The Respect of the International Environmental Law in the Field of the Northern Dimension: Good Practices and Virtuous Examples in the European Region

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Abstract: The following work aims at analyzing the theme of regional environmental cooperation within the Northern Dimension, a joint policy created by the European Union together with Norway, Iceland and the Russian Federation which sees the Northern Dimension Environmental Partnership as a collaborative dimension between governments, private companies, public stakeholders and local communities in the implementation of projects aimed at environmental protection. In the logic of international law, the dynamics of the NDEP are particularly interesting to study as representing a model of virtuous cooperation in the environmental protection field and in the prevention of international disputes related to cross-border pollution in the Nordic region. The precautionary approach that is actively enforced through the implementation of the of international environmental law obligations, makes the Northern Dimension Environmental Partnership considered a unique example of its kind, thanks to its ability in contributing to sustainable development in the region.

Key-words: International Environmental Law – Northern Dimension – Common Foreign and Security Policy – International and European Cooperation – Northern Europe – Sustainable Development Goals

1. Introduction of the Northern Dimension: the international cooperation in the high north

The Northern Dimension represents a particularly interesting area of international cooperation to analyze in the international perspective. It is the result of

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a joint policy which brings together the European Union, Russian Federation, Iceland and Norway. From a legal point of view, the EU launched the Northern Dimension in December 1997, with the European Council adopting the Finnish proposal to create a "Nordic dimension" of cooperation with other non-EU States within the framework of the northern borders of the Union.[1]

The Northern Dimension was born from the need to create an area of cooperation between State actors and an International Organization, in this case the EU, in order to intensify relations between the European Union and Russia *prima facie*, and between the EU and two states of the European Economic Area and European Free Trade Association (EFTA), Iceland and Norway. The peculiarity of the Northern Dimension, in its nature of a sub-regional joint policy, is that it provides a multi-level cooperation framework that concerns areas of collaboration different from the agreements between the EU and Russia, namely which are the Partnership already existing and Cooperation Act (PCA) of 1994 and the Common Strategy of the European Union on Russia (first adopted in 1995 and revised at the Cologne summit in the summer of 1999) and also different from the Free Trade Agreement that the EU has with Norway and Iceland.[2]

The Northern Dimension wants to deepen cooperation in areas substantially different from those listed above, as it intends to promote security and stability in the region, as well as helping to build a safe, clean, and accessible environment for all people in the northern European scenario. These include cold climatic conditions, health and social disparities in standards of living, environmental challenges including problems with nuclear waste and wastewater management, insufficient transport and border crossing facilities. As part of these objectives, it also has the great possibility to be able to take advantage of the potential in terms of natural resources and the unique ecological heritage that the Northern European area and the sub-Arctic polar spaces possess.[3]

The 2004 enlargement of the Union with the inclusion of Estonia, Latvia, Lithuania, and Poland, has determined a renewed centrality of the Northern Dimension: eight EU Member States (Denmark, Germany, Poland, Lithuania, Latvia, Estonia, Finland, and Sweden) surround the Baltic Sea, and the EU's shared

[1] See point 68 on Regional cooperation in Europe in the Conclusions of the Presidency of the Council; Available at: https://www.europarl.europa.eu/summits/lux1_en.htm

[2] An interesting historical reconstruction of the path of the ND is offered by MAZUR-BARANSKA, A. "The Northern Dimension of the EU". 9 Pol. Q. Int'l Aff. 31, 2000.

[3] On this issue, AALTO, P., TYNKKYNEN, N. "The Nordic Countries: Engaging Russia, Trading in Energy or Taming Environmental Threats?". In: AALTO, P. (ed.). *The EU–Russia Energy Dialogue: Europe's Future Energy Security?* Aldershot: Ashgate, 2007, pp. 119–129; LYNE, R. "Blueprint for a New Relationship with Russia". *Europe's World*, No. 9, 2008, pp. 52–58 and Artic Monitoring and Assessment Programme (AMAP), *AMAP Assessment Report: Arctic Pollution Issues*, Arctic Council, Oslo, 1998.

border with Russia has lengthened.[4] This led the ND, following its launch in 1999 to a need for renewal in 2006 – thanks to the Northern Dimension ministerial meeting held in Brussels which approved by unanimity "The Guidelines for the Development of a Political Declaration" and "Policy Framework Document for Northern Dimension Policy"[5] aimed at defining four areas of cooperation, which are implemented through *ad hoc* partnerships in the following subjects: environment, public health and social well-being, transport and logistics, culture.

