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# EXTENSION OF COASTAL STATE JURISDICTION IN THE (NORTHERN) ADRIATIC, POSSIBLE ALTERNATIVES AND THE NEW EUROPEAN MARITIME POLICY

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# EXTENSION OF COASTAL STATE JURISDICTION IN THE (NORTHERN) ADRIATIC, POSSIBLE ALTERNATIVES AND THE NEW EUROPEAN MARITIME POLICY

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*The landmark Communication from the Commission to the Council and the European Parliament 'Towards an Integrated Maritime Policy for better governance in the Mediterranean' (COM(2009)466) makes reference to the fact that ' [...] the large proportion of marine space made up of high seas makes it difficult for [Mediterranean] coastal States to plan, organise and regulate activities that directly affect their territorial seas and coasts [...]. The aim of this intervention is to assess the past and recent positions of the EU regarding the extension of coastal State jurisdiction in the Mediterranean and to propose some potential alternatives to the process of extension of coastal State jurisdiction in the Adriatic Sea.*

## 1. EUROPEAN UNION

If the division of competences between the EU and its Member States is in some areas unclear, and subject to the discretion of the EU whether to exercise its regulatory powers or not,<sup>1</sup> there are no doubts that it is for each Member State to determine the extent and limits of

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<sup>1</sup> See Part One, Title I. TFEU (Categories and areas of Union Competence), Articles 2-6 and Declaration concerning the competence of the European Community with regard to matters governed by the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement of 28 July 1994 relating to the

its national 'territory'. This in turn means that the decision whether to proclaim an Exclusive Economic Zone (EEZ) and/or *sui generis* zones (and its modalities) lies within the competences of each Member State and not with the EU. However, as pointed out by Boelaert-Suominen:

[...] any extension of the Member States' maritime jurisdiction automatically entails a concomitant extension of the EC's regulatory competence, insofar the Community [EU] is internally competent to regulate the subject matter concerned.<sup>2</sup>

That means that an EU Member State may in principle decide not to proclaim an EEZ or a *sui generis* zone, but if it does so then it automatically extends also the EU regulatory competences in a particular field.<sup>3</sup>

This however does not mean that the EU has not had any say whatsoever regarding the extension of coastal State jurisdiction by its Member States. An outstanding example is represented by the Resolution of the Council of the EC, dated 5 November 1976<sup>4</sup> with which the Council invited the Member States to extend by *a concerted action* (as from 1 January 1977) the limits of their fishing zones to 200 nm. Although the resolution covered only the North Sea and North Atlantic coasts, it represents an important precedent and it also made clear that is without prejudice to similar action being taken for other fishing zones within the jurisdiction of Member States, such as in the Mediterranean.

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implementation of Part XI of the Convention, OJ L 179, 23.06.1998. For a general discussion see S. Boelaert-Suominen, 'The European Community, the European Court of Justice and the Law of the Sea', *International Journal of Marine and Coastal Law (IJMCL)*, Vol. 23, 2008, pp. 643-713.

<sup>2</sup> *Ibid.*, p. 688.

<sup>3</sup> The ECJ for example expressly confirmed the need for Member States to implement the Habitats Directive not only in relation to their territorial waters, but also with regard to the continental shelf and the EEZ. See Case C-6/04, *Commission v. UK*, Judgment of 20 October 2005 [2005] ECR I-9017, paras. 115-117.

<sup>4</sup> Council Resolution of 3 November 1976 on certain external aspects of the creation of a 200-mile fishing zone in the Community with effect from 1 January 1977, OJ C 105, 7 May 1981.

There are at least two additional landmarks in the attitude of the EU regarding the extension of coastal State jurisdiction in the Mediterranean. In the 2002 *Communication laying down a Community Action Plan for the conservation and sustainable exploitation of fisheries resources in the Mediterranean Sea under the Common Fisheries Policy*,<sup>5</sup> the EU Commission expressed the opinion, that the Declaration of FPZ up to 200 nm from baselines, could be an important contribution to improving fisheries management, particularly in the light of the fact that 95% of Community catches are taken within 50 nm of the coast of the Mediterranean. The second important landmark is represented by the *2003 Venice Declaration*.

