

The Use of Water Borders and the Good Neighborliness Principle

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Abstract: The use of Romania's water border for economic activities, navigation, recreation, fishing, bathing, beach, shopping, and animal shelter is established by the local authorities, with the prior consent of the territorial units of border police and ensuring fully compliance of the internal and international laws and of the good neighborliness principle.

Keywords: good neighborhood; water border; management activities

1. General Rules. Good Neighborhood

It is generally recognized in our time that good neighborhood has become not only a political condition to pursue normal relations between states located in a geographical proximity, but also an important principle of international law.

This recognition is due to a long experience in the sense of the need to maintain not only correct but also supporting relations, collaboration and help with its neighbors, the closest ones being able to favor the beneficial relationships, promoting a spirit of understanding and the elimination of all tension and conflict sources.

As shown in the literature, “*The neighborhood remains a fundamental and permanent factor of the relations of each state, not only because it has neighbors, but because it remains with its neighbors forever, according to the geographical context which history had set. As such, and living together with neighbors is a permanent political imperative.*” (Pop, 1986, p. 423)

We must not forget that the first rules of international law were actually established between neighboring countries, which the diplomatic relations normally settled

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between close partners, in order to get an extension in the most distant areas and regions.

Corollary, the economic relations began by first taking place between countries located in a geographical proximity, subsequently gaining, because of extension of means of transportation and communication, a dimension that people know today.

The fundamental principles of international law also occurred primarily in relation to neighboring countries (respect for sovereignty, noninterference, renunciation of force, etc.) to achieve then, over time, the generalization and inclusiveness feature that we have today.

The promotion of good neighborly relations has always been a fundamental objective of the states' policy, this being reflected in numerous bilateral treaties - some being expressly called as being analyzed as good-neighborly¹ - the customary rules that have been established throughout the history, but also in the documents of some international organizations and bodies, as well as in doctrinal works.

The affirmation of the cross-border cooperation idea, under the conditions underlying the process of European integration has given to us new dimensions to the concept of good neighborliness, demonstrating on the one hand its viability and usefulness, and on the other hand identifying new areas, sectors of activity in which good neighborhood relations can and should take the stand. Changing the European Union's external borders and their extension brings with it new realities. New members bring new neighbors whose relevance for stability and development of the Union has a special significance. (Busek & Mikulitsch, 2005, p. 77)

In legal terms the good neighborliness has proved to be a good principle, as important and effective as all other principles of international law.

Thus it was demonstrated undoubtedly that the relations between countries, especially between neighboring countries cannot be developed - if it is indeed desired the true peace and stability in international relations - than considering good neighborhood, whose legal meanings are continuously enriched through states' practice, as a participant with supporting elements towards the recognition

¹ Among the oldest neighborhood treaties we include: the Convention of friendship and good neighborliness between Italy and San Marino (1897), the Convention between Japan and Russia to strengthen peace and good neighborly relations (1907), good-neighborly Treaty between Afghanistan and the United Kingdom (1921), the Convention of friendship and good neighborly relations between France and Turkey (1926)

of legal connotations of international law, in general, and of the principle of good neighborliness, in particular.¹

2. About the Activities that are carried out in Border Waters

Manifested primarily as a general principle of peaceful coexistence between neighboring states, good neighboring has seen, over time, more profound meanings about the way in which there should have been maintained and solved the problems between good neighbors.

Therefore it is sufficient to mention the customs' facilities, local border traffic, police and administrative assistance in neighboring areas, the friendly settlement of any disputes and disagreements, the establishment of a border regime for the benefit of both countries, transport facilities, grazing, cooperation border in the veterinary field, for example in combating avian influenza threat, not to mention other problems such as environmental protection, cooperation on oil supply in the border area, construction of tunnels, bridges, cooperation on rescue operations and many other areas. Appropriate bilateral administration, often in common, of these fields is necessary especially when the border is formed by water.

2.1. Maritime Transport of Sea Freight and Passengers

The communities that have developed in the vicinity of water received, in addition to natural food resources, also the possibility of communication and exchange of goods by sea, practicing shipping since the beginning of humanity.

Seas, rivers and streams were both foreign and strategic areas, favorable for defense and easy transport routes, increasingly widely used, especially since the Industrial Revolution and since the promotion of free navigation principles on the rivers.²

¹ Duculescu, Victor *Buna vecinătate și tratatele internaționale/ Good neighborhood and international treaties*, apud (Deaconu, 2001, p. 5)

² "... river courses are common and inalienable property of all the countries bathed by their waters, and any nation cannot claim, without committing an injustice, that it has the right to occupy one channel of a river and prevent the neighboring peoples, on the banks of that river, not to use the same facilities ... so it is revocable at any time, even in case of agreement, because nature knows no privileged peoples or individuals, and that the human rights are imprescriptible." (Baicoianu, 1917, p. 19)

One of the biggest possibility offered by the Danube is, from ancient times, shipping. This possibility is enhanced by the commissioning the Trans-European Rhine-Danube system, the navigation axis of European importance, which will connect through this river western countries, the center of the continent and the Black Sea. The transport on the Danube River is open to all commercial ships that will operate in full equality of treatment in terms of port charges, fuel supply, driving and servicing.

