From Schweizerhalle to Baia Mare: The Continuing Failure of International Law to Protect Europe's Rivers

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FROM SCHWEIZERHALLE TO BAIA MARE: THE CONTINUING FAILURE OF INTERNATIONAL LAW TO PROTECT EUROPE'S RIVERS

Aaron Schwabach

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I. INTRODUCTION

Beginning on January 31, 2000, at least 100,000 cubic meters of highly polluted water escaped from a tailings dam at the Aurul gold mine in Baia Mare, Romania.\(^1\) The water flowed into the Somes, Tisza, and Danube Rivers, causing enormous environmental damage. Most of the damage occurred in Hungary, downstream from Baia Mare. Hungarian politicians called the spill "the first, most serious environmental catastrophe in the 21st century,"\(^2\) and "the worst ecological disaster in central Europe since Chernobyl in 1986."\(^3\)

More striking than the resemblance to the Chernobyl disaster, though, was the resemblance to another 1986 environmental catastrophe: the Sandoz warehouse fire at Schweizerhalle, near Basel, Switzerland, which released over 10,000 cubic meters of highly contaminated water into the Rhine.\(^4\) In each of these instances, an international environmental legal regime ostensibly protected the affected river system. However, international law failed to prevent or reduce the impact of the accident in each case.

Fourteen years after the Sandoz spill, Europe's river systems remain unacceptably vulnerable to catastrophic chemical accidents. This article explores the growth of the environmental regime of one such system, the Danube basin, and the weaknesses revealed by the Baia Mare accident.

II. THE BAIA MARE ACCIDENT AND RELATED INCIDENTS

A. Baia Mare

Baia Mare is located in northern Romania near the borders of Hungary and Ukraine. West of Baia Mare, the Somes River flows across the border into Hungary, where it joins the Tisza.

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\(^1\) See Eszter Szamado, Cyanide Spill is Ecological Crisis: Hungarian Official, AGENCE FRANCE PESSE, Feb. 12, 2000 (statement of Zoltina Illes, President of Hungarian parliament's environment committee).


\(^3\) Szamado, supra note 1.

The Tisza denotes the Romania-Ukraine border north of Baia Mare. To the east of Baia Mare, between the town of Baia Borsa and the border, the Vaser River flows into the Viseu, which joins the Tisza at the border.5

The Aurul mine at Baia Mare was one of many in northern Romania. When fully operational, the Aurul mine might have produced 50,000 ounces of gold and 250,000 ounces of silver per year.6 Ownership of the Aurul mine is evenly divided between the Romanian and Australian partners in the venture.7 The Romanian government owns Remin, the Romanian partner.8 The directors of the Australian partner, Esmeralda Exploration Ltd., hold 25% of the mining company's shares.9

Tailings from the mine are collected behind a tailings dam.10 The tailings are mixed with a cyanide solution to aid in extracting the metal from the ore.11 During the month of January, ice and snow built up on the dam, causing water levels behind the dam to rise to levels higher than normal.12 There is still some dispute as to the date and cause of the dam failure, but on January 30 or 31, the water overtopped the dam or the dam burst.13 For the next four to five days, water containing cyanide and heavy metals flowed over the dam into the local creek system, and from there into the Somes (known in Hungary as the Szamos).14 As noted, the Somes joins the Tisza in Hungary. The Tisza flows through Hungary and (very briefly) Slovakia and Ukraine, before entering Yugoslavia and joining the Danube upstream from Belgrade.15 The polluted water thus ended

5 See, e.g., EUROMAP, ROMANIA, MOLDAVIA (map) (1999).
6 Mann I, supra note 2.
7 Esmeralda owns 50% of Aurul S.A., which owns the Aurul S.A. Tailings Retreatment Project at Baia Mare. See Australian Stock Exchange Company Announcements, Mar. 15, 2000, 2000 WL 16709113.
8 Mann I, supra note 2.
10 “Tailings” are “residue separated in the preparation of various products (as grains or ores).” WEBSTERS NINTH NEW COLLEGIATE DICTIONARY 1202 (1986).
12 See Middleton, supra note 9.
13 Esmeralda Chairman Brett Montgomery maintains that there was an overflow, rather than structural failure of the dam. See Middleton, supra note 9.
15 See The Balkans, NATIONAL GEOGRAPHIC, Feb. 2000 (map insert) [hereinafter The Balkans].
up in the Hungarian portion of the Tisza.

After the accident, a water monitoring station at Szolnok in Hungary measured cyanide levels more than 700 times the usual amounts. \(^{16}\) Nine days later, the levels were still twenty-eight times the maximum safe level. \(^{17}\) The Hungarian authorities banned fishing and all contact with the water of the Somes; it appears that all animal life in the Hungarian section of the Somes was killed. \(^{18}\) The spill continued to move downstream with the current, contaminating the Tisza, which provides drinking water for two million Hungarians. Some industrial facilities were closed and authorities provided schools and hospitals with distilled water. \(^{19}\)

Near Csongrad, far downstream from the accident, cyanide levels were twenty times the allowed maximum. \(^{20}\) Emergency services blocked the river with barges and filled railway cars with dead fish scooped from the river. \(^{21}\) One Hungarian leader said of the river, "It is as if a neutron bomb had been detonated. All the living organisms have been destroyed." \(^{22}\) By February 11, the spill had reached the border between Hungary and Yugoslavia. \(^{23}\) Yugoslav authorities reported an initial cyanide level of 0.13 milligrams per liter, falling to .07 milligrams per liter later in the day. \(^{24}\) Serbian authorities prohibited use of the waters of the Tisza (known in Yugoslavia as the Tisa). \(^{25}\) Serbian environment minister Branislav Blazic declared, "The Tisza has been murdered.... This is an absolute catastrophe." \(^{26}\)

By February 19, the Tisza was almost entirely lifeless over the nearly 1,000 kilometer stretch between the Somes and the Danube. Hungarian and Yugoslavian workers had removed more

\[^{16}\text{See Mann I, supra note 2. See also Middleton \\& Kemp, supra note 9 ("800 times the acceptable level").}\]

\[^{17}\text{See Mann I, supra note 2.}\]

\[^{18}\text{See Middleton \\& Kemp, supra note 9.}\]

\[^{19}\text{See Mann I, supra note 2.}\]


\[^{21}\text{See id.}\]

\[^{22}\text{Szamado, supra note 1 (statement of Zoltna Illes).}\]

\[^{23}\text{See id.}\]

\[^{24}\text{See id. Professor Bozo Dalmacija of the University of Novi Sad (in Yugoslavia) stated that 0.1 mg/l is the maximum amount considered safe. Four and one half milligrams of cyanide (or 45 liters of water with the maximum "safe" concentration) will kill a human; much smaller amounts will kill fish. See id.}\]

\[^{25}\text{See id.}\]

than 100 metric tons of fish from the Tisza. Many of the 15,000 people employed by the fishing industry hung black banners from their houses and bridges.

