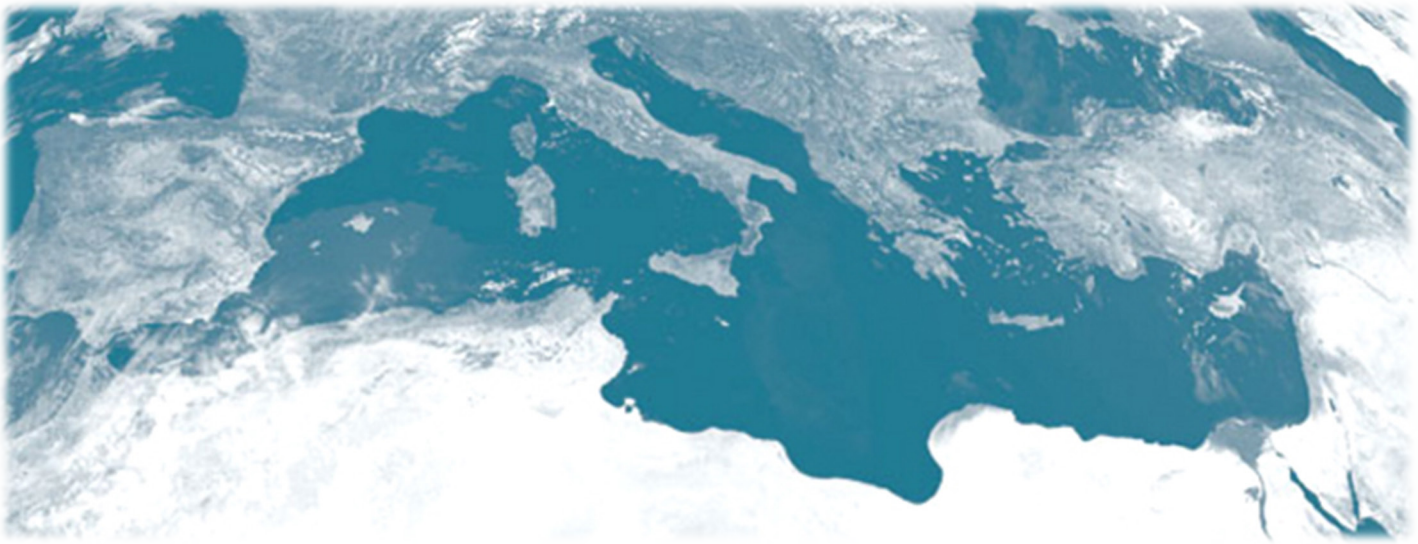
The Mediterranean Action Plan: the challenges of a regional process towards sustainable development



Plan Bleu Memo for Rio+20

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The Mediterranean Action Plan: the challenges of a regional process towards sustainable development

Input to the preparation of Rio+20 from the Plan Bleu Association for the Environment and Development in the Mediterranean

« We [the ministers and heads of delegation] note that the current international environmental governance architecture has many institutions and instruments and has become complex and fragmented. It is therefore sometimes not as effective and efficient as it should be. We commit ourselves to further efforts to make it more effective. »
(Extract from the final declaration of the UNEP Governing Council, February 2010)

The forthcoming Rio+20 Conference is reviving long-standing issues concerning international environmental governance. The old chestnut regarding the advisability of setting up a global organisation for the environment and sustainable development is back on the agenda. Yet it extends far beyond the means for regulating global environmental public goods at international level- players and institutions, decision taking, connections or cooperation between international systems, the means for technical, economic or financial cooperation, monitoring and reaction to non-compliance.
The lessons learned from the Mediterranean region's experience (regional environmental law, regional commission on sustainable development) can provide enlightening input in this respect.

1. The Mediterranean region: a well-established testing ground.

1.1. A varied, specific, vulnerable and threatened environment

The **environment** in the Mediterranean region is particularly varied and specific. The region harbours a wide diversity of fauna and flora, providing a home to 25,000 plant species, accounting for 10% of the biosphere for a mere 1.5% of global land mass. It is specific since endemic species abound- indeed, it tops the list of the world's hot spots for biodiversity, noted for their major contribution to global biodiversity.