## **1.2. Venice Declaration (2003)**

One of the main issues discussed at the Third Ministerial Conference on the Sustainable Development of Fisheries in the Mediterranean, held in Venice on 25-26 November 2003<sup>6</sup> and attended by the European Commission and governments of all States bordering the Mediterranean and some third States (Poland, Japan and Russia) was the possibility of proclaiming Fisheries Protection Zones (FPZs) in the Mediterranean.

The common denominator of the great majorities of the interventions of Adriatic (and Mediterranean) States was therefore that there should be a *concerted and regional approach towards the proclamation of FPZs*. The latter position is also reflected in Section 10 of the final *Declaration of the Conference (2003 Venice Declaration)* which provides as follows:

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<sup>5</sup> For a thorough discussion of the EU Common Fisheries Policy see the excellent work by R. Churchill and D. Owen, *The EU Common Fisheries Policy*, Oxford University Press, Oxford 2010. See also Commission of the European Communities, 'GREEN PAPER: Reform of the Common Fisheries Policy', COM (2009) 163 final, Brussels, 22.04.2009. For its application in the Mediterranean (including the Adriatic Sea) see Council Regulation (EC) No. 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, OJ L 409 of 30.12.2006; corrigendum: OJ L 36 of 8.2.2007.

<sup>6</sup> The first Ministerial Conference was held in Crete on 10-12 December 1994, the second on 27-29 November 1996 in Venice.

Against the background of a closer cooperation between all States benefiting from the biological wealth of the Mediterranean marine environment, *we consider that the creation of fisheries protection zones permits the improvement of conservation and control of fisheries and thus contributes to better resource management and to our common commitment to combat IUU fishing.*

We consider that, without prejudice to the sovereign rights of States and in accordance with relevant international law, a more detailed examination should be made of the modalities for the creation of fisheries protection zones taking into account the precedents that exist, with a view to employing a *concerted and regional approach* suited to the needs of the fisheries concerned and based on *dialogue and coordination*. In order to progress in this direction, the Mediterranean states shall co-operate at the appropriate regional level.<sup>7</sup>

What is possible to discern both from 1977 Council Resolutions, the 2002 Communication and the 2003 Venice Declaration, is that firstly the approach advocated by the European Commission (on behalf of the EU) was *sectoral* (proclamation of FPZ) therefore limited to the extension of jurisdiction for fisheries purposes. Other elements of the EEZ, e.g. jurisdiction with regard to the protection and preservation of the marine environment and marine scientific research were not taken into account. What the EU seems to have advocated at that time was therefore the proclamation of derived zones *in plus stat minus* (FPZs) and not of full EEZs. Secondly, the longstanding position of the EU has been that a *concerted* approach, first among EU Member States and subsequently among all the countries of the region (or sub-region), should be preferred to unilateral action. In the case of the (unilateral) proclamation of the Croatian EFPZ the mentioned position has been extended also to candidate States.<sup>8</sup>

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<sup>7</sup> Emphasis added. Declaration of the Ministerial Conference for the Sustainable Development of Fisheries in the Mediterranean, 25-26 November 2003, Proceedings of the Conference, p. 89 at p. 92.

<sup>8</sup> See Commission of the European Communities; Communication from the Commission: Opinion on Croatia's Application for Membership of the European Union, COM (2004)257 final, Brussels, 20 April 2004. Quoted in D. Vidas, 'The UN Convention on the Law of the Sea, the European Union and the Rule of Law: What is going on in the Adriatic Sea?', IJMCL, Vol. 24, 2009, pp. 1-66, at p. 18.

