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Canary Islands' waters and the Law of the Sea

Abstract

Configuring the oceanic space occupied by the waters that connect the different islands in the Canary archipelago is key to measuring the surrounding maritime spaces under Spanish sovereignty or jurisdiction. The lines that trace the perimeter contour of the outer limit of the Canary Islands' waters, as defined in Law 44/2010 and in the Statute of Autonomy, are the starting point for measuring the extension of the territorial sea, contiguous zone, exclusive economic zone and continental shelf of the Canary Islands, under state sovereignty.

This article has been written from a legal perspective and provides some ideas to justify the analogous application of the archipelagic principle to the Canary Islands' waters under our national legislation, in line with similar legislative options adopted by other countries. This principle was introduced in the 1982 United Nations Convention on the Law of the Sea for archipelagic states. It also reflects on how the International Law of the Sea has evolved, in the more than 40 years since its codification, towards greater environmental protection, as shown by the numerous initiatives on preserving, restoring and conserving the marine environment undertaken by the various United Nations organisations in charge of marine affairs.

Keywords

Oceans, environment and climate; State archipelagos; analogous application of the archipelagic principle; island regime; protection of the marine environment in the Canary Islands.

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1. The impact of the oceans on the environment and climate

The seas and oceans are the origin of life and are home to many of the ecosystems onwhich human life depends. They cover almost three quarters of the Earth's surface and, from space, Earth looks like a large blue sphere[1].

The oceans are important communication routes and the world's most widely used means of transporting goods; 90% of international goods are transported by sea[2]. They are also the habitat of most of the planet's species. Marine fishing, and increasingly aquaculture[3], provide a livelihood for millions of people around the world. The seabed and subsoil remain practically unexplored, despite the fact that they contain most of the world's strategic mineral resources. Extracting these minerals through underwater mining involves significant environmental risks; using machinery destroys the ocean floor and the marine species that inhabit it, also generating columns of sediments containing heavy metals that can disturb the ocean floor, altering the marine ecosystem and phytoplankton's ability to sequester carbon.

In addition to the oceans' impact on the global economy, their ecological function is also extremely beneficial to the world. The oceans regulate the Earth's climate and temperature, absorbing most of the sun's radiation and more than 90% of the heat produced by global warming. They also act as a buffer to climate change, producing more than half of the oxygen we breathe, storing large amounts of carbon dioxide and absorbing around 23% of annual CO2 emissions from the atmosphere[4].

However, the oceans have been warming at an alarming rate in recent years. According to a recent study[5], in 2022 the global ocean heat content (OHC) was the highest on record, surpassing the previous record of 2021, due to the absorption of greenhouse gases and other anthropogenic substances. Moreover,warming, increasingly acidic oceans are altering the global climate system and, in turn, affecting land and marine ecosystems, as evidenced by the melting of Arctic ice and the growing disappearance of coral reefs.

1 In 1972, astronauts on the *Apollo 17*spacecraft, the last manned mission to the moon, took a photograph of the Earth that became famous because it resembled a large *blue marble*.

2 According to data from the United Nations Conference on Trade and Development(UNCTAD) gathered by the Ministry for Ecological Transition. See: https://www.miteco.gob.es/es/costas/temas/proteccion-medio-marino/plan-ribera/contaminacion-marina-accidental/trafico_maritimo.html .

3 As extractive overfishing threatens the oceans' living resources, algae, mollusc and finned fish aquaculture is gaining ground. See National Geographic article: https://www.nationalgeographic.es/medio-ambiente/acuicultura

4 However, carbon dioxide reacts with seawater, producing carbonic acid which lowers its pH, acidifying the oceans and affecting ecosystems. See the State of the Global Climate 2022 Report by the World Meteorological Organization (WMO): https://storymaps.arcgis.com/stories/6d9fcb0709f64904aee371eac09afbdf

5 *Another Year of Record Heat for the Oceans* (2023). Cheng, L., Abraham, J., Trenberth, KE et al. *Advances in Atmospheric Sciences*.(Accessed 28 April 2023). Available in:s00376-023-2385-2.pdf.

2. The role of the UN in protecting the marine environment

Ocean waters are interconnected. The sea has no barriers, so what is done in one place has repercussions in another, just like greenhouse gas emissions, plastic pollution[6] and dumping. This means international cooperation is needed and it is important that the United Nations takes the lead in comprehensively regulating the legal system applicable to maritime spaces and their borders, as well as adopting general, binding measures to prevent, protect and restore the ecological balance of the marine environment and preserve the biodiversity of the oceans.

The international community has been addressing environmental protection and the restoration of biodiversity at a global level, primarily through the United Nations Environment Programme (UNEP), which was established in 1972 and is the world's leading intergovernmental authority in this field. UNEP is also the institution in charge of protecting the marine environment and the environmentally sustainable use of its resources[7], through its Regional Seas Programme and Action Plans; as well as the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities[8].

In terms of the fight against climate change, the most important initiative of the UN system is the Framework Convention on Climate Change (UNFCCC) adopted in 1992 and ratified by Spain in December 1993[9]. It was amended in 1997 by the Kyoto Protocol, in which an agreement was reached to reduce carbon dioxide emissions produced by burning fossil fuels, a cause of global warming. However,the most significant breakthrough came after the 21st Conference of the Parties on Climate Change (COP 21), where attending parties adopted the Paris Agreement in December 2015[10]. For the first time, under this agreement both developed and developing countries made a commitment to reduce worldwide greenhouse gases, limit the increase in global average temperature to a maximum of 2 °C above pre-industrial levels, not to exceed 1.5 degrees by the end of this century, to achieve climate neutrality so that the amount of CO_2 released into the atmosphere by humans is offset by the amount absorbed naturally by the planet.

The irrefutable environmental impact on the oceans led to the first Oceans Conference in New York in June 2017. It aimed to propose solutions to implement

6 The North Pacific central gyre is a convergence zone where clockwise ocean currents act as a holding mechanism and prevent plastic debris from moving. The plastic waste floating on the surface forms the *Great Pacific Garbage Patch*, estimated to be 1.6 million km2 in size, more than three times the size of Spain. See:https://web.archive.org/web/20100702192331/http://oceans.greenpeace.org/raw/content/en/documents-reports/plastic_ocean_report.pdf

7 See: Oceans and Seas | UNEP - UN Environment Programme

8 See:Governing the Global Programme of Action | UNEP - UN Environment Programme

9 BOE, 1 February 1994, No. 27.

10 See: Paris Agreement English (unfccc.int)

Sustainable Development Goal (SDG) 14 of the 2030 Agenda on the conservation and sustainable use of oceans and marine resources, bearing in mind that the health of living beings and sustainable economic growth depend on a healthy ocean[11].

COP 26, held in Glasgow in November 2021, formalised the Climate Deal to fully implement the Paris Agreement. For the first time, the ocean was integrated into the Conference process and it was agreed to organise an annual dialogue between state and non-state actors to explore ways to strengthen ocean-based climate change action, which began in Bonn in June 2022.

The second Oceans Conference, which took place in Lisbon in mid-2022, highlighted the devastating effect of climate change on the oceans and concluded with a declaration that included many non-binding proposals for making progress in protecting the marine environment.

At COP 27, held in November 2022 in the Egyptian city of Sharm el-Sheikh, binding measures to phase out fossil fuel use were not approved, but ocean-climate action was present in several panel discussions that conveyed the message of making the Paris Agreement *bluer*, making the ocean a place for innovation and real climate action[12].

At COP 28, held in Dubai in December 2023, despite opposition from some oil-producing and other developing countries, an important agreement was reached to initiate an energy transition to renewable and clean energy to curb climate change, progressively ending the era of fossil fuels[13]. Although the pact does not contain specific commitments to achieve this, an agreement was made to reach net zero emissions by 2050, which will depend on the will of governments. This conference is important because previous agreements have so far focused on reducing greenhouse gas emissions, but have made no reference to the need to reduce fossil fuels such as coal, oil and gas, the main sources of greenhouse gas emissions.

However, it took almost 25 years, until 2006, for UNCLOS to begin discussing what is known as the *Oceans Treaty* toguarantee the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction, known as the high seas, whose resources belong to all humanity. After arduous negotiations, an agreement was reached on 4 March 2023, with the final text adopted by consensus in New York on 19

11 In December 2017, the UN General Assembly mandated UNESCO's Intergovernmental Oceanographic Commission (IOC) to work with all stakeholders to design a Decade of Ocean Science for Sustainable Development (2021-2030), to ensure that ocean science supports countries' efforts to achieve the goals of the 2030 Agenda. See:https://www.unesco.org/es/decades/ocean-decade

12 The most important agreement was the creation of a loss and damage fund for countries that are most vulnerable to climate change, although neither how the fund would function nor the beneficiary countries were specified in the agreement. Discussion of this issue was postponed to the climate summit in Dubai where modest progress was made, with several developed countries offering $700 million to create a fund for this purpose.

13 The draft final agreement is available at the following link: https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf

June[14]. The agreement contained the commitment to create a global network of marine protected areas[15] covering 30% of the world's oceans by 2030, in compliance with the 30x30 target that had been agreed at COP 15 of the UN Convention on Biological Diversity in Montreal in December 2022[16], which then was simply a recommendation.

