

ROMANIA * THE MINISTRY OF FOREIGN AFFAIRS

**TO THE AARHUS CONVENTION SECRETARIAT
UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE
ENVIRONMENT AND HUMAN SETTLEMENTS DIVISION**

**Mr. JEREMY WATES
SECRETARY**

**Palais des Nations 8-14, Avenue de la Paix-1211, Geneve 10
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Dear Mr. Secretary,

I have the honor to write to you referring to an issue of general European interest - the project developed by Ukraine to build a deep navigation canal through Bystroe Estuary, a project likely to damage the flora and fauna species, their natural habitats and the water flow regime in the Biosphere Reserve of the Danube Delta. As you know, this area is under the special protection of UNESCO and RAMSAR CONVENTION as a part of the world natural heritage.

As you might have already been informed, the works started on the 11th of May 2004 and are being carried out on a daily basis.

These developments lead to various recommendations and negative reactions of the international community, among which a Report released in October 2003 by a joint RAMSAR-UNESCO Mission in the Ukrainian Danube Delta, that established that the choice of the Bystroe branch for the construction of the waterway represented the worst solution among other possible alternatives and requested that a comprehensive environmental impact assessment of the project be conducted.

According to statements of Ukrainian officials, the main objective of the project - constructed by the German company "Josef Mobius Bau Aktiengesellschaft" - is to provide an alternative navigation route to the canals of Sulina and Danube-Black Sea (Cernavoda-Constantza), both of which are located on Romanian territory. Experts counter that the two above-mentioned canals are more than sufficient for traffic in the Danube Delta region.

With two nearby canals functioning in compliance with international law, construction of the Bystroe Navigation Canal would be environmentally disruptive and destructive.

According to assessments conducted by European experts in water management, the construction plans of the deep navigation canal, as endorsed by Ukraine, will lead to an artificial and thus more aggressive water flow, impacting heavily on the Chilia's Secondary Delta, as well as on the Danube Delta in its entirety.

Expert inventories have noted approximately 4000 species of plants and birds in the region of the Bystroe Estuary; some of them can be founded only in the Danube Delta. Additionally, the Bystroe Estuary hosts the annual migration of 95% of the Danube Shad (*Alosa Ponticus*) population.

The transformation of the channel into a navigation canal will entail a process of embankment construction (for the purpose of restraining waters), followed by periodic dredging to eliminate alluvial deposits. Such works will disrupt the ecological equilibrium of the region and will plummet fish and bird populations not only of the Estuary, but of the neighbouring areas as well, the Danube Delta Biosphere Reserve (under UNESCO recognition) being one of them. It should be stressed that

the Danube Delta is one interlinked ecosystem, whose vitality and future depends on its biodiversity, and thus, sound management. Decisions and subsequent actions of the Ukrainian government will extend beyond national boundaries. Rivers, after all, know no political borders.

The Bystroe canal will, in fact, transect the Danube Delta Biosphere Reserve, and its extension will require a marked reduction in size of the Reserve.

In reaction to the Ukrainian project development, several demarches were undertaken by the Romanian Ministry of Foreign Affairs before and after the formally launching of the construction. We have sent more than 12 Verbal Notes to the Ukrainian Side asking for information and consultation on this issue, but no answer was received up to now. *Our request was made under the provisions of the Agreement between the Government of Romania and the Government of Ukraine on the cooperation in the management of border waters* (Galatzi, 30 September 1997).

Under Article 2 (Objectives and Principles of the Cooperation), paragraph 3, "*None of the parties may carry out on its territory, without prior consultation, any work which might modify the flow or the quality standards of the border waters*". As well, under Article 4 of this Agreement, the obligation to inform the other party about the projects which might have a negative impact in the territory of the other contracting state is stipulated in a similar way as that existing under other multilateral legal instruments. Thus, the party planning to take actions that might have negative consequences in the territory of the other contracting state has the obligation to **notify about its intentions the other contracting states**, to transmit all data on the planned actions and to offer the possibility of the other contracting state to participate to the assessment of the impact of such actions on the border waters.

Demarches to the Ukrainian authorities have also been undertaken by other Governments (Germany and United States of America), *so far with no success to our knowledge*.

