

## **Environmental Law for the Black Sea Region**

**Valentin Bou<sup>(1)</sup> and Arzu Nuray<sup>(2)</sup>**

*<sup>(1)</sup>School of Law, University of Valencia, Campus Tarongers s/n, 46022  
Valencia, Spain Tel +34-96-3828668 or 3828551 Fax +34-96-3828552  
e-mail: Valentin.Bou@uv.es*

*<sup>(2)</sup>General Directorate of EIAP & Planning, Turkish Ministry of Environment  
Eskisehir yolu 8 km. 06530 Ankara, Turkey Tel +90-312-2879963/4324  
Fax +90-312-2852910 e-mail: arzu\_nuray1@yahoo.com*

### **Abstract**

This paper is devoted to comment the characteristics of the environmental legal protection of the Black Sea (BS) region. In its first part, we shall examine the different characteristics of regional legal approaches all over the world dealing with environmental protection of semi-enclosed or closed seas. Subsequently, our attention will be focused on the environmental protection of the BS region, analysing first the main features of the BS regional co-operation in marine environmental affairs and second the environmental legal protection of the BS region.

### **Introduction**

The existence of a strong, complete and mandatory legal system for the environmental protection of a regional sea, such as the BS, is the best guarantee for achieving an effective protection of its marine and coastal environment. However, the mere adoption of norms is not enough to pursue this aim, as every norm needs to be implemented effectively. In the first part of this paper, we are going to comment the different legal characteristics of regional approaches dealing with environmental protection of semi-enclosed or closed seas all over the world. In its second part, we will pay a particular attention to the legal environmental protection of the BS. Accordingly, we will exam the main characteristics of the BS regional co-operation in marine environmental affairs and subsequently we will analyse the legal environmental system

for the protection of this special region and its implementation in practice. The authors of this paper wish to clarify that its contents express our personal opinions and in no way can be conceived as reflecting the opinions, attitudes or positions of any official institution.

### **Regional Co-operation on the Protection of the Marine Environment**

Since the beginning of the '970's, several regional approaches concerning the formulation and elaboration of rules, standards and recommended practices and procedures for the protection of the marine environment have appeared, constituting nowadays not only an important example of international regional co-operation, but also forming a substantial branch of current international environmental law.

The United Nations Conference on the Human Environment (Stockholm, 5-16 June 1972) adopted different instruments, mainly the Declaration of the United Nations Conference on the Human Environment, the Action Plan for the Human Environment, and the General Principles for Assessment and Control of Marine Pollution (Shoon, 1973; Garth, 1973). Among these General Principles, principles 8 and 9 read as follow: "Every State should co-operate with other States and competent international organisations with regard to the elaboration and implementation of internationally agreed rules, standards and procedures for the prevention of marine pollution on global, regional and national levels. States should joint together regionally to concert their policies and adopt measures in common to prevent the pollution of the areas which, for geographical or ecological reasons, form a natural entity and an integrated whole" (UNEP, 1988).

Many years have passed since the 1972 United Nations Conference on the Human Environment adopted the Action Plan for the Human Environment, including the General Principles for Assessment and Control of Marine Pollution. In the light of the results of the Stockholm Conference, the United Nations General Assembly adopted its Resolution 2997 (XXVII) of 15 December 1972, where it decided to establish the United Nations Environment Programme (UNEP) to "serve as a focal point for environmental action and co-ordination within the United Nations system". The UNEP Governing Council began to work very soon. In its very First Session (Geneva, 12-22 June 1973), the Governing Council of UNEP adopted its decision 1(I), in which it listed the Programme Priorities for Action by UNEP. Among the priority areas in which activities were to be developed, the Programme Priorities for Action included the item "Oceans" and requested the Executive Director of UNEP "to stimulate international and regional agreements for the control of all forms of pollution of the marine environment, and specially agreements relating to particular bodies of water". Furthermore, in its Second Session (Nairobi, 11-22 March 1974), the Governing Council adopted its Decision 8 (II) (22 March 1974), containing the Priority Subject Areas of the Programme concerning Oceans. Among those priority areas, two statements deserve special attention. The first one declared that: priority should be given to regional activities. Pursuant to the second statement, UNEP should encourage and support the preparation of regional agreements or conventions on the protection of specific bodies of water from pollution, particularly from land-based sources.

Accordingly, during the same year 1974, UNEP initiated its Regional Seas Programme. On 24 May 1978, the Governing Council of UNEP adopted its Decision 6/2. This Decision approved the Executive Director's proposal to amend the objectives and strategies for the Regional Seas Programme. The Executive Director proposed as the objective of UNEP Regional Seas Programme to develop comprehensive action plans for the protection and development of specific regional seas areas for consideration by Governments concerned and to support their implementation. Accordingly, the strategy of this Programme was built on the following basis: (i) Assessment of the state, sources and trends of marine pollution and its impact on human health, marine ecosystems resources and amenities; (ii) Co-ordination of, and support for, environmental management efforts in the protection, development and exploitation of marine and coastal area resources; (iii) Assistance to interested Governments in the implementation of existing conventions and promotion of new international and regional conventions, guidelines and actions to control marine pollution and protect and manage marine and coastal area resources; (iv) Support for education and training efforts to enhance the participation of developing countries in the protection, development and management of marine and coastal area resources; and (v) Exchange of information on the protection, development and management of marine and coastal area resources.

