).

unilateral and isolation policies⁴⁰⁷. As a matter of fact, the conflictual relationships among Mediterranean bordering States cannot be deemed ideal for cooperation.

Notwithstanding, in the context of the UNEP/MAP – Barcelona Convention System States have considerably cooperated in order to establish a commonly agreed, composite and interdisciplinary strategy to face environmental degradation in the Mediterranean. Indeed, the “Med Plan has been regarded as the most successful regional environmental cooperation model”⁴⁰⁸, however the definition of the framework for environmental cooperation has not been unchallenging⁴⁰⁹.

There are different reasons that explain why cooperation in environmental issues has been successful despite the conflictual context of international relations in the Mediterranean area. Firstly, States of the area have generally acknowledged that cooperation for environmental safeguard is the most efficient way to put into action counter pollution strategies⁴¹⁰. Secondly, it has been argued that the increasing public awareness in relation with environmental issues has encouraged the definition of more concrete strategies. Lastly, the role played by the UNEP has been particularly relevant in the establishment of a framework for negotiations in the Mediterranean Sea Area in relation with the definition of the MAP. As a matter of fact, while France initially played a prominent role in guiding the process for regional cooperation, it has been through the UNEP influence that the relevancy of the ecologic epistemic community concretized⁴¹¹. The latter is described by Haas in these terms:

“a professional group that believes in the same cause-and-effect relationships, truth tests to assess them, and shares common values. As well as sharing an acceptance of a common body of facts, its members share a *common interpretive framework*, or “consensual knowledge,” [...] they identify problems in the same manner and process information similarly. They also share a common vocabulary, common political objectives [...] and a common network [...] some common world view and concern about the same subject manner”⁴¹².

In point of fact, the development of environmental cooperation in the Mediterranean provides a reliable example of the epistemic community theory⁴¹³. The latter explains that the role played by the scientific community – the ecologic epistemic community – is crucially relevant to overcome political contrasts among States, that may undermine the development of common policies to face environment degradation that – as mentioned above

⁴⁰⁷ KLIOT (1989: 271).

⁴⁰⁸ CHUNG (1999: 372).

⁴⁰⁹ See Chapter 1, para 2. The Mediterranean region: what has made cooperation possible?

⁴¹⁰ CHUNG (1999: 372).

⁴¹¹ CHUNG (1999: 364).

⁴¹² HAAS (1990: 173-74).

⁴¹³ The latter can be identified even as “cooperation relying on scientific consensus surrounding the relevant environmental problem” (CHUNG, 1999: 372).

– needs to be faced collectively. In the Mediterranean case, the empowerment of a group of experts – whose shared common knowledge and agreed on the necessity to urgently develop an Action Plan for the Mediterranean – “contributed to the development of convergent state policies in compliance with the regime”⁴¹⁴. This group of experts was formed by like-minded governmental officials of the different States, members of the specialised agencies dealing with the preparatory phases of the UNEP/MAP – Barcelona Convention System⁴¹⁵. The ecologic epistemic community could play such crucial influence since all its members agreed and recognised the relevance of reliable, shared and widespread knowledge related to the degraded state of the environment of the Mediterranean. Indeed, scientific collaboration and data sharing, publications, conferences, workshops, seminars preceded the formation of the latter, and ensured the spreading of the same knowledge base⁴¹⁶. This aspect demonstrated to be profoundly relevant during the preparatory works of the MAP.

Initially, these were able to influence negotiations especially through informal channels, lobbying national authorities to ensure compliance with the regime⁴¹⁷. This informal influence happened mostly during the preparatory works for the drafting of the MAP and the Barcelona Convention, that – as for most of international law documents - have been long and complex, based on collection of information, finalization of drafts, expert and working groups meetings related to technical, legal, scientific, and institutional aspects⁴¹⁸. After the entry into force of the Convention, the role played by the ecologic epistemic community did not interrupt. Indeed, the same representatives were conceded responsibility to enforce and control the application of agreed pollution control measures and duty to ensure compliance to the regime at different level, considering both national representatives and actors involved in UNEP activities⁴¹⁹. The relevance of the ecologic epistemic community for the establishment of international environmental regime can be summarized through Haas affirmation: “if a group with a common perspective is able to acquire and sustain control over a substantive policy domain, the associated regime will become stronger, and countries will comply with it”⁴²⁰. Indeed, it has been acknowledged that countries having stronger legacy with the ecologic epistemic community have been more willing to comply and to ensure the definition of national policies that reflect the international regime for environmental safeguard in the area⁴²¹.

In point of fact, the ecologic epistemic community created a network that influenced the development regime at different level: through direct influence

⁴¹⁴ HAAS (1989: 377).

⁴¹⁵ HAAS (1989: 384).

⁴¹⁶ VANDEEVER (1999: 21).

⁴¹⁷ HAAS (1989: 384).

⁴¹⁸ YEROULANOS (1982: 177).

⁴¹⁹ HAAS (1989: 380).

⁴²⁰ HAAS (1989: 380).

⁴²¹ HAAS (1989: 388).

on national authorities, through a top-down approach considering the guiding role played by the UNEP in relation with the other actors involved, and the ecologic epistemic community enabled the definition of common guiding principles that enabled to overcome singular, particular and conflictual stances of the Mediterranean States⁴²². More particularly, the role played by the scientists was crucial in relation to consultation with national authorities, since the ecologic epistemic community members decided to provide similar and congruent advice to governmental officers, when they were asked support during the policy making process⁴²³.

While the ecologic epistemic community theory has been acknowledged and recognised as a reliable instrument to explain why environmental cooperation in the Mediterranean has been successful vis-à-vis the complex and conflictual context of regional international relations, it is limited in its scope. Indeed, it is useful to explain the development of the process prior to its adoption, however it is not reliable when it comes to evaluate the effectiveness of the regime established⁴²⁴. The sharing of common scientific background has definitely ensured initial compliance during the drafting phase of the UNEP/MAP – Barcelona Convention System, however even after the entry into force of the legal component of the regime compliance and implementation have not always been ensured, and the framework has numerous vulnerabilities. Indeed, it will be discussed in the following paragraphs that while the regime has positively affected the state of the environment in the Mediterranean, it cannot be considered sufficient for facing the critical situation of the area from an environmental point of view. Indeed, the Mediterranean is considered a hotspot for climate change, and actual measures have been considered insufficient to face future challenges⁴²⁵.

3.1.2 The implementation of the Ecosystem Approach and Good Environmental State in the Mediterranean

The main reason that led to the integration of the Ecosystem Approach ('EcAp) into the UNEP/MAP – Barcelona Convention conceptual framework has been to ensure resources – living and nonliving, coastal and land based – are managed integrately to ensure the safeguard and the sustainable use of the ecosystems, embracing an ecological perspective. Implementing EcAp for resource management entails considering the interrelations among flora, fauna and natural ecosystems to develop policies for environmental safeguard and sustainable development that may ensure the respect of the interdependency among the elements of the natural environment.

⁴²² CHUNG (1999: 375).

⁴²³ HAAS (1989: 387).

⁴²⁴ FRANTZI & LOVETT (2008: 244-245).

⁴²⁵ The state of the environment in the Mediterranean will be discussed in the following paragraphs.

The implementation of the EcAp in the UNEP/MAP – Barcelona Convention System can be considered innovative and particularly relevant considering the peculiarities of the Mediterranean Sea Area ecosystem. Indeed, it has been discussed that being a semi-enclosed sea⁴²⁶, both coastal and marine resources in the Mediterranean have followed a peculiar path of evolution, and the regional ecosystem has developed in a highly specific way. It is therefore necessary to ensure an integrated approach for the comprehension and study of such ecosystems, that could draw a clear picture of the dependency-relations of the different resources in the Mediterranean, in order to avoid measures that may undermine the natural balance of the ecosystem in the Mediterranean. For example, measures for the protection of fisheries would be nullified by policies that could have undesired or unforeseen negative consequences on fisheries habitats. According to the author of this dissertation, the application of such an approach to the context of the Mediterranean is particularly relevant for two main reasons: firstly, the Mediterranean Sea Area covers the jurisdiction of 21 States, the latter having similar coastal and land-based ecosystems. The definition of the peculiarities of the ecosystem in the Mediterranean may have successful potential consequences for the efficient application of the latter, since knowledge sharing may be facilitated by low degree of differences considering areas under different national jurisdiction. Secondly, the Ecosystem approach perfectly exemplifies how sustainable development should be ensured. Unilateral action, or single-area policies for safeguard of the environment do not provide effective counter-strategies for environment degradation. Indeed, when it comes to environment and sustainable development a holistic approach is not only necessary, but it provides the only reliable way to ensure policies implemented do not have undesired counter effect. The Ecosystem Approach is based on circularity and interdependency, which are principles directly related to the functioning of the natural ecosystems itself, and these may not be excluded from any policy related to sustainable development and environmental safeguard.

In addition, the implementation of the Ecosystem Approach in the UNEP/MAP – Barcelona Convention System is peculiar. While being relatively new – since it was discussed for the first time during COP 15 in 2008 – policies for the definition of the roadmap and the steps necessary for the inclusion of the EcAp as guiding principle have been developed according to a specific and tight timeframe.

The first step for the integration of the EcAp has been Decision IG.17/6: *Implementation of the ecosystem approach to the management of human activities that may affect the Mediterranean marine and coastal environment*. The latter has been adopted in 2008 and it has been agreed to proceed to the implementation of the EcAp through precise steps: definition of the ecological vision for the Mediterranean - the latter clarified as “healthy Mediterranean

⁴²⁶ See Chapter 2, Section I, para. 2.1 The International Legal Regime in the Mediterranean.

with marine and coastal ecosystems that are productive and biologically diverse for the benefit of present and future generations” – and common strategic goals, identification of peculiarities of Mediterranean ecosystem, definition of ecological objectives based on specific targets and indicators, revision of monitoring programmes and development of action plans⁴²⁷.

The strategic goals mentioned are identified in the text of the same decision: to protect, recovery and restore the marine and coastal ecosystems in the area – aiming at maintaining Good Environmental Status (‘GES’) – and allowing their sustainable use, to reduce pollution impact and to prevent, reduce and manage vulnerable area from environmentally damaging human activity⁴²⁸.

The following steps for the implementation of the ecosystem approach have been endorsed through Decision IG. 20/4, adopted during Cop 17 in 2012. The latter clarified CPs willingness to endorse the EcAp, “with the view to achieving or maintaining good environmental status of the Mediterranean Sea and its coastal region”⁴²⁹. Indeed, while the concept of GES is mentioned for the first time in previous Decision – IG.17/6 – it has not been elaborated and it will be detailly specified in the following Decision IG.21/3, that will be described in the following paragraphs.

