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# Towards integrated management of the coasts and the coastal waters in Spain

## 1. Background

The new trends that are developing with respect to the coastal zones and its natural resources are of great importance for the Kingdom of Spain for geographical, strategic and economic reasons.

Among the geographical reasons, it must be pointed out that Spain enjoys a considerable maritime coastline, about 7.880 kilometres long, if in addition to the peninsular coasts we take into account those of its two archipelagos and of the cities of Ceuta and Melilla. Moreover, Spain is a coastal State of both a semi-enclosed sea, the Mediterranean, and of the North East Atlantic Ocean, which are marine areas that present important regional legal developments.

The strategical considerations that make the Law of the Sea so important for Spain comprise, among others: 1) the fact of it being a coastal State with two straits used for international navigation, the Menorca Channel and the Strait of Gibraltar; the latter is one of the two waterways that links the Mediterranean with larger seas, and therefore constitutes one of the

maritime navigation routes most intensely travelled in the world; 2) the fact that two important archipelagic systems, the Balearic and the Canary archipelagos, belong to Spain, and that the Canary archipelago is a first class point in the intercontinental communications system; and 3) the also relevant fact that the Spanish sovereign territories in the north of Africa are all riparian of the Mediterranean Sea.

Among the economic considerations, it must be remembered that Spain is a world fishing power, especially because of its long-distance fishing fleet. Its important tourist industry is mainly located on its long maritime coastline, which provokes a special sensitivity to questions involving the preservation and protection of the coastal and marine environment; and that Spain lacks many mineral resources existing in large quantities in the International Deep Seabed Area, the commercial exploitation of which is expected to start in a more or less near future.

These and other factors have induced Spain to participate very actively in every codifying Law of the Sea conference convoked either by the League of Nations or by the United Nations Organisation, as well as in the different regional systems that involve the seas bordering Spain. Nevertheless, until the beginning of the sixties, the Spanish domestic legal system regarding the Law of the Sea was insufficient, heterogeneous and sporadic. From the Royal Order of 17 December, 1760, which extended the breadth of Spanish jurisdictional waters to six miles in order to prevent the smuggling of salt and tobacco (1), the Spanish marine zones remained practically unchanged till recently. Since 1971, when Spain acceded to the four Law of the Sea Conventions adopted at Geneva on 29 April, 1958 (2), it has developed an important legislative activity on this matter, coinciding to a large extent, but not completely, with the work of the Third United Nations Conference on the Law of the Sea (hereinafter, referred to as UNCLOS III).

With respect to the internal legal regime, the 1978 Spanish Constitution (hereinafter referred to as SC) contains some general provisions relating to the coastal zones. In implementing these constitutional provisions, the Shores Act of July 28, 1998 has played a pivotal role although it still faces some difficulties for its full implementation. In addition, the legal regime defined by the 1988 Shores Act is complemented by different acts and regu-

(1) The original version of this text can be found in DE YTURRIAGA BARBERAN, J. A. (1975), *Textos y documentos*, in A. POCH. (ed), *La actual revisión del Derecho del Mar. Una perspectiva española*, vol. 2, 1º parte, Madrid, p. 47.

(2) Spain acceded to the four 1958 Geneva Conventions on 25 February 1971. These four Conventions are the following: Convention on the territorial sea and the contiguous zone, officially published in Spain in the Boletín Oficial del Estado (hereinafter referred to as B.O.E.) dated 24 December 1971; Convention on the continental shelf (B.O.E. of 25 December 1971); Convention on the high seas (B.O.E. of 27 December 1971) and the Convention on fishing and conservation of the living resources of the high seas (B.O.E. of 27 December 1971).

lations, such as, among many others, the Act 27/1992 of 24 November, on State Ports and Merchant Shipping (3) and the Act 3/2001, of 26 March, on the State's Maritime Fishing (4). In sum, in Spain there is not a single legal regime for the whole coastal zone in itself. Different legal norms apply to its marine and land parts as well as to their different uses: navigation, fishing, seabed exploration and exploitation, environmental protection, spatial planning, ports and harbors, coastal urbanization, landscapes, etc.

In addition, some competences in matters important for the coastal zones have been granted to Autonomous Communities (hereinafter referred to as AA.CC.) but the constitutional criteria for the distribution of competences between the State and the regions have proved to be difficult to implement in practice.

## 2. Influence of International Law

Having a paramount interest in maritime and coastal affairs, Spain has always paid great attention to the evolution of the international Law of the Sea.

### 2.1. Global marine Conventions

On February 25, 1971, Spain acceded to the four 1958 Geneva Conventions on the Law of the Sea which are still in force today. In general, it can be stated that the four 1958 Geneva Conventions favoured and adequately protected the maritime Spanish interests.

In the negotiations of UNCLOS III, manifested a major interest in several issues, such as the regime of straits used for international navigation, the regime of fishing in the EEZ, the delimitation of marine zones between States with opposite or adjacent coasts and the regime of archipelagos. As the result of the negotiations was not in general responsive to its requests, Spain abstained in the final vote of the text of the United Nations Convention on the Law of the Sea (hereinafter, referred to as 1982 LOS Convention) on April 30, 1982. Explaining the attitude of his delegation, the Spanish representative said that "it would not have been surprising if his delegation had voted against the draft". However, "(...) his Government,

(3) 27/1992, de 24 de noviembre, de Puertos del Estado y de la Marina Mercante. BOE 27 November

(4) See: J. JUSTE RUIZ, *La Ley 3/2001, de 26 de marzo, de Pesca Marítima del Estado: análisis y evaluación*, Revista Española de Derecho Internacional (REDI), 2002, 1, Vol. LIV, pp. 95-114.

aware of the political and historical importance of the final moments of the Conference, had simply abstained, because it consider that its position on a question of great importance, which affected it very directly, had not been properly reflected in the text of Part III of the draft convention, and more particularly in articles 38, 39, 41 and 42" (referring to straits used for international navigation). The Spanish representative concluded that "the text approved by the Conference did not constitute a codification or expression of customary law" (5).

It must be pointed out that there is a difference between Spain and other leading developed countries, for Spain did not directly reject Part XI of the 1982 LOS Convention, regarding the International Deep Seabed Area. The adoption, on the 28 July 1994, of an Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (6), marked a turning point in the Spanish attitude towards the 1982 LOS Convention. This is so not only because the 1994 Agreement benefit Spanish interests in the Area, but also because it was considered increasingly difficult to maintain its thesis on navigation through international straits after the 1982 LOS Convention and the 1994 Agreement were broadly ratified, particularly by developed countries and maritime powers.

Nevertheless, on December 4, 1984, only just a few days before the end of the deadline provided for in its article 305, Spain signed the 1982 LOS Convention and made a declaration on points of particular concern repeating the principal arguments made during the III Conference (7). On July 29, 1994, Spain also signed the Agreement relating to the implementation of Part XI of UNCLOS. On 15 January 1997 Spain ratified the Agreement relating to the implementation of Part XI, and on 16 January 1997 it also ratified the 1982 LOS Convention, again making several declarations and statements (8). On 19 July 2002, Spain made a complementary declaration choosing the ITLOS and the ICJ as means for the settlement of disputes concerning the Convention and excluding compulsory jurisdiction with regard to disputes concerning boundary delimitations or those involving historic bays or tittles (Arts. 15, 74 and 83 of the Convention).

(5) UNITED NATIONS, *Third United Nations Conference on the Law of the Sea, Official Records*, 17, p. 160.

(6) UNITED NATIONS, *Law of the Sea Bulletin*, Special Issue IV, pp. 8-25.

(7) The nine points of the Spanish declaration concerned the status of the Colony of Gibraltar and some of its maritime spaces, the regime of straits used for international navigation (Part III and arts. 39, par. 3, 42, 1 (b), 221 and 233), access to fishing in the economic zones of third States (arts. 56, 61, 62, 69 and 70) and prospecting, exploration and exploitation of minerals in the Area (Annex III). See the full text of the Spanish declaration in *Law of the Sea Bulletin*, Nº. 4, February 1985, pp. 14-15. See also, J. A. PASTOR RIDRUEJO, (1983), *La Convención de 1982 sobre el derecho del mar y los intereses de España*, Cursos de Derecho Internacional de Vitoria-Gasteiz, 1983, pp. 77-82.

(8) See: R. RIQUELME CORTADO, *España ante la Convención sobre el derecho del Mar. Las declaraciones formuladas*, Murcia (Secretariado de Publicaciones de la Universidad) 1990.

Spain is a Contracting Party to most IMO Conventions, including the International Convention for the Safety of Life at Sea (SOLAS 1974) and its Protocols of 1974, 1978 and 1988, the International Convention for the Protection of Pollution from Ships 1973 as amended by the Protocol of 1978 (MARPOL 73/78) and its six Annexes, the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (INTERVENTION 1969) and its Protocol of 1973 (9), the International Convention on Civil Liability for Oil Pollution Damage (CLC 1969) and its Protocols of 1978 and 1992, the Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material (NUCLEAR 1971), the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND 1971), its Protocols of 1978 and 1992 and the 2003 Protocol establishing a Supplementary Fund (10), the Convention on Limitation of Liability for Maritime Claims (LLMC 1976), the Torremolinos International Convention for the Safety of Fishing Vessels (SFV 1977), the Convention for the Supresion of Unlawfull Acts against the Safety of Maritime Navigation (SUA 1988) and its Protocol of 1988, the International Convention for Oil Pollution Preparedness, Response and Co-operation (OPRC 1990) (11) and the 2001 International Convention on Civil Liability for Damage caused by pollution from bunker oil from ships (12). The Ministerio de Marina is responsible for the implementation of these Conventions, a task that is essentially carried out by its Direccion General de Marina Mercante. In executing its duties, this administrative body developed in 1994 a national plan for the safety of navigation and the combating of marine pollution that includes two centres for monitoring navigation in the Strait of Gibraltar (Tarifa) and in the area of Finisterre.

Special consideration deserves the role played by Spain at the Consultative Meetings of the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters (LC 1972), where it was very active particularly in leading the proposal for the total ban on the dumping of radioactive wastes at sea. This objective was finally accomplished in December 1993 when the XVI Consultative Meeting of the

(9) B.O.E. nº 112, 11 May 1994.

(10) The 2003 Protocol provides for a third tier of compensation for damages bringing the maximum amount payable to US$ 1160 million. The 2003 Protocol entered into force on March 23, 2005 and so far 24 States are Parties to it.

(11) IMO. *Status of Multilateral Conventions and Instruments in Respect of Which the IMO or its Secretary General Performs Depositary or Other Functions*, as at 31 December 2002. See also: IMO. Status of Conventions as at 31 August 2009 (*http://www.imo.org/*).

(12)The "bunkers" convention was adopted on March 23, 2001 and entered into force on November 21, 2008

Contracting Parties to the Convention adopted three resolutions containing respective amendments to prohibit the dumping of industrial wastes at sea (LC.49/16), the incineration of wastes at sea (LC.50/16) and the dumping of radioactive wastes and other radioactive material at sea LC.51 (13). Nowadays, Spain is a party to the 1996 Protocol amending and replacing the 1992 London Convention (14).