In short, despite evidence from a multitude of scientific studies and being a major concern for civil society, ocean-climate action has only recently begun to receive attention from the world's governments. Analyses of the problems facing the oceans and the various measures to solve them are well known. They have been presented by experts in numerous international fora[17], but political progress has been minimal and very frustrating. There is a need for homogeneous and binding governance strategies that are reflected in different countries' climate policies so that integrated solutions can be adopted, with a commitment to providing the necessary financial resources so these strategies can be implemented.

3. The codification process of the Law of the Sea

Leaving aside concerns about climate and environmental issues in the oceans, coastal states in the international community had long begun to consider the importance of extending their dominion over maritime spaces adjacent to their coasts, mainly for commercial and security reasons. Shortly after the end of the Second World War, the need to regulate the use of the ocean and its natural resources also arose, especially fisheries and offshore mineral and energy deposits. This led to the International Law Commission being mandated in 1949 to initiate the complex process of codifying the Law of the Sea which, until then, had been governed by customary law. In 1958, the First UN Conference on the Law of the Sea was held in Geneva, and four conventions were approved (Spain acceded later, in 1971)[18]: the Convention on the Territorial Sea and the Contiguous Zone; on the High Seas; on Fishing and Conservation of the Living Resources of the High Seas; and on the Continental Shelf.

14 The final text of the agreement, in the official UN languages, is available at the following link: https://treaties.un.org/doc/Treaties/2023/06/20230620%2004-28%20PM/Ch_XXI_10.pdf

15 The Treaty has three other main sections dealing with marine genetic resources, including issues related to fair and equitable benefit sharing; environmental impact assessments; and capacity building and the transfer of marine technology.

16 See press release: COP15: Nations Adopt Four Goals, 23 Targets for 2030 In Landmark UN Biodiversity Agreement | Convention on Biological Diversity (cbd.int)

17 In this area, reports by the Intergovernmental Panel on Climate Change (IPCC), created in 1988 by UNEP, and the World Meteorological Organisation (WMO), are of particular note. These reports state that, in recent years, there has been an increase in the average temperature of the oceans, which has led to sea levels rising due to the expansion of their waters.

18 The Convention on the Territorial Sea and the Contiguous Zone and the instrument of accession were published in the BOE of 24 December 1971, No. 307. The Continental Shelf Convention and the High Seas Convention were both published in the BOE of 25 December, No. 308. The Convention on Fishing and Conservation of the Living Resources of the High Seas was published in the BOE of 27 December, No. 309.

The Geneva Conventions, despite their limited application due to the small number of states that ratified them, were an important antecedent to the compilation process, as they coined the basic concepts of the different marine spaces and regulated their legal system. A major breakthrough was establishing rules for determining the baselines that separate inland waters from the territorial sea, based on the geographical characteristics of coasts. Although a consensus was reached on the starting point for calculating different maritime areas, it was not possible to reach an agreement on the limits of their width (Orcasitas, 1959: 70).

Many nations, especially those that had just gained independence at the time, did not ratify the treaties because they did not satisfy their claims for a greater expanse of maritime space[19] and the fairly widespread claim to extend exclusive economic rights up to 200 nautical miles from the coast, following the precedent of some South American states, such as Ecuador, Chile and Peru (Briceño, 2012: 139-170).

The failure of the Geneva Conventions did not deter the UN from trying to progress in establishing a new maritime order that would gain the general support of the international community; in 1960, the Second Conference on the Law of the Sea was convened to establish the extent of the territorial sea and the fishing zone, however, it ended without agreement.

In 1967, the General Assembly (UNGA) adopted resolution 2340 (22) establishing the *Commission on the Peaceful Uses of the Seabed and Ocean Floor beyond the Limits of National Jurisdiction,* with a mandate to draw up a proposal for a legal regime for the seabed and ocean floor. Subsequently, Resolution 2749 (25)[20] of 17 December 1970 was adopted, which established that exploiting seabed resources in the area outside national jurisdiction shall be carried out for the benefit of mankind as a whole[21].

On the same date, Resolution 2750 (25)[22] was adopted, which agreed that the Third Conference on the Law of the Sea[23] would be convened in 1973 and expanded the membership of the Seabed Commission, mandating it to act as a preparatory body for the Conference and to draw up the draft articles of a new treaty containing an equitable international regime for marine areas. It would include a mechanism for the area outside national jurisdiction, as well as a list of essential issues related to the Law of the Sea, especially legal regimes for the high seas, continental shelf, territorial sea,

19 One of the most controversial issues at the Geneva Conference was precisely the extent of the territorial sea; most naval powers wanted it to be limited to three miles, following the old custom of the range of a cannonball, but this was rejected.

20 See: a_res_2749_xxv.pdf (un.org)

21 In 1967, Arvid Pardo, the Maltese ambassador, made a famous speech in which he argued that the resources of the seabed and its subsoil, beyond the limits of national jurisdiction, are the common heritage of mankind.

22 See:a_res_2750_xxv.pdf (un.org).

23 It also had to take into consideration that many of the current UN member states had not participated in previous Law of the Sea conferences and that a universal agreement was needed that would take into account the interests and needs of all states, whether they were developed or developing, landlocked or coastal.

contiguous zone, fisheries and conservation of living resources, the protection of the marine environment and scientific research.

160 states participated in the Third Conference and eleven sessions were held between 1973 and 1982 (Treves, 2008). Three main commissions were appointed in the first period. The first dealt with the international regime of the seabed beyond national jurisdiction, and the second with issues related to the territorial sea, the contiguous zone, the continental shelf, the exclusive economic zone, the high seas, landlocked countries, closed shelf, narrow shelf or small coast countries, and transmissions from the high seas. The issue of the marine environment was dealt with by the third committee.

Finally, the United Nations Convention on the Law of the Sea (UNCLOS)[24], together with Resolutions 1 to 4, which are an integral part of it, was adopted on 10 December 1982 in the Jamaican city of Montego Bay which was chosen as the venue for signing at the end of the eleventh session[25].

The Convention contains a comprehensive compilation of the Law of the Sea in a single text. It establishes a universal legal regime for the world's oceans and seas and sets the rules governing the uses of the oceans and their resources, while providing a regulatory framework for the future development of specific areas of the Law of the Sea. It has 320 articles and nine annexes. It entered into force on 16 November 1994, following the deposit of the 60th instrument of ratification, and supersedes the 1958 Geneva Conventions. It has been in force in Spain since 14 February 1997[26].

On 28 July 1994, the UNGA adopted the Agreement on the implementation of Part XI of UNCLOS, on the area beyond the limits of national jurisdiction, which entered into force in general terms on 28 July 1996 and was ratified by Spain together with the other parties at the Convention[27]. All EU countries are parties to UNCLOS and the EU acceded to UNCLOS and the Agreement on the implementation of Part XI in 2003. Subsequently, the1995 New York Agreement, implementing Part XI of UNCLOS, was adopted for the long-term conservation and sustainable use of straddling and highly migratory fish stocks.

The Jamaica Convention was the result of complex negotiations and compromises that allowed a delicate consensus to be reached that reconciled the general interests of all countries. It succeeded in comprehensively regulating various aspects of the Law of the Sea, including the extent and legal regime of the different maritime areas, which can be summarised as follows:

24 See: https://www.un.org/Depts/los/convention_agreements/texts/unclos/convemar_es.pdf

25 It received 130 votes in favour, 4 against and 17 abstentions, including an abstention by Spain.

26 The instrument of ratification was published in the BOE of 14 February 1997, No. 39.

27 Ibid, 13 February 1997, No. 38.

- **Inland waters:** waters inside the baseline of the territorial sea, including rivers, lakes, ports and inland waters. They have the same status as the mainland and are under the full sovereignty of the coastal state.
- The **territorial sea**: waters that are twelve nautical miles from the baseline, the point from which the band is measured. State sovereignty extends to the airspace, seabed and subsoil of this strip. Vessels belonging to other states have the right of innocent passage, although the coastal state has the right to establish sea lanes and devices to separate maritime traffic.
- The **contiguous zone**: extends from the outer limit of the territorial sea up to 24 nautical miles from the baseline, the point from which the band of the territorial sea is measured. The coastal state may take measures to prevent and punish violations of its customs, fiscal, immigration and sanitary laws and regulations.
- The **exclusive economic zone (EEZ)**: extends up to 200 miles from the baseline, the point from which the band of the territorial sea is measured. The coastal state has sovereign rights for the exploration, exploitation, conservation and management of natural living or mineral resources in its waters, and marine seabed and subsoil, as well the right to energy production from water. It also has the jurisdiction to establish artificial islands and structures, for marine research and the protection and conservation of the marine environment. Other states have freedom of navigation, overflight, laying of submarine cables and pipelines.
- The **continental shelf**: may be extended, subject to certain conditions, by 150 miles from the EEZ boundary up to 350 miles, and confers sovereign rights on the coastal state over the exploration and exploitation of the natural resources of the seabed and subsoil, although exploitation is subject to specific payments to the International Seabed Authority (ISA).
- The **high seas**: the high seas are beyond the outer limit of national maritime spaces. This area is free and open to all coastal and landlocked states for peaceful purposes. The resources of the seabed, ocean floor and subsoil are the common heritage of mankind. Regulation of the high seas is addressed in Part XI of UNCLOS, which establishes the ISA, based in Jamaica, to control the activities of the high seas and to ensure the protection and preservation of the marine environment.

