

Protected areas and species: the Mediterranean Basin

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ABSTRACT

This paper deals with the study of those international conventions concerning specially protected areas and biological diversity that are applicable in the Mediterranean basin. After an Introduction, those international treaties that are applicable to the Mediterranean Basin, but are not expressly confined to it, are analysed in section II. Under section III, a special mention is made to the approach on and the evolution of these matters contained in the Mediterranean political and legal tools.

INTRODUCTION

International Law is progressively paying more and more attention to the establishment of specially protected areas (hereinafter referred to as SPAs) and to the protection of biological diversity as useful tools for the protection and conservation of the environment. It is very frequent to find these two aspects, SPAs and protection of species, closely linked in international texts, as there is a main trend to establish SPAs in order to give some kind of special protection to some species. In these SPAs, capturing, killing or collecting species of fauna and flora is prohibited or strictly regulated. For instance, following this approach SPAs have been defined as: "an area of land and/or sea especially dedicated to the protection and maintenance of biological diversity, and of natural and associated cultural resources, and managed through legal or other effective means" (AMOS (1994).

Nevertheless, the study of International Law shows that these two aspects are not always so closely linked as it seems. Many times, SPAs are established with the aim to protect nature *per se*, that is, for protecting either endangered, rare or fragile ecosystems, or wilderness, aesthetic, geological, historical, archaeological, architectural or scientific values. At the same time, the protection given to some species does not limit itself to some defined SPAs, but extend all over the world.

In fact, more than 140 names have been applied to various SPAs. The International Union for the Conservation of Nature and Natural Resources (IUCN) has developed a scheme for classifying these various types of areas, thus providing a basis for international comparison. The IUCN categories are based on the primary management objective(s) for each type of area. The category system includes: Ia.- Strict Nature Reserve; Ib.- Wilderness Area; II.- National Park; III.- National Monument; IV.- Habitat/Species Management Area; V.- Protected Landscape/Seascape; VI.- Managed Resource Protected Area. Although this system was designed to consolidate the many different national designations, it also proves that not all SPAs are devoted to wildlife preservation (MARKS, B.; PERRY, K. (1995).

The legal framework for these two items (SPAs and biological diversity) is composed of a large number of decisions, resolutions and recommendations as well as by international treaties, and their number is constantly being increased. Thus, the purpose of this paper is to summarise the contents of the most important international texts on these matters. In doing so, section II will deal with those international texts not expressly confined to the Mediterranean Basin (LEANZA, U. 1987), p. 381 et seq.). There are two reasons for this study: firstly, the problems faced by these texts and the evolution of their contents have not been different from those existing in the Mediterranean Basin. Secondly, many of these texts are international treaties of worldwide scope; others are only regional, but in both cases all of them are or have been mandatory for at least one Mediterranean State ¹. Finally, under section III a special mention shall be made to the approach on and the evolution of these matters contained in the Mediterranean political and legal tools.

II.- SPECIALLY PROTECTED AREAS AND PROTECTION OF SPECIES IN INTERNATIONAL LAW.

During the XXth century, it is possible to distinguish different stages in the evolution of international texts concerning SPAs and protected species (LYSTER, S. (1985); FORSTER, M. J.; OSTERWOLDT, R. U. (1992); BIRNIE, P. W.; BOYLE, A. E. (1992); MAFFEI, M. C. (1992); ...).

1.- The Isolating Approach.

During the first half of this century, the efforts of States concerning wildlife protection were mainly concentrated on the establishment of SPAs. As it has been correctly pointed out, SPAs are "often established with the broader scope of ensuring the survival of wild species which are threatened by various causes. It seems however that the creation of protected zones entails the consequence of separating the areas where protection measures are to be enforced and human activities prohibited from

¹ An up-dated list of the Mediterranean States that are Contracting Parties to each of the international conventions quoted below, is reproduced in UNEP(OCA)/MED WG.89/Inf.8 (27 February 1995), 13 pages.

those areas where human activities may develop irrespective of environmental considerations" (MAFFEI, M. C. (1993a), pp. 136-137).

It seems that both the Convention relative to the Preservation of Fauna and Flora in their Natural State (London, 8 November 1933) (RÜSTER, B.; SIMMA, B. (1975), vol. 4, p. 1.693) and the Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere (Washington, 12 October 1940) (*ibid.*, vol. 4, p. 1.729) reflect this stage, though not in absolute terms². But, in general, both Conventions focused their attention on the human activities prohibited in the SPAs³, isolating them from other components of the ecosystem.

2.- The Comprehensive Approach.

The increasing scientific progress that has taken place since World War II has pointed out the relationships between the different components of the environment and the impossibility of managing such elements separately. On the basis of these premises, a new comprehensive approach raised for the protection of nature and natural resources.

a) The Pioneer Treaties.

A first step in this direction was represented by the Convention on the Protection of Birds (Paris, 18 October 1950) (*ibid.*, vol. 4, p. 1.791). The new idea embodied in the Paris Convention is that all species deserve protection, whether they are useful or not to any given human activity, such as agriculture⁴. This idea is particularly evident in article 2 of the Paris Convention. According to it, the protection provided for by this Convention extends to all birds, at least during their breeding season, and to migrants, during their return flight to their nesting grounds. Obviously, there is an absolute protection for species that are in danger of extinction or are of scientific interest. Moreover, the Paris Convention also established a special kind of SPA aimed at alleviating the consequences of the rapid disappearance of suitable breeding grounds for birds as a result of human intervention⁵. However in strict contrast with the Paris Convention, it should be mentioned that the International Plant Protection Convention (Rome, 6 December 1951) (*ibid.*, vol. 5, p. 1.813) was not aimed at the protection of

² For instance, art. 8 of the London Convention extended the protection to the species listed in the Annex also outside the SPAs (national parks, strict natural reserves and their intermediate zones); art. VII of the Washington Convention concerned the protection of migratory birds of economic or aesthetic value, without being limited to any SPAs (national parks, national reserves, nature monuments and strict wilderness reserves).

³ "Hunting, killing or capturing of fauna and the destruction or collection of flora", but also "to enter, traverse or camp in" the SPAs according to article 2 of the London Convention; "hunting, killing and capturing of members of the fauna and destruction or collection of representatives of the flora in national parks" or "maintain the strict wilderness reserves inviolate" pursuant to articles III and IV of the Washington Convention.

⁴ This is a wholly different perspective from that contemplated in the previous Convention for the Protection of Birds Useful to Agriculture (Brussels, 19 March 1902).

⁵ Pursuant to its article 11: "the High Contracting Parties undertake to encourage and promote immediately, by every possible means, the creation of water or land reserves of suitable size and location where birds can nest and raise their broods safely and where migratory birds can also rest and find their food undisturbed".

all species of flora: its purpose was "securing common and effective action to prevent the introduction and spread of pests and diseases of plants and plant products and to promote measures for their control" (article I).

A further major step towards a more comprehensive approach was represented by a regional agreement: the African Convention on the Conservation of Nature and Natural Resources (Algiers, 15 September 1968) (RÜSTER, B.; SIMMA, B. (1976), vol. 5, p. 2.037). The comprehensive approach of this original Convention, that represents how the newly independent States understood the protection of nature and natural resources, can be seen in at least three directions. Firstly, the African Convention introduces the notion of rational and wise utilisation of nature and natural resources. In order to conciliate the economic exploitation of nature with its environmental protection, article 2 states as the fundamental principle of this Convention the duty of the Contracting States to adopt "the measures necessary to ensure conservation, utilisation and development" of natural resources. To carry out this purpose, the Contracting States commit themselves to include the importance of protecting nature and the rational utilisation of natural resources in educational programmes at all levels (article 13). At the same time, they shall ensure that all national and regional development plans include the conservation and management of natural resources as an integral part of them (article 14).

Secondly, another innovative feature of the African Convention is that it stresses the close relationships among the different components of the ecosystem. In this way, it must be highlighted that "natural resources" means renewable resources, that is, soil, water, flora and fauna. Though there are provisions for the individual protection of each one of these resources (articles 4 to 7), there also are special protection measures for those animal and plant species that are threatened with extinction, or which may become so, and for the indigenous flora and fauna (article 8), as well as for different SPAs called "conservation areas" (they may include strict natural reserves, national parks or special reserves and their corresponding buffer zones, pursuant to article 10). And thirdly, with a foreseeable character, the African Convention also introduces the integral management of the coast and the coastal zones. For instance, the Contracting States commit themselves "to maintain and extend where appropriate, within their territory and where applicable in their territorial waters, the conservation areas existing at the time of entry into force of" the African Convention (article 10.-1).