At present, in accordance with the decisions of the Governing Council, the Regional Seas Programme covers eleven areas where regional action plans are operative or are under development: the Mediterranean region; the Kuwait region; the West and Central African region; the Wider Caribbean region; the East Asian Seas region; the South-East Pacific region; the Red Sea and Gulf of Aden region; the Eastern African region; the South Asian Seas region; the South-West Atlantic region; and the North-West Pacific (Sand, 1988; UNEP, 1982a; UNEP, 1982b; UNEP, 1987; UNEP, 1990a; UNEP 1991).

The substantive aspect of any regional programme is outlined in an "action plan" which is formally adopted by an intergovernmental meeting of the Governments of a particular region before the programme enters an operational phase. UNEP co-ordinates directly, or in some regions indirectly through existing regional organisations, the preparations leading to the adoption of the action plan. In the preparatory phase leading to the adoption of the action plan, UNEP consults Governments through a series of meetings and missions about the scope and substance of an action plan suitable for their region. In addition, UNEP, with the co-operation of appropriate global and regional organisations, prepares reviews on the specific environmental problems of the region in order to assist the Governments in identifying the most urgent problems in the region and the corresponding priorities to be assigned to the various activities outlined in the action plan.

All action plans share a similar structure, although the specific activities for any region depend upon the needs and priorities of that region. An action plan usually includes the following five components: (i) environmental assessments; (ii) environmental management; (iii) environmental legislation; (iv) institutional arrangements; and (v) financial arrangements. (De Yturriaga, 1979; Manos, 1992; Juste, 1993). All components of a regional programme are interdependent. Assessment activities identify the problems that need priority attention in the region. Legal agreements are negotiated to strengthen co-operation among States in managing the

identified problems. They also provide an important tool for national policy-makers to implement national control activities. Management activities, aimed at controlling existing environmental problems and preventing the development of new ones, are one of the means by which States fulfil their treaty obligations. Co-ordinated assessment activities then continue to assist Governments by providing scientific information to judge whether the legal agreements and management policies are effective.

The key to success of any regional seas action plan is the political agreement of the Governments concerned and the execution of the programme primarily by national and other appropriate institutions from the region in close co-operation with the relevant components of the United Nations system, regional organisations and other appropriate organisations (UNEP, 1990b). The successful implementation of any regional seas action plan also depends to a considerable degree on sound preparations which take into account the specific socio-economic and political situation in a given region, the priorities in environmental protection as defined by the Governments of the region, the recognised capabilities and needs of the national institutions which are participating in the action plan, and the results of past and ongoing activities.

### **Characteristics of the BS Regional Co-operation in Marine Environmental Affairs**

In 1987 UNEP explored the interest in the development of an Action Plan for the BS through direct approach to BS States. Furthermore, Decision 15/1 of the Fifteenth Session of the Governing Council of UNEP (1989) approved the development of an Action Plan for this region. But while some of these States expressed their interest in the development of the Action Plan in the framework of the Regional Seas Programme, others preferred the development of a programme for the protection of the BS through direct multilateral agreement between the interest States, without involvement of the United Nations system. In fact, BS States originally followed this way of action. Thus, Bulgaria, Georgia, Romania, the Russian Federation, Turkey and Ukraine adopted in 1992 the framework Bucharest Convention and its related Protocols. But we must take into account that Article V paragraph 5 of the Bucharest Convention stipulates that: "The Contracting Parties will co-operate in promoting, within international organisations found to be competent by them, the elaboration of measures contributing to the protection and preservation of the marine environment of the BS". Moreover, in Resolution 3 adopted at the same 1992 Bucharest Diplomatic Conference on the Protection of the BS, BS States decided to invite UNEP Regional Seas Programme to co-operate with the Contracting Parties and/or the Istanbul Commission for the elaboration of a BS Action Plan, including provision of assistance and equipment as well as a preliminary work programme for priority environmental issues that were expressly identified in that Resolution. Furthermore, the Final Act of the Ministerial Meeting on the Declaration on the Protection of the BS (Odesa, April 6-7, 1993) insisted on this invitation.

Thus, on the one hand, at the legal stage of regional environmental co-operation, the system for the environmental protection of the BS, as it was originally designed, enjoyed a hybrid character, specially if it is compared with other regional approaches. BS States chose to follow the decentralised or anarchic diplomacy approach, that is, the direct multilateral legal negotiations, instead of acting in the framework of an international organisation, such as UNEP. But at the same time, they followed the

common UNEP pattern for the environmental protection of a regional sea, based on the (future) adoption of an action plan, with one regional legal component. Even the implementation of this regional legal component closely followed, at first sight, the UNEP Regional Seas Programme pattern, as it is formed by a framework Convention, that is, the Convention on the Protection of the BS Against Pollution and, by the moment, its three related Protocols: the Protocol on Protection of the BS Marine Environment against Pollution from Land-based Sources; the Protocol on Co-operation in Combating Pollution of the BS Marine Environment by Oil and Other Harmful Substances in Emergency Situations; and the Protocol on the Protection of the BS Marine Environment against Pollution by Dumping, all of them adopted in Bucharest on 22 April 1992 (Mee, 1992). But as far as becoming a Contracting Party to the Bucharest Convention implies automatically being also a Contracting Party to all its related Protocols, the final result achieved for the BS departs from the UNEP pattern, which is characterised by a high degree of flexibility concerning the rights and duties provided for to each Contracting Party, whereas the Bucharest system is based on the full equality in rights and duties among the different Contracting Parties (Sorensen, 1995).

