

Spain and the Law of the Sea: 20 years under LOSC

Archipelagos and islands

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(A) INTRODUCTION

Spain is a mixed state, comprising the peninsular mainland, two state archipelagos (the Canary Islands and the Balearic Islands), and the Spanish territories located in North Africa (Ceuta and Melilla) and off the coast of Morocco. These latter territories include Spanish islands and rocks, such as Alborán Island, the Chafarinas Islands (an archipelago made up of the islets Isla de Isabel II, Isla del Rey and Isla del Congreso), the Alhucemas Islands (consisting of Peñón de Alhucemas, or “Lavender Rock”, and the islets Isla de Tierra and Isla de Mar) and the rock Peñón de Vélez de la Gomera.¹

Following a brief review of the general issues involved in the delimitation of the maritime areas and, thus, in the determination of the legal regime applicable to each one, this chapter will give special consideration to the particularities of the legal regime governing the Canarian waters and to the protection of the marine environment surrounding Spain’s islands and archipelagos, before concluding with a final assessment. The issues related to the delimitation of the exclusive economic zone (EEZ) and fisheries zones in the Balearic Islands, the EEZ and continental shelf (CS) in the Canary Islands, and the lack of a maritime delimitation of the Spanish territories in North Africa (including the aforementioned Spanish islands and rocks off the coast of Morocco) will be addressed by other authors in this volume.²

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¹ The Island or Islet of Perejil [Parsley] will not be examined here, since, as a result of the Spanish-Moroccan incident of 2002 and following the mediation or good offices of then US Secretary of State Colin Powell, Spain and Morocco agreed to respect the previous status quo. In other words, they agreed to guarantee the non-occupation or exercise of sovereign or jurisdictional acts affecting the islet by either state. Pheasant Island (an uninhabited islet) is likewise excluded from this study, as it is subject to a condominium arrangement between Spain and France under the 1856 Treaty of Bayonne.

² On these questions, see the contribution in this volume by Pastor Palomar on the [“Exclusive Economic Zone and fisheries zones”](#), the contribution in this volume by de Faramiñán on the [“Continental shelf and its extension”](#) and the contribution in this volume by Orihuela Calatayud on [“Pending delimitations”](#).

(B) DELIMITATION AND LEGAL REGIME GOVERNING THE SPANISH ISLANDS AND
ARCHIPELAGOS

With regard, first, to the Canary and Balearic archipelagos, Art. 2 of the statutes of autonomy of both autonomous communities delimits their territories. The Canary archipelago is “composed of the seven islands of El Hierro, Fuerteventura, Gran Canaria, La Gomera, Lanzarote, La Palma and Tenerife, as well as the islands of Alegranza, La Graciosa, Lobos, Montaña Clara, Roque del Este and Roque del Oeste”. The territory of the autonomous community of the Balearic Islands “consists of that of the islands of Majorca, Minorca, Ibiza, Formentera and Cabrera and that of the other adjacent minor islands”.

This configuration of Spanish territory led the Spanish government to call for the application of the archipelagic principle and, therefore, of the archipelagic straight baseline system to state archipelagos at the Third United Nations Conference on the Law of the Sea (UNCLOS).

However, the United Nations Convention on the Law of the Sea (LOSC) ultimately approved in 1982 recognized the application of the archipelagic principle only to archipelagic states. Aware of the positions staked out during the negotiations, in 1977, Spain had adopted Royal Decree 2510/1977,³ which delimits virtually the entire Spanish coast based on straight baselines, thereby making it possible to group the closest islands in the Canary and Balearic archipelagos, in application of Art. 7 LOSC. That provision provides for the drawing of straight baselines in localities in which the coast is deeply indented or cut into or where there is a fringe of islands along the coast in its immediate vicinity. The most notable exceptions to the establishment of these straight baselines were the Bay of Algeciras, due to the presence of Gibraltar, a British colony, on one of its shores,⁴ and Spain’s North African territories — which include, in addition to the cities of Ceuta and Melilla, the islands and rocks under study here — due to the Moroccan claim to these territories.⁵

Thus, Royal Decree 2510/1977 made it possible to group the islands of Lanzarote, Fuerteventura, Alegranza, Graciosa, Montaña Clara and Lobos within the Canary archipelago through the use of straight baselines, turning the waters located on the landward side of the baselines into internal waters.

