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# BORDER ISSUES OF THE REPUBLIC OF SERBIA AND ACCESSION TO THE EUROPEAN UNION[1]

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*The process of Serbia's accession to the European Union implies the harmonization of domestic legislation with the right of the European Union in the field of external border control. The control of external borders is related to negotiation of the Chapter 24, referring to freedom, justice and security, and whose opening in the accession negotiations with the European Union once again encourages solving border issues between Serbia and Croatia, Bosnia and Herzegovina, Montenegro and Macedonia, as a successor states of the former Yugoslavia. Regulation of borders with "new neighbors" would contribute to the de jure, approval of their territorial integrity, and thus accelerated the process of Serbia's accession to the European Union and greater freedom of movement, that is applying the Schengen agreement principles on the "Europe without borders".*

## INTRODUCTION

European countries have tended to gradually enable the freedom of movement of people, services and capital since the establishment of European Coal and Steel Community in 1951, when the control was joined over the industry

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of coal and steel in six member countries (Belgium, the Netherlands, Luxemburg, Italy, Germany and France), and then from the signing the Rome contracts in 1957, when European Economic Community was created. Establishment of movement freedom has suggested the economic integration through the elimination of obstacles for the formation of unique market. Through continuous harmonization of internal regulations with European legal novelties and with coordination of economic, foreign and security policies, the states have managed to accelerate the creation of unique market which was a flywheel for the creation of the "Europe without borders".

During 1984, FR Germany and France signed Saarbrucken agreement which predicted gradual abolition of checkpoints on borders with the aim to provide movement of freedom. In the following year, on the 14th July 1985, France, Germany, Belgium, the Netherlands and Luxembourg signed in Schengen the agreement on gradual abolition of checkpoints on common borders [The Schengen acquis, 2000]. These countries established the area without internal borders (Schengen area), which enabled the free movement of people, goods, services and capital. Soon afterwards, the member countries of European Communities signed the Convention on implementation of Schengen agreement on the 19th July 1990 (Schengen II or Schengen Convention), which came into force on the 26th March 1995 [Convention, 1985]. Main goal of the Schengen Convention was to eliminate the border control between countries that had signed it, to establish the common external border, to construct a unique immigration policy and adopt additional procedures that enable the implementation of judicial and police cooperation [Lopandic & Janjevic, 1996].

The Amsterdam Agreement from 1999 was complemented by the Contract on founding European communities. Basic legal framework of European communities was extended by this with the so-called "Schengen acquis", since a new Chapter IV was included referring to the policy of visas, asylum and immigrations, as well as other policies related to free movement of people (so-called First pillar), as well as Chapter VI referring to police and court cooperation in criminal law matter (so-called Third pillar)[2] in the Contract on founding. Introducing the „Schengen aquis" into legal framework of Eu-

2 In Protocol with Amsterdam agreement, there was mentioned that all candidate countries must entirely accept the provisions of„Schengen acquis", as well as the rules accepted by the institutions based on those novelties. See: Evropojmovnik (2005), Institute for International Policy and Economy, Belgrade, pp. 147.

ropean communities meant that the system, established by Schengen agreement became a part of communitarian law (acquis communautaire) and one of the most important pillars of cooperation between European countries.[3] Thus Schengen regime is created as a region of freedom, security and justice whose main function was a part of a wider European project on the creation of a unique market. Today, most members of the European Union, as well as a certain number of countries out of the European Union, (primarily, Norway, Iceland, Liechtenstein and Switzerland which are EFTA members), meet the obligations from „Schengen aquis".[44] The exceptions are Bulgaria, Romania, Croatia and Cyprus which, as members of European Union have not yet began to implement Schengen Agreement, that is Great Britain and Ireland which due to internal political reasons did not want to join Schengen regime.[5]

Establishment of Schengen regime of inter-state cooperation in the aspect of controlling external borders over the time led to the situation for the European Union to sign the criteria that countries out of Schengen region must meet in order for their citizens to be able to enter the territory of European Union without visas (so-called White Schengen list), that is with visas (so-called Black Schengen List) [Council Regulations, 2001-2003]. The mentioned behavior has resulted from security reasons and relevant evaluation that the country, pretending to enter Schengen region, must be able to efficiently control illegal migrations of own citizens and foreigners that go

3 The following countries are members of „Schengen acquis": France, Germany, Belgium, the Netherlands and Luxembourg starting from the 19th June 1990; Italy from 27.November 1990.; Portugal and Spain from 25.June 1992.; Greece from 6.November 1992.; Austria from 28.April1995.; Denmark, Finland, Norway and Sweden from 19.December1996.; Poland, Czech Republic, Slovakia, Hungary, Latvia, Lithuania, Estonia, Malta, Cyprus and Slovenia from the 1st May 2004.; Switzerland from the 26th October 2004; Liechtenstein from the 28th February 2008.; Romania and Bulgaria have signed Schengen agreement on the 1st January 2007 and Croatia 1st July 2013. However, these countries as well as Cyprus, still haven't met conditions for its implementation.

4 Benefits from Schengen agreement are used by the states that are not European Union members such as Andorra, Monaco, San Marino and Vatican, as well as people from Greenland and Faroe Islands.

5 Although they did not sign Schengen agreement, Great Britain and Ireland have participated earlier in police and court cooperation in crime deeds; struggle against illegal drugs trafficking and in Schengen Information System. These countries have not participated in control of mutual external border and Great Britain also in issuance of visas due to traditional relations with Commonwealth countries.

through its territory on the way to European Union. This problem includes several aspects – from human trafficking, smuggling of migrants – to the issue of readmission [Grecic, 2006]. Since the poverty and grey economy is largely present in the Balkan region, the states must face comprehensive reforms in the field of law government and struggle against organized crime, corruption and illegal migrations. Establishment of European system of integrated border management in that aspect has a decisive significance because it establishes a permissible limit, imperceptible for all legitimate movement of people, goods, services and capital in the same time insubstantial for all illegal activities. Security of borders represents the priority of European Union for which it is required to develop certain capacities and accept prescribed procedures and standards of good practice, as a precondition for implementation of cooperation in the process of European integrations [Dapcevic, 2012].