During the following years, three international conventions fully transformed the legal framework provided for SPAs. The first one of these Conventions is the European Convention on the Protection of the Archaeological Heritage (London, 6 May 1969) (RÜSTER, B.; SIMMA, B. (1977), vol. 14, p. 7.023). For the first time, archaeological objects⁶ were internationally protected. According to the Preamble of the London Convention, "while the moral responsibility for protecting the European archaeological heritage (...) rests in the first instance with the State directly concerned, it is also the concern of European States jointly". The main protection measures provided for by the London Convention consist in protecting the deposits and sites where archaeological objects lie hidden. Therefore, each Contracting Party must

⁶ Pursuant to article 1 of the London Convention: "all remains and objects, or any other traces of human existence, which bear witness to epochs and civilisations for which excavations or discoveries are the main source or one of the main sources of scientific information, shall be considered as archaeological objects".

establish SPAs in order to delimit and protect sites and areas of archaeological interest and to create reserve zones for the preservation of material evidence to be excavated by later generations of archaeologists (article 2). However, the protection measures also extend outside the limits of this special kind of SPAs. Several provisions of the London Convention pretend to prohibit and restrain the international traffic of archaeological objects coming either from illicit excavations or unlawfully from official excavations.

The second Convention dealing mainly with SPAs is the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar, 2 February 1971) (RÜSTER, B.; SIMMA, B. (1976), vol. 5, p. 2.161) ⁷. The Ramsar Convention is not a regional agreement, as the previous one; in fact, it is a treaty of world-wide scope that is also applicable in the Mediterranean basin (KLEMM, C. (1990), p. 577) and it contains a detailed legal framework for a special kind of SPA, that is, wetlands of international importance, specially as waterfowl habitat. The reasons for giving an special international protection to wetlands are enumerated in the paragraphs of the Preamble of this Convention, where the following is expressly mentioned: the fundamental ecological functions of wetlands as regulators of water regimes and as habitats supporting a characteristic flora and fauna, specially waterfowl; that wetlands constitute a resource of great economic, cultural, scientific and recreational value, the loss of which would be irreparable; the need to stem the progressive encroachment on and loss of wetlands now and in the future; and that waterfowl in their seasonal migrations may transcend frontiers and so should be regarded as an international resource.

In order to achieve a strict environmental protection of these habitats, the Ramsar Convention begins by providing a very broad definition of wetlands as well as waterfowl ⁸. Moreover, as a general duty, article 4.-1 states that each Contracting Party shall promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands and providing adequately for their wardening. The institution, deletion or alteration of the boundaries of these natural reserves on wetlands and the adoption of the corresponding conservation measures is a right that belongs to each Contracting Party. In cases of a wetland extending over the territories of more than one Contracting Party or where a water system is shared by Contracting Parties, there is a duty to consult with each other (art. 5).

The same duty to consult each other is established among Contracting Parties when implementing obligations arising from this Convention. The international collaboration on these questions is mandatorily ruled, as Contracting Parties shall endeavour to coordinate and support present and future policies and regulations concerning the conservation of wetlands and their flora and fauna. A tool that may be useful in order to achieve this aim is the possibility of Contracting Parties, when necessary, to convene Conferences on the Conservation of Wetlands and Waterfowl (article 6). These Conferences, that have an advisory character, shall be competent, inter alia: to

⁷ See also the Protocol to Amend the Convention on Wetlands of International Importance Specially as Waterfowl Habitat (Paris, 3 December 1982).

⁸ According to its article 1: "1.- For the purpose of this Convention wetlands are areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing; fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters. 2.- For the purpose of this Convention waterfowl are birds ecologically dependent on wetlands".

make general or specific recommendations to the Contracting Parties regarding the conservation, management and wise use of wetlands and their flora and fauna; and to request relevant international bodies to prepare reports and statistics on matters which are essentially international in character affecting wetlands. Through this mechanism, it is possible to bridge the gap of this Convention, because it does not mention at all any conservation measure that might be adopted by Contracting Parties.

As a matter of fact, the Ramsar Convention distinguishes between the ordinary nature reserves established on wetlands by each Contracting Party, and those nature reserves on wetlands included in a List of Wetlands of International Importance. This last category, which is clearly promoted ⁹, seems to look for an international recognition of the importance of the wetlands included in the List and, therefore, the powers of Contracting Parties are less discretionary on them ¹⁰.

Though the right to designate suitable wetlands within their territory for inclusion in the List belongs to each Contracting Party ¹¹, they are not absolutely free to do what they want. Firstly, because the Ramsar Convention rules the criteria for selecting wetlands for the List ¹². Secondly, because the Conferences on the Conservation of Wetlands and Waterfowl are competent to discuss additions to and changes in the List as well as to consider information regarding changes in the ecological character of wetlands included in the List. And thirdly, it must be pointed out that even after a Contracting Party, in its urgent national interests, deletes or restricts the boundaries of a wetland previously included in the List, such Contracting Party still has to comply with the provision of article 4.-2: it should, as far as possible, compensate for any loss of wetland resources and, in particular, it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat.

The third and last treaty dealing mainly with SPAs is the Convention for the Protection of the World Cultural and Natural Heritage (Paris, 23 November 1972) (RÜSTER, B.; SIMMA, B. (1977), vol. 14, p. 7.238), which is also a treaty of world-wide scope. With the concern of protecting the world cultural and natural heritage, the Paris Convention provides a legal framework that includes all kinds of

⁹ Article 3 establishes, with a general character, that "the Contracting Parties shall formulate and implement their planning so as to promote the conservation of the wetlands included in the List". More explicit is the duty of each State to designate at least one wetland to be included in the List, when becoming a Contracting Party to the Ramsar Convention.

¹⁰ Nevertheless, article 2.-3 expressly states that "the inclusion of a wetland in the List does not prejudice the exclusive sovereign rights of the Contracting Party in whose territory the wetland is situated".

¹¹ The boundaries of each of these wetlands shall be precisely described and also delimited on a map by the corresponding Contracting Party and they may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six metres at low tide lying within the wetlands, specially where these have importance as water-fowl habitats.

¹² Pursuant to article 2.-2: "Wetlands should be selected for the List on account of their international significance in terms of ecology, botany, zoology, limnology or hydrology. In the first instance wetlands of international importance to waterfowl at any season should be included". See also the Criteria for Identifying Wetlands of International Importance for Designation for the List under Art. 2 of the Ramsar Convention, adopted during the 1987 Conference of the Parties in Regina (Environmental Policy and Law, 17/5, 203-204).

SPAs. Though the Paris Convention does not define the concepts of cultural and natural heritage, at least this Convention enumerates the properties situated on the territory of each State Party¹³ that might be considered as cultural or natural heritage¹⁴.

The Paris Convention recognises that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage situated on its territory belongs primarily to each State Party (article 4)¹⁵. Therefore, this Convention does not specify the means to be employed by the Parties for the protection of the cultural and natural heritage. However, at the same time, fully respecting the sovereignty of the States on whose territories this heritage is situated, the Convention considers this heritage as a "world heritage"¹⁶ for whose protection it establishes a system of international co-operation and assistance designed to support State Parties in their efforts to conserve and identify that heritage.

The international co-operation to achieve this aim is charged to an Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Committee". This World Heritage Committee shall establish, update and publish two different lists. On the one hand, a "World Heritage List" in which the World Heritage Committee, on the basis of the inventories submitted by every State Party of properties situated on its territory¹⁷ and forming part of its cultural and natural heritage, will select those having outstanding universal value for their inclusion in this List.

On the other hand, a "List of World Heritage in Danger", which shall include the property appearing in the previous List for the conservation of which major operations are necessary and for which assistance has been requested under the framework of this

¹³ This requirement excludes the possible existence of cultural and natural heritages in marine areas, only if they are beyond the national jurisdiction of any State (the high seas, the Zone) but not in other marine areas. For instance, the Scandola Reserve in the Mediterranean is situated in the French territorial sea.

¹⁴ Pursuant to its article 1, "cultural heritage" includes monuments, groups of buildings and sites. According to its article 2, "natural heritage" comprises natural features, geological and physiographical formations and precisely delineated areas as well as natural sites.

¹⁵ According to article 5 (d), each State Party to this Convention assumes the duty, in so far as possible, of taking the appropriate legal, scientific, technical, administrative and financial measures necessary for their protection.

¹⁶ The Preamble of the Paris Convention states that: "parts of the cultural and natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole".