## 2.2. Regional marine Conventions

At the regional level, Spain is a Party to the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention 1992), which has replaced the former Oslo and Paris Conventions since its entering into force on 25 March 1998 (15).The OSPAR Convention currently has five Annexes to whom Spain is Party (16).

Moreover, on October 17, 1990, the Governments of France, Portugal, Morocco and Spain and the European Community adopted in Lisbonne the Agreement on cooperation for the protection of the coasts and waters of the North East Atlantic against pollution (17), which has not yet entered into force. The Agreement provides for the cooperation of the Parties to combat pollution by oil and other harmful substances affecting their coasts and coastal waters up to the external limit of their exclusive economic zones in the Atlantic area defined in its article 3.

As far as the Mediterranean is concerned, Spain is a Party to the original Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention 1976) and its Protocols on dumping (Barcelona 1976) and emergencies (Barcelona 1976). It is also a Party to the Protocols on land-based sources (Athens 1980) and on specially protected areas (Geneva 1982), and it has signed (but not ratified) the Protocol on

(13) IMO. LC 16/14, 15 December 1993. *Report of the Fifteenth Consultative Meeting*. Annex 3, 4 and 5.

(14) The 1996 Protocol was adopted on 7 November 1996 and entered into force on 24 March 2006.

(15) Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (Oslo Convention 1972) and Convention for the Prevention of Marine Pollution from Land-Based Sources (Paris Convention 1974). J. JUSTE RUIZ, *La Convention pour la protection du milieu marin de l'Atlantique Nord-Est*, Revue Générale de DIP, 93/2, pp. 365-393; H. HEY, T. IJLSTRA, and A. NOLLKAEMPER, *The 1992 Paris Convention for the Protection of the Marine Environment of the North-East Atlantic: A Critical Analysis*", The International Journal of Marine and Coastal Law, vol 8, N° 1, 1993, pp. 1-75.

(16) Annex I: Prevention and elimination of pollution from land-based sources; Annex II: Prevention and elimination of pollution by dumping or incineration; Annex III: Prevention and elimination of pollution from offshore sources; Annex IV: Assessment of the quality of the marine environment; Annex V: Biodiversity and ecosystems (adopted in 1998 to cover non-polluting human activities that can adversely affect the sea).

(17) See the text in O.J. 93/C 56/02.

off-shore activities (Madrid 1994) (18). After actively participating in the 1995 Barcelona Conference, Spain became a party to the amended Barcelona Convention, thereafter named "Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean" (19), and to the new Protocol on specially protected areas and biological diversity (20); it has also ratified the amended Protocol on dumping (21). Subsequently, Spain has ratified the amendments to the Protocol on Land-Based Sources and Activities (Syracuse, 7 March 1996) (22) and has signed (but not ratified) the Protocol on the Prevention of Pollution by Transboundary Movements of Hazardous Wastes and their Disposal (Izmir, 1 October 1996) (23) and the new Protocol on Cooperation in Preventing Pollution from Ships and in Cases of Emergency, Combating Pollution in the Mediterranean Sea (La Valleta, 25 January 2002) (24). Spain has also signed the Protocol on Integrated Coastal Zone Management done in Madrid on the 21 January 2008 (25).

## 2.3. UNCED and Agenda 21, Chapter 17

Another set of international commitments for Spain derive from the instruments adopted by the 1992 UNCED and from actions subsequent to it. The principles of the Rio Declaration, most of which have already been incorporated into the EC environmental policy, are being progressively integrated into Spanish environmental policy and law, in particular those

(18) Not yet in force. See: J. JUSTE RUIZ, *The Evolution of the Barcelona Convention and its Protocols for the Protection of the Mediterranean Sea Against Pollution*, in E. L. MILES & T. TREVES (Ed.) *The Law of the Sea: New Rules, New Discoveries. Proceedings of the Law of the Sea Institute* (Genoa 1992), pp. 208-238.

(19) In force from 9 July 2004. See V. BOU FRANCH, *Hacia la integración del medio ambiente y el desarrollo sostenible en la región mediterránea*, in Anuario de Derecho Internacional, 12, 1996, p. 201-251.

(20) Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean, which entered into force on 12 December 1999.

(21) Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft, not yet in force.

(22) In force since 11 May 2008. See: M. BADENES CASINO, *Land-Bases Sources of Pollution: Recent Legal Trends for the Mediterranean Area*, in *op.cit., supra* note 35, pp. 1139- 1147. V. BOU FRANCH, *New Trends for Eliminating Land-Based Pollution in the Mediterranean Sea* in G. CATALDI (Director) *op.cit., supra* note XX, pp. 275-303, specially 293-303.

(23) In force since 28 December 2007. See: J. JUSTE-RUIZ, *Un nuevo instrumento jurídico del sistema de Barcelona para la protección del mar Mediterráneo: el Protocolo sobre movimientos transfronterizos de desechos peligrosos y su eliminación*, Revista Española de Derecho Internacional, vol. XLVIII, 1996, núm. 2, pp. 371378.

(24) In force from 17 March 2004.

(25) Final Act of the Conference of Plenipotentiaries on the Protocol on Integrated Coastal Zone Management (ICZM) in the Mediterranean. See: M. PRIEUR, *Un nouveau protocole sur la gestion intégrée des zones côtières : protocole de Madrid du 21 janvier 2008*, Vertigo - la revue électronique en sciences de l'environnement, Hors-série 5 – mai 2009, [En ligne], mis en ligne le 28 mai 2009. URL : *http://vertigo.revues.org/index8426.html*.

concerning environmental impact assessment, the precautionary principle and the polluter pays principle.

More directly related to coastal and marine matters are the provisions of Agenda 21, particularly in chapter 17 concerning "protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources".

The first programme area contains provisions on integrated management and sustainable development of coastal and marine areas. They underline the importance of those areas and call *inter alia* for the establishment by States of appropriate coordinating mechanisms, for the undertaking of measures to maintain biological diversity and productivity of marine species, for the improvement of data and information and for international and regional cooperation to support and supplement national efforts.

The second programme area deals with marine environmental protection, principally against the contaminants that pose the greatest threat (those which exhibit at the same time toxicity, persistence and bioaccumulation). After pointing out that land-based sources are responsible for 70 per cent of marine pollution, the text goes on to stress that:

*"17.19 Degradation of the marine environment can also result from a wide range of activities on land. Human settlements, land use, construction of coastal infrastructure, agriculture, forestry, urban development, tourism and industry can affect the marine environment. Coastal erosion and siltation are of particular concern.*

*17.20 Marine pollution is also caused by shipping and sea based activities. Approximately 600,000 tons of oil enter the oceans each year as a result of normal shipping operations, accidents and illegal discharges. With respect to off-shore oil and gas activities, currently machinery space discharges are regulated internationally and six regional conventions to control platform discharges have been under consideration. The nature and extent of environmental impacts from off-shore oil exploration and production activities generally account for a very small proportion of marine pollution.*

*17.21. A precautionary and anticipatory rather than a reactive approach is necessary to prevent the degradation of the marine environment. This requires, inter alia, the adoption of precautionary measures, environmental impact assessments, clean production techniques, recycling, waste audits and minimisation, construction and/or improvement of sewage treatment facilities, quality management criteria for the proper handling of hazardous substances, and a comprehensive approach to damaging impacts from air, land and water. Any management framework must include the improvement of coastal human settlements and the integrated management and development of coastal areas".*

In order to achieve these objectives, a series of management-related commitments are identified concerning prevention, reduction and control of pollu-

tion of the marine environment both from land-based and sea-based activities (shipping, dumping, off-shore oil and gas platforms and ports).

The third programme area deals with sustainable use and conservation of marine living resources of the high seas. Fisheries on the high seas have expanded to represent approximately 5 per cent of total world landings and, in spite of the regulation provided for in the 1982 LOS Convention, there are important problems which call for action by States and cooperation at the international level. Among the main objectives to achieve are "to maintain or restore populations of marine species at levels that can produce the maximum sustainable yield" and to "promote the development of selective fishing gear and practices that minimise waste and by-catch". States should take effective action, including international cooperation, to ensure that high seas fisheries are managed in accordance with the provisions of the 1982 LOS Convention, particularly with respect to straddling stocks and highly migratory species. And, specifically, flag States should ensure that fishing activities in the high seas take place in a manner so as to minimise incidental catch, take effective action to monitor and control fishing activities, deter reflagging (26), prohibit destructive fishing practices, fully implement GA resolution 46/215 on large-scale pelagic drift-net fishing (27) and take measures to reduce wastage and improve techniques of processing, distribution and transportation (28).

The fourth programme area refers to sustainable use and conservation of marine and living resources under national jurisdiction. Fishing in those waters, which represents 95 per cent of the total, with yields that have expanded nearly fivefold in the past four decades, also faces important problems in spite of the regulation set forth in the 1982 LOS Convention. But the problems extend beyond fisheries and affect coral reefs and other marine and coastal habitats, such as mangroves and estuaries, which are among the most highly diverse, integrated and productive of Earth's ecosystems. In view of that, paragraph 17.75 of the text says that:

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(26) Mention shall be made in this respect of the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, approved on November 24, 1993 and not yet entered into force. It has been, so far, ratified by Canada, Saint Kitts and Nevis, Georgia, Myanmar, Sweden, Madagascar, Norway and USA.

(27) M. BADENES CASINO, (1994), *La pesca con redes de enmalle y deriva*, Cuadernos jurídicos, 3/17, pp. 41 et seq.

(28) When dealing with marine living resources the resolution states that "States recognise: (a) The responsibility of the International Whaling Commission for the conservation and management of whale stocks and the regulation of whaling pursuant to the 1946 International Convention for the Regulation of Whaling; (b) The work of the International Whaling Commission Scientific Committee in carrying out studies of large whales in particular, as well as of other cetaceans; (c) The work of other organisations, such as the Inter American Tropical Tuna Commission and the Agreement on Small Cetaceans in the Baltic and North Sea under the Bonn Convention, in the conservation, management and study of cetaceans and other marine mammals (17.62 and 17.90). It states also that "States should cooperate for the conservation, management and study of cetaceans" (17.63 and 17.91).

*"States commit themselves to the conservation and sustainable use of marine living resources under national jurisdiction. To this end, it is necessary to:*

*(a) Develop and increase the potential of marine living resources to meet human nutritional needs, as well as social, economic and development goals;*

*(b) Take into account traditional knowledge and interests of local communities, small scale artisanal fisheries and indigenous people in development and management programmes;*

*(c) Maintain or restore populations of marine species at levels that can produce the maximum sustainable yield as qualified by relevant environmental and economic factors, taking into consideration relationships among species;*

*(d) Promote the development and use of selective fishing gear and practices that minimise waste in the catch of target species and minimise by catch of non target species;*

*(e) Protect and restore endangered marine species;*

*(f) Preserve rare or fragile ecosystems, as well as habitats and other ecologically sensitive areas."*

The section on management-related activities for sustainable use and conservation of marine and living resources under national jurisdiction contains various commitments by coastal States, including the implementation of mechanisms to develop mariculture and aquaculture.

The fifth programme area stresses that States should also address critical uncertainties in the management of the marine environment and climate change, particularly with respect to sea-level rise. And the sixth and last one affirms that States should strengthen international and regional cooperation and coordination by promoting the necessary institutional arrangements.

