



The Baltic Seas Environmental Protection Law and ICZM

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Abstract

The first part of this article will give a review of the Legal Regime of Marine Environmental Protection Law focussing on the Baltic Sea. The Legal Regime can be divided into International Law, European Law and National Law. International marine environmental law consists of a wide network of multilateral treaties, international co-operations and institutions. The most important centrepiece is the almost worldwide applicable United Nations Convention on the Law of the Sea (UNCLOS). The OSPAR-Convention, which focuses on the pollution of the Northeast Atlantic is of great importance for the North Sea and the Baltic Sea, while the Helsinki-Convention solely deals with the Baltic Sea region. The European Community (EC) is a member of numerous global and regional international treaties, but has also the power to enact Directives and Regulations in the field of marine environmental protection. In Germany, as an EU member state, marine environmental protection is provided by the secondary law and the implementations of EC Directives. Furthermore, Germany is member of several international organisations and institutions that deal with issues of the protection of marine environment. After giving this general information the last part of the article focuses on Integrated Coastal Zone Management (ICZM) in the legal framework.

1 Background

The Baltic Sea is under a constant exposure of the industrial countries of Northern and Central Europe. The marine ecosystem is endangered and damaged in many ways by intensive fishing, pollution, insertion of nutrients, shipping, military use, tourism, and various constructional influences, e.g. coastal protection, marine mining, dumping of dredged material, pipelines and cable trays, and - in the near future - off-shore wind power installations. Moreover the implications of climate change and global warming will have an impact on the marine environment. As a cross-border issue, marine environmental protection requires a political and legal framework. Especially the riparian states have to co-operate and co-ordinate their actions to prevent or reduce the negative human impact on the marine environment. Therefore marine environmental protection law, an entirely new legal regime mainly on the level of public international law, was established.

2 UNCLOS – Constitution of the Sea

The *United Nations Convention on the Law of the Sea (UNCLOS)*, www.un.org was signed in 1982 and is the most comprehensive and important multilateral agreement so far agreed in the framework of the United Nations. It was created during the third United Nations Conference on the Law of the Sea. The first Conference took place in Geneva in 1948. It covers almost all areas of the international law of the sea, e.g. protection of the maritime environment, development and transfer of maritime technology, as well as the demarcation of the various sea zones. It entered into force on 16 November 1994 and was amended in 1994 by the *Agreement relating to the Implementation of Part XI of UNCLOS* (concerning seabed mining). Currently, 148 States and entities are Parties to the Convention and 121 States and entities are Parties to the Agreement. UNCLOS divides the sea in several maritime

zones: the Territorial Sea, Contiguous Zone, Exclusive Economic Zone, Continental Shelf and High Seas.

The Territorial Sea expands up to 12 nautical miles from the baseline, which runs between the Territorial Sea and the Internal waters (waters on the landward side of the baseline). Except from the right of innocent passage of foreign vessels the coastal State exercises sovereign rights at the Territorial Sea.

The Contiguous Zone is adjacent to the States' territorial sea and may not extend beyond 24 nautical miles from the baseline. The coastal State has the right to exercise the control necessary to enforce several regulations (e.g. custom, entry or health regulations).

The Exclusive Economic Zone is the area beyond and adjacent to the territorial sea. It may not be extended beyond 200 nm from the baseline. The coastal State has sovereign rights for the purpose of exploring, exploiting, conserving, and managing natural resources, both living and nonliving, to be found in the waters, on the ocean floor and in the subsoil and, with regard to other activities, for the economic exploitation and exploration of the zone (e.g., the production of energy from the water, currents, and winds). The coastal State has jurisdiction with regard to establishing and using artificial islands, installations, and structures having economic purposes as well as for marine scientific research and the protection and preservation of the marine environment. Other States may exercise traditional high seas freedoms of navigation, overflight, and related freedoms, such as conducting military exercises.