Damage to the Danube, a much larger river, was less severe. At the Iron Gates I Dam on the Yugoslav-Romanian border, cyanide levels were still measurably above safe levels for fish. Thus, the “toxic bullet” of cyanide and poisonous metals, after causing destruction in four other states, returned to its state of origin.

The damage to the Tisza had severe short-term economic and environmental effects and may also have significant long-term effects. For example, the bed of the Tisza may remain contaminated with heavy metals for the next five years. In addition to the destruction of the fishing industry and the contamination of the river bed by heavy metals, some species of animals unique to the Tisza may become extinct.

B. Other Spills

No watercourse disaster would be complete without a few echoes. To some extent, a particularly serious spill serves to focus attention on smaller spills that might otherwise be overlooked. Unscrupulous plant operators, however, may also take advantage of the larger disaster to conceal smaller “accidental” releases of wastes.

In northern Romania, a combination of heavy precipitation and a period of unusually cold temperatures impounded large quantities of water. Rising temperatures then caused flooding throughout the region. In combination with the region’s mining industry, which operates with smaller margins for safety than might be tolerated in some wealthier countries, this flooding contributed to at least three serious toxic accidents.
Eastern Europe, of course, is an environmentally troubled region. Industrial towns such as Baia Mare have paid a serious price for decades of poorly regulated development; the life expectancy in Baia Mare is 63 years, six years less than the Romanian average. In 1999, a release of toxic waste in Yugoslavia severely damaged the Timok River, whose confluence with the Danube marks the border between Yugoslavia, Romania, and Bulgaria. After the Baia Mare spill, a smaller spill of cyanide from a northern Romanian coal mine into the Somes added to the contamination. Two spills at a zinc and lead mine at Baia Borsa released more than 20,000 tons of toxic sediment, containing heavy metals, into the Vaser. The waste flowed into the Viseu and the Tisza upstream from the Somes, contaminating parts of the river spared from the Baia Mare spill. World Wide Fund for Nature spokesperson Jan Korabov also made the Chernobyl comparison: "It would not be an exaggeration to put what has happened here in the past few weeks on a par with Chernobyl." Korabov pointed out that the effects of the Baia Borsa spills on river life might have been far more catastrophic but for the fact that almost all of the river life had been killed by the Baia Mare spill. Recognizing the continuing danger of such spills, Romanian environment minister Romica Tomescu stated that 41 mines in Romania were known to be in a dangerous condition.

C. Reactions to the Spill

While Hungary and Yugoslavia reacted with outrage, Esmeralda, the Australian mining company, reacted with almost complete denial. Esmeralda chairman Brett Mongomery said that the Hungarian government had "grossly exaggerated" the amount of damage. Hungarian Foreign Ministry spokesperson Gabor

34 See Some Residents See a Choice of Dying of Hunger Now or From Effects of Pollution Later; Spills Reveal Danger Lurking in Polluted Region in Romania, ORLANDO (FLA.) SENTINEL, Mar. 12, 2000, at A-18 [hereinafter Danger Lurking].
35 See Death on the Danube, supra note 11.
36 See Mann 1, supra note 2.
38 See The Balkans, supra note 15.
39 Leidig, supra note 37
40 See id.
41 See id.
42 European Catastrophe, supra note 20.
Horvath responded that “a person who calls a five-kilometer long carpet of dead fish floating along the river ‘grossly exaggerated’ is either genuinely unaware of the facts or wants to ignore them.”

Montgomery also said that the fish may have been killed by a natural increase in the turbidity or salinity of the river. He referred to a conspiracy against Esmeralda and said he had not considered the spill to be a major problem until he was contacted by the Mining Protection Institute, who threatened to make the spill “an international political issue.”

Esmeralda claimed that environmental standards in Romania were at least as high as those in Australia. Montgomery claimed that Esmeralda was not liable for any damage caused by the spill, because the site was owned by the Romanian company Aurul S.A., which had “extensive insurance.” He did not, however, follow the example set in 1986 by then Sandoz director Hans Winkler and make a public appearance to allow protesters to pelt him with dead fish.

Denial of reality is rarely a successful long-term strategy. On February 10, 2000, the Australian Stock Exchange suspended trading in Esmeralda’s stock; the price by that point had fallen to 20 cents (Australian) per share. In March, the company voluntarily entered receivership, provoking outrage in Hungary, and was delisted from the stock exchange.

Australia found itself politically divided by the catastrophe. While some sided with Esmeralda, Australia’s Greens and

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43 Id.
45 Id.
46 See Mann I, supra note 2.
47 Mann II, supra note 44.
48 See Sandoz Spill, supra note 4, at 451.
52 See id. (asserting that media coverage left the company with “no option” other than to have its listing removed from the Australian Stock Exchange).
53 See generally, e.g., Sykes, supra note 14 (asserting that claims of the Hungarian government and environmentalists describing severe damage caused by the cyanide spill were exaggerated and politically motivated).
Democrats insisted that Australia's environmental laws should be applied to Australian mining companies operating overseas. Green Senator Bob Brown pointed out that such incidents damaged Australia's prestige as well as the environment, while Democrat Senator Andrew Bartlett agreed that "companies like Esmeralda had proved [that] they could not behave like Australian ambassadors...." Bartlett also stated, "There needs [sic] to be binding codes of conduct and compulsory environmental bonds to cover clean-up costs in the event of disasters such as this," adding that "[n]on-binding codes of conduct clearly don't work...." Australian Environment Minister Robert Hill, however, responded, "The Federal Government's position is that it's up to other countries to set their own standards." 

Hungary's Foreign Ministry announced that it would take "all the possible diplomatic and legal steps to enforce Hungarian compensation demands." Foreign Ministry spokesman Gabor Horvath stated that "we will use international public law as well as international private law to seek and claim restitution for whatever damage has been done to my beautiful country." Horvath noted, however, that such relief would be sought against Romania and Esmeralda, but not against Australia: "There is no Australian state participation in the mine." Serbian environment minister Branislav Blazic announced a similar intention to seek compensation.

