



MEDITERRANEAN PAPER SERIES **2010**

# THE LAW OF THE SEA AND MEDITERRANEAN SECURITY

Natalino Ronzitti

**G | M | F** The German Marshall Fund  
of the United States

STRENGTHENING TRANSATLANTIC COOPERATION



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Cover photo: An oil tanker passes near the Bosphorus Bridge in Turkey. © Joel Rogers/Corbis.

# THE LAW OF THE SEA AND MEDITERRANEAN SECURITY

MEDITERRANEAN PAPER SERIES

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## EXECUTIVE SUMMARY

The attempt to call for a Conference on Security and Cooperation in the Mediterranean in the 1990s was not successful and the transformation of the Mediterranean from an area of conflict into an area of peace has continued to be elusive because of the numerous clashes in the region. There are also dormant controversies due to the colonial past. The delimitation of the marine area has sometimes become a source of conflict, especially the regulation of the use of the sea, including fisheries. This paper argues that a regulatory framework that takes account of the role of the European Union (EU) and its potential as an integrator of south riparian countries could be proposed. NATO, too, should play an important role now that France has again joined the military structures of the alliance. A transatlantic policy should be devised that not only involves the organizations in which European States and the United States already collaborate such as NATO, but also strengthens relations between the EU and NATO. The role of the United States is paramount because of the leverage it has on several Mediterranean countries, in particular Egypt, Israel, Morocco, and Turkey, and since it is one of the main military users of the Mediterranean. However, a common regulatory framework seems to be impossible for the time being, while cooperation on single issues appears to be much more feasible.

# 1 INTRODUCTION

In the 1990s, a Conference on Security and Cooperation in the Mediterranean (CSCM) was conceived as a follow-up to the Conference of Security and Cooperation in Europe (CSCE), which later developed into a full-fledged organization, the Organization for Security and Cooperation in Europe (OSCE). The starting point was a document circulated in 1991 by Italy and Spain and endorsed by France and Portugal. A number of Arab countries expressed a positive opinion. The very ambitious project aimed at convening a Conference representing the then 12 EU states, as well as the Mediterranean and Black Sea riparian states, including the Soviet Union and the Gulf States. Canada and the United States were to take part in the CSCM as CSCE members. Mauritania was to be represented as a Mediterranean country and Palestine as a nonrecognized entity. The ambition was to start a process similar to the one that began in Helsinki in 1973 that led to the formation of the CSCE. But the project was soon abandoned. While the CSCE's actors were well identified (the two blocs, the neutrals, and the nonaligned), the Mediterranean was too fragmented at that time and in the throes of numerous armed conflicts. The Gulf region was also shaken by the Iran-Iraq war (1980-1988) and the Iraqi invasion of Kuwait (1990).


An organizational framework for the Mediterranean was nevertheless set up and developed as an extension of policies of continental European organizations. The EU was the forerunner. In addition to enlarging its membership to the European Mediterranean, it set up a Mediterranean policy that culminated in the Barcelona process (1995) and the establishment of the Euro-Mediterranean Partnership (EMP). Other

organizations initiated a Mediterranean Dialogue (NATO) or more direct forms of participation (the OSCE, which has six associated countries: Algeria, Egypt, Israel, Jordan, Morocco, and Tunisia). FAO (Food and Agricultural Organization) and the Council of Europe should also be mentioned. The former, which is a United Nations' agency and thus has worldwide membership, has a special entity for fisheries in the Mediterranean: the General Fisheries Council for the Mediterranean. The latter deals with human rights, a controversial subject for southern Mediterranean states, and has established a thematic dialogue with the Mediterranean countries concerning migration policies.

European countries have been most active. In the 1990s, Italy and Spain led efforts to set up the 5+5 group of western Mediterranean countries (France, Portugal, Spain, Italy, Malta, on the one hand, and Algeria, Libya, Mauritania, Morocco, Tunisia, on the other). The most recent offspring of this diplomatic activism is the Union for the Mediterranean (UfM), established in 2008 through the efforts of French President Sarkozy. The UfM is a permanent conference with its own organs and, in principle, equal representation of the two sides of the Mediterranean. It includes Israel, Libya (as an observer), and the Arab League is associated.<sup>1</sup> The United States is not a member and it remains to be seen whether the UfM can have a role in constructing a transatlantic dialogue for the Mediterranean. The difficulty, as has been noted by Ian Lesser, is that the United States does not consider the Mediterranean a single region. Rather,

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<sup>1</sup> See, generally, Roberto Aliboni and Fouad M. Ammor, *Under the Shadow of "Barcelona." From the EMP to the Union for the Mediterranean*, Euromesco Paper, No. 77, January 2009.



it considers the Mediterranean an area to be segmented according to its political interests.<sup>2</sup> The Mediterranean area may be assessed from several perspectives. This paper focuses on legal and institutional viewpoints.

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<sup>2</sup> Ian O. Lesser, “Anxieties Without Borders: The United States, Europe and Their Southern Neighbours,” *The International Spectator*, 2005, p. 59 *et seq.*

## 2 TERRITORIAL SETTLEMENTS AND THEIR IMPACT ON MARITIME ISSUES

The CSCE/OSCE principles protect the territorial integrity of states. As a corollary, a further principle of European security protects existing borders, setting out that international frontiers cannot be changed through the use of force. Frontiers may be changed by mutual agreement of the countries concerned, provided that they freely express their will. In other words, frontiers may be changed only by peaceful means.

These principles have not impeded the birth of new states without the will of the parent state. The paradigmatic example is the violent dissolution of Yugoslavia. The Yugoslav case also exemplifies peaceful secession, with the independence of Montenegro, and the birth of states as the result of outside intervention. The birth of new states with a coastline calls for the redefinition of the maritime borders and crises on land often have repercussions on the adjacent sea areas.