The Continental Shelf comprises the sea-bed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nm from the baseline. The coastal State has the right of exploring and exploiting natural resources, establishing and using artificial islands, installations, and structures, authorisation and regulation of drilling, and the duty to pay for the exploitation of the continental shelf beyond 200 nm. Those rights do not affect the legal status of the superjacent waters or the air space above those waters. Other States have the right of navigation, and laying of submarine cables and pipelines.

High Seas are all parts of the sea that are not included in the EEZ, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. The High Seas are open to all States, whether coastal or land-locked, for navigation, overflight, laying submarine cables and pipelines, constructing artificial islands and other installations, fishing, and scientific research. In consideration of the size of the Baltic Sea there is no High Seas-Zone in the Baltic Sea. Part XII of UNCLOS is the core of international marine environmental protection law and creates a legal framework that obliges the member States to protect and conserve the marine environment. The contracting Parties are bound to create international rules on global and regional level and to co-operate, e.g. in case of threats of the marine environment or in the field of scientific research.

The International Maritime Organisation (IMO, www.imo.org) was established in 1948 during the first United Nations Conference on the Law of the Sea in Geneva. The Organisation's main task has been to develop and maintain a comprehensive regulatory framework for shipping and its remit today includes safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping.

3 Important global Conventions for Marine Environmental Protection

Under the guidance of the IMO numerous Conventions dealing with the protection from sources of pollution were enacted. The Conventions relevant for the Baltic Sea are listed below (a). Besides Conventions dealing with sources of pollution there are several Conventions dealing with the protection of species and their habitats (b).

a) Protection from Sources of Pollution

The *Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter* 1972, the *London Convention* for short, is one of the first global conventions to protect the marine environment from human activities. Its goal is the effective control of all sources of marine pollution and to prevent pollution of the sea by dumping of wastes and other matters. The 1996 *London Protocol* was agreed to modernise the Convention and, eventually, to replace it. The Protocol, which entered into force on 24 March 2006, prohibits all dumping, except for possibly acceptable wastes on the so-called “reverse list”.

The *International Convention for the Prevention of Pollution from Ships, 1973*, as modified by the *Protocol of 1978 relating thereto (MARPOL 73/78)* is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes. As the Convention of 02.11.1973 had not yet entered into force, the Protocol of 17.02.1978 absorbed the parent convention. It covers pollution by oil, sewage, garbage, chemicals and harmful substances in packaged form and includes six technical Annexes (I: Regulations for the Prevention of Pollution by Oil, II: Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk, III: Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form, IV: Prevention of Pollution by Sewage from Ships, V: Prevention of Pollution by Garbage from Ships, VI: Prevention of Air Pollution from Ships; States Parties must accept Annexes I and II, but the other Annexes are voluntary.). MARPOL also provides the concept of “special areas” which are considered to be so vulnerable to pollution by oil that oil discharges within that areas have been completely prohibited, with minor and well-defined exceptions. „Special areas“ are Mediterranean Sea, the Black Sea, the Baltic Sea, the Red Sea and the Gulfs area. In contrast to “special areas” there are also “Particularly Sensitive Sea Areas” (PSSA). PSSA are not designed by the convention but by application of one or more member states of IMO to the Marine Environment Protection Committee (MEPC) which identifies PSSA by decision. Amendments in Annex I in 1992 made it mandatory for new oil tankers to have double hulls and provided a schedule for existing tankers to fit double hulls.

The 1990 *International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC)* was adopted on 30. November 1990 and entered into force in 1995. Parties to the convention are required to establish measures for dealing with marine pollution incidents, either nationally or in co-operation with other countries. Ships and operators of offshore units must have an oil pollution emergency plan and have to report incidents of pollution to coastal authorities. The IMO plays an important co-ordinating role.

