

THE CONFLICTS ON THE ROMANIAN-UKRAINIAN BORDER, A STRUGGLE FOR THE DANUBE MOUTHS OR AN INHERITANCE FROM THE SOVIET PERIOD?

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Abstract: - *The Conflicts on the Romanian-Ukrainian Border, a Struggle for the Danube Mouths or an Inheritance from the Soviet Period ? The dispute between Romania and Ukraine has a complex nature and goes back to the history preceding the existence of both national states. The territory belonging today to Romania, Ukraine and Moldova used to be a buffer zone between the Ottoman, Russian and Habsburg Empires, and the frontier line changed very often even in modern times. However, the present border disputes between Romania and Ukraine were inherited from the communist period (1948-1989), as the bilateral agreements did not follow exactly the terms of the Paris Treaty of 1947. The consequences emerged after 1997 when, in spite of a new official border treaty with Ukraine, Romania had to address the ICJ from the Hague on the matter of the Black Sea shelf.*

Key-words: border conflict, maritime frontier, delimitation, maritime areas

1 Introduction

The relations between Romania and its neighbours were not always the best, with ups and downs, changing episodes of partnership, friendship, periodic cooling, verbal or legal disputes and even open hostility. That was more than true for our relation with Ukraine, our northeastern neighbour, and not only since 1991, when it became an independent state, but longtime before that.

The causes of the conflict cover several problems, such as: irredentist nationalism on both sides of the border, human rights and census issues connected to national minorities, jurisdiction disputes between the orthodox national patriarchates, unsolved borderline issues on the Lower Danube since 1948, environmental issues with mutual accusations of environmental damages and different diplomatic strategies and priorities due to internal political struggles and orientation.

2 Historical backgrounds

The formation of modern Romania was the result of a long and painful process, in a more than complicated geopolitical context, which explains why the conflicts at its present

northeastern borders are much older than the existence of the present day states. In a larger frame, these disputes originate in the particular geographical position of our country, situated either at the periphery or at the limit of major empires since its very early history, which usually made our territory a buffer zone.

The territories of the later principalities of Walachia, Moldova and Transylvania were a periphery of the Roman Empire, then a transit zone or a temporary settlement area for several migratory peoples in the early Middle Ages. The Kingdom of Hungary, born at the beginning of the second millennium, conquered and assimilated Transylvania, but it claimed also sovereignty over the territories situated to east and south of the Carpathians, even if just as buffer zones for the attacks coming from East. This claim became a formal dependence after the principalities of Walachia and Moldova were founded in the 14th century, when the Romanian princes, in exchange for Transylvanian feuds, recognized the Hungarian king as their suzerain. This was a clear situation as long as Hungary remained the undisputed major power in Central Europe, periodically extending its influence on Poland, on the Serbian and the Bulgarian principalities, when

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the Byzantine Empire was more and more becoming a shadow of itself and the Russian principalities were mostly fighting against each other.

The emergence of the Ottoman Turks in the Balkans in the second half of the 14th century rapidly changed the geopolitical situation in the area, as the Serbian and Bulgarian territories were gradually conquered and Walachia was put in the situation of defending itself more or less successfully¹, while Moldova became temporarily a subject of dispute between Poland and Hungary. In the 15th century Hungary was still able to resist and defeat most of the Turkish attacks, but after the Turks conquered most of the Balkan Peninsula and finally the city of Constantinople, Moldova also became a target for Ottoman conquest, resisting successfully until the end of the 15th century, but finally being forced to pay tribute to the Turks².

The Ottoman domination became overwhelming after the fall of Hungary in 1526 and the conquest of its capital Buda in 1541, though the principalities of Transylvania, Walachia and Moldova were able to preserve a large internal autonomy until the end of the 17th century. In 1672 Poland lost Kamieniec and the region of Podolia to the Turks, but after the siege of Vienna in 1683, the Habsburgs finally conquered Hungary and by 1699 the Turks were expelled to south of the Danube³. At the same time, a fourth major power in the area became Russia, which fought under Peter the Great several wars against the Ottomans, but after the failed campaign on the Prut river in 1711, the objective of gaining the access to the Black Sea was postponed for several decades⁴.