Romania quickly distanced itself from Esmeralda. Romania's deputy minister for environmental protection, Virgil Diaconu, said "We have issued repeated written warnings over the past year to the plant, asking [Esmeralda] to check again all their technological equipment." Aurul was reportedly fined the equivalent of $1,360 (Australian) for the accident.

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54 See Middleton & Kemp, supra note 9.
55 Id.
56 Id.
57 Id.
58 Id.
59 Id.
60 Mann I, supra note 2.
61 European Catastrophe, supra note 20.
62 See Bridgland, supra note 26.
63 Mann II, supra note 44.
64 See Mann I, supra note 2. As of March 17, 2000, $1,360 Australian was equivalent to $824.70 U.S. See Exchange Rates, WALL ST. J., Mar. 20, 2000, at C-13 ($1.00 (Aus.) was worth 60.64 cents U.S. on Friday, Mar. 17, 2000).
European Commission vice-president Loyola de Palacio opined that the spill was "a true European catastrophe," adding that the European Union might offer financial assistance. She invoked the "polluter pays" principle, stating that "[t]here is a clear principle in the EU that in general, who contaminates will pay for the restitution, although full restitution here is impossible." In the aftermath of the spill, arrangements were made for a United Nations team to inspect the Baia Mare site in March 2000. Recognizing that the existing legal regime was inadequate to protect the river, Romania and Hungary signed a protocol on the prevention of environmental pollution at Debrecen, Hungary, on March 16, 2000.

III. THE BAIA MARE SPILL AND INTERNATIONAL LAW

The Baia Mare and Baia Borsa spills, like the 1986 Sandoz spill, were classic cases of transboundary harm to an international watercourse. In all three situations, an industrial accident in the territory of an upper riparian caused harm to the watercourse in the territory of lower riparians. Over the past century, international law dealing with such events has evolved considerably, although significant gaps still exist. The Danube basin is to some extent governed by a treaty regime, although gaps in that regime may be filled by customary international law.

A. Sources of International Law

For purposes of this article it will be simplest to consider two categories of international law. The first, conventional international law, includes rules of law set out in written form and affirmatively agreed to by states. Treaties and other international agreements fall in to this category. The second category is customary law. In the absence of applicable conventional law, rules of international law may be derived from "international custom, as evidence of a general practice accepted as law." Customary

65 European Catastrophe, supra note 20.
66 Id.
68 See id. At the time of this writing, the text of the Debrecen agreement was not available in English; E-mail from Zsuzsanna Kocsis-Kupper, legal adviser (environment), Republic of Hungary, to Aaron Schwabach, Mar. 21, 2000.
69 Statute of the International Court of Justice, art. 38(1), 59 Stat. 1055, 1060 (1945),
law thus consists of those rules that, although not formalized by international agreement, are followed by states out of a sense of legal obligation. In addition to these two categories, "[g]eneral principles of law" have traditionally been viewed as a third category of public international law. However, they can also be seen as "supplementary rules" or a "secondary source of law." For example, judicial decisions and the teachings of the most qualified publicists are a "subsidiary means for the determination of rules of law." In any event, domestic judicial decisions and, to the extent that a state actually observes them, general principles of law are state practice, and thus form the basis for normative expectations.

B. Treaties and International Agreements Protecting the Waters of the Tisza and the Danube Basin

There is a considerable body of treaty law governing the uses of the waters of the Danube basin, including the Somes, the Vaser, and the Tisza. Many of these treaties are primarily concerned with navigation, the defining of borders, and undertakings such as the Iron Gates and Gabcikovo-Nagymaros projects. There are also some specifically environmental agreements, as well as environmental provisions in navigation treaties.

Prior to World War I, environmental preservation for its own sake was rarely a goal of government policy in Europe or elsewhere. Some Danube treaties from that period include quasi-environmental provisions primarily intended to preserve the river's navigability and to prevent the introduction of diseases from Turkey to Europe.
After World War I, the political map of the Danube basin underwent significant changes. Three major riparian states – the Ottoman Empire, the German Empire, and the Austro-Hungarian Empire – ceased to exist. In their place appeared what twelve years ago might still have been a recognizable political map of Eastern Europe.

As with the pre-war treaties, the Treaties of Versailles and Trianon made extensive provisions for the regime of navigation on the Danube but said little about non-navigational uses of the river. By 1921, the new navigation regime had been codified in the Definitive Statute of the Danube. Although the post-war treaties actually reflected less concern with quarantine and sanitary regulations, new non-navigational concerns began to appear. In particular, Article 293 of the Treaty of Trianon set up a Hydraulic System Commission with jurisdiction over non-navigational uses of much of the Danube basin. Article 293 was a revolutionary document; it foreshadowed the drainage basin approach to international watercourse administration, attempting to create a single unified authority for non-navigational uses of an entire (or almost entire) drainage basin.

Article 293 also provided that “[a]ny disputes which may arise out of the matters dealt with in this Article shall be settled as provided by the League of Nations.” Later, the Treaty of Sinaia

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75 Treaty of Peace With Germany, June 28, 1919, arts. 331-39 (dealing with navigable international rivers generally), 346-53 (dealing with the Danube specifically), 225 Consol. T.S. 189, 355-57, 360-61 [hereinafter Treaty of Versailles]; Treaty of Peace Between the Allied and Associated Powers and Hungary, June 4, 1920, arts. 120 (surrendering the Danube Flotilla), 275-91 (dealing with navigation on the Danube), 314 (binding Hungary to adhere to treaties regarding international transport concluded by the Allied and Associated powers within the coming five years), S. Doc. No. 67-348, at 3539, 3666-70, 3670-71, 3679 (1923) [hereinafter Treaty of Trianon]. See also Treaty of Peace Between Austria-Hungary, Bulgaria, Germany, Turkey, and Romania, May 7, 1918, arts. 24-26 (dealing with the regime of navigation on the Danube), 223 Consol. T.S. 256, 263-64.


78 Treaty of Trianon, supra note 75, art. 293.

79 See id.

80 Id.
provided for arbitration as well.\textsuperscript{81} The post-war treaties thus anticipated the need to resolve disputes arising from conflicting non-navigational uses and from conflicts between navigational and non-navigational uses. The Treaty of Trianon provided that the tribunal resolving such conflicts would make "due allowance in its decision for all rights in connection with irrigation, water-power, fisheries and other national interests, which, with the consent of all the riparian States or of all the States represented on the International Commission, shall be given priority over the requirements of navigation."\textsuperscript{82} Thus, Trianon represented a step in the transition to a world in which rivers are primarily valued for their non-navigational uses.

