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Governance of the Portuguese Sea – from Political Actors to Intergovernmental and Sectorial Coordination: A Legal Approach*

Zarządzanie morzem portugalskim – od aktorów politycznych do koordynacji międzyrządowej i sektorowej. Ujęcie prawne

ABSTRACT

Portugal's ratification of the United Nations Convention on the Law of the Sea in 1997 brought with it the need to create an appropriate strategy to assist policy makers. This was done by the Strategic Commission for the Oceans, an entity created in 2003 with the aim of promoting a strategic plan based on the sustainable use of the ocean and its resources. More than a place allowing different uses and activities, the ocean itself should be seen as the most valuable natural resource and should be protected, preserved and valued. The political model proposed by the report suggested the creation of a specialised Council of Ministers dedicated to the formulation of policies and planning guidelines, and to the coordination of the integrated management of the sector, which together with an entity of a predominantly technical nature, reach a definition of a global policy for the sea composed of a national strategy, the regular evaluation of sea affairs and the coordination of sectoral policies. This paper begins with the analysis of this strategic reference as a governance model, articulating the intersections between the various actors. A current approach requires this governance model to be multi-level: global, continental/regional, and domestic/local.

Keywords: governance of the Portuguese sea; governance model; strategy; Portugal; United Nations Convention on the Law of the Sea

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INTRODUCTION

Multi-level governance is a concept that emerges in international relations. Given the existence of this multilevel governance approach in the current political model, the legal instruments that allow its application should follow it as well. Thus, the present article intends to contribute to diminish the gap of articulation between international relations and international law in the appreciation of the multi-level governance problematic and, in particular, to test the less studied connection between supra-state and subnational levels in a transnational public good of special urgency like the sea/oceans. To this end, the following research questions are addressed: Does the ocean governance model constitute a multilevel governance model? If so, how does the articulation between the different levels of action take place? How does the coordination and intersection between the various actors involved occur?

In view of the above, we identify the legal and institutional framework at the global, continental/regional, and national/local level, using the example of the Portuguese strategic reference framework for the sea as the case study selected to answer the questions above. In addition to the case study and process tracing, both the normative analysis and the literature review for the establishment of a theoretical--conceptual framework relevant to the theme and an approach of inductive nature are applied, which intends to appreciate the operationalisation of multilevel governance.

FROM MULTI-LEVEL GOVERNANCE TO OCEAN GOVERNANCE

In the 1990s, a new approach was identified in the study of the decision-making process of interaction between the various agents of international and domestic systems: multi-level governance. Since then, scholars have been exploring this concept, its implications, weaknesses and opportunities, applying it to a wide range of phenomena in an attempt to help decision-makers develop more effective policies and rules to meet the challenges of this century.[1] Multi-level governance can be understood as an analytical framework that seeks to explain the vertical

[1] For example, see F.C. Moreira, A.P. Matos, *A governança multinível na proteção do direito fundamental ao ambiente da União Europeia*, "Revista Jurídica Portucalense" 2022, no. 32, p. 364; A. Schakel, *Multi-Level Governance in a 'Europe with the Regions'*, "British Journal of Politics and International Relations" 2020, vol. 22(4), p. 767; I. Bache, I. Bartle, M. Flinders, *Multi-Level Governance*, [in:] *Handbook on Theories of Governance*, eds. C. Ansell, J. Torfing, Cheltenham–Northampton 2022, p. 528; J. Xu, *Conflicts in Multi-Level Governance: An Analysis of International Climate Policy Implementation at the Sub-national Level*, "Global Public Policy and Governance" 2021, no. 1, p. 403; M. Zürn, *A Theory of Global Governance: Authority, Legitimacy, and Contestation*, Oxford 2018; M. Di Gregorio, L. Fatorelli, J. Paavola, B. Locatelli, E. Pramova, D.R. Nurrochmat, P.H. May,

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and horizontal exercise of authority, in a complex multi-stakeholder structure that challenges the management of "transnational commons" and where a delicate balance is sought that is promoted by a sufficiently decentralised form of governance that nevertheless provides networks of interactions and good practices capable of promoting collective action.[2] This new form of governance necessarily implies the displacement of state competences upwards to the supranational level, but simultaneously downwards to the sub-national level. Multi-level governance describes the coordination of the exercise of political authority through different levels of jurisdiction and in different functional areas including for this purpose an analysis of the structures and processes of governance covering overlapping territorial units: local, regional, national, continental and global.[3]

This scenario, which is hypothetically harmonious between spheres and agents, deals with sensitive matters, such as sovereignty and the interests of the different subjects involved. In this sense, disputes may arise over what is shared, how and who resolves these disputes. As M. Dawson questions: "If two levels of governance claim authority over the same peoples, resources or policy fields, who is to resolve the resulting dispute in a manner seen as legitimate and binding by both parties (such that they are likely to accept the result)?".[4] The literature recognises a fundamental role for law in mitigating the challenges of the establishment and consolidation of global or multilevel governance, particularly with regard to the delimitation of the exercise of authority, which is one of the most sensitive issues in the entire field.[5]

M. Brockhaus, I.M. Sari, S.D. Kusumadewi, *Multi-Level Governance and Power in Climate Change Policy Networks*, "Global Environmental Change" 2019, vol. 54.

