Analysis of the Mediterranean ICZM Protocol:
At the crossroads between the rationality of provisions and the logic of negotiations

Julien Rochette, Raphaël Billé
Institute for Sustainable Development and International Relations (IDDRI)

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Context

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

Aim of the report

A legal text, especially when it is drawn up at the international level, is above all the result of an often long and complex negotiation process, which has gradually led to each of its provisions being drafted. It is therefore the outcome of a series of compromises that have progressively brought somewhat differing positions together until States are united around a common vision. Consequently, this kind of legal instrument is often difficult to decipher: made up of a number of articles, divided into several different sections, sometimes referring to other instruments, and full of considerable editorial nuances, it requires a careful reading and in-depth analysis if its subtleties are to be understood. The aim of this report is therefore to shed light on the content of the Mediterranean ICZM Protocol and to present its main provisions according to a coherent analytical framework that is accessible to all stakeholders concerned, in order to clarify its meaning and to facilitate its adoption. A separate, upcoming report will precisely analyse the normative scope of each provision.

Plan of the report

A detailed analysis of the Protocol enables us to divide its provisions according to four major areas: the adoption of sectoral policies adapted to the singular nature of coastal zones (Part I), the evolution of governance methods (Part II), the use of strategic planning (Part III), and the strengthening of regional cooperation (Part IV). Finally, the conclusion will be the opportunity to suggest some avenues to explore for the implementation of the Protocol. It also seems necessary to take a closer look, in Annex I, at Article 8-2a, which establishes a coastal setback zone. Indeed, this article is undeniably a flagship provision of this new legal instrument and reveals how regional Mediterranean law filters into the traditional sphere of domestic law to govern an area, regional

planning, which is usually the sole competence of national and local authorities. Moreover, this article was the subject of heated debate during negotiations due to the fact that its implementation raises many challenges for an integrated and sustainable management of Mediterranean coastal zones. Finally, as this provision makes it possible to put several of the Protocol's objectives into action, from the preservation of ecosystems to adaptation to climate change and the prevention of coastal erosion, greater attention will be given to both its content and its implementation.

PART I: CONSOLIDATING AND SUPPORTING SECTORAL POLICIES RELATING TO COASTAL ZONES

The Protocol defines ICZM as "a dynamic process for the sustainable management and use of coastal zones, taking into account at the same time the fragility of coastal ecosystems and landscapes, the diversity of activities and uses, their interactions, the maritime orientation of certain activities and uses and their impact on both the marine and land parts[1]". Integrated management therefore particularly implies taking into account the interrelationships that exist between uses of the sea and coastal zones and the environment that they potentially affect. In this sense, ICZM aims to address the "implications of development, conflicting uses, and interrelationships between physical processes and human activities" (Cicin-Sain and Knecht, 1998). From a methodological viewpoint, the aim is thus to go beyond the sectoral approach and to make coastal management coherent by striving to achieve an articulated approach to all of its components: this is one of the fundamental dimensions of integration, a term stemming from the Latin *integrare*, which means "to reinstate something" or "to make something whole".
This does not however imply abandoning sectoral policies, since ICZM is above all intended to bring them into line rather than to replace them (Cicin-Sain and Knecht, 1998). Thus, integrated management "is not a substitute for sectoral planning, but avoids fragmentation by focusing on the linkages between different sectors" (Council of Europe, 1999). In this respect and in order to make the global approach coherent, it is particularly important to adapt sectoral policies to the specific nature of coastal zones. To this end, the Protocol aims to govern sectoral policies according to three major dimensions: (1) preserving natural and cultural heritage, (2) managing coastal activities, and (3) addressing risk.

1. Preserving natural and cultural heritage

1.1 General principles

1.1.1 Preserving biodiversity

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

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

Traditionally, a significant conflict exists between the need for immediate use of coastal resources and the necessity to ensure their long-term safeguard (Post and Lundin, 1996). Here, the reference

[1] Article 2-f.

to “future generations” (5-b) encourages States to step back from short-term considerations and to take the long term into account in their coastal management policies.

Sustainable use of natural resources (5c)

“The objectives of integrated coastal zone management are to (…) ensure the sustainable use of natural resources, particularly with regard to water use” (5c).

Prevention of damage to the environment and restoration (6j)

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

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

1.1.2 Preserving cultural heritage

Adopted by the UNESCO General Conference on 16 November 1972, the Convention Concerning the Protection of the World Cultural and Natural Heritage is particularly innovative in that it addresses the two components of heritage that were hitherto classically opposed: nature and culture. The ICZM Protocol does the same, paying special attention to coastal cultural heritage.

Preservation of cultural heritage (13-1)

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

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

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

Conservation of underwater cultural heritage (13-3)

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

These provisions set out in Article 13 are inspired by the UNESCO Convention on the Protection of the Underwater Cultural Heritage, which particularly invites States to cooperate at the regional

level[2], to foster *in situ* conservation[3] and to prohibit the commercial exploitation of underwater cultural heritage[4].

1.1.3 Preserving landscapes

ICZM and landscapes (2f)

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

The definition of ICZM proposed by the Protocol largely follows in the footsteps of research already conducted on this concept for many years: classically, it underlines the general objective of sustainable development, the dynamic nature of the process and the diversity of economic activities and uses linked to coastal areas. On the other hand, the reference to landscapes is more original and, to our knowledge, is only found elsewhere in the Model Law on Sustainable Management of Coastal Zones proposed by the Council of Europe in 1999[5]. This reference to landscapes first refers to the Barcelona Convention, which mentions the protection of areas of landscape interest as one element of the promotion of integrated management[6]. Some sectoral protocols also include landscape protection as one of the general obligations for Parties; this is the case, for example, of the Protocols concerning Pollution from Land-Based Sources (Annex IIE1-c) and Specially Protected Areas and Biological Diversity (Articles 4d, 6i and 8-2). In the case in point, the ICZM Protocol establishes a general principle – that of preserving coastal landscapes – and invites States to adopt specific instruments.

Preservation of coastal landscapes (5d, 8-1)

"The objectives of integrated coastal zone management are to (…) ensure preservation of the integrity of coastal ecosystems, landscapes and geomorphology" (5d).

"(…) the Parties shall endeavour to ensure the sustainable use and management of coastal zones in order to preserve (…) landscapes (…)" (8-1).

Adoption of specific instruments (11-1)

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

The provisions of the Protocol that concern landscapes are largely in keeping with the European Landscape Convention, signed in Florence on 20 October 2000. This text applies to the entire territory of the Parties and includes land and inland and maritime waters. Its substantive scope – the landscape – is defined as "an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors[7]". The Parties undertake in particular to "co-operate in the consideration of the landscape dimension of international policies and programmes[8]". By including a section on landscapes, the ICZM Protocol is thus consistent with the objectives set by the Convention, whose Article 9 provides that "the Parties shall encourage transboundary co-

[2] Article 6.
[3] Article 2-5.
[4] Article 2-7 of the Convention thus provides that "underwater cultural heritage shall not be commercially exploited".
[5] Article 1.
[6] Article 4-3e.
[7] Article 1a.
[8] Article 7.

operation on local and regional level and, wherever necessary, prepare and implement joint landscape programmes".

1.2 Preserving vulnerable ecosystems

1.2.1 Ecosystems covered by the Protocol

In addition to the general principles on the preservation of natural, cultural and landscape heritage, the Protocol also includes several provisions on the protection of specific coastal ecosystems.

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

Mediterranean wetlands – deltas, lagoons and marshes, etc. – host some exceptional biodiversity and provide numerous ecosystem services. Particularly threatened by socio-economic development (drainage, urbanisation, pollution, climate change, etc.), they are given special attention in the ICZM Protocol, which provides for their preservation and, to the extent possible, their restoration. These provisions follow on from the Ramsar Convention of 1971, whose goal is "the conservation of wetlands and waterfowl[9]". Here, the Protocol requires States to take into account the specific nature of wetlands and estuaries in their coastal policy and to regulate or even prohibit activities that may affect their integrity.

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

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

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

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

This provision, which requires States to preserve and rehabilitate dunes and bars, may be implemented in different ways, including (i) by moving coastal urbanisation back beyond zones

[9] Article 4-1.

containing dunes[10], (ii) by regulating the movement of pedestrians and vehicles, especially in the tourist season, or (iii) by setting up the appropriate facilities.

> **Islands (12)**
>
> "The Parties undertake to (…) promote environmentally friendly activities in such areas and take special measures to ensure the participation of the inhabitants in the protection of coastal ecosystems based on their local customs and knowledge" (12a).
>
> "The Parties undertake to (…) take into account the specific characteristics of the island environment and the necessity to ensure interaction among islands in national coastal strategies, plans and programmes and management instruments, particularly in the fields of transport, tourism, fishing, waste and water" (12b).

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

Thus, the grounds for this special protection granted to certain habitats are based on different criteria: (i) geographical, linked to proximity to the sea (marine habitats, estuaries), (ii) environmental, for vulnerable habitats that are not necessarily immediately adjacent to the coast (forests, wetlands), and (iii) cultural, economic, geographical and environmental in the case of islands.

1.2.2 Protection "outside specially protected areas"

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

1.3 Knowledge of ecosystems

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

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

[10] See Annex 1.

Inventories (16-, 16-3)

"The Parties shall (…) prepare and regularly update national inventories of coastal zones which should cover, to the extent possible, information on resources and activities, as well as on institutions, legislation and planning that may influence coastal zones" (16-1).

"With a view to facilitating the regular observation of the state and evolution of coastal zones, the Parties shall set out an agreed reference format and process to collect appropriate data in national inventories" (16-3).

Mediterranean coastal zone network (16-2)

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

1.4 Land management

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

Formulating land policy (20-1)

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

To this end, the Protocol encourages the creation of specific mechanisms, such as protection agencies.

Using tools such as protection agencies (20-2)

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

This provision is directly inspired by the mechanism set up in France through the *Conservatoire de l'Espace Littoral et des Rivages Lacustres* (CELRL - French coastal protection agency). A public institution created in 1975[11], the *Conservatoire* conducts a coastal land acquisition policy, and can acquire land situated in coastal districts as defined by the law of 1975 and in coastal municipalities as set out in law N°86-2 of 3 January 1986[12]. Since 2002, the *Conservatoire* also has the authority to operate in the public maritime domain, especially in zones adjacent to its own land, with the aim of ensuring integrated coastal zone management. Thus, with a view to integrating land and marine areas, the CELRL may now act on the foreshore, beaches or mangroves and may be given portions of the public domain by the State for a duration of 30 years. As the property belonging to the organisation is part of the public domain, the land acquired benefits from consolidated legal protection. In June 2010, land belonging to the *Conservatoire du Littoral* covered 135 000 hectares, or over 1 000 km of coastlines and 600 natural sites. Tunisia, with the *Agence Nationale pour la Protection du Littoral*[13] (APAL – National agency for coastal protection) and the region of Sardinia, with the Sardinian Coastal Conservation Agency (Rochette, 2010), also have similar land policy mechanisms.

