Original Research Article
Received: 24 December 2021
https://doi.org/10.20901/pm.59.2.05

Meandering Limits: The Danube Border Dispute Between Croatia and Serbia and Ways to Its Resolution

THOMAS BICKL
Independent Researcher, Ph.D. from Duisburg-Essen University

Summary

This single-case study seeks to provide an in-depth analysis of the territorial dispute between the Republic of Croatia and the Republic of Serbia over the State border along the Danube. The research article will look into the historical roots of the conflict and its current context of the EU accession process of Serbia addressing (i) the dispute in substance, e.g. the positions of Serbia and Croatia, (ii) available dispute settlement tools – bilateral (with or without third-party mediation) or third-party judicial, and (iii) delimitation scenarios of the Danube border both in the bilateral mode and in the light of the jurisprudence of international courts and tribunals. The study demonstrates that it does indeed take some political will to overcome the protracted conflict, and addresses the related focal points. The article is based on interviews, internal documents, decisions of international courts and tribunals, and secondary literature.

Keywords: Croatia, Serbia, Danube, EU Enlargement, Dispute Resolution

I. Introduction

The Danube border dispute between Croatia and Serbia is the 'lion dormant' amongst the bilateral issues between Belgrade and Zagreb.[1] It has been fast asleep for most of the time since the normalisation of relations in the late 1990s and has hardly surfaced

[1] I am particularly grateful to all interviewees for sharing their expertise and evidence with me. Special thanks go to Aleksandra Popović, Alen Legović, Milica Vujović Royle, Miloš Hrnjaz, and to Mirjana Jurić and the staff at the Croatian State Archive in Zagreb. The opinions expressed in this paper are the views of the author and cannot be attributed to any EU or other institution or body in any way.

in the public debate. The two States, it seems, "have other fish to fry" (interview Filip Ejdus, 20-09-2021) for the time being, in particular the issue of missing persons from the 1991-95 war which was indeed "a painful event and a human tragedy" (interview senior Serbian civil servant A, 20-09-2021). Diverging views on whether the border should run along the middle of the Danube's navigable channel or along cadastral limits from the late 19th century may indeed be seen as merely locational in practice. However, an unresolved bilateral territorial dispute can well develop into a 'lion rampant' once its resolution comes too close to the EU accession of one party to the dispute (interview Aleksandra Tomanić, 20-09-2021) under the power asymmetry between an EU Member State – Croatia – and that other party being a Candidate Country – Serbia. This comes irrespective of the fact that Serbia seems to be moving "at a snail's pace" on the EU path, whilst the EU itself has put the entire enlargement process "on slow motion" (interview Suzana Grubješić, 08-10-2021). In the 2021 Serbia report of the European Commission, the Danube issue with Croatia does receive a mention, albeit very briefly and in a rather opaque manner.[2]

This article is structured as follows: the first introductory item provides a brief account of the Danube as an international waterway and its role in Croatia and Serbia, of how the succession to State borders is handled under international law when independence occurs, and of the analytical framework of this study. The second item addresses the positions of Serbia and Croatia in the dispute over the course of the border along the joint stretch of the Danube. The means of dispute resolution (bilateral – with or without third-party mediation – or third-party judicial) will be the subject of the third heading, and the fourth item covers tentative solution scenarios in either resolution mode. This research paper concludes with a brief assessment of the way ahead in an EU context.

With regard to data collection, interviews, documents, and secondary literature constitute the pillars of this study. During the fieldwork, the author has conducted 15 semi-structured expert interviews.[3]

[2] "Relations with Croatia continued to be mixed. The border demarcation [*sic*] issue between the countries remains unsolved" (European Commission Serbia Report, 2021, p. 77). It should be noted, however, that *demarcation* is the actual marking of the border on the ground, i.e. the final stage. The preceding step is *delimitation*, the agreement on the course of the border usually by low-scale maps (see e.g. OSCE, 2011, pp. 9-11).

[3] The interviewees were two former politicians, four civil servants who all requested to remain anonymous, five academics, and four think-tank researchers / foundation representatives. Some interviewees fall into more than one category. Save for the anonymised civil servants, all interviewees have been informed about their right to privacy and have signed an informed consent as to the publication of their names.

Semi-structured interviews cover the same core aspects, but leave some room for personal views and anecdotal evidence which can open up further research issues (see e.g. Rabionet, 2011, p. 564).

Role of the Danube in Croatia and Serbia

The Danube is an international waterway of 2,857 km (International Commission for the Protection of the Danube River ICPDR interim report, 2018, p. 2), 1,071 km of which are State borders (Milanković Jovanov *et al*., 2018, p. 106) linking Germany, Austria, Slovakia, Hungary, Croatia, Serbia, Romania, Bulgaria, Moldova, and the Ukraine.[4] The Danube essentially is a major component of the international waterway linking the Black Sea to the North Sea, the Trans-European (Rhine-Danube) Corridor VII from Rotterdam to Sulina.

Croatia and Serbia share a joint section of the Danube River along 137 km (NEWADA, 2011a, pp. 5, 10; 2011b, p. 9) between the border with Hungary a few km north of Batina/Bezdan and Bačka Palanka/Ilok (see fig. 2 in II.). The land border with Hungary is fully delimitated and demarcated subject to a demarcation and maintenance agreement between Hungary and the SFR Yugoslavia from 1983 (OSCE, 2011, p. 12), to which both Croatia and Serbia are successor States. Serbia has another joint section along the Danube with Romania over 239 km (NEWADA, 2011b, p. 9), fully delimitated and demarcated, subject originally to the Treaty of Trianon 1920 and technically amended by an agreement between Romania and the SFRY in 1977 following the joint construction of the Đerdap I and II gates on the Danube (Dimitijević, 2012b, p. 107).

Croatia has one Danube port (Vukovar), Serbia has three (Apatin, Bogojevo, Bačka Palanka) along the joint section. Croatia's Danube traffic is predominantly transit, whereas Serbia has considerable amounts of domestic, export and import transport volumes (Interreg Danube Transnational Programme, 2018, pp. 12-13; Milanković Jovanov *et al*., 2018, p. 110). Croatia and Serbia signed a bilateral agreement on navigation on international waterways and their technical maintenance in 2009, and the corresponding Inter-State Commission on the implementation was founded in 2010 (Directorate for Inland Waterways of Serbia/Croatian Agency for Inland Waterways Joint presentation, 2011, p. 9).

Despite classical hydraulic and engineering work to ensure the safety of navigation at some places, the Danube can be considered a freely floating water body along its Croatia-Serbia stretch with considerable natural reserves at both sides of the river bank (author's field notes 19-09-2021) and no less than 17 navigation bottlenecks along its fairway with "all locations [being] cross-border" (Danube Region Strategy, 2014, p. 28). These critical locations[5] are caused by natural erosion and

[4] Its westernmost international container port is located in Kehlheim, Germany, and its easternmost one in Izmail, Ukraine (see https://www.danube-logistics.info/danube-ports).

[5] The most critical locations along the Danube overall at the time of writing are: the entire Hungary section, the area around Milka/Belene/Coundur (Bulgaria), Cochirleni (Romania), and Straubing-Vilshofen (Germany) (Danube Fairway, 2019 July 10, p. 5).

the deposition of sediments (Directorate..., 2011, p. 17; NEWADA, 2011b, p. 7; 2011a, p. 14). Overall, the close collaboration of both sides to ensure navigational safety along the Danube can be considered good-neighbourly in more recent times. Nevertheless, there was no maintenance of the Danube navigable channel at all in the joint section (and along the remainder of the Serbian stretch) between 1990 and 2000 (see e.g. NEWADA, 2011a, p. 9) in the context of the dissolution of Yugoslavia and the subsequent armed conflict between or within some of the successor States (see e.g. Dimitrijević, 2012a, pp. 8-12; Klemenčić and Schofield, 2001, pp. 26-37). Overall, cross-border cooperation on a regional level remains limited. There are no cross-border joint framework bodies for the management of inter-regional cooperation between Croatia and Serbia (Interreg IPA Programme 2021-2027, 2021, p. 149), which also holds for the town twinning between Osijek and Subotica on a local level (Ricz *et al*., 2016, p. 14), where the administrations on both sides nevertheless are in touch directly and *ad hoc*. Against the background of the contemporaneous joint management of the Danube waterway maintenance, Croatia and Serbia have an unresolved dispute over the boundary line along the joint section of the river (for the divergent positions, see II.). The dispute is a side-effect of the dissolution of Yugoslavia (SFRY). Therefore, any contemplation should start out from a historical angle.