¹ In 1417 Wallachia lost the province of Dobrogea to the Ottoman Empire, when prince Mircea had to pay an annual tribute and send one of his sons hostage to Constantinople as a guarantee of his loyalty to the Sultan.

² Moldova lost in 1484 to the Turks the cities of Kilia and Moncastro (later Akkerman, today Belgorod Dnestrovski), then further southern territories between 1434-1438, known as Ancient Bessarabia or Bugeac.

³ The final frontiers between the Ottoman and Habsburg Empires on the Sava-Danube line were fixed only in 1739 at the Peace Treaty of Belgrade.

⁴ Russia and the Ottoman Empire already fought three wars before 1711, and between 1735 and 1878, six more

The modern era for the international relations in the area was inaugurated by Catherine the Great, under whose rule the Russian Empire gained not only the access to the Black Sea (annexing by 1783 the territories until the Southern Bug river), but also the right of protection of orthodox Christians living in the Ottoman Empire, at the Treaty of Küçük Kaynarca in 1774. The next year, as a reward of her favourable attitude in the war, Austria annexed the northwestern part of Moldova, known since as Bukovina province, then in 1792, at the end of the next russo-turkish war, Russia annexed the so-called Transnistria, the territory between the Bug and Dniester rivers.

The most important territorial change for the Romanian Principalities came after the Treaty of Bucharest, in 1812, when the eastern half of Moldova, known since as Bessarabia, was included to the Russian Empire. The next Russo-Turkish war (1828-1829) consecrated again the Russian hegemony in Eastern Europe. Concluded by the Treaty of Adrianople, the Turkish cities left to the Danube (Brăila, Giurgiu and Turnu) with their annexed territories (rayas) were ceded to Walachia, fixing the border on the thalweg of the Danube, but the islands of the Danube Delta were given to Russia. The peace treaty was followed in 1834–1835 by the *Organic Regulations*, some quasi-constitutional organic laws enforced by the Imperial Russian authorities in Moldavia and Wallachia. This also meant the formal instauration of a Russo-Turkish condominium on the Danubian Principalities, reinforced after the revolutionary movements of 1848 by the Convention of Balta Liman (May 1849).

The international statute of the Danubian Principalities changed significantly again after the Crimean War. The Treaty of Paris (1856) placed the principalities, still as Ottoman vassals, under the protectorate of all European Powers (the United Kingdom, the French Empire, the Kingdom of Piedmont-Sardinia, Prussia, Austria and Russia). Russia lost the territory it had been granted at the mouth of the

wars, with Austria directly involved (on Russia's side) between 1735-1739 and 1787-1792.

Danube: the islands of the delta ceded to Turkey and three counties of Southern Bessarabia (Cahul, Bolgrad and Ismail) ceded to Moldova, it was forced to abandon its claims to protect Christians in the Ottoman Empire in favour of France and practically lost its influence over the Romanian principalities. The international protection proved to be a very favorable context for political unification when, in January/February 1859, the principalities created a *fait accompli* situation by electing the same person, A. I. Cuza, as their prince.

When the last Russo-Turkish war broke out in May 1877, the unified Romania proclaimed its independence and joined the war on the Russian side. Its reward was the recognition of the independence at the peace treaties of San Stefano and Berlin (1878), but also the territory of Northern Dobrogea, given as a compensation for the three counties of southern Bessarabia, which Russia occupied and refused to cede to Romania (though the integrity of Romanian territory was stipulated in the bilateral treaty preceding the war). As a result, the frontier between Romania and the Russian Empire became the Prut river and the lower Danube, with the largest Chilia branch within the delta sector.