The International Commission for the Protection of the Danube River (ICPDR), which was created under the auspices of the 1994 Sofia Convention on Cooperation for the Protection and Sustainable Use of the Danube River, adopted a Resolution on the Bystroe issue at its 6th Ordinary Meeting (Vienna, Austria, 1st-2nd December 2003). The Resolution outlines the ICPDR's recognition of, and concerns regarding the construction plans for the Bystroe Canal. The Resolution obliges the ICPDR President to write a letter to the Government of Ukraine requesting information about the canal project and expressing concerns related to possible environmental impact of the project, concerns shared by other international bodies devoted to Danube and Black Sea water management (Black Sea Commission, Ramsar Secretariat, UNESCO MaB and European Commission). The letter was sent to the Ukrainian Government but no answer was received up to now by the ICPDR.

A lot of demarches were made as well by environmental NGOs. For example, the World Wildlife Fund has been especially active in involving the international community in coming to terms with the reality of the canal's impact on the region and its inhabitants. Additionally, the Danube Environmental Forum (DEF) drafted at its General Assembly (Obrenovac, Serbia & Montenegro, 27th-28th November 2003) a "Bystroe Statement", recommending to the Ukrainian authorities that all canal construction presently underway be halted until a complete and independent environmental impact assessment of transboundary magnitude is conducted, and adequate participation of all interested and affected parties, namely NGOs, relevant stakeholders and the general public basin-wide, is guaranteed. Disregarding environmental impact assessments, the Ukrainian authorities are promoting the Bystroe Canal, specifying the project as an opportunity for social and economic development in the region, creating jobs for locals, and for encouraging trade in the region.

Finally, it is to be mentioned that Ukraine's Bystroe Canal project does not comply with several bilateral agreements and multilateral conventions, as mentioned in the annexed list. You may also find enclosed to this letter a more comprehensive study regarding the Bystroe issue.

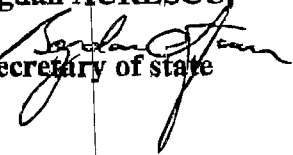
The Bystroe Canal project contravenes also to the provisions of the article 6 ("Public participation in decisions on specific activities") of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, done at Aarhus, on 25 June 1998.

In this respect, I would only like to remind the infringement by Ukraine of the paragraph 2 (e) of the above-mentioned article, according to which the public affected by the Ukrainian project should have been informed, either by public notice or individually as appropriate, early in the environmental decision-making procedure about the fact that the construction of the Bystroe Canal is subject to a national and transboundary environmental impact assessment procedure.

Taking into account all these elements, as well as the failure of the Ukrainian side to comply with the provisions of the said international documents, on behalf of the Government of Romania, I have the honor to kindly ask for the support of the Aarhus Convention Secretariat in this respect. The Romanian Government is confident that an active involvement of the Aarhus Convention Secretariat, according to its interest, would contribute to the solution of this issue in full respect of international law.

Please, accept, dear Mr. Secretary the assurances of my highest consideration,

Bogdan AURESCU,


Secretary of state

Building by Ukraine of a Navigation Canal on the Chilia Arm of the Danube River

I. Facts

1. According to information having as the main source the Ukrainian media, on Tuesday 11 May 2004 the Ukrainian Government has formally launched a project aiming at the **adjustment for navigation of the channel Bystroe on the Chilia Arm of the Danube - an inland watercourse** belonging to Ukraine, situated in the Danube Delta, **within the Ukrainian Natural Reservation of Danube**.

The construction of the canal is undertaken by the German company "Josef Mobius Bau Aktiengesellschaft".

The channel begins from a point on the Romanian-Ukrainian river border, situated upstream the junction of the Chilia Arm with the Musura Arm and flows into the Black Sea to the North of the common border.

2. It is to be mentioned that the navigation on the Sulina arm of the Danube, as on the entire river, is regulated by the 1948 Belgrade Convention on the Legal Regime of Navigation on the Danube, that defines the navigable Danube as a river open to free navigation (*"the Danube between Kellheim and Sulina, on the Sulina arm of the Danube"*). Therefore, the navigation on this arm of the Danube situated in the Danube Delta is being organized in full respect of the International Law. Furthermore, Romania underlines that Sulina is the only arm from the Danube Delta subject to the provisions of the 1948 Belgrade Convention.