[2] M. Zürn (*op. cit.*, p. 27) identifies the following as constitutive elements of governance: a plurality of actors; a set of agreed rules; the exercise of authority; common goals; and agreements that are not necessarily global. It follows from this set of governance pillars that three layers of the global political system are structured: (1) normative principles, (2) specific political institutions, and (3) interactions between different spheres of authority. It should be stressed, along this same line of reasoning, that multilevel governance necessarily involves the devolution of power from central national authorities to peripheral or sub-national ones, a sharing of power with civil society and its non-political representatives, and the diminution of state sovereignty in the opposite direction, i.e. towards international structures. This fluidity is only consistent with the recognition, tacit or explicit, that the functions and exercise of power by states are rapidly changing, refusing the previous dogmatic and static view. Multilevel governance can be understood as an analytical framework that seeks to explain the vertical and horizontal exercise of authority, in a complex, multi-stakeholder structure that challenges the management of "transnational commons" and where a delicate balance is sought that is promoted by a sufficiently decentralised form of governance that nevertheless provides networks of interactions and good practices capable of promoting collective action.

[3] See F.C. Moreira, A.P. Matos, *op. cit.*, p. 364.

[4] See M. Dawson, *The Role of Law in Multilevel Governance: Four Conceptualizations*, [in:] *A Research Agenda for Multilevel Governance*, eds. A. Benz, J. Boroschek, M. Lederer, Cheltenham–Northampton 2021, p. 81.

[5] *Ibidem*.

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As we have already mentioned, it is in the field of "transnational commons" that the need for governance instruments is most evident.

It is therefore no wonder that several international and regional human rights instruments include references to the environment.[6] The need to protect the environment is on the agenda,[7] and several cases are beginning to reach international courts themselves, including human rights courts through a strong articulation between the right to life and the right to a healthy environment.[8] When it comes to the protection of the marine environment, this interconnection has not been so well worked out, although the best doctrine defends this intersection as a background for the existence of marine environmental crimes.[9] The search for best practices in how to protect the ocean, often in the wake of several disasters for the marine environment,[10] has led to the need to create instruments and mechanisms for ocean governance.

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[6] The UN General Assembly adopted on 28 July 2022, with 161 votes in favour and 8 abstentions, Resolution A/RES/76/300: The human right to a clean, healthy and sustainable environment.

[7] Resolution adopted by the General Assembly on 21 July 2022: Our Ocean, our future, our responsibility, A/RES/76/296.

[8] For example, see judgments of the ECtHR in the following cases: *Oneryildiz v. Turkey* (2004); *L.C.B. v. The United Kingdom* (1998); *Smaltini v. Italy* (2015); *Murillo Saldias and Others v. Spain* (2006); *Budayeva and Others v. Russia* (2008); *Viviani and Others v. Italy* (2015); *Ozel and Others v. Turkey* (2015).

[9] V. Becker-Weinberg, *Recognition of Marine Environmental Crimes within International Law: A New Global Paradigm for the Protection and Preservation of the Marine Environment*, [in:] *The Environmental Rule of Law for Oceans: Designing Legal Solutions*, eds. F.M. Platjouw, A. Pozdnakova, Cambridge 2023, p. 207.

[10] On 12 December 1999, the Maltese-flagged single-hull oil tanker, broke in two, polluting almost 400 km of French coastline and causing unprecedented damage to marine environment. EU adopted several preventive legislations, known as the Erika I and II packages. See Communication from the Commission to the European Parliament and the Council on the safety of the seaborne oil trade, Brussels, 21.3.2000, COM/2000/0142 final. Erika 1 package includes: Directive 2001/105/EC of the European Parliament and of the Council of 19 December 2001 amending Council Directive 94/57/EC on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ L 19/9, 22.1.2002); Directive 2001/106/EC of the European Parliament and of the Council of 19 December 2001 amending Council Directive 95/21/EC concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (OJ L 19/17, 22.1.2002); 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 (OJ L 64/1, 7.3.2002); Regulation (EC) No. 1726/2003 of the European Parliament and of the Council of 22 July 2003 amending Regulation (EC) No. 417/2002 on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers (OJ L 249/1, 1.10.2003); Regulation (EU) No. 530/2012 of the European Parliament and of the Council of 13 June 2012 on the accelerated phasing-in of double-hull or equivalent design requirements for single-hull oil tankers (OJ L 172/3, 30.6.2012). Erika II package includes: Directive