The same system was applied to the Balearic archipelago, where straight baselines were used to group the islands of Majorca and Cabrera and the islands of Ibiza and Formentera, creating internal

³ Royal Decree 2510/1977, 5 August 1977, on the drawing of straight baselines in development of Law 20/1967, of April 8, on the extension of Spanish jurisdictional waters to 12 miles, for fishing purposes (*Official State Gazette*, [BOE No. 234](#), 30 September 1977).

⁴ On this question, see the contribution in this volume by del Valle Gálvez on “[Maritime zones around Gibraltar](#)”.

⁵ Morocco explicitly stated this claim in the interpretive declaration it made on 11 June 2007, upon ratifying the LOSC, in which it also reiterated its non-recognition of Spain’s “occupation” of these territories. See E. M. Vázquez Gómez, “Crónica de Derecho del Mar (Enero–Junio 2007)”, 14 *Revista Electrónica de Estudios Internacionales* (REEI) (2007), at 2–3. Specifically, it stated: “... The Government of the Kingdom of Morocco affirms once again that Sebta, Melilia, the islet of Al-Hoceima, the rock of Badis and the Chafarinas Islands are Moroccan territories.

Morocco has never ceased to demand the recovery of these territories, which are under Spanish occupation, in order to achieve its territorial unity.

On ratifying the Convention, the Government of the Kingdom of Morocco declares that ratification may in no way be interpreted as recognition of that occupation...”

waters on the landward side. In both cases, the navigation regime governing the internal waters is that established under the 2011 State Ports and Merchant Marine Act⁶ and Law 14/2014 on Maritime Navigation⁷, and the right of innocent passage recognized in Art. 8(2) LOSC does not apply.

The straight baselines are used to delimit the various maritime areas around the islands that make up these archipelagos, in accordance with the LOSC, which provides that the regime governing the waters of island territory shall be the same as that governing the waters of continental territory, i.e. with regard to the territorial sea (TS), contiguous zone (CZ), EEZ and CS. That regime is determined in accordance with Art. 14 LOSC, which allows for a combination of normal baselines, i.e. the low-water line along the coast, and straight baselines. Additionally, because of the configuration of the Spanish coast, which includes the presence of neighbouring states with opposite or adjacent coasts, in the absence of an agreement to the contrary between the states involved, Spain may also delimit its TS by drawing an equidistant median line.

As for the Spanish islands and rocks in North Africa, Morocco's claim to these territories is very likely the reason why Spain, unlike Morocco, did not draw straight baselines for them. In this regard, on 5 February 1976, Spain protested the *Dahir* published by Moroccan Decree 2-75-311, 21 July 1975, establishing straight baselines for the Spanish territories in North Africa.⁸ Such a delimitation would be contrary to the provisions of Art. 7(6) LOSC, as Peñón de Vélez de la Gomera and Peñón de Alhucemas fall on the landward side of those lines and Spain's TS is thus cut off from the high seas or an EEZ. In short, the fact that Spain did not draw straight baselines for its territories in North Africa does not mean that its islands and rocks there lack maritime areas. Rather, in these cases the delimitation would be calculated from the normal baseline and, for the delimitation of the TS, using the equidistant median line method as well.⁹

In accordance with the provisions of Art. 121 LOSC, which distinguishes between islands (paragraph 1) and rocks (paragraph 3), depending on whether or not they can sustain human habitation or economic life of their own, rocks have neither an EEZ nor a CS.¹⁰ Although Alborán Island, Isla de Isabel II in the Chafarinas Islands, Peñón de Alhucemas and Peñón Vélez de la Gomera are inhabited by military garrisons, Spain has not claimed an EEZ or CS around them to date. This is probably due to Morocco's claim to these territories, which does not affect Alborán Island, which, as we will see in the last section, is located in the Mediterranean, halfway between the Iberian peninsular and North African coasts.

