

Danubian Economy and Legislation

International Commission for the Protection of River Danube

Constantin Tănase¹

Abstract: European powers, Danube Riparian or non-riparian always showed great interest in the situation of the river, which is explained by resource wealth and its strategic importance. Over time these have concluded treaties, conventions bilateral and multilateral agreements in pursuit of their own political and economic interests. They also established various bodies, particularly committees to manage those interests in the area. Some had a beneficial role, but ignored at certain times, lower riparians natural rights, which did not have an economic and military force able to support their aspirations. Others were concerned and still are concerned especially with the problem of navigation on the great river. International Commission for the Protection of the Danube River was created by the Convention for the Protection of the Danube River signed in Sofia on 29 June 1994 and has other objectives and competencies to its predecessors. Also in its composition are the representatives of the riparian states and the European Community.

Keywords: commissions for the protection and management of the Danube River

1. Introduction

The importance of the Danube River results primarily from its geographic position and characteristics with major economic, political and strategic significance. It is the second largest river in Europe (after the Volga) measuring 2857 km long, of which 2588 km navigable. (Marinescu, 2010, p. 205). From spring until it flows into the Black Sea, it crosses territories of ten states and crosses four capitals. Bordering states mainly but also others are concerned as regards the system of navigation, access to this great body of water resources, their use and not least in terms of its protection and hydrograph basin.²

It is understood that, given such importance, the Danube has captured the attention of major military and economic powers in the earliest times, they seeking to impose their will in order to occupy a more advantageous position as compared to other riparian and non-riparian states. Nevertheless, or maybe because of that, a treatise written on the legal regime of the Danube only dates from the eighteenth

¹ Senior Lecturer, PhD, Faculty of Law, Danubius University of Galati, Romania, Address: 3 Galati Blvd., 800654, Romania, Tel.: +40372361102, Corresponding author: constantin.tanase@univ-danubius.ro.

² Danube hydrographic basin measures 817.000 km² (Stanciu & Duță, Alexandru, 2003, p. XII).

century (Treaty between Austria and Turkey in 1616), representing the will of the two empires of the time, with total disregard of other riparian state entities. Gradually, the Danube has entered the sphere of concern of also other European countries, non-riparian, but managed somehow or other to participate in regulating the status of the river and to impose their point of view due to political position occupied in different historical periods. Among non-riparian states participating in the establishment of the Danube juric regime can be mentioned: France, England, Spain, Russia, Sardinia (later Italy).

Initially, the regulations relating to the river focused exclusively the regime of navigation, the possibility of accessing different categories of ships (passenger, freight, war), belonging to certain states, categories of goods, persons who could carry and sell, tax exemptions etc.

By the Treaty of Paris of 1856, Danube was declared international river and created the European Danube Commission. For the first time it was established the principle of freedom of navigation on the Danube and by creation of the commission it was initiated and expressed interest in setting up portions of the river and keeping them in a state of airworthiness allowing easy circulation for at least the maritime sector (from shedding to Braila). The situation of Danube was the subject of also other international documents such as *the Paris Convention of July 23, 1921 on the Final Status of Danube, the Agreement regarding the exercise of powers of European Danube Commission, signed in Sinaia, August 18, 1938, between France, Britain and Romania, the Agreement dated 1 March 1939 concerning Germany's entry into the European Danube Commission, joining Germany and Italy in Sinaia Arrangement signed on 18 august 1938, and others.*

In the aftermath of World War II in the new political and strategic context, the regime of navigation on the Danube was regulated by the Belgrade Convention of 1948. Although the main actor was U.R.S.S., the Convention was signed only by the riparian states. And under this Convention it was created a Danube Commission having as main concern navigation problems. With time, under pressure from socio-economic developments, the commission issued also recommendations on the protection of waters against pollution caused by hydrocarbons (Marinescu, 2010, p. 206). Romania, whose territory is 1750 km length of the Danube, meaning 37.7% (Marinescu, 2010, p. 205) could not remain indifferent to the situation of the river, participating, starting from 1856, to the decisions taken in this regard. This participation, however, takes different forms in relation to the political situation of the moment and its position in the European context.

