

Chapter 2

Regional Context and Maritime Governance



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2.1 Introduction

The Alboran Sea's physical and geopolitical characteristics are what make this marine area generate governance structures that are both part of, and articulate, interests and demands on scales ranging from the international-global to the local levels, combining, as it does, immediate economic survival interests with conflicts of global complexity. Despite the fact that the surface area of this sub-basin only amounts to 3% of the Mediterranean Sea, the nature and complexity of the scenario make it stand out as far as both multilateral and bilateral international relations are concerned. A simple glance shows a combination of long-standing historical questions, such as territorial disputes on both shores and the extreme importance of maritime trade, and some conspicuous peculiarities, including the presence of some straits of great global importance, the convergence of vast economic disparities, and (the consequent) emigration. Despite the most defining features of this sub-basin (semi-confined waters, proximity of the two shores—and, at the same time, great socio-economic inequalities—and the intensity of some high impact uses) also being drivers of multilateral cooperation for the sake of more effective governance, the immensity of the differences and disagreements is a powerful obstacle to coordinated and acutely complex actions.

Although the Mediterranean Sea as a whole already has a long tradition of generating international cooperation instruments in maritime matters—the Mediterranean Action Plan was the first that was promoted under the United Nations

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Environment Plan (UNEP) regional seas programme—effective compliance with multilateral actions has been hindered by member States’ economic, technological, and administrative limitations, which explains why many of the situations of environmental vulnerability that exist throughout the basin have worsened, including those in the Alboran region. Another factor that may have contributed to this process of deterioration is the fact that a large part of the Alboran’s waters have remained outside national jurisdiction over recent decades (during which its coastal States’ have experienced strong economic and population growth) as a result of exclusive rights not being declared in the application of the United Nations Convention on the Law of the Sea (UNCLOS). The only change to this has come in the last few years, with the area under the high seas regime being reduced to a third of the basin’s total area.

In parallel with this, there has been a second, ongoing political and institutional process which, in contrast, has enabled the strengthening of coastal States’ ability to govern the area due to the expansion of the EU. With the joining of new member-States throughout the whole basin, EU States now control some 35% of jurisdictional waters (57% in the Alboran), implying that the EU has a notable ability to implement its policies, including those of a military or environmental nature.

This chapter is divided into three main sections to analyse these aspects: the first addresses the region’s geopolitical framework and identifies the extant political actors and political and socio-economic relations in the region. The second section examines the basin’s legal regime in the context of the United Nations Convention on the Law of the Sea. Lastly, the third section focuses on examining maritime governance in the region, and on the policy instruments and practices involved in the administration of maritime sectors and the management of the disputes that exist both among coastal States and with third States.

2.2 Political Geography of the Region

In this chapter, the area covered by the Alboran Sea is taken as the eco-region defined in Spalding et al. (2007). Stretching from the Strait of Gibraltar to Cabo de Palos-Le Portet (Fig. 2.1), this region has a surface area of about 79,000 km², equivalent to 3% of the Mediterranean basin. The area is somewhat complex in jurisdictional terms, due both to its territorial make-up and the structure of the maritime spaces over which sovereignty and jurisdictional rights are exercised. Although all the States around its shores have declared EEZs, there are also some high sea waters due to Spanish law considering that the EEZ extends from Cabo de Gata, even though the seafloor and subsoil that underlie the water column form part of the Spanish continental shelf.

The largest jurisdiction corresponds to EEZ (41%), followed by territorial sea (32%) and High Seas (22%). In national terms, Spain is the State that presides over the greatest jurisdiction (Tables 2.1 and 2.2).