Romania became a kingdom in 1881 and finally an important new factor in Eastern European politics. This became firstly obvious when the after the second Balkan's War in 1913, it annexed Southern Dobruja, then in 1916 when, after carefully negotiated preconditions, joined the Entente in WWI. Though in 1917 the Central Powers defeated and occupied the most important parts of Romania, the ultimate results were beyond expectations: after the Romanians of Transylvania, Bessarabia and Bukovina proclaimed in 1918 the unification to Romania, the Peace Treaties of Versailles (1920) recognized almost all new territorial annexations. However, the union of Bessarabia (though recognized by France, United Kingdom, Italy, and Japan) never came into force, because Japan did not ratify it. The United States refused to sign the treaty on the grounds that Russia was not represented at the Conference. Soviet Russia (and later, the USSR) did not recognize the union, and by 1924, after its demands for a regional plebiscite were declined by Romania for

the second time, declared Bessarabia to be Soviet territory under foreign occupation.

According to the Molotov-Ribbentrop Pact, Article 4 of the secret Annex, Bessarabia fell within the Soviet interest zone. On June 26, 1940, the USSR issued an ultimatum to Romania, demanding immediate cession of Bessarabia and Northern Bukovina. Romania was given four days to evacuate its troops and officials. On August 2, the Moldavian Soviet Socialist Republic was established on most of the territory of Bessarabia, merged with the western parts of the former Moldavian ASSR. Bessarabia was divided between the Moldavian SSR (70% of the territory and 80% of the population) and the Ukrainian SSR. Bessarabia's northern and southern districts (nowadays Budjak and parts of the Chernivtsi oblast) were allotted to Ukraine, while some territories (4,000 km²) on the left (eastern) bank of the Dniester (present Transnistria), previously part of Ukraine, were allotted to Moldavia. In addition, On October 25/26, 1940, soviet troops occupied six islands south of the Kilia thalweg.

Between June 22 and July 26, 1941, Romanian troops with the help of Wehrmacht recovered not only Bessarabia and northern Bukovina, but took control of the the entire region between Dniester and Southern Bug rivers, including the city of Odessa. The Romanian-administered territory - called the *Transnistria Governorate* - with an area of 44.000 km² and a population of 2,3 mln inhabitants, was divided into 13 counties, with nearly 200,000 Romanian-speaking residents.

During the offensive of August 1944, the soviet troops conquered again Northern Bukovina and Bessarabia, and after the truce of September 12th, the soviet border patrols occupied without a fight all the islands situated south of the navigable channel of the Kilia branch. The Peace Treaty of Paris (signed in 1947) fixed the Soviet-Romanian boundary on the Kilia thalweg (as it was between 1878-1914), but on February 4th 1948 Romanian prime minister P. Groza and Soviet foreign secretary V. Molotov signed a special protocol about the frontier between Romania and the USSR, according to which six Romanian Islands (Coasta Dracului, Daleru mare, Daleru

mic, Maican, Limba and the Serpents' Island) were ceded to the Soviet Union, while two other islands (Tatomir and Cernofca), also occupied by the Soviets in 1944, were recognized as belonging to Romania and evacuated. Though this protocol was not ratified, on November 25th 1948 the representatives of the foreign offices from both countries signed on the field an agreement establishing the frontier line on Musura Channel and Bay. The protocol was kept secret until February 27th 1961, when Romania and the USSR signed the official treaty about the frontiers' status, collaboration and mutual assistance. On June 20th 1961, the documents signed in 1948-1949 were ratified by the Romanian State Council, but neither by the Parliament of Romania, nor by the Supreme Soviet of the USSR, which made them unconstitutional and thus legally invalid from the international point of view.

At the dismantlement of the USSR in 1991, Romania was among the first countries to recognize the independent Ukraine, which inherited the unsolved border situation. In February 1992, diplomatic relationship was established, with embassies in Kiev and Bucharest. In 1997; the NATO advised Romania to solve its territorial issues with Ukraine before joining the organization.

The Romanian-Ukrainian de facto border on the Musura branch and the belonging of five from the six mentioned islands to Ukraine (Maican island remaining still to be disputed) were made official on June 2nd 1997, when the first borderline treaty was signed at Constanța. In June 2003, a second borderline treaty was signed by Ukraine and Romania at Chernowtzy. However, both sides have agreed that if no resolution on maritime borders can be reached within two years, then either side can go to the International Court of Justice to seek a final ruling.

