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THE INTERNATIONAL LEGAL FRAMEWORK APPLICABLE TO FISHERIES IN THE BLACK AND MEDITERRANEAN SEAS

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1. The Nature and Extent of Maritime Zones

Under both customary international law and the United Nations Convention on the Law of the Sea (Montego Bay, 1982; UNCLOS) the nature and extent of maritime zones within or beyond the limits of national jurisdiction are the following, moving from the coast seaward.

A) The marine **internal waters** are the waters located on the landward side of the baseline from which the territorial sea is measured. The baseline corresponds, depending on the geographical characteristics of the coastline, to the low-water line or, in particular cases, to one or more straight segments that connect points located on land or islands[1]. The internal waters are subject to the sovereignty of the coastal State.

B) The **territorial sea**, which includes the seabed and its subsoil, is subject to the sovereignty of the coastal State with the exception of the right of innocent passage for ships flying the flag of third States. Its breadth cannot exceed 12 nautical miles (n.m.) from the baseline (Art. 3 UNCLOS). The territorial sea does not depend on any express proclamation by the coastal States concerned, but exists *ipso iure*.

C) In the **contiguous zone**, the coastal State may exercise the control necessary to prevent infringements of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea and to punish such infringements. In this zone the coastal State may also exercise some rights as regards objects of an archaeological and historical nature found at sea (Art. 33 UNCLOS; so-called archaeological contiguous zone). The contiguous zone may not extend beyond 24 n.m. from the baseline of the territorial sea and is established on the basis of an express proclamation by the coastal State concerned.

D) In the **exclusive economic zone** the coastal State enjoys "sovereign rights" for the purpose of exploitation of the natural resources, whether living or non-living, and production of energy from the water, currents and winds, as well as "jurisdiction" with regard to artificial islands, installations and structures, marine scientific research and protection and preservation of the marine environment[2]. The other States enjoy the freedoms of navigation, overflight and laying of submarine cables and pipelines, and of other internationally lawful uses of the sea related to these freedoms. The breadth of the exclusive economic zone cannot exceed 200 n.m. from the baseline of the territorial sea (Art. 57 UNCLOS). The exclusive economic zone is established on the basis of an express proclamation by the coastal State concerned.

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[1] Under the UNCLOS, straight baselines can be drawn the cases of deeply indented coastlines or fringes of islands (Art. 7), mouths of rivers (Art. 9), bays (Art. 10) or archipelagic States (Art. 47).

[2] For more details see Art. 56 UNCLOS. Nobody knows what is the difference between "sovereign rights" and "jurisdiction".

E) The **continental shelf** includes the seabed and subsoil beyond the territorial sea. It is defined as

> "the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance" (Art. 76, para. 1, UNCLOS).

In the continental shelf the coastal State exercises sovereign rights for the purpose of exploring it and exploiting its natural resources (Art. 77, para. 1, UNCLOS), both mineral and living. The continental shelf does not depend on any express proclamation by the coastal State concerned, but exists *ipso iure* (Art. 77, para. 3). The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters (Art. 78, para. 1), that can be subject to the regime of either the exclusive economic zone or of the high seas.

F) The **high seas** is defined as "all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State" (Art. 86 UNCLOS). On the high seas jurisdiction is exercised by the State that has granted its flag to a certain ship. The high seas is subject to a regime of freedom that encompasses different activities:

> "1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:
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> (a) freedom of navigation;
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> (b) freedom of overflight;
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> (c) freedom to lay submarine cables and pipelines, subject to Part VI [= Continental Shelf];
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> (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
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> (e) freedom of fishing, subject to the conditions laid down in section 2 [= Conservation and Management of the Living Resources of the High Seas];
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> (f) freedom of scientific research, subject to Parts VI and XIII [= Marine Scientific Research].
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> 2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas (…)" (Art. 87 UNCLOS).

G) The seabed located beyond the limits of the continental shelf is called the **Area** and is subject to the special regime of the common heritage of mankind (Part XI UNCLOS). For geographical reasons, no seabed falling under the Area regime exists in the Black or in the Mediterranean Seas. In these semi-enclosed seas there is no point which is located at a distance of more than 200 n.m. from the nearest land or island.

2. The International Regime of Fisheries Applying at the World Level:

2.1. The UNCLOS

A) In the internal waters and in the territorial sea fisheries are subject to the sovereignty of the coastal State. Vessels flying the flag of third States may be allowed to engage in fishing activities if a treaty to such purpose in concluded between the coastal State and the States concerned.