[11] Law N°75-602 of 10 July 1975 creating the *Conservatoire de l'Espace Littoral et des Rivages Lacustres*, a public administrative body, JO of 10 July 1975 p. 7126.
[12] Law N° 86-2 of 3 January 1986 on the planning, protection and development of coastal areas, JO of 4 January 1986.
[13] Law N°95-72 of 24 July 1995 creating the *Agence de Protection et d'Aménagement du Littoral* (APAL).

2. Managing coastal activities

2.1 Reconciling coastal activities and preservation of ecosystems

2.1.1 General principles applicable to all coastal activities

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

Principle of balance (5a, 6h)

"The objectives of integrated coastal zone management are to (…) facilitate, through the rational planning of activities, the sustainable development of coastal zones by ensuring that the environment and landscapes are taken into account in harmony with economic, social and cultural development" (5a).

"The Parties shall be guided by the following principles of integrated coastal zone management: (…) the allocation of uses throughout the entire coastal zone should be balanced, and unnecessary concentration and urban sprawl should be avoided" (6h).

In order to reconcile the development of coastal zones and environmental protection, the Protocol encourages the application of a "principle of balance". These provisions, set out in Articles 5a and 6h, imply careful management of these zones with a view to reconciling the development of human activities and the preservation of natural landscapes and areas. In France, this "principle of balance" is laid down in Article L 146-2 of the *Code de l'Urbanisme*, a provision stemming from the *Loi Littoral*. Compliance with the principle of balance by no means implies prohibiting any new urbanisation. However, it does mean that this urbanisation must not exceed a certain threshold, at the risk of compromising the achievement of other priorities, which are also legitimate. This threshold is defined here by the "carrying capacity" (see 2.1.2).

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

"The Parties shall (…) accord specific attention to economic activities that require immediate proximity to the sea" (9-1a).

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

Freedom of access to the sea and along the shore

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

The Protocol invites States to recognise and provide freedom of access by the public to the sea and along the shore. This provision particularly implies: (i) taking this requirement into account in the

localisation of coastal activities, whether economic or recreational, and (ii) organising this access, especially by instituting easements.

Careful management of natural resources (9-1b)

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

Managing water resources and waste (9-1c)

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

Adapting the coastal economy (9-1d)

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

2.1.2 Specific tools to be implemented

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

Carrying capacity (6b, 9-1e)

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

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

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

Codes of good practice (9-1f)

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

Indicators (9-1e)

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

Environmental assessment (19)

"1. Taking into account the fragility of coastal zones, the Parties shall ensure that the process and related studies of environmental impact assessment for public and private projects likely to have significant environmental effects on the coastal zones, and in particular on their ecosystems, take into consideration the

specific sensitivity of the environment and the inter-relationships between the marine and terrestrial parts of the coastal zone.

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

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

Environmental assessments are appropriate mechanisms for preventing the degradation of biodiversity and ensuring coastal activities preserve ecosystems. Consequently, Article 19 envisages the use of assessments through two types of instruments: (i) environmental impact assessments, for public and private projects likely to have significant environmental effects on the coastal zone, and (ii) strategic environmental assessments for plans and programmes that are likely to significantly affect the integrity of ecosystems. In addition to the environmental section, the Protocol also calls for prior assessment of risks associated with different human activities and infrastructure[14].

2.2 Regulating specific activities

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

Activities subject to authorisation (9-2e, 9-2f)

"The Parties agree (…) to subject to prior authorization the excavation and extraction of minerals, including the use of seawater in desalination plants and stone exploitation" (9-2ei).

"The Parties agree (…) to subject such infrastructure, facilities, works and structures to authorization so that their negative impact on coastal ecosystems, landscapes and geomorphology is minimized or, where appropriate, compensated by non-financial measures" (9-2f).

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

Regulated, restricted or prohibited activities (8-3e, 9-2)

"Restricting or, where necessary, prohibiting the movement and parking of land vehicles, as well as the movement and anchoring of marine vessels, in fragile natural areas on land or at sea, including beaches and dunes" (8-3e).

"The Parties agree (…) to regulate aquaculture by controlling the use of inputs and waste treatment" (9-2cii).

"The Parties agree (…) to regulate the extraction of sand, including on the seabed and river sediments or prohibit it where it is likely to adversely affect the equilibrium of coastal ecosystems" (9-2eii).

"The Parties agree (…) to regulate or, where necessary, prohibit the practice of various sporting and recreational activities, including recreational fishing and shellfish extraction" (9-2diii).

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

The Protocol first requires the regulation of the movement and parking of land vehicles: this provision invites States to adopt a regulation to restrict or prohibit the movement and parking of vehicles within fragile natural areas, such as beaches, dunes or forests. Similarly, maritime traffic

[14] See 3.2 below.

must be regulated in order to avoid the degradation of marine ecosystems. By way of example, the anchoring of vessels in areas with high concentrations of Posidonia seagrass (risk of degradation) or invasive species (risk of propagation) should be prohibited. Since the Protocol remains vague as to the type of navigation concerned, it may be considered that these provisions apply to commercial, scientific research, sailing, and military vessels subject to the provisions of Article 4-2.

Aquaculture is also covered by specific provisions. In the Mediterranean, over the last few years marine aquaculture has increased at a rate of about +25% per year, to reach an annual production of 350 to 400 000 tonnes today (Rey-Valette et al, 2007). However, this activity is not without consequences for the area: water pollution due to an over-concentration of fish, contamination of wild fish by the chemical substances used (IUCN, 2007), etc. In the Mediterranean, it is estimated for example that the production of one tonne of fish in intensive marine aquaculture generates 110 kg of nitrogen compounds, 12 kg of phosphorous and 450 kg of organic carbon (Rais, 2005). The Protocol therefore requires States to regulate the use of inputs (drugs, vitamins, feed, etc.) as well as waste treatment.

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

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

Activities that must be compatible with the preservation of natural, cultural and landscape heritage (4-4, 9-2)

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

"The Parties agree (…) to guarantee a high level of protection of the environment in the location and operation of agricultural and industrial activities so as to preserve coastal ecosystems and landscapes and prevent pollution of the sea, water, air and soil" (9-2a).

"The Parties agree (…) to take into account the need to protect fishing areas in development projects" (9-2bi).

"The Parties agree (…) to encourage sustainable coastal tourism that preserves coastal ecosystems, natural resources, cultural heritage and landscapes" (9-2di).

"The Parties agree (…) to promote specific forms of coastal tourism, including cultural, rural and ecotourism, while respecting the traditions of local populations" (9-2dii).

"The Parties agree (…) to conduct maritime activities in such a manner as to ensure the preservation of coastal ecosystems in conformity with the rules, standards and procedures of the relevant international conventions" (9-2g).

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

3. Addressing risk

3.1 Integrating risks in coastal policies

Reference to the risks facing coastal zones first appears in the preamble to the Protocol, with the Parties declaring themselves to be "worried by the risks threatening coastal zones due to climate change, which is likely to result, *inter alia*, in a rise in sea level, and aware of the need to adopt sustainable measures to reduce the negative impact of natural phenomena". The authors of the first draft Protocol[15], and the experts charged with negotiations[16], were well aware of the need to link ICZM to risk prevention.

Addressing risk as an objective of ICZM (5e)

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

Including a section on "risk" in strategies, plans and programmes (22)

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

3.2 Tools for risk integration

Preliminary assessments (6i, 23-2)

"Preliminary assessments shall be made of the risks associated with the various human activities and infrastructure so as to prevent and reduce their negative impact on coastal zones" (6i).

"The Parties, when considering new activities and works located in the coastal zone including marine structures and coastal defence works, shall take particular account of their negative effects on coastal erosion and the direct and indirect costs that may result" (23-2).

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

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

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

Anticipation (23-3)

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

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

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

Adaptation of coastal zones (22, 23-1)

"The Parties (…) shall undertake vulnerability and hazard assessments of coastal zones and take prevention, mitigation and adaptation measures to address the effects of natural disasters, in particular of climate change" (22).

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

The impact of climate change will vary across Mediterranean coastal regions: it will therefore be necessary to make vulnerability studies of coastal zones in order to develop robust adaptation strategies and measures.

Establishing a coastal setback zone (8-2)

"(...) The Parties:

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

b) May adapt, in a manner consistent with the objectives and principles of this Protocol, the provisions mentioned above: 1) for projects of public interest; 2) in areas having particular geographical or other local constraints, especially related to population density or social needs, where individual housing, urbanisation or development are provided for by national legal instruments" (8-2).

In the spirit of the authors of the Protocol, "with regard to the coastal fringe where building is not permitted (…) the relevance of the principle lies not only in the concern to protect an area of ecological and landscape interest which is very fragile due to the land-sea interface, but also the necessity to prevent natural risks resulting from the rise in sea levels related to climate change, thereby giving effect to the Convention on Climate Change[17]". For a full analysis of Article 8-2, see Annex 1.

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

Academic literature (Cicin-Sain and Knecht, 1998) and international organisation documents (Agenda 21, Chapter 17) have always stressed the importance of institutional and organisational arrangements and processes in the implementation of ICZM. The Protocol therefore includes several provisions on governance methods for coastal zones, aimed at (1) consolidating integration mechanisms, (2) ensuring information and public and stakeholder participation, and (3) rethinking the foundations of public decision-making.

1. Consolidating integration mechanisms

Throughout the Protocol, we find the five dimensions of integration identified by Cicin-Sain and Knecht in 1998: spatial integration (1.1), intersectoral integration (1.2), institutional integration (1.3), science-management integration (1.4) and international integration (1.5).

1.1 Spatial integration

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

> **Taking into account the unity of the land-sea ecosystem (6a)**
>
> "(…) the Parties shall be guided by the following principles of integrated coastal zone management: the biological wealth and the natural dynamics and functioning of the intertidal area and the complementary and interdependent nature of the marine part and the land part forming a single entity shall be taken particularly into account" (6a).

1.2 Intersectoral integration

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

Intersectoral coordination (5f, 7-2)

"The objectives of integrated coastal zone management are to: (…) achieve coherence between public and private initiatives and between all decisions by the public authorities, at the national, regional and local levels, which affect the use of the coastal zone" (5f).