### **1.3. Towards and integrated maritime policy for better governance of the Mediterranean?**

Despite the fact that the 2003 Venice Declaration called for a *concerted and regional approach*, the latter was followed both in the Mediterranean and Adriatic Seas by a series of uncoordinated (unilateral) extensions of jurisdictions both with regard to the content of the zones (EEZs, Zones of Ecological Protection- ZEPs, Ecological and Fisheries Protection Zones- EFPZ) and their external limits. Somewhat ironically, the only FPZ which was proclaimed in the Mediterranean Sea in the aftermath of the 2003 Venice Declaration and which expressly made reference to the latter was that of Libya in 2005.<sup>9</sup>

In 2007 the European Commission, after a one year process of consultation, presented its ‘vision document’, a *Blue Book on an Integrated Maritime Policy for the EU*,<sup>10</sup> based on an inter-sectoral (*holistic*) approach to maritime activities. The ‘Blue Book’ had as its central goal the creation of optimal conditions for the growth of maritime sectors and coastal regions, while ensuring that the objectives of EU environmental legislation, including those of the *Marine Strategy Directive* are met.<sup>11</sup> Particularly the adoption of the ‘Blue Book’ seems to have influenced also the discussed (sectoral) approach of the EU towards the proclamations of maritime zones (FPZs) in the Mediterranean. An important landmark occurred on 10 June 2008, when the European Commission, the Slovenian Presidency of the EU and the Euro-Mediterranean University (EMUNI) organised in *Piran (Slovenia)* the first ever *international high level conference on maritime policy and governance in the Mediterranean* which was aimed at discussing the need of developing a holistic approach to the management of

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<sup>9</sup> See M. Grbec, Ph.D. Thesis, Section 3.4.3.

<sup>10</sup> *Integrated Maritime Policy for the EU*, Doc. COM (2007) 575 final of 10 October 2007. See also ‘Progress Report on the EU’s integrated maritime policy’, Doc. COM (2009) 540 final of 15 October 2009 and ‘Developing the international dimensions of the Integrated Maritime Policy for the European Union’, Doc. COM (2009) 536 final of 15 October 2009. See also M. Pavliha, ‘New European maritime policy for cleaner ocean and seas’, in N.A. Martínez Gutiérrez (Ed.); *Serving the Rule of International Maritime Law: Essays in Honour of Professor David Joseph Attard*, Routledge, London/New York, 2010, p. 22 at pp. 26-28.

<sup>11</sup> Article 11 FEU (previously Article 6 TEC) provides that ‘[e]nvironmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with the view of promoting sustainable development.’

maritime sectors and activities in the Mediterranean basin.<sup>12</sup> The *Conference Communiqué* in addition to addressing problems in individual sectors such as transport, fisheries, the environment etc., expressly mentioned that future discussions should focus also on two cross cutting issues, one of them being ‘[t]he absence of Exclusive Economic Zones and the ways to find acceptable solutions to solve the difficulties this situation is generating’.<sup>13</sup>

Shortly thereafter, on 14-15 January 2009, the European Commission convened a meeting of experts on the Mediterranean for the purpose of gathering independent expert advice on issues relating to the governance of the Mediterranean Sea. As a result, the experts have produced a *Report on the role of maritime zones in promoting effective governance for protection of the Mediterranean marine environment*.<sup>14</sup> The Report assessed the advantages and disadvantages of establishing EEZs<sup>15</sup> and one of its recommendations was to ‘[c]onduct further studies for establishing maritime zones and *alternative joint zones* in overlapping areas of potential EEZs’.<sup>16</sup> The Report makes reference to *potential EEZs and not EFZs* while with regard to possible delimitations problems it emphasizes that:

[...] The *development of common zones* is a possible way forward that has been used in other seas where there are similar problems of delimitation of maritime zones due to overlapping zones and other factors making delimitation by mutual agreement problematic.<sup>17</sup>

Based on the mentioned process of consultation, and within the framework of the EU Integrated Maritime Policy, the European Commission adopted on 11 November 2009 a

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<sup>12</sup> See [http://ec.europa.eu/maritimeaffairs/imp-mediterranean-conference\\_en.html](http://ec.europa.eu/maritimeaffairs/imp-mediterranean-conference_en.html).

<sup>13</sup> The other cross-cutting issue was surveillance and the way to create joint ownership of cross-sectoral surveillance in the region, among EU and non-EU countries. See *Conference on Maritime Policy in the Mediterranean Sea*, 10 June 2008, Piran-Portorož (Slovenia), Conference Communiqué.