Based on the above, it is clear that security of borders cannot be achieved without international and legal determination (delimitation and demarcation). Border security can only be the one that is legal at the same time. Therefore, Serbia in accession agreements with European Union must insist on regulation of open border issues with former Yugoslav republics and successors of SFR Yugoslavia. Even more because joining the EU does not only imply the abolition of internal and establishment of the control of external borders, but it also implies the elimination of all security risks related to this process that in addition to the issues of inter-state separation can also include other real security threats such as international criminal activities, illegal migrations and mass abuse of the right to asylum.

The following part of the study is precisely devoted to border issues that Serbia has with Croatia, Bosnia and Herzegovina, Montenegro and Macedonia. International and legal regulation of state borders could contribute to the accelerated accession of Serbia to European Union and thus greater freedom of movement, that is implementation of basic principles from Schengen agreement on the "Europe without borders".

## BORDER ISSUES BETWEEN SERBIA AND CROATIA

The first official negotiations regarding the succession of SFR Yugoslavia have started under the patronage of Peace Conference of European Union established on the 27th August 1991, at the extraordinary meeting of ministers

of foreign affairs in Brussels. At the same meeting there was constituted the Arbitration Commission, as an advisory body for expressing the opinion to all interested parties in Yugoslav process, about the content and domain of positive rules of international law, including the rules on withdrawing state borders.[6] Arbitration Commission whose chairman was French judge Robert Badinter, expressed the opinion no.3, according to which "demarcation lines between Croatia and Serbia could be changed only through free and mutual agreement", and unless the parties agree otherwise, „previous borders take the character of borders that are protected by international law" [I.L.M.,1992]. Using the extensive interpretation of jurisprudence of the International Court of Justice, Arbitration Committee has concluded that such an attitude is pointed out by the principle of respecting territorial quo status and especially the principle utipossidetis juris qui.[7]

6 Facing with different aspects of the crisis that followed decomposition of former Yugoslavia, Arbitration Commission has resorted to the solutions for which there were no legal precedents in earlier practice. Although it essentially did not strive to the introduction of some novelties, Arbitration Commission has "adapted" the existing rules and principles to conditions in which the succession of SFRY took place. Often the statements and recommendations of Arbitration Commission in some parts were in harmony with official attitudes of the highest bodies of international organizations, which is no wonder since the Arbitration Commission was in the same time a part of international monitoring of decomposition of Yugoslav Federation. Application of political criteria in forming opinion of Arbitration Commission therefore was the fact that significantly affected the solutions accepted in practice. See: DuskoDimitrijevic (2012), Drzavne granice nakon sukcesijeS FRJugoslavije, Institute for International Policy and Economy, Belgrade, 176, etc.

7 Arbitration Commission coursed Yugoslav succession case in the attitude of International Court of Justice expressed in the Decision from the 22nd December 1986., due to border dispute between Burkina Faso and Republic of Mali. However, by analyzing the decision mentioned at the Council of International Court of Justice we can determine that based on a special agreement from the 16th September 1983, between parties in the process, there was applied exclusively the principle of unchanging borders inherited from colonization age, which relied on the principle introduced in Resolution of Organization of African Unity adopted in Cairo in 1964. Considering that principle utipossidetis does not have the character of a special rule, but that it is the general principle which is logically related to independence gaining, the Court has actually stressed the fact the new Africa countries have respected administrative borders and borders established by colonial government, having in mind that such practice is not limited in the aspect of contributions to the gradual origination of habitual rule of international law. The court has stated that the principle superiorly covers legal gap up to the establishment of effective government as a base of sovereignty. Its primary goal is to provide territorial borders that exist at the moment of gaining independence. When these are delimited by the same

Having in mind that the agreement on border regulation between Serbia and Croatia has not occurred, by the application of the principles mentioned above, the border is the line that follows inter-republic demarcation executed in the period after the World War II. The basis of the mentioned delimitation was determined firstly by the Law on establishment and conformation of Autonomous Province of Vojvodina, which was adopted by the Assembly of the National Republic of Serbia on the 1st September 1945. In the provision of the point 1 of the Law the border between AP Vojvodina and Federal Croatia was prescribed to be temporarily determined based on the suggestion of the special commission of AVNOJ.[8] The border was drawn from Hungarian border, along the Danube, up to the Ilok. Border line goes across the Danube leaving Ilok, Sarengrad and Mohovo to Croatia and goes south leaving the village areas of Sid region: Opatovac, Lovas, Tovarnik, Podgradje, Adasevci, Lipo-

sovereign between colonies or different administrative units, then the application of the principle is reflected in transferring administrative borders into international borders, which has also occurred in the specific case due to the acquisition of independence of the mentioned French territories in Western Africa. Applying the principle utipossidetis juris prevents fratricidal fights to endanger the independence and stability of the new states. Having in mind its security role (and when it comes to conflict with the right to self-determination), the principle will be the wisest course which shows the prudence of African countries to preserve the territorial status quo. Finally, in addition to the fact that parties to the dispute required for the Court to solve the dispute based on the principle of invariability of borders inherited from the age of colonialism (utipossidetisiuris), we can certainly get the impression that Court resorted to its application through the application of the principle of justice infra legem. See: "Case Concerning the Frontier Dispute" (Burkina Faso v. Republic of Mali), Judgment of 22 December 1986, International Court of Justice Reports, 1986, § 20, 21, p. 565; Case Summaries, paragraph 1–15; 20–26. Alain Pellet (1992), "The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples", European Journal of International Law, pp. 178–185.