Decision IG.20/4 is crucially relevant since numerous practical aspects have been decided in relation with EcAp endorsements. Firstly, the Summary for Decision Makers⁴³⁰ has been endorsed. The latter describes the conclusions reached by the Initial Integrated Assessment of the Mediterranean Sea and Coastal Areas, “aiming at defining the major basin-wide priority issues to be addressed by the EA”⁴³¹ and to identify gaps in scientific research and monitoring mechanisms. The Initial Integrated Assessment has been developed thanks to the collaboration of the CPs, that provided information related to the biological, physical, and chemical features of their coastal area⁴³². The main conclusion reached by the Initial Integrated Assessment states that while differences among the different zones of the Mediterranean Sea Area are relevant, “commonalities may be more pervasive than are

⁴²⁷ Decision of the IG, 15-18 January 2008, 17/6, *Implementation of the ecosystem approach to the management of human activities that may affect the Mediterranean marine and coastal environment*.

⁴²⁸ Decision IG.17/6, p.180.

⁴²⁹ Decision of the IG, 8-10 February 2012, 20/4, Annex II, *Implementing MAP ecosystem approach roadmap: Mediterranean Ecological and Operational Objectives, Indicators and Timetable for implementing the ecosystem approach roadmap*.

⁴³⁰ Decision IG.20/4, Annex I.

⁴³¹ Decision IG.20/4, Annex I, p. 44.

⁴³² For the purpose of the Initial Integrated Assessment analysis, the Mediterranean Sea Area has been subdivided into four main areas: the Adriatic, the Western, Ionian and Central and Aegean-Levantine. Notwithstanding, this sub-division only aims at facilitating data collection, since the results of the Initial Integrated Assessment have underlined that no possible division practically represents the exosystemic features of the Mediterranean. The latter is indeed “conglomerate of linked coastal and marine ecosystems, with many shared resources, species and common approaches to both environmental monitoring and management” (Decision IG.20/4, Annex I, p. 44).

differences”⁴³³ and that some ecosystems in the region derive valuable services to the whole Mediterranean Sea area, which are particularly relevant for different economic activities in the area, like fishing, tourism, transport. In addition, different pressures and negative impacts common to the whole region have been recognised: coastal development and sprawl, overfishing and destructive fishing, contamination with toxic elements, nutrient over-enrichment, pollution by maritime industries, invasive species spread, area degradation⁴³⁴.

Moreover, Decision IG.20/4 adopts the Ecological Objectives. These are targeted and specific Objectives agreed and endorsed by the CPs that serve as guiding points to follow in order to ensure the application of the EcAp in the MAP policies definition and implementation. The Ecological Objectives are related to different areas: Biodiversity, Non-indigenous species, Harvest of commercially exploited fish and shellfish, Marine food webs, Eutrophication, Sea-floor integrity, Hydrography, Coastal ecosystems and landscapes, Pollution, Marine Litter, and Energy including underwater noise.

To every area, a specific Ecological Objective has been agreed, and additional and more specific Operational Objectives have been set. Additionally, Indicators aiming at enforcing measurement and assessment of every specific Operational Objective have been identified. These are described in Table 3⁴³⁵.

Ecological Objective	Operational Objective	Indicators
1. Biodiversity		
Biological diversity is maintained or enhanced. The quality and occurrence of coastal and marine habitats and the distribution and abundance of coastal and marine species are in line with prevailing physiographic, hydrographic, geographic and climatic conditions.	1.1 Species distribution is maintained	1.1.1 Distributional range 1.1.2 Area covered by the species (for sessile/benthic species)
	1.2 Population size of selected species is maintained	1.2.1 Population abundance
		1.2.2 Population density
	1.3 Population condition of selected species is maintained	1.3.1 Population demographic characteristics (e.g. body size or age class structure, sex ratio, fecundity rates, survival/ mortality rates)
	1.4 Key coastal and marine habitats are not being lost	1.4.1 Potential / observed distributional range of certain coastal and marine habitats listed under SPA protocol
		1.4.2 Distributional pattern of certain coastal and marine habitats listed under SPA protocol

⁴³³ Decision IG.20/4, Annex I, p. 46.

⁴³⁴ Report, 8-10 February 2012, IG.20/Inf.8, *Initial Integrated Assessment of the Mediterranean Sea: Fulfilling Step 3 of the Ecosystem Approach Process*.

⁴³⁵ Decision IG.20/4, Annex II, pp. 51-59.

		1.4.3 Condition of the habitat defining species and communities
2. Non-indigenous species		
Non-indigenous species introduced by human activities are at levels that do not adversely alter the ecosystem	2.1 Invasive nonindigenous species introductions are minimized	2.1.1. Spatial distribution, origin and population status (established vs. vagrant) of non-indigenous species
		2.1.2 Trends in the abundance of introduced species, notably in risk areas
	2.2. The impact of nonindigenous particularly invasive species on ecosystems is limited	2.2.1 Ecosystem impacts of particularly invasive species
		2.2.2 Ratio between nonindigenous invasive species and native species in some well studied taxonomic groups
3. Harvest of commercially exploited fish and shellfish		
Populations of selected commercially exploited fish and shellfish are within biologically safe limits, exhibiting a population age and size distribution that is indicative of a healthy stock	3.1 Level of exploitation by commercial fisheries is within biologically safe limits	3.1.1 Total catch by operational unit ⁸
		3.1.2 Total effort by operational unit
		3.1.3 Catch per unit effort (CPUE) by operational unit
		3.1.4 Ratio between catch and biomass index (hereinafter catch/biomass ratio).
		3.1.5 Fishing mortality
	3.2 The reproductive capacity of stocks is maintained	3.2.1 Age structure determination (where feasible)
		3.2.2 Spawning Stock Biomass (SSB)
4. Marine food webs		
Alterations to components of marine food webs caused by resource extraction or human induced environmental changes do not have long term adverse effects on food web dynamics and related viability	4.1 Ecosystem dynamics across all trophic levels are maintained at levels capable of ensuring long - term abundance of the species and the retention of their full reproductive capacity	4.1.1 Production per unit biomass estimates for selected trophic groups and key species, for use in models predicting energy flows in food webs
	4.2 Normal proportion and abundances of selected species at all trophic levels of the food web are maintained	4.2.1 Proportion of top predators by weight in the food webs
		4.2.2 Trends in proportion or abundance of habitat-defining groups
		4.2.3 Trends in proportion or abundance of taxa with fast turnover rates

5. Eutrophication		
Human-induced eutrophication is prevented, especially adverse effects thereof, such as losses in biodiversity, ecosystem degradation, harmful algal blooms and oxygen deficiency in bottom waters.	5.1 Human introduction of nutrients in the marine environment is not conducive to eutrophication	5.1.1 Concentration of key nutrients in the water column
	5.2 Direct effects of nutrient over-enrichment are prevented	5.1.2 Nutrient ratios (silica, nitrogen and phosphorus), where appropriate
		5.2.1 Chlorophyll-a concentration in the water column
		5.2.2 Water transparency where relevant
		5.2.3 Number and location of major events of nuisance/toxic algal blooms caused by human activities ⁹
6. Sea-floor integrity		
Sea-floor integrity is maintained, especially in priority benthic habitats	6.1 Extent of physical alteration to the substrate is minimized	6.1.1 Distribution of bottom impacting activities
		6.1.2 Area of the substrate affected by physical alteration due to the different activities
	6.2 Impact of benthic disturbance in priority benthic habitats is minimized	6.2.1 Impact of bottom impacting activities ¹² in priority benthic habitats
		6.2.2 Change in distribution and abundance of indicator species in priority habitats
7. Hydrography		
Alteration of hydrographic conditions does not adversely affect coastal and marine ecosystems	7.1 Impacts to the marine and coastal ecosystem induced by climate variability and/or climate change are minimized	7.1.1 Large scale changes in circulation patterns, temperature, pH, and salinity distribution
		7.1.2 Long term changes in sea level
	7.2 Alterations due to permanent constructions on the coast and watersheds, marine installations and seafloor anchored structures are minimized	7.2.1. Impact on the circulation caused by the presence of structures
		7.2.2 Location and extent of the habitats impacted directly by the alterations and/or the circulation changes induced by them: footprints of impacting structures
		7.2.3 Trends in sediment delivery, especially in major deltaic systems
		7.2.4 Extent of area affected by coastal erosion due to sediment supply alterations

	7.3 Impacts of alterations due to changes in freshwater flow from watersheds, seawater inundation and coastal freatic intrusion, brine input from desalination plants and seawater intake and outlet are minimized	7.3.1. Trends in fresh water/sea water volume delivered to salt marshes, lagoons, estuaries, and deltas; desalination brines in the coastal zone
		7.3.2. Location and extent of the habitats impacted by changes in the circulation and the salinity induced by the alterations
		7.3.3 Changes in key species distribution due to the effects of seawater intake and outlet
8. Coastal ecosystems and landscapes		
The natural dynamics of coastal areas are maintained and coastal ecosystems and landscapes are preserved	8.1 The natural dynamic nature of coastlines is respected and coastal areas are in good condition	8.1.1. Areal extent of coastal erosion and coastline instability
		8.1.2 Changes in sediment dynamics along the coastline
		8.1.3 Areal extent of sandy areas subject to physical disturbance
		8.1.4 Length of coastline subject to physical disturbance due to the influence of manmade structures
	8.2 Integrity and diversity of coastal ecosystems, landscapes and their geomorphology are preserved	8.2.1 Change of land-use
		8.2.2 Change of landscape types
		8.2.3 Share of nonfragmented coastal habitats
9. Pollution		
Contaminants cause no significant impact on coastal and marine ecosystems and human health	9.1 Concentration of priority contaminants is kept within acceptable limits and does not increase	9.1.1 Concentration of key harmful contaminants in biota, sediment or water
	9.2 Effects of released contaminants are minimized	9.2.1 Level of pollution effects of key contaminants where a cause and effect relationship has been established
	9.3 Acute pollution events are prevented and their impacts are minimized	9.3.1 Occurrence, origin (where possible), extent of significant acute pollution events (e.g. slicks from oil, oil products and hazardous substances) and their impact on biota affected by this pollution

	9.4 Levels of known harmful contaminants in major types of seafood do not exceed established standards	9.4.1 Actual levels of contaminants that have been detected and number of contaminants which have exceeded maximum regulatory levels in commonly consumed seafood
		9.4.2 Frequency that regulatory levels of contaminants are exceeded
	9.5 Water quality in bathing waters and other recreational areas does not undermine human health	9.5.1 Percentage of intestinal enterococci concentration measurements within established standards
		9.5.2 Occurrence of Harmful Algal Blooms within bathing and recreational areas
10. Marine litter		
Marine and coastal litter do not adversely affect coastal and marine environment	10.1 The impacts related to properties and quantities of marine litter in the marine and coastal environment are minimized	10.1.1 Trends in the amount of litter washed ashore and/or deposited on coastlines, including analysis of its composition, spatial distribution and, where possible, source
		10.1.2 Trends in amounts of litter in the water column, including microplastics, and on the seafloor
	10.2 Impacts of litter on marine life are controlled to the maximum extent practicable	10.2.1 Trends in the amount of litter ingested by or entangling marine organisms, especially mammals, marine birds and turtles
11. Energy including underwater noise		
Noise from human activities cause no significant impact on marine and coastal ecosystems	11.1 Energy inputs into the marine environment, especially noise from human activities is minimized	11.1.1 Proportion of days and geographical distribution where loud, low and midfrequency impulsive sounds exceed levels that are likely to entail significant impact on marine animals
		11.1.2 Trends in continuous low frequency sounds with the use of models as appropriate

In addition to this, Decision IG.20/4 adopts the roadmap for the implementation of the EcAp and establish a review cycle to check the

implementation of the related projects once every 6 years⁴³⁶. Moreover, in the same Decision the first steps for the definition of the EcAp Governance System were established. In particular, the EcAp Coordinating Group has been institutionalized, and it has been agreed that it should work in conjunction with the MAP Focal Points, the Coordinating Unit, the MAP Components, and the MAP Partners⁴³⁷.