On the other hand, at the political stage of regional environmental co-operation, the economic constraints of most of BS States proved, as time evolved, the real need for technical and financial assistance from different international organisations of the United Nations system. It must be taken into account that the Bucharest Convention and its related Protocols have established rules, but they have not settled down goals, priorities and timetable needed to bring about environmental actions. For this reason, the Ministers for the Environment from the six BS States signed in April 1993 the Odesa Ministerial Declaration on the Protection of the BS Environment. The political regional co-operation for the environmental protection of the BS began with the Odesa Declaration, which is a document based largely upon Agenda 21 adopted at the Rio Conference on Environment and Development (Hey; Mee, 1993).

In fact, in order to make an early start to environmental action and to develop a longer-term Action Plan, BS States requested support from the Global Environmental Facility (GEF), who had established in 1991 a US \$ 2 billion fund under the management of the World Bank (WB), the United Nations Development Programme (UNDP) and UNEP. In June 1993, GEF established a three-year BS Environmental Programme (BSEP) with US \$ 11 million funding from GEF, which has further been supported by the UNDP funding of close to US \$ 400,000. It also attracted some US \$10 million in parallel grant funding from multilateral and bilateral donors, notably the European Union (Phare and Tacis Programmes), The Netherlands, France, Austria, Canada and Japan. BSEP has been closely linked to programmes supported by partner agencies in the UN system, such as UNEP, United Nations Food and Agriculture Organization (FAO), International Maritime Organization (IMO), World Health Organization (WHO), International Atomic Energy Agency (IAEA), Intergovernmental Oceanographic Commission of UNESCO (UNESCO/OIC), as well as programmes organised by other multilateral organisations, such as the Science for Stability Programme of NATO. The Turkish Government has always been an active participant of, and the contribution to BSEP through its annual in-kind support of US \$ 70,000 which has covered the costs of the Programme Co-ordination Unit (PCU) of BSEP.

The first Meeting of the BSEP Steering Committee took place in Varna (Bulgaria) in June 1993. At this Meeting, national delegates from the six BS States met together with GEF Partners, donors and representatives from different Non Governmental Organisations (NGOs), in order to define a three-year workplan. This Meeting selected the following three objectives for BSEP: (i) to improve the capacity of BS States to assess and manage the environment; (ii) to support the development and implementation of new environmental policies and laws; and (iii) to facilitate the preparation of sound environmental investments (Sezer, 1998). In fact, it was expected that BSEP would produce the following outputs: (i) a short-term strategy to attain a more sustainable ecosystem in the BS; (ii) preparation and adoption of a BS Action Plan; (iii) support systems for implementing the Bucharest Convention and the Odesa Declaration; (iv) training modules for capacity building, human resources development and environmentally sound investment policies; and (v) preparation and partly implementation of a list of urgent investments (RER/92/G31/B/G1/31). Initially, BSEP was designed to cover a three year period, from 1993 until 1995, but it was extended until the end of 1998. During this time, BSEP promoted the adoption of measures in order to develop an appropriate policy for the assessment, control and prevention of pollution in the BS region. These measures closely followed the contents of UNEP's Regional Seas Programme (GEF BSEP, 1995a; 1996; 1997a; 1998). But although BSEP has provided the most accurate information until now on the state of the marine pollution in the BS (BSEP, 1997b), it is discouraging that this amount of information has not been translated into the adoption of legal measures to strengthen the Bucharest Convention. The divorce between the acquisition of scientific environmental knowledge and the adoption of legal measures can only be partly explained, but never justified, in attention to the bodies responsible for both tasks, as far as the adoption of legal measures and decisions is the exclusive competence of the Istanbul Commission, which is an international body composed only by representatives from the different BS States.

As a result of the work carried out in the framework of BSEP, the six BS States adopted the Strategic Action Plan for the Rehabilitation and Protection of the BS (Istanbul, 31 October 1996). Although in its Preamble BS States appreciated the progress that had been made towards attaining sustainable development in the BS region through the actions taken within BSEP, the Strategic Action Plan was adopted exclusively by BS States. Furthermore, the duty to implement this Strategic Action Plan falls again mainly within the responsibilities of the Istanbul Commission. Moreover, the Strategic Action Plan contains a very generic appeal concerning co-operation with international organisations. Pursuant to it, BS States "shall individually and jointly encourage a close co-operation with relevant international organisations, including UN Agencies and international NGOs in implementing this Strategic Action Plan" (paragraph 26, d). But the lack of determination both in identifying which are those relevant international organisation and in assigning them specific roles, may cause uncertainties with important effects on the institutional and financial aspects needed for the implementation of this Strategic Action Plan.

