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Border disputes and water conflicts in the Western Balkans¹

1. INTRODUCTION

Territoriality is a major characteristic of human beings. We like to have our own confined territories at various scales from the individual (my room) to the communal (our city). Territories *per definitionem* involve boundaries of various sorts, since they are prerequisites of delimitation of areas, thus territorialization. The current political order, based on territorial nation states works similarly, territories confined with boundaries are the building blocks of it, where theoretically every single point of the Earth's land surface (except the Antarctica) belongs to a state and only one state, divided by state borders. In this system any deviation from the ruling principle is considered a dispute, a situation which is problematic.

Furthermore one major source of power for political elites, ruling the territorial nation states is territory itself (Newman 2006 pp. 91-92), thus no states are happy to give up territories for other states. This leads in many cases to the bitter and lingering nature (e.g. Israel, Cyprus) of border disputes which can further deteriorate bilateral relations.

In the region of former Yugoslavia – due to the dissolution of the state – several border disputes have remained even quarter of a century after the conflict. Some of these are connected to bodies of waters as they play a special role in border delimitation and since they weren't fully addressed by the late Yugoslav authorities. This non-regulation and the violent dissolution of the state led to the lingering border disputes of the successor states of former Yugoslavia. In this short paper we intend to collect the major border disputes of the successors of former Yugoslavia linked to waters.

2. THE SIGNIFICANCE OF BORDERS

Borders are inseparable parts of the Westphalian modern world order where territorial nation states are the major players of the international arena. Their territories are separated from each other by lines in the sand, called (international) borders, which therefore separate the areas of two adjacent states.

Borders are addressed in various ways in different disciplines (international law, history, sociology, geography etc.) and in the last decades several interdisciplinary approaches have

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also emerged. In the classical sense borders are seen either as barriers, the outer layer of their states where they confront the rest of the world, thus they are the first lines of defence. Borders are also viewed as filters, with the help of which those in power can decide who and what can enter or leave the state and who and what has to stay in or out. A third approach sees the borders as interfaces or bridges, where states meet, interact and cooperate.

In the last decade an increased interest can be seen towards borders and border studies (e.g. O'Dowd 2002, Kolossov 2005, Newman 2006, Scott 2011, Laine 2016). This is due to several mutually reinforcing processes and events. In the decades around the turn of the millennia globalization has been gaining ground and we experienced a fast development in transportation and communication technologies as well as new ideas of economic and cultural globalization. It created the perception of a shrinking world where borders were losing their importance. The fall of the Berlin wall and the iron curtain led to the re-unification of Germany and Europe, and the general deepening economic and political cooperation in the Western world resulted in supranational institutionalized cooperations (EU, NAFTA etc.) where borders has been deconstructed from above. The image of the 'borderless world' have never been closer and clearer which fuelled increased interest of borders from academics around the world.

In the meantime new borders have also emerged especially in Eastern Europe, where synthetic "federal" states (Soviet Union, Czechoslovakia, Yugoslavia) have been split creating new nation states with a lot of new borders; again something academics were eager to examine. The (re)birth of (new) borders created borderlands, cross-cut previously established territorial links of economy, transportation, city networks etc., and resulted in modified spatial patterns of development. In some cases – in Europe especially in the former Yugoslavia – the establishment of new borders did not go smoothly which fuelled inter alia the involvement of academics in researching border issues (Reményi – Végh, 2006).

One can classify borders along multiple typologies. The genetic approach focuses on the context of the genesis of borders, distinguishing antecedent, subsequent and superimposed boundaries. A rather geographical approach is the morphological division of borders, which investigates their position to natural features (physiographic, anthropomorphic and geometrical boundaries) (Anderson, 1999).

2.1. The relation of borders and waters

In the latter categorization a distinct type of borders are the ones connected to waters, which include inland waters (rivers or lakes) and the open seas. They both constitute relatively good markers of borders since they are well visible and create a boundary like disruption in the space.

In the case of inland waters and especially of rivers the uniqueness of the borders derive from the fact that since the border itself is linked to the body of water and rivers are rather unstable physical features the borders can change their position as a consequence of the change of the course of the flow. There are several possibilities to link borders to rivers but all have the same effect in some way: international borders can be either riverbanks, or median lines, but most often (especially at navigable rivers) thalwegs, which is a line connecting the deepest points of a valley/river, thus being the natural navigable channel within a river (S. Whittemore, 1937 p. 446). A typical dispute emerges when a river changes its course through natural movement and therefore the location of the boundary also changes. In cordial relations these changes can be adjusted from time to time (as was in the case of Hungary–Slovakia at the 1999 and 2018 modifications), but tense relations can cause longstanding disputes.