4. Spanish regulations

Spain, did not wait for the 3rd Conference debates, which were already at a very advanced stage, to conclude and approve Law 10/1977[28] on the territorial sea, to define its concept in accordance with the Geneva Convention and set the band

28 BOE, 8 January 1977, No. 7.

width at twelve nautical miles, the extension established by the majority of States, also coinciding with the provisions of Law 20/1967, for fishing purposes, and Decree 3281/1968, for customs purposes and the repression of smuggling. The inner limit of the territorial sea was determined by the low water mark and, where appropriate, by straight baselines established by the government in accordance with international rules. The median criterion was also established as a general rule for delimiting the outer limit, in cases when waters overlapped with neighbouring countries whose coasts are opposite Spanish coasts.

Decree 627/1976 had been issued to develop Law 20/1967, and was subsequently rectified by RD 2510/1977 of 5 August[29], which established the geographical coordinates used to delimit what was at the time known as *Spanish jurisdictional waters*, and to measure the width of the 12-mile fishing zone. For the Canary Islands, the criterion adopted was to draw straight baselines along the coast and the coordinates of each of the islands of the archipelago were singled out separately, with the exception of the easternmost islands of Lanzarote and Fuerteventura, and the islets of Alegranza, Graciosa, Montaña Clara and Lobos, which were grouped together in order to draw the perimeter where the most salient points of the islands joined.

The coordinates marked in RD 2510/1977 by the Ministry of Defence were subsequently sent to the UN Secretary General (Lacleta, 2005:5)[30], in compliance with the provisions of Art. 16.2 of UNCLOS, following the guidelines of the office of legal affairs of the Division for Ocean Affairs and the Law of the Sea[31].

Law 15/1978[32]was published shortly afterwards, in which Spain joined the trend followed by most countries to extend the EEZ from the outer limit of the territorial sea to an extension of two hundred nautical miles, counted from the baselines used to measure the width of the territorial sea. The Spanish State proclaimed its sovereignty for the purposes of the exploration and exploitation of the natural resources of the seabed and subsoil and the overlying waters of this maritime strip, extending to it the fishing rights established by the previous legislation. This law determines, for the first time and at a national level, the method of measuring the economic zone of archipelagos, starting from straight baselines joining the end points of their islands and islets, so that the resulting perimeter follows the general configuration of each archipelago. It also confirms the median or equidistant line as the system for delimiting the outer boundary of the EEZ with states with opposite or adjacent coasts. For archipelagos,

29 BOE, 30 September 1977, No. 234.

30 The author notes the following: [...] "the text of the Decree with the data corresponding to the delineation of these baselines and the coordinates of their end points were communicated to the UN and are published by the UN Office of Ocean Affairs in the volume on baselines, which also contains illustrative maps on pages 281 to 283 of this volume."

31 Guidelines on the deposits of charts and lists of geographical coordinates under the United Nations Convention on the Law of the Sea can be found at the following link:https://static.un.org/Depts/los/doalos_publications/publicationstexts/DepositGuidelinesSpanish.pdf

32 BOE, 23 February 1978, No. 46.

the median is calculated based on the archipelagic perimeter above. However, this legal text was left with its regulatory development pending and did not establish the coordinates of the EEZ corresponding to the Canary Islands archipelago.

However, it should be noted that the part of regulatory text RD 2510/77 that contradicted the later, higher-ranking law 15/1978[33], should be understood to have been repealed (Morales, 2002). This later law introduced a specific measuring method to configure the baselines of the archipelagos and its second final provision expressly modified law 20/1967, as well as any other regulations that contradicted it. It is important to remember that aforementioned RD 2510/1977 is the result of Law 20/1967, in which the government reserved the right to draw baselines in the places it considered appropriate, in accordance with international regulations, which at that time were represented by the Geneva Conventions. Consequently, I consider that the aforementioned provision lacks effectiveness, as far as the delimitation of Canary Islands' waters is concerned, as international regulations have been subsequently modified, following the entry into force of the Jamaica Convention, and national regulations, through Law 15/1978 and, above all, the Canary Islands Water Law 44/2010. However, it would certainly help, for the sake of legal certainty, if a new regulation were adopted that expressly repeals RD 2510/1977 to correct, at an international level, the geographical coordinates of the Canary Islands' waters and the territorial sea measured from archipelagic baselines, so this new regulation can be sent to the United Nations, under the protection of articles 16 and 47.9 of UNCLOS, together with the coordinates and nautical chart incorporated into the Statute of Autonomy of the Canary Islands.

It would also be appropriate to approve a regulation implementing Law 15/1978, which has already been provided for in its third final provision, specifically establishing the extension of Spain's EEZ in the area of the western Atlantic Ocean by the Canary Islands archipelago and, in compliance with the provisions of Article 75.2 of UNCLOS, to send the UN Secretary-General, for deposit and publication, the charts and geographical coordinates corresponding to the EEZ projected for the Canary Islands waters, as has already been done in the case of the Balearic Islands following the publication of Royal Decree 236/2013.[34]

In this context, it is understandable that our previous laws were not amended when UNCLOS entered into force, as they were based on customary international law and complied with, or did not contradict, the new international treaty. Subsequently,

33 The STS of 16 June 2008 (Third Chamber) considers that Law 10/1977 on the territorial sea was tacitly repealed by subsequent Law 15/1978. Its 7th legal basis reads: [...] "from a domestic law point of view, the Exclusive Economic Zone could be understood to govern the two hundred miles that are measured based on the archipelagic principle, since it can be assumed that Law 10/1977 has been tacitly repealed by the subsequent Law of 20 February 1978".

https://vlex.es/vid/dominio-maritimo-plataforma-continental-42923317

34 On 31 August 2018, Spain deposited with the United Nations the list of geographical coordinates of the outer limits of the EEZ in the north-western Mediterranean, corresponding to the eastern coasts of the Iberian Peninsula and the Balearic archipelago.

Law 27/1992 on State Ports and the Merchant Navy[35] was published, Article 7 of which regulated the areas in which Spain exercises sovereignty, sovereign rights or jurisdiction for navigation purposes, including inland waters and the contiguous zone. This fragmented national legislation is compensated for to a certain extent by the direct application of the precepts of UNCLOS, which prevail over domestic law (Art. 96.1 EC) and systematise the extent of marine spaces, the competences exercised over them by the coastal states, as well as the criteria for delimitation in the event of overlapping waters between neighbouring countries.

5. The Canary Islands' waters in the Spanish legal system

The Canary Islands' waters were regulated for the first time by Law 44/2010[36], passed under the 1996 Statute of Autonomy[37], which addressed a historical claim by Canarian representatives from all political parties[38].

The law was largely adopted due to a pact between the governing party (PSOE) and Coalición Canaria, which saw the latter political group support the budget law. This could explain a certain level of haste in approving a legal text that called the *Canary Islands' waters* 'archipelagic waters' which, according to Art. 49.1 of UNCLOS, are waters enclosed by the baselines of archipelagos. The baselines that join the extreme points of the islands following the configuration of the archipelago, as defined in Law 44/2010, were those already used in Law 15/1978, and expressly measure the outer width of the Canary Islands' waters[39] corresponding to the EEZ and implicitly measure the inner maritime spaces of the inter-island waters.

Another aspect addressed in Law 44/2010 was the declaration that the Canary Islands waters represented the special maritime area of the Autonomous Community. This was just a theoretical declaration without practical application insofar as, at that time, the Statute of Autonomy only covered the land territory of the islands and did

35 This law was replaced by Royal Legislative Decree 2/2011, of 5 September, which approved the Consolidated Text of the Law on State Ports and the Merchant Navy. The rules on maritime navigation contained in Law 14/2014 of 24 July also regulate some aspects of UNCLOS in this area.

36 BOE, 31 December 2010, No. 318.

37 LO 4/1996, of 30 December 1996 (BOE of 31 December 1996, No. 315) reformed the first Statute of Autonomy of the Canary Islands approved by Organic Law 10/1982.

38 The law's explanatory memorandum mentioned the senator for Coalición Canaria, Victoriano Ríos, who presented one of the first bills on this issue in 2003. Participation in the Foreign Affairs Committee by the Canary Islands deputies José Segura (PSOE) and José Luis Perestelo (Coalición Canaria) was decisive in drafting the final text of the law. In fact, Perestelo and Ana Oramas signed the bill that was finally approved with some modifications, entitled *Delimitation of the Maritime Spaces of the Canary Islands*. *See:*B-195-1.indd (congreso.es)

39 By the Canary Islands' waters, I generally mean the oceanic space surrounding the Canary Islands archipelago. I use this term in a broad sense to include both the *Canary Islands' waters*, delimited by statute, and the marine spaces over which the Spanish State exercises sovereignty or jurisdiction and which are governed by state and international regulations.

not grant autonomous powers over the strip of sea that joins them. Consequently, in order for the Canary Islands to have their own maritime domain, it was necessary to think of the archipelago as an inseparable group of land and water, rather than as a group of disconnected islands[40].

