

**IMPLEMENTING INTERNATIONAL ENVIRONMENTAL LAW IN
THE BLACK SEA BASIN: AN ANALYSIS OF BUCHAREST
CONVENTION***Arda ÖZKAN****Abstract:**

One of the most crucial developments in environmental quality at international level is the effort to base environmental problems on a legal ground. One of these legal grounds has taken place in the Black Sea which has long faced the pollution problems because of its geological features and narrow transition to open waters. Bulgaria, Georgia, Romania, Russian Federation, Turkey and Ukraine having coast to the Black Sea agreed on Bucharest Convention dated 1992, which is to prevent pollution in the Black Sea, minimize and control the current pollution, by the countries partied in the Convention. This study aims to evaluate the accomplishment phase of the Bucharest Convention in terms of environmental cooperation in the Black Sea. Within the framework of this aim, Bucharest Convention is to be analyzed in terms of the principles of the international environmental law in order to generate solutions for environmental problems of the Black Sea.

Key words: Black Sea, Environmental Cooperation, International Environmental Law.

INTRODUCTION

Environmental problems are the most debated in the recent years and the most challenging ones that man has ever faced. Particularly, in the past five decades, environmental problems have branched out and become a threat for all humanity, against which there have been some precautions taken; nevertheless, it is not satisfactory to say the steps taken are adequate. In the past few years, although there have been some concrete steps in order to contribute to the solution of the problem, these steps are not enough to live in a sound environment and pass on to next generations (Ökmen, 2003, p. 1-2). In fact, the complicated and having no boundaries nature of the environmental problems require the cooperation of national states as the global policy makers and international/supranational organizations as the global actors (Kaplan, 1999, p. 189).

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In today's world, environmental problems have a global dimension and the importance of acting for international environment protection law has increased and is going to do so in future. However, up to this time environmental problems have so complicated that they have had a negative effect on the countries' struggle for their own political affairs and global cooperation; likewise, the nature, number and their degree of affecting ecological system of the problems have altered in time. Therefore, the extent and complexity of the problems require restructuring and cooperating at international level. As a result of the requirements, the necessity of international organizations and legal arrangements become a current issue.

Without doubt, one of the most crucial developments in environment in international area is the effort to base environmental problems on a legal ground. One of these legal grounds has taken place in the Black Sea which has long faced the pollution problems because of its geological features and narrow transition to open waters. The Bucharest Convention dated 1992 and entered into force 1994, agreed among the six countries of the Black Sea (Bulgaria, Georgia, Romania, Russian Federation, Turkey and Ukraine) is accepted as an international convention which constitutes an important legal ground of regional environment regime. The Bucharest Convention foresees preventing pollution, minimizing and controlling current pollution, and cooperating for the precautions which are going to be taken as a general responsibility, which plays an important role in constitution of international environmental norms in the Black Sea basin.

In fact, Environmental regime which is formed to struggle for the environment problems faced by the Black Sea has come up on the agendas of three basic legal arrangements: The Bucharest Convention agreed by countries having to the Black Sea in 1992 and the regime whose basic qualifications specified by supplementary protocol was updated in accordance with the developments recorded in international environmental law with the Odessa Declaration, in a Ministry-level meeting in Odessa in 1993 and Strategic Action Plan in Istanbul in 1996 led by Global Environment Fund (GEF).

1. ENVIRONMENTAL PROBLEMS IN THE BLACK SEA BASIN

The Black Sea's environmental problems seem to have a complicated and intricate structure. Besides its structural problems, there are also other sources carrying the pollution into it, which complicates overcoming the problems. The environmental problems of the Black Sea are not only complicated in their interaction, cause and effect relations but also affecting the eco-system, bio-diversity, sea life, fishery and tourism negatively. These problems have become the reasons for the damages on social and financial structure of the coastal states (Güneş, 2001, p. 312).

In the Black Sea, there is sea and environmental pollution already, but the pollution brought by running waters and other environmental disposal make it more complicated (Sorensen, 1995, p.702). Due to two layers structure, lower layer's deprival of life support and semi-closed location, two thousand years' time is needed to replace all the water (Balkas, 1990, p. 183), which also leaves the Black Sea defenseless against the huge raise in environmental pollution rates (Bakan and Büyükgüngör, 2000, p. 24).

