

DEVELOPMENTS IN THE INTERNATIONAL PROTECTION OF THE RIVER RHINE

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*“In Köhln, a town of monks and bones,
And pavements fang’d with murderous
stones
And rags, and hags, and hideous wenches;
I counted two and seventy stenchs,
All well defined, and several stinks!
Ye Nymphs that reign o’er sewers and
sinks,
The river Rhine, it is well known,
Doth wash your city of Cologne;
But tell me, Nymphs, what power divine
Shall henceforth wash the river Rhine?”¹*

INTRODUCTION

Professor Karol Wolfke was one of the first who devoted his scientific work to environmental protection in a broad sense. In the Polish studies in international law he was a precursor of this new, dynamically developing branch of law. His works concerning the beginnings of the new branch of law show not only the innovative character of the undertaken studies but also prove perception of what was inevitable- the necessity to encompass with the norms of public international law things which exceed state boundaries and which cannot be regulated by one state only. The outline of historical and contemporary activities of states aimed at the protection of the Rhine and its basin presented below can serve as the best example.

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¹Samuel Taylor Coleridge (better known for the Rime of the Ancient Mariner, or Kubla Khan, This poem was written in 1828 during the visit to Köhln), <https://www.poemhunter.com/poem/cologne/>, access 10.10.2016.

The Rhine is the third longest river in Europe with the length of 1230 km². In the past the river was extremely important for the peoples inhabiting its basin³. Due to its location and navigability it constituted an ideal communication route having natural access to the high seas. The richness of the Rhine's living resources was still praised in the XVIIIth century. The first regulations concerning the usage of the Rhine as a waterway date back to the times of Charles the Great. The later feudal fragmentation of power resulted in establishing numerous restrictions concerning the river usage. Nevertheless, already by the signing of Peace of Westphalia in 1648 efforts had been made to reduce such unfavourable solutions⁴. The most important arrangements were only made in the Peace Treaty of 1814⁵, and later on during the Vienna Congress⁶. Back then it was decided on opening of the navigation on the Rhine for everybody (it mainly concerned riparian states and Great Britain).

The usage of the Rhine as a water-route went hand in hand with the growth in the number of people inhabiting its basin and the increase in exploitation of its living resources. The exploitation of the Rhine progressed so fast that already by the XIXth century changes in its basin having direct impact on the surroundings had been noticed. The quality of the water was deteriorating quickly enough, that even in the poem cited above the river was compared to a sewer. A number of factors contributed to that. In the second half of the XIXth century extensive hydrological works aimed at improving the navigability of the river were conducted⁷. To a significant extent this river regulation shortened its course and hampered the migration of different fish species. Many industrial plants were established along the river taking advantage both of the Rhine's favourable location and of the ports situated by its mouths. Moreover, the sewage and municipal waste from the cities located by the river was discharged directly to the Rhine's river bed which negatively affected the water quality. Furthermore, effluents from the fields also flowed into the river. Consequently, the Rhine quickly earned the unfavourable title of one of Europe's biggest sewers. In certain seasons of the year it was advised not to approach the river at all due to the stench that spread along the

²<http://www.avalonwaterways.com/Europe-Rivers/Rhine/>, Access 12.12.2016

³ The Rhine River is a name which stems from a Celtic word meaning "raging flow."

⁴*Treaty of Peace Between France and the Empire*, Oct. 14, 1648, 1 CTS 271, LXXXIX: "(...)Above all, the Navigation of the Rhine be free ..." this freedom was granted to the entities originating from the riparian states and all the charges and fees were to be restored to the pre-war levels. Internet source: <https://is.muni.cz/el/1423/podzim2008/MVZ430/um/Treaty-of-Westphalia.pdf>, access: 2.10.2015.

⁵ Treaty of Peace of Paris, 30th of May 1814, It is explicitly stipulated in article 5 of the Treaty, text in E Hertslet, *Map of Europe by Treaty I* (1875) 1.

⁶Arts. 108 – 117 of the Final Act of Vienna Congress of 9 June 1815, text in L Gelberg, 1 *Prawo międzynarodowe i historia dyplomacyjna. Wybór dokumentów* (1954) 24.