Thus, in 1856, Romania as a modern state had not been set yet. As we know, there were the Romanian or Danubian principalities, two under Ottoman suzerainty (Moldova and the Romanian Country), third (Transylvania) having autonomous status within the Habsburg Empire. However, using weather circumstances, the

Danubian principalities, subsequently Romania after 1859, succeeded in making minor progress on recognizing the rights conferred by the status of riparian state.

2. Convention on the Cooperation for the Protection and Sustainable Use of the Danube River (Danube River Protection Convention)

2.1. General Concepts on the Danube River Protection Convention

Danube River Protection Convention was signed in Sofia on June 29, 1994¹ by the representatives of the ten riparian countries and by the representative of the European Community (now European Union). Thus it was preserved the idea that the situation on the river is regulated only by the riparian states, the EU representative justifying his presence by the fact that most riparians are members of the union, and those who are not yet strive to achieve a future accession.

The need to conclude such a convention is obvious and it stems from the appearance and perpetuation of risks aiming the environment, economy and security of Danubian states. It has been taken into account the removal of unfavorable effects, short term or long term, due to changes in the state of watercourses in the Danube Basin. Of course there were also concerns prior to signing the Convention, especially bilaterally or internationally, such as: *Espoo Convention on Environmental Impact Assessment in a transboundary context* (1991) and *Convention on the Protection and Use of Transboundary Watercourses and international lakes of March 17, 1992 signed in Helsinki*, but Danube countries appreciated as useful and appropriate a convention directly on the Danube situation committing all riparian states. Otherwise, prior to signing this document consultations were held in Bucharest concluded with declaration which was the basis of the Convention.² As stated in the preamble of the Convention, it was started from the “strong desire” of the subscribing States to intensify their collaboration on management, protection and use of water.

Later, with the basic requirements of the Convention, bilateral agreements were concluded between the governments of the riparian states and have been issued declarations of cooperation between the competent ministries of the riparian states. In this regard there may be mentioned: *The Agreement between the Government of Romania and the Government of Ukraine on cooperation in boundary water management*, signed in Galati on 30 September 1997, *The Agreement between the Romanian Government and Republic of Hungary Government on the collaboration for the protection and sustainable use of border waters*, signed in Budapest on 15

¹ June 29 was set as the “Danube Day.”

² “The Declaration on the cooperation of the Danubian states in the field of management and especially of protection of the Danube waters against pollution,” signed in Bucharest on 3 December 1985 by Austria, Bulgaria, Czechoslovakia, Germany, Yugoslavia, Romania and U.R.S.S.

September 2003, *The Agreement between the Romanian Government and Republic of Moldova Government on the protection and sustainable use of waters of Prut and Danube*, signed in Chisinau on June 28, 2010, *the Agreement between the Ministry of Environment and Water Management of Romania and the Ministry of Environment and Waters of Republic of Bulgaria on the cooperation in the Water Management field*, signed in Bucharest on 12 November 2004, *The Declaration between the Ministry of Environment and Water of Bulgaria, Ministry of Environment and Territorial Planning of Republic of Moldova, Ministry of Water, Forests and Environmental Protection of Romania and the Ministry of Environment and Natural Resources of Ukraine on the cooperation in connection with the creation of the Lower Danube Green Corridor*, signed in Bucharest on June 5, 2000, *The Declaration of cooperation in water management field between the Ministry of Environment and Water in Romania and the Ministry of Environment, Health and Consumer Protection in Bavaria*, signed in Munich on 25 April 2005.

For the achievement of a normative framework as accurately as possible, the Convention defines since art. 1 the operating concepts and expressions such as: *Danubian states* (sovereign states which hold a considerable part of the Danube hydrographic basin, meaning more than 2,000 square kilometers of the total hydrographic basin), *hydrographic basin of Danube* (part of the river hydrographic basin that the contracting parties benefit from), *transboundary impact* (any significant adverse effect on the riverine environment resulting from a change in the conditions of waters caused by human activities and that are beyond the area under jurisdiction of a contracting party), *dangerous substances* – general – *substances hazardous to water, pollution sources* etc.

