

Europeity and Europeism

The Danube 3D

Associate Professor Jana Maftai, PhD
Danubius” University of Galati, Romania
janamaftai@univ-danubius.ro.

Abstract: The Danube, an international River, whose waters cross the Romanian territory over a distance of 1075 km, is of a particular importance for Europe and it has a huge economic and strategic significance for our country. The significance of Danube was recognized since ancient times and the doctrinal opinions highlight the role of the Old River in the existence of the Romanian state. The achievement of Rhine-Main-Danube Canal has transformed it into a Pan-European transport corridor. The recent EU concerns for the Danube region have resulted in the adoption by the Commission in December 2010 EU Strategy for the Danube Region, which aims at strengthening the 14 countries’ cooperation for the sustainable progress of the region. All these aspects we have covered in the paper addressing Danube from three dimensions: historical, legal and geopolitical one. For the elaboration of the paper we have used as research methods the analysis of the mentioned issues from the doctrine point of view in the specialized treaties and papers, documentary research, interpretation of legal rules in the field. As the Danube collects waters that flow through the states’ territories, the European countries have to consider a bond in their effective cooperation for the prosperity of their inhabitants.

Keywords: international river; Belgrade Convention of 1948; Danube Strategy; International Day of Danube; Danube Commission

1 Introduction

A priori it should be noted that the theme of the Danube, given the great importance of this stream for Europe, in general, and for our country, in particular, has been, over time, a coveted asset for the great powers, the bone of contention between them and the riparian States and subject to heated debates, negotiations and controversy for politicians and researchers, so often reminded by the doctrine. (Lache, 2011, p. 11)

The international significance of this river has been recognized since ancient times and the doctrinal views highlight the role of the old Danubius in the existence of the Romanian state. Grigore Antipa appreciated that “*of the Danube - as the Carpathians – it is tied the whole life of our people; it is the part that keeps us in contact with the peoples of Western and Central Europe and all it opens us the wide path to the ocean ...*” (Antipa, 1921, p. 2) The paper from which we extract the excerpt is an analysis “*of the scientific, economic and political problems*” of the

Danube. Starting from this quote, we also approached the theme of the Danube, from three dimensions (hence the chosen title - 3D): historical, legal and geopolitical, without pretending to rise to the level of reflection and interpretation of the great Romanian teacher or to formulate fully comprehensive answers.

This paper is intended to be as an introduction to the offering theme of the Danube, an attempt to outline the profile of this unique river in terms of three dimensions, and also the beginning of a long road because we wanted it to be the first in a series of several articles that will have as subject the Danube, each time trying to complete the landscape, piece by piece, like a puzzle. Moreover, the construction of the Danube's full picture requires an interdisciplinary approach, the contribution of several sciences being able to highlight the political, legal, historical, geographical, strategic, sociological, cultural, environmental, economic aspects, the energy force, the Danube's transport potential, as in a game of mirrors, where each dimension will reflect the situation of others.

We will complete the Danube's picture with reference to the Rhine-Main-Danube Canal and we will highlight the recent concerns of the European Union for the Danube Region, resulting in the adoption, by the European Commission in December 2010 the EU Strategy for the Danube Region, which aims at strengthening the cooperation of 14 countries of the region for sustainable progress.

In preparing this paper we used as research methods the analysis of issues related to the mentioned objectives, with reference to the doctrinal views expressed in treaties and specialized papers, documentary research, interpretation of legal norms in the field and we guided in achieving all proposed objectives according to the prestigious Romanian researcher: *"Before being a political issue, it is a matter of physical, economic and commercial geography. Therefore, not only from the study of documents, treaties, diplomatic notes and so on, but from the examination of the actual situation especially and following our specific interests, we will find ways to solve this issue."* (Antipa, 1921, p, vi)

2. Geo-historical and Geopolitical Highlights

The Danube has long built the geographical identity, starting from the sources, in Germany, Black Forest Mountains, wetting the earth today of other nine countries (Austria, Slovakia, Hungary, Croatia, Serbia, Romania, Bulgaria, Moldova and

Ukraine) and across the four capitals (Vienna, Bratislava, Budapest and Belgrade) until it flows into the Black Sea.

