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MARINE PARKS AND RESERVES: A BRIEF LEGAL OVERVIEW

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LIST OF ACRONYMS

CNPPA	[IUCN] Commission on National Parks and Protected Areas
EEZ	exclusive economic zone
GMP	General Management Plan
IUCN	World Conservation Union
MPA	marine protected area
PSSA	Particularly Sensitive Sea Area
UNCLOS 1982	United Nations Convention on the Law of the Sea

1. INTRODUCTION

Since 1986, the World Conservation Union (IUCN) Commission on National Parks and Protected Areas (CNPPA) has been promoting the establishment and management of a global system of marine protected areas (MPAs). An MPA is defined by IUCN (GBRMPA/WB/IUCN, 1995) as:

"any area of intertidal or subtidal terrain, together with its overlying water and associated flora, fauna, historical and cultural features, which has been reserved by law or other effective means to protect part or all of the enclosed environment."

This definition envisages a wide spectrum of marine protected areas. Marine protected areas need not be limited to small non-extractive reserves. Increasingly, marine conservationists are turning towards establishment of large, zoned marine protected areas that encompass a variety of human activities. The IUCN definition does not specify what constitutes "protection." Clearly, human

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activities that are incompatible with conservation objectives must be prohibited or strictly restricted within MPAs. One reasonable reference point, consistent with IUCN protection classification, would be prohibition of large-scale mechanized and non-mechanized resource extraction and habitat disturbance within MPAs. Many other activities can have unacceptable impacts on natural ecosystems through their direct effects on habitat and wildlife populations, and through their access to especially sensitive features within the protected area. Only human activities with known and acceptable ecological impacts should be permitted within MPAs.

The policy of IUCN has been to:

“foster marine conservation by encouraging governments, the non-governmental community and international agencies to cooperate in:

- (a) Implementing integrated management strategies to achieve the objectives of the World Conservation Strategy in the coastal and marine environment and in so doing to consider local resource needs as well as national and international conservation and development responsibilities in the protection of the marine environment;
- (b) Involving local people, non-governmental organizations, related industries and other interested parties in the development of these strategies and in the implementation of various marine conservation programmed.

It is also the policy of IUCN to recommend that, as an integral component of marine conservation and management, each national government shall seek cooperative action between the public and all levels of government for development of a national system of marine protected areas.” (Kelleher and Kenchington, 1991)

The CNPPA has divided the marine areas of the world into 18 marine regions, largely on the basis of bio-geographic criteria, with consideration for political boundaries for practical reasons. In 1990, working groups were established in each region consisting, wherever possible, of both marine resource managers and marine scientists.

The aim of the working groups have been to:

- € summarize the main physical and biological characteristics of the marine environment;
- € divide each marine region into its constituent bio-geographical zone;
- € make an inventory of existing MPAs;
- € identify gaps in the representation of the bio-geographic zones in MPAs;
- € identify areas of national or regional priority for the establishment of new MPAs or for management strengthening and support to existing MPAs; and
- € determine other recommendations for establishing or improving the management of MPAs in each marine region.

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2. INTERNATIONAL CONVENTIONS

There are several international instruments that directly address MPA creation¹. There are also a number of international instruments that address more generally the designation and protection of national parks and other protected areas, such as Article 8(a) of the United Nations Convention on Biological Diversity, 1992, which states: "each Contracting Party shall, as far as possible and as appropriate: establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity." These have important significance for countries developing marine parks and similar areas.

Two conventions focus specifically on the designation and protection of national parks and other areas, and these are considered below.

2.1 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (Paris, 1972)

This Convention protects both "cultural heritage" and "natural heritage" (physical and biological formations and areas) which are of "outstanding universal value." Sites are proposed by the country concerned for inclusion in the World Heritage List, and have to be approved by the World Heritage Centre Committee.

Under this Convention, each party commits itself to "do all it can" to accomplish the Convention's goals of: identification, protection, conservation, presentation and transmission to future generations of cultural and natural sites (whether listed or not). To this end, a party must act "to the utmost of its own resources and, where appropriate, with ... international assistance and cooperation."

Each state, in fulfilling these commitments, must:

- € adopt a general policy integrating these protection schemes into comprehensive planning and community awareness programmes;
- € develop services for the conservation, protection and presentation of protected areas "with the appropriate staff in possession of means to discharge their functions";
- € undertake scientific and technical research into means of counteracting the dangers to these areas;
- € develop the necessary legal, scientific, technical and administrative framework to backstop the protection; and
- € develop more formal training concerning the conservation, protection and presentation of protected areas, as well as scientific research into these matters.