After World War II, however, the river system seems to have declined in relative political importance. Whereas the Treaty of Trianon devotes nineteen articles to the Danube,\textsuperscript{83} the Treaty of Paris contains a single, short "Clause Relating To The Danube," which provides that international traffic on the Danube should be free and open to the nationals of all States.\textsuperscript{84} From 1945 to 1989, most of the lower Danube Basin was effectively under the control of a single, relatively minor riparian state: the Soviet Union. Thus, the post-war regime of navigation on the river (which added little in the way of environmental provisions) replaced the previous two-commission regime with a single-commission system.\textsuperscript{85} Furthermore, the old non-riparian participants in the navigation regime (Britain, France, and Italy) were completely excluded from participation.\textsuperscript{86} Other non-environmental, Danube-specific treaties, which nonetheless contained some environmental provisions, dealt with the Iron Gates and Gabcikovo-Nagymaros projects.\textsuperscript{87}

\textsuperscript{81} Treaty of Sinaia, \emph{supra} note 77, art. 21.
\textsuperscript{82} Treaty of Trianon, \emph{supra} note 75, art. 282.
\textsuperscript{83} See \textit{id.} arts. 274-293. In addition, Articles 268-73 discuss transit through Hungarian territory (including transit on the Danube), and Articles 27, 30, and 31 relate to the Danube and its tributaries as frontiers. \textit{Id.} The Treaty of Versailles contains an additional 17 clauses relating to the Danube. Treaty of Versailles, \emph{supra} note 75, arts. 331-39 (general clauses relating to the Elbe, the Oder, the Niemen, and the Danube), 346-53 (special clauses relating to the Danube).
\textsuperscript{86} See \textit{id.} (Britain, France, and Italy are not parties to the Convention).
\textsuperscript{87} See \textit{Agreement Concerning the Establishment of a River Administration in the Rajka-Gonyu Sector of the Danube}, Feb. 27, 1968, Czechoslovakia-Hung., 640 U.N.T.S. 50
The post-war era also saw a dramatic increase worldwide in the number of treaties dealing specifically with environmental concerns. In 1958, the lower riparian states began efforts to protect

(English text begins at page 66); Treaty Concerning the Construction and Operation of the Gabcikovo-Nagyamaros System of Locks, Sept. 16, 1977, Czechoslovakia-Hung., 1109 U.N.T.S. 235, 32 I.L.M. 1247. The agreements concerning the Iron Gates project were contained in twelve separate documents, all signed at Belgrade on November 30, 1963:


fisheries in the Danube.\textsuperscript{88} Romania, Yugoslavia,\textsuperscript{89} and the Soviet Union were parties to the 1958 Fisheries Convention. Hungary joined in 1961.\textsuperscript{90} Articles 1 and 3 of the Convention defined the area governed by the treaty in a way that would exclude almost all of the Tisza and all of the tributaries of the Tisza affected by the Romanian spills.\textsuperscript{91} The Danube itself and the Tisza at its junction with the Danube in Yugoslavia, however, would be covered by the Convention. Under the Convention, Romania was obligated "work out and apply measures to prevent the contamination and pollution of the river ... by ... waste from industrial and municipal undertakings which are harmful to fish and other aquatic organisms...."\textsuperscript{92} The spills themselves are evidence, however, that any such measures that might have existed in Romania were either inadequate or improperly applied.

The Convention did create an obligation on the part of Romania toward Hungary. However, this obligation was not violated in the Baia Mare and Baia Borsa spills, as none of the waters in Hungary covered by the treaty were affected by the accident.\textsuperscript{93} The same was true of Ukraine, which is not a party to the treaty and does not assume the responsibilities of the Soviet Union. Those rights and responsibilities have passed to the Russian Federation.\textsuperscript{94} The state currently known as Yugoslavia is apparently not a party either, though its status is less clear.\textsuperscript{95} If (as seems likely) the contracting parties were forming obligations vis-à-vis each other, rather than mutually agreeing to undertake some


\textsuperscript{89} The state then known as Yugoslavia was a party to the treaty. All other references to Yugoslavia in this article are to the state presently using the name "Federal Republic of Yugoslavia."


\textsuperscript{91} Danube Fisheries Convention, supra note 88, arts. 1, 3. See generally The Balkans, supra note 15.

\textsuperscript{92} Danube Fisheries Convention, supra note 88, art. 7.

\textsuperscript{93} See id. See generally The Balkans, supra note 15.

\textsuperscript{94} The Environmental Treaties and Resource Indicators database at the Center for International Earth Science Information at Columbia University lists the present parties to the treaty as Bulgaria, Hungary, Romania, and Russia. See, e.g., Globelaw, http://globelaw.com/sources.htm.

\textsuperscript{95} For a discussion of the difficulties in assessing the international legal rights and responsibilities of the successor states to the former Yugoslavia, see Paul R. Williams, The Treaty Obligations of the Successor States of the Former Soviet Union, Yugoslavia, and Czechoslovakia: Do They Continue in Force? 23 DENV. J. INT'L L. & POL.'Y I (1994).
form of obligations *erga omnes*, Romania did not violate any obligation to Yugoslavia.

In the context of the Baia Mare and Baia Borsa spills, the most significant treaties currently in force between Romania and at least some of the affected downstream states are the United Nations Convention on the Protection and Use of Transboundary Watercourses and International Lakes\(^\text{96}\) and the Convention on Cooperation for the Protection and Sustainable Use of the Danube River.\(^\text{97}\)

Romania, Hungary, Ukraine, and Slovakia are all parties to the U.N. Convention.\(^\text{98}\) Under the U.N. Convention, Romania is obligated to "take all appropriate measures . . . to prevent, control, and reduce pollution of waters causing or likely to cause transboundary impact"\(^\text{99}\) and to minimize the risk of accidental pollution.\(^\text{100}\) Romania failed to comply with these regulations. The state should have required a more secure containment structure for the mine tailings, or perhaps required monitoring of water buildup behind the tailings dam and ameliorative measures when the buildup reached a certain level. Romania apparently did not, however, fail in its duty to warn Hungary "about any critical situation that may have transboundary impact,"\(^\text{101}\) although Ukraine and Hungary have expressed dissatisfaction over Romania’s lack of communication regarding the details of the accidents.\(^\text{102}\)

While the U.N. Convention incorporates the equitable use


\(^{98}\) See U.N. Convention, *supra* note 96.