Relevant provisions in relation with the governance structure were endorsed through Decision IG.21/3, adopted during Cop 18 in 2013⁴³⁸. The latter precisely describes the structure of the Governance framework of the ECAP. This is summarized in Figure 1.

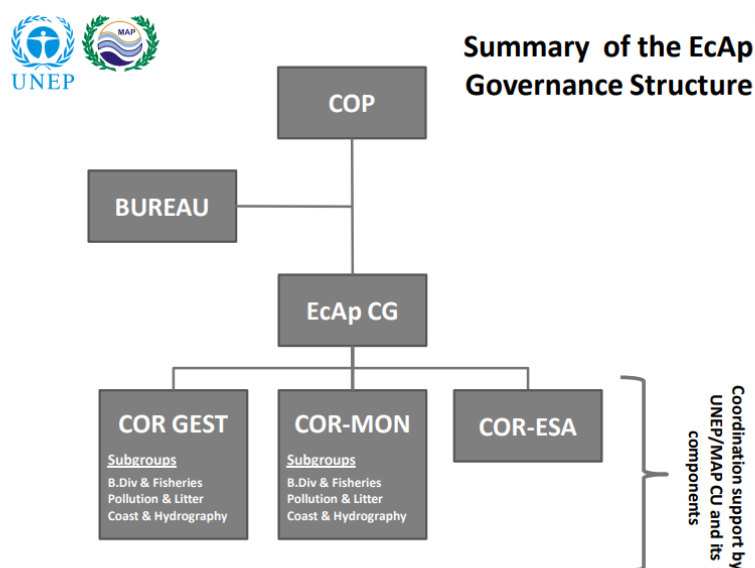


Figure 1: ECAP Governance Structure

The CoP and the Bureau supervise the work of the EcAp Coordination Group, formed by the MAP Focal Points and it guides the process for the implementation of the EcAp in the MAP framework. It is supported by three Correspondence Groups, Correspondence Group on GES and Targets ('COR GEST'), the Correspondence Group on Monitoring ('COR MON') and the Correspondence Group on Economic and Social Analysis ('COR ESA'). These are all formed by national experts designated by the CPs, however their mandate differs. The COR GEST ensures the implementation of the Ecological Objectives described above in relation with three main areas of intervention: Pollution and litter (Ecological Objectives 5, 9, 10 and 11), Biodiversity and Fisheries (Ecological Objectives 1, 2, 3, 4 and 6), and Coast

⁴³⁶ Decision IG.20/4, p. 40.

⁴³⁷ Decision IG.20/4, p. 41.

⁴³⁸ Decision of the IG, 3-6 December 2013, 21/3, *Ecosystems Approach including adopting definitions of Good Environmental Status (GES) and targets*.

and Hydrography (Ecological Objectives 7 and 8)⁴³⁹. The COR MON works in close collaboration with the MED POL, and it monitors the implementation of the COR GEST activities. Lastly, the COR ESA is specialised in developing socio-economic analysis related to marine ecosystems, considering different activities, like maritime transport, aquaculture, recreational activities, and oil industry, fisheries and offshore activities⁴⁴⁰. In particular, the contributions of the COR ESA are particularly relevant since these exemplifies an innovative approach related to ecosystem management, that is connected with the consideration of the economic value of the latter. Indeed, it has been deemed necessary to begin estimating the possible negative consequences of human action on the environment, in order to avoid that the “ecological processes necessary to support the flow of ecosystem services on which welfare of present and future generations depends” are threatened by economic activities⁴⁴¹. More precisely, the conjunction between ecosystemic analysis and economy concretized in the attempt to avoid economic activities to degrade the environment, in order to ensure the future sustainable exploitation of the latter.

Subsequently, Decision IG.21/3 clarifies how GES should be implemented in relation with the single Ecological Objective considered and the respective Operational Objectives. Indeed, the GES can be considered a flexible concept, and the latter is shaped in relation with the peculiar area to which it is applied. The GES is not an overarching concept; however, it has been stated and agreed on how good environmental status means and how it should be reached in relation with the specific Ecological Objectives and their consequential Operational Objectives. For example, considering Ecological Objective 1.4.3 Condition of the habitat defining species and communities – the latter being under the Biodiversity Ecological Objective and the Operational Objective 1.4 Key coastal and marine habitats are not being lost – states that GES is ensured when “the population size and density of the habitat-defining species, and species composition of the community, are within reference conditions ensuring the long-term maintenance of the Habitat”⁴⁴². Indeed, the flexibility of the GES concept is necessary to ensure that the assessment of the good status considers the different and numerous threats that the environment is subject to in the area: human activities, invasive species, pollution, urbanization are among the threats that may “compromise the capacity of marine ecosystems to provide ecosystem services”⁴⁴³.

The assessment and monitoring component of the EcAp implementation in the MAP has been enforced by the definition of the Integrated Monitoring and

⁴³⁹ Decision IG.21/3, Annex V, p. 65.

⁴⁴⁰ Decision IG.21/3, Annex V, p. 66.

⁴⁴¹ LE TELLIER (2017: 3).

⁴⁴² Decision IG.21/3, Annex I, p. 37.

⁴⁴³ GORJANC ET AL. (2022: 1).

Assessment Programme of the Mediterranean Sea and Coast ('IMAP'), endorsed through Decision IG.22/7⁴⁴⁴.

The latter is a comprehensive programme aimed at ensuring the monitoring of the implementation of the Ecological Objectives and the relative GES in the Mediterranean. In order to do so, 27 common indicators have been developed related to the different Ecological Objectives, and these are useful to measure the degree of implementation, or non-implementation, of the Operative Objectives of the 11 Ecological Indicators⁴⁴⁵. The IMAP is crucially relevant to ensure the effectiveness of the EcAp in the Mediterranean Sea Area, and specific timelines have been set to assess its efficacy. In addition, the whole programme established through the IMAP is endorsed by different report projects developed in order to ensure assessment of the state of the environment in the Mediterranean with frequency⁴⁴⁶. These documents are the First Mediterranean Assessment report that was published in 2020, and the 2020 State of the Environment and Development in the Mediterranean. These will be considered and discussed in the following paragraphs, when discussing the vulnerabilities and problems related to the UNEP/MAP – Barcelona Convention System. Indeed, the outcomes of these documents related to the state of the environment in the Mediterranean demonstrate the whole system in practice is not ensuring the Mediterranean Sea Area is safeguarded from environmental damaging processes.

⁴⁴⁴ Decision of the IG, 9-12 February 2016, 22/7, *Integrated Monitoring and Assessment Programme of the Mediterranean Sea and Coast and Related Assessment Criteria*.

⁴⁴⁵ LE TELLIER (2017: 5).

⁴⁴⁶ Decision IG.22/7, pp. 425-426.

3.2 Vulnerabilities of the UNEP/MAP – Barcelona Convention System

3.2.1 The critical state of the environment in the Mediterranean: the MAR 1 and the SoED reports

The main aim of this dissertation until now has been to provide an explanation of how the UNEP/MAP – Barcelona Convention System developed, and how its provisions have been ensured and efficiently put into action. It is indeed incontestable that the framework envisaged from the UNEP has been necessary to reduce the increasing level of pollution in the area. Notwithstanding, the state of the environment in the Mediterranean is still under considerable stress. The considerations related to the environment of the Mediterranean Sea Area that will be described in the following section derive from two main reports that have been published by the UNEP and the MAP themselves. In particular, the First Mediterranean Assessment Report ('MAR 1')⁴⁴⁷ has been published in 2020 by the UNEP, the MAP, the P/B, the Union for the Mediterranean ('UfM') and the Mediterranean Experts on Climate and Environmental Change ('MedEC'). The second report that will be considered is the State of the Environment and Development in the Mediterranean ('SoED') that has been published in 2020 by the UNEP, the MAP and the P/B. Additionally, while the MAR 1 has been drafted in order to provide reliable and scientific information considering the evolution of different environmental phenomenon in the Area, the SoED attempts to provide "recent information on a broad range of interconnected topics and insight for priority action"⁴⁴⁸ and has therefore a more interdisciplinary viewpoint.

The MAR 1 has been drafted with the aim "to provide science-based guidance to multiple actors involved in coming up with a response to climate and environmental changes and to reduce associated risks to communities and natural ecosystems in the Mediterranean"⁴⁴⁹. In particular, it has been stated that human action in every sub-region of the Mediterranean negatively impacts the environment. However, the source causing environmental degradation differs, and the report assesses the risk related to the Mediterranean environment considering four main areas that have been considered particularly vulnerable to change: Climate Change, Pollution, Land and Sea use and Non-indigenous species.

For what concerns anthropogenic Climate Change, it has been acknowledged - with a high degree of scientific confidence – that the region will warm 0.4°C

⁴⁴⁷ Report of the UNEP, 2020, MAR 1, *Climate and Environmental Change in the Mediterranean Basin, Current situation and risks for the future. First Mediterranean Assessment Report*.

⁴⁴⁸ Report of the UNEP, 2020, *State of the Environment and Development in the Mediterranean ('SoED')*, p. 4.

⁴⁴⁹ Report MAR 1, p. 8.

more than the global average temperature. This will have repercussions on precipitation, heat waves and freshwater evaporation that will hugely intensify in the future decades.

Moreover, it has been recognised that Pollution is another crucial problem for the Mediterranean Sea Area. Indeed, due to demographic pressures, and consequential increased industrial and agricultural activities, pollutants have increased considering the quantity of these toxic substances in the basin, as well as the different typologies discharged⁴⁵⁰. More specifically, pollution of seawater happens due to discharge of untreated waters, input of human induced nutrients – that provoke nutrient enrichment and a change of the ecosystems balance – and wastes in general, with the plastic waste being the most dangerous for the environment.

In addition, MAR 1 considers Air pollution since the Mediterranean Area is among the areas of the world with the higher concentration of gaseous air pollutants⁴⁵¹. The basin is particularly vulnerable to air pollution since the peculiar meteorological conditions and the closeness with the Sahara Desert inhibits air circulation, and the transport sector and urban air discharges do not permit air exchange and increase toxic gas accumulation.