Historical Context

Prior to 1991/92, both Serbia and Croatia were constituent Republics of the Socialist Federal Republic of Yugoslavia (SFRY).[6] At the second session of the Antifascist Council of National Liberation of Yugoslavia (AVNOJ) on 29/30 November 1943, the former Kingdom of Yugoslavia ceased to exist and was replaced by a federal State and its respective units including the Socialist Republics of Croatia and Serbia. In the spring of 1945, the Politburo of the Central Committee of the Communist Party of Yugoslavia (CPY) appointed a special commission (chaired by Milovan Đilas and comprising, *inter alia*, the interior ministers of Croatia and Serbia) mandated with a proposal on the Croatia-Serbia (Vojvodina) boundary line. The Đilas Commission carried out fieldwork including meetings with local representatives and submitted a report to the CPY Central Committee that the latter adopted on 1 July 1945 (Klemenčić and Schofield, 2001, pp. 11-12; Dimitrijević, 2012a, pp. 5-6; Vukosav and Matijević, 2020, pp. 187-188; see also Đilas, 1985, pp. 99-100).

[6] Serbia (including Vojvodina and Kosovo) and Montenegro continued as the Federal Republic of Yugoslavia (FRY) until 2003, followed by Serbia and Montenegro, until Montenegro declared its independence in 2006. Kosovo became independent in 2008. Vojvodina has continued its status as an Autonomous Province of Serbia.

The Đilas Commission proposed a *provisional* boundary line allocating the districts of Subotica, Sombor, and Apatin Ođazi (Bačka region) along the left bank of the Danube to Vojvodina, and the districts Batina and Darda – between the Drava and the Danube – (Baranja region) along the right bank of the Danube to Croatia. The border thus went along the Danube river, and turned south roughly half way between Vukovar and Bačka Palanka/Ilok (Srem/Srijem region; see Klemenčić and Schofield, 2001, pp. 12-13; Dimitrijević, 2012a, p. 7). The town of Ilok and its western surroundings were subsequently allocated to Croatia by means of the Law on Establishment and Organisation of the Autonomous Province of Vojvodina on 1 September 1945. Somewhat later, before 1948, Croatia and Serbia agreed to a boundary change allocating the village area of Jamena (by the Sava River) to Serbia whilst the village area of Bapska (southwest of Šarengrad) was transferred to Croatia. No changes on the Croatia-Vojvodina borderline occurred up until the dissolution of the SFRY in 1991/92. However, no detailed demarcation has ever been carried out along the Croatia-Vojvodina boundary (Klemenčić and Schofield, 2001, pp. 14-16). It is also important to note generally that no legal act has ever been adopted by any federal FPRY/SFRY body which would establish and define the administrative boundaries between the Yugoslav federal units (PCA *Croatia*/*Slovenia*, 2017: 101, para 316; see also e.g. Radan, 2000, p. 7; Simentić Popović and Sandić, 2020, p. 44; Bickl, 2021a, p. 2).

Succession to State Borders

Generally, in modern international relations, a territorial boundary "needs to be complete and precise if it is to be useful, with no areas left vague" (Thirlway, 2018, p. 119). It has become a firmly established principle of international law that the former internal boundaries of a territorial unit become international borders after obtaining independence. This principle referred to as *uti possidetis juris* was first applied in the context of decolonisation in Latin America in the 19th century and later in Africa and Asia in the 20th century. As the International Court of Justice (ICJ) noted, *uti possidetis* is

> [...] a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs.

It further observes that

> the application of the principle of *uti possidetis* result[s] in administrative boundaries being transformed into international frontiers in the full sense of the term. (International Court of Justice, 1986, p. 566, paras 20, 23)

At the same time, the nature of *uti possidetis juris* is such that

> [it] is essentially a retroactive principle, investing as international boundaries administrative limits intended originally for quite other purposes.[7] (International Court of Justice, 1992, p. 388, para 44)

The principle of *uti possidetis* also played a strong role in the context of the dissolution of Yugoslavia in 1991/92. In respect of the former SFRY Republics, the Badinter Commission (mandated by the European Community in August 1991), in its Opinion No. 3,[8] noted that

> [...] the former [intra-SFRY] boundaries become frontiers protected by international law. (American Society of International Law, 1992, pp. 1499-1500)

One must distinguish between (i) legal title to territory (*uti possidetis juris*), and (ii) the effective control of an area (*uti possidetis effectivités*). With regard to the method with which a judicial body is going to establish a boundary on the basis of international law, the arbitral tribunal in *Croatia*/*Slovenia* observed:

> It is common ground that legal title takes precedence over *effectivités*. Where no legal title is established, or [...] not with sufficient precision to establish the exact location of the boundary, the *effectivités* play a crucial role. (Permanent Court of Arbitration, 2017, pp. 109-110, para 340)[9]

The Tribunal in *Croatia*/*Slovenia*, the first-ever judicial decision on a territorial dispute between successor States of Yugoslavia, further stated that (i) the historical context matters (the Austro-Hungarian Empire, the Kingdom of the Serbs, Croats, and Slovenes, the Kingdom of Yugoslavia, and the Yugoslav Federation), and that (ii) a judicial body would, in the absence of a legal title, look for evidence clearly pointing at the exclusive power of the State (*effectivités*), such as "the levying of taxes, the organisation of elections, conscription for military service, and law enforcement" which would take precedence over services such as the delivery of mail or the provision of telephone lines or electricity (*ibid*., pp. 110-111, paras 341, 343).

Dispute Resolution Analytical Framework in an EU Context

It appears vital to investigate the real issues at stake in a dispute. Parties to a conflict, sometimes deliberately, tend not to spell out their interests clearly. Hidden agendas, however, are a huge burden for negotiations and can lead to *positional*

[7] Milovan Đilas (Chair of the above-mentioned post-World-War-II intra-Yugoslav Boundary Commission) is reported as saying that the inter-Republican boundaries "were never intended to be international boundaries" (Owen, 1995, pp. 34-35).

[8] For an in-depth assessment of the Opinions of the Badinter Commission, see Craven (1996).

[9] The ICJ applied the same methodology e.g. in *Nicaragua v. Colombia* (2012, p. 652, para 66).

bargaining rather than real negotiations based on the underlying interests and a search for mutual gains (Fisher *et al*., 2012).[10] Further, conflicts very rarely dissolve 'out of the blue'. To be resolved, they require some form of *management*. The question whether to opt for third-party assistance and in what form (e.g. facilitation or mediation, or judicial resolution and its type) and the timing of their initiatives/involvement, play a crucial role (Galtung, 1996; Zartman and de Soto, 2010; Keohane *et al*., 2000).

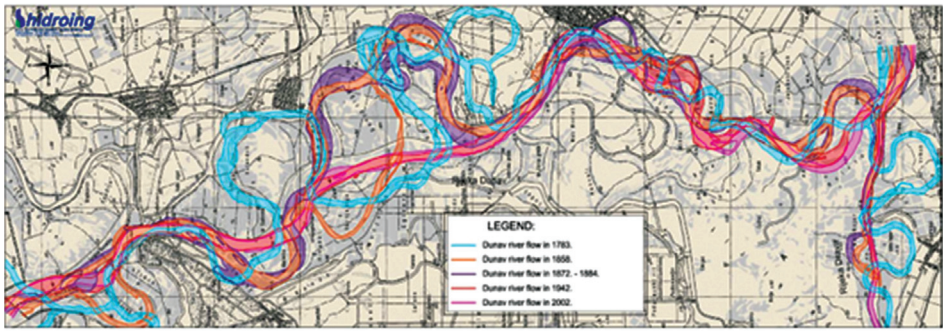
The resolution as such of a bilateral dispute can also be subject to an 'external incentive' – in the context of the EU accession process, the so-called *EU conditionality* (Schimmelfenning and Sedelmeier, 2004). In fact, it has become a clear obligation not only to take over existing EU legislation, but to solve any bilateral dispute between an EU Member State and a Candidate Country ahead of EU accession (European Commission, 2018, p. 7; see also Petrović and Tzifakis, 2021). The Danube border issue between Serbia and Croatia in particular is mentioned in the 2021 Serbia report (European Commission, 2021, p. 75). This approach may be seen as a lesson learnt from the EU accession of Croatia where the unresolved bilateral territorial dispute over the State border with Slovenia was used by Ljubljana to veto Zagreb's EU accession negotiations forcing upon Croatia a judicial resolution of the conflict. Somewhat ironically and regrettably, this issue has transformed into a frozen conflict between two EU Member States still pending today (see Bickl, 2021a).[11]

With regard to EU accession negotiations – requiring unanimity of the Member States to open and close negotiating Chapters thus entailing the veto-leverage of each Member State – it is vital to assess whether a dispute is loaded with a core *national interest* or *identity issue* of the Candidate Country (Freyburg and Richter,

[10] An enlightening example for positional bargaining and its confrontational effects, apart from its inherent time-consuming inefficiency, is the breakdown of the talks about a ban on nuclear testing in 1961. One of the questions was how many on-site inspections per year should the US and the USSR be allowed to carry out on the other party's territory. Whilst the Soviet Union favoured three, the United States insisted on no less than ten. The talks actually broke down over this disagreement whilst the nature of the 'inspection' had never been discussed, so that it was not at all clear whether there would be one person inspecting for one day or hundred people for one month. In fact, little attempt had been made to reconcile verification with the mutual aim of minimal intrusion (Fisher *et al*., 2012, pp. 5-7).

