

SUMMARY

Of PhD Thesis

"JURIDICAL FRAMEWORK OF THE INTERNATIONAL COOPERATION FOR THE PROTECTION OF REGIONAL SEAS AGAINST POLLUTION. THE CASE OF THE BLACK SEA"

This PhD Thesis aims to explore the legal means and instruments available internationally, regionally and nationally, for the purpose of achieving an efficient framework of cooperation of states in the world to protect the marine environment from pollution, as well as the measure in which this cooperation manages to solve practical, typical problems of a complex area, which always raises numerous problems.

This thesis comprises eight chapters divided on many sections and subsections, which reflects a broad approach and analysis of scientific research subject area. The thesis is accompanied by the conclusions, four annexes which complement the scientific study and an extensive bibliography with a rich main source of Romanian and foreign specialized literature, reference works in the field of environmental law.

Chapter I, entitled "**The Protection of the Marine Environment**", treats the development of the impact of human activities exerted on the marine environment over time, being identified as the main sources of pollution, and their dramatic effects on various marine ecosystems, biodiversity and coastal zone.

The awareness of the consequences of pollution on the marine environment, as well as on human life and health occurred after growing concern for achieving impact studies, which revealed that the massive pollution caused serious injuries, in some cases irreversible, of the living resources, marine ecosystem and coastal zone. In this respect, the international cooperation is based on the need to develop and protect the marine environment, something that can be achieved only through the partnership of the worldwide nations. The results of states' cooperation at an international and regional level have led, over time, in a laborious process of development and crystallization of rules, legal means and methods which are specific for preventing and combating marine pollution, leading today to a system of international texts highly complex, geographically structured (global and regional) or structured on the types and forms of pollution. The international and regional legal regulations have been supplemented by national regulations, out of the obligation to implement foreign law, in response to the cooperation between states. However, given the continued adaptation and updating of international legal standards, the implementation process has to go a long way, requiring the permanent adoption of measures, on specific areas in order to prevent, limit and control marine pollution.

Compared to the scale of the described phenomenon, the same chapter identifies the objectives of the scientific research approach, which consisted of: identifying the legal framework of the cooperation established for the purpose of marine environment protection against pollution, internationally and regionally: the legal framework analysis and determining the existing relationship between different categories of instruments, depending on the level to which they are adopted and their purpose: the situation of the implementation

and transposition at national level of international regulations on marine and coastal environment protection, as well as biological resources and biodiversity conservation of the Black Sea; the analysis of the integrated management model of the issue of regional seas and their perspectives; proposing legislative measures to be adopted at a national level in order to complement the normative acts, international and regional implementation of those documents that have not yet been ratified by Romania, as well as the way in which many regulations in this field could be efficiently organized at the national level.

Chapter II, entitled "**International legal regulations on protecting the marine environment**" identifies and analyzes the main international framework conventions, protocols, additional codes, aimed to prevent and protect the marine environment. Thus, the obligations of the states are discussed and studied, regarding the marine pollution control, the cooperation, in critical cases due to accidental pollution, but also for promoting scientific studies and exchange of information.

The international regulatory developments show three steps with slightly different objectives, but interdependent. Thus, a first response of the international law on marine pollution offensive was a specialised legal framework, with partial nature and narrowly tailored to the pollutant's specificity and the cause of the event. Following the United Nations Conference in Stockholm appeared a global legal framework, designed to treat the phenomenon as a whole, and expressed formally through the Convention on the Law of the Sea, but having the main drawback of not taking into account the geographical features and oceanographic areas defined. The third step is to establish a regional legal framework, but for a particular ecosystem. This approach allows taking into account all the pollution affecting an area and to adopt joint measures to prevent and combat.

The process of adopting such conventions and complementary codes to protect the marine environment proved, since the beginning, to be a difficult one, mainly due to the difficulty of determining the nations to participate in working meetings and especially to globally implement the measures which were taken, but the most significant issue that has led to hinder the process if implementing the conventions was that of the slow method for the adoption of these instruments. Like any other process on such a scale, this one too involved the consumption of financial resources, especially materials and time.