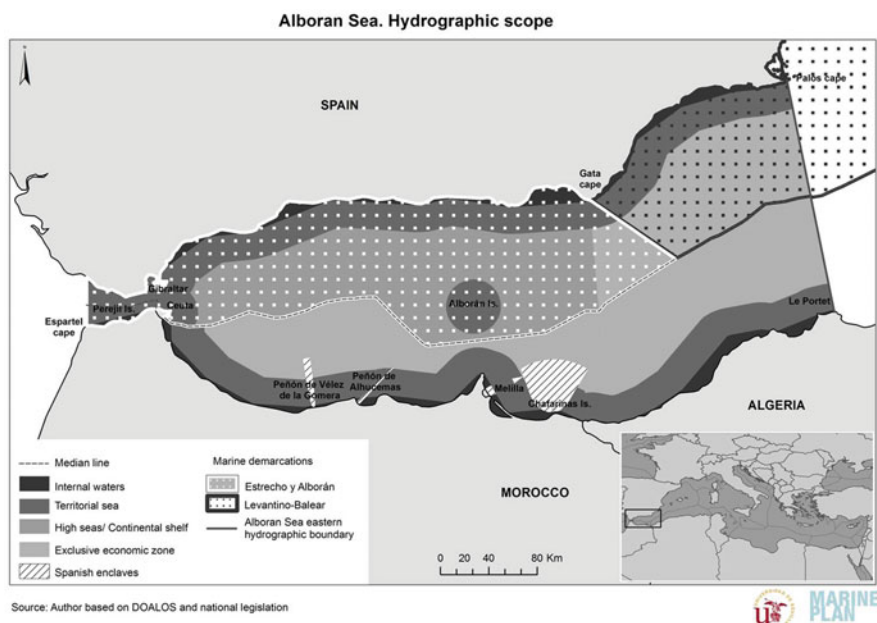


Fig. 2.1 Alboran Sea. Study area

Table 2.1 Alboran Sea. Jurisdictions by country

Country	Jurisdictions	Surface (sq. km)	Total surface (sq. km)
Algeria	Exclusive economic zone	11,133	16,591
	Inland waters	935	
	Territorial sea	4523	
Morocco	Exclusive economic zone	9552	17,642
	Inland waters	1245	
	Territorial sea	6845	
Spanish enclaves	Exclusive economic zone-Contiguous zone	793	44,814
	Inland waters-Territorial sea	97	
	Territorial sea-Contiguous zone	90	
	Territorial sea-Territorial sea	629	
Spain	High seas/Continental shelf	17,140	79,047
	Exclusive economic zone	10,757	
	Inland waters	2069	
	Territorial sea	13,239	
	Total	79,047	79,047

Source: Author

Table 2.2 Alboran Sea.
Surface by jurisdictional areas

Total jurisdictions	Surface (sq. km)	%
Inland waters	4346	5
Territorial sea	25,326	32
High seas/Continental shelf	17,140	22
Exclusive economic zone	32,235	41
Total	79,047	100

Source: Author

The Alboran Sea is a sub-basin of the western Mediterranean that lies between the Spanish and the North African coasts, and between the Algero-Provençal Basin and the rest of the western Mediterranean in the east, and the Strait of Gibraltar in the west. It is a clearly identifiable marine area due to a series of defining features (physical, geopolitical, economic etc.) and some conflicts and legal disputes over the multiple and heterogeneous use of a relatively small space for the coexistence of three States (Spain, Morocco, and Algeria), a colonial territory (Gibraltar) and a number of bases under Spanish sovereignty along the Moroccan coast.

The Alboran Sea's morphology (semi-enclosed sea), size (approx. 79,000 km²: 3% of the surface area of the Mediterranean) and bathymetry accord it some very distinctive features, and its position in the westernmost sector of the Mediterranean enables it to communicate with the Atlantic Ocean through the Strait of Gibraltar.

Situated as it is between the coasts of Spain and the Moroccan and Algerian Maghreb, the Alboran Sea is 490 km (approx. 272 nm) long from east to west and 160 km (approx. 89 nm) wide from north to south.

2.2.1 *The Regional Context*

The Alboran sub-basin is framed in the westernmost part of the Mediterranean region as a whole, whereby it shares this wider region's geographical and physical features and also its human character. The entire Mediterranean is a semi-enclosed sea (as is the Alboran) and it is this particular morphological configuration which, on many occasions, exacerbates the various environmental (pollution, eroding coastal areas etc.) and human problems (conflicts and legal disputes between coastal States and with third States, border issues, and threats to regional security) (Nair 1995, 1998; Bethemont 2000; Sanguin 2000) that are produced in its waters and on its shores. Notwithstanding, its size and morphology compel the States around its shores to strive for mutual understanding and regional cooperation, as geological features such as its enclosed morphology and the short distance between its shores are not only the cause of friction, but also give rise to the need to coexist and share the common space (Khader 1995; Aubarell 1999; Morillas and Blázquez 2009; López García and Hernando de Larramendi 2010; Beneyto 2010; Florensa 2017).

From the geopolitical and socio-economic viewpoints, the Alboran is basically an area where different and occasionally opposed socio-economic, cultural and

strategic models collide. However, it is no less true that, apart from the problems found here [latent north/south tension and a broad and varied range of issues and complexities (unequal north/south development, political and cultural differences, frequently diverging geopolitical and strategic points-of-view, problems with sovereignty, migratory flows, competition for the various marine resources, and environmental issues)], the area also possesses a common historical legacy (Luciani 1984), which makes this space a bridge between Europe, the Maghreb and Sub-Saharan Africa.

A growing network of inter-State relationships has helped to usher in an interesting period of political dialogue between European countries (the former European Economic Community (EEC) and Arab countries (especially in the Maghreb) since the 1970s. Progress in this process of Euro-Mediterranean rapprochement has been embodied in the so-called Euro-Arab Dialogue and the EEC's Mediterranean Global Policy, both of which were unfortunately stalled, or at least put on hold, by the Gulf War (Amin 1994). Nevertheless, a parallel Euro-Mediterranean cooperation process has developed in the areas of the environment and science from the 1970s on: the MEDSPA programme, a range of scientific projects, the Environmental Programme for the Mediterranean, Euro-Mediterranean environmental and fisheries cooperation (the 1990 Nicosia Charter, the 1992 Cairo Declaration, the 1994 Heraklion Declaration) and, of course, the Mediterranean Action Plan and the Barcelona Convention, both of which were extended in 1995. This, what could be referred to as a 'maritime-environmental' foundation stone, took its place alongside the economic and political foundations represented by the Euro-Mediterranean Association, the Union for the Mediterranean and other political dialogues (dialogues initiated by NATO (the North Atlantic Treaty Organisation), the Western European Union (WEU) and the Organisation for Security and Cooperation in Europe (OSCE) with non-Mediterranean countries) (Khader 1995; Aubarell 1999; Núñez Villaverde 2005; Florensa 2017). Both these lines of multilateral action provided a degree of hope during turbulent historical times.