⁷The works commenced at the beginning of XIXth century, and their originator was Johann Tulla, water engineer. Further information: N Rösch, *Die Rhein begradigung durch Johann Gottfried Tulla*, zfv 4/2009, 242, https://www.google.pl/search?q=http%3A%2F%2Fwww.geodaesie.info%2Fsystem%2Ffiles%2Fprivat%2Fzfv_2009_4_Roesch.pdf&rlz=1C1AOHY_plPL709PL714&oq=http%3A%2F%2Fwww.geodaesie.info%2Fsystem%2Ffiles%2Fprivat%2Fzfv_2009_4_Roesch.pdf&aqs=chrome..69i58j69i57.15168j0j4&sourceid=chrome&ie=UTF-8, access 10.11.2016

Rhine. Obviously, the usage of water for agricultural purposes was also extremely risky, not to mention drinking it.

The first attempts to limit the negative consequences of human activities were made in the XIXth century. The disappearing precious fish species and the deteriorating quality of water drew attention of the states located by the river. In 1885 Germany, the Netherlands and Switzerland concluded a contract on the basis of which efforts were to be taken in order to protect salmon⁸. However, the contract did not aim at limiting the amount of waste landing in the river; it was solely establishing rules which would prevent too intensive fishing. A special commission had been established to monitor the fishing. In certain seasons of the year limitations to fishing were made, as well as the possibility of imposing penalties on those subjects which do not comply with the restrictions. The commission did not possess extensive competences. In addition, no actions were undertaken to limit the riparian state's right to build artificial installations. The most important was still maintaining the river's navigability. The actions of the commission did not contribute to an increase in the number of salmon. To the contrary, the condition of the river was becoming more and more dramatic, which was pointed out by the Netherlands in 1932 while seeking Germany's and France's interest in broadening the scope of cooperation⁹. Unfortunately, the proposal for the new discussions was rejected which resulted in maintenance of the old order. It was not long before the consequences were visible - already by the 1940's the life in the river almost completely died out. After the war had finished the Commission resumed its work; however in 1948 it informed riparian states that it was necessary to undertake more intensive actions aimed at protection of the Rhine.

Thanks to the Commission's position, talks were undertaken by all the states located along the Rhine river. France and Luxembourg also joined this group. The meeting of the representatives of the interested governments took place on 11th of July, 1950¹⁰. The most important decision regarded taking international measures aimed at improving the situation. During the meeting it was agreed that a new Commission would be set up and its scope of responsibilities was determined. The new organ was composed of representatives of all states located in the Rhine's basin. The 1950 contract was of crucial importance for cooperation in this region since it was signalling a more extensive coordination of activities concerning broadly understood tasks with regard to the Rhine's water quality monitoring, its salinity and its contamination with heavy metals. The states preliminary obliged themselves to exchange information concerning industry located in the Rhine's basin and the threats which industrial plants located there posed. Also, the Ruhr district

⁸Vertrag zwischen Deutschland, den Niederlanden und der Schweiz betreffend die Regierung den Lachsfischerei im Stromgebiete des Rheins, vom 30 Juni 1885, official website of ICPR: http://www.iksr.org/fileadmin/user_upload/Dokumente_de/Kommunikues/Lachsvertrag_1885_DE_NL.pdf

⁹ P Huisman, J de Jong, K Wieriks, 'Transboundary cooperation in shared river basins: experiences from the Rhine, Meuse and North Sea' (2000) 2 Water Policy 89.

¹⁰Protokol über die Konferenz der Internationalen Kommission für den Schutz des Rheines gegen Verunreinigung, Bazyl 11 July 1948, official website of ICPR, http://www.iksr.org/fileadmin/user_upload/Dokumente_de/Kommunikues/Protokoll_1950d.pdf, access 10.12.2016.

was pointed out as being an area which is at the same time special and the most harmful to the whole river system. The Commission, despite certain successes, was unable to completely eliminate the threats. The biggest obstacles in the way to achieving this goal were, among others, the limited competences and lack of reliable funding sources which definitely limited independent functioning. The fact that the Commission was not capable of slowing down or reversing the negative tendencies may indicate the failure of its functioning. Ill-considered exploitation of the river continued. In the 1960's the Rhine was considered to be the most polluted European river¹¹. This time more radical steps needed to be taken.