⁶ Royal Legislative Decree 2/2011 of September 5, approving the consolidated text of the State Ports and Merchant Marine Act ([BOE No. 253](#), 20 October 2011)

⁷ Law 14/2014, 24 May 2014, on Maritime Navigation ([BOE No. 180](#), of 25 July 2014), an English version available [here](#). On this question, see the contribution in this volume by Díez-Hochleitner on "[Maritime zones under sovereignty and navigation](#)".

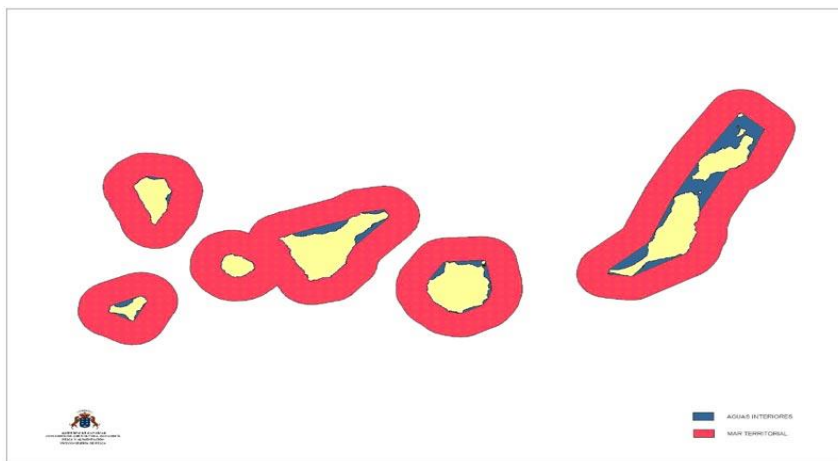
⁸ On 10 September 2008, the Spanish government published a communication on the declaration made by Morocco upon its ratification of the LOSC, BOE No. 274, 13 November 2009.

⁹ See Arts. 2 and 4 of Law 10/1977, 4 January, on the Territorial Sea ([BOE No. 7](#), 8 January 1977).

¹⁰ See A. Pastor Palomar, *La Delimitación Marítima entre Estados. Formaciones Insulares y Bajíos* (Tirant Lo Blanch, Valencia, 2017), Chapter III (Islands) and Chapter V (Rocks).

(C) THE LAW ON THE CANARY ISLAND WATERS: AN APPLICATION OF THE ARCHIPELAGIC PRINCIPLE TO THE CANARY ISLANDS?

Many authors have argued that the adoption of Law 44/2010, 30 December 2010, on the Canary Island Waters,¹¹ could be considered an application of the archipelagic principle to state archipelagos, intended to establish a practice that would afford states a new regulation.¹² This argument is based on the Law's preamble, the sense of the previous draft bills, and the practice initiated by other states.¹³ This latter point has been refuted by Lacleta,¹⁴ who considers these cases to have involved the



application of straight baselines, just as the Royal Decree of 1977 did in the case of Spain's archipelagos.

Indeed, the delimitation of the maritime areas around the Canary Islands (see the figure on the left by the regional Government of the Canary Islands) is determined by the straight baselines drawn in 1977,

which, as noted above, grouped the islands of Lanzarote, Fuerteventura, Alegranza, Graciosa, Montaña Clara and Lobos, giving rise to internal waters on the landward side. Therefore, the maritime areas regulated under the LOSC are measured from those lines or, in the absence thereof, the normal baseline.

However, one year later, Spain included in Law 15/1978, 20 February 1978, on the Economic Zone,¹⁵ the recognition of the application of the archipelagic principle to state archipelagos that it had called for during the negotiation of the LOSC.¹⁶ Specifically, Art. 1(1) of the aforementioned law provides: "In the case of archipelagos, the outer limit of the economic zone shall be measured from straight baselines joining the outermost points of the islands or islets forming the respective archipelago, so that the resulting perimeter conforms to the general configuration of each archipelago."

¹¹ [BOE No. 318](#), 31 December 2010. It entered into force on 31 March 2011.

¹² E. Orihuela Calatayud, "La delimitación de los espacios marinos en los archipiélagos de Estado. Reflexiones a la luz de la Ley 44/2010, de 30 de diciembre de aguas canarias", 21 REEI (2011) 1-26.