A long-standing conflicting situation is in Northern Cyprus. The Turkish Republic of Northern Cyprus owes its birth to the Turkish intervention of 1974 and is still an unrecognized state, but it claims the sea areas close to its coast including its part of the continental shelf and exclusive economic zone (EEZ). The other major conflict in the Eastern part of the Mediterranean is represented by the Palestinian issue. The access to Gaza from the sea is impeded by Israel, which has also set up a blockade as we shall see later.

Colonial legacies are also of importance, though minor. As of the 1960s, all riparian countries that were dominated by European powers have gained independence and there are no longer any colonies or protectorates in the Mediterranean. However,

there are still colonial legacies that are sometimes used as an excuse for starting controversies of a broader nature that can escalate into a crisis or even a conflict.

Gibraltar is still the object of contention between Spain and the United Kingdom, but the very fact that the two states are members of the EU keeps the controversy dormant so that it does not influence transit through the Strait.

The situation of Ceuta and Melilla, the two enclaves in Morocco under Spanish sovereignty, is different. The two small territories are claimed by Morocco which, in July 2002, occupied a small island close to the Moroccan coast. The rocky outcropping, which belongs to Spain, has no inhabitants. Strictly speaking, this was a violation of Spain's territorial integrity. However, the crisis was soon dissolved after Spain recovered the island by force: the few Moroccan soldiers were taken prisoner. The mediation of then U.S. Secretary of State Colin Powell helped bring the crisis to an end. The two small enclaves play a role in the delimitation of waters with Morocco.

Cyprus gained its independence in 1960, but has not rid itself completely of its colonial past. The price paid by Cyprus for its independence was the concession to the United Kingdom of the two sovereign bases of Akrotiri and Dhekalia, which are still in the hands of the former colonial power. It is understandable that the island's current situation prevents Cyprus from claiming the two bases as part of its territory. It has been argued that the bases could serve British and U.S. interests in pursuing their Middle Eastern policies. The United States has insisted that the United Kingdom maintain the two



bases since they are the site of intelligence and communication systems used to control traffic in the Mediterranean.

The demilitarization of the Greek islands close to the Anatolian coast should also be mentioned here. This dates back to the beginning of the 20th century. Lemnos was demilitarized by the London Declaration of February 13, 1914. The Declaration was restated in the Lausanne Convention of July 24, 1923, which was subsequently abrogated by the Montreux Convention of 1936. However, according to a sound interpretation, which has been accepted by NATO but repudiated by Greece, the Montreux Treaty did not terminate the island's neutralization. The 1914 London Declaration also stipulated the neutralization of the central Aegean islands: Lesbos, Chios, Samos, and Nikaria. The Dodecanese Islands were also demilitarized by the 1947 Peace Treaty that transferred the archipelago to Greece. The Soviet Union often claimed that Greece had contravened its obligations since it hosted U.S. warships. Periodically Turkey accuses Greece of having contravened the obligations stemming from demilitarization. Turkey has also accused Greece of implanting military installations in contrast with the 1947 Peace Treaty.

The demilitarization of the Greek islands is a dormant issue. In January 1996, a small Turkish military unit disembarked on the islets of Imia (Kardak), triggering a confrontation that became very harsh and was only defused through U.S. intervention.<sup>3</sup>

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<sup>3</sup> Haralambos Athanasopoulos, *Greece, Turkey and the Aegean Sea: a Case Study in International Law*, Jefferson (N.C.), 2001, p. 10.

# 3 THE MEDITERRANEAN AS A SEMI-ENCLOSED SEA

The Mediterranean is an example of a semi-enclosed sea, according to the definition given in Article 122 of the Law of the Sea Convention.<sup>4</sup> The regime of semi-enclosed seas is spelled out in Article 123, which encourages the bordering states to cooperate directly or through appropriate regional organizations in several areas, such as the conservation and exploitation of sea resources, protection of the marine environment, and coordination of marine research. Security is not mentioned. Other states, not bordering on the semi-enclosed sea, may be invited to cooperate. This is important since third states may enter a semi-enclosed sea and are entitled to use it in accordance with the law of the sea.

The two entry points of the Mediterranean from the ocean are respectively natural (the Strait of Gibraltar) and man-made (the Suez Canal). The Strait of Gibraltar is subject to the law of transit passage, which means that every vessel, including warships, has an unimpeded right of transit, and submarines may transit the strait submerged. There is also a right of over-flight as proved during the U.S. air bombing of Libya on April 15, 1986. The U.S. aircraft coming from British bases overflew the Strait of Gibraltar since their continental allies denied them transit right over their territories.

The two states bordering the Strait of Gibraltar, Spain and Morocco, tried to oppose the stipulation of transit passage at the Third Law of the Sea Conference. However, subsequent practice shows that the two states acquiesced in the right of transit passage,

<sup>4</sup> “A gulf, basin, or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more States.”

including over-flight, as proven by the declaration issued in 1986.<sup>5</sup>

The Suez Canal linking the Mediterranean with the Red Sea and the Indian Ocean has become an important route for sea transport, since it eliminates the circumnavigation of Africa. The importance of the Suez Canal might be increased with the opening of the North-West passage, since ships coming from the Indian Ocean can cross the Mediterranean and the Atlantic and then enter the Pacific without being obliged to use the longer route through the Panama Canal. The Suez Canal regime is regulated by the 1888 Constantinople Convention. The canal is open to all shipping, including merchant ships and warships. The sovereign state (Egypt) may exact a toll, but cannot close the canal, which must be kept open both in peacetime and wartime — a stipulation that has often been violated. Apart from the two World Wars, during which it was closed to enemy shipping, the canal was, for instance, closed to Israeli shipping until the March 26, 1979 peace treaty between the two countries.