The geographical description of the Danube or its importance we find since ancient times from Herodotus, Ptolemy, Apollonius of Rhodes or Strabo. The Greek historian Herodotus, for example, indicated that Hister has five mouths and “*after flowing right across Europe, finally reaches the Euxine Sea, where the colonists from Miletus have settled in the citz of Istria*” and it was included in the category of famous rivers that were waterways when coming from the sea. (Pearson, 1934, p 328 et seq.)

Later, Napoleon I would have considered it as the “King of Rivers” and the French politician and diplomat, Talleyrand, recognizing its importance, said that “*the center of gravity of Europe is not in Paris or Berlin, but at the mouth of the Danube*”.¹

With a length of 2857 km, the Danube ranks second among the European river after the Volga. Another feature that individualizes it is that it is the only river in Europe flowing from west to east, and the construction Rhine-Main-Danube Canal potentiates the value of the bond set between the Black Sea and North Sea², crossing the continent from north to south.

Romania has more than a third of the Danube, 1075 km, but very important from a geopolitical and geostrategic point of view it was and it remains so the fact that it flows into the Black Sea in our country.

Nicolae Iorga said that “*the life of a nation is often determined in a decisive and fatal way, to which it cannot resist by the geographical area that had to develop.*” (Iorga, 1985, p. 13) Or Romania is often defined as a country situated in the Carpathian-Danubian-Pontic area, the Carpathians, the Danube and the Black Sea representing the spatial unit that has watched over the fate of the Romanian people. The same author linked the “*problem of the Danube*” to the “*entire history of Eastern Europe – and the Western Europe in connection to the East.*” (Iorga, 1998, pp. 83-84)

“*The history of our people is a chapter from the very history of the old Danube*” (Botez, 1919, p. 26), wrote Jean Bart, whose writing feather shaped under the

¹ *Apud* (Băicoianu, 1915, p. 25), note 1.

² On the same line, see (Baltălungă & Daniela, 2008, 10th year, p. 59)

careful guidance of Ion Creanga, whose teacher was in the primary school¹, and Alexander Lahovary considers that the Romanians' interest in Danube is "the oldest, largest and most permanent", not being any other "*matter that is the most important for the country*". (Lahovary, 1881, p. 3)

The great Romanian politician, historian and publicist, Mihail Kogălniceanu, whose work Alexandru Zub wrote that is "*multiple and fruitful*" and that "*can be called anytime to help*" (Zub, 2007), attributed to the Romanians, in the first book dedicated to the problem of the Danube and Romania's sovereignty at the mouth of the river, the important role of the "guardians of the Danube", a mission which is considered providential mission as "*from ancestors, there is in the Romanian people the instinct that without the Danube, Romania cannot be, and it would not have the reason to be! (...) As long as the Romanians were masters of the Danube, they were strong and powerful, as soon as its coasts were kidnapped from their rule and reinforced through foreign cities, and their mouths were given to others, the result was national political, economic decadence of principalities.*" (Kogălniceanu, 1882, pp. 79-80) The indissoluble relationship between the Danube and the Romanian state is found mentioned by Al. Radulescu, highlighting its mission of "*European sentinel*" and the necessity of "*geopolitical reasons*" for Europe, the existence "in this position" of a Romanian state "strong, whole, having a Black Sea shore stretched sufficiently to become apt to guard the mouths of Danube".²

Mastering the Danube and its mouths was often the subject of the confrontation between riparian or non-riparian states and it was subject to long negotiations between European diplomats and not only, because the strategic importance was immense. In a synthetic form, but brilliant, the Romanian diplomat Constantin Diamandy explained it in the following terms: "*if geographically speaking the Danube ends at its mouths, them economically it flows into the Mediterranean Sea: in the Delta it pours its waters, in the Mediterranean takes its ships. Without free exist at the Mediterranean crossroads, the Danube cannot fulfill its role in the world trade*". (Ardeleanu, 2008, p. 5)

That is why the Danube needs international regulation as a result of cooperation of States, while respecting the sovereignty of coastal States, but this was to be achieved only after the World War II.