¹⁷ The Paris Convention also includes a disclaimer clause. According to article 11.-3: "The inclusion of a property in the World Heritage List requires the consent of the State concerned. The inclusion of a property situated in a territory, sovereignty or jurisdiction over which is claimed by more than one State shall in no way prejudice the rights of the parties to the dispute". Nevertheless, this provision does not expressly require the consent of all the claimant States, either for its proposal or for its inclusion in the List.

Convention¹⁸. This second List may include only such property forming part of the cultural and natural heritage as is threatened by serious and specific dangers, such as the threat of disappearance caused by accelerated deterioration, large-scale public or private projects or rapid urban or tourist developments projects; destruction caused by changes in the use or ownership of the land; major alterations due to unknown causes; abandonment for any reason whatsoever; the outbreak or the threat of an armed conflict; calamities and cataclysms; serious fires, earthquakes, landslides; volcanic eruptions; changes in water level, floods, and tidal waves.

It is also important to note that the criteria on the basis of which a property belonging to the cultural or natural heritage may be included in either of the two Lists, are not defined in the Paris Convention. In fact, according to article 11.-5, the World Heritage Committee shall assume responsibility for this task.

The international assistance is also carried out by the World Heritage Committee, who shall receive and study the corresponding requests formulated by State Parties aimed at securing the protection, conservation, presentation or rehabilitation of the cultural or natural properties situated in their territories and included in either of the two Lists. For implementing this international assistance, the World Heritage Committee shall decide on the use of the resources (that is, compulsory and voluntary contributions) of the Fund for the Protection of the World Cultural and Natural Heritage of Outstanding Universal Value, called "the World Heritage Fund"¹⁹.

b) Stockholm and Beyond.

On 16 June 1972, the United Nations Conference on the Human Environment held in Stockholm adopted the Declaration on the Human Environment and the Action Plan for the Human Environment (RÜSTER, B.; SIMMA, B. (1975), vol. 1, p. 118). Among the 26 principles embodied in the Stockholm Declaration, it is probably that the most important regarding these matters is probably Principle 2, which reads as follows:

"The natural resources of the earth, including the air, water, land, flora and fauna and specially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate"²⁰.

Though these principles do not have binding force on States, as both the Stockholm Declaration and its Action Plan are tools of soft law, it must be remembered that they

¹⁸ The protagonism of the State Party in whose territory the property in question is situated is underlined in the Paris Convention. It is this State who must request international assistance for its properties (article 19). The World Heritage Committee cannot refuse the inclusion in this second List without consulting the State Party in whose territory the cultural or natural property is situated (article 11.-6). In the same line, the consent of the State concerned is necessary so that the World Heritage Committee shall co-ordinate and encourage the studies and research needed for the drawing up of the List (article 11.-7).

¹⁹ This assistance may take different technical and financial forms. See article 22 of the Paris Convention and UNESCO, Doc. WHC/2 Revised (27 March 1992), at 20 ff.

²⁰ Attention must also be paid to Principle 4: "Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitats which are now gravely imperilled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development".

highly influenced the following international environmental practice, including the adoption of new treaties on these matters.

One of these treaties, also of a world-wide scope, is the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 3 March 1973) (RÜSTER, B.; SIMMA, B. (1976), vol. 5, p. 2.228). The Preamble of the Washington Convention causes some confusion. From its two first paragraphs, it seems that this Convention also follows a comprehensive approach (applicable to all species of wild fauna and flora) and that it is going to provide for a direct protection of living resources ²¹. But, in fact, the Washington Convention reflects a sectoral approach, as it only applies to certain species of wild fauna and flora without taking into account the need to protect their natural ecosystem. Moreover, it only provides for indirect protection of species resulting from the strict regulation of their international trade ²².

The species protected by the Washington Convention are classified in three Appendices. Appendix I includes all species threatened with extinction which are or may be affected by trade; Appendix II includes all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation; and Appendix III includes all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other parties in the control of trade. The regulation of the international trade of these species is based upon a system of exchange of import and export permits or a re-export certificate which have to fulfil precise conditions that differ depending on each Appendix, as well as certify that the trade of specimens belonging to a given species is not detrimental to the survival of the species involved.

Another Convention highly influenced by the Stockholm Conference is the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979) (RÜSTER, B.; SIMMA, B.; BOCK, M. (1981), vol. 23, p. 1) ²³. The Bonn Convention begins by recognising that wild animals in their innumerable forms are an irreplaceable part of the earth's natural system which must be conserved for the good of mankind. Therefore, the Preamble states that each generation of man holds the resources of the earth for future generations and has an obligation to ensure that this legacy is conserved and, where utilised, is used widely.

In order to reach the objective of conservation of migratory species of wild animals, the Bonn Convention gives a very broad definition of "migratory species" ²⁴,

²¹ These two paragraphs read as follows: "The Contracting States, recognising that wild fauna and flora in their many beautiful and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come; conscious of the ever-growing value of wild fauna and flora from aesthetic, scientific, cultural, recreational and economic points of view".

²² The Preamble also reflects this approach. Its paragraph 4 recognises "that international co-operation is essential for the protection of certain species of wild fauna and flora against overexploitation through international trade".

²³ Vide the last paragraph of the Preamble of the Bonn Convention.

²⁴ Pursuant to its article I.1.a): "<<Migratory species>> means the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries".

but provides for two different kinds of protection. On the one hand, Appendix I deals with Endangered Migratory Species²⁵. Due to their migratory nature, the protection provided for by the Bonn Convention is not limited to a confined area²⁶; in fact, the protection measures follow the migratory animals through all their ranges²⁷. However, this approach does not preclude the existence of SPAs. Article III.4.a) of the Bonn Convention states that: "Parties that are Range States of a migratory species listed in Appendix I shall endeavour to conserve, and where feasible and appropriate, restore those habitats of the species which are of importance in removing the species from danger of extinction".

On the other hand, the Bonn Convention does not provide immediate protection for the species listed in Appendix II²⁸; in fact, it acts as an "umbrella treaty". Therefore, the Parties to the Bonn Convention that are Range States of migratory species listed in Appendix II shall endeavour to conclude agreements covering the conservation and management of these species²⁹. These agreements must implement the guidelines settled down in its article V but, until now, only a very small number of these agreements have been concluded³⁰.

The last agreement directly influenced by the Stockholm Declaration is the Convention on the Conservation of European Wildlife and Natural Habitats (Berne, 19 September 1979) (RÜSTER, B.; SIMMA, B.; BOCK, M. (1981) vol. 23, p. 40). Once again, the Berne Convention links the existence of SPAs with the protection of flora and fauna³¹ and, like the African Convention on the Conservation of Nature and Natural Resources, the Berne Convention is also a regional agreement. But the Berne Convention aims to protect European wildlife throughout its geographical range and, therefore, the Committee of Ministers of the Council of Europe may invite any

²⁵ That is, those migratory species that are in danger of extinction throughout all or a significant portion of their range.

²⁶ Appendix I includes some species that can be found in the Mediterranean basin, such as the monk seal (Monachus monachus), the sea turtle (Caretta caretta), some cetaceans (i.e. Eubalaena glacialis) and some migratory birds, like the Audouin's gull (Larus audouinii).

²⁷ According to its article I.1.f): "< Range > means all the areas of land and water that a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route".

²⁸ Pursuant to its article IV.1: "Appendix II shall list migratory species which have an unfavourable conservation status and which require international agreements for their conservation and management, as well as those which have a conservation status which would significantly benefit from the international co-operation that could be achieved by an international agreement".

²⁹ In the case of the Mediterranean, it must be remembered that both the monk seal (Monachus monachus) and the sea turtle (Caretta caretta) are included in both Appendices, while other migratory animals, like the white stork (Ciconia ciconia) are found only in Appendix II.

³⁰ Such as the Agreement on the Conservation of Seals in the Wadden Sea (Bonn, 16 October 1990); the Agreement on the Conservation of Bats in Europe (London, 25 November 1991); the Agreement on the Conservation of Small Cetaceans of the Baltic and North Sea (New York, 17 March 1992), ...

³¹ The sixth paragraph of its Preamble states that: "Aware that the conservation of natural habitats is a vital component of the protection and conservation of wild flora and fauna".

non-European State to accede to the Berne Convention in order to fulfil this aim ³². Taking this into account, it is evident that the Berne Convention constitutes an improvement in comparison with the African Convention (MAFFEI, M. C. (1993b), p. 281 et seq.), both from the geographical point of view (the African Convention is open to African States only) and from the legal point of view (the African Convention seems to be limited to the territories of the Parties).