\(^{99}\) U.N. Convention, *supra* note 96, arts. 2.2-2.2(a).

\(^{100}\) See *id.* art. 3.1(l).

\(^{101}\) *Id.* art. 14.

concept, it also incorporates the three canons by which much of international environmental law is interpreted: the precautionary principle, the "polluter-pays" principle, and the principle of inter-generational equity. All of these principles, however, tend to protect the environment at the expense of development and, thus, work against Romania in the present situation.

The U.N. Convention does not, however, make specific provisions for liability or compensation in the event of transboundary harm. For example, Article 7 (Responsibility and Liability) provides only that, "The Parties shall support appropriate international efforts to elaborate rules, criteria and procedures in the field of responsibility and liability" without elaborating on specific ways to achieve these goals. Article 10 provides for consultations “between the Riparian Parties . . . at the request of any . . . Party,” whereas Article 22 provides for settlement of disputes “by negotiation or any other means of dispute settlement acceptable to the parties to the dispute.”

Romania, Hungary, Ukraine, and Slovakia are all signatories to the Convention on Cooperation for the Protection and Sustainable Use of the Danube, and of the four, all but Ukraine have ratified or otherwise become parties to the Convention, which provides similar protections to the river, although with greater specificity. The Convention also incorporates the precautionary and polluter-pays principles, although not the inter-generational equity principle. The Danube Protection Convention is nonetheless ‘greener’ than the U.N. Convention, as

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103 See U.N. Convention, supra note 96, arts. 2.2(c), 3.
104 See id. art. 2.5(a).
105 See id. art. 2.5(b).
106 See id. art. 2.5(c).
107 Id. art. 7.
108 Id. art. 10.
109 Id. art. 22.1. Article 22.2 provides for compulsory submission to the International Court of Justice (ICJ) or arbitration if a nation declares in writing that it accepts one or both of the means of dispute settlement. See id. art. 22.2. None of the states involved in the current situation have made such a declaration.
111 See Danube Protection Convention, supra note 97, art. 2(4); Annex I, Part 2.2. The Convention also continues the functions of the 1985 Bucharest Declaration on the Cooperation of the Danubian Countries on Problems of Danubian Water Management. See id., art. 19.
112 See id. pmbl.
it sets a standard of sustainable, rather than equitable, use.\textsuperscript{113} It imposes similar duties to "prevent, control and reduce transboundary impact" from pollution.\textsuperscript{114} For example, "Ore preparation" is specifically listed as a hazardous activity.\textsuperscript{115} There are also duties to warn of accidental pollution,\textsuperscript{116} and to consult with affected lower riparians.\textsuperscript{117} Romania's violation of or compliance with these various provisions would be essentially the same as under the U.N. Convention. The Danube Protection Convention does, however, offer a stronger dispute resolution mechanism. Article 24 of the Convention is worded somewhat differently from Article 22 of the U.N. Convention, in a way that suggests that acceptance of compulsory jurisdiction of the ICJ or arbitration is the norm.\textsuperscript{118} In order to accept compulsory jurisdiction of the ICJ, however, parties must make an affirmative declaration separate from the acceptance or ratification of the treaty itself.\textsuperscript{119} Article 24 does provide for compulsory arbitration where states have made no declaration and have not resolved a particular dispute within twelve months.\textsuperscript{120} Annex V provides detailed arbitration guidelines.\textsuperscript{121}

The Danube Protection Convention also sets up an International Commission for the Protection of the Danube River,\textsuperscript{122} with binding rule-making powers within its area of competence.\textsuperscript{123} The Commission began to operate on a provisional basis even before the Convention entered into force. On April 12, 1998, it undertook a project, "To promote the international cooperation relating to an integrated approach to the management of the Tisza River Basin," as well as "[t]o identify the joint base for an Integrated Tisza River Basin Plan . . . ."\textsuperscript{124} The project was assigned to an Irish group, ESB International, and was originally scheduled for completion on April 6, 2000.\textsuperscript{125}

\begin{footnotes}
\item[113] See id. arts. 2(3), 2(5).
\item[114] See id. art. 5(1). See also arts. 5(2), 6(c).
\item[115] Id. Annex II, Part 1.1(c).
\item[116] See id. arts. 16(3).
\item[117] See id. arts 12(f), 11.
\item[118] See id. art. 24(1).
\item[119] See id. arts. 24(2)(b), 24(2)(c).
\item[120] See id. arts. 24(2)(a), 24(2)(e).
\item[121] See id. Annex V.
\item[122] See id. Annex IV.
\item[123] See id. Annex IV, arts. 4, 5.
\item[125] See id.
\end{footnotes}
Another convention that, if in force, would also be applicable to the Baia Mare situation is the Espoo Convention on Environmental Impact Assessment in a Transboundary Context.\(^{126}\) The Espoo Convention would require its parties to prepare environmental impact assessment documentation for proposed activities that could have “significant adverse transboundary” effects.\(^{127}\) Thus, Romania would have been obligated to require Aurul S.A. to produce detailed, environmental impact, assessment documentation.\(^{128}\) In addition, under the Espoo Convention, Romania should have notified Hungary and invited it to participate.\(^{129}\) Furthermore, after the documentation was produced “without undue delay,” Romania should have entered into consultations with Hungary concerning ways in which the adverse impact might be reduced or eliminated.\(^{130}\) The Espoo Convention is not in force, however, and the incomplete Danube treaty regime offers no equivalent.

Overall, the treaty regime protecting the Danube is far less comprehensive than that protecting Europe’s other great international river, the Rhine.\(^{131}\) The Rhine treaty regime includes, *inter alia*, a treaty creating a multinational Commission charged with the protection of the river against pollution,\(^{132}\) a treaty seeking to protect the river from chemical pollution, with detailed lists of prohibited and restricted pollutants,\(^{133}\) and a convention dealing with the specific problem of chloride pollution from the French potassium mines in Alsace.\(^{134}\) There are also regional treaty

\(^{126}\) Convention on Environmental Impact Assessment in a Transboundary Context, Feb. 25, 1991, 30 I.L.M. 800 [hereinafter Espoo Convention]. Hungary, Romania, Ukraine, and Slovakia are all signatories to the Convention but have not ratified it. *See* Globelaw, http://globelaw.com/sources.htm (naming the countries that have ratified the treaty). By its terms, the Espoo Convention will enter into force ninety days after the sixteenth instrument of ratification is deposited. *See* Espoo Convention art. 18.

