Legal patchwork and national borders in the Mediterranean Sea

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ABSTRACT

The Mediterranean is a particularly vulnerable sea due to its morphology and its geographical position, and it is a highly complex basin also from a legal point of view. This paper highlights some legal issues emerging from state and international practice that are destined to influence the future developments of the legal regime of the Mediterranean Sea. In particular, the focus is on the legal fragmentation and uncertainty related to national regulations and actions in the Exclusive Economic Zone (EEZ) that can entail a number of risks for an effective and durable protection of the marine ecosystem. Indeed, the legal patchwork of the maritime zones in which the basin is divided and the existing and potential conflicts on the delimitation of those zones between the coastal states can undermine national or even international efforts to protect the marine environment and its resources, thus causing negative and irreversible effects on the whole planet ecosystem. This paper is complementary to the video presented by the author at Blue Planet Economy (BPE) European Maritime Forum 2021.

KEYWORDS: Mediterranean Sea, exclusive economic zone, environmental protection.

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1 THE SPECIAL CHARACTERISTICS OF THE MEDITERRANEAN SEA

The Mediterranean is a particularly vulnerable sea because of its morphology, of its geographical position and of the fragmentation due to the many maritime zones established by the Mediterranean states, as well as to the heterogeneity of their political and legal systems.

The basin has unique characteristics: it is a semi-enclosed sea, according to the legal definition contained in art. 122 of the United Nations Convention on the Law of the Sea of 1982 (hereinafter the 1982 Convention)[1], and it is surrounded by 22 coastal states, belonging to three continents[2].

The significant impact caused by international navigation, by continuous industrialization of the coastline and by other severe and numerous anthropogenic pressures on the marine environment and on its resources highly contributes to the particular vulnerability of this sea.

In addition, several other elements of political and legal relevance increase dramatically the complexity of the whole picture, such as the social and political instability of a number of coastal states, the several open or latent inter-state and intra-state conflicts and the strategic importance of the basin in the EU and international political and security theatre[3].

1.1 The legal regime and the proclamation of the Exclusive Economic Zone

As far as the legal regime of the Mediterranean Sea is concerned, the peculiarity of the basin is even more evident[4]. Indeed, differently from the states of the other seas of the planet, the Mediterranean coastal states have started proclaiming their Exclusive Economic Zone (hereinafter EEZ) only since the nineties and the process of proclamation is not yet completed. The EEZ is a maritime zone related to the water column and to the seabed and subsoil starting from the baseline and extending to a maximum distance of 200 nautical miles, where each coastal state can exercise some exclusive sovereign powers and jurisdictional rights in certain domains, as illustrated in paragraph 2[5].

As a consequence, today, a number of areas of this sea are still subject to the legal regime of the high seas in the absence of EEZ proclamations by all coastal states[6].

Moreover, until very recent times, states decided to exercise only some powers and not all the rights provided for by international law, creating the so-called reduced areas, also known as *minoris generis* zones, such as fisheries protection zones or ecological zones[7]. This was the case of many coastal states, as Spain, France, Libya and Algeria, that, after having proclaimed a reduced zone, decided to extend their proclamation to all the rights offered by international law, transforming their fisheries or ecological protection zones into full-fledged EEZ.

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[1] The United Nations Convention on the Law of the Sea of 1982 (hereinafter the 1982 Convention) is the framework convention regulating all activities at sea. It was adopted on 10 December 1982 and entered into force on 16 November 1994 (1833 UNTS 397 UNCLOS).
The Convention is available at https://treaties.un.org/doc/publication/CTC/Ch_XXI_6_english_p.pdf
The Convention has been ratified by all Mediterranean states with the exception of Israel, Libya, Syria and Turkey. See the status of the ratifications at https://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm

[2] The coastal states of the Mediterranean, not considering United Kingdom for Gibraltar and the basis of Akrotiri and Dhekelia, are the following: Albania, Algeria, Bosnia-Herzegovina, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Morocco, Monaco (Principality), Montenegro, Slovenia, Syria, Spain, the State of Palestine, Tunisia, and Turkey.