"Competent national, regional and local coastal zone authorities shall, insofar as practicable, work together to strengthen the coherence and effectiveness of the coastal strategies, plans and programmes established" (7-2).

The Protocol thus calls for establishing intersectoral coordination by striving to achieve coherence between the different policies implemented in coastal zones, from agriculture to tourism, and from extractive activities to transport. In this sense, "ICZM differs from the earlier form of CZM in that it attempts a more comprehensive approach taking account of all of the sectoral activities that affect the coastal zone and its resources and dealing with economic and social issues as well as environmental/ecological concerns" (Post and Lundin, 1996).

1.3 Institutional integration

In addition to intersectoral coordination, the authors of the Protocol thought it necessary to give special attention to institutional integration, since "all the international and national documents and reports, as well as the various experiments in integrated coastal zone management, emphasize the difficulties which arise out of the dispersion of responsibilities for the coastal zone between a multitude of services and administrative units[18]". Thus, the Protocol invites States to ensure institutional coordination between the competent authorities in the coastal zone and to strengthen links between the competent administrative departments in coastal and marine areas.

Institutional coordination (7-1a, 7-1b)

"The Parties shall (…) ensure institutional coordination, where necessary through appropriate bodies or mechanisms, in order to avoid sectoral approaches and facilitate comprehensive approaches" (7-1a).

"The Parties shall (…) organize appropriate coordination between the various authorities competent for both the marine and the land parts of coastal zones in the different administrative services, at the national, regional and local levels" (7-1b).

The matter of creating a special authority for this task is not settled by the text, which only mentions the use of "appropriate bodies or mechanisms". Numerous studies nevertheless advocate the creation of a special ICZM authority and press for institutional coordination. Thus, in 1995, UNEP called for the "designation of a *lead agency* for coastal management at the national level (…). The role of the lead agency is to be a facilitator for bringing together various agencies involved in ICAM and stimulating a dialogue between them". Likewise, Article 27 of the Model Law on Sustainable Management of Coastal Zones provides that at national level, "in order to facilitate integrated coastal-zone management, a clearly identified ministry, inter ministerial committee or national coastal-zone agency shall be responsible for giving impetus to and co-ordinating the action of the various authorities in charge of coastal zones". However, in the spirit of the authors of the Protocol, "this does not necessarily involve the merger of administrative services, but particularly the reduction of administrative barriers and the organization on a permanent basis of appropriate co-ordination so as to achieve territorial integration with regard to the land-sea division[19]". This may be achieved by creating an institution specifically for this purpose, or by using an authority or mechanisms that already exist.

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

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

1.4 Science-management integration

Decisions based on science (15-3)

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

1.5 International integration

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

2. Information, participation and the right to legal recourse

For many, the intrinsic nature of integrated management demands the active participation of local communities and other local stakeholders (UNEP/MAP, 1995; Council of the European Union, 2002; OECD, 1993). The idea of citizen participation in public affairs – *res publica* – refers to the Rousseauist theory of direct democracy. Representative democracy was in fact set up for practical reasons while the ideal of direct citizen participation persisted. In this sense, the right of citizens to environmental information recently emerged, recognised by international law[20] and increasingly associated with a real right to participate[21]. Article 15 of the Barcelona Convention already sets out certain provisions on information and participation, which are supplemented here by the ICZM Protocol.

2.1 Information

2.1.1 Beneficiaries of information

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

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

[21] Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

2.1.2 Scope of information

Information on the Protocol (3-3)

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

Information on strategies, plans and programmes (14-2)

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

Information on research (15-3, 16-4)

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

"The Parties shall take all necessary means to ensure public access to the information derived from monitoring and observation mechanisms and networks" (16-4).

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

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

Although the Protocol grants populations and actors the right to information in several fields, it leaves it to States to determine the mechanisms and procedures for ensuring the application of this right, as well as who is deemed "relevant".

2.2 Participation

2.2.1 Principle of participation

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

"Appropriate governance allowing adequate and timely participation in a transparent decision-making process by local populations and stakeholders in civil society concerned with coastal zones shall be ensured" (6d).

"With a view to ensuring efficient governance throughout the process of the integrated management of coastal zones, the Parties shall take the necessary measures to ensure the appropriate involvement (…) of the various stakeholders" (14-1).

2.2.2 Beneficiaries of participation

Article 15-2 of the Barcelona Convention provides that "the Contracting Parties shall ensure that the opportunity is given to the public to participate in decision-making processes relevant to the field of application of the Convention and the Protocols, as appropriate". The ICZM Protocol extends the beneficiaries of participation beyond the public to include "the territorial communities and public entities concerned; economic operators; non-governmental organizations; social actors" (14-1).

Special mention is also given to the inhabitants of islands in order to ensure their participation "in the protection of coastal ecosystems based on their local customs and knowledge" (12-a).

2.2.3 Scope of participation

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

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

Means of participation (14-1)

"Such participation shall involve *inter alia* consultative bodies, inquiries or public hearings, and may extend to partnerships" (14-1).

This provision on means of participation has been "carefully worded to show the availability of a mix of political and legal methods[22]". As with the right to information, the mechanisms aimed at ensuring participation are left to the discretion of States.

2.3 The right to legal recourse

In addition to information and participation, the Parties are also invited to recognise a right to legal recourse. At this stage, although the study of the legal scope of the Protocol will be made in another report, let us stress that this is simply an "invitation", characteristic of soft law, and not a binding obligation.

The right to legal recourse (14-3)

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

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

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

1. National ICZM strategy

1.1 General objective: formulating or strengthening national ICZM strategy

National ICZM strategy (18-1)

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

This provision is seen by many as the "core of the Protocol[23]", requiring States to adopt a strategic document specific to coastal zones.

Consistency with the Mediterranean ICZM Strategy (17, 18-1)

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

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

The drafting of Article 17 of the Protocol calling for the adoption of a Mediterranean ICZM strategy has led to considerable debate. Some saw such a document as necessary in order to establish a "common vision", while others expressed their "strong doubts", fearing "a lot of extra work", questioning its "added value" and stressing that "it could be highly detrimental for coastal zones requiring urgent action if countries had to wait until completion of a Mediterranean Strategy for ICZM before starting work on their national strategies[24]". The PAP/RAC is charged with overseeing the formulation of this strategy, which should begin over the next few months.

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

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

1.2 Content of the strategy

General content (18-2)

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

A simple reference to the strengthening or adoption of a national ICZM strategy would undoubtedly have been insufficient. Indeed, it would then be possible to consider a political declaration made at the end of an inter-ministerial meeting on coastal zones, a communiqué of just a few lines prepared in high places, or an official speech presented by an environment minister as an example of a national strategy. Article 18-2 therefore sets out important requirements as to the minimum content of this strategy: (i) analysis of the existing situation; (ii) objectives; (iii) priorities; (iv) identification of ecosystems needing management; (v) identification of relevant actors and processes; (vi) measures to be taken and their cost; (vii) institutional instruments and legal and financial means available[25]; and (viii) an implementation schedule. However, the form that this strategy must take remains to be determined. Could it be an administrative document, a ministerial report or a political declaration? Negotiation meetings provide little clarification on this and the authors of the first draft Protocol themselves had no preconceived ideas[26].

Specific sections (10-1a, 12b, 22)

"The Parties shall take into account in national coastal strategies (…) the environmental, economic and social function of wetlands and estuaries" (10-1a).

"The Parties undertake to (…) take into account the specific characteristics of the island environment and the necessity to ensure interaction among islands in national coastal strategies (…)" (12b).

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

The Parties chose not to establish an exhaustive list of the issues the national strategy must address, but nevertheless insisted on the need to take into account certain habitats – wetlands and islands – and to integrate policies for the prevention of natural hazards.

Indicators of implementation (18-4)

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

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

[25] In this respect, Article 21 of the Protocol provides that "for the implementation of national coastal strategies and coastal plans and programmes, Parties may take appropriate measures to adopt relevant economic, financial and/or fiscal instruments intended to support local, regional and national initiatives for the integrated management of coastal zones".

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

1.3 Formulation procedure

Participation (14-1)

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

For an analysis of the provisions on participation, see Part II, 2, above.

Transboundary cooperation (28)

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

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

2.1. Form of coastal plans and programmes

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

Formulation of coastal plans and programmes (18-1)

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

Purpose of coastal plans and programmes (18-3)

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

Article 18-3 provides indications as to the form that these coastal plans and programmes may take.

Form of coastal plans and programmes (18-3)

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

The Protocol therefore simply specifies that plans and programmes may be "self-standing or integrated". Thus, "coastal plans and programmes may be conceived specially for integrated coastal zone management and be set out in a specific document, or they may be conceived and integrated into strategies, plans and programmes of which the objectives or coverage are broader than mere coastal matters. In this latter case, they would be integrated into an overall environmental strategy or a land-use or urbanism plan[27]". In other words, these coastal plans and programmes may take the form of (i) a document specific to coastal zones, setting out methods for implementing the national ICZM strategy at an appropriate territorial level, or (ii) a section on coastal zone management within an existing document.

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

It should be stressed that the notion of "coastal plans and programmes" nevertheless remains somewhat vague. Could these be ICZM projects or programmes, as classically understood in academic literature and within international organisations (Billé and Rochette, 2010)? Are these plans and programmes necessarily binding and opposable to local urban planning documents? Can the planning documents adopted at the national, regional or local level be considered as coastal plans and programmes? We believe that this intentionally broad formulation makes it possible to include all projects and documents, whether binding or not, aimed at implementing national ICZM strategies. However, we feel it is important to underline here that the use of regional planning documents, whatever the scope of their application, appears to be the most appropriate means of ensuring the application of many of the provisions of the Protocol, including: the principle of balance, (ii) spatial integration, (iii) intersectoral integration, (iv) respecting carrying capacity, (v) taking into account the need for proximity to the sea, and (vi) establishing a coastal setback zone[28].

2.2 Level of implementation for coastal plans and programmes

Level (18-3)

"Coastal plans and programmes (…) shall specify the orientations of the national strategy and implement it at an appropriate territorial level (…)" (18-3).

The first draft Protocol presented in 2005 made no mention of the level of implementation for coastal plans and programmes. From the second negotiation meeting for the text, however, it became clear that States feared the imposition of planning "at" and "by" the local level[29]. Consequently, the Parties proposed that reference should be made to the "appropriate territorial level" to define the perimeter covered by plans and programmes: these may then apply to the whole of the national coastline or to smaller scales, whether regional or local. However, the Protocol gives no indication as to competence for formulating these documents, which may remain in the hands of the State or be decentralised.