Despite many experts currently talking of the failure of the most ambitious Euro-Mediterranean initiatives, the possibility still exists of committing to instruments which, even though they seem to be more modest and limited to specific topics (science, the environment, fisheries etc.), are no less useful for that. The key to cooperation in the Mediterranean may lie in the search for common areas for the management of spaces and resources of natural and economic value (Grasa and Uljed 2000) rather than getting mired in interminable arguments about civilisation, culture and beliefs.

2.2.2 *Countries and Territories: Geopolitical and Socio-economic Information*

The waters of the Alboran Sea bathe the coasts of three States, one European (Spain) and two North African (Morocco and Algeria), as well as those of a number of ‘micro-territories’: one British colonial territory (Gibraltar) and several locations under Spanish sovereignty (major garrisons—Ceuta and Melilla—and some minor outposts—Peñón de Vélez de la Gomera, Peñón de Alhucemas, the Chafarinas Islands, Perejil (or Parsley) Island and Alboran Island) (Blake 1987).

The inequality and heterogeneity that exists in the Alboran region is further slightly complicated by the different focuses of Spain, on the one hand, and the Maghreb countries, on the other, in affairs of foreign policy, relations with other States, and membership of regional organisations. Spain forms part of the web of western organisations (EU, WEU, NATO), whereas the two States in the Maghreb belong to the Arab League and the Arab Maghreb Union, the latter an organisation which, despite its ambitious name and goals, has not achieved to date any real political and economic integration of the countries in the area (Morocco, Algeria, Tunisia, Libya and Mauritania).

The Alboran is also a clear example of Mediterranean asymmetries in wealth, development and well-being. Despite the economic and social difficulties triggered by the crisis, according to the World Bank, GDP *per capita* stood at US\$28,157 in the European State (Spain) in 2017 and the country had a human development score of 0.891 out of 1 according to the United Nations Development Programme (2018), while the two Maghreb States had lower levels of wealth per inhabitant—US\$3007 in Morocco and US\$4123 in Algeria—and lower levels of development—0.754 in Algeria and 0.667 in Morocco. These socio-economic inequalities add to the different demographic behaviours on the two shores of the Alboran Sea, an especially serious matter for the Maghreb countries, where high fertility rates have resulted in high birth rates and a high percentage of young people. The latter translates into growing spending needs for infants and the young (education and health) and imbalances between the number of people reaching working age and the number of jobs that the economic system can offer. All this obviously generates unease among the Maghrebi people and tensions in their countries, as well as migratory flows towards the north. As some authors (Nair 1995; Guerraoui 2000; Suárez de Vivero 2009) state, these socio-economic factors are at the root of the lack of stability in the region and may have major consequences in the field of inter-State relationships.

2.2.3 *The Alboran Sea and the Maritime Economy*

The Alboran is not only an area on the border between the North and the South, but also a zone of transit, exchange and circulation. This is the reason why its maritime

economy rests on two major pillars: one, the extraction of living marine resources; and the other formed by maritime transport and traffic.

Fishing is a traditional activity in the area and makes a contribution to the economy that, while rather small in terms of the national economy, provides worth for the local communities that are dependent upon it. It has become so important that it has triggered several disputes between Spain and the Maghreb countries over the use of certain waters and has impacted EU-third country treaties (with Morocco, especially) and even the trade relationships between them. On numerous occasions, the living resources, which are scarce and highly coveted by all the coastal States, are a basis for sparking frequent North-South disputes (legal disputes, biological rest periods, defense of fishing grounds regarded as belonging to one county or another, a lack of agreements in affairs relating to fisheries management and exploitation etc.). However, this is an even more serious matter in other Mediterranean sub-regions, and it would seem that a certain climate of cooperation and agreement has been achieved in the Alboran Sea.

Regarding the use of the Alboran Sea as an area for sea traffic, it must be said that it is a privileged space with great importance in the world as far as maritime communications are concerned. A large part of the traffic between the Middle East and Asia and the Western world makes use of this area and the Strait of Gibraltar as a key transit route. An additional function needs to be added, one that is secondary but that has a major impact on the regional level: it connects the basin's northern (Europe) and southern areas (the Maghreb and the rest of Africa). So, along with the traditional maritime traffic routes, there are other connections, in this case north-south, which augur greater cooperation in the future and the generation of shared economic interests. This is the fixed link project in the Strait, with electric power lines across the Strait of Gibraltar and the current Maghreb-Europe gas pipelines. One of these pipelines originates in the HassiR'mel gas fields in Algeria, goes through Morocco and crosses the Strait (Martínez Díaz 1993), while the other, which originates in the same fields, connect with Beni Saf (on the Algerian coast) and from there crosses the seabed to Almeria (ERM Iberia, S.A. 2005).