The most innovative element of this form of cooperation seems to lie in what could be called a *"multilevel approach"*[6] In this case, the ND provides for coordination and cooperation at different levels. The European Union, the countries taking part to the Joint Policies, and the public and private actors placed in the area. The *ratio* is linked to the fact that there are other existing field of cooperation that take advantage of a well-established multilevel approach in the northern European area,[7] even if the Northern Dimension undoubtedly represents the most advanced area of cooperation between state and non-state actors at the regional level as well as representing a field of coordination with the greater commitment of the European Union on the territory, with the propulsive role of the European External Action Service[8] of the European Union (EEAS) in increasing dialogue and stability in the area.

If viewed from this perspective, the ND is considered to be the element of cooperation that most of all guarantees a fair and sustainable partnership between the Russian Federation and the European Union. This include the exercise of shared competences between the EU and the Member States includes in the

4 Many authors have discussed the leading role of the Finnish Government for incrementing the ND in the European context: see the contribution of WICHTER, J., WILSKA, J. "Northern Dimension in Europe – Esko Aho". *Brown Journal of World Affairs*, 7(2), [v]-2, 2000. See also on this topic ARTER, R. "Small State Influence Within the EU: The Case of Finland's Northern Dimension Initiative". 38 J. Common Mkt. Stud. 677, 2000 and OJANEN, H. "EU and Its Northern Dimension: An Actor in Search of a Policy, or a Policy in Search of an Actor". *European Foreign Affairs Review*, Vol. 5, Issue 3, 2000, pp. 359–376.

5 See the two documents at http://www.eeas.europa.eu/archives/docs/north_dim/docs/nd_political_declaration_2006_en.pdf and https://eeas.europa.eu/sites/eeas/files/northern_dimension_policy_framework_document_updated_28_05_2015.pdf

6 CATELLANI, N. "Outlining the Northern Dimension: toward regional cooperation in Northern Europe". *The European Union's Northern Dimension*, Rome, Laboratorio CeSPI, 2000, p. 17.

7 The main other areas of regional cooperation in the region are the following ones: The Council of Baltic Sea States, The Barents Euro-Arctic Council, the Nordic Council and the Arctic Council. The element that clearly differentiates these cooperation forums from that examined in this work is the presence and the incisive role that the European Union possesses within the Northern Dimension, with the exercise of skills and an area of cooperation that, only in the case of the ND, does it appear clearly in the Common Foreign and Security Policy of the EU.

8 See the EEAS action in the Northern Dimension at: https://eeas.europa.eu/diplomatic-network/northern-dimension/347/northern-dimension_en

realization of projects that involve investments and capitals of many stakeholders of the region in order to foster the economic development and the well-being of the local communities in the area.

In terms of EU Law, the competence of the Union falls within the Common Foreign and Security Policy[9] of the European Union, since it is a joint policy which involves the external relations of the European Union but which has nevertheless not seen the conclusion of an international treaty between the EU and third States. For what concerns the juridical nature of the ND, the EU does not exercise exclusive competence in drafting international agreements, as it has been observed, although it does exercise many shared competences (in this case social policies, environment and energy, based on art.4 TFEU) and supporting competences (such as the protection of human health and culture, as mentioned in art.6 of the same Treaty).

The ND activity is carried out through Ministerial Meetings;[10] Meetings of Senior Officials and a Steering Group (composed of representatives of the European Union, Iceland, Norway and the Russian Federation, set up at an expert level). The Northern Dimension Institute, the Northern Dimension Business Council and the Northern Dimension Parliamentary Forum[11] represent further field of this cooperation and enhance public participation in the ND. This contributes to create a project-based cooperation which gives an agile structure to this regional dimension, possibly open to the participation of other States too.

This explains and confirms what has been previously said about the multilevel approach of which the Northern Dimension's actions and cooperation areas are made up. In its nature as a *sui generis* international organization, the European Union establishes and develops a Northern Dimension joint policy in areas of shared interest with the other parties, while then delegating to the States the execution and launch of specific *ad hoc* projects in the matters of interest of the subject involved. It will therefore be the state concerned, or the private actor representing economic interests, to put this form of cooperation into practice in an economic partnership already started by the EU. The outcomes on which the ND operates are mainly attributable to three points: firstly, the single partnerships

[9] The CFSP is defined and implemented only by the European Council and the Council, and represented by the President of the European Council and by the High Representative of the Common Foreign and Security Policy together with the leading role of coordination of the EEAS in these matters.