¹ Moreover, the Romanian writer with filibuster name has dedicated a special work to the old river, *Cartea Dunării/ The Danube book*, which was published in 1933 (Bart, 1933).

² Apud (Bădescu, 1996, p. 103)

3. The Danube - International River: Historical and Legal Landmarks

3.1. International Rivers

In the doctrine theory, interpreting the international regulations in the matter, the international rivers are defined as streams that cross or separate several countries or crossing more countries, that separate or crosses the territories of two or more states which are navigable to the mouth at sea¹ (Miga-Besteliu, 2005, p. 150). Viewed from this perspective, the international rivers can be divided into contiguous - that separates the territories of two states or successive – the ones crossing territories of several states. Their legal regime is determined by the international multilateral conventions because, although forming part of the state, given their navigable feature they are subject to special legal regulations. The member states cooperation can watch their use for purposes other than navigation. In this way, states have established a set of customary and conventional rules and a set of legal institutions governing freedom of navigation on certain rivers and other activities of states in this area, and actions to protect waters against pollution of these rivers, waterways that make up the international law as part of public international law. (Takacs & Niciu, 1976, p. 165)

There are set in rules on the international regime of the following rivers:

- the sovereignty of riparian states over the national regime sector on those rivers;
- principle of freedom of navigation for merchant ships of the Member States;
- equal treatment to all merchant ships;
- the obligation of riparian states to undertake the maintaining works of the river navigability and improve them in their national sector;
- member non-riparian military ships do not have the right to sail on rivers with international regime;
- the establishment of international commissions of international monitoring of how the regime of international rivers is applied;
- the right of each riparian state to a river with international regime to use, reasonably and fairly the river waters without harming the interests of the other riparian states etc. (Niciu, 2001, pp. 270-271)

¹ Such international rivers are: Rhine, Danube, Escaut, Meuse, Mossele, Congo, Niger.

3.2. The Legal Regulation of Navigation on the Danube

In the preface to a book published in the early years of the XXth century, Dimitrie S. Nenițescu reminded the Danube issue as “*one of those that tend to immortalize*” even if “*of all international rivers the Danube is the river on which it was concluded, in various occasions, most treaties of navigation*”. (Nenițescu, 1903, p. 4) However, the specialized literature devoted to the Danube regime in modern times is not all as rich. The river remained, however, on the agenda of the diplomatic activity of that times and we can say that it recurred periodically, “every time under new look”, (Nenițescu, 1903, p. 4) and the legal regime of the Danube was and is very often commented by the specialists, this theme incited always, being approached from the angle of the territorial sovereignty and the principle of freedom of navigation, or because this regime has led to the establishment of one of the first international organizations. (Constantin, 2004, p. 508)

The Vienna Final Act signed on July 9, 1815 established in article 108-117 (Baicoianu, 1915, pp. 200-202) the basic principles of navigation on navigable rivers and waters are the “*cross or break more countries.*” The Danube, although the most important European river was not included, but in the enumeration of article 117, it remained subject of dispute between the three great empires of those times: the Habsburg Empire, the Ottoman Empire and Tsarist Empire. But it did not represent a hinder for the theorists to consider the Treaty of Vienna in 1815 “*a harmonious and happy combination of the principles of freedom of navigation on waterways with that of inviolability of sovereignty interests of riparian States,*”¹ “*one of the most beautiful works*” (Nenițescu, 1903, p. 33) of the XXth century concerning the inland navigation. The legal regime of the Danube was established by conventions and treaties concluded between the three great powers mentioned above: The Russo-Turkish Protocol of 1817, the Russo-Turkish Convention of October 7, 1826, the Treaty of Adrianople in 1829, the Convention between Russia and the Habsburg Empire 1840 etc.

In 1854, the representatives of the European powers accredited at Vienna addressed a Memorandum to the Gorchakov Prince by demanding to ensure the freedom of navigation for the Lower Danube and the proposed establishment of a permanent union authority to exercise control over this sector of the river. Count Osten Prokesh requires that the principles established in the Final Act of the Congress of Vienna in 1815 should be applied on the Danube as well, and after the Vienna

¹ N. Dașcovici *apud* (Stanciu, 2002, p. 24)

Conference held between 23 March 1854 - 23 March 1855 it was signed a protocol setting out the division of the River into two sections: Upper Danube and Lower Danube. The first sector ensured the freedom of navigation in accordance with the Treaty of 1851 between Austria and Bavaria; the second area was administered by the Executive Commission of the European Union under the riparian control. (Stanciu, 2002, p. 38 et seq.)