[3] For some security issues under the international law of the sea, see Andreone (2018)

[4] On the legal regime of the Mediterranean Sea see Andreone & Cataldi (2010); Gavouneli (2008); Gimenez (2007); Scovazzi (2001).

[5] Art. 55 of the Convention, in defining the legal regime of the EEZ, states that "The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention".

[6] For an update picture of the national proclamations by Mediterranean coastal states beyond the 12 nautical miles of the TS, see Andreone (2020).

[7] For a survey of the *minoris generis* zones as well as the new maritime zones, see Molenaar (2015).

To complicate the already composite picture, there are also the often-conflicting implications deriving from national proclamations by coastal states, drawing unilaterally the external limits of their EEZ in areas overlapping the maritime zone already claimed, or potentially claimable, by opposite or adjacent states. Indeed, in the Mediterranean Sea the distance between the coasts never exceeds 400 nautical miles; as a consequence, no coastal state can unilaterally proclaim an EEZ of 200 nm, which is the maximum extension admitted by international law. The potential conflicts and the criticalities arising from the delimitation of a maritime border are illustrated in paragraph 3.

The partition of the sea into as many maritime national zones as the number of bordering states, regulated differently by each coastal state (although it was inevitable and, in some respects, desirable[8]) entails legal uncertainty regarding the applicable rules and the standard of effective environmental and resources protection. It also increases the risk of conflicts between opposite and adjacent states on the maritime boundary delimitation and on the appropriation of living and non-living resources.

In this context, this legal fragmentation appears counterproductive for the environmental protection of the Mediterranean ecosystem that would require a much greater cooperation effort by bordering States.

Finally, it has to be recalled that once the process of extension of national jurisdiction will be concluded, the high seas regime will disappear in the Mediterranean Sea (see Figures 1 and 2, respectively illustrating the current situation of proclamations and the future one).

Figure 1. Current situation of the Mediterranean Sea national proclamations.

[8] Most of the proclamations established by Mediterranean states in the nineties were based on their environmental concerns and on the idea of exercising the necessary environmental and fisheries protection through the establishment of national zones.