3 The dispute on the Serpents' Island and the Black Sea continental plateau

On September 16th, 2004 the Romanian side brought a case to the Court following unsuccessful bilateral negotiations. On February 3rd, 2009 the Court revealed its verdict, in which it established a single maritime boundary

delimiting the continental shelf and exclusive economic zones of Romania and Ukraine.

Oil (10 million tons) and natural gas deposits (1 billion m³) were discovered under the seabed nearby. The natural resources are not significant though, as they can be exhausted in 2-3 years of development. BP and Royal Dutch/Shell signed prospect contracts with Ukraine, while Total with Romania. Austrian OMV also signed a contract with Naftogaz of Ukraine and Chornomornaftogaz to jointly participate to an auction for a concession of the area.

Due to its geographic position, Snake Island status dramatically affects the maritime frontier line between the two countries. If Snake Island is an island, then continental shelf around Snake Island should be considered as Ukrainian water. If Snake Island is not an island, but a cliff, then in accordance with international law the maritime boundary between Romania and Ukraine should be drawn without taking into consideration the isle location. The Romanian side claimed that Ukraine was developing Snake Island in order to prove its island status as contrary to a cliff.

In general, the islands are "special" or "relevant" circumstances to be considered in each act of delimitation effected either by states themselves or with the help of a third party, such as the ICJ, and depending on the peculiarity of a given situation, considerations of equity may lead to giving islands full, partial or even no effect in determining entitlement to maritime areas.

The decision of the ICJ in this case was not easy to predict. Even if the ICJ declares Snake Island to be an "island", in delimiting the maritime zones, the ICJ may take into account "special" or "relevant" circumstances (the fact that the Black Sea is the "enclosed or semi-enclosed sea" which would make the maritime delimitation more difficult, the presence of the Serpents' island, its location, significance etc.) and give the Serpents' Island either full, or some, or none effect at all.

The court delivered its judgment on February 3, 2009, which divided the sea area of the Black Sea along a line which was between the claims of each country.

On the Romanian side, the Court found that the landward end of the Sulina dyke, not the manmade end should be used as a base point for the establishment of the provisional equidistance line. The Court noted that the functions of a dyke are different from those of a port, and only harbor works are regarded as forming part of the coast.

On the Ukrainian side, the Court found that Snake Island cannot be taken to form part of Ukraine's coastal configuration. The Court explained that "to count Serpents' Island as a relevant part of the coast would amount to grafting an extraneous element onto Ukraine's coastline; the consequence would be a judicial refashioning of Geography" The court concluded that Snake Island "should have no effect on the delimitation in this case, other than that stemming from the role of the 12-nautical-mile arc of its territorial sea".

While the judgment draws an equitable line between both parties, Romania got a larger chunk (9700 sq km or 79.34%) of the disputed area from the continental shelf, allowing it to exploit 80% of estimated 100 billion cubic meters of natural gas deposits and 15 million tons of petrol located underneath the seabed. Although according to Ukraine's commissioner in the UN International Court, almost the whole of oil and gas reserves are concentrated in the part of the sea shelf going to Ukraine.

The island Maican, the smallest of the six islands ceded by Romania to the USSR according to the before mentioned 1948 Groza-Molotov protocol, was „inherited” by Ukraine in 1991. As Romania contested the international validity of this protocol, the status of five islands was cleared by the borderline treaties of Constanța (June 1997) and Chernowtzy (June 2003), with the exception of the island Maican. After April 2009, the Romanian delegation of the Romanian-Ukrainian border commission made a first attempt to trace the boundary at north of island Maican, claiming that the natural silting of the southern branch made it unsuited for navigation and thus the borderline should be on the northern branch.

The Ukrainian side refused this claim, arguing that it would create a dangerous precedent for further Romanian territorial

claims (in case of other branches of the Danube become silted). Moreover, a northern version of the boundary would make the new navigable channel of the Bâstroe branch a sector for international navigation and hence Ukraine should share the taxes with Romania.

