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CASE STUDY:

THE SUCCESS OF REGIONAL SOLUTIONS IN THE BALTIC

by Anne Christine Brusendorff*

INTRODUCTION

The cooperation of the coastal countries surrounding the Baltic Sea provides an impressive example of regional cooperation for marine protection. Exploring the evolution of the Convention on the Protection of the Marine Environment of the Baltic Sea Area, an internationally legally binding agreement (to protect the Baltic Sea), provides a basis for future joint initiatives and actions around the globe.

NATURAL CHARACTERISTICS OF THE BALTIC SEA

The Baltic Sea is a relatively young and rather small sea in comparison to other bodies of water on Earth. It is unique in many respects due its geographical, climatological, and hydrological characteristics. These characteristics are important to understand as they have had, and continue to have, a major influence on legal and political cooperation in the region.

The Baltic Sea¹ is surrounded by nine coastal countries: Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Sweden, and Russia. A semi-enclosed sea, it is connected to the North Sea and the northeast Atlantic Ocean via the narrow Danish Straits. Due to a limited possibility for water exchange, the total substitution of the water in the Baltic Sea takes up to thirty years. This also means that polluting substances remain and accumulate in the sea for long periods of time.

The catchment area of the sea, and thus the area of potential input of polluting substances, is four times the size of the sea itself and densely populated, hosting a high level of agricultural and industrial activities. Additionally, the outflows from more than two hundred rivers enter the Baltic, bringing vast amounts of fresh water to the sea, along with polluting substances. This large volume of fresh water makes the Baltic Sea one of the largest bodies of brackish water in the world. Thus, living conditions are harsh for fauna and flora and not an ideal living environment for marine or freshwater species.

The low salinity level in the Baltic Sea also means that a horizontal layer develops between the upper, more oxygenated, and the lower, less oxygenated, parts of the seawater. As a result,

deep basins in the Baltic Sea can be naturally oxygen deficient and therefore devoid of life. Winter conditions can be hard, with major parts of the Baltic Sea covered by ice for several months each year. This in turn presents challenges for extensive navigation at sea — including the transportation of oil.

COOPERATION BETWEEN THE BALTIC COASTAL COUNTRIES

Against this background, it is hardly surprising that based on an initiative of the Finnish Government, a cooperation was established in the early 1970s among the then-seven² countries surrounding the Baltic Sea (and later joined by the European Community). The resulting Convention on the Protection of the Marine Environment of the Baltic Sea Area of 1974 (the “Helsinki Convention”) was both a follow-up to the UN Conference on the Human Environment, held in Stockholm in 1972, and a reaction to the deteriorating status of the Baltic Sea.³

A legally binding obligation, the purpose of the Helsinki Convention is to protect the Baltic Sea marine environment from all sources of pollution, be it from land, air, or the sea itself. The Helsinki Convention also ensures rapid assistance and cooperation in the need for transnational response to accidents at sea. The Helsinki Commission (“HELCOM”) was designated as the governing body of the Convention.

POLITICAL AND ENVIRONMENTAL COOPERATION

The Helsinki Convention paved the way for political cooperation in the field of marine environment protection policies

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during a time when many other issues divided the Baltic coastal countries. With this political foundation, the scene was set for major steps toward protecting the marine environment of the Baltic Sea area. These steps naturally correspond to the more than three decades of cooperation under the Helsinki Convention — each of them epoch-making in their own way.

THE FIRST DECADE

A common understanding among Baltic coastal countries was required to select the measures to protect the marine environment of the Baltic Sea, including an identification of the activities and pressures impacting its health. Thus, deciding which parameters to measure in the sea, and how to measure pollution loads coming into the sea from land-based activities was the key focus during the beginning of HELCOM.

Since the deteriorating health of the Baltic was obvious, various measures were taken in the first decade to phase out the use of certain hazardous substances. For example, one of these decisions concerned phasing out the use of polychlorinated biphenyls, or PCBs. These pollutants were targeted due to strong indications that they were primarily responsible for the serious decrease in the reproductive rate of seals and the decline in the white-tailed eagle population in the Baltic Sea region.⁴

From the very beginning of the cooperation, the prevention of pollution from shipping activities was high on the agenda. Arguably, shipping was not, and still is not, one of the biggest pressures on the Baltic marine environment. However, the already well-established global forum for maritime activities⁵ created the possibility to influence — from a Baltic perspective — new shipping regulations,⁶ and ensured their harmonized implementation in the region.