Chapter III, entitled "**The legal regime of protecting the regional seas**" refers first to the evolution of regulations on environmental protection factors within the European Union. For a better understanding of the evolution of EU environmental regulations, the scientific study highlights those objectives and principles of community environmental policy which are the basis of all environmental protection regulations and, as a consequence of those which are specific to the marine and coastal environment.

Furthermore, the six sectoral environmental action programs are analysed, which reflect the evolution of a system that led to reconsideration of the strategy of integration as a whole. From the liberal concept included in the founding treaties, without concern for the environment, the European model has evolved towards sustainable development, subordinating environmental objectives along with the social and cohesion ones, the prevalent economic objectives from the beginning of the integration process.

The Environmental Action Programmes have been targeted by critics who argue that their effects - in terms of environmental protection - have been insignificant, and in the sense

that on the contrary, ecologist purposes are being aimed, with a disproportionately high environmental price effects (negative) suffered by other sectors of the economies of the Member States. It is the case of those measures which aim to reduce carbon dioxide emissions by 20% by 2020, as compared to the level from 1990, which will have the effect of increasing natural gas imports from Russia.

Despite criticism, the political priority function of the Environmental Action Programmes must be appreciated in the sense that based on them, the legal value documents were subsequently adopted; therefore they had both the role of configuring the role of community action strategy, and also of stimulating the process of legal regulation. In this regard, it should be noted that the principles set out by the various action programs have found, sooner or later, legal consecration (i.e. the principle of promoting the most appropriate level of action – the subsidiarity – expressed for the first time in the Programme of Action launched in 1973; it is based on the idea that Member States remain responsible for their environmental policy. The principle of preservation, conservation and protection of the environment was set in 1973 and is based on the finding that it is easier to prevent and cheaper than to repair or reduce ecological damage; “the polluter pays” principle set out in Program III had the effect of the implementation of anti-pollution rules, the use of an income tax incentive ...). The fact is that the steps initiated by the European Union towards protecting the marine environment should be harmonized with those that are carried out worldwide, and the efficiency of the environmental protection measures is also influenced by the cooperation between the national governmental structures and international or regional organizations specialized in this field.

For the purpose of the scientific study, I continued analysing the legal protection framework of regional seas at a community level, reflected by the adoption of many sectoral directives and regulations to harmonize rules on the international community. All this culminated in a systematic legal framework established by European Parliament Directive in the field of water (1996) which sets out the achievement of good status (ecological and chemical) of water by the year 2015 for all EU Member States. However, that Directive represents a set of texts that sometimes lack the necessary coherence, and which demonstrates that on the date of the adoption, there is no unified view of European policy for the marine environment level. Therefore, the losses of biodiversity caused by pollution and climate changes have led to the initiation of discussions, which led to the development by the European Commission in October 2002 of the Directive project on the marine environment. Its aim is to establish a framework for community action in the field of marine environmental policy, namely to achieve good environmental status of European seas and oceans by 2021.

I believe that such a goal can be achieved only by implementing effective measures to protect and conserve organisms (biological components) and habitats (area occupied by organisms) of marine ecosystems. The new Framework-Directive on marine environmental strategy thus extends the EU law regarding the water, to cover marine environment and is the composition of the new cross-sectoral integrated maritime policy for Europe. In this respect, this requires that Member States ensure "good ecological status" of all marine regions and sub-regions of Europe just as the Water Framework-Directive sets out the main objective of "good status" of freshwater and coastal waters.

Regarding the specific regional seas protection systems, in the same chapter of the thesis, the coordinator role which the United Nations Environment Programme (UNEP) has is examined. Originally designed as a strategy to international cooperation to improve

environmental condition - following the Stockholm Conference in 1972 - it appears that the primary role of UNEP is to lead various institutions in the fight for environmental protection, promoting in particular environmental projects designed to assist developing countries.

