



FACULTY OF LAW
University of Lund

Nina Mårtensson

The French Ecologic Protection
Zone
- Developing Marine
Environmental Protection in
International Law

Master thesis
20 points

Supervisor: Ulf Linderfalk

International Law, Law of the Sea, Environmental Law

Spring 2004

Contents

SUMMARY	1
PREFACE	2
ABBREVIATIONS	3
1 INTRODUCTION	4
1.1 Presentation of the subject	4
1.2 Method and material	5
1.3 Disposition	5
2 THE FRENCH LAW OF 2003 CREATING AN ECOLOGIC PROTECTION ZONE	7
2.1 Article 1 Proclamation of an EPZ	8
2.2 Article 2 Marine Scientific Research	8
2.3 Article 3 MARPOL violations	9
2.4 Article 4 Court Competence	9
2.5 Article 5 Dumping	10
2.6 Article 6 Incineration	10
2.7 Article 7 and 8	10
2.8 Conclusion	10
3 THE NEED OF PROTECTION OF THE MARINE ENVIRONMENT	12
3.1 Dumping of chemicals and heavy metals	12
3.2 Shipping	13
3.3 Seabed mining and marine scientific research	14
4 EXISTING ENVIRONMENTAL PROTECTION IN INTERNATIONAL LAW	15
4.1 UNCLOS	15

4.1.1	Vessel Source pollution	15
4.1.1.1	Legislative jurisdiction	16
4.1.1.2	Flag State enforcement jurisdiction	16
4.1.1.3	Coastal State enforcement jurisdiction	16
4.1.1.4	Port State enforcement jurisdiction	17
4.1.2	Dumping	18
4.1.3	Marine Scientific research	19
4.1.4	Incineration	19
4.1.5	Safeguards	20
4.2	MARPOL	21
4.2.1	Jurisdiction	22
4.2.2	Pollution by Oil and Noxious Liquid Substances in Bulk	23
4.2.3	Dumping	23
4.2.4	Incineration	24
4.2.5	Evaluation	24
4.3	The Mediterranean Action Plan	24
4.3.1	The Barcelona Convention	25
4.3.1.1	Dumping	26
4.3.1.2	Vessel source pollution	27
4.3.1.3	Monitoring, liability and compensation	27
4.3.2	Evaluation	27
4.4	Special Areas	28
4.4.1	MARPOL	28
4.4.2	UNCLOS	29
5	CLOSING COMMENTS	30
5.1	Conclusion	30
5.2	Reflections and future developments	31
	BIBLIOGRAPHY	33
	SUPPLEMENT A: LOI 2003-346	37
	SUPPLEMENT B : LOI 76-655	41
	SUPPLEMENT C : LOI 86-826	43
	SUPPLEMENT D : DECRET 2004-33	44
	SUPPLEMENT E : CODE DE L'ENVIRONNEMENT (PARTIE LEGISLATIVE)	47

Summary

In 2003 France introduced an ecologic protection zone off its Mediterranean coast. In that zone France has jurisdiction regarding environmental protection. This thesis will examine whether the zone is in conformity with existing international law and whether it was a necessary measure despite all the existing environmental protection in the Mediterranean Sea area.

The thesis is structured as a combined descriptive and analytical study of French and international environmental law applicable to French maritime areas, especially the Mediterranean. The French law will be described to explain which changes are done in French law and which competences were added. In order to examine whether the changes made are in consistency with existing international law relevant provisions in three conventions applicable to the Mediterranean Sea area; UNCLOS, MARPOL and the Barcelona Convention, will be described.

The thesis also includes a chapter on different threats to the marine environment in French waters to explain why there is a need of protection and preservation of the marine environment. Another chapter will explain the function of being proclaimed a Special Area to give a complete picture of existing protection in the Mediterranean.

The examination of existing environmental protection shows that it presupposes implementation through national legislation. National initiatives like this one are necessary for their function. The French law follows the provisions set out in UNCLOS for an exclusive economic zone and it aims to enforce internationally acknowledged conventions such as MARPOL and the Barcelona Convention. Therefore the French law must be considered to be in conformity with existing international law.

Preface

I would like to thank Jur. Dr. Ulf Linderfalk for taking great interest in a rather narrow topic and for, despite all his other commitments, never being hard to get in contact with or to get support from. I would also like to thank professor Pierre Bringuier at Montpellier University in France for developing my interest in maritime law by his fascinating course in *Droit d'espaces et mondialisation* and for proposing the discussed French law as a topic for my thesis.

I have librarians Lena Olsson and Habteab Tesfay at the Raul Wallenberg Library and Susan Wangeçi-Ekelöf and Cecilia Denne at the World Maritime University Library to thank for all the information I managed to gather, without their help and good will my work would have been much more difficult.

For everything else I would like to thank my wonderful parents Dennis and Jeanette Mårtensson. Thank you for always being there, for believing in me and for making it possible for me to pursue my goals.

Abbreviations

EEC	European Economic Community
EEZ	Exclusive Economic Zone
EPZ	Ecologic Protection Zone
GESAMP	Group of Experts on the Scientific Aspects of Marine Environmental Protection
IMO	International Maritime Organisation
MARPOL	International Convention for the Prevention of Marine Pollution from Ships, 1973 as modified by the protocol of 1978 relating thereto
MCSD	Mediterranean Commission on Sustainable Development
OILPOL	1954 London Convention for the Prevention of Pollution of the Sea by Oil
PAH	Polycyclic Aromatic Hydrocarbons
PCB	Polychlorinated Biphenyl
SO ^x	Sulphur Oxides
TBT	Tributyltin
UN	United Nations
UNCHE	United Nations Conference on the Human Environment
UNCLOS	United Nations Convention on the Law of the Seas
UNEP	United Nations Environmental Programme
US	United States

1 Introduction

1.1 Presentation of the subject

The global awareness of the need to protect the marine environment has increased since the middle of the 20th century and states all over the world today strive to ameliorate environmental protection under the supervision of international organisations such as the International Maritime Organisation and United Nations. States cooperate and adopt international treaties such as MARPOL and join environmental cooperation programmes such as UNEP's regional seas programme.¹

At the same time the law of the sea has covered major grounds regarding regulations, and state jurisdiction seem to expand and creep further away from the coasts. After the entry into force 1994 of 1982 United Nations Law of the Sea convention, international law contains rules and regulations about internal waters, territorial seas, contiguous zones, exclusive economic zones, continental shelves and even the high seas.

Seeing these developments it is not a surprise that France now has introduced ecologic protection zones off its coasts to respond to the need of protection of the marine environment and in line with the creeping jurisdiction. It may even appear to be the logical thing to do, especially as a state with a Mediterranean coast line.

The Mediterranean has since the beginning of shipping been one of the most trafficked sea areas in the world and today 28% of world shipping take place there although its surface constitutes only 1% of world oceans.² Being a semi-enclosed area it is particularly sensitive to pollution which has forced the Mediterranean coastal states to be attentive to environmental questions, e.g. they have since 1976 cooperated within the Mediterranean Action Plan, developed under the auspices of UNEP.³

The Mediterranean is a major world shipping route linking the Atlantic Ocean with the Suez Canal, as about 25% of global oil traffic goes through the Mediterranean, according to French government figures.⁴ The French Environment Ministry said that in 2002 it recorded over 200 incidents of ships intentionally polluting waters, mostly by pumping out ballast, but it could intervene in only a handful of cases because the vessels were outside

¹ E.g. Stockholm Conference on the Human Environment 1972, United Nations Conference on Environment and Development 1992

² Assemblée National no 722, (French Travaux Préparatoires), p.11; Noémie & Castallenet, "Rapport sur la Pollution Marine par Hydrocarbures et les Dégazages Sauvages en Méditerranée", p.1

³ Mediterranean Action Plan, see section 4.3 below.

⁴ The Associated Press, "France Fights Pollution", p.1

the 12-mile zone where France has jurisdiction.⁵ However, being a defined space surrounded by many states also make jurisdiction claims a sensitive matter. Due to the strategic placement and the wide use of the Mediterranean most coastal states are reluctant to letting other states invoke influence over it. This is probably the reason why only Egypt exercises EEZ jurisdiction in the Mediterranean and France (as well as Spain) has proclaimed EEZs in the Atlantic Ocean but not in the Mediterranean.⁶

In 2003 France was the first country in the world to introduce an ecologic protection zone around its territory. The object of this new zone was, according to the sénat, to implement Part XII of UNCLOS, which concerns protection and preservation of the marine environment and being a zone stretching up to 200 nautical miles it also comes under the provisions of part V concerning the EEZ.⁷

This leads to two main questions which will be the subject of my thesis; is the French law from 2003 in accordance with part V and XII of UNCLOS and to what extent did the desired protection exist through other international conventions?

1.2 Method and material

This thesis is structured as a combined descriptive and analytical study of French and international environmental law applicable to French maritime areas, especially the Mediterranean. The sources used are the new French law concerning an ecologic protection zone, with its travaux préparatoires and other French laws referred to by that law. Also international and regional conventions applicable to the Mediterranean Sea area are used.

1.3 Disposition

In the next chapter the new French law will be described, article by article, to explain which changes are done in French law and which competences were added. Chapter 3 will then examine the different threats to the marine environment in French waters to explain why there is a need of protection and preservation of the marine environment.

Chapter 4 will consist of existing environmental protection relevant to France. It starts off with the relevant articles in the framework convention on the law of the sea, the 1982 *United Nation Convention on the Law of the Sea* (UNCLOS) and then the *International Convention for the Prevention of*

⁵ Noutary, E. and Lorne, J-R., “The Mediterranean Sea: In the Waiting Room”, p.1

⁶ Ahnish, *The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea*, p.344. Also Morocco has proclaimed an EEZ but, even though the Dahir of 1980 did not distinguish between the Atlantic and the Mediterranean coast, it does not appear to have implemented the 200 n.m. zone off Morocco’s Mediterranean coast.

⁷ Sénat no 261, (French Travaux Préparatoires), p.1

Marine Pollution from Ships, 1973 as modified by the protocol of 1978 relating thereto, or shorter MARPOL 73/78 will be investigated. In the last sections of chapter 4 marine environmental protection concerned specifically with the Mediterranean will be covered by investigating the Mediterranean Action Plan and the protection given an area proclaimed a special area. Since France has no EEZ in the Mediterranean it is the area most in need of protection according to the travaux préparatoires.⁸

The first section in chapter 5 will contain a comparison of the articles in law 2003 and the provisions in international conventions to conclude whether the new law is in accordance with existing international law. The second section will contain the author's reflections on law 2003 and possible future development.

⁸ Sénat no 261, p.1

2 The French law of 2003 creating an Ecologic Protection Zone

French maritime law is dependant on rules and standards elaborated on international level, the most important document being the 1982 United Nations Law of the Sea Convention (UNCLOS). According to UNCLOS chapter V a state can proclaim an exclusive economic zone (EEZ) of 200 nautical miles from the base line, which France did in 1977 off all its coasts except the Mediterranean. The Mediterranean coast was omitted because of problems due to the geographically limited area and the absence of consensus in economic questions regarding the division of fishing assets. *Law no 2003-346 of 16 April 2003 relating to the creation of an ecologic protection zone off the French territory's coast*⁹ takes the economic difficulties into consideration and imposes a zone “of the same size and of the same nature as the exclusive economic zone with the exception of [regulations about] economic assets”,¹⁰ called the ecologic protection zone (EPZ).

According to Assemblée National the EPZ is thus created under the provisions of part V of UNCLOS in order to implement international rules and standards. It admits that there are fears from other Mediterranean states that this will start the development of EEZs in the Mediterranean, but claims that since there is no economic bearing on this zone those fears are unfounded. France also believes that since Mediterranean states are concerned with environmental questions, as can be shown by the adoption of the *Barcelona Convention for the Protection of the Mediterranean Sea against Pollution* in 1976, and the new zone will help promote a good application of the *International Convention for the Prevention of Marine Pollution from Ships, 1973 as modified by the protocol of 1978 relating thereto* (MARPOL 73/78), this development will be welcomed by the other Mediterranean states.¹¹

The new law is accordingly an attempt to extend the competences and sanctions existing in the EEZ, as far as ecology and science are concerned, to apply in the EPZ as well.¹²

⁹ Author's own translation of « Loi no 2003-346 du 15 Avril 2003 relative à la creation d'une zone de protection écologique au large des côtes du territoire de la République »

¹⁰ Assemblée National no 722, p.7

¹¹ Ibid., p.7-8

¹² Ibid., p.9

2.1 Article 1 Proclamation of an EPZ

The first article of law no 2003-346 (hereafter referred to as law 2003) modifies the already existing *law no 76-655 of 16 July 1976 relating to the exclusive economic zone off the French territory's coast* (hereafter referred to as law 76-655).¹³

The first paragraph of article 1 inserts the words “and the ecologic protection zone” in the title of law 76-655 which means that the law now also comprise the ecologic protection zone.