Each party must also establish national, public and private foundations or associations to invite donations for the protection of the cultural and natural heritage. The parties also agree to undertake educational and information programmes, "to strengthen appreciation and respect by their people of their cultural and natural heritage." The convention also requires the parties to report to UNESCO legislative and administrative provisions adopted to further this convention.

The Convention recognizes that there is also an international responsibility regarding the

1. For example, see *The African Convention on the Conservation of Nature and Natural Resources*, Algiers, 1968; *The United Nations Convention on the Law of the Sea*, 1982; *The Convention for the Protection Management and Development of the Marine and Coastal Environment of the Eastern African Region*, Nairobi, 1985.

natural and cultural heritage. The convention provides a mechanism for international cooperation, and a small fund of money for the assistance of parties in the protection of areas designated under the Convention. Such assistance may only be provided at the request of a party, and in connection of a listed property, and generally only in conjunction with co-payments by the concerned state. Preferred types of assistance projects are stated, but emergency assistance may also be available (Young, 1993).

Countries party to this Convention as of May 1998 are represented among the participants at this workshop:

- € Bangladesh accepted on 3 August 1983;
- € India accepted on 14 November 1977, and has inscribed five natural sites on the World Heritage List;
- € Indonesia accepted on 6 July 1989. No sites have yet been inscribed, although three protected areas have recently been nominated for inclusion on the World Heritage List;
- € Malaysia has been a signatory since 7 December 1988;
- € Philippines ratified the Convention on 19 September 1985, although no natural sites have been inscribed;
- € Sri Lanka accepted on 6 June 1980 and has inscribed one natural site;
- € Thailand ratified in 1987 and three sites were nominated for inscription on the World Heritage List during 1991; and
- € Viet Nam ratified the Convention on 6 October 1987, although to date no sites have been inscribed on the World Heritage List.

2.2 Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat (1971)

This Convention is designed to regulate the deterioration of wetlands by human activity (drainage, pollution and saltwater intrusion). For this Convention, the term "wetlands" includes swamps, bogs, saltwater marshes and other wet areas, including marine areas with a depth at low tide of 6 m or less.

The Convention requires the member states to:

- € designate areas for listing as wetlands of international importance (based primarily on their use by waterfowl). A state is required to list at least one wetland, by submission of a precise decision or map, at the time it becomes a party to the convention;
- € promote conservation of listed wetlands;
- € promote conservation of unlisted wetlands; and
- € promote the conservation of waterfowl.

In addition, the Convention requires parties to protect non-listed wetlands "by establishing nature reserves ... and providing adequately for their wardening." Loss of wetlands should be avoided and minimized. Where all or part of a listed wetland is lost, other areas should be listed and protected in its stead.

The parties are also required to provide education, research, training, publication and

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formation exchange regarding wetlands and their flora and fauna. IUCN performs administrative functions under the Convention and a conference of members convenes regularly to perform advisory and supervisory functions (Young, 1993).

As of May 1998, among the countries present at this Workshop, India acceded to the Convention on 1 October 1981 and Sri Lanka has been a party since 15 October 1990. In Bangladesh, the proposal to become a party to this Convention is awaiting approval.

2.3 Other international agreements

In addition to the forgoing conventions, there are a number of additional international agreements that directly or indirectly are of importance to the creation of MPAs worldwide and in the Asian region. These include those discussed in the following sections.

2.3.1 The United Nations Convention on the Law of the Sea

The United Nations Convention on the Law of the Sea (UNCLOS, 1982) provides specifically for marine scientific research, protection of the marine environment and the promotion of research centres (Part XII – Protection and Preservation of the Marine Environment: Articles 192-196). One interesting issue is the relationship between the establishment of MPAs and the restriction of activities within their boundaries, on the one hand, and the freedom of navigation under UNCLOS.

Some type of restriction on navigation would seem in practice to be the most effective way of preventing damage due to dumping, “as the no-dumping rule is extremely difficult to enforce except where the culprits are caught red-handed which is of course infrequent.” (De Klemm, 1993). The laws of a number of countries – Malaysia, for example – allow for the imposition of such restrictions in protected areas, and there seems to be no reason why such restrictions could not be seen as compatible with a country's obligation to protect the marine environment under UNCLOS, at least within internal waters and territorial seas. As De Klemm (1993) points out, the situation is different with respect to the exclusive economic zone (EEZ), where no restrictions on navigation as such are allowed. However, countries still have the power within their EEZ to control fishing and activities that affect the sea bed, as countries have sovereign rights over all living resources and all resources of the continental shelf, living or non-living (De Klemm, 1993: 261).