[11] Croatia does not recognise the 2017 Final Award of the arbitration tribunal due to illegal communication between the representative of the Slovenian government and the arbitrator nominated by Slovenia. The Tribunal subsequently reconstituted thus remedying Slovenia's violation of the Arbitration Agreement. It is important to note that the Final Award constitutes a binding settlement of the dispute under international law. However, the EU Court of Justice determined that it cannot be enforced through EU law (see Court of Justice of the EU, 2020, paras 102, 106).

Fig. 1. Danube Main Channel Change 1783-2002 from Border to Hungary (left) to Aljmaš (right)



Source: Directorate for Inland Waterways of Serbia/Croatian Agency for Inland Waterways, 2011, p. 18.

2010; Noutcheva, 2012). National identity is regarded as a cognitive model defining how actors see their interests and to what degree an EU conditionality item is legitimate and appropriate to fit a given national identity. If an EU requirement proves at odds with the national identity, compliance will follow the appropriateness reasoning. In turn, if a requirement is filtered as non-problematic, its further consideration can go down the consequentialist cost-benefit path. It is vital to note that either way can lead to non-compliance. It is the *reasoning* that is different (Freyburg and Richter, 2010, pp. 265-266). In a complementary fashion, Noutcheva (2012, pp. 24-34) distinguishes between *rationality*- and *legitimacy*-based (non-)compliance.

II. The Positions of Croatia and Serbia

The main reason for the territorial dispute lies in the fact that the Danube has changed its course since the 19th century (see fig. 1 above), mainly through natural meandering and regulation works – the cutting of channels to shorten the waterway and improve navigation[12] – which resulted in the creation of 'pockets' between the Danube's main navigable channel and the original cadastral boundaries.

The meandering also caused the creation of disputed islands (adas) further downstream at Vukovar and Mohovo/Šarengrad. It is important to note that the cadastral records have not been aligned accordingly (see Klemenčić and Scho-

[12] Major regulation works carried out in the 19th century include Blaževica (1894), Siga (1894) and Srebrenica (1890-91 and 1894). In Blaževica, a 4-km channel, and in Siga, an 8-km channel was cut (Klemenčić and Schofield, 2001, p. 17).

field, 2001, p. 17; Šelo Šabić and Borić, 2016, p. 10) and that some parts of the cadastral limits had been drawn along Danube tributaries (Dunavci) in the first place (Dimitrijević, 2012a, p. 13). This comes on top of the fact that there has never been any legally binding federal or inter-republican document on the exact course of the domestic intra-Yugoslav boundaries anyway (see *Historical Context* in I.). Today, the area along the right bank of the river is controlled by Croatia and the area along the left bank by Serbia/Vojvodina (author's field notes, 19-09-2021).

Croatia's Position

Croatia bases its territorial claim on the principle of *uti possidetis juris* and the cadastral limits of its districts and municipalities. The data of these territorial units relate to the so-called first stable cadastre following a geodetic survey under the Austro-Hungarian Empire 1877-1891 (see Ministry for Foreign and European Affairs of the Republic of Croatia, 2010, p. 2),[13] i.e. from *before* the regulation works on the Danube. These cadastral limits were carried over to the Socialist Yugoslav Republic of Croatia after 1945 and feature in municipal cadastral maps of SR Croatia, e.g. from 1963 (author's field notes State Archive Zagreb, 21-09-2021).

As a result of the pockets created by the Croatian cadastral limits, Croatia claims 115 km² of land on the left bank of the Danube (interview senior Croatian civil servant, 21-09-2021) on the basis of legal title (*uti possidetis juris*). In the (scarcely populated) area of the northernmost pocket Karpanđa/Kenđija (the remainder of the left-bank pockets claimed by Croatia are natural reserves, and so are the smaller right-bank pockets), Croatia also claims *effectivités* in FPRY/SFRY times.[14] Whilst the length of the joint Croatian-Serbian stretch of the Danube is 137

[13] The document *Temeljni elementi stajališta o razgraničenju između Republike Hrvatske i Republike Srbije* (*Basic elements of the position on the delimitation between the Republic of Croatia and the Republic of Serbia*) was prepared by the Croatian Ministry for Foreign and European Affairs for the 2011 meeting of the bilateral Inter-State Commission on the Danube border (interview senior Croatian civil servant, 21-09-2021) and provided to the author in its original version by the MFEA. The corresponding *aide memoire* of the Republic of Serbia referred to in the following section was provided to the author in an English translation by the MFA of Serbia.

[14] According to Croatia, the village of Kenđija was not included in the Law on the Division of the People's Republic of Serbia into the Municipalities, Cities and Counties of 1952. Instead, it was included in the corresponding Law of the People's Republic of Croatia of 1952. Croatia further refers to revised Laws to the same effect of PR Croatia and PR Serbia from 1957, 1959, and 1963, and of SR Croatia and SR Serbia from 1966 (Ministry for Foreign and European Affairs of the Republic of Croatia, 2010, pp. 7-9). Croatia also invokes effective control of the Kenđija pocket through judicial, administrative and police services until 1991 (*ibid*., p. 7). However, Serbia invokes the records of the courts in Apatin and Sombor with regard to criminal and civil jurisdiction in the left-bank area of Karpanđa/Kenđija (Ministry of Foreign Affairs of the Republic of Serbia, 2010, pp. 7-8; see also *Serbia's Position* in II). Today, the few hamlets inside Kenđija and the

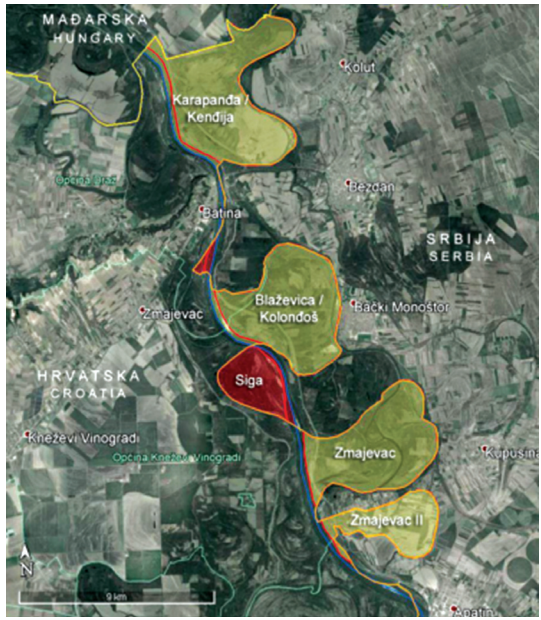
Fig. 2. Croatian Cadastral-Limits Claim Along the Danube from Border to Hungary to Ilok/Bačka Palanka. Serbia Claims the Middle of Danube's Navigational Channel (Thalweg)

Source: Vukosav and Matijević, 2020, p. 194.

km, the length of the disputed border, from the point of view in Zagreb, stretches over 203 km (along some sections of the navigable channel of the Danube river, but also along tributaries, and on land; interview senior Croatian civil servant, 21-09-2021; see also Simentić Popović and Sandić, 2020, p. 44). For the delimitation line

area's inside settlements (largely cottages) along the Danube tributary, all of which are accessed from the road N16 linking Bezdan to the Danube bridge to Batina, are controlled by Serbia (author's field notes, 19-09-2021). The Danube is also the customs and EU external border between the two countries. Thus, the (very few) Croatian farmers left in Kenđija are practically selling their products at the market in Bezdan and cannot do so across the Danube in Batina (Jutarnji list, 2017). With regard to the Danube islands at Vukovar and Šarengrad, there seems to be pre-1991 evidence of Croatian administration by the forestry authority Hrvatske Šume, whereas Vojvodinan authorities seem to have been in charge of flood management on the left bank of the Danube at Vukovar (Klemenčić and Schofield, 2001, pp. 24-25). Today, the Vukovar island, whilst under control of Serbia/Vojvodina, is open to people from Vukovar for recreational use during the summer months following an agreement between the local authorities of Vukovar and Bač (the Vojvodina municipality across the river) from the end of July 2006 (B92, 2006); see fig. 5 below.

Fig. 3. Danube Pockets According to Croatian Claim Between Border to Hungary and Apatin



Source: Vukosav and Matijević, 2020, p. 195.

claimed by Croatia see fig. 2 above. For the larger Danube pockets related to the Croatian claim see fig. 3 above.

