

## How minimizing the footprint of the aquaculture and fisheries on the ecosystem?

French-Japanese Symposium, Ifremer, Sète, France, 1-3 September 2010

### Indeterminacy of waters “Under the jurisdiction” in the Mediterranean : Issues of maritime delimitation in semi-enclosed sea

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**Key words:** maritime delimitation - Mediterranean - International Law - Law of the Sea - Exclusive Economic Zone - semi-enclosed sea - coastal states - spatial governance - Fisheries – Marine Environment Protection

#### Introduction

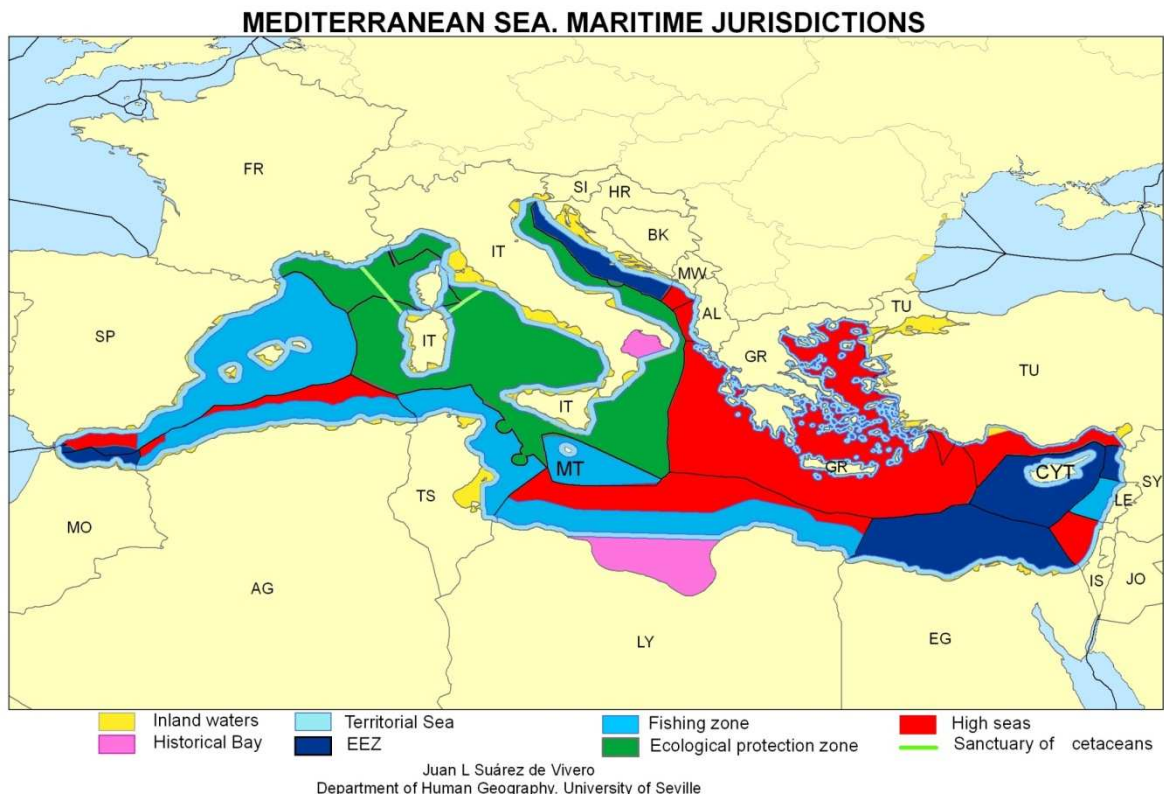
Geostrategic enclave surrounded by three continents, *Mare Medi Terra*, whose etymology means literally "sea in the middle of land", built its maritime history on conflicting and bloody inclinations, relations and episodes. The thirst for political domination, the stakes for controls of ports, trading, shipping and sea lanes have strongly conditioned the relationship between the great imperial powers and their areas of influence. In the modern era, international law governs state relations now allayed, strengthened by the instruments of cooperation on the use, access, exploitation and protection of the common regional sea.