At the same time, the Berne Convention is one of the most advanced conventions of its kind (IMBERT, P. H. (1979), p. 726) and, in this way, its Preamble recognises that "wild flora and fauna constitute a natural heritage of aesthetic, scientific, cultural, recreational, economic and intrinsic value that needs to be preserved and handed on to future generations". It is obvious that if wild flora and fauna have an intrinsic value of their own, then all species must be preserved, whether they are depleted or not, or whether they are threatened with extinction or not. Therefore, article 1.-1 explicitly states that: "the aims of this Convention are to conserve wild flora and fauna and their natural habitats, especially those species and habitats whose conservation requires the co-operation of several States, and to promote such co-operation". This approach does not preclude, however, that "particular emphasis is given to endangered and vulnerable species, including endangered and vulnerable migratory species" (art. 1.-2).

Concerning SPAs, the Berne Convention creates two different kinds of duties. Firstly, each Contracting Party shall ensure the conservation of the habitats of the wild flora and fauna species (art. 4.-1). Although this provision seems to impose an absolute obligation to protect habitats, it explicitly mentions that they specially must apply to those habitats of the strictly protected flora and fauna species included in Appendices I and II. Secondly, the Contracting Parties undertake to give special attention to the protection of areas that are of importance for the migratory species (art. 4.-3). But in this case, this provision has not an absolute scope, as it only relates to migratory species that are included in Appendices II and III and to habitats which are appropriately situated in relation to migration routes, as wintering, staging, feeding, breeding or moulting areas.

As regards the protection of species, the Berne Convention settles different protection measures for the strictly protected flora species included in Appendix I, for the strictly protected fauna species included in Appendix II ³³ and for the protected fauna species included in Appendix III. Moreover, the Contracting Parties undertake to co-ordinate their efforts at protecting the migratory species included in Appendices II and III whose range extends into their territories (art. 10.-1). Finally, Contracting Parties shall prohibit the use of all indiscriminate means of capture and killing and the use of all means capable of causing local disappearance of, or serious disturbance to, populations of a species (art. 8). This provision comprises, though not only, those prohibited means and methods of killing, capture and other forms of exploitation listed in Appendix IV.

³² For instance, both Senegal (13 April 1987) and Burkina Fasso (14 June 1990) are Parties to the Berne Convention.

³³ Among the Mediterranean marine species, the monk seal (*Monachus monachus*) and the sea turtle (*Caretta caretta*) are included in Appendix II, as well as many cetaceans and migratory birds that can be found in this area.

3.- Towards the Sustainable Use.

At the beginning of the 1980's, different instruments of a highly programmatic character appeared

in order to reach a stricter environmental protection for living species and nature. Among them, I must refer to both the World Conservation Strategy (RÜSTER, B.; SIMMA, B.; BOCK, M. (1981), vol. 23, p. 420 et seq.), launched in 1980 by the International Union for Conservation of Nature and Natural Resources (IUCN), the United Nations Environment Programme (UNEP) and the World Wildlife Fund (WWF)³⁴ and the World Charter for Nature, adopted by the United Nations General Assembly by Resolution 37/7 on 9 November 1982 (I.L.M., 22, p. 456 et seq.)³⁵.

Unlike the Stockholm Declaration, these instruments of soft law did not have a direct influence on the following international agreement, that is, the United Nations Convention on the Law of the Sea but, at least, they paved the way for the Convention on Biological Diversity.

An important treaty of world-wide scope that has some bearing on these matters is the United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982) (I.L.M., 12, p. 1261 et seq.). Its Part XII, whose specific object is the protection and preservation of the marine environment, contains at least one provision expressly related with SPAs that may have some importance for the Mediterranean³⁶. According to its article 194.-5: "The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life".

But this provision is clearly insufficient for a comprehensive approach to SPAs. This article lacks a self-executing character: it is an "umbrella-treaty" norm that must be implemented in practice. Under article 194.-5, it is clear that SPAs must respond to the objectives of protection and preservation of "rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life", but the Montego Bay Convention does not define any of these concepts. There are also some legal gaps, as there is no indication on either what kind of protection and preservation measures may be adopted or whether it is possible to create a partly

³⁴ The World Conservation Strategy is intended to stimulate a more focused approach to the management of living resources and to provide policy guidance on how this can be carried out. The aim of the W.C.S. is to achieve the three main objectives of living resources conservation: to maintain essential ecological processes and life-support systems; to preserve genetic diversity; and to ensure the sustainable utilisation of species and ecosystems.

³⁵ In the World Charter for Nature, there are several references that are directly or indirectly linked to SPAs. Among them, the most important are paragraphs 2, 3 and 4 of its General Principles, that read as follows: "2. The genetic viability on the earth shall not be compromised; the population levels of all life forms, wild and domesticated, must be at least sufficient for their survival, and to this end necessary habitats shall be safeguarded; 3. All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to the habitats of rare or endangered species; 4. Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilised by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist (...)".

³⁶ Article 234 of the Montego Bay Convention, regarding ice-covered areas, has no meaning at all for the Mediterranean Sea.

marine and partly terrestrial SPA.

Some doubts also arise about who has the right to create such areas and to adopt the corresponding protection and preservation measures. It seems clear that in the maritime zones subject to national sovereignty (i.e., internal waters, territorial sea) it is the coastal State who has the right to adopt SPAs; it is much more difficult to consider whether SPAs can be created in straits used for international navigation, though these areas are among the most marine "fragile ecosystems" in the world³⁷. This right also belongs to coastal States in their exclusive economic zones, as they have jurisdiction in this maritime zone with regard to the protection and preservation of the marine environment³⁸ and their laws and regulations relating, *inter alia*, areas of fishing that are mandatory for nationals of other States fishing in their exclusive economic zones³⁹. Nevertheless, the institution of exclusive economic zones in the Mediterranean has not been generalised yet⁴⁰.

However, the situation is very different for the maritime zones beyond the limits of national jurisdiction: in the high seas⁴¹, there is no provision indicating who has the authority to create SPAs but, at least, it seems that if SPAs are created in order to ensure the conservation and management of living resources, then their adoption must be the result of international co-operation⁴². There is also no provision for cases of straddling SPAs lying partly in the territorial sea or exclusive economic zone of one or more States and partly in the high seas.

As regards the protection of marine species, the provisions of the Montego Bay Convention are also very vague, as they do not concern the protection *strictu sensu* of species, but their exploitation and conservation. Nevertheless, it must be mentioned that the general obligation to protect and preserve the marine environment, provided for by art. 192, also applies to marine species wherever they are, that is, whether they are in maritime zones subject to national jurisdiction or not. The only provision dealing with depleted, threatened or endangered marine species is the previously commented article 194.-5. An interesting provision for the Mediterranean concerning other species is article 196. According to it, "States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from (...)

³⁷ In spite of articles 39.-2 (b), 42.-1 (b) and 43 (b), it must be pointed out that a Spanish proposal aimed at reinforcing the environmental powers of coastal States in international straits was not approved at the Third United Nations Conference on the Law of the Sea.

³⁸ Art. 56 (b) of the Montego Bay Convention.

³⁹ *Ibid.*, art. 62.-4 (c).

⁴⁰ It should be remembered that the European Council's Resolutions of November 3, 1976 (The Hague Resolutions) agree that "Member States shall, by means of a concerted action, extend the limits of their fishing zones to 200 miles off their North Sea and North Atlantic coasts, without prejudice to similar action being taken for fishing zones within their jurisdiction in the Mediterranean" (*I.L.M.*, 15, p. 1425, published in the *OJ* 1981 C 105/1). No such an action has been taken thus far by the concerned European Community Member States (Spain, France, Italy and Greece), whereas other Mediterranean coastal States have made different claims for extended fishing zones (Malta, Libya, Tunisia and Algeria), exclusive economic zones (Morocco) or territorial seas (Syria). See CATALDI, G. (1995).

⁴¹ It must be remembered that there is not a single square meter in the Mediterranean included in the International Deep Sea-bed Area.

⁴² *Ibid.*, art. 118.

the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant or harmful changes thereto"⁴³.

At the same time, the fisheries regime provided for the exclusive economic zone and for the high seas is based, in both cases, on the maximum sustainable yield criterion when determining the allowable catch of the living resources (articles 61 and 119). But this approach has been criticised by ecologists, as it is considered that it leads to over-exploitation of species. There are also specific provisions for certain groups of species, such as straddling stocks, highly migratory species, marine mammals⁴⁴, anadromous stocks, catadromous species and sedentary species (articles 63 to 68, 116 and 120). But once again, these provisions are aimed at the exploitation and conservation of these species, rather than to their ecological protection.