As far as Cernavoda-Constantza canal is concerned, this is situated far to the South of the Danube Delta, its legal regime being that of Romanian inland waterway.

3. **By now, despite all demarches, the Ukrainian authorities did not respect their obligations of information and consultation regarding this project with possible substantive negative impact on the Danube Delta, as set forth by the applicable international legal instruments.**

II. The consequences of the project on the Bystroe canal as to the Danube Delta's ecosystem

4. According to preliminary assessments of the Ministry of Environment and Water Management of Romania, based on unofficial data, the Ukrainian project concerning the deep navigation canal on the channel Bystroe (*"Stambulul Nou"*) will start a **more active process of water flow**, which will entail consequences on the Chilia Secondary Delta, as well as on the Danube Delta as a whole.

There are about **4000 species of plants and birds** in the region of the Bystroe channel, some of which found in the Danube Delta only. Also, the Bystroe channel is the place of breeding migration for **95 percent of the Danube shad (*Alosa Ponticus*) population of the Danube**. The artificial adjustment of the channel through the building of a navigation canal implies embankments to restrain waters, followed by dredges to eliminate the alluvia. **These works will affect the ecological equilibrium of those waters and will cause significant losses of fish and birds**, on the channel itself, as well as in the neighbouring areas, including those in the territory of Romania where the Danube Delta Biosphere Reservation was established in 1993. It should be stressed **that the Danube Delta is a single ecosystem, protected by UNESCO as a component of the world natural heritage and the damage inflicted to its Ukrainian side endangers the system as a whole**. The area in which the Ukrainian authorities are building the navigation canal is situated within the part of the Danube Delta which due to its natural characteristics is included in the

Danube's Biosphere Reservation, as set forth by the Ukrainian domestic legislation. Thus, the size of the reservation has to substantially be reduced for the concrete works to start.

A more comprehensive assessment regarding the possible impact of the Bystroe Canal building on the environment is presented in the annex 1, based on unofficial information because no official information was received up to now from the Ukrainian authorities.

III. Demarches in reaction to the Ukrainian project development

5. In reaction to the Ukrainian project development, several demarches were made by the **Romanian Ministry of Foreign Affairs and Romanian Ministry of Environment and Water Management** before and after the formally launching of the canal:

- **12 Diplomatic Notes** addressed by Romanian Ministry of Foreign Affairs to the Ukrainian Side asking for information and consultation on this issue, but **no concrete answer was received up to now and no consultations took place**. *Romanian request was made under the provisions of the Agreement between the Government of Romania and the Government of Ukraine on the cooperation in the management of border waters (Galatzi, 30 September 1997)*. Under Article 2 (Objectives and Principles of the Cooperation), paragraph 3, "*None of the parties may carry out on its territory, without prior consultation, any work which might modify the flow or the quality standards of the border waters*". As well, under Article 4 of this Agreement, the obligation to inform the other party about the projects which might have a negative impact in the territory of the other contracting state is stipulated in a similar way as that existing under other multilateral legal instruments. Thus, the party planning to take actions that might have negative consequences in the territory of the other contracting state has the obligation to notify about its intentions the other contracting state and to transmit all data on the planned actions and to offer the possibility of the other contracting state to participate to the assessment of the impact of such actions on the border waters.

- In June 2003, in Kiev, at the European Conference of the Environment Ministries the **Governor of the "Danube Delta" Biosphere Reservation has requested the accomplishment of an impact assessment study from the biodiversity, hydrological, social and economic point of view**. This requirement has also been supported by the General Director of WWF, Claude Martin.

- In October 2003 the Common Mission of Ramsar Convention on Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar 1971) and of the Programme "Man and Biosphere" – MAB UNESCO has also asked the environmental impact study for the canal project. The fact has been reflected in the Report of the Permanent Committee of the Ramsar Convention in 2004. **The Romanian Governor of the Danube Delta" Biosphere Reservation has insisted to be realized the environmental impact study**.

- **Within the III rd Session of the Authorized Authorities for the implementation of the Romanian-Ukrainean Agreement on cooperation in the field of transboundary waters management** (November 4-7, 2003 in Piatra Neamt), **the Romanian Party has invited the Executive Secretary of the ICPDR (International Commission for Danube Protection) to participate in the meeting**. Within this framework, informal discussion took place regarding the construction of a navigation canal on the Bastroe Branch. **The Romanian Party requested the technical documentation of this project. The Ukrainian Party answered that there are 6 alternatives for carrying out this project, and the final alternative had not yet been chosen**. After internal approval of the final alternative by the Ukrainian Party, **this alternative would be transmitted also to the Romanian Party but it was never done**.