<sup>14</sup> N. Oral et al.; ‘The Role of Maritime Zones in Promoting Effective Governance for the Protection of the Mediterranean’, Report of the Expert Group on Governance of the Mediterranean Sea, Prepared for the European Commission: Directorate General for Maritime Affairs and Fisheries: Mediterranean and Black Sea, 2009.

<sup>15</sup> *Ibid*, p. 40.

<sup>16</sup> *Ibid*, Recommendations, No. 20, p.50.

<sup>17</sup> Emphasis added. *Ibid*, pp. 43-44.

Communication ‘Towards an Integrated Maritime Policy for better governance in the Mediterranean’<sup>18</sup> which proposed a set of actions aimed at driving coastal States towards a more co-ordinated and holistic approach to the management of activities impacting on the sea and oceans. According to the 2009 Communication one of the main governance weakness in the Mediterranean is that: ‘[...] the large proportion of marine space made up of high seas makes it difficult for coastal States to plan, organise and regulate activities that directly affect their territorial sea and coasts’.<sup>19</sup>

Although the outcome of the process is difficult to predict, there are strong indicators that the favour of the EU is shifting from *sectoral* FPZs towards *holistic* EEZs. The latter process has been also influenced by the fact that a number of States in the wider Mediterranean Sea have particularly in the period following the 2003 Venice Conference proclaimed (*Cyprus, Syria, Tunisia and Libya*) and in certain cases even delimited *actual* or *potential* EEZ (*Egypt-Cyprus, Cyprus-Lebanon*)<sup>20</sup> It is particularly noteworthy that on 25 August 2009 France expressed its determination to upgrade its Mediterranean ZEP into a full EEZ<sup>21</sup>. It seems that at least in the Eastern<sup>22</sup> and Central Mediterranean the formal proclamation of EEZs will represent a ‘lowest

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<sup>18</sup> European Commission, Towards an Integrated Maritime Policy for better governance of the Mediterranean, Communication from the Commission to the Council and the European Parliament, COM (2009) 466, Brussels, 11 November 2009.

<sup>19</sup> M. Grbec, op.cit., Section 3.

<sup>20</sup> Section 3.1.1.

<sup>21</sup> The French Minister of Environment, J. Borloo expressed the intention of France to upgrade in the near future its Mediterranean ZEP to a full EEZ. It furthermore appealed to other State parties of the Union for the Mediterranean (UFM) to follow suit. See Dnevnik, ‘Francozi opozorili Hrvaško: Ne igrajte se z zaščiteno ekološko-ribolovno cono!’, Ljubljana, 28 September 2009.

<sup>22</sup> The discussion on the proclamation and/or delimitation of EEZs in the Eastern Mediterranean got new impetus after the discovery of a substantial amount of natural gas 90 nm off the coast of Israel. According to *Blomberg* Israel already started negotiations with Cyprus regarding the delimitation of their *EEZs*, while Lebanon officials have said the gas reserves may extend to their own waters and urged their own prospecting. See D. Wainer and M. A. Derhally, Massoud: ‘Israel Gas Finds Trigger Dispute With Lebanon, Cyprus Questions Boundaries’, *Bloomberg*, 17 June 2010. On the 15 July 2010 Lebanon (unilaterally) delimited its ‘potential’ EEZ with ‘Palestine’ (Israel) on the basis of a median line. See UN; MZN.79.2010.LOS (Maritime Zone Notification), 24 August 2010.

common denominator' and that the discussion on a 'concerted approach' will be most likely focused on the actual implementation of the regime of the EEZ.