## 3. European Community Law

European Community norms also have a great impact on the Member States policy and law regarding coastal and marine matters. Since it became a member of the European Community in 1986, Spain has paid particular attention to the implementation of these norms.

### 3.1. Coastal related instruments

A first series of relevant instruments is composed by a number of general texts that express the policy of the Community and its member States on the handling on coastal matters.

We shall mention, in this respect, the European Coastal Charter adopted at Chanià, on October 8, 1981, by a Conference of the coastal peripheri-

cal regions (29). The European Coastal Charter is a declaratory instrument aiming at balancing the requirements of coastal region development with the need for environmental protection of these regions. To that end the Charter spells out ten specific objectives related to coastal zone management and concerning respectively fishing, protection of representative zones, coastal land planning, coastal land use, prevention of risks, tourism, improvement of information, scientific research, harmonization of the law and transboundary cooperation. The strategy proposed by the European Coastal Charter was endorsed by the European Parliament in a Resolution adopted on July 19, 1982.

The EC Commission has subsequently adopted several communications on integrated coastal zone management (30), before the Council adopted its first Resolution on the future Community policy concerning the European coastal zone on 25 February 1992 (31). Taking note of the final Declaration of the European Coastal Conservation Conference, held in The Hague from 19 to 21 November 1991, this Council Resolution invited the Commission "to propose for consideration a Community strategy for integrated coastal zone management which will provide a framework for conservation and sustainable use (and) to incorporate this initiative into the Fifth Environmental Action Programme". On May 6, 1994, the Council adopted a Resolution on a Community Strategy for integrated coastal zone management (32) in which it underlines the need for such an strategy, recalls the provision of the Fifth Community programme in the matter, welcomes the progress already made by several Member States at national level, recognizes the contribution that a number of existing Community measures (33) and financial instruments could make to such a strategy and:

"*Renews its invitation to the Commission to propose within six months at the latest, with a view to strengthening coordinated action in this area and in accordance with the principle of subsidiarity, a Community strategy for the integrated management of the whole of the Community coastline that, while taking account of the specific problems and potential of the different zones, will provide a framework for its conservation and sustainable use*".

(29) *Annuario Europeo dell'Ambiente*, 1988, p. 866.

(30) COM (86) 571 final 1986.

(31) OJ. No. C 59, of 6.3.1992, p. 1.

(32) OJ. No. C 135, of 6.3.1992, p. 2.

(33) Council Directive 79/409/EEC of 2 April 1979 on the conservation of birds (OJ. No. L 103, of 25.4.1979, p. 1.), Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ. No. L 175, of 5.7.1985, p. 40.), Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural *habitats* and of wild flora and fauna (OJ. No. L 206, of 22.7.1992, p. 7.).

After the submission by the Commission of two other Communications (34), the European Parliament and the Council adopted on 30 May 2002 a Recommendation concerning the implementation of Integrated Coastal Zone Management in Europe (35). The European Parliament and the Council recommended each Member State concerned, in partnership with the regional authorities and inter-regional organisations, as appropriate, to develop a national strategy to implement the criteria and principles for integrated management of the coastal zones provided for by this Recommendation. Moreover, they asked Member States not only to improve and strengthen their collaboration with neighbouring countries, including non-Member States in the same regional sea, but also to work actively with the Community institutions to facilitate progress towards a common approach to integrated coastal zone management. In responding to the 2002 Recommendation, Spain presented its Integrated Coastal Zone Management and stocktaking report to the Commission of the European Communities on March 28, 2006. An important part of this document is the Spanish National Strategy for integrated coastal areas management, which describes strategic and specific objectives and proposes initiatives, measures and activities that take account of the highly decentralized governmental structure of Spain and the need for new multi-level governance instruments concerned with coastal management (36).

## 3.2. Applicable environmental legislation

Since 1972 the European Community has developed an environmental policy based on six consecutive Action Plans adopted by the corresponding Council resolutions (37). The 1986 European Single Act and the 1992 European Union Treaty have given to the EC environmental policy a formal constitutional basis. More than 500 community norms have been adopted so far in that field, many of which are directly or indirectly related to coastal management in the Member States. After the accession of Spain in 1986 these zones extended in the Mediterranean to approximately 40.000 Km of highly populated and intensively used coastal areas.

(34) COM(97) 744 and COM (2000) 547.

(35) OJ. No. L 148, of 6.6.2002, p. 24.

(36) Gestión Integrada de las Zonas Costeras en España. Informe de España en cumplimiento de los requerimientos del capítulo VI de la recomendación del Parlamento Europeo y del Consejo de 30 de Mayo de 2002 sobre la aplicación de la gestión integrada de las zonas costeras. Dirección General de Costas. Ministerio de Medio Ambiente. 28 marzo 2006. Ver: J. JUSTE RUIZ, *Vers la gestion intégrée des zones côtières en Espagne: état des lieux*, Vertigo - la revue électronique en sciences de l'environnement, Hors-série 5 – mai 2009, [En ligne], mis en ligne le 28 mai 2009. URL : *http://vertigo.revues.org/index8374.html*.

(37) S. P. JOHNSON, G. CORCELLE, *The Environmental Policy of the European Communities*, Graham & Trotman 1989 (reprinted 1990), pp. 11-21.

*i) General aspects*

Action by the European Community on marine pollution follows a somehow peculiar track since it addresses waters in general, without enacting separate norms for fresh waters and for sea waters. Such a legislative methodology also makes it quite difficult to relate the community norms to the cathegorization of sources of marine pollution commonly dealt with in the law of the sea, namely: pollution from land-based sources, pollution from the exploration and exploitation of the sea-bed, pollution from dumping and pollution by ships.

In addition to that, while the water pollution policy of the EC is said to be the oldest and most complete one, these qualifications do not really apply to the particular area of marine pollution, where the legislative production of the Community is quite reduced. The reason for this still nascent stage of development of the European marine protection policy has to do with problems of distribution of competences between the Community and its Member States, particularly with respect to the sources of marine pollution covered by international Conventions.

That notwithstanding, it is true that some "horizontal" Council Directives, such as those on environmental impact assessment (38) and on the right to environmental information (39), may also apply to coastal and marine protection. The same scope of application is valid for the Council Regulation on the establishment of the European Environment Agency and the European Environment Information and Observation Network (40). Many other sectoral community norms, such as those concerning air pollution, waste management and transboundary movements, the control of chemicals, maritime transport and the protection of flora and fauna, may also be of interest when dealing with coastal and marine matters.

The EC policy on coastal and marine environmental protection has been developed essentially by the participation of the Community and its Member States in the international conventions in the field. Hence, the EC is a Party in several international conventions of global scope which may affect the environmental protection of the European coastal waters (41). However,

(38) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (JO. No. L 175, of 5.7.1985, p. 40), as last amended by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 (JO. No. L 140, of 5.6.2009, p. 114).

(39) Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (JO. No. L 41, of 14.2.2003, p. 41).

(40) Council Regulation (EEC) No 1210/90 on the establishment of the European Environment Agency and the European Environment Information and Observation Network of 7.5.1990 (OJ. No. L 120, 11.5.1990, p. 1), as last amended by Regulation (EC) No. 1641/2003 of the European Parliament and of the Council of 22 July 2003 (OJ. No. L 245, of 29.9.2003, p. 1).

(41) See, among others: the Council Decision 98/392/EC of 23 March 1998 concerning the conclusion

it must be said that the EC has not been generally admitted to become a Contracting Party to some of the global conventions adopted under the auspices of the IMO, where it has only been granted the condition of "observer". Nonetheless, the EC has become a Party to almost all the regional conventions concerning marine protection that are applicable to European coasts (42), that is, the North-East Atlantic (43), the Mediterranean (44) and the Baltic (45) Seas.

by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof (OJ. No. L 179, of 23.6.1998, p. 1); Council Decision 93/626/EEC of 25 October 1993 concerning the conclusion of the Convention on Biological Diversity (OJ. No. L 309, of 13.12.1993, p. 1); Convention on international trade in endangered species of wild fauna and flora (OJ. No. L 384, of 31.12.1982, p. 7); Council Decision of 1 February 1993 on the conclusion, on behalf of the Community, of the Convention on the control of transboundary movements of hazardous wastes and their disposal (Basel Convention) (OJ. No. L 39, of 16.2.1993, p. 1); Council Decision of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change (OJ. No. L 33, of 7.2.1994, p. 11); Council Decision 2002/358/CE of 25 April 2002 concerning the approval, on behalf of the European Comunnity, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder (OJ. No. L 130, of 15.5.2002, p. 1); Council Decision 98/685/EC of 23 March 1998 concerning the conclusion of the Convention on the Transboundary Effects of Industrial Accidents (OJ. No. L 326, of 3.12.1998, p. 1); Council Decision 2006/507/EC of 14 October 2004 concerning the conclusion, on behalf of the European Community, of the Stockholm Convention on Persistent Organic Pollutants (OJ. No. L 209, of 31.7.2006, p. 1); Council Decision 2006/871/EC of 18 July 2005 on the conclusion on behalf of the European Community of the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (OJ. No. L 345, of 8.12.2006, p. 24).

(42) The only exception is the Convention for the protection of the Black Sea against pollution.

(43) See: Council Decision 98/249/EC of 7 October 1997 on the conclusion of the Convention for the protection of the marine environment of the north-east Atlantic (OJ. No. L 104, of 3.4.1998, p. 1); and Council Decision 2000/340/EC of 8 May 2000 concerning the approval, on behalf of the Community, of the new Annex V to the Convention for the Protection of the Marine Environment of the North-East Atlantic on the protection and conservation of the ecosystems and biological diversity of the maritime area and the corresponding Appendix 3 (OJ. No. L 118, of 19.5.2000, p. 44).

(44) The EC is a Contracting Party to the Convention for the protection of the marine environment and the coastal region of the Mediterranean, adopted in 1976 (Council Decision 77/585/EEC, OJ. No. L 240, of 19.9.1977, p. 1); and amended in 1995 (Council Decision 1999/802/EC of 22 October 1999, OJ. No. L 322, of 14.12.1999, p. 32). The EC is also a Contracting Party in four Protocols to the Barcelona Convention. Fist, in the Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea, adopted in 1976 (Council Decision 77/585/EEC, OJ. No. L 240, of 19.9.1977, p. 1); and amended in 1995 (Council Decision 1999/802/EC of 22 October 1999, OJ. No. L 322, of 14.12.1999, p. 32). Second, in the Protocol concerning Cooperation in Combating Pollution by Oil and other Harmful Substances, adopted in 1976 (Decision 81/420/EEC, OJ. No. L 162, of 19.6.1981, p. 4.); and replaced by the 2002 Protocol concerning cooperation in preventing pollution from ships and, in cases of emergency, combating pollution of the Mediterranean Sea (Council Decision 2004/575/EC of 29 April 2004, OJ. No. L 261, of 6.8.2004, p. 40). Third, in the Protocol for Protection of the Mediterranean Sea against Pollution from Land-based Sources and Activities, adopted in 1980 (Council Decision 83/101/EEC, OJ. No. L 67, of 12.3.1983, p. 1.); and amended in 1996 (Council Decision 1999/801/EC of 22 October 1999, OJ. No. L 322, of 14.12.1999, p. 18). Fourth, in the Protocol concerning Specially Protected Areas, adopted in 1982 (Decision 84/132/EEC, OJ. No. L 68, of 10.3.1984, p. 36.); and replaced by the 1995 Protocol concerning specially protected areas and biological diversity in the Mediterranean (Council Decision of 22 October 1999, OJ. No. L 322, of 14.12.1999, p. 1).

