The Barcelona Convention System for the Protection of the Mediterranean Sea against Pollution: An International Trust at Work

Evangelos Raftopoulos
Lecturer in Law, University of Athens; UNEP/MAP Consultant*

An international lawyer’s approach to the Barcelona Convention System for the Protection of the Mediterranean Sea against Pollution requires two things: first, a bold departure from the positivist doctrine of international law, which, being guided and, simultaneously, restricted by the familiar private law analogies, revolves quite unconvincingly around the contractual notion of “consent” as the basis for all treaty obligations in the domain of international relations; and second, a corresponding attempt to discover the normative importance of the notion of “membership” in a community of interests punctuated by an organizational structure and by a strong technical implementing dimension. Although these may sound rather theoretical, they lie, in fact, at the very heart of the explanation of the function of the Barcelona Convention system. In developing an analytical framework for discussion of the Barcelona Convention system a number of initial points must be made: the Barcelona Convention system constitutes an international trust; the implementation of its public purpose requires a continuously evolving permanent structure within which the Mediterranean States and the international community at large are, at different levels, involved; implementation is to be brought about by international scientific and technical co-operation as well as by national legislative action and hence is comprehensive and contextual; and, finally, compliance, despite the lack of any coercive authority, is secured in a voluntary fashion through certain constructive means. These points are not signs of a paradox or, indeed, of arbitrary word play by the author, they form the necessary perspectives for a discussion of the Barcelona Convention system.

* The views expressed are those of the author and do not necessarily reflect the official views of UNEP.
Of course, our presentation will unavoidably blend the analysis of the Barcelona Convention system with the more operational and more policy oriented perspective of the decision-maker. Being equally concerned with the institutional aspects of the Barcelona Convention system, the decision-maker's perspective would embrace both the substantive aspects as well as the procedural details connected with them, and the integrated regional strategy endorsed by UNEP for the protection of the Mediterranean Sea Area; it would investigate the quality and the effectiveness of the ever-expanding structural and technical implementation of this system; and it would tackle, from a policy point of view, those issues on which the strongest interaction arises between the furtherance of the public purpose and the strategy pursued within the framework of this system and the discretion inherent in the public role of the parties, best illustrated in the system of financing the multifarious activities of the Mediterranean Action Plan (MAP).

The Approach of the Barcelona Convention System

It should be stressed from the outset that the Barcelona Convention system has an important legitimating effect on the regional strategy for pollution control, codified by the Mediterranean Action Plan: it establishes community rules on the subject in the context of the political, socio-economic and technical realities of the Mediterranean Sea Area. By virtue of these rules, the Mediterranean States are vested with the status of Environmental Trustees vis-à-vis the international community and, in effect, their obligations should be perceived in the light of such a status. We shall return later to the implications of this point.

The Barcelona Convention system is created to protect and enhance the Mediterranean Marine Environment and serves, in this respect, the corresponding needs of the international community. As a result, its characteristic features are determined by the complexity and diversity of this subject. It contains, in effect, not only legal but also institutional and technical elements which are essential for the promotion of its public or community purpose. "Time", in the sense of the continuous operation of the system, and "space", in the sense of the contextual determination of the operation of the system, underlie the Barcelona Convention system and require a certain institutional organization and a particular mode of operation in order to conform with the intricacies of the subject.

In the first place, the Barcelona Convention system purports to deal with all possible sources of marine pollution comprehensively and with the management of the marine environment. It proceeds, however, gradually, by means of specifying

---