The second paragraph of article 1 adds a second paragraph to article 4 of law 76-655 giving the ecologic protection zone the same maximum delimitation as the exclusive economic zone, i.e. 188 nautical miles from the limit of the territorial sea¹⁴ which in the case of France extends 12 nautical miles from the base line. It also explains that the French authorities intend to only exercise the competences mentioned in law 76-655 art 4 para 1, i.e. “the competences recognised in international law for protection and preservation of the marine environment, marine scientific research and installation and usage of artificial islands, installations and structures” and this is even more stressed by stating that the regulations in art 3, concerning fishing, not are applicable in the ecologic protection zone to vessels sailing under a foreign state's flag. This excludes the regulations with economic bearing that are included in the EEZ from applying to the EPZ.

The third paragraph of article 1 adds to article 5 of law 76-655 an explanation that the new ecologic protection zone, like the exclusive economic zone once was, will be created by a decree of the Conseil d'État and 8 January 2004 an EPZ was created off the French Mediterranean coast.¹⁵ The decree made reservation to modifications occurring after negotiations with neighbouring states, and it was modified 28 February 2004.¹⁶ France has proclaimed an EPZ consisting of two areas, separated by Corsica and its territorial sea. After the modifications in February the EPZ in the Mediterranean covers the area shown in map 1 placed at the end of this chapter.

2.2 Article 2 Marine Scientific Research

Article 2 changes the words of *law no 86-826 of 11 July 1986 relating to marine scientific research and changing law no 76-655 relating to the*

¹³ Author's own translation of « Loi no 76-655 du 16 Juillet 1976 relative à la zone économique au large des côtes du territoire de la République »

¹⁴ Law 76-655, Article 1

¹⁵ Décret no 2004-33 du 8 janvier 2004 portant création d'une zone de protection écologique au large des côtes du territoire de la République en Méditerranée

¹⁶ J.O no 50 du 28 février 2004 p.4082

*exclusive economic zone off the French territory's coast*¹⁷ (hereafter referred to as law 86-826) to include also the ecologic protection zone. This means that the authorisation necessary for scientific research in the EEZ is now also necessary in the EPZ.

2.3 Article 3 MARPOL violations

Articles L.218-10, -11 and -13 to -19 contains sanctions for violations of French vessels against MARPOL regulations concerning oil pollution, and article L.218-21 extends the application of these sanctions to foreign vessels and platforms. The application encompasses also foreign vessels and platforms registered in a state not party of MARPOL.

Article 3 changes article L.218-21 of the Environmental Code to include also the EPZ to its application and when the EPZ is added France has jurisdiction to enforce MARPOL in its internal waters, its territorial sea, its EEZ and its EPZ but in the second paragraph of art L.218-21 the words “or in the ecologic protection zone” are inserted to limit the sanctions to fines, when the offence is committed in the EEZ or the EPZ by foreign vessels or platforms.

2.4 Article 4 Court Competence

Article 4 inserts both the EEZ and the EPZ into the applicability of art L.218-29, concerning the competence of the courts specialised in maritime law to rule over violations of MARPOL.¹⁸ This extends their competence from having covered the internal waters and territorial seas to also cover the EEZ and the EPZ.

The second paragraph limits the competence of Paris Supreme Court so that its jurisdiction not will overlap that of the specialised courts mentioned above. The Supreme Court will now cover only French vessels on the high seas.

Its third paragraph gives the same competence to the competent higher courts as to the specialised courts. It also refers to regulations in code de procédure penal regarding prosecutors and other components of a functioning court system.

¹⁷ Author's own translation of « Loi no 86-826 du 11 juillet 1986 relative à la recherche scientifique et portant modification de la loi no 76-655 du 16 Juillet 1976 relative à la zone économique au large des côtes du territoire de la République »

¹⁸ Tribunaux de Grande Instance du Littoral Maritime Spécialisés, situated in Le Havre, Brest and Marseille

2.5 Article 5 Dumping

Article 5 inserts both the EEZ and the EPZ into the applicability of art L.218-45, which concerns dumping. Its first paragraph makes all the clauses in section I (Pollution from vessels through discharge) applicable to dumping outside the zones in the Oslo convention, regardless of whether it is done on the high seas, in the EEZ or the EPZ, the territorial sea or the internal waters. Since the Oslo convention only covers certain areas, the EEZ and EPZ would not be fully protected without this extension.

The second paragraph states that the regulations are applicable also to foreign vessels, aircrafts, machines and platforms, in the territorial seas or internal waters even if they are registered in a state not party of the Oslo convention. It also limits the sanctions for foreign vessels committing violations outside the territorial seas to fines.

2.6 Article 6 Incineration

Art L.218-61 extends all the clauses of the section concerning pollution from vessels through discharge from applying only to French vessels to apply also to foreign vessels, when it comes to incineration. They are now applicable in all sea territories under French jurisdiction and even on sea territories not under French jurisdiction if the loading has taken place on French territory.

Art 6 limits the sanctions for foreign vessels to fines when the violation has taken place in the EPZ, just like they were already limited in the EEZ.

2.7 Article 7 and 8

Article 7 adds a seventh section named « The Ecologic Protection Zone » to Livre II in code de l'environnement. That section holds so far only article L.218-81 reproducing article 4 of Law 76-655 that defines the EPZ. (As discussed in section 2.1 above)

Article 8 states that beginning January 1, 2004 the French government every year shall present to the parliament an assessment of decisions and measures concerning maritime safety and coastal protection taken at international, European and national level. The assessment will be followed by a debate.

2.8 Conclusion

France states generally in article 1 that in this new zone they are claiming “the competences recognised in international law for protection and preservation of the marine environment, marine scientific research and

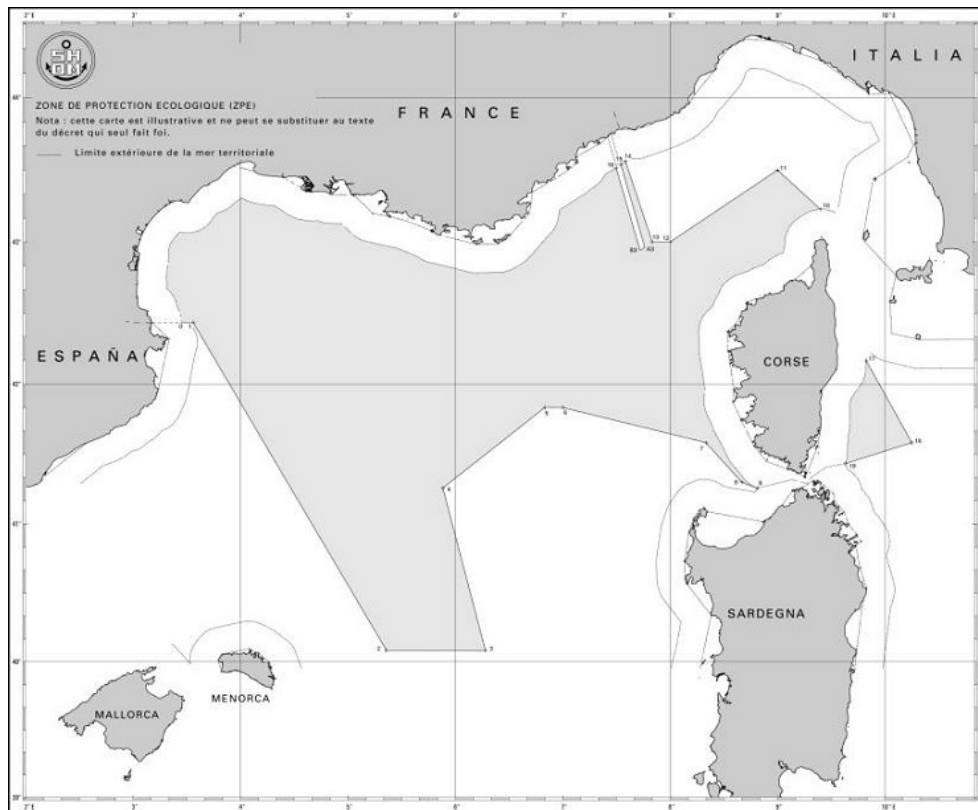
installation and usage of artificial islands, installations and structures” but it makes a clear point in that this does not include any economic rights.

Article 2 and 3 insert the EPZ in different articles of the code de l’environnement and laws already applicable to the EEZ to make them applicable also in the EPZ. Off the coasts where there are EEZs there is no need to proclaim an EPZ since the EPZ is less extensive than the EEZ. Off the Mediterranean coast on the other hand the introduction of an EPZ is a substantial extension of French powers. Therefore the focus will lie on the Mediterranean, as regards those articles.

Articles 4 and 5 in contrast extend French jurisdiction and competence in matters not formerly contained in the EEZ and this extension, since it covers not only the Mediterranean but also the other coasts, is of a greater scope.

Article 7 is only an addition of the regulations in article 1 to simplify access and comprehension and since it does not add any new jurisdiction or competence it will be disregarded throughout the rest of the thesis. Neither article 8 is of interest to this thesis since it only concerns debates and assessment and has no direct bearing on international law.

Map 1 The French Ecologic Protection Zone¹⁹



¹⁹ *La Zone de Protection Écologique*, Association Francaise des Capitaines de Navires, p.1

3 The need of protection of the marine environment

There are many reasons to why global awareness of the need to protect the marine environment has increased, one of them may be that states are starting to realise how many threats there are to the marine environment, especially considering that new threats still are discovered.²⁰

France, being a state with many coasts of which one borders a highly trafficked semi-enclosed sea, unfortunately has to deal with most of them. However land-based sources, from which 80% of ocean pollution originates according to United Nations Environmental Programme,²¹ are not of great interest to this thesis, polluters being under French state sovereignty and land-based pollution from another state is under that state's sovereignty outside the realm of French jurisdiction.

France has by the new law added jurisdiction to be able to protect its EPZ from threats occurring in that area and those threats are therefore the only relevant threats. Threats from fishing are also omitted, although it in many ways effects the marine environment in a negative way, because France has from the application of its new zone specifically excluded fishing and other actions with economic bearing. Threats occurring in the French EPZ are different vessel-sourced pollutions and pollution from artificial islands, installations and structures, including both operational work and scientific research.

3.1 Dumping of chemicals and heavy metals

Dumping into the sea was for a long time an accepted way to get rid of different types of wastes. It was considered an easy way to make the waste "disappear".²² Nowadays we know that not only does it take a very long time for different materials dumped in a sea to disappear, they also make a lot of damage as they are deteriorating.

Chemical pollution mainly comes from industrial waste either dumped into the ocean directly or through discharges without enough cleaning. Chemical pollution to the sea consists of e.g. PCBs (Polychlorinated Biphenyls) from old electronic equipment and hydraulic fluids, PAHs (Polycyclic Aromatic Hydrocarbons) from road runoff or burning of wood and coal and pesticides such as dioxin, used in paper bleaching processes.

²⁰ E.g. fouling paints and ballasting as discussed in section 3.2

²¹ "Water for the future", UNEP Annual Report, p.1

²² "MARPOL - 25 years", *Focus on IMO*, October 1998, p.24

The chemicals contaminate fish and shellfish in the area and not only render it useless for food but since some fish migrate it also spreads the chemicals to other areas.²³ Marine mammals are the most susceptible to PCBs, since concentrations magnify through the food chain. Dolphins in the Mediterranean are among the marine mammals most highly contaminated by PCBs and evidence exists of reproductive disorders and immunosuppression.²⁴

As for metals, many of them occur naturally in the environment and are from e.g. weathering of rocks or volcanic activities introduced into the sea, but they also get into the sea from dumping of barrels and other containers that slowly dissolve due to the saltwater. Some of the metals, such as iron, are necessary in low concentrations for the survival of living organisms, but in excessive amounts they are toxic, others, such as mercury, are harmful from the start. The metals are harmful in various ways; some interfere with the functioning of cell membranes while others hinder the photosynthesis.