A more global approach on these questions is embodied in the Convention on Biological Diversity (Rio de Janeiro, 5 June 1992) (*J.L.M.*, 31, p. 818 et seq.)⁴⁵. This rather complex Convention⁴⁶ affirms that the conservation of biological diversity is a common concern of humankind (Preamble, paragraph 3). But though it is true that this Convention is aimed at providing environmental protection to biological diversity⁴⁷, its provisions also meet the need to ensure economic development⁴⁸. Therefore, new exceptions have appeared when implementing the provisions of the Biodiversity Convention, such as the appeal to the different capabilities of developing countries⁴⁹ or the more famous art. 20.-4. According to

⁴³ Since 1984, an alga of tropical origin, *Caulerpa taxifolia*, has been spreading rapidly in the north-western Mediterranean. On the current situation concerning the spreading of this tropical alga, vide UNEP(OCA)/MED WG.89/Inf.9 (17 March 1995), pp. 1-15.

⁴⁴ It is interesting to note that both the International Convention for the Regulation of Whaling (Washington, 2 December 1946) and the 1982 moratoria apply in the Mediterranean. But, as far as in the Mediterranean there is no whaling industry nor any commercial whaling, those texts are not useful in this sea, because they do not cover the accidental catching of cetaceans, which is the only whaling activity that now takes place in the Mediterranean.

⁴⁵ This Convention had a sound precedent in the Report of the World Commission on Environment and Development "Our Common Future", specially in its chapters 6.58 and 6.60. The Brundtland Report was adopted later by the General Assembly of the United Nations (UN doc. A/42/427 of 4 August 1987).

⁴⁶ A detailed study of this Convention, including the use of biotechnologies in connection with conservation issues, its financial mechanisms, ... exceeds the limits of the present paper.

⁴⁷ For instance, the Contracting Parties are "conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components"; and they are "conscious also of the importance of biological diversity for evolution and for maintaining life sustaining systems of the biosphere" (Preamble, para.s 1 and 2). The expression "biological diversity" means "the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems" (art. 2, para. 1).

⁴⁸ This approach can also be seen in paragraphs 19 and 20 of its Preamble.

⁴⁹ The phrase "in accordance with its capabilities", which is contained both in art. 6 and in art. 20.-1, qualifies the obligations undertaken by the Parties.

it: "The extent to which developing country Parties will effectively implement their commitments under this Convention will depend on the effective implementation by developed country Parties of their commitments under this Convention related to financial resources and transfer of technology and will take fully into account the fact that economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties".

An original feature of the Biodiversity Convention is that it makes a distinction between conservation and sustainable use, but this distinction is not carried out to a clear end. Though it is generally admitted that conservation includes sustainable use, this Convention defines sustainable use⁵⁰, but it does not contain a definition of conservation. In fact, the Biodiversity Convention deals with in-situ conservation (art. 8), ex-situ conservation (art. 9) and sustainable use of components of biological diversity (art. 10).

In-situ conservation⁵¹ includes, "as far as possible and as appropriate", measures previously ruled in prior agreements, such as the establishment of protected areas⁵², and the protection of threatened species⁵³, their natural habitats and ecosystems. But it also refers to new measures, concerning, inter alia, the use and release of living modified organisms resulting from biotechnology, alien species, ... Ex-situ conservation⁵⁴ includes, also "as far as possible and as appropriate", measures adopted both predominantly for the purpose of complementing in-situ measures (such as the recovery, rehabilitation and reintroduction of threatened species into their natural habitats) and preferably in the country of origin of such species.

III.- SPECIALLY PROTECTED AREAS AND PROTECTION OF SPECIES IN THE MEDITERRANEAN POLITICAL AND LEGAL FRAMEWORK.

Among the different Mediterranean political and legal tools concerning SPAs and biological diversity in the Mediterranean basin, it is possible to distinguish clearly at least two different stages.

1.- The Former Political and Legal Framework.

In 1974, the Governing Council of UNEP drew up its ocean programme contemplating co-operation in different regional seas and, in particular, in the

⁵⁰ Pursuant to art. 2, para. 16, sustainable use means "the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations".

⁵¹ In-situ conservation means "the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties" (art. 2, para. 13).

⁵² Although art. 2, para. 14 defines the concept of "protected area" very vaguely ("Protected area means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives"), this Convention does not contain a list of protected areas.

⁵³ It is worth noting that the Biodiversity Convention neither defines the concept of "threatened species", nor contains a list of species threatened with extinction at a global level.

⁵⁴ Ex-situ conservation means "the conservation of components of biological diversity outside their natural habitats" (art. 2, para. 8).

Mediterranean (DE YTURRIAGA BARBERAN, J. A. (1979), p. 338 et seq.). As a result of this initiative, the Executive Director of UNEP convened an Intergovernmental Meeting on the Protection of the Mediterranean (Barcelona, from 28 January to 4 February 1974), where the Mediterranean Action Plan (MAP) was adopted⁵⁵. Implementing the legal framework for the co-operative regional programme, the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea, convened by UNEP (Barcelona, 2-16 February 1975), adopted the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution and two related Protocols⁵⁶ (DE YTURRIAGA BARBERAN, J. A. (1976), p. 63 et seq.; RAFTOPOULOS, E. G. (1988), 101 pp.; JUSTE RUIZ, J. (1993), p. 208 et seq.). But neither the MAP nor the Barcelona Convention and these two related Protocols said a word on SPAs in the Mediterranean. In fact, they only contained indirect and very vague references to the Mediterranean living resources⁵⁷. These matters were taken into consideration only at the beginning of the 1980's, specially when a Conference of Plenipotentiaries convened by the Organisation in accordance with art. 15 of the Barcelona Convention adopted the fourth Protocol concerning Mediterranean Specially Protected Areas (Geneva, 3 April 1982)⁵⁸.

The Geneva Protocol is aimed at giving legal protection to SPAs, rather than to protect the Mediterranean species wherever they are. Although its Preamble stresses "the importance of protecting and, as appropriate improving the state of the natural resources and natural sites of the Mediterranean Sea, as well as of their cultural heritage in the region, among other means by the establishment of specially protected areas including marine areas and their environment"⁵⁹, all of its provisions are related only to SPAs and there is no provision concerning the protection of living species outside these protected areas (TORREGROSA PUERTA, F. (1991), p. 188 et

⁵⁵ The MAP dealt with the following four aspects: I. integrated planning of the development and management of the resources of the Mediterranean Basin; II. co-ordinated pollution monitoring and research programme in the Mediterranean; III. framework convention and related protocols with their technical annexes for the protection of the Mediterranean environment; and IV. institutional and financial implications of the Action Plan.

⁵⁶ Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft and Protocol concerning Co-operation in Combating Pollution of the Mediterranean Sea by Oil and Other Harmful Substances in Cases of Emergency. The Barcelona Convention and its related Protocols were the first of UNEP's regional seas agreements.

⁵⁷ The only references of the MAP were those concerning "improvement and better utilisation of the living resources of the sea, in particular by aquaculture" (point I, para. 4.(a)(iv)) and the "effects of pollutants on marine communities and ecosystems" (point II, para. 2). In the Barcelona Convention, only para. 3 of its Preamble recognised "the threat posed by pollution to the marine environment, its ecological equilibrium, resources and legitimate uses", but no provision towards this aim was drafted.

⁵⁸ A third Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources was previously adopted at Athens, on 17 May 1980. The texts of the MAP, the Barcelona Convention and its four related Protocols are reproduced in UNEP (1992a). More recently, a fifth Protocol for the Protection of the Mediterranean Sea against Pollution resulting from the Exploration and Exploitation of the Continental Shelf, the Seabed and its Subsoil has been adopted at Madrid, on the 14 October 1994.

⁵⁹ Para. 3 of its Preamble. See also art. 1.1.

seq.)⁶⁰. This revival of the so-called "isolating approach" is also pointed out by the fact that these SPAs can be created exclusively in wetlands, coastal areas, internal waters and in the territorial waters of the Mediterranean coastal States⁶¹. This clear statement excludes the possibility of establishing SPAs in the Mediterranean high seas. At the same time, it is worth noting, given the date of the adoption of the Geneva Protocol, that without prejudicing "the codification and development of the law of the sea", none of its provisions enables coastal States to establish SPAs in their exclusive economic zones, if this were the case (VUKAS, B. (1987), pp. 431-432).