8 Commission led by Milovan Djilas was nominated by the presidency of AVNOJ on the 19th June 1945. In the report of the Commission it is suggested for the demarcation to go along the "temporary border between Vojvodina and Croatia starting from Hungarian border, along the Danube up to the landmark between the villages Backo Novo Selo and Bukin (backo-palanacki region); from there across the Danube between the areas of villages Opatovac-Mohovo, Lovas-Bapska, Tovarnik-town of Sid, Podgradje-Ilinci, Adasevci-Mala Vasica, Lipovac-Batrovci, Strosinci-Morovic. In that way, the villages of the present Sid region, Opatovac, Lovas, Tovarnik, Podgradje, Adasevci, Lipovac, Strosinci (and Jamena), along with their areas – would belong to Croatia and villages Mohovo, Bapska, the town of Sid, Ilinci, Mala Vasica, Batrovci, Morovic- along with their areas – to Vojvodina. It is logical that all the territories on the west, i.e. east from these villages should belong to Croatia, i.e. Vojvodina". See: Archive of Memorial Center„Josip Broz Tito", Belgrade, 1I-5-6/66.

vac, Strosinci and Jamena to Croatia and the town of Sid and villages Ilinci, Mala Vasica, Batrovci, Morovic to Vojvodina [OG NRS, 28/1945]. Demarcation between Croatia and Serbia is indirectly confirmed by adopting the law on administrative and territorial classification [OGNRS,17/1947] .

In the Law on administrative and territorial division of Vojvodina from 1946., it was prescribed that: „The area of Autonomous province Vojvodina includes a part of the National Republic of Serbia which borders, starting from the Sava river western from the place Sremska Raca towards the north, along the border of the National Republic of Serbia towards the National Republic of Croatia up to the state border towards Hungary" [OGNRS,47/1946]. Correction of border line was carried out somewhat later in the region Bapska Novak which belonged to Croatia and in the place Jemen which Serbia got (AP Vojvodina). In the 1990's, Serbia adopted the Law on territorial organization and local self-government which followed by previous solutions present in the Law on establishment and conformation of Autonomous Province Vojvodina from 1945. Based on the mentioned regulation, parts of cadastral municipalities on the left bank of Danube, Sombor, Beli Manastir (part of Batina, Draza, Zmajevac, Knezevi Vinogradi) Apatin, Backa Palanka and a part of Vukovar (a part of Mohovo and Sarengrad) were joined to the Republic of Serbia [OGRS,47/1991]. Basically, the accepted solution has had no meaning of delimitation in the aspect of international law, but indirectly has derived administrative and legal demarcations of internal borders between the two federal units of SFRY [Dimitrijevic,D, 2003].

In order to identify and determine inter-state border, Serbia and Croatia established in 2002 a mixed commission that had the task to prepare the contract with the description of border line between these two neighboring countries. Commission has adopted the Protocol on the principles for identifying the border line and preparation of the Agreement on state border between the Republic of Croatia and Federal Republic of Yugoslavia. Until today, commission hasn't published any official data on the results of demarcation. The need to develop and stabilize good neighbor relations between Croatia and Serbia suggests international legal regulation of the border. Prior to final delimitation, it would be required to examine all relevant legal arguments. In that sense, we will here express only a few observations related to mutual territorial requirements, as well as facts that can be significant for international legal delimitation.

Since 1945, the Danube was determined to be, for its largest part, the border line between Serbia and Croatia. However, the river has successively meandered changing its course and withdrawing from east to the west, by which great surfaces of fertile land were joined to Vojvodina in the period in the independence of these former Yugoslav republics. Croatia today claims several thousand hectares of the land along Vojvodina border which has now found itself in Serbia due to evolution movements of the Danube.[9] Therefore, Croatia claims Vukovar and Sarengrad's island on the Danube. As a basis for setting territorial requests towards Serbia, Croatia points out its so-called historical borders which existed prior to the foundation of Serbian country (period of Ottoman occupation and Austro-Hungarian government of Yugoslav countries in the period from 1699 to 1718), and supposing for the sake of conviction and having in mind that in the period mentioned it wasn't an independent country in international legal sense, Croatia also refers to more recent facts such as demarcation lines between Yugoslav administrative and territorial units established in the period after the World War I and II [Boban, 1993].

Along with the all mentioned above, Croatia points out that for defining Croatian and Serbian border we must also use Austro-Hungarian cadastre measurements of land in order to determine that the border goes along the "brink of cadastre municipalities border", which deviates from the course of the Danube. According to cadastre border, Croatia would include parts of the territory at the left bank of the Danube (so-called pockets), which are recorded in Croatian municipal cadastre recordings.[10] Generally speaking, highlighting some kind of "historical rights" has its fons et origo in territorial pretensions. In international practice it is known that withdrawal of "historical borders" is more in the domain of politics, than of law.

9 It is evaluated that the total land surface on the left bank of the Danube was about 9.600 ha. On the other hand, the land which moved to the right bank of the Danube due to meandering has a surface of only910 ha.

10 „If Croatia would actually "hit" Serbian bank of the Danube as well, there would be a real chaos. People from Sombor would lose municipal land in Kendija, Karapandza and Adice. In Apatin, an entire street along the quay could through one night become a part of another country. In the colony Harcas-Vagoni such a border would meander between the weekend houses: the orthodox Temple of Holy Apostles, built in 2000, would also belong to Croatia. Special case is the hospital Principovac, in which children with special needs are treated, which would need to be separated in two parts!?" See: „OdredjivanjemedjeSrbijeiHrvatskejosotvoreno", Dnevni list „Novosti", 21. 12. 2008, p. 7.

It is quite certain that any reaching for "historical borders" covers the request for unilateral extension of territorial sovereignty for which there is no adequate argument in international law [Blum, 1965]. Croatian law for determining state border based on cadastre measurements is not founded in international law since the arguments of that kind in global practice represent the evidences on owning the acquired property rights, which per se, cannot be of any significance in determining inter-state border. It would be principal not to bring into question the usage of the acquired property rights through mutual regulation of the regime by using the property from both sides of border line. The very withdrawal of border line however, must be executed based on rules and principles of international law. Having this in mind, "cadastre borders" from the Austro-Hungarian period can only have a secondary significance in the aspect of a definite determination of border between Croatia and Serbia[11].

