

Danube Navigation Regime after the Second World War

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Abstract: We have analyzed in this paper issues such as the reaffirmation of the principle of freedom of navigation on the Danube by the Peace Treaty of 1947, the adoption of the Belgrade Convention of 18 August 1948 and the regulation of navigation on the Danube by the provisions in the content of this international legal instrument, as well as new regional realities related to the EU integration of eastern Europe borderline (Romania and Bulgaria). We have highlighted the need to modernize and improve the activity of the Danube Commission determined by the Danube's perspective of waterway artery of the EU and the revision of the Belgrade Convention. 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.

Keywords: Belgrade Convention of 1948; Danube Commission; International River

1. Introduction

In a previous paper (Maftel, 2012) we have made an interdisciplinary introduction to the Danube issue, highlighting the geo-historical, geopolitical and historical-legal elements that characterize the old river. We concluded this analysis with the promise that we will return to this inexhaustible subject in an attempt to detail the analyzed issues, or to add new research perspectives.

Determining the return to the Danube issue is perhaps generated by the words of a "warm patriotism" by Alexandru Lahovari, a Romanian politician with a great oratory talent: *"The interest we have for the Danube is the oldest, the biggest and the most permanent interest of Romania; is not a matter that is more important to this country, for as Herodotus said that the "Nile made Egypt", we must say that the Danube created the political and economic importance of our country"* and whether *"the conventions, treaties ... have a term, they are fulfilled, they are*

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passing; a convention on the Danube regime is likely to be without a deadline. It will keep as long as the Danube flows into the sea.” (Haneş, 1944, pp. 93-94).

We have decided this time on the analysis of the international context existing at the time of the adoption of the Belgrade Commission (***), the international legal instrument regulating the navigation regime on the Danube, the institutional framework created by it and the extent to which it is necessary to reconsider the regulations of the navigation regime on the Danube, having in view the creation of the European cooperation framework to which Romania has joined, as well as the new regional realities at the eastern limit of Europe, which require the modernization and efficiency of the Danube Commission activity on these issues, especially from the point of view of the Danube River between the European states and the Danube, being considered an inland waterway of the European Union, but also the quality of a Danube river state of our country.

2 The 1947 Peace Treaty

The period immediately following the end of the Second World War recorded mutations in the international relations. It was necessary to organize the international society for peacekeeping. The great victorious powers - the United States, the USSR, the United Kingdom, France and China - convened the Paris Peace Conference, whose works were officially opened on July 29, 1946 at the Luxembourg Palace. The delegations of 21 nations participating in the conference: the five great powers to which joined the 16 states which were “allied and associated powers”: Australia, Belgium, Belorussia, Brazil, Canada, Ethiopia, Greece, India, New Zealand, Norway, the Netherlands, Poland, Czechoslovakia, the South African Union, Ukraine and Yugoslavia (Ciobanu, 2001, pp. 360-361). The discussions ended on October 15, 1946. The purpose of the conference was to discuss the peace treaty projects with Bulgaria, Finland, Italy, Romania and Hungary and to make recommendations to the Council of Foreign Ministers for the scheduled conference to be held in New York between November and December 1946, which concluded the final text of the five treaties within the third session. These treaties were signed two months later, on February 10, 1947, in Paris, at the Salon de l’Horloge/ The Clock room in Quai d’Orsay (Buzatu, 2011, p. 163). A. Fontaine conspired on these: “*five treaties, no peace*” (Fontaine, 1994, p. 55). But they ended a stage in the history of these states. The Romanian Foreign Minister at that time, Gheorghe Tatarescu, appreciated, on the occasion of the ratification of

the Treaty by the Romanian Parliament (August 23, 1947) that “*the Treaty concludes a chapter in our history and at the same time it begins another. It means an end and a beginning at the same time*”¹. We can consider the Paris Peace Conference (July 29 - October 15, 1946) a reference event in the history of international relations that ended the diplomatic plan of the Second World War, the peace treaties concluded in 1947 marking relations between states for a long time (Vlad, 2014, p. 264).