However, Law 44/2010 was a precursor to the reform of the Statute of Autonomy subsequently carried out by Organic Law 1/2018 of 5 November (Ovejero, 2004: 186)[41]. Article 4.1 of this law solved the problem by adding the sea to the spatial scope of the Community, together with the islands that make up the archipelago. The current Statute reproduces the full text of the Canary Islands Water Law verbatim and also includes as an annex the same graphic of the perimeter contour of the Canary Islands' waters, as shown below.

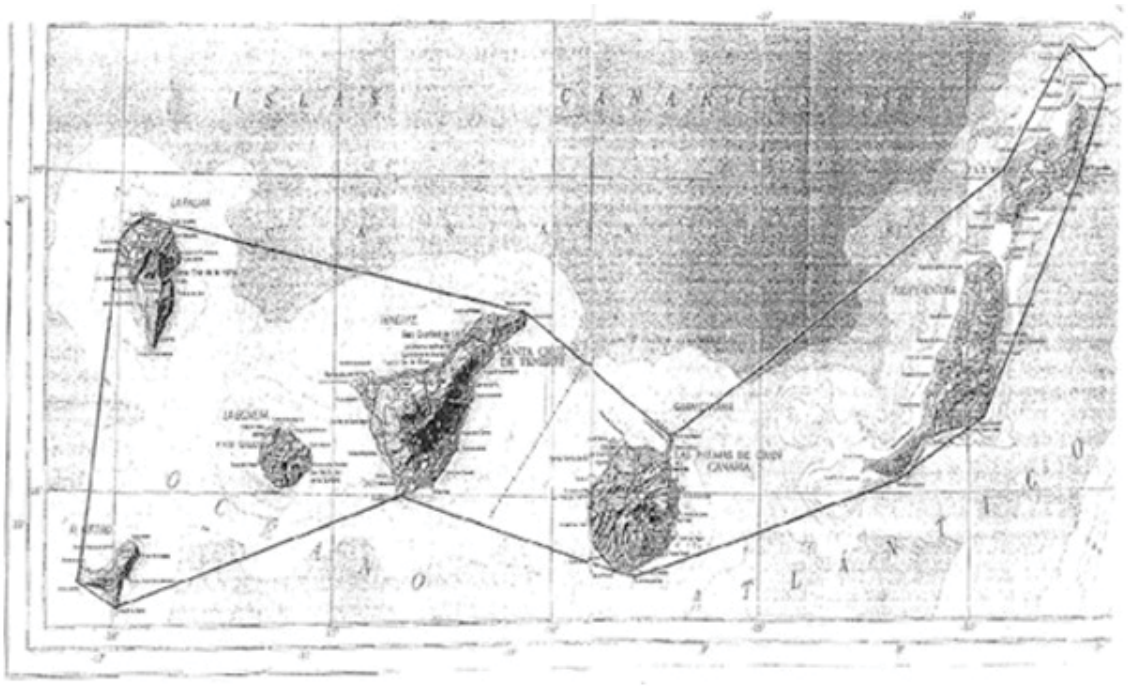

Figure 1. Map of Canary Islands' waters, delimited according to the coordinates established in Annex II of the Statute of Autonomy (LO 1/2018). Source: BOE:https://www.boe.es/buscar/act.php?id=BOE-A-2018-15138

Consequently, including the sea as part of the Community's territory, by means of a statutory regulation, has been a fundamental milestone that gives meaning to the definition of the Canary Islands' waters. They are incorporated into the special maritime sphere of the Autonomous Community and governed by autonomous competences that are not reserved for the State.

40 The author points out that: "[…] in the case of the Canary Islands, the surrounding sea could be considered an inherent part of the special nature of the Canary Islands and should therefore be recognised as such. For this to be possible, a reform of the Canary Islands Statute would also have to be carried out, specifically a reform of Article 2, which would recognise the inter-island sea as territory belonging to the Autonomous Community and as an element inherent to its special island state, recognised and protected by the Constitution."

41 BOE, 6 November 2018, No. 268.

Furthermore, Art. 4.5 of the Autonomous Statute reiterated the proviso established in the additional provision of Law 44/2010, which was predictably entitled *Respect for International Law*. This banality could be seen as the legislator reaffirming that the marine spaces surrounding the waters of the archipelago, under Spanish sovereignty or jurisdiction, must be measured from the archipelagic baselines that delimit the Canary Islands' waters, implying that the perimeter contour of these waters has been established by Spanish legislation while taking into consideration international Law of the Sea. In any event, applying the archipelagic principle to the Canary Islands, as provided for by our legislation, is a unilateral legislative act without prejudice to international law, which prevails over domestic law.

6. Applying the archipelagic principle to the Canary Islands

Whenit came to establishing the borders of the Canary Islands' waters, the provisions of UNCLOS regulating maritime spaces of state archipelagos were followed, and it is a matter of debate whether or not they can be extrapolated to a mixed state such as Spain. As is well known, Part IV of the Convention restricts the application of its precepts to archipelagic states that also meet the special characteristics defined in Article 46 b). International regulations are very exact in this area and do not cover any group of islands that geographically form an archipelago; they must also constitute a geographical, economic, political and historical entity of relevance and follow the specific guidelines for drawing baselines listed in Art. 47.

The Community of the Canary Islands meets all the conditions set out in Art. 46 b) and can be considered an archipelago for international purposes . The relevant geographical criteria are definitely met[42], bearing in mind that the Canary Islands is a volcanic region with an estimated geological age of around 20 million years and its land covers an area of 7,447 km2. It is also home to ecosystems that are unique on the planet, due to their biodiversity and large number of endemic species. The Canary Islands archipelago forms part of the Macaronesia biogeographical region, together with the archipelagos of the Azores, Madeira and Cape Verde (García-Talavera, 2021: 16)[43].

42 The current Statute of Autonomy defines the Canary Islands as an Atlantic archipelago consisting of the sea and the islands and islets that compose it: seven islands with their own administration: El Hierro, Fuerteventura, Gran Canaria, La Gomera, Lanzarote, La Palma and Tenerife, as well as the island of La Graciosa and the islets of Alegranza, Lobos, Montaña Clara, Roque del Este and Roque del Oeste. La Graciosa was deemed to be the eighth island in the archipelago, instead of being an islet as before. Unlike the other islands, which have their own Cabildo (Regional Government), the island of La Graciosa does not have its own administration; it is part of the Lanzarote municipality of Teguise, and is governed by the Cabildo of Lanzarote.

43 […] "In the mid-19th century, English botanist Philippe Baker Webb recovered the name Macaronesia from Greco-Roman mythology." The term comes from ancient Greek and derives from the conjunction of the words *makarion*, meaning happiness, and *nesoi*, meaning islands, clearly inspired by the Roman name for the *fortunate islands* by which the Canary Islands were known.

In terms of the economy, the GDP of the Canary Islands exceeds 42 billion euros, with a GDP per capita of approximately 19,000 euros and a population of almost 2,200,000 inhabitants. These economic and population figures[44] are well above the average for archipelagic states.

Politically, within the Spanish system, the Canary Islands is an autonomous community divided into the provinces of Las Palmas and Santa Cruz de Tenerife, and it exercises the right to self-government as a nationality. Accordingly,Art. 138.1 of the Constitution, in proclaiming the principle of inter-regional solidarity, recognises the constitutionally significant fact that the differential feature of this Community is its status as a series of islands,[45], and this is enshrined in the Statute of Autonomy.

In terms of history, the Canary Islands have been linked to Spain for more than five centuries. They were incorporated into the Crown of Castile at the end of the 15th century under the Treaty of Alcaçovas[46], while the Azores, Madeira and Cape Verde archipelagos remained in Portuguese hands.

In view of the above, it can be concluded that the natural elements of the Canary Islands make it impossible to conceive of each of them separately, as they intrinsically form a unit as a cohesive archipelago with a special geographical and political character. Furthermore, the economic and historical importance of the Canary Islands is not only in line with the requirements of UNCLOS, but also goes beyond, in historical, economic and population parameters, that of most archipelagic states, especially those known as Small Island Developing States (SIDS)[47].

Finally, the baselines of the Canary archipelago also comply with the requirements of UNCLOS. In this regard, Art. 47 stipulates that they must be straight lines that, following the general configuration of the archipelago, join the far ends of the islands; the main islands must be included within their perimeter and they should cover an area in which the ratio between the sea area and the land area is between 1:1 and 9:1. The length of the lines may not exceed 100 nautical miles, although, as an exception, 3% of the total number of lines may exceed that length, up to a maximum of 125 miles.

The perimeter contour line that encloses the Canary Islands waters draws an irregular polygon, complying with the relationship between land and sea authorised by UNCLOS. Its shape corresponds faithfully to the distribution of the islands in

44 See TABLE-OF-INDICATORS-OF-THE-ECONOMY-CANARIA_2023-01-30.pdf (gobiernodecanarias.org).

45 Constitutional protection of the Canary Islands, as islands, also entails special features that are distinctive to the Canary Islands, such as the Cabildos, local bodies that are directly and democratically elected, and represent each of the islands.

46 The pact signed in the Portuguese town of Alcaçovas on 4 September 1479, between representatives of King Alfonso V of Portugal and the Catholic Monarchs, divided the Atlantic archipelagos between the kingdoms of Portugal and Castile.