B) Within the exclusive economic zone, the UNCLOS fisheries management scheme relies on the determination by the coastal State of the allowable catch of the living resources (Art. 61, para. 1) and the subsequent determination of its own capacity to harvest (Art. 62, para. 2). Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements and pursuant to the terms and conditions established in its legislation, give other States access to the surplus (Art. 62, para. 2). The other States must comply with the terms and conditions established by the coastal State and relating to a number of matters listed by Art. 62, para. 4, such as, *inter alia*, licensing, payment of fees and other forms of remuneration, joint-ventures and other cooperative arrangements, technical measures for the conservation of living resources (quotas of catch, seasons and areas of fishing, sizes and amount of gear, number of fishing vessels, etc.). Under Art. 62, para. 3, in giving other States access to its exclusive economic zone, the coastal State shall "take into account all relevant factors", including, *inter alia*, the significance of the living resources of the area to its economy and other national interests, the rights of land-locked and geographically disadvantaged States[3] of the same subregion or region, the requirements of developing States of the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

The UNCLOS devotes specific provisions to those species that, due to their natural characteristics, do not respect the artificial boundaries that are drawn by men on maps, namely the so-called straddling stocks (Art. 63)[4], highly migratory species (Art. 64)[5], anadromous stocks (Art. 66)[6], catadromous species (Art. 67)[7].

As regards disputes that may arise about fisheries in the exclusive economic zone, the UNCLOS provides that the coastal State is not obliged to accept the submission to compulsory settlement procedures of any disputes relating to its sovereign rights with respect to living resources,

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[3] Art. 70, para. 2, defines the term "geographically disadvantaged States" as meaning "coastal States, including States bordering enclosed or semi-enclosed seas, whose geographical situation makes them dependent upon the exploitation of the living resources of the exclusive economic zones of other States in the subregion or region for adequate supplies of fish for the nutritional purposes of their populations or parts thereof, and coastal States which can claim no exclusive economic zones of their own".

[4] That is stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area of the high seas beyond and adjacent to it.

[5] Annex I to the UNCLOS provides the list of highly migratory species, which includes several species of high commercial value, such as tunas and swordfish.

[6] Anadromous species, such as salmon, originate in rivers, migrate to the sea and return to rivers.

[7] Catadromous species, such as eels, originate in the sea, migrate to rivers or brackish waters and return to the sea.

including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States, and the terms and conditions established in its conservation and management legislation (Art. 297, para. 3 *a*).

In fact, the UNCLOS management scheme is not always feasible, especially in the case of developing coastal States which have no knowledge of the biological characteristics of living resources in their 200-mile exclusive economic zone and cannot count on sufficient financial and technological means to determine the allowable catch and to exercise a full control on the amount of foreign catches. In these cases, access to fisheries is often granted by the coastal State in the form of a number of licenses to foreign fishing vessels (according to the practical criterion that it is easier to count vessels than to count fish!) and in exchange for the payment of adequate fees. With time, the license system could be combined with more advanced arrangements, such as joint venture agreements with foreign fishing corporations where the coastal State directly participates in the benefits and risks of the venture. This could contribute to the achievement of the final aim, consisting of the building by the coastal State of a national capacity to fully exploit the living resources[8].

C) Under Art. 68 UNCLOS, the regime of the exclusive economic zone does not apply to sedentary species of the continental shelf. They are defined by Art. 77, para. 1, as the living organism of the seabed and subsoil "which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil" (Art. 77, para. 2, UNCLOS). Sedentary species are subject to the sovereign rights of the coastal State, as are the mineral resources of the continental shelf.

D) The UNCLOS regime on high seas fisheries is based on an obligation to cooperate for the conservation and management of living resources. Arts. 117 and 118 provide that all States have the duty to take, or to cooperate with other States in taking, measures of conservation. Art. 119 specifies several factors that must be taken into consideration in determining the total allowable catch and establishing other conservation measures, namely, relevant environmental and economic factors, special requirements of developing States, fishing patterns, interdependence of stocks, effects on species associated with, or dependent upon, harvested species, and generally recommended minimum standards. The establishment of subregional or regional fisheries organizations is called for by Art. 118.

An obligation to cooperate is not devoid of legal meaning. It implies a duty to act in good faith in pursuing a common objective and in taking into account the requirements of the other interested States. This kind of behaviour is likely to lead to the conclusion of an agreement. As remarked by the

[8] See *Coastal State Requirements for Foreign Fishing*, FAO Legislative Study No, 21, Rev. 3, Rome, 1988.

International Court of Justice in the judgments of 20 February 1969 on the *North Sea Continental Shelf* cases[9] and of 25 July 1974 on the two *Fisheries Jurisdiction* cases. In the latter the Court stated that

> "it is one of the advances in maritime international law, resulting from the intensification of fishing, that the former *laissez-faire* treatment of the living resources of the sea in the high seas has been replaced by a recognition of a duty to have due regard to the rights of other States and the need of conservation for the benefit of all. Consequently, both Parties have the obligation to keep under review the fishery resources in the disputed waters and to examine together, in the light of scientific and other available information, the measures required for the conservation and development, and equitable exploitation, of those resources"[10].