On the other hand, SPAs established under this Geneva Protocol are not confined only to provide indirect protection to living species, but they may have broader aims. Pursuant to art. 3.2, SPAs "shall be established in order to safeguard in particular: (a) - sites of biological and ecological value; - the genetic diversity, as well as satisfactory population levels, of species, and their breeding grounds and habitats; - representative types of ecosystems, as well as ecological processes; (b) - sites of particular importance because of their scientific, aesthetic, historical, archaeological, cultural or educational interest". But once again the Geneva Protocol established no list of Mediterranean SPAs. This lagoon was partly solved with the duties of the Parties of giving appropriate publicity to the establishment of protected areas (art. 8) and of informing the public as widely as possible of the significance and interest, of the protected areas and of the scientific knowledge which may be gained from them from the point of view of both nature conservation and archaeology.

But the shortcomings of the Geneva Protocol were evident very soon. Firstly, the Geneva Protocol did not envisage the establishment under the framework of the MAP of a Regional Activity Centre specialised in these matters, but the Mediterranean Governments meeting in Athens in 1980 adopted the offer of Tunisia to host such a Centre. The Regional Activity Centre for Specially Protected Areas (RAC-SPA) was set up in 1985 (UNEP (1992b), p. 27). Secondly, even before the entering into force of the Geneva Protocol⁶², the Contracting Parties to the Barcelona Convention adopted the Genoa Declaration on the Second Mediterranean Decade on 13 September 1985. The Genoa Declaration identified ten targets to be achieved as a matter of priority during the second decade of the MAP. Among them, it was included, on the one hand, the "protection of the endangered marine species (e.g. Monk Seal and Mediterranean sea turtle)". On the other hand, two targets highlighted the need of establishing a detailed number of SPAs in the Mediterranean Basin⁶³.

These new machinery and objectives were implemented immediately. In 1987, the RAC-SPA was officially inaugurated and the same year the Guidelines for the Selection, Establishment, Management and Notification of Information on Marine and Coastal Protected Areas in the Mediterranean were adopted (RAC-SPA (1987), 28 pp.). Simultaneously, the Contracting Parties to the Barcelona Convention recognised that the provisions of the Geneva Protocol were not enough to ensure the protection

⁶⁰ Accordingly, the Geneva Protocol has no list on Mediterranean protected species.

⁶¹ Art. 2.

⁶² The Geneva Protocol entered into force on 23 March 1986.

⁶³ "Identification and protection of at least 100 coastal historical sites of common interest"; and "identification and protection of at least 50 new marine and coastal sites or reserves of Mediterranean interest" (point 17, para.s (g) and (h)).

of certain endangered species and adopted several Action Plans for them: monk seals (1987)⁶⁴, marine turtles (1989)⁶⁵ and cetaceans (1991)⁶⁶. The RAC-SPA was also charged with the co-ordination of the relevant activities. On the other hand, the Mediterranean States entrusted the International Council for Monuments and Sites (ICOMOS) with drafting general principles and selection criteria for the coastal historical sites of common interest. In 1987, an initial list of 100 historical sites was adopted by all Mediterranean States, with the understanding that it would remain open. Lastly, it must be mentioned that nowadays 123 SPAs exist in the Mediterranean basin, that is, 64 SPAs more than when the Genoa Declaration was adopted⁶⁷.

2.- The Revision Process and the New Political and Legal Framework.

After the Rio World Summit on Environment and Development (UNCED), the Mediterranean States decided at their Antalya Meeting in 1993 to initiate a revision process in order to update and adapt the MAP and its different legal instruments to the new environmental concepts and techniques that have emerged in the last twenty years (JUSTE, J. (1995), p. 1 et seq.). After some technical meetings⁶⁸, the Mediterranean States adopted at Barcelona, on 10 June 1995, new additional Mediterranean instruments, many of them dealing with SPAs and biological diversity.

Among them, it must be pointed out firstly the approval of the Action Plan for the Protection of the Marine Environment and the Sustainable Development of the Coastal Areas of the Mediterranean (MAP Phase II)⁶⁹. The new MAP Phase II now expressly includes among its main objectives the sustainable management of natural marine and land resources and the protection of nature, sites and landscapes of ecological or cultural value. Moreover, it also has two chapters concerning respectively living marine resources and conservation of nature, landscape and sites. It is worth noting that the first one of them mentions among its objectives the intention to halt present trends towards the degradation of resources and habitats; the sustainable management of living marine resources at national and regional levels⁷⁰; the introduction of the precautionary principle to this end; and the extension towards the high seas of measures concerning the protection and conservation of living marine resources. The second chapter already mentioned concerns conservation of nature,

⁶⁴ Vide RAC-SPA (1995), 70 pp.; and doc. UNEP(OCA)/MED WG.87/4 (15 December 1994), 57 pp.

⁶⁵ Vide RAC-SPA (1993), 21 pp.

⁶⁶ Vide UNEP/IUCN (1994), 37 pp.

⁶⁷ Vide RAC-SPA (1994), 272 pp.

⁶⁸ A special mention deserves, due that it was not a technical meeting but a political one, the Ministerial Conference celebrated at Tunis on the 1st November 1994, where the Mediterranean States Ministers in charge of the environment stressed the need for sustainable development in the Mediterranean. The Conference Report and the Agenda MED 21 are reproduced in REPUBLIC OF TUNISIA (1995).

⁶⁹ MAP Phase II deals with the following items: sustainable development in the Mediterranean; strengthening of the legal framework; and institutional and financial arrangements.

⁷⁰ There is also a chapter in MAP Phase II dealing with integrated coastal area management. Among its objectives, the preservation of the biological diversity of coastal ecosystems and the preservation of ecosystems for future generations, are expressly quoted.

landscapes and sites. This chapter is aimed at proposing to the Contracting Parties a programme of activities that will assist them to protect and sustainably manage the natural and cultural Mediterranean heritage, thus contributing to the sustainable development of the region. In this way, five types of activities will be carried out concerning: collection of data and periodic assessment of the situation; legal measures; planning and management; public awareness and participation; and exchange of experience and strengthening of natural capabilities. It also deserves to be mentioned that, when adopting legal measures, special attention will be given in the Mediterranean to the habitats of threatened species, to insular environments and to archaeological remains, including underwater ports, structures and wrecks, as well as the announce of the establishment of a list of "Specially Protected Areas of Mediterranean Importance" (SPAMI) and a list of endangered species.

Secondly, the political undertakings adopted by the Mediterranean States in MAP Phase II were complemented by another document, also of a highly political character, which identifies the Priority Fields of Activities for the forthcoming decade (1996-2005) taking into account Agenda MED 21 ⁷¹. At least three PFAs must be pointed out. The first one deals with the management of genetic resources and, in order to reach this aim, the Contracting Parties commit themselves to prepare appropriate measures of *in-situ* protection of genetic resources and to promote the creation of a bank of genes and the rational use of genetic resources at country level. The second PFAs concerns marine living resources. The forecast activities for the next decade consist in the development of common resource management policies inspired by the precautionary principle and the implementation of international conventions concerning fisheries, specially the code of conduct for responsible fishing. The last PFAs highlighted is related to conservation of nature, landscape and sites. By far, this PFAs comprises a larger number of activities for the forthcoming decade, such as preparing and approving national strategies for the conservation of biodiversity; drawing up inventories of the elements of Mediterranean biological diversity, lists of threatened species and of sites of natural or cultural value; drafting and approving the annexes to the new Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean; enhancing conservation and rational management of Mediterranean wetlands; encouraging the establishment of national inspection mechanisms and land-use policy tools allowing protection of the coastal areas to be safeguarded taking into account the specific conditions in each country; and applying, in co-operation with other organisations involved, action plans on the monk seal, marine turtles and marine mammals ⁷².

Lastly, on 10 June 1995, the same day that the above mentioned political tools were approved, several legal measures were also adopted. On the one hand, the Barcelona Convention was amended ⁷³ and, without any doubt, the most important amendment regarding these issues is the introduction of a new article 9A on

⁷¹ See the Document UNEP(OCA)/MED IG.5/CRP.11/Add.8: Priority Fields of Activities for the Environment and Development in the Mediterranean Basin (1996-2005).

⁷² The political understandings included in MAP Phase II and in the PFAs document were reconfirmed by the Barcelona Resolution on the Environment and Sustainable Development in the Mediterranean Basin

⁷³ The new amended title of the Barcelona Convention is the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean.

conservation of biological diversity⁷⁴. Thus, the gap existing in the former Barcelona Convention has been bridged and the need to protect areas and biodiversity in the Mediterranean basin has been recognised by the most important legal tool of the Barcelona system.