In order to strengthen the competences of the Commission another agreement was signed in Bern, Switzerland in 1963. The Convention granted a special international status to the Commission and this organ was formally to be operating under the name of the International Commission for the Protection of the Rhine¹². A year after the treaty was signed a permanent Secretariat has been set up in Koblenz as an organ of ICPR. Its task was to coordinate the works on the river condition through establishment of permanent monitoring. Thanks to the stipulations of the Convention this institution could also play a more active role in the works for the improvement of Rhine's water quality. Additionally, ICPR received further competences including: preparing reports, recommendations and taking part in international meetings dealing with the issues of the Rhine's pollution. The weakness of this agreement was that the tributaries of the Rhine were not included in its scope. The European Economic Community was also invited to cooperate and its representatives joined the works of the ICPR. It gave a new impetus to the cooperation since there was much dissent among states. That period was characterized by the conflict between the Netherlands located in the lower Rhine and Germany and France which were at the time the greatest polluters¹³. Nonetheless, the end of 1960's was not favourable for the Rhine. Despite the cooperation, the chemical industry contributed to the deterioration of the water quality. Moreover, in 1969 the Rhine was contaminated which resulted in the high mortality rate of fish and water pollution¹⁴. The states realized that if they wished to improve the quality of water they needed to undertake further steps. It did not concern only protection, but above all restoration of life in the Rhine and the reduction of the threat of further contaminations.

¹¹ The Rhine was announced a dead river in terms of ecology. More about the pollution of the Rhine, see also: Th Bernauer, P Moser, 'Reducing Pollution of the Rhine River: The Influence of International Cooperation' (1996) Water Policy 1.

¹² Vereinbarung über den Internationale Kommission zum Schutze des Rheins gegen Verureinigung, 29 April 1963, official website of the ICPR, http://www.iksr.org/fileadmin/user_upload/Dokumente_de/Kommunikues/1963_Berner_Uebereinkommen_DE.pdf, access: 10.10.2016

¹³ KG Malle, 'Cleaning Up the River Rhine. Intensive international efforts are reclaiming the most important river in Europe' (1996) 1 Scientific American 71. Internet source: http://ogoapes.weebly.com/uploads/3/2/3/9/3239894/cleaning_up_the_river_rhine.pdf, access: 10.11.2016.

¹⁴ This accident happened on July 1969, S Villamayor-Tomas, FD Fleischman, I Perez Ibarra, A Thiel, F van Laerhoven, 'From Sandoz to Salmon: Conceptualizing resource and institutional dynamics in the Rhine watershed through the SES Framework' (2014) 8 International Journal of the Commons 383.

At the beginning of the 1970's the water quality deteriorated severely due to accidents in which toxic chemicals got into the Rhine. More and more frequently public opinion accused the ICPR and states of being a tinkering exercise. Trying to prevent further deterioration of the water condition, the International Commission for the Hydrology of the Rhine Basin (CHR)¹⁵ was created in 1970 to strengthen data exchange and standardize measuring methods. The new Commission was established thanks to the UNESCO initiative addressed at states located in the catchment areas of international rivers. The aim of the CHR is also drafting common programmes relating to development of joint hydrological measures for sustainable development of the Rhine basin.

The next step on the way to improving the Rhine's condition was the signing of two treaties in 1976¹⁶, on the basis of which the ICPR's competences were broadened. The first convention aimed at reducing the level of salt in the river. The reduction was to be conducted in three stages. In the end, only the first stage was realized by 1987. The two latter stages were abandoned as being too expensive and ineffective. Finally, one more protocol was added to the convention in 1991¹⁷, which has been realized with some success along with other activities undertaken and financed by states. Nevertheless, the closing of a phosphorus plant in Alsace has also contributed to a significant reduction in salinity. The second agreement concerned chemical pollution in general. The text of the convention was drafted by the ICPR on the basis of authorization granted by the states' ministers responsible for environmental protection during the second official conference which took place in Bonn in 1973¹⁸. This time the European Economic Community (currently the European Union)¹⁹ formally became a party to this convention and actively participated in the protection of the Rhine. As a result, states as well as European institutions could coordinate works in the field of environmental protection. The term "states" was officially replaced with the term "parties" to the treaties concerning the Rhine's protection. This change required special agreements with Switzerland who was not a member of the Community. From the point of view of the ICPR it was an extremely important event since the Communities could, from then on, co-finance some of the projects. Pursuant to this agreement the ICPR was to draw up