Croatia further holds that a future agreement with Serbia on the delimitation of the border must be based on Article 7 of the Protocol between the Republic of Croatia and the Federal Republic of Yugoslavia (FRY)[15] from 23 April 2002[16] stipulating that the delimitation line should be based on "cadastral and other relevant documentation".

With a view to the dispute resolution mode, Zagreb prefers a bilateral agreement, but would also be ready for a joint submission to the ICJ if a bilateral settlement of the Danube-related border proved impossible (interview senior Croatian civil servant, 21-09-2021).

[15] The present-day Republics of Serbia and Montenegro are considered successor States to the FRY and thus to the agreement.

[16] Protocol on the Principles of Identification and Determination of the Borderline and Preparation of the Agreement on the State Border between the Republic of Croatia and the Republic of Yugoslavia.

Serbia's Position

Serbia bases its claims on the presumption that there has never been any document succeeding the report of the Đilas Commission from 1945 (adopted by the CPY Politburo) fixing the Danube as the provisional boundary line between the Yugoslav Republics of Croatia and Serbia in a general way (Ministry of Foreign Affairs Republic of Serbia, 2010, p. 4; see also *Historical Context* in I.). Therefore, it was the exact course of the river boundary which was now to be determined. International State practice in the context of customary international law and settled jurisprudence of international courts and tribunals clearly suggested that the centre-line of the Danube's navigable channel (Thalweg) was the appropriate means of delimitation for a navigable river boundary (*ibid*., p. 6). Serbia could not accept the cadastral claims of Croatia as (i) land cadastres were supposed to be used for technical, taxation, and statistical purposes, and (ii) SFRY cadastres were generally considered "unsatisfactory and unreliable" at the time lacking regular updates and overall accuracy[17] (*ibid*.), and the particular cadastral limits invoked by Croatia did not reflect the substantial meandering of the river and regulation works from the late 19th century and were not in accordance with the existing laws in Serbia/Vojvodina. The Thalweg area should be newly measured and incorporated into a bilateral legal act between Serbia and Croatia (interview senior Serbian civil servant B, 20-09-2021). With regard to effective control (*effectivités*) on the left bank of the Danube during SFRY times, Serbia invokes the jurisdiction of the local Vojvodina courts in criminal and civil matters (see footnote 14).

The Thalweg principle surfaced for the first time in the Treaty of Luneville of 9 February 1801, delimitating the river boundary between France and Germany (Shah, 2009, p. 369; Dimitrijević, 2012a, p. 14). Generally, the Thalweg 'line' tends to be used for navigable boundary rivers, and it may be said that the navigational freedom of riparian States is the paramount interest (Shah, 2009, p. 366). It is worth noting, however, that the application of the Thalweg principle produces an *area* rather than a line (Bouchez, 1963, p. 793) as the channel of the river (fairway) has a certain width (and depth) indispensable for navigation. The minimum fairway requirements for the Danube as an international waterway applicable to Croatia and Serbia (and Bulgaria and Romania) are 2.5 m in depth at low-water-level and 80 m in width.[18]

[17] The Serbian *aide memoire* quotes a text from the Undersecretary at the Secretariat for General Administration and Justice of SR Croatia published in a paper of the Faculty of Law of the University of Zagreb in 1982.

[18] No passing of vessels/convoys is foreseen in the river *bends* along that section (Danube Region Strategy, 2014, p. 7).

As regards the dispute resolution mode, Belgrade wishes to continue the bilateral mode of dispute resolution aiming at a negotiated settlement with active mediation on the part of the EU as an option (interview senior Serbian civil servant B, 20-09-2021).

III. Means of Dispute Resolution

Essentially, there are two major modes of conflict resolution: (i) bilateral, and (ii) third-party. Whilst in the bilateral mode the parties are in direct contact and negotiations, the third-party role can mean both a facilitating or mediating role still confined to the bilateral mode, or a full third-party mode where the treatment of the dispute is delegated to judicial resolution, usually the ICJ or arbitration (see fig. 4 below; see also e.g. Tanaka, 2018; Galtung, 1996).

Bilateral

In the bilateral mode, the parties to the conflict are in touch directly and fully autonomous. They can decide on all aspects of the resolution no matter whether they are procedural or relate to the subject matter, i.e. the parties can agree on the format (political and/or expert level), timetable (meetings on a regular basis or on agreement), and the agendas, and on whether to establish deadlines or an overall roadmap.

Provided there is some political will equilibrium – and a comparable level of perception that it is legitimate and both in the national interest and in line with the national identity to solve the dispute (Freyburg and Richter, 2010; Noutcheva, 2012; see *Dispute Resolution Analytical Framework in an EU Context* in I.) – all aspects of a given dispute can be put on the table and creative solutions may be found. Also, the bilateral mode may be the most efficient one as the parties can determine the frequency of meetings and have ample room for tailor-made solutions (as long as the interests of third States are not affected) without recourse to judicial resolution which is costly (as you need to employ a legal team) and time-consuming (through the substantial amount of preparation of the written submissions, the hearing, and the time required for the reflections proper of the court/tribunal). The bilateral mode, however, apart from the political-will/legitimacy/national interest/identity issue, is inherently prone to substantial delays and cumbersome dynamics, in particular if there is no pre-agreed thematic roadmap with deadlines. This is where a third-party mediator can offer useful assistance (see fig. 4 below) provided the parties to the dispute so wish. It is important to note that the resolution mode would still be a bilaterally negotiated settlement and not judicial third-party resolution.

In the case of the dispute contemplated in this study, Croatia and Serbia set up a bilateral Inter-State Commission on the Danube border in 2002. Parties meet on

agreement and there is no fixed meeting calendar. There were 11 meetings thus far, however none between 2011 and 2018 (interview senior Serbian civil servant B, 20-09-2021; information provided by the Ministry of Foreign Affairs of Serbia, 08-06-2022). It appears that, for several years during that period, the respective national expert groups have not even co-existed simultaneously (Simentić Popović and Sandić, 2020, p. 55). At the time of writing, the last meeting took place in June 2019 (before the start of the COVID pandemic; a meeting foreseen for March 2020 was cancelled). There are no expert group meetings scheduled at the time of writing as everyone has apparently been waiting for a signal from the political level (interview senior Croatian civil servant, 21-09-2021 and 08-06-2022).[19] No meeting documents or any other kind of information from the Inter-State Commission on the Danube border have ever been published, and it may be said that the issue is widely considered a "taboo topic" (interview Duško Dimitrijević, 06-09-2021).

Third Party

A third party can, as already mentioned, play a facilitating or mediating role in the bilateral mode. A purely *facilitating* role is limited to bringing the parties together, to hosting the talks, yet with no active input from the third party. Its success can be rather limited, as is manifest for the first ten years of the so-called EU-facilitated dialogue on the normalisation of relations between Serbia and Kosovo which started in 2011.[20] In contrast, a *mediating* role indeed includes the submission of content both procedurally and on the subject matter by the mediator, i.e. the mediator will want to propose meetings, an agenda, and even drafts of the tentative agreement to be discussed with the parties. It is important to note that the activation of a mediator is in any case subject to the prior consent of the parties.

As in the full bilateral mode, the issue of political will and considerations of legitimacy and national interest and identity play a role on both sides (Freyburg and Richter, 2010; Noutcheva, 2012; see *Dispute Resolution Analytical Framework in*

[19] The Presidents of Croatia and Serbia, Kolinda Grabar-Kitarović and Aleksandar Vučić, met in 2016, when they signed a *Declaration on Improving Relations and Resolving Open Issues* (see European Western Balkans, 2016), and in 2019, when they agreed on an approximate deadline of 24 months for bilateral negotiations after which a judicial settlement was to be pursued (Tanjug news, 2019). However, these meetings seem to have had no impact on the operational level. It is the view of this author that such incentives ought to come from the executive levels of government (i.e. prime minister or foreign minister) rather than from the Presidents, unless there is a clear *ex-ante* coordination between the governmental and presidential levels.

[20] In the autumn of 2021, the dialogue nevertheless produced a roadmap regarding the de-escalation caused by the non-recognition of vehicle license plates in North Kosovo and Serbia (30-09-2021); see https://eeas.europa.eu/headquarters/headquarters-homepage/104902/belgrade-pristina-dialogue-chief-negotiators-reach-arrangement-resolve-tension-north-kosovo_en.

an EU Context in I.). Governments may or may not find it convenient to delegate the resolution of bilateral disputes to a third-party mediator. The political costs will be weighed up against the benefits of agreeing to facilitation of a bilateral solution by a third party, very likely also including the issue of responsibility for success or failure.

Fig. 4. Overview of Dispute Resolution Modes

	Bilateral	**Third party**
Negotiations	*Agreement (Treaty, Protocol, MoU*)*	*Mediation (for bilateral agreement)*
Judicial settlement	*Special Agreement (ICJ**) Arbitration Agreement*	*Mediation (for bilateral agreement)*
	for submission to →	*Court/Tribunal****

* Memorandum of Understanding; ** International Court of Justice; *** Arbitration
Source: author.