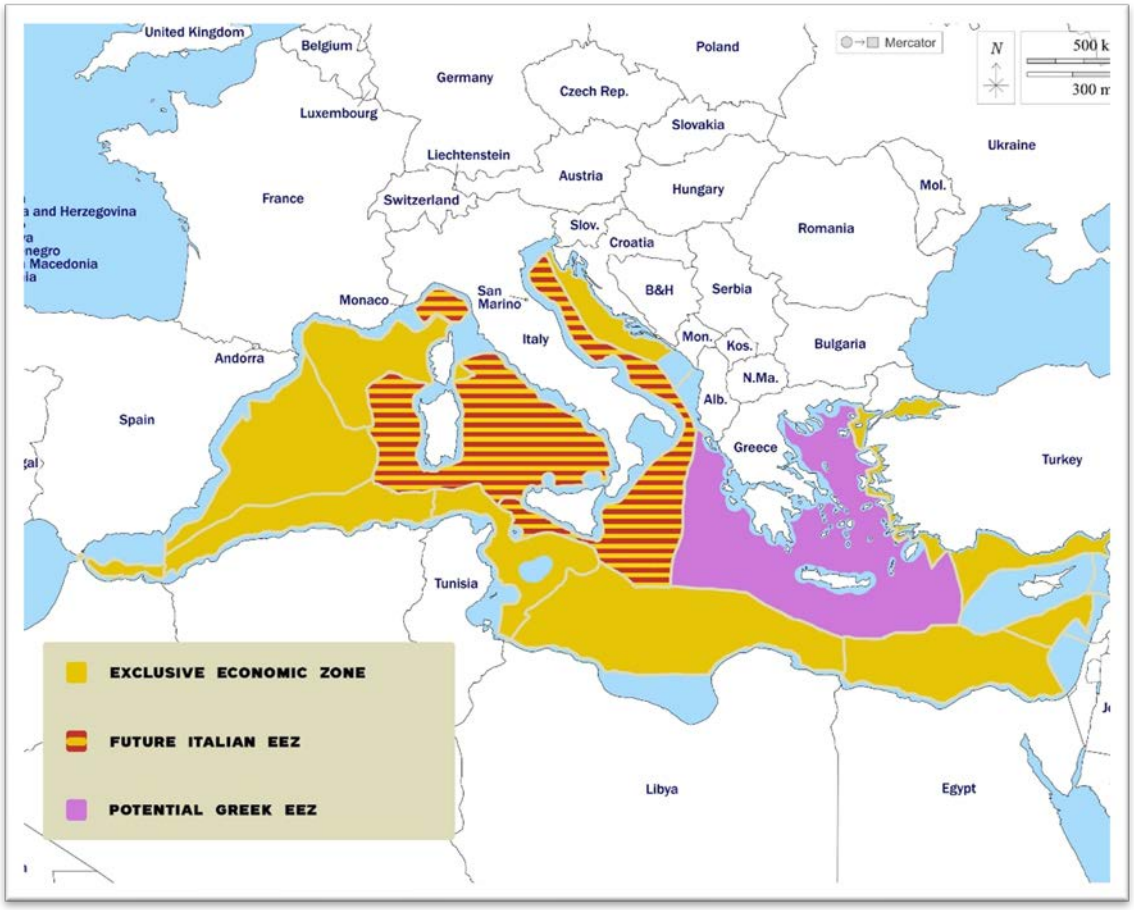

Figure 2. Future situation of the Mediterranean Sea.

Disclaimer: The maps have the sole aim of showing the partition of the Mediterranean Sea in many maritime zones and they do not reflect the official geographic coordinates claimed by states. Being the purpose exclusively illustrative, there is no intention of indicating official and/or possible borders neither suggesting solutions. Apologies for evident mistakes due to the fact that they have been realised by non-expert in cartography and in relevant disciplines.

1.2 The Italian case

In June 2021, the Italian Parliament approved the law that authorises the declaration, by Presidential decree, of an EEZ, in all or part of the waters beyond the Territorial Sea[9], on the basis of a decision by the Council of Ministers on the proposal of the Minister of Foreign Affairs and International Cooperation. The external limits of this future zone will be fixed by agreement with the opposite or adjacent states.

Previously, Italy had established an ecological protection zone beyond the 12 nautical miles in the Ligurian Sea, in the Tyrrhenian Sea and in the Western Mediterranean Sea by the Presidential Decree No. 209 of 27 October 2011 on the basis of Law No. 61 of 8 February 2006, authorising the establishment of Ecological Protection Zones[10]. Therefore, in this area national,

[9] Law No. 91, June 14, 2021, "Istituzione di una zona economica esclusiva oltre il limite esterno del mare territoriale", entered into force on 08 July 2021 (GU No. 148 of 23 June 2021).

[10] Presidential Decree No. 209, October 27, 2011 (GU No. 293 of 17 December 2011) establishing an Ecological Protection Zone in the North Western Mediterranean, in the Ligurian Sea and in the Tyrrhenian Sea with the exclusion

European and international rules on the prevention and repression of all possible types of marine pollution and on the protection of marine mammals and biodiversity are also applied to ships flying a foreign flag and to persons of foreign nationality. In this zone, Italy also exercises exclusive sovereign rights over fisheries as specified by Law No. 116 of 11 August 2014, amending Law No. 61 of 2006[11].