It is clear that a space simultaneously overused by such a great variety of, in many cases, incompatible activities is bound to be a flashpoint for a multitude of conflicts, both between the different public and private users and between the various uses and the marine environment. On top of the economic, environmental and spatial consequences produced by these marine uses on the local and basin levels, there is also a more general feature: the existence of an economic 'equator' that splits the region into two very distinct and contrasting areas from the point-of-view of their levels of development. The responses to such circumstances can be, on some occasions, the choice of economic nationalism and the preservation of spaces and resources that are considered to be one's own, and, on others, commitment to multilateral cooperation and regional integration.

2.3 Alboran Sea: Law of the Sea and Jurisdictional Issues

The Alboran Sea connects two continents and links States that share, in addition to their history and their concerns, territorial conflicts. In this chapter, we first try to place this maritime space in its legal context and, subsequently, present the States that share a border and the sea's national maritime legislation. Finally, we address the maritime borders and current conflicts. In this section, the scope of analysis is the one already described previously.

Although all the States present in the sea have declared an EEZ, there are also high seas waters due to the particularity of Spanish legislation, which sets Spain's EEZ from Cabo de Gata, although the bed and subsoil of the overlying water column are part of the Spanish continental shelf.

The most extensive jurisdiction corresponds to EEZ (41%), followed by territorial sea (32%) and high seas (22%). At the national level, Spain is the State with the greatest jurisdictional presence (Tables 2.1 and 2.2).

2.3.1 *The Alboran Sea in the Context of UNCLOS*

By sea, we mean a surface that is differentiated by having its own identity: basic level, hydrographical and hydrological characteristics. However, in reality, a well-defined surface area of any particular sea might bear a name of its own. In the case of the Mediterranean Sea, there are several such areas (or sub-basins), some of which have long histories, while others are simply recognized by the names of the coastal States that are part of their littoral, or even the names of some submerged islands under the surface. The Alboran Sea, which is the object of study of this work, is no exception and owes its name to Alboran Island. Consequently, in short, as has already been indicated above, the Alboran Sea is simply one part of the Mediterranean Sea.

Now, it is a fair question to ask about its legal regime. How might it be defined in accordance with the United Nations Convention on the Law of the Sea (UNCLOS)? Before answering, it would be appropriate to present the definitions attributed to the various legal regimes for seas.

In Part IX and, more specifically, in Article 122, UNCLOS lays down definitions for two categories of the sea: closed and semi-enclosed. The convention recognises the first as a sea surrounded by several States that communicates with another sea or ocean through a narrow passage.

The most common example given for this is the Mediterranean Sea. As for the second, this refers to any sea constituted wholly or mainly by the Territorial Seas and Exclusive Economic Zones of several States. One example of this is the Caspian Sea.

According to this illustration, if the Mediterranean Sea is a semi-enclosed sea and the Alboran Sea is a part thereof, ipso facto it, too, is a semi-enclosed sea. Moreover, it is a perfect example of this regime, as it is connected with the ocean via a narrow

passage, none other than the Strait of Gibraltar, and is surrounded by three States, i.e., Spain, Algeria and Morocco.

2.3.2 States and Their Maritime Jurisdictions

Now, it must be stated that in addition to fully or partially concerning the coastlines of three States, the Alboran Sea is also bordered on by the colony of a fourth State.

Although it encompasses the entire Mediterranean seaboard of Morocco and much of that of Spain, it only covers a small part of the Algerian coast. Meanwhile, the eastern coast of the colony of Gibraltar descends into the Alboran Sea. It should be pointed out that the western end of the Mediterranean, like the eastern end, is an area where almost all the international legislation governing the sea and its inherent activities is applied, including that established in the regional framework and the national legislation of the Mediterranean States, as well as that of the autonomous community of Andalusia.

Regarding UNCLOS, both Morocco and Algeria signed the convention on 10th December 1982 and ratified it on 31st May, 2007 and 11th June, 1996, respectively. Spain signed the convention on 4th December 1984 and ratified it on 15th January 1997. The United Kingdom endorsed the convention on 25th July 1997, and expressly extended it to include Gibraltar.

2.3.2.1 Moroccan Legislation

With regard to the national maritime legislation of these actor in the Alboran Sea, in 1973 Morocco passed Act 1.73.211 (which will be amended and supplemented by draft legislation 37-17). This sets the limits of the country's territorial sea at 12 nm and an exclusive Moroccan fishing zone at 70 nm from the baselines. Article 2 of the mentioned Moroccan legislation adopts the equidistance method (Gutiérrez Castillo 2009) to delimit its territorial sea from its opposing and adjoining neighbours. Two years and 4 months elapsed before a decree was passed (which will be amended and supplemented by draft decree 2-17-349) that determined the basic closing lines on the coast and the geographical coordinates of the limits of the territorial waters and the Moroccan exclusive fishing zone that later became an Exclusive Economic Zone (EEZ). The EEZ was extended to 200 nm by Act 1-81 (which will be amended and supplemented by draft legislation 38-17), which also created the Contiguous Zone (CZ) adjacent to the territorial sea, the width of which is 24 nm as the sea's breadth does not allow the EEZ to extend beyond the median line. We, therefore, assume that under no circumstances should it exceed 43 nm in the west and 95 nm in the east (the coordinates of the delimitation of the EEZ have not been published to date). Regarding Morocco's continental shelf (CS), this was essentially defined in the *Dahir* (decree emitted by the King) concerning the code for the exploration and exploitation of hydrocarbon deposits and subsumed by the above-mentioned Law

1-81. Article 11 of the Moroccan legislation establishes two methods for delimitation with neighbouring opposing or adjoining States: the median line for the delimitation of its EEZ and equity in the case of its CS.