Paris Peace Treaty of 1856 stated in article 15 that the principles of the Vienna Act of 1815 shall be applied also to Danube and its mouths, setting a single international regime for the whole course of the Danube River under the principle of riparian state sovereignty. According to the same document it was agreed on the establishment of Permanent Committee of Riparian, which had as task the enforcing regulations across the navigable waterway of the Danube River, execution of technical work needed to ensure free navigation and so on, as well as a European Commission Danube, temporary mission for two years, but it has been successively extended. In the structure of the European Commission of the Danube, known as the Maritime Danube Commission, whose headquarters was established in Galati, there were included four non-riparian states - England, France, Prussia, Sardinia and three riparian states - Russia, Turkey and Austria.¹ The Commission started its work on November 4, 1856, when it held its first meeting. (Baicoianu, 1915, p. 60)

In 1857, following the riparian negotiations, it was adopted the *Danube Navigation Act* recognizing the freedom of navigation under all halls “from the full sea ports to the Danube and from each of these ports each of these sea” (article 5) and navigation between ports of Danube “without entering in full sea” for vessels of “*riparian countries of this river*” (article 7). This document was submitted to the Conference of the signatory Powers of the Paris Peace Treaty of 1856, which rejected it, thus dismantling and the riparian Commission (which powers were unwilling to recognize the rights granted by Act) in favor of the European Danube Commission.

Eight years later it would be concluded between the signatory states of the Paris Peace Treaty of 1856 regarding *The Public Act of navigation on the Danube's mouths* signed in Galati on November 2, 1865 and confirmed by the Peace Conference of 1866. In addition to extending the mandate of the European Danube Commission, by its terms, this document established freedom of navigation for

¹ Because of this “Europeanization” it has acquired the name of the European Danube Commission. (Dinh, Dailler, & Pellet, 1999, p. 1187)

commercial vessels, but forbidding access to warships at the mouth of the Danube, for all flags, the exceptions being established by article 19 of the Treaty of Peace from Paris.

Romania was admitted in the Danube Commission by the Treaty of Berlin of 1878, signed on 13 July by the seven great powers of Europe, a document by which it was recognized the independence, but by which it was infringed the sovereignty, because the Commission was to operate “*with complete independence from the territorial authority*” (article 53) (Stanciu, 2002, p. 102) The territorial jurisdiction of the Commission was extended to Manchester, and later by the Treaty of London of 1883, to Braila.

During the political and diplomatic events of the First World War Danube it has proven its strategic and economic importance, and by the end of it, the regime of the Danube was completed by the Danube’s Statute, adopted in Paris in 1921¹, following negotiations “complex and contradictory” (Stanciu, 2002, p 224) held at the Paris Peace Conference and the International Conference of the Danube. The purpose of the latter was to establish the political and legal regime of the Danube, to set “*the largest river of freedom and equality regime to meet the desires and the needs of all.*” (Stanciu, 2002, p. 213) By this Statute reaffirms the principle of freedom of navigation on the Danube, a principle that has been recognized as universally valid for all waterways of international interest by the Statute on the regime of *Statute on the regime of Navigable Waterways* annexed to the Barcelona Convention, signed on 20 April 1921 under the auspices of the Societies of Nations.²

The navigation on the Danube was internationalized from Ulm until it flows into the sea, and the European Danube Commission composed of the following countries: England, France, Italy and Romania, which have territorial jurisdiction in Braila and Sulina. It was created and the International Commission composed of representatives of the Danube riparian states (one for each state) as well as from the delegates of non-riparian Member States represented in the European Danube

¹ The agreement on the final Status of the Danube was voted by the Romanian Senate on April 3, 1922 and the House of Representatives on April 7, 1922. The Law on ratification of the Convention was promulgated by the Royal Decree on 13 April 1922 and entered into force on 1 October 1922 (Lache, 2011, p. 15)