[10] See the Joint Statement of The Third Ministerial Meeting of the Renewed Northern Dimension, Brussels, 18 February 2013, https://ec.europa.eu/commission/presscorner/detail/en/PRES_13_63

[11] The Sixth Northern Dimension Parliamentary Forum was held in in Bodø, on 19–20 November 2019. The Conference Statement is readable at https://www.stortinget.no/contentassets/54e5750d20674a978dd60789eef15633/conference-statement-sixth-northern-dimension-parliamentary-forum.pdf

aim to favor agreements in specific matters of cooperation in the long-term run, increasing confidence-building between public and private subjects involved in the area. As a second element, the ND can be an interesting model for building other regional experiences of similar composition and effectiveness, useful for regional groupings of States interested in establishing forms of agile partnerships as in this case. Finally, it is possible to affirm that this kind of cooperation can prove itself useful in the formation of legally binding behaviors between States which could lead to local customs: a very useful tool in international law to interpret agreements between present States in the region.

This work intends to focus precisely on those areas of cooperation concerning the protection of the environment, the wastewater treatment and the correct use of nuclear wastes coming from nuclear power plants of the region.

2. The Northern Dimension Environmental Partnership

The Northern Dimension countries share a geographical datum: in fact, they are all coastal states overlooking the Barents and the Baltic Sea.[12] The "pathological" element shared by Norway, Russia, Iceland and Finland is linked to the problem of pollution caused by poor wastewater treatment, insufficient energy efficiency measures and inadequate management of urban, agricultural and nuclear waste.[13] In this case, several rural and less developed local areas of the territory do not have the necessary resources to deal with these environmental problems. An example is the north-western area of the Russian Federation which needs a strategic partnership, also with European actors and with third states, to define new environmental projects in the area.[14]

The case of Northern Dimension Environmental Partnership (NDEP) precisely fits this topic, an environmental cooperation[15] inserted in the wake of the Northern Dimension that intends to promote international cooperation between governments, the European Union, private investors and European financial

[12] LANE, J. "In search of balance: Russia and the EU in the North". *Polar Geography* 34(3): 163–192, 2011, DOI: 10.1080/1088937X.2011.597886, p. 120.

[13] VÄYRYNEN, A. "The renewed Northern Dimension – Experiences and Expectations". *Seminar on the Renewed Northern Dimension and the Next Steps, Lappeenranta*, 2007, p. 3.

[14] CATELLANI, N., op. cit., p. 10.

[15] It is interesting to note that the cooperation on environmental matters has also been extended to Belarus, which belongs to the area of the Baltic Sea, although not being officially part of the Northern Dimension joint policy. In the area of nuclear safety, projects focus on the treatment of radioactive waste and the safe storage of spent nuclear fuel.

institutions in order to stimulate investments and create new economic opportunities for environmental projects. This logic of cooperation therefore intends to encourage the development of the territory thanks to a multi-level partnership that stimulates green investments, thus going to have positive externalities on environmental protection too.

Another characteristic of the territorial dimension on which the ND extends, is connected to the risk of nuclear wastes related to the use of Russian nuclear energy in the north-western area.[16] To this end, the NDEP promotes nuclear safety projects in close collaboration with the Russian authorities and international experts, with grants from the NDEP[17] which fully cover the investment funds.[18]

The projects relating to the NDEP are therefore linked to two main sections: on the one hand, the protection of the environment meant as the conservation of the marine ecosystem and natural resources in the area between the Baltic Sea and the Barents Sea, and another preventive approach linked to the use of nuclear energy in the area – especially on the Russian territory – aimed at preventing any kind of cross-border damage to neighboring states.

From an environmental and marine point of view it is worth underlining the richness of natural resources and marine biodiversity[19] both in rivers and seas of the territory and in forests that cover a large portion of the geography of the area. The recent phenomena of environmental degradation, mainly linked to climate change which shows its most evident effects especially in the Arctic area, raise numerous environmental problems in the Nordic region. The data linked to the increase of temperatures of the Baltic and the Barents Sea explain that these two

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[16] GODZIMIRSKI, J. "Russia's energy strategy and prospects for a Northern Dimension energy partnership". In: AALTO, P., BLAKKISRUD, B., SMITH, H. (ed.). T*he new northern dimension of the European neighborhood*, Centre for European Policy Studies, Brussels, 2008, pp. 145–163.

[17] "*The fund serves the Northern Dimension Area, covering north-west Europe from the Arctic and Sub-Arctic areas, including the Barents and White Seas, to the southern shores of the Baltic Sea. It includes all countries in this vicinity from north-west Russia in the east to Iceland in the west"*, from NCD Partnership website at http://ndcpartnership.org/funding-and-initiatives-navigator/northern-dimension-environmental-partnership-fund-ndep

[18] The NDEP, following its establishment in 2001, aims to coordinate funding for priority cross-border environmental projects in the ND area. This is in fact equipped with an NDEP support fund, launched by the initiative of international financial institutions, receiving contributions from the European Union, Belarus, Belgium, Canada, Denmark, Finland, France, Germany, the Netherlands, Norway, Russia, Sweden and UK. By 2016, a total of 348 million of euros had been allocated to the NDEP Support Fund, with 182 million earmarked for environmental projects and EUR 166 million for nuclear safety projects.

