

## **Some Aspects on Multilateral Cooperation for Danube Protection**

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**Abstract:** The Danube River has always been a major concern of the great European powers, riparian or not. All the more the riparian countries, small and medium-sized, with little economic, political and military potential, have permanently sought the best ways and means to preserve their related rights to this important watercourse, offered by their geographical and obviously strategic position. Naturally, over the years, the collision of these interests, both economic and political, resulted in various regulations with the declared purpose of establishing a certain order in the multitude of claims, the real purpose being to provide advantages to the strong. Because of this, the agreements, treaties and conventions concluded almost exclusively concerned the navigation regime, access conditions for different categories of ships, taxes, contributions etc. The Convention on Cooperation for the Protection and Sustainable Use of the Danube River (Convention for the Protection of the Danube River), signed in Sofia on 29 June 1994, is a turning point for the attitude to the great river. In this article we intend to examine briefly the cooperation of the signatories of the Convention for the Protection of the Danube, according to the regulations contained in this important document of public international law.

**Keywords:** multilateral cooperation; protection of the Danube River; Convention for the Protection of the Danube

### **Introduction**

Until the Convention on Cooperation for the Protection and Sustainable Use of the Danube River, in short - the Convention for the Protection of the Danube River, signed in Sofia on 29 June 1994<sup>2</sup> treaties and conventions on the great river concerned only the navigation regime, the maintenance of the seaworthiness route on certain portions, the level of some taxes and tariffs.

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<sup>2</sup> Since then June 29 has been established as “Danube Day”.

For the first time, the Sofia Convention deals with anything other than the own interests of states, more or less influential as a result of their economic and military potential, some of them being non-riparian. The current Convention considers the protection and sustainable use of the river for the benefit of all riparian. It is the work of the ten countries whose territories it crosses, called in the convention Danubian states, plus the European Community.

The Convention is structured on four parts and five annexes which are an integral part of it. Part I contains general provisions on the definitions of some terms used in the text, the objectives and principles of cooperation, the scope and other general provisions. Part II, entitled Multilateral Cooperation, is dedicated to the concrete ways of implementing cooperation, which will be briefly presented and discussed in the content of this article. Part III regulates the establishment, tasks, competences, structure and procedures of the International Commission as a deliberative body regarding the management of cooperation. Part IV contains procedural and final clauses.

Annex 1 consists of two parts, in part I being listed the best available techniques and in part II of the Annex - the best environmental practices. Annex 2, entitled Industrial Sectors and Hazardous Substances, is also structured on two parts, part I - List of Industrial Sectors and Industries, part II - Orientative List of Dangerous Substances and Groups of Substances. Annex 3 - Guide of Water Quality General Assessment. Annex 4 - Statute of the International Commission for the Protection of the Danube River. Annex 5 - Arbitration.

The signatories of the Convention started from preserving the idea that the river situation would be decided by the riparian states, the EU being justified by the fact that most of the riparian are members of the union and those who were not yet at the date of its conclusion were endeavoring to join, which has been achieved in the meantime by some of these countries, such as Romania and Bulgaria.

The need for the convention is obvious and has its origins in the emergence and persistence of some risks aiming the environment, the economy and the safety of the Danubian states. Moreover, in the preamble of the international normative act, the contracting parties have expressed their firm desire to intensify the collaboration on water management in the field of water protection and use (...), emphasizing the urgent need to strengthen national and international measures of prevention, control and significant reduction of the transboundary impact caused

by hazardous substances and nutrients discharged into the aquatic environment of the Danube basin (...).

Concerns at the European level on water protection and management have also emerged before the Convention, especially bilaterally and multilaterally, examples in this sense being the Espoo Convention on Environmental Impact Assessment in a Transboundary Context (1991) and the Convention on the protection and use of transboundary water courses and international lakes of 17 March 1992 signed in Helsinki. In this context, the Danubian countries have considered as being useful and timely a convention regarding directly Danube situation which engage all riparian states. In view of such an approach, consultations were held in Bucharest, finalized with a statement that formed the basis of the convention.<sup>1</sup>

Based on the regulations of the Convention, riparian states have subsequently concluded bilateral agreements and collaborative declarations have been issued between their line ministries. It may be mentioned in this respect: the Agreement between the Government of Romania and the Government of Ukraine on cooperation in the field of frontier water management, signed in Galati on September 30, 1997, Agreement between the Government of Romania and the Government of the Republic of Hungary on collaboration for the protection and sustainable use of border waters signed in Budapest on September 15, 2003, Agreement between the Government of Romania and the Government of the Republic of Moldova on the protection and sustainable use of Prut and Danube waters, signed in Chisinau on 28 June 2010, Agreement between the Ministry of Environment and Water Management of Romania and the Ministry of Environment and Waters of the Republic of Bulgaria on cooperation in water management, signed in Bucharest on 12 November 2004, the Declaration between the Bulgarian Ministry of Environment and Water, the Ministry of Environment and Territorial Planning of the Republic of Moldova, the Romanian Ministry of Waters, Forests and Environmental Protection and the Ministry of Environment and Natural Resources of Ukraine on cooperation in the creation of the Lower Danube Green Corridor, signed in Bucharest on 5 June 2000, the Declaration on Collaboration in Water Management between the Ministry of Environment and Water Management of Romania and the Ministry of Environment, Health and Consumers Protection in Bavaria, signed in Munich on 25 April 2005.

