

Global Ocean Governance

From Vision to Action

Dorota Pyć, Jakub Puzkarski (eds.)

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P o z n a ń

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Abbreviations

ABNJ	– Areas Beyond National Jurisdiction
BAT	– Best Available Technology
BEP	– Best Environmental Practice
BGR	– Federal Institute for Geosciences and Natural Resources of Germany
BOOS	– Baltic Operational Oceanographic System
BOPC	– Convention on Civil Liability for Bunker Oil Pollution
BSAP	– Baltic Sea Action Plan
BSR	– Baltic Sea Region
CBD	– Convention on Biological Diversity
CHM	– Common Heritage of Mankind
CLC	– International Convention on Civil Liability for Oil Pollution Damage
CMI	– Comité Maritime International
COMRA	– China Ocean Mineral Resources Research and Development Association
CRISTAL	– Contract Regarding an Interim Supplement to Tanker Liability for Oil Pollution
DORD	– Deep Ocean Resources Development Company
EC	– European Community
ECJ	– European Court of Justice
EU	– European Union
EEZ	– Exclusive Economic Zone
ELSA	– European Law Students' Association
FAO	– Food and Agriculture Organization
FUND	– International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage
GEOS	– Global Earth Observation System of Systems
GOG	– Global Ocean Governance
GOOS	– Global Ocean Observing System
GMES	– Global Monitoring for Environment and Security
HELCOM	– Helsinki Commission
HNS	– Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea
IA	– Integrated Assessment
ICJ	– International Court of Justice
ICSU	– International Council for Science
ILC	– International Law Commission
ILO	– International Labour Organization
IOC	– Intergovernmental Oceanographic Committee
IOM	– Interoceanmetal Joint Organization
IMCO	– International Maritime Consultative Organization
IMO	– International Maritime Organization
IOPCF	– International Oil Pollution Compensation Funds
ISBA	– International Seabed Authority

ITLOS	– International Tribunal for the Law of the Sea
IТОPF	– International Tanker Owners Pollution Federation
IUCN	– International Union for Conservation of Nature
LLMC	– Convention on Limitation of Liability for Maritime Claims
LOSC	– United Nations Convention on the Law of the Sea
MARPOL	– International Convention for the Prevention of Marine Pollution from Ships
MGRs	– Marine Genetic Resources
MEPC	– Marine Environment Protection Committee
MPA	– Marine Protected Area
MSR	– Marine Scientific Research
NGOs	– Nongovernmental Organizations
NOOS	– North-West Shelf Operational Oceanographic System
OCIMF	– Oil Companies International Marine Forum
OECD	– Organization for Economic Co-operation and Development
OSPAR	– Convention for the Protection of the Marine Environment of the North-East Atlantic
SD	– Sustainable Development
SUA	– Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation
TEC	– Treaty on the European Union
TFEU	– Treaty on the Functioning of the European Union
TOVALOP	– Tanker Owners Voluntary Agreement concerning Liability for Oil Pollution
UN	– United Nations
UNCLOS	– United Nations Convention on the Law of the Sea
UNCSD	– UN Conference on Sustainable Development
UNCITRAL	– United Nations Commission on International Trade Law
UNCTAD	– United Nations Conference on Trade and Development
UNEP	– United Nations Environment Programme
UNGA	– United Nations General Assembly
UNESCO	– United Nations Educational, Scientific and Cultural Organization
VCLT	– Vienna Convention on the Law of Treaties
WCED	– World Commission on the Environment and Development
WMO	– World Meteorological Organization
WWF	– World Wildlife Fund

Preface

European Law Students' Association – ELSA is the world's largest independent and non-profit organization. ELSA is comprised of students and recent graduates of law and administration. Due to its international character which is mainly based on common capacity building, ELSA creates helpful mutual platforms of cooperation and agreement by getting to know different political systems and legal cultures. Thus, ELSA provides opportunities for international exchange, diversified legal education and personal professional development for law students and young lawyers. Thanks to participating in the association's activities, a great majority of ELSA members gain valuable experiences and reach a new perspective on law perception, on the formation of a future, professional life, and on international relationships. ELSA Poland is one of the four funding national groups of ELSA. We operate at 18 law faculties in 16 Polish cities, which gives us the possibility to reach out to 40,000 students in the whole country. The association's activities focus mostly on the organization of projects, which aim to shed light on the practical side of legal issues; they are mainly addressed to law and administration students, as well as to young lawyers.

“Global Ocean Governance: from Vision to Action” was the first international conference devoted to the law of the sea, organized by the Polish National ELSA Group. ELSA Gdańsk was honoured to greet academic representatives, practicing lawyers and law students from various European countries. The Faculty of Law and Administration at the University of Gdańsk as one of the few universities in Poland includes in its legal studies an obligatory “Maritime Law” course. Given the fact that the University of Gdańsk has such a great scientific and didactic background, we were able to provide a broad academic programme with the participation of the most renowned Polish and international experts in this field.

The Honorary Patronage over the conference was conducted by: Mr. Cezary Grabarczyk – Minister of Infrastructure, prof. zw. dr hab. Bernard Lammek – Rector of the University of Gdańsk, prof. zw. dr hab. Jarosław Warylewski – Dean of the Faculty of Law and Administration of the University of Gdańsk, Mr. Paweł Adamowicz – President of Gdańsk, Mr. Jacek Karnowski – President of Sopot, Mr. Wojciech Szczurek – President of Gdynia.

During the conference the different aspects of the law of the sea have been discussed. The participants raised the problems related to the human activity and safety at sea. The most important issues of Global Ocean Law and the various challenges of governing its resources, such as safety at sea, integrated marine management, the maritime policy of the European Union, the emergence of sea law and global ocean governance were considered.

Issues concerning global and regional economics connected with the sustainable development of seaports were discussed in context of the integrated

management of the coastal zone, in particular with the global economy and its obligation to protect the marine environment, the human impact on the marine environment, the meaning of the sectorial approach towards maritime economy, the sustainable development of seaports, and the integrated coastal zone management.

Moreover, the subject of legal protection of marine areas beyond national jurisdiction, as well as the legal instruments and rules of the marine environmental protection of regional seas were also broadly reviewed. Preserving the marine biodiversity, preventing, reducing and controlling the marine pollution from different sources, and also combating marine pollution are challenges for present generations. Threats that are considered to have the most negative influence on the marine environment include: the acidification process, which changes the water's pH level; climate change leading to the warm up of sea and ocean waters; mangrove forests logging; uncontrolled sea fishery conducted on an industrial scale; and plastic waste polluting the oceans. The impact of climate change on global oceans, the principles of marine environment protection, the maintenance of marine biodiversity, the legal instruments of regional seas protection, the creation and management of marine protected areas were all among the discussed issues.

The huge success of the conference relied on the presence of distinguished experts, such as the International Tribunal for the Law of the Sea judges, and the fruitful debate, in which both professionals and students participated.

This achievement would not be possible without the involvement of many ELSA Gdańsk members, lecturers, partners, and our guests. Most of all, I would like to thank the editor-in-chief of this publication and the member of the conference's program council, Mrs. dr hab. Dorota Pyć, for her support, help and commitment in creating this project. One of the results of the conferences is this publication, which we proudly present to you, and hope that it gains your recognition.

Jakub Puzkarski
President of ELSA Gdańsk 2011/2012

Introduction

The fundamental value of ocean governance is the maintenance of long-term sustainability of marine natural resources. Ocean governance means the coordination of various uses of the ocean and protection of the marine environment. Ocean governance is also defined as the process necessary to sustain ecosystem structure and functions. Effective ocean governance requires globally-agreed international rules and procedures, regional action based on common principles, and national legal frameworks and integrated policies.

Global ocean governance (GOG), as well as management of the marine environment or management of the World Ocean, is essential for achieving the objectives of sustainable development. Common and rational use of the World Ocean (which is also defined as the marine environment and its resources) should be based on integrated maritime governance, understood as the processes of planning, decision-making and management at the global level. This also includes maritime areas beyond national jurisdiction, and integrates activities substantively and institutionally. Protection and preservation of the environment and natural resources should be considered as superior to irrational use of the marine environment. It is assumed that this would be possible with the creation of a global maritime administration having clear objectives and scope of activities. This would also need to have appropriate available financial resources and adequately-trained human resources, as well as a constantly-updated database. The creation of integrated management of the marine environment in maritime areas within the boundaries of coastal States and territories, where coastal States exercise sovereign rights associated with efficient and flexible instruments, allows a reasonable balance between the protection and preservation of the environment and the freedom to use the seas and oceans. The sector approach to the marine environment, developed and persisted through the years, should be balanced by an integrated approach.

The Preamble to the Convention on the Law of the Sea (UNCLOS) pointed out that the main value for maritime law is unity of the Global Ocean: “the problems of ocean space are closely interrelated and need to be considered as a whole”. UNCLOS is called “the constitution of the oceans and seas”. The Convention on the Law of the Sea introduced to international law the obligation to protect and preserve the marine environment. One of the objectives of the UNCLOS is to develop the rational use of maritime resources and the conservation of marine living resources.

Holistic, ecosystem and precautionary approaches are recognized as rules of marine resources management, but the idea of global ocean governance and regional maritime management is deeply fragmented and insufficiently developed.

Numerous sectors are regulated and managed independently of others, by diverse agencies and under different rules and procedures.

The integrated management of the marine environment includes comprehensive, integrated management of human activities based on the available scientific knowledge on ecosystems and their dynamics, origin and impact of the activities, which are essential for the health of the marine ecosystem, as well as achieving sustainable use of marine ecosystem assets and maintaining the integrity of the marine ecosystem.

European regional maritime management is based on marine spatial planning, decision making and integrated management understood as the implementation of decisions and continuous improvement planning procedures and decision-making. Maritime spatial planning involves identifying possible uses of marine resources and their rational distribution as well as providing sustainable activity in terms of the ecosystem, all of which is performed in the marine environment in order to achieve economic, social and environmental objectives arising from regional and national policies in accordance with international rules and standards, recommended practices and procedures for the protection and preservation of the marine environment.

In Europe, according to the policy of the European Union, maritime spatial planning involves the process of planning and regulating all human activities in marine areas, including maintaining the good condition of marine ecosystems as well as marine biodiversity. The process of decision-making is closely interrelated to international global and regional cooperation.

It is desirable for the development of the management system to base it on the integration of instruments and institutional capacity for cooperation and coordination, the creation of a knowledge base and cross-cutting tools necessary to enable the introduction of an integrated policy, the improvement the quality of sector policies through the active search for synergies and increased coherence between sectors. All these activities should take into account the specificity of each of the EU regional seas, as well as all world maritime regions, through solutions tailored to the needs and pragmatic implementation of all global ocean governance objectives and rules.

Dorota Pyć
Warszawa, 5 kwietnia 2014 r.

Protection of the Baltic Sea by HELCOM

Marcin Berent*
Bogusz Bomanowski**

1. Character of the Baltic Sea

In accordance with the topic, it is necessary to present the specificity – or at least to give a thumbnail sketch – of the Baltic Sea, since it would be impossible to capture the essence of the Convention on the Protection of the Marine Environment of the Baltic Sea Area,¹ without such a presentation.

To simplify, we can assume that the Baltic Sea has a negligible area, a small dimension and a rather shallow depth,² low salinity and low water exchangeability with the world's oceans.³

Another characteristic feature of the area is that the so called Baltic Area also contains numerous basins, as the Baltic Sea has considerable drainage.⁴

It is classified as an inland sea, with a quite brackish upper layer, and even more so in the lower layer. Significant differences in local salinity levels, influencing its density, is an obstacle to the water mixing, which in turn creates a barrier to the exchange of oxygen, especially in the deep.⁵

Saline water inpourings occur from the North Sea and take place once throughout several years on average. On many occasions, the time gap is significant, for instance, during a period between 1976 and 1993 there was only one

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¹ Officially named as the Baltic Marine Environment Protection Commission (pl. Komisja Ochrony Środowiska Morskiego Bałtyku) which will be indicated in further part of the publication. It is also known as HELCOM.

² Comparative characteristics of the Baltic Sea to other seas, see: *Morza. Ważniejsze morza świata* [online]. PWN [access: 2011-08-13]. Available at: <<http://encyklopedia.pwn.pl/haslo.php?id=2144079>>.

³ See: R. Marcinkowski, *Encyklopedia Popularna PWN*, PWN, Warszawa 1982, p. 59.

⁴ For more information about the geoecological features of this continental divide, see: *Charakterystyka fizycznogeograficzna zlewiska Morza Bałtyckiego, Środowisko Morza Bałtyckiego* 1991, ed. L. Håkanson, No. 1, p. 15.

⁵ *Ibidem*, pp.10-13. Accordingly: D. Pyć, *Analiza wdrożeniowa postanowień konwencji helsińskiej*, Gdynia 2005, p. 7.

significant inpouring of highly saline ocean waters. Considering the fact that the Baltic Sea does not use any other sources of saline waters supply and is subjected to a number of factors levelling this salinity, such as evaporation and a great inflow of river waters, it is not difficult to understand why the salinity of the Baltic waters is significantly far from the one, which is a feature of the majority of the world's ocean waters. Furthermore, it is limited from several per mills in the area of the Danish Straits, being a source of inflow, to only three per mills in the distant waters of the Finnish Gulf.⁶ A specific feature of this sea is its double-layerity. The layer near the surface is of a medium salinity ranging from 8 to 2 grams of salt per litre (it is marked S=8-2‰), whereas the layer near the sea bed has a salinity nearing 28‰. The salinity decreases while moving to the east, and increases while moving towards the sea bed. The specific weights of the surface waters and sea-bed waters differ so much that these layers cannot mix with each other. As a result, in one basin we have two different, unmixable seas, which, however, have a mutual influence.⁷

As it was previously mentioned, the water exchange between the Baltic Sea and the world's oceans is limited. The small exchange through the Danish Straits and the Kiel Canal results in a significant susceptibility to pollution. The problem is particular and important taking into account the decreasing oxygen concentration, arising from the exchange with the North Sea. The terminal effect is, indeed, overeutrophication. Such an effect is deepened by the undesirable inflow of substances of communal origin as well as nitrogen and phosphorus, which are harmful for the oxygen stability.⁸ An increasing growth of phytoplankton retards the water filtering of generated and external pollution. Also, increased phytoplankton's growth results in excessive hypoxic dead zones at the bottom.⁹

⁶ See: E. Berkowska, H. Rasz, M. Sobolewski, D. Stankiewicz, *Międzynarodowa Współpraca na Rzecz Ochrony Środowiska Bałtyku*, Raport No. 46/1993, Kancelaria Sejmu, Biuro Studiów i Ekspertyz, Wydział Analiz Ekonomicznych i Społecznych, p. 2.