[19] *The Northern Dimension of Canada's Foreign Policy, Communications Bureau Department of Foreign Affairs and International Trad*e, Canada [online]. Available at: http://www.international.gc.ca and *Nuclear Wastes in the Arctic: An Analysis of Arctic and Other Regional Impacts from Soviet Nuclear Contamination*, Washington, DC: U.S. Government Printing Office, 1995, p. 115.

marine areas are particularly sensitive to environmental degradation and this is further aggravated by the low salinity and the shallow waters of the Baltic Sea, the latter being also threatened by eutrophication, which reduces oxygen in the water and damages the health of indigenous people of the territory, as well as the life biodiversity of fish, plants and animals.[20] Phosphorus and nitrogen from poorly treated wastewater and agricultural waste have led to excessive algae growth in seawater which deprives other living organisms of oxygen when it decomposes and produces marine dead zones. The Baltic Sea has changed over the years from a marine environment with clear waters to a sea with a growth of harmful algae[21] in large part. The narrow body of water in the Gulf of Finland – shared by Finland, Estonia and Russia – has been particularly affected. In the context of the NDEP plan of action, improving wastewater treatment is the central point of the environmental program. Project selection is based on the environmental effects of sources, if it has direct cross-border impacts and on local and regional priorities.[22]

The second line of action is instead linked to the treatment of nuclear waste. Spent nuclear fuel and radioactive waste in northwestern Russia present

[20] ANADÓN, R., DANOVARO, R., DIPPNER, J. W., DRINKWATER, K. F., HAWKINS, S. J., O'SULLIVAN, G., OGUZ, T., REID, P. C. Impacts of Climate Change on the European Marine and Coastal Environment. *Marine Board, Position Paper 9, European Space Foundation,* 2007, pp. 24–39; HOLT, J., SCHRUM, C., CANNABY, H., DAEWEL, U., ALLEN, I, ARTIOLI, Y., BOPP, L., BUTENSCHON, M., FACH, B. A., HARLE, J., PUSHPADAS, D., SALIHOGLU, B., WAK*, S.* Potential impacts of climate change on the primary productionof regional seas: A comparative analysis of five European seas. *Progress in Oceanography*, Volume 140, 2016, pp. 93 and 106; PUSHPADAS, D., UTE, D., SCHRUM, C. "Projected climate change impacts on North Sea and Baltic Sea: CMIP3 and CMIP5 model-based scenarios". *Biogeosciences Discussions.* 12(15), DOI: 10.5194/bgd-12-12229-2015, 2015.

[21] "The long-term effects of pulp mill chlorate on different algal species of the Baltic Sea were studied in land-based model ecosystems simulating the littoral zone. Brown algae (Phaeophyta) exhibited an extraordinarily high sensitivity to chlorate and pulp mill effluents containing chlorate. All brown algal species ceased growth or showed major signs of toxicity at all concentrations tested, down to microgram per litre levels". ROSEMARIN, A., LEHTINEN, L., NOTINI, M., MATTSON, J. Effects of pulp mill chlorate on baltic sea algae. *Environmental Pollution*, Volume 85, Issue 1, 1994, pp. 3–13.

[22] An example of cooperation in this field is the mining industry of Nickel Pechenga. The Nordic countries have been active in an attempt to reduce mining pollution in the Murmanskregion through inter-state cooperation in the region. The renovation project of Pechenganikel, a Norilsk Nikel branch that manages Cupron. Relaunched in 2005, the project is finally making progress in its environmental profile, which is likely to improve the state of the environment in the entire Murmansk region. See the contribution of SALMI, O., TYNKKYNEN, N. Environmental Governance in Russia: Changing Conditions for International Environmental Cooperation in the Case of the Murmansk Region Mining Industry and the St. Petersburg Water Sector. Submitted draft article, 2008 and SALMI, O. Eco-Efficiency and Industrial Symbiosis – A Counterfactual Analysis of a Mining Community. *Journal of Cleaner Production*, Vol. 15, No. 17, 2007, pp. 1696–05.

numerous environmental risks on an international scale. The Barents Sea area is the largest nuclear waste repository in the world,[23] with existing nuclear waste management facilities that appear completely used, determining consistent losses of radioactive material in the environment. The currentuly supported structures cannot cope with the huge task of dismantling the aging of the Soviet nuclear fleet and therefore efforts must be directed to radically improve the way in which accumulated waste is managed, as well as to facilitate the present and future decommissioning and the dismantling of nuclear-powered ships. As for nuclear non-proliferation of armaments, the size of the nuclear fleet has been reduced with 140 submarine support vessels and other equipment that have been withdrawn from service in the northwestern region of Russia.[24] The result is significant quantities of spent nuclear fuel and accumulation of radioactive waste in poor storage conditions in the region.