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<sup>1</sup> “Declaration on the cooperation of the Danubian states in the field of management and, in particular, the protection of the Danube waters against pollution”, signed in Bucharest on 3 December 1985 by Austria, Bulgaria, Czechoslovakia, Germany, Yugoslavia, Romania and the USSR.

All these agreements, declarations or arrangements are based on the principles of equality and reciprocity, their purpose being to eliminate the contradictions that may arise during the application of the basic rules of the Convention.

For the correct and effective application of the provisions of the Convention, art. 1 defines the notions and expressions with which it operates, such as: Danubian states - sovereign states that have a considerable part of the Danube river basin, that is more than 2,000 Kmp of the total hydrographic basin; hydrographic basin of the Danube - the part of the hydrographic basin from which the Contracting Parties benefit; transboundary impact - any significant adverse effect on the riparian environment resulting from a change in water conditions caused by human activities and going beyond the area under the jurisdiction of a Contracting Party; hazardous substances - generally - dangerous substances for water, sources of pollution etc.

## **Principles and Objectives of the Cooperation**

### **Principles**

Of the general principles that guide and constitute the cornerstone of environmental protection, the Convention enshrines two general principles that underpin the multilateral cooperation for the protection of the Danube: the principle the polluter pays and the precautionary principle.

The polluter pays is a fundamental requirement, specific to environmental law, by virtue of which the victim of environmental damage is absolved from the task of proving the perpetrator's fault. In general, the prove of a culprit raises many difficulties in the task of the injured party, which is why environmental legislation, given the importance and urgency of the repair, as well as the obvious nature of the cause of pollution, considered it appropriate to establish the liability of the polluter, irrespective of some elements of establishing tort liability under common law. The basis of this principle, which apparently fades the importance of the culprit, is the risk idea in the sense that an activity that creates a risk for another makes the author responsible for the damage it can cause. The victim will only have to prove the existence of the damage and the causal relationship between it and the act. This eliminates the difficult task of probing the culprit.

The precaution considers making decisions in certain circumstances on certain issues. It is a fundamental principle enshrined in all national and international normative acts and is part of the idea of preventing any risks to the environment.

Based on these principles, the Convention guides cooperation towards a sustainable water management in the Danube river basin, mainly targeting, according to art. 4 para (5) the following:

maintaining the general quality of life;

maintaining continuous access to natural resources;

avoiding lasting environmental damage and ensuring the protection of ecosystems;

applying a preventive approach.

The Convention provides, by para (6) and (7) of the same article that it is inadmissible for its provisions to cause any significant, direct or indirect, increase in impacts on the riverine environment and that each contracting party is free to adopt and apply more stringent measures than those resulting from its contents.

### **Objectives of Cooperation**

Sustainable and equitable management of surface water and groundwater in the Danube river basin is the first objective of the Convention. It is part of the generally accepted concept that water is a renewable, vulnerable and limited natural resource, indispensable for life and society, raw material for productive activities, energy source and transport way, a determinant factor in maintaining ecological balance.<sup>1</sup> At the same time, it is a natural patrimony that must be protected and is part of the public domain of the signatory states of the Convention.

Control of hazards caused by accidents with substances dangerous to water, floods and frost on the Danube River is the second objective of cooperation on river protection. It shall ensure taking some appropriate legal, administrative and technical measures to maintain and improve the current state of the environment and the conditions of quality of river water and its hydrographic basin. These measures are intended to prevent and mitigate the impacts and adverse changes that may occur.

Other objectives:

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<sup>1</sup> Art. 1 para (1) of Law no. 107/1996 The Law of waters.

reduction of pollution and the need for rational and sustainable use of water;  
sustainable development and protection of the Danube river basin:  
harmonization and coordination of the measures adopted and those planned at national and international level;  
ensuring a sustainable use of water resources for drinking, industrial and irrigation water supply;  
conservation and reconstruction of ecosystems.