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Ocean governance can be seen as the integrated conduct of ocean policy, actions and issues as a tool to protect the marine environment, the sustainable use of coastal and marine resources and the conservation of its biodiversity. It comprises legal and institutional frameworks and implementation mechanisms that should be integrated both horizontally and vertically.[11] Sustainable Development Goal 14 calls for "careful management of this essential global resource" as "a key characteristic of a sustainable future". The concept of ocean governance implies intricate relationships at many levels (international, national, regional, local) and processes through which individuals and institutions, public and private, attempt to manage maritime affairs, accommodate diverse interests and cooperate through formal or informal agreements. It covers different sectoral policies ranging from maritime transport, fisheries and exploitation of marine resources to the protection of the marine environment, blue energy or underwater cultural heritage. It also implies different levels of decision-making (international, regional, national, subnational) and involves multiple actors who participate in or are affected by decision-making processes.[12]

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 (OJ L 208/10, 5.8.2002); Regulation (EC) No. 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ L 208/1, 5.8.2002); Regulation (EU) No. 100/2013 of the European Parliament and of the Council of 15 January 2013 amending Regulation (EC) No. 1406/2002 establishing a European Maritime Safety Agency (OJ L 39/30, 9.2.2013). The third maritime safety package and port State control (after the Prestige case) was approved in December 2008, comprising six directives and two regulations: Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131/57, 28.5.2009); Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements (OJ L 131/132, 28.5.2009); Directive 2009/17/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system (OJ L 131/101, 28.5.2009); Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations (OJ L 131/47, 28.5.2009); Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council (OJ L 131/114, 28.5.2009); Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims (OJ L 131/128, 28.5.2009); Regulation (EC) No. 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (OJ L 131/11, 28.5.2009); Regulation (EC) No. 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (OJ L 131/24, 28.5.2009).

[11] See F.C. Moreira, B.M. Bravo, *EU Integrated Maritime Policy*, "Juridical Tribune" 2021, vol. 9(3), pp. 535–548.

[12] See J.P.M. van Tatenhove, *Marine Governance as a Process of reflexive Institutionalization? Illustrated by Artic Shipping*, [in:] *Ocean Governance: Knowledge Systems, Policy Foundations and Thematic Analyses*, eds. S. Partelow, M. Hadjimichael, A.-K. Hornidge, Cham 2023, pp. 253–274.

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Interestingly, the notion of ocean governance as a global ocean perspective and analysis has been more related to the fact that all ocean issues should be addressed as one rather than to any theories of international relations or political science, quoting to this effect the preamble of 1982 United Nations Convention on the Law of the Sea (UNCLOS): "The problems of ocean space are closely interrelated and need to be considered as a whole". Recognising the already enshrined "fundamental role of law" in the implementation and consolidation of global or multi-level governance, it will be from this seemingly innocuous phrase, which only intended to highlight the need to adopt in a single instrument all issues of the oceans, that we arrive at the legal motif to support the following step. The combination of this and other international instruments has given rise to the need for a holistic and global approach to oceans. In fact, it is from UNCLOS and other international instruments that the need for such an approach in relation to the oceans begins to be designed, defining the concept of the ecosystem approach and realising that with the oceans being interlinked, the effective implementation of this approach will only be possible if the several stakeholders in the ecosystem will be coordinated in these policies.

Therefore, and in answer to the initial question, current ocean governance models can – and should – be seen as a model of application of multi-level governance.

GLOBAL/INTERNATIONAL OCEAN GOVERNANCE

The global framework should begin with what is considered to be the "constitution of the oceans", the UNCLOS.[13] UNCLOS determines the legal regime applicable to the use of the oceans by all States and enshrines the general obligation to protect and preserve the marine environment. This is a cross-cutting obligation that applies to all States in all marine spaces, whether they fall under the national jurisdiction of a State or beyond. At the same time, attention must also be paid to the "difficult balance between rights and freedoms at sea".[14]

However, UNCLOS also allows for the possibility for States to be bound by other international conventions. In fact, States are free to contract other obligations in these matters as long as they are compatible with "the general principles and objectives" of UNCLOS. Regarding the obligation to protect and preserve the marine environment, we should highlight the Convention on Biological Diversity of 1992 (CBD), the recent Agreement on Biodiversity Beyond National Jurisdiction or the Convention for the Protection of the Marine Environment of the North-East

[13] T.T.B. Koh, *A Constitution for the Oceans*, 1982, https://cil.nus.edu.sg/wp-content/uploads/2015/12/Ses1-6.-Tommy-T.B.-Koh-of-Singapore-President-of-the-Third-United-Nations-Conference-on-the-Law-of-the-Sea-_A-Constitution-for-the-Oceans_.pdf (access: 18.9.2023).

[14] Y. Tanaka, *The International Law of the Sea*, Cambridge 2019.

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Atlantic of 1992 (OSPAR) and the principles and regimes that have been developed by the International Maritime Organization (IMO).