However, a number of crucial questions that are typical of high seas fisheries may be asked to address a number of persistent problems that affect high seas fisheries, such as unregulated fishing, vessel reflagging to escape control, insufficiently selective gear, unreliable databases, excessive fleet size and lack of sufficient cooperation between States. To be meaningful, an obligation to co-operate should be complied with by all the States interested in the exploitation of a specific fishery. According to customary international law and to Art. 34 of the 1969 Vienna Convention on the Law of Treaties, "a treaty does not create either obligations or rights for a third State without its consent". How is it possible to apply a conservation scheme agreed upon among the parties to a multilateral treaty to fishing vessels flying the flag of non-party States (for example, a flag of convenience)? What are the means for preventing the conservation measures accepted by most interested States from being frustrated by a few countries which enjoy the benefits of such measures without burdening themselves with the corresponding duties? It is well known that where the fishing effort exceeds the rate of natural reproduction of the resources, the yield of the fishery decreases. Conservation measures (such as closed areas, closed seasons, quotas, minimum size of nets, etc.) need often to be adopted to achieve the objective of reaching an intensity of fishing which approaches as closely as possible the optimum sustainable yield from a determined fishery. It cannot be taken for granted that, on the high seas, these kinds of technical measures of restraint are be agreed upon by all the interested States.

2.2. Other Instruments

The post-UNCLOS trend in the field of high seas fisheries is based on the adoption of new instruments for the strengthening of cooperation among all the States which are interested in the exploitation of marine living resources, in particular as regards fishing activities carried out at the regional level.

A) Among the many instruments of soft law, consideration should be given to the **Code of Conduct for Responsible Fisheries**, unanimously adopted on 31 October 1995 by the FAO Conference. It aims at providing "a necessary framework for national and international efforts to

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[9] International Court of Justice, *Reports of Judgments, Advisory Opinions, Orders*, 1969, para. 85 of the judgment.

[10] *Ibidem*, 1974, para. 72 of the judgment between the United Kingdom and Iceland and para. 64 of the judgment between the Federal Republic of Germany and Iceland.

ensure sustainable exploitation of aquatic living resources in harmony with the environment"[11]. The Code has a voluntary character. But, in some cases, it reflects rules that already belong to customary international law or are given binding effect through specific treaties. The Code also contains ideas which may orientate the progressive development of international law of the sea. This is the case of the general principle of responsible fisheries, which is a way to integrate the idea of sustainable development into the field of fisheries:

> "States and users of living aquatic resources should conserve aquatic ecosystems. The right to fish carries with it the obligation to do so in a responsible manner so as to ensure effective conservation and management of the living aquatic resources" (Art. 6, para. 1).

Another important soft law instrument is 2001 FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (so-called IUU fishing). It provides, *inter alia*, the following definitions:

> "3.1. Illegal fishing refers to activities:
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> 3.1.1. conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;
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> 3.1.2. conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or
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> 3.1.3. in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.
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> 3.2. Unreported fishing refers to fishing activities:
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> 3.2.1. which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or
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> 3.2.2. undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.
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> 3.3. Unregulated fishing refers to fishing activities:
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> 3.3.1. in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or
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> 3.3.2. in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law".

B) As regards multilateral treaty law, the **Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas** was

[11] FAO, *Preface* to *Code of Conduct for Responsible Fisheries*, Rome, 1995, p. vi.

adopted on 24 November 1993 by the FAO Conference. The preamble of the Agreement recalls that "the failure of flag States to fulfil their responsibility with respect to fishing vessels entitled to fly their flag", as well as "the practice of flagging or reflagging vessels as a means of avoiding compliance with international conservation and management measures for living marine resources", "are among the factors that seriously undermine the effectiveness of such measures". The parties to the Agreement are under the basic obligation to comply with the principle of flag State responsibility:

> "Each Party shall take such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures" (Art. III, para. 1 *a*).

The other main obligations set forth in the Agreement relate to the exercise of flag State responsibility. For example, parties must not authorize any fishing vessel previously registered in the territory of another party that has undermined the effectiveness of conservation and management measures to be used for fishing on the high seas (Art. III, para. 5). Parties are under an obligation to apply such sanctions of sufficient gravity as to be effective in securing compliance with the requirements of the Agreement (Art. III, para. 8)[12]. Other provisions deal with compulsory authorizations for fishing vessels, records of fishing vessels, transmission of information to the FAO for subsequent circulation to all parties.