47 Small Island Developing States (SIDS): [Conferences | Small Island Developing States | United Nations] were recognised at the United Nations Conference on Environment and Development in 1982 [United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992 | United Nations] as a collective of 38 UN member states facing specific social, economic and environmental vulnerabilities.

the ocean. It is laid out in straight lines between the outermost points of each of the islands, and the individual lengths of lines do not exceed 100 miles at any point. Therefore, the configuration of the Canary Islands waters regulated in our positive law is in accordance with all the analysed requirements included in the Law of the Sea.

7. The analogous extension of the archipelagic system to specific State archipelagos

The legal concept of an *archipelagic state* was incorporated into the UNCLOS text on the initiative of Indonesia, the Philippines and Fiji. Prior to the Third Conference, a wide-ranging debate took place with conflicting positions. On the one hand, the major powers and countries with foreign archipelagos close to their shores opposed the Convention's introduction of a specific regime for establishing archipelagic baselines, which they considered detrimental to their interests. On the other hand, a group of continental countries with island territories, including Spain (Cervera, 2009:353-359)[48], were generally in favour of introducing the archipelagic principle (Orihuela, 2011:9)[49], while archipelagos who were politically established as states claimed that it should apply exclusively to them, an option that finally prevailed, with some restrictions as we have seen.

While it is true that Part IV of UNCLOS covers archipelagic states, it is also true that it does not regulate mixed states that include a continental space and one or more archipelagos in their territory. While there are regulations for islands, regardless of their political status, the specific doctrine for a group of islands that make up an archipelago that is dependent on a state is not covered by the Convention. As Ambassador Yturriaga Barberán explains (Yturriaga, 2022: 237): "The Spanish delegation did not succeed in getting UNCLOS to accept that the archipelagic principle should also apply to archipelagos that are part of a continental state, and UNCLOS remained silent on the matter." Therefore, the Law of the Sea does not prohibit extending the application of the archipelagic state doctrine to archipelagos that are part of a continental State. In other words, the situation is unregulated but is not prohibited either.

48 The author, a member of the Spanish delegation to the 3rd Conference, explains that [...] "the text that emerged from the Convention regarding the regime of the islands is not entirely favourable to Spanish interests, although it was understood that any modification that might have succeeded could have been more detrimental in terms of a more restrictive definition of the marine spaces of islands. Nations such as Algeria, Libya and Morocco sought to introduce amendments to address the negative effect that specific islands belonging to one state might have on the delimitation of the marine spaces of another coastal state, when these islands are located in front of it. For Spain, the baseline system for an archipelago belonging to a continental state is important; hence Spanish opposition to anything that would imply a substantive change."

49 The author points out that: "Among the states that spoke in favour of extending the benefits of the principle to archipelagic states, either in the Conference Plenary or in the Second Sub-Committee were: Argentina, Chile, Cyprus, Ecuador, Spain, Greece, India, Peru and Portugal. Opponents to its extension included: Algeria, Belgium, Burma, Mauritania, Mauritius, Pakistan (although only in enclosed or semi-enclosed seas), Thailand, Tunisia and Türkiye."

We are therefore faced with a legal loophole that must be closed by analogous means. *Analogia legis* is a legal technique used to fill possible legal gaps; it consists of applying a legal rule or legal text to a factual situation that is not expressly regulated, and is used in cases which are not expressly excluded and are very similar in nature. According to Art. 4.1 of the Civil Code, analogous enforcement is applicable when a law does not cover a specific case, but regulates another similar case and there is similar reasoning between the two. Analogous interpretation may not deviate from or contradict the rule of positive law taken as its reference point, and it must be applied in its entirety to the unregulated analogous case.

Therefore, in my opinion, it is legally feasible for Spanish legislation to analogously transpose all of Part IV of UNCLOS to the Canary Islands in a way that respects the precepts of an international treaty, which form part of our positive law (Art. 96.1 CE). It is essentially a question of taking inspiration from international regulations[50] to give legal coverage to a situation that is neither expressly addressed nor excluded by these regulations.

The same practice has been followed by several mixed states[51] that have passed unilateral laws applying the international legal doctrine of sovereign archipelagos to their island territories, with some special features. This type of national legislation has generally gone unchallenged by the rest of the international community, which can be interpreted as tacit acceptance. With regard to the Canary Islands' waters, it should be noted that there is no conflict over their extent and the measurement of the territorial sea and contiguous zone, since they do not overlap with the claims of other coastal states. A different issue, which is not addressed in this article, is the problem of delimiting the remaining maritime areas of the Canary Islands waters (EEZ and continental shelf), due to overlaps with Morocco[52] to the east and with Portugal to the north-east. These countries have extended their maritime borders under their internal legislation to limits that partly coincide with those set out in Spanish legislation[53].

50 A similar precedent was set when many countries extended their Exclusive Economic Zone to 200 miles during the Geneva Convention, when agreement couldn't be reached on its width due to the differing positions of several states. On that occasion there was also a legal loophole which, through customary law, was eventually incorporated into the Montego Bay Convention.

51 Within the EU, this legislative option has been adopted by Portugal for the Azores and Madeira archipelagos and by Denmark for the Faeroe Islands archipelago, which enjoy a certain degree of autonomy. Other mixed states such as Australia, Canada, Ecuador, India and Norway have also applied the same principle to their archipelagos.

52 The Permanent Mission of Morocco to the UN issued note NV/ATL/No./114/2015 dated 10 March 2015, in which it expressed its reservations about the expansion of the Canary Islands' continental shelf, due to the interpretation of Law 44/2010 on the archipelagic doctrine and establishment of baselines, which it considered were not in accordance with Part IV of UNCLOS. However, the Permanent Mission of Spain replied to the Moroccan note on 22 April 2015, clarifying that the delimitation of the maritime waters of the Canary archipelago had already been covered by Law 15/1978, prior to UNCLOS.

53 Apart from domestic law, all three countries are parties to the Montego Bay Convention, the provisions of which prevail and are applicable when resolving disputes. The criterion established in the Convention for settling any dispute concerning the delimitation of the exclusive zone or shelf between States with adjacent or conflicting coasts is that an equitable agreement be reached on the basis of international law, hence the importance of negotiations to achieve this. If there is no agreement, and until such time as agreement is reached, the equidistant rule is applied as an interim solution.

8. The regime of islands

On a separate issue, Part VIII of UNCLOS addresses the regime of islands and its Art. 121 simply establishes them as a geological concept, defining them as a natural extension of land, surrounded by water and above sea level. Only artificial islands and rocks unfit for human habitation or without an economic life of their own are excluded. The Convention equates islands to small continents, ignoring criteria such as their independence or whether they belong to a state when it comes to granting them the same territorial sea, contiguous zone, economic zone and even continental shelf as other land areas (Yturriaga, 2022: 236)[54].

There would therefore be nothing to prevent the individual Canary Islands, according to the strict application of the Law of the Sea, from establishing baselines enclosing their internal waters and from there measuring the width of the territorial sea of each island and of the remaining marine areas. However, taking the island as a reference point would be a departure from Spanish legislation and also lead to an overlap between the majority of island aquatic spaces and their various applicable legal regimes. These would be difficult to resolve, generating confusion and causing legal uncertainty, given the unique location of each island in the ocean, as can be seen in the following image (Martín, 2005), in which the internal waters are shown in blue, and the territorial sea of each island and group of eastern islands, is in red.

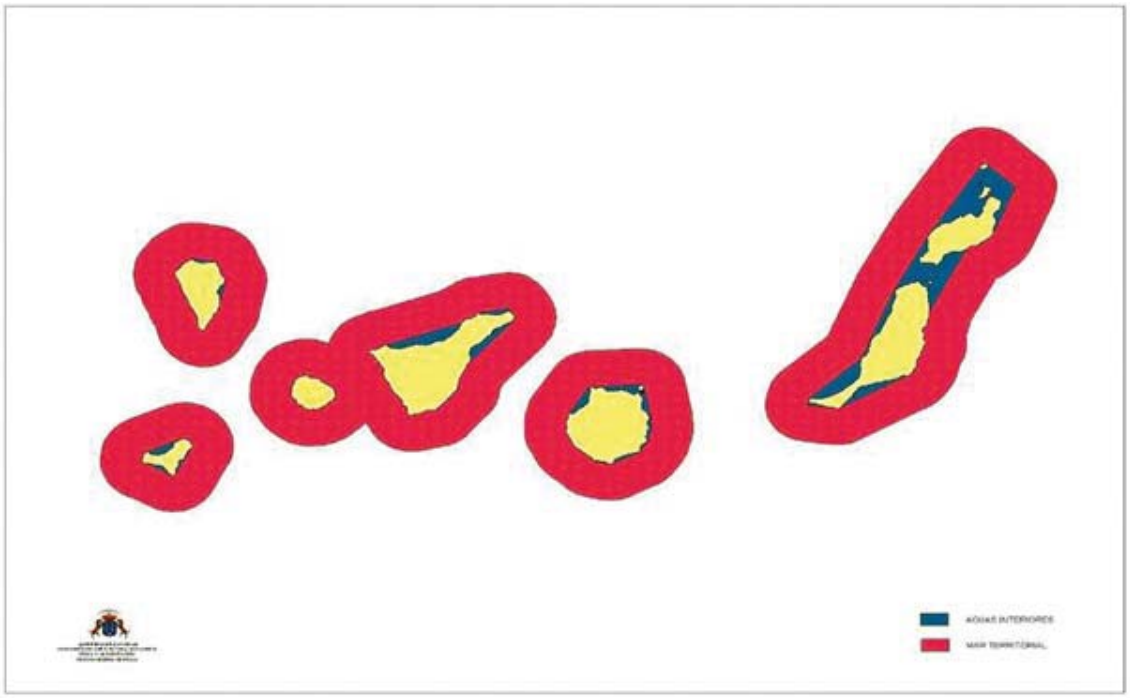

Figure 2. Inland waters and territorial sea enclosure lines, according to RD 2510/77.
Source: Servicio de Estructuras Pesqueras de la Viceconsejería de Pesca del Gobierno de Canarias.