(45) See: Council Decision 94/156/EC of 21 February 1994 on the accession of the Community to the Convention on the Protection of the Marine Environment of the Baltic Sea Area 1974 (Helsinki Convention) (OJ. No. L 73, of 16.3.1994, p. 1); and Council Decision 94/157/EC of 21 February 1994 on the accession of the Community to the Convention on the Protection of the Marine Environment of the Baltic Sea Area (Helsinki Convention as revised in 1992) (OJ. No. L 73, of 16.3.1994, p. 19).

*ii) Directives on waters*

Among the EC directives on waters, applicable also to sea waters, mention shall be made first to Council Directive 76/464 of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (46). This framework directive covers the whole of the aquatic environment of the Community that is the inland surface waters, territorial waters, internal coastal waters (47) and ground water. The directive's aim is to "eliminate" water pollution caused by substances of the black list included in its Annex I (considered the most dangerous due to their toxicity, persistency and bioaccumulation) and to "reduce" pollution by substances of the "grey list" included in its Annex II. The discharges of black list substances must be authorised before hand by the relevant authority in the Member State concerned, respecting the emission standards (48) laid down by the national authorities or by the Community (49). Member States should also adopt plans and programmes to reduce pollution from discharges of the grey list substances (50).

On 8 December 1976, the Council adopted Directive 76/160/ECC on quality requirements for bathing waters (51). This Directive covered all fresh water or sea water in which bathing was "traditionally practised by a large number of bathers". The Directive established quality standards in the form of either mandatory limit values (I), which Member States were obliged to respect, or guide limit values (G), which Member States ought to endeavour to achieve and respect. Member States were given a period of ten years (from notification in 1975) to ensure that the quality of their bathing waters conformed to the mandatory limit values laid down by the

(46) OJ. No. L 129, of 18.5.76. p. 23. This Directive was amended by Council Directive 91/692/EEC of 23 December 1991 (OJ. No. L 377, of 31.12.1991, p. 48) and by Directive 2000/60 of the European Parliament and of the Council of 23 October 2000 (OJ. No. L 327, of 22.12.2000, p. 1). See also the *corrigendum* published in OJ. No. L 24, of 28.1.1977, p. 55.

(47) "Internal coastal waters" means "waters on the landward side of the base line from which the breath of territorial waters is measured, extending, in the case of watercourses, up to the fresh-water limit" (Article 1.2.(b)).

(48) Following the compromise reached during the elaboration of the Directive, parallel to the "emission standards" the Council should also establish "quality objectives" for each black list substance which can be exceptionally applied by the authorising Member State (is the so called "parallel approach").

(49) Following a Council Resolution on water pollution of 7 February 1983, various Directives have been adopted laying down emission standards or quality objectives for discharges of "black list" substances: aldrin, dieldrin and endrin, mercury, hexachlorecyclohexane (HCH), carbon tetrachloride; DDT and pentachlorophenol, heptachloride and chlordan, hexachlorobenzene, and hexachlorobutadine and chloroform.

(50) A series of directives proposals on water quality objectives for chromium, zinc, lead or arsenic have not yet been adopted by the Council.

(51) OJ. No. L 31, of 5.2.1976, p. 1. Directive as last amended by Regulation (EC) No. 807/2003 (OJ. No. L 122, of 16.5.2003, p. 36).

Directive. They also had to send the Commission a regular report on their bathing waters and its most significant characteristics.

However, Decision No. 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme (52) contained a commitment to ensuring a high level of protection of bathing water, including by revising Council Directive 76/160/ECC. As a result, the Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC (53) was adopted. The purpose of this Directive is to preserve, protect and improve the quality of the environment and to protect human health by complementing Directive 2000/60/EC establishing a framework for the Community action in the field of water policy. Therefore, Directive 2006/7/EC applies to any element of surface water (54) where the competent authority expects a large number of people to bathe. This Directive lays down provisions for the monitoring and classification of bathing water quality; the management of bathing water quality; and the information to the public on bathing water quality.

Another important Directive affecting coastal waters is Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters (55). This Directive applies to those coastal and brackish waters designated by the Member States as needing protection or improvement in order to support shellfish (bivalve and gasteropod molluscs) life and growth and thus contribute to the high quality of shellfish products directly edible by man. Once these waters are designated, Member States shall not set less stringent values than those given in column I of the Annex concerning quality of shellfish waters and shall endeavour to observe the values in column G, while ensuring that the implementation of the measures taken pursuant to this Directive may on no account lead, either directly or indirectly, to increased pollution of coastal and brackish waters. Member States were given a period of six years after designation to ensure that designated waters conformed to the specified values. The Commission publishes regular reports on the state of the waters for shellfish designated by the Member States.

Finally, Directive 2000/60/EC of the European Parliament and of the

(52) OJ. No. L 242, of 10.9.2002, p. 1.

(53) OJ. No L 64, of 4.3.2006, p. 37.

(54) For the definition of the terms "surface water", "ground water", "inland water", "transitional waters", "coastal water" and "river basin", Directive 2006/7/EC refers to Directive 2000/60/EC, that will be mentioned subsequently.

(55) OJ. No. L 281, of 10.11.1979, p. 47, as amended by Council Directive 91/692/EEC, of 23 December 1991 (OJ. No. L 377, of 31.12.1991, p. 48. See also the *corrigendum* published in OJ. No. L 190, of 12.7.2006, p. 99.

Council of 23 October 2000 establishing a framework for Community action in the field of water policy (56) follows a more comprehensive approach on this matter. Pursuant to its Article 1:

*"The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:*

*(a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;*

*(b) promotes sustainable water use based on a long-term protection of available water resources;*

*(c) aims at enhanced protection and improvement of the aquatic environment,* inter alia, *through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;*

*(d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution, and*

*(e) contributes to mitigating the effects of floods and droughts and thereby contributes to:*

- *the provision of the sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use,*
- *a significant reduction in pollution of groundwater,*
- *the protection of territorial and marine waters, and*
- *achieving the objectives of relevant international agreements, including those which aim to prevent and eliminate pollution of the marine environment, by Community action under Article 16(3) to cease or phase out discharges, emissions and losses of priority hazardous substances, with the ultimate aim of achieving concentrations in the marine environment near background values for naturally occurring substances and close to zero for man-made synthetic substances".*

Directive 2000/60/EC defines "coastal water" as "surface water on the landward side of a line, every point of which is at a distance of one nautical mile on the seaward side from the nearest point of the baseline from which the breadth of territorial waters is measured, extending where appropriate up to the outer limit of transitional waters". Moreover, the term "transitional waters" are those "bodies of surface water in the vicinity of river mouths which are partly saline in character as a result of their proximity to coastal waters but which are substantially influenced by freshwater flows".

(56) OJ. No. L 327, of 22.12.2000, p. 1. Last amended by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 (OJ. No. L 140, of 5.6.2009, p. 114).

*iii) Marine pollution*

The EC has a long tradition in adopting legislation concerning the marine environmental protection (57). However, during many years the EC Law has followed an incomplete and fragmentary approach on marine pollution, and on several occasions environmental accidents had to take place before Community norms were adopted (58). The adoption on 22 July 2002 of the Sixth Community Environment Action Programme, already mentioned, represented the starting point for the progressive introduction of an integrated, global and ecosystem approach on this subject. One of the objectives of the Sixth Action Programme is the "conservation, appropriate restoration and sustainable use of marine environment, coasts and wetlands" (Article 6.1). Among the priority actions identified in order to pursue this objective, the Sixth Programme includes the promotion of the sustainable use of the seas and conservation of marine ecosystems, including sea beds, estuarine and coastal areas through, among other means, the adoption of a thematic strategy for the protection and conservation of the marine environment and the promotion of integrated management of coastal zones (Article 6.2.g).

Implementing these objectives, the European Commission began to construct the Maritime Policy for the European Union (59), and as a result the Directive 2008/56/EC of the European Parliament and of the Council establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) was adopted on 17 June 2008 (60). As it is stated in its Preamble, Directive 2008/56/EC should "promote the integration of environmental considerations into all relevant policy areas and deliver the environmental pillar of the future

(57) See V. FRANK, *The European Community and Marine Environmental Protection in the International Law of the Sea. Implementing Global Obligations at the Regional Level*, 2007, Leiden/Boston; T. TREVES, "The European Community and the European Union and the Law of the Sea: Recent Developments", *Indian Journal of International Law*, 48/1, 2008, p. 1-20.

(58) See V. BOU, *Freedom of navigation versus pollution by oil from vessels: the point of view of coastal States*, in R. CASADO RAIGÓN (dir.), *L'Europe et la mer (pêche, navigation et environnement marin/Europe and the Sea (fisheries, navigation and marine environment)*, Bruylant, Bruselas, 2005, p. 253-288; J. JUSTE, V. BOU, *After the Prestige's Oil Spill: Measures taken by Spain in an evolving legal framework*, Spanish Yearbook of International Law, 10, 2006, p. 1-38.

(59) COM(2006) 275 final, of 7.6.2006: Green Paper Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Towards a future Maritime Policy for the Union: a European vision for the oceans and seas, 49 p.; COM(2007) 575 final, of 10.10.2007: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. An Integrated Maritime Policy for the European Union.

(60) OJ. No. L 164, of 25.6.208, p. 19. See V. BOU, *La Política Marítima de la Unión Europea y su contribución a la prevención de la contaminación marina*, in J. PUEYO LOSA, J. JORGE URBINA (coord.), *La cooperación internacional en la ordenación de los mares y océanos*, Madrid, Iustel, 2009, p. 89-133.

maritime policy for the EU". This Directive applies to all "marine waters" of Member States. This term includes not only coastal waters as defined by Directive 2000/60/EC, their seabed and their subsoil, but also all marine zones provided for by UNCLOS where a Member State has and/or exercises jurisdictional rights.

The subject matter of Directive 2008/56/EC consists in the establishment of a framework within which Member States shall take the necessary measures to achieve or maintain good environmental *status* in the marine environment by the year 2020 at the latest. To reach this aim, the Directive establishes a common procedure with a detailed plan of action and calendar that must be followed by Member States in order to develop a marine strategy for each marine region or subregion concerned and to adopt the appropriate programme of measures. The scheduled plan of action implies that Member States endeavour to follow a common procedure in three stages. First, by 15 July 2010 at the latest, each Member State must inform the Commission of each marine region or subregion where it commits to develop a marine strategy for its marine waters. Second, in order to prepare the different marine strategies, each Member State concerned endeavours to make: (i) an initial assessment, to be completed by 15 July 2012 of the current environmental *status* of the waters concerned and the environmental impact of human activities thereon; (ii) a determination, to be established by 15 July 2012 of good environmental *status* for the waters concerned; (iii) establishment, by 15 July 2012, of a series of environmental targets and associated indicators; and (iv) establishment and implementation, by 15 July 2014, of a monitoring programme for ongoing assessment and regular updating of targets. Third, to develop, by 2015 at the latest, a programme of measures designed to achieve or maintain good environmental *status*.