Regarding the latter, Part XII of UNCLOS itself brings together a set of principles and regimes that have been developed by the IMO, such as pollution from seabed activities, environmental impact assessment and the protection of ecosystems and marine biodiversity. It should be noted that UNCLOS does not exhaust the regime of protection and preservation of the marine environment in Part XII with several provisions scattered throughout it, integrated into other regimes, especially with regard to maritime spaces under national sovereignty or jurisdiction.[15] Part XII has extended and strengthened the jurisdiction of port and coastal States in order to ensure greater compliance with international rules and practices by States, where pollution prevention and control are concerned. It is thus observed that the reactive approach existing before UNCLOS has given way to a preventive approach, mainly with regard to the exercise of States' jurisdictional powers.

The rights that States may exercise over their marine spaces vary according to their distance from their land territory. These spaces include the territorial sea, the exclusive economic zone (EEZ) and the continental shelf. In the territorial sea, the State has sovereignty; in other spaces, it has jurisdiction accompanied by sovereign rights over the respective resources and uses. Within the EEZ and in a zone adjacent to its territorial sea, there is a strip of approx. 12 miles called the contiguous zone in which the State may take the supervisory measures necessary to prevent and repress customs, fiscal, health or emigration infractions occurring in its territory or in the territorial sea. Tourism activities may thus have to comply with different approaches, considering the marine space in which they are located but always guided by a common principle: these activities must be exercised in accordance with the environmental policy of the respective State and in accordance with its duty to protect and preserve the marine environment. Thus, in the territorial sea, the State benefits from a wide range of powers that allow it to adopt laws and regulations concerning the exercise of the right of innocent passage in matters of navigation safety, maritime traffic, preservation of the marine environment and pollution control. As for the other maritime spaces under its jurisdiction (EEZ and continental shelf), the coastal state has more limited powers as its rights coexist with the principle of freedom of navigation.

Finally, and still with regard to the interpretation of the obligation to protect and preserve the marine environment, it is important to refer to the jurisprudence brought by the China Sea case,[16] in which the Arbitral Tribunal ruled as follows.

[15] Such as internal waters, territorial sea, contiguous zone, exclusive economic zone and continental shelf.

[16] Judgment of the Permanent Court of Arbitration in the South China Sea Arbitration, *The Republic of Philippines v. The People's Republic of China* (2016). Case information is available at https://pca-cpa.org/en/cases/7 (access: 18.9.2023).

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First, the obligation concerns maritime spaces under the sovereignty or jurisdiction of the respective State but also maritime spaces under the sovereignty or jurisdiction of third States, or in zones beyond these (area and high seas). Second, this obligation unfolds in both positive and negative aspect. The State is obliged to take all necessary measures to protect and preserve the marine environment but also not to degrade it. Third, we are facing an obligation of means and not an obligation of result. What is required is that the State acts with due diligence, not only by adopting the appropriate legislation, but also by adopting inspection and surveillance measures. Fourth, Article 206 of UNCLOS enshrines an obligation of a customary nature, under which States must conduct environmental impact assessments and publish the respective reports. Fifth, the duty of cooperation between States cuts across all of Part XII of UNCLOS, being a "fundamental principle" in the management of risks of environmental damage. Sixth, this obligation must be complemented by the obligation arising from Article 194 (5) of UNCLOS, which states that "the State must take all necessary measures to protect and preserve the marine environment, but also not to degrade it".[17] Seventh, this obligation must be supplemented by the obligation arising from Article 194 (5) of UNCLOS, which requires States to "take the necessary measures to protect and preserve rare or fragile ecosystems as well as the habitat of endangered, threatened or endangered species and other forms of marine life". This general duty obliges States to adopt measures regardless of the existence of records of "sensitive impacts or threats from human activities".[18] One of the measures that States can adopt is the creation of marine protected areas (MPAs). In its implementation, the set of rights and freedoms enshrined in the UNCLOS may require coordination with different levels of decision-making at both regional and domestic level.

REGIONAL/CONTINENTAL OCEAN GOVERNANCE

As already mentioned, UNCLOS recognises in its preamble that "maritime space problems are closely interrelated and should be considered as a whole". This notion of interconnection of maritime space is also taken into account by the European Commission in identifying the main objectives for an integrated maritime policy of the European Union, with a view to maritime spatial planning and the

[17] See J.J. Urbina, M.C. Ribeiro, *Comentário à Parte XII: Proteção e Preservação do Meio Marinho*, [in:] W. Brito, F.C. Moreira, *Comentários à Convenção das Nações Unidas sobre Direito do Mar*, Almedina 2022, pp. 407–449.

[18] See F.C. Moreira, B.M. Bravo, *op. cit*.