There is no doubt that BSEP has achieved much in a relatively short period of time. In fact, as a consequence of BSEP, many institutions in the region have currently sufficient technical capacity to implement the BS Strategic Action Plan. But once BSEP is over, it became clear and urgent the need to establish immediately both a BS Environmental Fund, financed by BS States, and the Secretariat to the Istanbul

Commission in order to ensure the successful implementation of the Bucharest Convention and other policies and action plans. These two topics were lengthily discussed at the Sixth Meeting of the BS Steering Committee (BS-PIU/SC6/98), held at Istanbul from 14 to 15 December 1998, where it was agreed the effective establishment of both institutions before April 1999 and the commitment of each BS State to contribute to the BSEP funds with US \$ 19.400 in order to ensure the survival of the Programme Co-ordination Unit (PIU) of BSEP until that date. The effective implementation of these requirements were considered as a pre-condition in order to negotiate in April 1999 a new programme of about US \$ 30-35 million with the GEF Council. This new GEF programme will replace the former BSEP and it intends to finance one sound and large scale project in each of the six BS States with the objective of addressing the biggest single problem of the BS: eutrophication. Hence, the establishment of the Secretariat to the Istanbul Commission and financial contributions by BS States are critical in this respect and it will also be recognised by other potential multilateral and bilateral donors, including WB, which is planning to allocate a loan of US \$ 500 million for environmental investment projects in the BS region.

### **Legal Environmental Protection of the BS Region**

The environmental legal protection of a regional sea is the result of the environmental measures, criteria, standards and procedures provided for at three different legal levels: international, regional and national law.

### ***International Environmental Law for the Protection of the BS Region***

International treaties, customary law, general principles of law, as well as significant policy documents such as the Declaration of the 1972 Stockholm Conference, Agenda 21 and the Rio Declaration, have all had and will continue to have a smaller or larger impact on the legal developments in the BS region. Therefore, legal instruments especially applicable to this region cannot justifiably be considered in isolation. The regime provided for by treaties of a broader geographical scope of application, the rules provided by customary law or general principles and the agendas prepared at international level are highly relevant, and cannot be disregarded if legal regimes for the BS region, and national laws and measures within its countries, are to develop into efficient tools. According to scholars, it is indeed international law that can be used to secure harmonisation and development of national environmental law, that can facilitate compensation for environmental damage, and provide for offences, penalties and other sanctions to be employed under national law against individuals and companies whose activities are harmful to the environment (Birnie; Boyle, 1992, p. 5).

This paper will not examine the whole range of customary rules or principles which may or may not be applicable when it comes to environmental protection. We shall say that there are, at least, two international customs whose existence is not questioned and that are applicable in the environmental field. The first one establishes the duty of all States to co-operate in the protection of the environment. This duty includes the obligation of an early notification of whatever situation that causes or may cause an appreciable environmental harm to another State and the obligation to negotiate and adopt measures that will avoid the repetition of the same environmental

harm or risk in the future. The second international custom establishes the obligation that States shall individually and jointly prevent pollution, both transboundary and global pollution. At least one principle, that is, the precautionary principle, also applies in the BS region, as reflected in the Odesa Declaration. The Rio Declaration defines the precautionary principle as follows: "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".

More important is to mention the existence of different international treaties aimed at protecting the marine environment and the land and nature which are directly relevant to the BS. The first one is the 1982 United Nations Convention on the Law of the Sea. Although at 1 April 1998, Bulgaria, Russia, Georgia and Romania were the only BS States that had ratified this Convention, it is important to bear in mind that part of its contents is becoming more and more important as customary law and hence those contents are binding for all States, including all BS States. This is the case, for instance, with its Part XII, devoted specifically to the marine environmental protection. Moreover, BS States have claimed maritime zones (territorial sea, exclusive economic zone) in accordance with the provisions of this Convention and it may well serve as guidance in future delimitation agreements, which are needed for the implementation of the Bucharest Convention.

Another important Convention is the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78). This Convention is almost universally applicable, it has already been ratified by all BS States and is therefore fully in force in this region. Although Article VIII of the Bucharest Convention establishes very general obligations concerning pollution from vessels, this provision will not be implemented in the future with the adoption of a new Protocol to the Bucharest Convention due to two main reasons. The first one is that MARPOL 73/78 contains very concrete and technical measures for preventing this source of marine pollution. In fact, MARPOL 73/78 has six Annexes concerned with oil (Annex I), noxious liquid substances in bulk (Annex II), harmful substances carried by sea in packaged forms (Annex III), sewage (Annex IV), garbage (Annex V) and air pollution from ships (Annex VI). It is difficult to conceive a regional Protocol settling down more stringent measures and standards than those provided for by MARPOL 73/78. The second reason is that MARPOL 73/78 has been almost universally accepted and hence it is binding even for ships flying the flag of a non BS State when it navigates through the BS. Another feature of MARPOL 73/78 is that it offers a possibility of extra protection for the BS region, having designated the whole BS region as a "special area" within several of its Annexes. Under this regime, if in force, discharge of oil or garbage within the region would be fully prohibited. In order to enforce this regime, however, BS States will need to provide for sufficient reception facilities in their BS ports. Once enforced, the regime will serve as a strong complement to the Bucharest Convention's provision on oil pollution. Unfortunately, the provisions of MARPOL 73/78 have neither been fully nor consistently applied by BS States. Effective enforcement, however, will require clarity about the marine delimitation issue mentioned above.