3.2 Shipping

When it comes to ocean based threats, accidents of large oil tankers are what most people think of first, but there are also many other threats from shipping maybe not as obvious but just as dangerous. Pollution from ships also comes from e.g. dumping of ballast water containing harmful aquatic organisms. Harmful aquatic organisms are alien species that when they are introduced to a new habitat changes the ecosystem of that habitat; it can be e.g. jellyfish, molluscs, bacteria or plankton.²⁵

All ships are also painted with an anti-fouling paint that prevents attachment of unwanted algae and other organisms to the ship. The paint contains substances poisonous to plants (herbicides) and has been found to interfere with reproduction of various organisms in the marine ecosystem. Tributyltin (TBT) for example is an organo-metallic compound used as biocide in anti-fouling paints of ships and boats. It is an endocrine disrupting chemical whose toxic effect is well documented in molluscs and now the effects on seabirds, marine mammals and fish are becoming evident. TBT is detected all over the Mediterranean basin.²⁶

Different transports also cause oil pollution and air pollution even when normally used e.g. by combustion of carbohydrates in the ship's engine and it is common for large ships to flush and clean their tanks at open sea. Especially detrimental are the major oil spills resulting from accidents such

²³ Umana, U.A., *Marine Ecosystems and the Role of Marine Protected Areas as Sustainable Development Strategies*, p.15

²⁴ Civili, "The Mediterranean Marine Environment: Pressures, State of Pollution and Measures taken (The Barcelona Convention and the Mediterranean Action Plan)", p.170

²⁵ harmful aquatic organisms = alien species, nuisance, hitchhiker, invaders or non-indigenous species; Umana, p.22

²⁶ Civili, p.169

as Exxon Valdez (1989) or Erika (1999).²⁷ The damage of oil pollution depends on many factors such as the density of the particular oil. The pollution can cause anything from contaminated birds, mammals and other organisms at the surface to damaging spawning grounds and organisms at the bottom.²⁸

3.3 Seabed mining and marine scientific research

Seabed mining is done to extract different metals and spills of these cause the same effects as the metal dumping previously discussed does.²⁹ The Mediterranean states undertake more than half (from 65% to 85% according to estimates for different years) of the world's mercury mining and provide no less than half of the world supply.³⁰

Mining also poses serious threats to hydrothermal vent ecosystems; the mining can either impose direct physical damage and destruction or indirect effects such as sedimentation and disruption of water circulation systems.³¹

Scientific research, when done carelessly and without appropriate caution, can also seriously damage fragile ecosystems. Both over collecting or inappropriate collecting of samples and implantation of alien organisms are detrimental to an ecosystem.³²

²⁷ International Tanker Owners Pollution Federation Ltd, Historical data, Statistics, p.1

²⁸ Umana, p.25

²⁹ See section 3.1

³⁰ Civili, p.166

³¹ Glowka, p.27

³² Umana, p.24

4 Existing environmental protection in international law

4.1 UNCLOS

International agreements are the springboards of united efforts to solve problems and safeguard international common interests. When it comes to maritime law many efforts, e.g. the Geneva conventions from 1958, has been made to agree on a common framework for the law of the sea, but it was not until the 1982 *United Nations Convention on the Law of the Sea* (UNCLOS) that there was a convention covering all aspects of the law of the sea.

Part XII of UNCLOS is dedicated to the protection and preservation of the marine environment where art 193 puts environment priority over the sovereign right of states to exploit their natural resources. It sets forth a legal framework which is both general (in its application throughout the marine environment) and comprehensive (in covering all pollution sources) and which, therefore, reflects “the most significant stage of codification and development of the new environmental law of the sea”.³³

Speaking in environmental terms the acceptance of a 200 nautical miles economic exclusive zone was a great leap forward. The “elimination of the freedom of fishing and the substitution of coastal state sovereign rights over exploration, exploitation, conservation and management of living resources”³⁴ gave a whole different possibility for the coastal state to protect the marine environment and hence pollution can no longer be regarded as an implicit freedom of the seas.³⁵ For the purpose of protecting the marine environment in the EEZ Part XII has to be read together with part V.

4.1.1 Vessel Source pollution

Part XII treats accidental as well as operational pollution from ships. The principles and rules in the convention regarding that sort of pollution represent a careful compromise reached between the flag states, advocating a freedom of navigation as unrestricted as possible, and the coastal states aiming at the modification of this freedom by recognizing certain environmental powers of the coastal and port state.³⁶ The key rule is still

³³ Kwiatkowska, B, *The 200 Mile Exclusive Economic Zone in the New Law of the Sea*, p.160

³⁴ Stevenson, J. & Oxman, B., ”Third United Nations Conference on the Law of the Sea: The Geneva Session”, p.776

³⁵ Birnie, P. & Boyle, A., *International Law & the Environment*, p.348

³⁶ Kwiatkowska, p.170-171

freedom of the seas as stated in article 58(1) but there are several provisions that form exceptions to it.

4.1.1.1 Legislative jurisdiction

When it comes to state competence to prescribe laws and regulations relating to pollution from ships, the convention in article 211(2) reaffirms the traditional, primary responsibility of the flag state, but their responsibility may, under certain conditions, be duplicated or overlapped by the new legislative jurisdiction of the coastal state stated in the same article paragraph 4 and 5. The difference is that while the flag state legislative jurisdiction is mandatory, the coastal state legislative jurisdiction is only permissive. The competence to adopt anti-pollution measures is not unrestricted, the laws and regulations of the flag state must “at least have the same effect as that of generally accepted international rules and regulations” and those of the coastal state must “conform and give effect to generally accepted international rules and standards established through the competent international organization or general diplomatic conference”.³⁷

4.1.1.2 Flag State enforcement jurisdiction

According to articles 92 and 94 the principal authority for enforcement of pollution control is the flag state of the ship. Article 217(1) even requires flag states to ensure compliance by vessels flying their flag (or of their registry) with international pollution control conventions and that state’s regulations adopted to implement the international conventions. It also requires them to provide effective enforcement of these regulations irrespective of where a violation occurs.³⁸

However there was widespread concern about weaknesses in exclusive flag state jurisdiction for enforcement purposes so coastal state enforcement jurisdiction³⁹ and port state enforcement jurisdiction⁴⁰ was introduced.

4.1.1.3 Coastal State enforcement jurisdiction

The enforcement provisions of article 220 must be read in the light of the regimes established for the EEZ in part V of the convention and in accordance with article 56(1)(b)(iii) article 220 recognises that a coastal state has limited enforcement rights with respect to pollution caused by vessels navigating in its EEZ.⁴¹ This jurisdiction has to be exercised with due regard to the rights and duties of other states and the coastal state must act in a way compatible to the Convention. This means e.g. that other states

³⁷ Kwiatkowska, p.172

³⁸ Marine Environmental Law, Para. 2.98

³⁹ UNCLOS Commentary, Vol IV, p.282-283, Para. 220.1

⁴⁰ Ibid., p.260, para. 218.1

⁴¹ Ibid., p.282, para. 220.1

have the right to navigate without distractions as long as they comply with the provisions of UNCLOS and other rules and regulations of international law.⁴²

The enforcement rights coastal states have apply to violations of applicable international rules and standards (or the coastal state's laws and regulations compatible with such rules and standards) which were committed in the EEZ.⁴³ In order to prevent impediments to the freedom of navigation, the measures coastal states can take are graded depending on "the proximity of the discharge to that state and the magnitude and perceived severity of the damage"⁴⁴ and article 220 provides three stages of enforcement action that can be taken.⁴⁵

Paragraph 3 and 4 provides that where there are clear grounds for believing that such violation has taken place the state may order the vessel to give information regarding its identity and port of registry, its last and next port of call and other relevant information to establish whether a violation has occurred. To facilitate this, flag states should enact legislation to require their vessels to comply with such demands for information.⁴⁶ Paragraph 5 states that where the violation has resulted in a substantial discharge causing or threatening to cause significant pollution of the environment, the state may conduct a physical inspection of the vessel but only if the latter has refused to give information, or that information is manifestly false, and if the circumstances of the case justify an inspection. At last, coastal states may where there is clear objective evidence that violation has resulted in a discharge causing or threatening to cause major damage to the coastline or related interests of the coastal state, or to any resources in its territorial sea or EEZ, detain the vessel and institute other proceedings. However, if a vessel is detained it should be released if appropriate bonding or other financial securities are provided.⁴⁷

4.1.1.4 Port State enforcement jurisdiction

The expression port state must generally be understood as referring to the State (or States) to whose port or ports a vessel is proceeding at a given moment. The basic distinction between the enforcement jurisdiction of port states and that of coastal states is, as the term coastal state implies, that the enforcement jurisdiction of a coastal state relates to violations of the laws and regulations of the coastal state in its internal waters, territorial sea or EEZ, or on its continental shelf and is applied for the protection of the coastal state itself. Port state jurisdiction according to article 218 relates to the enforcement of the applicable international rules and standards in

⁴² Marine Environment Law, para. 2.44

⁴³ Kwiatkowska.p.181-182

⁴⁴ UNCLOS Commentary, Vol IV, p.282, para 220.1

⁴⁵ Marine Environment Law, para. 2.47

⁴⁶ Ibid., para. 2.47

⁴⁷ Ibid., para. 2.47

respect of a discharge from a vessel outside the port state's internal waters, territorial sea or EEZ. The enforcement jurisdiction of a port state, therefore, under some circumstances may be concurrent with that of the flag state or of another coastal state.⁴⁸ The formal distinction in the convention between port state jurisdiction and coastal state jurisdiction made in these matters is in direct consequence of the extension of the coastal state's jurisdiction over the EEZ. Port state enforcement jurisdiction depends on the foreign vessel being voluntarily within a port or at an offshore terminal of the state.⁴⁹

Throughout article 218, the violations contemplated are violations of "applicable international rules and standards", while this may presuppose a transformation of the international rules and standards into norms of internal law for procedural purposes (including the penalties), in substance the actions of the port state must be directed towards violations of the applicable international rules and standards to fall within the scope of article 218.⁵⁰

4.1.2 Dumping

Pollution by dumping is considered in article 210 which codifies the rules that evolved in state practice on the basis of the 1972 London dumping convention so those rules are now applicable to the 200 nautical mile EEZ.⁵¹

According to article 210(1) states are obliged to adopt laws and regulations to prevent, reduce and control the pollution of the marine environment by dumping but they are also encouraged by paragraph 4 to establish international rules and paragraph 6 requires that national legislation is no less effective than international rules and standards. Article 210(5) also establishes a principle of "express prior approval" of the coastal state for dumping within its EEZ and the coastal state has the right to permit, regulate and control dumping within its EEZ as long as it confers with other states which because of their geographical situation may be affected.⁵²

Article 216 complements article 210 and it provides that national laws and regulations adopted in accordance with applicable international rules and standards are to be enforced by each coastal state with regard to dumping. Also the flag state is obliged to enforce the rules and regulations with regard to dumping from vessels flying its flag (or are of its registry) as is any state with regard to dumping of wastes or other matter loaded within its territory or at its offshore terminals. If proceedings are instituted by one state in accordance with article 216 with respect to a dumping incident no other state is obliged to institute enforcement proceedings, this however does not

⁴⁸ UNCLOS Commentary, Vol IV, p.260-261, para. 218.1

⁴⁹ Ibid., p.261, para. 218.1

⁵⁰ Ibid., p.272, para. 218.9 (e)

⁵¹ Kwiatkowska, p.177

⁵² Ibid., p.177

prevent it from doing so should the circumstances warrant, and provided that the recognised rights of the accused are observed.⁵³

Dumping is regulated in detail by a number of global and regional conventions. Article 237 permits such conventions and that article together with article 311 concerning relations to other conventions and international agreements give preference to the obligations deriving from those agreements in appropriate cases.⁵⁴

4.1.3 Marine Scientific research

Art 56 gives the coastal state “jurisdiction as provided for in the relevant provisions of this convention with regard to...marine scientific research”. The relevant provisions are to be found in part XIII and with respect to the EEZ article 246(1) provides that the coastal state has “the right to regulate, authorise and conduct” scientific research.