54 The author explains that: "The Spanish delegation contributed to the prevailing thesis that islands had the same rights to maritime spaces as continental masses, in contrast to the criteria of countries such as Morocco, Türkiye and Venezuela."

I therefore believe it to be fair that, in order to establish the contour of the Canary Islands' waters, the Statute of Autonomy has taken the whole archipelago as a reference point, rather than each island separately, in line with the definition of the Canary Islands as an Atlantic archipelago, in which the system of self-government is based on its exceptional geographical location, characterised by its remoteness from the European continent, its island status and the fact it is an Outermost Region[55]. These special differential, statutory and European characteristics explain why the Canary Islands is the only Spanish Community with its own maritime area made up of inter-island waters which, together with the land surface of the eight islands and islets that make up the Community[56], comprise the area over which it exercises its powers.

UNCLOS provisions only require islands to meet very vague geographical and habitability requirements (no mention, for example, of minimum size or number of inhabitants) in order to configure their water areas. However, this is not the case for a group of islands that comprise an archipelago, which is subject to very comprehensive regulation. As indicated above, archipelagos must not only be a state, they must also have significant geographical features and a relevant historical or economic importance in order for Part IV of the Convention to be applicable to them. However, in the case of the Canary Islands, only the formal political aspect is missing, as has already been explained.

Consequently, the principle that is most suitable and coherent with the Law of the Sea for delimiting the Canary Islands' waters is, in my opinion, the archipelagic principle, as is set out in our legislation. This is also the case due to its clarity and simplicity. However, it is no secret that this issue is not straightforward and that several authors maintain different criteria (Lacleta, 2005; Martin, 2005); although it should be noted that these publications are prior to Law 44/2020.

Without claiming to be exhaustive, some of the authors consulted (Calderon, 2016: 31-33)[57]consider that Spanish legislation lacks international legal effectiveness, as it contradicts the higher-ranking UNCLOS rules, which restrict the application of Part IV exclusively to archipelagic states (Navarro, 2011). There is a middle ground proposed by Professor Eloy Ruiloba[58] (Ruiloba, 2009) and a position similar to the one I hold, given by Professor Esperanza Orihuela (Orihuela, 2011) and shared to

55 In political terms, Outermost Regions (ORs) are European regions that are geographically located on other continents and are governed by Community legislation, with some beneficial exceptions such as those provided for in Article 349 of the Treaty on the Functioning of the European Union (TFEU) to help these territories face challenges that hinder their development, generally arising from their remoteness and isolation.

56 It should not forgotten that the total island and maritime territory of the Autonomous Community of the Canary Islands covers more than 36,000 km2, exceeding the size of historical communities such as Catalonia and Galicia.

57 A more extensive analysis of the different doctrinal positions on this issue is provided in the work cited above.

58 This author proposes a new middle way consisting of broadly applying Art. 7 of UNCLOS so that, taking into account the economic interests of the region, straight baselines can be drawn between the islands.

some extent by José Antonio de Yturriaga (Yturriaga, 2002: 238)[59]. In any case, there is unanimous agreement regards the doctrine that it is unfair, and to a certain extent discriminatory, that Art. 47 of the Montego Bay Convention, on drawing archipelagic baselines, cannot be applied to the Canary Islands. It is also precisely this situation that leads me to step away from an exact interpretation of UNCLOS on this issue, in favour of a teleological interpretation, based on the spirit and purpose of the law.

9. Inland waters and the legal regime for archipelagic waters

After the current Statute of Autonomy, I consider that the political debate that arose during the processing of Law 44/2010 on whether the Canary Islands' waters are considered inland waters has been overcome. Although Spanish law does not regulate the legal regime of inland waters, international law assimilates them into national territory over which the State exercises full sovereignty.

It must be emphasised that Spanish law on the Canary Islands' waters is adapted to international regulations and also that the baselines that define them are in accordance with their requirements. I therefore argue that it is not appropriate to equate archipelagic waters with inland waters (Orihuela, 2011:21)[60];as this would imply an extensive interpretation contrary to international law, which has a separate legal regime for both marine areas[61]. Moreover, not even sovereign island states could do this, as it would contravene Article 49 of the Convention, which includes a special regulation for archipelagic waters, different from inland waters. However, this does not prevent enclosing lines being drawn to separate Canary Islands waters from inland waters, as authorised for archipelagos by Art. 50 of UNCLOS[62].

In terms of the legal regime, the Convention equates inland waters with land space under full state sovereignty, so innocent passage is not permitted. On the other hand, the legal status of archipelagic waters closely resembles the territorial sea and a regime similar to that used for straits is established. According to Art. 49 et seq. of UNCLOS,

59 The cited author states that: "it is within legal logic to extend *mutatis mutandis* some of the provisions of the Convention - such as those on enclosing all or part of the archipelagic perimeter with straight baselines - to state archipelagos, as was done by the 2nd Commission Chairman Reynaldo Galindo in the Single Official Negotiation Text. Spain missed the opportunity to make an exact interpretation in this regard when it signed or ratified UNCLOS, but it refrained from doing so, perhaps to avoid objections from states opposed to this extension of the archipelagic principle."

60 The author argues that "if these(archipelagic) waters were considered to be internal waters, it would have to be understood that our country's intention is to set a precedent tending not only to extend the application of the archipelagic principle to state archipelagos, but also to modify the legal regime of the waters enclosed within the perimeter."

61 See Arts. 49 and 50 of UNCLOS.

62 Inland waters (located inside the baseline of the territorial sea and including the mouths of rivers, bays, ports, roadsteads and low tide elevations) and the territorial sea, are state maritime and land public property assets, according to Coastal Law 2/2013, enacted to develop Art. 132.2 EC, which states that: "TheState's public domain assets are those determined by law and, under all circumstances, include the maritime-land zone, beaches, the territorial sea, the natural resources of the economic zone, and the continental shelf."

sovereignty extends to the airspace above them, as well as to the seabed and subsoil, and vessels of all states enjoy the right of innocent passage. However, transit through archipelagic waters and the adjacent territorial sea can be channelled through sea and air routes suitable for the safe traffic of foreign ships and aircraft, taking into account the recommendations of the relevant international organisation[63]. Under international law, the body responsible for authorising measures to regulate maritime traffic and transit through specific areas is the International Maritime Organisation (IMO) of the United Nations, at the request of the state concerned. Traffic regulation must be based on the need to protect the waters for ecological, socio-economic or scientific reasons and also to prevent environmental risk that may be caused by maritime activities.

The waters of the Canary Islands are subject to intense maritime traffic of all kinds of vessels that travel the great oceanic routes between Europe, Africa and America. Many of these are large vessels transporting oil from Gulf countries and pose a risk of accidental oil spill pollution. In 2003, the Ministry of Public Works submitted the creation of the Specially Sensitive Sea Area (ZMES) of the Canary Islands to the Marine Environment Protection Committee of the IMO. It was approved by a resolution adopted on 22 July 2005, by virtue of which two maritime traffic separation devices were established: a western one between the islands of Gran Canaria and Tenerife; and an eastern one between Gran Canaria and Fuerteventura, indicated on the following nautical chart:

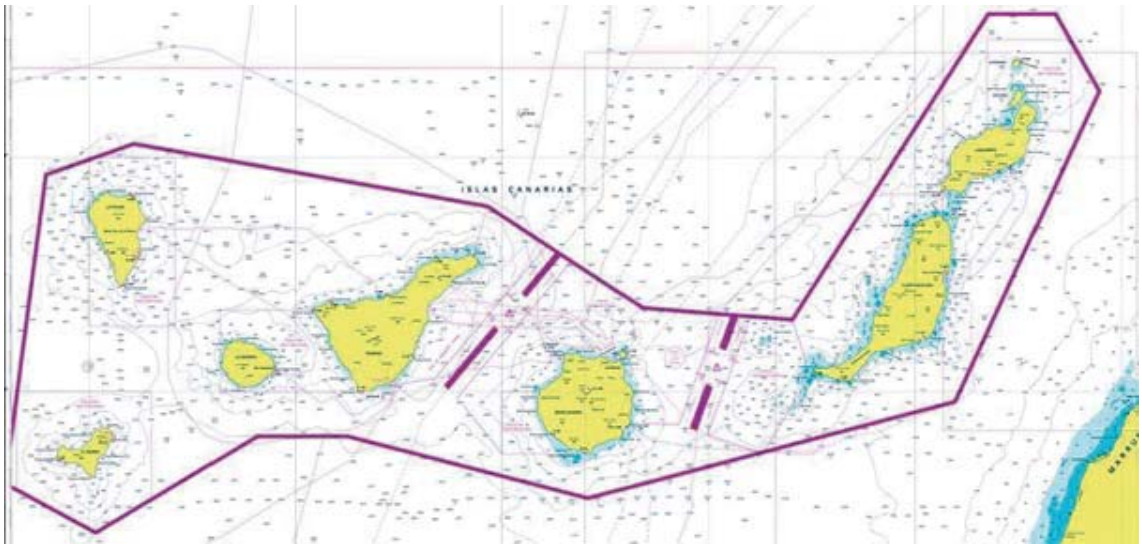

Figure 3. Canary Islands Particularly Sensitive Sea Area.
Source: Resolution MEPC.134 (53) of 22 July 2005 .https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/MEPCDocuments/MEPC.134(53).pdf

These lanes are compulsory for ships in transit whose origin or destination is not a port in the Canary Islands[64]. It should also be noted that the reporting area for ships

63 See Art. 53 of UNCLOS, which gives archipelagic states the option to establish passageways that must comply with international regulations.