⁷ See: G. Kaptur, *Bałtyk cierpi – ratujmy go wszyscy*, Czas Morza 1999, Vol. 12, No. 2, p. 23. It is worth emphasizing that a characteristic feature of the Baltic Sea is a two-layered water mass, with its occurrence on the border of the so called thermocline and halocline. The thermocline is installed during summer – as well as winter time and it is disrupted when the air temperature reaches 4°C. After the thermocline disruption, mixing of warm and cold water occurs. For more information see: *Morze bałtyckie* [online]. Instytut Biologii i Ochrony Środowiska [access: 2011-08-20]. Available at: <http://www.biologia.apsl.edu.pl/pracownicy/obolewski/Obolewski/atlas/morze_baltyckie.html>.

⁸ E. Berkowska, H. Rasz, M. Sobolewski, D. Stankiewicz, op. cit., p. 5.

⁹ See: D. Pyć, op. cit., p. 7. See also: J. Pawlak, M. Laamanen, J. Andersen, *Eutrophication in the Baltic Sea – An integrated thematic assessment of the effects of nutrient enrichment in the Baltic Sea region. Executive Summary*, BSEP 2009, No. 115A. It is worth emphasizing here that the increase in phytoplankton *per se*, to some extent, can be regarded as an occurrence which yields certain positive results. The nutrition abundance for phytophagous zooplankton constitutes a positive result. An increase in the biomass of zooplankton and zoobenthos creates favourable conditions for fish that feed upon them. Unfortunately, the zooplankton as well as other consumers is unable, however, to consume the rapidly occurring abundant nutrition. As a result, enormous amounts of dying phytoplankton fall to the sea floor where it constitutes nourishment for the zoobenthos that feed on dead organic matter. This group of organisms is also unable to utilize the excess food, which causes a deposition of the unused organic matter onto the sea floor. The oxygen is consumed in the process

Phosphoric and nitrous components incoming from throughout the drainage basin as well as silicates add to the eutrophication, which has a negative impact on the clearness of the sea.

Another problem is the dumping of ship waste into seas, which has been increased through the 20th century and may lead to an extreme degradation of the Baltic's waters.¹⁰

It is worth mentioning that in spite of a lapse of many years sank weaponry and ammunition is still considered as a source of Baltic contamination too. It is

of bacterial decomposition of the organic matter. In the shallow water bodies the restoration of oxygen supply is possible owing to its influx from the atmosphere (intensive water oxygenation during storms) as well as to the photosynthetic process during which the oxygen is produced. Whilst in the deeper regions, where the oxygen consumption from respiration and organic matter mineralization prevails over water oxygenation, a temporary or permanent oxygen deficit may occur. Sulphur bacteria start appearing when the aerobic decomposition of organic matter ceases due to the lack of oxygen. Hydrogen sulphide constitutes the final product of their decomposition process. Consequently, creatures inhabiting the sea floor die from the lack of oxygen and hydrogen sulphide poisoning. Lack of benthic organism's rules out the bioturbation phenomenon, i.e. sediment ventilation performed by the migrating zoobenthos organisms, which mix the sediment and drill channels in it, facilitating the oxygen permeation to deeper layers. These unfavourable phenomena, resulting from the lack of oxygen, occur predominantly below the halocline. The influxes of well-oxygenated oceanic water of higher density, from the North Sea, are rare and they infrequently reach the greatest depth of the Baltic Sea. The more salty and 'heavy' water deposited in there has only a slight chance of oxygenation. It is estimated that circa 100.000 square kilometres of the deep seafloor area is periodically completely devoid of oxygen. For more information, see: E. Andruliewicz, M. Szymelfenig, J. Urbański, J. Węslawski, *Morze Bałtyckie – o tym warto wiedzieć*, Gdynia 2008 [online]. Instytut Oceanografii [access: 2011-08-20]. Available at: <http://ocean.ug.edu.pl/~oceju/morze_baltyckie.pdf>; electronic version of the book titled: *Zeszyty Zielonej Akademii*, pp. 89, 91-93.

¹⁰ About the contaminants introduced to the Baltic Sea, see: *Zanieczyszczenie olejowe* [online]. Nasz Bałtyk [access: 2011-08-14]. Available at: <http://lewis.sggw.pl/~ozw1/zgw/wis/05_06/Baltyk/index14.html>. See also: D. Pyć, op. cit., p. 7. See also: J. Pawlak, M. Laamanem, J. Andersen, op. cit., p. 15 and subsequently expanded in: J. Janas, *Eutrophierung der Ostsee: Ursachen, Situation und Perspektiven*, Köln 2004, particularly pp. 1-6. See also: G. Schlungbaum, *Die Bewertung der inneren Küstengewässer der Ostsee in Mecklenburg-Vorpommern – ein Beitrag zum Gewässergüte-atlas der Bundesrepublik Deutschland mit Vergleichen zu den fließenden und stehenden Gewässern*, Universität Rostock, Rostock 1997. The Baltic Sea environment, in a global context, is also protected on other legal grounds. As an example, the United Nations Convention on the Law of the Sea of 10 December 1982 (assumed by Poland, see: *Journal of Laws of Republic of Poland* 2002, No. 59, Issue 543) lays a responsibility upon coastal countries to prevent the contaminations originating from the continental sources, also for instance the International Convention for the Prevention of Marine Pollution from Ships (MARPOL 73/78) of 1973. See also the provisions of Konwencja Gdańska of 1973 (ratified by Poland the following year). Furthermore, the World Wide Fund for Nature (WWF), Coalition Clean Baltic (CCB) as well as Greenpeace International (known to exaggerate at times) are among those organisations that support activities in favour of the Baltic Sea's protection. When it comes to the organisations with a scientific profile, the following should be mentioned: Międzynarodowa Rada Badań Morza (abbreviation: ICES), Konferencja Oceanografów Bałtyckich (abbreviation: CBO) and Bałtyccy Biologicy Morza (abbreviation: BMB). See also: *Ochrona Bałtyku* [online]. Nasz Bałtyk [access: 2011-08-13]. Available at: <http://www.naszbaltyk.pl/ochrona_baltyku.html>. See also: K. Kreiser, *Natur- und Umweltschutz in den baltischen Staaten*, (in:) *Estland, Lettland, Litauen – drei Länder, eine Einheit?* eds. A. Bruns, S. Dähler, K. Kreiser, Dokumentation des Projektatoriums 2000/2001, pp. 27-39, particularly p. 32 onward. See also: A. Volgman, *Die Baltischen Staaten in Konflikt zwischen Ökologie und Ökonomie*, (in:) A. Bruns, S. Dähler, K. Kreiser, op. cit., pp. 40-56.

estimated that before and during World War II, Nazi Germany produced and stored about 300 thousand tons of chemical ammunition, which by virtue of contracts verged during the Potsdam conference concerning the demilitarization of Germany, the Allies sank between 1945 and 1947. It is also probable that the USSR continued sinking after 1947 as well. It was assessed that in this way, between 42 and 65 thousand tons of chemical ammunition, made their way into the Baltic Sea. Assuming out of necessity a remarkably simplified and generalized approach, according to which military toxic agents alone comprise on average about 15% of the ammunition's weight, it is possible to estimate that in the Baltic there was sank from 6 to 15 thousand tons of military toxic agents.¹¹ Unfortunately, with regards to its unchangeable nature, the confidential or secret character of binding decisions related to countries' capabilities of defense, there is no such possibility to phrase as positive the prognosis when it comes to protection from emissions of substances of military origin. The fact of a country's disposal of a certain type of ammunition as well as more specific information, for instance the quantity and type of this ammunition or the place of its drop to the sea, will surely remain a secret – a secret which significantly hampers counteracting the negative aspects of these kinds of emissions. The differences between countries-signatories of the Helsinki Convention in the area of military interests in the Baltic region are smaller than under the rule of the former convention. From the time of enacting the currently binding act from 1992 until the moment of gaining its obligatory force, the integration of the majority of the Baltic countries with NATO took place, whereas in the recent years much hope is put on tightening relations between NATO and Russia. It does not change the fact that in works concerning the military, we can still admittedly find information about the resignation from a certain type of weaponry or ammunition, but usually searching for information about where this withdrawn weapon and/or ammunition finally got to is in vain.¹² Chemical ammunition remaining after the German armies found itself in the hands of World War II's victors, who conducted intentional operations of its sinking.¹³

¹¹ E. Andrulowicz, M. Szymelfenig, J. Urbański, J. Węstawski, op. cit., pp. 108-109.

¹² See e.g.: I. V. Hogg, *Artyleria: działa i polowe wyrzutnie raketowe*, Bellona, Warszawa 2000, particularly pp. 22, 26, 28, 69 and 154. See also: M. E. Heskew, *Compared and contrasted artillery*, Bremen 2010, pp. 150-153.

¹³ There are three known areas of inundations: Mały Belt, Głębia Bornholmska – towards the east from Bornholm, and the south-western part of Gotland Deep. Presumably, there are circa 40.000-60.000 tonnes of chemical ammunition, on the bottom of the Baltic Sea, including approximately 12.000-13.000 tons of chemical warfare agents. In fact, the quoted numbers may be substantially higher. It is estimated that there may be approximately 60 spots in the Baltic Sea holding submerged weapons. Previous investigations have made it possible to pinpoint some of the areas with submerged chemical warfare agents and to partially understand the impact the submerged chemical warfare has on the surrounding ecosystem. There are 16 fully documented cases of chemical ammunition retrieval within the Polish Economic Zone (pl. Polska Strefa Ekonomiczna). Sulphur mustard was the main chemical warfare agent posing the biggest threat [after]: P. Wójcik, *Na dnie Bałtyku czyha śmierć*, *Środowisko*, 2009, Vol. 396, No. 12, pp. 30-31. In Poland the Chief Inspectorate of Environmental Protection is also a leader of the Flagship Project "Assess which assesses the need to clean up chemical weapons" within the Priority area 3 "to reduce the use and impact of hazardous substances"

In the face of all the mentioned circumstances and constantly rising threats to the ecological safety of the Baltic, the need to take up the fight and introduce immediate measures of stopping the degradation have become urgent for all the states, which can influence the state of the Baltic, especially for those bordering it.

2. Historical remarks on the Helsinki Convention of 1974

It is worth signaling that the previous sign of objection against pollution of the Baltic was the Convention on the Protection of the Marine Environment of the Baltic Sea Area of 1974 (Helsinki Convention), signed in Helsinki on March 22, 1974¹⁴ and ratified by the Republic of Poland on November 8, 1979.¹⁵ This was the first international convention addressing all kinds of pollution in a particular region. An Interim Commission was established, which focused mainly on discharges of harmful substances and monitoring the state of the marine environment.¹⁶ The 1974 Helsinki Convention was enforced in 3d May 1980 and it remained in action until 2000, when it was replaced by the new Helsinki Convention signed in 1992,¹⁷ which was enforced in the early 2000s. Some authors ascertain that a new convention was signed as a consequence of the dramatically changed political landscape at the south-eastern rim,¹⁸ but it is necessary to point out that there were many other – not political but rather environmental reasons to revise the international regulations in the Baltic Sea Region. First of all, in the new convention, all pollution sources from the whole of the Baltic area was consolidated under homogenous regulation being in force on the international level.

The old convention is mentioned because it laid the ground for the formation and functioning of the Baltic Marine Environment Protection Commission (or the Helsinki Commission, abbreviated as HELCOM), with governing body of the convention comprising the representatives of contracting parties to the convention.

(coordinated by the Swedish Environmental Protection Agency). The aim of the project will be achieved within the framework of HELCOM through the work of the HELCOM ad hoc Expert Group on dumped chemical munitions (HELCOM MUNI). HELCOM has already dealt with the issue of chemical weapons within its framework. In 1995 The HELCOM Final Report of the *ad hoc* Working Group on Dumped Chemical Munitions (HELCOM CHEMU) was released. In the scope of the work of the HELCOM MUNI will be included gathering the existing information on chemical weapons, the assessment of ecological risks and developing the recommendations for future dealing with dumped chemical weapons. To avoid doubling the work, it was decided that the work will be conducted within the Flagship Project of the EU Strategy for the Baltic Sea Region. See: EU Strategy for Baltic Sea Region [online]. Główny Inspektorat Ochrony Środowiska [access: 2011-08-20]. Available at: <<http://www.gios.gov.pl/artykuly/783/The-EU-Strategy-for-the-Baltic-Sea-Region>>.

¹⁴ The Helsinki Convention [online]. Helsinki Commission [access: 2011-08-13]. Available at: <http://www.helcom.fi/Convention/en_GB/convention/>.

¹⁵ Journal of Laws of Republic of Poland 1980, No. 18.

¹⁶ See: B. Hassler, *Protecting the Baltic Sea: The Helsinki Convention and National Interests*, (in:) *Yearbook of International Co-operation on Environment and Development*, eds. O. Stokke, Ø. Thommessen, Earthscan Publications, London 2003/2004, p. 33.

¹⁷ Named simply: "Convention" in further part of our publication.

¹⁸ See: B. Hassler, *op. cit.*, pp. 33, and 36, 37.

The important reason behind declaring the Convention of 1974 insufficient was its limited territorial coverage, as it covered the Baltic and all the Danish Straits (Great Belt, Little Belt, Oresund and Kattegat),¹⁹ but it did not cover the inland waters, as per Article 4.3: “While the provisions of the present Convention do not apply to internal waters, which are under the sovereignty of each Contracting Party, the Contracting Parties undertake, without prejudice to the sovereign rights, to ensure that the purposes of the present Convention will be obtained in these waters.” The article was not effective enough, which seems to have been the reason behind the introduction of the new convention on the Protection of the Marine Environment of the Baltic Sea Area of 1992,²⁰ which is subject to analysis herein.