¹³ The following states have delimited inter-island waters for their archipelagos: Portugal, for the Azores and Madeira islands; Denmark, for the Faroe Islands; Norway, for the Spitsbergen Islands; and Ecuador for the Galapagos Islands.

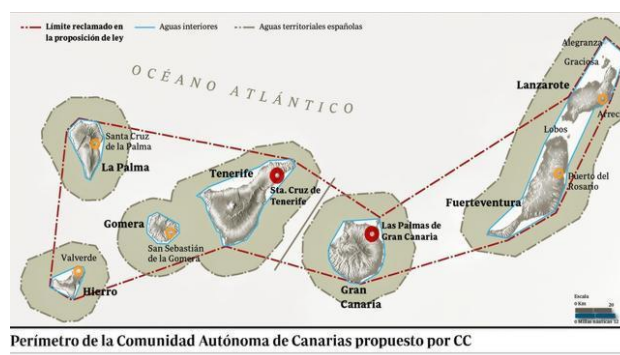
¹⁴ J. M. Lacleta, "Las aguas del archipiélago canario en el derecho internacional del mar actualmente vigente", Working Paper, *Real Instituto Elcano de Estudios Internacionales y Estratégicos*, 13 June 2005, 1-23, at 8-9.

¹⁵ [BOE No. 46](#), 23 February 1978. It entered into force on 15 March 1978.

¹⁶ As Lacleta has pointed out, the said law was enacted when the possibility of obtaining the archipelagic status for the waters of mixed states was still under discussion. Spanish lawmakers were thus seeking to provide evidence of their interest in supporting such a position, *loc. cit.*, at 4. On "Islands and Archipelagos" at UNCLOS, see the contribution in this volume by de Yturriaga Barberán on "[Spain at UNCLOS](#)".

Ultimately, the adoption of the Law on the Canary Island Waters failed to shed light on the matter. Although the sense of the Law is the recognition of “inter-island” waters for the Canary Islands (in the sense of a maritime area pertaining to the Canary Islands),¹⁷ its sole Additional Provision, entitled “Respect for International Law”, expressly states: “The drawing of this perimetric outline will not change the delimitation of the maritime areas of the Canary Islands as established by Spanish law under the international law in force” (see the figure in this page by ABC). Therefore, in accordance with international law, the delimitation of the Canarian maritime areas is as established in the Royal Decree of 1977.¹⁸ That is because, under Art. 16 LOSC, states are obligated to give due publicity to the charts or lists of geographical coordinates and must deposit a copy of each one with the Secretary-General of the United Nations. In the case of Spain, the lists of geographical coordinates deposited with the Office of Ocean Affairs are those established under the Royal Decree of 1977, not under the Law of 1978. Furthermore, had Spain applied the archipelagic perimeter to state archipelagos, it would follow that it would have adopted a similar law for the Balearic archipelago. To date, this has not occurred.

Therefore, as provided under the sole article, paragraph 1, of the aforementioned Law, the Canary Island waters —delimited in accordance with the geographical coordinates established in Annex I of the Law, which were used to establish the straight baselines used for their delimitation (see Annex II of the Law)— are the special maritime area of the Autonomous Community of the Canary Islands. Thus, it is necessary to examine the distribution of powers established by the Spanish Constitution and the Canarian Statute of Autonomy, as well as the nature of the other maritime areas surrounding the Canary Islands. In this regard, paragraph 2 provides: “The exercise of state or regional powers in the Canary Islands and, where appropriate, over the other maritime areas surrounding the Canary Islands over which the Spanish state exercises sovereignty or jurisdiction will take into account the material distribution of powers established by the Constitution or the Statute of Autonomy, for both these and terrestrial areas.”¹⁹



¹⁷ The Spanish Supreme Court has pronounced itself on this contradiction in the system of delimitation of the EEZ of the Canary archipelago (since the Law of 1978 excludes the Mediterranean Sea from its scope of application). See the judgement of 18 June 1992 (Contentious-Administrative Chamber, Appeal No. 540/1990) and the judgement of 16 June 2008 (Contentious-Administrative Chamber, Appeal No. 1341/2004).