The situation in the Adriatic is however rather different, as Croatia is the only State to have so far proclaimed an EFPZ (whose regime however is not applicable to Member States of the EU), Slovenia has proclaimed a ZEP, while Italy has adopted a framework law for the adoption of a ZEP or more ZEPs along its coast. As mentioned, there has been no move by Albania or Montenegro to extend their jurisdiction in the Adriatic Sea<sup>23</sup>. This seems to point at the need to discuss problems related with the extension of coastal State jurisdiction not only at the regional (Mediterranean level), but also at an appropriate sub-regional Adriatic level. As pointed in the Conclusions of the (2004) IUCN workshop:

The lack of coordination of national initiatives of extension of jurisdiction *ratione materiae* (fishery, marine pollution...) is [also] a major obstacle to the development of coordinated legal framework for integrated resource management. Extension should be promoted on a voluntary and regional basis in a concerted manner.<sup>24</sup>

The relevant question seems to be, particularly taking into account the *political* and *geographical* characteristics of the discussed area (Northern Adriatic) and the difficulties experienced so far<sup>25</sup>, whether there are *viable* alternatives to the process of extension of coastal State jurisdiction in the mentioned area. Obviously, also in such scenario the paramount concern should be to ensure *good environmental status* and *sustainable development of the Northern Adriatic in general*. A possible solution seems to be provided

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<sup>23</sup> See M. Grbec, Extension of Coastal State Jurisdiction in the Mediterranean: 'Quasi EEZ' or real 'Sui generis' Zones ?, in N.A. Martinez Gutierrez (Ed), *Serving the Rules of International Maritime Law: Essays in Honour of Professor David Joseph Attard*, Routledge, London/New York, 2010, p. 181 at p.183.

<sup>24</sup> IUCN, *Towards an Improved Governance in the Mediterranean Beyond the Territorial Sea*, Workshop's Conclusions, 15-16 March 2004, available at [http://cmsdata.iucn.org/downloads/conclusions\\_en.pdf](http://cmsdata.iucn.org/downloads/conclusions_en.pdf). The workshop's conclusions make reference also to '[t]he idea of an informal structure to be used as a forum for the management and prevention of litigation and for developing compromising solutions [...]' in the field of extension of coastal State jurisdiction and (presumably) also delimitation of maritime zone in the Mediterranean Sea.

<sup>25</sup> See *supra* note 23.

by the provisions of the *1995 Protocol Concerning Specially Protected Areas and Biodiversity in the Mediterranean (Biodiversity Protocol) to the Barcelona Convention*.

## 2. THE BIODIVERSITY PROTOCOL

One of the most important Protocols to the Barcelona Convention at least for the purpose of this paper, is the *Biodiversity Protocol*.<sup>26</sup> The latter has been in force since 1999 and all Adriatic States (with the exception of Bosnia and Herzegovina) and the EU are parties to it.<sup>27</sup> It should be emphasized that the geographical scope of application of the Biodiversity Protocol is not limited any more to internal waters and territorial sea, as was the case with the 1982 Protocol,<sup>28</sup> but includes all maritime waters (including the high seas), the sea-bed and subsoil and the terrestrial coastal areas designated by each of the parties, including wetlands.<sup>29</sup>

Another important achievement of the Biodiversity Protocol is the establishment of a List of SPAMIs which may contain sites which ‘are of importance for conserving the components of biological diversity in the Mediterranean, therefore sites which contain ecosystems specific to the Mediterranean area or the habitats of endangered species; are of special interest at the scientific, aesthetic or educational levels’<sup>30</sup> and which may be located ‘wholly or partially on the high seas’.<sup>31</sup> The importance of proclaiming a SPAMI lies also in the fact that within such an area, if agreed, State parties may adopt and enforce even such protective measures as for example the ‘regulation of the passage of ships’ and/or ‘the regulation or prohibition of fishing, hunting, taking of animals and harvesting of plants or their destruction’.<sup>32</sup> This is

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<sup>26</sup> See M. Pavliha, ‘Mednarodnopravni argumenti v luči prava EU zoper plinske terminale v Tržaškem zalivu’, *Podjetje in delo*, No. 8, Ljubljana, 2010, section 4.4.

<sup>27</sup> See Slim and Scovazzi, *op.cit. (Part 1)*, p. 140.

<sup>28</sup> Article 2.

<sup>29</sup> See Article 2(1).

<sup>30</sup> Article 4.

<sup>31</sup> Article 9(2).