As a result of parallel negotiation, the structure of the five treaties is similar. The Treaty signed by Romania contained a preamble and eight sections (regulating territorial, political, military, economic issues, plus the provisions on repairs and refunds), having in total 40 articles. What is important to remember for the economy of this scientific approach is the fact that during the negotiations the diplomatic agenda returned to the solution of an extremely important issue, the problem of the Danube, under the conditions of the new force report that called for the Great Powers to abandon their favorable status with regard to the Danube. Throughout history, the course of the Danube has incited the Great Powers for political, strategic and economic interests. At the Postdam Conference in 1945, President Truman described Europe's waterways as the leading cause of international conflicts: “*One of the persistent causes for wars in Europe in the last two centuries has been the selfish control of the waterways of Europe. I mean the Danube, the Black Sea Straits, the Rhine, the Kiel Canal, and all the inland waterways of Europe which border upon two or more states. The United States proposed at Berlin that there be free and unrestricted navigation of these inland waterways. We think this is important to the future peace and security of the world. We proposed that regulations for such navigation be provided by international authorities.*” (Woolley & Peters)

Certainly, the Great Powers did not take up the favorable position they had until then and, in an attempt to protect their interests on the Danube, persevered on the inclusion in the peace treaties concluded with Romania, Bulgaria and Hungary of the clause on internationalization of navigation on Danube (Moşneagu, 2011, p. 305). Molotov said in this respect in the plenary session of October 10th, 1946: “*We must show that to solve the problem of the Danube in peace treaties with former satellites of Germany that it is desired to solve the problem of navigation system on the Danube by way of prescriptions imposed on the defeated states. In fact, we witness the attempt to use this opportunity to restore on Danube some*

¹ Apud (Ciobanu, 2001, p. 369)

privileged position of great power which are probably not interested in the sovereignty and national interests of Danube Members, but who want to dictate and impose its will everywhere” (Molotov, 1951, pp. 131-132).¹

The 1947 peace treaty reaffirmed the principle of freedom of navigation on the Danube in the wording of art. 36 of the Treaty of peace with Romania, signed at Paris, on 10 February 1947: “*Navigation on the Danube shall be free and open for the nationals, vessels of commerce, and goods of all States, on a footing of equality in regard to port and navigation charges and conditions for merchant shipping. The foregoing shall not apply to traffic between ports of the same State* (Nations, 1949, p. 70)”

At the suggestion of the Romanian government, the problems related to the Danube regime have been postponed, and would be discussed and settled through a special convention concluded between the riparian countries.

3. The Belgrade Convention of 1948

The negotiations on the Danube issue have led to the adoption at the meeting of the Committee of Foreign Ministers in New York on 12 December 1946 of the decision to “*call within six months of the coming into force of the Peace Treaties of Romania, Bulgaria and Hungary, a conference to work out a new convention regarding of navigation of the Danube*” (Historian, p. 593)

The conference proceedings were opened on July 30, 1948, after a preparatory meeting of the conference in Moscow in July 1948, attended only by the riparian states alongside the Soviets. The conference was attended by delegates of 11 states: Austria (as an observer, in an advisory capacity), Bulgaria, Romania, UK, US, USSR, France, Czechoslovakia, Yugoslavia and Ukraine. This limited participation constituted a violation of art. 42 of the Danube Statute of 1921, which provided that all signatory States should be invited to conference for any status review (Kapteyn, 1984, p. 2):

“Article 42. At the expiration of five years from the date of its coming into force, the present statute may be revised if two-thirds of the signatory States so request and specify the stipulations which appear to them to require revision. This request shall be addressed to the Government of the French Republic, which will summon,

¹ Apud (Vătăman, 2011, p. 74).

within six months, a Conference in which all the States signatory of the present Convention shall be invited to take part."¹ (***)

In fact, the new Convention and the Supplementary Protocol stated that it *"is noted that the former regime of navigation on the Danube and the instruments providing for the establishment of that regime, in particular the Convention signed in Paris on 23 July 1921, are no longer in force"*.

Negotiations were dominated by the USSR, against the same persistent attitude of the Western powers, for which this meeting constituted a great diplomatic failure.

Both the Belgrade Convention and the Additional Protocol were signed by seven states on 18 August 1948: the Soviet Union, Bulgaria, Hungary, Romania, Ukraine, Czechoslovakia and Yugoslavia. Britain and France did not take part in the vote, and the US voted against.