The nuclear partnership therefore aims to provide all the necessary tools to eliminate any risks – or damage – associated with cross-border pollution in the European scenario. This has become an important multilateral initiative for the management of nuclear waste in northwestern Russia. It focuses on the regions of the Kola Peninsula, Archangelsk and Murmansk,[25] which make up the largest nuclear waste repository in the world. NDEP's work also aims to provide expertise and cooperation with the International Atomic Energy Agency (IAEA).[26]

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[23] AMAP Assessment 2009, *Radioactivity in the Arctic*, p. 16; NYMAN, J. The Dirtiness of the Cold War: Russia's Nuclear Waste in the Arctic. 32 Envtl. Pol'y & L. 47, 2002, pp. 50–51; KIRCHNER, A. The Dumping of Radioactive Waste in the Arctic. *European Environmental Law Review*, Issue 2, 2000, p. 48; YABLOKOV, A. et al. Facts and Problems Related to the Dumping of Radioactive Waste in the Seas Surrounding the Territory of the Russian Federation. Commissioned by the President of the Russian Federation, 1992, Decree no. 613 (Greenpeace Russia trans., 1993); MELLOR, J. Radioactive Waste and Russia's Northern Fleet: Sinking the Principles of International Environmental Law. *Denver Journal of International Law and Policy*, n. 28, 1999, p. 59.

[24] MOLTZ, J. C. Russian Nuclear Submarine Dismantlement and the Naval Fuel Cycle, *The Nonproliferation Review*, n. 7, 2000; HANDLER, J. The lasting legacy: nuclear submarine disposal. In: *Jane's Navy International*, 1998, pp. 16–18.

[25] GODZIMIRSKI, J. op. cit., p. 156.

[26] There are several financial institutions operating in this environmental partnership, among which the most significant are represented by the European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB), the Nordic Investment Bank (NIB) and the Nordic Environment Finance Corporation (NEFCO). The Northern Dimension Environmental Partnership concept was approved at the EU summit in Gothenburg in 2001 with the establishment of a Steering Group. The Steering Group addresses the preparation of projects as many times as necessary, once or twice a year, in preparation of the Assembly of Contributors. The NDEP Assembly of Contributors is the governing body that chairs the NDEP Support Fund responsible for the general policy of the Fund and for the decision on the awarding of grants. The participants in the Fund constitute the members of the Assembly and the international financial

In this context, the European Bank for Reconstruction and Development, with the Bodø Declaration of March 1999, launched a process to create a multilateral legal framework that would set the conditions under which all the countries concerned could aid the Russian Federation on nuclear-related activities. The Multilateral Nuclear Environmental Program in the Russian Federation (MNEPR) was signed on May 21, 2003 by western donors and the Russian Federation and created an official framework to address the most important legal issues associated with western assistance in the Russian Federation, in particular the access to sites, tax exemption and liability. The completion of the MNEPR agreement was a precondition for the conclusion of NDEP grant agreements for nuclear waste projects under the Northern Dimension environmental partnership.[27]

NDEP's work saw a renewal of skills and strengthening of its projects when the European Union, Russia, Iceland and Norway adopted the new political framework and the political declaration for the Northern Dimension[28] for a permanent dimension of joint cooperation in the European high-north in 2006. In fact, the documents note the work of the NDEP, together with the EBRD mandate, as virtuous mechanisms and correct example of environmental protection, as well as an effective cooperation model to attract investments in the green and blue economy in the region.

3. The NDEP contribution to prevent international litigation on environmental issues

So far, the role of the economic partnership within the Northern Dimension has been seen as an instrument which, although not having legally binding obligations

institutions participate in the meetings of the Assembly as observers. The EBRD is responsible for the administration of the fund. This establishes a set of principles and a program of potential nuclear projects, building on the extensive experience of the International Atomic Energy Agency (IAEA) contact expert group in collaboration with Russian authorities, including the Federal Atomic Energy Agency (Rosatom).

[27] Cooperation on nuclear waste is significantly more complex due to numerous factors: uncertainty about the future ownership of the structure, changes in the composition of the project participants, a multitude of donors, Russian suspicion of the chemical-biological treatment process designed by European partners, the lack of common understanding and an insufficient cost estimate. An example is the project concerning the hazardous waste facility Krasnyi Bor. See TYNKKYNEN, N. Experiences of environmental cooperation between the nordic countries and Russia: lessons learned and the way forward. In: AALTO, P., BLAKKISRUD, B., SMITH, H. (ed.). *The new northern dimension of the European neighborhood.* Centre for European Policy Studies, Brussels, 2008, pp. 71–91.

