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INTERNATIONAL LAW AND BORDER DELIMITATION BETWEEN SERBIA AND CROATIA

ABSTRACT

This study represents an attempt of author to describe the question of territorial delimitation between Croatia and Serbia on Danube River which has been topical as a result of succession of SFR Yugoslavia. After the demarcation of administrative line between Croatia and Serbia 1945th in the framework of the Yugoslav Federation, the Danube River had altered its' riverbed, withdrawing Westwards from the East, thus *de facto* incorporating large areas of fertile land in territory of Vojvodina, Serbian northern province. During the process of dissolution of the former Yugoslavia, on basis of the report of the European Community Arbitration Commission, UN Security Council had adopted Resolution no. 777 which confirmed the principle *uti possidetis* by which have been announced that former administrative borders between former Yugoslav Republics became international borders. By virtue of this principle, the Danube River became *de facto* border between Croatia and Serbia. However, in previous period, application of the principle of *uti possidetis* has limited effect of freezing the territorial *status quo* existing at the moment of independence of the successor States. Because the clear legal title has not existed in the former Yugoslavia, the principle could be understood only in retrospective historical context which not precludes the parties from citing the contents of any indicia of title. Nowadays, Croatia requests the return of territory of approximately 11000 acres that had been "transferred" to Serbia due to alternation of Danube's riverbed. Croatia bases this claim on measurements from cadastral survey register that had been carried out in 19th century by

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the Austrian-Hungarian Empire's officials. Those mainly went along the main current of Danube, and partially along Danube tributaries. On the other side, Serbia follows the changes of current of Danube and insists on the application of general rule for delimitation of border at Danube river along the main current (Thalweg) that proved to be the best in regards to downstream transport when the water altitude is at lowest point. The application of the Thalweg as a general rule of delimitation preserves to each limitrophe State equality of right in the beneficial use of the Danube which may be important to unravel the actual confused boundary stands.

Key words: Danube River, delimitation, internatnional law, succession of SFR Yugoslavia, principle of uti possidetis, Serbia, Croatia.

Introduction

The border problem concerns drawing of inter-state borders between Croatia and Serbia – it had been institutionalised during the succession processes in the territory of the former SFR when the international community accepted the opinion of the Arbitration Commission that inter-republic boundaries were international borders unless the parties concerned did not find some other solution. In this way, the Danube river became a border between Croatia and Serbia.[2] Since the boundary line had been drawn between Baranja and Bačka in 1945 the Danube successively meandered, its riverbed changed while it increasingly retreated from the east to the west. In this way, big areas of arable land became a part of Vojvodina. When the Yugoslav crisis broke out Croatia demanded that the area of about 7,000 hectares, which became a part of Serbia due to the movement of the Danube, should be returned to Croatia in accordance with the Austrian-Hungarian cadastre land surveying from the 19th century. The cadastre border had been mainly drawn along a part of the main course of the Danube, while a part of it had been drawn along the so-called Dunavci, what actually included its tributaries. In the 1990s, Serbia adopted the Law on Territorial Organisation and Local Self-Government that followed the earlier solutions from the Law on Establishment and Organisation of the Autonomous Province (AP) of Vojvodina that had been passed in 1945. According to the Law, a part of the cadastre communes from the Danube left bank became a part of the Republic of Serbia – Sombor, Beli Manastir (a part of Batina, Draž, Zmajevac, Kneževi Vinograd), Apatin, Bačka Palanka and a part of [3] Vukovar (a part of Mohovo and Šarengrad). The Law followed the changes of the Danube course, but *per se*, it was not of a crucial factor

[2] According to t*he* law mentioned above the Croatia-Serbia border was drawn along the temporary route of the Danube river from the Hungarian border all the way up to Ilok. See: *Službeni glasnik NR Srbije*, broj 28/1945.

[3] *Službeni glasnik Republike Srbije*, broj 47/1991.

for the international legal border demarcation between the two states. With the aim of implementing the process of border demarcation, the International Diplomatic Commission for Identification and Establishment of the Border Line and Preparation of the Treaty on the State Border was established. The Commission adopted the Protocol for Identification and Establishment of the Border Line. However, up to the present days the Inter-State Diplomatic Commission has not published the information on the results of the border demarcation on the Danube. It should be necessary to consider all relevant law argumentation that goes in favour of the Serbian part until the Treaty on the Border is concluded with Croatia.