The limited time scope of this talk does not allow continuing on the history of the development of international cooperation towards environmental protection of the Baltic area,²¹ so we shall focus on the work of the Helsinki Commission after the introduction of the new Convention in 1992.²²

The Helsinki Convention was signed on April 9, 1992 by all the states of the Baltic basin – Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Russia and Sweden. Also, the European Commission acceded to the Convention. The Convention was ratified by the Republic of Poland on June 24, 1999; the ratification document was submitted on November 15, 1999, and it became law in Poland on January 17, 2000.²³ Regardless of this, international and intergovernmental organizations can apply to become observers of the Convention, should they prove their capability of increasing environmental safety standards. HELCOM can also invite any non-member states to its sessions.²⁴

¹⁹ The Kattegat Strait, comprising the Baltic Sea border, is a part of the sea itself, however in terms of the surface measurements it is frequently separated and its surface area tends to be deducted from the so called actual Baltic Sea, thus the above-mentioned remark was essential. From the morphometric perspective, the surface of the Baltic Sea together with its seven basins equals 415.266 square kilometres, with only 209.930 square kilometres comprising the so called actual Baltic Sea, whilst the Kattegat occupies 22.287 square kilometres. For more information about the surface and other morphometric data of the Baltic sub-basins, see: Z. Mikulski, *Water Balance of the Baltic Sea*, Helsinki 1985, p. 174. For information about the Kattegat Strait, see e.g.: W. Walczak, *Dania*, Warszawa 1984, p. 152. On a sidenote, it is worth noting that the U-2359 shipwreck that was found on the bottom of the Kattegat most likely comprises the last sunken Nazi submarine.

²⁰ See: M. Górski, A. Kaźmierska-Patrzyzna, *Ochrona wód morskich. Ochrona wód morskich w świetle prawa międzynarodowego. Konwencja helsińska z 1974 i 1992 r.*, (in:) *Prawo ochrony środowiska*, ed. M. Górski, Warszawa 2009, p. 425.

²¹ See e.g.: Helsinki Convention on the Protection of Baltic Sea [online]. EU [access: 2011-08-13]. Available at: <http://europa.eu/legislation_summaries/environment/water_protection_management/128089_en.htm>. Expanded through the prism of the collaboration between 1988 and 1992, see: L.-K. Williams, *Zur Konstruktion einer Region, Die Entstehung der Ostseekooperation zwischen 1988-1992*, BWV, Berlin 2007.

²² Entire Convention, including the amendments of 15 November 2008, available at: The Helsinki Convention [online], op. cit.

²³ Journal of Laws of Republic of Poland 2000, No. 28, Issue 346.

²⁴ See also: Observers [online]. Helsinki Commission [access: 2011-08-13]. Available at: <http://www.helcom.fi/helcom/observers/en_GB/observers/>.

HELCOM plays an important role in the protection of the environment of the Baltic Sea and Baltic Sea Region. It is impossible to present in the same article the regulations related to the Helsinki Commission (HELCOM) itself and interactions between the Helsinki Convention and the recommendations (and other acts) created by HELCOM with the legal system of Poland. This is the reason why we decided to focus only on the regulations of the Helsinki Convention, which place HELCOM as the main administrative office competent to carry out a great spectrum of duties to ensure realization of the Helsinki Convention for the protection of the environment of the Baltic Sea. Additionally, we describe the main rules/principles creating a basis of HELCOM activities and the main direction of its efforts. Some strategic obligations of Poland as a party to the Convention are shown.

3. Spatial range of the Helsinki Convention of 1992

It has been stated that the Convention covers the entire Baltic Sea Area. As for Poland, practically it covers the entire territory of the republic, including territorial and inland waters of all the member states.²⁵

4. Helsinki Commission – purposes, structure, functioning

HELCOM's duties comprise mostly maintaining permanent surveillance of practical measures undertaken in implementation of the Convention and initiating actions toward the realization of the objectives set forth by the Convention, specifically the prevention, reduction and total elimination of pollution by point and zonal sources, and securing the biodiversity of both species and dwellings within the Baltic Sea.²⁶

Basing on the HELCOM representatives declarations regarding achieving of their goals and their vision through the joint effort of the Baltic states, we can point out that it acts as:

primo, as an environmental governing body, producing action toward environmental protection;

secundo, as an entity providing information on the state and tendencies observed in the sea environment, efficiency of applied protective measures, and initiating actions that might lead to decisions on other international fora;

tertio, as a body promoting development in accordance with the Baltic Sea's specific needs;

quarto, as an entity overseeing the termination of implemented actions by the member states;

²⁵ See also: *Sprawozdanie z realizacji zadań Krajowego Sekretariatu ds. Konwencji Helsińskiej za rok 2009*, Warszawa 2010, p. 3. This document has been drawn up by the Chief Inspector for Environmental Protection.

²⁶ *Ibidem*.

quinto, as an organ, which coordinates joint actions should a disaster (or accident) take place on the sea.²⁷

The commission works both through permanent and *ad hoc* problem groups. Since its reorganization (in 2003), HELCOM maintains 5 permanent problem groups:

1. HELCOM MONAS – monitoring and assessment (The Monitoring and Assessment Group);²⁸
2. HELCOM LAND – group dealing with contamination from land (The Land-based Pollution Group);²⁹

²⁷ See: About HELCOM [online]. Helsinki Convention [access: 2011-08-13]. Available at: <http://www.helcom.fi/helcom/en_GB/aboutus/>.

²⁸ Amidst some important recommendations issued by HELCOM MONAS, the following ought to be mentioned: HELCOM Recommendation 28E/14 adopted 15 November 2007, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Development of harmonized principles for quantifying diffuse losses throughout the Baltic Sea catchment area; HELCOM Recommendation 26/3 (supersedes HELCOM Recommendation 18/1) adopted 2 March 2005, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Monitoring of radioactive substances; HELCOM Recommendation 26/2 (supersedes HELCOM Recommendation 15/2 and 19/4) adopted 2 March 2005, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Compilation of waterborne pollution loads (PCL Water); HELCOM Recommendation 24/1 (supersedes HELCOM Recommendation 14/1) adopted 25 June 2003 having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Monitoring of airborne pollution load; HELCOM Recommendation 19/3 adopted 26 March 1998, having regard to Article 13, Paragraph b) of the Helsinki Convention: Recommendation concerning The Manual for the Marine Monitoring in the Combine programme for HELCOM; HELCOM Recommendation 13/1 adopted 6 February 1992, having regard to Article 9, Paragraph 2 of the Helsinki Convention: Disposal of Dredged Spoils; HELCOM Recommendation 12/9 adopted 20 February 1991, having regard to Article 13, Paragraph b) of the Helsinki Convention: Follow-Up Studies in Connection with Major Oil Spills; HELCOM Recommendation 12/1 adopted 21 February 1991, having regard to Article 13, Paragraph b) of the Helsinki Convention: Procedures for Granting Permits for Monitoring and Research in the Territorial Waters and Exclusive Economic Zones, Fishing Zones or Continental Shelves; HELCOM Recommendation 10/1 adopted 14 February 1989, having regard to Article 13, Paragraph b) of the Helsinki Convention: Abnormal Situations in the Marine Environment.

²⁹ Amidst some important recommendations issued by The HELCOM LAND, following ought to be mentioned: HELCOM Recommendation 31E/4 (supersedes HELCOM Recommendation 24/5 from 1st of January 2011) adopted 20 May 2010, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Proper handling of waste/land filling; HELCOM Recommendation 31E/3 adopted 20 May 2010, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Cadmium in fertilizers; HELCOM Recommendation 31E/2 (supersedes HELCOM Recommendation 24/2) adopted 20 May 2010, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Batteries and accumulators and waste batteries and accumulators containing mercury, cadmium or lead; HELCOM Recommendation 31E/1 (supersedes HELCOM Recommendation 19/5) adopted 20 May 2010, having regard to Article 13, Paragraph b) of the Helsinki Convention: Implementing HELCOM's objective for hazardous substances; HELCOM Recommendation 29/1 adopted 5 March 2008, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Reduction of Emissions from Crematoria; HELCOM Recommendation 28E/8 Adopted 15 November 2007, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Environmentally friendly practices for the reduction and prevention of emissions of dioxins and other hazardous substances from small-scale combustion; HELCOM Recommendation 28E/7 adopted 15 November 2007, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Measures aimed at the substitution of polyphosphates (phosphorus) in detergents; HELCOM Recommendation 28E/6 adopted 15 November 2007, having

regard to Article 20, Paragraph 1 b) of the Helsinki Convention: On-site wastewater treatment of single family homes, small businesses and settlements up to 300 Person Equivalents (P.E.); HELCOM Recommendation 28E/5 (supersedes HELCOM Recommendations 7/3, 9/2 and 16/9) adopted 15 November 2007, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Municipal wastewater treatment; HELCOM Recommendation 28E/4 adopted 15 November 2007, having regard to Article 20, Paragraph 1 c) of the Helsinki Convention: Amendments to Annex III “Criteria and Measures Concerning the Prevention of Pollution from Land-Based Sources” of the 1992 Helsinki Convention; HELCOM Recommendation 27/1 (supersedes HELCOM Recommendation 16/8) adopted 8 March 2006, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Limitation of emissions into atmosphere and discharges into water from the incineration of waste; HELCOM Recommendation 25/4 (supersedes HELCOM Recommendations 18/3 and 20/1) adopted 2 March 2004, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention 1992: Measures aimed at the reduction of discharges from Water and Marine Fish Farming; HELCOM Recommendation 25/3 (supersedes HELCOM Recommendations 20/3 and 16/11) adopted 2 March 2004, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention 1992: Reduction of Nutrients and other Pollutants leaching from forestry land; HELCOM Recommendation 25/2 adopted 2 March 2004 having regard to Article 20, Paragraph 1 b) of the Helsinki Convention 1992: Reduction of Emissions and Discharges from Industry by effective use of BAT; HELCOM Recommendation 25/1 (supersedes HELCOM Recommendation 6/1) adopted 2 March 2004, having regard to Article 20 (1), b) of the Helsinki Convention 1992: Elimintaion of PCBs and PCTs; HELCOM Recommendation 24/5 (superseding HELCOM Recommendation 22/4, to be superseded by HELCOM Recommendation 31E/4 from 1 January 2011) adopted 25 June 2003, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Proper handling of Waste/Landfilling; HELCOM Recommendation 24/4 (superseding HELCOM Recommendations 11/7, 13/4 and 17/5) adopted 25 June 2003, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Reduction of Emissions and Discharges from the Iron Steel Industry; HELCOM Recommendation 24/3 (superseding, together with requirements in Annex III of the Convention, HELCOM Recommendations 7/2, 13/7 (except Annex), 13/9, 13/10, 13/11 and 14/4) adopted 25 June 2003, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Measures aimed at the reduction of emissions and discharges from agriculture; HELCOM Recommendation 23/12 (superseding HELCOM Recommendation 16/10) adopted 6 March 2002, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Reduction of Discharges and emissions from production of textiles; HELCOM Recommendation 23/11 (superseding HELCOM Recommendation 20E/6) adopted 6 March 2002 having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Requirements for discharging of waste water from the chemical industry; HELCOM Recommendation 23/10 (superseding HELCOM Recommendation 14/2) adopted 6 March 2002, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Reduction of discharges and emissions from production and formulation of pesticides; HELCOM Recommendation 23/9 (superseding HELCOM Recommendation 17/4) adopted 6 March 2002, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Restriction of atmospheric emissions and waste water discharges from hard coal cokeries; HELCOM Recommendation 23/8 (superseding HELCOM Recommendation 6/2) adopted 6 March 2002, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Reduction of discharges from oil refineries; HELCOM Recommendation 23/7 (superseding HELCOM Recommendation 16/6) adopted 6 March 2002, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Reduction of discharges and emissions from the metal surface treatment; HELCOM Recommendation 23/6 (superseding HELCOM Recommendation 6/3) adopted 6 March 2002, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Reduction of emissions and discharges of mercury from chloralkali industry; HELCOM Recommendation 23/5 (superseding HELCOM Recommendations 5/1 and 17/7) adopted 6 March 2002, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Reduction of discharges from urban areas by the proper management of storm water systems; HELCOM Recommendation 23/4 (superseding HELCOM Recommendation 18/5) adopted 6 March 2002, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Measures aimed at the reduction of mercury pollution resulting from light

3. HELCOM HABITAT – group for environmental protection and biodiversity (The Nature Protection and Biodiversity Group),³⁰

sources and electrical equipment; HELCOM Recommendation 21/1 (upon its entry into force on 31 December 2000, this Recommendation supersedes HELCOM Recommendation 19/6) adopted 20 March 2000, having regard to Article 20 (1), c) of the 1992 Helsinki Convention: Amendments to Annex III “Criteria and measures concerning the prevention of pollution from land-based sources” of the 1992 Helsinki Convention; HELCOM Recommendation 20/4 (supersedes HELCOM Recommendation 9/10) adopted 23 March 1999, having regard to Article 13, Paragraph b) of the Helsinki Convention 1974: Antifouling paints containing organotin compounds; HELCOM Recommendation 20/2 (supersedes the HELCOM Recommendation 13/13) adopted 23 March 1999, having regard to Article 13, Paragraph b) of the Helsinki Convention 1974: Approval of pesticides (“Plant protection products”) for use in the catchment area of the Baltic Sea; HELCOM Recommendation 18/4 (supersedes HELCOM Recommendation 13/12) adopted 11 March 1997, having regard to Article 13, Paragraph b) of the Helsinki Convention: Managing Wetlands and Freshwater Ecosystems for Retention of Nutrients; HELCOM Recommendation 17/10 adopted 13 March 1996, having regard to Article 13, Paragraph b) of the Helsinki Convention: Basic Principles for Realization of BAT and BEP in Food Industry; HELCOM Recommendation 17/9 (supersedes HELCOM Recommendation 11/3) adopted 13 March 1996, having regard to Article 13, Paragraph b) of the Helsinki Convention: Reduction of Discharges from the Sulphite Pulp Industry; HELCOM Recommendation 17/8 (supersedes Recommendation 11/4) adopted 13 March 1996, having regard to Article 13, Paragraph b) of the Helsinki Convention: Reduction of Discharges from the Kraft Pulp Industry; HELCOM Recommendation 17/6 adopted 12 March 1996, having regard to Article 13, Paragraph b) of the Helsinki Convention: Reduction of Pollution from Discharges into Water, Emissions into the Atmosphere and Phosphogypsum out of the Production of Fertilizers; HELCOM Recommendation 17/1 adopted 13 March 1996, having regard to Article 13, Paragraph b) of the Helsinki Convention: Reduction of Emissions from Transport Sector Affecting the Baltic Sea; HELCOM Recommendation 16/7 adopted 15 March 1995, having regard to Article 13, paragraph b) of the Helsinki Convention: Basic Principles in Waste Water Management in the Leather Industry; HELCOM Recommendation 16/4 adopted 15 March 1995, having regard to Article 13, paragraph b) of the Helsinki Convention, 1974: Reduction of Emissions into the Atmosphere from the Pulp and Paper Industry; HELCOM Recommendation 14/3 adopted 3 February 1993, having regard to Article 13, Paragraph b) of the Helsinki Convention: Limitation of Emissions to the Atmosphere and Discharges into Water from Glass Industry; HELCOM Recommendation 13/2 (supersedes HELCOM Recommendation 12/4) adopted 5 February 1992, having regard to Article 13, Paragraph b) of the Helsinki Convention: Industrial Connections and Point Sources other than Household Connected to Municipal Sewerage Systems; HELCOM Recommendation 9/4 adopted 15 February 1988, having regard to Article 13, Paragraph b) of the Helsinki Convention: Recommendation Concerning Reduction of Emissions of Lead from Combustion of Leaded Gasoline; HELCOM Recommendation 6/4 adopted 13 March 1985, having regard to Article 13, Paragraph b) of the Helsinki Convention: Recommendation Concerning Measures Aimed at the Reduction of Mercury Resulting from Dentistry.