The *International Convention on the Control of Harmful Anti-fouling Systems on Ships* was adopted in 2001 and will prohibit the use of harmful organotins in anti-fouling paints used on ships and will establish a mechanism to prevent the potential future use of other harmful substances in anti-fouling systems. Anti-fouling paints are used to coat the bottoms of ships to prevent sealife such as algae and molluscs attaching themselves to the hull, and thereby slowing down the ship and increasing fuel consumption. Parties to the Convention are required to prohibit or to restrict the use of harmful anti-fouling systems on ships flying their flag, on ships which operate under their authority and all ships that enter a shipyard, port or offshore terminal of a Party. Because the Convention has not entered into force yet, port States cannot apply any requirements of the Convention to foreign ships. Flag States may, however, apply the requirements of the Convention to their national fleets.

b) Protection of species and habitats

The *International Convention for the Regulation of Whaling* (www.iwcoffice.org) came into effect on 10 November 1948 in order to protect all whale species from overhunting. It regulates proper conservation and development of whale stocks, promotes relevant research, ensures information on the status of resources and designs specific areas as whale sanctuaries. In order to follow the aims of the Convention the International Whaling Commission was established. The Commission has made

many revisions to the schedule, which is the main part of the Convention, reflecting changing economical, ecological and commercial standards.

The *Convention on Wetlands*, signed in Ramsar, Iran, in 1971 (*RAMSAR Convention*, www.ramsar.org) provides the framework for national action and international co-operation for the conservation and wise use of wetlands and their resources. There are currently 155 contracting parties to the Convention, with 1674 wetland sites, totaling 150 million hectares, designated for inclusion in the Ramsar List of Wetlands of International Importance. A Ramsar Convention site in the Baltic Sea is the Southern coast of the Gulf of Finland (www.wetlands.org).

The *Convention on the Conservation on Migratory Species of Wild Animals (CMS or Bonn Convention*, www.cms.int) aims to conserve terrestrial, marine and avian migratory species throughout their range. It was concluded under the auspices of the United Nations Environmental Programme (UNEP) in 1979 in Bonn. The UNEP also provides administrative support to the Convention. Appendix I of the Convention lists migratory species threatened with extinction and the CMS Parties are obliged to protect these animals, e.g. by restoring the places where they live. Appendix II of the Convention lists migratory species the need international co-operation and the member States are encouraged to conclude global or regional agreements. Such agreements aim to conserve, for example, small cetaceans of the Baltic and the North Seas and African-Eurasian migratory waterbirds. It is in force since 1983 and has 102 contracting Parties.

The *Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention*, www.coe.int) aims to conserve flora and fauna and their natural habitat (listed in Appendices I and II of the Convention), to promote co-operation in that field, and to afford special protection to threatened species (listed in Appendix III). The Convention was adopted and signed in Bern, Switzerland, in 1979 and came into force on 1 June 1982. It covers the whole natural heritage of the European continent and extends to some States of Africa. It has 40 member States of the Council of Europe, as well as Burkina Faso, Morocco, Senegal, Tunisia and the European Community. The Convention co-ordinates the actions of its Parties by adopting common standards and policies for the sustainable use of biological diversity. A Standing Committee coordinates the execution of the Convention by developing work programmes or a monitoring systems and has adopted 90 regulations and seven resolutions.

The *Convention on Biological Diversity (CBD Convention*, www.biodiv.org) was adopted at the Earth Summit in Rio de Janeiro in 1992 and entered into force on 29 December 1993. The CBD Convention is the key document regarding sustainable development and has 190 Parties. It aims to conserve biological diversity, the sustainable use of its components, and fair and equitable sharing of benefits arising from genetic resources. The agreement covers all ecosystems, species and genetic resources. The Convention is legally binding, which means the Parties are obliged to implement its provisions.

The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation of Straddling Fish Stocks and Highly Migratory Fish Stocks (www.un.org) was adopted in 1995 and sets out principles for the conservation and management of those fish stocks. The management must be based on the precautionary approach and best available scientific information. The Agreement provides a framework for co-operation and sets out detailed minimum standards for conservation and management. It entered into force on 11 December 2001 after 59 States and entities signed the Agreement.