2.3 Formulation procedure

Participation (14-1)

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

Transboundary cooperation (28)

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

Environmental assessment (19-2)

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

[28] For some developments on the roles of regional planning documents, see the conclusion.

[29] MAP/UNEP, Report of the Second Meeting of the Working Group of Experts Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Loutraki, Greece, 6-9 September 2006, UNEP(DEPI)/MED WG.298/4, §111.

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

Inter-State cooperation is a founding and fundamental principle of international environmental law, and is of particular importance where enclosed or semi-enclosed seas are concerned[30]. The Protocol therefore contains several provisions aimed at encouraging and strengthening regional cooperation on ICZM.

1. Principle of cooperation

1.1 Obligation to cooperate

The Barcelona Convention itself sets out this principle of cooperation by providing for the exchange of scientific data and information[31] as well as the transfer of technology[32]. The Convention also organises a system of assistance in the implementation of the legal obligations adopted: its Article 13-3 thus invites the Contracting Parties to "cooperate in the provision of technical and other possible assistance in fields relating to marine pollution (…)". Following on from these provisions, the ICZM Protocol establishes an obligation to cooperate and proposes certain tools to be implemented for this purpose.

Obligation to cooperate (1)

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

1.2 Special instruments for cooperation

Exchange of information (23-4, 27)

"The Parties undertake to share scientific data that may improve knowledge on the state, development and impacts of coastal erosion" (23-4).

"The Parties undertake, directly or with the assistance of the Organization or the competent international organizations, to cooperate in the exchange of information on the use of the best environmental practices" (27-1).

"With the support of the Organization, the Parties shall in particular: (a) define coastal management indicators, taking into account existing ones, and cooperate in the use of such indicators; (b) establish and maintain up-to-date assessments of the use and management of coastal zones; (c) carry out activities of common interest, such as demonstration projects of integrated coastal zone management" (27-2).

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

[30] United Nations Convention on the Law of the Sea, Article 123.
[31] Article 13-1.
[32] Article 13-2.

more systematic linkage between ICZM projects and the normative framework (Billé and Rochette, 2010).

Training and research (25)

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

"The Parties undertake, directly or with the assistance of the Organization or the competent international organizations, to promote scientific and technical research into integrated coastal zone management, particularly through the exchange of scientific and technical information and the coordination of their research programmes on themes of common interest" (25-2).

Although this is a classical approach to Mediterranean cooperation – formulated in particular in the Protocols concerning Pollution from Land-Based Sources[33], Specially Protected Areas and Biological Diversity[34] and the Offshore Protocol[35] – the strengthening of national capacities, especially through staff training and the development of research, is a key condition for the effective implementation of the legal obligations established and, more generally speaking, for the application of ICZM.

Scientific and technical assistance (26)

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

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

2. Fields of regional cooperation

2.1 Cooperation on strategic planning in the region

Mediterranean ICZM strategy (17)

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

[33] Article 10-2.
[34] Article 22-2.
[35] Article 24-2.

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

Transboundary cooperation for coastal strategies, plans and programmes (28)

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

Transboundary environmental assessments (29)

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

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

"The Parties may, where appropriate, enter into bilateral or multilateral agreements for the effective implementation of this Article" (29-3).

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

2.2 Cooperation in certain specific fields

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

Landscapes (11-2)

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

Marine habitats (10-2b)

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

Environmental education (15-2)

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

Mediterranean coastal zone network (16-2)

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

Cooperation in case of disasters (24)

"The Parties undertake to promote international cooperation to respond to natural disasters, and to take all necessary measures to address in a timely manner their effects" (24-1).

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

"The Parties undertake to promote mutual cooperation and cooperation among national, regional and local authorities, non-governmental organizations and other competent organizations for the provision on an urgent basis of humanitarian assistance in response to natural disasters affecting the coastal zones of the Mediterranean Sea" (24-3).

The tsunami that hit Asia on 26 December 2004 showed the world the fragility of coastal zones and their exposure to natural disasters. It also reminded us that the Mediterranean Sea could be concerned by this type of event (Santorini, 1650 BC; Crete, 365 BC; Rhodes, 1303; Algiers, 1365; Calabria, 1783; Liguria, 1887; Messina, 1908; Amorgos, 1956; Nice, 1979; Boumerdès, 2003, etc.) and that preventive measures are therefore essential, not only in the case of tsunamis, but more generally speaking for earthquakes, including underwater ones, volcanic eruptions or landslides that could cause tidal waves. The ICZM Protocol thus provides for cooperation both upstream (detection, warning) and downstream (humanitarian assistance) of future natural disasters affecting Mediterranean coastal zones.

CONCLUSION: SOME AVENUES TO EXPLORE FOR THE IMPLEMENTATION OF THE ICZM PROTOCOL

With this study, our aim was to offer an analytical rather than literal reading of the ICZM Protocol. Through the deconstruction of its provisions and an in-depth study of the spirit in which these were negotiated, we revealed the architecture underlying the text which, in our opinion, is articulated around four main areas: (i) consolidating and supporting sectoral policies related to coastal zones, (ii) changes in coastal governance, (iii) the use of strategic planning and (iv) strengthening regional cooperation. The result of this study remains – inevitably and intentionally – both dense and relatively lengthy. We did not want to sacrifice the complexity of the Protocol, which is inherent to the majority of international legal instruments but even more so here given that the subject, ICZM, is a vast one and that the instrument, a legal text specifically focusing on coastal zones, is new.

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

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

Adapting the legal framework: the major role of the State

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

Here, it is important to stress that States are the primary subjects of international law. The first developments and modifications needed must therefore concern above all the national legal framework. In decentralised States, the regional authorities will clearly be able to take advantage of the competences transferred to them to adapt their normative system and participate in the implementation of the Protocol. However, this by no means exempts the State from making the

necessary changes to the national legal system: in a strongly decentralised State for instance, the adaptation of the sole regional legal framework would still be insufficient.

Implementing legal provisions: the importance of regional planning documents

Once the provisions of the Protocol have been integrated into the domestic legal system, the key issue of their implementation must be addressed. In this respect, it could be considered that regional planning documents constitute special instruments for the implementation of the text. Here, we go beyond the literal analysis of the Protocol, which makes a broader reference to "coastal plans and programmes". However, in our opinion experience shows that regional planning documents unquestionably have added value if (i) they are part of a strategic planning activity and (ii) their planning content is imposed during the issuing of individual authorisations for the implantation of activities or construction. Drawn up by the State or by regional authorities, at national or sub-national level, these documents should therefore be the mainspring of the application of the provisions of the Protocol, from the regulation of coastal activities to compliance with the principle of balance, from spatial integration to respect for carrying capacity, and from the establishment of coastal setback zones to the preservation of biodiversity.

Consequently, it is first necessary to determine whether the national legal system enables the State or the authorities to formulate regional planning documents. If this is not the case, the domestic legal system must be modified in order to authorise it. If this possibility is already provided for by the law, it is then necessary to determine whether existing planning documents can be used to regulate the sectoral policies mentioned in the text and to apply, in a broader manner, the ICZM principles and objectives identified by the Protocol. Can they, at least in theory, provide for measures to preserve biodiversity, regulate, restrict or prohibit the activities mentioned in the Protocol, and impose the integration of risk in planning policies? If this is not the case, then the legal system itself must be modified in order to make it possible.

In a second step, the system of regional planning documents itself will have to be organised. It includes, among other, the use of mapping instruments, the creation of data bases relating to the areas at stake, the training of experts and the implementation of procedures dedicated to the elaboration of the documents and to the enforcement of their content.

Adapting governance patterns as a cross-cutting concern

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

Indeed, the issue of governance should first be at the heart of discussions on adapting the domestic legal framework: the law can thus help to more effectively take into account the governance requirements identified by the Protocol. Spatial integration, for example, may be facilitated by a legal modification enabling a regional planning document to cover both the land and marine parts of the coastal zone. Institutional integration may also be supported by the creation of an agency, structure or body specially charged with forging links between the departments involved in coastal zones. This necessity to use the law is even more evident for issues linked to information and participation, whose implementation requires the use of procedures and mechanisms that can only be established by law.

Nevertheless, the implementation of ICZM in general, and of its governance section in particular, must be guided by certain principles whose application is not necessarily guaranteed by the modification of the domestic legal system alone. This is the case, for example, of intersectoral integration, science-management integration and institutional coordination, provisions of the

Protocol whose effective application requires changes of behaviour that the law can only suggest but not guarantee. It is therefore in the implementation stage, especially through the adoption of planning documents, that a special effort must be made to this end. The national and sub-national authorities must keep in mind all of these principles in the application of legal provisions. This calls, in particular, for consolidating communication on the issue and making efforts in the training of experts involved in this implementation stage.

BIBLIOGRAPHY

A Handbook for Measuring the Progress and Outcomes of Integrated Coastal and Ocean Management, (2006), IOC annuals and Guides, 46.

Billé, R., (2007), "A dual-level framework for evaluating Integrated Coastal Management beyond labels", Ocean and Coastal Management, 50(2007).

Billé, R., Rochette, J., (2010), "Combining project-based and normative approaches to upscale ICZM implementation", IDDRI, Series « Idées pour le débat », n°4/2010.

Bonnot Y., (1995), Pour une politique globale et cohérente du littoral en France, La Documentation française.

Cicin-Sain B., Knecht R., (1998), Integrated coastal and ocean management: concepts and practices, Island Press, Washington.

Commission of the European Communities, (1999). Towards a European Integrated Coastal Zone Management (ICZM) Strategy - General Principles and Policy Options.

Council of Europe, (1999), European Code of conduct for coastal zones, Strasbourg, Paris.

European Union Working Group on Indicators and Data, Measuring Progress in the Implementation of Integrated Coastal Zone Management, (2004), Guidance notes for completing the Progress Indicator.

Intergovernmental Oceanographic Commission, (1997), Methodological Guide to Integrated Coastal Zone Management, Manuals and Guides, UNESCO, Paris.

OECD, (1993), Coastal Zone Management: Integrated policies, Paris.

Olsen S, Lowry K, Tobey J, (1999), A manual for assessing progress in coastal management, Narragansett, RI, USAID/SIDA.

UNEP/MAP (1995), Guidelines for integrated management of coastal and marine areas with particular reference to Mediterranean basin, UNEP Regional Seas Reports and Studies N°161.

UNEP/MAP/PAP (2001), White Paper: Coastal Zone Management in the Mediterranean, PAP/RAC, Split.

PNUE/PAM-Plan Bleu, (2009), State of the Environment and Development in the Mediterranean, UNEP/MAP Plan Bleu, Athens.