³⁰ Amidst some important recommendations issued by The HELCOM HABITAT, following ought to be mentioned: HELCOM Recommendation 28E/9 adopted 15 November 2007, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Development of broad-scale marine spatial planning principles in the Baltic Sea area; HELCOM Recommendation 27-28/2 adopted 8 July 2006, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Conservation of seals in the Baltic Sea Area; HELCOM Recommendation 24/10 adopted 25 June 2003, having regard to Article 20, Paragraph 1 b) of the 1992 Helsinki Convention: Implementation of Integrated Marine and Coastal Management of Human activities in the Baltic Sea Area; HELCOM Recommendation 21/4 adopted 20 March 2000, having regard to Article 20 (1), Paragraph b) of the 1992 Helsinki Convention: Protection of heavily endangered or immediately threatened Marine and Coastal Biotopes in the Baltic Sea Area; HELCOM Recommendation 21/3 adopted 20 March 2000, having regard to Article 20 (1), Paragraph b) of the 1992 Helsinki Convention: Sustainable and Environmentally friendly tourism in the Coastal Zones of the Baltic Sea Area; HELCOM Recommendation

4. HELCOM MARITIME – group dealing with contamination at sea (The Maritime Group), resulting from the normal use of sea vessels, as well as preventing disasters and accidents;³¹

19/2 adopted 26 March 1998, having regard to Article 13, Paragraph b) of the Helsinki Convention: Protection and Improvement of the Wild Salmon (*Salmo salar* L.) populations in the Baltic Sea Area; HELCOM Recommendation 19/1 adopted 23 March 1998, having regard to Article 13, Paragraph b) of the Helsinki Convention: Marine Sediment Extraction in the Baltic Sea Area; HELCOM Recommendation 17/3 (supersedes HELCOM Recommendation 12/2) adopted 12 March 1996, having regard to Article 13, Paragraph b) of the Helsinki Convention: Information and Consultation with Regard to Construction of New Installations Affecting the Baltic Sea; HELCOM Recommendation 17/2 adopted 12 March 1996, having regard to Article 13, Paragraph b) of the Helsinki Convention: Protection of Harbours Porpoise in the Baltic Sea Area; HELCOM Recommendation 16/3 adopted 15 March 1995, having regard to Article 13, Paragraph b) of the Helsinki Convention: Preservation of Natural Coastal Dynamics; HELCOM Recommendation 15/5 adopted 10 March 1994, having regard to Article 13, Paragraph b) of the Helsinki Convention: System of Coastal and Marine Baltic Sea Protected Areas (BSPA); HELCOM Recommendation 15/1 adopted 8 March 1994, having regard to Article 13, Paragraph b) of the Helsinki Convention: Protection of the Coastal Strip.

³¹ Amidst some important recommendations issued by The HELCOM MARITIME, following ought to be mentioned: HELCOM Recommendation 31E/5 adopted 20 May 2010, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Mutual plan for places of refuge in the Baltic Sea area; HELCOM Recommendation 29/2 adopted 5 March 2008, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Marine litter within the Baltic Sea region; HELCOM Recommendation 28E/13 adopted 15 November 2007, having regard to Article 20, Paragraph 1 b) and Annex II of Helsinki Convention: Introducing economic incentives as a complement to existing regulations to reduce emissions from ships; HELCOM Recommendation 28E/11 adopted 15 November 2007, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Further measures to improve the safety of navigation in ice conditions in the Baltic Sea; HELCOM Recommendation 28E/10 (supersedes HELCOM Recommendations 19/8, 26/1 and 28/1) adopted 15 November 2007, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Application of the no-special fee system to ship-generated wastes and marine litter caught in fishing nets in the Baltic Sea area; HELCOM Recommendation 28/3 (supersedes HELCOM Recommendation 24/6) adopted 7 March 2007 having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Guidelines on bunkering operations and ship to ship cargo transfer of oils, subject to Annex I of MARPOL 73/78, in the Baltic Sea Area; HELCOM Recommendation 28/2 (supersedes HELCOM Recommendation 7/7) adopted 7 March 2007, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Recording of fuel oil bunkering operations in the Oil Record Book and documentation for the use of reception facilities; HELCOM Recommendation 25/7 adopted 2 March 2004, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Safety of winter navigation in the Baltic Sea Area; HELCOM Recommendation 25/6 (superseding HELCOM RECOMMENDATION 14/6) adopted 2 March 2004, 3 February 1993 having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Guidelines for the recommended minimum throughput of oil filtering-water separating equipment on board ships; HELCOM Recommendation 25/5 adopted 2 March 2004, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Assessment of the need for escort towing in tanker transport routes to prevent accidents in the Baltic Sea area; HELCOM Recommendation 24/8 adopted 25 June 2003, having regard to Article 20, Paragraph 1 c) of the Helsinki Convention: Amendments to Annex IV “Prevention of pollution from ships” to the Helsinki Convention, concerning discharge of sewage; HELCOM Recommendation 23/3 adopted 6 March 2002, having regard to Article 20, Paragraph 1b) of the Helsinki Convention: Enhancing the use of pilots in route T and the Sound by notification to departing ships and establishment of an early warning system; HELCOM Recommendation 23/1 (supersedes HELCOM Recommendation 19/11) adopted 6 March 2002, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Notification of Ship’s wastes; HELCOM Recommendation 22E/5 adopted 10 September 2001,

having regard to Article 20 (1), c) of the Helsinki Convention: Amendments to Annex IV “Prevention of pollution from ships” to the Helsinki Convention; HELCOM Recommendation 22/3 (supplements HELCOM Recommendations 19/8, 19/9, 19/12, 21/2 and 22/1) adopted 21 March 2001, having regard to Article 20(1), b) of the 1992 Helsinki Convention: Unified interpretations to ensure a harmonized and effective implementation of the strategy for port reception facilities for ship-generated wastes and associated issues; HELCOM Recommendation 22/1 (*supplements HELCOM Recommendation 19/9*) adopted 21 March 2001, having regard to Article 20(1), b) of the 1992 Helsinki Convention: Installation of toilet retention Systems and standard connections for Sewage on board existing fishing vessels, working vessels and pleasure craft; HELCOM Recommendation 21/2 (*upon its entry into force on 31 December 2000, this Recommendation supersedes HELCOM Recommendations 14/8 and 19/7*) adopted 20 March 2000, having regard to Article 20 (1), c) of the 1992 Helsinki Convention: Amendments to Annex IV “Prevention of Pollution from Ships” of the 1992 Helsinki Convention; HELCOM Recommendation 19/16 (supersedes HELCOM Recommendations 6/13, 10/8, 16/1, except for elaboration of the Manual on the legal systems of the Contracting Parties) and 16/2) adopted 24 March 1998, having regard to Article 13, Paragraph b) and Regulation 2 of Annex IV of the Helsinki Convention: Co-operation in investigating violations or suspected violations of discharge and related regulations for ships, dumping and incineration regulations; HELCOM Recommendation 19/15 adopted 24 March 1998, having regard to Article 13, Paragraph b) of the Helsinki Convention: Minimum Requirements for Vessels Bound for or Leaving Ports of the Baltic Sea States and Carrying Dangerous or Polluting Goods; HELCOM Recommendation 19/14 adopted 26 March 1998, having regard to Article 13, Paragraph b) of the Helsinki Convention: A Harmonized System of Fines in Case a Ship Violates Anti-Pollution Regulations; HELCOM Recommendation 19/13 adopted 26 March 1998, having regard to Article 13, Paragraph b) of the Helsinki Convention: Basic Principles of Ashore Handling of Ship-Generated Wastes; HELCOM Recommendation 19/12 adopted 26 March 1998, having regard to Article 13, Paragraph b) of the Helsinki Convention: Waste Management Plans for Ports; HELCOM Recommendation 19/10 adopted 26 March 1998, having regard to Article 13, Paragraph b) of the Helsinki Convention: Application by the Baltic Sea States of Guidelines for Holding Tanks/Oily Water Separating of Filtering Equipment for Ships of less than 400 Tons Gross Tonnage; HELCOM Recommendation 19/9 adopted 26 March 1998, having regard to Article 13, Paragraph b) of the Helsinki Convention: Installation of the Garbage Retention Appliances and Toilet Retention Systems and Standard Connections for Sewage on Board Fishing Vessels, Working Vessels and Pleasure Craft; HELCOM Recommendation 18/2 (supersedes HELCOM Recommendation 9/5 as from 1 January 1998 for new installations and as from 1 January 2001 for existing installations) adopted 12 March 1997, having regard to Article 13, Paragraph b) of the Helsinki Convention: Offshore Activities; HELCOM Recommendation 17/12 adopted 13 March 1996, having regard to Article 13, Paragraph b) of the Helsinki Convention: Measures to Abate Pollution by Oil and other Harmful Substances in Cases of Grounding, Collision, Sinking of a Ship or other Maritime Casualty; HELCOM Recommendation 15/4 adopted 9 March 1994, having regard to Article 13, Paragraph b) of the Helsinki Convention: Additional Maritime Safety and Pollution Prevention Measures in the Baltic Sea Area; HELCOM Recommendation 14/7 adopted 3 February 1993, having regard to Article 13, Paragraph b) of the Helsinki Convention: Guidelines for Provisions of Facilities for the Handling, Storage and Processing of Shipboard Garbage; HELCOM Recommendation 12/5 adopted 20 February 1991, having regard to Article 13, Paragraph b) of the Helsinki Convention: Promotion of the Use of Safer Tankers While Carrying Oil; HELCOM Recommendation 11/10 adopted 14 February 1990, having regard to Article 13, Paragraph b) of the Helsinki Convention: International Cooperation on Liability for Damage Resulting from Vessel-Based Pollution; HELCOM Recommendation 10/7 adopted 15 February 1989, having regard to Article 13, Paragraph b) of the Helsinki Convention: General Requirements for Reception of Wastes; HELCOM Recommendation 10/6 (supersedes HELCOM Recommendations 6/11 and 7/9) adopted 15 February 1989, having regard to Article 13, Paragraph b) of the Helsinki Convention: Application by the Baltic Sea States of a Helsinki Convention Form for Reporting Alleged Inadequacy of Reception Facilities for Sewage; HELCOM Recommendation 10/5 (supersedes HELCOM Recommendations 1/11, 6/8 and 7/10) adopted 15 February 1989, having regard to Article 13, Paragraph b) of the Helsinki Convention:

5. HELCOM RESPONSE – the group responsible for reaction (The Response Group), established to monitor the readiness of member states to undertake necessary action in order to prevent the spreading of leak contamination and to identify dangerous waste and the respective perpetrators.³²

Members of the Helsinki Commission, in order to ensure the execution of the duties assigned to each of the HELCOM groups, often appoint adequate organizations within the member states. This tendency is perhaps well illustrated

Guidelines for the Establishment of Adequate Reception Facilities in Ports; HELCOM Recommendation 9/11 adopted 16 February 1988, having regard to Article 13, Paragraph b) of the Helsinki Convention: Recommendation Concerning Guidelines for the Establishment of National Counter Pollution Measures Regarding Pleasure Craft; HELCOM Recommendation 2/2 adopted 17 February 1981, having regard to Article 13, Paragraph b) of the Helsinki Convention: Recommendation on the Acceptance by the Baltic Sea States of International Instruments on Maritime Safety, Pollution Prevention and Related Matters; HELCOM Recommendation 1/5 adopted 5 May 1980, having regard to Article 13, Paragraph b) of the Helsinki Convention: Recommendation Concerning the Application by the Baltic Sea States of Guidelines for Type Testing and Approval of Sewage Treatment Systems.

