CHAPTER 2

The Legal Framework for European Community (EC) Action to Protect and Preserve the Marine Environment

2.1 Introduction

The implementation of the international ocean regime in European seas must be examined in the context of the unique legal and political structure of the Community and the special relation with its member states. The present chapter provides some general remarks on the main elements which makes the EC system a “new legal order of international law”, including its legal subjects, sources, institutional framework, instruments, decision-making processes and compliance mechanisms. The focus of the discussion is on European environmental law and the capacity of the Community to take action at the internal and international levels concerning matters related to the protection and preservation of the marine environment. Particular attention is given to the rules and principles justifying “when”, “whether”, “to what extent” and “in what manner” the Community may act. With the evolution of the European integration process, the member states have transferred, completely or partially, explicitly or implicitly, some of their powers to the Community, thereby limiting their capacity to take autonomous action at the national and international levels. The Community capacity to act, generally defined as “competence”, is not unlimited, but derives from the attribution of powers under the EC Treaty (the principle of attribution). Such a (shared) competence, moreover, has to be exercised according to the fundamental principles of EC law (i.e., subsidiarity and proportionality) and guiding principles of European environmental law (e.g., integration, regional differentiation, precautionary principle). These principles are essential in order to understand the Community’s approach to ocean preservation and the manner in which it implements its commitments under the international ocean regime, which will be discussed in detail in Chapter 3. Different from the “existence” of a Community competence is the “nature” of its powers, which may be exclusive or shared with the member states. Defining the nature of the EC competence is a fundamental step in determining the division of powers between the EC and its member states, which will be covered separately in Chapter 4. Chapter 2 concludes with some final considerations of the possible added value of the Community legal system for the proper implementation of the international ocean regime in the European seas. The discussion does not pretend to be exhaustive, but provides an important starting point for conducting the analysis in the following chapters.
2.2 Mechanisms of European Integration

2.2.1 Legal Subjects

At the time of its creation in 1957, the then European Economic Community (EEC) was conceived as a purely economic organization whose primary objective was the establishment of a common market without internal borders or trade barriers between the member states. In addition, the member states created the European Atomic Energy Community (EURATOM), which is a legal entity different from the EEC with a separate legal personality, but acting through the same institutions.1

With the development of the European integration process and the further amendments of the original Treaty, the EEC evolved into a wider entity, which includes, *inter alia*, environmental protection among its primary objectives.2 In 1992, the Maastricht Treaty formalized this development and transformed the original EEC into the European Community (EC), normally referred to as the “Community”.

The 1992 Maastricht Treaty, moreover, extended the cooperation between the EC member states beyond economic integration and related matters by establishing a European monetary and political union, i.e., the European Union (EU).3 The EU was conceived as an overarching political entity formed by the Community and its member states cooperating intergovernmentally in matters of common foreign and security policy (CFSP) and with cooperation in justice and home affairs (JHA). There was no intention to create an international legal person separate from the existing Community(ies), equipped with its own treaty-making powers and able to undertake international obligations.4 The EU does not have its own institutional structure, it may only act through its components: i.e., the Community and the member states.

The EU legal system, therefore, is a complex legal order based on three pillars: the EC and EURATOM (first pillar) plus two intergovernmental pillars: the CFSP (second pillar) and the PJJC (ex JHA) (third pillar).5 The EU’s action under the two intergovernmental pillars is governed by different mechanisms, decision-making and instruments, compared to the EC action under the first pillar. The member states are

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1 Both the EEC Treaty and the EURATOM Treaty were signed in Rome on 25 March 1957 and entered into force on 1 January 1958.
5 With the Treaty of Amsterdam, part of the third pillar (asylum and immigration policies) has been transferred to the first pillar (EC). Currently, the third pillar deals only with policy and judicial cooperation in criminal matters.