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Navigation on the Danube River. International Historical-Legal Aspect

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Abstract: The history of navigation on the Danube river is part of the centuries of history of the countries and peoples who inhabited the banks of the Danube since ancient times. The origins of navigation on the Danube date back to the XVIII century, when after the collapse of the Ottoman Empire, the access to the Black sea was gained. According to the peace Treaty, signed in July, 1774, the right to trade on the Danube both on ships, and on the adjoining land was received. According to the Bucharest peace Treaty with Turkey (1812), the border between the countries began to pass along the Prut river. Changes in the regime of navigation on the Danube in the XVII-XVIII centuries, the development of bourgeois relations and the emergence of large cities on the Danube lands contributed to the revival of foreign trade on the river.

Keywords: Danube river; Danube shipping; international navigation; foreign trade

The history of navigation on the Danube river is part of the centuries of history of the countries and peoples who inhabited the banks of the Danube since ancient times. Let us briefly dwell on the historical aspect of this issue. The origins of navigation on the Danube date back to the XVIII century, when after the collapse of the Ottoman Empire, Russia gained access to the Black sea. According to Kucuk-Kainadzhirsky peace Treaty between Russia and Turkey, signed in July, 1774, Russian citizens received the right to trade on the Danube both on ships, and on the adjoining land.

A little later, in 1812, Bessarabia went to Russia. And according to the Bucharest peace Treaty with Turkey (1812), the border between the countries began to pass along the Prut river and the Kiliya mouth. The Convention of 1826 signed in Akkerman (now Belgorod-Dnestrovskiy), moved the border to the Sulina mouth, and

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then after the Russian-Turkish war of 1828-1829, the Adrianople peace Treaty established the border between the two countries on St. George branch.

Changes in the regime of navigation on the Danube in the XVII-XVIII centuries, the development of bourgeois relations and the emergence of large cities on the Danube lands contributed to the revival of foreign trade on the river. However, because of the rapids in the area of Katarakt transit traffic between the Middle and Lower Danube was almost absent.

The origin of the first steamship societies on the Danube belongs to the 30-s of the XIX century. In the beginning the First Danube steamship joint-stock company is created in Austria, then Exclusive royal Bavarian and Vyurtenbergsky steamship society is created. Though the first steamship "Carolina" was constructed in 1818, because of the technical imperfection it existed quite not for long.

Intensive development of the international navigation on the internal waterways of Europe at the beginning of the XVIII century induced the governments of the leading states of the continent to coordinate the basic principles of navigation on the rivers. It was made in the Act of the Vienna congress of 1815, signed by the representatives of eight countries Austria, Spain, France, Great Britain, Portugal, Prussia, Russia and Sweden. And though when developing the Act the principles of international law about freedom of navigation on the Western European rivers (Rhine, Neckar, Main, Moselle, Maas, Scheldt) were meant, basic provisions of the document had in the subsequent an impact and on the establishment of the international legal mode on the Danube.

The act of the Vienna congress defined, in fact, the main signs of the mode of the international rivers developed then in the XIX-XX centuries in other multilateral agreements and conventions on freedom of navigation on such rivers. The agreement on navigation signed between Russia and Austria in 1840 on national sections of the river of these countries was the first legal document which confirmed the desire of the parties to apply the provision of the Act of the Vienna congress on the Danube.

The period between the middle of the XIX-XX centuries in the international Danube shipping is the period of multilateral treaties with the participation of non-Danube States.

After defeat of Russia in the Crimean war of 1853-1856 by seven countries Russia, Turkey, Great Britain, France, Sardinia, Austria and Prussia signed the Parisian treatise which declared the Black Sea open and free for merchant ships of all nations. The new adjoining line of Russia was transferred to Bessarabia.

The Parisian treatise announced the Danube the international river. The act of the Vienna congress of 1815 concerning freedom of navigation on the rivers from now on extended to the Danube and its mouth. The specified treatise in 1856 formed the European Danube Commission (EDC) which intended to carry out the works necessary for cleaning of the Danube branches, beginning from Isakchi. Representatives of the countries which signed the Parisian treatise were a part of EDC. EDC had the flag, the administration, the fleet, the police, the court.

Upon termination of two years' war between Russia and Turkey according to the Berlin treatise of 1878 frontiers on the Lower Danube were changed: the Southern Bessarabia with border across the Prut and the Kiliya branch with an entry in the Black Sea were annexed to Russia again. On the Berlin congress the territorial power of EDC was expanded to Galatz, Romania was a part of the Commission.