4 Regional Conventions

The *Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992, (Helsinki Convention*, www.helcom.fi) entered into force on 17 January 2000 and was signed by all the bordering States and the European Community. Already in 1974 all the sources of pollution around the Baltic Sea were made subject to the Helsinki Convention 1974, which entered into force in 1980 and was signed by the at that time seven Baltic coastal States. In the light of political changes and

developments in international environmental law, the new Convention was signed. It aims to prevent and eliminate all sorts of pollution in order to promote the ecological restoration of the Baltic Sea Area and the preservation of its ecological balance. The governing body of the Convention is the Helsinki Commission (HELCOM).

The *Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and Belt* was signed at Gdansk in 1973 (*Gdansk Convention*) and entered into force on 28 July 1974. The main objectives of the Convention have been to preserve and increase the living resources of the Baltic Sea and the Belts. The International Baltic Sea Fishery Commission (IBSFC) was established in order to promote close co-operation amongst its members. The Gdansk Convention and the IBSFC, however, ceased to exist on 1 January 2007, because Russia and the European Community have been the only members of the Convention. Now a new Agreement shall ensure close co-operation between the EC and Russia (www.europarl.europa.eu) and will not entail any changes to the current structure of the Community fleet in the Baltic Sea nor on the way shared stocks are managed. To achieve the objectives of this Agreement, a Joint Baltic Sea Fisheries Committee will be established, which will act as an important forum for scientific advice on the status of fish stocks in the Baltic Sea and on fisheries management.

The *Agreement on the Convention of Small Cetaceans of the Baltic and North Sea (ASCOBANS, www.ascobans.org)* was concluded in 1991 under the aegis of the CMS Convention and entered into force in 1994. The aim of the Agreement is to promote close cooperation amongst Parties with a view to achieving and maintaining a favourable conservation status for small cetaceans. A Conservation and Management Plan forming part of the Agreement obliges Parties to engage in habitat conservation and management, surveys and research, pollution mitigation and public information.

The *Agreement on the Conservation of African-Eurasian Migratory Species (AEWA, unep-aewa.com)* was concluded in 1995 and entered into force on 1 November 1999. It is also an Agreement concluded under the auspices of the CMS Convention and covers 235 species of birds ecologically dependent on wetlands. Currently 59 States have become a Contracting Party to AEWA.

5 Regional Co-Operation

The Helsinki Commission, or HELCOM (www.helcom.fi), is the governing body of the Helsinki Convention and works to protect the marine environment of the Baltic Sea from all sources of pollution through intergovernmental co-operation between Denmark, Estonia, the European Community, Finland, Germany, Latvia, Lithuania, Poland, Russia and Sweden. The Helsinki Commission meets annually. Ministerial level meetings are also held occasionally. The Commission unanimously adopts Recommendations for the protection of the marine environment, which the Contracting Parties must act on in their respective national programmes and legislation. There are also Joint Ministerial Meeting of the Helsinki and OSPAR Commissions (JMM), in order to create consistent standards for the North and Baltic Sea.

Agenda 21 was concluded in 1992 at the Earth Summit in Rio de Janeiro. It is a programme run by the UN and aims to co-operate on a global, national and local level for a sustainable development of the environment. The number 21 refers to the 21st Century. For the Baltic Sea region the Baltic 21 was created. It is a regional multi-stakeholder co-operation and provides a regional network to implement the globally agreed Agenda 21 and World Summit on Sustainable Development activities, while focusing on the regional context of sustainable development (www.baltic21.org).

The Council of the Baltic Sea States (CBSS, www.cbss.st) is a political forum for regional intergovernmental cooperation. The members of the Council are the 11 states of the Baltic Sea region as well as the European Commission. The CBSS was established by the region's Foreign Ministers in Copenhagen in 1992. The Council identifies political goals, creates action-plans, initiates projects and serves as a forum for the exchange of ideas concerning regional issues of common interest. It is

responsible for overall co-ordination of intergovernmental cooperation in the Baltic Sea Region in accordance with the Organisation's Terms of Reference.