\(^{127}\) *Id.* art. 2(2).

\(^{128}\) *Id.* art. 3.

\(^{129}\) *Id.* art. 5.

\(^{130}\) *See* Sandoz Spill, *supra* note 4, at 458-66.


\(^{133}\) *See* Convention Relative a la Protection du Rhin Contre la Pollution par les Chlorures, Convention on the Protection of the Rhine Against Pollution by Chlorides,
commissions charged with protecting specific tributaries or regions of the Rhine, such as the Saar, the Moselle, and Lake Constance. Also, unlike the Danube, the Rhine is largely protected by European Union law, since most of the riparian states of the Rhine are also members of the EU.

C. Customary International Law Governing the Use of the Waters of Transboundary Watercourses

Although Romania evidently violated its obligations under the U.N. Convention to Ukraine, Hungary, and Slovakia, it did not violate its obligations to Yugoslavia. Romania may still have a duty to Yugoslavia, however, under customary international law since this body of law may fill any gaps in the set of rights and duties defined by the U.N. Convention.

Customary international law has long recognized limits on the discharge of pollutants into rivers. The exact nature and extent of those limits, however, are somewhat hard to determine. The right of a downstream neighbor to receive an uninterrupted flow of uncontaminated water must be balanced against the right of the upper riparian to make equitable use of the river’s waters.

The approach generally taken to balance the rights of lower and upper riparian owners is one of limited territorial sovereignty. The territorial integrity interest of the lower riparian is balanced against the territorial sovereignty interest of the upper riparian. Limited territorial sovereignty is not fixed, however, but is a movable point somewhere along a continuum between absolute territorial sovereignty and absolute territorial integrity. Romania had both a sovereign right to exploit resources within its territory and a duty to respect the territorial integrity of lower ri-

135 See generally Sandoz Spill, supra note 4, at 460.
136 This is a natural extension of the Trail Smelter principle (see note 133, infra, and accompanying text). One of the earlier declarations of this principle in the past century was in the Donauversinkung case: “When utilizing an international watercourse in its territory, every State is bound by the principle springing from the idea of the community of nations based on international law: that it may not injure another member of the international community.” Johann G. Lammers, POLLUTION OF INTERNATIONAL WATERCOURSES 433-38 (1984) (discussing Donauversinkung case (Baden v. Wurttemberg), 116 Entscheidungen des Reichsgerichts in Zivilsachen, Suppl. Entscheidungen des Staatsgerichtshofs 18).
137 See Diverting the Danube, supra note 74, at 325-27.
138 For a full discussion of the competing approaches to this question, see generally Diverting the Danube, supra note 74, at 325-40 (indicating a lack of a high degree of normativeness by using the term “approach” instead of “rule”).
riparians (such as Yugoslavia) by preventing or minimizing harm from those activities. The exact amount of harm that an upper riparian might be permitted to cause lower riparians is, of course, likely to be a highly contentious matter, and has led many environmentalists and scholars to embrace an alternative – the community theory.

A fourth approach to the management of international freshwater resources, the community or drainage basin management theory, has yet to find acceptance in the practice of states. While theorists embrace the community theory, states are reluctant to sacrifice their sovereignty to a drainage basin management authority. Furthermore, most upper riparians seem to see the community theory as a product of the environmental movement and as more likely to protect the interests of downstream states.

The present situation in the Danube Basin is unusual because many of the riparian states did not exist in their present form as little as a decade ago. Thus, it is difficult to make any specific predictions about the conduct of the riparian states based upon their past conduct. In a broader sense, however, the practice of the world’s states in similar situations may provide a normative framework within which to evaluate the responsibilities of Romania to Yugoslavia and the other lower riparians.

1. Decisions of International Tribunals

Basic principles of the customary international law of state responsibility for transboundary harm are generally seen as having been developed through the Trail Smelter arbitration, the Corfu Channel Case, and the Lake Lanoux Case. The Trail Smelter

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tribunal, in dicta, first expressed the principle that a state has responsibility for environmental damage extending beyond its territorial limits:

[N]o State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.143

In the Corfu Channel Case, the International Court of Justice also applied this general principle of limited territorial sovereignty, stating that it is “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States.”144 The Lake Lanoux arbitration applied the principle to the non-navigational uses of a transboundary watercourse:

[T]he upstream State has, according to the rules of good faith, the obligation to take into consideration the different interests at stake, to strive to give them all satisfactions compatible with the pursuit of its own interests, and to demonstrate that, on this subject, it has a real solicitude to reconcile the interests of the other riparian with its own.145

2. Aspirational Documents and Pronouncements of International Bodies

Public and private international organizations have also addressed the problem of transboundary environmental harm. While the aspirational documents thus produced create no legally binding obligations, they may serve to show “the general principles of law recognized by civilized nations[.]”146 To the extent that they are promulgated (especially in the case of General Assembly resolutions) by certain states and not by others, they may also provide insight into the practice or expectations of those states.


143 Trail Smelter Arbitral Tribunal, supra note 140, at 716.
144 Corfu Channel Case, supra note 141, at 22.
145 Lac Lanoux Case, supra note 142, at 169.
a. The Stockholm Declaration

Principle 21 of the United Nations' Stockholm Declaration on the Human Environment is generally viewed as having attained the status of customary international law. Principle 21 provides that states have "the sovereign right to exploit their own resources pursuant to their own environmental policies . . . ." Along with this right, though, comes the "responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction." The Stockholm Declaration thus incorporates the Corfu Channel standard that no state may allow its territory to be used to harm another state.

b. The Helsinki Rules

The Helsinki Rules promulgated by the International Law Association also assume limited territorial sovereignty. Article IV of the Helsinki Rules states the "equitable use" concept: "Each basin State is entitled, within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an interna-
tional drainage basin." Among the factors to be used in determining what is reasonable and equitable, are the economic and social needs of each state, the population in each basin state dependent on the waters of the basin, and the degree to which waste and unnecessary injury can be avoided.

The first of these factors seems to weigh on the side of Romania because of its great need for development. The Aurul mine, for example, provided 3,000 desperately needed jobs in Baia Mare. The others, though, favor the injured lower riparians. Two million Hungarians drew drinking water from the Tisza, and the cost of protective measures – higher and better-constructed tailings dams – would have been relatively slight.

