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Is the Bucharest Convention on the Protection of the Black Sea against Pollution still a Matter of General Concern? Has it Reached its Purpose?

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Abstract

If one takes into account the challenges that the Black Sea faces – eutrophication, chemical pollution, threats to biodiversity and dramatic reduction of living marine resources, mainly due to the inappropriate conservation measures regarding the fishing areas at the maritime basis – the question that arises is whether we can assert –after 20 years of application – that the Bucharest Convention on the protection of the Black Sea against pollution is still useful, that it has reached its purpose. The question is favored by the fact that the European Union seems more and more concerned with cooperation in the area, which also results from the former Communication of the Commission “Black Sea Synergy – a New Regional Cooperation Initiative”, COM(2007)160.

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JEL Classification Codes: *Q53, Q58*

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Introduction

The impact of eutrophication on the Black Sea, from 1960 until 1990s, results from a series of indicators (European Institute of Romania, 2007): the transparency of water (m) decreased by half; the area of hypoxia regions (km²) during summer and autumn increased 1000 times; the area of Phyllophora fields (a keystone species) decreased by more than 200 times, being reduced to just 500 km²; the total biomass of Phyllophora, which was the nucleus of a biocoenosis of approximately 100 invertebrates and fish, decreased from 10,000,000 tones to 400,000 tones; the total biomass of the Black Sea mussels (*Mytilus galloprovincialis*) decreased to one third of its original quantity. In the mid 1990s, the total level of nitrogen was four times higher compared with the level in the 1970s, while the phosphates level remained almost the same compared to the said period. However, the Trans-border Diagnostic Analysis showed that while 30% of the nutrients reaching the Black Sea are discharged directly or by means of national rivers, the major rivers crossing the territory of several countries, such as: the Danube, the Dnieper, the Dniester, the Don and the Kuban are responsible for transporting the remaining of approximately 70%. Because the tributary streams from point or diffuse sources of some coastal states flow into international rivers - for example into the Danube or into the Dnieper, it was calculated that practically 70% of the total quantity of nutrients come from the coastal states, compared with 30% which come from the countries without sea access. Beside this, the input of hazardous substances, especially oil, continues to be a threat to the Black Sea ecosystem, the oil penetrates the environment by accidental or intentional discharges from ships and also from the land-based sources. Almost half of the oil input resulting from land activities reaches the Black Sea through the Danube. Also, the introduction of some exotic species in the past by vessels deballasting has produced serious damages to the Black Sea ecosystem and poses a threat for the Black Sea and for the adjacent seas: Mediterranean Sea and Caspian Sea. Inadequate management of resources and especially inappropriate policies in the fisheries field and in the management of the coastal area continues to be a barrier in the way of sustainable development of the Black Sea region. Most of the fish stocks in the Black Sea, already affected by pollution, have been overexploited or are threatened by overexploitation; many coastal areas have been damaged as a result of erosion and uncontrolled urban and industrial development. Therefore, there is a serious danger of losing valuable habitats and natural landscapes and,

in the last instance, the biological diversity and productivity of the Black Sea ecosystem.

General vision over the situation

The intensification of sub-regional cooperation and the emergence of new issues regarding marine environment pollution and degradation claimed the embracement of a special regime for its protection, and so on 21 April 1992, in Bucharest was signed by the representatives of the coastal states (Bulgaria, Georgia, Romania, Russian Federation, Turkey and Ukraine) the Convention on the Protection of the Black Sea Against Pollution, accompanied by three additional protocols (Duğu, 1994; Duğu, 2003; Duğu, 2007; Istanbul, Report, 2002). It's about a conventional assembly in which the general legal regime is established by Convention, and the special regimes for protection of the marine environment against some particular forms of pollution - from land-based sources, with oil and other harmful substances in emergency situations and pollution by discharge – are provided by the additional protocols.¹ The Convention acknowledges, even from the preamble, that "its natural and recreational resources can be preserved first of all through the mutual efforts of the coastal states" and, in consequence, are considered "the special hydrological and ecological characteristics of the Black Sea and the great sensitivity of its flora and fauna to changes in temperature and composition of the sea water" by taking into consideration that the Black Sea marine environment pollution results also from land-based sources of other countries of Europe, mainly through rivers; therefore, is recognized the need of scientific, technical and technological cooperation for the attainment of the purposes of the Convention, given that the existing international agreements, by that time, did not cover all aspects of the Black Sea marine environment pollution coming from third states. As usual, the Contracting Parties to the Convention undertake, individually or jointly, to take all the necessary measures consistent with the international law and in accordance with the provisions of the Convention, to "prevent, reduce and control pollution" (art. 5 para 2). In this sense, from the point of view of the sectoral approach method are given the necessary measures to combat against some special forms or sources of pollution. Thus, the Convention establishes (art. 6) the commitment of each Contracting Party to prevent pollution of the marine environment of the Black Sea from any source by hazardous substances and matters (specified in an annex²). Alongside the preventive measures and for their