[28] See note n. 5 above.

well defined by the States, enhance international cooperation in environmental matters. This occurs in a particularly interesting way, as it provides not only an involvement of local communities in order to strenghten environmental development projects in the region, but also thanks to the cooperation between governments and private financiers who develop economic policies with positive externalities in the area.

Among the best practices of the ND, it is worth mentioning the preventive approach, which intends to enhance that set of internationally binding actions or behaviors aimed at preventing certain activities deemed dangerous or likely to cause an environmental damage.

In this case, the example of cooperation within the NDEP for nuclear waste appears to be of fundamental importance from an international perspective. Indeed, the Russian Federation is not part of the 1960 Paris Convention on Third Party Liability in the Field of Nuclear Energy and the 1963 Protocol and is has only signed the Vienna Convention on Civil Liability for Environmental Damage of 1963 without never ratifying it. The role of the International Atomic Energy Agency (IAEA) becomes fundamental, which, in the context of the 1994 Convention on Nuclear Safety, acts as a monitoring agent for Nuclear safety. The role of the NDEP is aimed at strengthening the mandate of the IAEA,[29] thanks to partnership and investment policies which, through the creation of soft-instruments, aim to encourage Russian waste control and monitoring activities and to cooperate with States in order to prevent any cross-border prejudice that could give rise to international disputes with the Russian Federation.[30] The role of the NDEP therefore goes alongside the legally binding instruments that already exist on the international level: in fact, it promotes multilevel policies that manage to be more incisive thanks to a local application – in full compliance with a subsidiary principle – of the binding rules of environmental protection in the field of international law.

Having reviewed the legal framework governing the work of the NDEP in its global projection, it is now necessary to dwell on the analysis of the partnership in the sphere of environmental protection and its legal bases in international law. Most of the projects currently implemented thanks to NDEP concern wastewater treatment and actions aimed at avoiding cross-border damage through the marine space that the Northern Dimension States share. In fact, it has been seen that the NDEP applies in the geographical area that includes the Baltic Sea and the Barents Sea, together with the sub-arctic areas of the territory.

[29] JANKOWITSCH, O., TONHAUSER, W. "Convention on Nuclear Safety". *Austrian Review of International and European Law*, Vol. 2, Issue 3 (1997), pp. 319–340.

[30] CARROLL, S. "Transboundary Impacts of Nuclear Accidents: Are the Interests of Non-Nuclear States Adequately Addressed by International Nuclear Safety Instruments". 5 Rev. Eur. Comp. & Int'l Envtl. L. 205, 1996, pp. 205–206.

Firstly, it is appropriate to mention the international rule that establishes the obligation to preserve the marine environment and to take all the necessary measures to prevent, reduce and control pollution of the marine environment.[31] In this case the *lex generalis* is to be found in the United Nations Convention on International Law of the Sea (UNCLOS) which, in art.192 of Part XII establishes the obligation to preserve the marine environment and in art.194 the need to adopt all measures to control the pollution of the marine environment, deriving from any source. Last but not least, UNCLOS in art. 197 also establishes the obligation of cooperation through international organizations of a regional nature with the aim of developing *ad hoc* rules for the protection of the marine environment.[32]

In order to incardinate the work of the NDEP in the logic of international environmental law, there are three key-conventions that govern and set the rules for environmental cooperation in the sector of the treatment of marine spaces and wastewater: the Convention on the Protection and Use of Transboundary Watercourses and International Lakes adopted in 1992 in Helsinki (hereinafter the Water Convention); the Convention on the Law of the Non-navigational Uses of International Watercourses of 1997 and, to a complementary extent, the Convention on Environmental Impact Assessment in a Transboundary Context of 1991.

The Water Convention is undoubtedly the legal element in which the need for international cooperation is declared in order to prevent a transboundary impact of any environmental damage. Article 3, para 1(g) states that *"appropriate measures and best environmental practices are developed and implemented*

[31] With regard to the methods of protecting the marine environment, it is interesting to note that that the agreements concluded after the 1972 Stockholm Conference are characterized by no longer considering the marine environment and its pollution as the subject of synallagmatic relations between States, that is, as an object of strictly reciprocal individual rights and obligations, but there is a general interest of the international community in the protection of the marine environment as such. These agreements therefore define the role of agent *uti universus* towards any other State that has polluted the marine environment. Conversely, it follows the erga omnes obligation to protect the marine environment for all States in the international community. In these terms, see LEANZA, U., CARACCIOLO, I. "Il diritto Internazionale: Diritto per gli Stati e Diritto per gli Individui – Parti Speciali". Turin, Giappichelli Editore, 2010, pp. 377–380.