Beginning from the attitude by which the border security can result only from a valid legal base of the constitutive nature, Serbia in the argumentation regarding delimitation with Croatia has referred to the Law on establishment and conformation of the Autonomous Province of Vojvodina from 1945. However, since the mentioned legislative solution has no meaning of international legal delimitation, the current situation at the moment of succession of SFR Yugoslavia couldn't entirely compensate the lack of legal basis in international legal sense. In case of the lack of basis, the law takes into consideration the factual situation that is created by a certain state practice based on real and undisturbed performance of effective power (ex facto jus oritur). [Island of Palmas Case, 1928] (However, this prescription on the existence of legal base in relation to state border on the Danube is not achieved because one subjective element is missing – legal awareness that is obligatory and must be respected (opinio juris sivenecessitatits)[12]. Therefore it would

11 In case of a dispute between Great Britain and Norway on fishing, International Court of Justice has determined that delimitation must have international law form. And that it cannot depend solely on the will of coastal state and its internal law. See: "Fisheries Case" (United Kingdom v. Norway), Judgment of December 18, 1951, International Court of Justice Reports, 1951, p.116

12 Lack of formal law delimitation between Croatia and Serbia makes establishment of border line between the two neighboring countries more difficult. Tacit approval of factual state is not a sufficient evidence of the existence of legal awareness on obligation to respect the separation line between Croatia and Serbia and acceptance of the principle utipossidetis juris, is not sufficient to solve all border issues. Therefore,

be required to use the existing rules of the general international law to draw borders on the so-called border waters towards Serbian population which also include the Danube in a part of the flow that goes through Serbia and Croatia.

For defining the borders on rivers that flow through the two or more countries or make the very border between the countries, international law has established the principle of the mainstream (Ger. Thalweg, Fr. fil de l'eau, Eng. mid-channel)[13]. Serbia insists on the application of the mentioned principle by highlighting that border should be drawn so that it goes through the middle flow path of the Danube, more precisely, from the flowing kilometer 1433,1 to flowing kilometer 1295,5 (from the border with Hungary up to Backa Palanka).

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the existing demarcation lines cannot be evidence that borders are already accepted through prescription and acceptance, since there are territorial requirements in some areas prior to the acquisition of independence. Moreover, in the 1990's there came to the obvious disputing of administrative line between the two republics, now independent states. Due to factual changes, parts of cadastre municipalities on the left bank of the Danube have been given to Serbia. See: „Law on territorial organization and local self-government", Official Gazette of the Republic of Serbia, no 47/1991. Having in mind that formal acknowledgement of the border has never occurred before, the very tacit statement of the existence of effectiveness of republican power in relation to internal demarcation line is not sufficient for the consent of the other party. See: "Land, Island and Maritime Frontier Case" (El Salvador v. Honduras), International Court of Justice Reports, 1992, p. 351. In literature about law it is mentioned that for the confession it is not necessary to have only the existing statement of effectiveness of state government in relation to border line, but we also need the consent of the other party. See: Charles de Visscher (1967), Les effectivites du droit international public, Paris, p. 111.

13 Principle of mainstream in international practice is known since the Middle Ages. Thalweg was elaborated on Congress in Rastatt in 1797. It was consecrated in Treaty of Luneville in the aspect of International law from the 9th February 1801, where it served as a support for division of Rhine between Germany and France. Thalweg has appeared to be the best criterion in the aspect of downstream transport, when water level is the lowest at flowing river. There are exceptions to this rule that occur for two reasons. First of all, mainstream line is differently defined in doctrine and practice. It is usually believed that it is an interrupted line that connects the deepest places in riverbed. The second reason is that the flow of many rivers is impermanent, and thus it comes to changes in mainstream position. For that reason sometimes there are determined continuous periodic measurements in order to have a precise determination of the position of mainstream line. See: Milan Bartos (1956), Medjunarodnojavnopravo, Beograd, book II, p. 25-26; James Wilford Garner (1935), "The Doctrine of Thalweg", British Year Book of International Law, n° 16, p. 177; Ruiz Fabri (1990), "Reglescotumieresgenerales et droit international fluvial", AnnuaireFrançais de Droit International, p.818.

In relation to the issue of moving the flow of the Danube towards the west, that is Croatia, we must have in mind that international law owns principles of border withdrawal in case of altering the river flow. Since the changes of Danube's flow have occurred during a longer historical period, Croatia couldn't bring into question the application of the mainstream principle. Delimitation of islands and river branches on the Danube, formed in the meantime, should also be done in relation to its position towards the mainstream and the fact whether the islands were created by gradual or abrupt changes. If the principle of the mainstream could not be applied entirely, then in context of developing good relations with neighbors through the application of common management of water flows and resources principle (cooperative management), it would be good to find solutions acceptable to both parties through mutual negotiations [Hensel &, McLaughhlin, 2006]. Possible judicial justification of Serbian and Croatian dispute about determination of state border would lead to situation for both parties to be precluded in their requirements of unilateral acceptance of mutually opposed positions in relation to the current situation in the field (non licetvenire, contra factum proprium)[14]. In that aspect, the joining of Croatia to EU on the 1st July 2013 could not have a greater impact on solving this open border dispute effectively. Therefore, we consider it would be necessary to conclude a contract as soon as possible on determination of border between Croatia and Serbia which would be on the policy line of European Union on regional cooperation development which is included in priorities of foreign policy of both countries.

14 Without a proper agreement between interested parties, the states should look for answers beforehand arbitration or International Court of Justice in which case the decision of judicial body would replace legal base required for final international law regulation of border on the Danube. According to the Court, when the principle utipossidetis reaches the goal at the moment of acquiring independence, by transferring administrative borders into international, they do not have to automatically become insecure as well. In case of a dispute, Court considers other arguments as well such as effective principle, as well as legal acts from which legal bases occur and on which there is de facto based the principle utipossidetis at the moment of succession. See: "Gulf Fonesca Case" (El Salvador v. Honduras), International Court of Justice Reports, 1992, pp. 388, 586–587; Temple of Preah Vihear Case" (Cambodia v. Thailand) , International Court of Justice Reports, 1962, p. 696. Hersch Lauterpacht (1927), Private Law Sources and Analogies of International Law, Longmans, London, p. 280.