The Belgrade Convention entered into force on 11 May 1949, after the deposit of the sixth instrument of ratification, in accordance with art. 47 (Moca & Duțu, 2008, p. 287).

"Art. 47: The present Convention and its annexes, of which the Russian and French texts are authentic, shall be subject to ratification and shall come into force upon the deposit of six instruments of ratification."

The seven signatory States have deposited their instruments of ratification as follows (Commision):

<i>States</i>	<i>Dates on which the instrument of ratification was deposited</i>
<i>Bulgaria</i>	<i>22 February 1949</i>
<i>Czechoslovakia</i>	<i>22 February 1949</i>
<i>Yugoslavia</i>	<i>23 February 1949</i>
<i>Romania</i>	<i>5 March 1949</i>
<i>Hungary</i>	<i>14 March 1949</i>
<i>Union of Soviet Socialist Republics</i>	<i>11 May 1949</i>
<i>Ukrainian Soviet Socialist Republic</i>	<i>14 May 1949</i>

¹Treaty Series No.16 (1922). Convention instituting the Definitive Statute of the Danube. Signed at Paris, July 23, 1921.

The Danube Commission currently has 11 Member States: Republic of Austria, Republic of Bulgaria, Hungary, Federal Republic of Germany, Republic of Moldova, Russian Federation, Romania, Republic of Serbia, Slovak Republic, Ukraine, Republic of Croatia (Commission).

In addition, there are 10 states that have received the observer status: Kingdom of Belgium, Hellenic Republic, Georgia, Republic of Cyprus, The Former Yugoslav Republic of Macedonia, Kingdom of the Netherlands, Republic of Turkey, French Republic, Montenegro, Czech Republic (***), but the Danube Commission is also working closely with other international observer organizations: European Union, United Nations Economic Commission for Europe, Central Commission for the Navigation of the Rhine, International Commission for the Protection of the Danube River, Organization of the Black Sea Economic Cooperation, International Maritime Organization etc.(***)

The Belgrade Convention, a reference document on the navigation regime on the Danube, has opened a new chapter in this area by removing the non-riparian states and Germany from the control of the river. The control of the riparian members on the Danube was marked by the Soviet domination of the Danube and the Danube Basin, which thus recorded a great success of the diplomacy in Moscow. Germany will gain observer status in 1957, and Austria will become a member of the Danube Commission in 1960.

The Convention proclaims in Article 1 the freedom of navigation as a principle, without discrimination: *Navigation on the Danube shall be free and open for the nationals, vessels of commerce and goods of all States, on a footing of equality in regard to port and navigation charges and conditions for merchant shipping.* The exception is the traffic between ports of the same state (small coastal navigation) reserved only for the riverine state.

Vessels of war do not enjoy the freedom of navigation on the Danube. Navigation on the Danube of military ships of non-river states is forbidden (Geamănu, 1975, p. 586). The military vessels of each river state can navigate only within the boundaries of its Danube frontiers, not having the right to enter in the river basin sector of another riparian state, except on the basis of a prior understanding between the States concerned; the same rule applies to customs, sanitary and river police (Moca & Duțu, 2008, p. 287).

Each river state has the right to determine the conditions of navigation, in agreement with the other riparian states, and the obligation to keep the river in a

state of navigation by carrying out maintenance and fitting works. The riparian states exercise the right of customs control, sanitary and oversight by the river police, as well as to charge taxes (Miga-Beșteliu, 2005, pp. 151-152).

By the Convention's regulation it was set up the Danube Commission, whose primary task is to oversee the implementation of the provisions of the Convention. Unlike previous commissions, the Commission has attributions of recommendation and coordination, consultation and information (Florescu, 1975, pp. 191-195). This is supplemented by the other functions listed in article 8 of the Convention, the Danube Commission being competent to conduct study and uniformization of river navigation and surveillance rules, to make recommendations to States and to transmit documentation necessary for the elaboration of the navigation regulations by each river basin state to establish a uniform system of river water management and piloting, to coordinate the hydrometeorological services on the Danube, to publish works, itineraries, maps and atlases for the needs of navigation to receive and communicate to the riverine states, information and statistical data on river navigation, etc.