Entry into the Mediterranean from the Black Sea and vice-versa is regulated by the 1936 Montreux Convention, which distinguishes passage in time of peace and passage in time of war. The Convention gives considerable powers to Turkey as guardian of the straits. In time of peace, private shipping has complete freedom of passage; over-flight is permitted only along the routes indicated by Turkey. The regime of warships is subject to important limitations. The overall tonnage present

<sup>5</sup> Tullio Treves, “Codification du droit international et pratique des Etats dans le droit de la mer,” in *Recueil des cours de l’Académie de droit international*, tome 223, 1990- IV, pp. 130-132.

in the straits should not exceed 15,000 tons and submarines from non-Black Sea countries are not allowed to enter the straits. Black Sea countries have more privileges since they may transit the straits with warships over 15,000 tons. Even their submarines are allowed passage under specific conditions. It is a moot point whether aircraft carriers from Black Sea states are allowed to transit. In 1976 Turkey allowed the passage of the Soviet ship Kiev, which was described as an aviation cruiser but in fact was a ship with aircraft and helicopters on the deck.

In time of war the situation is different. If Turkey is a belligerent party or feels threatened with imminent danger of war, the passage of warships is left entirely to its discretion and the transit of merchant vessels is curtailed. Turkey also enjoys wide powers in the regulation of the passage of warships even if it is not party to the conflict. Transit of merchant vessels is not curtailed in principle and is subject to the same conditions as in peacetime.

Should the Montreux Convention be modernized? Nobody dares to reopen that treaty. The United States is not party to the Montreux Convention and it does not question the regime established by it. It should be noted that during the Georgia crisis of summer 2008, Turkey did not authorize the passage of the U.S. hospital ships Mercy and Comfort, whose aggregate tonnage is over 140,000 tons. However, the USS Mount Whitney was allowed to transit to dispatch humanitarian aid to Georgia. A naval squadron of the Standing NATO Maritime Group 1 (made up of Germany, Poland, Spain, and the United States) also entered the Black Sea to visit friendly ports of riparian states; this met with protests from the Russian Federation, which

claimed that the visit was a pretext for influencing the outcome of the crisis.

# 4 DELIMITATION OF SEA AREAS: TERRITORIAL SEA, CONTINENTAL SHELF, EXCLUSIVE ECONOMIC ZONES

The use of the Mediterranean is open to not only bordering states but also third states. The U.S. Sixth Fleet, for example, is based in Naples, Italy, and U.S. ships are part of the NATO naval strategy. That naval presence is destined to stay, notwithstanding the recent restructuring of the U.S. naval presence, which has involved the closure of the U.S. submarine base in La Maddalena (Sardinia). Germany is contributing to the Standing NATO Maritime Group 2 (SNMG2) stationed in the Mediterranean and, in 2006, after the Lebanon war with Israel, led the Maritime Unifil 2, that took over the Maritime Task Force deployed off the Lebanese coast. The Soviet Union also used the Mediterranean and, under Egyptian president Gamal Abdel Nasser, was granted naval anchorage and facilities in Alexandria, Egypt. After having been absent for a number of years, the Russian Federation is in the Mediterranean again. The Russian fleet not only visits those waters twice a year, but is also developing a naval base in the Syrian port of Tartus. It may even acquire naval facilities in Tripoli, Libya. The Mediterranean is no longer a NATO lake, as it was for 15 years after the end of the Cold War.

The delimitation of sea areas is essential for a naval strategy. The most powerful sea users require that delimitation be in conformity with the law of the sea. All Mediterranean states, with the exception of Israel, Syria, and Turkey, have ratified the Law of the Sea Convention. Libya has signed but not ratified it. The United States, one of the most prominent outside users of the Mediterranean, has also not ratified it. However, the United States feels bound by the Law of the Sea Convention on maritime delimitation and navigation as customary international law.

Delimitation of the territorial sea in the Mediterranean has often been a source of controversy since it is considered at variance with the law of the sea. Excessive claims by one country have been challenged by other Mediterranean countries and/or the United States. The latter has even challenged the delimitation of allied countries. Syria claims a territorial sea of 35 miles — clearly in contrast with the law of the sea, which entitles it to a territorial sea of up to 12 miles.

But the most controversial delimitations are in other parts of the Mediterranean. Libya claims the Gulf of Sidra as a historic bay, subject to its sovereignty. Libya's claim is not recognized by most Mediterranean countries and has been challenged by the United States, which has exercised its right of free navigation transiting through the Gulf. Two Libyan aircraft that tried to assert Libyan sovereignty while the U.S. held a naval exercise there were destroyed by the U.S. navy in 1981.

Greece is obliged to maintain a territorial sea of six miles, since any further extension would be considered a *casus belli* by Turkey. In effect, extending the Greek territorial sea would mean transforming the high seas corridors between the Greek islands into straits, curtailing the freedom of navigation. Greece claims sovereignty over the air space above its territorial sea up to ten miles, a claim not recognized by Turkey.

There is currently a controversy between Slovenia and Croatia over the waters of the Gulf of Pirano.<sup>6</sup> An understanding was reached in September 2009 whereby Croatia will grant Slovenia a corridor for

<sup>6</sup> Fabio Caffio, "La 'guerra di trincea' tra Slovenia e Croazia," in *AffarInternazionali*, June 5, 2009.

access to the high seas. The understanding was reached thanks to the efforts of the EU, of which Croatia wishes to become a member. The understanding was substantiated with the conclusion of an Arbitration Agreement, signed on November 4, 2009, and which entered into force in June 2010. One of the tasks of the Arbitral Tribunal is to determine “Slovenia’s junction to the High Seas.”

