



The tortoise shell Integrated Coastal Management in Galapagos

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Abstract

The current work aims to examine the legal framework for Integrated Coastal Management for Archipelago de Galapagos. It examines the content of ICM at the internal level in order to find if there is a standard for appropriate Integrated Management of Coastal Zones. Also it aims to define whether the ratification of UNCLOS by the government of Ecuador should affect the implementation of such framework.

KEYWORDS: Galapagos, integrated coastal management, CBD, sustainable development, international law, Ecuador,

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Introduction

“Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes”. Such reads the opening paragraph of Article 71 of the Constitution of the Republic of Ecuador.¹ In 2008, this South American republic, became the first nation to legally recognize rights to Nature², granting that the enforcement of such rights could be called in front of the authorities by *“all persons, communities, peoples and nations”*.³ This goes beyond of what other text tend to offer as rights to nature, for example access to water or clean air. It abandons the anthropocentric point of view -what humans should get from the environment- and gives mother nature characteristics such of any other human or organization that allows for it to exercise its rights through any citizen.

Such a declaration in the constitutional text entails a great obligation. Considering that the territory of Ecuador host a great variety of unique species, like those find in the Amazon rainforest or the Archipelago of Galapagos. This required the establishment of a strong environmental legal framework. The Constitution adopted in 2008 implicitly placed a even bigger legal burden on the Government shoulders, as the necessity to develop regulatory model that met the expectations raised by the Constitutional reforms.

Galapagos is said to have played a great role for Darwin in the development of its theory of evolution⁴. The Galapagos Archipelago is formed by a group of 18 main islands, 3 smaller islands, and 107 rocks and islets⁵ in which a great biodiversity thrives.

1 <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html> Last accessed 21.05.2013

2 Mychalejko C. *Ecuador's Constitution Gives Rights to Nature*, published 25.09.2008 06:3 available at <http://upsidedownworld.org/main/content/view/1494/1/> Last accessed 05.07.2013

3 Ibid.

4 Freeman D., C Bajema, J. Blacking, R. L. Carneiro, U. M. Cowgill, S. Genovés, C C. Gillispie, M. T. Ghiselin, J. C. Greene, M. Harris, D. Heyduk, K. Imanishi, N. P. Lamb, E. Mayr, J. W. Raum and G. G. Simpson, *The Evolutionary Theories of Charles Darwin and Herbert Spencer*, CURRENT ANTHROPOLOGY Vol. 15, No. 3 (Sep., 1974), p. 211

5 <http://www.geo.cornell.edu/geology/GalapagosWWW/GalapagosGeology.html> Last accessed

Galapagos has experienced not just the natural evolutionary changes. Man have also left a permanent imprint in the islands since it arrive there for the first time. The Archipelago has a history of diverse uses: pirate lair, prison, military base among the best known. Currently it develops as a great spot for Tourism and Research.

Ecuador is member of several international conventions that relate to Integrated Management. As the country has not become part of UNCLOS, until recently, is hard to determinate the extend to which the convention have influence the national legal framework. As a new scenario is setted with Ecuador becoming a part in the UN Convention on the Law of the Sea, we are presented with the opportunity to examine the Ecuadorian ICM legal framework, to compare what the legal instruments with state practice and determinate the appropriate of the national regime. Because of its particular characteristics (the archipelago includes, a Province, a National Park, a Marine Reserve, a Whale Sanctuary and include in UNESCOS world heritage list) Galapagos should be managed by an special set of rules both under domestic and international law.

The object of this research is to analyse the adequacy of the current national regime for Integrated Coastal Management for the archipelago in the light of International Law.

Method

The present paper will describe and analyse the appropriateness of Galapagos legal framework for Integrated Coastal Management in the light of International Law. While the Special Law for the Conservation and Sustainable Use of the Province of Galapagos an the Management Plan for Galapagos, will be the main documents used to described the local legal framework for IMC, this work will make use of international conventions, like the UN Convention on the Law of the Sea, Agenda 21 and the Convention on Biodiversity in order to understand the International Framework for ICM. These last two documents will be analysed in the same subsection as they might be better understood as sub-products with the same origin, the Rio Declaration. Galapagos has been selected as departing point as it involves several actors and complex factors and the efforts for its management are recognized by authors and International Organizations.

The goal of the current work requires determinate what is Integrated Coastal Management

at the International level in order to be able to conclude whether or not Galapagos ICM framework fulfil the mandates from the main instruments that exists at the International Level. With this in mind, the present paper is structured in the following manner.

The first section will attend to as what is Integrated Coastal Management. This section will make use of legal instruments at the international level and when required, the opinion in different research papers from several international legal journals and publications. We will try to determinate the rationale behind Integrated Coastal Management, the content of this concept and its principles. This will be followed by the analysis of what International Law describes as Integrated Coastal Management and its requirements to adopt an ICM framework.

The last section will describe the current Galapagos framework for Integrated Management. The driving question being: How is the ICM framework of Galapagos, is implemented and structured. The description will make use if the local regulatory framework. The framework will be described in general terms when possible, but it might be that some phases will require a higher level of detail. Activities, special circumstances and stakeholders will be identified, and the mechanisms for participation, described. Integration has to be achieved in several levels, the participatory level and the regulatory level will be presented and discussed in this section. At this stage, Galapagos will serve as illustration of what is provided by the local framework in contrast to what is required from the the International instruments in order to address the question of whether or not, the Galapagos ICM framework fulfil the requirements of International Law.

1. What is Integrated Coastal Management?

The current section is divided in four sub-sections. First, will provide a review of the rationale behind Integrated Coastal Management while the second will deal with the issue of defining Integrated Coastal Management. Third one will refer to the relevant international legal documents that constitute the base for the legal Framework for ICM. Finally, the fourth section will sum up the core principles of ICM. By the end of this section, we should have clarified what are the legal requirements and obligations related to the adoption of an ICM approach.

1.1.- Rationale

The Ocean has been divided and managed in accordance to several factors. Integrated Coastal Management have to consider the implications of the diverse activities performed in the coastal and the different maritime areas. Also, the management rules tend to vary according to the regulators interests. Not so long ago, for example few considerations could have been made as for the effects that establishing a navigation commercial route will have over the fishing resources, or how the harvesting of targeted species will influence the increase or decrease of other species. There are still, for example, places where inland industries place waste material in the sea water among other forms of marine pollution.⁶ A few decades ago the coastal states will manage their maritime areas in different manner resulting sometimes that the efforts of one state will be mined by the lack of action of the neighbouring coastal countries.

The adoption of UNCLOS cause that the regulation process over the ocean and the national waters to turn more complex. This as from then on, coastal states had to attend to the kind of activity to be regulated and also to the maritime zone when it is to be develop as it might

⁶ UNESCO, *Facts and Figures on Marine Pollution*, <http://www.unesco.org/new/en/natural-sciences/ioc-oceans/priority-areas/rio-20-ocean/blueprint-for-the-future-we-want/marine-pollution/facts-and-figures-on-marine-pollution/> Last accessed 26.08.2013

carry effects over the rights of other states. This is known as the traditional or sectoral approach. The origin for this approach can be found in the constant clash produced between the Sovereignty and Freedom principles that derived in the current zoning of the Sea, adopted by the UNCLOS.

For Tanaka, “*The principle of sovereignty promoted the extension of coastal states’ jurisdiction, while the principle of freedom ensured the nonappropriation of the ocean as well as the freedom of use*”⁷. The method to reconcile the rights granted by the sovereignty and freedom principles was to divide the coastal zone from the high seas granting territory and navigational rights one each to the coastal states and the flag states. In the correspondent section, we will provide a further explanation about UNCLOS and the development of the traditional sectoral regime.

While we have separate terrestrial from maritime environment and even subdivide this even more in sub-zones, the reality of natural process ignore our abstract approaches. So far have activities been undertaken without any regard to the effects that each of it could carry on other sectors with diverse consequences. Disappearance of species by alteration of the food chain, introduction of foreign species in diverse maritime areas or hypertrophication, can be named as examples of negative effects of the traditional approach for managing maritime and coastal zones.