- As a result of the request of the Head of the Romanian delegation to the ICPDR, at the beginning of 2004, **the Executive Secretary of ICPDR has informed the Ukrainian**

Party about the damages that the construction of the Bystroe Canal might cause to the Danube Delta.

- On the 12th of May, 2004 Romanian Ministry of Environment and Waters Management has sent a letter to the Committee of State of Ukraine for Water Management in which it was asked, in compliance with art.2 and art.4 of the Bilateral Agreement between the Ukrainian Government and Romanian Government on Cooperation in the Field of Transboundary Waters Management to be informed and consulted regarding the Bystroe project and to receive data on the planned measures.

- On May 2004, after the formally launching of the canal construction, the Ministry of Foreign Affairs of Romania and the Romanian Ministry of Environment and Waters Management have sent letters to the Secretary of the Espoo Convention in order to be submitted to the Implementation Committee of this Convention, for consideration. The content of the letters expressed the fact that Romania has requested to be notified by Ukraine on the proposed project to be constructed in the Ukrainian Danube Delta. In this respect, a recommendation from the Implementation Committee has been requested.

The Bystroe issue was formally raised by the head of the Romanian delegation at the Third Meeting of the Parties to the Espoo Convention (Cavtat, Croatia, 1- 4 June 2004). On this occasion, during the plenary session, the Secretary of the Convention has asked the Implementation Committee to take the appropriate measures in this case.

- Letters on Bystroe matter were sent by the Romanian Prime-Minister, Mr. Adrian Nastase to the Ukrainian Prime-Minister, Mr. Viktor Yanukovici, to the President of the European Commission, Mr. Romano Prodi, to the European Commissioner for Enlargement, Mr. Gunter Verheugen, to the Commissioner for the Environment of the European Commission, Mrs. Margot Wallstrom, to the Prime-Minister of the Republic of Ireland, Mr. Bertie Ahren

- Other letters in this respect were also sent by the Ministry of Foreign Affairs to the Ramsar Secretariat, UNESCO MAB Programme and to the Standing Committee of the Bern Convention.

- In March-April 2004 the Romanian Parliamentary delegation to the Parliamentary Assembly of the Council of Europe proposed a draft resolution on the Bystroe canal which was signed by many other delegations.

- At the beginning of May 2004, the Governor of the "Danube Delta" Biosphere Reservation has asked the Secretariat of the Ramsar Convention, the Secretariat of the Programme "Man and Biosphere" - MAB UNESCO and to the Centre for World Heritage - UNESCO (the Danube Delta Biosphere Reservation- Romania, as well as Danube Biosphere Reservation- Ukraine are falling under the provisions of the 3 conventions above mentioned) to support the Romanian request regarding the accomplishment of the environmental impact study and to respect the provisions of these legal instruments. Subsequently, the international conventions have addressed to the Ukrainian authorities and to the President of the Ukraine.

- During some rounds of bilateral negotiations of the Agreement concerning the delimitation of the maritime zones of Romania and Ukraine in the Black Sea (e.g. Braila, Romania, 14th of April 2004), the Romanian delegation asked for information and consultation but no answer was received up to now in this respect even during those meetings the Ukrainian Side has apparently showed preoccupation for the Bystroe matter.

- During 6th -10th of May 2004, Mr.Herve Lethier, expert of the Council of Europe, has expertised the "Danube Delta" Biosphere Reservation- Romania and with this occasion he has requested that the Governor of the "Danube Delta" Biosphere Reservation to be a member of the common mission that will visit Ukraine in the second half of June 2004. The mission will be composed by the representatives of the Ramsar Convention, of the MAB Programme and of Council of Europe. The Governor of the "Danube Delta" Biosphere Reservation will represent, within this mission, the Ramsar Convention.

- The Bystroe issue was also approached by the Romanian and Ukrainian President, Mr. Ion Iliescu and Mr. Leonid Kucima during the 11th Summit of the Heads of States from the Central Europe, held in Mamaia, Romania, between 27th and 28th of May 2004.