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adoption by Member States of maritime policies that recognise the connection of all maritime issues and safeguard the treatment of these as a whole.[19]

The European Union has a holistic vision of maritime affairs, having developed an Integrated Maritime Policy that has a set of cross-cutting policies that interact and complement each other in the areas of the blue economy, maritime safety, knowledge of the marine environment, maritime spatial planning, integrated maritime surveillance and sea basin strategies.[20] Diplomas such as the Marine Strategy Framework Directive[21] (MSFD) or the Habitat Directive,[22] aim to promote the sustainability and protection of marine ecosystems. The Green Deal itself includes a blue dimension which enshrines the oceans as a fundamental element of the European Green Deal.[23]

Article 191 (1) of the Treaty on the Functioning of the European Union requires the prudent and rational utilisation of natural resources. This use should be combined with the application of three principles: precaution and preventive action, correction – as a priority at source – of the damage caused to the environment, and polluter-pays. An ecosystem approach – comprehensive, holistic and integrated – to the marine environment also applies to the marine environment. An integrated management strategy for land, water and living resources promotes conservation and sustainable use in an equitable manner, which is manifested in activities related to its marine resources and respective policies that are being updated. Good environmental status is the objective to be attained. To achieve good environmental status biodiversity must be maintained.[24]

The MSFD provides the legal framework for this ecosystem approach, stemming from the implementation of the Convention on Biological Diversity and the EU Biodiversity Strategy 2030.[25] The MSFD is supported by other EU legal

[19] See Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (OJ L 164/19, 25.6.2008).

[20] F.C. Moreira, B.M. Bravo, *op. cit*.

[21] See Directive 2008/56/EC.

[22] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206/7, 22.7.1992).

[23] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal, Brussels, 11.12.2019, COM(2019)640 final.

[24] F.C. Moreira, *Políticas Públicas para o ambiente marinho e seus recursos*, "E-Pública – Revista Eletrónica de Direito Público" 2020, vol. 7(2), pp. 27–54.

[25] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU: Biodiversity Strategy for 2030 Bringing nature into our lives, Brussels, 20.5.2020, COM/2020/380 final.

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instruments, including the Water Framework Directive[26] and the Urban Wastewater Treatment Directive,[27] the Birds and Habitats Directive,[28] the Common Fisheries Policy,[29] the Maritime Spatial Planning Directive,[30] the Strategic Environmental Assessment Directive[31] and the Environmental Impact Assessment Directive,[32] the Environmental Liability Directive,[33] the Waste Framework Directive,[34] the Plastics Strategy,[35] and the Single-Use Plastics Directive.[36] In the specific protection arising from the exploitation of non-living resources, the hydrocarbons and offshore directives should be considered.[37] And of course, the Green Deal itself, which has replaced the traditional economic model of the EU with a roadmap of

[26] 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 (OJ L 327/1, 22.12.2000).

[27] Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ L 135/40, 30.5.1991).

[28] Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20/7, 26.1.2010); Council Directive 92/43/EEC.

[29] See Regulation (EU) No. 1379/2013 of the European Parliament and of the Council of 11 December 2013 on the common organisation of the markets in fishery and aquaculture products, amending Council Regulations (EC) No. 1184/2006 and (EC) No. 1224/2009 and repealing Council Regulation (EC) No. 104/2000 (OJ L 354/1, 28.12.2013); Regulation (EU) No. 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No. 1954/2003 and (EC) No. 1224/2009 and repealing Council Regulations (EC) No. 2371/2002 and (EC) No. 639/2004 and Council Decision 2004/585/EC (OJ L 354/22, 28.12.2013); Report from the Commission to the European Parliament and the Council: Implementation of Regulation (EU) No. 1379/2013 on the common organisation of the markets in fishery and aquaculture products, Brussels, 21.2.2023, COM(2023) 101 final.

[30] Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning (OJ L 257/135, 28.8.2014).

[31] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197/30, 21.7.2001).

[32] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26/1, 28.1.2012).

[33] Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143/56, 30.4.2004).

[34] Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312/3, 22.11.2008).

[35] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Strategy for Plastics in a Circular Economy, Brussels, 16.1.2018, COM(2018) 28 final.

[36] Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment (OJ L 155/1, 12.6.2019).

[37] Directive 94/22/EC of the European Parliament and of the Council of 30.05.1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons (OJ L 164/3, 30.6.1994); Directive 2013/30/EU of the European Parliament and of

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actions covering all sectors of the economy, and passing on this idea that has long existed in maritime policies: a sectoral approach is no longer possible. A holistic and integrated approach is required.

The regional approach is not only present at the EU level. There are a number of international organisations and treaties that cross the entire European continent.[38] In the different maritime regions recognised by the European Union, there are several relevant forums for regional governance, corresponding to various European maritime regions: Atlantic, Mediterranean, Black Sea, Baltic Sea, Arctic, etc.[39]

Of relevance to the maritime region of which Portugal is part, we can cite the OSPAR Convention. It is an international treaty that was signed in 1992 by 15 governments and the European Union with the aim of protecting the marine environment of the North-East Atlantic. The Convention is governed by a number of bodies at different levels, including the OSPAR Commission, which is the highest level decision-making body and includes representatives from all the Contracting Parties, as well as observers from NGOs, industry and other interested parties. In addition to the OSPAR Commission, there are also several subsidiary bodies, including the OSPAR Intersessional Correspondence Group, which meets between Commission meetings to provide advice and support on specific issues, and the OSPAR Joint Assessments and Monitoring Programme, which is responsible for assessing and monitoring the state of the marine environment in the North-East Atlantic.