Yet the fact that the Mediterranean is a semi-closed sea with an extremely slow rate of water renewal means that the region is also highly vulnerable and particularly at risk. The threats are multiple: urbanisation, growth of tourism (the Mediterranean is the world's leading tourist destination), intensification of transport, maritime in particular (the Mediterranean accounts for 30% of global traffic for 1% of ocean area), biological invasion, impact of climate change, etc.

Varied, specific, vulnerable and threatened: the nature of the region necessitates the adoption of special measures to protect its natural resources and areas. This should be done nationally but in coordinated fashion to avoid one country ruining another's efforts, a necessity further heightened by the fluidity of the marine environment. The Mediterranean lies at a geographical crossroads, straddling three continents and surrounded by 22 riparian countries, hence the importance of international cooperation.

1.2. Thirty-five years of cooperation built on regional environmental law: the lessons

The Mediterranean Sea became the subject of cooperation relatively early-on through the **UNEP Regional Seas Programme**. As far back as 1975, sixteen Mediterranean countries and the European Community adopted the Mediterranean Action Plan (MAP), the first plan to be adopted within the Regional Seas Programme under the aegis of UNEP. The following year, the same countries adopted the Barcelona Convention for the protection of the Mediterranean Sea against pollution. It stipulates that the signatories should individually or jointly take all necessary measures to protect and improve the marine environment in the Mediterranean Sea in view of assisting its sustainable development and in order to prevent, reduce, combat and, as far as possible, eliminate pollution in the area, notably:

- Pollution caused by dumping from ships and aircraft;
- Pollution from ships;
- Pollution resulting from the exploration and exploitation of the continental shelf, the seabed and its subsoil;
- Pollution from land-based sources.

The convention foresees a cooperation and information mechanism between the Parties in case of a pollution emergency in the Mediterranean Sea, with a view to reducing or eliminating the ensuing damage.

The Parties would also endeavour to establish a pollution monitoring system.

In 1995, once MAP II was adopted, the convention was widely amended to take account of developments in environmental law and the outcome of the Rio Conference. The amendments mainly focused on extending the geographical scope of the convention to the coastline (art. 1), including the precautionary and « polluter pays » principles, requiring the Parties to conduct and promote impact assessments (art. 4), protecting and preserving biological diversity (art. 10), combating pollution from the transboundary movement of hazardous waste (art. 11) and public participation and access to information (art. 15). They opened the door to the inclusion of sustainable development issues (preamble and art. 4).

The instrument currently has 22 contracting parties[1].

The initial framework convention has also been supplemented over the years by seven protocols[2]:

- The « Dumping » Protocol (from ships and aircraft)
- The « Prevention and Emergency » Protocol (pollution from ships and emergencies)
- The « Land-Based Sources » Protocol
- The « Specially Protected Areas and Biological Diversity » Protocol
- The « Offshore » Protocol (pollution resulting from exploration and exploitation)
- The « Hazardous Waste » Protocol and
- The Protocol on « Integrated Coastal Zone Management ».

The international legal framework, with its remarkable capacity to evolve, has thus been gradually extended: from environmental concerns towards sustainable development and from the marine environment to coastal zones and the coastline. Under MAP's aegis the shaping of regional law in the Mediterranean has been flanked by the setting up of institutions- the Regional Activity Centres- and a financial mechanism- the « Mediterranean Trust Fund »- intended to encourage implementation. Thus the environment has clearly played a pioneering role in terms of regional integration and fruitful dialogue between countries at varying levels of development.

[1]Albania, Algeria, Bosnia-Herzegovina, Cyprus, Croatia, Egypt, European Community, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Morocco, Monaco, Montenegro, Slovenia, Spain, Syria, Tunisia and Turkey.