The Agreement is a sign of a new way to understand the regime of fisheries on the high seas. All States retain their traditional right to sail ships flying their flag on the high seas and to give their flag to vessels fishing on the high seas. But this right is linked to the obligation to exercise flag State responsibility. To allow vessels flying the national flag to undermine the effectiveness of international conservation and management measures is to be considered a breach of an international obligation. This important corollary to the right to fish on the high seas is a welcome addition to the body of international law of the sea.

C) Another instance of the trend towards strengthening multilateral cooperation in the field of fisheries is the **Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of 10 December 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks**, opened for signature in New York on 4 December 1995 (so-called Fish Stocks Agreement).

As a sign of the new way to understand fishing activities on the high seas, the Fish Stocks Agreement includes a detailed provision on the precautionary approach as applied to fisheries. In particular:

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[12] The importance of this provision lies in the fact that parties are obliged to establish and apply sanctions also relating to activities which take place on the high seas and not in their own jurisdictional waters.

> "States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures" (Art. 6, para. 2)[13].

Today the precautionary approach, which is one of the main elements of the 1992 Rio Declaration on Environment and Development[14], has been included in many legal instruments relating to the protection of the environment or the management of natural resources[15]. It involves, *inter alia*, a reversal of the burden of proof in the case of lack of full scientific certainty.

Several provisions of the Fish Stocks Agreement stress the important role that is played by subregional or regional fisheries management organizations or arrangements. The Fish Stocks Agreement confirms the general principle that coastal States and States fishing on the high seas are under a duty to cooperate to conserve and manage straddling and highly migratory fish stocks (Art. 5). But it also contains provisions that derogate from the traditional principle of freedom of fishing on the high seas. On the one hand, all States having a real interest in the fisheries concerned have the right to become members of a subregional or regional fisheries management organization or participants in such an arrangement (Art. 8, para. 3). On the other, only those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such an organization or arrangement, have access to the fishery resources to which those measures apply (Art. 8, para. 4).

A party may authorize a vessel to use its flag for fishing on the high seas "only where it is able to exercise effectively its responsibilities in respect of such vessel" under the UNCLOS and the Fish Stocks Agreement. Besides the flag State, enforcement jurisiction is attributed also to port States and other parties to the Agreement or regional fisheries organizations, which can stop, board and inspect vessels on the high seas. The obligation to ensure enforcement of the measures is primarily vested in the flag State (Art. 19). However, powers are also given to the other parties. In any high seas area covered by a subregional or regional fisheries management organization or arrangement, any State party member of the organization or arrangement may board and inspect vessels flying the flag of another State party for the purpose of ensuring compliance with conservation and management measures (Art. 21, para. 1). On notification by the inspecting State that there are clear grounds for

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[13] The 1995 UN Fish Stocks Agreement makes the precautionary approach concrete. The basic concept, developed in Art. 6, para. 3, and further elaborated in Annex II, is that stock-specific reference points must be determined and not exceeded (para. 4). A precautionary reference point is defined in para. 1 of Annex II.

[14] "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation" (principle 15 of the Rio Declaration).

[15] In the field of fisheries, the view that States should "act with prudence and caution to ensure that effective conservation measures are taken to prevent serious harm to the stock" (in the specific case, a species of tuna of high commercial value) was expressed by the International Tribunal for the Law of the Sea in the order of 27 August 1999 in the *Southern Bluefin Tuna* cases (para. 77 of the order), although the concept of precautionary approach was not explicitly mentioned in it.

believing that a vessel has engaged in any activity contrary to the conservation and management measures, the flag State shall either fulfil its obligation to take enforcement action or authorize the inspecting State to take such enforcement action, as the flag State may specify (Art. 21, para. 7). When, following boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation and the flag State has either failed to respond, or has failed to take the required action, "the inspectors may remain on board and secure evidence and may require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port" (Art. 21, para. 8).

D) More recent (and not yet in force) is the **Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing**, adopted on 22 November 2009 within the FAO framework.

In the preamble the parties declare themselves "deeply concerned about the continuation of illegal, unreported and unregulated fishing and its detrimental effect upon fish stocks, marine ecosystems and the livelihoods of legitimate fishers, and the increasing need for food security on a global basis". They recognize that "measures to combat illegal, unreported and unregulated fishing should build on the primary responsibility of flag States and use all available jurisdiction in accordance with international law, including port State measures, coastal State measures, market related measures and measures to ensure that nationals do not support or engage in illegal, unreported and unregulated fishing". The objective of the Agreement is "to prevent, deter and eliminate IUU fishing through the implementation of effective port State measures, and thereby to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems" (Art. 2).