For the time being, until the approval of a Decree establishing the EEZ beyond the territorial sea in the Sicily Channel and in the Adriatic and Ionian Seas, for foreign vessels those waters remain subject to all freedoms of the high seas, from the exploitation of resources to navigation, without the possibility to apply national and EU environmental protection measures and regulations.

2 Legal aspects of the Exclusive Economic Zone

The concept of EEZ, as regulated by Part V of the 1982 Convention, represents the development and merger of the exclusive fishing zone, at the centre of the international debate since 1958[12], and of the concept of "patrimonial sea", which was affirmed during the seventies, following the claims of the newly formed and developing states to re-appropriate their own natural resources, including the marine ones [13].

Over the years, the claims of sovereignty of coastal states have extended to all the economic resources of the water column beyond the Territorial Sea (hereinafter TS), and therefore not only to fisheries resources, including the seabed and subsoil resources which were already part of the Continental Shelf (hereinafter CS) concept. Therefore, the EEZ, as codified by the 1982 Convention, also absorbs the powers of the coastal state over the CS, although the latter continues to have a distinct discipline in Part VI of the Convention.

In the EEZ, coastal states enjoy exclusive rights of exploitation of all the marine resources and jurisdiction over environmental protection, artificial islands, and marine scientific research; in this zone, they should also respect relevant international obligations to protect and conserve the marine ecosystem.

Differently from the TS and the CS, which are the so-called automatic maritime zones, as the coastal State enjoys respectively sovereignty and some exclusive sovereign powers over resources regardless of their will and express proclamation concerning the exercise of those powers, the EEZ has to be proclaimed by the coastal state.

However, today, the need for an express proclamation is being discussed as a *sine qua non* condition for the existence of the EEZ itself. Indeed, the proclamation has the mere function of informing other States of the ways and limits of the exercise of the powers conferred to the coastal State over its EEZ (Andreone, 2004). In fact, the Convention does not indicate either the forms or the ways in which this proclamation should take place, and also the States practice of proclaiming the EEZ has assumed different forms over the decades, thus not indicating a standard procedure.

Finally, it is necessary to underline that coastal States, when establishing their EEZ according to the 1982 Convention, not only are claiming for the rights and powers conferred to them by

of the Strait of Sicily, was notified to neighbouring states and to the UN Secretary General. For an analysis of the Law No. 61 of 8 February 2006 GU No. 52 of 3 March 2006, see Andreone (2007); Leanza (2006).

[11] By the amendment introduced by Law No 116 of 2014, the national and EU regulations (notable the Common Fisheries Policy) are applicable to foreign fishing vessels in the Italian Ecological Protection zone.

[12] The original core of the concept of the Exclusive Economic Zone (EEZ) is attributable to the Exclusive Fishing Zone (EFZ) and to the most ancient claims of coastal states to exercise exclusive powers of conservation and management over marine resources living beyond the territorial sea. The debate that characterised the First United Nations Conference on the Law of the Sea held in Geneva in 1958, focusing on the extension of the territorial sea (TS) and on the special interests on fish resources located beyond the TS, shows that already at the end of the fifties the issue of extending the powers of the coastal state over fishing resources beyond the TS had already established itself internationally.

[13] The legal literature on EEZ is very extensive and references can be found in Andreone (2015).

international law, but they also assume a number of duties provided by the 1982 Convention, mainly in the XII Part devoted to environmental protection.

2.1 Rights and duties of the coastal state in the EEZ

Art. 56 of the 1982 Convention distinguishes between ***sovereign rights*** and ***jurisdictional rights*** enjoyed by coastal State in the EEZ.

Sovereign rights are recognised to the coastal state for the purposes of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed, and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from water, currents and winds.

Then, it is provided that coastal states enjoy ***jurisdiction*** with regard to: (i) the establishment and use of artificial islands, installations and structures; (ii) marine scientific research; (iii) the protection and preservation of the marine environment, and regarding other rights and duties provided for in the 1982 Convention.