The same bilateral-mode considerations apply to the other third-party option where parties may decide to fully delegate the resolution of their dispute to third-party *judicial* resolution, i.e. they mandate an international court (usually the ICJ) or tribunal (arbitration panel) subject to a Special Agreement (ICJ) or Arbitration Agreement (arbitration).[21] This in itself requires the parties to agree bilaterally on the scope of jurisdiction of the judicial body, i.e. the applicable law, which may be considered a substitute for a bilateral agreement (see Thirlway, 2018, p. 119). A third-party mediator can also be of assistance at this stage (see fig. 4 above) when the parties need to agree on the contents of the submission to the Court/Tribunal, which may be just as protracted on key points as a full bilateral settlement (as was the case with *Croatia*/*Slovenia*; see Cataldi, 2013; Bickl, 2021a, pp. 163-179; interview Miloš Hrnjaz, 29-09-2021).

The discretionary powers of the judicial body can be restricted to the application of international law as such,[22] perhaps supplemented by an existing bilateral

[21] A party to the conflict can also initiate proceedings unilaterally, which shall be neglected here. One should, however, keep in mind the seminal ICJ Genocide Case where Croatia, in 1999, filed an Application against the Federal Republic of Yugoslavia (FRY) "for violations of the Convention on the Prevention and Punishment of the Crime of Genocide". The Court handed down its judgement in 2015; see https://www.icj-cij.org/en/case/118.

[22] See e.g. International Court of Justice, 2005, p. 9, para 2.

treaty[23], or, in the case of arbitration, it may also include political criteria.[24] Parties may wish to include in the submission of their dispute to a judicial body a so-called *critical date*, i.e. the court/tribunal may consider the facts of a case up until that date only. In the *Croatia*/*Slovenia* arbitration, the parties chose the date of their joint declarations of independence (26 June 1991). It should come as no surprise that usually some quite fierce bargaining ensues between the parties over the terms of the mandate for the court/tribunal (see Keohane *et al*., 2000, pp. 459-470).

With judicial resolution come substantial costs for the legal/expert team (for the drafting of the bilateral agreement, the preparation of the submissions and the hearing), and the time required for the proceedings proper, i.e. roughly three years from the moment of mandating the judicial body – 12 months for the preparation of the submissions plus 24 months for the deliberations of the court/tribunal. The Special/Arbitration Agreement usually also includes a deadline for the implementation of the ruling by the parties.

IV. Solution Scenarios

There appears to be no sense of urgency for the resolution of the Danube border dispute at the time of writing. This is essentially to do with two factors: (i) the general perception on both sides that the overall level of bilateral relations is relatively low at present (interview Jelica Minić, 20-09-2021; interview Miloš Hrnjaz, 29-09-2021), not least through low-level personal relations between the political leadership in both countries and different foreign and European policy goals where the bilateral relations are not a priority (interview Dejan Jović, 22-10-2021),[25] and

[23] See e.g. International Court of Justice, 1992, pp. 10-11, para 3.

[24] As in the *Croatia*/*Slovenia* arbitration on their territorial and maritime dispute; see Cataldi (2013) and Bickl (2021a, pp. 163-189).

[25] The two countries' foreign policies are now very different and neither side considers the other as a priority in its own foreign policy. Croatia is fully focused on further integration into the EU inner core, the Eurozone and Schengen. The government's eye on Western Balkans issues would not primarily relate to Serbia, but to Bosnia-Herzegovina (the electoral law and the status of the Croats in BiH), and even to other issues (such as the Three Seas initiative highlighting Croatia's role as a riparian to the Adriatic). Serbia, in turn, is focused on the issue of Kosovo for which Croatia is not an important international player. In addition, the government in Belgrade follows the policy of 'military neutrality' and of the 'four pillars of foreign policy' (relating to the EU, the US, China, and Russia). Another objective of Serbia's foreign policy is to project power in the Western Balkans via the Open Balkans initiative, involving Albania, Serbia and North Macedonia, and in future perhaps also Montenegro and Bosnia-Herzegovina. Thus, to Serbia, too, the bilateral issues with Croatia are not a priority. This may change if EU enlargement accelerates, in which case Croatia would have to be consulted and Serbia would certainly want it not to use a veto against Serbia's EU accession.

(ii) that EU accession of Serbia is currently only a distant possibility and perhaps even questionable altogether. The latter is due to the very limited performance on rule of law issues on the part of Serbia (see European Commission, 2021, pp. 17-55; European Commission, 2020b, pp. 18-53) and, more prominently, to the non-participation of Serbia in the EU sanctions against Russia in the context of Moscow's war of aggression against the Ukraine, at a time when a Candidate Country's alignment to the EU foreign policy is becoming ever more decisive (see e.g. European Commission, 2020a, February 2, p. 2).[26] However, the current lack of urgency is equally due to the hesitant, if not obstructive, stance of some EU Member States when related to finally opening the accession negotiations with Albania and North Macedonia, thus seriously undermining the credibility of the EU enlargement process altogether (interview Nikola Burazer, 29-09-2021; interview senior Slovenian civil servant, 22-09-2021; interview Srđan Majstorović, 20-09-2021; for an alternative enlargement policy, see e.g. Busek *et al*., 2021).[27]

Prospects for Bilaterals

The current conflict resolution line-up of following the bilateral approach without a clear roadmap and timetable appears to be an exercise *sine diem*. In terms of the legitimacy and national interest/identity model (Freyburg and Richter, 2010; Noutcheva, 2012), one could argue that the parties seem to have different considerations when it comes to the best way to serve the national interest/identity under the present circumstances, i.e. whether one would gain from an early or a late (tentative) resolution of the dispute. Serbia must be interested in solving the issue soon to clear an obstacle for EU membership, whereas Croatia can wait, as there is no incentive for Zagreb to solve the conflict soon since this would mean giving away the status-

[26] Rather than cutting or reducing energy imports from Russia, Serbia concluded a new bilateral three-year contract with Russia on the supply of natural gas at "extremely favourable" rates (Radio Free Europe, 2022).

[27] The opening of EU accession negotiations with North Macedonia and Albania had been blocked by Bulgaria (on identity-politics issues related to Bulgarians in North Macedonia) between November 2020 and June 2022, thus preventing the official launch of accession negotiations by means of an Intergovernmental Conference (IGC) up until 19 July 2022 (see Reuters news, 2022). The previous delay was caused by France and others in 2019. At the request of France, the methodology of the EU accession negotiations has subsequently been revised (allowing for more reversibility) and in place since the spring of 2020. On the detrimental effects of the non-recognition of progress made in Albania, North Macedonia, and Candidate Countries in general, see e.g. Nechev *et al*. (2021). The start of the EU membership talks with Albania and North Macedonia was conditional on a compromise formula stipulating, inter alia, constitutional guarantees for the Bulgarian minority in North Macedonia, a process that is yet to start (see e.g. Radio Free Europe Radio Liberty, 2022). According to public opinion polls, a large majority in both countries is against concessions to the other country (Euractiv, 2022) – an indication of how pro tracted the conflict has become.

quo leverage any Croatian government has vis-à-vis Serbia as a Candidate Country whose path to EU accession it could burden by a (temporary) veto – a fact Serbia is well aware of (interview member of the negotiating team of Serbia for EU accession, 28-11-2016).[28] However, there does not seem to be any political momentum on either side, a fact which in practice neutralises the above non-equilibrium of national interest/identity considerations. EU accession of Serbia is not imminent and may at best be contemplated towards the end of this decade. This creates a scenario where the power asymmetry between Zagreb and Belgrade would to a substantial degree fade away if the dispute was tackled soon within the coming years, i.e. well ahead of a probable, albeit uncertain, EU membership of Serbia. To rise to the occasion, the following would be necessary:

- It seems inevitable that the resolution of the Danube border dispute be subject to a clear roadmap including a timetable. A solution in bilateral mode ought to be found by 2025. To achieve this, a *new element* would have to be inserted into the country reports of the European Commission to both (i) provide for a timely settlement of disputes ahead of a potential (and tempting) veto scenario, and (ii) help restore the credibility of the EU enlargement process altogether.

  As per the 2022 European Commission country reports, all bilateral issues (with an EU Member State or another Candidate Country) need to be labelled with a clear timetable for its resolution. As a realistic default mode, the parties to the dispute should be tasked to negotiate a bilateral settlement within 12 months[29] and to devise a roadmap and a meeting calendar accordingly. The European Commission should stand ready to provide mediation services subject to the consent of the parties (and may well offer incentives, such as an expanded approach on and new funds for cross-border collaboration along the Danube in a comprehensive long-term sense, also taking note of the role of an international waterway in Green Transport). If the parties fail to reach a bilateral settlement after 12 months, EU meditation should automatically come in with the aim to achieve a bilateral agreement within 6 months. In the event of non-agreement, negotiations for submission to judicial resolution should be concluded within a further 6 months.