On the other hand, a new Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (Barcelona, 10 June 1995) was also adopted. When this 1995 Barcelona Protocol enters into force, it shall replace the 1982 Geneva Protocol in the relationships among the Parties to both instruments. Like the 1982 Geneva Protocol, the new Barcelona Protocol is aimed at "protecting and, as appropriate, improving the state of the Mediterranean natural and cultural heritage". But the tools that are going to be used in order to reach this objective consist not only in the establishment of SPAs, but also in the protection and conservation of species⁷⁵.

Moreover, the geographical coverage of the Barcelona Protocol has been broadened, and now it comprises: "the maritime waters of the Mediterranean Sea proper, including its gulfs and seas, bounded to the west by the meridian passing through Cape Spartel lighthouse, at the entrance of the Straits of Gibraltar, and to the east by the southern limits of the Straits of the Dardanelles between Mehmetcik and Kumkale lighthouses; the seabed and its subsoil; the waters, the seabed and its subsoil on the landward side of the baseline from which the breadth of the territorial sea is measured and extending, in the case of watercourses, up to the freshwater limit; and the terrestrial coastal areas designated by each of the Parties, including wetlands" (art. 2.-1)⁷⁶. In practice, however, the Barcelona Protocol neither pretends being limited only to the Mediterranean basin, nor being mandatory exclusively for the Contracting Parties. Like the Berne Convention, there is a provision trying to protect endangered or threatened species throughout their geographical ranges. But the way to reach this aim does not consist in inviting non-Mediterranean States to accede to the Barcelona Protocol, but "to consult with range States that are not Parties to this Protocol, with a view to co-ordinating their efforts to manage and protect" these species (art. 11.-7)⁷⁷. Moreover, pursuant to art. 28.-1: "The Parties undertake to adopt appropriate measures, consistent with international law, to ensure that no one engages in any activity contrary to the principles and purposes of this Protocol"⁷⁸.

The first general obligation assumed by the Parties to the Barcelona Protocol consist in taking "the necessary measures to protect, preserve and manage in a sustainable and environmentally sound way areas of particular natural and cultural

⁷⁴ According to it: "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 in which this Convention applies".

⁷⁵ Preamble, para. 3.

⁷⁶ This broadened geographical scope, which in fact includes all Mediterranean waters whether they are subject to national jurisdiction or not, has been only possible after a long discussion on the drafting of a disclaimer clause contained in art. 2, para.s 2 and 3.

⁷⁷ In a similar way, art. 28.-1 states that: "The Parties shall invite States that are not Parties to the Protocol and international organisations to co-operate in the implementation of this Protocol".

⁷⁸ This provision, known as the Antarctic clause, is inspired in art. X of the Antarctic Treaty.

value, notably by the establishment of " SPAs ⁷⁹. To this end, Part II of this Protocol is devoted to protection of areas ⁸⁰. The most original feature of this Part is the distinction between SPAs (Section one) and Specially Protected Areas of Mediterranean Importance (Section two). Section one includes nearly all the substantial provisions previously ruled by the 1982 Geneva Protocol, with their corresponding improvements. Accordingly, SPAs must be established by each Party in the marine and coastal zones subject to its sovereignty or jurisdiction (art. 5.-1) ⁸¹ in order to safeguard: (a) representative types of coastal and marine ecosystems of adequate size to ensure their long-term viability and to maintain their biological diversity; (b) habitats which are in danger of disappearing in their natural area of distribution in the Mediterranean or which have a reduced natural area of distribution as a consequence of their regression or on account of their intrinsically restricted area; (c) habitats critical to their survival, reproduction and recovery of endangered, threatened or endemic species of flora and fauna ⁸²; and (d) sites of particular importance because of their scientific, aesthetic, cultural or educational interest (art. 4). While the protection measures for each SPAs closely follows the wording of article 7 of the 1982 Geneva Protocol, the introduction of a new article 7 on planning and management of SPAs which, *inter alia*, provides for the integrated management of SPAs covering both land and marine areas, must be highlighted. However, any mention to buffer areas, such as the one contained in article 5 of the 1982 Geneva Protocol, has disappeared in the 1995 Barcelona Protocol.

On the other hand, in order to promote co-operation in the management and conservation of natural areas as well as in the protection of threatened species and their habitats, the Parties undertake to draw up a "List of Specially Protected Areas of Mediterranean Importance". The SPAMI List may include: sites which are of importance for conserving the components of biological diversity in the Mediterranean; contain ecosystems specific to the Mediterranean area or the habitats of endangered species; or are of special interest at the scientific, aesthetic, cultural or educational levels (art. 8). The differences between SPAs and SPAMIs consist not only in recognising the particular importance of SPAMIs for the Mediterranean, but they also affect both their geographical scope and the procedures for their establishment. Thus, it is worth noting that SPAMIs may be established not only in the marine and coastal zones subject to the sovereignty or jurisdiction of the Parties, but also in zones situated partly or wholly on the high seas. Moreover, while the procedures for the

⁷⁹ Art. 3.-1 (a). This provision also means that the establishment of SPAs is not the only way to protect, preserve and manage those areas of particular natural and cultural value.

⁸⁰ A new feature of this Protocol is that it is structured in six parts: General Provisions; Protection of Areas; Protection and Conservation of Species; Provisions Common to Protected Areas and Species; Institutional Provisions; and Final Provisions.

⁸¹ The inclusion of the word "jurisdiction" might constitute a sufficient basis for creating SPAs in future economic exclusive zones, if this were the case.

⁸² Pursuant to article 1, "endangered species" means any species that is in danger of extinction; "endemic species" means any species whose range is restricted to a limited geographical area; and "threatened species" means any species that is likely to become extinct within the foreseeable future throughout all or part of its range and whose survival is unlikely if the factors causing numerical decline or habitat degradation continue to operate". As we have already seen, it is not usual that legal instruments define these concepts.

establishment of SPAs are left to the domestic legislation of each Party, the procedure for the establishment and listing of SPAMIs is provided for by article 9. According to it, proposals for inclusion in the SPAMI List may be submitted by the Party concerned, if the area is situated in a zone already delimited, over which it exercises sovereignty or jurisdiction, or by the neighbouring Parties concerned if the area is situated, partly or wholly, on the high seas⁸³ or in areas where the limits of national sovereignty or jurisdiction have not yet been defined. After examining that the proposals are in conformity with the common criteria that shall be adopted by the Parties for the choice of protected marine and coastal areas that could be included in the SPAMI List (art. 16), a twofold procedure for inclusion of the proposed area in the list has been established. If the proposal concerns an area subject to the sovereignty or jurisdiction of a Contracting Party, then the meeting of the Parties shall decide to include it in the SPAMI List. But if the proposal concerns an area situated partly or wholly on the high seas or in areas where the limits of national sovereignty or jurisdiction have not yet been defined, then the 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 such an area (art. 9).

Other general obligations assumed by the Parties to the Barcelona Protocol consist in taking "the necessary measures to protect, preserve and manage threatened or endangered species of flora and fauna" and to co-operate, directly or through the competent international organisations, in the conservation and sustainable use of biological diversity"⁸⁴ in the Mediterranean basin. In order to reach these objectives, Part III of the Barcelona Protocol establishes different national and co-operative measures for the protection and conservation of species. At the national level, the Parties shall manage living species "with the aim of maintaining them in a favourable state of conservation"⁸⁵. Among the national measures, it may be pointed out that the Parties shall: in the zones subject to their sovereignty or national jurisdiction, identify and compile lists of the endangered or threatened species of flora and fauna and accord protected status to them; co-ordinate their efforts, through bilateral or multilateral action, including if necessary, agreements for the protection and recovery of migratory species whose range extends into the Mediterranean basin⁸⁶; formulate and adopt measures and plans with regard to *ex situ* reproduction, in particular captive breeding of protected fauna and propagation of protected flora; and make provision, where possible, for the return of protected species exported or held illegally (art. 11). On the other hand, among the co-operative measures for the protection and conservation of species, it must be highlighted that the Parties shall adopt measures

⁸³ It is worth noting that if the area proposed is situated wholly on the high seas, it will be not always possible to identify which are the neighbouring Parties. On the other hand, if the proposed area is situated wholly on the high seas, it is not clear at all why the submission of the proposal is restricted to the neighbouring Parties and it is not open to any Contracting Party.

⁸⁴ The definition of "biological diversity" in art. 1 (b) of the Barcelona Protocol repeats word by word the definition given by art. 2.-1 of the Biodiversity Convention.

⁸⁵ While the expression "favourable state of conservation" is not defined, according to art. 1 (f) "conservation status of a species" means the sum of the influences acting on the species that may affect its long-term distribution and abundance.