6 European Regulations

The European Community is Party to almost all international Conventions and Agreements dealing with marine environmental protection law. The EC may intensify the effectiveness of those Conventions and Agreements by enacting Secondary Law (Directives or Regulations) which the member States have to implement or to apply directly (Hünnekens & Wittmann 2007, p. 91 ff). The EC also participates in international organisations, e.g. in the Helsinki Commission.

For Example, to implement the Bern Convention in Europe, the European Community adopted Council Directive 79/409/EEC on the Conservation of Wild Birds (EC Birds Directive) in 1979, and Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora (EC Habitats Directive) in 1992. The Directives include provisions for the establishment of a European network of protected areas (Natura 2000) and to deal with continuing losses of European biodiversity on land, at the coast and in the sea to human activities.

Because there are numerous Directives and Regulations in the field of marine environmental protection (see www.eur-lex.europa.eu) the article can only give some examples:

Directive 95/21/EC, amended by Directive 2001/106/EC on port State control . This Directive provides for inspections to be carried out on all vessels and includes specific requirements relating to the inspection of oil tankers. Council Directive 94/57/EC, amended by Directive 2001/105/EC. This Directive lays down common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations. Regulation (EC) No 2099/2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) and amending the Regulations on maritime safety and the prevention of pollution from ships. Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues. This Directive aims to ensure compliance with the MARPOL provisions requiring ports to provide adequate reception facilities.

Regulation (EC) No 417/2002 of the European Parliament and of the Council of 18 February 2002 on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No 2978/94, Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC and Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency are also important European acts.

7 National Regulations

As a basic principle, national Regulations only bind persons and legal entities acting on the national territory and in Territorial Sea.

The challenge of national legal setting in the Baltic Sea area is the zone-system adopted by the UNCLOS, because only in the Territorial Sea and on State territory national law is applicable. For the application of national regulations in the Exclusive Economic Zone a special act is necessary, because this zone is not German territory and Germany has only some sovereign rights pursuant to the UNCLOS' framework (see above; Erbguth & Schlacke, § 15 Rn. 65; Proelß, p. 228 ff, p. 233 ff; Czybulka 1999, p. 562, 567)

Another complexity is the sector based legal system in Germany. Although there is, corresponding to the reform of the Federal system in 2006 concerning the distribution of competences between the Bund und the Federal States, a new competence for marine nature protection (Art. 72 para.3 nr. 2 Basic Law, where the Federal States have no authority to depart from the Bund's regulations) there is no complete competence for the protection of the environment of the sea. But, the Federation has the

power to regulate all important environmental sectors (Ekardt & Weyland 2006, p. 737 ff; Epiney 2006, p. 403 ff.).

Because of the sector-based legal system there are numerous relevant regulations in different acts:

In the Territorial Sea there are regulations in the Law about Sea fisheries¹, completed by a Sea Fisheries Order², the Law of Ships Safety³, the Law of the Transport of Dangerous Goods⁴ completed by the Order of Transport of Dangerous Goods⁵, the Law of the Nature Conservation of the Bund⁶ and the Nature Conservation Acts of the Federal Coastal States⁷, the Law of Water Budget (household)⁸ completed by the Water Acts of the Federal States⁹, the Law concerning the Tasks of the Bund on Sea-going Vessels¹⁰ and the Order about the Seaway Navigation¹¹.

The following legal acts are important for the German EEC and Continental Shelf: the Order about Constructions in the Sea¹², the Law about Spatial Planning¹³, the Law of Mining¹⁴ and the Order concerning Continental Shelf Mining¹⁵, § 38 of the Law of the Nature Conservation of the Bund¹⁶, the Law about the Priority of Renewable Energies¹⁷, the Law about Sea fisheries¹⁸, completed by a Sea Fisheries Order¹⁹, the Law of Ships Safety²⁰, the Law concerning the Tasks of the Bund on Sea-going Vessels²¹, the Order about the Seaway Navigation²² and last but not least the Law about the Prohibition of Dumping in the High Seas. (www.gesetze-im-internet.de; Erbguth, Schlacke, § 15, Rn. 66 f).