³² Amidst some important recommendations issued by The HELCOM RESPONSE, following ought to be mentioned: HELCOM Recommendation 31E/6 adopted 20 May 2010, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Integrated wildlife response planning in the Baltic Sea area; HELCOM Recommendation 31/1 (supersedes HELCOM Recommendations 1/7, 4/3 and 11/13) adopted 4 March 2010, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Development of national ability to respond to spillages of oil and other harmful substances; HELCOM Recommendation 28E/12 adopted 15 November 2007, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Strengthening of sub-regional co-operation in response field; HELCOM Recommendation 24/9 adopted 25 June 2003, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Ensuring adequate emergency capacity; HELCOM Recommendation 24/7 (*supersedes HELCOM Recommendation 12/6 "Development of a drift forecasting system to respond to spills of oil and other harmful substances"*) adopted 25 June 2003, having regard to Article 20, Paragraph 1 b) of the Helsinki Convention: Further development and use of Drift Forecasting for Oils and other Harmful Substances in the Baltic; HELCOM Recommendation 22/2 (supersedes HELCOM Recommendation 1/8) adopted 21 March 2001, having regard to Article 20(1), b) of the 1992 Helsinki Convention: Restricted use of Chemical agents and other Non-chemical means in Oil Combatting Operations on the Baltic Sea Area; HELCOM Recommendation 20/5 (supplements HELCOM Recommendation 11/13) adopted 23 March 1999, having regard to Article 13, Paragraph b) of the Helsinki Convention 1974: Minimum ability to respond to Oil spillages in Oil Terminals; HELCOM Recommendation 19/18 (supersedes HELCOM Recommendation 7/12 concerning the application of the IMO guidelines for reporting incidents involving harmful substances) adopted 24 March 1998, having regard to Article 13, Paragraph b) of the Helsinki Convention: Reporting on Incidents Involving Harmful Substances and Emergency Dumping; HELCOM Recommendation 19/17 (supersedes HELCOM Recommendation 10/10) adopted 24 March 1998, having regard to Article 13, Paragraph b) and Regulation 2 of Annex VI of the Helsinki Convention: Measures in order to Combat Pollution from Offshore Units; HELCOM Recommendation 12/18 (supersedes HELCOM Recommendation 7/11) adopted 20 February 1991, having regard to Article 13, Paragraph b) of the Helsinki Convention: Airborne Surveillance with Remote Sensing Equipment in the Baltic Sea Area; HELCOM Recommendation 12/7 adopted 20 February 1991, having regard to Article 13, Paragraph b) of the Helsinki Convention: Special Cooperation in Case of a Chemical Tanker Accident in the Baltic Sea. See also: *Raport z prac Sekretariatu Konwencji Helsińskiej za 2006 r. wynikających ze zobowiązań wobec Konwencji o Ochronie Środowiska Morskiego obszaru Morza Bałtyckiego (Konwencji Helsińskiej)*, Warszawa 2007, p. 5. This document has been issued by the Chief Inspector for Environmental Protection.

by the report of the Polish ministry responsible for the protection of the natural environment: “the department of environment coordinates the execution of tasks undertaken because of obligations Poland has from the Helsinki Convention, and also the activity of HELCOM in areas of its group dealing with contamination from land (HELCOM LAND), monitoring and assessment (HELCOM MONAS), its group for environmental protection and biodiversity (HELCOM HABITAT), and their expert subgroups. To this purpose, the national secretary’s office for the Helsinki Convention has been established. It does not include the groups dealing with contamination at sea (HELCOM MARITIME) and responsible for reaction (HELCOM RESPONSE), as those in Poland are coordinated directly by the Ministry of Infrastructure (before that, the Ministry of Marine Economy)”.³³

In the organizational structure of HELCOM, a separate implementation group (HELCOM BSAP IG³⁴) is responsible for coordinating the implementation of the Baltic Sea Action Plan (BSAP). Also, what has already been mentioned, various specialized or short-term tasks are executed by numerous *ad hoc* groups, mostly experts or those responsible for planning, which are subject to appropriate actions of the permanent groups.³⁵

The liaison organ between HELCOM and the task groups is the Heads of Delegations, representing member states, which have the power to authorize plans and documents and also hold executive power regarding the tasks at hand.³⁶

HELCOM itself typically holds plenary sessions every year, and as for ensuring coherence and coordinating each of the various tasks undertaken by the problem groups, the international HELCOM Secretariat has been established in Helsinki.³⁷

The aforementioned implementation group (HELCOM BSAP IG) also deserves a bit of attention, as the group has special duties within HELCOM. Bearing in mind the need to take immediate action for the reduction of pollution and restitution of the good ecological status of the Baltic marine environment by 2021, the parties to the Convention, working during the HELCOM Ministerial Meeting in Krakow, adopted on November 15, 2007, the Baltic Sea Action Plan, in which was outlined a comprehensive set of actions to achieve:

1. countering of eutrophication;
2. freedom from disturbance by hazardous substances;
3. favourable biodiversity;
4. environmentally friendly maritime activities, specifically ensuring safe sailing, exploitation of the seabed, minimizing the negative impact of offshore investments and preventing the introduction of alien animal and plant species to the Baltic.³⁸

³³ See: *Sprawozdanie...*, op. cit., p. 11.

³⁴ Abbreviation expansion: HELCOM Baltic Sea Action Plan Implementation Group.

³⁵ See: *Raport...*, op. cit., p. 11.

³⁶ See: *Sprawozdanie...*, op. cit., p. 4.

³⁷ Arg. from Article 21.3 of the Convention.

³⁸ *Ibidem*, p. 3.

Parties to the Convention, having signed under the Baltic Sea Action Plan, have undertaken an obligation of preparing national implementation programs before 2010 and declared their preparedness to present them during the planned 2010 HELCOM Ministerial Meeting in Krakow. However, after the acceptance of the Plan, it soon became apparent that the assumptions regarding the reduction of biogenes would not be verifiable until the planned meeting. Hence, it was decided that the national implementation programs would be of an initial nature only. In the long run, the ultimate formulation of these programs should be happening before the ministerial meeting planned for 2013.³⁹

According to the definition from Article 2.11, the “Commission” means the Baltic Marine Environment Protection Commission referred to in Article 19. It is established for the purposes of this Convention.⁴⁰ Meetings of the Commission shall be held upon convocation by the Chairman. There are two basic types of meetings of HELCOM: general meetings and extraordinary meetings. The general meetings are convoked by the Chairman at least once a year. Extraordinary meetings shall be convened by the Chairman to be held as soon as possible, however, not later than ninety days after the date of submission of the request. They are held upon the request of any Contracting Party which is endorsed by another Contracting Party.

The structure of the Helsinki Commission is worth elaborating upon. As it was already said, its members are, on equal rights,⁴¹ all the member states that ratified the Convention – so practically all the representatives of the Baltic states. The EU also has its representatives in HELCOM.⁴² Another thing is the matter of chairmanship of the Commission. According to the rules, the chairmanship of the Helsinki Commission rotates between the contracting parties every two years, according to their alphabetical order⁴³ in English.⁴⁴ The party, who handles leadership, nominates the Chairman, who holds office for two years,⁴⁵ and cannot in the same time period be a representative of the party to the Convention.⁴⁶ Until June 2010, I. Maydanov of the Russian Federation was the Chairman, and was succeeded by G. Lindholm of Sweden.

³⁹ Ibidem.

⁴⁰ Arg. from Article 19.1 of the Convention.

⁴¹ Arg. from Article 23.1 of the Convention. Legal equality of the members could be, at least partly, interpreted from the Article 19.5 of the Convention.

⁴² For more information about the involvement of other subjects in the Baltic Sea region, see e.g.: K. Kern, *Voller Dynamik: der Ostseeraum*, WZB-Mitteilungen 2004, No. 106, pp. 45-47. See also: idem, T. Löffelsens, *Sustainable Development in the Baltic Sea Region – Governance beyond the Nation State*, Local Environment 2004, No. 9, pp. 451-467. See also: idem, *Governance beyond the Nation State – Transnationalization and Europeanization of the Baltic Region*, WZB-Bestellnummer 2004, No. 105, p. 35 onward.

⁴³ Arg. from Article 19.3 of the Convention (first sentence of this Article).

⁴⁴ Arg. from Article 21.1 of the Convention.

⁴⁵ Arg. from Article 19.3 of the Convention (second sentence of the Convention).

⁴⁶ Arg. from Article 19.3 *in fine* of the Convention.

Some more details about the administrative aspects of the functioning of HELCOM are given in Article 21 and 22. As per this regulation, the Commission headquarters is Helsinki and the working language of the Commission shall be English. The structure of HELCOM is rather flexible than fixed. The Commission is not restricted by the casuistic regulations and has some influence on the creation of its administrative support, first of all because it is able to adopt its own Rules of Procedure and Financial Rules. According to Article 22.2 the Commission shall adopt an annual or biennial budget of proposed expenditures and consider budget estimates for the fiscal period following thereafter. Furthermore, HELCOM can unanimously take decisions about the amounts of donations from parties – as per Article 22.3, the total amount of the budget, including any supplementary budget adopted by the Commission shall be contributed by the Contracting Parties other than the European Economic Community, in equal parts, unless unanimously decided otherwise by the Commission. However, the European Economic Community shall contribute no more than 2.5% of the administrative costs to the budget.⁴⁷ The expenses related to the participation in the Commission of parties representatives, experts and advisers shall be played by proper parties.⁴⁸

HELCOM also appoints an Executive Secretary, who is the chief administrative official of the Commission and shall perform the functions that are necessary for the administration of this Convention, the work of the Commission and various tasks entrusted to the Executive Secretary by the Commission and its Rules of Procedure. HELCOM has an opportunity to make provisions for the appointment of such additional personnel as may be necessary, and to determine the duties, terms and conditions of service of the Executive Secretary.

Articles 19.4 and 19.5 establish the general principle of decision-making – unless otherwise provided under this Convention, and the Commission shall take its decisions unanimously.⁴⁹ Each Party shall have one vote in the Commission, despite the European Economic Community (or any other regional organization of economic integration), which shall exercise their right to vote (in matters within their competence) with a number of votes equal to the number of their member states which are signatories of the Helsinki Convention.⁵⁰ However, such situation results in some limitation for the organization or its members voting rights, because it shall not exercise their right to vote if their member states exercise theirs (and *vice versa*). Sometimes it is probably not ideal for member states of the organization, who are parties of the Convention, because their interests are not always identical, and the European Economic Community or any other regional organization receives more influence than parties, who are their members.

⁴⁷ Arg. from Article 22.4 of the Convention.

⁴⁸ Arg. from Article 22.5 of the Convention.

⁴⁹ Arg. from Article 19.5 of the Convention.

⁵⁰ Arg. from Article 23.1 and 23.2 of the Convention.

5. HELCOM tasks in the text of the Helsinki Convention of 1992

The most important regulations related to the tasks of HELCOM in the Helsinki Convention of 1992⁵¹ are located in Articles 20 to 23.

According to the Article 20 we can indicate the following catalogue of HELCOM duties:

- a) to keep the implementation of this Convention under continuous observation;
- b) to make recommendations on measures relating to the purposes of this Convention;
- c) to keep under review the contents of this Convention including its Annexes and to recommend to the Contracting Parties such amendments to this Convention including its Annexes as may be required including changes in the lists of substances and materials as well as the adoption of new Annexes;
- d) to define pollution control criteria, objectives for the reduction of pollution, and objectives concerning measures, particularly those described in Annex III;
- e) to promote close co-operation with appropriate governmental bodies, taking into consideration sub-paragraph f) of this Article, additional measures to protect the marine environment of the Baltic Sea Area and for this purpose:
 - i) to receive, process, summarize and disseminate relevant scientific, technological and statistical information from available sources; and
 - ii) to promote scientific and technological research; and
- f) to seek, when appropriate, the services of competent regional and other international organizations to collaborate in scientific and technological research as well as other relevant activities pertinent to the objectives of this Convention.

It is an open formula of a catalogue of the duties and consequently HELCOM may assume other functions. It may be all functions as it deems appropriate to further the purposes of the Convention.

There are also a few other tasks dedicated to HELCOM by the Convention. Reporting faculties (and in a way supervision faculties):

1. HELCOM shall be notified by Contracting Party about transboundary impact on the Baltic Sea Area (any other contracting party which may be affected by a transboundary impact on the Baltic Sea Area shall be notified too);⁵²
2. extraordinary (emergency) dumping (made in accordance to Article 11.4) shall be reported and dealt with in accordance to Annex VII and shall be reported forthwith to the Commission in accordance to the provisions of Regulation 4 of Annex V;⁵³
3. reporting and exchange of information from Article 16.1.:
HELCOM should receive regular reports from all member states of the Convention. In the reports of the parties should be emblazoned several issues:
 - a) the legal, regulatory, or other measures taken for the implementation of the provisions of this Convention, of its Annexes and of recommendations adopted there under;
 - b) the effectiveness of the measures taken to implement the provisions referred to the above mentioned legal, regulatory, or other measures;

⁵¹ Only when it comes to the text of the Convention, without the Schedules and Exhibits, which form (according to Article 28) an integral part of it; but it is impossible to discuss this in this paper due to limitations of its complexity.

⁵² Arg. from Article 7.1 of the Convention.

⁵³ Arg. from Article 11.5 of the Convention.

- c) problems encountered in the implementation of the provisions referred to by the legal, regulatory, or other measures;
4. HELCOM (as well as any member state of the Convention) has a right to expect effectively some information from other member states, such as: information on discharge permits, emission data or data on environmental quality, as far as available.

5.1. Creation of standards

HELCOM should outline the organization and scope of work connected with the implementation of tasks.⁵⁴ Faculties related to the Convention:

1. HELCOM can raise a necessity of convening a conference for the purpose of a general revision of or an amendment to this Convention (it may be also convened with the consent of the contracting parties);⁵⁵
2. HELCOM also may recommend by itself amendments to the articles of this Convention (as per Article 31.2). Any such recommended amendment shall be submitted to the Depositary and communicated by it to all contracting parties, which shall notify the Depositary of either their acceptance or rejection of the amendment as soon as possible after receipt of the communication.⁵⁶ Additionally, HELCOM shall consider any amendment proposed by the contracting party (if the party, who propose the amendment make a request).⁵⁷ In such a situation, upon the request of any contracting party endorsed by another contracting party, an extraordinary meeting shall be convened by the Chairman to be held as soon as possible, but not later than ninety days after the date of submission of the request.⁵⁸ If an amendment is adopted by HELCOM, it may recommend an acceptance of amendments to the articles of Convention to the contracting parties;⁵⁹
3. HELCOM possesses a significant scope of authority in making amendments to the annexes of the Convention. The Commission has the ability to consider any amendment to the annexes proposed by a contracting party. Only the amendment adopted by HELCOM shall be communicated to the Contracting Parties and recommended for acceptance.⁶⁰ Furthermore, any amendments to the annexes recommended by HELCOM shall be communicated to the contracting parties by the Depositary and recommended for acceptance. The Commission has a right to determine a closing date for the member states to decide on the subject of

⁵⁴ Arg. from Article 24.4 of the Convention.