¹⁵ Further information: Official Website of the Commission: <http://www.chr-khr.org/en/general>, access 10.10.2016.

¹⁶Convention for the Protection of the Rhine Against Pollution by Chlorides, Dec. 3, 1976, 1404 UNTS

91 and Convention for the Protection of the Rhine River Against Chemical Pollution, Dec. 3, 1976, 1124 UNTS 406.

¹⁷Zusatzprotokoll zum Übereinkommen zum Schutz des Rheins gegen Verunreinigung durch Chloride, Bonn 25.09.1991, Official Website of the ICPR: http://www.iksr.org/fileadmin/user_upload/Dokumente_de/Kommunikues/1991_Zusatzprotokoll_Chlorid_d.pdf, Access: 4 12.2016.

¹⁸Further information: official website of the Commission: <http://www.iksr.org/en/international-cooperation/about-us/history/increasing-confidence/index.html>, access 10.10.2016.

¹⁹ Zusatzvereinbarung zu der Bern am 29 April 1963 unterzeichneten Vereinbarung über die Internationale Kommission zum Schutze des Rheins gegen Verunreinigung. Bonn 3.12.1976, Official Website of the ICPR, access 10.10.2016

programmes and monitor their effectiveness in terms of limiting chemical substances poured into the Rhine. The goal was very ambitious since it assumed a significant improvement of water quality. In practice it proved not to be so easy.

The changes in terms of improving water quality were proceeding slowly, which was caused not only by the improper management of the river but also to disregard of security norms. It has also appeared that some of the pollutants could only be removed from the river within the framework of long-term actions. All these activities were impeded by one more disaster, namely, the uncontrolled outflow of chemicals to the river resulting from the fire at the Sandoz plant in Switzerland. A toxic pesticide stain spread 70km downriver, which forced the city authorities to close the drinkable water intakes²⁰. This has slowed down the works on improving water quality since, once more, numerous species of fish were killed. Additionally, the lack of cooperation between states was revealed since the states located in the basin were informed of the accident with a delay of more than 24 hours. It made impossible undertaking all protective measures in those states, which some of the governments' representatives called openly an intentional action²¹. The Sandoz plant which caused the misfortune paid multimillion Euros in compensation to both natural and legal persons, including associations and local authorities.

This accident was a major turning point in the management of the Rhine. Soon after, very ambitious plans concerning the improvement of river condition were accepted and ICPR was vested with the task of drawing up a 10-years action programme. In 1987 the Rhine Action Programme (RAP)²² was adopted and it was realized by 2000. Precious species of fish were to come back to the river, the quality of drinkable water was to be improved and the sedimentary layer on the river bed was not to be polluted by harmful substances. The Rhine Action Programme Coordinating Group was established, which was to coordinate and plan the detailed works. In addition, special financing for the project was foreseen as well as a personnel expansion of the Secretariat in Koblenz for the purposes of the Group. The entirety of the work was to be divided into three stages which were presumed to finish around the year 2000.

These activities were finally producing positive effects. Two floods which occurred in the years 1993 and 1995 forced the states to undertake one more effort which was the drawing up of a common programme for fighting floods. In 1998 during the ministers' meeting the realization of the RAP was

²⁰See more: A Schwabach, 'The Sandoz Spill: The Failure of International Law to Protect the Rhine from Pollution' (1989) 16 Ecology Law Quarterly 446.