## BORDER ISSUES BETWEEN SERBIA AND BOSNIA AND HERZEGOVINA

After international and mutual legal recognition, Bosnia and Herzegovina and Serbia have expressed the willingness to respect territorial status quo, stipulated in provisions of the Article 10 of Dayton Peace Agreement from the 21st November 1995 [GFA, 1996]. Official negotiations regarding the regulation of the border between Serbia and Bosnia and Herzegovina are started through inter-state commission on the 27th April 2001.[15] Delimitation was used as a starting point performed after the World War II, when the delimitation line of Macva region was drawn, according to the measures from the period from 1920 to 1923, and based on description made by mixed commission of Austro-Hungarian representatives and Kingdom of Serbs, Croatians and Slovenians.

In measures of the field executed during 1967 and 1982, the described border found itself in the charts, while property and legal delimitation was recorded in border municipalities. In a way in which it was described, delimitation line between Serbia and Bosnia and Herzegovina goes from the confluence of Drina to Sava at Bosanska Raca in the north, to the village Poblace at the triangle of Serbia, Montenegro and Bosnia and Herzegovina, in the south. For the greatest part it is about a natural border because delimitation line is presented by the flow of the river Drina in the north part and hill area of Stara Vlaska mountain from Tara and Zvijezda to Javorje and Kovac in the southern part.

Over the time, due to meandering of the river Drina, there came to a certain movement of border line so that in Bosnia and Herzegovina there is a land that belongs to Badovinci, cadastre municipalities Bogatic from Macva region. With the mentioned problem in mutual relations there is also the issue of Bosnian enclave whose size is about 400 hectares in the part of ca-

15 The harmonization of the text of inter-state Agreement on state border has occurred in December 2002., where at the session of inter-state commission there was also adopted the proposal of the Agreement on a simplified circulation of people and goods on border Uvac-Uvac and Vagan-Ustibar. See: Official Gazette of Serbia and Montenegro, addition International Contract, no. 6/2005. In addition, then there were verified Agreements on determination of border crossings and border transport. Agreement on a simplified process of circulation of people and goods in border crossings Uvac-Uvac and Vagan-Ustibar was signed on the session of International Council of the two countries in Sarajevo, 24. February 2005.

dastre municipality Mioce, village Medjurecje, municipality Rudo, separated from cadastre municipality Medjurecje, which is territorially drawn into the municipality of Priboj in the Republic of Serbia. Historically observed, this border line is inherited from the time of the Turkish reign of Novi Pazar area [Golic, 2010].

The manners of solving border issues between Serbia and Bosnia and Herzegovina are significantly different. For Serbia, a part of railway road Belgrade-Bar, between village Jablanica in Cajetina municipality and Strpci in Rudo municipality (Bosnia and Herzegovina) in the length of about 12 km, as well as part of the region around hydro-accumulation complex Bajina Basta, has a special interest.

Serbia believes that border line is not sustainable at the part where railway passes through the territory of Bosnia and Herzegovina, or in areas where the facilities of hydro power plant are situated, as well as in the region of municipalities Priboj and Rudo. Separation line should not intersect transport communications of facilities that has had a vital economic importance that were constructed by Serbia for previous state community from its own financial funds. Serbia lays the right by repurchasing the land on the left bank of Drina, in municipalities Zvornik, Bratunac, Srebrenica, Rogatica and Visegrad, which was flooded and turned into an accumulation lake during the construction of hydro power plants. Having in mind that hydro power plants „Zvornik" and „Bajina Basta" are in the property of the Republic of Serbia, that is its public company "Elektroprivreda Srbije" and the fact that these plants are today intersected by mainstream leading through the middle of the Drina, the acquired proprietary rights shouldn't be brought into doubt.

The problem is especially expressed in case of a hydro power plant "Bajina Basta", whose generators are located in the territory of the neighboring country. If we would adopt the presented proposal of Serbia, then new border line would contribute to a better cooperation with neighbors, as well as communication of local population in border regions of the municipalities Priboj and Rudo that are regarding geography, economy and culture related in the closest way. In mutual negotiations, Serbia has suggested Bosnia and Herzegovina to draw a border line, instead at Bic mountain, through the middle of the flow of the river Lim from the confluence of Uvac to the village Sjeverina, so that villages at the left bank of Lim, Ustibar, Mioce and Mokronozi belong to Priboj municipality to which they gravitate naturally and economi-

cally. The mentioned suggestion assigns Serbia the present Bosnian enclave Medjurecje in local community of Priboj, Sastavci. In this manner, we would greatly solve the problem of transport depression of about two thirds of the territory of Priboj municipality from the center of municipality, as well as the economic and administrative issues resulting from the existing state.

In case that the mentioned suggestion is accepted Serbia is ready to offer Bosnia and Herzegovina the appropriate territorial compensation, by the principle "meter for square meter of land of the same quality". Thus, for compensation to Bosnia and Herzegovina the forest land is offered that is of the same quality and the land it would be given to Serbia. There are not many people in the area that would be given to Bosnia and Herzegovina, which ultimately would not have negative repercussions in the aspect of migrations. Similarly, by exchanging the territory and water region, we could solve other territorial issues, by which the delimitation process would be definitely ended. In cases of hydro power plants "Zvornik" and "Bajina Basta", Serbia as the state border, has given the proposal of moving the middle of the river Drina to its left bank, 300 meters downstream from these facilities, in order for them to be at its territory. In return, Bosnia and Herzegovina was offered the appropriate surface of the river Drina which at the moment belongs to Serbia.

The suggestion mentioned at some river sectors would lead to movements of the border towards the right bank of Drina in favor of Bosnia and Herzegovina. In the aspect of regulating a part of railway road Belgrade-Bar between villages Jablanica in Cajetina municipality and Strpci in Rudo municipality, Serbia has suggested to draw the border line along the railway, with territorial compensation for Bosnia and Herzegovina in some other area that would be confirmed by the agreement. The reason for giving the suggestion mentioned is that displacement of railway in village of Strpci to the Serbian territory would be technically complicated and financially expensive project. In that aspect, Serbia has suggested exchange of land and water surfaces of about 40 square kilometers for the four disputable border points.