64 It established five restricted areas that must be avoided by vessels and a mandatory reporting system for vessels of more than 600 deadweight tonnes intending to travel in the Particularly Sensitive Sea Area and carrying heavy grades of oil.

obliged to participate in the reporting system (CANREP) is delimited on the chart by an outer polygonal line, which reaches up to 12 nautical miles from the territorial sea of the Canary Islands, measured from the archipelagic baselines established in Law 44/2010. This confirms that the IMO did not object to the legal regime for Canary Islands waters which, as far as establishing compulsory shipping lanes is concerned, coincides with the international provisions applicable to archipelagic states.

Furthermore, the airspace over the oceanic surface of the Canary Islands is managed by the public company ENAIRE, which is also responsible, through the Gran Canaria centre, for regulating air navigation in the Western Sahara, in accordance with decisions by the International Civil Aviation Organisation (ICAO), thetechnical body of the United Nations responsible for the technical and economic regulation of world aviation.

10. The Canary Islands search and rescue area

The IMO has adopted important maritime conventions to coordinate the search and rescue obligations of coastal states. The first Convention in this field was the 1974 Convention for the Safety of Life at Sea (SOLAS Convention[65]) which called on states to establish search and rescue facilities and services to assist persons in distress at sea near their coasts.

However, the most important instrument is the SAR Convention[66] of 1979, amended in 2004, which establishes an international system for search and rescue operations, dividing the areas managed by coastal countries into maritime areas. This means that when an accident occurs at sea, the rescue of persons in need of assistance is coordinated by the specialised service responsible for the area in which the accident has occurred. The distribution of SAR areas is based on grounds of operational efficiency, depending on the availability and scope of the rescue resources of the coastal countries that are part of the SAR Convention, who unilaterally notify the IMO of the maritime area for which they are responsible. Rescue demarcations are without prejudice to the delimitation of maritime areas under the sovereignty or jurisdiction of coastal states, which are governed by the 1982 United Nations Convention on the Law of the Sea (UNCLOS). Article 98 of this law obliges the master of a ship to render assistance to any person who is in danger of being lost at sea and also encourages the creation of search and rescue services, stressing the need for cooperation between neighbouring states, regardless of the specific areas assigned to them.

Spain acceded to the SAR Convention in 1993 and notified the IMO that its area of rescue responsibility covers a marine area of 1.5 million km2, divided into 4

65 See: https://www.imo.org/es/About/Conventions/Paginas/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx

66 See: International Convention on Maritime Search and Rescue (SAR Convention)

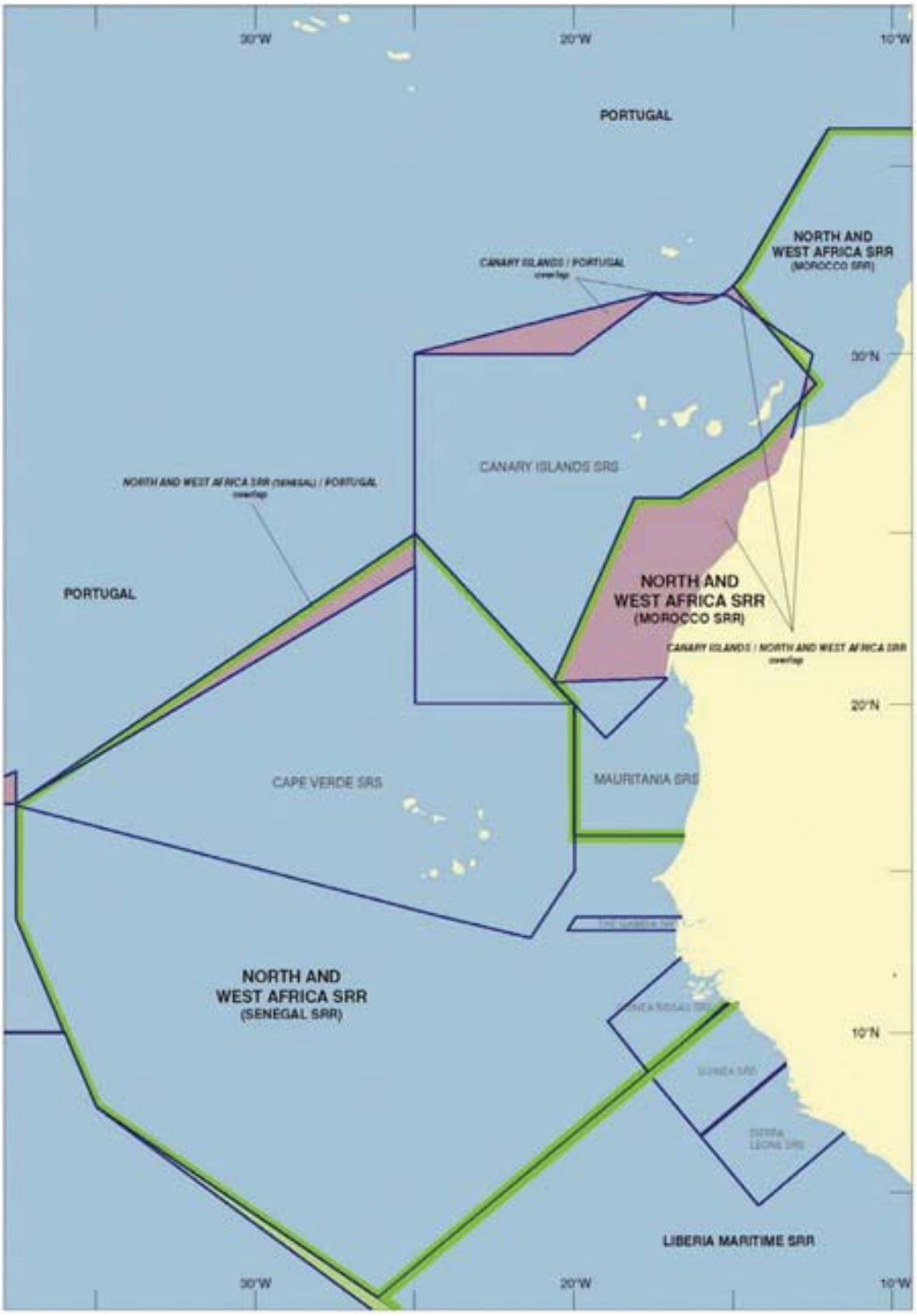

Figure 4. SAR Zone Canary Islands and Morocco
Source: IOM. SAR.8/Circ.3 Annex 4, page 6. world index.CDR (uscg.mil)

zones: Atlantic, Strait, Mediterranean and Canary Islands. They are managed by the public company SASEMAR[67] through its 20 maritime rescue centres, which act as Spanishcoordination centres for the SAR Convention. The Canary Islands area is the largest area and is coordinated through the Maritime Rescue Centres of Tenerife and Las Palmas; it includes the strip of sea adjacent to the entire coast of Western Sahara.

In turn, Morocco ratified the SAR Convention in 1999 and notified the IMO in 2011 of its areas of responsibility, including the South Atlantic region which is associated with the Dahkla coordination centre, which is under the authority of Casablanca. This area includes the maritime space that projects from the coast of Western Sahara and overlaps with the Canary Islands zone. The maps published by the IMO show this strip of sea as an overlapping maritime search and rescue area between Spain and Morocco, in which both countries share responsibility and must coordinate to respond to emergencies that occur in the common area, as can be seen in the following figure:

11. Protection of the marine environment of the Canary Islands

The Autonomous Community of the Canary Islands, as part of the Spanish State and belonging to the EU, has taken on important commitments derived from international, European, national and regional regulations on the management of the marine environment, the protection of biodiversity and the sustainable use of its resources.

In this area, Law 42/2007 on Natural Heritage and Biodiversity[68] created the Marine Protected Area concept so it could be integrated into a network of protected marine areas under state and regional power, within the framework of the 1992 United Nations Convention on Biological Diversity, known as the *Rio de Janeiro Earth Summit*[69].

Furthermore, the Marine Strategy Framework Directive 2008/56/EC, which established general regulations for planning the marine environment with the aim of maintaining a good environmental condition, included the sub-region of European Macaronesia, comprising the Outermost Region archipelagos of Azores, Madeira and the Canary Islands, in the Atlantic space. The previous Directive was transposed into Spanish law by Law 41/2010, of 29 December, on the Protection of the Marine Environment[70], which kept the Canary Islands in the Macaronesian sub-region of the North-east Atlantic, creating the Canary Islands marine demarcation within the

67 The Sociedad de Salvamento y Seguridad Marítima (SASEMAR) is attached to the Ministry of Transport, Mobility and Urban Agenda, through the Directorate General of the Merchant Navy. It was launched in 1993 and its main activity is to save lives at sea, but it is also involved in preventing and combating marine pollution and assisting maritime traffic.