In the light of the reality, Tanaka manifests that the traditional approach has proven not being adequate nor sufficient to solve the issues that affect ocean management.⁸ At FAO's report it reads about the traditional approach that “*it has become abundantly clear that sectoral management approaches have failed to prevent the rapid deterioration of coastal environments.*”⁹ About the sectoral approach, Cullinan opinion is that it “*does not recognize that coastal areas have any distinctive characteristics that necessitate different management approaches.*”¹⁰

7 Tanaka Y. *Zonal and Integrated Management Approaches to Ocean Governance: Reflections on a Dual Approach in International Law of the Sea*, THE INTERNATIONAL JOURNAL OF MARINE AND COASTAL LAW, Vol 19, No 4 © Koninklijke Brill NV, 2004 p.484

8 *ibid*

9 UNFAO, *Integrated coastal management law Establishing and strengthening national legal frameworks for integrated coastal management*, FAO LEGISLATIVE STUDY 93, available at <http://www.fao.org/docrep/012/a0863e/a0863e00.pdf>, Sec. 1.1, Last accessed 06/06/2013
Also, Box 1 of the document provides with other several definitions for ICM.

10 Cullinan C., *Integrated Coastal Management Law: Establishing and Strengthening National Legal Frameworks for Integrated Coastal Management*, Food & Agriculture Org., 2006 p. 3

Other consequence of the traditional approach was that the management of coastal and maritime areas was undertaken individually, according to the needs and principles of their respective coastal State. B. Cicin-Sain, considered in 1998 that though Sectoral programs could be effective, *“programs involving a single resource or use often are not equipped to handle conflicts with other uses and activities or to act in a manner supportive of overarching national coastal and ocean management goals”*¹¹

The necessity to redefine development brought more attention to Integrated Coastal Management, *“the undertaking of coastal management in its pursuit of sustainable development has been correctly perceived by the scientific community as an unprecedented binding task”*.¹²

The Brundtland UN commission, published its report in 1987 under the title “Our Common future”. It is firmly stated in it that the *“collective of Nations”* should adopt measures to achieve Sustainable Development as new paradigm for economic and social growth that incorporates environmental concerns. Five years later, the UN Conference for Environment and Development pointed at Integrated Management (UNCED 92) as the ideal approach to achieve the Sustainable Development of Marine and Coastal areas.

Agenda 21 calls for a *“Global partnership for sustainable development”*¹³ and that *“...This global partnership must build on the premises of General Assembly resolution 44/228 of 22 December 1989, which was adopted when the nations of the world called for the United Nations Conference on Environment and Development, and on the acceptance of the need to take a balanced and integrated approach to environment and development questions.”*¹⁴

As we see it, the necessity to evolve to a new paradigm for development as being also sustainable, made necessary the adoption of a new approach for management of the environment, including Coastal and Maritime zones. The acknowledgement that failure of the traditional approach was in part due to the disregard of the close interrelations existing in the environment, was followed by the adoption of a new approach that considers the

11 Cicin-Sain, B. R. W. Knecht, D. Jang, G. W. Fisk *Integrated Coastal and Ocean Management: Concepts And Practices*. Island Press, I. mars 1998 p. 10

12 Vallega A., *Fundamentals of Integrated Coastal Management* Springer, 31. july 1999 p. 1

13 UNSD, United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3 to 14 June 1992, *Agenda 21*, Par 1.1

14 *ibid*, Par 1.2

environment and the different and close relations that occur in it.

1.2. Definition

Several years have passed since the offset of Integrated Coastal Management and regardless its content being clear, it is not easy to find a proper definition to what ICM is. Mostly, the implementations for ICM derives from the text of International instruments. Is for that reason we turn to them in order to obtain a proper definition though legal regulations at both National and International level are vague in the terms and though most make reference to the obligation to implement IM in the coastal and marine areas, a definition is so far, still missing.

The US Coastal Zone Management Act (1972) is among the first documents at the National level that remark the necessity for a new approach to manage the coastal areas and its resources¹⁵. The CZMA was adopted to attend the *“national interest in the effective management, beneficial use, protection, and development of the coastal zone.”*¹⁶ Though the Act introduced a detailed framework for Integrated Coastal Zone Management, it did not described it explicitly as Integrated. Moreover, the word “integrated” is never mention in the text. It is the detailed nature of the Act that allow us to recognizes the elements of Integrated Management. An example of this can be found in § 1451 of the Act. The findings stress how competing activities have affected the environment and how inland activities can carry effects on the maritime areas, which recognizes the integration of environments. As well is important that the Act remarks the necessity for coordination between governmental agencies at all level to coordinate efforts which can also be interpreted as the necessity for different agencies to integrate and coordinate efforts, another element of ICM.

At the International level, three instruments could be considered as the foundation on which ICM is based: Agenda 21, the Convention on Biodiversity and the UN Convention on the Law of the Sea.¹⁷ Agenda 21 is seen as the landmark for the introduction of Integrated. Hold in Rio de Janeiro between the third and the fourteenth of June 1992, the

¹⁵ US was the first country to implement an Integrated Management program for its coastal zone, following the adoption of the act.

¹⁶ Finding *a*, United States of America, Coastal Zone Management Act 1972

¹⁷ The UN Framework Convention for Climate Change of 1992, does is as well relevant for Integrated Management but the mentioned documents target maritime issues more directly in my opinion.

United Nations Conference on Environment & Development produced Agenda 21. A political instrument and set of guidelines that

*“addresses the pressing problems of today and also aims at preparing the world for the challenges of the next century. It reflects a global consensus and political commitment at the highest level on development and environment cooperation.”*¹⁸

*The ultimate goal of AGENDA 21 is for the world to achieve sustainable development¹⁹ as this will allow the “fulfilment of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future.”*²⁰

To achieve this goal, the requirement to adopt approaches *“that are integrated in content and are precautionary and anticipatory in ambit”* is indispensable.²¹ The previous experience remarks that the answer to the issues derived from environmental interdependence have to be address from and integral perspective: *“integration between environment and development (sustainable development), integration among sectors, integration among nations (especially North and South)”*²²

Chapter 17 of Agenda 21, refers to the Protection of the Oceans, All kinds of Seas including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources. The first paragraph of this section includes Integrated Management as one of the new approaches to be adopted in order *“to pursue the protection and sustainable development of the marine and coastal environment and its resources.”*²³ This Chapter describes the reasons why adopting such an approach is necessary -which will be analysed in the next section- but again, the document fail to provide a clear definition of what Integrated Coastal Management is.

Also relevant to Integrated Coastal Management is the United Nations Convention on Biological Diversity. Though one the objectives of the Convention is to achieve Sustainable Use of the biological diversity²⁴ there is not a explicit mention of Integrated

18 Supra note 13, Par 1.3

19 ibid, Par 1.1

20 ibid

21 Supra note 13 , Par 17.14

22 Cicin-Sain B. ,*Sustainable Development and Integrated Coastal Management OCEAN AND COASTAL MANAGEMENT 21* (1993) p. 15

23 Supra note 13, Par 17.1

24 CBD, Art.1

Management, though as will be presented later, some bodies of the CBD have recommended the adoption of Integrated Management approaches.²⁵ Nevertheless, the convention include other definitions that are relevant for ICM, as will be shown later.

Finally, the UN convention in the Law of the Sea does not include mentions to Integrated Coastal Management. The convention does recognizes the influence that other agreements can have on the obligation to conserve and protect the marine environment. This obligations are to be carried out in a manner consistent with the general principles and objectives of UNCLOS, as manifested in article 237. Is this article that creates the bond with other international instruments, more directly with the CBD. As we will see later, the text of article 237 is one of the main factors in the adoption of and ICM framework on the terms of International Instruments adopted after UNCLOS.