Furthermore, each marine region is examined in detail, with specific issues and adopted measures (conventions, action plans, protocols, etc.). In this respect, it is emphasized that, developing the principles and vision of the Convention on the Law of the Sea, the regional seas conventions and their developments have marked the transition from orientation to orientation towards resource use, regarded as the essence of the new law of the sea.

At the end of that chapter of the thesis, the key issues specific to regional seas are presented, as well as a comparative analysis of elements and strategic directions adopted by UNEP for the regional seas programs in 2004-2007, 2008-2012 respectively.

After a brief history of the Black Sea and identifying the main sources leading to the degradation of the marine ecosystem in the area, **Chapter IV - "The protection of the Black Sea against Pollution"** examines the legal regime established to protect the Black Sea. In this regard, I have noticed that the adoption of the Convention regarding the Protection of the Black Sea against pollution is included in the broader context of the concerns of countries in the region in recent years to multiply their cooperation on many fields: economic, political, cultural, scientific, etc., including by establishing appropriate institutional structures. I have noticed that the document establishes a permanent intergovernmental cooperation and develops a part of the adoption experience and implementation of other documents in such field. Thus, States-Parties cooperate not only in emergency cases, but also for preventing and combating the various forms of marine pollution. At the same time, the complex and dynamic nature of all conventional framework is to be noted: the general framework provided by the Convention, supplemented and developed through a series of additional protocols, as well as the possibility of permanent development through a series of regulations required by the reality. In terms of content, the rules set goals of quality and quantity, set requirements which the environmental factors and natural resources must meet ecologically.

After analyzing the Strategic Action Plan for the Rehabilitation and Protection of the Black Sea against pollution, I have stressed the fact that the principles of the Rio de Janeiro Conference continue, tailoring them to specific problems of the region, namely: promoting the concept of "sustainable development" , the precautionary principle in decision making; the principle of preventive action, the principle of stimulating the use of "clean" technology, the principle of appropriate use of economic instruments to support sustainable remediation, introducing environmental considerations into all regional strategies and plans, promoting a close relation between the littoral states; the principle of involving the stakeholders in the area by protecting property rights; transparency and public participation.

Also, other measures to protect the Black Sea against pollution, resulting in plans, programs, ministerial statements, activities at the legislative and / or institutional level, completed or currently developed, are discussed in that chapter.

Chapter V of the thesis presents **"The legal status of biological resources and biodiversity conservation of the Black Sea"**. Both the legal regulations on the conservation of biological resources internationally adopted and also the measures taken in national law are analyzed in detail.

In this regard, I have noted that all legal regulations on biological resources and biodiversity conservation of the Black Sea are marked by a lack of consistency and adaptation to the specific objective. Of course, in areas belonging to the national jurisdiction, the littoral states exercise their sovereign rights and apply the relevant internal law. It is an application of the right of each State to exploit their natural resources according to environmental policy and in accordance with their obligation to protect and preserve the marine environment as reflected in article 193 of the Convention on the Law of the Sea. However, the main recommendation would be a greater involvement of institutions in the implementation of appropriate management systems for the marine environmental protection regarding the ecological biodiversity conservation and coastal protection, which is in continuous erosion. On the other hand, in the free sea, the principle of freedom of fisheries, of exploitation of marine natural resources applies, limited by a number of requirements designed to prevent exhaustion and to ensure their preservation. The two categories of legal rules are supported and supplemented each other in the context of the relationship between national law and international law, regulated in national constitutions.