² Romania joined the Barcelona Convention through an additional protocol on 9 May 1924, with the condition that its provisions are not in conflict with the principles of the Statute of the Danube ((United Nations Treaty Collection, *Convention and Statute on the Regime of Navigable Waterways of International Concern*, <http://treaties.un.org/Pages/LONViewDetails.aspx?src=LON&id=555&lang=en>)

Commission. This situation affected the sovereign rights of Romania, which prompted Nicolae Titulescu to characterize this status as “an unbelievable anachronism, a control of aliens’ inadmissible ancestral territory.” (Titulescu, 1967, p. 544)

In 1938 it was signed a tripartite agreement at Sinaia between France, Britain and Romania (to which it will join next year Italy and Germany), *The Arrangement concerning the exercise of the Danube European Commission powers* (which had 23 articles to which it would add an explicative Protocol)¹, where most of the competences were transferred to Romania, and in 1939 by an agreement that included only four items, it was changed the composition of the European Commission of the Danube, by including Germany. A year later, the International Council of the Danube is replaced by the Danube River Council, at the Conference in Vienna in 1940.

After the Second World War the peace treaty of 1947 reaffirmed the principle of freedom of navigation on the Danube. As a result of this clause, was organized in 1948 an international conference to adopt a new Convention, meant to replace that of 1856 Belgrade Convention of 18 August 1948 regarding the regime of navigation on the Danube. The Convention was signed by the Union of Soviet Socialist Republics, the People's Republic of Bulgaria, the Hungarian Republic, the People's Republic of Romania, the Ukrainian Soviet Socialist Republic, the Republic of Czechoslovakia and the Federal People's Republic of Yugoslavia and entered into force on May 11, 1949, after the submission of the sixth instrument of ratification, according to article 47.

The Convention recognizes the freedom of navigation as a principle without discrimination, to all commercial vessels. Through its regulations it was created a new Commission of the Danube which generally maintains the competence of previous commission, but the non-riparian states were excluded. For this reason, France and Britain, although they participated in the conference, refused to sign the agreement and indicated that they would consider that it can not be opposable to them and that it will take to produce the effect the Convention of 1856. In Western doctrine it was appreciated that besides the regulations of Belgrade Convention, the freedom of navigation is asserted only in theory and less in practice, as it is placed in the hands of the riparian countries (Dinh, Dailler, & Pellet, 1999, p. 1188) and

¹ *Apud* Anexe (Daşcovici, 1943, pp. 185-197).

that this legal system is a typical expression of the Cold War (Rousseau, 1953, pp. 399-400).

Besides the Danube Commission, a body with overall responsibility over the entire river to implement the regime established by this Convention, there have been created two special river administration bodies with jurisdiction limited to certain areas of the river: the Lower Danube Administration and the Iron Gate Administration.

Danube Commission has the current headquarters in Budapest and it is composed of representatives of coastal states, one from each riparian state.

It was reproached to this Convention the fact that its provisions are limited to issues related to navigation, such as the environmental protection or other hydraulic structures being outside its regulatory scope.¹

The Convention has been supplemented by the additional Protocol adopted in Budapest on March 26, 1998.

A centuries-old dream was fulfilled in 1986 when it was opened by the Main Danube - Rhine Canal, thus realizing the link between the Black Sea and the North Sea via inland, which resulted in new legal issues that needed to be handled by the states concerned. (Dinh, Dailler, & Pellet, 1999, p. 1189) Thus it was born the “*blue corridor*” as it is called the trans-European route connecting the port of Rotterdam to the port of Constanta, which actually creates a main water line of 3100 km which crosses Europe from north to south and it shortens the path towards the two seas, but unfortunately insufficiently exploited.