On International Commission, the text of the Convention provides that it is the organization established by art. 18.

2.2. Objectives, Principles and Scope

The contracting parties have considered that the correct application of the Convention requires setting goals and principles as accurate as possible and a well-defined scope.

a) Thus, it has been appreciated that the objectives of a cooperation in the field stated in the title of the Convention are the following:

- sustainable and equitable management of water, including by conservation, improvement and rational use of surface water and groundwater hydrographic basin, insofar as these are possible (art. 2 para. (1) of the Convention);
- control of hazards caused by accidents or substances hazardous to water, floods and frost;

- reducing pollutant loads of the Black Sea from sources in the hydrographic basin;
 - maintain and improve the current state of the environment and water quality conditions of the Danube River and of waters from its hydrographic basin;
 - reducing pollution and rational, sustainable use of water;
 - harmonization and coordination of measures taken and planned at national level with the initiatives and measures taken at international level in the entire contents of the Danube basin;
 - ensure the sustainable use of water resources for industrial drinking water supply and irrigations;
 - preserving and recreating ecosystems in order to ensure public health.
- b) As principles of the cooperation in the field of protection and sustainable use of the Danube River were included in the convention the following:

- *The polluter pays*, it means preventing or remedying environmental damage by operators carrying on certain professional activities without having to prove their guilt.
- *The precautionary principle requires diligence of professional operators, so as to eliminate any risk that could be invoked in the case of uncertainty about a particular action.*

The Convention disposes, in the field of water management of Danube waters also some ecological criteria such as (art. 2 para. (5) of the Convention):

- maintain the general quality of life;
- maintain continuing access to natural resources;
- avoid lasting ecological damage and ensure protection of ecosystems;
- application of a precautionary approach.

c) The scope of the Convention is the Danube hydrographic basin, meaning that part of the river hydrographic basin that riparian countries benefit from.¹

In this hydrographic basin, the contracting parties (riparian countries) can carry out activities on the disposal of sewage, hydrotechnic engineering, adjustments for leaks, flood control, removing hazards caused by frost, building of installations in or out of the watercourse, exploitation hydrotechnic constructions, measures to prevent ecological impact, protection of ecosystems, etc.

¹ Hydrographic basin is the area of land where all surface runoff flow through a sequence of streams, rivers and possible lakes to the sea in a river with a single river mouth, estuary or delta.

According to art. 3 paragraphs (3) of the Convention, its provisions apply to fishing and inland navigation as far as are concerned problems of water protection against pollution caused by such activities.

3. International Commission for the Protection of the Danube River

3.1. Tasks and Powers

By art. 18 para. (1) of the Convention, the contracting parties decided to establish *The International Commission for the Protection of the Danube River*, briefly called *International Commission*. Within this committee, riparian countries have pledged to cooperate in meeting their obligations, developing proposals and recommendations. However, the committee was entrusted with the power to address any issue would be entrusted by mandate from the contracting parties of those that are the subject of the domain of applicability, according to art. 3 of the Convention.

Decisions adopted by the commission are fulfilled by the signatory states that have undertaken to communicate him the implementation of the decision nationally, the financial dimension of the action, the designation of competent institutions with the execution of the decision, communication of planned activities etc. Also contracting countries shall provide the Commission reports, documents, information about their legislation in the field of river water management and waters within its hydrographic area, bilateral or multilateral agreements and treaties to which they are parties, on the issue of Danube.

International Commission reviews the experience gained by carrying out the provisions of the Convention and submits proposals to the contracting parties on amending or supplementing it. Where appropriate, the committee prepares bases of drafting other regulations for the protection and water management of the Danube and within its hydrographic basin.