[2] Two of them- the « Offshore » and « Integrated Coastal Zone Management » Protocols- have not yet come into force.

1.3. Fifteen years of cooperation based on a regional Commission on sustainable development: some lessons

The **Mediterranean Commission on Sustainable Development (MCSD)** was set up in 1996. It comprises 46 members, made up of representatives of the 22 Contracting Parties to the Barcelona Convention and 24 representatives of civil society (local authorities, business, NGOs, scientists, inter-governmental organisations and eminent experts) with 14 alternant members, normally with a 2 year remit. The inclusion of civil society represented a considerable innovation and at the time was widely welcomed as an attempt to broaden international environmental governance.

Drawing on studies conducted by specialised organisations or ad hoc working parties, the MCSD drafts thematic recommendations, which the Contracting Parties to the Convention may adopt (coastal management, water demand management, indicators of sustainable development, tourism, public awareness raising and information, etc.). The MCSD was also the driving force behind the drafting of a Mediterranean Strategy on Sustainable Development, adopted by the Contracting Parties in 2005[3]. Intended to encourage the implementation of international commitments at regional level (Rio, Millennium goals, Johannesburg), the Strategy sets out seven priority action areas- water, energy, transport, tourism, agriculture, urban development and coastal management and establishes four main objectives to be met in order to promote sustainability:

- feeding economic development;
- reducing social disparity;
- switching non-sustainable models of production and consumption and ensuring the sustainable management of natural resources, and
- improving governance.

Whilst the initiative to set up the MCSD was originally welcomed for its originality, particularly its inclusion of representatives of civil society on an equal footing, just like the UNCSD the MCSD has struggled to establish itself as a genuine forum for political debate. Its discussions sometimes get bogged down, country representation is often limited and provided by Ministry of the Environment representatives alone. Yet, as was stated by the representative of Monaco at the Sixteenth Ordinary Meeting of the Contracting Parties, the main reason for the sterility of some of the MCSD's debates lies in the fact that it has been unable to discuss with players unused to inter-governmental fora- stakeholders in development, agriculture, fisheries, tourism and industry. Their absence has meant that it has mainly been the Barcelona Convention regulars who have become involved with the MCSD. Dialogue with private stakeholders is, however, fundamental to the implementation of the Mediterranean Strategy on Sustainable Development.

Moreover, countries have not to date appointed independent experts or scientists who could have provided an original interface with representatives of the countries, NGOs and business. Finally, possible recommendations from the Commission need to be validated by MAP's governing bodies before they are submitted to the Meeting of the Parties. All too often this has discouraged innovation and ambition in discussions and has demotivated the high level expertise which could otherwise have been called upon.

Despite its commendable efforts, MAP has still not managed to reform the MCSD- reform would probably require a different approach along the lines of a Forum with more autonomous governance, which could provide input not only to MAP, but also to other international mechanisms active in the Mediterranean.

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[3]UNEP(DEC)/MED IG.16/7 27 June 2005. Adopted by the fourteenth meeting of the Contracting Parties to the Barcelona Convention (Portoroz, November 2005).

2. Variable geometry regional environmental agreements

Besides the « common law » comprising various customary rules which tend in essence to be very general (ban on damaging the environment of the other States, for example), international environmental law is largely developing on a treaty basis. This has allowed organised, institutionalised *international systems* underwritten by financial commitments to be formalised on a sector by sector, area by area basis. By providing a precise basis for international cooperation (ban on a given chemical substance as of a given date, regulation of trade in a given wild species for which a specific type of form will be required, etc.), by allowing cooperation to be institutionalised and collective means for encouraging compliance and reacting to non-compliance to be developed and by providing for the evolution of the initial system through amendment of the treaty, the adoption of protocols or more simply secondary legislation etc., international conventions or treaties continue to be one of the most effective tools in inter-state cooperation.