⁸⁶ This provision ought to be included in art. 12 ("Co-operative measures for the protection and conservation of species") and not in art. 11, which in fact deals with national measures.

to ensure the protection, recovery and conservation of the flora and fauna listed in the Annexes to this Protocol relating to the List of Endangered or Threatened Species and the List of Species whose Exploitation is Regulated. These measures must include the prohibition on the destruction of and damage to the habitat of species included in the List of Endangered or Threatened Species and the formulation and implementation of action plans for their conservation or recovery (art. 12).

IV.- FINAL CONSIDERATIONS.

The international legal instruments regarding the establishment of SPAs and the protection and conservation of biological diversity have become each time more complex, as they have evolved from a sectoral to a global and comprehensive approach. In the case of the Mediterranean basin, these matters are even more complicated, due to the co-existence of a large number of international treaties of world-wide scope that are also applicable in the Mediterranean; of different regional agreements, such as the African or the Berne Convention that also apply to some Mediterranean States; and of different political and legal Mediterranean tools concerning the same matters.

At the same time, the political and legal system initiated by MAP twenty years ago has proved to be so flexible enough as to evolve, receipt and contribute to the creation and development of newer environmental concepts and techniques. This is also the case for SPAs and biodiversity. Whereas there was no provision on these matters neither in MAP nor in the Barcelona Convention, the increasing environmental awareness of the Mediterranean States led to the adoption of the 1982 Geneva Protocol. The requirements of updating and adapting to new developments, forced the Mediterranean States to adopt the 1995 Barcelona Protocol, which is called to substitute the 1982 Geneva Protocol, that is, the youngest Protocol already adopted when the revision process of the Mediterranean system was initiated.

Nevertheless, it must be mentioned that this sustainable development of the Barcelona system for the Mediterranean has not reached an end. Much remains to be done. For instance, none of the three lists included in the Barcelona Protocol actually exist. There are large areas in the Mediterranean, mainly in the less developed countries, where there is no SPAs at all and there is an urgent need of financial assistance to developing countries that express a need for it with a view to implement the Barcelona Protocol. Perhaps the Euro-Mediterranean Ministerial Conference, to be held once again in Barcelona on 27 and 28 November 1995, and convened with a view to strengthening Euro-Mediterranean co-operation between the countries of the European Union and other Mediterranean countries, will help to this aim.

ACKNOWLEDGEMENTS

This work has been done within the framework of the Research Programme GV - 2445/94.

REFERENCES.

AMOS (1994) Parks and IUCN; a report on issues related to national parks and protected areas at the 19th General Assembly of IUCN.

BIRNIE, P. W.; BOYLE, A. E. (1992), International Law and the Environment, Oxford

CATALDI, G. (1995), L'établissement d'une politique commune de la pêche par les Etats côtiers de la Méditerranée (not yet published).

DE YTURRIAGA BARBERAN, J. A. (1976), Convenio de Barcelona de 1976 para la protección del mar Mediterráneo contra la contaminación, Revista de Instituciones Europeas, 1976, 63-96.

DE YTURRIAGA BARBERAN, J. A. (1979), Regional Conventions on the Protection of the Marine Environment, RCADI, 162.

FORSTER, M. J.; OSTERWOLDT, R. U. (1992), Nature Conservation and Terrestrial Living Resources, in: Peter H. Sand (ed.), The Effectiveness of International Environmental Agreements, Cambridge, pp. 59 et seq.

IMBERT, P. H. (1979), La Convention relative à la conservation de la vie sauvage et du milieu naturel de l'Europe - Exception ou étape? Annuaire Français de Droit International, 25, 726-752.

JUSTE RUIZ, J. (1993), The Evolution of the Barcelona Convention and Its Protocols for the Protection of the Mediterranean Sea against Pollution. In: Edward L. Miles; Tullio Treves (eds.), The Law of the Sea: New Worlds, New Discoveries, 208-238.

JUSTE RUIZ, J. (1995), The Revision Process of the Mediterranean Action Plan, the Barcelona Convention and Its Protocols for the Protection of the Mediterranean Sea against Pollution (in print).

KISS, A. (1989), Droit international de l'environnement, Paris

KLEMM, C. (1990), La Convention de Ramsar et la conservation des zones humides cotieres, particulièrement en Méditerranée, Revue Juridique de l'Environnement, 1990/4, 577-598.

LEANZA, U. (1987), The Regional System of Protection of the Mediterranean Against Pollution. In: Umberto Leanza (ed.), Il regime giuridico internazionale del mare Mediterraneo, Milano.

LYSTER, S. (1985), International Wildlife Law, Cambridge.

MAFFEI, M. C. (1992), La protezione internazionale delle specie animali minacciate, Padua.

MAFFEI, M. C. (1993a), Evolving Trends in the International Protection of Species, German Yearbook of International Law 36, 131-186.

MAFFEI, M. C. (1993b), The Protection of Endangered Species of Animals in the Mediterranean Sea. In: Edward L. Miles; Tullio Treves (eds.), The Law of the Sea: New Worlds, New Discoveries, 253-298.

MARKS, B.; PERRY, K. (1995), The protection of special areas in Antarctica. In: Francioni, F.; Scovazzi, T. (ed.s), International Law for Antarctica. II (in print).

RAC-SPA (1987), Guidelines for the Selection, Establishment, Management and Notification of Information on Marine and Coastal Protected Areas in the Mediterranean, Tunis, 28 pp.

RAC-SPA (1993), La Protection des Cétacés, du Phoque Moine, des Tortues Marines, des Plantes Marines et des Oiseaux en Méditerranée, Document Préparé par Cyrille De Klemm, Tunis, 21 pp.

RAC-SPA (1994), Repertoire des aires marines et cotieres protegees dans la Méditerranée. Sites d'importance biologique et ecologique, Tunis, 272 pp.

RAC-SPA (1995), Present status and trend of the Mediterranean monk seal (Monachus monachus) populations, Tunis, 70 pp.

RAFTOPOULOS, E. G. (1988), The Mediterranean Action Plan in a functional Perspective: A Quest for Law and Policy, MAP Technical Report Series N° 25, UNEP, Athens, 105 pp.

REPUBLIC OF TUNISIA, MINISTRY OF ENVIRONMENT AND LAND USE PLANNING (1995), The Tunis Conference on Sustainable Development in Mediterranean. November 1st 1994, Tunis, Tunisia, 2 vol.s.

RÜSTER, B.; SIMMA, B. (1975), International Protection of the Environment. Treaties and Related Documents, vol. 1, New York.

RÜSTER, B.; SIMMA, B. (1975), International Protection of the Environment. Treaties and Related Documents, vol. 4, New York.

RÜSTER, B.; SIMMA, B. (1976), International Protection of the Environment. Treaties and Related Documents, vol. 5, New York.

RÜSTER, B.; SIMMA, B. (1977), International Protection of the Environment. Treaties and Related Documents, vol. 14, New York.

RÜSTER, B.; SIMMA, B.; BOCK, M. (1981), International Protection of the Environment. Treaties and Related Documents, vol. 23, New York.

TORREGROSA PUERTA, F. (1991), Utilización y protección del medio marino: la ecogestión de la columna de agua y de los recursos biológicos del Mar Mediterráneo, Doctoral Thesis, Valencia.

UNEP (1992a), Mediterranean Action Plan and Convention for the Protection of the Mediterranean Sea against Pollution and its related Protocols, Athens, 61 pages.

UNEP (1992b), The Mediterranean Action Plan. Saving our common heritage, Athens, 40 pages.

UNEP(OCA)/MED WG.89/Inf.8 (27 February 1995): Multilateral Treaties in the Field of Environment to which Mediterranean Countries are Parties, 13 pages.

UNEP(OCA)/MED WG.89/Inf.9 (17 March 1995): The presence of the tropical alga *Caulerpa taxifolia* in the Mediterranean Sea, 24 pages.

UNEP(OCA)/MED WG 87/4 (15 December 1994), Report of the Meeting of Experts on the evaluation of the implementation of the Action Plan for the management of the Mediterranean monk seal, 57 pp.

UNEP/IUCN (1994), Technical Report on the State of Cetaceans in the Mediterranean, MAP Technical Reports Series n° 82, UNEP, RAC-SPA, Tunis, 37 pp.

UNESCO, Doc. WHC/2 Revised (27 March 1992), Operational Guidelines for the Implementation of the World Heritage Convention.

VUKAS, B. (1987), The Protection of the Mediterranean Sea Against Pollution. In: Umberto Leanza (ed.), Il regime giuridico internazionale del mare Mediterraneo, Milano.