Demarches to the Ukrainian authorities have also been undertaken by other Governments (Germany and United States of America), so far with no success to our knowledge.

6. **The International Commission for the Protection of the Danube River (ICPDR), created under the auspices of the 1994 Sofia Convention on Cooperation for the Protection and Sustainable Use of the Danube River, adopted a Resolution on the Bystroe issue at its 6th Ordinary Meeting (Vienna, Austria, 1st-2nd of December 2003). The Resolution outlines the ICPDR's recognition of, and concerns regarding the construction plans for the Bystroe Canal. According to the Resolution, the ICPDR President wrote a letter to the Government of the Ukraine requesting information about the canal project and expressing concerns related to possible environmental assessments of the project, concerns shared by other international bodies devoted to Danube and Black Sea water management (Black Sea Commission, Ramsar Secretariat, UNESCO MaB and European Commission).**

ICPDR asked also for an impact assessment of the Bystroe Canal construction but up to now no answer was received from the Ukrainian Government.

A lot of demarches were made as well as by environmental NGOs. For example, the World Wildlife Fund has been especially active in involving the international community in coming to terms with the reality of the Canal's impact on the region and its inhabitants. Additionally, the Danube Environmental Forum (DEF) drafted at its General Assembly (Obrenovac, Serbia & Montenegro, 27th-28th November 2003) a "Bystroe Statement", recommending to Ukrainian authorities that all canal construction presently underway be halted until a complete and independent environmental impact assessment of transboundary magnitude is conducted, and adequate participation of all interested and affected parties, namely NGOs, relevant stakeholders and the general public basin-wide, is guaranteed. Disregarding environmental impact assessments, Ukrainian authorities are promoting the Bystroye Canal, specifying the project as an opportunity for social and economic development in the region, creating jobs for locals, and for encouraging trade in the region.

It is worth mentioning that the Report released in October 2003 by the Ramsar-UNESCO Mission in the Ukrainian Danube Delta, signaled that the choice of the Bystroe branch for the construction of the waterway represent worst solution and a request was made for a comprehensive environmental impact assessment, which was never made.

Finally, it is to be mentioned that Ukraine's Bystroe Canal project contravenes several bilateral agreements and multilateral conventions as are mentioned in the annexed list.

III. Multilateral and bilateral regulations in the field of environmental protection relevant to the Bystroye channel

Several international legal multilateral instruments are applicable to the Bystroye issue, such as:

1. *The Convention on the Conservation of European Wildlife and Natural Habitats (Bern, 19.09.1979)* to which Ukraine is a Contracting Party stipulate that its aims are to conserve wild flora and fauna and their natural habitats, especially those species and habitats whose conservation requires the co-operation of several States, and to promote such co-operation. Particular emphasis is given to endangered and vulnerable species, including endangered and vulnerable migratory species.

According to the provisions of Article 4 of the Convention, the Contracting Parties undertake to co-ordinate as appropriate their efforts for the protection of the natural habitats when these are situated in frontier areas.

Building the Bystroye Channel, Ukraine may cause serious damages to the wild flora and fauna species located in the Danube Delta ecosystem, producing a deliberate disturbance, damage and destruction of these species, actions strictly prohibited according to the Bern Convention.

At the same time, according to the article 11, the Contracting Parties (including Ukraine) undertake to co-operate in carrying out the provisions of the Convention.

2. *The Convention on the Wetlands of International Importance, especially as Waterflow Habitat (Ramsar, 1971)*, which has as a goal the conservation of wetlands, of their fauna and flora which serve as a habitat for waterfowls.

Under this Convention, Ukraine has listed 22 such wetlands, among which the Bystroye channel area, where the Ukrainian authorities intend to build the canal disregarding that this area enjoys a regime of integrated protection (in the similar zones existing in Romania, no such works are permitted, even the access of the visitors is forbidden).

In conformity with the Convention, Ukraine has a number of obligations among which **to consult with the other parties to the Convention on the implementation of the Convention, in particular in the wetlands which exceed the territory of one contracting state or where a hydrologic basin is divided among several contracting states (Article 5)**. This is the case of the Danube Delta,

At the same time, Ukraine has the obligation to undertake a **study of the impact of the project** on the environment, prior to any concrete steps to achieve it. Such a study should be examined together with each state which may be affected.