In the second half of the 19th century and up to the beginning of World War I there was a steady development of the fleet and transportations across Danube. In 1850-1856 on average 2.5 million tons of freights, in 1875-1880 3.1 million tons, in 1906-1910 – 9.8 million tons annually were transported down the river. Considerably the average annual tonnage of the vessels which passed the Sulinsky channel from 0.55 million tons (on average during 1866-1870) increased to 1.97 million tons (1906-1910).

According to EDC 1018 vessels under the flags of 13 states in the general tonnage of 1228 thousand tons put out to sea from the Danube river in 1900.

The red line message between estuarial Danube (Galatz and Breila) and seaports was supported in 1900 by vessels of five navigable societies, including the Russian Black Sea and Danube shipping company created in 1883.

From the beginning of World War I and approach of military operations to lower reaches of Danube EDC practically stopped its activity.

After the end of the war the Versailles peace treaty in July, 1921 in Paris between Great Britain, Austria, Belgium, Bulgaria, Czechoslovakia, France, Germany, Greece, Hungary, Italy, Romania and the Serbia-Croatia-Slovensky State (later Yugoslavia) signed the convention approving the so-called: final statute of Danube: in its development.

The Parisian convention of 1921 decided that navigation across the Danube river is free and open for vessels of all flags on the terms of full equality by all navigable part from Ulm to the Black Sea and by all river part announced international. The

last included estuarial sites of inflows of Danube-Morava (with inflow of Taya), Drava, Tisa, Marosh.

Two commissions, which became control authorities over navigation down the river, were created: besides EDC to which: sea Danube: from Breila to the Black Sea submitted the International Danube Commission (IDC) which extended the influence on the rest part of Danube with the specified inflows was formed.

Besides, for the improvement of conditions of navigation between Turiu-Severin and Moldova on the site Katarakt (Iron Gate) by the Convention provided creation in Orshov of special administrative and technical services from representatives of the adjacent countries (Yugoslavia and Romania) with participation of the representatives of IDC.

Under the Versailles peace treaty representatives of Great Britain, Italy, France and Romania were a part of EDC (Galatz was determined residence at the Parisian conference). Thus, primary influence of non-Danube States on the estuarial site of the Danube was legalized. The competence of EDC did not undergo significant changes.

The competence of IDC included observation of the performance of the Parisian convention, drawing up general plans of works on the river, control of their execution, establishment of collecting and tariffs, etc.

According to the pre-war mode of the Danube, foreign vessels were not granted the right of transportations between ports of one coastal state. The Parisian convention of 1921 gave such opportunity to other flags, though with the reservation on consent to that of local authorities.

After the conclusion of the convention of 1921 the influence of Great Britain and France, which distributed a considerable part of the fleet of Germany and the former Austria-Hungary between the states of the Small Entente (Romania, Yugoslavia, Czechoslovakia) considerably amplified on the Danube.

In the beginning of the 20-s of the XX century the Yugoslavian river shipping company and Czechoslovak Danube river shipping company were formed. Since the end of the 20-s of the XX century the influence of Germany on the river basin considerably increases.

The modern period of the development of the Danube navigation began with the conclusion of Belgrad convention in 1948. The Belgrad conference is the

organization existing in 1948-1949 for the purpose of post-war settlement of the international legal mode of the Danube River.

Representatives of the Danube countries the USSR and Ukrainian SSR, Bulgaria, Hungary, Romania, Czechoslovakia, Yugoslavia participated in the work of the conference. The delegations from the USA, Great Britain and France were also its members. The representatives of Austria were invited with an advisory vote.

The convention which came into force on May 11, 1949 established the status of a navigable part of the Danube as an international European highway for citizens and goods of all states on the basis of equality in the relation of port and navigation charges and other conditions of trade navigation. The specified situation extended from the city of Ulm in Germany to the mouth of the Danube with an exit to the Black Sea. The Danube countries kept the sovereign rights and the right of jurisdiction in the internal territorial waters. At the same time they guaranteed protection of interests of international trade and cultural ties on the Danube. Swimming across the Danube for warships of non-Danube States was forbidden (Pochkaeva, 1951, p. 59).

In 1949, in accordance with article 5 of the Convention, the Danube Commission was established. The main objectives of the Danube Commission is the provision and development of free navigation on the Danube for the commercial vessels under the flags of all the States in accordance with interests and sovereign rights of the States-participants of the Belgrade Convention, as well as strengthening and the development of economic and cultural relations of these countries between themselves and with other countries.