A brief analysis of each area of competence provided for by art. 56 can be useful to analyse the scope and the legal nature of the powers recognised to the coastal State by the 1982 Convention.

Living resources. Art. 56 and other relevant articles of the Convention attribute to the coastal State sovereign rights functional to the exploration, exploitation, conservation and management of all living and non-living natural resources of the water column, of the seabed and of the subsoil of the EEZ, as well as functional rights to other activities connected with the exploration and economic exploitation of the area. From the reading of Part V, almost entirely dedicated to living resources, and of the other relevant provisions of the Convention, it is clear that the coastal State enjoys extensive and exclusive powers over living resources, while the exclusive powers over other economic resources are not as specified and regulated. Indeed, art. 73 of the Convention provides for a broad range of measures, including boarding, inspection, arrest, and judicial proceedings, that can be adopted on foreign vessels in the exercise of the sovereign rights of the coastal State over living resources.

Fishing sector. With regard to fisheries, the Convention creates a detailed conventional regime that regulates the rights and obligations of coastal states, and also provides some prerogatives for third states. Firstly, the coastal state must comply with the provisions on the conservation and exploitation of living resources provided for by art. 61 and art. 62 of the Convention, establishing the total allowable catch that can be caught in one's EEZ, and ensuring that conservation is not endangered by excessive exploitation (art. 61, paragraphs 1 and 2). In the second instance, the coastal state is required to promote the objective of the optimal utilization of the living resources (art. 62, paragraphs 1 and 2). Then, the coastal state verifies the existence of a possible surplus of resources, within the limits of the total allowable catch, that can be allocated, through bilateral agreements, to third States chosen by the coastal State on the basis of the criteria set by art. 62. However, the vagueness of the above-mentioned duties of conservation and of rational allocation of the surplus, in the light of all the pertinent provisions of the 1982 Convention and of State practice, leads to the conclusion that the power of management and conservation of EEZ living resources is highly discretionary. Neither the reference to landlocked States and geographically disadvantaged States as favoured beneficiaries of the possible surplus nor the allocation of the surplus itself to third States correspond to practice and customary law.

Non-living resources. Regarding non-living resources and sedentary species, within 200 nautical miles, the applicable rules are those provided for both the EEZ, if proclaimed, and the CS. In the case of an extended CS, which therefore exceeds 200 nautical miles, only the rules provided for the CS in Part VI will apply. However, it is interesting to note that the legal regime of fishing in the EEZ does not apply to sedentary species (art. 68 of the Convention). It follows that a) even coastal states, which have not proclaimed the EEZ, may in any case exercise sovereign rights over these species; b) this exercise of powers is not limited by the conservation and rational

management obligations envisaged for fishing; c) finally, the provisions of art. 73 regarding coercive powers of the coastal State would not, in principle, be applicable to fishing for sedentary species.

However, the practice of coastal states shows a tendency to exercise broad coercive powers also to exercise sovereign rights over the CS's natural resources, living and non-living, which could pose a series of legitimacy and identification problems in the future.

Other economic resources. Coming to the other economic resources of the EEZ, as required by art. 56, the coastal State enjoys «sovereign rights […] with regards to the other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds» (Koulouris, 2020).

Artificial islands. Art. 56 attributes to the coastal State jurisdiction over the creation and use of artificial islands, installations and structures, compatibly with other relevant provisions of the Convention and, in particular, with the provisions of art. 60, which outlines the applicable legal regime, and that art.80 applies *mutatis mutandis* also to the CS.

The coastal state has the exclusive right to build, authorise and regulate the construction, positioning and use of the three categories of constructions at sea. In any case, this exclusive right must be coordinated with the rights of third countries for navigation within the EEZ and the CS, therefore it cannot be said to be absolute.

Scientific research. Art. 56 letter b) of the Convention attributes jurisdiction over marine scientific research to the coastal State, a matter regulated in detail in Part XVIII of the Convention under art. 246-255. Within the EEZ, the coastal state enjoys wide prescriptive powers on marine scientific research, although the Convention reaffirms the general principle of the freedom of pure scientific research, that should not imply any commercial application.