⁵⁵ Arg. from Article 30 of the Convention.

⁵⁶ Arg. from Article 31.2 of the Convention.

⁵⁷ Arg. from Article 31.1 of the Convention.

⁵⁸ Arg. from Article 19.4 of the Convention.

⁵⁹ Arg. from Article 31.1 of the Convention.

⁶⁰ Arg. from Article 32.1 of the Convention.

acceptance of the proposed amendment. Moreover, HELCOM is able to appoint the date, when the accepted amendment will enter into force;⁶¹

4. conditions of the participation of a regional economic organization may be agreed upon between the Commission and the interested organization, if this organization has limited competence.

5.2. HELCOM in the Polish administrative structure

There is not enough space to analyze the whole influence of the Helsinki Convention and HELCOM recommendations on Polish law, and such an analysis is not rigorously connected with the main topic of this article.⁶² This is why we have focused only on the level of the administrative structure.

Poland has been a member of HELCOM since 1974. Now in Poland we can match two levels of governing cases related to HELCOM's competences. The first level is a general coordination of the policy of Poland as at participator of the Baltic Sea protection based on the Helsinki Convention. It is performed by the Ministry of Environment and the Ministry of Maritime Economy. If necessary, both of them are acting in liaison with the Ministry of the Economy (general, not only maritime) and the Ministry of Agriculture and Countryside Development. The second level is more specialized and intended to perform exact permanent actions facilitated by the implementation of HELCOM's standards and even effectuating HELCOM activities. It should be mentioned, that on this level in Poland exists an administrative structure called GIOŚ⁶³ responsible for a wide area of tasks related to environment protection;⁶⁴ notwithstanding this, because of such an expanse and

⁶¹ Arg. from Article 32.2 and 32.3 of the Convention. The period determined by the Commission shall be prolonged for an additional period of six months and the date of entry into force of the amendment postponed accordingly, if, in exceptional cases, any Contracting Party informs the Depositary before the expiration of the period determined by the Commission that, although it intends to accept the amendment, the constitutional requirements for such an acceptance are not yet fulfilled.

⁶² For more about the implementation and execution of the Convention and HELCOM programme recommendations in Poland, see D. Pyć, op. cit. See also: Główny Inspektor Ochrony Środowiska, *Sprawozdanie z realizacji zadań Krajowego Sekretariatu ds. Konwencji Helsińskiej za rok 2009 dokument opracowany w celu prezentacji na kierownictwie resortu*, Warszawa 2010.

⁶³ Polish for: Główny Inspektorat Ochrony Środowiska, which means General Inspection for Environmental Protection.

⁶⁴ According to the official web site of GIOŚ (Task of the Environmental Protection [online]. Główny Inspektorat Ochrony Środowiska [access: 2011-08-19]. Available at: <<http://www.gios.gov.pl/artykuly/691/Tasks-of-the-Inspection-for-Environmental-Protection>>, the Chief Inspector for Environmental Protection as a head of the Inspection for Environmental Protection is a central organ of government administration – and is appointed (dismissed) by the Prime Minister. The tasks of the Inspection are performed by the Chief Inspector for Environmental Protection, who is assisted by the General Inspectorate for Environmental Protection and the Voivodes, in turn supported by Voivodship Inspectors for Environmental Protection as heads of Voivodship Inspections for Environmental Protection, constituting a part of the so called combined voivodship administration. The major tasks of the Inspection for Environmental Protection include: control of compliance with environmental protection regulations, examining the state of the environment under the programme of the National Environmental Monitoring and preventing major (environmental) accidents. These tasks are performed by, among others: the control of compliance with environmental protection regulations and

the noticeable multifariousness of GIOŚ tasks, it was necessary to establish a more specialized agency inside GIOŚ structure, constituted to discharge the maintaining of tasks directly consequent from the Polish membership in the Helsinki Convention. This agency is called the State Secretary's Office of the Helsinki Convention⁶⁵ (in this article we propose to use the following abbreviation: SSOHC in place of the Polish origin SKH). The SSOHC⁶⁶ has its headquarters in Gdansk and is an integral part of GIOŚ, but remains separated in the plane of its tasks. The main way of acting of the SSOHC is the continuation of a previous effective implementation of all tasks Poland has due to the fact of being a member of the Convention. Effectiveness of this implementation is accomplished by action coordination and the assuring of the participation of experts and various ministries representatives at the meetings of the permanent and ad hoc working groups (ensembles) of HELCOM, elaborated above, in the section related to HELCOM conformation and tasks subdivision.

If effective implementation is the general way of the SSOHC work, its currently primary targets are:

1. preparing of Baltic Sea Action Plan (BSAP) together with official Polish opinion about this document⁶⁷ and participating in the work on the National Implementation Programme;

sensible use of natural resources; controlling compliance with the decisions specifying the conditions of using the environment; participating in the proceedings related to the location of investments; participating in the commissioning of structures or installations that may have a significant impact on the environment; controlling the use of installations and facilities protecting the environment against pollution; taking decisions suspending the activity violating environmental protection requirements or the principles specifying the use of the environment; cooperating with other inspecting authorities, prosecution authorities, justice and government administration, the organs of local government and civil rapid response administration as well as social organizations in the area of environmental protection; organizing and coordinating National Environmental Monitoring, conducting environmental quality tests, observing and assessing the state of the environment and the changes taking place in the environment; preparing and implementing analytical and examining methods as well as controlling and measuring methods and initiating activities to establish the conditions preventing major accidents, helping to eliminate their consequences and restoring the environment to its proper condition.

⁶⁵ Polish: Krajowy Sekretariat ds. Konwencji Helsińskiej (abbreviation: KSKH).

⁶⁶ For information about SSOHC see more on official GIOŚ Web site – especially recommended sources, used in this article: Bałtycki Plan Działania HELCOM jako strategia ochrony cennych zasobów Morza Bałtyckiego [online]. Główny Inspektorat Ochrony Środowiska [access: 2011-08-20]. Available at: <http://www.gios.gov.pl/zalaczniki/artykuly/BSAP_HELCOM_pl.pdf>.

⁶⁷ All Baltic Sea countries have presented National Implementation Programmes (NIPs) for actions to protect the environment and reach the BSAP goals (of implementing necessary measures) by 2021. According to Polish introductory National Implementation Programmes, prepared by the Department of Environment Monitoring and Information of GIOŚ on July 2010, the final designation of the goals of BSAP should be prepared and confirmed on the departmental HELCOM conference in 2013. See more on: The Baltic Sea Action Plan recognized worldwide as a good example of Ecosystem Based Management of the Marine Environment [online]. Baltic Nest Institute [access: 2011-09-01]. Available at: <<http://www.balticnest.com/balticnest/balticnest/activities/news/news/thebalticseaactionplanrecognizedworldwideasagoodexampleofecosystembasedmanagementofthemarineenvironment.5.f59f88212eb498a3838000986.html>> and: Wstępny Krajowy Program Wdrażania Bałtyckiego Planu Działań [online]. Główny Inspektorat Ochrony Środowiska [access: 2011-09-01]. Available at: <http://www.gios.gov.pl/zalaczniki/artykuly/art_321_20101012.pdf>.

2. consulting projects of the EU legal documents to support GIOŚ and the Ministry of Environment in their general competence (ex. consulting directive 2008/56/Ec of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy – Marine Strategy Framework Directive);
3. providing the harmonization of targets and methods of HELCOM with the requirements of the EU Strategy for the Baltic Sea Region.⁶⁸

Besides this, the SSOHC is constituted to analytic work on documents from HELCOM's Secretary's Office and deciding what kind of actions should be undertaken by Poland. Other duties of the SSOHC are coordination of the preparation of the national Implementation Programme of the Baltic Action Plan. Another of SSOHC's commitments is related to performing assisting functions such as conducting the bureaucratic service of the Polish representatives on such important decision-making meetings as HELCOM HOD or HELCOM general meetings. In all the aforementioned actions, the SSOHC is able to cooperate with appropriate organizational units of the Ministry of Environment or other resorts, accordingly to their commitments. Furthermore, in all the SSOHC actions cooperation with scientists is available and indicated.

6. The Convention principles and strategic purposes and Poland's obligations related to them

6.1. Principles underlying the Convention, their purport and function

As due to the nature and available volume of this paper it is impossible to present in detail all of HELCOM's actions or even to conduct an extensive analysis of the particular recommendations of this body, it appears to be justifiable to bestow some attention to the Convention's principles as the most significant and at the same time most general and synthetic normalizations with which these detailed items should comply. Their number and circumstantiality make it impossible to present them in detail in this article. After the Convention normalizations directly referring to the Helsinki Commission, its tasks and structure, these are the principles that reputedly constitute the regulations that considerably influence the shaping and directing of the Commission's activities. They do not have such direct reference to the HELCOM activities as the regulations discussed in the previous part of this paper and are derived mainly from the Articles 19-23 and others, in which the Commission is indicated *expressis verbis*. Nonetheless, they do set the direction of the activities of the parties and the commission. They also standardize the comprehension and application of the Convention that constitutes the act that was given a relatively general form. Furthermore, in such a complicated field as environmental protection that takes advantage of the interdisciplinarity attribute and at the same time complexity and that is excessively determined by terms and

⁶⁸ Endorsed by the European Council in October 2009.

extralegal rules, the principles seem to be indispensable to avoid or at least to alleviate the effects of the complexity and to ensure usability and efficiency of the legal act. At this point it is implausible to deliberate on the importance of legal rules in general,⁶⁹ and the rules in the environmental law either as a group,⁷⁰ or as a particular rule. The only thing one can do is to refer the authors to other publications that approach this subject with a thoroughness adequate for its role. According to B. Bomanowski, the subject of legal rules and their role in the environmental law has been elaborated on in other publications.⁷¹

In Poland the principles of the environmental law, including the ones that correspond in name and content to the principles from Article 3 of the Helsinki Commission, are governed by the Act of 27 April 2001 on Environmental Law⁷² in Articles 4-12. Nevertheless, according to the Article 2.4 of this act, rules pertaining

⁶⁹ See e.g.: K. Opalek, J. Wróblewski, *Zagadnienia teorii prawa*, PWN, Warszawa 1969; K. Działocha, *Wewnętrzna hierarchia norm konstytucji w orzecznictwie Trybunału Konstytucyjnego. Państwo, ustroj, konstytucja. Studium*, Wydawnictwo UMCS Lublin 1991; T. Stawecki, P. Winczorek, *Wstęp do prawoznawstwa*, Beck, Warszawa 2003; S. Wronkowska, *Podstawowe pojęcia prawa i prawoznawstwa*, Ars. boni et equi, Poznań 2005; J. Wróblewski, *Zagadnienia teorii wykładni prawa ludowego*, Wydawnictwo Prawnicze, Warszawa 1959; S. Wronkowska, M. Zieliński, Z. Ziemiński, *Zasady prawa. Zagadnienia podstawowe*, Wydawnictwo Prawnicze, Warszawa 1974; M. Zieliński, *Charakter i struktura norm konstytucji*, Wydawnictwo Sejmowe, Warszawa 1997; P. Szustkiewicz, *Zasady w prawie administracyjnym*, *Prawo i środowisko* 2008, Vol. 53(1); in reference mostly to administrative law rules also: Z. Duniewska, *Zasady prawa administracyjnego i organizacji administracji*, (in:) *Prawo administracyjne. Pojęcia, instytucje, zasady w teorii i orzecznictwie*, ed. M. Stahl, Difin, Warszawa 2004.

⁷⁰ See e.g.: *Konstytucja Rzeczypospolitej. Komentarz do Konstytucji RP z 1997 r.*, ed. J. Boć, Wolters Kluwer, Wrocław 1998; J. Boć, K. Nowacki, E. Samborska-Boć, *Ochrona środowiska*, Wolters Kluwer, Wrocław 2008; P. Korzeniowski, *Zasady ogólne prawa ochrony środowiska*, (in:) *Prawo ochrony środowiska*, ed. M. Górski, Warszawa 2009; M.M. Kenig-Witkowska, *Prawo ochrony środowiska. Wybór i wprowadzenie*, Warszawa 2009; *Leksykon ochrony środowiska*, ed. J. Ciechanowicz-McLean, C.H. Beck, Warszawa 2009; J. Ciechanowicz-McLean, Z. Bukowski, B. Rakoczy, *Prawo ochrony środowiska. Komentarz*, LexisNexis, Warszawa 2008; A. Lipiński, *Prawne podstawy ochrony środowiska*, Zakamycze, Kraków 2002; А.П. Анисимов, *Научно-практический комментарий к Федеральному закону Об охране окружающей среды (постатейный)*, Деловой двор 2010; С.В. Ведяшкин, *Функции экологического права России, Правовые проблемы укрепления российской государственности: Сборник статей. Часть 5*. Томск: Изд-во Томского ун-та, 2001; С.А. Боголюбов, *Экологическое (природоресурсное) право: учебник для юридических вузов*, Wolters Kluwer,; В.И. Шиян, *Экологическое право*, Издательство МГИУ 2008; J. Stochlak, M. Podolak, *Ochrona środowiska w Polsce. Studium prawno-politologiczne*, Wydawnictwo UMCS, Lublin 2006; M.M. Kenig-Witkowska, *Prawo środowiska Unii Europejskiej. Zagadnienia systemowe*, LexisNexis, Warszawa 2005; *Prawo ochrony środowiska*, ed. J. Stelmasiak, LexisNexis, Warszawa 2010; E. Radziszewski, *Prawo ochrony środowiska. Przepisy i komentarz*, Warszawa 2003; W. Radecki, *Teoretyczne podstawy prawa ochrony przyrody*, Wydawnictwo Prawo Ochrony Przyrody, Wrocław 2006; B. Wierzbowski, B. Rakoczy, *Podstawy prawa ochrony środowiska*, Warszawa 2004.