Also, the objective of multilateral cooperation for the protection of the Danube is the activities that produce or can produce transboundary impacts such as:

wastewater discharge, the introduction of nutrients and hazardous substances, as well as heat evacuation;

hydrographic arrangements, regulation, leakage and water storage level, flood control and frost risk removal, the effect of installations on or off the watercourse on the hydraulic regime;

exploitation of hydro technical constructions, erosion, landslides, floods and sediment transport;

the handling of hazardous substances for water and the prevention of accidents.

Fisheries and inland navigation are also covered by the objectives of cooperation insofar as such activities involve risks of possible pollution caused by such activities.

These objectives, listed in the content of the Convention, are not limitative. Nor would such a limitation be useful. That is why we appreciate that during the implementation of the normative act, the reality, the practical activity will reveal new objectives to be achieved in its multilateral cooperation.

### **Forms of Cooperation and Ways of Achievement**

According to art. 4 of the Convention, the forms of cooperation will as a rule be the following:

a) consultations and joint activities within the International Commission;

b) exchange of information on bilateral and multilateral agreements, legal regulations and measures in the field of water management, exchange of legal documents, guidelines, other forms of exchange of information and experience.

The International Commission for the Protection of the Danube River, shortly referred to as the International Commission, is the permanent structure created through art. 18 of the Convention to ensure cooperation and fulfillment of the assumed obligations. In carrying out the attributions established in Annex IV to the Convention, the International Commission shall prepare proposals and recommendations. It also has the competence to address any issue would be entrusted by mandate by the contracting parties, of those which are subject to the scope of applicability, according to art. 3 of the Convention. Commission decisions are being implemented by States that have committed themselves to communicating to the Commission the way of achievement at national level, the financial dimension of the action, the designation of competent institutions with the implementation of decisions, the communication of planned activities, etc. Cooperation in the International Commission shall also be achieved by communication of the Contracting Parties of some reports, documents, information on its own legislation in the field of river water and those of its hydrographic basin management, bilateral or multilateral agreements and treaties to which they are on the issue of the Danube.

It is also the Commission which analyzes the experience gained through the implementation of the Convention provisions and presents proposals to amend or supplement it. If necessary, the Commission prepares further regulations in this area. And it is also the one which makes dispositions regarding the cooperation with international and national organizations or with other bodies engaged or interested in the protection and management of Danube waters, as well as on general issues regarding the protection and management of waters.

#### *Ways of Cooperation*

##### *Prevention, Control and Reduction of Cross-Border Impact*

For the efficient protection of the water quality and its sustainable use, to reduce the cross-border impact, the contracting parties, according to the provisions of art. 5 para (1) of the Convention shall develop, adapt and apply appropriate legislative, administrative and technical measures in accordance with para (2) of the same article. In general, they concern the recording of natural water resource conditions, the adoption of legal rules on waste water evacuation, the handling of substances

hazardous for water, the reduction of the introduction of nutrients or dangerous substances, the generalization of positive practice and the proposals of the International Commission, avoiding adverse transboundary effects produced by waste and hazardous substances, in particular those arising from transport.

*Special Measures for the Protection of Water Resources*

They mainly aim at preserving ecological resources by: identifying groundwater resources to be protected in the long term, preventing their pollution, minimizing the risk of accidental pollution, assessing the importance of different elements of the biotope for riparian ecology and proposing measures to improve coastal and aquatic ecological conditions, according to art. 6 of the Convention.

*Emission Limitation*

This form of multilateral cooperation takes into account water quality objectives and criteria (art. 7 of the Convention). According to the provisions of this text, the emission limits in the industrial sectors will be set by the Contracting Parties on a proposal by the International Commission. Water quality objectives are set by Contracting Parties and they also apply water quality criteria to prevent, control and mitigate cross-border impact. The recommendations contained in Annex III to the Convention will be applied by the Contracting Parties both at national and international level, that is together with other signatories, if the situation so requires.

For the efficient emissions limitation, the Contracting Parties shall ensure in the areas under their jurisdiction the following:

harmonization of national emissions limitation regulations with the limits set by the Convention;

orientation towards the best technologies of industrial installations, especially those using hazardous substances;

discharges of wastewater will be notified beforehand by competent authorities and limited deadlines;

if necessary, measures that are more restrictive than the standard ones will be applied, going up to prohibitions;

environmental impact assessment in accordance with national and international regulations, as well as with procedures accepted by the contracting parties;

the imposition of preventive measures and behavioral rules to combat adverse effects after accidents.

*Emission Inventories, Action Programs and Recorded Progress Assessments*

The Contracting Parties undertook to periodically inventory the relevant pollution sources in the river basin, to establish measures to prevent the risks of pollution and to reduce these sources. In this respect, measures plans with precise tasks and objectives will be established. The main objectives will be to reduce pollution loads and concentrations from industrial and urban sources.