It should be noted that the Moroccan legislation was drawn up before the conclusion of UNCLOS and that the last Law on the matter dates from 1981. However, it took its inspiration from the latter and sought to adapt to its provisions (Ihrai 2007).

2.3.2.2 Spanish Legislation

Spain's coastline is 7905 km long. The country passed its first law delimiting the fishing zone under its jurisdiction in 1967. However, it was not until 1977 that legislation was passed to accurately define the maritime domains under its jurisdiction, their width and the competencies to be exercised by the State. In that year, Spain enacted Law 10/1977 of 4th January, which set a width of 12 nm beyond the country's straight baselines as the area under Spanish sovereignty.

It must also be stated that the same Law referred to the equidistance method for the delimitation of the country's territorial sea with neighbouring States.

The points of the baseline from which the outer limits of the territorial sea are measured were soon determined. The coordinates of the baselines were published only 7 months later, in Royal Decree 2410/1977. However, no exclusive economic zone was declared in the Alboran Sea until Royal Decree 236/2013. Notwithstanding, prior to 2013 Spain possessed a protected fishing zone in the Mediterranean which was calculated from Punta Negra-Cap de Gata (36°43' N and 02°9' W). This has been replaced de facto by the EEZ that, according to the law, is also measured from the same location. It must be highlighted that the seabed and subsoil of the water column in the Alboran Sea outside Spanish territorial sea form part of the Spanish continental shelf.

2.3.2.3 Algerian Legislation

Algeria was the first actor in the area to extend its territorial sea to 12 nm. Article 1 of Decree 63-403 of 12th October 1963 stipulated that the width of the Algerian territorial waters was 12 nautical miles. Twenty-one years were to pass between the extension of the territorial sea to 12 nm and the publication of the geographical coordinates of the line that delimited the country's jurisdictional waters. In fact, it was Decree 84-181 of 4th August 1963 that defined the straight baselines from which the width of the maritime areas under Algerian national jurisdiction is measured.

In 2004, Algerian Presidential Decree No. 04-344 of 6th November 2004 established a contiguous zone adjacent to the territorial sea that extends 24 nm from the baseline of the territorial sea.

The last Presidential Decree, No. 18-96 of 20th March 2018, establishes an EEZ along the country's coastline. There had previously been a fishing zone beyond the territorial waters with a width of 32 nm from the western border at Ras Tenes and 52 nm from Ras Tenes at the eastern border. It is assumed to have been subsumed by the EEZ, since Decree 18-96 takes into consideration the decree that created this zone. Its width has not been explicitly stated but its coordinates were published in the Decree's annex. According to the SHOM (the French Naval Hydrographic and Oceanographic Service) map projection, the outer boundary of the EEZ is much wider in the direction of the Balearic Islands, and Sardinia. There is no reference to the continental shelf in the Algerian legislation, perhaps due to its narrowness and the little importance that it has. This said, Algeria enjoys full rights according to what is stipulated in UNCLOS.

It is useful to point out that the Algerian legislator has not revealed the method by which it delimited its TS and EEZ with neighbouring States, except that in the case of the latter, it published the fact that it had been created and gave its geographical coordinates.

It should be highlighted that, as in the case of Morocco, the term 'territorial waters' is used to refer to the territorial sea. The latter term only appears in the Presidential Decree of 2004.

2.3.2.4 Gibraltar Legislation

The last State to be presented in this part is none other than the United Kingdom, which is involved in the Alboran Sea by way of its colony of Gibraltar. The only legislative document that has invoked the territorial sea is the Law of the Protection of Nature (Act 1991-11). It should be pointed out that what is being referred to here is not an article or a paragraph or even a fragment of this Law, but the definition of an abbreviation in Article 2, entitled interpretation and application, in which the legislator provides definitions of the terms used in the Law. This reads: 'BGTW' means British Gibraltar Territorial Waters, which is the area of sea, the sea bed and subsoil within the seaward limits of the territorial sea adjacent to Gibraltar under British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to 3 nautical miles and to the median line in the Bay of Gibraltar. The part concerned by the Alboran Sea has a territorial sea of 3 nm width.

2.3.3 Maritime Borders and Disputes

Addressing borders and the conflicts inherent in them entails the involvement of three States in a historical conflict. The only State that is not involved in the Alboran dispute is Algeria, which has no agreement with Morocco as to a delimitation of the

maritime boundary between the two countries, and there has not even been any sporadic dialogue on the subject (as mentioned by Morad Medelci in 2013).

Spain, on the other hand, is the dominant State on the majority of the borders and has also been the dominant force in the resulting conflicts. Its borders lie in both the northern side and the southern part of Alboran Sea.