As we observe, international legal instrument providing regulation for Integrated Coastal Management fail to provide a definition to the matter being regulated but as indicated previously, definitions for Integrated Coastal Management are mostly to be found in academic sources and they tend to vary in considerations of the time they were given or the . For example, FAO's report *Integrated coastal management law Establishing and strengthening national legal frameworks for integrated coastal management* of 1993, defines ICM as

*“Integrated coastal management (ICM) is an approach to managing a defined coastal area that understands the coast as a complex and dynamic system that encompasses many interactions between people and ecosystems, and must be managed as an integrated whole. It is an ongoing process of formulating, implementing and refining a comprehensive and holistic vision of how humans should interact in an ecologically sustainable manner with the coastal environment.”*²⁶

This definition indicates that ICM stands as an approach to manage a defines coastal area in the context of the complex and dynamic system that constitutes the Coast. Also that the permanent process that supposed the formulation, implementation and refinement of this “holistic view” on how humans interact with the coastal environment, should consider the many interactions between people and ecosystems. Here “sustainable” does not refer to a

²⁵ CBD, *Integrated Marine and Coastal Area Management (IMCAM)* available at <http://www.cbd.int/marine/imcam.shtml> Last accessed 25.08.2013

²⁶ Supra note 9

goal but to the behaviour in which human actions should be performed. It does not indicate if stake holders have to be integrated into the management process.

Jens Sorensen in 1997 elaborated on a quite descriptive definition for ICM:
*“the integrated planning and management of coastal resources and environments in a manner that is based on the physical, socio-economic, and political interconnections both within and among the dynamic coastal systems, which when aggregated together, define a coastal zone. An integrated approach requires both the horizontal (cross sectoral) and vertical (the levels of government and non-government organizations) coordination of those stakeholders whose actions significantly influence the quantity or quality of coastal resources and environments”*²⁷

This definition proposed here, incorporates the necessity to cross-sectoral integration both at the vertical and horizontal level, and incorporates the stakeholder input in the management process. It takes from ICM the evolving nature that such framework should have I as it must be adapted to the environmental and socio-cultural-economic changes.

Later in 1998, Biliiana Cicin-Sain & Robert W. Knecht, that ICM,
*... can be defined as a continuous and dynamic process by which decisions are made for sustainable use, development, and protection of coastal and marine areas and resources... the process is designed to overcome the fragmentation inherent in both the sectoral management approach and the splits in jurisdiction among levels of government at the land-water interface*²⁸

This definition includes key elements for ICM. The dynamic character of the process and the necessity of an integral approach in contra-position of the sectoral approach.

The presented definitions are only a small example many and varied other definitions of Integrated Coastal Management that have been developed. The intention of presenting three diverse definition is to remark the evolution that ICM has suffered during time and to reaffirm that definitions will vary according the authors background.

Nevertheless, guidelines for ICM have the following common features²⁹:

27 Sorensen J. *National and international efforts at integrated coastal management: Definitions, achievements, and lessons*, COASTAL MANAGEMENT 25:1, (1997) p. 9

28 Supra note 11 p. 39

29 Cicin-Sain B., Knecht and Fisk, 1995 as referred to in UNFAO, supra note 9 Box 2,

- As for the purpose of ICM, it is agreed that *Integrated Coastal Management* “is to guide coastal area development in an ecologically sustainable fashion”³⁰
- ICM is Holistic and interdisciplinary in nature and place “special emphasis on the principle of intergenerational equity, the precautionary principle and the polluter pays principle.”³¹
- ICM policies, based of its evolutionary and adaptive characteristics has to be must be adopted “with regard to science.” Also in this close relation with science, natural and social, ICM have to make use of the best techniques available “such as risk assessment, economic valuation, vulnerability assessments, resource accounting, benefit-cost analysis and outcome-based monitoring should all be built into the ICM process, as appropriate.”³²
- As for the the functions of ICM, the should aim to strength and harmonize “sectoral management in the coastal zone.”³³ It should also preserve and protect “the productivity and biological diversity of coastal ecosystems and maintains amenity values.”³⁴ Finally, ICM should encourage the “rational economic development and sustainable utilization of coastal and ocean resources and facilitates conflict resolution in the coastal zone.”³⁵
- ICM calls for Spatial integration , as it “embraces all of the coastal and upland areas”³⁶ including those ocean areas that can affect the coastal land, all those uses that can affect both the ocean area an its natural resources. “The ICM programme may also include the entire ocean area under national jurisdiction (Exclusive Economic Zone), over which national governments have stewardship responsibilities under both the Law and the Sea Convention and UNCED”³⁷
- Horizontal and vertical integration. ICM have as as goal to overcome the sectoral and intergovernmental fragmentation that exist in coastal management. This as the process of coastal management requires “effective coordination among various

30 Ibid

31 ibid

32 ibid

33 ibid

34 ibid

35 ibid

36 ibid

37 ibid

sectors active in the coastal zone and between the various levels of government operating in the coastal zone.”³⁸

- The optional nature of ICM allows to states to adapt the “*the coordination and harmonization mechanism (to the aspects of each particular) national government setting*”³⁹

Integrated Coastal Management though not defined explicitly at the regulatory level is described in such a manner that still allows for its implementation, as . This, according to FAO, have increased the ability of states to develop and implement programs for ICM as “*there is a widespread international consensus as to its main features*”⁴⁰. Evidence of this, is the several programs for ICM that have been implemented by local and national governments around the globe. This situation, the lack of definition but a high level of description, allow states to adopt their ICM to their special features and needs. Still the question remains about how to determinate whether or not such application can be considered appropriate in the light of regulations at the international level. The difficulty to provide a concise definition of ICM might come as it “*involves combining, co-ordinating or integrating, at a number of scales, values, interests and goals, many of which are in competition.*”⁴¹

1.3 ICM in international Law

As mentioned before, the notion that the management of the maritime zones must be performed in an integrated manner is not new. There exist records that the necessity to adopt an integrated approach to the oceans had been already brought to discussion.⁴² Though this efforts were never materialized in legal instruments at the international level, at the the academic sphere they were and are relevant.

This section will expose the international provisions regarding Integrated Coastal Management. We will make use of UN Convention on the Law of the Sea, the Rio

38 ibid

39 ibid

40 Supra note 9

41 Kenchington R. & D., *Crawford, On the Meaning of Integration in Coastal Zone Management*, Ocean & Coastal Management 21 (1993), Elsevier Ltd., p. 111

42 See Tanaka Y. for an historical recap on this issue in Tanaka Y. supra note 7

Declaration, Agenda 21 and the Convention on Biodiversity. While there exist other instruments that are relevant for Integrated Management, for example the UN Framework Convention on Climate Change, Agenda 21, the CBD and UNCLOS are relevant for the analysis of issues regarding the coastal and maritime zones.

This instruments will be presented in the order attending to their adoption. UNCLOS will have an specific sub-section while the Rio Documents will be presented in the same sub-section. The last sub-section will attend to Integrated Coastal Management principles where their theoretic content will be developed.

1.3.1 UN Convention on the Law of the Sea

The UN Convention of the Law of the sea provides the basic framework of regulation on the Sea Matters. Though by the time of its negotiation and adoption seems ICM was already being discussed at some forums, the Convention does not refer to it. This is curious considering that at the preamble of UNCLOS we read that the States were “*Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole*”⁴³. This declaration should have implications and some meant that the the ocean affairs should be considered “*through a holistic approach.*”⁴⁴

Regardless of this declaration, UNCLOS is not directed straight-forward on an integration approach. It rather established and sectoral approach, where the different areas were subject to state jurisdiction or jurisdictional rights. The further we depart from the coast, the jurisdiction of the coastal states dilutes while the rights of the flag states get stronger at the international waters. In between we find the Exclusive Economic Zone, were the for the purpose of exploring and exploiting, conserving and managing the natural resources of the water column, the sea bed and its subsoil are granted to the coastal estate. The management includes living and non-living resources, and other economic activities.⁴⁵

How could the establishment of such a sectoral approach still allows for the later adoption of an Integrated Management Approach? At this point the opinions are diverse. Some

43 UNCLOS Preamble.

44 Ducrotoy JP and S Pullen, *Integrated Coastal Zone Management: commitments and developments from an International, European, and United Kingdom perspective OCEAN & COASTAL MANAGEMENT* 42 (1999), Elsevier Ltd, p. 3

45 Supra note 23 Art. 56 (1)

mean that, from the negotiation process, the Convention “*played a significant catalytic role in encouraging thought directed toward an integrated marine policy.*” as “*interactions, overlaps and contradictions were more clearly exposed and the need for increased coherence in national policy was underscored; inter-ministerial committees and coordinating mechanisms were formed*”⁴⁶.