The coastal state must normally give its consent to pure research by other states in its EEZ, but it may withhold its consent to resource-oriented research⁵⁵ and those wishing to undertake research in another state’s EEZ are subject to various obligations⁵⁶ e.g. they must provide the coastal state with information on the research in advance and with the results of the research as they are received. The coastal state must also always be allowed to participate in the project if it so wishes and the project must be conducted so that it does not unjustifiably interfere with legitimate actions of the coastal state.⁵⁷

Nearly all states, whether developing or industrialized, which have established a 200 mile EEZ assert their rights over marine scientific research in the zone, most of them refer to it only in general terms but there are also states (USSR, Iceland, Malaysia, Venezuela) which have more detailed rules.⁵⁸

4.1.4 Incineration

Article 212 of UNCLOS gives states the right to adopt laws and regulations and to take other necessary measures to prevent, reduce and control atmospheric pollution. It also encourages “the development of global and regional rules, standards and recommended practices and procedures to prevent, reduce and control such pollution”. So far international regulation

⁵³ UNCLOS Commentary, Vol IV, p.233-234, Para 216.1

⁵⁴ Ibid., p.239, Para 216.7(b)

⁵⁵ UNCLOS Article 246(3) and (5)

⁵⁶ Churchill, R.R. & Lowe, A.V., *The Law of the Sea*, p.168-169

⁵⁷ UNCLOS Article 246, 248 and 249

⁵⁸ Kwiatkowska, p.146-148

on the subject is sparse, and until there are more international rules it will be regulated with state appreciation.

4.1.5 Safeguards

To protect freedom of navigation there are safeguards in articles 223 to 233. Restraints of an action that physically affects navigation in the EEZ are included in articles 224-227 while articles 223 and 228 to 231 contain procedural protections.

Article 216 (indirectly through the laws and regulations to be adopted under that article), 218 and 220 all have rules relating to the investigation of violations of international rules and standards by foreign vessels. Article 226 deals with some aspects of those investigations, especially the time within which the investigation must be undertaken, the nature of and limitations on the physical examination of the vessel, its equipment and documentation, and the consequences of the findings from the investigation.⁵⁹ Part XII does not authorize the arrest of any person; at most it permits the detention of the crew along with the vessel. Both the crew and the vessel should according to article 226(1)(c) be promptly released when appropriate financial security has been given.⁶⁰

Several articles in the convention refer to documents or certificate a ship or vessel should carry (e.g. art 23, 91, 110, 217 and 226). Although the convention itself contains no formal obligation on the part of the flag state to ensure that its ships and vessels in fact carry the documentation required by international law, reference should be made to other applicable treaties, in particular MARPOL, which have regulations regarding certificates. Despite the absence of a formal obligation in UNCLOS, an undocumented ship or vessel, or one carrying false documents, will encounter serious difficulties if faced with the requirements of national laws of different port states adopted in conformity with UNCLOS and MARPOL.⁶¹

Art 228 gives the flag state right of pre-emption, which enables the flag state to take over the proceedings itself within 6 months and article 230 states that only monetary penalties may be imposed in the case of violations committed beyond the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.

Furthermore it should be noted that there are also measures concerning maritime casualties pollution in article 221 and the right of hot pursuit in article 111 which have enforcement measures wider than the enforcement measures *sensu stricto* relating to the punishment of violations of the anti-pollution rules and standards.⁶²

⁵⁹ UNCLOS Commentary, Vol IV, p.336, Para. 226.1

⁶⁰ *Ibid.*, Vol IV, p.342, Para. 226.11(a)

⁶¹ *Ibid.*, Vol IV, p.343, Para. 226.11(b)

⁶² Kwiatkowska, p. 179

4.2 MARPOL

The 1973 International Convention for the Prevention of Pollution from Ships was adopted at the 1972 Stockholm Conference on the Human Environment (UNCHE). The regulations in the convention mainly deal with jurisdiction, powers of enforcement and inspection, while the more detailed anti-pollution regulations are contained in the Annexes. A more effective system of enforcement was adopted since Coastal states were not satisfied with the observance of the OILPOL convention.⁶³ MARPOL still includes much of the 1954 London Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) in its first annex, which concerns just oil pollution, but besides oil pollution it also includes pollution by; Noxious Liquid Substances in Bulk (Annex II), Harmful Substances Carried by Sea in Packaged Form (Annex III), Sewage from ships (Annex IV), Garbage from ships (Annex V) and Air Pollution from Ships (Annex VI – not yet in force). New annexes concerning ballast water and anti-fouling paints are currently being prepared, so the work with MARPOL has in no aspect seized.

Only Annex I and II were mandatory, the others were optional. Despite this, the 1973 Convention was only ratified by three states and it did not enter into force. In February 1978 however, IMO held a Conference on Tanker Safety and Pollution Prevention which resulted in the Protocol of 1978 relating to the 1973 International Convention for the Prevention of Pollution from Ships (1978 MARPOL Protocol). The 1978 MARPOL protocol absorbed the 1973 convention since it had not yet entered into force and it is now known as the *International Convention for the Prevention of Marine Pollution from Ships, 1973 as modified by the protocol of 1978 relating thereto*, or shorter MARPOL 73/78.⁶⁴

The states were more willing to ratify MARPOL 73/78 because it was decided that Annex II would not become binding until three years after the Protocol entered into force. That gave the states some time to first implement Annex I regarding oil and to overcome technical problems with Annex II. It entered into force on 2 October 1983 when states which together made up more than 50 percent of world shipping by gross tonnage had ratified it.

In 2000 the Parties to MARPOL made up over 94% of world merchant tonnage,⁶⁵ which must make at least the mandatory annexes I and II fall into the category of “generally accepted international rules and standards” referred to in several of the UNCLOS articles discussed above.⁶⁶

⁶³ Birnie & Boyle, p.362-365

⁶⁴ “MARPOL 25 years”, p.1-2

⁶⁵ Birnie & Boyle, p.363

⁶⁶ Kwiatkowska, p.172

4.2.1 Jurisdiction

Under article 1 the parties undertake to “give effect to the provisions of the present Convention and those Annexes thereto by which they are bound, in order to prevent the pollution of the marine environment by the discharge of harmful substances or effluents containing such substances in contravention of its provisions”. The rules laid down in the convention and the annexes to MARPOL apply to all ships except ships operated by the government.⁶⁷

Parties to MARPOL must according to article 6(1) cooperate in the detection of violations and the enforcement of its provisions. To do so they should use all appropriate and practicable measures of detection and environmental monitoring and establish adequate procedures for the reporting of breaches and the obtaining of evidence.⁶⁸

To ensure that the provisions in the different Annexes, concerning e.g. construction and equipment of ships, are complied with, a ship will in accordance with article 5 be given a certificate stating that it operates in accordance with MARPOL.⁶⁹ A ship that is required to hold such a certificate may be inspected by the officials of the port or offshore terminal of a party to MARPOL while it is there. Normally such an inspection is limited to verifying that it has a valid certificate but if there are clear grounds for believing that the condition of the ship or its equipment does not substantially correspond with the particulars endorsed on the certificate, a more thorough inspection may be made. Where defects on the ship are discovered and the ship is considered to present an unreasonable threat of harm to the marine environment the port state must not allow the ship to sail unless it is to the nearest repair yard available.⁷⁰

In addition the officials of a port or offshore terminal may according to article 6 inspect a ship flying the flag of a party state in order to determine whether it has discharged any harmful substances in violation of the annexes.⁷¹ If the port state is party to the convention and is asked by another party state to inspect a ship, it may do so if the convention is applicable to that ship and it is given enough evidence of a violation to justify such an inspection.⁷²

If a breach of the convention occurs within the jurisdiction of a party state that state must according to article 4(2) either prosecute the matter itself in its own courts or inform the government of the ship’s flag state of the violation and provide all the evidence it can to substantiate that allegation. Parties must also ensure that violations are prohibited within their

⁶⁷ Marine Environment Law, Para. 1.58

⁶⁸ Ibid., Para. 2.09

⁶⁹ Ibid., Para. 2.10

⁷⁰ Ibid., Para. 2.11

⁷¹ Ibid., Para. 2.12

⁷² Ibid., Para. 2.14

jurisdictions and enforceable under the domestic legislation. Article 9(3) makes clear that the term jurisdiction “shall be construed in the light of international law in force at the time of application or interpretation of the present convention”. If article 4 is read in the light of subsequent developments it must include coastal state pollution jurisdiction in the EEZ.⁷³

Since port states can have compliance to MARPOL as a condition of port entry and article 5(4) requires port states to ensure that no more favourable treatment is given to the ships of non-parties also non-party states can come under the influence of MARPOL. State practice under port state inspection schemes now in force in most of the major shipping regions indicates that non-parties have generally accepted the application to their vessels of MARPOL standards.⁷⁴

4.2.2 Pollution by Oil and Noxious Liquid Substances in Bulk

According to Annex I discharge of small quantities of oil is still permitted if it takes place en route, more than 50 miles away from land and not in special areas. Annex I contains provisions on operating methods and ship construction in order to eliminate all but minimal levels of oil discharge and minimise the risk of accidental pollution. It also emphasizes port discharge for residues which cannot otherwise be disposed of.⁷⁵

Annex II establishes a comprehensive regime to prevent noxious liquid substances that are carried in bulk from polluting the sea. To this end it prohibits or restricts the entry of such substances to the sea according to the category of the particular substance concerned, with stricter controls for special sea areas. Tanker design and construction are required to meet certain standards, under both Annex II and supplementary construction codes, so as to minimise the risk of accidental pollution. The problem of the disposal of waste substances is to be solved by requiring them to be discharged to on-shore reception facilities with a corresponding duty on port states to provide adequate facilities for this purpose.⁷⁶

4.2.3 Dumping

Art 3 of the London Dumping convention excludes from the scope of the convention the disposal at sea of wastes or other matter derived from the normal operations of vessels. Wastes discharged to the sea or in ports from

⁷³ Birnie & Boyle, p.366

⁷⁴ Ibid., p.365

⁷⁵ Ibid., p.362-363

⁷⁶ Marine Environment Law, para. 5.06

such operations must therefore be subject to special international rules or will be uncontrolled. Annex V of MARPOL fills this gap.⁷⁷

Annex V defines, in regulation 1(1), garbage as “all kinds of victual, domestic and operational waste including fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically, except those substances that are defined or listed elsewhere in the other Annexes to the present Convention” and regulation 3 and 4 prohibits the disposal of plastics and severely restricts discharge of other garbage into coastal waters.

4.2.4 Incineration

An Annex VI concerning air pollution is pending enough ratifications to enter into force and will be a welcomed contribution to the sparse existence of international regulations concerning atmospheric pollution.