For what concern Land and Sea use, the report acknowledges that the increasing urbanization of the area causes biodiversity loss and biological homogenization⁴⁵². Additionally, abandonment of agro-pastoralism areas has led numerous lands to become arid and natural forests have been lost. Considering marine resources, these are overexploited and most marine species are decreasing in number due to unsustainable fishing practices. In particular, in 2010 “the cumulative percentage of collapsed and overexploited stocks exceeded 60% across the Mediterranean Sea”⁴⁵³. It is acknowledged that in order to ensure sustainable management of marine resources, the fishing pressure has to be largely decreased.

Lastly, the report describes the crucial problem related to Non-indigenous species present in the Mediterranean Sea Area, that is considered a vulnerable “hotspot” for these species to settle⁴⁵⁴. Among these, invertebrates are the most numerous, and the majority arrive from the Red Sea and the Atlantic. These enter the Mediterranean basin mostly due to ships transportation and aquaculture. The main problem related to the presence of Non-indigenous species has to be analysed in relation with two main aspects: firstly, the emerge of these species in the basin exemplifies that the native species have collapsed or decreased in number, meaning that the presence of Non-indigenous species is the result of pre-existing environmental problems in the area. Secondly, the presence itself of the Non-indigenous species does not let the ecosystem restore to original balance and composition. Indeed, the

⁴⁵⁰ Report *MAR 1*, p. 12.

⁴⁵¹ Report *MAR 1*, p. 13.

⁴⁵² Report *MAR 1*, p. 14.

⁴⁵³ Report *MAR 1*, p. 14.

⁴⁵⁴ Report *MAR 1*, p. 14.

presence of Non-indigenous species exemplifies the presence of a previous problem, and it becomes a problem itself⁴⁵⁵.

The measures proposed by the MAR 1 to face these present and incoming challenges are numerous. Relevant attention is given to local communities, since it is considered necessary for local coastal communities to develop measures for adaptability and to enforce the capabilities of these communities to face emergencies and health consequences related to climate change⁴⁵⁶. Furthermore, it is stated that very few coastal cities have adopted or developed local climate plans, which are crucially relevant to ensure resilience in relation to climate change. Integration of good practices and knowledge sharing have been deemed necessary to do so⁴⁵⁷. Additionally, sustainable water security measures should be implemented, and possible negative counter effects – like soil contamination, energy consumption or coastal systems degradation – have to be considered. In relation to this, it has been acknowledged that the agrifood sector should be developed accordingly to the problem of water scarcity in the area, and cultivations should be selected in order to resist the scarcity of water resources⁴⁵⁸.

Moreover, the concept of Land Degradation Neutrality has been endorsed in the conclusions of the report. The latter states that land loss may be solved through sustainable land use in order to maintain land resource base while increasing resilience of land-related resources communities. Lastly, categories have been defined to ensure adaptability to sea-level rise that will affect coastal resources and coastal communities. These are: protection, accommodation, advancement, and retreatment⁴⁵⁹.

Along with the conclusion reached by the MAR 1 report, it is relevant to discuss the SoED report findings in relation with the state of the environment in the Mediterranean. The approach embraced for the drafting of the latter is evidence-based, since the SoED stresses the “overall unsatisfactory state of the regional environment” through providing reliable data. Furthermore, it is action-oriented since actions to ensure sustainable development have been identified⁴⁶⁰. The report stresses the connection between socioeconomic development and environment. Indeed, it has been acknowledged that “environmental changes strongly impact critical sectors in the Mediterranean region and put local economies under stress”⁴⁶¹. In relation to this, the report identifies eight areas that are particularly threatening for the Mediterranean environment: Climate change, Population densities in coastal areas, Health impacts from atmospheric pollution, Health impacts from lack of water supply and wastewater treatment, Waste and its management, Fisheries practices, Fossil fuels, and Excessive use of chemical and pharmaceutical products.

⁴⁵⁵ Report *MAR 1*, p. 15.

⁴⁵⁶ Report *MAR 1*, p. 31.

⁴⁵⁷ Report *MAR 1*, p. 32.

⁴⁵⁸ Report *MAR 1*, p. 31.

⁴⁵⁹ Report *MAR 1*, p. 31.

⁴⁶⁰ Report *SoED*, p. 6.

⁴⁶¹ Report *SoED*, p. 57.

Even the SoED concludes that the Mediterranean is a hotspot for Climate change, and it has been asserted that the ecological footprint in the Mediterranean is higher than other regions of the world. Additionally, it has been acknowledged that GHGs emissions fall behind global ambitions in the area, meaning that the North-South divide in relation with emissions is disappearing, since South Mediterranean countries are reaching the same GHGs emission level as North Mediterranean countries, due to increasing industrialization and urbanization. Indeed, Climate change is “exacerbating existing environmental fragilities and degradations in the Mediterranean basin”⁴⁶². Notwithstanding, in 2019 only Lebanon, Libya and Turkey have not ratified the Paris Agreement, which is the most relevant international agreement in relation with Climate Change. Additionally, most of the Mediterranean countries have submitted their Nationally Determined Contributions (‘NDCs’)⁴⁶³ to the Secretariat of the UNFCCC. As a matter of fact, while GHGs emissions are increasing in the area, Mediterranean States are attempting to comply with the international commitment taken in relation to GHGs reduction.

According to the SoED, increasing emissions is not the only environmental problem to consider in the area. In fact, population growth is considered a crucial phenomenon to determine the future socio-economic development of the region. While the industrialized North is aging, the developing South has a younger population that however do not easily find employment and live in poor and reprimed conditions. Environmental degradation will exacerbate the yet difficult situation, and additionally it will lead to resources degradation, forced migrations and it will affect human health of Mediterranean communities. The numerous Mediterranean populations of the future will have to adapt to climatic conditions that will be more challenging than the previous ones, and this will affect employment opportunities and health standards. It is likely that the conjunction of environmental degradation with impaired socio-economic situation may cause social and political pressures, leading to revolutions, social disorder, regime change and generalized political chaos.

In relation to human health, the SoED highlights that it is mostly threatened by emissions and unwise waste management. Indeed, the region remains hugely dependent on fossil fuels, and it has been estimated that 228,000 people died prematurely in 2016 due to prolonged exposure to air pollution⁴⁶⁴. It has been previously mentioned that the Mediterranean Area meteorological conditions inhibit air circulation. It means that increasing or high levels of

⁴⁶² Report *SoED*, p. 58.

⁴⁶³ The NDCs are national plans and policies developed by national authorities in which strategies to ensure the reduction of GHGs emissions and other toxic gases are explained. The provision and the reporting system under the Paris Agreement is based on the NDCs, that national authorities have to send to the Secretariat of the UNFCCC in order to ensure compliance with the Paris Agreement, the latter enforcing the UNFCCC and stating CPs pledge to ensure global temperatures will not rise above 1,5°C.

⁴⁶⁴ Report *SoED*, p. 262.

GHGs emissions are likely to accumulate for a long time in the basin of the Mediterranean. Additionally, inefficient waste treatment – considering incineration and landfills, which are the most common typologies of urban waste treatment in the area - has serious repercussions of health⁴⁶⁵. Another crucial problem that affects human health is the excessive use of chemical products that can be discharged directly or indirectly into the environment. The direct penetration implies the use of pesticides or insecticides, while the indirect penetration entails the degradation of pharmaceutical materials through wastewater⁴⁶⁶. Lastly, in relation with fisheries, the conclusions reached by the SoED are similar to the ones described by the MAR 1.

To conclude, eight areas for actions and transitions have been identified in the SoED report. It has been proposed to implement changes in production and consumption patterns, and to ensure inclusive development. Additionally, the urgency to ensure food and water security, energy efficiency and reliance on low-carbon energy solutions were recognised. Moreover, sustainable solutions in relation with tourism and mobility should be implemented and reduction, reuse, and recycling of waste should be ensured in the industry and mining sector. Lastly, it is recommended to embrace the blue economy approach, that is based on the attempt to ensure sustainable development in relation with marine resources growing exploitation⁴⁶⁷.

The MAR 1 and the SoED have highlighted that the efforts Mediterranean States are putting into action to ensure environmental safeguard in the area are insufficient. The discussion about the conclusions of these reports is useful to introduce the vulnerabilities and the gaps of the UNEP/MAP – Barcelona Convention System. These will be discussed in the following paragraphs.

3.2.2 Differences in state capacity between the North and the South share of the Mediterranean and the role of the EU.

At this point of the analysis, it seems necessary to question the effectiveness of the UNEP/MAP – Barcelona Convention System for the safeguard of the Mediterranean Sea Area environment. Indeed, the most recent reports on the Mediterranean State of Environment discussed above stress that marine resources and ecosystems in the area are still crucially endangered.

In relation to this, it is necessary to affirm that the UNEP/MAP – Barcelona Convention Systems has numerous vulnerabilities. While measuring the effectiveness of international regimes can be a complex procedure, it is not possible to assert that the UNEP/MAP – Barcelona Convention Systems is working efficiently. In case the regime for environment protection would be perfectly working, the numerous environmental problems emerging from the SoED and the MAR 1 would not be so critical.

⁴⁶⁵ Report *SoED*, p. 265.

⁴⁶⁶ Report *SoED*, p. 162.

⁴⁶⁷ Report *SoED*, p. 7.

The vulnerabilities of the framework for the protection of the Mediterranean environment are numerous. According to the author of this dissertation the most relevant problem is related to the difference in state capacity considering the North and the South countries bordering the Mediterranean. As a matter of facts, while the concept of state capacity entails different areas of intervention – the institutional, administrative, political and technical – state “capacity – like incapacity – is contingent on contextual factors associated with the public sector functions”⁴⁶⁸. In practice, it means that state capacity is composite and while it can have – for example – a strong political endorsement, it may be technically ineffective to put into action the policies in question. This concept perfectly exemplifies in the case of numerous States of the Mediterranean Sea Area having fragmented state capacity - or completely lacking state capacity – when considering environmental policies. For example, Algerian, Egyptian and Turk measures to implement at national level the provisions of the Barcelona Convention and the related Protocols have been considered insufficient, and little environmental policy development has happened in these countries⁴⁶⁹. In addition, some Mediterranean States have collapsed, and the implementation of the MAP provisions is not possible when basic state capacities are not ensured, since state authorities have to face growing and complex domestic problems⁴⁷⁰. This is the case of Lebanon, Libya and Syria.

The necessity to collectively face environmental issues in the Mediterranean seems incompatible with the ineffective action of some States involved. Indeed, “without a minimum level of state capacity, there is no policy development for experts to influence, nor any place for the institutionalization of environmentally friendlier principles and policy norms to occur”⁴⁷¹.

In addition to this, programme developed to fill the gap of lacking state capacity in the area have been considered insufficient since most of these programmes aim to increase technical state capacity, disregarding the institutional, social, cultural, administrative area in which these programmes have to be implemented⁴⁷². Indeed, it seems reliable to affirm that policies aiming at solving a precise environmental problem in Lebanon can not be the same implemented in France, considering not only state juridical framework but even the political sensibility to the matter, fundings, institutions involved and administrative capabilities. Furnishing technologies or increasing the application of these in States where the state authority is not able to ensure the development and effective use of these technologies seems insufficient to fill the gap between North and South countries in the Mediterranean.