⁷¹ See: B. Bomanowski, *Zasada zrównoważonego rozwoju, wnioski de lege lata i de lege ferenda*, (in:) *Zrównoważony rozwój na poziomie lokalnym i regionalnym. Teoria i praktyka*, ed. M. Burchard-Dziubińska, A. Rzeńca, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 2010, pp. 26-45, specifically pp. 29, 36, 38 and 41-44. As the title suggests, the author focused on the sustainable development rule, but did present it in the context of other Polish legal rules and international regulations that inspired it.

⁷² Consolidated text: *Journal of Laws of Republic of Poland of 2008, Issue 25, 150.*

to protection of the sea against pollution from ships and administrative bodies relevant in this particular protection are defined by separate regulations. Thus they are not subject to the regulation of the act on Environmental Law which results in the exclusion of a considerable part of the regulation that corresponds to the principles of Article 3 of the Convention from the regulation of the act on Environmental Law, where there are counterparts of the principles expressed in the Convention. It does not change the fact that the analogy of the objectives and meanings of the principles facilitates interpretation of Article 3, especially in view of quite an extensive theoretical elaboration of the principles of the Environmental Law act. It should be stressed that it is not the first time when the authors dealing chiefly with the Polish regulation have pointed to the significant identity and common genesis of the Helsinki Convention's principles and those composing the Polish Environmental Law act.⁷³ Thus being aware of the fact that the normative content of the Environmental Law act is being considerably limited in relation to what is standardized by the Convention (Article 2 of the Environmental Law), one notices that the principles are similar in regards to their objective and formulation and as such they are compared with each other, yet bear in mind the dissimilarity of issues they pertain to.

Two articles are focused on the principles of the Helsinki Convention. As it seems, the Article 3, entitled *Fundamental principles and commitments*, should be treated as a set of principles having the largest range in relation to the remaining normative content. The formulation of a separate article containing the principles with a division into six paragraphs deserves at least in general to be acknowledged for the well-aimed technical and legislative measure. In the article author's view, this has not been fulfilled to an entirely satisfactory extent, which is due to the fact that the number of principles possible to be interpreted from this article is lower than the number of all principles that can be interpreted from the text of the whole Convention. This is so, because in the Convention content the legislator included also the Article 6 entitled *Principles and commitments concerning land-based sources*. In the face of the above, the range of standardizing of Article 3 does not tie in fully (though it ties in considerably with forming a fundamental regulations basis) with the normative act principles called in such a way on the basis of the Convention analysis.

The current Convention constitutes the obligation of securing natural ecosystems against pollution in the sea and coastal area, and also – in the long term – the protection of species diversity.⁷⁴

The principle of pollution prevention plays an important role in the Convention.⁷⁵ As a result of accepting the assumption expressed in such a way, it become advisable to develop measures that will constitute a remedy in case of

⁷³ E.g.: P. Korzeniowski, op. cit., pp. 58, 62.

⁷⁴ The *ratio legis* and axiological foundations of the Convention can be deduced from its preamble (see further in the text).

⁷⁵ Arg. from Article 3.1 of the Convention.

circumstances that will justify the suspicion of a risk to human life and a health hazard, danger for living resources and marine ecosystems, possible destruction or diminishing of environment values, and finally fear of limiting use of the sea in the acceptable range in connection to the substances (or energy) introduced to the Baltic directly or indirectly. It must be underlined that the basis for undertaking the prevention actions is the above-mentioned threats even when they are potential in nature. Thus they will also be well-grounded when an obvious evidence of a cause and result relation between the threatening influence and its potential – thus also alleged – result will not be possible to take.⁷⁶ The preventive nature of the principle pertaining to averting pollution allows us to acknowledge the far-reaching accordance of the Convention with the Polish standardizations.

Of course, the Convention is not limited to this single rule (called the precautionary principle), it is however the most important of its rules, as it is the basis of every intervention in any of the aforementioned cases. There are other rules that can be found within the Convention:

1. The principle of independence and cooperation. In accordance with Article 3.1 of the Helsinki Convention, the Contracting Parties undertake individually or jointly any appropriate legislative, administrative and other measures preventing and eliminating pollutions in order to promote ecological restoration of the Baltic Sea area and preservation of its ecological balance. It means that on one hand the countries-parties of the Helsinki Convention are obliged to cooperate not only in the legislation field, but also within the range of undertaking executive measures (administrative, used to apply the law) or others, either emergency or planned activities aimed at eliminating the environment threats. On the other hand, the obligation of cooperation does not remit the obligation of independent care for waters that come under their jurisdiction. In the Polish legislation the regulations of the Act of 16 March 1995 on the prevention of the sea pollution by ships may be regarded as the analogy of this Convention principle. In Article 22.1 of the said regulations one may read that “in order to eliminate pollutions in the Polish sea areas, a director of maritime office may directly apply for help to proper bodies in other countries of the parties within the Helsinki Convention of 1992, first and foremost to those who also can be affected by the pollution consequences.” In accordance with Article 22.2 the Director of the maritime office when summoned to help by a body of another country of the party within the Helsinki Convention of 1992 is obliged to take steps to provide such help – 22.3: *in cases provided for in the act 1 and 2 the director of the maritime office informs the Helsinki Commission about the undertaken actions*. It should be stressed that M. Górski and A. Kaźmierska-Patrzyzna indicate that it is this principle that is of crucial importance.⁷⁷

2. The principle of ecological restoration and the principle of the preservation of the ecological balance. Both principles are mentioned in Article 3.1 *in fine*.

⁷⁶ Arg. from Article 3.2 of the Convention.

⁷⁷ See: M. Górski, A. Kaźmierska-Patrzyzna, op. cit., p. 425.

The principle indicates two levels of actions – restoring and preservation of the ecological balance. Theoretically, it is impossible to call them stages, as they do not have to be situated in any time sequence in relation to each other. They can be undertaken simultaneously.

3. Rule of liability – focusing on the restoration of the Baltic Sea’s ecosystem and, later on, on maintaining ecological equilibrium. The means to this are individual or joint legislative, administrative or other relevant measures undertaken by the Contracting Parties;

4. The prevention principle. It is one of two principle *expressis verbis* mentioned in Article 3 (the second is the polluter pays principle). According to Article 3.2: “the Contracting Parties shall apply the precautionary principle, i.e., to take preventive measures when there is reason to assume that substances or energy introduced, directly or indirectly, into the marine environment may create hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea even when there is no conclusive evidence of a causal relationship between inputs and their alleged effects.” The precautionary principle results partially from Article 3.1 and Article 3.2. In the first regulation it is mentioned that the Convention parties shall take legislative, administrative and other adequate preventive measures, eliminating pollutions in order to promote ecological restoration of the Baltic Sea area and preservation of its ecological balance. The other regulation refers to this principle in most of its text. According to this regulation, the Contracting Parties shall apply the precautionary principle, i.e. take remedial measures when there is reason to assume that the substances or energy introduced, directly or indirectly, into the marine environment may create hazards to human health, harm living resources and marine ecosystems, damage amenities or interfere with other legitimate uses of the sea. Thus it is justifiable to state that when Article 3.1 constitutes measures and objectives of the principle being described, the Article 3.2 standardizes the reasons and conditions of applying this principle.⁷⁸ The principle of preventing damage of the environment (defined as the principle of the objective) takes the highest place in the catalogue of the basic principles of the international marine environmental law.⁷⁹ It is based on the assumption of the advantage of sufficiently prompt precautionary actions and the conviction that it is easier to prevent than restore.⁸⁰ Application of the precautionary principle is facilitated by the fact that it is generally compliant with the principles known to the Polish environmental law. These are the principle of prevention and the precautionary principle. They are reflected in Article 6 of the Act in Environmental Law. The principle of prevention results from the Article 6.1.

⁷⁸ The further part of Article 3.2 deals rather with the foresight rule, which will be explained later.

⁷⁹ See: D. Pyć, *Prawo zrównoważonego rozwoju*, Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2006, pp. 148-150. Also see: eadem, *Prawo rozwoju zrównoważonego: zasada prewencji i „zanieczyszczający płaci” w systemie ochrony środowiska morskiego –współczesne tendencje w prawie międzynarodowym, wspólnotowym i krajowym*, *Prawo morskie*2002, XVII, pp. 169-183.

⁸⁰ *Ibidem*.

5. The polluter pays principle. The polluter is financially liable for introducing contaminating substances into the Baltic. Article 2.1 regulates the definition of the pollution:

pollution means introduction by man, directly or indirectly, of substances or energy into the sea, including estuaries, which are liable to create hazards to human health, to harm living resources and marine ecosystems, to cause hindrance to legitimate uses of the sea including fishing, to impair the quality for use of sea water, and to lead to a reduction of amenities.

Marine pollutions are subject to different classifications by the source of the pollution (land, air, ships, exploitation and exploration of the sea bottom), by contaminants⁸¹ (oils – detailed regulation: Article 2.6, other – general regulation: Article 2.7 – harmful substances and Article 2.8 – dangerous substances). There is the classification by the criterion of the polluter’s intention.⁸² A useful criterion of the classification of pollutions is the manner of pollution which in opposite to the source criterion allows to draw attention to the place, the object from which the pollution derives, and the action, which leads to the pollution, which may help to find the subject that is liable for the pollution from a certain location (which is important for enforcing the polluter pays principle). Additionally, it helps to prevent similar pollutions in the future and to prepare new regulations and standards to control activities, which might result in marine pollutions. Beside the definition of pollution, there are also other terms important for understanding pollution, i.e.: “pollution from land-based sources”,⁸³ “pollution incident”,⁸⁴ “dumping”,⁸⁵ and “incineration”.⁸⁶ It should be underlined, that the definition of the pollution established by the Helsinki Convention of 1992 is similar to the definition

⁸¹ See: D. Pyć, *Zarządzanie zanieczyszczeniami morskimi (Zrozumieć gospodarcze przyczyny problemów ochrony środowiska morskiego)*, (in:) *Gospodarcze prawo ochrony środowiska*, J. eds. Ciechanowicz-McLean, T. Bojar-Fijałkowski, Wydawnictwo Uniwersytetu Gdańskiego, p. 184.

⁸² See: D. Pyć, *Zarządzanie zanieczyszczeniami...*, p. 187. Also see: W. Radecki, *Odpowiedzialność karna za naruszenie środowiska w świetle prawa międzynarodowego*, Ossolineum, Wrocław 1981, pp. 44-45.

⁸³ Article 2.2 of the Helsinki Convention: ““pollution from land-based sources” means pollution of the sea by the point or diffuse inputs from all sources on land reaching the sea waterborne, airborne or directly from the coast. It includes pollution from any deliberate disposal under the seabed with access from land by tunnel, pipeline or other means.”

⁸⁴ Article 2.9 of the Helsinki Convention: a “pollution incident means an occurrence or series of occurrences having the same origin, which results or may result in a discharge of oil or other harmful substances and which poses or may pose a threat to the marine environment of the Baltic Sea or to the coastline or related interests of one or more Contracting Parties, and which requires emergency actions or other immediate responses.”

⁸⁵ Article 2.4 a of the Helsinki Convention: “i) any deliberate disposal at sea or into the seabed of wastes or other matter from ships, other man-made structures at sea or aircraft; ii) any deliberate disposal at sea of ships, other man-made structures at sea or aircraft; Exceptions are in art. 4 b).”

⁸⁶ Article 2.5 of the Helsinki Convention: “incineration means the deliberate combustion of wastes or other matter at sea for the purpose of their thermal destruction. Activities incidental to the normal operation of ships or other man-made structures are excluded from the scope of this definition.”

adopted⁸⁷ by the Intergovernmental Oceanographic Commission UNESCO, which qualifies marine pollution as the “introduction by man, directly or indirectly, of substances or energy into the marine environment (including estuaries), which results in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities, including fishing, impairment of quality for use of sea water and the reduction of amenities”.⁸⁸ It should be noticed, that this version of marine pollution definition encounters some criticism, because of taking not sufficient account of the need to prevent changes in the marine environment, apart from easy and quickly identifiable deleterious effects.⁸⁹ The definition from part 1, Article 1.1 of the United Nations Convention on the Law of the Sea⁹⁰ is wider: “pollution of the marine environment means the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health, hindrance to marine activities, including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities.” It is more similar to the definition from the Helsinki Convention. Both – UNCLOS and the Helsinki Convention established potential deleterious effects as sufficient reason to recognize an action as the pollution, which helps to provide effectiveness to the above mentioned prevention principle.

6. The rule of using the Best Environmental Practice and Best Available Technology. The *punctum saliens* of this rule is the promoting and application of practices and technologies best suited to assuring the ecological safety of the Baltic. Also, additional measures should be introduced should the aforementioned strategy not lead to acceptable results.

7. The rule of monitoring. It ensured that the measurement of dangerous emissions from either point or zonal sources is carried out in a scientific manner. It does not seem well-founded to be concerned that the principle may be a limitation

⁸⁷ Initially the definition was created by the Joint Group of Experts on the Scientific Aspects of Marine Pollution – GESAMP (Joint Group of Experts on the Scientific Aspects of Marine Pollution is an advisory body consisting of specialized experts nominated by the Sponsoring Agencies (IMO, FAO, UNESCO, WMO, WHO, IAEA, UN, UNEP). Its principal task is to provide scientific advice on marine pollution problems to the Sponsoring Agencies and to the Intergovernmental Oceanographic Commission (IOC)): “pollution means the introduction by man, directly or indirectly, of substances or energy into the marine environment (including estuaries) resulting in such deleterious effects as harm to living resources, hazards to human health, hindrance to marine activities including fishing, impairment of quality for use of sea water and reduction of amenities”. See: *GESAMP, Report of the First Session*, London, 17-21 March 1969, UN Doc. GESAMP I/11 (1969, p. 5). See also: *Environment Capacity. An Approach to Marine Pollution Prevention*, GESAMP (IMO/FAO/UNESCO/WMO/WHO/IAEA/UN/UNEP), Joint Group of Experts on the Scientific Aspects of Marine Pollution, Rep. Stud. GESAMP, No. 30, Rome 1986 and No. 47, Rome 1991; D. Pyć, *Zarządzanie...*, p. 183.

⁸⁸ *Comprehensive Outline of the Scope of the Long-Term and Expanded Programme of Oceanic Exploration and Research*, IOC, UN Doc. A/7750 (1969), p. 25.