The delimitation of Italy’s territorial waters has generally been recognized by the other littoral states, but is contested by its closest ally, the United States. Italy claims the Gulf of Taranto as a historic bay subject to its sovereignty. This claim is not recognized by the United States, which sent a note of protest at the time of delimitation. In 1982, a submarine intruded into the Gulf of Taranto in what was deemed a covert Soviet protest against the Italian delimitation. Italy filed an official protest against the Soviet Union, which denied its presence. Indeed the real nationality of the submarine was never officially assessed. Roach and Smith affirm that “foreign submarines transited Gulf of Taranto submerged on February 1985.”<sup>7</sup> The United States does not recognize the straight baseline drawn by Italy along the Tuscan Archipelago either — a delimitation that has recently (2009) been challenged by France as well, after years of acquiescence. Nor does the United States recognize the legality of the closure of the Strait of Messina to shipping over 50,000 tons, even though it has not challenged that claim by transiting the strait with cargoes over that tonnage.

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<sup>7</sup> Ashley Roach and Robert W. Smith, *United States Responses to Excessive Maritime Claims*, The Hague/Boston/London, 1994, p. 44, note 21.

Delimitation of the territorial sea in the Mediterranean can be seen as a transatlantic problem in that it is a source of controversy between allies. But the controversies are downplayed and as Giulio Andreotti, then Minister of Foreign Affairs, once said: there is no real controversy between Italy and the United States over the status of the Gulf of Taranto, just a difference in points of view.

The controversy over the Gulf of Sidra and challenges by the U.S. Navy could affect the interpretation of the 2008 Treaty of Friendship, Partnership, and Cooperation between Italy and Libya, article 4.2, which stipulates that neither party will allow the territory to be used for hostile acts against the other party. Should Italy forbid U.S. ships from using Italian ports for exercises being carried out in the Gulf of Sidra?

The delimitation of the continental shelf in the Mediterranean has almost been completed and is no longer a source of controversy. A confrontation took place between Malta and Libya at the end of the 1970s, but the two countries eventually turned to the International Court of Justice (Sardinia) for apportionment of the continental shelf, which issued its judgment in 1985. There is a dormant controversy between Greece and Turkey, which could flare up if the two countries were to act unilaterally. Turkey, unlike Greece, is unwilling to refer the controversy to the International Court of Justice (ICJ).

Fisheries are the real source of dispute in the Mediterranean. This kind of controversy is characteristic of Mediterranean countries and does not involve outside users, in particular the United States. The Mediterranean is now apportioned with exclusive

economic zones (EEZs) and fishery zones. Those countries that have developed a fishing industry, like Italy, were against establishing such zones, such as Croatia's proclaimed EEZ. But their institution by the coastal state is a sovereign right, and an EEZ or fishing zone may be set up with a unilateral act, provided that its delimitation is in conformity with the law of the sea. An EEZ may extend up to 200 miles from the coast. However, since the Mediterranean is a narrow sea, the EEZ should be delimited by agreement with states with adjacent and/or opposite coasts.

In comparison to the delimitation of the continental shelf, the delimitation of EEZs and fishery zones by agreement with opposite and adjacent states is not well advanced. The outer limit of the Tunisian EEZ is still a source of controversy with Italy. The best solution would seem to be the conclusion of fishery agreements allowing countries with more developed fishing fleets to exploit foreign waters in return for a fee or other benefits to the coastal state. For EU countries, the competence to stipulate such agreements belongs to the European Commission. Yet, the competence for delimitation of EEZs and fishing zones does not belong to the Commission, even though the EU has ratified the Law of the Sea Convention. It only has the competence to stipulate an agreement for fisheries once that the zone has been delimited. As a result, to date the EU has concluded a fishery agreement only with Morocco. A comprehensive agreement between the EU and Libya is being negotiated, but it is far from being finalized. The agreement should also include fisheries.

Another problem is constituted by unrecognized entities. Cyprus concluded an agreement with

Lebanon on January 17, 2007, for the delimitation of their EEZs according to the system of the median line. The legality of the division, however, is challenged by the Turkish Republic of Northern Cyprus since the agreement also apportions the water adjacent to Northern Cyprus.

# 5 PROTECTION OF THE MARINE ENVIRONMENT AND THE FIGHT AGAINST POLLUTION

The Mediterranean is one of the busiest sea routes in the world, but with its heavily populated shores, the sea's pollution is equally the product of land and marine sources. The legal landscape aimed at preventing pollution is both universal and regional. The 1973 London Convention on the prevention of pollution from ships (MARPOL) has been ratified by most Mediterranean countries. Moreover the Convention contains several annexes, one of which is dedicated to the Mediterranean. At the regional level, one has to refer to the Barcelona system, consisting of several Protocols additional to the original Convention adopted in 1976. The Protocol of Athens, concluded on May 17, 1980, regulates pollution from land, while the Madrid Protocol of 1994 is related to the pollution stemming from exploitation of the continental shelf. The original Barcelona Convention was amended and renamed the Convention for the Protection of the Marine Environment and the Coastal Region in the Mediterranean. So far seven additional protocols have been stipulated (the latest was adopted in January 2008). The Barcelona process, which includes the EU, is a kind of self-contained regime with its own machinery for updating and amending. Oil spills are one of the greatest dangers. After the accidents involving the Erika (1999) and the Prestige (2002), the European Commission has enacted a regulation obliging oil tankers to be built with a double hull.<sup>8</sup> The regulation addresses ships flying EU flags and foreign shipping calling at EU ports or off-shore terminals.

<sup>8</sup> Regulation (EC) No. 1726/2003 of the European Parliament and the Council of July 22, 2003, modifying EC Regulation No. 417/2002.

Part XII of the Law of the Sea Convention contains numerous provisions regulating the protection and preservation of the marine environment. Article 192 lays down the general principle that "states have the obligation to protect and preserve the marine environment." Two provisions may be a source of contention. The first is Article 221 which authorizes coastal states to take unilateral measures on the high seas against foreign ships to avoid pollution arising from maritime casualties. The consent of the flag state is not requested. The second is Article 236 on military navigation. According to this article, the provisions regarding the protection and preservation of the maritime environment do not apply to warships.