It must be pointed out that all marine strategies adopted shall apply an ecosystem-based approach to the management of human activities, ensuring that the collective pressure of such activities is kept within levels compatible with the achievement of good environmental *status* and that the capacity of marine ecosystems to respond to human-induced changes is not compromised, while enabling the sustainable use of marine goods and services by present and future generations. Hence, if this approach is successful, then the integrated management of coastal areas will be included into a global, ecosystem management of all European marine waters.

### 3.3. The Common Fisheries Policy

The norms concerning the legal regime of fisheries constitute an important chapter of the integrated management and sustainable development of coastal areas.

However, a substantial part of the EC legislation on fisheries does not apply to coastal waters. Ever since the adoption of the first regulations on the matter (61), the EC has contemplated the establishment of a "common structural policy", including equal access to fish stocks (62), and a "common market policy", encompassing all aspects of trade in fish products. Whereas the EU norms concerning marketing of fish products and certain structural measures fully apply in the coastal areas of Member States, the same is not true for the regulations concerning access to fish stocks. In effect, Council Regulation 170/83, of 23 January 1983, establishing a community regime for the conservation and management of fishing resources (63), provided in article 6 that the application of the equal access principle could be postponed in the sovereign waters up to 12 miles of each Member State until December 31, 1992 (64). This "territorial seas" reservation for coastal fishing has been maintained in the successive updating of the common fisheries regulations thus excluding the application of the provisions of the common fisheries policy concerning access to fish stocks to coastal waters (65).

Although the EU common fisheries policy is evolving very fast and continuously gaining importance with respect to other common policies its incidence in coastal areas management is still substantially limited to its structural and market component and not to the extractive activity that, for the most part, still remains under national legal and executive control.

## 4. Internal legislative framework

Article 132 of the 1978 Spanish Constitution enumerates the coastal zones pertaining to the State's "public property" (bienes de dominio público). According to this constitutional provision, coastal public property consists in those properties so defined by law and, in any case, the foreshore (zona maritime-terretre), the beaches, the territorial sea and the natural

(61) Council Regulations 2141/70 and 2142/70 of 20 October 1970 (OJ. No. L 236, of 27.10.1970, p. 1); and Council Regulations 100/76 and 101/76 of 19 January 1976 (OJ. No. L 20, of 28.1.1976, p. 1).

(62) For the tormentous evolution of the principle of equal access see *passim* R. R. CHURCHILL, *EEC Fisheries Law*, Dordrecht/Boston/Lancaster (Nijhoff) 1987.

(63) OJ. 1983 No L 24/1, 27.1.83.

(64) Art. 8, 3 of the regulation contemplates the possibility for the Council to extend these exceptions for an additional period of ten years, that is, until the 31st of December 2002.

(65) With respect to the situaion in the Mediterranean see: "Explotación, conservación y protección de los recursos biológicos del Mediterráneo". En *El Derecho Internacional: normas, hechos y valores. Liber Amicorum José Antonio Pastor Ridruejo*, Madrid (Servicio de Publicaciones de la Universidad Complutense), 2005, pp. 413-439.

resources of the economic zone and the continental shelf. These components of the public domain are unalienable, exempt from prescription and cannot be attached under any circumstances (66).

## 4.1. The Spanish coastal zones

Pursuant to Article 132.2 of the Constitution, Article 3 of the Shores Act (28 July 1988) states that the coastal public property consists of the following:

*"1. The seashore and coastal waters inlets which include:*

*(a) The foreshore, i.e., the zone between the lowest water mark of high spring tides and the highest limits reached by the waves in the greatest known storms, or the highest water mark of spring tides, whichever is higher. This zone also includes the shores of the rivers up to the point of affected by the ebb tides.*

*This zone includes marshes, estuaries, swamps and, generally, all lowlands which are periodically inundated by the rise and fall of the tides, the waves or seawater filtration.*

*(b) The beaches, i.e., zones of deposit of unconsolidated material such as sand, gravel, stones and cobblestones, including escarpments, berms and dunes, whether or not covered with vegetation and formed by the action of the sea, sea winds or other natural or artificial causes.*

*2. The territorial sea and internal waters, their beds and subsoil as defined and regulated by their specific legislation.*

*3. Natural resources of the economic zone and the continental shelf as defined and regulated by their specific legislation".*

Although in Spain the 1998 Shores Act somehow operates as a framework law, there is quite varied specific legislation applying for each land and sea parts of the coastal zone. Moreover, at the present time, there are not laws or regulations applying to the whole coastal area, including its landward and seaward projection, nor addressed specifically to the interaction of these two components.

With respect to the land part of the coastal zone, that is the foreshore, the beaches, the marshes, estuaries, swamps, lowlands and other elements deemed as part of it by the Shores Act (67), a high number of legislation applies. In fact, there are separated laws and regulations for almost each of the different uses of the land coastal areas (spatial planning, urbanism, tourism, water supply, agriculture etc) with a low level of legal integration among themselves.

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(66) SC, Art. 132. In Spanish law coastal public property is characterized by the fact that its owner is a public Administration and that it is reserved for a public use, a public service or to the encouragement of national wealth: Art. 339 of the Civil Code and art. 1 of the State Property Act (Ley de patrimonio del Estado) (15 April 1964). Vide B.O.E. of 23 April 1964 and 7 May 1964.

(67) See arts. 4 and 5 of the 1988 Shores Act, listing as parts of the coastal public property, *inter alia*, small islands located in inland waters and territorial sea (Art. 4, 6) or formed by natural causes thereof (art. 5).

As for the sea side of the coastal zone, there are different laws and regulations applying to its distinct component areas. Spanish internal waters are defined as "those waters located between the shore and the straight baselines established by the Government as the inner limit of the territorial sea" (68). Implementing previous legislation, Royal Decree nº 2510/1977 of 5 August 1977 established the straight baselines system for the delimitation of the Spanish coastal zones (69). According to it, nearly all the Spanish continental shores enjoy their respective straight baselines (70), with the important exceptions of Gibraltar (71) and the Spanish sovereign areas in the north of Africa (72), due to the possible overlapping with waters belonging to third States. This straight baselines system is complemented by the Convention of 14 July 1959 between Spain and France concerning fisheries in the Bidasoa and in the Bay of Higuer, which draws a straight closing line for this Bay (73).

The Act nº 10/1977 of 4 January concerning the Territorial Sea (74) states that the sovereignty of the Spanish State extends, "beyond its land territory and its internal waters, to the territorial sea adjacent to its coasts" and that "such sovereignty shall be exercised, in accordance with international law, over the water column, sea-bed, subsoil and resources of the territorial

(68) Article 2 (a) of Royal Decree number 258 (10 March 1989), establishing the general provisions on dumping of dangerous substances from land into the sea (B.O.E. of 16 March 1989).

(69) Published in: UNITED NATIONS (1980), UN. ST/LEG/SER.B/19, *National legislation and treaties relating to the Law of the Sea*, New York, p. 112. Previously, the Act nº 93 of 24 December 1962 on penalties for fishing offences committed by foreign vessels in Spanish territorial waters and other waters under Spanish jurisdiction ruled the possibility of drawing straight baselines up to 24 nautical miles for the closing of bays; article 2 of the Act nº 20 of 8 April 1967 concerning the extension of Spanish territorial waters to twelve miles for fishing purposes generalised this providence for all Spanish shores (published in: UNITED NATIONS (1970), UN. ST/LEG/SER.B/15, *National legislation and treaties relating to the territorial sea, the contiguous zone, the continental shelf, the high seas and to fishing and conservation of the living resources of the sea*, New York, pp. 667 and 668).

(70) It must be emphasized that the above mentioned Royal Decree nº 2510/1977 drew straight baselines around each of the islands belonging to the Balearic and Canarian archipelagos and not archipelagic baselines, though article 1 of Law nº 15/1978 of 20 February on the Exclusive Economic Zone enabled the Government to do so (published in: UNITED NATIONS (1980), UN. ST/LEG/SER.B/19, *op. cit.*, p. 250 and 391).

(71) When acceding to the 1958 Geneva Conventions, Spain made the following reservation to all of them: "Nevertheless, its accession cannot be interpreted as a recognition of any rights or situations in connection with the waters of Gibraltar other than those referred to in article 10 of the Treaty of Utrecht, of 13 July 1713, between the Crowns of Spain and Great Britain". This reservation was confirmed by the first final provision of the Act nº 10/1977 of 4 January concerning the Territorial Sea (UNITED NATIONS (1980), UN. ST/LEG/SER.B/19, *op. cit.*, p. 111) and by the Declarations made by Spain upon signature and, with slightly different drafting, upon ratification of the 1982 LOS Convention.

(72) Ceuta, Melilla, Chafarinas islands, the island of Peregil and the rocks of Vélez de la Gomera and of Alhucemas.

(73) A French version of this Convention has been published in UNITED NATIONS (1970), UN. ST/LEG/SER.B/15, *op. cit.*, pp. 750 and 888. Vide *infra*, section 5.

(74) BOE. 8, I, 1977.

sea, and over the superjacent airspace". It expressly declares that the breadth of the Spanish territorial sea is 12 nautical miles measured from the straight baselines established by the Government.

The Act nº 27/1992 of 24 November 1992 concerning national ports and merchant shipping (75) provided for a contiguous zone extending from the outer limit of the territorial sea up to a distance of 24 nautical miles from the baselines from which the breadth of the territorial sea is measured (article 7). In this zone, the Government may take the necessary measures to: prevent violations of customs, smuggling, taxation, immigration and health laws and regulations in national territory and territorial waters; and to punish such violations (second supplementary provision). No "archeological zone", as provided for in article 303.2 of the 1982 LOS Convention, has already been created.

An exclusive economic zone which extends from the outer limit of the Spanish territorial sea for a distance of 200 nautical miles from the baselines used to measure the breadth of the territorial sea, was established by Law nº 15/1978 of 20 February on the Exclusive Economic Zone (76). Nevertheless, this exclusive economic zone only applies to the Atlantic coasts of mainland Spain, including the coasts on the Cantabrian Sea, and the islands of the Canary archipelago. Regarding the regime of fisheries in the exclusive economic zone, fishing is an activity reserved for Spanish nationals. Exceptionally, foreign fishermen may fish in this zone subject to the conclusion of agreements with those countries whose fishing vessels have habitually fished in the zone or if it is so provided in international treaties to which Spain is a party. This regime was, however, substantially changed after the accession of Spain to the European Communities in 1986 (77), as the common European fishing policy also applies in the Spanish exclusive economic zone in the Atlantic. In its exclusive economic zone, Spain also has "sovereign rights for the purposes of exploring and exploiting the natural resources of the sea-bed, subsoil thereof and its superjacent waters". These sovereign rights include: "(a) the exclusive right to the natural resources of the zone; (b) the authority to enact regulations concerning the preservation of, exploration for and exploitation of such resources with a view to the protection of the marine environment; (c) exclusive jurisdiction to enforce all relevant measures; (d) such other rights as may be determined by the Government in accordance with international law" (article 1). However, it is expressly stated that "the establishment of an economic zone

(75) BOE. 25, XI, 1992. UNITED NATIONS, *Law of the Sea Bulletin*, 24, p. 17.

(76) BOE. 23 -II- 1978.