According to the Agreement, each party shall require that fishing vessels entering in its ports provide sufficiently in advance the information specified in Annex A. After receiving the relevant information, as well as such other information as it may require to determine whether the vessel requesting entry into its port has engaged in IUU fishing or fishing related activities in support of this kind of fishing, the party decides whether to authorize or deny the entry of the vessel into its ports[16]. A party is bound to deny entrance in its ports if it has sufficient proof that a vessel has engaged in IUU fishing or fishing related activities in support of such fishing, in particular if the vessel is already included on a list of vessels having engaged in such fishing or related activities adopted by a regional fisheries management organization in accordance with the rules and procedures of such organization and in conformity with international law.

[16] Denials of entry are communicated not only to the vessel, but also to its flag State and, as appropriate and to the extent possible, the relevant coastal States, regional fisheries management organizations and other international organizations.

In certain cases listed in Art. 11, a party is bound to deny, pursuant to its laws and regulations and consistent with international law, a vessel that has entered one of its ports the use of the port for landing, transshipping, packaging and processing of fish that have not been previously landed and for other port services, including refuelling and resupplying, maintenance and drydocking.

Parties are under an obligation to inspect the number of vessels in their ports required to reach an annual level of inspections sufficient to achieve the objective of the Agreement, according to the minumum standards of inspection specified in Annex B. Where, following port State inspection, a flag State Party receives an inspection report indicating that there are clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or fishing related activities in support of such fishing, it shall immediately and fully investigate the matter and shall, upon sufficient evidence, take enforcement action without delay in accordance with its laws and regulations (Art. 20, para. 4).

Special provisions apply to meet the requirements of developing States (Part 6 of the Agreement). Parties are bound to take fair, non-discriminatory and transparent measures consistent with the Agreement and other applicable international law to deter the activities of non-Parties which undermine the effective implementation of the Agreement (Art. 23, para. 2).

3. The Nature and Extent of Maritime Zones in the Black and Mediterranean Seas

The general rules of international law on the regime and extent of maritime zones within and beyond national jurisdiction apply also in semi-enclosed seas, such as the Black and the Mediterranean seas[17]. Despite a certain number of unsettled maritime boundaries, especially in the Mediterranean Sea, there is no doubt that States bordering enclosed or semi-enclosed seas are entitled to establish exclusive economic zones whenever they wish to do so, even though for geographical reasons they cannot claim a full size 200-mile zone[18]. International law does not prevent States bordering seas of limited dimensions from establishing their own exclusive economic zones, provided that maritime boundaries are not unilaterally imposed by one State on its adjacent or opposite neighbouring States[19].

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[17] The Black and Mediterranean seas ares a semi-enclosed seas according to the definition provided by Art. 122 UNCLOS: "For the purposes of this Convention, 'enclosed or semi-enclosed sea' means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States".

[18] In fact, exclusive economic zones have been proclaimed in other semi-enclosed seas, such as the Baltic and the Caribbean.

[19] As remarked by the International Court of Justice in the judgment of 18 December 1951 on the *Fisheries* case, "the delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal State as expressed in its municipal law. Although it is true that the act of delimitation **i**s necessariliy a unilateral act, because only the coastal State **i**s comptent to undertake it, the validity of the delimitation with regard to other States depends upon international law" International Court of Justice, *Reports of Judgments, Advisory Opinions and Orders,* 1951, p. 20).

The six Black Sea coastal States[20] have established a 12-mile territorial sea and have proclaimed their exclusive economic zones.

3.1. The Peculiarities of Maritime Zones in the Mediterranean Sea

In the case of the maritime zones established in Mediterranean Sea, which is surrounded by twenty-two coastal States[21], a number of peculiarities must be taken into account that make the present picture particularly complex.

Not all the Mediterranean coastal States have so far decided to establish an exclusive economic zone.

Some coastal States have established beyond the territorial sea *sui generis* zones, such as a **fishing zone** or an **ecological protection zone**. While neither of them is mentioned in the UNCLOS, they are not prohibited either. They encompass only some of the rights that can be exercised within the exclusive economic zone. Such a fragmentation of rights seems compatible with international law, as the right to do less can be considered as implied in the right to do more (*in maiore stat minus*). The current picture of national coastal zones is summarized hereunder.

A) As regards internal waters, several Mediterranean States (Albania, Algeria, Croatia, Cyprus, Egypt, France, Italy, Libya, Malta, Morocco, Montenegro, Spain, Tunisia and Turkey) apply legislation measuring the breadth of the territorial sea from straight baselines joining specific points located on the mainland or islands. Historical bays are claimed by Italy (Gulf of Taranto) and Libya (Gulf of Sidra).

B) Most Mediterranean States have established a 12-mile territorial sea. The exceptions are the United Kingdom (3 n.m. for Gibraltar[22] and the Sovereign Base Areas of Akrotiri and Dhekelia on the island of Cyprus), Greece (6 n.m.) and Turkey (6 n.m. in the Aegean Sea, but 12 n.m. elsewhere).

C) Five States have declared a fishing zone beyond the limit of the territorial sea.