The Commission enjoys legal personality and has its own budget, its members and officials benefiting from the system of privileges and immunities established by the Convention on Privileges and Immunities of the Danube Commission (***)¹. Under the rules of this Convention, the Commission has the right to contract and sue, the buildings of the Danube Commission, its archives and documents are inviolable, the representatives of the Member States enjoy the same immunities and privileges in the territory of each member state of the Convention as the diplomatic representatives (immunity from prosecution and administrative proceedings for acts performed in the exercise of their official functions in the Commission's work, customs facilities, etc.).

4. The International Regulations on the Navigation Regime on the Danube following the 1948 Belgrade Convention

The political and economic evolutions brought about by the new regional realities due to the European integration of Romania and Bulgaria, the eastern border of

¹ The Convention on the Privileges and Immunities of the Danube Commission was signed on 15 May 1963 and entered into force on 28 January 1964. Between Hungary on the territory of which it was the headquarters of the Commission, and the Commission of the Danube it was concluded an agreement on 27th March 1964. The Commission has its own rules of procedure.

Europe, and the Danube's consideration of the European Union's inland waterway have led, after 1990, to a series of proposals for revising the Convention from Belgrade and even replacing it with a new convention. It was created a preparatory committee for a Diplomatic Conference on Issues of Broader Danubian Cooperation which was the purpose to determine the need to modernize and improve the activity of the Commission.

Following the transformations that took place in Central and Eastern Europe after 1990, regarding the regime of the Danube navigation and the use of the river, changes have taken place in the meantime through the adoption of some regulations such as:

- the Additional Protocol adopted in Budapest on 26 March 1998 and entered into force in 1999, which supplemented the 1948 Convention establishing that Germany, Croatia and the Republic of Moldova to become parties to the 1948 Convention and full members of the Danube Commission;
- the Signature Protocol to the Additional Protocol, whereby Germany reserves rights resulting from its membership of NATO and the EU (Miga-Beșteliu, 2005, p. 152).

Although several meetings have been held so far, the final text of the revised convention has not yet been adopted. We can mention some of the main proposed novelty elements:

- regulating the status of observer at the Danube Commission and the modalities for exercising this function;
- the possibility of acceding to the Convention of non-riparian states¹ and of regional economic integration organizations with their own legislative powers;
- the regulation of the carriage of passengers and goods in the territory of one of the Contracting Parties shall be governed by the national law and international agreements applicable in the territory of that State²;
- ensuring and improving the navigation conditions;

¹ Turkey and France have expressed interest in joining the upcoming Danube Convention.

² Romania has endorsed Order No 787/2007 of the Minister of Transport regarding the approval of the navigation regime in the Romanian sector, published in the Official Monitor no. 672 of October 2, 2007, with the subsequent modifications and completions.

- the establishment of an executive body of the Danube Commission, called the Council, which will develop the necessary policies and objectives for the development of river transport along the Danube¹, etc.

It is also important to point out that due to the connections made through the two channels (Danube-Black Sea and Rhin-Main-Danube Channel), Romania occupies a particularly important strategic place, at the Mouth of the Danube, and in the context of the geopolitical re-evaluation from this perspective must highlight the favorable economic opportunities and the influence of our country over the regional valorization.

5. Conclusions

We consider our scientific approach a modest contribution to highlighting the complex problems involved in the period of fierce diplomatic negotiations at the end of the Second World War regarding the Danube navigation regime.

It is superfluous to recall that international public law and international relations are in a close and dynamic relationship, but it may be useful to reiterate that international law must keep up with the evolution of international realities that require the renewal of regulations so that the legal framework would be accomplished for the cooperation between states.

Although the strategic importance of the Danube has made its rule often the subject of confrontations between riparian or non-riparian states, the key to the Danube gate, as Jean Bart stated in *Europolis*, “*from one pocket to another, after all the struggles, through the arms and intrigues*”, the purpose of the old river is to unite and not to divide, to be a bridge river, not an apple of discord, which occasionally places the states at the negotiating table to decipher its mysteries, passions, feelings and resentments, which must “*all be drowned in the Danube*” (Hanes, 1944, p. 93).

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¹ For details, see (Dinescu, 2006, pp. 170-174).

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