OSPAR is a regional-level governance instrument as it operates within a specific region, namely the North-East Atlantic. It plays an important role in coordinating and harmonising the policies and activities of the countries that are party to the Convention. It provides a framework for these countries to work together to protect the marine environment of the North-East Atlantic and to address common issues such as pollution, overfishing and the impacts of climate change.

At the same time, the OSPAR Convention is also linked to global governance instruments such as the UNCLOS and the CBD. The Convention takes into account these global frameworks and seeks to align its goals and objectives with them. In terms of national governance, each Contracting Party to the OSPAR Convention is responsible for implementing the Convention within its own territory. This means that each country must take actions to protect the marine environment within its own waters, in accordance with the commitments it has made under the Conven-

the Council of 12 June 2013 on safety of offshore oil and gas operations and amending Directive 2004/35/EC (OJ L 178/66, 28.6.2013).

[38] Convention for the Protection of the Marine Environment of the North-East Atlantic (the OSPAR Convention), Convention on the Protection of the Marine Environment of the Baltic Sea Area (HELCOM), Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (the Barcelona Convention), Artic Council.

[39] See European Environment Agency, *Marine Regions and Subregions*, 8.5.2020, https://www.eea.europa.eu/data-and-maps/figures/marine-regions-and-subregions (access: 19.9.2023).

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tion.[40] The OSPAR Commission provides guidance and support to countries in implementing the Convention and also monitors their progress to ensure that the Contracting Parties are meeting their obligations.

The OSPAR Convention's objectives and provisions include the establishment of MPAs.[41] Under the OSPAR Convention, Contracting Parties are required to cooperate with each other to the establishment of MPAs, with the aim of protecting and conserving marine ecosystems and biodiversity. The Convention also sets out specific criteria and guidelines for the identification, selection and management of MPAs.

As a State Party to the OSPAR Convention, Portugal is committed to implement the Convention's objectives and provisions within its own territory. This includes the establishment and management of MPAs in marine zones under their jurisdiction.

DOMESTIC/LOCAL OCEAN GOVERNANCE

The sea is Portugal's greatest asset and can only be understood and taken advantage of in its entirety and in all its dimensions through an approach that is both holistic and global, enabling a sustainable blue economy. This blue economy thus derives both from the resources and uses derived from the exploitation of the sea, but also from the various activities that directly or indirectly concern it.

It is clear from international law that the use of marine resources by the State holding sovereignty or jurisdiction over the maritime spaces where they are located, must be exercised in accordance with its duty to protect and preserve the marine environment and integrated into its environmental policy. This should be based on the precautionary and preventive action, correction of environmental damage and the polluter pays principle. These rights and obligations are made compatible through a holistic and ecosystem-based approach. This approach should be exercised in a forward-looking manner within a national strategy of its own defined for the time being. Sensitive ecosystems which include MPAs should be subject to enhanced protection.

In 2003, Portugal established the Strategic Commission for the Oceans with the aim of developing a strategic vision for the sustainable use and management of the country's ocean resources. The Commission's final report, published in 2006, outlined a comprehensive set of recommendations for the development of a national ocean policy that would promote sustainable economic growth, environmental protection and social well-being. The report recognised the importance of multi-level governance and the need to work collaboratively to address common ocean issues. Some of the key ideas put forward by the Strategic Commission for the Oceans

[40] See Article 2 of the OSPAR Convention.

[41] See OSPAR Commission, *Fiches d'identité des AMP*, https://mpa.ospar.org/home-ospar/mpa-datasheets (access: 18.9.2023).

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included the need to: a) develop a national ocean policy that would integrate various sectoral policies and promote sustainable development of ocean resources; b) create a network of MPAs to conserve biodiversity and promote sustainable fisheries; c) establish a national oceanographic program to enhance scientific knowledge of the ocean and support evidence-based decision-making; d) promote the development of renewable energy sources such as offshore wind and wave energy; e) enhance Portugal's role in international ocean governance, including through participation in international organisations and initiatives. Overall, the recommendations of the Strategic Commission for the Oceans helped to shape the development of the Portuguese marine strategy in the following years, and many of the ideas put forward by the Commission remain relevant and important today.[42]