[28] The expectation back in 2016 was that Croatia would trigger a veto when the EU accession negotiations reach the (Danube-related) fisheries chapter.

[29] Experience shows that, provided there is political will, a bilateral border agreement can be reached even within 6 months, as was the case between Croatia and Bosnia-Herzegovina in 1999. Negotiations at times proved difficult as the BiH delegation first had to find an internal consensus between the Federation and Republika Srpska (interview Mladen Klemenčić, who was a member of the Croatian delegation, 22-09-2021).

This would require a new allocation of human resources and the creation of a Mediation Unit in the European Commission in close collaboration with the Member States. There are, however, best practices to draw on at the UN,[30] and it seems that this would well fit into the EU's ambitions of playing a more prominent role on the international stage anyway.

- With regard to the substance of the Croatia-Serbia Danube border, there is ample room for a creative solution, once the two parties contemplate mutual gains rather than defending maximum demands by sticking to positional bargaining where it becomes ever more difficult to explore face-saving opportunities (which you need when 'giving up' positions in slow mode and after re-iterating why you cannot move; Fisher *et al*., 2012; see *Dispute Resolution Analytical Framework in an EU Context* in I.). It certainly is not easy to bridge, as it were, the purely cadastral approach of Croatia and the Thalweg (Danube's navigable channel) approach of Serbia. Nevertheless, this author suggests that the following items truly merit contemplation by the parties:

  ► There is a unique opportunity to look for mutual gains reached autonomously. Both parties know very well how to organise pragmatic collaboration on the ground. It would be a sign of good-neighbourly relations and mature political will to solve a dispute without recourse to external assistance;

  ► Both the pre- and past-1991 periods could be taken into account. Without a cut-off date it is much easier to explore a win-win scenario rather than just be winners or losers. It appears that territorial sovereignty over a natural reserve across the river with no direct access makes little sense, but the sharing of best management practices would;

  ► The Danube should connect rather than separate the two countries. 25 years after the normalisation of relations, Croatia and Serbia are in a position to explore ways to jointly manage their respective natural reserves along the Danube and apply for EU funds to support this ultimately sustainable type of cross-border regional cooperation;

  ► The Thalweg line could be a solution for the unpopulated sections along the Danube and the general rule along the river unless agreed otherwise. Coordinated hydraulic and regulation works so important for navigational safety are often impossible where the river boundary is disputed. Fur-

[30] For the United Nations Mediation Support Unit, see https://peacemaker.un.org/mediation-support.

Fig. 5. The Vukovar Island

Source: Vukosav and Matijević, 2020, p. 197.

ther, investment into port facilities along the Danube promoting green river transport is easier to attract when there is legal security;

► In populated areas, the cadastral evidence could prevail. This would obviously have to include pragmatic forms of cross-border collaboration as to the provision of infrastructure services to citizens. The cultivation of arable land inside the Kenđija pocket, for example, would be facilitated if it was clear how the Serbian and Croatian authorities collaborated, ahead of Serbian EU membership and beyond;[31]

► The Vukovar island (see fig. 5 below) could be subject to some form of joint administration. The Danube island's summer opening to the people of Vukovar is very popular and a great example of good-neighbourly relations at the local level.

[31] One could envisage local cross-border special permits for Croatian citizens from Kenđija to sell their produce at the local market also in Batina, and not only in Bezdan. This would apply in any scenario (Kenđija/Karapanđa under Serbian or Croatian sovereignty), as road access from the Kenđija/Karapanđa pocket to Batina is only possible through the Batina bridge transiting the N16 via (undisputedly) Serbian territory (see also footnote 14). The cross-border permits would, however, require a waiver from the EU customs code as long as Serbia is not an EU member.

Prospects for Judicial Resolution

As mentioned above, the dispute should be submitted to judicial resolution if no agreement can be reached on the bilateral level at the expiry of the deadlines, including the one for EU mediation. However, this would be impossible if one of the parties or both parties would, for whatever domestic reasons (e.g. election campaign issues, or the need for diversion of attention), consider it legitimate or serving the national interest/identity best to leave the dispute pending (Freyburg and Richter, 2010; Noutcheva, 2012). At any rate, this bilateral mode should, of course, also include the option of moving directly to judicial resolution. The two parties would need to sit down to negotiate the mandate for the ICJ, which is by no means free of controversy and would revisit some of the most loaded issues from the bilateral negotiations (see III). Arbitration appears not to be a solution as Croatia has not recognised the Final Award in the dispute over the common State border with Slovenia and arbitration awards are not enforceable (see footnote 11). Therefore, the following would seem appropriate:

- As per the new deadlines ideally applicable from the 2022 country reports of the European Commission (see *Prospects for Bilaterals* above), the parties would have 6 months for the submission of the dispute to the ICJ. It is suggested here that the parties will negotiate on the basis of a draft by the EU Commission following consultations with the parties. Provided the dispute is submitted by mid-2023, the Court could be expected to hand down its judgement by mid-2026 (12 months for the submissions of the parties plus 24 months for the deliberations of the Court including a hearing).
- It would not be wise to try to make a prediction about the outcome of proceedings before an International Court. Nevertheless, it is worth contemplating a few items prone to play a role in the deliberations of the Court:

  ► The jurisprudence of the ICJ and arbitral tribunals generally indicates a strong emphasis on legal title according to *uti possidetis juris* (see e.g. Thirlway, 2018), not least with regard to river boundary delimitation (e.g. Shah, 2009, pp. 382-394; Bouchez, 1963). Depending on what exactly the Court will identify as sufficiently establishing legal title, legislation on the scope of territorial units may be expected to have a strong bearing. It will be interesting to see in this regard how the Court would weigh them, and what legal baring it would attach to the Đilas Commission report of 1945 endorsed by the CPY Politburo;

  ► Much will also depend on whether the parties will have agreed to include a critical date (which in itself will not be easy as Croatia and Serbia may find it difficult to agree on an exact date as to the dissolution of the SFRY,

or have different views on whether or not to include the period from independence to the present day altogether). If there is a critical date in the submission agreement for the Court and if it relates to the disintegration of Yugoslavia, no factual post-independence and present-day control of an area (*effectivités*) will obviously be taken into account by the Court. Bluntly speaking and seen from both ends of the spectrum: a critical date around 1991 would seem to favour Croatia, no critical date at all would seem to favour Serbia;

► Also relating to the critical date, albeit not entirely, is the role of the Danube as an international waterway. The Court is very likely not only to take note of that fact generally – as it did in the ICJ Gabčíkovo-Nagymaros case (International Court of Justice, 1997, p. 7, para 54) on the joint dam project on the Danube. In addition, it may also want to look at the various international conventions governing the use of the Danube and obligations relating to e.g. the safety of navigation and the fairway maintenance. Relevant conventions in this regard include the Danube Convention from 1948 (signed in Belgrade with Yugoslavia as a signatory and present-day Croatia and Serbia being successor States not only to Yugoslavia, but thus also to the Convention), and, more recently, the EU Danube Strategy from 2011 *de facto* positing a joint responsibility of both countries along the joint Danube section. The bilateral agreement between Croatia and Serbia from 2009 on the collaboration on navigation and maintenance is also likely to play a role with regard to the joint management of the river in terms of *effectivités* (for an international law analysis, see Bickl, 2021b).

V. Conclusion

The Danube border dispute, although it has the salience of a territorial dispute, is still very much the 'lion dormant' in the bilateral relations between Zagreb and Belgrade. The present circumstances are, admittedly, not the best from a purely bilateral angle. Relations are at a relatively poor level, and nobody seems to be keen on embarking on a search for mutual gains in an atmosphere where you need to be the winner and where 'compromise' is for weaklings. Yet, the fact that the dispute has hardly been discussed in the public domain could come in useful, as the issue of face-saving after retreating from a maximum position is not quite so prominent. This may leave just about enough room for exploring new angles, some of which have been outlined above, at the political and expert levels on both sides.

Still, to leave the dispute about the Danube at the bilateral level with no resolution roadmap at all has little future. The last 20 years have virtually seen no progress, even in times of *détente* such as during the period when Sanader and

Koštunica or Josipović and Tadić were in office. International experience with conflict resolution shows that the search for mutual gains is the king's way to arrive at good-neighbourly agreements also in strained regions. The historic agreements between Egypt and Israel in 1979 and between Greece and North Macedonia in 2018 speak volumes. These agreements also offer another finding: quite often a skilled and tactful third-party mediator can successfully assist the parties to a conflict behind the scenes in finding a lasting solution in the spirit of mutual respect and reconciliation.