The legal regime envisaged for marine research in the EEZ and in the CS is much more detailed and complex than that provided for by the Geneva Convention on the CS of 1958, with the aim of obtaining a reduction in abuses and non-cooperative behaviour by coastal states towards research vessels belonging to third States[14].

In any case, the coastal State's discretion to authorise scientific research remains very wide both in the EEZ and in the CS.

Protection of the marine environment. Differently from what can be inferred reading only the provisions of art. 56, which recognises jurisdiction on environmental protection to the coastal state, the combined reading of the relevant provisions (including Part XII of the Convention devoted to the protection of the environment) excludes that coastal States enjoy exclusive and extensive rights to protect the environment, but rather selected and specific powers, tailored according to the various types of pollutants under consideration, such as pollution from seabed activities, from installations and other devices, from dumping, or directly from vessels.

For each of these types of pollution, except pollution from vessels, coastal States enjoy wide regulatory and enforcement powers, since the related activities are subject to their previous consent and are not limited by international standards. By contrast, with respect to ship source pollution, coastal States cannot adopt domestic laws or regulations containing environmental protection measures that are less effective than generally accepted international laws or regulations, adopted by the competent international organizations, namely the International Maritime Organization (IMO).

The duty to respect the minimum international standards of environmental protection represents a form of limitation on the power of the coastal State to protect more strictly its EEZ environment. Turning to the enforcement and judiciary powers of the coastal States, the provisions of Part XII indicate a clear preference for the competence of the flag State to judge its vessel in cases of pollution violations within the EEZ of another State. This is evidently due to a general favour, at the time of the negotiation of the 1892 Convention, for the freedom of navigation and the predominance of flag State jurisdiction; but, on the other hand, it highlights

[14] For an extensive discussion of marine scientific research issues, see Cinelli (2020), Treves (2012), and Bateman (2005).

the weakness of the coastal State's enforcement action and its capacity to represent a deterrent to these pollution violations.

2.2 Rights and duties of third states in the EEZ

Art. 58 is dedicated to the rights and obligations of other states in the EEZ. It expressly mentions three freedoms that are still guaranteed by the Convention in art. 87 regulating the freedoms of the high seas: freedom of navigation, freedom of overflight and freedom of laying submarine pipelines and cables.

This specification implies that there is no longer any presumption in favour of other freedoms other than those mentioned.

However, art. 58, first paragraph, also recognises to third States all other uses of the sea that are lawful under international law and connected with the aforementioned freedoms, while the second paragraph expressly refers to the provisions of the Convention, from art. 88 to art. 115, regulating the high seas.

Indeed, art. 58 together with the subsequent art. 59 indicate the need to ensure a constant balance of the interests of the coastal state and of the other states in the exercise of the three freedoms mentioned.

Under the Convention, the limitations to third States' rights of navigation and overflight in the EEZ are not only due to the duty to take into due account (due regard) the rights of the coastal State (art. 58, paragraph 3), but also to the duty to comply with the other applicable international standards (art. 58, paragraph 3), and in particular the rules aimed at protecting general interests, such as the protection of the marine environment (art. 59).

2.3 Conflicts of attribution of powers between the coastal State and third States and creeping jurisdiction

Although the 1982 Convention contains a detailed legal regime of the rights and obligations recognised to coastal States and to other States in the EEZ, the risk of conflict of attribution of powers and competences between States remains very high, both in relation to the activities expressly envisaged and regulated, and regarding economic and non-economic activities, which were not foreseen or foreseeable at the time of the drafting of the Agreement. This potential conflict arises from the functional characteristic of state powers at sea and from the incessant tendency of states to extend their powers rather than reduce them (creeping jurisdiction) (Kwiatkowska, 1991; Franckx, 2005).