Post J.C, Lundin C.G., (Ed**)**, (1996), Guidelines for integrated costal zone management, Environmentally Sustainable Development Studies and Monographs Series N°9, The World Bank, Washington D.C.

Rais C., (2005), Développement durable de l'aquaculture en Méditerranée : Aspects environnementaux, 2005, Document disponible à l'adresse suivante : http://www.uicnmed.org/web2007/cd_aquaculture/docs/art_sc/durabilite_aquaculture.pdf

Rey-Valette H., Blancheton J.P., Rene F., Lazard J., Syndhia M., Chia E.. (2007), Le développement durable : un défi pour l'aquaculture marine en Méditerranée, Cahiers Agricultures, 16 (4).

Rochette J., (2010) " Des relations État – régions dans la politique littorale italienne ", Revue Méditerranée, A Paraitre, 2010.

Scovazzi T., (2009), "The entry into force of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage", Aegean Institute of the Law of the Sea and Maritime Law.

UICN, (2007), Guide pour le développement durable de l'aquaculture méditerranéenne. Interactions entre l'aquaculture et l'environnement, UICN, Gland, Suisse et Malaga, Espagne, 2007.

UNEP/MAP, Report of the Fifth Meeting of the Working Group of Experts Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Loutraki, Greece, 10-11 December 2007, UNEP(DEPI)/MED WG.324/4, 18 December 2007, 31p.

UNEP/MAP, Report of the Fourth Meeting of the Working Group of Experts Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Split, Croatia, 13-16 June 2007, UNEP(DEPI)/MED WG.318/4, 6 September 2007, 53p.

UNEP/MAP, Report of the Third Meeting of the Working Group of Experts Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Loutraki, Greece, 12-15 February 2007, UNEP(DEPI)/MED WG 305/4, 16April 2007, 51p.

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

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

ANNEX 1. COASTAL SETBACK ZONES IN THE MEDITERRANEAN: A STUDY ON ARTICLE 8-2 OF THE MEDITERRANEAN ICZM PROTOCOL[36]

[36] This Annex is taken from the following report : Rochette J., du Puy Monbrun G., Wemaëre M., Billé R., (2010), "Coastal setback zones in the Mediterranean : a study on Article 8-2 of the Mediterranean ICZM Protocol", Iddri, Collections Idées pour le débat, upcoming.

1. Introduction

1.1. Context and objective of the report

This report provides an analysis of Article 8-2 of the ICZM Protocol, and particularly endeavours to study its content and to determine its legal scope. It therefore presents a general overview of the underlying obligations and implications of the implementation of its provisions. However, it does not prejudge the legal modifications that States will need to make after an in-depth examination of their national legal systems in light of the requirements specified by the text.

1.2. Why focus specifically on Article 8-2? The 100 metre setback zone, an emblematic provision of the ICZM Protocol

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

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

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

1.3. General considerations on coastal setback zones

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

1.3.1. Objectives of coastal setback zones

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

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

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

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

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

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

In **Algeria**, the Law of 1 December 1990 on urban and regional planning imposed a building ban on "a strip of 100 metres in width from the shoreline[37]". Article 18 of the Law of 5 February 2002 on coastal protection and development states that "this ban may be extended to 300 metres for reasons linked to the sensitive nature of the coastal environment". Although the law nevertheless authorises "buildings or activities requiring proximity to the sea", the decree intended to specify the application of this provision has yet to be adopted, which has resulted in many cases of misapplication of the text (Megfhour Kacemi and Tabet Aoul, 2007).

[37] Article 45.

In **Croatia**, the 2007 Physical Planning Act establishes a "protected coastal area[38] (PCA)", a zone "encompassing all islands, the continental belt 1 000 metres in width from the coastline and the sea belt 300 metres in width from the coastline[39]". Articles 50 and 51 ban new construction works within a belt from 70 to 100 metres from the coastline under certain conditions. Nevertheless, exceptions are provided for "construction works for utility infrastructure and underground power lines, accompanying facilities used for hospitality and catering and tourism purposes, construction works which by nature must be located on the coast (shipyards, ports etc.) and for development of public areas[40]".

In **France**, the principle of protecting a continuous 100 metre strip was already set out in the National Planning Directive of 25 August 1979. Legislative confirmation by the Law of 3 January 1986 on coastal planning, protection and development, known as the *Loi Littoral*, clarified the principle, removing the numerous exceptions that existed under the previous regulation. Article L 146-4-III of the French Urban Planning Code thus provides that "outside urban areas, buildings and facilities are prohibited within a 100 metre coastal strip (…). A zoning and land use scheme may extend the coastal setback (…) to more than 100 metres when justified by the sensitivity of the environment or by coastal erosion". Although the general principle of a 100 metre setback zone is clearly established, it should be stressed that this development ban does not apply to "buildings and facilities necessary for public service or economic activities requiring proximity to the sea". This concept has been strictly interpreted by the law, principally authorising facilities needed for the maintenance and development of traditional coastal activities (aquaculture, naval repairs, etc[41]).

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

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

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

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

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[38] Article 48.
[39] Article 49.
[40] Article 51.
[41] Consequently, the following requests were rejected: a sea spa centre (Administrative Court of Nice, 17 December 1987, Mouvement niçois pour la défense des sites et du patrimoine and others), a bar-restaurant (Council of State, 9 October 1996, Union départementale Vie et Nature 83), a car park (Council of State, 10 May 1996, Commune de Saint-Jorioz). On the contrary, exceptions were granted for aquaculture activities (Administrative Court of Rennes, 11 October 1989, Société pour l'étude et la protection de la nature en Bretagne), the construction of a lifeguard post (Administrative Court of Caen, 27 December 1990, Sahiguède), and the creation of two basins for the development of oyster-farming activities (Administrative Court of Rennes, 23 April 2003, Association Les amis de Locmiquel, de Baden et du golfe du Morbihan).

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

Last, in those Mediterranean States that have not established coastal setback zones *stricto sensu*, it should be pointed out that special attention is nevertheless often given to the areas closest to coastlines through consolidated legal protection. In **Egypt** for example, the 1994 Environment Law submits the construction of any establishment within 200 metres of the coastlines to the permission of the competent administrative authority, in coordination with the Environmental Affairs Agency[42]. In **Italy**, the Law on landscapes also calls for special attention to be given to the 300 metre strip by prohibiting, if need be, any new building[43].

1.4 Structure of the study

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

2. The principle of a 100 metre setback zone

2.1. The content of the principle

2.1.1. The objectives attached to the establishment of a setback zone

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

Regional planning is traditionally a sovereign competence a State asserts over its territory. The ICZM Protocol nevertheless marks a shift away from this original approach and considerably disrupts the traditional field of inter-State cooperation, filtering into disciplines that were hitherto governed by domestic law alone: this is particularly true for regional planning and urban planning law, areas that are governed by some of the provisions of the Protocol. The text thus aims to establish a "common framework for the integrated management of coastal zones[44]", in other words to define common rules for coastal management. In this case, although some Mediterranean States have already included the establishment of setback zones in their legal system, the main objective of Article 8-2 is in fact **to set minimum requirements and common criteria** for the establishment of such zones.

[42] Article 73.
[43] Legge 8 agosto 1985, N° 431, Conversione in legge con modificazioni del decreto legge 27 giugno 1985, N° 312 concernente disposizioni urgenti per la tutela delle zone di particolare interesse ambientale, Gazzetta Ufficiale della Repubblica Italiana N° 197 del 22 agosto 1985 (Legge Galasso).
[44] Article 1.

Article 4-3-e of the Barcelona Convention requires States to "promote the integrated management of the coastal zones, taking into account the protection of areas of ecological and landscape interest and the rational use of natural resources". Echoing this provision of the framework convention, the ICZM Protocol recognises Mediterranean coastal zones as "common natural heritage (…) that must be preserved" and urges States to guarantee the protection of natural and landscape heritage[45]. Article 8-1 itself – which introduces the principle of the setback zone – concerns the preservation of "coastal natural habitats, landscapes, natural resources and ecosystems". We can therefore conclude that the establishment of a setback zone as provided for by the Protocol is part of the broader objective of **protecting natural heritage** in Mediterranean coastal zones.

Finally, for those who drafted the Protocol, the relevance of the principle of a setback zone "lies not only in the concern to protect an area of ecological and landscape interest which is very fragile due to the land-sea interface, but also the necessity to prevent natural risks resulting from the rise in sea levels related to climate change[46]". This acknowledgement of natural risks is in fact set out in Article 8-2-a itself, which states that the coastal zone includes "areas directly and negatively affected by climate change and natural risks". Consequently, the establishment of a setback zone is also part of the broader goal of **preventing natural risks and adapting to climate change**, and is a major tool for achieving this goal.

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

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

First, the approximation of domestic laws by means of setting common rules is a direct consequence of regional cooperation on coastal issues - cooperation which is largely encouraged by international instruments. **Agenda 21**, resulting from the Rio Conference (1992), thus calls for cooperation on integrated coastal zone management, especially within a regional framework[47]. In the same way, the **Programme of Action adopted during the Johannesburg Summit** (2002) advocates the application of an integrated management of the oceans and coasts, suggesting the development of "regional programmes of action[48]" to achieve this.

The protection of natural and landscape heritage is also an obligation set out in numerous international treaties. The **United Nations Convention on the Law of the Sea** (UNCLOS), for example, establishes the obligation to protect the marine environment[49] and encourages regional cooperation to this end[50], especially in the case of enclosed or semi-enclosed seas[51]. The obligation to sustainably manage coastal zones and, more specifically, the establishment of coastal setback zones by States therefore clearly correspond to the objectives set out in UNCLOS. Since it concerns the protection of ecosystems, habitats and, more broadly speaking, biodiversity, it is also a tool for applying the **Ramsar Convention on Wetlands of International Importance** or the **Convention on Biological Diversity** and the Jakarta Mandate[52]. By including a section on landscapes, the

[45] Articles 5(b) and 5(d), for example.
[46] UNEP/MAP, Draft Protocol on the integrated management of Mediterranean coastal zones, Meeting of MAP Focal Points, Athens (Greece), 21-24 September 2005, UNEP(DEC)/MED WG.270/5.
[47] Chapter 17: Protection of the Oceans, all Kinds of Seas, Including Enclosed and Semi-enclosed Seas, and Coastal Areas and the Protection, Rational Use and Development of their Living Resources, 17.10.
[48] Plan of Implementation of the World Summit on Sustainable Development, 33-c.
[49] UNCLOS, Article 192.
[50] UNCLOS, Article 197.
[51] UNCLOS, Article 123.
[52] CBD COP II, Decision II/10, Conservation and sustainable use of marine and coastal biological diversity, Jakarta, Indonesia, 6-17 November 1995, UNEP/CBD/COP/2/19.