As a matter of facts, differences in relation with state capacity are strictly related to differences in political concern over environmental issues⁴⁷³. Where

⁴⁶⁸ VANDEEVER (1999: 10).

⁴⁶⁹ VANDEEVER (1999: 21).

⁴⁷⁰ VANDEEVER (1999: 23).

⁴⁷¹ VANDEEVER (1999: 22).

⁴⁷² VANDEEVER (1999: 23-24).

⁴⁷³ CHUNG (2004: 98-100).

state authority can not provide to citizens basic life standards, it seems unreliable it may be willing to deal with environmental issues, that are unfortunately still deemed secondary vis-à-vis other issues .

Differences in political concern over environmental issues and lacking state capacity seems incompatible with an effective implementation of common and collective agreed measures to face the collective problems these measures try to face.

In fact, the lacking or insufficient Southern States capacity in the implementation of the MAP is countered by intensive interest North countries of the Mediterranean – and European countries in particular – have in the area. Indeed, the European Union – while being a signatory of the Barcelona Convention – has developed numerous programmes implemented and founded at EU level that aim at improving the environmental situation in the Mediterranean. The EU competencies are combined with national and local authorities in relation with coastal zone management, regional development, fisheries, environment, energy and industrial policies⁴⁷⁴. Most of these programmes have been developed in the framework of the Union for the Mediterranean ('UfM')⁴⁷⁵, that is an intergovernmental institution where all the EU countries and 15 other States dialogue and cooperate in order to ensure sustainable development in the Mediterranean, promoting research, scientific and technical innovations and increasing employment opportunities⁴⁷⁶. The policies of the UfM have attempted to face the vulnerabilities of the Southern countries of the Mediterranean and to support them with programmes and funds to ensure their alignment with the development path of the Northern countries. The actors involved in the MAP framework have developed numerous joint programmes with the UfM, and collaboration among different institutions in the Mediterranean is useful for knowledge and best practices sharing.

Notwithstanding, involving all the EU countries in developing regional policies may have undesired counter-effects, according to the author of this dissertation. Indeed, since insufficient political willingness has been recognised as a problem even for Mediterranean States, it is reliable that EU MSs non-bordering the Mediterranean may have even fewer national interests

⁴⁷⁴ BELFIORE (1996: 220).

⁴⁷⁵ The UfM Member States are: Albania, Algeria, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Jordan, Latvia, Lebanon, Lithuania, Luxemburg, Malta, Mauritania, Monaco, Montenegro, Morocco, The Netherlands, Palestine, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Syria, Tunisia, Turkey. It is relevant to consider that Syria has suspended its membership in 2011, while Libya has been granted observer status. Syria and Libya are among the countries that have been mentioned above in relation to the lacking state capacities that the national authorities have demonstrated considering the implementation of the MAP projects and the provisions of the Barcelona Convention. The suspension of Syria and the limited membership of Libya in the UfM exacerbate the possibilities these countries have to ensure environmental safeguard in their maritime jurisdictions.

⁴⁷⁶ SCOLLUS & FERRAGINA (2010: 29-30).

in dealing with Mediterranean environmental issues. Enlarging cooperation in relation with specific environmental problems of one specific area may exacerbate possibilities to effectively cooperate.

In point of fact, the EU action can be classified considering strategies involving Mediterranean EU Member States, and more enlarging policies including EU MSs and non-EU MSs, like the UfM framework.

In relation with the strategies involving Mediterranean EU Member States, the first, binding, regulatory directive enacted by the EU and applying to EU MSs EEZs is the Marine Strategy Framework Directive ('MSFD'), enacted in 2008⁴⁷⁷. The latter is an integrated and framework directive aiming at safeguarding the marine areas of the European Seas and applies to the Mediterranean indeed.

Being a directive, the MSFD does not define specific goals and targets; indeed, it only defines the general framework in which the directive should be implemented, and leaves MSs space to define the practical aspects and specific provisions to ensure compliance with the directive. This aspect emerges in relation with the first step necessary to implement the MSFD. MSs have been asked to define GES in its own marine waters, however 11 descriptors have been identified by the EU in order to guide the MSs in the peculiar definition of GES in their jurisdictional waters. Most of the GES indicators defined by the MSFD are the same embraced by the MAP in relation with the application of the EcAp⁴⁷⁸. Secondly, MSs have to define the monitoring system for the assessment of the implementation of the GES. Lastly, Programmes of Measure ('POMs') have to be drafted by the MSs that contains guidelines for the identification, recording and implementation new or existing measures that are deemed efficient to ensure GES, and action plans, awareness- raising activities to support the implementation of the POMs⁴⁷⁹.

Notwithstanding, the directive is institutionally ambiguous. Indeed, it makes the framework for environmental safeguard in the Mediterranean complex for EU MSs, that are asked to comply with the legal provisions of the Barcelona Convention and with the MSFD. Additionally, it makes the gap between EU MSs and non-EU MSs even deeper, since "the requirements of the MSFD cannot be directly incorporated into the processes of the Barcelona Convention, hampering coordination and collaboration"⁴⁸⁰.

It is possible to affirm that even in relation with environmental legislation the Mediterranean lays in "jurisdictional asymmetry"⁴⁸¹: while Southern Mediterranean States have insufficiently implemented environmental legislation, EU MSs have to deal with different legislative frameworks that overlap.

⁴⁷⁷ LOIZIDOU (2017: 82).

⁴⁷⁸ See Chapter 3, para. 3.1.2 The implementation of the Ecosystem Approach and Good Environmental State in the Mediterranean.

⁴⁷⁹ LOIZIDOU (2017: 82).

⁴⁸⁰ LOIZIDOU (2017: 82).

⁴⁸¹ See Chapter 2, Section I, para. 2.1 The International Legal Regime in the Mediterranean.

3.2.3. Mediterranean States unequal implementation of the legal provisions and lacking financial contributions.

The differences among States in the Mediterranean Sea area do not only influence the actual and effective implementation of the MAP framework, but this played a crucial role in the establishment of the UNEP/MAP – Barcelona Convention System itself. As a matter of fact, the difference among actors involved in the drafting of the legal instrument has demonstrated to be another vulnerability of the whole framework. Indeed, it has been questioned whether the Barcelona Convention and the Protocols are the most efficient legal instrument to ensure environmental cooperation in the Mediterranean. The Convention and the Protocols are legally binding and ambitious instruments having the form of hard law that has been considered less effective in producing desired effects when a low level of commitment is present between CPs. Indeed, when actors having different degree of political commitment and capability to comply with stringent provisions negotiate, the tendency is to adopt “low and ineffective standards”⁴⁸². Indeed, it has been acknowledged that probably “soft-law based institution could have provided more flexibility to reluctant states and created like-minded enthusiasm among the states”⁴⁸³. In relation to this, it is possible to discuss the effectiveness of the UNEP/MAP – Barcelona Convention considering the effective compliance and implementation of the CPs to the legal system, that can be measured considering the date of entry into force of the different legal instruments. As a matter of fact, evaluating the effectiveness of the international regime is complex, and considering the time frame for the actual implementation of the provision seems a reliable measurement. Indeed, to assess the improvement or worsening of the state of the environment in the Mediterranean would require measuring the direct consequences of the effects of the policies established, and this is complex in environmental-related issues since many different environmental problems interconnect. Indeed, embracing such measurement would require “knowledge of the counter-factual e namely, what would have happened if there had been no regime in existence”⁴⁸⁴. Due to the complex and uncertain relation between regime and environmental performance, considering the date of entry into force of the different legal instruments seems the most reliable strategy to discuss the effectiveness of the UNEP/MAP – Barcelona Convention System⁴⁸⁵. This information is collected in Table 4⁴⁸⁶.

⁴⁸² CHUNG (2004: 101).

⁴⁸³ CHUNG (2004: 101).

⁴⁸⁴ FRANTZI ET AL. (2009: 178-179).

⁴⁸⁵ FRANTZI ET AL. (2009: 178-179).

⁴⁸⁶ Document of the UNEP, 2020, *Signatures and Ratifications of the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols*.

CPs	Barcelona Convention		1976 Dumping Protocol	2002 Prevention and Emergency Protocol
	Acceptance of 1995 Amendments	Entered into force	Acceptance of 1995 Amendments	Entered into force
Albania	26.07.01	09.07.04	26.07.01	-
Algeria	09.06.04	09.07.04	-	14.12.16
Bosnia and Herzegovina	19.10.2020	18.11.2020	-	
Croatia	03.05.99	09.07.04	03.05.99	17.03.04
Cyprus	18.07.03	09.07.04	18.07.03	18.01.08
EU	12.11.99	09.07.04	12.11.99	25.06.04
Egypt	11.02.00	09.07.04	11.02.00	-
France	29.03.01	09.07.04	29.03.01	17.03.04
Greece	10.03.03	09.07.04	-	27.12.06
Israel	29.09.05	29.10.05	-	10.10.14
Italy	07.09.99	09.07.04	07.09.99	30.07.16
Lebanon	22.04.09	22.05.09	-	03.12.17
Libya	12.01.09	11.02.09	-	-
Malta	28.10.99	09.07.04	28.10.99	17.03.04
Monaco	11.04.97	09.07.04	11.04.97	17.03.04
Montenegro	19.11.07	19.12.07	-	19.12.07
Morocco	07.12.04	06.01.05	05.12.97	26.05.11
Slovenia	08.01.03	09.07.04	08.01.03	17.03.04
Spain	17.02.99	09.07.04	17.02.99	09.08.07
Syria	10.10.03	09.07.04	11.04.08	11.05.08
Tunisia	01.06.98	09.07.04	01.06.98	-
Turkey	18.09.02	09.07.04	18.09.02	17.03.04

CPs	1980 LBS Protocol		SPA & Biodiversity Protocol		
	Acceptance of 1996 Amendments	Entered into force	Entered into force	Amendments to Annexes II & III Entered into force	Amendments to Annex II Entered into force
Albania	26.07.01	11.05.08	25.08.01	16.04.15	14.09.18
Algeria	-	-	13.04.07	16.04.15	14.09.18
Bosnia and Herzegovina	-	-	-	-	
Croatia	11.10.06	11.05.08	12.05.02	16.04.15	14.09.18
Cyprus	18.07.03	11.05.08	17.08.03	16.04.15	14.09.18
EU	12.11.99	11.05.08	12.12.99	16.04.15	14.09.18
Egypt	-	-	12.03.00	16.04.15	14.09.18
France	29.03.01	11.05.08	16.05.01	16.04.15	14.09.18
Greece	10.03.03	11.05.08	-	-	-
Israel	19.06.09	19.07.09	-	-	-
Italy	07.09.99	11.05.08	12.12.99	16.04.15	14.09.18
Lebanon	-	-	-	-	-
Libya	-	-	-	-	-
Malta	28.10.99	11.05.08	12.12.99	16.04.15	14.09.18
Monaco	26.11.96	11.05.08	12.12.99	16.04.15	14.09.18
Montenegro	19.11.07	11.05.08	19.12.07	16.04.15	14.09.18
Morocco	02.10.96	11.05.08	25.05.09	16.04.15	14.09.18