The northern side of Alboran Sea is the place of delimitation between Gibraltar's (UK) and Spain's territorial seas, with the latter upholding the doctrine of the dry coast, i.e. Gibraltar has no rights to any territorial sea according to what is stipulated by Article X of the 1713 Treaty of Utrecht (MRabet Tamsamani 2018). As seen previously, as long as the United Kingdom claims a territorial sea with a width of 3 nm around the rock, Gibraltar has a de facto 3 nm of territorial sea around the rock itself and 1.5 nm inside the bay of Algeciras, although Spain does not recognise any rights to these. The first final provision of the Law of the Territorial Sea makes a clear reference to this so as to avoid any interpretation that might suggest implicit recognition of sovereignty for discussion. It should not be forgotten that one of the outcomes of this conflict is that two superimposed zones in the area have been declared Sites of Community Importance (SCI) (Council Directive 92/43/EEC). The first SCI, declared by the United Kingdom and concerning the Southern Waters of Gibraltar, was approved by the Commission on 19th July 2006 while the second, declared by Spain and approved by the Commission on 12th December 2008, fully envelops the Gibraltarian SCI.

The historical Spanish–Moroccan dispute on the southern side of the Alboran Sea is much more complex due to its location. The existence of cities, islands and islets over which sovereignty is claimed by Morocco makes delimitation doubly difficult, firstly, because of the claim itself, and secondly, because of the presence of islands and rocks that make maritime delimitation a challenging affair.

To give a clear picture of the situation, we are talking of the towns of Ceuta, which was occupied by the Portuguese in 1415, and Melilla, which was seized by the Spanish in 1497, the Chafarinas Islands, the Al-Hoceima Islands (which came under Spanish control in 1559 and became Spanish in 1673) and the Peñón de Vélez de la Gomera, or Badis, as it is called in Morocco (occupied in 1508, taken over by the Moroccans in 1522 and reoccupied in 1564) (MRabet Tamsamani 2018).

From the Spanish point-of-view, these are places under Spanish sovereignty: the two towns that were founded are Spanish enclaves with an undisputable right in international law to territorial sea, a contiguous zone, an exclusive economic zone and, naturally, all the rights that pertain to the continental shelf. However, the fact that Spain has not established an EEZ in the Alboran Sea also means that only territorial sea and a CS have been delimited in these towns' maritime space.

With respect to the islands and rocks, as the Al-Hoceima Islands and the rock of Vélez de la Gomera are uninhabited, in accordance with Article 121.3 they are only entitled to a territorial sea and a contiguous zone.

However, the case is different for the Chafarinas Islands as they are occupied by a military detachment (Gutiérrez Castillo 2010), entitling Spain to also delimit an exclusive economic zone and a continental shelf.

If we consider the conflict from the point-of-view of the Moroccan government, (MRabet Tamsamani 2018), Ceuta and Melilla are Moroccan towns and the islands and the rock are part of Moroccan territory. During its ratification of UNCLOS, Morocco declared its intention to reiterate its claim ‘eternally’.

This territorial conflict becomes apparent with the plotting on the surface of the baselines and the bays’ closing lines along the coastline and when plotting the outer boundaries of the territorial sea, the contiguous zone and the exclusive economic zone. The straight baselines in question are as follows: Almina Point—Black Cape; Farallones—Restinga Tofiño; Restinga Tofiño—the Northernmost Point of Congress island, and the Northernmost Point of King’s Island—the Algerian-Moroccan border.

This means that the two towns under Spanish sovereignty belong to Morocco according to Moroccan internal law, and the same is even truer for the closed bay of Al-Hoceima, which encloses in its internal waters the island of Vélez de Gomera/ Badis, which is also under Spanish sovereignty.

In addition, a glance at a maritime chart of the ports of Melilla and Bani Ansar leads us to believe that this is a single port, as part of the port of Bani Ansar is clearly inside the internal waters of the port of Melilla, especially in the region of the former’s dike. However, it was not possible to protest against this overlap on the part of Spain at either local or central level.

As can be observed, no delimitation is forthcoming, since the lack of an agreement on the subject between the two States means that no delimitation will be recognised or respected in the Alboran Sea. In the meantime, Spain continues to strive to avoid any procedures or decisions that might impact its diplomatic relationship with Morocco.

Alboran Island and Las Nubes Islet are located 57 km from the coast of Morocco and 87 km from the Spanish shore. There is no conflict between the two States in this case as no claim has been made. Their current status and legal regime are governed by Article 121, para. 3, which provides for them to possess a territorial sea and a contiguous zone, but gives them no rights to an exclusive economic zone or a continental shelf (Gutiérrez Castillo 2006).

2.4 Maritime Governance and Cross-Border Cooperation

The Mediterranean Sea is an area where a substantial number of multilateral action initiatives can be found in the maritime affairs domain. Some of these are of a strictly political and legal nature (§ 2), including the supranational structure of the European Union. All the coastal States belong to such political–legal structures, although not all to all of them.