On the other hand, Bosnian party insists for the state border to be determined by the existing demarcation line of the marginal cadastre municipalities, since it is administration line that existed at the moment of international acknowledgement of Bosnia and Herzegovina. Bosnia and Herzegovina suggests that the border should be determined by the creation of a narrow corridor through the territory of Serbia, by which Medjurecje enclave would get

a direct physical connection with the territory of Rudo municipality. Finally, Bosnia and Herzegovina does not exclude the possibility to start negotiations on possible corrections of border and exchange certain areas after signing the contract on position and description of state border [Cirkovic, M &Golic,R, 2007].

## BORDER ISSUES BETWEEN SERBIA AND MONTENEGRO

After the decomposition of SFR Yugoslavia, state territory of Serbia and Montenegro was pronounced Federal Republic of Yugoslavia (FRY) on 27th April 1992. Soon afterwards FRY changed its name in State Community of Serbia and Montenegro (SCSM) on the 4th February 2003. The issue of mutual delimitation was not asked until Montenegro did not use the right to separate itself from the state community based on the Law on Implementation of Constitutional Chart [OGMNE,1/2003]. In the 5th paragraph of the Article 60 of the Law was prescribed that: „member country that uses the right to separate itself does not inherit the right to international law subjectivity, and all disputable issues are particularly regulated between successor country and independent country".

Stepping out of the state community for Montenegro meant the acquisition of independence de jure and de facto on the 21st May 2006. From the aspect of international law on succession, Montenegro is the successor country; while on the other hand, Serbia has retained state law continuity of international legal subjectivity of predecessor country [Dimitrijevic, 2007]. After the pronouncement of independence of Montenegro in 2006, delimitation has become one of the current issues between the two countries. Administrative border line between Serbia and Montenegro within Yugoslav Federation has mainly followed the line of delimitation defined by London Agreement between the Kingdom of Serbia and Kingdom of Montenegro from 1913. By the Agreement mentioned there was determined that the border was to follow the water line between Cehotina and Lim, and afterwards to cut the direction between Brodarevo and Bijelo Polje, from where it went through Sandzak on the east, intersecting the river Ibar in its upper flow and ending in the triplex with Kosovo and Metohia region on Mokra Gora.

During 2008, Serbia and Montenegro founded one common commission for delimitation whose operation was soon interrupted due to the fact that Montenegro acknowledged the Republic of Kosovo for opportunist reasons.

Unilaterally proclaimed independence of Kosovo on the 17th February 2008, and international recognition by Montenegro, was treated as a hostile act since southern Serbian province Kosovo and Metohia according to the Constitution of the Republic of Serbia has been its constituent part[16]. In relation to other parts of the territory where we must determine inter and state border, there are no great disagreements. We can consider the issue of determining the border line of forest region which is between the municipality of Pljevlja and municipality of Prijepolje, that is under the administration of the Republic of Serbia, that is public company „Srbijasume"[Brajovic, 2012] as an exception of an open issue.

With normalization of political relations, negotiations regarding delimitation are carried out on the7th March 2011 when inter and state commission got the task to prepare the terrain for border transport and border crossings regulation, in addition to defining the borders. In that manner, at the meeting of the representatives of Serbia and Montenegro the text was agreed on four border agreements. The three agreement referred to road transport (Gostun–Dobrakovo, Spiljani–Dracenovac and Jabuka-Raca), and one to the control of railway transport on the relation Belgrade–Bar. Control of the passengers will, according to this agreement, be done without stopping passenger trains and cargo control will be performed in Bijelo Polje (Montenegro). Interstate commission determined after visiting the border areas that there has been a possibility to establish border crossing on Pester weald, in order to maintain connections between local populations from both sides of the border line.

After the commission had performed an insight in the region of the passage Cemer, on the road between Pljevlja and Priboj, as well as near Rozaje, Serbian party suggested opening of border crossings in those locations, while

16 Montenegro and Kosovo formed the Commission for demarcation and maintenance of the border which ended its operation after many years. Serbia hadn't participated in operation of this commission which brought into question legal obligation of the Agreement on border between Montenegro and Kosovo whose signing was announced for the end of August 2015 in Vienna. As it was mentioned in official statements of the two parties, the border will follow administrative delimitation according to the Constitution of SFRY and solution from the Constitution of Kosovo and Comprehensive proposal for solving status of Kosovo on previous special UN representative Martti Ahtisaari from the 27th March 2007.

Montenegrin party emphasized the request to open an international border crossing near Rozaje. In the aspect to the region of Prijepolje municipality, Serbian party represents the standpoint that there is no possibility to open new border crossings, but in addition to that, for the needs of local population we must find adequate solutions in the aspect of regulating the crossings on the places commonly suggested by both parties[17]. From all mentioned above it is clear that states did not go into deep details in the issues of delimitation, leaving the Commission the possibility to reach satisfactory solutions in the aspect of final determination of state border through the regulation of border regime.

## BORDER ISSUES BETWEEN SERBIA AND MACEDONIA

After Macedonia declared its independence in September 1991, it unilaterally withdrew a border line on the part of Sherup on the border with Albania, to the south of Popova Sapka, the valley of the Crnkamenska River to Vrace and Rudka[18]. With this it occupied the region known by its quality pastures, in the area of Serbian and Macedonian border, on Sari mountain, whose length is 115km, starting from Djeneral Jankovic in Lepenac valley, then across Sar mountain, with insignificant corrections to Korab on the west, and the south to Belandza region, on the slope south-western from Stirovica in Gora municipality, at the length of 31 km and surface of 7,607ha[19].

17 The Law on protection of state border of the Republic of Serbia says that crossing state border is possible only through border crossings. See: Official Gazette of RS 97/2008

18 The first signs of territorial dispute with Macedonia could be spotted from the act of Sobranja FR Macedonia from the 28th September 1990, which was titled: Some aspects of territorial delimitation between FR Macedonia and FR Serbia". There is expressed the need to initiate the process of delimitation with Serbia on new bases and with new territorial requirements in the aspect of the Prohor Pcinjski Monastery with surrounding villages, Djeneral Jankovic colony and northern areas of Sar mountain. See: Srecko M. Nikolic (1994), „On the issue of delimitation between the Republic of Serbia and FYR Macedonia the region of Sar mountain", in: Osnovni principi razgranicenja drzava, Belgrade, Military-geography Institute, p. 227-235; Tihomir Stojanovic, (1994), „Razgranicenje SR Jugoslavije sa Makedonijom", Army, p. 9; Branko Pavlica (2011), Drzavne granice Republike Srbije, Belgrade, Radojkovic-Smederevo, p. 142–167.