4.2.5 Evaluation

A 1990 GESAMP report concluded that the entry into force of MARPOL had had a substantial positive impact in reducing operational pollution from all types of vessels.⁷⁸ This conclusion is shared by a report prepared for IMO by the US National Academy for Sciences, also in 1990 which found that a total of 568800 tons of oil entered the sea from ships in 1989 compared to 1.47 million tons in 1981.⁷⁹

MARPOL has restructured the tanker fleet so it is far less likely to discharge oil intentionally. The regulations have led classification societies, insurers, port state governments and tanker owners to take measures they would not have taken unless forced to do so.⁸⁰

4.3 The Mediterranean Action Plan

UNCLOS, since it only sets down framework rules, allows significant regional variations as long as they are no less effective than the generally accepted rules.⁸¹ Many environmental problems are even better solved with local cooperation, since the specific problems may vary from region to region. The Convention encourages regional cooperation in many different articles, and the unspecific regulations in UNCLOS can be seen as proof that the problems were meant to be taken care of locally, the regional agreements are then a way of implementing UNCLOS. The definition of a

⁷⁷ Marine Environment Law, para. 6.01

⁷⁸ “The State of the Marine Environment”, GESAMP, UNEP, p.92, Para. 382

⁷⁹ “Petroleum in the Marine Environment”, IMO, p.24 para 10.1

⁸⁰ Mitchell, R. and others, “International Vessel-Sources Oil Pollution”, p.86

⁸¹ UNCLOS, Article 197 and 237

region is not a fixed one but depends on the need for protection and the possibility to cooperate.⁸²

Regional cooperation also facilitates monitoring, supervision and enforcement, and in several cases (e.g. Mediterranean) supervisory institutions have been installed.⁸³ Regional cooperation is also a more appropriate basis for the integrated ecosystem and coastal zone management called for by Agenda 21 which is why several regional agreements have been revised in accordance with Agenda 21.⁸⁴

The possibility of regional cooperation given by UNCLOS is used by UNEP to form a Regional Seas Programme, which helps and overlooks multilateral cooperation on a regional basis to manage coastal and ocean areas. The standard form for the Regional Seas Programme, including synchronized assessment and management activities supported by institutional and financial arrangements, and the regional focus for controlling marine pollution was developed at the United Nations Conference on the Human Environment (UNCHE) in Stockholm 1972. It is similar for all UNEP's regional seas programmes, but it was developed for the Mediterranean in 1976.⁸⁵ The framework constitution provides the possibility to be flexible and sensitive to the different ecological conditions of each region and the needs of every region's governments. The programme can cover everything from conservation and protection to development and control, all depending on the needs of the specific region.⁸⁶ The Mediterranean's major sources of contamination are sewage, petroleum, petrochemical industry, mining, food and beverage processing, metal industries, chemical industries, agricultural runoff and thermal effluents.⁸⁷

The Regional Seas Programme concerning the Mediterranean is called the Mediterranean Action Plan, or Med Plan for short, and it provides for the adoption of national regulations, permits, inspections and penalties.⁸⁸

4.3.1 The Barcelona Convention

The Med Plan is built around the *Barcelona Convention for the Protection of the Mediterranean Sea against Pollution* which was signed by all the Mediterranean States in 1976 (except Albania who became a party in 1990)

⁸² Birnie & Boyle, p.354

⁸³ E.g. Med Plan Headquarters in Athens

⁸⁴ E.g. 1995 revisions on Mediterranean convention regime, made in Barcelona, Spain on 10 June 1995

⁸⁵ Haas, P.M., "Save the Seas: UNEP's Regional Seas Programme and the Coordination of Regional Pollution Control Efforts", p.189

⁸⁶ Ibid., p.189-190

⁸⁷ Ibid., p.192

⁸⁸ "Report of the First Intergovernmental Review Meeting on the Implementation of the Global Programme of Action for the Protection of the Marine Environment by Land-based Activities", UNEP, para. 22

and was joined by the EEC in 1977.⁸⁹ It entered into force in 1978 and since the 1995 revised version not has entered into force it is the 1978 version that will be considered here.

The convention, which according to article 1 covers all of the Mediterranean area from the Straits of Gibraltar to the Dardanelles except the internal waters of the contracting parties, is administered by UNEP from its headquarters in Geneva.⁹⁰

Article 4(1) of the convention states the general obligation of the contracting parties to take “all appropriate measures in accordance with the provisions of this Convention and those Protocols in force to which they are party, to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea area and to protect and enhance the marine environment in that area”. To this end provision is made in articles 4(5) and 21 for the adoption of protocols to the convention dealing with specific types of marine pollution. This enables new topics to be addressed without amending the basic treaty and allows for differences in participation and the geographical scope of each protocol while retaining common supervisory institutions.⁹¹

4.3.1.1 Dumping

Parties to the convention are according to article 5 to take all appropriate measures to prevent and abate pollution in the Mediterranean caused by dumping from ships and aircraft. Measures to do this are provided by a protocol⁹², which was agreed to at the same time as the convention, concerning the dumping of wastes and other matter into the sea.

The protocol has three annexes containing similar, but not identical, provisions to the annexes of the London and Oslo Conventions dealing with the dumping of wastes at sea. They list subjects according to how dangerous they are considered and according to article 6 of the protocol the dumping of all wastes and matter at sea must have a general permit and such permits and licences should according to article 7 not be issued unless careful consideration has been given to the characteristics and composition of the matter and the dumping site and the method of deposit.⁹³ Not all substances however can be subject to a general permit, all substances listed in Annex I are prohibited absolutely according to article 4 and substances listed in

⁸⁹ O.J. EEC 1977, L240/1

⁹⁰ Marine Environment Law, para. 1.65

⁹¹ Morrison, F.L. & Wolfrum, R., *International, Regional and National Environmental Law*, p.280-281

⁹² 1976 Protocol for the prevention of pollution of the Mediterranean Sea by dumping from ships and aircrafts

⁹³ For further information on the factors to consider before issuing a permit; see 1976 Dumping Protocol, Annex III

Annex II may, according to article 5, only be disposed of at sea under a special licence from the relevant national authority.

Discharges resulting from the normal operations of a ship or aircraft are not covered by the protocol according to article 4a and exceptions from the terms of the protocol will be made if the dumping was made to save lives or a ship in danger, as long as the occurrence is immediately reported to UNEP.⁹⁴

4.3.1.2 Vessel source pollution

Article 6 requires contracting parties to take all steps to conform with international law concerning the prevention of pollution from ships and to ensure the effective implementation of relevant international rules. The relevant international rules referred to must be considered to be those included in MARPOL and no protocol on this matter has been adopted.

4.3.1.3 Monitoring, liability and compensation

Article 12 states that the contracting parties shall cooperate to form an efficient monitoring system for the area and according to article 16 the parties also undertake to cooperate in the formulation and adoption of appropriate procedures for the determination of liability and compensation for damage resulting from the pollution of the marine environment as a result of breaches of the convention and its protocols.

4.3.2 Evaluation

The environmental protection in the Mediterranean Sea area is still very active, sewage treatment plants and oil reception facilities have been built in the area, there is a close working team of scientists involved, national policies and regulations are developing and millions of euro goes into it every year.⁹⁵ After Agenda 21 the Mediterranean Commission on Sustainable Development (MCSD) was set up to help implement the new policy. Marine environmental work today is more resource oriented than use-oriented⁹⁶ and the most recent development is the adoption of protocols on transboundary movement of hazardous wastes and pollution from continental shelf operations in the Mediterranean.⁹⁷

According to the former director of the regional seas programme, Stejpan Keckes “the key to success of any regional seas action plan is the political agreement of the governments concerned and the execution of the

⁹⁴ 1976 Dumping Protocol, art 8

⁹⁵ Haas, p.199-200

⁹⁶ Ibid., p.211

⁹⁷ Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal, adopted in Izmir on 1 October 1996

programme primarily by national institutions from the region, in close cooperation with the relevant specialized organizations of the United Nations system and other appropriate organizations relevant to the region”.⁹⁸ Haas has a similar point of view and conclude that the most successful regional seas programmes have all satisfied three preconditions:

1. the existence of a regional community of able marine scientists interested in environmental management applications of their work;
2. the respect of political decision makers for the authority and expertise of these scientists; and
3. the existence of actual channels of contact or influence between the scientific community and national policy makers.⁹⁹

The program for the Mediterranean is considered one of the most successful and innovative regional seas programmes, and it corresponds to the “success-conditions” set forth by Keckes and Haas. There was an emerging consensus in the participating countries that the Mediterranean environment was in danger and that a common effort was needed so implementation was relatively fast and easy¹⁰⁰ and a lot of time and money has been put into it.¹⁰¹

4.4 Special Areas

4.4.1 MARPOL

The 1973 convention was first in introducing special areas in its annexes I, II and V, concerning Oil Pollution, Noxious Liquid Substances in Bulk, and Garbage from ships respectively. Also Annex VI when it enters into force will establish special areas, so called SO^x emission areas. These areas are for technical reasons relating to their oceanographical and ecological condition and to their sea traffic, considered particularly vulnerable¹⁰² and for them the adoption of special mandatory methods for the prevention of sea pollution is required.

The Mediterranean is considered a special area under Annex I concerning oil pollution and Annex V concerning Garbage. Under Annex I regulation 10 all discharge of oil is strictly forbidden in special areas unless the oil content is less than 15 parts per million or 100 parts per million if the ship is proceeding en route and the discharge is made as far as possible from land, but in any case no less than 12 nautical miles from the nearest land. Regulation 5 in Annex V prohibits disposal of garbage into the sea in special areas, with the exception of food wastes that are made as far as

⁹⁸ Keckes, S., “The UNEP Sponsored Regional Seas Programme and the Coordination of Regional Pollution Control Efforts”, p.9

⁹⁹ Haas, p.198

¹⁰⁰ Morrison & Wolfrum, p.280-281

¹⁰¹ Haas, p.199-200

¹⁰² MARPOL Annex I, Reg. 1(10)

possible from land, but in any case no less than 12 nautical miles from the nearest land.

4.4.2 UNCLOS

Also UNCLOS in its article 211(6) permits a coastal state to proclaim special areas within its EEZ. Regulations adopted for these areas may be more stringent than international rules and standards, but they are subjected to strict terms and conditions established in paragraph 6 (a) and (b) which preclude any discretion from being exercised by the coastal state. This includes a procedure to be followed for this end within IMO and a requirement that the coastal state regulations must implement international rules and standards or navigational practices related to special areas.¹⁰³ In those areas article 220 paragraphs (3) to (7), regarding enforcement by coastal states that were discussed under section 4.1.1.3, are applicable.¹⁰⁴

Even though the foregoing concept of special areas is modelled upon the MARPOL convention the rules of UNCLOS make a wider utilization of this concept possible than the rules of MARPOL do. Special areas under art 211(6) may be established at any vulnerable, clearly defined part of the EEZ anywhere in the world with regard to practically all types of vessel-source pollution while MARPOL designates special areas only with regard to the types of pollution covered by its Annexes.¹⁰⁵

¹⁰³ Kwiatkowska, p.173

¹⁰⁴ UNCLOS Article 220(8)

¹⁰⁵ Kwiatkowska, p.174

5 Closing comments

5.1 Conclusion

Since France according to article 1 in law 2003 only claims to have parts of the competences given to coastal states in the EEZ by UNCLOS article 56, and the new EPZ not is allowed to extend more than the 200 nautical miles granted states with respect to an EEZ, it does not exceed the competences given by UNCLOS. The difference in names is merely an editorial adjustment to clarify the purpose of the new zone.

The reference in article 1 of law 2003 to “competences recognised in international law” includes not only the competences given by UNCLOS but also the competences given under the “generally accepted international rules and regulations” referred to in UNCLOS. In those generally accepted rules and regulations, the MARPOL regulations must be included (as discussed in section 4.2), which means that the competences in the EPZ sometimes are given by two different sources. It is also important to note that article 237 states that UNCLOS is without prejudice to obligations assumed by states under special conventions as long as they are carried out “in a manner consistent with the general principles and objectives” and as long as other agreements are compatible with UNCLOS, article 311 even gives them preference.

The authorisation for scientific research provided for in article 2 of law 2003 in the EPZ is in conformity with UNCLOS article 246 read together with article 56 and nearly all states that have EEZs have claimed similar rights in them.

Article 3 contains direct references to MARPOL and the right to impose sanctions are contained in article 4 of MARPOL and that right is by article 9 referring to “future developments” extended to include also the EPZ (or EEZ) as cited in article 211 in UNCLOS. It must be noted that the sanctions are limited to fines in accordance with UNCLOS article 230.

The right to impose sanctions would not be efficient if the courts not had competence to rule over the MARPOL violations, and article 4 of law 2003 gives them that competence. Article 4 of MARPOL even requires its state parties to ensure that violations are enforceable under domestic jurisdiction.

When it comes to dumping, as considered in article 5 of law 2003, article 210 and 216 of UNCLOS rectifies the competences to sanction and enforce violations of dumping provisions, may they be national or regional as long as they are in compliance with applicable rules and standards. Provisions regarding dumping can be found in the London Dumping Convention and

MARPOL Annex V fills the gaps where the London convention not is applicable, so France does not invoke anything that is not allowed.