*Monitoring Programs*

Based on their own experience, the Contracting Parties will cooperate in monitoring and evaluation field. To this end, they will harmonize or make comparable monitoring and evaluation methods in the field of water quality, emission control, flood forecasting and other situations in order to obtain comparable results to be introduced into joint monitoring activities. According to art. 9 para (1) of the Convention, the Contracting Parties shall develop concerted or joint systems for this purpose and inventory the sources of pollutants (emissions), updating the required documents as set out in annexes.

*Reporting Obligations*

In accordance with the provisions of art. 10 of the Convention, the Contracting Parties shall report to the International Commission on the basic issues necessary for the Commission to carry out its tasks.

These reports will mainly include:

situations and documents provided for by the Convention,

information on the existence, conclusion, amendment or denunciation of bilateral or multilateral agreements and treaties on the protection and management of Danube River waters and waters in its hydrographic basin, or relevant and of interest;

information on laws, ordinances and other general national regulations on the protection and management of river waters and those in its hydrographic basin;

communication of the decisions of the International Commission;

designation of the relevant institutions to liaise with the International Commission;

communication of planned activities that, by their nature, could produce transboundary impacts.

#### *Consultations*

The Contracting Parties will participate in consultations, at the request of one or more Parties, on planned activities that could cause transboundary impact. These consultations are usually held within the International Commission and are aimed at solving concrete problems.

#### *Exchange of Information*

Through art. 12, the Convention established the obligation of the Contracting Parties to make an exchange of reasonable data.

These data refer to:

the general riparian environmental conditions in the river basin of the Danube;

the experience gained in the application and exploitation of the best available technologies and the results of research and development;

consultations will take place, except in cases of danger, before any decision on proposed activities is taken.

#### *Protection of Information Provided according to the Provisions of the Convention*

The measure addresses industrial and commercial secrets or other confidential data, according to national laws. Contracting Parties receiving such information shall have the right to respect their secrecy and to use them exclusively for the purpose provided by the Convention.

#### *Informing the Public*

The competent authorities of the Contracting Parties shall be obliged to make available to any natural or legal person, at reasonable cost, the information held on the quality of the riparian environment of the river, without claiming that the request is founded. This obligation cannot affect the right of the Contracting Parties to refuse a request in so far as it would prejudice the protected information.

*Research and Development*

In order to achieve the objectives of the Convention, the Contracting Parties will develop complementary or joint scientific or technical research programs. The results of such research will be forwarded to the International Commission to be made available to all parties to the Convention.

*Communications Systems, Warning and Alarm Systems, Emergency Plans*

The Contracting Parties may establish coordinated or common communication, warning and alarm systems for the entire river basin if these are necessary to supplement those existing bilaterally. They will also consult on ways and means of harmonizing national communication, alert and warning systems and emergency plans. According to art. 16 para (2) of the Convention, within the International Commission, the Contracting Parties shall inform each other on emergency cases concerning: accidental pollution, critical water conditions, floods, frost-related hazards. The Convention contains provisions on the procedure for informing, controlling and mitigating risks of any nature.

*Mutual Assistance*

According to art. 17 para (1) of the Convention, the Contracting Parties shall provide mutual assistance at the request of either Party in any event, in particular in the event of emergence of any critical situations of riparian conditions. Mutual assistance procedures are developed by the International Commission and mainly target: direction, control, coordination and supervision of assistance; services and facilities needed; arrangements for compensation, reparation, reimbursement of costs and expenses; ways to reimburse the cost of the assistance services.

**Conclusions**

The Convention on Cooperation for the Protection and Sustainable Use of the Danube River (Convention on the Protection of the Danube River) is the most modern act of public international law on the legal status of the great European river. Unlike previous acts in the field, the Convention establishes the legal framework for the protection of this important patrimony element of the continent and of the world. The main pillar of the convention set up by the convention is the multilateral cooperation for the protection of the Danube and its hydrographic basin. In this legal context, Romania has an important position, determined by its location at the mouths of shedding, which implies its responsibilities as well. The

existing data attest that Romania has properly fulfilled and still fulfilling its tasks and obligations and assumed and provided for by the Convention. Even before the convention was concluded, Romania demonstrated exemplary behavior in using this important watercourse, the evidence being visible both in bilateral and multilateral relations. It is not by accident that the conclusion of the Sofia Convention was preceded by consultations held in Bucharest, finalized with a statement that constituted its basis.<sup>1</sup>

## **5. Bibliography**

Law no. 107/1996 The Law of waters.

Declaration on the cooperation of Danubian states in the field of management and, in particular, the protection of Danube's waters against pollution.

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<sup>1</sup> "Declaration on the cooperation of Danubian states in the field of management and, in particular, the protection of Danube waters against pollution", signed in Bucharest on December 3, 1985 by Austria, Bulgaria, Czechoslovakia, Germany, Yugoslavia, Romania and U.R.S.S.