Moreover, the jurisdictional rights and responsibilities that were granted to the coastal states by the UNCLOS, in the context of the different areas and uses, brought up the problems and point at the necessity to find solutions to them: “*UNCLOS III... considered a wide variety of ocean uses and problems and made basic determinations with regard to jurisdictional questions, providing both significant rights and responsibilities to coastal states in the most heavily utilized parts of the world’s oceans.*”⁴⁷

In a different line, some are of the opinion that the development of the EEZ and the rights granted over the Continental Shelf, stimulate the development of different regimens for the management that prevented the adoption of an ICM Regime. This as result of States being granted individually with the “*ability to regulate large ecosystems under one potential management regime*”⁴⁸ This was not totally a negative output in the context of the sectoral approach, as the states were capable of developing management regimens in consideration of the jurisdictional rights granted by UNCLOS in the different maritime zones. Also, as UNCLOS established a method to define the maritime territories and its jurisdictional rights, the boundaries established set also limit to ICZM efforts at the regional level.⁴⁹

As we have indicated, there are different positions about the real influence of UNCLOS over the adoption of Integrated Coastal Management regimes. Regardless ,it is possible to find several principles that allow for adoption of such regimes in the text of the Convention.

46 Juda L. and R.H. Burroughs, *The prospects for comprehensive ocean management*, [MARINE POLICY](#), 1990, vol. 14, issue 1, Elsevier Ltd., p 26

47 *ibid.* p 24

48 Forrest C., *Integrated Coastal Zone Management: A Critical Overview*, *WMU Journal of Maritime Affairs*, 2006, Vol. 5, No.2, Springer, p. 217

49 *ibid.*, p. 218

“UNCLOS thus defines the right and duties of States by setting up lines in the sea –boundaries which reflect jurisdictional competencies of States and therefore ultimately determine the boundaries for States or even regional ICZM programs.”

We have mentioned that UNCLOS approach is based on diverse marine and maritime areas where states enjoy different rights and have certain obligations regardless that at the preamble It recognizes the necessity to attend to the ocean as a whole in dealing with it issues.

Both, the internal waters and the territorial sea are under total jurisdiction of the coastal state. In the EEZ, coastal states enjoys:

*(a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;*⁵⁰

But in exercising these rights, the coastal state have to take regard of the rights granted to the other states by UNCLOS. This appears to be one of the weakness of the Convention. The coastal state wishing to implement an stricter legal framework for its EEZ will be dependant on the agreement with other states or might be subject of the decision of International Organizations like IMO⁵¹. On the other hand, and following the text of article 197 of UNCLOS, this provides the opportunity for states to collaborate with each other in *“formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features.”*⁵²

It seems to be a matter of perspective whether or not these kind of provision could have prevented the adoption of an ICM approach, but these are not only principles that we relate to.

For Forrest, the mention of the common heritage of mankind in article 136 of UNCLOS of great remark as it is one of the *“two seminal ideas (that) are regarded as underpinning its*

50 Supra note 43, Art. 56 (1)

51 Supra note 48, p. 217

“The reconciliation of these principles and the sovereignty based jurisdictional competencies are resolved through international co-operation in international organisations... The establishment of most of these international governmental and non-governmental agencies predate the development of ICZM type management strategies, and are therefore themselves based on sector and interest divides”

52 Supra note 43, Art. 197

development".⁵³ The other one being the recognition of the interrelated character of the Ocean issues as mentioned in its preamble.

UNCLOS includes two provision in is Part XII that can be related to ICM. The first contained in article 192 makes reference to the obligation to "*protect and preserve the marine environment*" which addressed all states while Article 193 reaffirms the right of every state to exploit its natural resources. The limit of this sovereign right over the national natural resources is settled by the states own environmental policies "*and in accordance with their duty to protect and preserve the marine environment.*"⁵⁴. In other words, the power granted to states over their natural resources is to be balanced by the obligations established by the international community and in this way ensuring also that the coastal state doesn't affect the rights granted by UNCLOS to other states.⁵⁵

Theses provisions are to be executed regardless of their maritime zone. Still, while implementing them, states have to be aware that their territorial water can be subject of a more stringent regulation than the implemented for the EEZ, where their sovereign rights have to be exercised in consideration of other states rights. This is as consequence of the sectoral approach implemented by UNCLOS.

Also, PART XII doesn't determinate the activities to be regulated. Article 194 of UNCLOS provides for coastal states to take actions to prevent, reduce and control pollution of the marine environment. The measures can be taken individually or jointly, and should make use of "*the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.*"⁵⁶

The adoption of an Integrated Coastal Management approach could be one of the measures adopted to achieve the goal setted by the article. If we keep in mind that ICM aim to achieving Sustainable Development, then environmental, protection and conservation, measure have to be placed. This will fulfil the mandate of this provision.

Next we will see later how certain International Instrument, adopted post-UNCLOS, have updated the provisions related to conservation and protection of the environment by

53 Supra note 48, p. 217

54 Supra note 43, Art. 193

55 *Coastal State Environmental Protection*, p. 291

56 Supra note 43, Art. 194

including management areal approaches in order to ensure Sustainable Development,.

1.3.2. The Earth Summit Documents: The Rio Declaration, Agenda 21 and the Convention on Biodiversity

The UN Convention on Environment and development, the Earth Summit, celebrated in Rio de Janeiro, Brazil in 1992 culminated with the adoption of a series of documents that though lacking a binding character still have managed to influence the development of Environmental Law. These instruments

“reflect a fundamental shift in thinking, a shift in paradigm: the understanding that, henceforth, nations, groups, and individuals must address questions of environment and development and relations between North and South in a fundamentally different way than they have in the past.”⁵⁷

Integrated Management is one of the principles that derive from these documents. These International Instruments aim to establish a new standard for what until then was to be considered Development. Among this documents we mention the Rio Declaration, the UN Convention on Climate Change, the Convention on Biodiversity and Agenda 21 as the most representatives for Integrated Coastal Management. The present section aims to provide an insight on how the ICM approach was developed from the Earth Summit documents and how are they still relevant after more than two decades.

The Rio Declaration on Environment and Development is not a binding document. Strictly it doesn't even include for a legal framework. Nevertheless, it contain several principles that influenced others both at the national and international level and is considered the source of the further development of Integrated Management. The Declaration *“together with the other resulting international instruments, reflected a new paradigm in addressing the environment – the notions of interdependence, integration and sustainable development”⁵⁸*

In the context of the present work, the principles that are more relevant for Integrated Coastal Management are:

⁵⁷ Supra note 22, p. 12

⁵⁸ Supra note 48, p. 208

1) Sustainable development , 2) the right of States over their natural resources and their environmental responsibilities, 3) Inter-generational Equity, 4) Environmental Protection as Integral part of the Development process , 5) Intra-generation equity, 10) Integration of the society for handling of Environmental Issues; and 15) the precautionary approach.

As this is only a declaration of principles, the true value is not easily concealed by it self, rather in the development of other documents supported by those original principles.

Further we will address the content of this declaration in more detail.