ICZM Protocol and Article 8-2 also tie in with the objectives set by the **European Landscape Convention**, signed in Florence on 20 October 2000.

Finally, underlining in its preamble that States with low-lying coastal areas are particularly vulnerable to the adverse effects of climate change, the **United Nations Framework Convention on Climate Change** invites States to "cooperate in preparing (…) appropriate and integrated plans for coastal zone management[53]". The development of ICZM initiatives at the regional level, in particular through the establishment of setback zones, thus falls within the legal framework of the Convention.

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

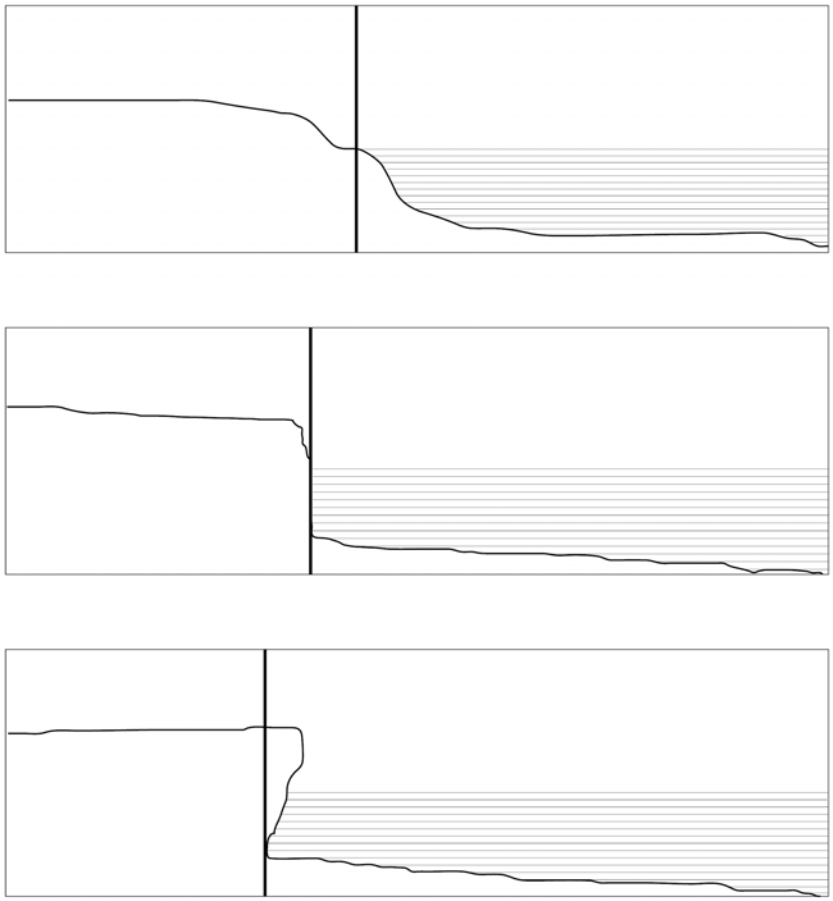
2.1.3. Calculating the setback zone

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

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

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

[53] Article 4(e).



2.1.4. Setback zone and existing urbanisation

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

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

2.2. The legal scope of the principle

2.2.1. An obligation to produce results

The legal scope of a provision is traditionally determined by making a distinction between an obligation to use best efforts and an obligation to produce results. The former is usually understood as an obligation under which the debtor – the State in international law – must employ its best efforts to achieve a specific goal; it therefore differs from the latter, under which the debtor may accept liability for achieving a specific goal.

Paragraph 2 of Article 8 provides that the Parties "shall establish in coastal zones (…) a zone where construction is not allowed". The use of the verb "establish", an action verb used in the present tense, reveals beyond dispute the desire of those responsible for drafting the Protocol to subject States to an **obligation to produce results**. According to the principle of *Pacta sunt servanda*, codified in Article 26 of the Vienna Convention on the Law of Treaties, the Parties to the Protocol must therefore apply this provision "**in good faith**" and refrain from taking measures that would reduce its scope and prevent the establishment of a 100 metre setback zone, subject to the provisions of Article 8-2-b.

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

2.2.2. Specific consequences for the Mediterranean EU Member States

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

The provisions of an international agreement form an integral part of the Community legal order as soon as the agreement enters into force[54]. This principle extends to the mixed agreements concluded by the EU and its Member States with non-member countries. Under Court of Justice of the European Communities (CJEC) case law, these agreements "have the same status in the Community legal order as purely Community agreements[55]". In the hierarchy of EU standards, an international treaty takes precedence over secondary Community law (regulations, directives and decisions). Finally, as EU law originates in a monistic approach, the EU does not necessarily need to adopt an instrument to transpose international agreements into Community law, at least where EU competence is concerned.

These effects of an international agreement that is duly approved by the EU and its Member States have several consequences, which have been confirmed by the CJEC since its **case law in the Etang de Berre case** on the applicability of the Athens Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources to the Barcelona Convention[56].

First, the Court considers that "in ensuring respect for commitments arising from an agreement concluded by the Community institutions the Member States fulfil, within the Community system, an obligation in relation to the Community, which has assumed responsibility for the due performance of the agreement". It therefore concludes that "there is a Community interest in compliance by both the Community and its Member States with the commitments entered into under those instruments". Consequently, if a Mediterranean EU Member State that is party to the Protocol fails to respect the provisions of the Protocol, the Commission may, on its own initiative or by declaring admissible a complaint brought by an individual, initiate proceedings for failure to fulfil an obligation against the State in question[57] or even for non-implementation of judgments for failure to fulfil obligations, and may then impose penalty payments[58].

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[54] CJEC, 30 April 1974, R. & V. Haegeman v Belgian State, Case 181/73; CJEC, 30 September 1987, Demirel, Case 12/86.
[55] CJEC, 19 March 2002, Commission v Ireland, Case C-13/00.
[56] CJEC, 15 July 2004, Syndicat professionnel coordination des pêcheurs de l'étang de Berre et de la region v Électricité de France (EDF), Case C-213/03.
[57] Article 256, TFEU.
[58] Article 260, TFEU.

Second, because the provisions of duly concluded international agreements are an integral part of Community law, the Court finds itself competent to rule on the proper application of an international agreement, whether mixed[59] or otherwise[60], by the EU Member States. It may therefore allow an action for failure to fulfil an obligation brought by the European Commission on the basis of Article 256 of the TFEU, as previously mentioned.

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

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

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

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

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

The scope of the direct applicability is not without consequences for the due implementation of the ICZM Protocol and its monitoring. It lays down the recognition of an obligation to produce results for States and, in accordance with the established case law of the Court[61], direct effect confers

[59] CJEC, 30 September 1987, Demirel, Case 12/86.
[60] CJEC, 30 April 1974, R. & V. Haegeman v Belgian State, Case 181/73.
[61] CJEC, 5 February 1962, Van Gend & Loos, Case 26/62.

rights and obligations on individuals that the national and EU courts must enforce: this gives all concerned persons the possibility to rely on it before the national courts or within the framework of a complaint submitted to the Commission for non-compliance with Community law.

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

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

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

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

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

Nevertheless, according to Article 4-4, even those activities and facilities "should be operated or established as far as is reasonable and practicable, **in a manner consistent with this protocol**". The parties do not have to enact specific national legal instruments organising the establishment of such facilities and activities to be in compliance with the Protocol. However, numerous Mediterranean legislations already take into account the specificities of national defence and security facilities and activities along the seashore and grant them an exemption[62]. In France for example, this exemption is subject to "imperative technical necessities".

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

4. Adaptations to the principle

Aiming at integrated coastal zone management, the Protocol agrees with the idea that a complete building ban within the 100 metre strip from the highest winter waterline is unrealistic: constructions already exist and the Protocol does not require any systematic expropriation. However, contrary to some national legislations such as the French Loi Littoral, the Protocol does not specifically mention the non-application of the coastal setback zone in areas that are already built up. Therefore, the implementation of Article 8-2 requires a high level of flexibility. In the Mediterranean, many urbanised areas are indeed located along the coast and within the setback zones and future projects of considerable importance for the development of Mediterranean countries may require immediate proximity to the sea. The Protocol deals with this fact by adding an "adaptation clause" to Article 8-2a in Article 8-2-b. Thus, the Parties "*may adapt [the implementation of the setback zone provision], in a manner consistent with the objectives and principles of the Protocol (…): 1) for projects of public interest, 2) in areas having particular geographical or other local constraints, especially related to population density or social needs, where individual housing, urbanisation or development are provided for by national legal instruments*". These two adaptation hypotheses will be studied in the following pages, but first an analysis of their common framework is needed.

4.1. A common framework for adaptation conditions

4.1.1. Formal condition: a State-level text

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

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

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

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

4.1.3. Meaning of "adaptation"

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

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

Despite this possibility given to States, the Parties have nevertheless established the 100 metre zone as a specific area in which planning precautions must be guaranteed, pursuant to Articles 5 and 6 of the Protocol. This means, for example, that adaptations to the principle of the setback zone must be implemented in a moderate way, respecting the particular sensitivity of the area. In France, for instance, the non-application of the principle in areas that are already urbanised within the 100 metre strip does not authorise vast property developments: in fact, the principle of the "limited extension of urbanisation[63]" applies, a concept that is evaluated according to the location of the planned urbanisation, the density of existing construction, and the specific configuration of the site, etc. The use of such precautions makes it possible to guarantee **special protection for the 100 metre strip**, over and above the potential applicability of the principle of the setback zone alone.

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

4.2. Adaptations for "projects of public interest"

4.2.1. Common features of the notion of "public interest"

It is widely admitted that the notion of public interest, which is often connected with that of general interest, excludes any kind of action conducted in the sole interest of an individual or a group of individuals[64]. There is also no doubt that projects of public interest are projects aimed at ensuring **social and/or economic benefits for the community**. The notions of public interest and economic or social interest are not mutually exclusive. The economic or social nature of the public interest is in fact the core of the idea of adaptation for "projects of public interest" according to the Protocol, since Article 4-4 reserves the right of the Parties to establish or operate national defence and security facilities and activities.