The main problem highlighted is the linking, coordinating and supplementing the existing regulations in terms of their content and from the perspective of preserving the biological resources and marine biodiversity. From this point of view, an important "fracture" of both major fronts is observed: the space (national-international) and the material right (the content of the regulations). In this respect, for the first one, usually the national regulation, which is more concerned about the prospects for practical application and effective compliance, is unwilling to assimilate the environmental and conservation nature of the marine ecosystem. It prefers to use tools and methods which have already become classical in the field of fisheries and fish farming, preferring to establish such a regime of prohibitions and sanctions, but to regulate a specific protection for certain species of fish, as required by the Monaco Agreement. On the other hand, although the international regulation is integrated with national law, its too general nature makes it ineffective, its role being limited to be the stimulus of domestic lawmaking process.

The second issue is the fact that legal regulations on fishing show some resistance to assimilating the issues which aim to preserve the fish as a species integrated in the marine ecosystem, reducing its action to the rational management measures to avoid depletion of resources (economic perspective).

Another feature is the lack of special regulation which aims to protect coastal areas and, therefore, an integrated management of biological resources in the area of contact and sea-shore influence. In this situation, in respect of creating protected areas and planning the area, at the international level, only the provisions of the Convention on wetlands of international importance and the Convention on natural and cultural world heritage sites of its specific nature remain effective.

Other activities in Romania on the conservation of biological resources (research and monitoring activities, regional activities under the Protected Areas Regional Strategy, including the conservation of nature reservation "Aquatory seaside 2 Mai - Vama Veche ") are identified and analyzed in the same chapter.

Based on the extensive natural habitats of the Black Sea, but also because of the economic importance of coastal zone and the geographical position as the main corridor at the eastern border of Europe, the regulations adopted nationally are presented in **Chapter VI -**

"Coastal area protection", taking into consideration that it requires the concerted action of protection and management in order to enable sustainable development. In this sense, the regime of using the coastal zone public property, but also the way in which its objectives of integrated management are achieved is analysed. Principles and strategic issues on which management of coastal areas should be based are being noted, namely: coastal environment protection, based on an ecosystem approach; preserving its integrity and functioning and sustainable management of natural resources, both of the marine components and also the terrestrial component of coastal zone; activities involving natural processes and respecting the load capacity of ecosystems, human activities over time becoming more favourable for the environment, more socially responsible and economically stable.

Regulating the use of Black Sea beaches, in order to preserve their proper and adequate protection for tourists, as well as the existing projects, for rehabilitation of the Black Sea coastal zone are included and analyzed in the second section of that chapter.

Chapter VII presents a theoretical approach to the regulations on **"Liability for environmental damage."** Both the international regulations and those adopted at Community level are analysed, i.e. nationally, concerning the liability for environmental damage, the purpose of the presentation being that all legal rules adopted in the environment in general and marine environment protection, in particular, would be ineffective without the institution of legal liability. The legal liability is present in all branches of law and suggests the penalty for violation of conduct rule and / or repair of damage caused.

In this chapter some cases of jurisprudence are to be noted. For example, after analysis of an Award rendered by the District Court in Sicily (issued in 2008), the Court did not only apply the "polluter pays" principle, and the principle of precaution, but also other principles such as the principle of proportionality, of property, the principle according to which the environmental protection is an overriding public interest objective.

Chapter VIII - "Towards an integrated management model for regional seas issues" is designed to analyse the need for establishing an integrated approach for the problems of protecting and preserving regional seas, of the diversity of their biological resources and coastal areas.

As mentioned at the beginning of the lecture, marine pollution prevention and environmental protection implies the need for cooperative action between states and the adoption of common rules in this regard. Equally, sustainable development is a central objective of the European Union's political agenda, and integrated maritime policy (IMP) plays an important role in achieving this objective. However, for the IMP to be successful it cannot be limited to the European level. On the other hand, marine ecosystems and maritime economies go beyond the national borders.

Integrated maritime policy (IMP) of the European Union has established itself as a new approach to promote optimal development of all maritime activities in a sustainable way. This confirmed the view that under the joint development of maritime policy, Europe can achieve much greater benefits, with a much reduced environmental impact. EU institutions, Member States and regions have established governance structures to ensure that maritime policies are no longer developed in isolation and take into account the linkages and synergies with other strategic areas.