International Commission also disposes on cooperating with international and national organizations or with other bodies engaged or interested in the issue of protection and water management of Danube, but also on general matters concerning the water protection and management.

3.2. Structure and Procedures

a) The Structure of the Commission

International Danube River Protection Commission is composed of delegations of the contracting states. Each signatory state of the Convention may nominate no more than five delegates, including the head of delegation and his representative. In addition, from each delegation may be a number of experts to deal with special

problems. The names of these experts are communicated to the Secretariat of the International Commission.

The Commission has a president appointed by the contracting parties, in turn, by alphabetical order (in English) for a period of one year. The delegation following the presidency nominates one of its members for the function of president. Powers of the President are foreseen in the Regulation of operation of the commission, however, in principle, the president cannot speak on behalf of his delegation.

In the committee operates a *permanent working group*. For certain fields of work and for specific problems there are groups of experts permanent or ad hoc. Permanent working group and groups of experts, permanent or ad hoc, consist of delegates and experts nominated by the delegations of commission. At the permanent working group participate delegates from all contracting parties. Permanent working group has a president nominated by the International Commission which also determines the maximum number of delegates. The committee also determines the number of experts participating in expert groups.

International Commission has a permanent secretariat based in Vienna. It is headed by an *Executive Secretary* appointed by the commission, for who will establish its duties, duration and conditions of the mandate. Also the commission makes recommendations to establish necessary staff for the functioning of the secretariat.

In principle, the Executive Secretary fulfills the functions established by the Commission in purpose of managing the convention and conduct the committee's activity, as well as other tasks in accordance with the procedural rules adopted by the Commission.

Periodically, the commission's work, results, and some special problems are assessed and analyzed by *special experts*. These experts are appointed by the International Commission among the persons qualified in the field of interest. They can be appointed as special experts and specialized scientific institutions. Based on the conclusions made by special experts and own findings, Commission presents annually reports on its activity to the contracting parties, other reports requested by the parties on the situation of the Danube.

The legal competence of the International Commission, necessary to the exercise of functions and meeting proposed goals is consistent with applicable law at the headquarters of its secretariat. Regarding the own work, running and representation procedure, the Commission determines its own rules of procedure. Under these rules it is performed including the representation of the commission by its president.

Establishing financial rules is also under the responsibility of the committee that may adopt an annual or biennial budget of expenditure, achieving at the same time budget estimation for the following fiscal period. The total budget amount,

including additional amounts established by the Commission is made by the contribution of the contracting parties, only the European Community Participation in establishment the budget is in equal parts, but the Commission may decide, unanimously, another way to participate. European Community may contribute not more than 2.5% of the administrative costs of the budget. Participation in the committee of experts and advisers representatives is supported financially by each contracting party.

The official languages of the International Commission are English and German.

4. Conclusions

The first commission interesting the Danube River was established by the Treaty of Peace signed in Paris on March 30, 1856 following the Crimean War, respectively the Danube European Commission. Among the signatories of the treaty appeared non-riparian powers, but with major interests in the Danube area, especially of the lower course (Lower Danube) and mouths. Mainly Danube European Commission has set targets on navigation, access to different categories of vessels, tax exemptions etc. Although initially it has been foreseen a limited period of operation of this commission (2 years), its existence has been prolonged due to politico-strategic interests existing in the area.

After the Second World War, through the Belgrade Convention of 18 August 1948 it was regulated the regime of navigation on the Danube through which has been established a Danube Commission based in Budapest. The Commission, which exists today, has executive and administrative attributions concerning navigation on the Danube.

As we have seen, the International Commission for the Protection of the Danube River has other objectives whose achievement cooperates with the Danube Commission. For the first time, riparian countries have expressed their concern about the protection of Danube waters and the environment, translated into cooperation for the protection and sustainable use of the river by the Convention signed in Sofia on June 29, 1994. In our opinion, this act of international law has a special importance through the established rules on environmental protection, this concern producing indisputably effects also in political cooperation plan and in the European integration.

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