However, the spatial configuration of the Mediterranean maintains a recurring problem of delimitation of the waters "under the jurisdiction." Defined in international law of the sea, these are the waters beyond the limits of the territorial sea (12 nautical miles), better known as the Exclusive Economic Zones (EEZ). In accordance with Articles 55 and following of the United Nations Convention on the Law of the Sea (UNCLOS) signed at Montego Bay in Jamaica in 1982 and came into force in 1994, the maximum width of the EEZ can not exceed 200 nautical miles or 370 km. Without a full and complete sovereignty over this area, the coastal State exercises its jurisdiction, benefits from rights and obligations extended, called sovereign, primarily in economic terms. The principle of adjacency, sometimes called the "coastal privilege" (Apollis, 1980), bases the claim for extension, formalized through unilateral declarations. This historical process of recognition of EEZ under international law marked a phase of standardization and expansion of the right of coastal states to sea, also considering as dominant phenomenon of the "contemporary revolution of international law of the sea" (Apollis, 1980). This extension builds on the content of the rights granted to states, mainly in fisheries and exploitation of the riches of the soil and subsoil, and more recently for reasons of protection/conservation and sustainable use of environment and marine resources. In this legal context favorable to maritime "nationalism", the Mediterranean would almost act as an exception. Its cramped *de facto* prohibits the establishment of EEZs with a maximum width of 200 nautical miles. Beyond the territorial seas, it is always the high seas regime that

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prevails. The situation remains largely undetermined, heterogeneous, despite several unilateral States initiatives, but remains relative on the enforceability against neighboring countries and international law. The Mediterranean offers a complex legal landscape, burdened by its international status of semi-enclosed sea (art. 122 UNCLOS). Through the dialectic of law and territory, marine spatial claims of Mediterranean states seem inclined by a new impetus. Since the 2000s, and in support of international environmental law, the need to protect ecosystems and marine biodiversity appear as a legitimate ground for consolidation of state powers in continuity of territorial waters.



**Status of maritime jurisdiction in the Mediterranean** (although some inaccuracies persist in this mapping representation, it clearly illustrates the multiplicity of situations and States claims).

### **A semi-enclosed sea: Major constraint to unilateral delimitation**

#### *A few binding but self-limiting international status*

- Article 122 & 123 UNCLOS: a principle of cooperation in specialized fields of management of biological resources, preservation of the marine environment and scientific research.
- “Diplomatic” dimension of the governance of a semi-enclosed sea: consensual approach of fact and law.
- Art.74 UNCLOS on the delimitation process “of the exclusive economic zone between States with opposite or adjacent coasts” by agreement, treaty, thus excluding any individual and exclusive action.

*. Scope and limits of Mediterranean governance: the example of fisheries*

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- 80% of Mediterranean waters are under a regime of high seas (56% worldwide - Sumaila et al., 2007). The International Legal Regime of the high seas governs by the ultimate survival of the customary principle of *Mare Liberum* (Grotius in 1608). Freedom on the high seas (art. 87 UNCLOS), including fisheries, but framed in the goal of mutual respect for state interests, equitable and sustainable exploitation of stocks (MSY) and conservation of biological resources.
- General Fisheries Commission for the Mediterranean (GFCM) (regional cooperation in managing fisheries resources): Advisory institution (reports, recommendations and resolutions) without any legally binding, but having a normative scope that we could qualify as "indirect".
- International law principle of *pacta sunt servanda*: Treaties must be performed in good faith by the States, without raising breaches of reasons based on provisions of national (internal) law. Legal problems of applicability (enforcement) in areas of high seas or in fuzzy areas "under the jurisdiction", where governments are responsible only for their own nationals, without any capacity for preventive action or repressive towards foreign fleets or ship-owners.
- The GFCM: explicit illustration of a low-normative Mediterranean policy, emphasizing soft law, consultation and consensus.