The members of the Danube Commission are the Republic of Austria, the Republic of Bulgaria, the Republic of Croatia, Germany, the Republic of Hungary, the Republic of Moldova, Romania, the Russian Federation, the Republic of Serbia, the Slovak Republic and Ukraine.

Since 1954, the Commission is located in Budapest. The official languages of the Commission are French, German and Russian. Austria acceded to the Convention as a full member in 1960.

An important stage in the development of navigation on the Danube was the meeting of the 75th session of the Danube Commission, which was held in Budapest in 2011. It was attended by delegations from all States members of the Commission, delegations from observer States France and Belgium, as well as a representative of the Central Commission for the navigation of the Rhine. The Ukrainian delegation

was headed by the Deputy Chairman of Ukrmorrechflot Irina Marich. One of the items on the agenda was the question of the revision of the Convention regarding the regime of navigation on the Danube of 1948. The Chairman of the preparatory Committee for the Diplomatic conference on the revision of the 1948 Convention on the regime of navigation on the Danube, Istvan Horvat, reported that the text of the draft Convention and the Protocol on amendments had been linguistically agreed in 2009. According to him, the only obstacle to convening a Diplomatic conference to sign the revised Convention was the lack of final agreement on the text of the draft by Romania, which stated that it had adopted the text only :ad referendum:, that is, in advance. The Ministry of infrastructure of Ukraine reports, that at the same time, the constructive work of the Session and the appropriate level of training allowed the Commission to adopt :the Main directions of the navigation policy on the Danube:, :the Basic provisions on swimming on the Danube: Recommendations on the use of InlandAIS: Recommendations on the organization of professional training of rivermen.

Two important multilateral legal instruments: the Convention on the contract for the carriage of goods by inland waterways: and the Convention on limitation of liability in inland navigation, were presented at the expert meeting on shipping policy on the Danube.

Inland water transport was until recently the only mode of transport in respect of which the international rules concerning the contract of carriage of goods did not operate. For other modes of transport (sea, road, air and rail), there have been uniform rules on the contract for the international carriage of goods for decades.

In the absence of uniform international regulations, international carriers of goods by inland waterways had to rely on national legislation (either by force or by their own choice).

At the same time, differences between laws and regulations at the national level lead to legal ambiguity at the level of rights and obligations of the Contracting parties. Some European States (e.g. Switzerland and the Netherlands) have relied on the law of the sea in formulating their legislation for inland navigation, while others (e.g. Germany) have been guided rather by the provisions relating to road and rail transport. As a result, national regulations sometimes favour the shipper, sometimes the carrier. At the same time, after the :fall of the iron curtain: in some States of Central and Eastern Europe there was a legal vacuum, including the lack of special river law.

Therefore, the Budapest Convention was intended to harmonize and unify as much as possible at the European level the rules relating to private law contracts in the field of carriage of goods in inland navigation. The Convention has established a contractual regime governing and introducing, among other things, rules on the rights and obligations of Contracting parties, limiting the liability of the carrier in the event of loss of or damage to the goods and transport documents.

The harmonization of norms, which is declared as a goal, is aimed at creating an acceptable balance between the economic interests of the shipper and the carrier, which should contribute to the development of international transport of goods by inland waterways. For the sake of consensus, provisions have been drawn from both the law of the sea and road and rail transport.

By its very nature, the Convention applies to all cases of international carriage of goods where the port of shipment or place of receipt of the goods provided for in the contract is located in a state other than the port of discharge or the place of delivery of the goods provided for in the contract, at least one of these States being a Contracting party to the Convention.

The Convention on the contract for the carriage of goods by inland waterways was unanimously adopted at a Diplomatic conference held in Budapest from 25 September to 4 October, 2000 under the General patronage of the Danube Commission, the Central Commission for the navigation of the Rhine and the United Nations Economic Commission for Europe.

Since 22 June 2001, the Convention has been submitted by the government of the Republic of Hungary to the Depositary of the Convention for one year for signature by all States.

So far, the Convention has been signed by 16 States, 8 of which are member States and 3 are observer States of the Danube Commission.

The Convention entered into force on 1 April 2005, the date of ratification by the five coastal States on the Rhine and the Danube. In chronological order, Hungary, Switzerland, Romania, Luxembourg and Croatia ratified it.

Two more ratifications have been added since that date, and the Convention has now been ratified by 15 States in which it is already in force. Among these 15 States, 9 are member States and 4 are observer States of the Danube Commission. Thus, we can state the great interest of the Danube States in this legal instrument.

For the Danube countries, the Budapest Convention is a good tool to support and consolidate the booming trade with Western European States and to prevent further fragmentation of legislation for inland navigation.