2.3.2 ASEAN Declaration on Heritage Parks and Reserves

Another instrument of importance for the protection of natural parks and reserves in the Southeast Asian region is the ASEAN Declaration on Heritage Parks and Reserves (Bangkok, 29 November 1984). This Declaration made under the auspices of the Association of Southeast-Asian Nations (ASEAN) established on 8 August 1967 in Bangkok, Thailand, with the signing of the *Bangkok Declaration* by the five original member countries, namely Indonesia, Malaysia, Philippines, Singapore and Thailand. Brunei Darussalam joined the Association on 8 January 1984. Viet Nam became the seventh member of ASEAN on 28 July 1995. Laos and Myanmar were admitted on 23 July 1997. The *ASEAN Declaration on Heritage Parks and Reserves* was made by the member States of the Association, that were concerned with the necessity to preserve and protect national parks and nature reserves of the ASEAN member countries. There is no specific reference to marine parks and reserves, but the general endorsement provided for protected areas in this instrument is equally applicable to both terrestrial and marine environments. The Declaration declares various national heritage sites and reserves.

2.3.3 IMO Guidelines for the Designation of Special Areas and Identification of Particularly Sensitive Sea Areas

Finally, in the international context, mention should be also made of the Guidelines for the Designation of Special Areas and Identification of Particularly Sensitive Sea Areas (PSSAs), adopted by the IMO General Assembly in 1991. At the time that the Guidelines were adopted, the Great Barrier Reef was selected as the first PSSA. Since then, no additional PSSAs have been selected, although Agenda 21 calls on States "in cooperation with IMO, to take pro-active steps to identify rare and fragile marine ecosystems as well as the habitats of vulnerable marine species, and to ensure that measures are taken to minimize, to the fullest extent possible, the threat of pollution from vessels in these areas." (de Fontaubert, Downes and Agardy, 1996).

3. MARINE PROTECTED AREAS: NATIONAL LEGAL APPROACHES

In recent years, marine parks and reserves have emerged as important tools for conservation and tourism. Countries experimenting with this relatively new device find that it raises a number of critical institutional and policy challenges. Among these challenges is the need to design an appropriate legal framework.

In approaching this question, countries have most often drawn upon two established bodies of legal doctrine. The overall protection of marine resources has typically been the job of fisheries legislation, assisted by general environmental laws. At the same time, the "park" and "reserve" aspects draw heavily from well-established legal models for protected areas. These models, however, have evolved to a great extent in the context of the development of terrestrial protected areas. How appropriate these models are for the aquatic environment remains a matter of debate. Some observers have concluded that the terrestrial concepts of national parks and protected areas can be transferred quite easily to the marine context. Issues such as buffer zones, the need to involve resource-dependent communities, management of tourism pressures and the search for innovative financing mechanisms arise in marine protected areas just as they have in their more established counterparts on land. Other observers, however, find more differences than similarities, and argue for the need for better adaptation of land-based doctrine to the marine context. In this respect see Beurier and Le Morvan (1980) and du Saussay (1980).

In general, legislation in the South and Southeast Asia region relating to marine parks and reserves continues the tradition of dealing with them in the context of fisheries and environmental legislation. For example:

- € Bangladesh: conservation, use and exploitation of marine resources are provided for under the Territorial Water and Maritime Zones Act, 1974. According to provisions in this Act, conservation zones may be established to protect marine resources from indiscriminate exploitation, depletion or destruction. At present, there is no legal provision for the management of coastal zones.
- € Indonesia: the Conservation of Living Natural Resources and their Ecosystems Act was passed on 10 August 1990. This Act distinguishes between nature sanctuaries (nature reserves and game reserves) and nature conservation areas (national parks and large forest parks). These designations, which are equally applicable to terrestrial or marine reserves, provide differing degrees of legal protection ranging from nature reserves, where no human activities are allowed, to national parks, where utilization of natural resources by local people is permitted within a system of management zoning. The Act also makes provision for existing protected areas to be established as biosphere reserves under the

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UNESCO Man and the Biosphere Programme.