<sup>32</sup> Article 6(c), (g).

particularly noteworthy as in certain cases such protective measures even exceed the competences which a coastal State is entitled to exercise in its EEZ.<sup>33</sup>

Proposals for the inclusion in the SPAMI List may be however submitted by a State party alone only ‘if the area is situated in *a zone already delimited*, over which *it exercises sovereignty and jurisdiction*’.<sup>34</sup> Alternatively, if the area is located ‘partly or wholly on the high seas’ or in a disputed area ‘where the limits of national sovereignty and jurisdiction have not yet been defined’, the proposal has to be submitted by ‘the neighbouring parties concerned’.<sup>35</sup> These provisions, particularly if read together with the detailed ‘disclaimer’ provision embodied in Article 2(2) of the Biodiversity Protocol,<sup>36</sup> seem to provide Adriatic States with an important practical tool, enabling them to immediately protect areas of particular natural and/or cultural value also in the absence of a delimitation agreement and/or unilateral extension of jurisdiction.

For the time being the only SPAMI encompassing areas of high seas is the ‘Mediterranean Marine Mammals Sanctuary (Pellagos)’ in the Ligurian Sea<sup>37</sup>. The EU has been however recently funding a project implemented by the (UNEP) RAC/SPA<sup>38</sup> and which aims at identifying areas of ‘conservation interest’ on the Mediterranean high seas for potential

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<sup>33</sup> See Article 56 of UNCLOS and Article 6 of the Biodiversity Protocol. According to Article 6(i) ‘[t]he parties, in conformity with international law and taking into account the characteristics of each specially protected area, shall take [...] any other measure aimed at safeguarding ecological and biological processes and the landscape’. See also the ‘omnibus’ clause in Article 6(h).

<sup>34</sup> Article 9(2)(a).

<sup>35</sup> Article 9(2)(b).

<sup>36</sup> ‘Nothing in this Protocol [...] shall prejudice the rights, the present or future claims or legal views of any state relating to the law of the sea, in particular, the nature and the extent of maritime areas, the delimitation of maritime areas between states [...] as well as the nature and extent of the jurisdiction of the coastal State, the flag State and the port state.’

<sup>37</sup> See T. Scovazzi, ‘The Mediterranean Marine Mammals Sanctuary: The Signature of an Agreement Establishing a Sanctuary for Marine Mammals’, *IJMCL*, Vol. 16, No. 1, 2001, p. 132.

<sup>38</sup> See <http://www.rac-spa.org/>.

inclusion in the SPAMI List. The first phase of the project was implemented in the period 2008-2009 and was aimed at the identification of 'priority conservation areas' on the Mediterranean 'high seas', while the second phase undertaken in the period 2010-2011 involves the drafting of presentation reports (proposals) for the areas to be identified as candidates for the SPAMI List.<sup>39</sup> Obviously, as the report may be submitted only by consensus, the drafting of a presentation report and ultimately the presentation of a 'joint' SPAMI proposal for a certain area requires an advanced level of cooperation between the States concerned.

An important outcome of the first part of the project was the compilation of the list of priority conservation areas located (partly or wholly) on the high seas, and likely to include sites that could be candidates for the SPAMI List. It is particularly important that the list includes also the Central and *Northern Adriatic* as a possible area for the proclamation of a SPAMI.<sup>40</sup> The report makes express reference to the ecological value of the area (biological productivity, importance for life history, importance for threatened species), and to the fact that '[...] establishing a protected area in this site would require significant marine restoration effort'. The next steps for Adriatic States seem to be therefore to cooperate in the detailed 'geographical identification' of the area to be covered by such SPAMI and the selection of the most appropriate 'protection measures' to be applied within it,<sup>41</sup> taking obviously into account also the interest of international navigation and the historical patterns of local fisherman.

### 3. CONCLUSIONS

It is suggested that the establishment of a SPAMI<sup>42</sup> covering also areas of high seas, may represent a viable alternative to the extension of coastal State jurisdiction in the (Northern)

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<sup>39</sup> UNEP MAP; Report of the Extraordinary Meeting of the Focal Points for SPAs, UNEP (DEPI)/MED WG.348/5, 4 June 2010, p. 4, fn. 30.