¹⁸ In this regard: “... The Government of Spain would like to note that the baselines used to measure the breadth of the continental shelf in the partial submission on the limits of the continental shelf of Spain west of the Canary Islands are set out in Royal Decree No. 2510/1977 of 5 August, as is stated in section 7.9 of the submission. Law No. 44/2010 does not define baselines and was not used in any way in the preparation of the submission on the limits of the continental shelf west of the Canary Islands...”. Permanent Mission of Spain to the United Nations, [No. 076 MP/bcm](#), New York, 22 April 2015, United Nations Secretariat, Office of Legal Affairs (Division for Ocean Affairs and the Law of the Sea).

¹⁹ The Spanish Supreme Court expressed this view in its judgement of 7 October 2011 (Roj: STS 6513/2011 – ECLI: ES:TS:2011:6513).

According to the provisions of Art. 148 of the Spanish Constitution [hereinafter, “CE” from the Spanish] and Art. 30 of the Canarian Statute of Autonomy, the autonomous community has exclusive jurisdiction over, amongst other matters: fishing in inland waters, shell fishing and aquaculture; protected natural areas; maritime transport conducted exclusively between ports or points of the autonomous community; and environmental protection management (Art. 32 in this last case).

In accordance with Art. 149 CE, maritime fishing falls under the exclusive jurisdiction of the state. Specifically, the scope of Law 3/2001, 26 March 2001, on State Maritime Fisheries, amended by Law 33/2014, 26 December 2014, which, in turn, repealed Law 71/1978, 26 December 1978, on Fisheries Development in the Canary Islands,²⁰ distinguishes between external waters (including the TS, the EEZ and the Fisheries Protection Zone in the Mediterranean) and internal ones, over which the autonomous communities have jurisdiction.²¹ In accordance with the provisions of Art. 13 of the aforementioned Law 3/2001, the declaration, by Ministerial Order, of fisheries protection zones (including, amongst others, marine reserves) to encourage the protection and regeneration of marine living resources also falls under the jurisdiction of what is today the Spanish Ministry of Agriculture and Fisheries, Food and the Environment. Three such marine reserves have been declared in the Canary Islands (La Restinga-Mar de las Calmas, La Graciosa-Islets and La Palma). Additionally, Art. 15 bis grants the same Ministry the power to authorize the installation of artificial reefs in external waters (paragraph 1), although in those cases in which the reefs span both external and internal waters, the authorization must be jointly granted by the Ministry and the autonomous community to which the internal waters belong (paragraph 2).

Recreational maritime fishing in the external waters of the Canary archipelago is regulated by Royal Decree 347/2011. These waters are one of the four zones constituting distinct management units. This group also includes the Mediterranean zone, which comprises the waters over which Spain exercises sovereignty or jurisdiction around the Balearic Islands, Alborán Island, the cities of Ceuta and Melilla, and the Fisheries Protection Zone in the Mediterranean (Art. 2).

Finally, the navigation regime governing the internal waters of the Canary Islands is that established in general in the aforementioned Law 14/2014, on Maritime Navigation, which distinguishes between navigation in each maritime area, taking into account the characteristics of the vessels, albeit subject to the agreement reached in the context of the International Maritime Organization (IMO), which will be examined below.

(D) THE PROTECTION OF THE MARINE ENVIRONMENT IN THE SPANISH ISLANDS AND ARCHIPELAGOS

In light of the obligation undertaken by states to protect and preserve the environment,²² the LOSC envisages the need for both global and regional cooperation, whether directly or through the

²⁰ BOE No. 313, 27 December 2014.

²¹ See Title I “On maritime fisheries in external waters”, and, specifically, Art. 4 on the “Delimitation of the scope” of the aforementioned Law 3/2001.

²² Art. 192 LOSC.

competent international organizations.²³ To this end, this chapter will now briefly review the main actions the Spanish government has taken in the context of the IMO and the European Union (EU) in relation to the protection and preservation of the marine environment of the Spanish islands and archipelagos.