The maximum positions of both countries may be quite far apart. Yet, when the notion of positional bargaining can be overcome, there is a lot of room for manoeuvre to search for mutual gains. As has been demonstrated, there are indeed ways to a pragmatic solution which would serve the interests of the citizens on both sides, of legal certainty, the cross-border protection of natural reserves along the Danube, and not least of navigational safety along a major international waterway the potential of which for green transport is far from being fully exploited yet. In addition, there would be reputational gains for all sides if this territorial dispute can be successfully settled.

Any time soon would be a very good moment to tackle the dispute. First, because Serbia's EU membership is not around the corner, so the next few years should be a calm period in respect to the absence of EU-related power end-games and veto scenarios (as sadly experienced with Albania and North Macedonia recently). And second, the solution will take between two and five years from the beginning anyway depending on whether we see dynamics for a fully negotiated bilateral solution or rather a somewhat lengthier judicial resolution. In any case, the EU should stand ready to actively mediate. For a bilateral settlement of the Danube issue might have positive spill-over effects also on other issues between the two States and the Western Balkans region as a whole.

INTERVIEWS

Aleksandra Tomanić, Executive Director European Fund for the Balkans (EFB). Belgrade, 20 September 2021.

Dejan Jović, Professor of International Relations, Zagreb University. Member of The Balkans in Europe Policy Advisory Group (BiEPAG). E-mail interview, 22 October 2021.

Duško Dimitrijević, Principal Research Fellow, Institute of International Politics and Economics, Belgrade. E-mail interview, 06 September 2021.

Filip Ejdus, Associate Professor of International Relations, Belgrade University. Belgrade, 20 September 2021.

Jelica Minić, President of European Movement Serbia (EMinS) and EMinS founding member. Deputy Foreign Minister of the Republic of Serbia 2000-2004. Lecturer at the Diplomatic Academy of the Ministry of Foreign Affairs of Serbia. Belgrade, 20 September 2021.

Member of the negotiating team of Serbia for EU accession. Brussels, 28 November 2016.

Miloš Hrnjaz, Professor of International Law and International Relations, Belgrade University. Remote interview, 29 September 2021.

Mladen Klemenčić, Member of the Croatian Inter-State Commission Expert Group on the border between Croatia and Bosnia-Herzegovina 1999, Member of the Croatian expert team for the preparation of the arbitration procedure with Slovenia 2012/13. Zagreb, 22 September 2021.

Nikola Burazer, Programme Director at the Centre for Contemporary Politics, Executive Editor of European Western Balkans (EWB), Belgrade. Remote interview, 29 September 2021.

Senior Croatian civil servant. Zagreb, 21 September 2021; E-mail interview, 08 June 2022.

Senior Serbian civil servant A. Belgrade, 20 September 2021.

Senior Serbian civil servant B. Belgrade, 20 September 2021.

Senior Slovenian civil servant. Ljubljana, 22 September 2021.

Srđan Majstorović, Chairman of the Governing Board of the European Policy Centre – CEP, Member of BiEPAG. Belgrade, 20 September 2021.

Suzana Grubješić, Deputy Prime Minister for European Integration of Serbia 2012-2014. Phone interview, 08 October 2021.

REFERENCES

(All web links accessed 10 June 2022)

American Society of International Law (1992) International Legal Materials (I.L.M.). *Conference on Yugoslavia Arbitration Commission: Opinions on questions arising from the dissolution of Yugoslavia*, pp. 1494-1526.

B92 (2006) July 29. *Vukovarska ada za opuštanje*. Available at: https://www.b92.net/info/vesti/index.php?yyyy=2006&mm=07&dd=29&nav_id=206197%7ctitle=Vukovarska.

Bickl, T. (2021a) *The Border Dispute between Croatia and Slovenia. The Stages of a Protracted Conflict and its Implications for Enlargement*. Cham: Springer.

Bickl, T. (2021b) *Prospects for judicial settlement of the Danube border dispute between Croatia and Serbia.* Opinio Juris blog. Available at: http://opiniojuris.org/2021/11/26/prospects-for-judicial-settlement-of-the-danube-border-dispute-between-croatia-and-serbia/.

Bouchez, L. (1963) 'The Fixing of Boundaries in International Boundary Rivers', *International and Comparative Law Quarterly*, 12(3), pp. 789-817. Available at: https://heinonline.org/HOL/Page?handle=hein.journals/vlr34&div=20&g_sent=1&casa_token=&collection=journals.

Busek, E., Schäffer, S. and Laborel, E. (2021) 'Why the Western Balkans should join the EU immediately'. IDM Policy Paper Series 02/2021. Available at: http://www.idm.at/publikationen/idmpps/item/idm-policy-paper-series-2-202.

Cataldi, G. (2013) 'Prospects for the judicial settlement of the dispute between Croatia and Slovenia over Piran Bay' in Boschiero *et al*. (eds.) *International Courts and the development of International Law*. The Hague: T.M.C. Asser Press, pp. 257-268.

Court of Justice of the European Union (2020) January 31. Judgement. *Croatia*/*Slovenia*. C-457/18. Available at: https://curia.europa.eu/juris/document/document.jsf?text=&docid=223863&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=25219543.

Craven, M. (1996) 'The European Community Arbitration Commission on Yugoslavia', *British Yearbook of International Law*, 66(1), pp. 333-413.

Danube Fairway (2019) July 10. *Fairway Rehabilitation and Maintenance Master Plan for the Danube and its navigable tributaries*. National Action Plans Update May 2019. Available at: http://www.fairwaydanube.eu/wp-content/uploads/2019/07/FRMMP_national_action_plans_May2019.pdf.

Danube Region Strategy (2014) November 13. *Fairway Rehabilitation and Maintenance Master Plan*. Available at: https://navigation.danube-region.eu/wp-content/uploads/sites/10/sites/10/2019/09/2014-11-13_FRMMP_final_document_clean-1.pdf.

Dimitrijević, D. (2012a) 'A Review of the Issue of the Border between Serbia and Croatia on the Danube', *Megatrend Review*, 9(3), pp. 1-22. Available at: http://www.megatrendreview.naisbitt.edu.rs/files/pdf/SR/Megatrend%20Revija%20vol%2009-3-2012.pdf.

Dimitrijević, D. (2012b) *Državne granice nakon sukcesije SFR Jugoslavije*. Beograd: Institut za međunarodnu politiku i privredu.

Directorate for Inland Waterways of Serbia/Croatian Agency for Inland Waterways (2011) *Current state of IWT bottleneck projects in the Republic of Serbia and the Republic of Croatia – Current Projects and Future Plans*. Joint Presentation of the Republic of Serbia and the Republic of Croatia. Available at: https://www.icpdr.org/main/sites/default/files/Dusan%20ISAKOVIC%20-%20SERBIA%20and%20CROATIA%20-%20Bottleneck%20projects%20final%20version%20web%20size.pdf.

Đilas, M. (1985) *Rise and Fall*. San Diego and New York: Harcourt Brace Jovanovich.

Euractiv (2022) June 2. *Bulgarian President hints at North Macedonia referendum*. Available at: https://www.euractiv.com/section/politics/short_news/bulgarian-president-hints-at-north-macedonia-referendum/.

European Commission (2018) *A credible enlargement perspective for and enhanced EU engagement with the Western Balkans*. Available at: https://ec.europa.eu/info/sites/default/files/communication-credible-enlargement-perspective-western-balkans_en.pdf.

European Commission (2020a) *Enhancing the accession process – A credible EU perspective for the Western Balkans*. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0057&from=EN.

European Commission (2020b) *Serbia Report 2020*. Available at: https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/serbia_report_2020.pdf.

European Commission (2021) *Serbia Report 2021*. Available at: https://ec.europa.eu/neighbourhood-enlargement/serbia-report-2021_en.

European Western Balkans (2016) June 20. *Declaration on Serbia-Croatia relations signed*. Available at: https://europeanwesternbalkans.com/2016/06/20/declaration-on-serbia-croatia-relations-signed/.

Fisher, R., Ury, W. and Patton, B. (2012) *Getting to Yes. Negotiating Agreement Without Giving In*. London: Random House.

Freyburg, T. and Richter, S. (2010) 'National identity matters: The limited impact of EU political conditionality in the Western Balkans', *Journal of European Public Policy*, 17(2), pp. 263-281.

Galtung, J. (1996) *Peace by peaceful means*. Oslo: International Peace Research Institute.

International Commission for the Protection of the Danube River (ICPDR) (2018) *Interim Report on the Implementation of the Joint Programme of Measures in the Danube River Basin*. Available at: https://www.icpdr.org/flowpaper/app/#page=1.

International Court of Justice (1986) Judgement. *Case concerning the Frontier Dispute (Burkina Faso/Republic of Mali)*. Available at: https://www.icj-cij.org/public/files/case-related/69/069-19861222-JUD-01-00-EN.pdf.