19 In December 1992, UNPROFOR troops have occupied the region of Gora and Restalica municipalities that are along the slope of Sar mountain, previous borders within Vardar region of Kingdom of Yugoslavia, inherited in post-war Yugoslavia. It was done due to mutual disputing and possessing of certain border areas. In later phase, UNPROFOR troops were replaced by UNPREDEP troops, and finally in 1998 there came

There was no understanding from Macedonian part although the Yugoslav party emphasized legal arguments on possession based on earlier official cartographic data and documentation from cadastre in 1928, and based on the Law on establishment and conformation of Autonomous Kosovo and Metohia region from 1945[20].

The dispute continued and was extended by new territorial requirements in the aspect of drawing border between the municipality of Vitin in Serbia and Kumanovo in Macedonia which includes the forest area of Kopiljaca of 2184 ha. Defined in 1928, these borders were confirmed by cadastre measurements from 1952 and by aero photogrammetric measurement from1970, so Serbia took them to be final as it was a member of Federal Republic of Yugoslavia.[21]_However this was also disputable from Macedonian part and legally good counter-arguments were not presented. Mutual disputes included the areas around cement plant Djeneral Jankovic, medieval Serbian monastery Prohor Pcinjski with thirteen villages and strategically significant hill among Trgoviste and Kriva Palanka called Cupino brdo[22].

The Agreement of regulation of relations and promotion of cooperation between FR Yugoslavia and the Republic of Macedonia was concluded on the

military forces of NATO due to security reasons. See: Zlatko Isakovic, (1994), „Polozaj Makedonije u balkanskom okruzenju", International politics vol. XLV, no. 1024, p. 35.

20 Law on establishment and conformation of Autonomous Kosovo and Metohia region (AKMR), (Official Gazette of NR Serbia, no. 28/1945; no. 51/1959.) it was determined that it consists of counties, and firstly there was mentioned Gorski country with headquarters in Dragas. After the abolishment of country government, disputable area remained a part of Dragas municipality in Kosovo and Metohia.

21 In proceedings numbered 39027 from the 9th October 1928, Ministry of Finances of the Kingdom SCS has performed the description of border line. According to the data of census cadastre from 1952 and aero photogrammetric measurement from 1970., which was performed by Macedonian part, it was close to the border of forest complex of Kopiljaca with small deviations, determined by a unique elaborate of woods regulation from 1926. Border had a different character before World War II when abutments of Vardar region were on the north from Djakovica, Pristina and Leskovac and when the Administration for Forests from Skopje had power over woods in Kosovo and Metohija and southern Serbia. It is about a disputable area of the surface of 2184 ha of forest. See: M. Kostic, Sava Stankovic (1994), „Current state of borders of FR Yugoslavia and obligations of the border service of Federal Ministry of Foreign Affairs ", in: Osnovni principi razgranicenja drzava, Military-geography Institute, Belgrade, p. 139.

22 Macedonian Sobranje adopted an elaborate titled: „Some aspects of territorial delimitation between FR Macedonia and FR Serbia"on the 28th September 1990 and prior to acquisition of independence, where the aspirations for revisions of administrative borders at specific locations up to 30km in depth of Serbian territory were expressed.

occasion of solving the issue of border delimitation with Macedonia, on the 8th April 1996. At the same time common expert commission was formed with the aim to prepare the agreement proposal on describing and stretching the state border [SL SRJ, MU, 1/1996]. After armed intervention of NATO on FR Yugoslavia and accepting the Resolution of UN Security Council no. 1244 on the 10th July 1999, and signing of Military and technical Agreement in Kumanovo, peace forces of UN(KFOR), occupied Yugoslav and Macedonian border from the direction of Kosovo.

There was a progress in reaching the agreement on borders with political changes in SR Yugoslavia in October 2000, so the two countries signed the Agreement on extending and describing the border on the 23rd February 2001 in Skopje [SL SRJ, MU, 1/2001]. In the Agreement it was stated that state border was a plane that vertically cut the surface of land, their air space and space below the land's surface between FR Yugoslavia and the Republic of Macedonia. The border stretched along topographic border line that went "between border marks, water parting, ridge or wall, from the Yugoslav-Macedonian-Albanian triplex at North-East". Marking state border in the field was postponed for the next two years since the Agreement went into force [Pavlica, B, 2009].

In the region of Central Serbia and Kosovo and Metohia, this marking was not equal and according to the predicted plan due to which Serbian party offered the Macedonia the alteration of the Agreement on border issues. This didn't occur due to the resistance of Albanian population from both sides of the border[23]. Officially, demarcation on the region towards Kosovo and Metohia and Macedonia started on the 20th May 2008, based on the Protocol on the operation of technical commission signed in Skopje on the 18th April 2008 and according to "Comprehensive proposal for solving the status of Kosovo" [Comprehensive Proposal, 2007], of the special Un representative Martti Ahtisaari from the 27th March 2007, which Serbia did not accept[24].

23 Shortly after signing the Agreement on borders, which was then confirmed by international community, Albanians from Kosovo and Albanians from Macedonia protested, warning current Macedonian government that they will face serious problems if the agreement did not suit their interests. In borderland place Tanusevci, in February 2001 there were the first conflicts between Albanian rebels and Macedonian security forces, which grow into a serious conflict a month later, stopped only six months later with mediation of NATO, USA and European Union.

24 In the Annex VIII (Security framework on Kosovo), to Article 3 of the document mentioned (Border), it was predicted that "Kosovo will in cooperation with International

After it had recognized the so-called Republic of Kosovo on the 9th October 2008 without deep thinking, Macedonia performed the demarcation of border towards Kosovo and Metohia with the support to International administration on Kosovo and without the participation of official representatives of the Republic of Serbia.