Slovenia	08.01.03	11.05.08	07.02.03	16.04.15	14.09.18
Spain	17.02.99	11.05.08	12.12.99	16.04.15	14.09.18
Syria	11.04.08	11.05.08	09.11.03	16.04.15	14.09.18
Tunisia	01.06.98	11.05.08	12.12.99	16.04.15	14.09.18
Turkey	18.09.02	11.05.08	18.10.02	16.04.15	14.09.18

CPs	1994 Offshore Protocol	1996 Hazardous Wastes Protocol	2008 Integrated Coastal Zone Management (ICZM) Protocol
	Entered into force	Entered into force	Entered into force
Albania	24.03.11	18.01.08	24.03.11
Algeria	-	-	-
Bosnia and Herzegovina	-	-	-
Croatia	10.03.18	-	28.02.13
Cyprus	24.03.11	-	-
EU	29.03.13	-	24.03.11
Egypt	-	-	-
France	-	-	24.03.11
Greece	-	-	-
Israel	-	-	02.03.2016
Italy	-	-	-
Lebanon	-	-	31.08.2017
Libya	24.03.11	-	-
Malta	-	18.01.08	10.05.2019
Monaco	-	-	-
Montenegro	-	18.01.08	08.02.12-
Morocco	24.03.11	18.01.08	21.10.12
Slovenia	-	-	24.03.11
Spain	-	-	24.03.11
Syria	24.03.11	24.03.11	24.03.11
Tunisia	24.03.11	18.01.08	-
Turkey	-	18.01.08	-

Table 4: Signatures and Ratifications of the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols as at 29 October 2020

For what concerns the acceptance of amendments to the 1995 Barcelona Convention, it is possible to notice that there is a huge degree of difference between the different States. Bosnia has accepted the amendments in 2020, while Tunisia has been the first in 1997. Most of the States have accepted the amendment between 2000 and 2007, while the others prior to the end of the 1999. For what concerns the entry into force of the Convention, for most of the States it became effective in 2004 – the BC was amended in 1995, so 9 years passed – and only for Israel, Lebanon, Libya, Montenegro, Morocco the amended BC entered into force after 2004.

Concerning the amendments to the 1976 Dumping Protocol, Algeria, Bosnia and Herzegovina, Greece, Israel, Lebanon, Libya and Montenegro still have not accepted them. Additionally, Syria has been the last to accept the

amendments – in 2008 – while the first States were Monaco and Morocco in 1997.

A huge degree of difference in relation with the date of entering into force is present even in relation with the 2002 Prevention and Emergency Protocol. Tunisia, Libya, Egypt and Albania still have not ratified it while the last States to accept the amendment has been Lebanon, and the first have been Croatia, EU, France, Malta, Monaco, Slovenia and Turkey in 2004.

In relation with the LBS Protocol of 1980, the date of entering into force in this case is the same for all the States that have adopted it – 2008 – while some others have not adopted the Protocol in general. These are Algeria, Bosnia and Herzegovina, Egypt, Lebanon, and Libya. The SPA and Biodiversity Protocol entered into force in different periods for numerous States: the period comprises the years between 1999 and 2007.

The last three Protocols – Offshore, Hazardous Wastes, ICZM – are not in force for the majority of states. For example, the Hazardous Waste protocol has not been adopted by 15 States.

These differences in effective implementation of the legally binding provisions make the legal framework even more weak. Indeed, it has been argued that collective action is necessary in relation with environmental concern, and these differences exemplify lacking state capacities and low political commitment to the cause. Indeed, it does not always exist a “positive relationship between well-designed institutional arrangements based on the Convention-Protocol approach and an effective clean-up of regions affected by marine pollution for which the arrangements are designed”⁴⁸⁷.

As a matter of fact, the BC and the Protocols, while being legally binding and hard law instruments – which should ensure a strict implementation of the provisions – in point of fact are not sufficient to ensure implementation due to delays in entering into force.

In addition to this, another example that demonstrates that a binding, well-designed framework is not sufficient to ensure environmental cooperation is related to financial contributions.

The status of the ordinary contributions to the MTF are collected in Table 5.

⁴⁸⁷ CHUNG (2004: 103).

Ordinary Contributions to MTF													
Country	Unpaid Pledges for 2018 and prior years	Unpaid Pledges for 2019	Unpaid Pledges for 2020	Unpaid Pledges as of 31/12/2020			Pledges for 2020	Collections for 2020		Pledges for 2021	Collections for 2021	Unpaid Pledges for 2021	Deferred Income
	EUR	EUR	EUR	EUR			EUR	EUR		EUR	EUR	EUR	EUR
Albania	-	-	-	-			3.467	3.467		3.467	3.467	-	3.467
Algeria	148.829	29.150	-	177.979			59.801	59.801		59.801	-	59.801	
Bosnia and Herzegovina	-	-	-	-			5.200	5.200		5.200	5.200	-	
Croatia	-	-	-	-			33.367	33.367		33.367	33.367	-	
Cyprus	-	-	-	-			15.600	15.600		15.600	15.600	-	
Egypt	-	-	-	-			80.602	80.602		80.602	-	80.602	
European Union	-	-	-	-			142.670	142.670		142.670	142.670	-	
France	-	-	-	-			1.918.407	1.918.407		1.918.407	1.918.407	-	
Greece	-	-	-	-			158.603	158.603		158.603	158.603	-	
Israel	-	-	-	-			212.338	212.338		212.338	-	212.338	
Italy	-	-	-	-			1.433.064	1.433.064		1.433.064	1.433.064	-	
Lebanon	8.646	18.499	20.367	47.512			20.367	-		20.367	-	20.367	
Libya (State of Libya)	604.662	50.268	13.000	667.930			13.000	-		13.000	-	13.000	
Malta	-	-	-	-			7.367	7.367		7.367	7.367	-	
Monaco	-	-	-	-			4.767	4.767		4.767	4.767	-	
Montenegro	-	-	-	-			1.733	1.733		1.733	1.733	-	
Morocco	-	-	-	-			23.834	23.834		23.834	23.834	-	
Slovenia	-	-	-	-			32.934	32.934		32.934	32.934	-	
Spain	-	-	-	-			929.953	929.953		929.953	929.953	-	
Syrian Arab Republic	102.615	9.652	4.767	117.034			4.767	-		4.767	-	4.767	
Tunisia	-	-	-	-			10.834	10.834		10.834	-	10.834	
Turkey	-	-	-	-			594.113	594.113		594.113	594.113	-	
TOTAL	864.752	107.569	38.134	1.010.455			5.706.788	5.668.654		5.706.788	5.305.079	401.709	3.467

Year	2016	2017	2018	2019		2020		2021
Collection Rate	98,46%	97,82%	97,82%	98,12%		99,33%		92,96%

EC Discretionary Contribution												
						Expected contribution for 2020	Received contribution for 2020		Expected contribution for 2021	Received contribution for 2021	Open Receivable for 2021	
						EUR	EUR		EUR	EUR	EUR	
European Commission						596.484	596.484		596.484	596.484	-	

Host Country Contribution												
						Expected contribution for 2020	Received contribution for 2020		Expected contribution for 2021	Received contribution for 2021	Open Receivable for 2021	
						EUR	EUR		EUR	EUR	EUR	
Greece						344.800	354.437		344.800	355.200	-	

Table 5: Status of Assessed Ordinary Contributions apportioned to Parties of the Barcelona Convention as of 31 December 2021⁴⁸⁸

As it is possible to notice from Table 5, the Unpaid pledges for 2021 are numerous: Albania, Egypt, Israel, Lebanon, Libya, Syria and Tunisia have not versed their contributions in 2021. It is relevant to consider that Lebanon, Libya, and Syria have not versed their contributions in 2020 as well.

It is possible to assert that while the collective legal framework is established and has binding nature, States singularly do not ensure implementation due to delayed adoption of legal documents and lacking financial contributions.

⁴⁸⁸ Document of the MTF, 2021, *Status of Assessed Ordinary Contributions apportioned to Parties of the Barcelona Convention*.

National contribution however is complex to assess, and the vulnerabilities of the framework are evident. Notwithstanding, it is not possible to deny the relevance of the legal, institutional and scientific component in Mediterranean cooperation in relation with environmental issues. It has been stated that probably the most relevant contribution of the MAP has not been to concretely face environmental issues in the area, however to increase public concern and boost attempt to find commonly agreed measures that still need to be enforced⁴⁸⁹.

⁴⁸⁹ SKJÆRSETH (1996: 49).

Conclusion

The aim of this dissertation has been to evaluate the effectiveness in ensuring environment protection in the Mediterranean as envisaged by the UNEP/MAP – Barcelona Convention System.

In order to do so, the topic has been analysed considering different aspects: firstly, it has been discussed in relation with the historical context in which the UNEP/MAP – Barcelona Convention System has been drafted. Secondly, the actual institutional framework has been described, considering the legal instrument adopted and the institutions involved. Lastly, strength points and vulnerabilities of the framework have been discussed.

In particular, the main aim of Chapter 1 has been to embrace an historical perspective that may enable us to understand the reasons that led to environmental cooperation in the Mediterranean. In order to do so, it has been considered the global framework in which regional cooperation developed. The Stockholm conference and the establishment of the UNEP set the basis for environmental cooperation in general. Successively, the UNEP Regional Seas Programme has been discussed, and it has been acknowledged that the Mediterranean has been given a pivotal role in the initial assessment of the regional programme for environmental cooperation. Furthermore, the characteristics that make the Mediterranean a particularly fragile ecosystem have been described. It has been recognised that it had been the recognition of high tangible levels of pollution in the Mediterranean that boosted cooperation, and similarly happened at global level prior to the Stockholm conference.

Additionally, the first phase of the Mediterranean Action Plan has been described, considering the legal, scientific, integrated management and institutional and financial components that have been developed. More particularly, in relation to the MAP – PHASE I the 1975 Barcelona Convention, the MED POL PHASE I and PHASE II, the Blue Plan and finally the financial arrangements of the MAP – PHASE I have been considered.

Subsequently, it has been briefly described the process of revision and amendment that the MAP - PHASE I have been subject to after the UNCED in 1994. Again, indeed, the global context shaped the regional one, and the huge improvement made during the UNCED in relation with conceptualization and principles embraced in environmental cooperation made the MAP - PHASE I an obsolete framework that needed to be updated. The most crucial element of innovation has been the definition of the concept of sustainable development, that embraces intergenerational equity in the definition of development strategies. The scope of the principle and the whole innovation process adopted in Rio has been reflected in different documents drafted during the Conference of Plenipotentiaries to the Barcelona Convention in 1995. The latter has been the final step initiated some years

before, aimed at aligning the UNEP/MAP – Barcelona Convention System to the Rio process. The documents adopted are the amended Barcelona Convention, the Dumping and the SPA Protocols, and the Barcelona Resolution on the Environment and Sustainable development in the Mediterranean Basin, containing the definition of MAP – PHASE II and the initial steps to be followed for the establishment of the MCSD.