4 The Bâstroe Channel and the Musura Bay

In August 2004, Ukraine inaugurated the first sector of the newly built Bâstroe Channel (also known as Bystroe Channel, Danube-Black Sea Channel), in the Danube Delta. This was among the main Ukrainian waterway until 1959, when its exploitation stopped due to natural silting. There was a project proposed by Ukraine to reopen its navigation. According to official Ukrainian plans, it was to be completed in 2008. The intent was to provide a deep-water route from the Danube to the Black Sea under Ukrainian control, in order to reduce ship transit costs and provide an alternate route to Romania.

Ecologists have raised significant concerns about damage to the Danube Delta ecosystem. The Danube Delta has been a UNESCO World Heritage Site since 1991. The European Union has repeatedly asked Ukraine to halt the project, as have Romania and the United States. The Worldwide Fund for Nature has said the canal threatens the delta's most important wetland, where 70 percent of the world's white pelicans and 50 percent of pygmy cormorants live.

After the apparent failure of diplomatic efforts, the government of Romania, where most of the Danube Delta lies, is reportedly considering building a 20 km canal that would absorb the Danube's water upstream of Ukraine's small piece of the river, in order to render the planned Bastroe Channel useless and thereby discourage Ukraine from attempting such a project. The Romanian canal would be designed so that it could be shut at any time, returning the river more or less to its current state.

The official inauguration of the project was scheduled for Ukrainian Independence Day August 24, 2004 but was postponed until August 26. On August 24, around 140 non-profit organisations and trade unions submitted an open letter at the Ukrainian embassy in Bucharest,

Romania saying the project may endanger more than 280 bird species and 45 freshwater fish species living in the delta. On August 26 Ukraine officially inaugurated the project and the Romanian government announced plans to bring a lawsuit against Ukraine at the Hague-based International Court of Justice, invoking the Ramsar Convention on wetlands. In May 2005, parties of the Aarhus Convention agreed on political sanctions against Ukraine. Ukraine announced the temporary halt of the project in June, 2005. In February 2006 "The Conference for the Sustainable Development of the Danube Delta" was held in Odessa with participation of Romania, Moldova and Ukraine and involved international organizations. Work on the channel is still planned in accordance with international conventions.

The most recent reason of dispute between the two neighbours appeared in 2006, when the Ukrainian border patrol changed the beaconing of the borderline, moving the beacons next to the northern dike of Sulina branch. The reason claimed was the silting of Musura Bay, leading to a natural increase of Ukrainian territory and thus to a new delimitation of territorial waters too.

5 Conclusion

The multiple border conflicts between Romania and Ukraine are constantly deteriorating the relationship between the two neighbours, charging it with useless tensions and distrust. The mutual accusations and chicanes do not serve the interests of any part concerned, they just cause useless trouble and suspicion between them. The nationalist political climate is an important background cause of the bad relationship, periodically affected by the government changes in both countries. Generally speaking, there was no significant difference between the nationalism of post-1989 Romanian governments (all major Romanian party and government of the last two decades was moderately nationalist, pro-European and pro-Atlantic), but there was a significant difference between the orientation of Ukrainian governments and presidents, revealing the deep divisions of ukrainian internal politics.

The lack of mutual trust is damaging the

perspectives of economic changes and cooperation, resulting in lost opportunities and regional underdevelopment. The commercial changes between the two neighbours are declining, the transportation in the vicinity and through the borderline is difficult, the border traffic is dominated by smuggling and corruption, and the infrastructural development is quasi non-existent. However, the recent evolutions in Ukraine and the conflict with Russia offered new opportunities for improving bilateral relations.

The decision of the ICJ on the Serpents' Island and the Black Sea continental plateau proves that the competition for natural resources can be solved by reasonable compromises. Unfortunately this wasn't the only issue to be solved, but the recent evolutions and the civil war in Eastern Ukraine makes the border conflicts between Romania and Ukraine marginal compared to the conflict with Russia.

The expected Shengen membership of Romania (which is only a matter of time and actual politics) will need a better relation with the non-EU member neighbours, in order to reinforce the eastern border, so the positive attitude of Ukraine and Moldova towards cooperation will be indispensable in the future. That is why Romania needs to improve its relationship not only with its EU-member neighbours, but with the eastern ones too.

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