On the status of borders after the succession of SFR Yugoslavia

One of the most important issues after the creation of new states in the territory of the former Yugoslavia was inter-republic boundary demarcation for which the Arbitrary Commission of the European Community gave its relevant opinion. Acting within the framework of rules and principles of international law the Arbitrary Commission defined in a new way the real situation concerning the territorial position and status of the borders between the republics of the former SFR Yugoslavia.[4] Taking as a starting point the protection of territorial integrity of the new states and acknowledging the existing state of affairs in the Opinion No. 2 the Commission strictly limited the range of the right to self-determination within "the context of the unclear and unstable situation" pointing out the significance of the rules on maintaining the borders that existed at the moment when the new states acquired their independence (*uti possidetis juris*).[5] In accordance with this view, in the Opinion No. 3 the Arbitrary Commission insisted on accepting the administrative or actually internal boundaries as inter-state borders. Their dispositivity resulted from the fact

[4] In the Opinion No. 1 of the Arbitrary Commission of 29.11.1990 it was said that SFR Yugoslavia is „....in the process of dissolution...". Consequently, in the Opinion No. 3 it was pointed out that as soon as the process in SFRY led to the creation of one of more independent states the problems of borders, this especially including republic ones, should be settled in accordance with the set criteria (they were defined in the Opinion). In the Opinion No. 8 of 04.07.1992 it was said: "The process of dissolution had been completed and the SFRY no longer existed". The conclusion resulted from the recognition of Slovenia, Croatia, BH and the fact that Serbia and Montenegro passed the Constitution of FR Yugoslavia on 27.04.1992 as well as from a number of UN resolutions (resolutions No. 752, 757, 777 and 47/1). See: Matthew Craven, "The EC Arbitration Commission on Yugoslavia", *British Year Book of International Law,* 1995, p. 333; Alain Pellet, "La Commission d"Arbitrage de la Conferénce Européene pour la Paix en Yugoslavié", *Annuaire francais de droit international,* 1991, p. 329, ibid., 1992, p. 220, ibid., 1993, p. 286.

[5] The Opinion No. 2 of the Arbitrary Commission followed after Lord Carrington, President of the Conference for Implementation of Peace in Yugoslavia, considered the question of the right of the Serbs in Croatia and BH to self-determination. See: *International Legal Materials*, vol. 92, p. 168.

that they represented "the demarcation lines that could be changed by free and mutual agreement" becoming international borders *a contrario*, „which are protected by international law". In one word, the *uti possidetis* principle works in the way that it freezes the legal basis for possession of territories at the moment of independence. This is supported by the principle of respect for territorial integrity resulting from the last Constitution adopted in 1974 (paragraphs 4 and 5 of the Constitution) that ensured unchangeability of the republic boundaries unless an otherwise agreement was freely made. In this way, the principle of delimitation of new states after the decolonisation in America and Africa *uti possidetis juris qui* that had been adopted earlier has in time turned into a universal legal principle for territorial delimitation that could be also applied to SFR Yugoslavia.[6] Accepting the *de facto* situation the Arbitrary Commission pointed out to the security function of this rule under the conditions that could lead to „fratricidal fights and endanger the independence and stability that has just been acquired by the new states".[7]

As for the international borders of the former Yugoslavia, now being external borders of the new states, in the opinion of the Arbitrary Commission they should remain protected under international law in accordance with the principle reminded by the UN Charter, the Declaration relating to the principles of international law concerning friendship and co-operation of states in accordance with the UN Charter (Resolution No. 2625/XXV of the UN General Assembly) and in accordance with the Helsinki Final Act inspiring the Article 11 of the Vienna Convention on Succession of States in Respect of Treaties of 23 August 1978.[8] The analysis of this part of the opinion points to the