Untreated sewage, reaching at seas directly, indirectly or via running waters, agricultural waste, industrial waste, and the most dangerous nuclear waste are encountered as the various forms of environmental pollution (Genckaya, 1993, p. 555).

Petrol pollution in the Black Sea is partly because of environmental pollution; it is carried by the rivers or directly flows into the seas from the coasts. The other part of petrol pollution is caused by the normal operation or accidents of the ships. The environmental pollution stands for 75% of the pollution in the Black Sea, and the petrol pollution has the biggest pie. 100,000 tons of pollution a year is higher than the pollution occurred during the biggest tank ship disaster (BSTDA, 1997, p. 40) so far. This data does not include the pollution rates caused by petrol transportation, so it is not adequate to give the exact rate of pollution; however, the data is important in bringing the importance of the topic out (Güneş, 2001, p. 319).

Black Sea's being a strategic hub in transporting the energy sources adds the environmental problems an international title. There are two main sources of pollution in the Black Sea: first one is the pollution caused by organic and industrial waste carried by coast and especially rivers; the other one is the pollution by the transportation of petrol by the tank ships. Industrial and domestic waste of Turkey and Russia has been carried by the rivers and caused substantial environmental problems. Besides, heavy metal concentrations left into the sea have threatened the life at sea; and through mussels and other living creatures, the people (Çevik, et al, 2008, p. 396).

Black Sea is a geostrategic and geo-economic hub, which underlines the importance of international dimensions of the problems. In this context, the pollution has branched out. There have been more and more scientific evidences proving that there is an ecological damage – no less than a disaster- because of land resources in the Black Sea and The Sea of Azov. With pathogens and toxic chemical substances, the ecologic damage has caused pollution. In conclusion, coastal states deprive of invaluable water product resources, which face extinction, recreation and tourism potential (Goyet, 1995, p. 25-26).

2. ANALYSIS OF THE BUCHAREST CONVENTION

Countries having coast to the Black Sea have organized a diplomatic conference concerning prevention of pollution in the Black Sea in April, 1992. Besides countries having to the Black Sea, at state-level Armenia, Greece, Moldova, and Yugoslavia; at international organization level Tuna Commission, United Nations Environment Program, International Maritime Organization, World Meteorological Organization, United Nations Development Programmed, and World Health Organization participated in the conference as observers.

Apart from “the contract of preventing the Black Sea from pollution” (Bucharest Convention) there were three other protocols accepted. The titles of these three additional protocols are as follows: “The Protocol on Preventing Pollution of the Marine Environment of the Black Sea due to from Land-Based Sources”, “The Protocol on Cooperation in Combating Pollution of the Black Sea by Oil and Other Harmful Substances in Emergency Situations”, and “The Protocol on the Protection of the Black Sea Marine Environment Against Pollution by Dumping”.

The policies for protecting and usage of the resources of the Black Sea of the coastal states are expressed in Odyssey Declaration. The declaration is signed by environment secretaries of Georgia, Bulgaria, Russia, Romania, Turkey and Ukraine in Odyssey on 7th April, 1993. The declaration regulates the timing, actions taken for combining the efforts of all the parts of society in order to protect the environment with reasons. In fact, the declaration develops the ideas stated in the Bucharest Convention and makes them more palpable. Particularly, , in the care of GEF (Global Environmental Facility), Black Sea’s Situation Management and Protection (Black Sea Environment Program) has been founded in order to keep the promises regarding the years 1993-1996 stated in the Convention. This program has been a base for a mechanism to fulfill the provisions of the Bucharest Convention (Kuznyetsov, et al, 2000, p. 93-94).

2.1. The Parties of the Convention

The states contracting to form the Black Sea Environment Polity are the countries which are countries having to the Black Sea. The countries located in the Black Sea basin and responsible for environment problems of the Black Sea marine to a degree are not legal parties in environment regime of the Black Sea on the condition that they are not on the same coastline.¹ Compared to other marine environment programs, this situation is the same

¹ It is possible to party in 1992 Bucharest Convention as a participant if the country is a non-Black Sea interested in accordance with the article 28/3. According to the article, This Convention shall be open for accession by any non-Black Sea State interested in achieving the aims of this Convention and contributing substantially to the protection and preservation of the marine environment of the Black Sea provided the said State has been invited by all Contracting Parties.

in the others; however, it has more negative effects on the Black Sea unlike the other programs. On considering the fact that a crucial part of the environmental problems faced in the Black Sea are due to the rivers and the activities of the countries located in the basins of these rivers flowing into the Black Sea it will not be wrong to say that the countries' located in the Black Sea basin being excluded from the regime formed to protect the Black Sea will have a negative effect on the accomplishment of the regime. Particularly, thinking the pollution from governing activities of the countries located in Danube Basin has affected the Black Sea marine environment, overwhelming reality of the situation comes up (Güneş, 2001, p. 322-323).