As outlined in the National Strategy for the Sea 2013–2020 and the subsequent National Strategy for the Sea 2021–2030, the Portuguese marine strategy represents a comprehensive and ambitious approach to a wide range of ocean issues, including marine conservation, sustainable fisheries, maritime transport, energy production and ocean governance.[43] The latest document even draws attention to a few changes that have been implemented at international level with regard to ocean governance. Recognising that the international ocean agenda has gained new power and a new dimension in the last decade, refocusing on the environmental, social, economic and geopolitical dimensions, social, economic and geopolitical dimensions, the document aims to incorporate the new developments into the strategy to be adopted: 1) the United Nations report "Regular Process of Global Assessment of the State of the Marine Environment, including Socio-economic Aspects", which initiated a cycle of regular assessments of the "state of the world ocean"; 2) the UN Sustainable Development Goals, particularly Goal 14 and the Decade of Ocean Sciences for Sustainable Development along with a Decade of Ecosystem Restoration, both to be implemented between 2021–2030; 3) the creation of the High Level Panel for Sustainable Ocean Economy, in which business opportunities and financial investment are central to the development of the blue economy; 4) the Intergovernmental Panel on Climate Change and its report on the ocean, together with the "Our Ocean" Conferences; 5) the UN Environment Programme report "Out of the Blue", and the EU's research and innovation programme for the period 2021–2027 focused on the ocean, the Blue Investment Fund and the Blue Bonds.[44]

The strategy also recognises the importance of multi-level governance and the need to work collaboratively with other countries and international organisations to address common ocean issues. It also emphasises the importance of integrating

[42] F.C. Moreira, *op. cit.*, pp. 27–54.

[43] Resolution of the Council of Ministers 68/2021, Diário da República 108, 1.ª série, 4.6.2021, p. 23.

[44] *Ibidem*.

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scientific knowledge and traditional knowledge in decision-making processes related to the ocean.

The Portuguese marine strategy is an important instrument for the implementation of marine governance at the national level, and it also has a role to play in the context of multi-level governance. The Strategy is intended to provide a framework for the sustainable management of Portugal's marine zones, in line with national, European and international commitments and obligations, including those under UNCLOS, CBD, OSPAR Convention, and the EU Marine Policy.

At the national level, the Portuguese marine strategy aims to coordinate the policies and activities of different government agencies and stakeholders involved in the management of coastal and marine waters. This includes the development of integrated management plans for coastal and marine areas, the establishment of MPAs and the monitoring and assessment of the state of the marine environment.

At the regional level, the Portuguese marine strategy is intended to contribute to the implementation of the OSPAR Convention, which is a key multilateral instrument for the protection of the marine environment in the North-Atlantic. The Strategy seeks to align Portugal's policies and activities with the objectives and provisions of the Convention, including those related to the establishment and management of MPAs and the monitoring and assessment of the state of the marine environment. Portugal has also played an active role in shaping the EU sustainable use and protection of the marine environment and has been an active participant in the development and implementation of EU policies and initiatives in this area. For example, Portugal has been involved in the development of the EU's Integrated Maritime Policy, which aims to promote a more coherent and integrated approach to the sustainable management of Europe's coastal and marine waters. In addition, Portugal has played a leading role in the establishment of MPAs in EU waters, both within its own jurisdiction and in collaboration with other Member States. Portugal was one of the first countries to establish a network of MPAs in its waters and has been actively involved in efforts to establish a network of MPAs in the North-East Atlantic under the OSPAR Convention. Portugal also proposed the nomination of the first national MPA under the high seas: the hydrothermal vent field 'Rainbow' located on the Portuguese continental shelf beyond 200 nautical miles.[45] The establishment of the Rainbow Seamount MPA was a significant milestone in international efforts to protect vulnerable marine ecosystems on the high seas and demonstrated

[45] The Rainbow Hydrothermal Vent Field is located on the MID-Atlantic Ridge, about 350 nautical miles southwest of the Azores, and was proposed by Portugal in 2003 as a marine protected area under the OSPAR Convention. The Rainbow Seamount is a unique underwater ecosystem that incudes hydrothermal vents that support a diverse community of species, including rare and endemic species. Portugal proposed the establishment of the marine protected area in response to concerns about the potential impacts of deep-sea mining on the Rainbow Seamount and other vulnerable marine ecosystems in the region. The proposal for the Rainbow MPA was accepted by OSPAR in 2006.

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Portugal's commitment to the sustainable management and protection of the marine environment beyond its own jurisdictional waters.[46]

The Portuguese marine strategy can contribute to multilevel governance at the global level in a number of ways. As a national strategy for the sustainable management of Portugal's maritime zones, it can serve as a model for other countries seeking to develop similar strategies. By aligning its policies and activities with international instruments of marine governance, such as UNCLOS and CBD, the Portuguese marine strategy can also contribute to the achievement of common goals related to the protection and sustainable use of the marine environment at the global level. Through its participation in international fora and processes, Portugal can share its experiences and best practices with other countries and contribute to the development of global frameworks for the sustainable management of coastal and marine waters. At the same time, the Portuguese Marine Strategy can also be informed by global frameworks and initiatives, such as the UN Sustainable Development Goals and the Global Ocean Observing System. By aligning its national strategy with these global initiatives, Portugal can contribute to the sustainable use and protection of the ocean. Overall, the Portuguese marine strategy can contribute to multilevel at the global level by serving as a model for other countries, aligning national policies and activities with international frameworks and contributing to the development of global initiatives for the sustainable management of coastal and marine waters.