Even the drafters of the Convention were aware of the fluidity of the concept of EEZ, and for this reason, by introducing the provisions of art. 56, 58 and 59, they created a "permanent solution mechanism" for conflicts of attribution of rights between states with different interests.

In particular, through art. 59, a balancing rule was introduced for the attribution of residual rights not attributed and not foreseen, based on the concept of equity, on the assessment of all the relevant circumstances and the importance of the interests at stake, as well as on the consideration of the interests of the international community as a whole (Nandan & Rosenne, 1993)[15].

The latter reference to the interests of the international community appears significant, since it implies the necessity to consider, when balancing the rights of coastal or third states, also the *erga omnes* obligations binding all States, such as the obligation to protect the marine environment and the obligation to use the sea for peaceful purposes only.

Although, in principle, no presumption in favour of coastal states or other states appears to be codified in the Convention, international practice shows a certain imbalance in favour of coastal states when resolving conflicts of attribution, which leads us to admit multiple forms of extension

[15] The authors of the well-known Commentary cited believe that art. 59 favours coastal states when their economic interests are at stake while, when such interests are not involved, the interests of third states and the international community must be considered.

of the powers of coastal states within the EEZ (functional creeping jurisdiction)[16]. This happens, for example, in cases of extensive interpretation of the coastal state's powers over fisheries or over protection of marine environment or in other areas of its competence within 200 nautical miles.

3 Delimitation of the Exclusive Economic Zones and potential conflicts

In the absence of the maximum possible extension of the EEZs, being the case of a potential overlap of them, the borders of the EEZs of two or more adjacent or opposite states must be fixed by agreement among the concerned states. Indeed, current international law excludes the definitive unilateral determination of the maritime borders in case of potential overlapping with the maritime zones of other states. Indeed, art. 74 of the 1982 Convention regulates the delimitation of EEZs between states when their zones are overlapping, providing that the agreement among parties involved in the definition of the maritime boundaries of their respective maritime areas would be the preferred solution, as it guarantees the protection of the prevailing interest, which is to ensure an equitable result for the parties.

The agreement on the maritime border of the EEZ must not meet any predetermined criteria: its content is free and may be formal or tacit. Nevertheless, the interested states only have the obligation to conduct the negotiations in good faith and with the real intention of achieving an agreed border, but no obligation to conclude a final agreement on the border.

This is the reason why it can happen that a coastal state decides to proclaim its maritime borders unilaterally, despite the potential overlap with neighbouring states, even after having tried to negotiate an agreement with them. In a number of cases where coastal states did not achieve a positive outcome with the negotiations, the dispute among the parties was brought before international courts.

In those cases, open or latent conflicts among opposite or adjacent states dramatically increase the risk of affecting or undermining an effective protection of the marine ecosystem.

As mentioned, the distance among the coasts of the Mediterranean Sea never exceeds 400 nautical miles, thus implying the possibility of overlaps, and even conflicts, between coastal states.

In the seventies and eighties, some Mediterranean states have concluded a number of delimitation agreements for their CS borders. Following the more recent practice of proclaiming the EEZ, negotiations among coastal states to fix even the border for the water column have been started and, in some cases, peacefully finalised into agreements[17]. Nevertheless, the number of open conflicts and of undergoing negotiations on the EEZ borders is still high.

Italy is also interested by this kind of negotiations, officially or unofficially initiated to fix the EEZ borders with several opposite or adjacent neighbouring states[18]. Interestingly, the EEZ border with Greece has been fixed by agreement in 2020, even before the official proclamation by Italy and Greece of their respective EEZs in the Ionian Sea[19].

[16] The mentioned "functional creeping jurisdiction" is only one aspect of the so called "creeping jurisdiction" claimed by coastal states over the years. Indeed, it has to be added to the well-known tendency of coastal states to extend the spatial range of influence of the coastal state beyond 200 nautical miles (space-type creeping jurisdiction).