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

The notion of a "project of public interest" should not be confused with that of "**public services requiring, in terms of use and location, the immediate proximity of the sea**", which also exists

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

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

in the Protocol. The second notion is more specific and narrower than the first one. The problem of the location of such "public services" must be disconnected from the "adaptation for projects of public interest". These services will be granted an ordinary dispensatory regime allowing them to settle along the seashore, whatever the local width of the setback zone. This dispensatory regime must respect the objectives and principles of the Protocol, which means at least that the location of public service activities and facilities must be: (i) motivated by an essential need to be near the seashore, and (ii) assessed beforehand in terms of its effect on the coastal environment. In the majority of European countries, public services generally benefit from exemptions from the special provisions for the coastal strip. After being authorised by the competent administration, they can settle within the established coastal setback. This is why "projects of public interest" are usually ruled by specific provisions, which must not be confused with those dedicated to public service activities and facilities. The French coastal law provides a good example of how a national legal instrument could handle the settlement of public services within the setback zone. Article L 146-4-III para. 2 provides that the building ban in the coastal setback "does not apply to buildings or facilities necessary to public services or to economic activities requiring immediate proximity to the sea. Their construction is, however, submitted to a public inquiry following the modalities of law N°83-630 of 12 July 1983 on the democratisation of public inquiries and environmental protection". Projects of public interest therefore follow a different regime regarding their exceptional characteristics.

4.2.2. Examples of national legislations relating to projects of public interest

National legislations providing for a setback zone along the seashore do not always distinguish between the needs of economic activities and public services and the development of a project of public interest. Spain and France do make this distinction[65]. They provide an interesting illustration of the originality of an adaptation for a project of public interest.

In **Spain**, where public services and activities that require immediate proximity to the sea are usually permitted within the 100 metre coastal setback zone[66], exceptional dispensations for other kinds of activities or facilities may be granted by the government (*Consejo de Ministros*) for specific public use reasons (*razones de utilidad pública debidamente acreditadas*). In such cases, the construction or modification of high-traffic roads and the deployment of high-voltage electricity networks are possible within the setback zone[67]. Moreover, in some parts of the setback zone – with the exception of coastal wetlands and specially protected areas – housing projects and industrial facilities that do not require immediate proximity to the sea may be established if they are of "exceptional importance" and if, for "specific economic reasons", it is more convenient to settle them along the coast.

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

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

[67] Article 25(3).

The **French legislation** also grants an general exemption from the building ban within the 100 metre coastal strip for public services and activities that require immediate proximity to the sea. Their settlement must be preceded by a public inquiry[68]. Roads may also be built in their interest. Beyond the domestic and essential needs of those public services, the Code also provides that "facilities, buildings, the establishment of new roads and works necessary to maritime and air safety, national defence, civil security, and those necessary to the functioning of airports and public ports, with the exception of marinas, are not subject to the present section [which in particular provides for the 100 metre coastal strip and the public inquiry prior to the exemption] when their localisation is an imperative technical necessity[69]". This provision shall not be considered equivalent to the stipulation of the fourth point of the clause on the preservation of rights; its scope is indeed wider. This text actually governs some of the most typical coastal "projects of public interest" that could, in a manner consistent with the objective of the Protocol, justify an adaptation of the width of the 100 metre setback zone, such as public ports (with the exceptions of marinas)[70]. The imperative technical necessity to which this text refers can be qualified taking urbanisation constraints into account[71].

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

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

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

In general, the case law of the **Court of Justice of the European Communities** identifies the public interest of a project particularly from the viewpoint of criteria concerning general interest, human health, public security and environmental protection[72]. In the more specific field of the Habitats Directive, the Commission moreover provides interesting guidelines for assessing the legality of operations conducted in the areas protected by this text. In its "**Guidance document on**

[68] Urban Planning Code, Article 146(4)(III) para. 2.
[69] Article L.146(8) para. 1.
[70] It was recently ruled that the construction of a public hospital within the 100 metre strip could not be considered as a facility necessary to civil security: Administrative Court of Appeal of Nantes, 23 June.2009 N°08NT01439.
[71] See, for example, Conseil d'État, 29 December 1999, N°197720 (construction of a new road connecting a public port).
[72] CJEC, 28 February 1991, Commission/Germany [Leybucht], Case C-57/89.

Article 6-4[73]", the European Commission states that "it is reasonable to consider that the "imperative reasons of overriding public interest, including those of social and economic nature" refer to situations where plans or projects envisaged prove to be indispensable:

- within the framework of actions or policies aiming to protect fundamental values for the citizens' life (health, safety, environment);
- within the framework of fundamental policies for the State and the Society;
- within the framework of carrying out activities of economic or social nature, fulfilling specific obligations of public service".

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

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

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

First of all, the project of public interest must be relevant regarding the "rational planning of activities[74]" and the "ecosystem approach to coastal planning[75]", and should basically result from the formulation of land use strategies, plans and programmes covering urban development and socio-economic activities as well as other relevant sectoral policies[76]. Fundamentally, such a project should concern facilities and activities requiring immediate proximity to the sea: port infrastructures and facilities essentially required for their normal functioning as well as coastal defence works could constitute obvious examples. But the list is open and could integrate facilities required by scientific research or by other coastal-related public interests (relevant activities are broadly listed in Article 9-2).

In any case, the decision must be made at the end of a specific "**assessment of the risks** associated with the various human activities and infrastructure so as to prevent their risk and reduce their negative impact on coastal zones[77]". This negative impact could consist in increasing coastal erosion[78] and overwhelming the carrying capacities of the affected coastal zone[79]. In this respect, Article 19 of the Protocol provides that "the Parties shall ensure that the process and related studies of **environmental impact assessment** for public and private projects likely to have significant environmental effects on the coastal zones, and in particular their ecosystems, take into consideration the specific sensitivity of the environment and the inter-relationships between the marine and terrestrial parts of the coastal zone". An adequate assessment method dedicated to the coastal zones is thus required at every level of the decision-making process. Indeed, assessment must be effective from the stage of coastal planning and programming to that of the specific conception of the project of public interest, as stated in Article 19-2: "in accordance with the same criteria, the Parties shall formulate, as appropriate, a strategic environmental assessment of plans and programmes affecting the coastal zones".

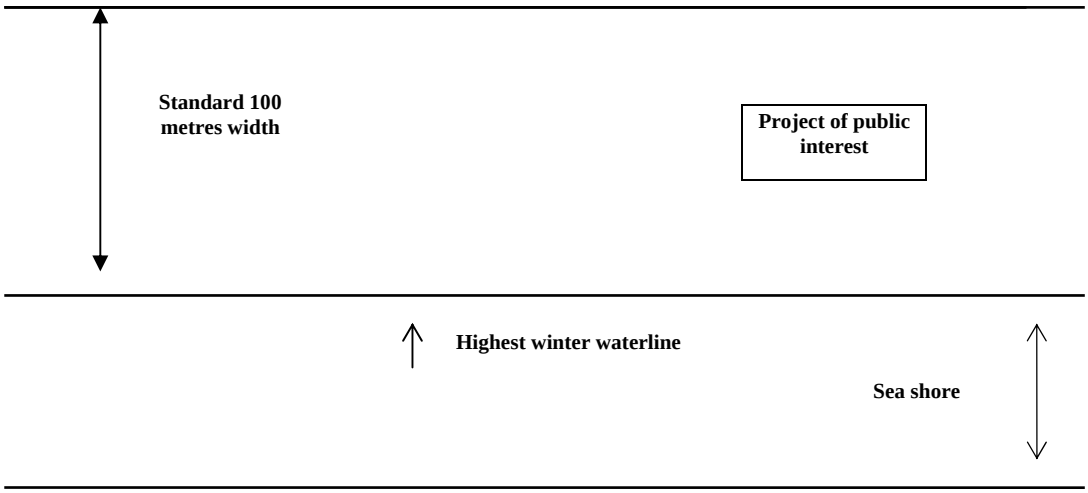
[73] Guidance document on Article 6(4) of the "Habitats Directive" 92/43/EEC, January 2007, http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/guidance_art6_4_en.pdf
[74] Article 5(a).
[75] Article 6(c).
[76] Article 6(f).
[77] Article 6(i).
[78] Article 23(2).
[79] Article 19(3) for example.

4.2.5. Consequences of the establishment of projects of public interest in the 100 metres coastal fringe

For the projects of public interest, a crucial issue is to determine whether the "adaptation" possibilities provided by article 8-2b refers to the width of the non-building zone or to the non-building principle. An example suffices to explain the issue.

Let's imagine a project of public interest located in the 100 metres width coastal fringe, as illustrated by the figure 1.

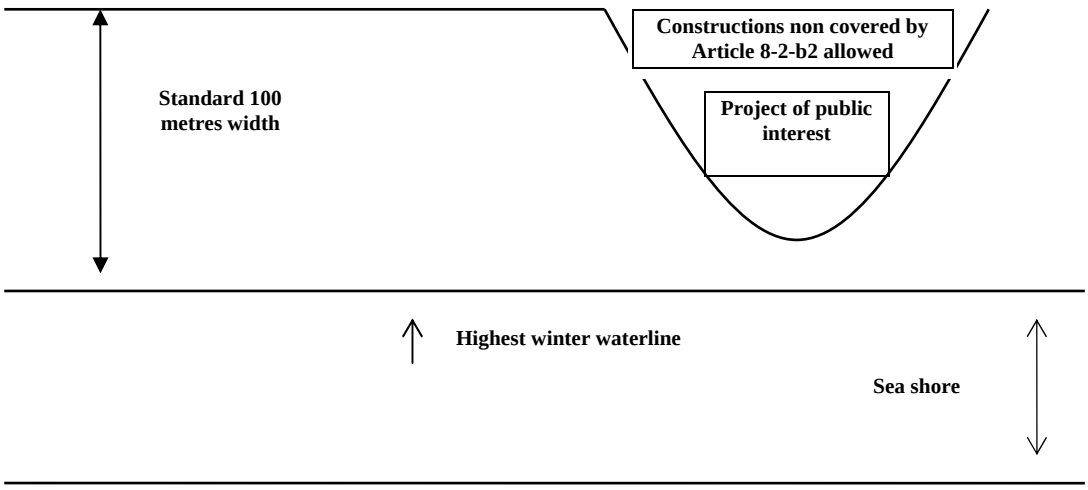
Figure 1



The question is whether constructions – individual houses for example – non covered by article 8-2-b2 can be allowed beyond the project of public interest zone but inside the 100 metres zone, or if the 100 metres non-building principal is still applicable.