[6] In its decision of 22 December 1986 on "Case Concerning the Frontier Dispute" (Burkina Faso v. Republic of Mali) the International Court of Justice said that on the basis of the Special Agreement of 16 September 1983 the principle of unchangeability of borders inherited from the colonisation period was exclusively applied on the border dispute between Burkina Faso (former Upper Volta) and the Republic of Mali. It relied on the principle set in the Cairo Resolution of the Organisation of African Unity adopted in 1964. Considering that the range of the *uti possidetis* principle was general, the International Court of Justice emphasised that it predominantly covered the legal void until the establishment of effective power as a basis of sovereignty. The primary goal of the principle was to secure the territorial borders at the moment of independence. When they were delimitated on the part of the same sovereign between the colonies or various administrative entities the application of the principle was reflected in turning the administrative boundaries into international borders. This occurred in the specific case concerning the above mentioned French territories in West Africa. As the Court pointed out, bearing in mind its role in ensuring stability (and when it collides with the right to self-determination), the *uti possidetis* principle would be the wisest course that would show the rationality of African states to maintain the territorial *status quo*. Apart from the arguments mentioned above, it seems that the Court's decision was more based on the interpretations having a basis in the *infra legen* principle of equity. See: Judgement of 22 December 1986. *International Court of Justice Reports*, p. 565. (Case Summaries, para 1–15; 20–26).

[7] Opinion n°3 of Arbitration Commission, *International Legal Materials*, vol. 92, op. cit., p. 172.

[8] Opinion n°3 of Arbitration Commission, ibid., p.172.

specific exploration of the international legislation the Arbitrary Commission relied upon concerning unchangeability of international borders of SFRY after the succession. Actually, the international rule that succession of states does not encroach upon the issue of borders defined by the treaty, or upon rights and obligations concerning the border regime defined by the states confirmed the rule of international law that was codified in the Vienna Convention on Succession of States in Respect of Treaties.[9] As it has been derived from the legal practice and international legal doctrine it essentially relies upon the principle of sovereign equality of states, which are obliged to refrain from threats and use of force in their mutual relations (the rule is included in the Article 2 of the UN Charter). Unchangeability of borders is a principle that is confirmed by the Final Act and 1975 CESC Helsinki Declaration. As the international community rests upon the prohibition of interventionism that is directed against territorial integrity of states, it is the rule that the internationally recognised borders can be changed only by peaceful means and by agreement. The same view is assumed by the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States of 24 October 1970 concerning "demarcation lines".[10] The rule on inviolability was confirmed in the Paris Charter for a New Europe adopted in 1990. Moreover, it coincided with the collective consensus on the recognition of new states in the territory of SFR Yugoslavia. By adopting the Directives on Criteria for the Recognition of New States in Eastern Europe and the Soviet Union and the Declaration on Yugoslavia on 16 December 1991 the EC stipulated recognition of states by adoption of international legal standards, which incorporate the obligation of respect for territorial integrity and inviolability of borders of states.[11]

As for present international law that in the case of Yugoslavia passed a sort of political test, it comes out that by gaining independence that was recognised by foreign countries all former republics of the second Yugoslavia also acquired international recognition of their borders. The administrative borders were *via facti* "transformed" into international ones, while the international borders remained preserved by the rules of international law on their unchangeability. As for the former one, however, this is actually a legal presumption that is generally applicable under the factual conditions at the moment of independence. However, it does not produce an absolute effect *ratione temporis* since, by the nature of things, it functionally suspends the effects that are legally based until it is convalidated. The change of the situation always depends on what the parties to a dispute can specifically do in order to prove the legal validity of the facts to which they refer.[12]

[9] *Službeni list SFRJ,* br. 1/1980, dodatak Međunarodni ugovori.

[10] UN General Assembly Resolution n°2625 (XXV).

[11] UN Document n° S23293 of 17 December 1991.

[12] Vesna Knežević Predić, „Princip uti possidetis juris u praksi međunarodnih sudova, *Međunarodni problemi*, Beograd, 2001, br. 4, str. 441.

In the case of Serbia-Croatia delimitation on the Danube the approach mentioned above should be accepted as an initial step towards the creation of a legal title regardless of the existing basis that has already been established – effective power at the moment when the succession of states takes place.[13] Finding satisfying solutions commits one to make an extensive analysis of the legal materials on drawing of internal borders in the predecessor state while applying general international legal rules on delimitation on the so-called border waters.