(77) Vide the text of the Act of accession of Spain and Portugal to the European Communities. B.O.E. of January 1, 1986.

shall not affect the freedom of navigation, the freedom of overflight and the freedom to lay submarine cables" (article 5).

As it has been said, there is no Spanish exclusive economic zone in the Mediterranean Sea, and though Law n• 15/1978 of 20 February on the Exclusive Economic Zone enabled the Government to establish it at any moment (first final provision), this has not been done yet. However, Spain, by Royal Decree No. 1315/1997 of 1 August 1997 as modified, has established a fisheries protection zone extending at its starting point 37 miles measured from the outer limit of the territorial sea off Punta Negra-Cabo de Gata (78). The fisheries protection zone is delimited according to the line which is equidistant (median line) from the opposite coast of Algeria and Italy and the adjacent coast of France. No fisheries protection zone is established in the Alboran Sea, off the Spanish coast facing Morocco. It was argued, in the preamble of the Royal Decree, that extension of jurisdiction over fisheries resources beyond territorial waters was a necessary step to ensure adequate and effective protection of fisheries resources. In Spain's view, maintenance of the *status quo*, which was already characterized by excessive exploitation of fisheries resources, was unacceptable as it would have rapidly led to the depletion of these resources. As with the Spanish EEZ in the Atlantic, the European common fisheries policy for the Mediterranean also applies in this new fisheries protection zone.

There is no Spanish law covering Spain's continental shelf. However, this gap in its legal regime has been partly remediated by the fact that, following the accession to the 1958 Geneva Convention on the continental shelf in 1971, specific legislation has been passed for the exploration and exploitation of each natural resource existing in the Spanish continental shelf (79). Regarding the question of the outer limit of the Spanish continental shelf, on the Atlantic coasts of Spain, including the Cantabrian Sea, the establishment in 1978 of an exclusive economic zone up to 200 nautical miles, which covers its continental shelf, solves basically the problem, pending delimitation with third States in overlapping areas (80). In the Mediterranean Sea, Spain cannot claim a 200 nautical mile continental shelf,

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(78) BOE. 26_VIII- 2007, modified by Royal Decree 431/2000, of 31 March (BOE. 1-04- 2000).

(79) This is the case, for instance, of mineral resources, hydrocarbons, shellfishes, corals, ...

(80) There are delimitation problems regarding both the continental shelf and the exclusive economic zone between Spain, on the one hand, and France, Portugal and Morocco, on the other. Of all these problems, the only one which has already been solved by a delimitation agreement is the continental shelves delimitation between Spain and France. Vide the Convention entre le Gouvernement de la République française et le Gouvernement de l'Etat espagnol sur la délimitation des plateaux continentaux des deux Etats dans le Golfe de Gascogne (Golfe de Biscaye), signée à Paris le 29 Janvier 1974 and an additional Echange de lettres (published in: UNITED NATIONS (1980), UN. ST/LEG/SER.B/19, op. cit., p. 445 and 449). See also V. BOU FRANCH, (1995), *La delimitación de los espacios marítimos españoles*, in Homenaje al Profesor Joaquín Tomás Villarroya, 30 pages (in printing).

for the geography of the area makes this impossible; nevertheless, the breath of the Spanish continental shelf in the Mediterranean rests largely undetermined and therefore, the solution can only come after negotiating the corresponding delimitation agreements with the competing riparian States (81).

## 4.2. The exercise of costal competences

The territorial structure of the Spanish administration, as established by the Spanish Constitution in 1978, is a rather complex one. Although it is not a federal State, the regional administrations have become much more important, for during the 1980's seventeen Autonomous Communities (hereinafter, referred to as AA.CC.) were created and special statutes were provided for the cities of Ceuta and Melilla. This decentralising process provoked the emergence of a new framework for the relationships between the State, acting as the central administration, and the AA.CC., which are the regional or decentralised administrations. These relationships do not respond to a single pattern; in fact, they depend upon the matter under consideration.

With respect to coastal matters, these relationships do not reflect a spatial system for distributing legislative and executive competences between the AA.CC. (i. e. in land and internal waters) and the Spanish State (i. e. in the other marine coastal zones), but they follow quite different functional patterns. In fact, there are cases of coexisting exclusive competences, cases of shared competences and cases of coexisting exclusive and shared competences.

For instance, regarding the entry into and exit from Spanish ports, the Spanish Constitution has established a system of coexisting exclusive competences. According to article 149.1.20ª SC, the State has the exclusive competence on matters concerning ports of general interest but, pursuant to art. 148.1.6ª SC, the AA.CC. may assume competences on matters related to refuge and sport ports and, in general, in those ports where commercial activities are not carried out (82). Therefore, the most important competences regarding ports belong to the State, as it is the competent administration for both ports of general interest and ports where commercial activities are carried out.

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(81) In this sea, there are delimitation problems concerning the continental shelves existing between Spain, on the one hand, and France, Italy, Argelia and Morocco, on the other. Of all these delimitation problems, the only one that has already been solved is the continental shelf delimitation between Spain and Italy. Vide U. LEANZA, L. SICO, M. C. CICIRIELLO (1988), *Mediterranean Continental Shelf. Delimitations and Regimes. International and National Legal Sources*, volume 1, book 1, pages 109-111.

(82) These constitutional provisions have been implemented by articles 2 to 5 of the Act nº 27/1992, of 24 November 1992, concerning national ports and merchant shipping, doc. cit.

Another pattern for distributing competences between the State and the AA.CC. is the one established for environmental matters, including matters related to the marine environment, which involves sharing competences between the two administrations. According to art. 149.1.23ª SC, the State has the exclusive competence in matters concerning the basic legislation on environmental protection, without prejudicing the AA.CC. competence for establishing additional protective norms. At the same time, article 148.1.9ª SC states that the AA.CC. may assume competences in the management (la gestión) of environmental protection. This pattern of shared environmental competences permits the AA.CC. to exercise quite important powers when dealing with coastal matters. For instance, regarding waste disposal at sea, the Shores Act requires a prior administrative authorisation which must be granted "in accordance with the applicable State and Regional legislations" (83). According to constitutional interpretation, this means that it is a competence that belongs to the State in cases of wastes dumped from vessels and aircraft at sea, but when wastes come into the sea from land-based sources the AA.CC. are the competent administration (84). Simultaneously, the Shores Act provides that every legally authorised disposal of polluting waste at sea will be subject to payment of a fee to the licensing Administration and that these fees will be determined on the basis of their polluting contents. In any case, and without taking into account who the licensing Administration is, this fee will only be used to drain and improve the quality of sea waters (85).

Finally, there is a third pattern for distributing legislative and executive competences between the State and the AA.CC. This third possibility is a mixed system in which both exclusive and shared competences coexist. This is the case, for instance, of fishing, shellfisheries and aquaculture which will be studied under the following section.

## 4.3. Special reference to fishing, shellfisheries and aquaculture

Fishing, shellfisheries and aquaculture in Spanish coastal zones are characterized by being activities reserved for public use (when carried out in the internal waters) or for the Spanish fishing vessels (when carried out beyond internal waters), without affecting "the fishing rights recognised or established for foreign vessels under international agreements" (86).

(83) 1989 Shores Act, art. 57.

(84) *Ibid*, art. 110.h) and Constitutional Court's judgement nº 149/1991, of 4 July 1991, regarding the Shores Act nº 22/1988, of 28 July 1988, 4th F and 7th A h para.s

(85) *Ibid*., art. 85.

(86) Art. 5 of the Act nº 10/77, of 4 January 1977 concerning the territorial sea.

The constitutional distribution of competences between the State and its AA.CC. has had a large and highly polemic influence (87) on the question of which Administration is competent for ruling and granting or not granting the corresponding authorisations or concessions for fishing in Spanish waters. In this regard, it should be noted that in the Spanish Constitution there are at least two different provisions that directly confront this problem: one asserts the exclusive State competence on "coastal fishing, without prejudicing the competences attributed to the Autonomous Communities concerning the arrangement of the fishing sector" (article 149.1.19ª); the other provision indicates that the AA.CC. may assume competences on "fishing in internal waters, shellfisheries and aquaculture" (article 148.1.11ª).

At first sight, it could seem that these two constitutional provisions establish a spatial system for distributing competences between the State and the AA.CC. According to it, the AA.CC. would be the competent Administration on coastal fishing in internal waters, while the Spanish State would be the competent one in the other coastal zones (territorial sea, exclusive economic zone, continental shelf). However, a systematic interpretation of all the relevant constitutional provisions (88), like the one carried out by the Spanish Constitutional Court (89), clearly shows that, in fact, what has been established is a rather complex functional system of distribution of competences on coastal fishing, in which, both the State and the AA.CC. exercise their respective competences.

*i) Fishing, shellfisheries and aquaculture in internal waters*

With respect to Spanish internal waters (90), it can be noted that as a result of its legal qualification as a coastal public property, the use of this zone is free and public for all the common and natural uses. These uses include "fishing, taking seaweed and shellfish and similar actions not requiring any works and installations of any kind and which are carried out in accordance with the laws and regulations". However, when they involve

(87) See MINISTERIO PARA LAS ADMINISTRACIONES PUBLICAS (1991), *Régimen de distribución de competencias entre el Estado y las Comunidades Autónomas: pesca*, Madrid, 74 pages.

(88) For instance, taking into account those provisions that can have an indirect influence on this matter, such as those that reserve international relationships (article 149.1.3ª) or security and the armed forces (article 149.1.4ª) exclusively to the State.

(89) Mainly, its judgements nº 56/89 of 16 March 1989, and nº 147/91 of 4 July 1991.

(90) A special regime applies to fishing in the Bidasoa River and in the Bay of Higuer. The Convention signed between Spain and France on 14 July 1959 (quoted *supra*, note 18) divided these internal waters into three zones: one belonging to Spain, another to France and the central area is under the common sovereignty of both States. Nevertheless, the two countries reserved the fisheries in the whole area exclusively and indistinctly to the nationals of the two States.

either special intensity, dangerousness or profitability, or when they require the execution of works and installations, they can only be carried out pursuant to a reservation, allocation, authorisation or concession according to the law (91). This hypothesis is fully applicable to professional fishing activities, but not to non-industrial, sportive or leisure fisheries.

As to the distribution of competences between the State and the AA.CC., the starting point is the constitutional possibility for the AA.CC. to assume competences on fishing in internal waters, shellfisheries and aquaculture (article 148.1.11ª). This provision was quickly implemented as it was expressly included in the Autonomous Statutes of the 10 coastal AA.CC. (92), and it was also implemented by a large number of Royal Decrees attributing competences on these matters to the different AA.CC. involved (93). Therefore, a very broad autonomous legislation regarding fishing in internal waters, shellfisheries and aquaculture has already appeared and it has provoked the fragmentation of their substantive legal regime, depending on each A.C. (94).

However, the existence of autonomous competences on these matters does not prevent the possibility of State intervention on the bases of its general constitutional powers. The Constitutional Court has recognised the constitutional State's right to intervene both when State laws and regulations act as suppletory law and when the State is the holder of overlapping competences with those of the AA.CC. (95). The first possibility arises whe-

(91) Article 31 of the Shores Act.