[32] In this regard, the Convention invites the parties to create agreements and texts of a conventional nature that have a clear regional vocation in the protection of the marine environment, precisely in order to better outline the characteristics of the marine ecosystem that is intended to be protected. In the case of the Northern European area, the conventional text is represented by the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area of 1992.The aim of the States-Parties to the Convention is to prevent and eliminate pollution of the marine environment of the Baltic Sea Area caused by harmful, toxic and dangerous substances from land-based sources; from ships; from incineration and dumping; from exploration and exploitation on the seabed.

for the reduction of inputs of nutrients and hazardous substances from diffuse sources, [...] (guidelines for developing best environmental practices are given in annex II to this Convention)".[33] Best environmental practices are appropriate combinations of measures that lead to the minimization or elimination of the main sources of pollution in marine spaces. The concept implies the combinations of measures that will reduce harmful emissions as well as the introduction of dangerous substances in the most cost-efficient way,[34] and considering the influence of the time scale in the assessment of ecological effects. These practices are therefore conditioned by a deepening of international scientific cooperation in order to develop projects and partnerships aimed at reducing the impact of human activities on the environment. The application of best environmental practices should logically not result in any increase in pollution in other parts of the environment which do not concern the marine space, nor an increase in the risk to human health or biological resources of cross-border countries.

Article 9(2), takes up the theme of cooperation insisting in a logic of Joint Bodies in order, *inter alia*, to develop concerted action programs for the reduction of pollution loads from both point sources (municipal and industrial sources) and diffuse sources (particularly from agriculture). The same article lists the tasks that must be performed by a joint body. Through this provision, the Convention aims to promote substantial compatibility between the different institutional cooperation mechanisms within its legal framework. However, it is logical that the Riparian States can freely decide, on the basis of their priority and needs, which forms of cooperation or joint bodies to establish and which competences to confer with the body. It implies the possibility of modifying the functions and powers of a common body over time or of assigning further tasks, exactly as in the case of the Northern Dimension Environmental Partnership, that is a continuously expansive joint policy, especially when it comes to considering the environmental projects that have been approved in the recent years. [35]

The Convention on the Law of the Non-navigational Uses of International Watercourses enforces what has been said by the Water Convention, while referring in art. 21(2)-(3) to a cooperation that provides for a harmonization of scientific knowledge and the development of policies aimed at reducing

[33] Convention on the Protection and Use of Transboundary Watercourses and International Lakes as amended, along with decision VI/3 clarifying the accession procedure, adopted 1992 and entered into force in 1996.

[34] *Guide to Implementing the Water Convention*, United nations economic commission for Europe-Convention on the Protection and Use of Transboundary Watercourses and International Lakes, ECE/MP.WAT/39, 2013, pp. 50–55.

[35] The on-going projects and the joint bodies who manage the environmental cooperation in the field of the NDEP can be seen at https://ndep.org/projects/#environmental

and controlling the pollution of watercourses.[36] The article takes up the ban on cross-border pollution, a customary environmental rule[37] that defines that the State, although having full sovereignty over its territory, and the right to freely dispose of the natural resources present therein, must not compromise the possibilities of other states to exercise the same rights.

In connection with the ban on cross-border pollution, it is important to take into account in the Convention also the reference to the concept of *due diligence*, relevant principle of international environmental law. Its legal basis in the Convention can be found in letter (*b*) and (*c*) of art. 21(3), the obligation to *"establish techniques and practices to address pollution from point and non-point sources; and to define lists of substances the introduction of which into the waters of an international watercourse is to be prohibited, limited, investigated or monitored"*. These positive actions constitute the basic nucleus on which the *due diligence* obligation in international law is based,[38] and therefore in the attitude of diligence adopted by the State in preventing the risk of ecological damage, through measures that tend to eliminate or mitigate any harmful action. In this case, the attitude put in place by the Northern Dimension Environmental Partnership intends to offer the member States of the joint policy the execution of positive obligations, aimed at affirming diligent behavior implemented by each State in the region. The particularity in the execution of this obligation, within the framework of the NDEP, is given by a cooperation that starting from the economic and investment sector has environmental consequences in the environmental field, by providing tools of knowledge and information exchange that directly answer to the due diligence approach established by environmental law.

Finally, the Convention on Environmental Impact Assessment in a Transboundary Context helps to analyze NDEP as a particularly interesting form of cooperation in the framework of international environmental law and the application of its principles in the European scenario. In fact, the agreement[39] refers to

[36] Convention on the Law of the Non-navigational Uses of International Watercourses Adopted by the General Assembly of the United Nations on 21 May 1997.