International Court of Justice (1992) Judgement. *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras; Nicaragua (intervenant))*. Available at: https://www.icj-cij.org/public/files/case-related/75/075-19920911-JUD-01-00-EN.pdf.

International Court of Justice (1997) Judgement. *Case concerning the Gabčikovo-Nagymaros project (Hungary/Slovakia)*. Available at: https://www.icj-cij.org/public/files/case-related/92/092-19970925-JUD-01-00-EN.pdf.

International Court of Justice (2005) Judgement. *Frontier Dispute (Benin/Niger)*. Available at: https://www.icj-cij.org/public/files/case-related/125/125-20050712-JUD-01-00-EN.pdf.

International Court of Justice (2012) Judgement. *Territorial and Maritime Dispute (Nicaragua/Colombia)*. Available at: https://www.icj-cij.org/public/files/case-related/124/124-20121119-JUD-01-00-EN.pdf.

International Court of Justice (2015) Judgement. *Application of the Convention on the prevention and punishment of the crime of genocide (Croatia/Serbia)*. Available at: https://www.icj-cij.org/public/files/case-related/118/118-20150203-JUD-01-00-EN.pdf.

Interreg Danube Transnational Programme (2018) *Common Danube Report 2018*. Available at: http://www.interreg-danube.eu/uploads/media/approved_project_output/0001/36/7267f05e37056e29de33f0c0f2849c7953c8268f.pdf.

Interreg IPA Programme 2021-2027 (2021) *Cross-border cooperation Croatia-Serbia. Territorial and socio-economic analysis of the programme area*. Available at: https://www.interreg-croatia-serbia2014-2020.eu/wp-content/uploads/2021/04/Territorial_Analysis_HR-RS_final.pdf.

Jutarnji list (2017) February 15. *Hrvatsko selo zaglavilo u Srbiji. Tužna priča o zaboravljenom mjestu u sastavu RH, ali s lijeve strane Dunava*. Available at: https://www.jutarnji.hr/vijesti/hrvatska/hrvatsko-selo-zaglavilo-u-srbiji-tuzna-prica-o-zaboravljenom-mjestu-u-sastavu-rh-ali-s-lijeve-strane-dunava-sve-nas-vise-uzima-drzavljanstvo-srbije-5635511.

Keohane, R., Moravcsik, A. and Slaughter, A-M. (2000) 'Legalized Dispute Resolution: Interstate and Transnational', *International Organization*, 54(3), pp. 457-488.

Klemenčić, M. and Schofield, C. (2001) 'War and Peace on the Danube: The Evolution of the Croatia-Serbia Boundary', *Boundary and Territory Briefing*, 3(3). IBRU Durham University. Available at: https://www.durham.ac.uk/media/durham-university/research-/research-centres/ibru-centre-for-borders-research/maps-and-databases/publications-database/Boundary--Territory-Briefings-(Vol.-3-no.-3).pdf.

Milanković Jovanov, J. *et al*. (2018) 'The Danube inland waterway transport and its role in Serbia's economic development', *R-Economy*, 4(3), pp. 105-114. Available at: https://journals.urfu.ru/index.php/r-economy/article/view/3530.

Ministry for Foreign and European Affairs of the Republic of Croatia (2010) *Temeljni elementi stajališta o razgraničenju između Republike Hrvatske i Republike Srbije*. Internal note.

Ministry of Foreign Affairs of the Republic of Serbia (2010) *Aide memoire*. Internal note.

Nechev, Z. *et al*. (2021) *Bouncing back: Completing the EU unification process*. Balkans in Europe Advisory Group (BiEPAG). Available at: https://biepag.eu/publication/policy-brief-bouncing-back-completing-the-eu-unification-process/.

Network of Danube Waterway Administrations (NEWADA) (2011a) *National plan for IWW maintenance in the Republic of Croatia*.

Network of Danube Waterway Administrations (NEWADA) (2011b) *National plan for IWW maintenance in the Republic of Serbia*.

Noutcheva, G. (2012) *European Foreign Policy and the challenges of Balkan accession*. London and New York: Routledge.

Organization of Security and Co-operation in Europe (OSCE) (2011) *Applied Issues in International Land Boundary Delimitation*/*Demarcation Practices*. Vienna: OSCE. Available at: https://www.osce.org/files/f/documents/b/c/85263.pdf.

Owen, D. (1995) *Balkan Odyssey*. New York, San Diego and London: Harcourt Brace Jovanovich.

Permanent Court of Arbitration (2017) *Croatia v Slovenia*. PCA Case No 2012-04. Final Award. Available at: https://pcacases.com/web/sendAttach/2172.

Petrović, M. and Tzifakis, N. (2021) 'A geopolitical turn to EU enlargement, or another postponement? An introduction', *Journal of Contemporary European Studies*, 29(2), pp. 157-168.

Rabionet, S. (2011) 'How I learned to design and conduct semi-structured interviews: An ongoing and continuous journey', *Qualitative Report*, 16(2), pp. 563-566.

Radan, P. (2000) 'Post-Secession International Borders: A Critical Analysis of the Opinions of the Badinter Arbitration Commission', *Melbourne University Law Review*, 24(1), pp. 50-75.

Radio Free Europe (2022) May 29. 'Vučić Says Serbia Secures Gas Deal With Russia Following Phone Talks With Putin'. Available at: https://www.rferl.org/a/serbia-vucic-gas-deal-russia/31873908.html.

Radio Free Europe Radio Liberty (2022) July 17. Available at: https://www.rferl.org/a/bulgaria-north-macedonia-sign-pact-eu/31947352.html.

Republic of Croatia / Federal Republic of Yugoslavia (2002) *Protokol o načelima utvrđivanja granice i pripremi Sporazuma o državnoj granici između Republike Hrvatske i Republike Jugoslavije.*

Reuters news (2022) July 19. 'Albania, North Macedonia finally start EU membership talks'. Available at: https://www.reuters.com/world/europe/albania-north-macedonia-finally-start-eu-membership-talks-2022-07-19/.

Ricz, A. *et al*. (2016) *Case study of cross-border cooperation along the Serbian-Croatian border. CBC between twin towns Subotica and Osijek*. Central European Service for Cross-Border Initiatives. European Institute for Cross-Border Studies. Available at: http://institute.cesci-net.eu/tiny_mce/uploaded/EUSDR_Part_Two_12_Subotica-Osijek.pdf.

Schimmelfennig, F. and Sedelmeier, U. (2004) 'Governance by conditionality: EU rule transfer to the Candidate Countries of Central and Eastern Europe', *Journal of European Public Policy*, 11(4), pp. 661-679.

Shah, S. (2009) 'River Boundary Delimitation and the Resolution of the Sir Creek Dispute between Pakistan and India', *Vermont Law Review*, 34(2), pp. 357-414.

Simentić Popović, J. and Sandić, G. (2020) *If students can do it – so can you! Resolving border disputes between Serbia, Croatia and Bosnia-Herzegovina*. Belgrade, Sarajevo, Zagreb: Goran Sandić.

Šelo Šabić, S. and Borić, S. (2016) *Crossing Over. A Perspective on Croatian Open Border Issues*. Zagreb: Friedrich Ebert Foundation.

Tanaka, Y. (2018) *The Peaceful Settlement of International Disputes*. Cambridge: Cambridge University Press.

Tanjug news (2019) February 17. *Spor Srbije i Hrvatske oko granice – pozicije i dalje udaljene*. Available at: https://www.rts.rs/page/stories/sr/story/9/politika/3423317/spor-srbije-i-hrvatske-oko-granice--pozicije-i-dalje-udaljene.html.

Thirlway, H. (2018) 'Territorial Disputes and Their Resolution in Recent Jurisprudence of the International Court of Justice', *Leiden Journal of International Law*, 31(1), pp. 117-146. Available at: https://www.cambridge.org/core/journals/leiden-journal-of-international-law/article/territorial-disputes-and-their-resolution-in-the-recent-jurisprudence-of-the-international-court-of-justice/309E517C5720ACADA1B149464351B745.

Vukosav, B. and Matijević, Z. (2020) 'A contribution to the study of the Croatian-Serbian border dispute in the Croatian Danube region – historical, geographical, and contemporary aspects', *Geoadria*, 25(2), pp. 177-208. Available at: https://hrcak.srce.hr/index.php?show=clanak&id_clanak_jezik=362480.

Zartman, W. and De Soto, A. (2010) *Timing mediation initiatives: The peacemaker's toolkit*. Washington D.C.: United States Institute of Peace.

Thomas Bickl holds a Ph.D. from Duisburg-Essen University. He works in the European Parliament (from October 2022, for the European Commission).

Mailing Address:

Thomas Bickl, Avenue des Rogations 27, 1200 Brussels, Belgium.
E-mail: tbickl@hotmail.com