Other type of water related borders are the maritime borders, the current system of which was established by the UN in the Convention on the Law of the Sea (UNCLOS)² in 1982 (with entry into force in 1994). This regulates the maritime borders as well as the different maritime zones of each coastal states. Usually these borders and zones are clearly defined, but conflicting claims of sovereignty (e.g. the South China Sea) or the interpretation of the Law of the Sea (maritime boundary of the two Koreas) can lead to territorial and border disputes.

Bodies of water can play an indirect role in border disputes as well. In this case the border does not run along waters, but access to the water (river or sea) is the ultimate goal of the territorial dispute. In these situations corridor-like territorial features (e.g. Danzig, Leticia etc.) can be created which on one hand can provide the access, but on the other these are territorial extremities usually prone to geopolitical conflicts (Pap, 2001).

2.2. Border disputes

When neighbouring states are unable or unwilling to agree on their international borders border disputes emerge. The major theoretical types are positional, territorial, resource and functional disputes (Guo, 2018). In positional disputes the exact line of the border is disputed, either because the delimitation or its explanation in documents are not accurate enough or because changes on the ground alter its relative position and the affected countries disagree on the interpretation of the new situation (e.g. changing courses of border rivers). One may call territorial disputes the ‘classical’ border disputes, where in the focus of the disagreement stands the debated sovereignty over a territory. In these cases not the border itself is important but the

² United Nations Convention on the Law of the Sea:
https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf (Downloaded 04 08 2020).

contested rule over a piece of land or sea. Resource based disputes are centred around cross-border or border side resources, including but not limited to minerals (e.g. oil fields), fresh water (Jordan, Nile...), fertile lands etc. Again not the border itself is challenged but the use of resources affected by the border. Finally functional border disputes are related to the functioning, regulation and utilization of borders. Unilateral moves (closing the border, introducing discriminative measures...) are typical triggers of functional border disputes of neighbouring states.

3. THE BORDER ISSUES OF FORMER YUGOSLAVIA

During the dissolution of Yugoslavia (in several waves from 1990 to 2008, with still existing potential for further territorial fragmentation) territorial sovereignty and therefore border issues has been in the centre of the debates (Reményi – Végh, 2006). This is no surprise at all, since usually any state disintegration involves the necessity of agreeing on the new territorial order, thus on borders as well. One major reason from a geographical point of view, why the dissolution triggered a series of armed conflicts over territorial control can be found in the spatial configuration of former Yugoslavia (other major factor being the political elites' willingness and intentions to go to war for territories and power).

Firstly, the spatiality of ethnic groups did not match the territorial administrative structure of the state (Kocsis, 1993). Except Slovenes and their republic all federal units were multi-ethnic and the largest ethnic groups has lived in multiple republics and provinces, the Serbs (the largest group within the state) being the most scattered throughout Yugoslavia, which was, to some degree (Đilas, cited by Bataković, 1995 p. 32.), an intentional move of Tito, aiming to curb potential Serb hegemonic aspirations. Secondly, the road to the dissolution was beset on all sides by growing ethnonationalism, which on one hand can't be perceived as something unusual in late socialist Europe during the last years of communism, while on the other, it was fuelled from the top by the national elites of each ethnonational groups (Juhász et. al. 2003).

Thirdly, the borders of the federal units of Yugoslavia have been viewed only as administrative lines and haven't been addressed by the state bureaucracy even when disputes among federal units arose. Tito even addressed internal borders as just lines drawn in granite, not to divide but to connect the nations of Yugoslavia (Bataković, 1995 p. 32.). The exact moves, talks and debates surrounding the (re)establishment of internal borders after World War II are rather obscure (Režek, 2015), but Milovan Đilas, an influential politician of the time had important role in it (Klemenčić – Schofield, 2001 p. 12.). The general rule (as agreed in 1945 by the Yugoslav communist leaders) was to re-establish the 1878 Berlin Congress international lines

(Spahić et al. 2014), thus the historical approach was widely used, but not always and not everywhere, since some of them have never been international borders before (e.g. the Danube between Croatian Baranja and Serbian Vojvodina). In some cases ethnic principles (defining the boundaries of Macedonia or Syrmia) or other strategic considerations (Bay of Kotor) have been used. Documents addressing the whole issue are missing (if ever existed) and one can rely only on indirect references. Various factors contributed to the creation of internal borders prior to the 1946 constitution, including historical, ethnic and administrative ones (Režek, 2015 p. 442.).