The effect of basin countries on the Black Sea was addressed during Bucharest Conference, as well. The article 2 accepted at Bucharest Conference foresees a cooperation between contracting parties of Bucharest Convention and the countries in Danube basin. The article "Cooperation with Tuna States in order to Fulfil the Requirements Determined by the Convention Concerning Prevention the Black Sea from Pollution" is not an international alliance, but it is a soft law document under the effect of international law (Alpkaya, 1996, p. 46).²

According to this document the rivers flowing into the Black Sea are the main source of pollution. Tuna States are trying hard to make some arrangements about bettering ecological conditions of Danube which has the largest basin among these rivers. Keeping the Danube States' effort in mind, contracting parties of Bucharest Convention are going to be the followers of improvements in the ecological conditions and in cooperation with the Danube States as pointed by the Bucharest Convention.

The states having signatures on the Final Act accepted in Bucharest Conference state that they are going to be in cooperation with Danube States; as for the Danube States they emphasize the necessity of such cooperation in accordance with the international law. This legal necessity is based on two main opponents:

First is the duty of protection and maintenance of the ecological balance in environment, soil, air, and water in accordance with "Paris Requirement for a New Europe" which was accepted on 21st November 1990 by the Danube States and others.

Second is the law principle concerning the fact that protecting and maintaining coastal area is the responsibility of every nation no matter whether they are in the coastal line or not (BSEP, 1995).

² A soft law document is not a document which is just a political document without any law sanction. Contracting parties of such documents are to obey to the document in their actions, not to act as though there were not such a document, and not to state that the matter specified by the contract is the authority area of those states.

The article accepted by the contracting parties in Bucharest Convention does not have an international sanction, but it is a significant document as it constitutes a basis for alliance which is to be done between Danube basin States and countries having to the Black Sea. The necessity of cooperation between contracting parties of the Black Sea regime and Danube States has come up on the Black Sea Strategically Action Plan (BSEP, 1996).³

2.2. Application Area of the Convention

Bucharest Convention shall apply to the Black Sea proper with the southern limit constituted for the purposes of this Convention by the line joining Capes Kelagra and Dalyan (Bucharest Convention, art. 1/1). Contracting parties of the convention are to fulfill the legal responsibilities both in their glaucoma and exclusive economic districts. Contracting parties were not only given these responsibilities and authority, but also the responsibility of other contracting parties' implementation of the convention in their reigned areas without disturbing the peace of the countries from international law (art. 5/1).

However, it is seen that Bucharest Convention excludes some ships in practice. Accordingly, this Convention does not apply to any warship, naval auxiliary or other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each Contracting Party shall ensure, by the adoption of appropriate measures not impairing operations of such vessels or aircraft owned or operated by it, that such vessels or aircraft act in a manner consistent, so far as is practicable, with this Convention (art. 4).

2.3. General Provisions of the Convention

The Bucharest Convention foresees the cooperation of the Contracting Parties in promoting, within international organizations found to be competent by them, the elaboration of measures contributing to the protection and preservation of the marine environment of the Black Sea (art. 5/2).

Pollution of the marine environment means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazard to human health, hindrance to marine activities, including fishing and other legitimate uses of

³ In the Black Sea Strategic Action Plan led by Global Environment Fund, at the pollution from land part, it is put through that eutrophication (in a large water ecosystem excessive increase in plant existence because of increasing nutrition mostly from the land) in Danube States Strategic Action Plan is unsatisfactory in generating solution, and in order to find solutions that basin - level strategies should be developed and reduction in pollution in Danube is a necessity are discussed.

the sea, impairment of quality for use of sea water and reduction of amenities (art. 2/1). Definition of the pollution means that frame of the problem which is planned to solve is formed. The definition given in Bucharest Convention is parallel to the marine pollution definition developed by the Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP) which is a work group of United Nations (Birnie and Boyle, p. 252).