But the system was constructed in piecemeal fashion, with no initial overall vision, as a means to address new threats identified or in response to some catastrophe. The Mediterranean region has not escaped a proliferation of rules. Whilst the Barcelona Convention states that in order to become a Contracting Party to the Convention a State must be Party to at least one of the protocols, at the same time it stipulates that any protocol to the Convention is only binding on the Contracting Parties to that specific protocol. Thus an à la carte system has been set up, fragmenting the system of protection afforded. This phenomenon is further consolidated by the fact that amendments to the Protocols only bind such Parties as have accepted them. Finally, each State is bound by different obligations and the regional system is seen as constituting a variable geometry protection system.

The difficulties of the dense and evolving system constituted by the Barcelona Convention are further compounded by European Union law, which applies to the countries on the Northern shores but also (at least to an extent) to those to the South (through neighbourhood policy, association agreements, etc.…). EU law undeniably draws on regional dynamics, but it also accentuates the image of a regulatory mechanism with variable geometry. Multiple overlapping initiatives (with the risk of duplication and inconsistency) give rise to confusion, undermining the visibility, coherence and effectiveness of policies. This also consolidates the gap in human and financial means between the States on the two sides of the Mediterranean.

3. Expertise

At international level, the setting up of the IPCC and the IPBES project have drawn attention to the science/political interface and the role of expertise, which as was shown by Peter HAAS in 1993 in his book entitled « Save the Mediterranean », is crucial in the Mediterranean as elsewhere.

The specific geographical and hydrographical features of the Mediterranean are such that there is an obvious need for scientific expertise. This expertise must be in a position to transcend a purely sectoral or thematic approach to also address the interfaces between sectors in order to identify aspects which complement each other, synergy but also competition and inconsistency. Nor should the importance of economic and social expertise be forgotten within the sustainable development framework in determining the impact of economic and social activities on the environment but also the impact of environmental measures on the economies and societies of the various States. This multi-faceted, systemic type of expertise allows decision takers to adopt measures to which States can subscribe without fearing their impact on national development and the economy.

As far as the Plan Bleu is concerned, consolidating the role of experts and building capacity in all countries is a regional priority.

Against this backdrop, many scientific experts are currently advocating an ecosystem-based approach to take account of the interaction between the various components of a system. This has been a point of discussion in the Mediterranean for some years[4], despite the relative compartmentalisation between the Barcelona system, the General Fisheries Council for the Mediterranean and the network of scientific institutions involved with such issues. The joint and comprehensive management of the Mediterranean would, however, appear to hinge on a substantial strengthening of the links between these *fora* and an exchange of scientific data on the environment.

There can be no claim to implementing an ecosystem-based approach, for example, if biodiversity is managed in one forum and fisheries in two or three others (GFCM, ICCAT) without adequate linkage. This issue of bridging between marine biodiversity and fisheries fora should be addressed within the framework of RIO+20.

4. Effectiveness

International environmental law is hampered by numerous *« ineffectiveness phenomena »*[5]. Despite major statutory developments, « *'black holes' persist, and it would seem unlikely that they can be eliminated in the near future: international standards remain uncertain and full of loopholes and, above all, they are not built on effective institutional guarantees* »[6]. The effectiveness of international environmental law and of sustainable development in more general terms varies from one system to another: few treaty provisions are precise enough to give them a direct effect on national law.

In this respect, the stakes have shifted to some extent. From the 70s until the mid-90s, the initial concern was to introduce a set of rules to address the various threats facing the environment. The bulk of the system was already in place, providing an impressive regulatory structure bordering on statutory congestion (the term *treaty congestion* is used, for example)[7]. The issue of implementation then arose, maybe somewhat belatedly, and thereby the ability of States to meet their obligations, even though on this point those Mediterranean countries which belong to the European Union, whose Court of Justice can sanction shortcomings, are in a very different position to non-Member States.