Based on the above, it is no surprise that at the time of the dissolution of the state one of the major issues was the definition of the international borders of the newly emerging states. According to the Serbian position (which have been kept throughout the conflict, especially in the case of Croatia and Bosnia-Herzegovina) the internal borders of the member republics are merely administrative boundaries and not internationally recognized borders, furthermore the last constitution provides the right of secession to nations and not republics (people vs. territory), thus after the civil war the principle of the right of ethnic self-determination should be the basis of further territorial agreements, instead of the principle of the inviolability of borders. In contrary, the Bosniak and Croat positions, referring also to the last Yugoslav constitution, emphasized the international recognition of the republics' borders, the right of secession of the republics (and not the people), and refused to agree on anything else but their secession with their existing boundaries. During the clash of the two major positions reasonable and less reasonable arguments have been articulated for and against both ambitions. Naturally all parties tried to interpret the rules along their interests, but at the end, based on the rulings of the Badinter Commission, the republics' borders became the new international borders (Pellet, 1992; Radan, 1999; Hoffmann 2007).

The use of the *uti possidetis iuris* principle seemingly simplified the territorial consequences of the succession, but the ethnic tensions, which constituted an important layer of the conflict,³ remained. Almost all former member republics (except Slovenia) inherited smaller or larger ethnic tensions in close connection to their new international borders. Therefore, instead of solving one important problem of the region, it was simply bestowed one administrative scale down from a federal level to the level of former republics (now independent states) (Reményi – Végh, 2006).

³ We do not think that multiethnicity was the primary cause of the dissolution of the federal state, but it did contribute to the nature of it, triggering a bloody territorial war marred by large scale violence against civilians, mass displacement of people on ethnic basis, ethnic cleansing, etc.

The wars that broke out during the prolonged disintegration of Yugoslavia (with the exception of the so-called Ten-Day War for Slovenia, which was a last effort to save the federal Yugoslavia) were all fought to fit the ethnic and administrative borders, and include as many members of the respective nation as possible. Due to the fragmented, mosaic-like ethno-territorial patterns of many regions of Yugoslavia, this resulted in displacement of 'others' from territories under the rule of a given nation and the violent occupation of lands under the control of other nations on ethnic claims.

After the series of brutal wars a US brokered peace deal ended the first stage of the dissolution. The treaty, which was agreed in Dayton, Ohio and signed in Paris in 1995, set the new territorial structure of the region including borders. All independent countries inherited their pre-independence administrative borders and a new, unique type of boundary was set up in Bosnia-Herzegovina to divide the warring parties, creating the Federation of BiH and the Republic of Srpska (Juhász et al. 2003). Later secessions also followed suit, both Montenegro and (however not a settled issue so far) Kosovo declared their independence within their former administrative borders.

3.1. Case studies

Following the dissolution, former internal administrative borders became international, and the disagreements along them, turned from domestic disputes to international tensions. Due to the Yugoslav administration's neglect of internal borders, and its perception that they are only for administrative reason, no one was prepared for managing them in an international environment, which in some cases led to lingering border disputes among the former member republics. In the following section we give a brief overview on the ones connected to waters.

3.1.1. The Gulf of Piran and the Slovenian exit to the sea

In the core of the maritime border dispute (the wider issue also involves disputed land borders) is the lack of previous maritime border delimitation between Slovenia and Croatia. The maritime boundaries of the north Adriatic have been agreed in 1975 by Italy and Yugoslavia in the Treaty of Osimo, which also divided the territory of the Free city of Trieste. The UNCLOS maritime border system was also debated during the existence of Yugoslavia, signed and ratified in 1982/1986 by the federation. This means that the Yugoslav-Italian (external) maritime border was set, but internal maritime lines between Croatia and Slovenia have never been properly established (Avbelj-Letnar Černič, 2007 p. 4.).