Administrative boundaries in the former Yugoslavia

Concerning the former Yugoslavia, it is very difficult to answer the questions what were the bases for drawing the territorial boundaries between the republics and what government bodies did this. As early as during World War II under the leadership of the Communist Party the so-called National Liberation Committees had been created on the parts of the liberated territories. In time, these interim government bodies turned into permanent bodies of the territorial government in the areas that had been liberated from the occupying forces.[14] By the establishment of the National Antifascist Liberation Council of Yugoslavia (AVNOJ) in November 1942 the contours of the first revolutionary power appeared. AVNOJ worked devotedly to accelerate the establishment of the territorial and Province political governments that represented the peoples and nationalities of Yugoslavia. These were the germs of the future federal units. In June 1943, the Territorial Antifascist Council of National Liberation of Croatia (ZAVNOH) was established at Plitvice. In the same period, the main national liberation committee of Serbia did not manage to turn itself into an official political-territorial organisation.[15] At its Second Session in Jajce that took place from 29-30 November 1943 AVNOJ made a revolutionary break-off with the Kingdom of Yugoslavia. By the promulgation of the Law on the Name of the State and Coat of Arms, the revolutionary government declared that the future Yugoslav state union would be democratic and federal.[16] The decision to

[13] Gerald Fitzmaurice, "The General Principles of International Law", *Recueil des Cours Académie de Droit International* 1957. vol. 92, p. 148.

[14] As early as during February 1942 the first National Liberation Committees were established on the territory of the liberated Foča. By the decision of the Politburo of the Communist Party of Yugoslavia the well-known „Foča regulations" were adopted as the first offspring of the power in the second Yugoslavia that was established by the revolution.

[15] Zbornik dokumenata i podataka o narodnooslobodilačkom ratu jugoslovenskih naroda, Tom I–IX, Beograd, 1949–1969.

[16] By the decision at the Second Session in Jajce that was made on 29 November 1943, AVNOJ recognised the right of every people to self-determination, including secession and unification with other peoples. This was the way full equality of the peoples was to be achieved in the second, liberated Yugoslavia. See: Prvo i Drugo zasedanje AVNOJ-a, Zagreb, 1963. str. 231, 241–243. The validity of the latter laws on territorial enlargement that had not been internationally recognised in a proper way was disputed after the end of the war.

build Yugoslavia on the federal principle formally led to the constitution of Croatia at the third session of ZAVNOH that took place on 9 May 1944 in Topusko. The decision on the constitution of Serbia was made on 11 November 1994 at the session of the Antifascist Assembly of People's Liberation of Serbia in Belgrade. After the liberation, at its Third Session that took place from 7 to 10 August 1945 AVNOJ accepted the decision of the First Assembly of Vojvodina of 31 July 1945 as well as the decision made by Regional Assembly on integration of Vojvodina. Analysing the historiographical and legal documents it can be concluded that neither during the revolution AVNOJ as a supreme legislative and executive representative body nor later the Interim National Assembly of the Democratic Federal Yugoslavia and then the Constituent Assembly, which took place on 29 November 1945 adopted any official legal document that would establish and define the administrative boundaries between the Yugoslav federal units.[17] Judging by the relationships at that time such decisions could be made by some political centres of power that presided over the sessions within the Communist Party of Yugoslavia during the war and occupation and immediately after its end. One such decision that was made public was taken by the Commission of the Politburo of the Central Committee of the Communist Party of Yugoslavia on the provisional separation of Vojvodina from Croatia.[18] In its conclusion submitted to the Presidency of AVNOJ the so-called Đilas Commission drew the provisional boundary starting from the border with Hungary, along the Danube all the way up to the boundary between Bačko Novo Selo and Buklin (the area of Bačka Palanka), then across the Danube between the villages Opatovac-Mohovo, Lovas, Babska, Varoš – Tovarnik, Šid, Podgrađe-Ilinci, Adaševci-Mala Vašica, Lipovac-Batrovci and Strošinci-Morović.[19] Explaining it by ethnic and economic reasons, the areas of Subotica, Sombor, Apatin, and Odžak in southeastern Bačka became a part of Vojvodina. Due to the national composition of the population, the areas of Batina and Darda between the Danube and the Drava in Baranja became a part of Croatia. The areas

[17] AVNOJ explicitly did not allow dismemberment or unification of the parts of Yugoslavia's territory to the territories of other states. Although it confirmed constitutional-legal discontinuity with the Kingdom of Yugoslavia on the other hand, it accepted the international legal continuity with the Kingdom of Yugoslavia. According to the ideas of it creators, the values of the decisions made by AVNOJ would be historically assessed by the nature of the socialist revolution from which "self-determination of people" *eo ipso* resulted. See: Svetomir Škarić, „Evolucija ustavnosti u socijalističkoj Jugoslaviji", u Zborniku radova sa naučnog skupa SANU: 'Dva veka savremene ustavnosti', Beograd, 1990. str. 599.