A UNEP report stipulates very clearly: « *The proliferation of international demands has placed a particularly heavy burden on developing countries [but not only developing countries], which are often not equipped to participate meaningfully in the development and implementation of international environmental policy* »[8]. Under the Barcelona system, it remains highly questionable whether the control mechanisms are effective. The system as constructed depends on the cooperation of the States for it to function. However, too many States are currently failing to submit their national evaluation reports or send in incomplete versions. There are various reasons for this- some States do not have the technical means to draft this type of report, for others it is simply a matter of ill will. However, despite its shortcomings, this reporting system represents progress in itself, as does the setting up of the Compliance Committee.

Is it true, as some would claim, that international environmental law has moved very quickly from childhood marked by remarkable growth and vitality to a sickly old-age, characterised by loss of vigour and even the inability to respond to change[9]? We do not believe so, since the Barcelona Convention has managed to revamp itself since the RIO Summit and even to innovate with the ICZM protocol. The risk should not, however, be overlooked.

There can in any case be no doubt that environmental treaty law brings great influence to bear on the growth of domestic law, even though this influence is hard to measure. The negotiation of international

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[4] Cf UNEP/MAP, , « Implementing the Ecosystem Approach in the Mediterranean », *MEDWAVES The magazine of the Mediterranean Action Plan,* n°58, October 2009

[5] J. Carbonnier, *Flexible droit. Pour une sociologie du droit sans rigueur,* LGDJ, 10th ed., 2001, p. 137.

[6] A. Cassesse, *Violence et droit dans un monde divisé,* PUF, Paris: Perspectives Internationales, p. 68.

[7] E. Brown Weiss, « International Environmental Law: Contemporary Issues and the Emergence of a New World Order », *Georgetown Law Journal,* 1993, vol. 81, p. 675.

[8] UNEP, 2001. International Environmental Governance, Report of the Executive Director. UNEP/IGM/1/2, 4 April, p. 19.

[9] P. Sand, « The Evolution of International Environmental Law », *op. cit.,* p. 42.

conventions, even apart from the declarations, action plans and other strategies, helps define *« common benchmarks »*[10] at international level. This is, moreover, a clearly stated aim. The Stockholm Declaration recognised, for example, the need to cooperate at international level towards resolving environmental issues and to that end to agree on some common principles for action: « *Having considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the environment... »*. Having insisted in this respect on the importance and fragility of the environment, it expressed the « *common conviction »* in the shape of 26 principles, some of which are well established today. Twenty years later at the Rio Conference in June 1992, a new declaration was adopted « on the environment and development ». It set out 27 principles, some of which picked up on the Stockholm Declaration whilst others were newer (the precautionary principle, for example, or the principle of public participation in decision-taking and information). These principles are also often set out in the preamble or the main text of international conventions on the protection of the environment.

As common benchmarks at international level, the principles of international environmental law are often taken on board in national legislation, whether in legislative or even constitutional rules. Sometimes wording which already exists at international level is simply copy-pasted; other times the wording is discussed, adapted and amended. Through such mimicry and lifting, the principles of international environmental law are instrumental in globalising environmental law and to an extent even in producing a sort of acculturation of national environmental law. This phenomenon bears witness to the power of international standards as the new common law[11].

5. CONCLUSION

In conclusion, we believe that there are many lessons to be learned from the 20 years of implementation of the Rio Declaration's principles in the Mediterranean through the overhaul of MAP, its legal instruments and the setting up of the MCSD.

The Mediterranean is a region where the concept of sustainable development is both particularly relevant as an intellectual approach and particularly difficult to implement. The issue of the regional governance of sustainable development is particularly tricky in the area in that expertise, socio-political circles and governance fora relating to the economy and the environment are still highly compartmentalised.

During the preparations for RIO+20 the Plan Bleu Association intends to further its consideration of prospects for the regional governance of sustainable development in the Mediterranean.

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[10] In the words of B. Jobert, P. Muller, *L'État en action,* Paris, PUF, 1987 ; A. Faure, G. Pollet, Ph. Warin (dir.), La construction du sens dans les politiques publiques, Paris, L'Harmattan, 1995

[11] Jean-Louis Halperin, *Profils des mondialisation du droit,* Dalloz, 2009, p. 233 ss..