Based on legislation dating back to 1951 (Decree of the Bey of 26 July 1951) which was subsequently confirmed (Laws No. 63-49 of 30 December 1963 and No. 73-49 of 2 August 1973), Tunisia has established along its southern coastline (from Ras Kapoudia to the frontier with Libya) a fishing zone delimited according to the criterion of the 50-meter isobath[23].

In 1978, Malta established a 25-mile exclusive fishing zone (Territorial Waters and Contiguous Zone Amendment Act of 18 July 1978). Legislative Act No. X of 26 July 2005

[20] Turkey, Bulgaria, Romania, Ukraine, the Russian Federation and Georgia.

[21] Spain, the United Kingdom (as far as Gibraltar and the sovereign base areas of Akrotiri and Dhekelia are concerned), France, Monaco, Italy, Malta, Slovenia, Croatia, Bosnia and Herzegovina, Montenegro, Albania, Greece, Cyprus, Turkey, Syria, Lebanon, Israel, Egypt, Libya, Tunisia, Algeria, Morocco.

[22] A longlasting dispute exists between Spain and the United Kingdom as to whether Gibraltar is entitled to a territorial sea.

[23] The area where the Tunisian fishing zone is located is considered by Italy as a high seas zone of biological protection where fishing by Italian vessels or nationals is prohibited (Decree of 25 September 1979).

provides that fishing waters may be designated beyond the limits laid down in the 1978 Act and that jurisdiction in these waters may also be extended to artificial islands, marine scientific research and the protection and preservation of the marine environment.

In 1994, Algeria created a fishing zone whose extent is 32 n.m. from the maritime frontier with Morocco to Ras Ténès and 52 n.m. from Ras Ténès to the maritime frontier with Tunisia (Legislative Decree No. 94-13 of 28 May 1994).

In 1997, Spain established a fishing protection zone in the Mediterranean (Royal Decree 1315/1997 of 1 August 1997, modified by Royal Decree 431/2000 of 31 March 2000). The zone is delimited according to the line which is equidistant between Spain and the opposite or adjacent coasts of Algeria, Italy and France[24].

In 2005 Libya established a fisheries protection zone whose limits extend seaward for a distance of 62 n.m. from the external limit of the territorial sea (General People's Committee Decision No. 37 of 24 February 2005), according to the geographical co-ordinates set forth in General People's Committee Decision No. 105 of 21 June 2005.

D) Three States have adopted legislation for the establishment of an ecological protection zone.

In 2003, France adopted Law No. 2003-346 of 15 April 2003 which provides that an ecological protection zone may be created. In this zone France exercises only some of the powers granted to the coastal State under the exclusive economic zone regime, namely the powers relating to the protection and preservation of the marine environment, marine scientific research and the establishment and use of artificial islands, installations and structures. A zone of this kind was established along the French Mediterranean coast by Decree No. 2004-33 of 8 January 2004 which specifies the co-ordinates to define the external limit of the zone. The French zone partially overlaps with the Spanish fishing zone.

In 2005, Slovenia provided for the establishment of an ecological protection zone (Law of 4 October 2005)[25].

In 2006, Italy adopted legislation for ecological protection zones (Law No. 61 of 8 February 2006) to be established by decrees. No such decrees have been adopted so far. Within the ecological zones, Italy will exercise powers which are not limited to the prevention and control of pollution, but extend also to the protection of marine mammals, biodiversity and the archaeological and historical heritage.

E) One Mediterranean State has established a zone for both fishing and ecological purposes**.**

[24] No fishing zone was established as regards the Spanish Mediterranean coast facing Morocco.
[25] Croatia has objected to the right of Slovenia to establish national coastal zones beyond the territorial sea.

On 3 October 2003, the Croatian Parliament adopted a "decision on the extension of the jurisdiction of the Republic of Croatia in the Adriatic Sea" and proclaimed "the content of the exclusive economic zone related to the sovereign rights for the purpose of exploring and exploiting, conserving and managing the living resources beyond the outer limits of the territorial sea, as well as the jurisdiction with regard to marine scientific research and the protection and preservation of the marine environment, whereby the ecological and fisheries protection zone of the Republic of Croatia is established as of today" (Art. 1). However, on 3 June 2004, the Parliament amended the 2003 decision in order to postpone implementation of the ecological and fishing zone with regard to Member States of the European Union.

G) A number of States have established, or officially announced the establishment of, an exclusive economic zone.

In 1981, Morocco created a 200-mile exclusive economic zone (Dahir No. 1-81-179 of 8 April 1981), without making any distinction between the Atlantic and the Mediterranean coasts.

Upon ratifying the UNCLOS on 26 August 1983, Egypt declared that it "will exercise as from this day the rights attributed to it by the provisions of parts V and VI of the (...) Convention (...) in the exclusive economic zone situated beyond and adjacent to its territorial sea in the Mediterranean Sea and in the Red Sea".