Germany, as a party of international treaties, is obliged to transfer the international measures into national law. Not thoroughly Germany is on stage with these obligations. There is no special German regulation concerning ICZM and at the moment there is no movement towards such a special act or an implementation in the new Environmental Code.

The Environmental Code aims the principles of better regulation, more transparency and consistency in environmental law. The existing sector-based law is to codify and harmonise to establish uniform environmental requirements, to strengthen integrative environmental approaches and to facilitate implementation of European environmental provisions in Germany. The regulations are planned to be more suitable for practical implementation and enforcement. There are some derogation options of the federal states to depart from certain regulations (like water or nature conservation) The most expected part of the Environmental Code will be the simplification permitting procedures by introducing an „integrated authorisation“. The publication of the whole code will not be realised in one step. The first part, expected until 2010 will introduce the integrated authorisation and related issues, Water Management Law, Nature Conservation Law, emissions trading and renewable energy sources. The

¹ SeeFiG, 12.07.1984, reviewed in 1998, last modification 31.10.2006

² SeeFiV, 18.07.1989, last modification 31.10.2006

³ SchSG, 09.09.1998, last modification 18.06.2007

⁴ GGBefG, 29.09.1998, last modification 31.10.2006

⁵ GGvSee, 04.11.2003, reviewed 06.01.2006, last modification 31.10.2006

⁶ BNatSchG, 25.03.2002, last modification 10.05.2007

⁷ e.g. LNatSchG M-V, reviewed 22.10.2002, last modification 23.05.2006

⁸ reviewed 19.08.2002, last modification 10.05.2007

⁹ e.g. LWaG 30.11.1992, last modification 14.7.2006

¹⁰ SeeAufgG, reviewed 26.07.2002, last modification 31.10.2006

¹¹ SeeSchStrO, reviewed 22.10.1998, last modification 28.06.2006

¹² SeeAnIV, 23.01.1997, last modification 31.10.2006

¹³ ROG 18.08.1997, last modification 9.12.2006

¹⁴ BBergG, 13.08.1980, last modification, last modification 09.12.2006

¹⁵ FlsBergV, 21.03.1989, last modification 31.10.2006

¹⁶ BNatSchG, 25.03.2002, last modification 10.05.2007

¹⁷ EEG, 21.07.2004, last modification 07.11.2006

¹⁸ SeeFiG, 12.07.1984, reviewed in 1998, last modification 31.10.2006

¹⁹ SeeFiV, 18.07.1989, last modification 31.10.2006

²⁰ SchSG, 09.09.1998, last modification 18.06.2007

²¹ SeeAufgG, reviewed 26.07.2002, last modification 31.10.2006

²² SeeSchStrO, reviewed 22.10.1998, last modification 28.06.2006

first draft of the Environmental Code to be presented by the Federal Ministry for the Environment is scheduled for September 2007. From September 2007 until spring 2008 the discussion of the draft and the consultation process follow. In the period of spring 2008 until the beginning of 2009 the legislative procedure will be implemented in Parliament. (www.umweltgesetzbuch.de; Bohne 2006, p. 276 ff)

8 The relevance of Marine Environmental Protection to the Coasts

In the following the article describes the relevance of the above mentioned regulations for Marine Environmental Protection Law to the coasts. For this, a look at Integrated Coastal Zone Management (ICZM) as a specific instrument for sustainable use while protecting the coastal zones is essential.