[37] The ban on cross-border pollution finds its first application in the sentence of 11 march 1941 by an Arbitral Tribunal instituted to resolve a dispute between the United States and Canada regarding *Trail smelter case*, see *Reports of International Arbitral Awards, Trail smelter case (*United States, Canada), 16 april 1938 and 11 march 1941. Regarding the principle of cross-border pollution, see also a sentence of the ICJ, Corfù channel (United Kingdom of Great Britain and Northern Ireland v. Albania) of 1949, and the Advisory Opinion of 1996 about *Legality of the threat or use of nuclear weapons*.

[38] On this principle in the field of international environmental law, see YOTOVA, R. "The principles of due diligence and prevention in international environmental law". *Cambridge Law Journal*, 75(3), 2016, 445–448.

[39] Convention on Environmental Impact Assessment in a Transboundary Context, approved in February 1991, entered into force in September 1997.

the Environmental Impact Assessment as a concrete indication of the diligence used by the State, through an administrative procedure mechanism capable of identifying any negative repercussions that could result to the environment from the execution of a given activity. The Convention is particularly interesting to analyze in the light of the NDEP, because despite having the Environmental Impact Assessment (EIA) as its central element – which is part of a logic of internal law with a clear administrative component – it translates the national obligation on an international scale, considering the connection between the EIA and the cross-border context. The Convention in art. 2(6) establishes the obligation on States to *"provide, in accordance with the provisions of this Convention, an opportunity to the public in the areas likely to be affected to participate in relevant environmental impact assessment procedures regarding proposed activities and [...] ensure that the opportunity provided to the public of the affected Party is equivalent to that provided to the public of the Party of origin"*.

In this case, the environmental impact assessment is the result not only of an endogenous process of the national system, but is an administrative procedure that develops and improves over time thanks to a constant and gradual cooperation between the State entity and third parties, through a transfer of knowledge and expertise of other private and public entities that contribute to providing a multi-level partnership policy in the execution of the EIA.

4. Conclusions

The article wanted to focus on the Northern Dimension Environmental Partnership as a structure which, in the context of the joint policy headed by the Northern Dimension, constitutes a rare example for structure and composition in the international system and represents a virtuous example in the environmental cooperation. Its hybrid structure, free from legally established agreements or obligations, albeit institutionalized through the role of joint bodies that coordinate the activities and projects of the NDEP, places it as a case which favors the development of a cooperation capable of involving both public and private actors in the northern region, establishing an effective instrument of environmental cooperation between the Member States of the European Union and the neighboring ones such as Russia, Iceland and Norway. The international regulatory framework therefore contributes to fill a single apparent gap of the Northern Dimension, namely the absence of an established regional organization, by making use of the development of multi-level cooperation instruments that in the European framework also strengthen and stimulate the exchange of good practices and the green economy in the area. It follows that, if an environmental

partnership is implemented within the Northern Dimension, the ability of states to act in full compliance with the international environmental rules becomes an opportunity to deepen many partnerships in areas that constitute a very particular case in the existing environmental cooperation framework.

This cooperation encourages both negative obligations, as in the case of the ban on cross-border pollution, and positive conducts that the State must put in place, as seen through the due diligence and the environmental impact assessment that primarily concern a preventive approach in avoiding to cause an environmental damage to another State. The EIA was considered as a process which, although linked to an internal evaluation mechanism capable of identifying the possible negative effects that a human activity could have on the environment, follows an international path too, thanks to capacity of sharing best practices that validate and give meaning to a *sui generis* cooperation such as that of the NDEP. To conclude, it is precisely this structure of multi-level cooperation and the creation of regional development mechanism that responds effectively to new environmental challenges, possible ecological risks and their repercussions on international scale. The new challenges of international law relate precisely to the ability to understand how the concept of cooperation between States is evolving over time, providing also for the inclusion of new subjects in the context of sustainable development policies. In fact, even though considering the role of primary subjects of the international communities (namely the States) as crucial, this does not exhaust them in achieving results with the necessary inclusion of new actors and subjects for the realization of these objectives. The Sustainable Development Goals launched by the United Nations in 2015 precisely aim, in the 17 points listed, to understand how the complex problems of the current world can find their resolution only through regional systems, thanks to a local development that must include the involvement of cooperation mechanisms, such as joint policies, which are measured according to the circumstances and needs of the territory considered. The fragility and uniqueness of the Northern European ecosystem has in fact led States, together with the European Union, to develop several specific projects that start from this new perspective of sustainable development. The Northern Dimension Environmental Partnership has *in nuce* possibilities with specific characteristics able to enforce concretely the cooperation, even not limited to the environmental field, in the Northern European scenario.

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