As for the Prut River, if our country has abandoned its old plans to transform it into a waterway, but it cannot be said the same thing about the Republic of Moldova which has already reached the operational level at Giurgiulesti Port, from the confluence with the Danube.

2.2. The Use of Border Waters for Irrigation

The use of watercourses for irrigation (Ardelean, 1967, p. 540) is an important aspect of the use of frontier waters.

The irrigation is, as practice shows, a very important and current issue for the national economy of any country. International river waters represent an important source for providing quantities of water required for irrigation, a source which cannot be neglected. Unlike indoor waters use for irrigation, the use for the same purpose of international river waters raises interesting issues of public international law.

The practice of bilateral agreements concluded by the riparian states to use the international watercourses for irrigation purposes, proves a great diversity. Thus there are agreements that register the usage by each coastal state of rivers in the sector. The idea of using, under the conditions of equality of border waters for irrigation purposes, appears in some agreements in the first half of last century.

Another form of conventions is the one referring to the existence of gained rights, on the use of waters in irrigation purposes. Since 1970 the International Law Commission of the UN General Assembly has elaborated rules on the “use of international watercourses for purposes other than navigation.” It is considered the use of these waters for power generation, irrigation and other economic and commercial purposes.

For our country irrigation problem was addressed in the “The Declaration of Danube states member on household matters and river’s water protection against pollution”, adopted in Bucharest in 1985, and in bilateral conventions concluded by Romania with the USSR on 30 October 1986, with Hungary on 25 June 1986 and with Yugoslavia in 1963, the “Iron Gates I” and 1976, the “Iron Gates II”.

2.3. Carrying out Leisure Activities and Water Contests

Border waters and territorial sea waters provide opportunities for making tourism or water activities after prior approval of the territorial border police whose units’ area of responsibility will transit.

Persons or agencies authorized to conduct such activities in the border waters are required to communicate the territorial border police units all recreational program or cruise on the Danube¹ and Black Sea in order to obtain the necessary approvals.

The approvals for such activities will be communicated to all sectors immediately to the entire border police sectors located along the ship’s route with trippers. Leisure activities and sailing competitions will be conducted only in places and under the conditions established by the territorial units of border police. Territorial sea and border waters vessels with hikers are not allowed to dock, only in ports. Only in case of major force (storm, damage or any other circumstance likely to defeat the will of the crew) docking can be achieved at any point on the Romanian bank, under the condition of previous announcement to the closest police border or police station.

2.4. The Industrial and Sport Fishing

Fishing is the activity of catching fish on the basis of authorization, in places, times and with tool of sizes permitted by the law for industrial, scientific and sports purposes. To make this work there must be fulfilled general conditions, valid

¹ Danube is an important international river road, of great attraction for tourists from around the world, as it flows through 10 countries (Austria, Bulgaria, Croatia, Germany, Hungary, Moldova, Slovakia, Romania, Ukraine, Serbia) and it has tributaries in seven countries. Passes through four state capitals: Vienna, Bratislava, Budapest and Belgrade.

throughout the country, governed by Law no. 192 of 19 April 2001 on the fish stock, fishing and aquaculture.¹

According to article 40 of GEO no. 105/2001, the industrial and sport fishing in the border waters, internal waters and territorial sea is carried out under the law, in the places and areas established by competent authorities, with the prior approval of the Head of Border Police Inspectorate.

This activity will take place only in national fisheries basin, observing periods and areas of fishing closures in order to protect fisheries, to limit fishing of certain species of fish and marine animals such as oysters, sturgeons, and mackerel in the mouths of Danube flows into the Black Sea to a depth of 5 km offshore.

In addition to these limitations there are also added the prohibition of the use of tools (nets - coastal marine area, in these and other complex Razelm - Sinoe) and hazardous or harmful fishing methods (using explosives or electric fishing). In addition to these general conditions, the law provides that special conditions must be met in order to obtain *prior approval of the territorial units of the Border Police*.

This approval will be given after the local authorities have established the places or areas destined for industrial or sport fishing by administrative decision.

2.5. Possession and Use of Boats and Vessels

The border state law is restrictive regarding the use of boats and vessels in border waters and territorial sea in order to prevent fraud crossings over the border line, smuggling or other violations of the legal regime of the state border.