In the Convention various sources of pollution are linked to separate verdicts. Pollution from land-based sources, Pollution from vessels, Pollution by dumping, and Pollution from activities on the continental shelf, Pollution from or through the atmosphere are categorized in accordance with the quality of contamination (art. 7, 8, 10, 11, 12 and 14). The contracting parties are to act within the international law while implementing the duties from the Convention. As stated in the Convention the Contracting Parties take part in this Convention on the basis of full equality in rights and duties, respect for national sovereignty and independence, non-interference in their internal affairs, mutual benefit and other relevant principles and norms of international law (art. 3). In order to implement the Convention it is seen that the Contracting parties' cooperation in conducting scientific research and in observing, preserving marine environment is given as a separate article (art. 15/1).

It is seen that there is another special arrangement for contracting parties, in case of unfulfilled responsibility. This liability includes not only the damage caused by contracting parties themselves, but also the ones caused by natural or juridical persons to the marine environment of the Black Sea in areas where it exercises, its sovereignty, sovereign rights or jurisdiction. Each Contracting Party shall adopt rules and regulations on the liability for damage caused by natural or juridical persons to the marine environment of the Black Sea in areas where it exercises, in accordance with international law, its sovereignty, sovereign rights or jurisdiction. In the Bucharest Convention both compensation for the damage caused and the liability of the precautions needed taking before damage, are taken into consideration (art. 16).

2.4. Executive Organs of the Convention

In order to achieve the purposes of the Convention the Contracting Parties shall establish a Commission on the Protection of the Black Sea against Pollution, hereinafter referred to as the Commission (art. 17/1). The Commission is to undertake the responsibilities accepted unanimously, and the following; elaborating criteria pertaining to the prevention, reduction and control of pollution of the marine environment of the Black Sea and to the elimination of the effects of pollution; promoting scientific and technical research in order to achieve the purposes; cooperating with competent

international organizations, especially with a view to developing appropriate programs or obtaining assistance in order to achieve the purposes of this Convention (art. 18). The Commission and the Secretariat shall have their headquarters in Istanbul. The location of the headquarters may be changed by the Contracting Parties by consensus (art. 17/6-2). The Commission shall conclude a Headquarters Agreement with the host Contracting Party (art. 17/1).

Each Contracting Party shall be represented in the Commission by one Representative who may be accompanied by Alternate Representatives, Advisers and Experts (art. 17/2). Representatives, Alternate Representatives, Advisers and Experts of the Contracting Parties shall enjoy in the territory of the respective Contracting Party diplomatic privileges and immunities in accordance with international law (art. 17/8). The Chairmanship of the Commission shall be assumed by each Contracting Party, in turn, in the alphabetical order of the English language. The Commission shall meet at least once a year. The Chairman shall convene extraordinary meetings upon the request of any Contracting Party. Decisions and recommendations of the Commission shall be adopted unanimously by the Black Sea States (art. 17/4 and 17/5). Gathering of contracting parties apart from the Commission meetings is arranged under another article in Bucharest Convention. The Contracting Parties shall meet in conference upon recommendation by the Commission in order to revise implementation of the Convention and the additional protocols. The primary function of the meetings of the Contracting Parties shall be the review of the implementation of this Convention and of the Protocols upon the report of the Commission. A non-Black Sea State which accedes to this Convention may attend the meetings of the Contracting Parties in an advisory capacity (art. 19).

The Commission shall be assisted in its activities by a permanent Secretariat. The Commission shall nominate the Executive Director and other officials of the Secretariat. The Executive Director shall appoint the technical staff in accordance with the rules to be established by the Commission. The Secretariat shall be composed of nationals of all the Black Sea States, the privileges and immunities of the officials of the Secretariat shall be determined by agreement among the Contracting Parties (art. 17/6 and 17/9). The secretariat which was officially founded on 15 October 2000 started its activities in accordance with the action plan accepted on the sixth meeting of the Commission (BSEPPIU, 2001a, p. 1). The privileges and exemption of the Secretariat officers are determined via an international convention among the Black Sea States on 28 April 2000 (BSEPPIU, 2000), appointment and personal rights of the Secretariat officers were stated via implementing regulations (BSEPPIU, 2001b).