On the Romanian territory it was achieved a national fluvial branch, the Danube-Black Sea Canal, opened in 1984, declared national water that is under the exclusive jurisdiction of the Romanian state. The navigation on the canal shortens the way to the Black Sea about 400 km and takes place under the conditions

¹ In this regard, in 1966 there were drafted by the International Law Association “Helsinki Rules on the use of international watercourses”, a document which recognizes each coastal state the right to a fair and reasonable share regarding the use of watercourses of each pool. It should be noted, however, that this document is not legally binding, but it has only feature of recommendation. Following the coding work achieved by the UN International Law Commission in 1997, it was adopted in New York, the Convention on the Law of the Non-Navigational Uses of International Watercourses. But this Convention has not entered into force (Convention on the Law of the Non-Navigational Uses of International Watercourses).

provided by the Romanian legislation.¹ This channel is part of the importance of trans-European waterway between the Black Sea and the North Sea.

3.3. The European Strategy for Danube

The origin of this strategy is the Romanian and Austrian initiative, which launched in 2008 the idea of a new framework for the cooperation of the untapped potential of the Danube, an idea supported by the European Commission, the European Parliament and the Committee of the Regions. There was a public consultation process initiated by the European Commission, and in November 2010 the Danube Summit (the event that marked the end of this process) took place in Bucharest where it attended, along with representatives of the 14 countries in the Danube Basin² and the European Commission, the representatives of the two coastal provinces of Germany, the city of Ulm in Germany, and Poland, invited as observer, and the Chairman of the European Affairs Committee of the Bundestag and Chairman Regions, as special guests. The summit concluded with the adoption of the Bucharest Declaration on the EU Strategy for the Danube Region policy, a document which shows the strong commitment of the riparian states to support this new form of cooperation for regional development.

A month later, on 8 December 2010 the European Commission adopted the *EU Strategy for the Danube Region*, according to the EU Strategy model for the Baltic Sea, structured into four priority axes, namely: connecting the Danube region, environmental protection, and increasing the regional prosperity and improving the governance system. Each of the four pillars focuses on priority areas for the achievement of programs, projects and activities designed to provide efficient and sustainable solutions to common problems in the Danube Basin partners: the environmental and biodiversity issues, challenges related to the security of the region, stimulating multimodal transports, tourism, green energy, etc.. But the particular value of this strategy consist of “*in strengthening the inter-regional, cross-border, trans-national co-operation, as well as the accumulation of numerous heterogeneous initiatives and projects that were already initiated or are*

¹ Law No. 55 of 16 January 2002 approving Government Ordinance no. 79/2000 the regime of navigation on the Danube-Black Sea Canal and White Gate-Midia Năvodari, published in Official Monitor no. 49/24 January 2002.

² 8 EU Member States: Austria, Bulgaria, Czech Republic, Germany, Hungary, Romania, Slovakia, Slovenia and 6 non-member countries: Bosnia and Herzegovina, Croatia, Montenegro, Republic of Moldova, Serbia and Ukraine.

in the course of implementation in the Danube region". (Dobrescu & Grigorescu, 2011)

4. Conclusion

We affirm without any doubt that the Danube is the backbone of Europe or, as Lévy called it "*a large artery of the European body*"¹. Waterways path, border between peoples, the Danube was often the cause for discord between them, but the overwhelming importance of the old river of the just as old continent over the millennia reflects the particular political and economic development of Central European and Southeast states.

In this article we achieved an interdisciplinary introduction on the Danube issue and we highlighted the geo-historical, geopolitical and historical legal elements, following a future work on the relationship between the river and the Romanian people, the feature of international river and the principle of navigation freedom, international legal regulation, the creation of trans-European navigation route on the Danube between the ports of Constanta and Rotterdam, the Danube Commission and the Danube Strategy.

Even though nowadays it is not yet valued the full tourism, energy, transport, cultural or natural potential, the Danube is stated on the agenda authorities' priorities of the riparian states authorities or those created by bilateral or multilateral international cooperation. June 29, celebrated as the International Day of the Danube, under the auspices of the International Commission for the Protection of the Danube River, was established to remind us that Danube needs protection, that the states from the Danube basin must realize that the Danube's wealth must unite them and not divide them. As it is in its nature to gather its waters from the territories of the countries that it crosses, the European countries should consider it as a bridge in their effective cooperation to solve common challenges, for the prosperity of their inhabitants.

¹ *Apud* (Ardeleanu, 2008, p. 4).

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