There are strong grounds for the proposition that

"if a marine protected area is to be treated seriously by the people, the power to establish any marine protection or conservation management system should be provided *by law*, with approval and any subsequent amendments requiring endorsement by the highest body responsible for such legislative matters in the country concerned. The legislation for establishment should contain enough detail for:

- € proper implementation and compliance;
- € delineation of boundaries;
- € provision of an adequate statement of authority and precedence;
- € provision of sufficient infrastructure support and resources to back up necessary tasks" (Kelleher and Kenchington, 1993)

In this regard, specific legislation relating to marine parks has been enacted. Tanzania Marine Parks and Reserves Act, No. 29 of 1994, is an interesting example that has relevance for countries in the South and Southeast Asia region. The Tanzanian Act creates a special category of national parks that are not under Tanzania National Parks Authority's jurisdiction, except in special circumstances as noted below. The Minister may, after consultation with local government authorities and upon resolution of Parliament, declare a marine park by notice in the Gazette. The Marine Parks Act, Section 8(1), stipulates that "parks may be created if" but fails to list the criteria, apparently due to a misprint. Marine Reserves may be created similarly, except that no Parliamentary resolution is required. Criteria for the creation of a marine reserve include furthering the objectives of marine reserves (as set forth in Section 10), if the area is of particular natural scenic, scientific, historical or other importance, etc. (Section 8(2)). The Act also stipulates that the Minister responsible for National Parks may declare any marine park to be a national park, provided that the objectives of marine parks and reserves would be met, and that certain other provisions of this Act would apply (Section 8(3)). While this action has never been taken, the provisions of the Act are laid out below, in order to understand what Tanzania National Parks Authority's role might be in the future.

Pursuant to the Act, the objectives of marine parks and reserves – as set out in Section 10 – include:

- (a) to protect, conserve and restore the species and genetic diversity of living and non-living marine resources as well as the ecosystem processes of marine coastal areas;
- (b) to stimulate the rational development of underutilized natural resources;
- (c) to manage marine and coastal areas so as to promote sustainability of existing resource use, and the recovery of areas and resources that have been overexploited or otherwise damaged;
- (d) to ensure that the villages and other local resident users in the vicinity of, or dependent on, a marine park or marine reserve are involved in all phases of the planning, development and management of that marine park or marine reserve, share in the benefits of the operation of the protected area, and have priority in the resource use and economic opportunity afforded by the establishment of the marine park or reserve;

- (e) to promote community-oriented education and dissemination of information concerning conservation and sustainable use of the marine parks and reserves; and
- (f) to facilitate research and to monitor resource conditions and uses within the marine parks and reserves.

The Statute, in Section 3(3), establishes the Marine Parks and Reserves Unit ("the Unit") of the Fisheries Division, to establish and monitor the control, management and administration of marine parks and reserves, seek funds for establishment and development of marine parks and reserves, expend funds in furtherance of establishment and development of such parks and reserves, implement and enforce the provisions of the Act and its subsidiary legislation, and to do all such other things which are necessary and within the Unit's powers. The Unit is also given authority to establish, operate or manage offices and services for the purposes of their duties and functions; provide educational and informal services to local resident users; establish, operate, manage or grant concessions or licences to other persons to operate accommodations and restaurants; and, to operate transport services for conveyance of visitors to marine parks (Section 3(4)).

In addition, the Act creates a Board of Trustees of the Marine Parks to be appointed by the Minister (Section 4(1)). The Board's function (Section 4(3)) is to formulate policies on marine parks, oversee the use of the Marine Parks Fund, to advise the Director of Fisheries on management of marine reserves and to advise the Minister on approval, revision and amendment of the general management plan of any marine parks. Under Section 5, advisory committees are also to be created for each marine park, with the function of advising the Board on the management and regulations on marine parks; overseeing the operation of marine parks; consulting with the warden on technical, scientific and operational matters concerning the marine parks and proposing potential wardens to the Board. The Act also specifies (Section 6) that wardens shall be appointed to manage each park.

The Minister is required, under Section 14, to adopt a General Management Plan (GMP) for every marine park and reserve. Furthermore, no activities, rights, licences, titles, interests, franchises, leases, claims, privileges, exemptions or immunities may be granted within a marine park or reserve unless such grant is consistent with the GMP and regulations (Section 13(1)). The GMP is to include designated zones, including a description of activities permitted therein. A time limit exists for development of a GMP after a park is declared, and the Board is to consider such plan and recommend its adoption to the Minister.

The Government is required (Section 8(1)) to involve village councils or affected villages in preparation of the GMP, as well as the enactment of regulations and zoning of the marine park or reserve. Provisions of the Act establish the opportunity for "local resident users" to sustainably utilize the marine parks and reserves, as well as to reside in the areas, the Minister may make regulations governing the activities of these "local resident users." Both general and specific authority is given to the Minister for Fisheries and the Board of Directors to restrict or permit certain activities within marine parks and reserves.

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