The Rio Declaration offered the Principles over which the other Earth Summit documents are build up. Of these, Agenda 21 is a voluntary plan of action toward sustainable development. This Plan develops a framework and sets of goals for achieving Sustainable Development. The term “*sustainable*” was placed beside “*development*” indicating the new ideal path towards which the world was to turn to. Paragraph 1.2 of Agenda 21 addressed that the global partnership required to turn accept “*the need to take a balanced and integrated approach to environment and development questions*”. Chapter 17 of Agenda 21 starts with its first paragraph reaffirming the integrated character of the marine and coastal environments and underline that new approaches “*that are integrated in content and are precautionary and anticipatory in ambit*” are required to achieve the goals of protection and sustainable development. This as “*current approaches to the management of marine and coastal resources have not always proved capable of achieving sustainable development.*”⁵⁹

Agenda 21 develops a program for the protection, rational use and development of the living resources of the Oceans and Seas. This program compromises seven “areas” among which the first one correspond to “*integrated management and sustainable development of coastal areas, including exclusive economic zones*”⁶⁰. The EEZ deserve special comments as is “*an important marine area where the States manage the development and*

59 Agenda 21, Para 17.14

60 Ibid, Para 17.1 The six remaining “areas” are:

- b. Marine environmental protection;
- c. Sustainable use and conservation of marine living resources of the high seas;
- d. Sustainable use and conservation of marine living resources under national jurisdiction;
- e. Addressing critical uncertainties for the management of the marine environment and climate change;
- f. Strengthening international, including regional, cooperation and coordination;
- g. Sustainable *development* of small islands.

conservation of natural resources for the benefit of their people”⁶¹.

The second paragraph of the same section recognizes that Integrated Management at Coastal zones is required as the Coastal “ *are the areas most available for development activities*”. This as most of the population of the world is concentrated in coastal zone which will only increase the importance of these areas in the future.

In short, the coastal and maritime zones are of vital importance for the future of the humanity as most of the population is concentrated in such areas. The current approach of management does not allow for sustainable development. Being that the Coastal and Maritime ecosystems are integrated, this calls for adopting a new approach, an integrated approach.

This is noted from the beginning as the objectives described in letters a) (*integrated policy and decision-making process, including all involved sector*) and f) (*Provide access, as far as possible, for concerned individuals, groups and organizations to relevant information and opportunities for consultation and participation in planning and decision-making at appropriate levels*) clearly refer to Integrated Management both at the regulatory and participatory level. The section expands on the what is manifested on the preamble were is manifested that Integrated Management is required to achieve sustainable development. The Rio Declaration does not make this remark though as manifested before it sets sustainable development as the new paradigm for development.

The other objectives the Area of Integrated Management and Sustainable development⁶² relate to other aspects of the management and this to relate to others principles mentioned in the Rio Declaration.

Objective c) call for the states to concentrate on “*well defined issues concerning coastal management*”. This principles calls in general terms to determinate the issues that specifically attend to to coastal management.

Objective d) expressly mentions preventive and precautionary approaches should be applied in phases of planing and implementation projects and keep to be applied during assessment of their impact and objective e) calls to develop and apply methods related to

61 Supra note 59, Para 17.3

62 Ibid, Para. 17.5

national resource and environmental accounting to trace the changes in value resulting from the “*use of coastal and marine areas*.”

The objectives mentioned can be again related to the different activities described in the same section, specifically management-related⁶³ and those related to data and information collection⁶⁴. These section, exemplify diverse actions that could be taken by States in adopting the Integrated Management approach and Sustainable Development. It is though more concrete than the previous sections. It is important that the section don't call only for actions aimed at the coastal or maritime zones or their resources, rather includes as well those aiming at the social and cultural sphere⁶⁵.

The development of what is currently known as Integrated Coastal Management is based on the principles laid down by Agenda 21. Notice that Agenda 21 not only calls for managing the coastal area in consideration of its intrinsic relation between areas, it also calls for the adoption of integral policies and, in the development of such policies, the participation of all those sectors that could be affected by the implementation of such policies. Agenda 21 is not a binding document, but this have not prevented it to exercise a great influence in the development of ICM frameworks.

The CBD, unlike Agenda 21 and the Rio Declaration, provides a more concrete set of obligations though its terms are flexible and allows for states to adapt their efforts in the achieving of the objectives set by the convention as we will see later Though the CBD .

These objectives are set in article 1 and are:

1. The Conservation of Biological diversity,
2. The sustainable use of its components; and,
3. The fair and equitable sharing of the benefits arising out of the utilization of genetic resources.

The Preamble lacks the binding character of the articles texts but provides for a light to interpret the text of the Convention as it contains declarations that are again connected to the Rio Declaration, and are easily linked with the others documents that are a result of the

63 Ibid, Para. 17.6 and 17.7

64 Ibid, Para. 17.8 and 17.9

65 Ibid, Para 17.6, letter (E to I)

Earth Summit. For starts, it recognizes the sovereign right that states have over their biological resources. Later is also reaffirmed that this right has to be exercised considering the responsibility to conserve biological diversity and to use the biological resources “*in a sustainable manner.*”⁶⁶

Later it also remarks that “*the in-situ conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings*” is fundamental for conserve the biological diversity.

Finally, it underlines the necessity and importance of promoting “*international, regional and global cooperation among States and intergovernmental organizations and the non-governmental sector.*” This cooperation calls for actors at different levels to participate of the conservation of biological diversity and the sustainable use processes.

Article 2 of the CBD provides the definitions to be used in the application of the convention. Two of these definitions, Ecosystem and Protected Area, make reference to specific geographical Area. This should not be taken as sign of the CBD adopting a sectoral approach. This only reaffirms the objective of the CBD and that this convention should be analysed also in the context of the Earth summit and is resulting documents.

The convention stressed the necessity to adopt a sustainable use of the biological diversity while allowing the parties to act “*in accordance with its particular conditions and capabilities*”⁶⁷. For this porpoise, States are bound to “*develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity*”⁶⁸ and to integrate “*conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies*”.⁶⁹ Though this obligation is not so strong, as its performance will vary according to the possibilities of states and also the reach will be in as long as it seems to be appropriate.

As it was mention before, certain obligation are weakened by introducing provisions that consider the capacities of the states as “lack of capacity” could always be posed as justification for not fulfilling the objectives of the convention. On the other hand is the

66 Supra note 24, preamble

67 Ibid, Art.6

68 Ibid,, Art. 6 a)

69 Ibid, Art. 6 b)

inclusion of such considerations that allow more states to adopt and ratify the Convention, eventually building their capacity up.

In relation with other international instruments, the CBD is quite explicit: It shall not have impact over the rights and obligations that derive from other International Agreements, exception in cases were the performance of such obligation or the exercise of such rights “*would cause a serious damage or threat to biological diversity.*”⁷⁰ In respect to the marine environment, the Convention urges the parties in article 22. 2. to be consistent with the rights and obligations that are risen from the Convention in the Law of the Sea.

So far, we observe that the CBD though including certain provisions that relate to sustainable development or sustainability directly, does not refer directly to integrated Management. There are in article 8 of the Convention, some provisions that are quite relevant in the context of Integrated Management. The named article 8 relate to protection In-Situ, and illustrates the activities that state could undertake to ensure the protection and conservation of biodiversity. Letter *a*) mentions the establishment of a “*system of protected areas*” in order to ensure that biodiversity is conserved in such areas. Though the Convention does not makes reference the inherent integration between different ecosystems, letter *e*) in a implicit manner recognises the interaction between geographical areas. It calls for the promotion of “*environmentally sound and sustainable development in areas*” While discussing the use of MPA for protection and conservation of biodiversity in the context of Integrated Coastal Management the CBD is considered “*the most relevant agreement*”⁷¹ of all the international conventions.

The Conference of the Parties is the main body of the Convention. Among the many capacities established in article 23 for the conference, the capacity to adopt protocol and amendments to the convention.⁷²

In its decision II/10, the Conference of the parties, adopted the recommendations of the Subsidiary Body on Scientific, Technical and Technological Advise (SBSTTA), addressing to the parties and encouraging “*...the use of integrated marine and coastal area*”

70 Ibid, Art. 22

71 Cicin-Sain B., S. Belfiore, *Linking marine protected areas to integrated coastal and ocean management: A review of theory and practice*, OCEAN & COASTAL MANAGEMENT 48 (2005) 847–868 r 2006 Elsevier Ltd. p. 858

72 Supra note 24, Art. 23 4.

management as the most suitable framework for addressing human impacts on marine and coastal biological diversity and for promoting conservation and sustainable use of this biodiversity;” This included the other tools and measures recommended later by the SBSTTA, and adopted in the programme of work on Marine and Coastal Biological Diversity, as mentioned in the “Review of existing instruments relevant to integrated marine and coastal area management and their implementation for the implementation of the Convention on Biological Diversity”⁷³

As the CBD, encourages states to establish Protected Areas, and the Conference of Parties have encourage state to adopt Integrated Coastal Approach to ensure the sustainability of the biological resources in the marine and coastal areas, it institutes another layer to be considered in the adoption of ICM approaches.