As for the incineration considered in art 6 of law 2003, article 212 of UNCLOS gives states right to adopt laws and regulations and to take other necessary measures to prevent, reduce and control atmospheric pollution. Unfortunately there are not many international regulations on the subject until Annex VI of MARPOL enters into force. This could be a weak spot in the French legislation, but considering that article 212 gives the right to take the necessary measures and that there are no international standards, national legislation to regulate incineration should be accepted.

Through the study it has been shown that the competences claimed by France with law 2003 are in accordance with competences specified by part V and XII in UNCLOS and other international and regional conventions. It has also been shown that the different international conventions, though extensive in content, presuppose implementation through national legislation.

5.2 Reflections and future developments

In year 2000 three quarters of the pollution violations took place outside the territorial seas so despite the extensiveness of international rules and regulations applicable to the Mediterranean Sea area they were out of reach for French jurisdiction.¹⁰⁶ In this respect creating an EPZ so French jurisdiction can reach the violations outside the French territorial sea is a good idea, however the efficiency of the EPZ depend on whether France has the means and devotion to use the new legislation. Environmental organisations have noted that France has been lenient in enforcing existing measures to prevent pollution. Greenpeace claims that France over the last 20 years has checked less than 10% of ships entering French ports and in 2002, France inspected only 558 ships, while Greece checked 751, Belgium 1,679, and the United Kingdom 1,801. France has blocked the creation of an agency of maritime control and it was even subpoenaed before the European Court of Justice over the failure to meet its international obligations.¹⁰⁷

Believing in good intentions, one could claim that this is an initiative proving that the French government is prepared to take its responsibilities seriously and is devoted to making amends, but the hesitant Mediterranean states' fears that this will turn into the development of EEZs are worth an extra thought.

If assumed that there are no underlying motives, this is a development that corresponds well to the development towards more restrictions at sea and

¹⁰⁶ Noémie, E. & Castallenet, F., p.1

¹⁰⁷ "France: Environmental Issues", *France Country Analysis Brief*, Official Energy Statistics from U.S., p.1

more rules and regulations to protect the environment. France has not exceeded the rights and obligations given by UNCLOS since all jurisdictional competence France now has lies under chapter V regarding the EEZ and if used correctly it will help enforce French obligations under MARPOL,¹⁰⁸ one of the most important documents in regulating marine vessel source pollution. It might even be claimed that France has been extremely cautious to follow protective regulations, e.g. the law in several articles specifically states that the sanctions regarding foreign vessels never is to exceed fines which is a condition laid down in UNCLOS article 230.

However in order for the aim of the EPZ to be fully accomplished it is necessary that also the other Mediterranean states introduce an EPZ and that financial as well as technical means are given to the North African states to enforce violations in their EPZ. Otherwise it is likely that violations are moved away from the European states to the African coast to avoid sanctions and being a limited, semi-enclosed area it will still affect the entire Mediterranean Sea area.

For a future study it would be interesting to investigate the reactions of the international society concerning the concept of a zone solely for the protection of the marine environment. It will also be interesting to see if similar zones are proclaimed not only in the Mediterranean but also in other areas where the proclamation of EEZs have been difficult and whether the fears of development of EEZs in the Mediterranean were unfounded. For the environmental organisations it will be interesting to see to what extent France will use its newfound jurisdiction and for France this will be an opportunity to show that it has a genuine interest in protecting the sensitive marine environment in the Mediterranean.

¹⁰⁸ As stated by Assemblée National in Rapport no 722, p.7-8

Bibliography

Ahnish, F.A., *The International Law of Maritime Boundaries and the Practice of States in the Mediterranean Sea*, Oxford University Press Inc., 1993, New York

The Associated Press, “France Fights Pollution”, in Mediterranean Environmental News Network, 8 April 2003
http://www.enn.com/news/2003-04-08/s_3737.asp accessed 12/05/04 08:20

Birnie, P. & Boyle, A., *International Law & the Environment*, 2nd ed., Oxford University Press Inc., 2002, New York

Churchill, R.R. & Lowe, A.V., *The Law of the Sea*, 3rd ed., Manchester University Press, 1999, Manchester

Civili, F.S., “The Mediterranean Marine Environment: Pressures, State of Pollution and Measures taken (The Barcelona Convention and the Mediterranean Action Plan)”, in Ehlers, P., Mann-Borgese, E., Wolfrum, R. (Ed.) *Marine Issues – From a Scientific, Political and Legal Perspective* Kluwer Law International, 2002, Hague, p.165-176

“France: Environmental Issues”, *France Country Analysis Brief*, Energy Information Administration, Official Energy Statistics from U.S. Government, Washington, September 2003
<http://www.eia.doe.gov/emeu/cabs/franenv.html> accessed 26/05/04 15:48

Glowka, L., “Testing the Waters: Establishing the Legal Basis to Conserve and Sustainably use Hydrothermal Vents and their Biological Communities”, in Hjalmar, T. & Koslow, J.A. (Eds). *Managing Risks to Biodiversity and the Environment on High Sea, Including Tools such as Marine Protected Areas - Scientific and Legal Aspects*, Proceeding of the Expert Workshop for Nature Conservation, Germany: Feb. 27 – Mar. 4 2001, Germany: Federal Agency for Nature Conservation, p.195-215

Haas, P. M., “Save the Seas: UNEP’s Regional Seas Programme and the Coordination of Regional Pollution Control Efforts”, in *9 Ocean Yearbook* (1991), p.188-212

International Tanker Owners Pollution Federation Ltd, Historical Data, Statistics
www.itopf.com/stats.html accessed 22/04/04 09:34

Keckes, S., “The UNEP Sponsored Regional Seas Programme” in *UNEP, Co-operation for Environmental Protection in the Pacific*, UNEP Regional Seas Reports and Studies no. 97, UNEP, 1988, Nairobi, p.7-9

Kwiatkowska, B., *The 200 Mile Exclusive Economic Zone in the New Law of the Sea*, Martinus Nijhoff Publishers, 1989, Dordrecht

Marine Environment Law, Bates, J.H. & Benson, C., Lloyd's Shipping Law Library, 1993, London

"MARPOL – 25 years", International Maritime Organization, in *Focus on IMO*, October 1998, London

Mitchell, R., McConnell, M.L., Roginko, A., and Barrett A., "International Vessel-Source Oil Pollution", in Young, O.R., (Ed.), *The Effectiveness of International Environmental Regimes; casual connections and behavioural mechanisms*, Cambridge, MA, 1999, London, p.33-90

Morrison, F.L., Wolfrum, R. (Ed.), *International, Regional and National Environmental Law*, Kluwer Law International, 2000, Hague

Noémie, E. & Castallenet, F., "Rapport sur la Pollution Marine par Hydrocarbures et les Dégazages Sauvages en Méditerranée", WWF France, Paris, January 2003

<http://www.wwf.fr/pdf/pollutionmarine.htm> accessed 12/05/04 08:16

Noutary, E. and Lorne, J-R., "The Mediterranean Sea: in the Waiting Room" in *Ambitions Sud International (Bimonthly Economic Magazine of PACA Region with European Diffusion)*, 25 November 2003

<http://www.ambitions-sud.net/n37/n37en-salle.htm> accessed 12/05/04 08:24

"Petroleum in the Marine Environment", IMO, Paper submitted by the United States at the Marine Environment Protection Committee 30th session, 19 September 1990, London, MEPC 30/INF.13

"Report of the First Intergovernmental Review Meeting on the Implementation of the Global Programme of Action for the Protection of the Marine Environment by Land-based Activities", United Nations Environmental Programme, 22 December 2001, UNEP/GPA/IGR.1/9

"The State of the Marine Environment", Joint Group of Experts on the Scientific Aspects of Maritime Environmental Protection GESAMP, UNEP, 1990, Nairobi

Stevenson, J. & Oxman, B., "Third United Nations Conference on the Law of the Sea: The 1975 Geneva Session", *American Journal of International Law* 69 (1975), p.774-781

United Nations Convention on the Law of the Sea 1982- A commentary, Volume IV, Nordquist, H. (Editor-in-chief), Rosenne, S. and Yankov, A. (Eds.), Martin Nijhoff Publishers, 1991, Dordrecht

Umana, U.A., *Marine Ecosystems and the Role of Marine Protected Areas as Sustainable Development Strategies*, World Maritime University, 2002, Malmö, Sweden

“Water for the Future”, United Nations Environmental Programme, in *UNEP Annual Report 2003*
www.unep.org/AnnualReport/2003/AR_2003/WATER.pdf accessed 25/03/04 14:26

La Zone de Protection Ecologique, Association Française des Capitaines de Navires, Information from La Préfecture Maritime de Méditerranée, January 2004, Brest, France
http://www.afcan.org/dossiers_reglementation/zone_pe.html accessed 16/05/2004 20:42

FRENCH LAWS AND TRAVAUX PREPARATOIRES

Sénat no 261; *Projet de loi relatif à la creation d'une zone de protection écologique au large des côtes du territoire de la République*, Yves Cochet 27/02/2002
www.senat.fr/leg/pjl01-261.html accessed 25/01/04 08:43

Assemblée National Rapport no 722 ; *rapport fait au nom de la commission des affaires économiques, de l'environnement et du territoire sur le projet de loi, adopté par le sénat, relatif à la création d'une zone de protection écologique au large des côtes du territoire de la République*, Jean-Pierre Grand 25/03/2003
www.assemblee-nationale.fr/12/rapports/r0722.asp accessed 25/01/04 08:18

Loi no 76-655 du 16 Juillet 1976 relative à la zone économique au large des côtes du territoire de la République, Journal Officiel (Lois et Décrets) du 18 Juillet 1976, p.4299
www.legifrance.gouv.fr/WASpad/RechercheSimpleLegi.jsp then enter the number of the law.

Loi no 86-826 du 11 juillet 1986 relative à la recherche scientifique et portant modification de la loi no 76-655 du 16 Juillet 1976 relative à la zone économique au large des côtes du territoire de la République, Journal Officiel (Lois et Décrets) du 12 juillet 1986, p.8702
www.legifrance.gouv.fr/WASpad/RechercheSimpleLegi.jsp then enter the number of the law.

Loi no 2003-346 du 15 Avril 2003 relative à la creation d'une zone de protection écologique au large des côtes du territoire de la République, Journal Officiel no 90 du 16 avril 2003, p.6726
www.legifrance.gouv.fr/WASpad/RechercheSimpleLegi.jsp then enter the number of the law.

Decrét no 2004-33 du 8 janvier 2004 portant création d'une zone de protection écologique au large des côtes du territoire de la République en Méditerranée, Journal Officiel no 8 du 10 janvier 2004, p.844, modified in Journal Officiel no 50 du 28 février 2004, p.4082
www.legifrance.gouv.fr/WASpad/RechercheSimpleJorf.jsp then enter the Journal Officiel number.

CONVENTIONS

The Convention for the Protection of the Mediterranean Sea Against Pollution (The Barcelona Convention), Adopted 16 February 1976 by the Conference of Plenipotentiaries of the Coastal States of the Mediterranean Region for the Protection of the Mediterranean Sea, held in Barcelona, entered into force on 12 February 1978, O.J. EEC 1977, L240/1

The 1976 Protocol for the prevention of pollution of the Mediterranean Sea by dumping from ships and aircrafts, O.J. EEC 1977, L240/12

The 1996 Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal, adopted in Izmir on 1 October 1996

The International Convention for the Prevention of Marine Pollution from Ships, 1973 as modified by the protocol of 1978 relating thereto (MARPOL), Adopted February 1978 by the IMO Conference on Tanker Safety and Pollution Prevention, held in London, entered into force on 2 October 1983, found with annexes in Basic Documents of International Environmental Law, Vol. 2, Hohmann, H., Graham & Trotman Ltd., 1992, London, p.762-849

The United Nations Convention on the Law of the Sea (UNCLOS), Adopted 10 December 1982 by the Third United Nations Conference on the Law of the Sea, held in Montego Bay, entered into force 16 November 1994, doc. A/CONF./62/122

Supplement A: Loi 2003-346

J.O n° 90 du 16 avril 2003 page 6726

LOIS

LOI n° 2003-346 du 15 avril 2003 relative à la création d'une zone de protection écologique au large des côtes du territoire de la République (1)

NOR: DEVX0100169L

L'Assemblée nationale et le Sénat ont adopté,

Le Président de la République promulgue la loi dont la teneur suit :

Article 1

La loi n° 76-655 du 16 juillet 1976 relative à la zone économique au large des côtes du territoire de la République est ainsi modifiée :

1° Son intitulé est ainsi rédigé : « Loi relative à la zone économique et à la zone de protection écologique au large des côtes du territoire de la République » ;

2° L'article 4 est ainsi rédigé :

« Art. 4. - Dans la zone économique définie à l'article 1er, les autorités françaises exercent en outre les compétences reconnues par le droit international relatives à la protection et à la préservation du milieu marin, à la recherche scientifique marine, à la mise en place et à l'utilisation d'îles artificielles, d'installations et d'ouvrages.