First, with regard to Spain's actions before the IMO, on 24 October 2003, it submitted a proposal to designate the waters of the Canary Islands as a Particularly Sensitive Sea Area (PSSA). The proposal was considered by the IMO's Marine Environment Protection Committee (MEPC) and approved at its 51st session, held in London, from 29 March to 2 April 2004.²⁴ According to the provisions of Art. 211(6)(a) LOSC, and in accordance with the MARPOL Convention to which Spain is a party,²⁵ the Spanish government cited, amongst other reasons, the intense maritime traffic to which the waters are subject and the high risk of pollution from oil and hazardous noxious substances. The proposal included various associated protective measures aimed at preserving the area's ecosystem and biodiversity. The PSSA would comprise a maritime area bounded by a polygonal line connecting points along the outer limit of the TS surrounding the Canary archipelago, including areas of the EEZ on the landward side. The protective measures would include: the establishment of "areas to be avoided" for in-transit shipping, usable only for small-scale inshore fishing, inter-island navigation and journeys from and to ports located inside the areas; the establishment of mandatory shipping routes for in-transit ships whose port of origin or destination was not in the Canary Islands; and the adoption of a "mandatory ship reporting system" for all vessels carrying heavy-grade oils in transit through the PSSA or leaving or heading for ports in the Canary Islands. The reporting was to be done through the Las Palmas and Tenerife Rescue Coordination Centres attached to the Ministry of Public Works.²⁶ The establishment of the PSSA in the Canary Islands entered into force on 1 December 2006.

Second, in the context of the EU, attention should be called to 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 (Marine Strategy Framework Directive),²⁷ which aims to achieve good environmental status in the marine environment by 2020, to protect and preserve the marine environment, and to prevent and reduce inputs in the marine environment. In accordance with the provisions of Law 41/2010, 29 December 2010, on the Protection of the Marine Environment,²⁸ which transposes the aforementioned directive into Spanish law,²⁹ the strategies will be

²³ Art. 197 LOSC.

²⁴ See the description of the Canary Islands as a PSSA (Annex 1) and the establishment of associated protective measures defined in Annex 2 of Resolution MEPC.134(53), adopted on 22 July 2005. Designation of the Canary Islands as a Particularly Sensitive Sea Area, available [here](#).

²⁵ The International Convention for the Prevention of Pollution from Ships, together with its amendments and additional Protocols, commonly referred to as MARPOL (from the English "Marine Pollution"), was signed by Spain in 1979 and ratified by instrument of ratification on 22 June 1984 (BOE Nos. 249 and 250, 17 and 18 October 1984).

²⁶ A. Ortega and E. Díaz, "Proposal for a New Traffic Separation Scheme in the Canary Islands", XII(II) *Journal of Maritime Research* (2015), 19-26. See also another analysis [here](#).

²⁷ OJ L 164, 25 June 2008.

²⁸ BOE No. 317, 30 December 2010.

²⁹ See I. González García and M. A. Acosta Sánchez, "La difícil aplicación de la Estrategia Marina europea y la

adopted by Royal Decree at the initiative of the Ministry of Agriculture and Fisheries, Food and the Environment, and they will be updated every six years. The said Law covers two large regions in which marine strategies must be established (Art. 6), in accordance with the provisions of Art. 4 of the Framework Directive:³⁰ (1) The North-east Atlantic Ocean, which has two sub-regions: a) the Bay of Biscay and the Iberian coast; and b) the Macaronesian region of the Atlantic Ocean surrounding the Canary Islands. (2) The Mediterranean Sea.

Law 41/2010 moreover created the concept of *marine demarcation*. Each of the five marine demarcations so established has its corresponding marine strategy. The following are of interest here:

- The marine demarcation of the *Strait and Alborán*,³¹ which includes two zones, one of which is the marine environment in which Spain exercises sovereignty or jurisdiction around the Chafarinas Islands, the Islet of Perejil, Peñón de Vélez de la Gomera, Peñón de Alhucemas and Alborán Island. This reference to the islands and rocks over which Spain exercises sovereignty or jurisdiction in North Africa is an exceptional instance of legal support for Spain's ownership of these possessions. Moreover, it is the first time Spanish law has made reference to the islet of Perejil. In light of the Spanish and European law,³² this demarcation will necessarily require cooperation with Morocco on the development of the marine strategies, which is unlikely to occur, given the lack of an agreement delimiting the maritime boundaries between the two countries as a result of the aforementioned territorial claim.
- The *Levantine-Balearic* marine demarcation and the *Canary Islands* marine demarcation, which will require cooperation with France and with Portugal, respectively. In the latter case, there is currently no delimitation agreement for the CS and EEZ in the waters between the Canary Islands and Madeira due to the dispute over the Savage Islands.³³

protección del medio marino en la Bahía de Algeciras/Gibraltar” 25 REEI (2013) 1-35, in particular, at 8-20.