[18] On 19 June 1945, the Presidency of AVNOJ appointed the mixed Commission for Delimitation between Vojvodina and Croatia. It was chaired by Milovan Đilas. According to this provisional decision, the demarcation line between Vojvodina and Croatia did not follow the Serbian national compositum, also disregarding the facts concerning the changes made by force during the war. See: Arhiv Memorijalnog Centra 'Josip Broz Tito' u Beogradu.

[19] By this division the area of Šid - Opatovac, Lovas, Tovarnik, Podgrađe, Adaševci, Lipovac, Strošinci with agricultural areas became a part of Croatia while the villages Mohovo, Babska, the town of Šid, Ilinci, Mala Vašica, Batrovci, and Morović together with their countryside became a part of Vojvodina. See: Arhiv Memorijalnog Centra 'Josip Broz Tito' u Beogradu.

of Vukovar, Šid and Ilok in Srem were divided by applying geographic and ethnic principles and by the economic importance they had for every federal unit.[20] Taking into account the above mentioned, it can be concluded that the internal delimitation only partly served to resolve the national question and it was primarily in the interest of the republic elites, what proved to be true in the successor war periods.

Drawing borders on boundary waters

If one wants a secure border, the rule is to make it legal. The security specifically results from the legal basis that enables the state to refer to it in case of disputing its territorial right. For international law, the process of defining borders is a constitutive one.[21] Taking into account the historical arguments that speak in favour of peaceful delimitation between Croatia and Serbia it should be reminded on the fact that international law has made a clear rule on drawing borders on the so-called boundary waters, this including the Danube in the part of the course that flows through these two states. Since it is undisputable that the state has a full control over its internal and national waters (*Fr .d'eaux interieures ou nationales; Ger. Eigengewasser; Eng. national waters*) giving rights to other states to use national waters should be based on the state will.[22] Drawing of borders on national waters that are a part of the territory that borders with other states implies the respects of general rules that have been established during a long-duration practice.

At first sight, it seems that it would be easy to draw a border along the Danube, since as a river it makes a natural border. However, in practice there are numerous and often very complex questions. For drawing borders on the rivers flowing through two or more states or on those that are the very borders between states the principle

[20] The division mainly followed the solutions proposed by the Đilas Commission and the Law on the Establishment of the Autonomous Province of Vojvodina (*Službeni glasnik NR Srbije* br. 28/1945). According to the latest Croatian sources, the territorial delimitation was done in 1945 and it largely respected the historical borders and the ethnic principle. In this sense, the statements made by the Commission are mentioned concerning the incorporation of Kotar, Batina, and Darda in the federal Croatia. See: J. Vrbošić, *Državnopravna pripadnost Baranje Republici Hrvatskoj i što u ovom trenutku znači tzv.Oblast Srema i Baranje,* u Zborniku: 'Jugoistočna Europa 1918–1995, Zagreb, 1995. The exception was allegedly made only in the case of Ilok where the population whose ethnic composition had changed came out for being in Croatia, but their will was disregarded. See: L. Boban, *Hrvatske granice* (1918–1991), Zagreb, 1992.

[21] Stephen B. Jones, *Boundary Making,* Washington, 1945, p. 5.

[22] As a part of the national territory, national waters are managed by the legal order of the state. There is a difference between national and international waters on which the right of free navigation of trade ships of all countries is stipulated by agreements. The right of navigation is officialism imposed on one hand by the geographic position of the water area being a border between countries and, on the other hand, by a need to develop traffic and trade.