68 BOE, 14 December 2007, No. 299.

69 Spain and the EU ratified the Convention, which calls on parties to create networks of terrestrial and marine protected areas.

70 BOE, 30 December 2010, No. 317.

network of marine protected areas; this is the maritime space in which Spain exercises sovereignty or jurisdiction around the Canary Islands and over which a specific strategy was intended to be developed. Subsequently, Royal Decree 1365/2018, of 2 November[71], approved the marine strategies, including the Canary Islands strategy, which is currently being drafted. On this point, it is extremely important to stress that the marine environment area of planning and protection corresponding to the Canary Islands demarcation, at a European level, coincides with the oceanic space of the archipelago over which the Spanish State exercises jurisdiction, measured using the archipelagic baselines defined in the Statute of Autonomy. In line with the above, the general framework of the first part of the marine strategy of the Canary Islands demarcation , published by the Ministry for Ecological Transition in 2019[72], indicates that the surface area of the demarcation covers 48,616,821.86 hectares, which is practically the same size as mainland Spain, as can be seen in the following map:

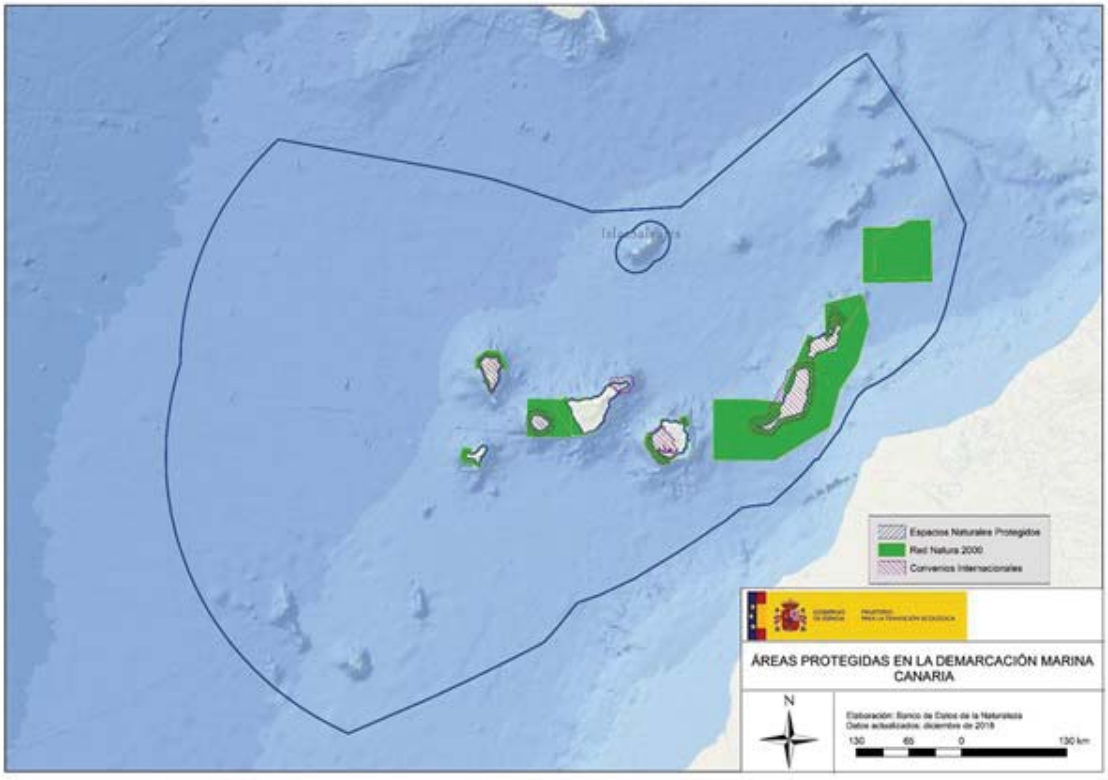

Figure 5. Protected areas in the Canary Islands demarcation. The blue line outlines the marine demarcation of the Canary Islands. Source: Marine strategy for the Canary Islands demarcation. Part I. General Framework. Ministry for Ecological Transition.

In this same context, Framework Directive 2014/89, which was incorporated into Spanish legislation through RD 363/2017[73], established a general regime for the

71 BOE, 19 November 2018, No. 279.

72 See page 1: https://www.miteco.gob.es/content/dam/miteco/es/costas/temas/proteccion-medio-marino/parteimarcogeneraldmcan_tcm30-498330.pdf

73 BOE, 11 April 2017, No. 86.

planning and management of marine areas and to promote sustainable development, while providing for the approval of a specific plan for each of the five Spanish marine demarcations[74]. Finally, RD 150/2023, of 28 February[75], approved the maritime spatial plans for the five Spanish marine districts[76], which form part of the marine strategies and are binding for the public administrations. Its main purpose is to promote the sustainability of the growth of maritime economies, the development of marine areas and the use of marine resources.

12. Some final considerations

It is clear that, in the more than 40 years that have passed since the Montego Bay Convention was signed in 1982, modern societies have evolved towards greater environmental awareness. The immediate future of humanity will undoubtedly be increasingly linked to the blue economy. Countries in the international community have realised the importance of the oceans for life on the planet, as well as their influence on climate change and global warming, as shown by the numerous initiatives undertaken by the United Nations. The interconnectedness of the seas calls for universal action to preserve a healthy marine environment for the benefit of mankind as a whole.

The paradigm on maritime spaces that inspired the origins of the Law of the Sea, which took sovereignty and the continent as the main concept to which islands are subordinated, is now outdated. There are quite a few cohesive archipelagic regions that, like the Canary Islands, are more socially and economically advanced than some continental states or even most state-like archipelagos, especially when compared to SIDS, many of which do not have the financial capacity to meet their international obligations to conserve and control their maritime spaces[77].

It is also noted that many unilateral national decisions applying the archipelagic principle to non-sovereign island territories constitute an international practice followed by a good number of states, and there is considerable tolerance for this. I

74 The explanatory memorandum stated that the provision was intended to meet the commitments of the European Green Pact, the Paris Agreement, the EU Climate Change Adaptation Strategy and the EU Biodiversity Strategy to 2030.

75 BOE, 04 March 2023, No. 54.

76 In the case of the Canary Islands, the maritime-land areas protected by international instruments are the Biosphere Reserves of the islands of Lanzarote, Fuerteventura, Gran Canaria, La Gomera, La Palma, and the Macizo de Anaga in Tenerife. 2 Sites of Community Importance, 13 Special Protection Areas for Birds and 27 Special Areas of Conservation of the Canary Islands Demarcation have been integrated into the European Natura 2000 Network (Directive 92/43/EEC).

77 See:*The United Nations Convention on the Law of the Sea*: *A historical perspective* (1998). Overview - Convention & Related Agreements (un.org): [...] "Another major challenge will be to provide the necessary assistance, particularly to developing States, to enable them to benefit from the rights they have acquired under the new regime. For example, many of the states that have established their EEZs are not currently in a position to exercise all their rights and fulfil their obligations under the Convention [...] these are long-term efforts that are beyond the current and possibly short-term capacity of most developing countries."

therefore consider that the sovereignty requirement for shaping archipelagic waters should not be exclusive. In my opinion, it should be extended to certain archipelagic states that, as in the case of the Canary Islands, have a special historical significance or form an intrinsic geographical, economic and political entity, in accordance with Art. 46 b) of UNCLOS, provided that they have the responsibility and capacity to protect and preserve the marine environment, which was already established as a primary obligation for states in UNCLOS (Art. 192), but without ever establishing mandatory measures.

Maritime spaces confer rights on coastal territories, but also entail surveillance, rescue, and conservation obligations. Therefore, in the case of particularly important archipelagos, being committed to protecting the marine environment, which is in the interests of the international community as a whole, should take precedence over formal questions of sovereignty in establishing the contour and outer limit of inter-island waters. In fact, the legislation of the Canary Islands, as a Spanish and European region, is a world leader in terms of the protection and sustainable use of its maritime spaces and resources.

The Law of the Sea, like international law in general, is permanently evolving to adapt to the new realities of a changing world. In addition to worldwide concern over protecting and restoring the marine environment, it is essential that maritime spaces are defined, and their legal regime is regulated, with as much clarity as possible, whether they are state-owned or belong to mankind as a whole, for the sake of legal certainty and to avoid any possible boundary conflicts.

This paper has addressed a problem that was left unresolved during the discussions at the 3rd Conference due to discrepancies that arose between different blocs of countries with opposing interests. A pragmatic consensus-building decision was taken to establish a special legal regime for archipelagic states, but failed to address the regulation of historical or special archipelagos belonging to a continental state. The analogous application of the archipelagic principle by Spanish laws to determine the contour of the Canary Islands' waters is not only in line with the international Law of the Sea, but is also highly respectful of it, since it applies it rigorously and in its entirety to a similar case, which is neither covered nor excluded by UNCLOS.

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