³⁰ Art. 4 specifies the regions and sub-regions for which marine strategies must be established. One of the subregions, in the North-east Atlantic Ocean, is the Macaronesian biogeographic region, comprising the waters surrounding the Azores, Madeira and the Canary Islands. Another, in the Mediterranean Sea, is the Western Mediterranean. States may establish other subdivisions, provided they inform the Commission.

³¹ The Strait-Alborán marine demarcation comprises four Andalusian provinces (Cádiz, Málaga, Granada and Almería) and the Autonomous Cities of Ceuta and Melilla. The demarcation spans from Cape Spartel (North Africa) through the Strait of Gibraltar to the Alborán Sea, including the Chafarinas Islands, the Islet of Perejil, Peñón de Vélez de la Gomera, Peñón de Alhucemas, and Alborán Island, located in the westernmost part of the Mediterranean Sea. See Ministerio de Agricultura, Alimentación y Medio Ambiente, *Estrategia Marina, Demarcación Marina del Estrecho y Alborán. Parte I. Marco General, Evaluación Inicial y Buen Estado Ambiental*, Secretaría General Técnica, Centro de Publicaciones, Madrid, 2012, at 1.

³² Arts. 5(3) and 6 of the Framework Directive and Art. 23 of Law 41/2010, which provides for the need for cooperation with other states when a single marine region or subregion is shared.

³³ See the reference to Spain's "objection to Portugal's submission to the Commission on the Limits of the Continental Shelf in note verbale No. 381 AV/ot of 10 June 2009 [...]. In that regard, it should be noted that while the Portuguese Government wishes the United Nations to recognize its exclusive economic zone and continental shelf in 2015 and to include the Ilhas Selvagens in both of them, Spain does not agree that the Ilhas Selvagens in any way give rise to an exclusive economic zone. It does, however, agree that they give rise to a territorial sea as it considers them to be rocks, which have the right only to a territorial sea. Spain also reiterates its previous objection, whereby it refused its consent to any delimitation of exclusive economic zones between Madeira and the Canary Islands." Permanent Mission of Spain to the United Nations, ESPAÑA 2015-2016, [Note verbale No. 186 FP/ot](#), New York, 5 July 2013, United Nations Secretariat, Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea. On the Savage Islands, see F. Baeza Betancort, [Las Islas Canarias ante el Nuevo Derecho Internacional del Mar](#) (Museo Canario, Las Palmas, 1987), at 93-94; and A. Sereno, "El nuevo mapa marítimo

Finally, the aforementioned Law 41/2010, on the Protection of the Marine Environment, formally created the Network of Marine Protected Areas, originated by Law 42/2007, on Natural Heritage and Biodiversity,³⁴ in compliance with the Habitats Directive.³⁵

The Natura 2000 network in Spain consists of Sites of Community Importance (SCIs), Special Areas of Conservation (SACs) and Special Protection Areas for birds (SPAs). With regard to the SPAs, anticipating the difficult and, initially, fruitless cooperation with its neighbouring states in the Strait, the Spanish government omitted the originally planned SPAs (Strait of Gibraltar, Chafarinas Islands, and Banco de la Concepción, which lies north-west of the Canary Islands) from the final list of areas to be classified as SPAs in the first network of marine protected areas. The reason given for this omission was none other than “to avoid diplomatic conflicts”, since the areas in question include maritime areas claimed by the United Kingdom and Morocco.³⁶ Ultimately, the Ministry of Agriculture and Fisheries, Food and the Environment approved Order AAA/1260/2014, 9 July 2014, declaring, amongst others, the marine areas of the Balearic Islands and the Canary Islands (including the Banco de la Concepción SPA), as well as the marine area of Alborán Island, to be SPAs.