3. *The Convention on the Environmental Impact Assessment in a Trans-Boundary Context (Espoo, 25 February 1991)*, to which Ukraine is a party as well, provides that any party which intends to carry out an activity which might have a significant negative trans-boundary impact has the obligation to notify it and to have direct and efficient consultations with the party which might be affected. These consultations should be carried out as soon as possible, but not later than the date that party informs its own citizens about the project (Article 3). In conformity with this obligation, Ukrainian authorities should have informed Romanian authorities about the activities envisaged to be undertaken, so that the latter may express their viewpoint as to the trans-boundary impact of such activities and the actions to be taken in order to reduce or eliminate it. Although the

Ukrainian authorities have taken some steps at the internal level to consult with institutions involved in the development of the project (Ministry of Transportation, the Academy of Science of Ukraine), no information on this subject was provided to the Romanian authorities. Moreover, the Romanian authorities have requested formally several times to be informed about the possible impact of such a project on economy and environment.

4. The 1994 Sofia Convention on Cooperation for the Protection and Sustainable Use of the Danube River.

Ukraine, by becoming a Party to this Convention undertook to comply with its provisions.

Thus, in article 2, paragraph 2 it is stated that the Contracting Parties pursuant to the provisions of this Convention shall cooperate on fundamental water management issues and take all appropriate legal, administrative and technical measures, to at least maintain and improve the current environmental and water quality conditions of the Danube River and of the waters in its catchment area and to prevent and reduce as far as possible adverse impacts and changes occurring or likely to be caused. According to the paragraph 3 of the same article the Contracting Parties shall strenghten, harmonize and co-ordinate their adopted measures and their measures planned to be taken at the domestic level.

In article 3, paragraph 2 is stipulated that, subject to this Convention in particular shall be the planned activities and measures in the field of water construction works, in particular regulation as well as run-off and storage level control of water courses, flood control and ice-hazards abatement, as well as the affect of facilities situated in or aside the watercourse on its hydraulic regime

Article 11 of the Sofia Convention provides a very usefful mechanism of bilateral consultations stipulating that, having had a prior exchange of information the Contracting Parties involved shall at the request of one or several Contracting Parties concerned enter into consultations on planned activities as referred to in Article 3, paragraph 2, which are likely to cause transboundary impacts, as far as this exchange of information and these consultations are not yet covered by bilateral or other international cooperation. The consultations are carried out as a rule in the framework of the International Commission, with the aim to achieve a solution.

5. The Convention concerning the Protection of the World Cultural and Natural Heritage adopted in Paris, 16 November 1972.

According to its provisions, States Parties to the Convention commit themselves to ensure the identification, protection, conservation, and presentation of World Heritage Properties. States recognise that the identification and safeguarding of heritage located in their territory is primarily their responsibility. They agree to do all they can, using their own resources and, at times with international assistance, to protect their World Heritage Properties. They agree, amongst other things, to as far as possible:

- *'adopt a general policy which aims to give the cultural and natural heritage a function in the life of the community and to integrate the protection of that heritage into comprehensive planning programs'*,
- *undertake 'appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage'*,
- *refrain from 'any deliberate measures which might damage, directly or indirectly, the cultural and natural heritage' of other Parties to the Convention, and to help other Parties in the identification and protection of their properties.*

6. The Agreement between the Ministry of Environment and Territorial Planning of the Republic of Moldavia, the Ministry of Waters, Forests and Environmental Protection of Romania and the Ministry of Environment and Natural Resources of Ukraine on the

Cooperation in the Zone of the Danube Delta and the Lower River Prut Protected Natural Areas (Bucharest, 5 June 2000)

This Agreement includes in its geographical scope the Danube Delta Reservation of Ukraine. In conformity with the provisions of this Agreement, the contracting parties undertook to control the economic activities so that they do not alter the characteristics of the natural protected area, as well as to coordinate among themselves in the framework of a Joint Commission as to the regional projects of development or administration in order to establish a joint management plan of the zone.