(92) Article 10.10 of the Autonomous Statute (hereinafter, referred to as A.S.) of the Basque Country; art. 9.17 of the A.S. of Catalonia; art. 27.15 of the A.S of Galicia; art. 13.18 of the A.S. of Andalucia; art. 10.1 (h) of the A.S. of Asturias; art. 22.9 of the A.S. of Cantabria; Art. 10.1 (h) of the A.S. of Murcia; art. 31.17 of the A.S. of the Valencian Community; art. 29.5 of the A.S. of Canarias; and art. 10.18 of the A.S. of the Balearic Islands.

(93) For the Basque Country, the Royal Decree (hereinafter quoted as R.D.) nº 1.412/81, of 19 July 1981; for Catalonia, the R.D. nº 1.965/82, of 30 July 1982; for Galicia, the R.D. nº 1.634/80, of 31 July 1980, the R.D. nº 3.318/82, of 24 July 1982 and the R.D nº 1.987/84, of 26 September 1984; for Andalucia, the R.D. nº 3.490/81, of 29 December 1981 and the R.D. nº 3.506/83, of 28 December 1983; for Asturias, the R.D. nº 2.630/82, of 12 August 1982 and the R.D. nº 2.967/83, of 19 October 1983; for Cantabria, the R.D. nº 3.114/82, of 24 July 1982 and the R.D. nº 2.973/83, of 28 October 1983; for Murcia, the R.D. nº 4.190/82, of 29 December 1982 and the R.D. nº 2.971/83, of 19 October 1983; for the Valencian Community, the R.D. nº 3.533/81, of 29 December 1981 and the R.D. nº 544/84, of 8 February 1984; for Canarias, the R.D. nº 1.938/85, of 9 August 1985; and for the Balearic Islands, the R.D. nº 3.540/81, of 29 December 1981 and the R.D. nº 541/84, of 8 February 1984.

(94) For instance, Law nº 1/86, of 25 February 1986, on coastal fishing in Catalonia; the Order of 27 October 1992, concerning the fishing of eel in the delta of the Ebro river; Law nº 2/85, of 26 February 1985, on the arrangement of coastal fishing in Galicia's waters; Galicia's Law nº 15/85, of 23 October 1985, on shellfisheries and acquaculture; Order of 7 August 1992 on submarine fishing activities in Galicia's internal waters; Decree nº 63/92, of 30 July 1992, on shellfisheries activities in waters under the competence of Asturias; Asturias' Law nº 2/93, of 29 October 1993, on coastal fishing in internal waters and arrangement of marine resources; Decree nº 17/92, of 3 February 1992, of the Valencian Government approving the regulations on coastal fishing; etc.

(95) Constitutional Court's judgement nº 147/91, of 4 July 1991, op. cit., 7th para.

never the suppletory application of State law must respond to the necessities of those Spanish coastal territories not integrated in any A.C.; to overcome the differences among the competences of each A.C.; or to fill up the lacuna resulting from the lack of action of an A.C. in implementing its own competences (96). The second situation, that is, the possibility of exclusive State competences overlapping those of the AA.CC., has already taken place twice. First, regarding the Basque Government Decree nº 67/82, of 29 March 1982, on the Survey office of fishing, shellfisheries and aquaculture, the Constitutional Court declared that coastal vigilance is a competence that belongs to the State, as it involves the national security (art. 149.1.4ª S.C.), while the survey and sanction of fishing activities in internal waters (97) are included in the autonomous competence provided for in art. 148.1.11ª S.C. (98). Second, the Constitutional Court considered that the Royal Decree nº 1.212/84, of 8 June 1984 (99), contemplating an hypothesis of overlapping competences regarding coral fishing in internal waters, was nevertheless in conformity with the Constitution (100).

Other situations of overlapping competences calling for State intervention could arise, for instance, if it becomes necessary to coordinate fishing activities of marine resources straddling the internal waters of two or more AA.CC. or if the infringements upon the autonomous legislation regarding fisheries are committed by foreign fishing vessels.

*ii) Fishing, shellfisheries and aquaculture beyond internal waters*

As it has been already mentioned, according to Article 149 (1) (XIX) SC, the State shall have "exclusive competence on sea fishing", without prejudice to the powers which, in regulations governing this sector, may be vested to the AA.CC.

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(96) Ibid. See also its judgement nº 103/89, of 8 June 1989, op. cit., 4th para.

(97) There is a broad autonomous legislation regarding offences and penalties on these matters. See, for instance, Galicia's Law nº 5/85, of 11 June 1985, on penalties for fishing activities, shellfisheries and acquaculture; Galicia's Law nº 13/85, of 2 October 1985, on accessory penalties for fishing activities, shellfisheries and acquaculture; Galicia's Law nº 3/89, of 20 April 1989, amending the Law nº 5/85, of 11 June 1985, on penalties for fishing activities, shellfisheries and acquaculture; Galicia's Law nº 6/91, of 15 May 1991, on offences regarding the protection of coastal fishing resources; Asturias's Law nº 3/88, of 10 June 1988, on fishing penalties; Valencia's Law nº 2/94, of 18 April 1994, for the protection of fishing resources; etc.

(98) Constitutional Court's judgement nº 113/83, of 6 December 1983, 2nd and 4th para. The competence for creating an appropriate coordinating system with the AA.CC. in order to provide the Army the information required for carrying out its vigilance and control functions, also belongs to the State.

(99) Constitutional Court's judgement nº 56/89, of 16 March 1989, op. cit.

(100) This Royal Decree (B.O.E. of 26 April 1984) refers to coral fishing in all the extension of Spanish seabed, with the only exception of the seabed existing in internal waters. Nevertheless, its art. 3.2 establishes that when a coral field straddles between internal waters and the territorial sea, the State and the corresponding A.C. will enter into agreements defining their respective competences.

Although this provision seems to grant to the State exclusive competence on all matters relating to coastal fishing beyond internal waters, this is not fully the case. In the first place, the Constitutional Court has made a clear distinction between the concepts of "coastal fishing", under the competence of the State, and the "arrangement of the fishing sector", attributed to the AA.CC. For the Spanish Constitutional Court, "coastal fishing" involves all activities related to the preservation and conservation of fishing resources as part of the national wealth and, therefore, it cannot be divided among the regional interests. Consequently, "coastal fishing" means the extracting activity considered on its own, including legislation on its characteristics and conditions. In this way, this competence covers all the legislation regarding coastal resources: determining the species which may be caught; fixing quotas of catch; regulating seasons and areas of fishing; the types, sizes and amount of gear; the types, sizes and number of fishing vessels that may be used; ... (101). Otherwise, the "arrangement of the fishing sector" expresses a different concept from that of "coastal fishing"; for the Spanish constitutional case-law the former concept refers to the organisation of the economic or productive sector of this activity. It includes requirements for the training of personnel, fishermen's labour conditions, ways of organising themselves, vessel conditions, official registries, ... (102).

The distinction between these two constitutional concepts is very important since the competent Administration is not the same in both cases. Regarding "coastal fishing" in "external waters" (that is, the Spanish marine waters beyond internal waters), the whole competence on fishing belongs to the State as an exclusive State competence. That means that the State is the only Administration that can legislate on these matters and the only Administration that can implement this legislation. On the other hand, the "arrangement of the fishing sector" is not a competence of only one holder, but in fact is a shared one: the approval of the basic legislation belongs to the State, but its implementation and its execution are tasks commended to the AA.CC. (103).

It must be recalled, also, that the autonomous competences on shellfisheries and aquaculture, established in art. 148.1.11ª S.C., are not limited to internal waters, but extend to all Spanish coastal zones, including the territorial sea (104). Therefore, here again, both the State and the AA.CC.s have

(101) Constitutional Court's judgements nº 56/89, of 16 March 1989, op. cit., 5th and 8th para.; and nº 147/91, of 4 July 1991, op. cit.

(102) *Ibid*.

(103) Constitutional Court's judgements nº 33/84, of 9 March 1984, 2nd para.; nº 156/86, of 11 December 1986, 3rd and 4th para.; nº 56/89, of 16 March 1989, 3rd and 4th para.; ...

(104) Considering the scope of the AA.CC. competence under art. 148.1.11ª SC, the Spanish

concurring competences with respect to shellfisheries and aquaculture beyond internal waters.

The Act 3/2001, of 26 March, concerning the State's maritime fishing, has as one of its main objectives to clarify the extent of the State's competences in the fishing sector (105).

## 5. Special reference to the Mediterranean

Integration of the Spanish coastal and marine policy into the wider Mediterranean area faces numerous difficulties given the inherent complexities of the region. These complexities relate not only to some aspects of the relationships among its Northern riparians but also, and more importantly, to their global relationship with the Southern States, some of which are faced at present with serious obstacles to their economic and social development.

### 5.1. Political aspects

A first aspect of the political complexities existing in the Western Mediterranean relates to issues of security.

The end of the cold war era has confronted the States of the region with new problems that call for an urgent solution. The Conference for the Security and Cooperation in Europe (CSCE) produced specific recommendations for the Mediterranean region at its meetings in La Valetta in 1979 and Venice in 1984, before convening a special meeting on the Mediterranean Region in Palma de Mallorca in 1990. The final report of this meeting, issued on 19 October 1990 (106), acknowledges the importance of the Mediterranean region for the security in Europe and in the world, reaffirms the application of the principles of the Final Act adopted in Helsinki in 1975 and envisages the possibility of convening a meeting that, inspired in the CSCE process, would consider norms and principles for stability, cooperation and "the human dimension" in the Mediterranean region. The

Constitutional Court has highlighted the fact that, with regard to the three different activities contemplated by this article (i.e., fishing, shellfishes and aquaculture), fishing is the only activity for which the competence of the AA.CC. is limited to internal waters. Therefore, as neither the Spanish Constitution nor the different Autonomous Statutes have introduced this limit for other activities, the autonomous competences on shellfisheries and aquaculture extend to all the Spanish coastal zones, not only to its internal waters. Constitutional Court's judgement nº 103/89, of 8 June 1989, regarding Law nº 23/84, of 25 June 1984, on acquaculture, 6th para.

(105) J. JUSTE RUIZ, *La Ley 3/2001, de 26 de marzo de pesca marítima del Estado: análisis y evaluación*, REDI, 202 -I-, vol. LIV, pp. 95-114.

(106) Text in *Conferencia de Seguridad y Cooperación en Europa. CSCE. Textos Fundamentales*, Madrid (Ministerio de Asuntos Exteriores) 1992, pp. 181-192.

operative part of this report focuses, however, on socio-economic and ecological matters that are the object of two separate sections concerning respectively "specific aspects of cooperation" and "protection of Mediterranean ecosystems".

Another aspect of the underlying political difficulties existing in the Western Mediterranean area relates to unsolved problems of marine delimitations between the coastal States. Aside from the partial agreements between Spain and Italy in 1974, between France and Monaco in 1984 and between France and Italy in 1986, most of the Mediterranean marine areas are still undelimited (107). The presence of a plurality of coastal States, the diversity of their respective marine claims and the uncertainties on the applicable international legal regime make the delimitations in the region a particularly acute problem with serious political consequences. That is probably why the majority of the States in the region have decideed not to declare extended exclusive fishing zones or exclusive economic zones until the issues of marine delimitation stand a better chance of an agreed solution.