The fact that Alborán Island has been left out of the Moroccan claim to the Spanish territories in North Africa was conducive to the declaration, in 1997, of the island (administratively linked to Almería) and its surroundings as a marine and fishing reserve, to be managed by the Secretariat-General of Fisheries of the Ministry of Agriculture and Fisheries, Food and the Environment.³⁷ Likewise, the Andalusian parliament passed Law 3/2003, 25 June 2003, declaring the Alborán Natural Area, in accordance with the 2001 designation of Alborán Island and its seabed as a Specially Protected Area of Mediterranean Importance (SPAMI).³⁸ These spaces coincide with the marine SPA ES0000505 Marine area of Alborán Island and the SCI ES6110015 Alborán.³⁹

de Portugal y el caso de las Islas Salvajes”, 28 REEI (2014) (DOI: 10.17103/reei.28.01).

³⁴ BOE No. 299, 14 December 2007. See Royal Decree 1599/2011, 4 November 2011, establishing the criteria for the integration of protected marine areas into Spain’s Network of Marine Protected Areas ([BOE No. 294](#), 7 December 2011).

³⁵ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. OJ L 206, 22 July 1992.

³⁶ See *Elpais.com* (19 October 2011): “España descarta tres parques para evitar conflictos diplomáticos: El Estrecho, Chafarinas y el Banco de la Concepción, en aguas que reclaman Marruecos y Gibraltar, se caen de la primera red de áreas marinas protegidas”. In declarations to the newspaper, Director General for Forestry Policy José Jiménez explained: “Where a dispute exists, we will study the matter with the Ministry of Foreign Affairs.” He defined these areas as “those places subject to some conflict in which the boundaries are not clear” (*ibid.*).

³⁷ See the [Ministerial Order of 31 July 1997](#) (BOE No. 204, 26 August and BOE No. 233, 24 September 1998).

³⁸ *Official Gazette of the Government of Andalusia* (BOJA) No. 133, 14 July 2003, and BOE No. 187, 6 August 2003. As stated in the law’s preamble, in compliance with one of the protocols adopted in the context of the Barcelona Convention, the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean, which was ratified by Spain through the instrument of 23 December 1998, Alborán Island and its seabed were designated a Specially Protected Area of Mediterranean Importance at the 12th Ordinary Meeting of the Contracting Parties to the said convention, held in Monaco in November 2001.

³⁹ See more information [here](#).

(E) CONCLUSIONS

The foregoing analysis of the delimitation of the waters of Spain's islands and archipelagos has revealed the existence of internal waters created by the straight baselines drawn around the closest islands of the Canary and Balearic archipelagos, thereby refuting the existence of archipelagic waters. In this regard, in accordance with the provisions of the sole Additional Provision of the Law on the Canary Island Waters, the recognition of inter-island waters belonging to the Canary Islands cannot be considered to constitute a precedent in state practice for the application of the archipelagic principle to state archipelagos.

With regard to the distinction the LOSC makes between islands and rocks, the lack of delimitation of the EEZ and the CS around certain islands and rocks off the coast of Morocco is due less to the provisions of Art. 121 LOSC than to Morocco's claim to these territories, as such a delimitation would require an agreement between the states. Morocco supported this claim in practice with the drawing of straight baselines that enclose Spanish territory, with the ensuing protest by the Spanish government.

Special mention must be made of the analysis of the regulations adopted by the EU in matters of protection of the marine environment, in accordance with the obligation for states with adjacent or opposite coasts to cooperate in this regard established under the LOSC. In implementing the European regulations, Spanish law managed to include an explicit reference to the Spanish islands and rocks located off the coast of Morocco. Specifically, in application of the Marine Strategy Framework Directive, Spanish law has provided for the establishment of the marine demarcation of the Strait and Alborán, which will necessarily require cooperation with Morocco on matters of marine environmental protection. This same cooperation is also required with other countries, in this case European, for the Levantine-Balearic marine demarcation (with France) and the marine demarcation of the Canary Islands (with Portugal).