²¹JB Hull, 'A Proud River Runs Red'. *Time Magazine*, November 24, 1986, 37, In official statement the Dutch Minister for Transport and Public Works, N Smit-Kroes, said "[t]he Swiss have treated us in a beastly manner", see also: R Watson, D Seward, R Marshall, S Sullivan, F Endt, 'The Blotch on the Rhine', *Newsweek*, November 24, 1986 59. The French Minister stated: "civilized society like our own-or, presumably, the Swiss-should inform its population of the risks".

²²The Rhine Action Program drawn up by the International Commission for the Protection of the Rhine against Pollution approved by the 8th Conference of Ministers on the Protection of the Rhine against Pollution, Strasbourg 1 October 1987. Official Website of the ICPR: http://www.iksr.org/fileadmin/user_upload/Dokumente_de/Kommunikues/APR_e.pdf, access 10.10.2016.

preliminary summed up and the positive outcome of the introduced regulations was stressed²³. The decline in the amount of harmful substances in the water was underlined as well as the improvement of water quality. This improvement not only had an impact on agriculture but was also reflected in return of over 45 species of fish, including salmon. Generally, in the 90's a reduction in the pollution of the river by over 50% was achieved²⁴. The ministers were aware of the fact that changes for the better have only been initiated; hence the governments were called to conduct further work. They also familiarized themselves with the draft text of the new agreement concerning protection of the Rhine. Moreover, the drawing up of a new document regarding the protection of the territories located by the river from floods was commissioned.

The success of the RAP influenced signing in 1999 a new agreement concerning Rhine protection and the coordination of state parties' activities, in accordance with the instructions from 12th Conference of Ministers²⁵. This new agreement replaced previous treaties and introduced more modern solutions. States had cooperated more closely since the end of 1980's which enhanced confidence and led to a departure from the traditional understanding of the river solely as the territory of the state through which it flows. The water quality, the return of the fish and the decrease in the amount of harmful substances were all the effect of coordinated activities. These proved that only collectively can positive results with regard to protection of the environment of rivers located in the Rhine's basin be achieved. Rising social consciousness and the engagement of organisations and political parties promoting environmental protection also played a vital part. The new law for the Rhine was adopted in 1999 and is currently a modern international agreement taking account of the developments of both states of the region and international organizations. The issues concerning the financing of common bodies were also resolved²⁶ and new competences were granted to these bodies. A new permanent institution was established called the Coordinating Committee for the Rhine²⁷. Its task is implementation of union directives: the

²³ Ministerial Declaration on the 12th Conference of Ministers on the Protection of the Rhine, Rotterdam, 22 January 1998, Official Website of the ICPR: http://www.iksr.org/fileadmin/user_upload/Dokumente_de/Kommunikues/12_Kommuniqu_e_1998_Rotterdam_en.pdf, Access 17.10.2016.

²⁴ Villamayor-Tomas, Fleischman, Perez Ibarra, Thiel, van Laerhoven (n 14) 363.

²⁵ Convention on the Protection of the Rhine, 12.4.1999, Bern. Official Website of the ICPR: http://www.iksr.org/fileadmin/user_upload/Dokumente_en/Convention_on_the_Protection_of_the_Rhine_12.04.99-EN_01.pdf, access: 6.06.2016.

²⁶ Rules of Procedure and Financial Regulations of the ICPR According to Article 7, Paragraph 4 of the Convention on the Protection of the Rhine (the Convention) the International Commission for the Protection of the Rhine (ICPR) gives itself the following Rules of Procedure and Financial Regulations applicable to the Commission's work and its Secretariat., Entered into force 10.07.2010 r., Official Website of the ICPR: http://www.iksr.org/fileadmin/user_upload/Dokumente_en/Gesch%C3%A4fts-und_Finanzordnung_IKSR-EN_30.06.10.pdf, access: 10.07.2016.

²⁷ Rules of Procedure and Financial Regulations for the Cooperation of the International Commission for the Protection of the Rhine (ICPR) with the Coordinating Committee (CC) Rhine, Official Website of the ICPR: http://www.iksr.org/fileadmin/user_upload/Dokumente_en/IKSR-CC-EN_30.06.10.pdf, access: 12.07.2016.

EU Water Framework Directive²⁸ and the so called floods directive²⁹. The Coordinating Committee should cooperate closely with the ICPR and take part in its meetings.