It is also worth noting that even in the environmental fields covered by specific Protocols to the Bucharest Convention, international law has evolved with time and new instruments have appeared. This is the case, for instance, with the 1972 London



Dumping Convention, that has been fully changed after the adoption of the 1996 Protocol to amend the London Dumping Convention. This is also the case with the Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities and the Declaration of Principles on Protection of the Marine Environment from Land-Based Activities, both of them adopted in Washington DC. in November 1995. Undoubtedly, as these international tools reflect the newest trends of international environmental law concerning these topics, BS States must pay appropriate attention to them and try to update accordingly the specific Protocols to the Bucharest Convention.

We must mention several conventions due to their significant roles as legal tools within the field of nature preservation (Bou, 1995) and which are or might prove of relevance to the BS region, such as the 1971 Convention on Wetland of International Importance, Especially as Waterfowl Habitat (Ramsar Convention); the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); and the 1979 Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention). Although the six BS States as a whole have not ratified any of them (but for instance, Turkey ratified the Ramsar Convention on 17 May 1994; CITES on 20 June 1996 and so on), it seems realistic to expect in the near future a full ratification of all these conventions by the six BS States. In fact, these conventions have already been relevant for the BS with independence of their ratification by BS States. For instance, although none of the BS States had ratified the Bonn Convention, all of them participated in the adoption of the 1996 Agreement on the Conservation of Cetaceans on the BS, the Mediterranean Sea and Atlantic contiguous area (Monaco Agreement), which is in fact an Agreement implementing the Bonn Convention (Bou, 1999).

Lastly, the 1992 Biological Diversity Convention is the first global instrument to follow a comprehensive approach to the problem of conserving the world's biological diversity and of using its biological resources sustainably. Most of its provisions set out policies, rather than establishing precise obligations or targets. The Biodiversity Convention can well be seen as providing an international framework for conserving biodiversity. Though not all BS States have ratified it yet, and its contents may not be said as to have evolved into customary law, the Biodiversity Convention, negotiated by a large number of countries, is deemed to have a large influence on nature protection all over the world (Maffei, 1993; Baartman, 1998).

### ***Regional Environmental Law for the Protection of the BS Region***

The regional law for the BS is represented by the Bucharest Convention and its three related Protocols, which are an integral part thereof. We must take into account that the Bucharest Convention and its related Protocols were adopted on 22 April 1992. Thus, they were not able to receive all the new environmental concepts and strategies that arose in the Rio Conference on Environment and Development, that was held a few months later. This dyslexia is reflected, for instance, in the main general undertaking of the Bucharest Convention, which consists in the undertaking of the Contracting Parties to "take individually or jointly, as appropriate, all necessary measures consistent with international law and in accordance with the provisions of this Convention to prevent, reduce and control pollution thereof in order to protect and preserve the marine

environment of the BS". After the Rio Conference, States have developed a more aggressive approach against pollution. Consequently, they considered that adopting measures to prevent, reduce and control pollution was not enough and therefore they introduced a new objective consisting in adopting measures in order to eliminate pollution to the fullest possible extent. For reaching this aim, new environmental principles appeared (such as the precautionary principle or the polluter pays principle), some general obligations have been implemented with very concrete norms and criteria (such as the norms and criteria implementing the duty to carry out environmental impact assessments or the duty to use the best available techniques and the best environmental practices, including the application of, access to and transfer of clean production technologies) and new strategies have been developed (such as the adoption of programmes and mandatory measures which contain, where appropriate, time limits for their completion in order to pursue the progressive elimination of pollution). But neither the Bucharest Convention nor its related Protocols have introduced this more aggressive objective. Therefore, there is no mention at all of the new environmental principles that have emerged during the last few years. No concrete norms and criteria have been provided for in order to implement the general and soft duties settled down in Article XV, paragraphs 5 (environmental impact assessments) and 6 (clean and low-waste technology) of the Bucharest Convention. In fact, the criteria established in Sections D (Availability of waste technology) and E (Potential impairment of marine ecosystems and sea-water uses) of Annex III of the Land Based Sources Protocol and in Section C (General considerations) of Annex III of the Dumping Protocol cannot fulfil this function due to different reasons. First, they are not valid for every source of marine pollution, but only for either dumping or land based pollution. Second, these criteria are very general and old-fashioned and therefore no concrete common terms of reference can be obtained from them. At least, we must highlight that there is a provision (Article 6 of the Land Based Sources Protocol) that foresees, with a partial character, the new strategy developed after the Rio Conference. But this provision is valid only for pollution from land based sources and it is a *pacto de contrahendo*, as it leaves for the future the adoption by the Istanbul Commission of common emission standards and timetable for the implementation of the programme and measures aimed at preventing, reducing or eliminating, as appropriate, this kind of marine pollution.

Nevertheless, the Bucharest Convention has established general obligations dealing with five of the six sources of marine pollution: land-based (Article VII, implemented by the Land Based Sources Protocol), vessel-source (Article VIII), dumping (Article X, implemented by the Dumping Protocol), offshore pollution (Article XI) and atmospheric pollution (Article XII). The only source of pollution not covered by the Bucharest Convention is exploitation of the International Seabed Area, because there is no single square meter in the BS appertaining to this common maritime area. The Bucharest Convention also deals with emergency response (Article IX, implemented by the Emergency Response Protocol), ruling the techniques to prevent pollution arising from accidents that take place in the BS.