The current legislation requires owners of boats and vessels (with or without propulsion, rowing, sailing, leisure, sport fishing or lifeguard) to register the captains of settlements located on the Danube or Black Sea ports, where they will receive a proof of performing this operation – the role boat or vessel.²

¹ Republished in the Official Monitor no. 627 of September 2, 2003.

² According to article 41 of GEO no. 105/2001: “the boats and vessels registered under the law in border waters and internal waters, are kept in places established by port captains or, where appropriate, by the local authorities, with the heads’ approval of border police sectors, taking measures those who hold them, in order to prevent illegal crossing of state border, the practice of smuggling and other illicit activities.”

Boats and vessels will be kept centrally in specially designed places, established by local authorities, with the approval of the territorial units' heads and border police and they will be able to circulate in the border waters that flew the state flag imprinted on plating: number of registration of the captain or city hall and port or place of origin.

Those who use these boats or vessels need to carry their identification cards, sport fishing licenses and the documents of the floating vessel. Boats and vessels owners will take security measures to prevent their use by others for illegal border crossing or the practice of smuggling with various goods.

2.6. Other activities

At the river border there are carried out activities, apart from those in GEO no. 105/2001, provided for in border treaties, agreements, conventions and protocols.

On the Danube, the riparian states have signed international agreements on maintenance, measurement, dredging the fairway, or remove rescue stranded, sunk ship etc.

In the border waters of the riparian member states there were built between the two territories the hydropower system from the Iron Gates hydro complex Turnu Magurele - Nikopol, Stânca-Costești dam, which led to carrying out joint activities in these facilities. Therefore it apparently results that the activities of border waters require knowledge of all national and international legal acts in order to maintain and respect firstly the principle of good neighborliness.

3. Brief Conclusions

As shown in the specialized literature, “*Good neighborhood crystallizes as a general principle of international law which, in essence, imprints a special value of respecting sovereignty and independence of neighboring countries, the principles of non-resort to force, non-intervention, peaceful settlement of disputes and cooperation. In a wide sense, this applies not only to geographically neighboring states, but to the states in a geographical area, and relations between all states, meaning a generalization of the international law of neighboring*”. (Gemănu, 1981, p. 421)

It is significant the fact that from the traditions of good neighborliness of the Romanian people, to the international practice - especially neighboring countries – the theoretical research sought to identify, from multiple angles, the valences and timeless importance of the principle of good neighborliness.

However it was considered that the very concept of “good neighborliness” expanded geographically, providing premises of good neighborliness right, indispensable corollary of international law, in a world in constant and profound transformation, in which the good neighboring faces often practices that tend to limit or to annihilate it. Hence the need for respecting the neighboring states treaties, conventions, bilateral agreements and protocols of the border and international alike.

Under these conditions, good neighborhood should be strengthened especially by legal means, continuously enriched, recognized by international documents, claiming the general aspects of the rules of good neighborhood and its concrete sense, aiming at moral, tolerance, mutual information, refrain from any actions or events which would harm the interests of other parties.

As shown as correct as possible, *“the directions and rules of the principle of good neighborliness should be followed by taking into account the changing nature of life, allowing them to solve multiple and complicated problems that a nation and a state is facing during their lives, of their destiny often calm, but sometimes difficult and even dramatic. In this fate, the relations with neighbors have had and will have a role that is (that is desired or not) the never-failing”*. (Pop, 1986, p. 538)

With Romania's EU integration¹ and preparation for accession to the Schengen area, we are already talking about the **legal community regime of water border** characterized mainly by the priority of community rules with obligatory feature towards the provisions of the national laws², by the abolition of controls to internal border, together with a strengthening of external border controls, the introduction of the Schengen Information System (SIS) that allows the identification of all categories of persons and goods which are subject to criminal justice in the community space, the exertion of the right to follow over the national border (in another state), the exertion of the right to transborder border surveillance etc.

¹ Romania joined the European Union with all the rights and obligations as at 1 January 2007 under the Treaty of Accession of 25 April 2005 our country ratified by Law no. 157 of 2005, published in the Official Gazette, Part I, no. 465 of June 1, 2005.

² See article 10 line 2 of Romania Constitution.

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***Belgrade Convention of 18 August 1948 on the regime of navigation on the Danube, published in the Official Monitor no. 253 of October 30, 1948.

***Emergency Ordinance no. 105 of 27 June 2001 on the state border of Romania.

***Romania's accession to the Treaty on European Union signed on 25 April 2005, ratified by Law no. 157/2005, published in the Official Monitor, Part I, no. 465 of June 2005.

***Sofia Convention of 29 June 1994 on cooperation for the protection and sustainable use of the Danube, ratified by Romania by Law no. 14/1995, published in Official Monitor no. 41 of 27 February 1995.