1.4 Appropriate Integrated Coastal Management: Principles

The main sources for Integrated Management are to be found in the instruments resulting from the Rio Summit. Agenda 21 and the CBD, are closely related to the Rio Declaration. Sustainable Development is build on the other principles of the Earth Summit. During more than two decades, such principles have become an important driver for the management of natural resources. All of them, and specifically integrated resource management, have come to be broadly accepted as the key to achieving ecologically sustainable development.⁷⁴

As said, the principles laid down by the Rio Declaration, Agenda 21 and the CBD aim at achieving Sustainable Development, but they are as well closely related between them. On this reason, Integrated Coastal Management “*should be guided by the sustainable development principles contained in the Rio Declaration of Principles and the other Earth Summit outputs*”⁷⁵.

⁷³ Conference of the Parties to the Convention on Biological Diversity, *Review of existing instruments relevant to integrated marine and coastal area management and their implementation for the implementation of the Convention on Biological Diversity*. UNEP/CBD/COP/5/INF/6, Nairobi: CBD; 2000. available at <http://www.cbd.int/doc/meetings/cop/cop-05/information/cop-05-inf-06-en.pdf> , as referred by Cicin-Sain B., S. Belfiore, *Linking marine protected areas to integrated coastal and ocean management: A review of theory and practice*, OCEAN & COASTAL MANAGEMENT 48 (2005) 847–868 r 2006 Elsevier Ltd. p. 858

⁷⁴ Supra note 41, p. 1

⁷⁵ Supra note 22, p. 32

For Cicin-Sain⁷⁶, influence over ICM is exercised by the following principles. In first place the principle of Sustainable development as it is the as the main goal for implementing and Integrated Management framework in the coastal zone. In exercising their right to development states must remember their environmental obligation not just with it nationals but also with the international community. Being Sustainable development the main reason for ICM, is not strange that the other principles influencing Integrated Management are also others related to Sustainable Development.

We have that Inter and Intra-generation Equity, Environmental Protection as Integral part of the Development process, and the Integration of the society for handling of Environmental Issues are key for Sustainable Development as they sets a balance between the obligation of the current generation of preserving the environment and the right of future generations to enjoy the resources to satisfy their needs. We should not forget that the right to management is derived from the right of States over their natural resources and while the integral character of such management is settled in order to address their environmental responsibilities.

We must remember that the exploitation and use of the natural resources have to be performed in “*an ecologically sustainable fashion.*”⁷⁷ This calls for states to balance both the right over the natural resource with the obligation setted by the international community to protect and preserve the environment. In line with what have been said, the principle of environmental safeguards, environmental safeguards, precautionary principle, 'polluter pays' principle, proper resource accounting, and trans-boundary safeguards are to be considered when developing and implementing and IM framework.

Finally, it has been remark that the International Framework for IM is flexible and allows for states to adapt their approaches to their needs and local realities. Also

“in addition, because integrated coastal management is concerned with public resources in coastal waters, special considerations--such as obtaining appropriate returns for the public from the exploitation of public resources in coastal waters--must also be a consideration. Process-oriented principles include participation in integrated coastal

76 ibid

77 Supra note 29

management processes by the public, industry, and interest groups; and consideration of socio-cultural values, including the special rights of indigenous peoples.”⁷⁸

78 Supra note 22, p. 33

2. Galapagos

The archipelago of Galapagos posed a serious challenge to the Ecuadorian government, once it decided to take the matters regarding the managing of the islands more seriously. Stake holders tried to impose their agenda, Tourism operations will affect fisheries, for example. Conflict of interests prevented a more efficient management of the Archipelago⁷⁹. Also the International community place great pressure over the Ecuadorian government to ensure that the management regime meet the criteria of international law. In this context, Forrest is correct when manifested that

*“A truly integrated management regime is thus hostage to a variety of international interests and co-operative arrangements, and while the very concept of sovereignty and the power of the nation-State is continuously evolving, and may very well be diminishing, it continues to be the paradigm within which nation-States must regulate ocean eco-system disturbances.”*⁸⁰

The legal framework for Galapagos has not solved all the issues on the matter, but it does provides a more competent model by means of inclusion in the decision making process. As mentioned in the introduction Ecuador has recently become a party in UNCLOS. Should this mean that the current framework should be relaxed or strengthened? The current section will try to dissect the main framework law for the integrated management of the Galapagos and discuss the ICM Framework in the light of international law.

79 “The management system was established as part of the Law of the Special Regime for the Conservation and Sustainable Development of the Province of Galapagos (Special Regime for Galapagos) in 1998, to deal with the existing conflicts over the use of natural resources among antagonistic groups of the marine reserve and as a strategy for obtaining commitments from local users regarding the decisions and regulations designed to improve the management and conservation of natural resources, as well as to promote compliance of these regulations...”

Viteri C, C. Chavez, *Legitimacy, local participation, and compliance in the Galapagos Marine Reserve*, OCEAN & COASTAL MANAGEMENT 50 (2007) r. 2006 Elsevier Ltd. pp. 255

80 Supra note 48, p. 218

2.1. Activities and Stake-holders

The territories of archipelago of Galapagos include a Province and a Marine Reserve, also some of the maritime areas are used by the Ecuadorian Navy for practices. Inside its limits, the inhabitants undertake activities such as fisheries, agriculture, research, conservation and protection, and tourism. Both, tourism and fisheries were undertaken by locals and some foreign companies. Galapagos has been declared as World Heritage site by UNESCO in 2001. Previously it had been declare a Biosphere reserve in 1981. Ecuador established a Marine Protected Area 1986 and Whale Sanctuary in 1991. The Galapagos National Park was established in 1959 and according to the Article 15 of the Special Law for Galapagos, the Management and Administration of the marine Reserve is provided by the Directive of the Park. All these elements present us with a complex situation where several interests collide. Considering that the environment in each island of the Archipelago is unique, the necessity to balance the socio-economic needs of the inhabitants, with the interest of the Government and the capacity of the environment, was and is quite strong.

The Archipelago required that the Government produce a special piece of legislation that considered its special characteristics.

During the revision of the first Management Plan for the Archipelago of 1992, the Identified Stake-holders were those related to the activities taking place within the limits of Galapagos. These are authorities at both, National and Local Government, the Ecuadorian Navy, the Tourism industry, Artisanal fisheries, and Conservation and Research.⁸¹

2.2 Integrated Management in the Archipelago

The present section will develop on the management of the Archipelago and how is integrated at the different levels and in different phases.

The Management of the Archipelago requires the interaction between several institutions or entities to provide information, control and enforcement. As manifested before, the

81 Presidency of Ecuador, *Management Plan for the Conservation and Sustainable Use of the Marine Reserve of Galapagos*, Published in the Official Gazette no. 173, of April 20th 1999, available at http://www.galapagospark.org/documentos/DPNG_plan_de_manejo_rmg.pdf (Spanish)

Heylings P., M. Bravo, *Evaluating governance: A process for understanding how co-management is functioning, and why, in the Galapagos Marine Reserve* OCEAN & COASTAL MANAGEMENT 50 (2007) 178–208, r 2006 Elsevier Ltd. p. 178

Archipelago host a province and a marine reserve. The management of each zone is performed by different institutions.