ICPR was structured as a collegial body vested with rather broad competences. It is composed of representatives of states located in the Rhine's basin and representatives of the European Commission. The structure of the ICPR is based on several organs. The most important is the Plenary Assembly, which consists of the representatives of all states. Its task is coordinating cooperation, drafting reports and drawing up new strategies for the Rhine. The Plenary Assembly convenes once a year. The plenary meetings are also attended by the persons sitting on the Coordinating Committee for the Rhine (apart from states sitting on the ICPR also the representatives of the Governments of the Republic of Austria, the Principality of Liechtenstein, the Region Wallonia and the Italian Republic). Italy's participation is nominal, since the state does not use the Rhine's resources. The CCR shares the Secretariat with the ICPR which has raised the operating costs by 30 %. Additional bodies supporting the ICPR are Strategy Groups including the following working groups: Flood and Low Water, Water Quality/Emissions, the Ecology and Project Group Upper Rhine. In the ICPR, according to the EU's instructions, a group responsible for preparing maps and a team dealing with information flow were established. In the works of the ICPR a special emphasis has been put on the need for cooperation with the non-governmental sector and external experts.

The ICPR Secretariat has been located in Koblenz permanently for many years. Its aim is to provide administrative support to all the ICPR organs and institutions cooperating with it. The Secretariat is preparing the documents for the ICPR and drawing up preliminary documents. It is an independent and unbiased institution. The presidency in the ICPR is held alternately by member states for three years. Since January 2017 this function has been taken over by the Switzerland. For the first time in history a woman - Martine Rohn-Brossard became President of the ICPR³⁰. The President of the ICPR is at the same time the head of the Secretariat.

The Commission operates on the basis of a strong mandate granted to it by the states parties to the agreement of 1999. Additionally, the Conferences of Ministers which have been held quite regularly since 1972 influence the works of the ICPR. The aim of the above- mentioned assembly is to provide impetus for action to the ICPR and determine its new tasks. The decisions of the Conference are binding on states and the ICPR. The described assembly consists of relevant ministers from the ICPR member states and a representative of the European Commission.

²⁸ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ of the EC L 327/ 275.

²⁹ Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks (Text with EEA relevance), OJ of the EU L288/27

³⁰ Official website of the ICPR, Access: 10.01.2017, <http://www.iksr.org/en/index.html>

One of the newest of the programmes that are implemented by ICPR is the Programme Rhine 2020³¹, which concentrates on the sustainable development of the Rhine. Its four most important goals have been identified as: ecosystem improvement; flood prevention and protection; water quality improvement and groundwater protection. This project is monitored systematically and already in its early phase in 2005 gave positive results.

CONCLUDING REMARKS

On the example of the Rhine one can observe what can be done by predatory economy and how long it takes to reclaim the river³². Like many other European rivers, the Rhine fell victim to people's ill-considered activities. For many years nobody cared to protect the water and life in the Rhine, naively believing that the river has some unspecified abilities of self-regeneration. Due to its enormous significance for the states located in the Rhine's basin, the problem of its proper usage and the restoration of resources required the engagement of several states. Only the termination of World War II, the development of a general interest in a more rational usage of water and a true ecological catastrophe forced the states to change their position. The global trends with regard to perception of rivers' usage rules also had an impact on that. The river ceased to be treated only as part of the state's territory where the state can do whatever it pleases for its own profits. The river became perceived as a common good, constituting an object of protection for states and nations located in its basin. It is well visible on the example of the Rhine how the changes were taking place and how the traditional approach to the river has been revised. Currently the cooperation of the ICPR member states is recognized as an example of proper practice for other states whose rivers and natural environment are facing similar problems.

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³¹ Conference of Rhine Ministers 2001, Rhine 2020, Program on the sustainable development of the Rhine, http://www.iksr.org/fileadmin/user_upload/Dokumente_en/rhein2020_e.pdf Access: 10.01 2017.

³² Commentary, see: SK Chase, 'There must be Something in the Water: An Exploration of the Rhine and Mississippi Rivers' Governing Differences and Argument for Change' (2011-2012) 29 Wisconsin International Law Journal 610.

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