By Law No. 28 of 19 November 2003 Syria provided for the establishment of an exclusive economic zone.

Cyprus proclaimed an exclusive economic zone under the Exclusive Economic Zone Law adopted on 2 April 2004.

Tunisia established an exclusive economic zone under Law No. 2005-60 of 27 June 2005. The modalities for the implementation of the law will be determined by decree.

Under a declaration of 27 May 2009 and a decision of 31 May 2009, No. 260, Libya proclaimed an exclusive economic zone. The external limit of the zone will be determined by agreements with the neighbouring States concerned.

By two notes deposited with the United Nations on 14 July and 19 October 2010 Lebanon determined the southern limits of its exclusive economic zone in relation to Palestine (southern median line) and Cyprus (southern part of the western median line).

In fact, while the Mediterranean may be considered today a sea in transition towards a general exclusive economic zone regime, some extended high seas areas still exist with this semi-enclosed sea. This situation must be taken into consideration as far as the regime of fisheries is concerned.

4. The Regional Co-operation Applying to Fisheries in the Black and Mediterranean Seas

Several legal instruments adopted at the Black and Mediterranean seas level confirm the trend towards regional co-operation among the States bordering these semi-enclosed seas. As regards the protection of the marine environment the main treaties are the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona, 1976; amended in 1995) with its seven protocols[26], the Convention on the Protection of the Black Sea against Pollution (Bucharest, 1992) with its three protocols[27], as well as the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (Monaco, 1996; ACCOBAMS). As regards marine scientific research, the Agreement establishing the Mediterranean Science Commission (Madrid, 1919; today the International Commission for the Scientific Exploration of the Mediterranean Sea, CIESM) may be quoted.

In the field of fisheries, the Agreement for the Establishment of the General Fisheries Commission for the Mediterranean (Rome, 1949; amended in 1963, 1976 and 1997) deserves particular consideration in this paper.

4.1. The General Fisheries Commission for the Mediterranean

The General Fisheries Commission (formerly Council) for the Mediterranean (GFCM) was established in 1949 as an institution under the auspices of the FAO to co-ordinate activities related to fishery management, regulation and research in the Mediterranean and Black Seas and connecting waters. It now has twenty-four members, including one non-Mediterranean State (Japan) and the European Union. The area covered by the GFCM Agreement includes both the high seas and marine areas under national sovereignty or jurisdiction.

The GFCM has the purpose of promoting the development, conservation, rational management and best utilization of all marine living resources, as well as the sustainable development of aquaculture in the area falling under its competence. Specific functions and responsibilities (Article III, para. 1) include powers to establish open and closed fishing seasons and areas; to encourage, recommend, coordinate and, as appropriate, undertake research and development activities,

[26] Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea (Barcelona, 1976; amended in 1995), Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea (Valletta, 2002; replacing a previous protocol of 1976); Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities (Athens, 1980; amended in 1996), Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (Barcelona, 1995; replacing a previous protocol of 1982), Protocol Concerning Pollution Resulting from Exploration and Exploitation of the Continental Shelf, the Seabed and its Subsoil (Madrid, 1994), Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal (Izmir, 1996), Protocol on Integrated Coastal Zone Management in the Mediterranean (Madrid, 2008).

[27] Protocol on the Protection of the Marine Environment of the Black Sea from Land-Based Sources and Activities (Bucharest, 1992), Protocol on the Protection of the Black Sea Marine Environment against Pollution by Dumping (Bucharest, 1992), Black Sea Biodiversity and Landscape Conservation Protocol (Sofia, 2002).

including cooperative projects in the area of fisheries and the protection of living marine resources; to assemble, publish or disseminate information regarding exploitable living marine resources and fisheries based on these resources; and to promote programmes for marine and brackish water aquaculture and coastal fisheries enhancement. The GFCM is required to apply the precautionary approach when formulating and recommending conservation and management measures, and to take into account the best scientific evidence available and the need to promote the development and proper utilization of marine living resources (Art. III, para. 2).

The GFCM also exercises scientific and consultative functions, in order to keep the state of the resources and the state of the fisheries under review. It is entitled to encourage, recommend, co-ordinate and, as appropriate, undertake research and development activities, including co-operative projects in the area of fisheries and the protection of living marine resources; to assemble, publish or disseminate information regarding exploitable living marine resources and fisheries based on these resources and to promote programmes for marine and brackish water aquaculture and coastal fisheries enhancement. Within the GFCM, a number of committees have been established, such as the Scientific Advisory Committee (SAC), advised by various sub-committees, the Committee on Aquaculture (CAC) and the Compliance Committee (COC).