While the Galapagos National Park is the main authority of the Marine Reserve , where it is in charge of “*the administration and management...*”⁸² exercising “*jurisdiction and competence over the management of it natural resources*”⁸³; the main entity for the management of the province is the INGALA⁸⁴. This is a collegiate body responsible for the Planning and Coordination of the activities at the Galapagos Province⁸⁵. Among its attributions are

To provide technical and financial assistance to other state bodies in those matters related to conservation of the environment, provision of public services, to the well being of the community, to sustainable development and ordering of tourism, the exploitation of natural resources and the formation of the human resources required by the province.⁸⁶

It also has the responsibility to promote that the economic activities undertaken by the residents of the Archipelago are performed in attention to the sustainable development principle.⁸⁷

It also have the commandment to coordinate research with other entities in the Archipelago on actions that should be supervised to ensure the maintenance of the islands ecosystems, like the use of natural resources, maritime and terrestrial, subterranean and surface waters, and others.⁸⁸

The Board of the INGALA is presided by the Minister of Environment and it incorporates as members, ministers from other branches of the government at the national level and local authorities, professional unions and representatives of civil society. Also, the Charles Darwin Foundation⁸⁹ its involved in the board though only as an advisory entity with no vote rights.⁹⁰

82 SLG Art. 15

83 Ibid

84 Instituto Nacional Galapagos or National Institute Galapagos

85 Supra note 82, Art.4

86 Ibid

87 Ibid

88 Ibid

89 <http://www.darwinfoundation.org/> Last accessed 10-08-2013

90 Supra note 82, Art. 5

Among its many attributions, the board have the capacity to approve the political guidelines for the conservation and sustainable development of the province, to approve the political guidelines for territorial planning and ordering in urban and rural areas, and to approve the Regional Plan for the Province of Galapagos⁹¹. The Management of the Galapagos Marine Reserve is guided by the Management Plan for Conservation and Sustainable Use of the Marine Reserve of Galapagos, PMRMG.

The plan, adopted in 1999, resulted from

*“a comprehensive participatory and negotiating process among key groups linked to the reserve. It permitted artisanal fishing, marine-based tourism, scientific investigation, education, navigation, and military manoeuvres within the GMR. It defined uses and prohibited activities such as industrial fishing within the marine reserve, and detailed the methods of regulation of permitted and prohibited activities in different zones.”*⁹²

The Participatory Management Board was established by the Management Plan adopted in 1999.

*“The PMB is the participatory forum for users of the marine reserve and is responsible for, among other things, analysing and making recommendations on issues relevant to the reserve that are passed to IMA for ratification or decision.”*⁹³

The Participatory Management Board is assemble by representatives of diverse sectors that make use of the Marine Reserve. The sectors that are represented are, the artisanal fisheries, tourism; and, the Scientific, conservation and education sector⁹⁴. Finally the last member of the board is the competent authority of the Marine Reserve, the Galapagos National Park. Originally, the scientific, conservation and education sector -represented by the Charles Darwin Foundation, played an advisory role without any voting capacity. Nevertheless, the sector acquired a more active part as voting rights have been granted

91 Supra note 82, Art. 5

92 Baine M., M. Howard, S. Kerr, G. Edgar, V. Toral, *Coastal and marine resource management in the Galapagos Islands and the Archipelago of San Andres: Issues, problems and opportunities*, OCEAN & COASTAL MANAGEMENT 50 (2007) 148- 173, Elsevier Ltd. p. 159

93 Ibid, p. 160

94 El manejo participativo en la Reserva Marina de Galápagos: Sistematización, evaluación y factores de éxito del modelo participativo, p 16. Available at http://www.upeace.org/cyc/libro/pdf/informes/fase_02/FUNDAR_2.pdf , last accessed 10-07-2013

during the last years.⁹⁵

The General functions of the PMB as provided in by section 6.3.2. of the PMRMG are,

- a) To analyse and propose to the Direction of the GNP on specific matters related to the Marine Reserve of Galapagos that don't interfere with the jurisdiction of the IMA, or in those that have been delegated by the IMA, INGALA or other institution.*
- b) To participate in the Evaluation of the efficiency of the Plan according to the program of evaluation and monitoring of the implementation of the Management Plan.*
- c) To analyse and propose modifications to the Management Plan;*
- d) To support the revision of the Management Plan;*
- e) To evaluate and monitor the accomplishments of the Management Plan;*
- f) To identify the technical information necessities for the discussion and decision making;*
- g) Analyse and propose the revision of the zoning of the Marine Reserve;*
- h) To ensure the integration of the terrestrial and maritime Management Plan;*
- i) Ensure compliance with environmental impact assessments for activities within the GMR;*
- j) Review and analyse the results of environmental impact studies conducted within the RMG and make recommendations;*
- k) Coordinate the participation of users in the management of the marine reserve, through the programs and management and administration applets included in this Plan of Management;*
- l) Promote the development of educational and scientific use of the Marine Reserve;*
- m) To analyse and propose new activities;*
- n) Develop and propose the system and qualification procedures for new uses, users and modalities within the Galapagos Marine Reserve, and*
- o) Participate in the development and proposals for reforms to the laws and regulations*

⁹⁵ Jones, P. J.S., *A governance analysis of the Galapagos Marine Reserve*, MARINE POLICY 41 (2013), Elsevier Ltd.P, 67

relating with the activities and uses within the Galapagos Marine Reserve.

Besides these, the Plan grants the PMB with specific functions and capabilities according to uses represented by its members.

The PMB does not have the final word on the decisions related to the reforms of the Management Plan as it requires the approbation of the IMA. Regardless of this, the process at the PMB provides the Users with a certain degree of influence over the destiny of the use of the Marine Reserve.

Critics argue that the PMB members have dedicated themselves to adopt decisions on fisheries, for the most part but still the process allows for a bottom-up approach, where the different sectors have a direct way to communicate with the authorities and to place on the table issues that affect them. As we will see next when we examine the IMA.

The Inter-Institutional Management Authority is a collegiate body conformed by the Ministry of Environment, which acts as president, Minister of Defence, Minister of Commerce, Industrialization and Fisheries, the Minister of Tourism, and representatives from the Chamber of Tourism of the province, the artisanal fisheries sector and the Conservation Science and Education Sector. The Director of the GNP acts as secretary. We notice that three of the voting members of the Authority have as well an active role at the PMB. As mentioned before this allows for the users to act at the IMA within a unified position. At this level, the majority is composed of members of the National Government. Now both the PMB and the IMA adopt their decision by a voting system. While in cases where a voted solution is not achieved at the Inter-Institutional Management Authority, it simply refrains from adopting a decision, issues where a decision has not been achieved at the PMB can be still analysed and decided on, by the Authority. The SLG also gives the IMA the capacity to adopt a new Management Plan and review its accomplishments, among other attributions granted in Article 14 of the SLG.⁹⁶

96 a) *To establish policies for the Galapagos Marine Reserve, based on principles of conservation and sustainable development.*

b) *To approve the Management Plan for Conservation and Sustainable Use of the Galapagos Marine Reserve.*

c) *Ensure compliance with the Plan.*

d) *Distribute the resources allocated to the Galapagos Marine Reserve and any other income in accordance with management priorities Reserve Zone.*

e) *Convene public or private institutions when they consider that their participation.*

2.3 Legal Framework and Management Principles of the Archipelago

The Special Law for the Conservation and Sustainable Use of the Province of Galapagos (from here on also the “SLG”) was adopted in March 18th. 1998. It represented a great legislative progress for the Archipelago as the previous regulations, though well intended, fail to address the local issues. It was not just a lack proper regulation, but political will that undermined most legislative efforts. The adopted law, successfully implemented legal framework that,

“... inter alia, restricted migration to the Galapagos province (Second Heading, Regime of Residence in the Galapagos Province), allowed for locally based institutions to design and implement local management policies (Art. 3), provided mechanisms for local residents and institutions to capture more of the rent generated from the lucrative tourism industry (Art. 48), established the GMR (Art. 12 & Art. 72), restricted fishing activities within the archipelago to local residents using artisanal techniques (Art. 42), empowered an Authority for Inter-Institutional Management (IMA) to establish a management plan for the GMR (Art. 13) and vested enforcement of regulations governing the GMR with one agency— the GNP (art. 15).”⁹⁷

The recitals of the law remark the obligation of the State to ensure the conservation of the natural areas of the National Heritage, marine or terrestrial, and ensure the development of the neighbouring human settlements in harmony with nature. This last phrase makes reference to sustainable development as new paradigm for the Archipelago. Sustainable Development is one of the principles under which the management of the Archipelago has to be performed.