This characteristic is a strength for the general governance of the basin, in so far as its execution and development individually depend on each State as a main political actor. However, the inadequacies and shortcomings of a large number of States and the wide breach that separates the two shores in economic, political and

social terms, hamper and erode the effectiveness of the regional institutions, including the European Union itself and its various policies in some cases.

Despite the existence of some specific cooperation initiatives on the sub-regional scale, the most representative example of which is, perhaps, the Adriatic Sea/Ionian Sea macro-region, for which the EU launched a Strategy in 2014, this is not the case in the Alboran Sea, which lacks the institutions required to apply any such initiative on the sub-basin level.

2.4.1 Background

There is a history of cooperative actions on the regional level going back to at least the beginning of the twentieth century. The regional marine concept arose early with the International Commission for the Scientific Exploration of the Mediterranean Sea (CIESM) being set up in 1908. Other regional initiatives include the Treaty of Montreux (1936), the Nyon Arrangement (1937) on the freedom and security of navigation, and the General Fisheries Council for the Mediterranean (1948 and called the General Fisheries Commission for the Mediterranean since the end of the 1990s onwards) set up by FAO. In more recent times was the so-called 1975 Mediterranean Action Plan (MAP) although there had been a number of interesting endeavours in the field of environmental protection in the Mediterranean, such as the so-called Euro-Mediterranean Charter (1973) and the Inter-parliamentary Conference of Coastal States on the Control of Pollution in the Mediterranean Sea, the Mediterranean Action Plan (1975) was undoubtedly the first major milestone among all the regional actions for protecting the sea. The Mediterranean Action Plan laid down a complex network of policies, arrangements, programmes, institutions and activities for the protection of the marine environment, and which aims in the long term to achieve the necessary understanding that could serve as a basis for broader cooperation agreements (Chircop 1989). Apart from its legal and technical apparatus, MAP also includes research and pollution monitoring—the MEDPOL programme—and other integrated planning- and development-linked aspects—set out in the Blue Plan.

This Action Plan has evolved (Table 2.3), having been reviewed and given a change of direction in the 1990s (MAP-Phase II). The new Action Plan and the new Barcelona Convention lay more emphasis on sustainable development, integrated management and regional cooperation as key elements (Pavasovic 1996). The 2008 formulation of a protocol on integrated coastal management (in force since March 2011) was one of the most recent milestones in the evolution of Mediterranean marine governance.

Table 2.3 Evolution of Mediterranean Action Plan

Period	Most relevant facts	Strategies and focuses
1970s (initial phase)	<ul style="list-style-type: none"> - Intergovernmental meeting for protection of Mediterranean: MAP adopted (1975) - Conference of Plenipotentiaries (1976): Barcelona Convention, Protocols on waste, Emergency Protocol - Split Conference (1978): Blue Plan and Priority Action Plan 	<ul style="list-style-type: none"> - Conservationism - Eco-development - Protection of marine environment and combating pollution - Integrated planning of environmental development and protection
1980s (development phase)	<ul style="list-style-type: none"> - Protocol on Land-based Sources of Pollution (1980) - Development of MEDPOL programme - Protocol concerning Specially Protected Areas (1982) - 4th Ordinary Meeting of the Contracting Parties (1985): Genoa Declaration 	<ul style="list-style-type: none"> - Protection extended to coastal areas - Definition of major environmental protection strategies
Beginning of 1990s (maturity phase)	<ul style="list-style-type: none"> - 6th Ordinary Meeting of the Contracting Parties (1989): Adoption of UNEP Directorate General report - Nicosia Charter^a (1990) - Coastal Zone Management Programme (1990) 	<ul style="list-style-type: none"> - Change in direction of MAP towards integrated coastal management - Reconciliation of environment and sustainable development
1990–1995 (maturity and adaption to UNCED postulations)	<ul style="list-style-type: none"> - Preparation of MAP report for presentation at UNCED (1991) - 8th Ordinary Meeting in Antalya (1993): change of MAP direction - Tunis Conference (1994): Declaration on Sustainable Development in the Mediterranean; Med Agenda 21 - 9th Ordinary Meeting in Barcelona (1995): New MAP and New Convention, Amendments to Protocols 	<ul style="list-style-type: none"> - Sustainable development - Change in direction of legal protection instruments - Application of Agenda 21
1995–present (recent modifications to the system)	<ul style="list-style-type: none"> - Establishment of the Mediterranean Commission on Sustainable Development (MCSD) (2005) - Conference of Plenipotentiaries (2008): signature of Protocol on Integrated Coastal Zone Management in the Mediterranean (2008); in force in 2011 - 17th Ordinary Meeting in Paris (2012): adoption of the Action Plan for the implementation of the ICZM Protocol 	<ul style="list-style-type: none"> - Sustainability - Participation and governance (states, local authorities, business community, NGOs) - Promotion of the integrated coastal zone management

Source: Author

^aCharter on Euro-Mediterranean Cooperation concerning the Environment in the Mediterranean Basin

Table 2.4 Legal–institutional marine governance forms in the Mediterranean

International initiatives	<ul style="list-style-type: none"> - UNCLOS - Conservation agreements - Fishing treaties - Agreements on dumping of waste and pollutants - UNEP-Regional Seas Programme
Regional initiatives	<ul style="list-style-type: none"> - Mediterranean Action Plan: Barcelona Convention and protocols; Blue Plan; MEDPOL Programme - General Fisheries Council for the Mediterranean - EU initiatives - Other initiatives: METAP (World Bank); NGOs (IUCN); sub-regional initiatives (Declaration on the Conservation and Sustainable Development of the Alboran Sea, Pelagos Sanctuary, RAMOGE Agreement etc.)
National initiatives	<ul style="list-style-type: none"> - Transposition of international law - General environmental legislation (natural spaces, pollution prevention, coastal protection and coastal and marine environment protection etc.) - Legislation on marine aspects (fishing, protected marine areas, navigation, exploitation of non-living resources etc.)