THE SECOND DECADE

The second decade of cooperation was characterized by the revision of the Helsinki Convention,⁷ based upon developments within environmental and maritime law. During this time, HELCOM embraced principles such as “the polluter-pays” and “the precautionary principle” as well as the “best available techniques” and “the best environmental practice.” At the same time, the fall of the Soviet Union, the fusion of East and West Germany, and the abolition of the area’s division into eastern and western blocs increased cooperation among neighboring states. The area protected by the Convention was expanded to include internal waters,⁸ and the area of application was enlarged to include the catchment of the Baltic Sea.⁹ HELCOM consequently began to assess coastal waters as part of the coordinated monitoring program on the health status of the Baltic Sea.

Another important step forward was the involvement of international financial institutions (“IFIs”), which for the first

time coupled desired environmental improvements and necessary funding. With the participation of the IFIs, a list of the most polluting sites in the Baltic Sea catchment area was prepared based on pre-feasibility studies. The involvement of the IFIs during the identification phase ensured that it would later be possible to obtain funding for the remedial actions needed at the sites.¹⁰

THE THIRD DECADE: THE START OF A PARADIGM SHIFT?

The complexity of regulating marine environmental protection issues increased during the third decade due to the expansion of the European Union (“EU”), leaving the Russian Federation as the only non-EU contracting party to the Helsinki Convention. The supra-national character of EU cooperation, and thus the delegation by the member states of decision-making powers to the EU in fields such as agriculture and fisheries, emphasizes the need for HELCOM to act as the environmental focal point and policy maker for the region, providing information about the health of and trends in the Baltic Sea, and the efficiency of measures to protect the sea. With regard to the specific needs of the Baltic Sea, HELCOM works to ensure the adoption

of measures within other international organizations as well as the strictest regional implementation of measures imposed by other international organizations. Hereafter additional HELCOM recommendations are adopted if needed.

In this new political arena, the role of HELCOM as a catalyst for regional and supra-national policy making is increasing, with HELCOM act-

ing as the “spokesperson” for the Baltic Sea, and also for non-HELCOM countries in the catchment area, including Belarus, Ukraine, the Czech and the Slovak Republics.¹¹

At the same time, this decade sees a shift towards holistic, quantifiable, and cost-efficient policy. This is motivated by changes at the international level, where specifically, in 2002, the World Summit on Sustainable Development in Johannesburg, South Africa, set the pace by stating that member states shall, by 2010, implement the ecosystem approach to the management of human activities that impact the marine environment. This ecosystem approach was taken onboard HELCOM in 2003, and was followed in 2005 by the European community’s adoption of a thematic strategy on the protection and conservation of the marine environment.¹²

The ecosystem approach advocates a comprehensive approach to the understanding and anticipation of ecological change, whereby the full range of consequences is assessed. This assessment is then used as the basis for developing appropriate management responses. Thus, while HELCOM has already decided on needed reduction measures in pollution loads (such as a 50 percent reduction in the nutrient loads reaching the Baltic

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Sea), the ecosystem approach takes as the starting point the current health of the Baltic Sea and the changes that the Baltic coastal countries would like to see in the future. Since stakeholder involvement is one of the major components when applying an ecosystem approach, it is necessary to be able to quantify the state of the Baltic Sea that is desired and what actions are needed in order to reach that condition.

The initial step toward the application of the ecosystem approach in the Baltic region was taken during the first stakeholder conference, arranged by HELCOM in March 2006. The stakeholders agreed that a HELCOM Baltic Sea Action Plan shall be developed under the overall vision of a Baltic Sea with all its components in balance, thus guaranteeing a diversity of life and supporting a sustainable use of its resources. Furthermore, the stakeholders decided to develop the plan of action according to four strategic goals: 1) a Baltic Sea unaffected by eutrophication; 2) a Baltic Sea with life undisturbed by hazardous substances; 3) a Baltic Sea with its biodiversity in favorable status; and 4) a Baltic Sea where maritime activities are carried out in an environmentally friendly way.