While Chapter 1 of this dissertation attempted to describe the historical path that has brought to the adoption of the UNEP/MAP – Barcelona Convention System, Chapter 2 aimed at describing the actual legal and institutional framework for environmental cooperation and safeguard in the Mediterranean Sea Area. The historical perspective has been abandoned, and the current “architecture” of environmental cooperation in the Mediterranean is analysed. Indeed, in Chapter 2 the MAP – PHASE II has been described. Again, a sectoral approach has been adopted to define specifically the components of the Action Plan, the actors involved, and its geographical scope. The aim has been to define the actual framework envisaged by Mediterranean countries to cooperate in environmental related issues.

In order to do so, the international law provisions that apply in the Mediterranean Sea Area in relation with the Law of the Sea have been described. It has been asserted that the Mediterranean lies in “jurisdictional asymmetry” in relation with the application of the UNCLOS, since most of the area lies under high sea regime, however there is no part of the continental shelf that is not under the jurisdiction of national States. In addition, Mediterranean countries have enacted legislation defining maritime boundaries that are not specifically mentioned in the UNCLOS. Notwithstanding this approach is not expressly prohibited by the UNCLOS, States declaring ecological, or fishing protection zones have contributed to complicate the uniform application of the commonly agreed provisions of the UNCLOS.

Subsequently, the most relevant amendments to the Barcelona Convention have been discussed. Indeed, the amendatory process of the convention began in the late 90s after the Rio process enlarged the scope of the Convention and made the cooperative efforts of the Mediterranean States more defined and comprehensive. The same approach has been endorsed in relation with the seven protocols to the 1995 Barcelona convention. Some have been amended while some have been adopted anew. In addition, the states that have ratified, accepted or approved the protocols have been identified.

In the last section, the institutional component of the UNEP/MAP – Barcelona Convention System has been described. This is based on the intertwined role played by the institutional governing bodies and the MAP Components. The institutional governing bodies are the Meeting of the CPS, the Compliance Committee and the Mediterranean Commission on Sustainable Development. Lastly, the role and duties of the MAP Components have been described. These include the MAP Coordinating Unit, the MEDPOL and the six RACs, which are: REMPEC, BP/RAC, PAP/RAC, SPA/RAC, CP/RAC and

INFO/RAC. The latter play a crucial role in implanting the legal provisions of the MAP framework, and these put into action numerous and various activities peculiarly attributed to single RAC, which are geographically distributed in different coastal cities of the Mediterranean Sea Area.

Chapter 3 attempted to evaluate the UNEP/MAP – Barcelona Convention System. In order to do so, the innovative features, the strengths points have been discussed and the vulnerabilities of the system have been analysed.

It is relevant to consider that the whole framework for environmental safeguard in the Mediterranean has developed into a context of conflict and harsh confrontations, since bordering countries of the Mediterranean have a long history of disputes among them. However, this conflictual context has been overcome mostly due to the relevance played by the ecologic epistemic community. The latter is described as a community of scientists, experts and technical factors that have agreed on a shared base of knowledge related to the state of the environment in the Mediterranean and have influenced national authorities accordingly. It has been stated that the presence of the ecologic epistemic community has permitted the overcoming of political conflictual stances due to the necessity to face increasing environmental degradation.

In addition to this, the framework for environmental safeguard in the Mediterranean is innovative in relation with the implementation of Ecosystem Approach ('EcAp') in environmental policies definition. The latter consider the necessity to take into account and assess the possible negative consequences deriving from environmental policies, in relation to the ecosystem these are put into action. Additionally, the EcAp implementation is supported by a precise conceptual framework - based on the Good Environmental Status concept and the definition of the Ecological Objectives – and by the Integrated Monitoring and Assessment Programme of the Mediterranean Sea and Coast ('IMAP'), that is a project aiming at providing scientific assessment and knowledge for the efficient implementation of the EcAp.

As a matter of fact, the UNEP/MAP – Barcelona Convention System is a vulnerable and ineffective framework. While it is not possible to neglect the relevance it played in ensuring management and cooperation for environmental protection in the area, the last two reports published by the UNEP in conjunction with other institutions demonstrated that the actual state of the environment in the Mediterranean is still under considerable stress.

The reasons explaining the ineffectiveness of the UNEP/MAP – Barcelona Convention system are numerous. Firstly, the gap between the North and South share of the Mediterranean is far from being solved. While South Mediterranean States lack technical, institutional, political, and financial capacity to implement the commonly agreed provision envisaged by the MAP, the European States bordering the Mediterranean have to deal with different legislative frameworks, the Barcelona Convention and the Protocols and the EU legislation on maritime issues safeguard. In particular, while the policies developed by the EU have been developed considering the MAP framework,

these are valid only for EU Mediterranean States, and in practice contrast with the MAP legal components. In addition, in order to assess and demonstrate the lacking state capacity the date of entering into force of the different legal components have been discussed. It has emerged that CPs have adopted the legal components with a huge difference in relation with timing. This demonstrates the gaps of the framework that has been developed to ensure collective action. Additionally, many CPs do not provide their contributions to the MTF. Without financial contributions, the effective implementation of policies, research, and cooperative efforts are nullified.

The vulnerabilities of the UNEP/MAP – Barcelona Convention System demonstrate that in some cases a huge gap is present between theoretical and practical implementation. The development of hard-law instruments, binding for all the CPs, has been exacerbated by the CPs inability to effectively put into action the legal obligations and their financial contributions.

The Mediterranean Sea Area seems to be a complex area even in relation to environmental issues. While the UNEP/MAP – Barcelona Convention System seemed an effective and comprehensive framework for environmental safeguard, in practice the Mediterranean ecosystem is collapsing.

To conclude, it seems evident that there is a problem of implementation in relation to the MAP framework. However, an effective methodology to efficiently measure implementation in relation with environmental legislation in the Mediterranean would be to singularly consider national legislation of the Mediterranean States promulgated to ensure compliance to the Barcelona Convention and the Protocols, and evaluate it. Indeed, it could be a further aspect to investigate and improve this investigation of the UNEP/MAP – Barcelona Convention System.

According to the author of this dissertation, the UNEP/MAP – Barcelona Convention System is definitely “State-centric”. Indeed, while it is acknowledged that in order to face environmental issues – in general – courageous State policies are necessary to ensure more sustainable practices, national authorities’ policies are the consequence of the attempt to answer to citizen’s requests – democracies, at least, work in this way. The point is that the lacking implementation of environmental legislation by the national authorities is attributable to a lacking interest citizens have in relation with environmental issues. In order to ensure compliance, it is necessary for the environmental problems to become a concern of the majority of the population of the country to make national authorities accountable for their inaction. The perspective to ensure promotion, enforcement and improvement of citizens sensitivity in relation with environmental issues is lacking in the UNEP/MAP – Barcelona Convention System. According to the author of this dissertation, it is necessary to fill this gap in UNEP/MAP – Barcelona Convention Systems to make the framework more efficient. In this way, the national authorities become accountable to their own citizens in relation with the international legal binding documents they have adopted. The two perspectives – the State-centric and the population-centric – are not mutually exclusive. These have to

be implemented jointly in order to ensure the effective implementation of environmental legislation adopted.

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Executive Summary

The topic of this dissertation is the UNEP/MAP – Barcelona Convention System, and the main aim of this analysis is to investigate it, on account of its innovative features and vulnerabilities to discuss the effectiveness of the regional institutional framework for environment protection of the Mediterranean.

In order to elaborate on the effectiveness of the framework, it is deemed necessary to consider the historical context that influenced the establishment of the UNEP/MAP – Barcelona Convention System, and this is the main topic of Chapter 1.

In particular, during Chapter 1 the evolution of environmental law in general is described, in order to define the influence that this had on environmental regional cooperation. In particular, the role played by the 1972 Stockholm conference and the 1992 Rio Conference is described. These global conferences on the environment boosted the ratification of pivotal legislative acts and ensured the definition of principles of environmental law that shaped the beginning of environmental cooperation in specific regions of the world. In relation to this, the role played by the UN considering environmental legislation and cooperation has been pivotal. More specifically, the UNEP has been established during the Stockholm Conference, aiming at ensuring coordination of environmental cooperation. One of the main tasks of the UNEP has been to boost regional cooperation, and the Regional Seas Programme has been established. These are peculiar regional action plans having legal, financial, institutional and scientific assessment components that have been developed to ensure the safeguard of specific ecosystems – like in the case of the Mediterranean. The Mediterranean Action Plan (‘MAP’) is the most advanced and efficient programme developed under the auspices of the UNEP Regional Seas Programme.

The reasons that led Mediterranean bordering States to give major relevance to the Mediterranean Seas Area are different. Indeed, the Mediterranean Sea Area has been considered particularly vulnerable to environmental degradation, and that is why the MAP has been the first programme developed by the Regional Seas Programme. It has been acknowledged that crucial and tangible conditions of the environment in the area, and the pressing issue of population increasing played a decisive role in boosting cooperation for environmental safeguard in the Mediterranean. In order to face the endangered state of the environment of the Mediterranean, the MAP – PHASE I has been defined by the Mediterranean States. The latter is a comprehensive action plan based on four components – legal, scientific, financial and integrated management. The legal component of the MAP – Phase I is the 1975 Convention for the Protection of the Mediterranean Sea against Pollution and the first two related Protocols (the “Dumping” and the “Emergency” protocols), that were adopted by the Conference of Plenipotentiaries of the

Mediterranean Coastal States for the Protection of the Mediterranean Sea, held in Barcelona in 1976. Additionally, the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources (1980) and the Protocol Concerning Mediterranean Specially Protected Areas (1982) have been subsequently adopted. The 1975 Barcelona Convention and the related protocols were binding agreements between Mediterranean bordering countries having the aim of defining the rule for environmental cooperation in the area, in order to ensure the safeguard on the regional environment.

The scientific component of the MAP – PHASE I was based on the efforts of the MEDPOL to assess pollution in the area. In order to do so, the MEDPOL worked in conjunction with international institutions – for example, the General Fisheries Council for the Mediterranean (‘GFCM’) – to recollect reliable data on the state of the environment in the Mediterranean. The integrated management component was based on the efforts of the Regional Centres called the Blue Plan (BP/RAC) and the Priority Area Programme Regional Activity Centre (PAP/RAC), having the main aim to ensure the management of marine resources in the area. Lastly, the Mediterranean Trust Fund has been established in MAP – PHASE I and it is the financial component of the Mediterranean Action Plan. However, financial rules and regulation will be more specifically defined in the following decades.

As a matter of fact, the MAP implemented during the 70s has been subject to an intensive project of revision after the conclusion of the 1992 Rio conference on Environment and Development, during which the globally endorsed principles of environmental law have been drafted – the polluter pays principles, the common but differentiated responsibilities principle, just to mention some. The influence of the Rio process is discussed in relation with the innovation and amendment adopted for the MAP. In particular, during the conference of the Plenipotentiaries to the Barcelona Convention in 1995, the 1975 Barcelona Convention, the Dumping and the SPA Protocols have been amended, and the Barcelona Resolution on the Environment and Sustainable development in the Mediterranean Basin has been drafted. The latter contains the description of MAP – PHASE II and the initial steps to be followed for the establishment of the Mediterranean Commission on Sustainable Development (‘MCSD’).