Under Albanian pressure, at the insisting of one part of international community, Macedonia signed the Agreement with the so-called Republic of Kosovo on physical demarcation of the border without the consent of Serbia on the 16th October 2009. Macedonia accepted the alteration of border line Debelde/Kodra Fura, Restelica/Lukovo Polje and Stancic/Topan with the mentioned agreement, which referred to Agreement on Demarcation from 2001, Comprehensive proposal for solving status of Kosovo from the 26th March 2007, Protocol from April 2008 on the operation of common technical commission and "valid principles of international law",[25]. According to valid

civil representative and International military forces develop a strategy that will enable a multi-phase transfer to police service of Kosovo for the authorizations of border control and integrated border management. Territory of Kosovo will be defined by border region of Socialist Autonomous Province Kosovo within Socialist Federal republic of Yugoslavia, based on its borders from the 31st December 1988, excepted changes occurred based on Agreement on Demarcation of borders between Federal Republic of Yugoslavia and Former Yugoslav Republic of Macedonia from the 23rd February 2001. Kosovo will, along with Former Yugoslav Republic of Macedonia establish a common technical commission, within 120 days from entering into force of this solution proposal, in order to physically delimit the border and agree on the issues that appear from the very implementation of the Agreement from 2001 between Federal Republic of Yugoslavia and Former Yugoslav Republic of Macedonia. The operation of technical commission should be done within a year since the establishment of the commission. International civil representative and International military forces will be included in operation of commission in order to facilitate the conversations between two parties and they can be, at the request of one of the parties, included in delimitation process".

25 In the Annex 1(a) of the Agreement on physical demarcation of border between the Republic of Macedonia and Republic of Kosovo, there was predicted a change of border line in the area Debelde/Kodra Fura and it started from a place situated at about 250m western from the point 1357 in the place called Plehniste. From here, border line stretched to south in the length of 125 m where it changed direction and followed borders of cadastre parcels up to the intersection with new road leading to Gosnice village about 625 m south-east from(PT-k) 1492. Here the borderline went down the new road through (Pt-к) 1492 and connected with border line according to the Agreement from 2001 of about250 m north-east of (Pt-к) 1492. In Annex 1(b), there was predicted the alteration of border line in part of Restelica (Lukovo Polje), so the line started from triplex between the Republic of Macedinia, Republic of Kosovo and Republic of Albania, which is 11 meters north-east from trigonometry point with point (Pt-к) 2092 meters from Serup. From the

rules of international law such an act is not an obligation for the Republic of Serbia, according to the principle-*pactatertiisnecnocet, necprosunt*. Such act is for it - *res inter alios acta* [26].

## CONCLUSION

In the following period, Serbia will have to completely coordinate its internal legislation with the law of European Union so that Chapter 24 would

triplex the line continued in general direction south-east in the line of 160 meters where it intersected with local road of this place and it was north-west from the point 1860 remote about 370 meters. From here border line continued in general direction south-east, in the length of 1750 meters to the spring that was north-east from (Pt-к) 1696 remote about650 meters. From here border lines went in general direction south-east to the existing road that led to Restelnica and cut it in place remote about 225 meters south of (Pt-к) 1696 meters. From here, border line continues in general direction north-east to (Pt-к) 1647 meters in the length of about 1750 meters. From (Pt-к) 1647, border line continued in general direction north-east in the length of about 1400 meters from the place that was about 250 meters north from the point 1600. After that, border line changed the direction to south-east and in the length of 300 meters it connected with border line defined by the Agreement from 2001. In the Annex 1(c) of the Agreement on physical demarcation there was predicted the alteration of border line at the area Stancic/Topan. Alteration moved along the line from the point 1105 in the place called Kodra Stan. From the point 1105, border line continued in general direction towards the south in the length of about 625 meters to the places that was situated about 50 meters south-east from (Pt-к) 1105. Border line from these continued in general direction to the south in the length of about 625 meters to the place that was about 50 meters south-east from (Ptk) 1105. Border line continued towards the east in the length of about 875 meters where general direction was changed and continued towards north-east in the length of 850 meters where it connected with the existing road Kumanovo-Gnjilane, about 200 meters east from the point 1011 meters. After that, border line continued according to the Agreement from 2001. Now at the entire altered part, border line followed cadastre border. See: Службен весник на Република Македонија, no. 127/2009.

26 The rules mentioned are related to the matter of the contract and are applied without any damage to any responsibilities that can occur for a country or international organization, i.e. foreign contractor in relation to conclusion or application of agreement whose provision are not in harmony with their obligations based on another agreement or based on the agreement whose subject is the alteration of agreement in relations between certain parties to the contract, i.e. contract termination or termination of its implementation that occurred as a consequence of agreement violation (paragraph 5. Articles 30, 41. and 60. Vienna Convention on the right of the contract from 1969.and Vienna Convention on the right of the contract between countries and international organizations or between international organizations from 1986.). See: Stevan Djordjevic, Dusko Dimitrijevic (2011), Medjunarodno pravo ugovora, Institute for International Policy and Economy, Belgrade.

be final and closed, which refers to sensitive field of justice, freedom and security in negotiations of accession. Having in mind that Lisbon Agreement abolished the difference between pillars of European Union and that the need to implement the policy of visas, asylum and immigrations, as well as other policies related to freedom of movement based on principles of solidarity and fair division of responsibility is emphasized, Serbia itself could initiate the regulation of open border issues with former Yugoslav republics, successors of SFR Yugoslavia, in spite of the fact that international legal delimitation among countries is of a facultative nature, because accession to European Union does not mean only the abolition of internal and establishment of control of external borders, but it also includes the elimination of all security risks related to this process. Especially because inherited administrative borders between successor countries of SFR Yugoslavia (which are via facti transformed into state borders based on extensive interpretation of the principle utipossidetis by Arbitration Commission for former Yugoslavia), precisely represent security risk *per se,* which should be dealt with by international legal means in order to overcome the obstacles on its path towards European Union.

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