Slovenia's short coastal strip (46 km) consists entirely of the parts of the former Free city of Trieste and due to the shape of the gulf, following the independence of Slovenia and Croatia, the former found itself stuck between the maritime zones of Italy and Croatia. From 1995 the border dispute has revolved around the Slovene demand of free access to the international waters which were blocked by the territorial waters of Croatia and Italy. Slovenia claimed the whole gulf or at least beyond the median line and a corridor to the international waters.

On the other hand, Croatia insists on the median line and refuses providing the corridor through the claimed territory. Both countries refer to different parts of the UNCLOS agreement, and several rounds of talks have been organized together with agreements (Drnovšek-Račan in 2001, Bled in 2007) which have later been ratified only one party. Slovenia even used its veto blocking Croatia's EU accession to enforce its interests. The dispute seemed to be ended by a binding rule of Permanent Court of Arbitration (in 2017, favouring Slovenia), which was however refused by Croatia (Pavlic, 2017).

3.1.2. The Pelješac bridge and the Bosnian exit to the sea

Similar to the Slovenian coast, the Bosnian is also a narrow strip of land (21 km), a consequence of previous treaties, but in this case dating back to the late 17th, early 18th centuries (Treaties of Karlowitz 1699 and Passarowitz 1718). Neum in the north, together with Sutorina in the south were established as buffer zones between Ragusa and the Venetian Republic. As border changes continued in the region, Neum remained part of the territorial unit now called Bosnia-Herzegovina and serves as the only access to the Adriatic for the country after its independence (Bickl, 2019 p 51.).

The corridor of Neum therefore disrupts the land continuity of Croatia, creating a sort of an exclave in Southern Dalmatia. The control of transit traffic through the corridor is a potential leverage in the hands of Bosnia-Herzegovina, and the mere existence of it once Croatia joins the Schengen Area can create unmanageable border situations. In the late 1990-ies negotiations have started between the two states involving special transit rights for Croatian traffic through the corridor and special commercial rights for Bosnian companies in the Croatian port of Ploče (the largest port in the region, where the V/C transport corridor ends, linking major Bosnian cities like Tuzla, Zenica, Sarajevo and Mostar), also known as the Neum/Ploče agreement, but without final consensus so far.

Since the early 1990-ies Croatia has had, at least theoretically, a plan to solve the unfavourable situation unilaterally: constructing a bridge over the Adriatic, linking mainland Croatia with its southern exclave, bypassing the Neum strip. While the bridge is to be constructed over Croatian

territorial waters, Bosnia-Herzegovina opposes it for two reasons: it may hinder the maritime traffic to and from the potential Neum port (if a commercial port will be constructed here ever), and since the maritime boundaries between the two states are not concluded yet (similar to the context of the Gulf of Piran dispute), and the ownership of two small uninhabited islands (Mali Skolj and Veliki Skolj) is still disputed (Papadopoulos, 2018). Furthermore, the history of the bridge shows that such a large and expensive construction, perceived by some as prestige investment, is hard to accomplish. In the last plans the bridge will be high enough to let all vessels enter the Bay of Klek and even EU financing can be involved (Pavlic, 2018).

3.1.3. Sutorina

Sutorina is located in Western Montenegro with a narrow coastal strip to the Bay of Kotor. The municipality, together with Neum served as a buffer zone between Ragusa and the Venetian Republic from 1699. From the Berlin Congress (1878) both areas became parts of Bosnia-Herzegovina and while Neum still belong to that country, Sutorina was transferred to Montenegro in 1947 as part of a land swap between the two socialist member republics (however without direct written sources on the transfer (Spahić et al. 2014 pp. 8-9.). After its independence, Bosnia-Herzegovina started to dispute the area until the 2015 Vienna Agreement, where it renounced claims on the municipality. For Bosnia-Herzegovina, the small exit to the sea is more than just a symbolic issue, knowing the disputes along its other narrow corridor at Neum. This dispute is (was) clearly a territorial one, the sovereignty over the municipality is debated, and not the position of the border itself.

3.1.4. The Prevlaka peninsula

Not far from the Sutorina area another disputed border is located. The Prevlaka peninsula of Croatia is a narrow strip of land in front of the entrance of the strategic Bay of Kotor of Montenegro. From the Treaty of Vienna (1815) until World War I the Habsburgs, between the two world wars Yugoslavia ruled both. During the establishment of the internal borders of Yugoslavia, the Bay of Kotor was ceded to the Montenegrin republic of Yugoslavia while the Prevlaka peninsula remained part of the Croatian republic, which meant they were separated into different federal units of the same state. Tensions arose following the secession of Croatia and the explanation behind have been the same as with the Gulf of Piran dispute: the international border dispute of successor states grew from the lack of proper definition of maritime boundaries between the federal units. However, in the case of this dispute the stakes are not as high, it does not practically block other countries' access to the sea or significant

resources. The dispute is more symbolic, but it has not been solved yet, though an agreement have been reached in 2002 (Pavlic, 2017).