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completion, the Convention on the Protection of the Black Sea Against Pollution also provides measures relating to material responsibility and liability, "in order to ensure the highest degree of deterrence and protection of the Black Sea against pollution". For this purpose, first of all is established the responsibility of the Contracting Parties for the fulfillment of their international obligations concerning the protection and the preservation of the marine environment of the Black Sea. For its materialization, each signing state adopts rules and regulations on the material liability for damages caused by natural or legal persons to the marine environment of the Black Sea, in areas where it exercises sovereignty, sovereign rights or their jurisdiction. In this context, consideration is given to the systems for assuring prompt and adequate compensations or other relief for damages caused by pollution of the marine environment. Therewith, the engagement of cooperation in the development and harmonization of laws, regulations and procedures relating to material liability, assessment of damages and compensation for prejudices caused by pollution of the Black Sea environment, is also provided (art. XVI).

The Strategic Action Plan for the Black Sea, adopted in 1996 by the environment ministers from the 6 coastal states, recognizes that eutrophication should be a matter of concern for all the countries located in the hydrographic basin of the Black Sea. On 17 April 2009, was adopted in Sofia (Bulgaria) an updated version of the Strategic Plan for the rehabilitation and protection of the Black Sea, which resumes the basic principles, the actions established in the initial plan and describes the future actions policy needed to meet the major environmental challenges that the marine environment is facing today, including a series of management objectives (coastal area integrate management; ecosystems approach management and basin integrated management). The long-term objectives contained in the plan on the quality of ecosystems refers to:

- protection of the living marine resources (by sustainable usage of the commercial stocks of fish and other living marine resources and the restoration / rehabilitation of the commercial stocks of living marine resources);
- conservation of biodiversity and the natural environment of the Black Sea (by reducing the risk of extinction of the endangered species, conservation of habitats and of marine and coastal landscapes; reduction and management of the introduction of new species);
- reducing the eutrophication ;
- ensuring water quality for human health.

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The ex-ante evaluation report of the Joint Operational Programme for Black Sea Basin for 2007-2013 (JOP BSB), since the last Report of Trans-boundary Diagnostic Analysis (Transboundary Diagnostic Analysis, 2007), and the summary of the conclusions of the international conference held on 7-8 May 2007 in Berlin, presented by Ahmet Kideys, the executive director of the Black Sea Commission shows that despite the substantial improvement of the quality indicators given in 1990, the environment state is still characterized by: high pressures on biodiversity, flora and fauna; massive pollution of the Sea Black with chemicals used in agriculture, toxic metals and radio nuclides; significant air pollution, especially a high exposure to macro particles.

To safeguard the marine resources was/is needed a prompt action; the European Commission adopted the Thematic Strategy for the Marine Environment which is the pillar of the part from any future marine policy related to environment protection. Presented as a Communication of the European Commission to the EU Council and the European Parliament, and made public on 11 April 2007, the Black Sea Synergy, resumes the EU vision on cooperation with the countries of the Black Sea region. Its subtitle - a new regional cooperation initiative - is somewhat misleading, since, in reality, the Black Sea Synergy is not an independent EU strategy for the Black Sea region, because the EU policy in the region is already included in three well defined and distinct dimensions: the pre-accession strategy of Turkey; the European Neighborhood Policy (ENP), which addresses, in Eastern Europe, to the new western independent states; and the strategic partnership with Russia. It should be seen rather as a complementary initiative to those policies that focus on the regional level, which was lacking until now from the preponderant bilateral ENP approach, intending to invigorate the cooperation within the Black Sea region and also between the Black Sea region and the UE. Linked to the EU strategy for Central Asia, the Black Sea Synergy includes as well important inter-regional elements. At the same time, the initiative also takes into account other regional cooperation programs developed in the area by international organizations or third countries. In this respect are listed the initiatives of Romania, Austria, the European Commission and the Stability Pact for consolidation of the Danube region profile, by endowing it with well-defined political and economic dimensions. Predominantly, the Black Sea Synergy is intended as a flexible framework to ensure greater coherence and better guidance of the policies that apply in the area. The idea of the European Commission is to complement the existing policies, to give a greater visibility to

