



**Workshop 15**

***Governance of the Mediterranean Sea: Meeting the Needs of the Future Today***

**directed by**

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***Workshop abstract***

The Mediterranean Sea region is a bridge between three continents. It is one of the most heavily used and populated marine regions in the world where twenty-two countries representing different levels of economic development, political structures and cultures exist within a narrow geographic area. Its historic role as a major maritime highway for trade continues unabated into the 21<sup>st</sup> Century bringing ships loaded with cargo from all points of the globe. Maritime traffic is expected to increase overall by 18 percent in the next decade and the number of vessel transits by 23 percent. The Mediterranean Sea is also a vital global energy route where an estimated 421 million tonnes of crude oil was transported in 2006 and 30 million tonnes of LNG. And each year millions of tourists flock to visit its beaches and see its rich cultural heritage. At the same time, the sea serves as a route for the illicit trafficking of humans, and drugs as well the transport of hazardous waste.

With this bevy of activities, however, the Mediterranean Sea faces many risks as it turns the corner of the first decade of the second millennium. The effects of climate change, absent effective mitigating measures, are expected to have serious impact upon the Mediterranean region, from the effects on the coasts from sea level rise to the loss of agricultural lands from desertification. The future sustainability of the Mediterranean Sea region, in short, is at risk. The critical question is whether the existing governance

of the Mediterranean region from the national, sub-regional and regional levels can meet present and future challenges? In other words, how are we governing the Mediterranean Sea?

From a legal perspective, the existing jurisdictional landscape of the Mediterranean Sea leaves nearly fifty percent of it as high seas and as a result beyond the jurisdiction of the coastal States to adopt and enforce the laws necessary for effective governance of the Mediterranean Sea. While international law allows states to establish maritime zones with appurtenant jurisdictional powers, the limited maritime space in the Mediterranean Sea prevents the full exercise of such rights because of the resulting overlap of maritime boundaries. The resolution of these overlapping zones, which is often also the challenge, requires the mutual agreement of the States to delimit these boundaries or to submit them for third party dispute resolution. This jurisdictional lacuna have important repercussion on the effective governance over these myriad of activities of the sea, including protection of the marine environment, sustainable exploitation of living resources, exploration and exploitation of non-living marine resources, energy, including alternative energy development, prevention of illegal activities at sea, protection of underwater cultural heritage, and tourism.

The political-legal map of the Mediterranean presents one broad line of demarcation: the EU Mediterranean countries and the non-EU Mediterranean countries. Many questions arise as to the inter-relation between these two hemispheres in relation to the regional governance scheme of the Mediterranean. For example, in 2008 the European Commission adopted a new and comprehensive Marine Strategy Framework Directive The aim of the Directive is to achieve good environment status in European marine waters by 2020. The Directive requires for each EU member State to prepare a national strategy to achieve good environmental status for its region or sub-region. In implementing marine strategies member States are required to make all efforts to coordinate with other neighboring non-EU coastal States through the regional seas programmes. How will these relationships be made?

For protection of the marine environment, the UNEP Mediterranean Action Programme (MAP) and its Mediterranean Commission on Sustainable Development provides one regional governance structure that seeks to unify the region under a common environmental governance umbrella referred to in general as the Barcelona system, which is structured around the Convention for the Protection of the Mediterranean Sea Against Pollution (“Barcelona Convention”), originally adopted in 1976 and renamed and amended in 1995 as the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and seven implementing protocols dealing with: dumping; prevention and emergency; land-based pollution; specially protected areas and biodiversity; offshore activities; hazardous wastes; integrated coastal zone management. However, not all Mediterranean States have ratified all regional legal instruments, as well as international treaties for the protection of the environment, creating a patchwork of legal rights and obligations, and as a result, an important gap in governance. Recently, the Mediterranean States adopted a mechanism for compliance and enforcement of these regional obligations. This can serve as an affective tool for governance. But will it?

The recently adopted 2009 ICZM Protocol when in force, will provide for an integrated and holistic approach to the management of the different activities in the Mediterranean Sea. However, in order for this approach to be successful regional and sub-regional cooperation will be of the utmost importance. But can theory be implemented into real practice?