On the basis of the decided ecological objectives, HELCOM is now working to develop concrete actions with timetables that will eventually fulfill the strategic goals and overall

vision for the Baltic Sea. Identifying the most cost-efficient ways to reach the goals is essential. All in all, this is an ambitious task; the political importance of which is shown by the fact that the HELCOM Baltic Sea Action Plan will be adopted on November 15, 2007 by the environmental and agricultural ministers from all the Baltic coastal countries.

CONCLUSION

For over three decades, HELCOM has demonstrated the value of tailor-made solutions for addressing regional activities that affect the marine environment. This is even more important in an enlarged EU, where eight out of nine of the Baltic coastal countries are now both members of the EU and have ratified the Helsinki Convention.

As HELCOM follows Johannesburg's prescription of the ecosystem approach, with the current and future status of the Baltic Sea at the core, the need for the Helsinki Convention is greater than ever. Not only does HELCOM possess information on pollution loads and the status of and trends in the sea, but it has also monitored the effects of previously-implemented regulatory measures. This knowledge, together with common objectives for a shared sea, should be the basis for future joint initiatives and actions in other international fora.



Endnotes: Case Study

¹ Convention on the Protection of the Marine Environment of the Baltic Sea Area, Apr. 9, 1992, 2099 U.N.T.S. 197 (defining the Baltic Sea Area as: "the Baltic Sea and the entrance to the Baltic Sea bounded by the parallel of the Skaw in the Skagerrak at 57 44.43'N").

² Denmark, Finland, East and West Germany, Poland, Sweden and the Soviet Union. After the fall of the Soviet Union the Baltic Republics Estonia, Latvia and Lithuania, together with the Russian Federation, also participated in the cooperation.

³ Convention on the Protection of the Marine Environment of the Baltic Sea Area, Mar. 22, 1974, 13 I.L.M. 546 [hereinafter Helsinki Convention].

⁴ HELCOM Recommendation 3/3 concerning protection of seals in the Baltic Sea Area, was adopted February 17, 1982. More than two hundred HELCOM recommendations have been adopted, and are available at http://www.helcom.fi/Recommendations/en_GB/front/ (last visited Sept. 30, 2006).

⁵ The International Maritime Organization ("IMO") is one of the specialized agencies of the United Nations.

⁶ HELCOM countries have joined forces within the IMO to achieve a special area status which requires stricter ship discharge regulations in the Baltic Sea. This has been effectively implemented by the HELCOM Baltic Strategy. Furthermore, HELCOM has based on IMO regulations requiring certain ships to be equipped with Automatic Identification Systems, established a Baltic traffic monitoring system surveilling ships in real time while they navigate in the Baltic Sea. The implementation of specific regulations for navigation in ice conditions, the first of its kind in the world, is another example of the regional cooperation.

⁶ The Convention on the Protection of the Marine Environment of the Baltic Sea Area, *supra* note 1, at art. 1.

⁷ Helsinki Convention, *supra* note 3 ("A Contracting Party shall, at the time of the deposit of the instrument of ratification, approval or accession, inform the Depositary of the designation of its internal waters for the purposes of this Convention.")

⁸ Helsinki Convention, *supra* note 3, at art. 6, § 1 of the Helsinki Convention ("The relevant measures to this end shall be taken by each Contracting Party in the catchment area of the Baltic Sea without prejudice to its sovereignty.")

⁹ From the beginning, 132 pollution "hot spots" were designated. This approach has been successful; today more than half of the "hot spots" in the region have been eliminated.

¹⁰ Belarus has the fifth largest catchment area to the Baltic Sea. Recent studies by HELCOM have shown that the nutrient and heavy metals input from Belarus, Ukraine and the Czech Republic to the Baltic Sea are significant. *Evaluation of Transboundary Pollution Loads*, Helsinki Commission (2005), http://www.helcom.fi/stc/files/Publications/OtherPublications/Transboundary_Poll_Loads.pdf (last visited Sept. 30, 2006).

¹¹ Communication from the Commission to the Council and the European Parliament, COM (2005) 504 with a proposal for an associated Directive now being discussed. COM (2005) 505, 24 October 2005.