We have mentioned that, Integrated Management is seen as *sine qua non* for achieving Sustainable Development in instruments at national and international level. But, how has the local framework adapted those international principles to it local reality and interests?

The *SLG* mentions in its eight recital that,

f) Approve fishing schedules, volumes, sizes, species and fishing gear allowed in Galapagos, with the advice of the National Council of Fisheries and Fisheries Development.

g) Authorize participatory studies, scientific research aimed at improving policies for Conservation and Development for marine fisheries.

97 Supra note 92, p. 159. The reference to the articles of the Law, are mine.

“That the land and sea areas and human settlements in the province of Galapagos are interconnected, so its conservation and sustainable development depends on the environmental management of this three components ”⁹⁸

The acknowledged of the integrated character of the components of the environment in Galapagos leads later to set the necessity for Integrated Management as we will see next. Declaring the integral and inter-connected character of the Galapagos environment and acknowledging that humans are just one of the components should point at the framework should not be developed from and anthropocentric perspective.

Article 2 of the law, set the principles under which policies, planing and execution of both public and private works, and the management of the Archipelago are to be developed.

1. The maintenance of ecological systems and biodiversity of the Galapagos Province, especially native and endemic, while allowing the continuation of the evolutionary processes of these systems under minimal human interference, taking into account, particularly genetic isolation between the islands, and between the islands and the mainland;

The first principle use an interesting wording. It does not make use of the term “conservation” as it will imply that the evolutionary process would not be taking into consideration. Also it calls to the genetic isolation between the islands, and between the islands and the mainland to be considered in the maintenance of the archipelagos ecosystem.

Is curious that Sustainable Development is not the first principle to be presented as it is the ideal to which the legislation aims at. Is this the main principle for management of the Archipelago? The practice of the management bodies for the archipelago suggest that though environmental considerations have to de made in the decision-making process, decision that affect the environment can be adopted when considered necessary for the benefit of the community.

2. Sustainable and controlled development based on the capacity of the ecosystems of the Galapagos Province;

Sustainable Development is the ultimate goal of the management of the ecosystem of the

98 Ley Regimen Especial Galapagos

Archipelago. The management should consider the capacity of the ecosystem to provide resources and regenerate itself.

3. Privileged participation of local community in the development of activities and the sustainable economic use of island's ecosystem, based on the incorporation of special production models, education, training and employment;

The participation level is one of them. By integrating stake-holders as actors in the management process, it gets improved by the experience of the local community in their different activities, it brings information and empirical knowledge which can enhance the scientific knowledge. More importantly, it brings the political decision making process, closer to those being socially affected.

This principle is manifested in practice in those provisions where participatory management is expressly required. The coordination for the elaboration and supervision of the plan for the management, conservation and sustainable use of the Marine Reserve⁹⁹ and the Annual Program for the Eradication of Exotic Species¹⁰⁰ rely on participatory management.

4. Reducing the risks of invasive diseases, pests, plant and animal species exogenous to the Galapagos Province;

The conservation and management of one ecosystem, goes by safeguarding it from the invasive species, meaning species that original belong to other ecosystems. This derives again for the protection and conservation principle.

5. The quality of life of residents of the province of Galapagos must correspond to the unique features of World Heritage Site;

The SLG includes provisions on how the life of the residents have to adapt to the features of the Archipelago. From prioritization given to the instruction aiming to attend the special needs of the region, in the matter of Education¹⁰¹; to the Right to Medical Attention in clinics of the mainland when required¹⁰². The encouragement of the tourism industry with local participation¹⁰³, the local handcraft Industry¹⁰⁴ and artisanal fisheries¹⁰⁵ and

99 Supra note 82, Art. 16

100 Ibid, Art. 55

101 Ibid 82, Art. 32

102 Ibid, Art. 37

103 Ibid, Art. 48

104 Ibid, Art. 59

105 Ibid, Art. 39

provisions regarding the distribution of the incomes and how the revenues for collection of taxes and fees have to be reverted into the community¹⁰⁶ are other example of provisions under this principle.

6. The recognition of the interactions between areas inhabited and terrestrial and marine protected areas and, therefore, the need for integrated management and,

Integrated Management is the corner stone for the management of the Archipelago. The Intern- Institutional Management Authority¹⁰⁷ is a entity created to stablish politics for the Marine Reserve among other functions. It is formed by the stake-holder representatives. This brings all the interest to the negotiation table.

7. The precautionary principle in the execution of works and activities that may harm the environment or island ecosystems.

Before, it was mentioned how the SLG aims to achieve the sustainable development of the Archipelago. To achieve this goal, Integrated Management relies heavily on scientific knowledge which allows to take informed decisions. According to the SLG, in cases where a decision has to be made and there is not enough technical information or there still doubts about the conclusions obtained, the precautionary principle “*requires to adopt the decision that rises the lowest risk of inflicting direct or indirect damage to the ecosystem.*”¹⁰⁸

This phrasing indicates that the decision-making authorities should rely on scientific information to develop their decisions. The weight if the recommendations provided by the scientific sector shall be contrasted with the interest of the other sectors, and then the decision should be the one that affect the less the natural processes in the Archipelago.

106 Ibid, Art. 19

107 Ibid, Art. 13

108 Ibid, Art. 73

3. Conclusion

Integrated Coastal Management is an approach for the management of the Coastal Zone, aiming to achieve sustainable development. It demands the application of the other principles of the Earth Summit. It calls for consideration of the interrelations existing in the environment, the effects of that sectoral activities over the whole environmental system and other activities, and finally for the participation of the regulation entities and sectors that could be affected by the management. These are some of the main elements of ICM.

Integrated Management of the Coastal Zone, as an approach, is developed in contrast to the traditional sectoral approach. In an effort to overcome the limitations that derive from ignoring the interrelations occurring in the coastal environment and as a necessary approach to achieve sustainable development. The adoption of UNCLOS, though establishing a sectoral regime, does not impede the adoption of ICM regimes as a part of the coastal states obligation to protect the marine environment.

International law, the Earth Summit document specifically, provide enough description over the content of the ICM that the lack of a proper definition does not affect the development and adoption of integrated management regulation for coastal zones. It is important to remark that the states are allowed to develop their own principles that adapt to their specific needs and conditions allowing that the adoption of such regimes expands. Ecuador participated in the Earth Summit and is party of the CBD among other environmental conventions. Hence that the adoption of an Integrated Management framework for the Archipelago of Galapagos has been a constant obligation for the Government. The latest Special Law for Galapagos, and the Management plan have successfully implemented a scheme that aims at sustainable development with a high level of participation at all levels. Also allowing the integration at the regulatory level.

The framework for the Management of Galapagos have all the elements to be considered

as Integrated. It is based on the interrelations existing in the environment. Calls for participation of the the stake-holders allowing an integration at both the vertical and the horizontal level though it can be argued that the level of influence varies. Never the less a high level of participation is achieved. The management framework makes use of science though the weight that it may have on the adopted final decision may vary. Still it can be say that a precautionary approach is in place. Moreover the framework aims to ensure that socio-economic development of the human settlements goes in hand with the preservation and protection of the environment. Sustainable development is the goal of the framework. With this said, seems that the influence of the international law relating to ICM is quite strong. More as Ecuador has been able to adapt the framework to its local reality, needs and expectations. There is nothing to suggest that Ecuador becoming party of UNCLOS should relax its legal framework in what refers to navigational and fishing rights, as the environmental measures are perfectly in line with the mandates and obligations setted in part XII of the Law of the Sea Convention.

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