By a two-thirds majority the GFCM can adopt recommendations on conservation and rational management of the resources, such as measures relating to fishing methods and gear, minimum size of species to be fished, open and closed fishing seasons and areas, the amount of total catch and fishing effort and their allocation among members, as well as measures for the implementation of the recommendations (Art. III and V). The recommendations have a binding nature. Parties must put them into effect, unless they object within 120 days from the date of notification.

Several GFCM recommendations regard the development and establishment by parties of the appropriate legal framework defining access to the fisheries resources and fishing grounds, as well as the implementation of management measures and the activities on monitoring, control and surveillance. Particularly notable are the GFCM measures on the establishment of fisheries restricted areas in order to protect the deep sea sensitive habitats (namely Recommendation 30/2006/3, adopted in 2006, which prohibits fishing with towed dredges and bottom trawl nets within “Lophelia reef off Capo Santa Maria di Leuca”, “The Nile delta area cold hydrocarbon seeps” and “The Eratosthenes Seamount”, and recommendation 33/2009/1, adopted in 2009, on the fisheries restricted area in the Gulf of Lions), as well as Recommendation 2005/1 on the management of certain fisheries exploiting demersal and deepwater species, prohibiting the use of towed dredges and trawl nets fisheries at depths beyond 1000 m.

Other priority issues facing fisheries in the GFCM region could be discussed and identified, also to promote convergence and consistency within the fisheries laws and regulations adopted by the parties.

4.2. The International Commission for the Conservation of Atlantic Tunas

The International Commission for the Conservation of Atlantic Tunas (ICCAT) was established under the International Convention for the Conservation of Atlantic Tunas (Rio de Janeiro, 1966). ICCAT is competent for fisheries of tuna and tuna-like fishes in the Convention Area, which includes the whole of the Atlantic, as well as the Mediterranean as a connected sea. Its mandate is to manage stocks of tuna and other associated species in these waters. It has the power to adopt resolutions that are binding on its Parties.

In the last years ICCAT has established a total allowable catch and national quotas for the fishing for bluefin tuna in the East Atlantic and Mediterranean waters, within the framework of a multiannual recovery plan. As regards fishing carried out by non-parties, in 1996 ICCAT, under Recommendation 96-11, asked parties to take appropriate measures to the effect that the import of Atlantic bluefin tuna and its products in any form from two non-Party States (Belize and Honduras) be prohibited. It also adopted a general instrument concerning trade measures (Recommendation 06-13), noting that "trade restrictive measures should be implemented only as a last resort, where other measures have proven unsuccessful to prevent, deter and eliminate any act or omission that diminishes the effectiveness of ICCAT conservation and management measures".

An informal *modus vivendi* has taken place between GFCM and ICCAT. GFCM "adopts" the ICCAT decisions relating to tuna and tuna quotas. In this way there are no contradictions between the GFCM and the ICCAT action.

4.3. The European Union Fishery Regime

A particular role for fisheries in the Black and Mediterranean seas is played by the European Union (EU; previously the European Community), an international organization of which twenty-seven European States are Members. The EU exercises, *inter alia*, an exclusive competence for fisheries management and conservation within EU waters and, beyond such waters, as far as Member States' vessels and nationals are concerned. Treaties relating to fisheries applying to Member States are negotiated and concluded by the EU. The EU also exercises a shared competence with Member States in the field of environmental protection, including the marine environment[28].

[28] See, in particular, Directive 2008/56/EC of 17 June 2008, establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive).

European legal norms are the foundation on which the nine Black Sea and Mediterranean Sea coastal countries that are EU Member States (Bulgaria, Cyprus, France, Italy, Greece, Malta, Romania, Slovenia and Spain) develop and implement many fishing and environmental measures. EU Member States are required to implement legal instruments adopted by the EU institutions to secure uniform or harmonised application of agreed policies throughout the EU. Whereas regulations are directly applicable in Member States, directives must be transposed into their national legal systems within a defined period of time.

The basis of the EU fisheries regime is today Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy. It clearly sets forth the objectives of the common fisheries policy, which aims at providing for coherent measures concerning different subject matters, such as conservation, management and exploitation of living aquatic resources, limitation of the environmental impact of fishing, conditions of access to waters and resources, structural policy and the management of the fleet capacity, control and enforcement, aquaculture, common organisation of the markets and international relations.

EU action against IUU fishing has been strengthened by the adoption of Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing and Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

Specific provisions for fishing in the Mediterranean Sea are to be found in Council Regulation (EC) No. 1967/2006 of 21 December 2066 concerning management measures for sustainable exploitation of fishery resources in the Mediterranean Sea. As for the Black Sea, reference can be made to Council Regulation (EU) No 1256/2010 of 17 December 2010 fixing the fishing opportunities for certain fish stocks applicable in the Black Sea for 2011.