BS States must implement, individually and jointly, the provisions of the Bucharest Convention and its related Protocols. In order to promote the joint implementation of these regional legal tools, the Bucharest Convention has foreseen the establishment of a Commission on the Protection of the BS against Pollution, known as the Istanbul Commission, composed by representatives from each Contracting Party

and assisted by a permanent Secretariat. It has also ruled the possibility of convening a Meeting of Contracting Parties in order to review the implementation of the Bucharest Convention and its related Protocols (Article XIX). Experience in earlier regional seas programmes has shown that the existence of an institutional structure, providing for a co-ordinating body, increases chances of success for a regional Convention. But in the case of the BS, BS States have failed in this point. More than seven years after the adoption of the Bucharest Convention, BS States have failed in establishing the permanent Secretariat in Istanbul. They have also failed in requesting an international organisation to carry out secretariat functions. Lacking this technical support, the Istanbul Commission, which held its first Meeting in May 1995, has not yet proven to be the active, supervisory body as intended by the Bucharest Convention. In fact, the Istanbul Commission has not been able to carry out some of its functions, such as making recommendations on measures and criteria necessary for achieving the aims of the Bucharest Convention; recommending amendments either to the Bucharest Convention or to its related Protocols, as well as to their annexes; or promoting the adoption of additional protocols. Therefore, there has been no need at all to convene any Meeting of Contracting Parties.

The result of this weak institutional structure is that the Bucharest Convention and its related Protocols have not been the dynamic legal system needed for the environmental protection of the BS, but they are a frozen legal system with no capacity at all either for evolving to face new environmental concerns or for updating their former contents in order to receive the newest environmental legal trends and concepts. In this regard, we must point out that in the very same 1992 Diplomatic Conference on the Protection of the BS, where the Bucharest Convention and its three related Protocols were adopted, the Russian Federation presented a draft Protocol concerning transboundary movement of hazardous wastes in the BS and co-operation in combating illegal traffic thereof. Resolution number 1 of the 1992 Diplomatic Conference decided that priority shall be given to the elaboration and adoption of a Protocol on this topic. Furthermore, the 1996 Strategic Action Plan insisted on the need of adopting this Protocol "without further delay" (paragraph 47). But leaving aside these political declarations, no concrete action towards the adoption of this Protocol has ever taken place. Moreover, in 1995 the Advisory Panel on the Harmonization of Environmental Quality Criteria, Standards, Legislation and Enforcement, which is a GEF BSEP working group, also recommended the elaboration and adoption of another Protocol concerning the conservation of biological diversity in the BS (GEF BSEP, 1995b). Again, the 1996 Strategic Action Plan insisted on the need to develop and adopt a Protocol on Biological Diversity and Landscape Protection to the Bucharest Convention by the year 2000 (paragraph 60). But once again no action towards this aim has already taken place.

A similar impression is obtained when we ask ourselves whether the contents of the 1992 Bucharest Convention and its related Protocols are still valid or not for the environmental protection of the BS at the turn of the millennium. On the one hand, we have seen that after the Rio Conference on Environment and Development, new objectives, principles, norms and criteria, as well as new strategies have appeared in the environmental field. But the Bucharest Convention has not received these new environmental trends and concepts. What is even worse is that Contracting Parties have taken no action at all in order to amend and update the contents of the Bucharest

Convention. On the other hand, the Land-Based Source Protocol and the Dumping Protocol are accompanied by annexes containing the so-called black, gray and green lists. In accordance with the general environmental practice that arose during the 1970's, pollution by substances and matter on the black list (Annexes I), categorised as hazardous, needs to be prevented and eliminated by Contracting Parties. Pollution by substances on the gray lists (Annexes II), categorised as noxious, needs to be reduced and where possible eliminated. In the case of the Land-Based Source Protocol there is an additional Annex III, which prescribes restrictions to which discharges of substances and matters listed in Annex II should be subject. Furthermore, dumping of wastes and materials containing the noxious substances listed in Annex II requires a prior special permit from the "competent national authorities", while, according to Annex III, dumping of all other wastes and materials (known as the green list) requires a prior general permit. We must take into account that the three lists system, which was quite frequently used in international environmental law some years ago, nowadays has become an old-fashioned system. The three lists system was first used by dumping conventions, such as the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters (London, 29 December 1972) or the Protocol for the Prevention of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft (Barcelona, 16 February 1976). But these international treaties used the three lists system in a time when their objectives were preventing, abating and controlling marine pollution. Nowadays, after the adoption of both the 1995 amendments to the Protocol for the Prevention and Elimination of Pollution of the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea (Barcelona, 10 June 1995) and the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters (London, 7 November 1996), both treaties have a more radical objective, that is, the elimination to the fullest extent possible of marine pollution. In order to reach this aim, both treaties have abandoned the three lists system and have replaced it with a general waste dumping ban and follow a reverse list system which enumerates the wastes that can be dumped at sea after obtaining a prior special permit from the competent national authorities. The shortcomings of the objectives of the Dumping Protocol to the Bucharest Convention are, then, evident, as far as this Protocol still follows the three lists system. In fact, the Dumping Protocol to the Bucharest Convention allows, under certain conditions, for the disposal at the BS of harmful or noxious substances and materials included in the gray and green lists. Consequently serious doubts arose about the usefulness of a regional Protocol, such as the Dumping Protocol to the Bucharest Convention, as far as it contains lesser strict environmental standards than those provided for by a treaty of world wide scope, such as the 1996 Protocol to the London Dumping Convention, which also applies to the BS. It seems urgent to amend and update the Dumping Protocol to the Bucharest Convention following the newest environmental trends and concepts, but once again BS States have taken no action at all towards this aim. The same situation occurs with the Land-Based Source Protocol to the Bucharest Convention, which is not in line with the 1995 Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities.