At first, it seems as there is an unmanageable and uncoordinated conflict situation of legal regulations concerning Marine Environmental Protection on single and different levels. This impression is intensified by both: ongoing law making of different legal subjects and the wish for more and more restrict regulations of the public. The above mentioned regulations deal with several locally or thematically restricted areas, like fisheries, traffic or biodiversity – irrespective of the classification as international, European or national law. The approach of focussing on local or thematic aspects cannot assure or guarantee a comprehensive examination. Having a look at the regulations as a whole, most of the regulations overlap locally or thematically or follow the same goals. These intersections – and also mistakes aside – have impact on the coasts both indirectly and directly. As a consequence of the respective issue of regulation and the fixed geographical scope the international regulations for the protection of the marine environment primarily have impact on the sea and its elements and not on the coasts. Coastal-specific regulations, admittedly, have direct impact on the coasts. Besides, the legally binding zoning of the sea according to UNCLOS and the several sovereign rights of the Contracting Parties have to be respected. The Contracting Parties also have, according to the terms of the regulation, to implement its obligations into its national law system. Regulations, which focus on the sea but also have influence other specifications of the medium water – or land areas which means the coast – have indirect impact on the coast.

Same applies for European rules, either Directives or Regulations, which not only have impact on single national legal systems but on the legal systems of all Member States (so-called supranational law). Implementing the European rules into national law systems has direct impact on the coastal zones. Additionally the European Union is, as mentioned above, Contracting Party to international treaties dealing with environmental protection. Thus, an interdependence of single regulations can be achieved, which is solely a side effect and not intended.

Further, national law systems of the riparian states of the Baltic Sea include additional marine environmental instruments, such as bids and bans, quality standards and protection, which also have impact on the coastal zones and not only on the States itself. The described legal framework does not cause controlled and coordinated actions but in total a coexistence of different single actions. An effective integration of all topics, different demands for utilisation and conservation and actual coordination is only possibly with the instrument of ICZM. ICZM focuses on the entire consideration of the coastal zone area. Therefore a declaration of ICZM and a legal framework is necessary. Another advantage of ICZM is that it focuses not only on a single level, but comprises planning and admission levels as well as a monitoring level.

9 ICZM in the legal framework

Relating to the ICZM and its process there are only a few legal acts dealing with the matter of integrated management of the coastal zone in the area of the Baltic Sea. Furthermore, these few international and European acts are not binding. This so called „soft law“ can only exert political pressure for further action on the Baltic Coast States.

Important ICZM-acts for the Baltic Sea region are the Recommendation of the EU and the Recommendation of Helsinki Commission. The Recommendation of the European Parliament and of the Council concerning the implementation of Integrated Coastal Zone Management in Europe of 30 May 2002, 2002/413/EC creates the framework for ICZM actions. By implementation of an environmentally sustainable, economically equitable, socially responsible, and culturally sensitive management of coastal zones of those important resources are integrated. The Recommendation promotes integrated management on a larger scale by means of horizontal instruments by contributing to integrated coastal zone management. There is need and aim to ensure coherent action at European level, including cooperative action and consultation with regional seas organisations or international organisations, such as the International Maritime Organisation, to address cross-border coastal zone problems. The member states have to take a strategic approach, which is defined in Chapter I. The recommendation explains in Chapter II principles the ICZM is based on. Conducting or updating an overall stocktaking to analyse which major actors, laws and institutions influence the management of their coastal zone is task of the member States pursuant to Chapter III. A national strategy by every member state is required (Chapter IV). Co-operation as well as reporting and review with a fixed timetable are matters of the following two Chapters.

Corresponding to this Recommendation are different communications from the Commission, like the Communication from the Commission to the Council and the European Parliament “Towards a Strategy to Protect and Conserve the Marine Environment”, COM 2002, 539 final, and the Communication from the Commission with the report to the European Parliament and the Council: “An evaluation of Integrated Coastal Zone Management (ICZM) in Europe”, COM 2007, 308 final.

Furthermore, there is the proposal of the Commission for a Directive of the European Parliament and Council establishing a Framework for Community Action in the field of Marine Environmental Policy (Marine Strategy Directive), SEC 2005 1290, but the directive only deals with European waters on the seaward side of the baseline. Because of the missing land-territory the Coastal Zone is not completely included. Pursuant to Art. 1 this directive establishes a framework for the development of Marine Strategies designed to achieve good environmental status in the marine environment, with a fixed timetable – at the latest by the year 2021. The framework is to ensure the continued protection and preservation of that environment and the prevention of deterioration.