3.1.5. The Danube

The most important fluvial border dispute in the region is the one between Croatia and Serbia along the Danube. The core of the dispute is the disagreement of the parties on where the actual border should run (a positional dispute). The Croatian position insists on the borders set in the 19th century along the then current course of the river. Since then these borders have always been used in lower territorial scales (municipal territories and cadastral mapping), and also in military maps in socialist Yugoslavia (the 1:50.000 topographic maps prepared by the Army Map Service of the US Army based on the 1964 Yugoslavian military maps show the same boundaries).

Due to hydro engineering and natural movements of the Danube, the river does not follow the course it used to centuries ago, meanders have been cut off and the river now flows a bit more to the west. The Serbian position is that the international border should follow the actual thalweg, in simple the actual course of the river. Their claim is based on the report of the Đilas commission which defined the internal border to be run along the Danube in 1945. Furthermore this would make life easier for all, in case the two states could agree on exchanging territories which belong to them but are now cut off by the new course. Two major obstacles can be identified here: firstly, from a practical approach, the Croatian territories which are now on the eastern side of the river are somewhat ten times larger than the Serbian territories west of the river (1000 vs 10.000 ha) (Klemenčić–Schofield, 2001 p. 19.). Secondly, from an ideological approach, regardless of the size of territory it's hardly imaginable that Croatia who just fought a territorial defensive war 30 years ago against Serbia would give up an inch of its territory.

This leaves the boundary issue along the Danube in a deadlock where even strange border-related ventures show up. In 2015, on a small island which was claimed by neither Serbia nor Croatia (being to the west of the main branch of the river, so from a Serbian perspective it's Croatia, but being east of the former course, so from a Croatian perspective it's Serbia), thus theoretically being a *terra nullius*, a Czech politician proclaimed the new state of Liberland. From our point the intentions and interests of the state-founder are of secondary importance, but they clearly display how the disagreement on the border between Serbia and Croatia can cause turbulences in international relations even beyond the confines of the two neighbouring nations (Rossman, 2016).

4. CONCLUSION

Border disputes following state dissolutions can be lingering issues, especially if the dissolution takes shape in a series of bloody territorial civil wars like in former Yugoslavia. The symbolic aspect of boundaries and territories in these cases cannot be overestimated, nation buildings are usually at full swing in post-conflict societies, identities are still under constructions and those constructing them are overly sensitive. This makes any border adjustments difficult, but still, the most troublesome cases are the ones which include objective advantages as well besides the symbolic/spiritual ones, like access to resources.

Among the disputes of former Yugoslavia the most problematic ones are those connected somehow to waters. On one hand because of their rational advantages (access to seas, rivers as resources), while on the other because these are either the boundaries which had been rarely if ever addressed in details by authorities in former Yugoslavia, or because the modifications are without proper explanation. Some lines, especially the maritime borders, have never been set up, while others have been left unattended for decades (e.g. the Danube), despite the changes in the natural environment around the boundary.

The unresolved border issues have far-reaching consequences on politics as well. Long lasting disputes can be focus points of political mobilization against other nations but at least issues that prevent the establishment of cordial neighbourly relations in an unstable region which for its development first of all needs stability. In the case of the countries of former Yugoslavia Euro-Atlantic integration creates further complications. Border disputes are not welcomed in the community and territorial extremities (like the Neum corridor disrupting Croatian land continuity) are problems to be solved in systems like the Schengen Area. In the new EU strategy towards the Western Balkans (A credible enlargement perspective for and enhanced EU engagement with the Western Balkans) it is explicitly stated that the EU cannot and will not import bilateral border disputes, they have to be solved before a country accedes (European Commission, 2018; Orlandic, 2019). Since EU accession is by far the most important stabilization and development factor for the Western Balkans currently on the horizon, unresolved border disputes seem to be, as for now, unsurmountable obstacles of long-term stabilization of the region. Or at least not in a European context, the signs of which are already present in the region.

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