### ***National Environmental Laws for the Protection of the BS Region***

It is difficult to comment the characteristics of the domestic or national law of the different BS States concerning the environmental protection of this semi-enclosed

sea. This difficulty arises not only because it is not easy to have public access to the environmental national legislation of the different States concerned, but also because of language restrictions. Therefore, this section closely follows the conclusions of the study carried out in 1998 by *Netty Baartman* for the GEF BSEP (Baartman, 1998). However, international and regional legal regimes require implementation at the national level. Effective implementation at the national level is the only real guarantee for success of international and regional legal systems on environmental protection of a particular region. But in countries like the former communist BS States, where national legal regimes on environmental protection have started to develop only several years ago, the immediate compliance with international and regional norms may be very difficult, as economic constraints make very difficult the acquisition of clean production technologies. In Turkey, the only BS State that has not been a former communist country, the situation is better, but not much better than the situation existing in former communist BS States.

All BS States have currently established environmental goals, which are laid down in their constitutions and/or general environmental protection acts. All the former communist BS States have recently adopted such framework acts. Turkey, which, unlike the other BS States, has not been under communist regime during the Soviet era, has had a general environmental act since 1982. Part of the implementation process consists on the creation of general environmental acts, in which goals are reflected, basic rights and duties are laid down, and procedures for implementation and enforcement are provided for. However, general environmental protection acts need to be implemented by sectoral acts, covering different environmental fields, and by administrative regulations. It is in this point where problems arise in the BS States' domestic law. The former communist BS States have begun to adopt sectoral acts on marine protection and on nature conservation, but their national legal systems are still far from complete (Postolache; Nenciu, 1996; Archer, 1995). Again, Turkey's position is to some extent different. But although the Turkish general environmental act has been implemented for a longer period of time (Özhan; Uras; Aktas, 1993; Nuray, 1997), the body of sectoral environmental acts is not complete even in this case. Therefore, a first consideration is that BS States do not yet make full and effective use of environmental quality criteria and standards, which are to develop and translate general environmental goals into realistic, understandable and applicable limits for the potential polluters.

More complex and problematic is the task to ensure a strong administrative base (including training and qualified staff), strong enforcement legislation, containing workable civil, criminal and administrative liability procedures, and actual access to court for those who have suffered environmental harm. In fact, the situation in all BS States is discouraging in this point, as implementation and enforcement are the most underdeveloped parts of their domestic laws concerning the environmental protection of the BS region.

## Conclusions

From time to time, BS States have expressed their concern about the state of the marine environment in the BS region and their political wish to protect and rehabilitate it. But these occasional expressions of good faith on the need to protect the marine and coastal environment of the BS region have scarcely been concreted with the adoption of

legal measures at the international, regional and national levels. Therefore it seems that although BS States acknowledge the need and urgency of protecting the marine environment in this particular region, the environmental concern is not one of its main political objectives. It is true that during the last few years many of the BS States have passed general environmental protection acts and that some improvements have been already made. But in general, the situation of the environmental protection of the BS region from a legal perspective cannot be considered as being satisfactory. There are many international environmental treaties that have not been ratified by all BS States. At the regional level, the Bucharest Convention and its related Protocols remain anchored and frozen in 1992: they have not been updated and strengthened; no new additional protocol has been adopted; and no measures to implement the Bucharest Convention or its related Protocols have been approved. At the national level, there are many legal loopholes and, in general, there is a strong lack of sectoral laws and administrative regulations defining environmental quality criteria and standards. This situation is unsustainable and its result is the progressive deterioration of the marine and coastal environment of the BS region. Many times, the economic constraints or the economic crisis affecting many of BS States is invoked, trying to justify this weak legal environmental system. But the economic situation is more related with the effective implementation of norms than with the adoption of norms. As a first step, BS States should proceed individually and jointly to adopt urgently new environmental norms, procedures and standards in order to update, complete and strengthen the legal system for the environmental protection of this region. As a second step, the time to implement those norms will arrive, and in this phase there is room for the technical and economic assistance of the international community. But currently the premise is failing and the BS environment cannot wait anymore.

### **Acknowledgments**

This paper has been written in the framework of the research programme GV97-RN-14-129.

### **References**

- Archer, J.H. (1995). "Bulgaria's coastal management program: the World Bank funds development of the first Black Sea ICAM effort", *Ocean & Coastal Management*, 26, 77-82.
- Baartman, N. (1998). "Analysis of the Practice of National and International Environmental Law in the Black Sea Region", GEF-BSEP, United Nations Publication.
- Birnie, P.W. and Boyle, A.E. (1992). "International Law and the Environment", Oxford.
- BS-PIU/SC6/98: PIU of the BSEP. "Summary Report of the Sixth Meeting of the Black Sea Environmental Programme Steering Committee, December 1998", Istanbul, Turkey, 14-15.