Generally speaking, military activities are not disciplined by maritime conventions. During the Kosovo war in 1999, NATO aircraft still carrying weapons on board after having accomplished their mission discharged them in the Adriatic before landing at the Italian base in Aviano. The practice of "jettison areas" raised protests from Croatia, since the weapons were discharged on its continental shelf and caused casualties among Italian fishermen. However, neither NATO nor the United States accepted any responsibility. The weapons were cleared away by a NATO squadron, which claimed that the sweeping operation was a mere exercise and was not the result of any duty of reparation for an illegal act. It is open to question, however, whether NATO's attitude is in conformity with the general obligation stemming from customary international law to pay due regard to the marine environment, even in case of belligerency.

# 6 MARITIME TERRORISM AND PIRACY

Piracy is no longer a Mediterranean phenomenon after the end of the Barbary coast suzerains and the establishment of Western colonies and protectorates. The waters are heavily policed and land is firmly controlled by littoral states. All this impedes the revival of the phenomenon of classical piracy as an act of depredation of one ship by another.

Maritime terrorism is different. The best known example is the case of the Achille Lauro, the Italian cruise ship hijacked by Palestinian terrorists in 1985. The Achille Lauro hijacking cannot be considered an example of piracy for two reasons: first, the Palestinian commando boarded the Achille Lauro before the ship started its navigation and thus the criterion of two ships is absent; second, the act was perpetrated for political reasons and not motivated by private ends.

At the time, there was a lacuna in international law since the law of the sea regulated only piracy and not maritime terrorism, allowing every state to capture the pirate ship and to try the pirates. The lacuna was filled by the 1988 Convention for the suppression of unlawful acts against the safety of maritime navigation signed in Rome, under the auspices of the International Migration Organization (IMO) and promoted by Austria, Egypt, and Italy. A protocol annexed to the convention dictates the provisions for acts of terrorism against fixed platforms on the continental shelf. Fixed platforms are artificial islands or other structures fixed to the continental shelf and the protocol applies only to those devices used for exploration or exploitation of resources or other economic purposes. Thus, the protocol does not apply to military installations, but is not clear whether it is deemed to cover pipelines as well. A broad interpretation would be preferable

since the Mediterranean shelf is crisscrossed by pipelines transporting oil and gas. The 1988 convention has been widely ratified by Mediterranean countries.

The Achille Lauro incident shows how terrorism and a different view on how to deal with hostage taking can endanger political relations between allies. The Achille Lauro eventually called in at Port Said and an agreement was concluded between Egypt and Italy, whereby the hijackers were provided with a safe-conduct to Tunisia. The Egyptian aircraft transporting the terrorists was intercepted in flight by the U.S. Air Force and obliged to land at the U.S. naval base in Sigonella, Sicily. The confrontation between the Italian and U.S. authorities ended when the latter consented to release the aircraft, which then proceeded to an airport in Rome, from where the terrorists were able to leave the Italian territory for Yugoslavia. Overall, the threat posed by terrorism in the Mediterranean is not so much its maritime dimension as the impact it may have on the stability of the regimes of southern shore countries.

However, maritime terrorist threats are now under strict control with operation Active Endeavour, a maritime force operating under NATO's aegis. Active Endeavour was established after the terrorist attacks on September 11, 2001. Falling under Article 5 of the NATO Treaty as a measure of collective self-defense, the operation is a positive example of transatlantic cooperation in the maritime domain. Active Endeavour is aimed at ensuring freedom of navigation and safety of sea routes in the Mediterranean. It monitors commercial shipping and inspects suspect vessels with the consent of the flag state. Over time, the operation has expanded to



include the participation of other Mediterranean countries, such as Egypt and Tunisia. In the fall of 2009, Morocco also signed a memorandum of understanding to contribute to the operation. The Russian navy has also carried out anti-terrorism exercises with the Italian and French navy.

# 7 PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

Almost all Mediterranean countries are parties to the weapons of mass destruction (WMD) treaties, i.e., the Nuclear Non Proliferation Treaty (NPT), the Biological Weapons Convention (BWC), and the Chemical Weapons Convention (CWC). Notable exceptions are Egypt, Israel, and Syria, which did not ratify the CWC, and Egypt and Syria, which are NPT members. All three countries are deemed to possess chemical weapons, and Israel, which is not an NPT member, is widely believed to have nondeclared nuclear weapons. Egypt's official reason for not ratifying the CWC is that its chemical arsenal is aimed at counteracting Israel's nuclear armament. Libya, a possessor of chemical weapons, ratified the CWC and is now engaged in a destruction program with the help of Italy. Libya was also secretly engaged in a nuclear program, even though the verification carried out by disarmament agencies found it to be very modest and insignificant. Nevertheless, in 2003, in a letter addressed to the Security Council, Libya took on the commitment not to participate directly or indirectly in perpetrating acts of international terrorism and declared that it was giving up its program for the construction of weapons of mass destruction.

While CWC commitments are subject to very strict international control, BWC commitments are not. The NPT control system, which has many loopholes, is implemented by the International Atomic Energy Agency (IAEA) and has a system of safeguard agreements, which has been strengthened by additional protocols. The latter entered into force recently, but not all Mediterranean countries have adopted it; those excluded are Egypt, Israel, Morocco, Syria, and Tunisia.

Two other treaties should be mentioned: the 1971 Seabed Treaty (Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor) and the Comprehensive Test Ban Treaty (CTBT). The former prohibits the placement of nuclear weapons on the seabed and ocean floor beyond 12 miles from the coast; the latter forbids nuclear tests. The seabed treaty has not been ratified by all Mediterranean states: Egypt, France, Israel, and Syria are not parties. Luckily its importance is limited. The prospects for an early entry into force of the CTBT are gloomy. So far the treaty has been ratified by a respectable number of countries, others have only signed it. All Mediterranean states, with the exception of Egypt, Israel, and Syria, have signed or ratified the CTBT. But both Egypt and Israel are among the 44 states whose ratification is necessary for the treaty's entry into force.