One of the important contributions of the 1982 Law of the Sea Convention for regional governance is Part IX which exhorts states bordering semi-enclosed and enclosed seas, such as the Mediterranean, to cooperate and coordinate in the exercise of their rights and duties, including the management of living marine resources, protection of the marine environment and scientific research. While the existing UNEP programme provides one mechanism for cooperation, what other ways are there to promote cooperation among the Mediterranean States to improve the governance of the Mediterranean Sea?

Beyond protection of the marine environment, the overall governance structure for the Mediterranean Sea and other activities need to be critically examined for existing gaps and weaknesses. What tools of governance are there at the national and regional levels for controlling and preventing illicit activities in the high seas? How are they coordinated? What regional strategy exists for promoting alternative energy development to both relieve the sea itself from the risks associated from the transport of hydrocarbon products as well as mitigate the effects of climate change? What system is there for promoting scientific research and programmes and the exchange of scientific information among all Mediterranean States? How is science fitting into the policy and governance frameworks? How do we bridge the differences between the different regions and sub-regions to promote sustainable future for all Mediterranean countries? Do the existing institutional structures such as the MAP or the UPM suffice, or are new institutions needed to bridge and harmonize the different needs and demands of the Mediterranean Sea countries?

These are only a few of the important questions that need to be raised and critically examined to better chart the future of the Mediterranean Sea region. The workshop will present 1 forum to examine in a multi-disciplinary approach the governance of the Mediterranean Sea and the tools for achieving good governance at the national, regional and sub-regional levels.

## *Work Shop Description*

The workshop builds upon three recent initiatives undertaken to address the challenges of governance of activities in the Mediterranean Sea. The first was an initiative undertaken by the IUCN to examine the legal issues of governance of the Mediterranean beyond national jurisdiction (i.e. high seas). A series of expert workshops were held examining the governance and maritime zone problems in the Mediterranean. This resulted in the adoption by the IUCN Congress in 2008 of a resolution for “Improving the Governance of the Mediterranean Sea.” The resolution, supported by all Mediterranean member Governments of the IUCN, called upon the members of the IUCN to establish an informal permanent forum for the Mediterranean Countries to engage in dialogue and cooperate in resolving governance and maritime zone related issues.

The second was an initiative by the European Commission DG for Maritime Affairs and Fisheries in January of 2009, who invited a group of legal experts to make an assessment of the existing governance of the Mediterranean within the framework of the patchwork of maritime zones and based on their assessment to prepare a report with a set of recommendations.

The third was the French initiative establishing the Union for the Mediterranean (UPM). The Heads of State on 13 July 2008 issued the Joint Declaration of the Paris Summit for the Mediterranean outlining an ambitious undertaking for a region-wide cooperative effort to address the many common challenges and aspirations for the Mediterranean countries, including governance issues, protection of the environment, climate change, illicit activities and economic development.

The workshop will build upon these initiatives and seek to address the question of good governance of the Mediterranean Sea from a broad and multi-disciplinary approach.

The workshop will include a special focus on the legal aspects of governance and examined in relation to what the law is (*lex lata*) and what the law should be (*lex ferende*). It is important to understand the existing legal situation in the Mediterranean Sea countries in relation to how their national laws implement international and regional obligations. An essential element for a robust governance is to ensure harmonization and where needed uniformity of the legal framework, that is for the adoption, implementation and enforcement of laws, of the different Mediterranean Countries, without reaching to the lowest denominator but rather adopting those standards which will ensure a consistent high level of governance throughout the Mediterranean Sea.

The legal map of the Mediterranean Sea needs to be charted and understood, looking for overlaps, gaps, weaknesses and strengths, inquiring along the way whether the Mediterranean Sea is governed by the best available laws?

Furthermore, and of high importance, is the delicate and challenging issue of maritime boundary delimitation in the Mediterranean Sea. Although the existing jurisdictional map of the Mediterranean Sea leaves nearly fifty percent as high seas and beyond national jurisdiction, unlike the “real high seas” the Mediterranean high seas is a “potential” EEZ awaiting delimitation. The problem created by limited marine space in the Mediterranean is one of overlapping and contested maritime boundaries and sui generis zones. (eg. ecological zones, archeological zones) that has made maritime boundary delimitation in the Mediterranean Sea somewhat of a Rubrik’s cube: challenging but not insolvable. The workshop can

provide the necessary non-governmental forum for engaging in an ‘informal’ dialogue to seek possible methods for common action in improving governance of the Mediterranean Sea through maritime zones, including alternatives zones. In addition, the potential role for third party dispute settlement will also be examined.