In essence, the framework offered by IMP aims to achieve four objectives: the creation of cross-sectoral knowledge and tools necessary to enable the implementation of integrated policies, improving the quality of sectoral policies, through an active search for synergies and increasing the coherence between sectors, the implementation of the above mentioned issues, taking into account the characteristics of the regional seas around Europe, through tailored solutions.

It also noted that the Framework-Directive on marine strategy, which is the environmental pillar of the IMP, requires Member States obligation to achieve a good ecological status for the marine environment by 2020, thus protecting the resource on which the economic and social activities related to the sea are based. The implementation of the Directive will be facilitated by the development of cross-sectoral IMP instruments, such as maritime spatial planning, and the various actions required for its implementation, such as socio-economic analysis of human activities related to the sea, for 2012, and later periodically, they will support the development of the IMP. In close connection with the Framework-Directive, the Common Fisheries Policy also integrated the ecosystem approach as the basic principle.

The last of the thesis ends with the presentation of the perspective of integrated management of regional seas issues, with the conclusions of the scientific research and with proposals to be adopted nationally.

The perspectives aim the consolidation of the IMP governance, of cross-sectoral policy instruments that are of major importance for strengthening the economic development, environmental monitoring, safety, security and law enforcement in Europe's seas and oceans; defining the limits of sustainability of human activities affecting the marine environment in the years ahead, in the context of the Framework-Directive on Marine Strategy, will provide clarity and will enable the development of a platform for the successful operation of all maritime activities, taking into account their cumulative effects; strategies based on the marine basins that are essential for the successful implementation of the IMP, which allow adjustment of priorities and policy instruments in the geographic, economic and political context specific to each large maritime regions; the international dimension of IMP which implies, for European states, to assume the leadership role in enhancing global maritime governance.

After analyzing the issues of integrated management, I have found that this approach is becoming a mandatory standard for maritime governance around the world. By adopting the IMP, the European Union becomes a pioneer in this field. But to exploit this position and all the benefits of own integrated policy, EU it must maintain and even enhance its influence in international debates.

In this respect, the EU should in particular: consolidate its role as a global player through active participation in international fora, in accordance with the principle of unity of its external representation, to promote adherence of all countries to the Convention on the Law of the Sea, to established by mutual consent high level dialogue on maritime affairs with key partners, ensuring the synergy with existing sectoral dialogues, to continue dialogue on integrated environmental management through the European neighbourhood policy instruments, at the level of the maritime basins within the existing structures, sharing implementation of best practices of those instruments with neighbouring countries; to continue their efforts to approach an increased attention to oceans and coasts within the

agenda to combat climate change and assist coastal and island states in this area; to continue to promote an approach integrated in the conservation and sustainable use of marine biodiversity, especially in areas beyond national jurisdiction, including the establishment of marine protected areas; to increase their cooperation in research activities with EU third countries, to define common regional strategies for marine research; to ensure coherence between the activities of various organizations, particularly in fisheries and the marine environment; to develop common strategies for all relevant marine basins.

Following research in the field, I consider appropriate the formulation of measures to be nationally adopted, as follows:

1. Expanding the Romanian participation in international and regional legal instruments, such as: the Convention for the Prevention of Marine Pollution by dumping of wastes or other substances (London 1972) as amended by the Protocol of 1996, the International Convention on the intervention on the high seas in cases of accidents that involve or may cause oil pollution (Brussels, 1969), the International Convention for the establishment of an International Fund for compensation for oil pollution damage (Brussels, 1971) as amended by the Protocol of 1992, the International Convention on Civil Liability for damage caused by pollution hydrocarbons used for the operation or propulsion of vessels, London, 2001);
2. Improvement of regional legal mechanism to protect the marine environment of the Black Sea against pollution, through: proper completion of the Convention on the Protection of the Black Sea against Pollution (Bucharest, 1992), particularly in terms of preventing pollution from land-based sources of pollution resulting from continental shelf exploitation, the seabed and subsoil, the ratification by Romania, of the Protocol on the Conservation of Biodiversity and landscape of the Black Sea Convention on the Protection of the Black Sea Against Pollution (1992).
3. The evolution process of harmonization of national legislation with community environmental Acquis, which involved dozens of European acts byway of numerous internal texts, has generated a cumbersome regulatory process, contradictory, constantly reshaping, with results such as: a large number of scattered texts, many of them contradictory, with obvious overlapping, very complicated and therefore sometimes difficult to apply. That is why there are now over 300 environmental laws (laws, decrees and governmental decisions, ministerial orders), plus dozens of international conventions ratified, gathered in a massive and unstructured corpus, and considered by some specialists in environmental protection as an ineffective one.