The Helsinki Rules use a “substantial injury” standard to determine whether a state’s use of water is reasonable and equitable. Article X of the Rules prohibits “any new form of water pollution or any increase in the degree of existing water pollution in an international drainage basin which would cause substantial injury in the territory of a co-basin State. . . .” Article XI provides that a polluting state must cease the polluting activity and compensate the injured state. The injury to the Tisza, and thus to Hungary and perhaps Yugoslavia, was certainly “substantial,” and both countries have announced their intention to seek compensation.

c. The World Charter for Nature

The World Charter for Nature (in actuality, merely a General Assembly resolution) provides that “States... shall... [e]nsure that activities within their jurisdictions or control do not cause damage to the natural systems located within other States or in

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152 Id. art. IV.
153 See id. art. V(2)(e).
154 See id. art. V(2)(f).
155 See id. arts. V(2)(i), V(2)(k).
156 Anca Paduraru, Baia Mare: Romania’s Polluted City, AP, Mar. 11, 2000, available at 2000 WL 15788674.
157 See The Helsinki Rules, supra note 151, art. V(2)(k).
159 See The Helsinki Rules, supra note 151, art. XI.
the areas beyond the limits of national jurisdiction. . . .”\textsuperscript{161} This
duty to other states, expressed in language similar to that of the
earlier Stockholm Declaration and the later Rio Declaration, is
then countered by a recognition that the Declaration takes “fully
into account the sovereignty of States over their natural resources
. . . .”\textsuperscript{162} The significant substitution of “natural systems” for “en-
vironment” might imply liability even in the absence of economi-
cally quantifiable harm. In the Baia Mara and Baia Borsa spills,
of course, both quantifiable economic harm and intangible harm
to “natural systems” are present.

d. The Rio Declaration

Principle 2 of the Rio Declaration\textsuperscript{163} is identical to Principle 21
of the Stockholm Declaration, with the exception of two added
words:

States have, in accordance with the Charter of the United Na-
tions and the principles of international law, the sovereign
right to exploit their own resources pursuant to their own en-
vironmental and developmental policies, and the responsibility
to ensure that activities within their jurisdiction or control do
not cause damage to the environment of other States or of ar-
eas beyond the limits of national jurisdiction.\textsuperscript{164}

Those two added words (“and developmental”) shift the balance
between territorial sovereignty and territorial integrity toward the
former, favoring developing nations and upper riparians (in this
case, Romania). The Rio Declaration does, however, require en-
vironmental impact assessment\textsuperscript{165} and “prior and timely notifica-

World Charter for Nature was adopted by a vote of 111 countries for to one (the United
States) against, with 18 abstentions (mostly Latin American countries, plus Algeria and
Lebanon). Later the U.N. Secretariat was informed that Mexico had intended to vote in
favor of the resolution. See id. at 455.

\textsuperscript{162} Id. art. 22.

\textsuperscript{163} See Rio Declaration on Environment and Development, June 13, 1992, (vol. 1) 31

\textsuperscript{164} Id. Principle 2 (emphasis added). The added words reflect the major concern of the
Rio Conference: balancing developing nations’ needs against the environmental concerns
of the developed countries. While the added words would seem to indicate that Romania
can place a high priority on development if it wishes, Romania still has an obligation to
ensure that the activity causes no harm to Hungary.

\textsuperscript{165} See id. Principle 17.
tion to ... potentially affected states..."166

e. The United Nations Convention on the Non-Navigational Uses of Transboundary Watercourses

Despite having been adopted by a General Assembly vote recorded as 103 to 3, with 27 abstentions and 33 members absent,167 the Convention on the Law of Non-Navigational Uses of International Watercourses168 cannot be said to reflect customary international law. The high number of abstaining states, and the significant concerns expressed by some of the supporting states, suggest

166 Id. Principle 19.

that the Convention does not represent conventional wisdom. Romania and the downstream states affected by the Baia Mare and Baia Borsa accidents, however, all voted in favor of the Convention, and may consider it an accurate statement of their rights and responsibilities under international law. Like the U.N. Convention on the Protection and Use of Transboundary Watercourses and Lakes, the Non-Navigational Uses Convention adopts an "equitable use" approach. Like the Danube Protection Convention, it requires that such use be (or attempt to be) sustainable.

Under the Non-Navigational Uses Convention, Romania would have had an obligation not to cause significant harm to its downstream neighbors. Once such harm occurred, Romania would then have been obligated to take "all appropriate measures... to eliminate or mitigate such harm and, where appropriate, to discuss the question of compensation."

Protection of water for drinking, fishing, and agriculture might take priority over mining uses. As the Convention states, "In the event of a conflict between uses of an international watercourse, it shall be resolved... with special regard being given to the requirements of vital human needs." Part III of the Convention (Planned Measures) would have required Romania to notify, consult, and negotiate with the lower riparians when planning activities such as the Aurul tailings operation, that had the potential to adversely affect the lower riparians. Finally, the Convention provides detailed dispute settlement procedures.

IV. THE FUTURE OF EUROPE'S INTERNATIONAL WATERCOURSES

The treaty regime protecting the Danube basin has proved inadequate, just as the Rhine treaty regime proved inadequate in 1986. Under the current system, whenever northern Romania experiences heavy flooding, the Tisza will be endangered.

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170 Non-Navigational Uses Convention, supra note 167, art. 5(1).
171 See id. art. 5. See also Danube Protection Convention, supra note 97.
172 See Non-Navigational Uses Convention, supra note 167, art. 7.
173 Id. art. 7(2).
174 Id. art. 10(2).
175 See id. arts. 11-19.
176 See id. art. 33.
There are signs, however, that the situation along the Danube will improve. Just as the Sandoz spill focused attention on the Rhine, the Baia Mare spill has focused international attention on the Danube and its tributaries. The Debrecen agreement is an encouraging sign. In addition, it should be noted that the legal structures protecting the Danube—especially the Danube Protection Convention and the International Commission for the Protection of the Danube—are very new. The Romanian spills have provided the current protective regime with its first real test, which it seems to have passed. All of the actors, including Romania, seem genuinely committed to addressing the situation.

However, two major problems remain. The first is the economic and political inequality that exists along the Danube; the second is that solving the problems of the Danube will not solve the problems of other rivers.