The workshop will also examine the concept of “cooperation” and look into the different modalities of cooperation, bilateral to multilateral and the importance of building bridges of cooperation to improve governance of the Mediterranean. The existing institutional structure for regional and international cooperation will be examined for areas of overlap and gaps, where and how such institutions can be strengthened or where new ones may need to be established. The role of civil society and other non-governmental actors as conduits of cooperation for improved governance will also be included.

The workshop will adopt a holistic and integrated perspective and examine the overall question of governance from a multiplicity of angles seeking to integrate these apparent divergences into a convergent holistic vision of the Mediterranean Sea. The workshop will bring together experts from different sectors and view points, including law, management, science, NGO, academic, government, economics, policy, sociology and cultural. The topics to be addressed include specific sectoral activities such as maritime – related activities , alternative energy development, coastal management, fisheries, illegal activities (human and drug trafficking), hazardous waste disposal, carbon sequestration, underwater cultural heritage, scientific research, as well as broader conceptual topics such as the notion of “cooperation”, governance, conflict resolution and integrated approach. The objective is to discuss the variety of subjects under a common umbrella and provide an opportunity to view these issues in an integrated manner. This is particularly important as the integrated approach is a key governance tool adopted by both the for the new EC Directive on Marine Strategy and the MAP Protocol for ICZM. Both adopted an integrated approach using marine spatial planning techniques to organize these activities into a meaningful governance scheme. Through an exchange of information and joint discussions, the workshop can serve as an important forum for developing ideas and perhaps provide the bases for a blueprint for integrated governance plan for the Mediterranean.

Another important component of the workshop will be involving comparative studies from other regions, such as the Baltic Sea, North Sea and Black Sea.

### *Sessions and topics for papers*

#### *Opening session: The Mediterranean: sea of cooperation and conflicts in quest of good governance*

The opening session will provide the broad picture of the Mediterranean Sea and lay the foundation for the remaining sessions. Papers to be presented should be of a descriptive nature examining topics such as the physical geography of the sea, socio-economic analyses, maritime traffic, biodiversity, risks to the environment, the regional legal regime, existing conflicts, together with theoretical contributions on the notion of governance and the meaning of “cooperation”.

#### *Session 2-A Legal Map of the Mediterranean*

The session aims to examine the existing legal jurisdictional landscape of the Mediterranean Sea and what the future landscape should be from the perspective of achieving optimal governance. The different

maritime zones existing in the Mediterranean will be examined, including the lack of uniformity in governance that their diversity brings and the special aspects inherent in delimiting zones of a different character. One area of focus is the transitory nature of the Mediterranean high seas as a “potential EEZ” . Another could be the protection of underwater cultural heritage. The session will also focus on alternative mechanisms such as common zones or joint development projects.

### ***Session 3-Environmental Governance and Cooperation for the Mediterranean***

The session aims at providing both a conceptual discussion of the notion of “governance” as well as examining its practical implementation within the regional context of cooperation for the protection of the environment, particularly within the framework of Article 123 of the 1982 LOSC, and including a comparative dimension. Papers on the UNEP Barcelona system, the new IZCM Protocol, the 2008 EU Marine Strategy Directive and neighboring seas regimes are encouraged.

### ***Session 4 – Illicit activities in the Mediterranean Sea***

The problems related to the illicit transport of humans, drugs and other illegal activities will be examined within the Mediterranean context and in light of the existing jurisdictional limits.

### ***Session 5- Looking into the future: the tools and mechanism for achieving ‘Mediterranean good governance***

This will be the concluding session that will focus on forward looking solutions to identified governance problems in the Mediterranean region. The “solutions” can be concrete or conceptual approaches, including cooperation mechanisms, institutional bridges, sociological and economical tools. The session should conclude with a recommendation for steps to be taken and which can serve for follow-up projects or programmes.

The last session will not require papers. It will be based on results of the other sessions and require the participation of “rapporteurs” of the other sessions, with the participation of the other participants. It should be noted that sessions may not be of equal length some may be longer than others.