3. THE BUCHAREST CONVENTION IN TERMS OF PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW

Bucharest Convention is conducted in accordance with the ruling principles adopted in general international law in particular international environment law. Although, rules of law in international environment law come out as international conventions, customs, distinct feature of these conventions is that they are 'frame' or 'umbrella' type agreements which are appropriate for adoption in case of new developments and requirements with the help of additional protocols without changing the main convention. This method, which is also known as handshake protocol, requires that agreement topics shall not be in one moot basket, but they are discussed in various conferences. Hence, the states have the liability of cooperation in order to provide accomplishment of the general aims of the convention with the help of a frame - type convention; the other precautions needed taking shall be discussed and arranged in separate protocols. That is, rights and liabilities are stated on the main convention as general principles, and the other instructions about implementing the convention are determined with additional protocols. Handshake protocol gives opportunity for adopting the articles when necessary because of new scientific developments without interrupting the main course of the convention, and also it enhances the forcefulness of environment law by the countries' undertaking responsibilities that they can. This method is beneficial for time and resource economy. Adopting international conventions is time consuming and expensive; arrangements via additional protocols eliminates changing the main convention and prevents prodigality and so the precautions on preserving environment are taken immediately (Güneş, 2001, p. 326).

It is observed that even if the Bucharest Convention is organized in accordance with handshake protocol method, there are some different points between the Bucharest Convention and the three protocols. The Protocol on the Protection of the Black Sea Marine Environment Against Pollution from Land-Based Sources, The Protocol on Cooperation in Combating Pollution of the Black Sea by Oil and Other Harmful Substances in Emergency Situations, and The Protocol on the Protection of the Black Sea Marine Environment Against Pollution by Dumping are indicated as component parts of the Convention (art. 7, 9, 10, 21/1).

According to the Bucharest Convention, the contracting parties are given the authority of making additional protocols as necessary for its implementation, which indicates a system open for improvement as in the other regional marine programs led by United Nations Environment Program. Legal developments in draft protocol and emergency action plan prepared for conservation of biodiversity can be seen as a model for adopting

convention to the new developments (BSEPPIU, 2001b, Turkish Republic Ministry of Environment Achieve, 2001a-b).

4. INSTEAD OF CONCLUSION: RECOMMENDATIONS FOR THE STATES OF THE BLACK SEA BASIN

Various mechanism and sanctions prepared in accordance with updated requirements in the Black Sea basin is possibly put into force within the frame of Bucharest Convention. However, in order to have efficient precautions preserving the Black Sea marine environment, and regain the lively life and ecosystem became extinct require the corporate effort of all the Black Sea States (Sav, 1992, p. 136). In this context, we should emphasize that some recommendations the necessity of cooperation on the environmental problems for the contracting parties of the Bucharest Convention and the other countries located in the Black Sea basin.

As the first step, the Contracting Parties of the Bucharest Convention and additional protocols and the non-contracting states of the Black Sea should arrange institutional and legal frameworks of their own. In order to achieve this purpose reliable mechanism for implementing the provisions and promises in the regional and international agreements should be developed; necessary steps should be taken to enhance environmental consideration in policies concerning the Black Sea at national or regional level; a mechanism for implementing the Convention, and revising the conflicts; activities to prevent unsustainable excessive use of the Black Sea and littoral source should be prompted.

As the second phase, all the states whether they are on the coastal line of the Black Sea or not, they are contracting parties of the Convention or not should empower the cooperation. In order to preserve the Black Sea ecosystem and provide sustainable management, enhance access of resources and strengthen the possibilities attempt ions and real mechanism towards a well developed Convention should be motivated; especially, so as to develop Convention of the Black Sea's Protection against Pollution the states should be activated, by doing so contribution of European Union and other regional economic cooperation organizations should be provided; civil society's contribution to the Black Sea Synergy Cooperation Initiative should be ensured; exchanging information and cooperation about environmental affairs should be strengthen among the Black Sea States, so close cooperation with the organizations arranging regional marine conventions concerning Mediterranean, the Baltic, Northeast Atlantic should be supported.

As the third phase, the states located in the Black Sea basin should prepare context for natives' accessing information about environment, and for providing an equal contribution; civil societies and shareholders in Black

Sea region should access actively at the decision process; special support should be provided for the development of civil societies and Civil Societies should support this at national level.

As a conclusion we can say that the most important step to be taken in the Black Sea Basin to fight against the environmental problems is the regional cooperation and global joint work and put it into practice. As long as the logic and the efforts are put into practice, we can be hopeful about the geography we share.

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