Thus, very few Mediterranean countries are not parties to the WMD treaties, but the very fact that they have no obligation not to build or increase their WMD armament is a source of suspicion and instability, encouraging more powerful countries to act unilaterally. In 2007, Israel bombed and destroyed the Deir ez Zor site in Syria, which was ready to host a nuclear reactor capable of building nuclear weapons supplied by North Korea. Contrary to what happened after the Israeli destruction of the Osirak reactor in Iraq in 1981, this time the UN Security Council was not convened and Syria limited itself to a protest without insisting on having the question discussed in the Security Council.

Mediterranean countries that are NATO members have joined the PSI (Proliferation Security Initia-

tive), a club of like-minded states intent on countering proliferation. One of the major results was the diversion of the ship BBC China to the port of Taranto, Italy, in 2003. The ship was bound for Libya with a suspicious cargo that was seized by Italian authorities. It was after this episode that Libya renounced building WMD. Many states in addition to Mediterranean NATO members participate in the PSI: Albania, Cyprus, Israel, Libya, Malta, Montenegro, and Morocco.

NATO, as has been pointed out, is present in the Mediterranean with operation Active Endeavour, tasked with counter-proliferation surveillance and interdiction in addition to its original counter-terrorism role.

# 8

## MILITARY USE OF THE SEA IN PEACE TIME

Geographically, the Mediterranean is a narrow sea. It has become even narrower with the coastal states' establishment of zones of jurisdiction. In addition to proclaiming historic bays and establishing straight baselines that reduce the high seas, coastal states have established contiguous zones, fishery zones, EEZs, and ecological reserves, carpeting the Mediterranean with areas subject to their control. Strictly speaking, all these zones, with the exception of the territorial sea and internal waters, are high seas. Nevertheless, the old freedom of the high seas is curtailed in several respects. For instance, fishing is not permitted in foreign fishery zones or EEZs without the consent of the coastal state. In principle, the zones of jurisdiction should not hamper military navigation and other uses of the sea by navies.

- Navigation and overflight: navigation is permitted in contiguous zones, fishery zones, and EEZs. Navies are also entitled to enter foreign territorial seas in innocent passage. But this claim is not recognized by a number of Mediterranean countries that require previous notification for entry into their territorial waters. Overflight of territorial waters is not permitted without the consent of the territorial state, while it is free over contiguous zones, fisheries zones, and EEZs.
- Military exercises: navy war games are a manifestation of the freedom of the high seas. However, a number of third world countries claim that military maneuvers cannot be undertaken in foreign EEZs. Navigation and naval maneuvers are often sources of naval incidents. Thus, "rules of the road" for navies are important. The most relevant document in this field is the U.S.-Soviet Treaty of May 25, 1972. This model was followed by subsequent treaties stipulated with the Soviet

Union by the United Kingdom (1986), France (1989), and Italy (1989). After the brief parenthesis of Russia's absence in the Mediterranean, these treaties have now regained their strategic importance. Greece and Turkey concluded a memorandum of understanding concerning military activities on the high seas and in the international airspace in 1988. Two agreements were concluded between Italy and Tunisia on November 10, 1988: an Executive Protocol on cooperation between the Italian Navy and the Tunisian Navy and a Technical Arrangement on practical measures aimed at avoiding incidents at sea and facilitating cooperation between the Italian Navy and the Tunisian Navy. Naval Confidence Building Measures (CBMs) were also developed within the ACRS (Arms Control and Regional Security) track of the Middle East peace process begun after the 1991 Madrid Conference. ACRS was co-sponsored by the United States and Russia and is now practically dead.<sup>9</sup> Nevertheless, in the naval sphere, discussions centered on regional cooperation in promoting SAR (Search and Rescue) zones and on INCSEA (Prevention of Incidents at Sea). Israel and 12 Arab states were members of SAR, which also included a representation of Palestinians.

- Military uses of the continental shelf: apart from the question of jettison areas, which has already been mentioned, the continental shelf can be used for other purposes such as the emplacement of dormant mines or more innocent listening posts

<sup>9</sup> Emily B. Landau, "ACRS: what worked, what didn't, and what could be relevant for the region today," in *Disarmament Forum*, No. 2, 2008, pp. 13-20.

for submarine tracking. Third World countries are usually opposed to such uses of their continental shelves by foreign states and claim that the placement of such devices hampers their sovereign right to exploit the natural resources of the seabed.

# 9 USE OF THE SEA IN TIME OF CRISIS AND ARMED CONFLICT

For centuries, the Mediterranean has been used as a theatre for naval operations and, with the development of aviation, for air operations. This has not changed with the entry into force of the UN Charter and the prohibition of the use of force, except in self-defense. The Law of the Sea Convention has introduced new zones of jurisdiction, but this has not impeded the exploitation of the Mediterranean for belligerent purposes and its use by navies in time of crisis.