« Lorsque, dans une zone délimitée ainsi qu'il est précisé à l'article 1er, les autorités françaises entendent, pour des motifs tenant aux relations internationales, n'exercer que les compétences mentionnées au premier alinéa, cette zone est dénommée zone de protection écologique. Dans cette zone, les dispositions de l'article 3 ne s'appliquent pas aux navires battant pavillon d'un Etat étranger. » ;

3° L'article 5 est complété par un alinéa ainsi rédigé :

« La zone de protection écologique est également créée par décret en Conseil d'Etat. »

Article 2

Dans l'article 2 de la loi n° 86-826 du 11 juillet 1986 relative à la recherche

scientifique marine et portant modification de la loi n° 76-655 du 16 juillet 1976 relative à la zone économique au large des côtes du territoire de la République, les mots : « dans la zone économique définie à l'article 1er de la loi n° 76-655 du 16 juillet 1976 précitée » sont remplacées par les mots : « dans la zone économique et dans la zone de protection écologique définies par la loi n° 76-655 du 16 juillet 1976 relative à la zone économique et à la zone de protection écologique au large des côtes du territoire de la République ».

Article 3

L'article L. 218-21 du code de l'environnement est ainsi modifié :

1° Au premier alinéa, après les mots : « côtes du territoire de la République », sont insérés les mots : « et la zone de protection écologique définies par la loi n° 76-655 du 16 juillet 1976 relative à la zone économique et à la zone de protection écologique au large des côtes du territoire de la République » ;

2° Au deuxième alinéa, après les mots : « dans la zone économique », sont insérés les mots : « ou dans la zone de protection écologique ».

Article 4

L'article L. 218-29 du code de l'environnement est ainsi modifié :

1° Au I, après les mots : « Dès lors qu'elles ont été commises dans », sont insérés les mots : « la zone économique, la zone de protection écologique, » ;

2° Le II est ainsi rédigé :

« II. - Le tribunal de grande instance de Paris est compétent pour la poursuite, l'instruction et le jugement des infractions commises par les capitaines de navires français se trouvant hors des espaces maritimes sous juridiction française. » ;

3° Le III est ainsi rédigé :

« III. - Pour la poursuite et l'instruction des infractions mentionnées au I, les tribunaux désignés au I et au II et le tribunal de grande instance dans le ressort duquel peut être trouvé le bâtiment exercent une compétence concurrente à celle qui résulte de l'application des articles 43, 52, 382, 663, deuxième alinéa, et 706-42 du code de procédure pénale. »

Article 5

L'article L. 218-45 du code de l'environnement est ainsi modifié :

1° Au premier alinéa, après les mots : « soit en haute mer », sont insérés les mots : «, soit dans la zone économique ou dans la zone de protection écologique » ;

2° Le deuxième alinéa est complété par une phrase ainsi rédigée :

« Seules les peines d'amende mentionnées à la sous-section 2 de la présente section peuvent être prononcées à l'encontre des navires étrangers pour des infractions commises au-delà de la mer territoriale. »

Article 6

Au II de l'article L. 218-61 du code de l'environnement, les mots : « dans la zone économique, telle que définie à l'article 1er de la loi n° 76-655 du 16 juillet 1976 relative à la zone économique au large des côtes du territoire de la République » sont remplacés par les mots : « dans la zone économique ou dans la zone de protection écologique ».

Article 7

Le chapitre VIII du titre Ier du livre II du code de l'environnement est complété par une section 7 intitulée : « Zone de protection écologique », comprenant un article L. 218-81 ainsi rédigé :

« Art. L. 218-81. - Ainsi qu'il est dit à l'article 4 de la loi n° 76-655 du 16 juillet 1976 relative à la zone économique et à la zone de protection écologique au large des côtes du territoire de la République, ci-après reproduit :

« Art. 4. - Dans la zone économique définie à l'article 1er, les autorités françaises exercent en outre les compétences reconnues par le droit international relatives à la protection et à la préservation du milieu marin, à la recherche scientifique marine, à la mise en place et à l'utilisation d'îles artificielles, d'installations et d'ouvrages.

« Lorsque, dans une zone délimitée ainsi qu'il est précisé à l'article 1er, les autorités françaises entendent, pour des motifs tenant aux relations internationales, n'exercer que les compétences mentionnées au premier alinéa, cette zone est dénommée zone de protection écologique. Dans cette zone, les dispositions de l'article 3 ne s'appliquent pas aux navires battant pavillon d'un Etat étranger. »

Article 8

A compter du 1er janvier 2004, le Gouvernement présente chaque année au Parlement un bilan des décisions et mesures adoptées aux plans international, communautaire et national dans le domaine de la sécurité maritime et de la protection du littoral. Cette déclaration est suivie d'un débat.

La présente loi sera exécutée comme loi de l'Etat.

Fait à Paris, le 15 avril 2003.

Jacques Chirac

Par le Président de la République :

Le Premier ministre,

Jean-Pierre Raffarin

Le garde des sceaux, ministre de la justice,

Dominique Perben

Le ministre des affaires étrangères,

Dominique de Villepin

La ministre de l'écologie

et du développement durable,

Roselyne Bachelot-Narquin

(1) Travaux préparatoires : loi n° 2003-346.

Sénat :

Projet de loi n° 261 ;

Rapport de M. Jean-Paul Alduy, au nom de la commission des affaires économiques, n° 101 ;

Discussion et adoption le 21 janvier 2003.

Assemblée nationale :

Projet de loi, adopté par le Sénat, n° 560 ;

Rapport de M. Jean-Pierre Grand, au nom de la commission des affaires économiques ;

Discussion et adoption le 3 avril 2003.

Supplement B : Loi 76-655

Loi n° 76-655 du 16 juillet 1976

Loi relative à la zone économique et à la zone de protection écologique au large des côtes du territoire de la République

Article

1

Modifié par Loi 2003-346 2003-04-15 art. 1 JORF 16 avril 2003.

La République exerce, dans la zone économique pouvant s'étendre depuis la limite des eaux territoriales jusqu'à 188 milles marins au-delà de cette limite, des droits souverains en ce qui concerne l'exploration et l'exploitation des ressources naturelles, biologiques ou non biologiques, du fond de la mer, de son sous-sol et des eaux surjacentes. Ces droits sont exercés dans les conditions et selon les modalités prévues aux articles ci-après.

Article

2

Modifié par Loi 2003-346 2003-04-15 art. 1 JORF 16 avril 2003.

Les dispositions de la loi n° 68-1181 du 30 décembre 1968 relative à l'exploration du plateau continental et à l'exploitation de ses ressources naturelles sont applicables, à l'exception de l'article 1er, au fond de la mer et à son sous-sol dans la zone économique définie à l'article 1er ci-dessus.

Article

3

Modifié par Loi 2003-346 2003-04-15 art. 1 JORF 16 avril 2003.

Les dispositions du décret du 9 janvier 1852 sur l'exercice de la pêche maritime sont applicables dans la zone économique définie à l'article 1er ci-dessus.

Les peines prévues aux articles 4, 5, 6, 7, 8 et 9 de la loi n° 66-400 du 18 juin 1966 sur l'exercice de la pêche maritime et l'exploitation des produits de la mer dans les Terres australes et antarctiques françaises sont remplacées, pour les infractions commises dans la zone économique et à la zone de protection écologique au large de ce territoire, par les amendes suivantes :

Article 4 : 150000 euros ;

Article 5 : 22500 euros ;

Article 6 : 22500 euros ;

Article 7 : 22500 euros ;

Article 8 : 22500 euros ;

Article 9 : 150000 euros d'amende pour chacun des articles 5 à 8.

Article

4

Modifié par Loi 2003-346 2003-04-15 art. 1 JORF 16 avril 2003.

Dans la zone économique définie à l'article 1er, les autorités françaises exercent en outre les compétences reconnues par le droit international relatives à la protection et à la préservation du milieu marin, à la recherche scientifique marine, à la mise en place et à l'utilisation d'îles artificielles, d'installations et d'ouvrages.

Lorsque, dans une zone délimitée ainsi qu'il est précisé à l'article 1er, les autorités françaises entendent, pour des motifs tenant aux relations internationales, n'exercer que les compétences mentionnées au premier alinéa, cette zone est dénommée zone de protection écologique. Dans cette zone, les dispositions de l'article 3 ne s'appliquent pas aux navires battant pavillon d'un Etat étranger.

Article

5

Modifié par Loi 2003-346 2003-04-15 art. 1 JORF 16 avril 2003.

Des décrets en Conseil d'Etat fixeront les conditions et les dates d'entrée en vigueur des dispositions de la présente loi en ce qui concerne la zone économique au large des diverses côtes du territoire de la République. La zone de protection écologique est également créée par décret en Conseil d'Etat.

Supplement C : Loi 86-826

Loi n° 86-826 du 11 juillet 1986

Loi relative à la recherche scientifique marine et portant modification de la loi n° 76-655 du 16 juillet 1976 relative à la zone économique et à la zone de protection écologique au large des côtes du territoire de la République

Article

1

[*article(s) modificateur(s)*]

Article

2

Modifié par Loi 2003-346 2003-04-15 art. 1, art. 2 JORF 16 avril 2003.

Toute activité de recherche scientifique marine, menée dans la mer territoriale, dans la zone économique et dans la zone de protection écologique définies par la loi n° 76-655 du 16 juillet 1976 relative à la zone économique et à la zone de protection écologique au large des côtes du territoire de la République et sur le plateau continental, est soumise à une autorisation assortie, le cas échéant, de prescriptions dans les conditions et selon les modalités fixées par décret en Conseil d'Etat.

Par le Président de la République :

François Mitterrand.

Le Premier ministre,

Jacques Chirac.

Le ministre des affaires étrangères,

Jean-Bernard Raimond.

Travaux préparatoires : loi n° 86-926.

Sénat :

Projet de loi n° 285 (1985-1986) ;

Rapport de M. Legrand, au nom de la commission des affaires économiques, n°8382 (1985-1986) ;

Discussion et adoption le 5 juin 1986.

Assemblée nationale :

Projet de loi, adopté par le Sénat n° 192 ;

Rapport de M. Hart, au nom de la commission de la production, n° 212 ;

Discussion et adoption le 30 juin 1986.

Supplement D : Décret 2004-33

J.O n° 8 du 10 janvier 2004 page 844

Décrets, arrêtés, circulaires

Textes généraux

Ministère des affaires étrangères

Décret n° 2004-33 du 8 janvier 2004 portant création d'une zone de protection écologique au large des côtes du territoire de la République en Méditerranée

NOR: MAEJ0330108D

Le Premier ministre,

Sur le rapport du ministre des affaires étrangères,

Vu la loi n° 76-655 du 16 juillet 1976 relative à la zone économique au large des côtes du territoire de la République, modifiée par la loi n° 2003-346 du 15 avril 2003 relative à la création d'une zone de protection écologique au large des côtes du territoire de la République, notamment son article 5 ;

Vu le décret du 19 octobre 1967 définissant les lignes de base droites et les lignes de fermeture des baies servant à la détermination des lignes de base à partir desquelles est mesurée la largeur des eaux territoriales ;

Vu le décret n° 85-1064 du 2 octobre 1985 portant publication d'une convention de délimitation maritime entre le Gouvernement de la République française et le Gouvernement de Son Altesse Sérénissime le Prince de Monaco (ensemble une annexe), signée à Paris le 16 février 1984 ;

Vu le décret n° 89-490 du 12 juillet 1989 portant publication de la convention entre le Gouvernement de la République française et le Gouvernement de la République italienne relative à la délimitation des frontières maritimes dans la région des Bouches de Bonifacio, signée à Paris le 28 novembre 1986, et son rectificatif ;

Le Conseil d'Etat (section des finances) entendu,

Décète :

Article 1

Il est institué au large des côtes du territoire de la République en Méditerranée une zone de protection écologique. Cette zone comprend deux parties que sépare la mer territoriale déclarée autour de la Corse.