## 5.2. Environmental aspects

The environmental protection of the Mediterranean Sea Area has been the object of a pioneering international regulation by the so called Barcelona Convention system currently composed by the Barcelona Convention and seven Protocols.

Spain is currently a Party to the Barcelona Convention, as amended in 1995, and to most of its Protocols (108). Through the history of the Barcelona Convention system, Spain has played a driving role in the continuing progress of the protection of the Mediterranean, especially by hosting the founding Barcelona Conference (1976), the revision Barcelona Conference (1995) and the Madrid Conference (2008) which adopted the new Protocol on integrated management of coastal areas of the Mediterranean.

In that respect, it could be emphasize that Spain has been particularly active in establishing specially protected areas and currently has the highest number of specially protected areas of Mediterranean importance (SPAMIS). Actually, nine of the seventeen existing SPAMIS are located in Spanish coastal waters, namely: the island of Alboran, the sea bottom of the Levante in Almeria, the Cabo de Gata-Nijar, the Mar Menor and the

(107) See J. JUSTE RUIZ, *La délimitation des espaces marins dans la Mediterranée occidental et les interêts espagnols*, in A. DE GUTTRY and N. RONZITI (Ed), *I rapporti di vicinato tra Italia e Francia*, Padova (Cedam) 1994, pp. 99-110. See also the articles by T. SCOVAZZI, J. P. FRANCALANCI, D. VIGNES, M. GESTRI and U. LEANZA.

(108) See above, section 2 b).

Oriental coast of Murcia, the Cap de Creus, the Medes islands, the National Parc of Cabrera and the Acantilados de Marco-Cerro Gordo park (109).

The new ICAM Protocol, when entering into force, would imply a series of new legal obligations to its Parties for which they need to be adequately prepared. The existing regional seas conventions do not define what a coastal area is and do not set its geographical boundaries, leaving each State free to determine the definition and limits of its coastal zones. However, Art. 2 of the ICAM Protocol gives the following definition: "coastal zone means the coastal geomorphologic area either side of the seashore in which interaction between the maritime and land parts occurs in the form of complex ecological and resource systems ..." In addition, art. 3 of the Protocol delineates the coastal zone by setting the rule that its sea part covers the coastal waters of each contracting Party until the external limit of its territorial sea whereas its land part extends until the limit of the terrestrial coastal units, as defined by each Party. A waiver allows States to adapt this geographical coverage to their coastal local peculiarities: the extension seaward could be less than external limit of its territorial sea (usually 12 miles) and in the land side it may be more or less wide than the existing coastal units. If a State wishes to benefit from these exemptions, based *inter alia* on the ecosystem approach, on economic and social criteria or on the specific needs of islands, it must notify the depositary.

In this precisely defined coastal area, a new set of specific legal obligations would apply to the Parties which shall establish a common framework for its integrated management and shall take the necessary measures to strengthen cooperation for this purpose. The implementation of the new ICAM Protocol would require a profound change on the legal and administrative structure governing Spanish coastal zones. In particular, it would require as an urgent matter to define the coastal zone for ICAM purposes, to clarify the role of regional and local powers in ICAM and to build up a coastal/marine policy base on a wide social consensus, strengthening public action and improving public participation.

## 5.3. Special problems

Some particular aspects of the Spanish situation deserve special attention when dealing with Mediterranean matters.

One aspect, and probably the most important, is the incidence of the colonial status of the British enclave of Gibraltar when dealing with coastal and

(109) The documents UNEP(DEC)/MED WG.228/Inf.12 Ad.1 and Ad.2 present the Spanish proposal for inclusion in the List of Specially Protected Areas of Mediterranean Importance (SPAMIs) of two sites (National Parc of Cabrera and the Acantilados de Marco-Cerro Gordo parc) according the convened format.

marine issues in the area. Most aspects of coastal management in the colonial area of Gibraltar are affected by legal and institutional disputes which in turn make more difficult the adoption and implementation of adequate laws and regulations. Questions such as strait baselines, legal *status* of the waters, marine delimitations, protection of the under-water cultural heritage, access to ports, policy of the seas, spatial planning and others have provoked repeated problems between the British and Spanish administrations concerned.

Another difficult matter is the presence of the Strait of Gibraltar, whose legal *status* in the light of the new Law of the Sea is still subject to controversy. Its strategic importance and the paramount interest of maritime powers opened the way for new maritime and air transit rules that the riparian States do not fully accept or, at least, do not interpreted in the same way. In this respect, it must be recognized that the heavy traffic of ships of all kinds, exercising the right of "transit passage", make the shores and waters of the Strait especially at risk from accidental pollution and other environmental damage. This and other problems related to the legal *status* of the Strait and the transit thereof shall be considered as an important obstacle for the integrated management of the coastal zone in the area. On the other hand, the Strait of Gibraltar is the closest physical stretch between the North and the South of the Mediterranean and offers a suitable way for building a permanent link between the two shores (110).

Another relevant aspect is the presence of the Mediterranean archipelago of the Balearic islands as well as a series of small islands and rocks of particular ecological value, such as the Medas Islands, the archipelago of Columbretes, the island of Tabarca and the island of Alboran. Other coastal areas of particular ecological importance are the estuaries of the rivers Ebro, Guadiana and Guadalquivir, and its wetlands which include the specially protected area of "Parque de Doñana".

Another series of issues relate to the exercise of regulatory and enforcement powers concerning navigation of some special vessels on the waters under Spanish sovereignty or jurisdiction, especially in the Mediterranean. The Act nº 25/1964 of 29 April 1964, on the uses of nuclear energy, restricts the innocent passage of foreign nuclear vessels (both State and commercial) by subjecting them to inspection and requiring them to obtain a previous

(110) A project of building a permanent link between Europe and Africa through the Strait of Gibraltar was submitted to study under the direction of two Spanish (SECEG) and Moroccan (ESNED) societies established in application of the Convention on scientific and technichal cooperation between Spain and Morocco of November 8, 1979, and its Complementary Agreement of October 24, 1980. Of the several possible technical solutions (essentially, bridge or tunnel) only the second seems able to forestall all possible objections based on considerations regarding the safety of international navigation when passing through the Strait of Gibraltar. See: J. A. PASTOR RIDRUEJO, *La construcción de un enlace fijo a través del Estrecho de Gibraltar: problemas jurídico-internacionales de la navegación marítima y aérea*, Seminario sobre los aspectos jurídicos del enlace fijo a través del Estrecho de Gibraltar, Madrid, 4 y 5 de diciembre de 1986 (xeroxed edition).

authorization in order to enter Spanish ports or transit through Spanish territorial waters (111). Mention must also be made of the Order of 17 April 1991 regulating the stopping and anchoring of tankers on jurisdictional waters or in the Spanish Exclusive Economic Zone (112). The Order requires tankers not discharging in Spanish ports to obtain a previous authorization by the competent Spanish authorities in order to be able to stop in the said waters. The authorization can be either granted or denied, and, in the former case, the tanker must comply with the requirements set forth in the Order.

The Act No 27/1992 of 24 November 1992 concerning national ports and merchant shipping includes two articles related to navigation of foreign civilian ships, in waters under Spanish sovereignty or jurisdiction, that seem to be in line with the requirements of the 1982 LOS Convention. According to the Act provisions, in order to prevent the conduct of illicit activities or trafficking of any kind, the Spanish authorities may stop, restrict or place conditions on the navigation of certain categories of civilian ships in internal waters, the territorial sea or the contiguous zone (113). They also may, in order to protect the safety of navigation and prevent pollution of the marine environment, visit, inspect, search, seize, initiate legal proceedings and, in general, take any steps deemed necessary with respect to ships which infringe or may infringe those legal rights (114).

## 6. Concluding remarks

Integrated management of coastal zones is becoming a matter of great importance all over the world and it deserves particular attention in enclosed and semi-enclosed seas, such as the Mediterranean.

Agenda 21 commits Coastal States to the integrated management and sustainable development of coastal areas and the marine environment under their national jurisdiction, overcoming sectoral isolation. As a recent FAO study has put forward "(e)ffective strategies in such areas require a special ability to think beyond traditional sectoral divisions between fisheries,

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(111) Arts. 70 and 74. See passim V. BOU FRANCH, *La navegación por el mar territorial incluidos los estrechos internacionales y las aguas archipelágicas en tiempo de paz*, Madrid (Colegio de Oficiales de la Marina Mercante) 1994, pp. 121-125. For J. A. YTURRIAGA BARBERAN, the legislative exclusion of nuclear vessels from innocent passage is in contradiction with the provisions of the 1982 LOS Convention, *Ambitos de Soberanía en la Convención de las Naciones Unidas sobre el derecho del Mar. Una perspectiva española*, Madrid (Ministerio de Asuntos Exteriores) 1993, p. 186.

(112) B.O.E. No 93, 18 April 1991, p. 12061. A critical appraisal of this Order may be found in M. P. ANDRES SAEZ DE SANTAMARIA, *Una nueva regulación del fondeo de buques tanque en los espacios marítimos españoles*, Revista Española de Derecho Internacional, 1991, pp. 265-268.

(113) Art. 211.

(114) Art. 212.

water management, land use planning, agriculture, forestry, urban planning, wildlife management, mining, waste management and many others" (115). And some of these activities, such as marine environmental protection, fisheries, marine wildlife and waste management, must be contemplated not only in relation to areas under national jurisdiction but also in relation to the high seas.

Action by the Mediterranean coastal States at the international level is currently developing in that direction, mainly with regard to environmental protection and sustainable development of the Mediterranean sea area. The on-going process of revision of the Mediterranean Action Plan as well as the Barcelona Convention and its related protocols is paying particular attention to the new principles concerning sustainable development of coastal and marine areas, as stated in the Rio Declaration and Agenda 21, Chapter 17. A proof of this new orientation of the Mediterranean legal instruments is the title of the amended Barcelona Convention which is going to be called "Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean" (116).

At national level, action is also developing towards a more integrated approach to coastal management policy and law. Given the great diversity of the Mediterranean coastal States, the pursuit of these objectives will require a substantial redesign of the legal framework in which the management of coastal areas currently takes place in some countries. As we have seen in the precedent pages, Spain is also moving towards a more integrated and sustainable oriented approach for the management of coastal areas. But, in spite of the legal innovations that have emerged in recent years, Spain is still far from having developed a full legal framework that will enable it to successfully cope with the increasing challenges of the matter.

The main problems currently affecting Spanish coastal zones result from the growth of mass tourism, the expansion of intensive agriculture and the growth of building sector, especially with the demand for second homes in coastal areas. The continual and constant process of environmental deterioration and the discrediting of actions implemented by the institutions is a clear indication of the failure of coastal management as a public policy.

In order to improve the integrated management of the Spanish coastal areas it would be necessary to build up institutions and to adapt the administrative competences at local, regional, and national levels. And last, but not least, the structural inadequacies of the coastal legislation to satisfy long-term needs of integrated coastal development shall be remediated.

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(115) FAO. *Legal and Institutional Aspects of Integrated Coastal Management in National Legislation*, Rome, December 1994.

(116) UNEP(OCA)/MED WG.91/7 (1 March 1995). *Report of the Meeting of Legal and Technical Experts to the Barcelona Convention, the Dumping Protocol and the Specially Protected Areas Protocol.*