<sup>40</sup> Ibid. Annex II, Item 5.

<sup>41</sup> See Article 6 of the *Biodiversity Protocol*.

<sup>42</sup> For a list of existing MPAs in the Northern Adriatic see R. Turk and R. Odoricco, *Marine Protected Areas in the Northern Adriatic*, *Varstvo narave*, No. 22, Ljubljana, 2009, p. 33 at 40.

Adriatic and/or may alleviate the difficulties arising from overlapping jurisdictional claims in that area.

An interesting precedent and possible solution in this regard seems to be pointed out by the ‘Marine Mammals (Pelagos) Sanctuary’ proclaimed by France, Italy and Monaco and partially located on the high seas of the Ligurian.<sup>43</sup> The ‘Pelagos Sanctuary’ in fact highlights a possible link between an *in plus stat minus* zone (e.g. Zone of Ecological Protection) and the proclamation of a ‘transboundary’ SPAMI on the basis of the *Biodiversity Protocol* to the *Barcelona Convention*. Although the proclamation of a SPAMI may in itself represent a viable alternative to the unilateral extension of jurisdiction by coastal States (at least in the SPAMI area), it is suggested that the previous and/or contemporary extension of jurisdiction, particularly for environmental purposes (e.g. proclamation of ZEPs), may solve the main problem in relation with the implementation of the regime of the SPAMI on the high seas which appears to be its enforcement against States non-Parties to the Protocol (third States). Such course of action seems to be ultimately in line with Article 28(2) of the Biodiversity Protocol which provides as follows:

The Parties undertake to adopt appropriate measures, consistent with international law, to ensure that no one engages in any activity contrary to the principles or purposes of this Protocol.

The inclusion of a certain ‘transboundary area’ into the SPAMI List<sup>44</sup> (coupled with the coordinated extension of jurisdiction for the purposes of the protection of biodiversity) may at least with regard to the part of the SPAMI located on the high seas temporarily, or in certain cases even permanently, override not only the potential problems related to the unilateral extension of jurisdiction by coastal States, but also the various problems involved with the delimitation of zones of sovereign rights and jurisdiction (overlapping claims) in the SPAMI area, and may furthermore substantially improve the protection and preservation of

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<sup>43</sup> See supra note 37.

<sup>44</sup> It should be noted, however, that ‘[t]he decision to include the area in the SPAMI list shall be taken by consensus by the Contracting Parties, which shall also approve the management measures applicable to the area.’ See Article 9(3)(c) of the Biodiversity Protocol.

areas of particular natural and/or cultural importance in the Mediterranean.<sup>45</sup> Such solution, which may be deemed to be the equivalent of a joint management zone, seems to be completely in line with Articles 74(3) and 83(3) and no doubt represents a solution in the spirit of Part IX of UNCLOS. Reference should be finally made to the fact that the three Northern Adriatic's coastal States have already adopted framework laws and/or actually extended their jurisdiction in the environmental field (including in the field of the protection of 'biodiversity'), and that the area of the Northern Adriatic high seas has been identified by the recent UNEP RAC/SPAs Report as a candidate site to be included in the SPAMI List.

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<sup>45</sup> See Article 3(1)(a) of the Biodiversity Protocol. The efforts regarding the establishment of the Northern Adriatic SPAMI may be undermined by the firm intention of Italy to allow the construction, despite strong objections by Slovenia, of two LNG terminals one on the shore and another in the middle of the ecologically vulnerable Gulf of Trieste in the immediate proximity of the Italy-Slovenia territorial sea boundary. See Malačič et al., 'Environmental Impact of LNG Terminals in the Gulf of Trieste (Northern Adriatic)', *Integration of Information for Environmental Security*, Vol. 3, Springer, 2008, pp. 361-381 and M. Pavliha, 'Mednarodnopravni argumenti v luči prava EU zoper plinske terminale v Tržaškem zalivu', *Podjetje in delo*, No. 8, Ljubljana, 2010.