⁸⁹ R. Churchill, A. Lowe, *The law of the sea*, Manchester University Press, Manchester 1999, p. 242.

⁹⁰ Acronym: UNCLOS

to the precautionary principle in the sense discussed beforehand. Precaution implicates forbearance from the activities also, when at a certain stage there is still no definite scientific evidence allowing to acknowledge a certain state or recognize it as threatening the the environment. The monitoring principle bears upon the stage of research, establishing the influence of activities that occurred in the past or are currently occurring. In contrast, the precautionary principle is directed into the future and should inure to the benefit of the non-performance of any activities that may have a negative influence on the environment. Moreover, it should be noticed that the principle of monitoring can support the fulfillment of the polluter pays principle, as it helps to establish the source of pollution.⁹¹

8. The comprehensive principle (avoidance principle) – Article 3.6 of the Helsinki Convention. Accordingly, the implementation of the Convention cannot cause transboundary pollution in areas outside the Baltic Sea Area. The relevant measures cannot not lead to the reduced neutralization of dangerous waste or to environmental strains on the quality of air, atmosphere or on soil and ground water.⁹² According to Article 3.6 of the Convention: “the Contracting Parties shall use their best endeavours to ensure that the implementation of this Convention does not cause transboundary pollution in areas outside the Baltic Sea Area. Furthermore, the relevant measures shall not lead either to unacceptable environmental strains on air quality and the atmosphere or on waters, soil and ground water, to unacceptably harmful or increasing waste disposal, or to increased risks to human health.” The important advantage of the Helsinki Convention is the complexity of its approach not only to the environment that is within the compass of this legal act. This regulation orders to use the act only in the manner that will not cause hazard beyond the area protected under this Convention. The principles detailed in Article 3 are called fundamental ones. As it can be seen from the above, the regulations of Article 3, including the complexity principle, should be referred to the whole Convention. Thus every activity undertaken on its basis must be performed in compliance with the multi-faceted protection of the areas beyond the Baltic.

Because of the aforementioned low water exchangeability with the world’s oceans, the Baltic is classified as a half-closed sea, which was the reason for the introduction of the prevention of pollution and potentially ultimate restitution of the Baltic Sea Area’s environment, through the use of:

1. BAT (Best Available Technology);⁹³
2. BEP (Best Environmental Practice);⁹⁴
3. evaluating the impact of significant installations on the environment EIA (Environmental Impact Assessment).⁹⁵

⁹¹ The rule is amplified by Article 6.3 of the Convention.

⁹² See: About Helcom [online], op. cit.

⁹³ Arg. from Article 6.1 of the Convention.

⁹⁴ Arg. from Article 6.1 of the Convention.

⁹⁵ Arg. from Article 7 of the Convention. Also see: U. Bahnsen, *Zur Internalisierung grenzüberschreitender externer Effekte durch internationale Vereinbarungen*, LIT Verlag, Münster-Hamburg-London 2002, pp. 174-181.

These are not the whole of a closed catalogue of measures. However, other measures, due to their temporal limitations, shall not be described, perhaps awaiting a mention in a possible post-conference publication.

As it can be seen, the reference to Article 6, BEP and BAT rules mentioned in Article 3.3 on the level of the regulation of the main principles of the whole Convention, are strengthened by detail Article 6.1 of the regulation.

6.2. Strategic target of the Convention

Also, which was already mentioned, the objective of the Convention is full (complex) protection of the Baltic Area's sea environment. To give a more precise definition, as well as to show the idea and general direction of the measures undertaken, quoting the preamble from the Convention seems both necessary and desirable:

THE CONTRACTING PARTIES,

CONSCIOUS of the indispensable values of the marine environment of the Baltic Sea Area, its exceptional hydrographic and ecological characteristics and the sensitivity of its living resources to changes in the environment;

BEARING in mind the historical and present economic, social and cultural values of the Baltic Sea Area for the well-being and development of the peoples of that region;

NOTING with deep concern the still ongoing pollution of the Baltic Sea Area;

DECLARING their firm determination to assure the ecological restoration of the Baltic Sea, ensuring the possibility of self-regeneration of the marine environment and preservation of its ecological balance;

RECOGNIZING that the protection and enhancement of the marine environment of the Baltic Sea Area are tasks that cannot effectively be accomplished by national efforts alone but by close regional co-operation and other appropriate international measures;

APPRECIATING the achievements in environmental protection within the framework of the 1974 Convention on the Protection of the Marine Environment of the Baltic Sea Area, and the role of the Baltic Marine Environment Protection Commission therein;

RECALLING the pertinent provisions and principles of the 1972 Declaration of the Stockholm Conference on the Human Environment and the 1975 Final Act of the Conference on Security and Co-operation in Europe (CSCE);

DESIRING to enhance co-operation with competent regional organizations such as the International Baltic Sea Fishery Commission established by the 1973 Gdansk Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and the Belts;

WELCOMING the Baltic Sea Declaration by the Baltic and other interested States, the European Economic Community and co-operating international financial institutions assembled at Ronneby in 1990, and the Joint Comprehensive Programme aimed at a joint action plan in order to restore the Baltic Sea Area to a sound ecological balance;

CONSCIOUS of the importance of transparency and public awareness as well as the work by non-governmental organizations for successful protection of the Baltic Sea Area;

WELCOMING the improved opportunities for closer co-operation which have been opened by the recent political developments in Europe on the basis of peaceful co-operation and mutual understanding;

DETERMINED to embody developments in international environmental policy and environmental law into a new Convention to extend, strengthen and modernize the legal regime for the protection of the Marine Environment of the Baltic Sea Area;

HAVE AGREED as follows: [...].

The objectives of the Convention are accomplished through decisions and accords, formulated recommendations, and – perhaps even primarily – through wide cooperation in the care of the environment, and likewise scientifically. Internationally and domestically formulated recommendations play a specific role in this process, being incorporated by means of administrative regulations, investments, control, education, training and monitoring later on.⁹⁶

6.3. Outline of the duties of Poland as a member of the Convention in the context of HELCOM's activity

These analyzed objectives justify the mention of the member state's duties, which also fall on the Republic of Poland.

According to the Convention, Poland is primarily required to:

1. prevent contamination of the Baltic Sea, as well as monitor its environment, as well as exercise strict care of its coastal zone. The control is part of the State Environment Monitoring subject to the recommendations of the HELCOM COMBINE Programme (HELCOM Cooperative and the Baltic Sea Environment);
2. evaluate the efficacy of measures undertaken to reduce pollution in the Baltic and formulate priorities with regard to pollution sources. This requirement is mostly met by monitoring the inflow of biogenes and potentially harmful substances, according to the requirements of the HELCOM PLC – Water program (HELCOM Pollution Load Compilation – Water). While the program itself deals with threats from river flow, the pollution of the Baltic from the air is monitored according to the HELCOM/EMEP PLC – Air Programme;
3. secure the biodiversity of the Baltic Sea, mostly through construction of the BSPA (Baltic Sea Protected Areas) network, as well as take the necessary measures to protect the endangered species and sea dwellings, and to commence zonal planning of the sea regions consistent with the so called ecological system approach;

⁹⁶ See: *Sprawozdanie...*, op. cit., p. 3. This document has been drawn up by the Chief Inspector for Environmental Protection.

4. implement the best technology available and the best environmental practice, mostly through enforcing environmental standards and regulations on the private sector, in accordance with the Second National Ecological Policy and harmonization with EU regulations.⁹⁷
5. preparing and executing uniform requirements on providing devices to receive waste from ships according to Article 8.2 (specified by appendix IV).

It may appear, that two phases can be pointed out, on which the role of HELCOM is particularly important. The first one is formulating realization methods of the Convention's obligations, which means creating and updating standards, which are from one side common for all signatories, so they have a supranational nature in their equal grade, as the Convention itself. The second one is HELCOM's activity in the area of controlling the realization of obligations resulting from the Convention, including the legality of factually undertaken measures with the guidelines.

7. Disadvantages of HELCOM

First of all, it should be mentioned, that HELCOM has inherited some kinds of typical limitations common to almost all the international organizations. It is weak and contains mandates that are too restricted.

Secondly, to ensure the participation of all countries affected by the Baltic Sea HELCOM consists of representatives of different economic, social and political levels of development. On July 1-3 2004 the Estonian economists – T. Paas and E. Tafenau noticed (during the XII scientific and educational conference Economic Policy Perspectives of Estonia in the European Union, Tartu-Värska) that the Baltic Sea region is a non-homogeneous region. They scored out large differences between the countries appearing in economic performance and in the speed of their adjustment to the challenges of transition and the EU and Euro-zone enlargement processes. These two scientists observed in 2004 that the Baltic Sea region countries can be divided into two groups (according to per capita gross domestic product), the high-income countries (Finland, Sweden, Denmark, Norway and Germany) and the middle – or low-income countries (Estonia, Latvia, Lithuania, Poland and Russia). These economical differences are mainly the results of the division of post Second World War Europe and remain in colligations with the political conditions and social development.⁹⁸ Today, nearly 7

⁹⁷ See: *Sprawozdanie z prac Sekretariatu ds. Konwencji Helsińskiej za rok 2008*, Departament Planowania i Zasobów Wodnych Krajowego Zarządu Gospodarki Wodnej KZGW, regarding periods I-IX, Warszawa 2009, p. 3.

⁹⁸ See: T. Paas, E. Tafenau, *EU Enlargement and Trade Integration: Can We Distinguish the Baltic Sea Region Cluster? XII scientific and educational conference Economic Policy Perspectives of Estonia in the European Union*, Tartu-Värska, July 1-3, 2004, Berliner Wissenschafts-Verlag, Berlin 2004, pp. 340-349.

years later, despite enlargement of the EU, geopolitical changes and other factors, these sentences mentioned above remain true and useful. Though eight out of the ten Baltic Sea region (BSR) countries are EU member countries and one of two non-member countries (Norway) is EU-associated, just in this group of countries alone differences are significant. Some of these differences, especially economic and legal (inside the EU primarily) might be neutralized in the near or far future, but there are other – mainly geographical differences not only referred to coastal line length. The size of a country is significant – Russia – the world's biggest country, larger than the whole of Europe, has access to five seas but has a very short coastal line on the Baltic Sea (108 kilometers only), and this is why environmental protection of the Baltic Sea cannot be so important for this country, comparing to the other Helsinki Convention signatories. The political system of Russia, despite being similar to EU-countries in the legal field, still functions specifically. From the other side, the EU countries of the Baltic region are very different too.

Another important trouble of HELCOM, recognized by B. Hassler, is that the commission has not enough power to enforce mitigation schemes perceived as necessary to deal with the environmental disturbances at hand.⁹⁹ This author noticed, that “all types of actors involved – professionals as well as NGOs and concerned citizens – often express frustration over unsatisfactory mitigation agreements, weak control mechanisms, and low degrees of actual implementation. The permanent staff of the HELCOM secretariat is quite small, and most of the research in the area is a result of undertakings in individual member countries. Furthermore, the primary regulatory mechanism stipulated in the Convention, the so-called HELCOM Recommendations, is not particularly forceful. Unanimous acceptance by the member countries is required for a Recommendation to be adopted, which might imply that the least ambitious country sets the level of commitment.”¹⁰⁰

HELCOM has less essential supervision faculties and capabilities – it works primarily as a reporting body, the supporter of researches, and as the author of recommendations.

As said by B. Hassler: “it will be argued that a richer understanding (emphasized by – M. B., B. B.) of the interaction on environmental issues between the countries in the region can be reached if HELCOM is seen less as an independent actor, and more as a result of the interaction between the countries (emphasized by – M. B., B. B.). From this perspective, the structure and workings of HELCOM reflect the varying interests of the Baltic Sea countries. To understand such institutional outcomes, country-specific interests and capability must be focused. In other words, an approach is here suggested whereby national interests to a considerable extent are promoted through international organizations, rather than the other way around.”¹⁰¹

⁹⁹ See: B. Hassler, *op. cit.*, p. 33.

¹⁰⁰ *Ibidem.*

¹⁰¹ *Ibidem.*

8. Advantages of HELCOM

To recap, it would be best to present HELCOM's achievements in acting for the improvement of the Baltic's natural environment since 1980 instead of repeating what has already been said. Further functioning of the Commission seems highly desirable, especially with over three decades of its activity, of which the following are testimony to this body:

1. the reduction of the inflow of contamination by organic and nutrient components from point sources;
2. reduction by 1/4 the emissions of oxygen absorbants – from an early 90's list of 132 point sources of such, 50 have been eliminated;
3. due to improvements in the efficacy of communal and industrial waste disposal, many beaches, previously unavailable, have been reclaimed;
4. radical reduction of toxic compound emissions, such as dioxins and furans;
5. the precipitation of creating national bans on hazardous substances such as PCBs and DDT;
6. extension of control over industrially emitted contaminants, mostly by reducing these emissions;
7. clear improvement of joint monitoring of the state of the sea environment;
8. increase in animal population;
9. perfection of specific legislation for countering environmental degradation of the Baltic (jointly with the International Maritime Organization), which is testament to its upkeep cooperation with external organizations;
10. creation of instruments to reduce toxic waste dumps from ships into the Baltic;
11. tightening of international cooperation between members of HELCOM in countering contamination of the seas;
12. signing of a ministerial declaration, mostly dealing with the reduction of nutrients.¹⁰²

In the end, it is hard to negate the need for further functioning of HELCOM and tightening of international cooperation for the environmental protection of the Baltic. It could even be said that there is much yet to be done, especially with regard to coordination and the development of the efficacy of measures for protection and improvement of the Baltic Sea environment. Alas, it is not a positive ascertainment should one consider the globally progressing degradation of the natural environment. The lack of positivity should not, however, divest our optimism towards the future of a clean Baltic, especially because of HELCOM's aforementioned achievements.¹⁰³

¹⁰² See: About HELCOM [online], op. cit.

¹⁰³ See: J. Gall, I. Stephani, *30 Jahre Helsinki-Übereinkommen: Errungenschaften, Herausforderungen und die Resolution des Youth Forum, Natur und Recht* 2004, No. 12, Vol. 26, pp. 781-787.