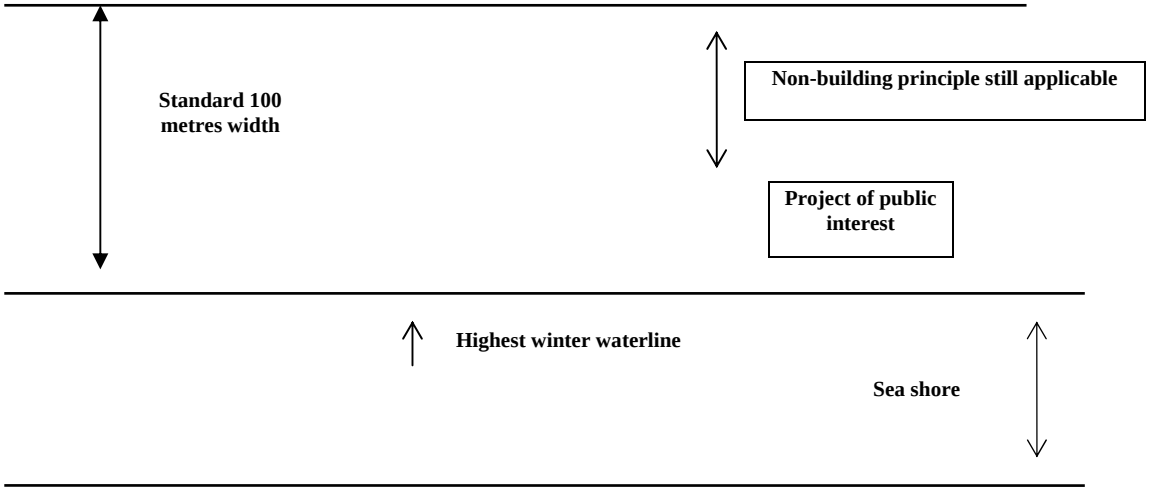
The first option, illustrated by figure 2, would mean that **the width of the non-building zone is "adapted"**, which would let the possibility to build beyond the project of public interest zone, even if it is in the 100 metres zone.

Figure 2



The second option illustrated by figure 3 would mean that **the non-building principle is specially adapted** for project of public interest but that the general principal itself remains applicable. In this context, constructions not covered by Article 8-2-b-2 shall not be allowed.

Figure 3



Provisions of Article 8-2 are not clear enough to give a peremptory and definitive answer to this question.

4.3. Adaptations for geographical or local constraints

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

4.3.1. Condition for the adaptation

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

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

4.3.2. Basis for the adaptation

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

4.3.2.1 Adaptation in areas having particular geographical constraints

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

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

Figure1[80]

Stromboli Island, Italy, where the development of urbanisation is "constrained" by the specific geography of the area.

Made of beaches and dunes, **sandy coastlines** are "the most sensitive environment to coastal changes" (Sano et al, 2010), which invites to implement a setback zone carefully. In particular, the width of the ideal setback zone should be determined taking into account the current (biodiversity loss, coastal erosion…) and future (climate change impacts) threats weighting on these vulnerable ecosystems (Nicholls and Hoozemans, 1996; Magnan, 2009; Magnan et al., 2009) (figure 2). Besides, the unity of the sandy dunes should be taken into account in delimitating the non-building area: ecological (Paskoff, 1985) but also legal (article 10-4 of the ICZM Protocol) basis justify the

[80] Source : http://www.dinosoria.com/climatique/stromboli_05.jpg

protection of the whole dune beds and not only the part located within the 100 metre zone (figure 2). Dunes are important ecosystems, not only from a biological point of view but also in terms of protection from the sea (buffer zones), which should be preserved beyond the sole 100 metre zone (figure 3).

Figure 2[81]

In Thau (France), coastal erosion affecting a road located too close to the shore

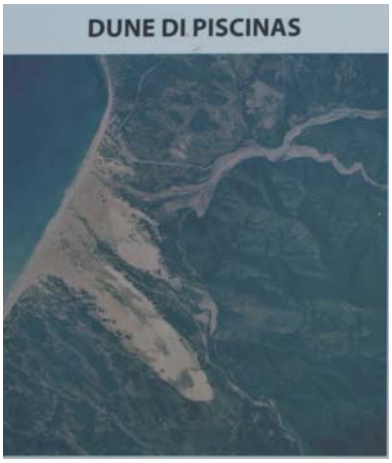


Figure 3[82]

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

Figure 4[83]

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

[81] Source : http://www.thau-agglo.fr/IMG/pdf/Plaquette_Lido_De_grands_enjeux_un_grand_projet_1-2.pdf
[82] Photo courtesy:of Julien Rochette.
[83] Photo courtesy:of Alexandre Magnan.

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

Figure 5[84]
In Corfu (Greece), an example of urbanisation in a cliff exposed to erosion

Figure 6[85]
The geography of the Venice Lagoon exposes the city to a risk of submersion.

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

[84] Photo courtesy of Alexandre Magnan.
[85] Source : http://www.lapanse.com/venise/vues_du_ciel/satellite.html

prevention and adaptation to climate change. Therefore, the precautionary principle invites not to decrease this width without conducting specific studies.

4.3.2.2 Adaptation in areas having "other local constraints"

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

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

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

According to the Protocol, "social needs" could also justify the adaptation of the 100 metre setback zone and therefore enable States to build in this sensitive area. In this regard, examples of traditional coastal activities can be given. Indeed, aquaculture or agriculture farms are plenty all along the Mediterranean coastlines and sometimes located in the 100 metre fringe without any other building around. In these important economic sectors, national legislations quickly evolve and impose new constraints, notably in the environmental field (sanitation, pollution control, waste management…). In this context, the implementation of such legislations can require the extension of existing facilities or even the construction of new ones. Therefore, the provision of Article 8-2-b-2 referring to adaptation for "social needs" could be used to authorize, in the 100 metre zone, **the adaptation of coastal maritime activities to new environmental regulations**. For example, France adopted measures in that sense in 2004[86].

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

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

5. Conclusion

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

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

5.2.Broad possibilities for adaptation

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

5.3.A 100 metre strip that is undeniably protected

However, despite the considerable possibilities for adaptation granted to States, the 100 metre strip remains well protected by the Protocol in general and by Article 8-2 in particular. Indeed, the "good faith" application of this article, as laid down in the Vienna Convention on the Law of Treaties, requires that States do not distort the content, scope or spirit of this provision. Moreover, beyond the principle of the setback zone, the negotiation meetings and the Protocol itself reveal the will to establish the 100 metre strip as a specially protected coastal area. This means that even in the case where adaptations to the principle are applicable, special attention must be given to this area. The general principles contained in Article 6 must be applied with care, especially the need to: (i) give priority "to public services and activities requiring, in terms of use and location, the immediate proximity of the sea", (ii) ensure the balanced allocation of activities and prevent "unnecessary concentration and urban sprawl", and (iii) make preliminary assessments "of the risks associated with the various human activities and infrastructure so as to prevent and reduce their negative impact on coastal zones".

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

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

in the sole light of the adaptations authorised by Article 8-2-b. The principle must take precedence over the adaptations that may nevertheless be made by the national systems, in accordance with the provisions of Article 8-2-b.

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

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

Moreover, as a centre specialising in ICZM issues, the PAP/RAC certainly has a role to play in the implementation of Article 8-2. First, it is undoubtedly in a position to reiterate, explain and promote this major provision of the Protocol. Perhaps it could also contribute to its application. Through the scientific and technical assistance mechanisms provided for by the Protocol[87], the Centre could first support States in the legal transposition of Article 8-2. Furthermore, while the prevalence of the project-based approach in the application of ICZM has certain considerable limitations, which the Protocol itself is in fact attempting to overcome (Billé and Rochette, 2010), the use of CAMP-type projects could also provide a relevant framework for facilitating the application of the provisions of Article 8-2, especially regarding the extension of the setback zone.

Quoted Bibliography

Ahmet Sesli F. et al., (2009), Coastal legislation and administrative structures in Turkey, *Scientific Research and Essay*, Vol. 4.

Benoit G., Comeau A. (Ed), (2005), "Sustainable Future for the Mediterranean, The Blue Plan's Environment and Development Outlook", Plan Bleu, Nice Sophia Antipolis.

Billé R., Rochette J., (2010), "Mise en œuvre de la gestion intégrée des zones côtières (GIZC) : comment réconcilier approche par projet et approche normative*", Annuaire du droit de la mer*, Tome XIII, Pédone, pp.337-369.

Conseil d'État, (1999), *L'intérêt général*, Paris, La documentation française.

Conseil d'État, (2002), *L'utilité publique aujourd'hui*, Paris, La documentation française.

Guidance document on Article 6(4) of the "Habitats Directive" 92/43/EEC, January 2007.

Hanak E., Moreno G., (2008), *California Coastal Management with a Changing Climate*, Public Policy Institute of California.

Magnan A., (2009), *La vulnérabilité des territoires littoraux au changement climatique : mise au point conceptuelle et facteurs d'influence*, Iddri, collection Analyses, 30p.

Magnan A., Garnaud B., Billé R., Gemenne F., Hallegatte S., (2009), *The future of the Mediterranean: from impacts of climate change to adaptation issues*, Iddri series, 43p.

Megfhour Kacemi M., Tabet Aoul K., (2007), Intégration des spécificités du littoral dans les documents d'urbanisme, *Courrier du Savoir*, N°08.

[87] Article 26.

Millennium Ecosystem Assessment, (2005), *Ecosystems and Human Well-Being: Synthesis*, Island Press, Washington. 155p.

Nicholls R.J., Hoozemans F.M., (1996), The Mediterranean vulnerability to coastal implications of climate change, *Ocean and Coastal Management*, 31, pp.105-132.

Paskoff R., (1985), *Les littoraux, impacts des aménagements sur leur évolution*, Masson, Paris, 188p.

UNEP/MAP/PAP, (2000), *Coastal Zone Management in Israel*, Priority Actions Programme Regional Activity Centre, Split, 2000.

UNEP/MAP, Report of the Fifth Meeting of the Working Group of Experts Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Loutraki, Greece, 10-11 December 2007, UNEP(DEPI)/MED WG.324/4, 18 December 2007, 31p.

UNEP/MAP, Report of the Fourth Meeting of the Working Group of Experts Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Split, Croatia, 13-16 June 2007, UNEP(DEPI)/MED WG.318/4, 6 September 2007, 53p.

UNEP/MAP, Report of the Third Meeting of the Working Group of Experts Designated by the Contracting Parties on the Draft Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean, Loutraki, Greece, 12-15 February 2007, UNEP(DEPI)/MED WG 305/4, 16April 2007, 51p.

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

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

Sano M., Marchand M., Medina R., (2010), Coastal setbacks for the Mediterranean: a challenge for ICZM, *Journal of Coastal Conservation*, Vol 14, N°1.

Scovazzi T., (2010), The 2008 Mediterranean Protocol on Integrated Coastal Zone Management and the European Community, in Del Vecchio A. (A cura di), *La politica marittima comunitaria*.