was set to divide unnavigable rivers in the middle of their riverbeds (*midium filium aquae*). Navigable rivers are divided by applying the principle of mid-channel (*Ger. Thalweg, Fr. fil de l'eau, Eng. mid-channel*). The first principle is based on the median that joins all points of the water course that are at equal distance from one and the other river bank. On the other hand, the mid-channel principle or *Thalweg* has been applied since the Middle Ages. It had been elaborated at the Rastatt Congress in 1797. It was accepted as an international legal standard in the Treaty of Luneville of 9 February 1801 where it served as a means for the division of the Rhine between Germany and France. *Thalweg* has proved to be the best criterion concerning downstream traffic when the water level of a navigable river is at its lowest point. Guided by the international treaty practice Max Huber, famous internationalist, noticed that in case no other agreement had been reached over drawing of borders on rivers, the median or mid-channel rule should be applied. The reasons for adopting median or the line of equal distance from the bank lie in their long use, which has quite possibly created a custom rule.[23] It would be, however, coherent to apply median as a general legal solution since it would imply deviation from the international practice. Actually, at some places a border line could leave the whole navigable part of a river to one state only, what would disable or limit navigation for other riparian states. For this reason mid-channel is today usually applied as a border line in navigable rivers. For two reasons there are exceptions to this rule. First of all, mid-channel is defined in different ways in the doctrine and in practice. Usually, it is defined as a continuous line joining the deepest points in the riverbed. The second reason is that courses of many rivers are unsteady, what makes changes in the position of their mid-channels. For this reason, periodical measurements are constantly made in order to establish exactly the position of the mid-channel.[24]

Drawing of borders on rivers also includes some specific questions. In practice, the following one is always posed: How should one draw borders on boundary rivers that change their courses? A custom rule on the change of the border is applied for gradual changes in the riverbed that have been caused by the evolutionary performance of the nature. In international law, accession (*accessio*) is the phenomenon that characterises the cases mentioned above.[25] Accession implies

[23] Max Huber, "Ein Beitrag zur von der Gebietshoheit an Grenzflüssen", *Zeitschrift für Völkerrecht*, 1907, p. 32. etc.

[24] Milan Bartoš, *Međunarodno javno pravo,* 1956, knj. II, op. cit., str. 25–26.

[25] Accession comes from Roman private law and it was embodied in international practice by Grotius. By the principle that the land that was naturally added to the bank belongs to the owner of the bank (*accessio cedit principali*) in the case of confiscation of the Spanish ship Anna in 1805 during the war between Great Britain and Spain judge Lord Stowell said before the British Prize Court that the ship had been confiscated in the area that belonged to the American territory. He accepted the request since the ship had been confiscated 3 miles beyond the continent's coast, but less than 3 miles from the coast of the island that was located near the mouth of the Mississippi. See: "The Case Anna", C.

territorial changes that occur by gradual performance of natural powers or by man. In the former case, by gradual rolling down of a bank and accumulation of the material on the other side of the border river the territory increases over a longer period of time, thus extending the border. An abrupt rolling off a part of the bank and its incorporation in the other bank (*appulsio*) produces a similar effect. Overflowing (*aluvio*) can also bring about alteration of borders. The artificially made accession makes one part have an advantage over the other one. For example, drainage or lifting of the embankment makes the level of the water raised, what inevitably requires reaching an agreement on the change of borders since customs rules have not been built. On the other hand, in most case avulsions do not bring about the change of borders (*avulsio*). States can deviate from the principle mentioned above for the reasons of equity in using of water flows of border rivers stipulating a treaty clause on unchangeability of borders. Natural accessions can result from the creation of estuaries (*aestuarium*) or actually, forking what creates swampy bays and causes narrowing. River narrowing increases the land on the account of seas and lakes into which rivers empty. After the accession is made by the creation of estuaries the question of the border of the main course can be raised – *Thalweg*.[26] If a river has several branches, it is by the rule that the border is drawn along the branch with the mid-channel. Observing from the line of separation all side branches remain within the territory of the state on whose part they flow. A similar approach is applied on delta branches, what implies small triangle islands that are created by depositing large quantities of river materials (sand and pebble). By the rule, those island will belong to the state to which the river mouth belongs. As for river islands on the rivers where the border has been drawn by applying the mid-channel rule, they should remain within the territory of the state that was first granted the islands, regardless of the fact that the mid-channel has changed. The exceptions are only made in the cases when the islands are located on the very mid-channel line. In that case, the island is divided among riparian states. With the change of the mid-channel, it is assumed that the island will not change its legal status.

Robinson's Admirality Reports, 1805, vol. 5, p. 373. Later in practice referring to the classic rules of accession was made for example in the dispute over the change of the Rio Grande river course between Mexico and the United States of America as well as in the border dispute between Honduras and Salvador. See: "The Chamizal Arbitration", American Journal of International Law, 1911, vol. 5, p. 782; Land,Island and Maritime "Frontier Dispute" (El Salvador v. Honduras), *International Court of Justice Reports*, 1992, pp. 351, 546.