[17] Among the several agreements concluded on the EEZ delimitation but still generating doubts and conflicts, we can mention the ones concluded by Cyprus in 2003 with Egypt and in 2010 with Israel (both texts are available at United Nations Oceans & Law of the Sea www.un.org/Depts/los/index.htm). In 2007, Cyprus also signed an EEZ delimitation agreement with Lebanon (Lebanon did not ratify it, claiming an area that overlaps the EEZ delimited by Cyprus and Israel) (Scovazzi, 2012).

[18] For an in-depth analysis of the delimitation issue between Italy and Algeria see Caffio (2020). As per the delimitation agreement concluded by Italy and France in 2015 and not yet entered into force see Caffio (2016) and Ronzitti (2016).

[19] The Italian and English texts are attached to Law No. 93 of 1 June 2021 (GU No. 149 of 24 June 2021) "Ratifica ed esecuzione dell'Accordo tra la Repubblica italiana e la Repubblica ellenica sulla delimitazione delle rispettive zone marittime, fatto ad Atene il 9 giugno 2020", by which Italy ratified the agreement less than a year after the Greek ratification by Law No. 4716 of 28 August 2020, *Official Gazette* of the Hellenic Republic No. 163 of 28 August 2020. The agreement entered into force on the date of the exchange of notifications held on 8 November 2021. For an in-depth analysis of the agreement between Italy and Greece see Marghelis (2021) and Mancini (2021).

4 CONCLUSIONS

Forty years after the signature of the United Nations Convention on the Law of the Sea of 1982, even if its complex corpus of provisions still remains a main point of reference, the uncertainty related to the ability of the Convention to cope with new challenges, to solve conflicts, and to settle disputes in order to overcome tensions between opposing interests within the EEZ is destined to increase due to the numerous environmental emergencies, the massive introduction of new technologies, as well as the new demand for safety and control of marine spaces.

Against this background, the legal fragmentation and the uncertainty related to national and international practice in the Mediterranean Sea show that it is incumbent upon the coastal states to urgently meet the challenge of managing and protecting a semi-enclosed sea threatened by many anthropogenic impacts and dangers.

This complex legal context can be counterproductive for the environmental protection of the Mediterranean ecosystem, which would require a much greater cooperation effort by the interested States. In principle, the Mediterranean coastal states are bound by art. 123 of the 1982 Convention, which provides for an obligation, upon States bordering a semi-enclosed sea, to cooperate with each other in the exercise of their rights and in the performance of their obligations with the aim of ensuring the conservation of marine resources, the protection of the marine environment and the coordination of their scientific research policies. Nevertheless, the practice has demonstrated that over the years this obligation of cooperation has been interpreted more as a duty to attempt negotiation in various matters, in particular as far as fisheries and environmental protection are concerned, but not as an obligation to conclude a binding agreement. Anyhow, the many international cooperation arrangements for conservation and preservation of the marine environment and of its resources are still inadequate, sometimes neither harmonised nor coordinated, too sectoral, or not sufficiently implemented.

Having this in mind, there is a need to protect collective values and to ensure a good status of the marine environment and of its resources in the interest of present and future generations. To achieve this goal, it appears urgent to overcome the conflicts inherent the delimitation, looking for alternative solutions to the strict division of the basin into national maritime zones with different protection measures. International practice in other seas already offers a number of examples of maritime delimitation agreements providing for shared management of common resources and for marine environmental protection, such as shared marine protected areas, in overlapping or disputed areas.

In the Mediterranean too, the focus of the debate should shift from the question of state interests over national maritime areas, mainly the EEZ, to the possibilities of international cooperation aimed at protecting the marine environment (and its resources), to be considered as a *unicum* and not as "space" to be divided[20].

Finally, it is worth to recall that the exercise of state powers and prerogatives conferred by the Convention to coastal states is never free from obligations, which are inextricably linked to the related rights of use and exploitation of the sea and of its resources.

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