The French Navy conducted operations aimed at intercepting weapons destined for Algerian rebels during the Algerian war of independence in the 1960s. As already recalled, the United States overflew the Strait of Gibraltar to bomb Tripoli in 1986. The Yugoslav central government subjected the city of Dubrovnik to naval bombardment in 1991–1992 and Israel established a naval blockade against Lebanon during the 2006 war. Israel is also currently patrolling the waters off the Gaza Strip, thus preventing the Palestinian Authority and now Hamas from reaching the open sea. On January 3, 2009, Israel proclaimed a formal blockade of Gaza waters at 50 miles from the coast. There are precedents of blockade of ports controlled by insurgents, but the blockade of coasts controlled by nonstate entities regarded by the blockading state as a terrorist organization is new. In this case the blockading state can invoke the right of self-defense, but the problem is that the blockade is affecting the right of third countries since it is established against all ships. On May 31, 2010, the Israeli blockade was challenged by a flotilla of six ships organized by a number of nongovernmental organizations (NGOs). Israeli commandos intervened against a Turkish ship, the *Mavi Marmara*, causing a number

of deaths and injuries. In this case the legal problems involved are twofold: the ships stopped and seized were 70 miles off the coast and a blockade aiming at starving the civilian population is prohibited. Israel's claim in its defense was that the flotilla had attempted to breach the blockade and a belligerent is allowed to take action to impede it; moreover the delivery of humanitarian aid should be authorized by the blockading force. The incident exacerbated relations between Israel and Turkey.

Naval operations may also be mandated by the Security Council. During the embargo against Yugoslavia (1992–94), the Italian navy, alone or in conjunction with NATO and the Western European Union (WEU), implemented the embargo decided upon by the Security Council resolutions 713, 724, 757, 787, and 820 by visiting and searching vessels bound for Yugoslavian ports. Vessels accused of violating the embargo were diverted to the Italian port of Bari and weapons and military equipment confiscated.

Naval operations cannot take place in the territorial waters of neutral states. Traditionally naval operations can take place in the territorial waters of belligerents and on the open seas. Are open sea areas still free for naval operations now that they have been made subject to the sovereign rights of coastal states with the establishment of fishery zones, EEZs or ecological reserves? The same question can be posed in connection with neutral continental shelves: can they be used for antisubmarine warfare? The traditional view is that such zones may become theatre of naval warfare. The only limitation is that belligerents should have due regard for the economic activities of the coastal state, such as fisheries, exploitation of the conti-

mental shelf, and the environment. This view, however, is questioned by Third World countries.

# 10 PERMANENT NEUTRALITY AND DEMILITARIZATION

In 1980, Malta declared its permanent neutrality, recognized and guaranteed by Italy. As a result, Malta cannot join military alliances such as NATO or collective security pacts establishing reciprocal rights and duties. Italy's guarantee entails the obligation to intervene at Malta's request, should the island be the object of armed attack. Italy cannot ask NATO for assistance in carrying out its obligations. In 1984, Malta signed a Treaty of Friendship and Cooperation with Libya, which was deemed contrary to its neutrality. However, with the change in the Maltese government, the matter of the treaty has lost interest and is no longer questioned. The change in Libya's attitude and its re-establishment of full relations with the West has ended all speculation. Instead, Malta's status could have raised a problem for its membership in the EU. From a formal point of view, its neutrality is preserved since the EU Treaty safeguards the security and defense policy of member states, which also includes permanent neutrality. The same is true for the Treaty of Lisbon since the "structured cooperation" envisaged under Article 42 is voluntary and the clause on collective self-defense does not throw the defense policy of neutral states into question. From a substantial point of view, however, the issue is different since the European integration process in defense policy could, in the long run, become incompatible with the status of permanent neutrality.

In the beginning, Malta's proclamation of neutrality was clearly anti-British and anti-United States. Dom Mintoff, then Labour prime minister of Malta, protested several times against U.S. Navy transit through Maltese territorial waters. At the time, the

U.S. administration was firmly opposed to neutralization.

Today, permanent neutrality could regain currency in the Mediterranean. As part of a settlement of the ongoing Israeli-Palestinian conflict, the "two peoples-two states" doctrine could be implemented imposing a status of permanent neutrality on the new Palestinian state, to be guaranteed by the main actors in the region as well as the United States.

There are other examples of neutralization of territories in the Mediterranean. The Moroccan coast of the Strait of Gibraltar between Melilla and the right bank of the Sebou River was neutralized by an agreement between France and Great Britain in 1904. After independence, Morocco stated that it was not bound by the colonial agreement even though it was willing to maintain the demilitarization *ex gratia*. A more recent example of demilitarization is the border between Egypt and Israel in the Sinai. With the changed role of warfare, demilitarization of territories does not play as important a role as it did in the 19th and early 20th centuries. However, it can be of some importance for territorial settlements.

Could an entire area such as the Mediterranean be demilitarized? Theoretically yes; politically it depends on the circumstances. Similar proposals were formulated in the 1960s by the Soviet Union and the NonAligned Movement (NAM). The Soviet Union was interested in the denuclearization of the Mediterranean, while the NAM was mainly in favor of making the Mediterranean Sea a zone of peace. The idea was to remove all foreign navies from the Mediterranean and to shut all U.S. bases there. Obviously those proposals were not acceptable to



the United States and its Mediterranean allies, including Israel.

Article 22 of the Treaty on Friendship, Partnership, and Cooperation between Italy and Libya states that the two countries will cooperate in the field of nonproliferation of WMD. Both countries will take the necessary steps to make the Mediterranean a WMD-free zone. However, even this engagement is not absolute in that it qualifies that the two states will act within the limits of their obligations stemming from relevant treaties and agreements in the field.

# 11

## A REGULATORY FRAMEWORK FOR THE MEDITERRANEAN AND POLICY CONSIDERATIONS

For the time being, resuscitating the CSCM seems unrealistic. It is true that when the CSCE was started in 1973, the Cold War raged and Europe was divided into two competing blocs. Yet, each bloc was politically responsible to a leader, whether that be the United States or the Soviet Union. The Mediterranean is too fragmented and results like those of the CSCE and later the OSCE, which contributed to the demise of the Soviet system, cannot be achieved step by step. Suffice it to mention such formidable obstacles as the Israeli-Palestinian conflict and its impact on relations between the United States and radical Arab countries, as well as the difficulty it creates for an effective Euro-Mediterranean dialogue. It is, however, conceivable that several regulatory systems could be set up in domains ripe for cooperation, such as fisheries, exploitation of the continental shelf, pipelines, and economic exchanges. These are sectors that involve cooperation between the EU and the southern riparian states, rather than transatlantic cooperation. The same is true for the regulation of illegal immigration and the apportionment of SAR zones.