In Chapter 2 the actual framework of the UNEP/MAP – Barcelona Convention System is described, in order to draw a clear picture of the institutional, legal, scientific framework for environmental protection in the Mediterranean Sea Area after the amendment process began in 1995. The Chapter is divided into two sections: Section I considers in particular the legal framework of the UNEP/MAP System, that consists in the amended Barcelona Convention and the seven additional protocols to the Convention. Section II focuses on the description of the actual institutional framework and financial provisions.

For what concern Chapter 2, Section I, the most peculiar aspects of the complex international legal framework in the Mediterranean Sea Area are discussed. To begin with, the legal status of the Mediterranean and the

delimitation of the maritime boundaries according to the UNCLOS is considered. In relation to this, it has been acknowledged that the Mediterranean is in a condition of “jurisdictional asymmetry” in relation to maritime boundaries delimitation according to the UNCLOS provisions. Indeed, most of the Mediterranean Sea area is considered high sea, meaning that is out of national jurisdiction and that even non-Mediterranean countries may exercise their rights in relation with passage or fishing, according to the UNCLOS general provisions. The reasons determining the jurisdictional asymmetry are the conflicts among Mediterranean States – that make the definition of agreement for maritime boundaries complex – and the unilateral action of some Mediterranean States, that have declared zones of control – fishing or ecological zone – that are not specified in the UNCLOS, making the definition of rights and duties the States may exercise in the area difficult to be defined.

Subsequently, the Barcelona Convention and the provisions included in the different articles are discussed in details. The amended Barcelona Convention is considered a framework agreement, providing general guidelines to follow enabling the definition of a dynamic and flexible legal framework. Indeed, the drafting of specific and binding Protocols ensures a more effective definition of policies to follow in order to face specific environmental issues in the area. In addition, during Chapter 2 the content of the seven protocols is discussed. These are the Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea, the Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea, the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities, the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean, the 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 the Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal, and lastly the Protocol on Integrated Coastal Zone Management in the Mediterranean.

In contrast, Chapter 2 Section II focuses on the description of the numerous organs establishing the institutional framework of the UNEP/MAP – Barcelona Convention System. The main aim is to consider the mandate, role and functions of the different organs involved. To begin with, the role of the institutional governing bodies is described. These are the Meeting of the Parties to the Barcelona Convention, (‘MOPs’), the Compliance Committee and the Mediterranean Commission on Sustainable Development.

The MOPs main task is ensuring the implementation of the legal provisions of the MAP. Indeed, it checks the CPs comply with the reporting systems envisaged by the Barcelona Convention, through which the CPs report on national policies endorsed to ensure legal compliance to the international convention, at national level. In addition, the MOPs has amendatory power in

relation with the Barcelona Convention and the Protocols. Furthermore, the implementation duty of the MOP is enforced by the collaboration with the Compliance Committee considering the Compliance mechanism under the Barcelona Convention. The latter is formed by 14 members elected by the MOPs, and it has the main duties to analyse possible cases of non-compliance and solve non-compliance cases, by supporting, solving and advising the CP involved.

The MCSD is the first commission ever established at regional level dealing specifically with sustainable development. The mandate is based on two main functions: to elaborate on the possible consequences of unsustainable development – socially, economically and ecologically – and to strengthen regional cooperation in order to ensure the integration of sustainable development approaches in intergovernmental decisions.

The MCSD drafted and elaborated on the Mediterranean Strategy on Sustainable Development ('MSSD'), which is a comprehensive guiding document aiming at proposing strategies to propose a paradigmatic change in governance of Mediterranean issues, considering sustainable development.

The Strategy is based on six guiding principles: Ensuring sustainable development in marine and coastal areas; Promoting resource management, food production and food security through sustainable forms of rural development; Planning and managing sustainable Mediterranean cities; Addressing climate change as a priority issue for the Mediterranean; Transition towards a green and blue economy; Improving governance in support of sustainable development.

In addition to the institutional governing bodies, the MAP Components are described. These can be considered complementary organs to the institutional governing bodies which deal with different and numerous functions, and these are the MAP Coordinating Unit, the MEDPOL and the six Regional Centres ('RACs') which are present in different coastal cities of the Mediterranean.

The MAP Coordinating Unit acts as Secretariat to the Convention, and it puts into action numerous and relevant activities. Among them, it ensures the development and enforcement of dialogue and collaboration between the MAP Components and other organs and institutions which are active in the area and that deal with environmental issues. Indeed, it has been acknowledged that the MAP Coordinating Unit has enforced and concretized the trans nationalization of environmental governance. Additionally, it ensures knowledge sharing in relation to environmental governance with the other Regional Seas Programmes, it reinforces cooperation and public information, and it drafts the five years Programme of Work.

In relation with the MEDPOL, it is the scientific component of the MAP, and it has been the first operational programme established in the institutional framework. It has the mandate to develop pollution assessment programmes, to share information and scientific findings and to strengthen CPs capabilities for its areas of interest. Three lines of action for the MED POL can be defined: pollution monitoring and assessment, pollution control policies and measures, capacity building and technical assistance.

The last components of the MAP are the Regional Activity Centres ('RACs'), which are operational Centres headquartered in different countries of the Mediterranean Sea Area that aim at dealing with different areas and subjects covered by the complex legal framework of the MAP. These ensure the centralization of environmental governance through decentralized action.

The RACs have different mandate, and each of these deal with a peculiar aspect of the MAP, and these are the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea ('REMPEC'), the Blue Plan Regional Activity Centre ('BP/RAC'), the Priority Actions Programme Regional Activity Centre ('PAP/RAC'), the Specially Protected Areas Regional Activity Centre ('SPA/RAC'), the Regional Activity Centre for Cleaner Production ('CP/RAC'), and the Regional Activity Centre for Information and Communication ('INFO/RAC').

In the last section of Chapter 2 the functioning and mechanisms for financial contributions are described, and the Mediterranean Trust Fund ('MTF') role in ensuring funds to the UNEP/MAP – Barcelona Convention System is described. The contributions to the Trust Fund are directed to two different areas: "Activities directly derived from the Convention for the Protection of the Mediterranean Sea against Pollution and its related protocols" and "Other activities agreed to as part of the Mediterranean Action Plan". Contributions are "proportionally distributed" among the two sections of the Trust Fund budget and every CPs has to provide its financial allowance.

The third and last Chapter of this dissertation attempts to evaluate the effectiveness of the UNEP/MAP – Barcelona Convention System considering innovative features and strongpoints, and vulnerabilities of the framework.

In order to do so, initially the strengths point and innovative features are considered. In particular, the role of the ecologic epistemic community is discussed. Indeed, it has been acknowledged that the ecologic epistemic community ensured cooperation in environmental related issues among Mediterranean States which have a long history of conflict in the area. In order to ensure compliance, the ecologic epistemic community influenced the Mediterranean States at different institutional levels and during various phases of the negotiation and drafting process of the MAP, ensuring cooperation and agreement thanks to the relevance given to the scientific assessment on the crucial condition the Mediterranean environment was facing. Indeed, the ecologic epistemic community is described by a group of scientists, experts and technicians that could put pressure onto their governments considering the scientific data demonstrating the critical environmental condition of the Mediterranean that they all recognised and agreed on.

Additionally, the adoption of the Ecosystem Approach ('EcAp') is considered an innovative feature of the MAP framework, and it is described in relation with the concept of Good Environmental Status ('GES') and the Integrated Monitoring and Assessment Programme of the Mediterranean Sea and Coast ('IMAP'). The latter is a project aiming at providing scientific assessment and knowledge for the efficient implementation of the EcAp. In addition, the GES

is a flexible concept applicable to different ecosystems that – though the definition of specific indicators – aims at defining how good environmental status should be ensured, in relation with the specific characteristics of the defined ecosystem.

The EcAp is considered a comprehensive, efficient, and innovative approach for the decision making and policy implementation process in the MAP System.

Notwithstanding, it will be stated that even if theoretically and on paper the UNEP/MAP – Barcelona Convention System is comprehensively facing problems related to the Mediterranean state of the environment, in practice the latter is crucially under stress. The last two most relevant reports published by the UNEP – in conjunction with other institutions – are discussed. The 2020 Mediterranean Assessment Report ('MAR 1') and the 2020 State of Environment and Development ('SoED') reports both assess the Mediterranean environment is subject to numerous threats, deriving from uncontrolled and environmental-dangerous increasing human activity in the area. Both the reports agree on considering the Mediterranean a hotspot for climate change, and that repercussions of inaction in relation with environmental issues in the area will be higher due to the peculiar ecosystem that characterizes the area.

The two reports consider different threats. Indeed, while the MAR 1 discusses four main area in which the degradation of the environment concretizes – Pollution, Climate Change, Land and Sea use and Non-indigenous species – the SoED considers eight areas that are threatening for the Mediterranean environment: Climate change, Population densities in coastal areas, Health impacts from atmospheric pollution, Health impacts from lack of water supply and wastewater treatment, Waste and its management, Fisheries practices, Fossil fuels, and Excessive use of chemical and pharmaceutical products.

To sum up, the MAR 1 and the SoED have highlighted that the efforts Mediterranean States are putting into action to ensure environmental safeguard in the area are insufficient.

In relation to this, the problems and vulnerabilities of the MAP framework are discussed in the last section of Chapter 3. Indeed, by considering the reports it is not possible to assert the MAP is efficiently ensuring environmental safeguard of the area. The main reason explaining the lacking implementation is the crucial difference in relation with technical expertise, institutions building, political sensitivity, and financial capacity among the North and the South share of the Mediterranean Sea. This difference does not enable an effective and comprehensive implementation of the UNEP/MAP – Barcelona Convention System. Indeed, while South Mediterranean countries are not able to put into action the different provisions of the MAP, European countries have to deal with different legislative frameworks, since the EU is implementing European legislation in relation with European Mediterranean waters, that cannot be jointly endorsed with non-EU legislation since these are valid only for European States. The lacking implementation of the legal

instrument of the MAP is evident considering the different timing the CPs have adopted the Protocols to the Barcelona Convention.

Lastly, the financial contributions of the Mediterranean States to the MTF are discussed, in order to assess whether these financially contribute to the development of the framework. It has been acknowledged that some countries do not financially contribute to the MTF. Indeed, Albania, Egypt, Israel, Lebanon, Libya, Syria and Tunisia have not paid their contributions in 2021. It is relevant to consider that Lebanon, Libya, and Syria have not versed their contributions in 2020 as well.

To conclude, the gaps of the UNEP/MAP – Barcelona Convention System demonstrate that the framework is theoretically convincing, however practically inefficient. The Mediterranean state of environment is critically under stress, notwithstanding the decade on environmental cooperation in the area, that is the most advanced in relation with other Regional Seas Programmes.