7. The Agreement between the Government of Romania and the Government of Ukraine on the cooperation in the management of border waters (Galatzi, 30 September 1997)

Under Article 2 (Objectives and Principles of the Cooperation), paragraph 3, "*None of the parties may carry out on its territory, without prior consultation, any work which might modify the flow or the quality standards of the border waters*". As well, under Article 4 of this Agreement, the obligation to inform the other party about the projects which might have a negative impact in the territory of the other contracting state is stipulated in a similar way as that existing under other multilateral legal instruments. Thus, the party planning to take actions that might have negative consequences in the territory of the other contracting state has the obligation to notify about its intentions the other contracting state and to transmit all data on the planned actions and to offer the possibility of the other contracting state to participate to the assessment of the impact of such actions on the border waters.

8. The Treaty between Romania and Ukraine on the Romanian-Ukrainian State Border Regime, Cooperation and Mutual Assistance in Border Matters, signed at Cernautzi, on the 17th of June 2003, and entered into force on the 27th of May 2004.

This Treaty which contains provisions for all matters related to the regime of the State frontier provides under Article 12 the obligations as to the management of the border waters. In accordance with this article, none of the parties may modify unilaterally the riverbeds, the banks or the flow regime of the border waters through works carried out on these waters; should such modifications occur, the party which carried out these unilateral works must bring the waters back at their initial condition. In Romanian experts' view, the building of a canal on the Bystroe channel is to bring about modifications on the Chilia Arm (which constitutes a Romanian-Ukrainian border water). Consequently, Romania is entitled under this Treaty as well, to request and receive explanations from Ukraine as to the envisaged actions.

The possible impact of the Bystroe Canal building on the environment

The negative impact of the Bystroe Canal on the Danube Delta ecosystem can also be observed in the following **preliminary study made by the Romanian Ministry of Environment and Water Management, based on unofficial data:**

1. Hydrological regime

Construction and navigation activities on the Canal **will change the Danube Delta hydrological regime, will activate the flow on the Bystroe Canal**, detrimental towards the other canals, **with impact on the neighboring natural ecosystems.**

As result, the changes in the hydrological regime of the Chilia Delta **will lead to the water eutrophication in the inner depressions**, due to the disappearance of the canals that have been connected to the Bystroe Canal; **the lack of the water circulation will transform the actual wetlands in pastures**, that will have a **negative influence on the Danube Delta most important function: biofiltration.**

2. Pollution

The navigation on the canal **will increase the risk of the pollution by oil products in the area.**

3. Fish communities

- The building activities and navigation on the canal **will cause damages to the habitat and to the nuriture**, for the most part of the fish species in this area, including the 7 species mentioned in the European Red List and the 16 mentioned in the Ukrainean Red List.

- Another result will be **the decrease of the annual fresh water fishery** by approximately 19 tones and **the decrease of the annual sea fishery** by approximately 80 tones.

- **The Danube shad breeding migration takes place, too, by the Bystroe Canal;** building and navigation activities will damage the natural development of the populations of this fish species and will reduce the industrial fishery by 90 tones.

- The deepening of the Canal bottom, the permanent dredging works for its maintenance, as well as the waves due to ships passing trough the canal, **will impair the breed development (sturgeons, shads, etc).**

- The dyking of the banks of Bystroe estuary **will destroy the breeding area of many fish species.** Sand banks in the front (aval) of the Bystroe Canal represents the feeding territory for a lot of fish species, used for trade purposes; construction activities and navigation on the canal, as well as the subsequent washing of the sandbanks **will destroy the nuriture area.**

4. Birds communities

In the „Danube” Biosphere Reserve (Ukrainian part of the Danube Delta) are presents 257 birds species, 9 of them listed in the European Red Book and 42 of them listed in the Ukrainian Red Book.

This area represent also the specific habitats for thousands waterfowls. This area is a nesting zone for 1000 pairs of pygmy cormorants (*Phalacrocorax pygmeus*) and 3 pairs of white-tailed eagles (*Haliaeetus albicilla*). During the breeding period there are around 2,500 white pelicans (*Pelecanus onocrotalus*), 80 Dalmatian pelicans (*Pelecanus crispus*), 800 pygmy cormorants (*Phalacrocorax pygmeus*), 900 red-breasted geese (*Branta ruficollis*) and 35 white-tailed eagles (*Haliaeetus albicilla*). The proposed navigation canal will affect the banks where there are 223 birds species, 5 of them listed in the European Red Book and 31 of them listed in the Ukrainian Red Book; the building of the canal and the navigation will lead the destruction of the nesting areas and will worsened the living condition for birds, as well as the lost of the resting, feeding and wintering areas.