[26] The main channel of the forking river was the subject of dispute over the Encuentro river (Argentina-Chile) in 1881. In that case, the length of the flow, size of the drained area, quantity of the water flow and other factors were taken into account.

Possible application of international legal rules on delimitation on the Danube

As borders are above all, a social phenomenon subject to social laws they are relative from the aspect of the so-called historical rights and international law has no adequate standards to be applied here.[27] In case of lack of form the law takes into account the factual situation that is produced by some state practice based on the genuine and unobstructed execution of effective power (*ex facto jus oritur*).[28] Prescription of the territorial title on the state borders is an agreement with the factual situation that is neither obstructed nor disputed by the other party.[29] The Serbia-Croatia border on the Danube is certainly not the case since there lacks a subjective element – legal consciousness on the obligation to respect it (*opinio juris sive necessitatis*).[30] For this reason, it is necessary to approach delimitation of the Danube on the basis of the general rules resulting from the long international practice of delimitation on navigable rivers. It seems that the mid-channel approach (*Thalweg*) would be the most appropriate for delimitation on the Danube.[31] The change of the Danube course westward or actually towards Croatia has occurred during a long historical period. In that sense, Croatia could not bring into question the application of the international rule mentioned above. As for delimitation of river islands and river branches of the Danube, the border should be defined in accordance with their position to the mid-channel. Gradual changes of the mid-channel do not bring into question the border line. As for new river islands that have been created in the meantime, delimitation should be carried out according to their position to the mid-channel as well as according to the fact whether they have been created gradually or abruptly. If the mid-channel principle could not be applied in all cases then the principle of equity should be implemented, these above all referring to the use of the Danube water flow and resources by applying the rules of neighbourhood law. In this sense, the arguments in favour of the earlier ownership of the land along the river bank should be of subsidiary and by no means of primordial legal importance in the final delimitation.

One should keep in mind that versatile regional co-operation and good neighbourly relations are priorities of Serbia's and Croatia's foreign as well as

[27] Yehuda Blum, *Historic Titles in International Law*, The Hague, 1965. p. 55.

[28] See: United States v. Netherlands, (Island of Palmas Case), A.J. I.L. 1928. vol.32. p. 867.

[29] El Salvador v. Honduras (Land, Island and maritime Frontier Case), I.C.J. Reports, 1992. p. 351.

[30] Charles de Visscher, Les effectivites du droit international public, Paris, 1967. p. 111. The author concludes that for recognition, it is not sufficient to give a statement on effectivity of the governmental authority concerning the border line, but it also requires an agreement of the other part.

[31] J. W. Garner, "The Doctrine of Thalweg"*, British Year Book of International Law,* 1935. n° 16, p. 177; Ruiz Fabri, "Regles cotumieres generales et droit international fluvial", *Annuaire Français de Droit International*, 1990, p. 818.

European Union integration policies. Occasional incidents between the parties do not deny the thesis on their *bona fide* acting. However, this makes impossible for each of them to be precluded in their territorial claims by taking unilateral opposite positions on the current territorial situation in a possible judicial case on the dispute (*Non licert venire, contra factum proprium*).[32] Integrated border management on the Danube presumes the conclusion of an international treaty on delimitation or the adoption of a collective declaration on the recognition of the existing "demarcation line of separation". Since no appropriate agreement has been reached, the two states should search solutions in *ad hoc* arbitrations or with the International Court of Justice.[33]

[32] Hersch Lauterpacht, *Private Law Sources and Analogies of International Law*, London, 1927. p. 280; "Cambodia v. Thailand (Temple of Preah Vihear Case)", *International Court of Justice Reports*, 1962, p. 696.

[33] As for the legal validity of unilateral acts defining borders, in the case of dispute between Great Britain and Norway over fishing the International Court of Justice established that sea delimitation always had its international legal aspect and it could not depend only on the will of the riparian state and its internal law. It is the fact that the act of delimitation is a unilateral one because a riparian state is entitled to take them but their validity is assessed according to their conformity with international law. See: "United Kingdom v. Norway (Fisheries Case)", Judgement of December 18, 1951, *International Court of Justice Reports*, 1951, p. 116.