### **The heterogeneity and legal fragility of territorial claims**

#### *Status and legal significance*

- Heterogeneity of the claims and declarations of coastal States: multiplication of spaces "under the jurisdiction" beyond the territorial waters with the terminology, aims and methods of various calculations.
- List commented: Exclusive Economic Zone, Fishing Protection Area, Exclusive Fishing Zone, Ecological Protection Area...

#### *Conflicts and legal disputes*

- Disputes/objections from neighboring States about these unilateral statements: loading maritime borders and methods used (baselines, equidistance ...).
- Several cases of litigation (international law) for the delimitation of territorial waters and continental shelves. Another obstacle for States to focus now on the EEZ with Problems of interpretation and difficulties in establishing boundaries in accordance with art. 174 UNCLOS.
- At present International law does not provide alternative form to the EEZs and recognizes no right to establish new categories of legal areas "under the jurisdiction" by other statutes or specific names (Significant legal uncertainty as to the true scope of these boundaries and their enforceability in international law of the sea).

### **The environmental protection, the new etendard of coastal state's hold over sea spaces**

#### *The conservationist impulse and its legal consequences*

- The phenomenon of Marine Protected Areas (MPAs): International and Regional Law in hard development especially since the 2000s (general overview and many examples).
- Tendency to expand MPAs "seaward" (off-shore) : deep sea, canyons, mammals, highly migratory fish, EBM ...

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- Media power, political and financial international lobby groups, favoring a network approach, with significant national and local relay. Proposals for many large protections with studies and scientific arguments (biodiversity, habitats, corridors, species ...).
- Rapid assessment of the situation of MPAs, including "large MPAS" and incentives to off-shore: regional actions (Barcelona Convention, GFCM ...) and national actions (eg the French strategy).

### *Subsidiarity and responsibility benefit of the states*

- Virtues and Limits of Regional Governance: Problems of implementation of joint and consensual decisions: means, controls and monitoring, fiscal and legal powers of police powers at sea (fisheries, environment, pollution ...). Multiple instances with FAO GFCM, the implementation of the Barcelona Convention and its various protocols. International law exists only through the States and their common will.
- An environmentalist discourse sometimes unrealistic and alarmist or constrained by the willingness of States, by national contexts and economic issues clearly superior.
- The legitimacy of extending the right (hold) of coastal states? Idea of the most appropriate level of decision/management or "governance" for a semi-enclosed regional sea. Integrating the concepts of effective protective action in connection with the special responsibility of coastal states (a consequence of the principle of "coastal privilege").
- Willingness of States to develop protected areas beyond the territorial waters: examples of MPAs in place or planned beyond territorial waters.

## Conclusion

Reflections have been conducted on the subject discussed in this article, especially for fisheries management, but mainly in terms of theoretical scientific research, without creating the conditions for its political ownership and legal translation. Several ideas were put forward, which can be summarized into two directions: **1)** On the basis of an international treaty, design and develop the conditions for a "meta-decision" to solve the technical problems related to water and geographical in court (delineation criteria, methods of calculation of the widths of EEZ, fair and balanced distribution of space ...). This process aimed to match the requirements of general international law to local Mediterranean. In this first configuration, this approach remains a classic inter-state cooperation with the main objective (and temporary) would be the final settlement of boundary issues navy. In this case, we can imagine the gradual "erosion" of high-seas to its disappearance altogether. **2)** Submit a *sui generis* status for the Mediterranean. On this last point, some authors suggest the recognition of a "patrimonial sea", a synonym of common interest rather than exclusive, with the establishment of a supranational institution (condominium) responsible for water resources and management (much more integrated system). In the second, setting the EEZ would no longer be an imperative of governance, since it would be a sharing of powers between the states (12 miles zone) and an autonomous and competent regional organization (high seas)...

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