From the existing three birds migration routes in the Black Sea catchments', the Pontic way is the most important and cross the area situated on the Western coast, area which include the Danube Delta too. On this migration route pass species which nesting in the North and Central Europe, but also some which have the distribution areas in Asia.

The most of migratory species flying on the route situated near to the seaside, where the trophic resources are rich and there are moderate climate conditions.

Into the “Danube Delta” Biosphere Reserve was identified over 331 bird species, very important for European fauna, listed on the different Annexes of the International Conventions concerning the species conservation and protection (Red Book – DDER). Only the Bern Convention mentioned 320 protected bird species.

It must be mentioned that any antropic interventions that determine changes in the natural habitats affect the optimum development of the essential process of the existing species in this area.

From these, the hydro technical works for navigation have the biggest impact because affect the entire deltaic biom, taking into account that the aquatic ecosystems are interconnected into such complex structure.

The setting up of a navigable channel in the central part of the Ukrainian Delta – Bystroe – by the increasing of the water flow will affect not only the natural habitats from neighboring, and also on large scale, including the Danube Delta Biosphere Reserve.

First areas affected will be situated in the North-Eastern part of the Danube Delta, from which: the strict protected areas Letea (S=2825 ha) and Rosca-Buhaiova (S=9625ha), reconstructed islet Babina (S=2100 ha) and Cernovca (S=1580 ha), as well as the restored areas Popina (S=3600 ha) from the fishery with the same name.

As result of the changes into the aquatic habitats firstly is possible to disappear the pelican colonies from Hrecisca-Buhaiova, and other polispecific colonies of egrets (*Egretta* sp.), herons (*Ardea* sp.), spoonbills (*Platalea leucorodia*), glossy ibis (*Plegadis falcinellus*) and cormorants (*Phalacrocorax* sp.).

As result, the avifaunistic value of the Danube Delta will be considerable reduced, including the other biodiversity components.

5. Animals and plants communities

- The vascular plants community of the reserve counts more than 950 species, 3 of them are mentioned in the European Red List, 16 of them are mentioned in Red Book of Ukraine. Half of them can be found in the area proposed for the channel construction, between them immigrant species presence.

- The communities from the reserve are considerably different from those from other deltas (Nipre, Nistru, Don, Kuban) from the North-West Black Sea coast and Azov Sea. The area comprises of a majority communities specific to the wetlands, that represent 80% of the total area.

- There will be two types of impact of the construction works:

- the waves produced by the ships will determine changes in plant communities, many species, including the rare ones will disappear;
- the navigation represents a vector for the exotic species introduction;

- The proposed canal will cut the central area of the biosphere reserve and will result a high level of pollution on an area of 5 km all around the channel and negative influences on the reserve's flora and fauna. The reserve's territory is the permanent or temporary habitat for rare or endangered insects, amphibians and reptiles, many of them being on the European Red List or on the Red Book of Ukraine. The majority of the mentioned vulnerable species are affected by the industrial activities.

6. Human communities

The local people livelihood in the Danube's mouth area is based mainly on fishing. The canal construction put under a question mark this traditional activity.

The „Danube-Black Sea” transport canal construction through the Bystroe estuary will cause the destruction of the natural communities from Danube Delta, at the same level that will destroy the traditional forms of natural resources management and can lead to worsening the socio-economic conditions of the region. In other words, the completion of this project will lead to the violation of the management principles for a biosphere reserve defined by UNESCO under the “Man and Biosphere” programme.

7. Existing transport ways

Today, the sea ships traffic on the Danube river take place on the Sulina-Braila sector.

The sediments carried by the Danube river through the Chilia branch – that limits the Romania-Ukrainian border – and implicitly through the new Bystroe transport canal will be deposited by the sea currents on the north-south direction on the Sulina channel's mouth, being necessary dredging works, very expensive – due to silting – to maintain the navigation depth.

Also, the important sediments contribution carried through the new canal section will cause morphological changes with irreversible effects in the delta-sea contact area.

As conclusion, the construction of the canal through the Bystroe estuary threaten the existence of the Danube Biosphere Reserve from Ukraine with impact on Danube Delta Biosphere Reserve from Romania, as well.