Les limites de cette zone sont définies, dans les deux tableaux ci-dessous, par une liste de points et de segments joignant chaque point au point suivant du tableau. Ces segments sont déterminés, selon le cas, par une loxodromie (ligne droite sur les cartes en projection Mercator) ou par la limite de la mer territoriale définie à partir des lignes de base décrites par le décret du 19 octobre 1967 susvisé. Les coordonnées sont exprimées dans le système géodésique WGS 84.

Partie Ouest

Vous pouvez consulter le tableau dans le JO

n° 8 du 10/01/2004 page 844 à 845

Partie Est

Vous pouvez consulter le tableau dans le JO

n° 8 du 10/01/2004 page 844 à 845

Ces limites seront modifiées, le cas échéant, à l'issue des négociations avec les Etats riverains.

Article 2

Le ministre des affaires étrangères, la ministre de la défense, le ministre de l'économie, des finances et de l'industrie et la ministre de l'écologie et du développement durable sont chargés, chacun en ce qui le concerne, de l'exécution du présent décret, qui sera publié au Journal officiel de la République française.

Fait à Paris, le 8 janvier 2004.

Jean-Pierre Raffarin

Par le Premier ministre :

Le ministre des affaires étrangères,

Dominique de Villepin

La ministre de la défense,

Michèle Alliot-Marie

Le ministre de l'économie, des finances et de l'industrie,

Francis Mer

La ministre de l'écologie et du développement durable,

Roselyne Bachelot-Narquin

J.O n° 50 du 28 février 2004 page 4082

Décrets, arrêtés, circulaires

Textes généraux

Ministère des affaires étrangères

Décret n° 2004-33 du 8 janvier 2004 portant création d'une zone de protection écologique au large des côtes du territoire de la République en Méditerranée (rectificatif)

NOR: MAEJ0330108Z

Rectificatif au Journal officiel du 10 janvier 2004, page 845, article 1er, remplacer les tableaux par les tableaux suivants :

Partie ouest

Vous pouvez consulter le tableau dans le JO

n° 50 du 28/02/2004 page 4082 à 4083

Partie est

Vous pouvez consulter le tableau dans le JO

n° 50 du 28/02/2004 page 4082 à 4083

Supplement E : Code de l'environnement (Partie Législative)

Article L218-10

(Ordonnance n° 2000-916 du 19 septembre 2000 art. 1 I Journal Officiel du 22 septembre 2000 en vigueur le 1er janvier 2002)

(Loi n° 2001-380 du 3 mai 2001 art. 1 Journal Officiel du 4 mai 2001)

(Loi n° 2004-204 du 9 mars 2004 art. 30 1°, 2° Journal Officiel du 10 mars 2004)

I. - Est puni de dix ans d'emprisonnement et de 1 000 000 euros d'amende le fait, pour tout capitaine d'un navire français soumis aux dispositions de la convention internationale pour la prévention de la pollution par les navires, faite à Londres le 2 novembre 1973, telle que modifiée par le protocole du 17 février 1978 et par ses modificatifs ultérieurs régulièrement approuvés ou ratifiés, entrant dans les catégories ci-après :

1° Navires-citernes d'une jauge brute égale ou supérieure à 150 tonneaux ;

2° Navires autres que navires-citernes d'une jauge brute égale ou supérieure à 500 tonneaux,

de se rendre coupable d'infraction aux dispositions des règles 9 et 10 de l'annexe I de la convention, relatives aux interdictions de rejets d'hydrocarbures, tels que définis au 3 de l'article 2 de cette convention.

II. - Les pénalités prévues au présent article sont applicables au responsable à bord de l'exploitation des plates-formes immatriculées en France pour les rejets en mer effectués en infraction aux règles 9 et 10 de l'annexe I de cette convention.

III. - La peine d'amende prévue au I peut être portée, au-delà de ce montant, à une somme équivalente à la valeur du navire ou à quatre fois la valeur de la cargaison transportée ou du fret.

Article L218-11

(Ordonnance n° 2000-916 du 19 septembre 2000 art. 1 I Journal Officiel du 22 septembre 2000 en vigueur le 1er janvier 2002)

(Loi n° 2001-380 du 3 mai 2001 art. 2 Journal Officiel du 4 mai 2001)

(Loi n° 2004-204 du 9 mars 2004 art. 30 1°, 3° Journal Officiel du 10 mars 2004)

Est puni de sept ans d'emprisonnement et de 700 000 euros d'amende le fait, pour tout capitaine d'un navire français soumis aux dispositions de la convention mentionnée à l'article L. 218-10 et appartenant aux catégories suivantes :

1° Navires-citernes d'une jauge brute inférieure à 150 tonneaux ;

2° Navires autres que navires-citernes d'une jauge brute inférieure à 500 tonneaux et dont la machine propulsive a une puissance installée

supérieure à 150 kilowatts,
de commettre une des infractions prévues à l'article L. 218-10.

Article L218-13

(Ordonnance n° 2000-916 du 19 septembre 2000 art. 1 I Journal Officiel du 22 septembre 2000 en vigueur le 1er janvier 2002)
(Loi n° 2001-380 du 3 mai 2001 art. 3 Journal Officiel du 4 mai 2001)
(Loi n° 2004-204 du 9 mars 2004 art. 30 1°, 4° Journal Officiel du 10 mars 2004)

Est puni de 6 000 euros d'amende et, en outre, en cas de récidive, d'un an d'emprisonnement, le fait, pour tout capitaine ou responsable à bord d'un navire français soumis aux dispositions de la convention mentionnée à l'article L. 218-10 n'appartenant pas aux catégories de navires définis aux articles L. 218-10 et L. 218-11, de commettre une des infractions prévues à l'article L. 218-10.

Article L218-19

(Ordonnance n° 2000-916 du 19 septembre 2000 art. 1 I Journal Officiel du 22 septembre 2000 en vigueur le 1er janvier 2002)
(Loi n° 2001-380 du 3 mai 2001 art. 4 Journal Officiel du 4 mai 2001)
(Loi n° 2004-204 du 9 mars 2004 art. 30 1° Journal Officiel du 10 mars 2004)

Le fait, pour tout capitaine de navire français auquel est survenu, en mer ou dans les eaux intérieures et les voies navigables françaises jusqu'aux limites de la navigation maritime, un des événements mentionnés par le protocole I de la convention mentionnée à l'article L. 218-10 ou toute autre personne ayant charge du navire, au sens de l'article 1er de ce protocole, de ne pas établir et transmettre un rapport conformément aux dispositions dudit protocole, est puni de deux ans d'emprisonnement et de 180 000 euros d'amende.

Article L218-21

(Loi n° 2003-346 du 15 avril 2003 art. 3 Journal Officiel du 16 avril 2003)

Dans la zone économique au large des côtes du territoire de la République, et la zone de protection écologique définies par la loi n° 76-655 du 16 juillet 1976 relative à la zone économique et à la zone de protection écologique au large des côtes du territoire de la République, les eaux territoriales, les eaux intérieures et les voies navigables françaises jusqu'aux limites de la navigation maritime, les dispositions de la présente sous-section s'appliquent, dans les conditions prévues aux articles L. 218-10, L. 218-11, L. 218-13 à L. 218-19, aux navires et plates-formes étrangers même immatriculés dans un territoire relevant d'un gouvernement non partie à la convention mentionnée à l'article L. 218-10.

Toutefois, seules les peines d'amendes prévues aux articles L. 218-10, L. 218-11 et L. 218-13 à L. 218-19 peuvent être prononcées lorsque

l'infraction a lieu dans la zone économique ou dans la zone de protection écologique au large des côtes du territoire de la République.

Article L218-29

(Loi n° 2001-380 du 3 mai 2001 art. 6 Journal Officiel du 4 mai 2001)

(Loi n° 2003-346 du 15 avril 2003 art. 4 Journal Officiel du 16 avril 2003)

I. - Dès lors qu'elles ont été commises dans la zone économique, la zone de protection écologique, les eaux territoriales, les eaux intérieures et les voies navigables françaises jusqu'aux limites de la navigation maritime, les infractions aux dispositions de la convention mentionnée à l'article L. 218-10 et à celles de la présente sous-section, ainsi que les infractions qui leurs sont connexes, sont jugées par un tribunal de grande instance du littoral maritime spécialisé, éventuellement compétent sur les ressorts de plusieurs cours d'appel dans les conditions prévues par le présent article.

Un décret fixe la liste et le ressort de ces tribunaux.

II. - Le tribunal de grande instance de Paris est compétent pour la poursuite, l'instruction et le jugement des infractions commises par les capitaines de navires français se trouvant hors des espaces maritimes sous juridiction française.

III. - Pour la poursuite et l'instruction des infractions mentionnées au I, les tribunaux désignés au I et au II et le tribunal de grande instance dans le ressort duquel peut être trouvé le bâtiment exercent une compétence concurrente à celle qui résulte de l'application des articles 43, 52, 382, 663, deuxième alinéa, et 706-42 du code de procédure pénale.

IV. - Dans chaque juridiction visée aux I, II et III, un ou plusieurs juges d'instruction sont désignés pour l'instruction des faits susceptibles de constituer une infraction à la présente sous-section.

V. - Lorsqu'ils sont compétents en application des dispositions du présent article, le procureur de la République et le juge d'instruction du tribunal mentionné au I exercent leurs attributions sur toute l'étendue du ressort de ce tribunal.

Article L218-45

(Loi n° 2003-346 du 15 avril 2003 art. 5 Journal Officiel du 16 avril 2003)

Les dispositions de la présente section sont également applicables aux opérations d'immersion effectuées en dehors de la zone d'application de la convention d'Oslo, soit en haute mer, soit dans la zone économique ou dans la zone de protection écologique, soit dans les eaux territoriales et intérieures maritimes françaises.

Dans les eaux territoriales et intérieures maritimes françaises, les dispositions de la présente section s'appliquent aux navires, aéronefs, engins et plates-formes étrangers, même immatriculés dans un Etat non partie à ladite convention. Seules les peines d'amende mentionnées à la sous-

section 2 de la présente section peuvent être prononcées à l'encontre des navires étrangers pour des infractions commises au-delà de la mer territoriale.

Article L218-61

(Loi n° 2003-346 du 15 avril 2003 art. 6 Journal Officiel du 16 avril 2003)

I. - Les dispositions de la présente section s'appliquent aux navires étrangers :

1° En cas d'incinération dans les eaux sous souveraineté ou sous juridiction française ;

2° Même en cas d'incinération hors des eaux sous souveraineté ou sous juridiction française, lorsque l'embarquement ou le chargement a eu lieu sur le territoire français.

II. - Toutefois seules les peines d'amende prévues aux articles L. 218-64 et L. 218-65 peuvent être prononcées lorsque l'infraction a lieu dans la zone économique ou dans la zone de protection écologique.

Article L218-81

(inséré par Loi n° 2003-346 du 15 avril 2003 art. 7 Journal Officiel du 16 avril 2003)

Ainsi qu'il est dit à l'article 4 de la loi n° 76-655 du 16 juillet 1976 relative à la zone économique et à la zone de protection écologique au large des côtes du territoire de la République, ci-après reproduit :

Art. 4 - Dans la zone économique définie à l'article 1er, les autorités françaises exercent en outre les compétences reconnues par le droit international relatives à la protection et à la préservation du milieu marin, à la recherche scientifique marine, à la mise en place et à l'utilisation d'îles artificielles, d'installations et d'ouvrages.

Lorsque, dans une zone délimitée ainsi qu'il est précisé à l'article 1er, les autorités françaises entendent, pour des motifs tenant aux relations internationales, n'exercer que les compétences mentionnées au premier alinéa, cette zone est dénommée zone de protection écologique. Dans cette zone, les dispositions de l'article 3 ne s'appliquent pas aux navires battant pavillon d'un Etat étranger.