Still, a good strategy is not enough. It needs to be updated. Legislation must be linked to the strategy and there must be real coordination between the actors involved at local and domestic level. It makes no sense to have difficulties arising from the ownership, exploitation, powers and rights exercised over maritime spaces.[47] A true articulation at central level is necessary in order to implement the defined global strategy, harmonising the legislation and filling the existing gaps.

CONCLUSIONS

Multi-level governance, although a concept associated with international relations, is a natural evolution of the principle enshrined in the UNCLOS: all matters of the sea are closely interrelated and must be considered as a whole. Therefore, a holistic and comprehensive approach to all matters relating to the sea is required.

[46] M.C. Ribeiro, *The 'Rainbow': The First National Marine Protected Area Proposed under the High Seas*, "International Journal of Marine and Coastal Law" 2010, vol. 25(2), pp. 183–207.

[47] A.R. Moniz, *Os direitos da Região Autónoma dos Açores sobre as zonas marítimas portuguesas*, [in:] *Gestão partilhada dos espaços marítimos. Papel das regiões autónomas*, eds. A.R. Moniz, A. Rocha, M.C. Ribeiro, R. Medeiros, Coimbra 2018, pp. 91–191.

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This holistic and global approach requires international cooperation between the various subjects of international law, and the definition of common rules that will mitigate the impact of human action on the sea, making the use and utilisation of the oceans' resources compatible with their protection and preservation; thus, guaranteeing an asset that is common to humanity for current and future generations.

There is no such thing as sea A or B; there is a common good for all of humanity, over which rights and obligations are imposed. Even in the territorial sea, a space under state sovereignty with the bundle of rights inherent to it, the state must fulfil its duty to protect and preserve the marine environment even if it has discretion to define its environmental policy.

That is why, when the state defends its policies for the sea, it must bear in mind the need to liaise with the various players at different levels: on a global dimension, defining and creating common rules that allow the uses of the sea to be articulated with its protection and the global objectives defined; on a regional dimension, taking into account the specificities of the large marine region in which they are inserted and adopting measures common to all states in the respective forums; and on a national level, defining the best policies for the marine ecosystem or ecosystems under the sovereignty or jurisdiction of the state on the one hand, but on the other welcoming and respecting international guidelines in this matter.

This is why the policies that the state adopts for the areas in which it exercises sovereignty or jurisdiction, or which have an impact on them, cannot be implemented without an appropriate and comprehensive strategy that balances international guidelines (whether at global or regional level) with the interests of the state and the uses it intends to implement.

This strategy, and its assimilation and implementation by local and state authorities, corresponds to a model of marine governance. A model that cannot fail to take into account international and European guidelines which, together with the national strategy, are the foundations of state policy for the sea.

We can therefore conclude that the current ocean governance model is clearly a multi-level model which requires liaison between the various national, European and international players, in which maritime policies influence each other.

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ABSTRAKT

Ratyfikacja przez Portugalię Konwencji Narodów Zjednoczonych o prawie morza w 1997 r. pociągnęła za sobą konieczność stworzenia odpowiedniej strategii służącej do wspomagania decydentów politycznych. Dokonała tego Komisja Strategiczna ds. Oceanów – jednostka utworzona w 2003 r. w celu promowania planu strategicznego opartego na zrównoważonym wykorzystaniu oceanu i jego zasobów. Ocean powinien być postrzegany nie tylko jako zbiornik wodny mający różne zastosowania i działania, lecz także jako najcenniejszy zasób naturalny, który należy chronić, zachowywać i cenić. Model polityczny zaproponowany w raporcie sugerował utworzenie wyspecjalizowanej Rady Ministrów, zajmującej się formułowaniem polityk i wytycznych planistycznych oraz koordynacją zintegrowanego zarządzania tym sektorem, wspieranej przez podmiot o charakterze głównie technicznym, a także opracowaniem globalnej polityki morskiej, obejmującej strategię narodową, regularną ocenę zagadnień morskich i koordynację polityk sektorowych. Artykuł rozpoczyna się od analizy tego strategicznego odniesienia jako modelu zarządzania przedstawiającego powiązania pomiędzy różnymi podmiotami. Obecne podejście wymaga, aby ten model zarządzania był wielopoziomowy: globalny, kontynentalny/regionalny i krajowy/lokalny.

Słowa kluczowe: zarządzanie morzem portugalskim; model zarządzania; strategia; Portugalia; Konwencja Narodów Zjednoczonych o prawie morza