Source: Prepared by the author

2.4.2 *Legal–Institutional Framework*

In recent years, several phenomena in the marine environment scenario have been subject to such rapid change that management instruments have not always been able to respond in the most suitable fashion. This has been due above all to the fact that these instruments are usually created by international organisations and their action mechanisms require broad consensus among countries. This is difficult to achieve in a region like the Mediterranean, where there are still sharp economic, demographic, and political contrasts. However, if the action that comes from international organisations does not seem to be very effective, the unilateral action taken by some states is even less so, especially that taken by the weakest in economic and technological terms. Be that as it may, in the Mediterranean international/regional institutions and legislation coexist alongside the various coastal states' own legal frameworks, with regional cooperation instruments seemingly sometimes predominating while at other times national instruments prevail. When the latter occurs, the inequality between countries' capacities and the varying degree of interest that they show in Mediterranean affairs could lead to lack of unanimity over issues that affect them collectively.

Mediterranean marine governance should be unfailingly multilateral and concerted, both because of the basin's peculiar geographical constraints and the nature and size of the problems shared by those along its coasts. However, it is also evident that each of the dimensions of Mediterranean marine governance is framed in a variety of regulations, legislation and institutions. Legal issues, maritime borders and the navigation regime are regulated by UNCLOS—and binding only for the states that have endorsed it. Meanwhile, environmental protection issues are, as is obvious, regulated by the states themselves, UNCLOS and also by an intricate regional web

that revolves around the Mediterranean Action Plan, all complemented with other (EU, World Bank, NGOs' etc.) institutions and actions.

There is therefore a wide variety of concerted actions in this region (navigation, piracy, exploitation of resources, migrations etc.), although the greatest efforts are made in the area of environmental protection (Table 2.4). Unlike in the field of the environment, where over time a regional spirit of cooperation has taken hold, more purely economic and, especially, geopolitical actions remain the domain of state sovereignty. Nevertheless, being aware of how complex and intertwined the problems that afflict the region are, the Mediterranean states have put a number of regional cooperation strategies in place both in the field of the environment (Barcelona Convention) and other areas (the Euro-Mediterranean Association, Conference for Security and Cooperation in the Mediterranean (CSCM), economic cooperation agreements, the European Neighbourhood Policy and the Union for the Mediterranean), seeking the most suitable solution through dialogue and consensus, regional integration, agreements and the participation of multiple actors (states, international organisations, all types of NGOs, economic associations, clusters etc.).

To recapitulate, it can be said that there are some favourable aspects to the framework of action in the Mediterranean Sea, especially in the field of the environment, but it is also true that there are some partial or incomplete aspects that have been at the root of most of the problems that continue to exist (or are worsening). Among the strong points of the protection system we can highlight: (a) the wide range of actions (national, regional, international) due to deep concern and recognition of the environmental issue; (b) the environmental instruments that have traditionally been the most important means for intervening in the regions have acted as drivers of international cooperation and dialogue and of other political and economic actions; (c) the presence at the core of the system of the Action Plan, which has been the catalyst of other complementary actions to its benefit and, especially, for attracting institutional and financial support from bodies such as the World Bank and the European Investment Bank and the very significant political support of the EU; (d) the shaping within MAP of a suitable set of protocols, rules and measures (legal mechanism) conducive to achieving a better environmental state despite non-compliance with said legislation.

In spite of this, and although it is true that the system organised around the Action Plan is the oldest and probably the most effective way of protecting the Mediterranean marine environment, it also suffers from a number of shortcomings: the instruments of environmental protection are not adequately taken into consideration (and are on occasion simply taken as partial corrections and not interventions in the problems at root level); there is a major shortcoming in that the international protection rules and regulations are not properly accepted and complied with, a problem which is not caused by these instruments, but by a lack of greater awareness; the lack of a defined common state strategy to at least abandon the search for fast economic growth and which proposes balanced development respectful of the environment (which should also involve the rethinking of major Mediterranean and Euro-Mediterranean policies); the little awareness of environmental problems and their consequences could be a major motive for regional conflict and insecurity;

the decoupling of some international/regional initiatives and each state's own policies as they can only intervene on the basis of their own immediate priorities and without taking into account the more general problems in the region; the unilateral character of certain actions, which means that they are less effective apart from not considering the cross-border nature of marine ecosystems; the financial weakness of the Action Plan; a variety of situations regarding the implementation and effectiveness of the different protection instruments, as some are partial and not coordinated with the others.

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