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the area and to contribute to the activation of the current regional cooperation process through an enhanced dialogue that should increase the trust between the concerned countries, emphasizing especially on the cross-border cooperation. Since the activities of the Black Sea Synergy are strongly linked to neighboring regions, notably to the Caspian Sea, to Central Asia and to South-Eastern Europe, its scope of actions could be extended beyond the Black Sea (COM, 2007; European Institute of Romania, 2007). This strategy introduces the spatial planning principle based on the ecosystem approach, approach which is required as long as from the conclusions of the studies performed over the years results: - the pollution from the land-based sources, although it is still intense, indicates a tendency for attenuation, for the industrial sector and also for the municipal one; - some improvements have been reported on the priority sources of pollution; - a reduced number and a low intensity on the algal bloom phenomena have been reported in all the Black Sea littoral states; - some species which were considered to have been completely disappeared were found in a recovery process; - the small pelagic fish stocks are recovering slowly; - the adverse effects of the *Mnemiopsis leidyi* jellyfish are mitigated by the invasion of other exotic species, *Beroë ovata*, which feed on *Mnemiopsis* and may become a limiting factor for its development; – the marine protected areas are in continuous expansion, including through the creation of new protected marine areas; – GDP increases were reported by most of the Black Sea littoral countries. Nevertheless, there are still many problems; the Black Sea ecosystem continues to be threatened by various pollutants, especially nutrients which are discharged into the Black Sea from land-based sources, particularly through rivers, the Danube contributes with more than half the amount of nutrients discharged into the Black Sea, the eutrophication is a phenomenon that occurs over wide areas of the sea and should be a matter of concern for the whole basin of the Black Sea.

Conclusion

It is necessary to amend the Bucharest Convention on the Protection of the Black Sea Against Pollution, signed in Bucharest on 21 April 1992 - correlated with other similar Conventions - to allow the European Union to become a signatory, and not merely an observer, to the Bucharest Convention. Apart from lobbying activities in the EU institutions to join the Convention from Bucharest, Romania can take actions to raise awareness among the decision makers in Brussels to create, together with the European Commission, a code of good

environmental practices.

On the other hand, the tightening of punishments for the ecological offenders is also imposed. It is true that a criminal law for the environment shapes difficultly at all levels, national, communitarian and international; neither the countries, in which we may speak of a tradition in this area (Bertella-Geffray, 2008)³, can not praise with the drastic reduction of the ecological delinquent acts and that because the reality shows that a small number of eco-offenders are criminally convicted and the criminal penalties are also modest⁴. The explanation is simple and universally valid: the effective application of the environmental criminal law depends on the existence of: a) some specialized police officers; 2) some criminal magistrates specialized in environmental issues and motivated; 3) a desire of the judicial institutions - especially of the public ministry – to include the fight against environmental delinquency among the priority objectives. Also, we can not speak about a shaped and continuous communitarian jurisdiction, with environmental criminal liability, all the more as important discussions were held regarding the communitarian competence, or its lack thereof, in the criminal field (Vial, 2008). Regarding the international jurisdiction, besides the recognition of the lack of international decisions in the environmental criminal law, should be emphasizes the need - often cited – to create an international environmental criminal court. In favor of this idea would be not only the great number of international agreements in this regard, but also the fact that "always the International Court of Justice in The Hague refused to recognize an ecological right of intromission (interference)", reason why it is considered that the appearance of the international environmental criminal court is only a matter of time (Bertella-Geffray, 2008).

Notes

¹ PROTOCOL on protection of the Black Sea marine environment against pollution from land-based sources; PROTOCOL on cooperation in combating pollution of the Black Sea marine environment with oil and other harmful substances, in emergency situations; PROTOCOL on the protection of the Black Sea marine environment against pollution by discharge. After signing the Convention and the 3 additional protocols, the coastal states, being concerned about the dangers that threaten biodiversity, such as eutrophication, overfishing, pollution and continuous introduction of exotic species; accepting as well the importance of the Black Sea pollution control with the purpose of preserving biodiversity, maintaining and restoring the ecosystem functions, have adopted on 31 May 2002, in Sofia, Bulgaria, the PROTOCOL on Conservation of the Black Sea Biodiversity and Landscape to the Convention on the Protection of the Black Sea Against Pollution.

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² Respectively in categories, among which: organostanic compounds, mercury, cadmium, lead and their compounds, etc.

³ In this article is emphasized that in 2006-2007 the environmental crimes were related to noise pollution and non-compliance with the non-protected species legislation.

⁴ In the article, several decisions are provided as examples (e.g. 1. conviction of a person for capturing, storing, transporting and marketing of non-domestic animals belonging to protected species - is about 36 birds from protected species – for 3 years of imprisonment with deferment; 2. conviction of a person, the owner of an establishment with the scope of receiving pets – for maltreatment of an animal placed in its care - for 3 months imprisonment with deferment and 6000 euro fine). *Idem*, p. 21.

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