Supplement acts are the VASAB Recommendation for spatial planning of the coastal zone in the Baltic Sea Region, but also the binding Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment and the council Directive 97/11/EC amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment as well as the Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy are completing the legal setting. The Water Framework Directive aims to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater, prior tasks are: preventing deterioration and protects and enhancement of the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems, promoting of sustainable water use based on a long-term protection of available water resources contributes in mitigating the effects of floods and droughts and ensurement of the progressive reduction of pollution of groundwater and prevents its further pollution as well as prevention and elimination of pollution of the marine environment.

The Baltic Marine Environment Protection Commission enacted the HELCOM Recommendation 24/10 „Implementation of integrated marine and coastal management of human activities in the Baltic sea area“ in June 2003. The non-binding rules have regard to Art.20, Para. 1 b Basic Law) and base on Art. 3 Basic Law (the precautionary principle) and Art. 15 Basic Law in which the parties agreed to individually and jointly take all appropriate measures, with respect to the Baltic Sea Area and its coastal ecosystems influenced by the Baltic Sea, to conserve natural habitats and biological diversity and to protect ecological processes of the 1992 Helsinki Convention.

There are previous HELCOM Recommendations of relevance to Integrated Marine and Coastal Management of human activities or related issues which are listed in Attachment nr.1. Following recommendations are of particular interest for ICZM:

- 9/1 - Protection of seals in the Baltic Sea area,
- 15/1 - Protection of the coastal strip,
- 15/5 - System of coastal and marine Baltic Sea Protected Areas,
- 16/3 - Preservation of natural coastal dynamics,
- 17/2 -The protection of Harbour Porpoise in the Baltic Sea area,
- 17/3 -Information and consultation with regard to construction of new installations affecting the Baltic Sea,
- 19/1 -Marine sediment extraction in the Baltic Sea Area,
- 19/17 -Measures in order to combat pollution from offshore units,
- 21/3 - Sustainable and environmentally friendly tourism in the coastal zones of the Baltic Sea and
- 21/4 - Protection of heavily endangered or immediately threatened marine and coastal biotopes in the Baltic Sea.

The HELCOM recommends to identify laws and regulations of relevance for the use and protection of marine areas, the authorities responsible for their implementation but also stakeholders with interests concerning the marine areas and interacting and/or conflicting interests, obligations and activities of private and public stakeholders. The recommendation aims to apply the principles laid down in the EU Directive on environmental assessment of plans and programmes and the EU Directive on Environmental Impact Assessment (EIA), relevant for introducing human activities in marine and coastal areas. The parties have to develop criteria, standards and guidelines that are needed for integrated management of human activities by sector authorities, as well as development of practical and applicable ways to share responsibility for plan management, implementation and enforcement. Furthermore there is need to identify the major planning and management issues for human activities in offshore areas and data gaps and such in knowledge that may impede planning and management of human activities in offshore areas, e.g. lack of spatial data on marine and coastal biodiversity and natural resources, use of land and water areas, demography, traffic, oil transport, etc., as well as problems connected with access to data. The HELCOM suggests to set up and carry out a scheme to fill in the identified data and knowledge gaps, e.g. by inventories and mapping of biodiversity (e.g. habitats and species) and resources, analysis of existing data or sharing experiences between authorities and stakeholders. Another proposal is the improvement of assessments of the status of biodiversity and of impacts of human activities on the marine and coastal environment and the development and implementation of an overall management plan for human activities for marine areas addressing the tasks. The implementation of this Recommendation should be evaluated at regular intervals, at least every three years (Erbguth 2005, 757 ff; Czybulka 2004, p. 137 ff; Prieur 2007, p. 493 ff).

The instrument of ICZM may be of importance for a coordinated and effective coastal (environmental) protection, if it manages the intersection of the different single regulations dealing with marine environmental law. That needs further discussion – also during scientific research – of the advantages and power of implementation of ICZM.

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