Security is a different matter and is of concern to both Europe and the United States. Anti-terrorism is also a matter for close transatlantic cooperation. Europe's added value in the fight against international terrorism could be the integration of Arab countries into the effort. Cooperation between interior ministers and exchange of information is ongoing and could be strengthened, provided that a common platform for respecting human rights is found. Soft security such as the fight against drug trafficking could interest both sides of the Atlantic.

Of paramount importance for both Europe and the United States is freedom of navigation, which should not be curtailed by the proclamation of new EEZs or by hampered transit in international straits.

Another issue is conflict containment or resolution. The United States, rather than Europe, has been the main actor in avoiding the eruption of conflict in the Aegean. Europe has nevertheless been called upon to play a role because of Turkey's ambition to become an EU member (since 1997, the peaceful settlement of border disputes has become a condition for EU accession).<sup>10</sup> The solution of other areas of potential conflict is within the reach of the EU, such as the controversy between Slovenia and Croatia for the apportionment of the Gulf of Pirano.

By contrast, the Israeli-Palestinian conflict is mainly in the hands of the United States, and the EU can only be supportive, particularly with economic aid. Peacekeeping in adjacent areas is not excluded, as proven by the dispatch, in 1979, of the Multinational Force & Observers (MFO) to the Sinai peninsula areas, which is still in operation, or the peacekeeping force in Lebanon after the 2006 war (UNIFIL II). These two operations show the flexibility of peacekeeping in the Middle East, since the former was set in motion outside the UN, while the latter was fully endorsed by the UN Security Council.

WMD is a field in which transatlantic cooperation should be maximized and applied to the Mediterra-

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<sup>10</sup> Frank Hoffmeister, "The Aegean Conflict — An Unsettled Dispute in Turkey's EU Accession Course," in Thomas Giegerich (ed.), *A Wiser Century?, Judicial Dispute Settlement, Disarmament and the Laws of War 100 Years after the Second Hague Peace Conference*, Berlin, 2009, p. 500.

nean context. The landmark resolution on nonproliferation of nuclear weapons adopted by the Security Council on September 24, 2009 singles out nuclear-weapon-free zones as a contribution to nonproliferation. The 2008 treaty also calls upon Italy and Libya to render the Mediterranean a zone free of WMD. For the moment, however, this is wishful thinking in the case of disarmament and arms control. A nuclear-weapon-free zone in the Mediterranean would have to be established by a treaty adhered to not only by the riparian States, including Israel, but also by its outside users, above all the United States. This would imply renouncing its nuclear deterrence — a condition that may not materialize because of the threat coming from Iran, a country equipped with missiles capable of targeting most European countries that may soon be endowed with nuclear warheads.

A diplomatic effort aimed at convincing the recalcitrant Mediterranean states to ratify the WMD treaties will be ineffective unless Israel renounces its nuclear deterrence and is convinced to join the NPT as a nonnuclear state. South Africa is the leading case of a state that has renounced its nuclear deterrence and dismantled its facilities. However, the South African arsenal was under construction, while Israel is widely believed to be a nondeclared nuclear state already possessing a significant number of nuclear weapons. A solution may be possible only if credible and effective security assurances are given by the nuclear states. Since the obligation assumed by nuclear powers under the NPT to start effective steps toward nuclear disarmament still has to be implemented, the vision of a world free of nuclear weapons put forward by President Obama may not materialize very soon.

Security arrangements to face new crises should be paramount in a Euro-Atlantic partnership. A nuclear Iran and/or an Iran equipped with long-distance missiles is a threat not only to Israel but also to other Mediterranean neighbor countries, such as Turkey, Greece, and Egypt. As Ian Lesser puts it, “the recent decision of the Obama administration to cancel planned missile defense installations in Poland and the Czech Republic in favor of a mobile maritime approach will make the Mediterranean the center of gravity for the U.S. and NATO ballistic missile defense architecture.”

New confidence and security building measures (CSBMs) should be negotiated. Navies are covered by a number of bilateral agreements and common understandings for preventing incidents on the high seas. Bilateral agreements and common understandings could be included in a multilateral process. Other CSBMs could include intermediate range missiles.

Transatlantic maritime cooperation could be organized by NATO, with operation Active Endeavour providing a good example. Cooperation should be enhanced by France’s reintegration into the NATO military structure. For the time being, NATO represents the best framework for maritime cooperation. WEU navies operated during the embargo against the former Yugoslavia in the 1990s when the EU did not yet have a unified navy. The Atalanta anti-piracy mission in the Gulf of Aden and Indian Ocean is the most recent example of European cooperation in the naval sector. NATO cooperation in naval strategy presupposes a basing policy that should take account of the reshuffling of U.S. bases abroad. This is all the more important since NATO is updating its Strategic Concept and a new version

should be released in late 2010 by the North Atlantic Council. Cooperation could also be carried out outside NATO, for instance within ad hoc coalitions that the new Obama administration has not revoked, such as the PSI, which has proven to be quite successful.

Freedom of navigation is more complicated. Leaving aside the differences on the delimitation of sea areas between allies, it implies a common vision on how to implement the liberty of the high seas. While Europeans prefer to rely on protest, the United States has a program to exercise its right of navigation by crossing disputed waters. For the moment it has shown considerable restraint, but the program to implement the freedom of the high seas through regular exercises has never been eliminated. European States and the United States need a common vision on this point. It is important that the EU pushes the Mediterranean states that have not yet ratified the 1982 Law of Sea Convention (Israel, Libya, Syria, and Turkey) to do so, a move that, however, cannot be credible unless the EU and the United States act in concert.



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