Consequently, and based on the innovative idea proposed by PhD Mircea Duțu - Grant Coordinator's "Background and dimensions of an Environment Code in Romania", I believe – in my extremely honourable title of collaborator within this Grant - that such a situation in which the Environmental Code will be developed and adopted in Romania, it would be appropriate to include a title dedicated to protecting the Black Sea coastal area and biodiversity conservation. Thus, orderly and systematic coverage of environmental rules in an Environment Code, the provisions marine and coastal environmental protection and biodiversity conservation could be included in the category of special provisions, starting with the basic framework laws in the last two terms - and Law 137/1995 and OUG195/2005 respectively, regarding the environmental protection, together with the arrangement of the European Community regulations in the field.

4. With regards to the Marine Reserve "Seaside Aquatory 2 Mai - Vama Veche" I believe it would be appropriate that it be extended to Bulgarian coastal waters, including Durankulak and Cape Kaliakra. The extension is supported at regional cooperation, by the Agreement for the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic area.

Why a Romanian-Bulgarian border marine area? Firstly because it will create new opportunities for enhancing cooperation between Romania and Bulgaria in the management of the marine sector, because the populations of plant and animal bodies do not take into account the political and administrative boundaries. But the benefits of transboundary protected areas are much more: a wide area beyond the borders of a country, will ensure better conservation of biodiversity, because the larger the protected area, the more it will maintain viable populations of several species belonging wildlife; poaching and illegal trade across borders will be better controlled, the legislation will be applied more effectively, and the inspection of border areas can become effective; pathogenic or harmful species, marched through ballast waters, which negatively affect biodiversity will be more easily controlled, eco-tourism will grow by attracting more visitors, opportunities for achieving common courses for tour operators, charging the same rates, etc.

Currently, worldwide there are 169 complexes of two or more contiguous areas, which actually involve many protected areas divided by international borders. Many of these are already declared transboundary areas, for others there is a high potential to gain such status. The Marine Reserve 2 Mai - Vama Veche could be one of them. Establishing the marine border areas would be the first achievement of this kind in Romania.

5. Starting from the observation that technical-scientific revolution led to a certain stage of relations between society and nature, which by its nature is contradictory (as on the one hand, this extraordinary development of science and technology company raised over the forces of nature, and on the other hand, has created new problems, making the future human society itself to be, in a considerable measure, dependent on the reciprocal relations with these forces, with the planet as a whole), from the one that in some cases the environmental degradation is due precisely to the "success" in achieving the aims pursued, indicates that the requirement which is added to the progress of science and technology is that it is conducted as a scientific-technical and environmental progress. Speaking of such progress, a new global ethics should be developed, and this means not only a new ethic in the use of natural resources, an attitude towards the nature which would be based on harmony, and not on conquest but also the fact that "the survival moves from a national to a global level". But this global ethic should be based on a global environmental consciousness, and this can be formed only by properly informing and educating people (not distorted for various reasons) and a continuous information regarding the environment and all the relevant law in the field must be amended (in the sense that it will acquire the necessary reality); also, the law regarding the central law obligations should be amended - with competence in the field (the central public authority for health, the central public authority for education and research, the National Authority for Consumer Protection, etc.)