- Bou, V. (1995). "Protected areas and species: The Mediterranean basin", In E. Özhan (ed.), *Proceedings of the Second International Conference on the Mediterranean Coastal Environment*, vol. 2, 671-696.
- Bou, V. (1999). "The agreement on the conservation of cetaceans on the Black Sea, the Mediterranean Sea and contiguous Atlantic area", *13th Annual Conference of the European Cetacean Society*, pending publication.
- De Yturriaga, J.A. (1979). "Regional conventions on the protection of the marine environment", *Recueil des Cours. Académie de Droit International*, 162, 338-340.
- GARTH. (1973). "Declaration on the human environment", *Stanford Journal of International Studies*, 8, 37 p. et seq.
- GEF BSEP. (1995a). "1994 Annual Report", Istanbul, 44 p.
- GEF BSEP. (1995b). "Recommendations of the Advisory Panel on the Harmonization of Environmental Quality Criteria, Standards, Legislation and Enforcement".
- GEF BSEP. (1996). "1995 Annual Report", Istanbul, 38 p.
- GEF BSEP. (1997a). "1996 Annual Report", Istanbul, 45 p.
- GEF BSEP. (1997b). "Black Sea Transboundary Diagnostic Analysis", Istanbul, 142 p.
- GEF BSEP. (1998). "1997 Annual Report", Istanbul, 39 p.
- Hey, E. and Mee, L.D. (1993). "The Ministerial Declaration: an important step", *Environmental Policy and Law*, 23, 215 et seq.
- Juste Ruiz, J. (1993). "The evolution of the Barcelona convention and its protocols for the protection of the Mediterranean Sea against pollution", In: E.L. Miles and T. Treves (eds.), *The Law of the Sea: New Worlds, New Discoveries*, 211 p. et seq.
- Maffei, M.C. (1993). "Evolving trends in the international protection of species", *German Yearbook of International Law*, 36, 131-186.
- Manos, A. (1992). "The regional approach to the protection of the marine environment against pollution and UNEP's programme for the Mediterranean", In: U. Leanza (ed.), *Le Convenzioni internazionali sulla protezione del Mediterraneo contro l'inquinamento marino*, Napoli, 19 p. et seq.
- Mee, L.D. (1992). "The Black Sea in crisis: a need for concerted international action", *Ambio*, 21, 278-286.
- Nuray, A. (1997). "Turkish laws related with coastal zones and their implementations", *Proceedings of the International Conference on Water Problems in the Mediterranean Countries, 17-21 November 1997*, Nicosia (North Cyprus), pending publication.

- Özhan, E., Uras, A. and Aktas, E. (1993). "Turkish legislation pertinent to coastal zone management", In: E. Özhan (ed.), *Proceedings of the First International Conference on the Mediterranean Coastal Environment*, vol. 1, 333-346.
- Postolache, J. and Nenciu, C. (1996). "Reviews of legal and institutional systems: new regulations and institution for environmental protection in Romania", In: E. Özhan (ed.), *Integrated Coastal Zone Management in the Mediterranean & Black Sea*, Sarigerme (Turkey), 301-308.
- RER/92/G31/B/G1/31. "GEF: Project Document. Environmental Management and Protection of the Black Sea".
- Sand, P. (1988). "Marine Environmental Law in the United Nations Environment Programme", London and New York.
- Sezer, S. (1998). "Integrating economics into environmental management. Case study: the Black Sea environmental programme", In: G. Kocasoy (ed.), *The Kriton Cury International Symposium on Environmental Management in the Mediterranean Region*, vol. 1, 176-182.
- Shoon, L. (1973). "The Stockholm declaration on the human environment", *Harvard International Law Journal*, 14, 423 p. et seq.
- Sorensen, J. (1995). "A comparative analysis and critical assessment of the regimes to manage the Black Sea and the Mediterranean Sea", In: E. Özhan (ed.), *Proceedings of the Second International Conference on the Mediterranean Coastal Environment*, vol. 1, 697-718.
- UNEP. (1982a). "Regional Seas Programme: Workplan", UNEP Regional Seas Reports and Studies No. 18, 41 p.
- UNEP. (1982b). "Achievements and Planned Development of UNEP's Regional Seas Programme and Comparable Programmes Sponsored by Other Bodies", UNEP Regional Seas Reports and Studies, No. 1, 68 ps.
- UNEP. (1987). "UNEP Oceans Programme: Compendium of Projects", UNEP Regional Seas Reports and Studies, No. 19, Rev. 3, 68 p.
- UNEP. (1988). "Regional Seas Programme: Legislative Authority", UNEP Regional Seas Report and Studies, No. 17, Rev. 1.
- UNEP. (1990a). "UNEP-Sponsored Programme for the Protection of Oceans and Coastal Areas", UNEP Regional Seas Reports and Studies, No. 125, 48 p.
- UNEP. (1990b). "Directory of Organisations Co-operating With and Contributing to UNEP's Ocean Programme", UNEP Regional Seas Directories and Bibliographies, No. 33.
- UNEP. (1991). "UNEP-Sponsored Programme for the Protection of Oceans and Coastal Areas", UNEP Regional Seas Reports and Studies, No. 135, 58 p.