A. Inequality Along the Danube

Economic and political inequality was not present along the Rhine in 1986. The riparian states of the Rhine are all wealthy, developed, democratic countries. Most are members of what is now the European Union. Those that were not members (Switzerland, Liechtenstein, and Austria) were thoroughly integrated into the Western capitalist economy and, while theoretically neutral, clearly aligned with the West during the Cold War era. All the riparian states of the Rhine had been at peace both internally and with each other for decades.

A similarly benign situation does not exist along the Danube. The riparian states include wealthy states such as Germany and Austria (also Rhine riparians), as well as impoverished, war-torn states such as Yugoslavia. While all of the riparian states are nominally democratic, the degree of individual liberty and participation in the political process varies greatly between them.

In such a situation, it is inevitable that some wealthy democratic states will attempt to export their environmental problems to poorer (and sometimes less democratic) ones. Austria, for example, after environmentalists prevented the building of a hydroelectric power plant in a nature reserve within Austria, helped finance the controversial Gabčíkovo-Nagymaros project...
in exchange for a promised share of the electricity to be generated. Similarly, European Union countries refuse to allow cyanide heap leaching in their own territory, yet permit the purchase of metals obtained by the same process in other countries.

Another Danubian problem not present along the Rhine in 1986 is the desperate poverty of some of the lower riparians. Romania (which is an upper riparian on the Tisza and a lower riparian on the Danube itself) has an annual per capita gross national product (GNP) of $1,600. This falls somewhat lower than the GPA of El Salvador. In stark contrast, Hungary’s annual per capita GNP, at $4,340, is nearly three times as high. Germany’s, at $28,870, is more than eighteen times as high. Bulgaria and Ukraine are even worse off than Romania. While no reliable information is currently available for most of the states of the former Yugoslavia, it seems safe to conclude that economic conditions there are truly desperate.

Given such disparities, wealthier states (including non-riparians such as Australia) will continue to fund environmentally undesirable projects in the poorer riparian states. In Romania, for example, both the government and the people seem committed to environmental protection. At the same time, however, Romania cannot afford to turn away foreign investors offering jobs and development. The problem can only be addressed by adopting and enforcing stringent environmental safeguards.

The regulations must be adopted and enforced either by the investing country (which, in this case, would be Australia), or by the country hosting the investment (which, in this case, would be Romania). There are problems with both approaches. Australia, like most other developed countries, has been unwilling to apply its environmental standards to activities of its citizens abroad. While a change would be welcome, such a strategy would only become effective when adopted by nearly all investing states.

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177 See Diverting the Danube, supra note 74, at 297.
178 See Id.
180 See id. As recently as 1992, an incredible 70.9% of Romanians lived on less than $2 per day. See id. at 65.
181 See id. at 12-14.
182 See supra notes 54-58, and accompanying text.
At the same time, Romania may feel that it cannot afford to adopt environmental regulations as stringent as Australia’s or the European Union’s. A mining operation, for example, would be far cheaper in Romania, even applying Australian environmental standards, than in Australia. Other developing countries, though, might compete to make themselves more attractive to investors by offering lower environmental protection costs.

As with the problem of extraterritorial application of domestic environmental laws, this problem cannot be solved on a global scale until nearly all of the investment-receiving countries agree on some uniform standards. However, the problem can be solved on a local scale. The effective enforcement of some internationally determined minimum level of environmental standards in the Danube basin would prevent a “race to the bottom” in environmental standards among the developing riparians, while leaving developed riparians free to set higher standards.

Political and diplomatic obstacles to achieving such uniformity also exist. Along the Danube, the major obstacle of this nature is the continuing isolation of Yugoslavia. Yugoslavia remains the recipient, rather than the source, of many of the Danube’s problems. Within Yugoslavia, the river has suffered both from the Romanian spills and from the war with NATO, two of whose members (Germany and Hungary) are Danube riparians. However, activities in Yugoslavia have enormous potential to cause harm to other riparians.

This is not to suggest a general rapprochement with Yugoslavia. However, those riparians situated downstream from Yugoslavia – especially the major riparians, Bulgaria and Romania – can only be harmed by excluding Yugoslavia from the Danube treaty regime. The ideal solution would be a rehabilitated Yugoslavia. However, in the interim provisional steps to

183 For a discussion of the environmental effects of the war with NATO, see Aaron Schwabach, Environmental Damage Resulting from the NATO Military Action Against Yugoslavia, 25 COLUM. J. ENVTL. L. 117 (2000).

ensure Yugoslavia's cooperation must be taken.

B. Saving Europe’s Other Rivers

The other problem, emphasized by the fourteen years between Schweizerhalle and Baia Mare, is that international environmental law tends to grow in reaction to catastrophic incidents that capture international headlines. Most environmental harm, however, is caused by activities that are routine, quotidian, and dull; they do not capture the public imagination, and thus do not evoke the same level of regulatory response.

International environmental law is thereby distorted. After the horse has gone, rule-makers and the public install new locks on the stable door, pat themselves on the back, and go on to something new. Chronic polluting activity is often overlooked, as is the possibility of similar disasters elsewhere.

In the aftermath of Schweizerhalle, the Rhine riparians succeeded in saving the Rhine. In the aftermath of Baia Mare, the riparian states will probably succeed in saving the Tisza and the Danube. Europe, however, has many other vulnerable international river basins. The Dniester, the Dnieper, the Volga, the Don, and the Oder, among others, are all endangered.185

It would be unfair to say that in the aftermath of the Rhine disaster nothing was done to protect Europe’s other rivers. The U.N./ECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes was adopted six years after the accident.186 The U.N. Convention is a step in the right direction. More generalized global conventions, such as the Non-navigational Uses Convention, tend to be less useful, since the problems of river basins are, by their nature, local problems rather than global ones. The difference in the nature of watercourses, their ecologies, and the political and economic nature of the states lying within their basins makes universal rulemaking impossible. Detailed, specific plans would be necessary for an international agreement to be effective. However, it would be hard to imagine that anything other than the most basic principles could be equally applicable to the Amazon, the Nile, the Columbia, the Rio Grande, and the Danube.

Within Europe, there is still enormous political, economic, and

186 See U.N. Convention, supra note 96.
environmental diversity among river basins. The U.N. Convention is a good beginning that also exhorts its parties to further their efforts. The Baia Mare and Baia Borsa spills highlight the need, at least within Europe, for continuing efforts to develop international legal structures to protect the waters of specific individual drainage basins.

187 See id. pmbl., art. 9.