The adoption and ratification of the Convention by the member States of the Danube Commission is intended to promote the support, weight and development of inland navigation as an equitable international mode of transport at the European level, the creation of greater legal security for entities operating in the inland navigation sector on the Danube in the negotiation and conclusion of contracts of carriage, and thus the reduction of legal disputes, as well as better control of costs and risks, which should be taken into account by inland water transport enterprises and their insurers in the framework of their economic activities.

The Convention on limitation of liability in inland navigation played a significant role in the harmonization of the international rules of navigation of the Danube States.

The Strasbourg Convention on limitation of liability in inland navigation of November 4, 1988, which entered into force on September 1, 1997, is intended by the Central Commission for the navigation of the Rhine to play an important role in the harmonization of legislation in inland navigation in Europe.

If in the case of the Budapest Convention in General, it is possible to observe the keen interest of the European States, especially member States of the Danube Commission, to ratify the Convention, this is not to the same extent be attributed to the ratification of the Strasbourg Convention on limitation of liability in inland navigation.

Since November 4, 1988, the date of opening for signature, only 4 States have ratified the Strasbourg Convention, although it is open for signature by all interested States.

The Central Commission for the navigation of the Rhine (CCNR) has long been trying to :push: the countries of Central and Eastern Europe to accede to the Convention, since ratification of the Convention by all coastal countries on rivers such as the Danube flowing through many States would be more than desirable for reasons of clarity and legal certainty.

The CCNR presented a number of legal arguments in favour of the Convention. It was mentioned that the Convention did not contain any General obligations with regard to the definition of responsibility and therefore did not oblige acceding States

to change their system of responsibility. The Convention also does not contain any obligations with respect to insurance, but the application of the limitation of liability involves the establishment of a Fund by the owners of ships.

Certain categories of damage (water pollution, damage due to hazardous substances, physical injury to passengers on sports and pleasure craft) may be subject to reservations or declarations (see article 18).

To clarify the benefits of the Convention for European inland navigation and to ensure that it could be ratified The Central Commission for the navigation of the Rhine organized two governmental meetings in 1998 and 1999.

Thanks to the adoption of a special Resolution in 1997, the CCNR agreed in advance to the accession of the Central and Eastern European countries to the Convention.

Under article 16 (3) of the Convention, States with direct access to the Rhine may be invited to accede to the Convention by a unilateral decision of the state for which the Convention enters into force. Although the preamble of the Convention refers specifically to the Rhine and the Moselle, under article 15 (2) any acceding state may declare the extension of the Convention to other rivers in its sovereign territory. It does not apply in the sovereign territory of States that have not acceded to the Convention.

It was possible to clarify the scope of application of the Convention as well as the conditions under which it could be ratified by the countries of Central and Eastern Europe through two government-level meetings organized by CCNR.

In 2009, the CCNR reported that the representatives of Slovakia, Bulgaria, Croatia, Hungary, Romania, Slovenia and the Czech Republic had expressed their fundamental interest in the Convention. However, so far none of these States has taken concrete steps to accede to the Convention. At the national level, some States are rather analysing the benefits and possibilities of acceding to the Strasbourg Convention.

According to some economists-analysts in the Danube region, the restrained attitude of the Danube States is due to their economic interests, since accession to the Strasbourg Convention could lead to an increase in insurance costs on the Danube.

The limited number of ratifications demonstrates the negative attitude of States towards the principle of limiting the liability of shippers, while this limitation of liability is justified both by the risks of shipping imposed on shipowners and by activities benefiting all parties.

Today, the Danube States are not really ready to consider exclusively the need to harmonize the legal framework of shipping, they rather prefer to pay attention to their economic interests.

Summing up, it can be said that at the international level, the idea of the need to unify the legal regime for inland water transport has developed in stages. Efforts towards harmonization, which focused primarily on the contract for the carriage of goods and the limitation of shipowners' liability, led to the adoption of two international conventions. Both conventions now offer a legal framework that takes into account the development of river transport, and some States have taken advantage of these opportunities and have not only ratified these conventions, but have also incorporated some of their provisions into their domestic legislation.

The Danube Commission should encourage member States to consider at the national level the possibility of ratifying the two conventions, especially the Strasbourg Convention, which is more problematic.

Within the framework of the expert meeting on shipping policy on the Danube, the Danube Commission will continue to analyze the situation with both conventions.

The States members of the Danube Commission decided, in their future activities, to apply these instruments in planning the work of the Danube Commission in the medium term.

The work of the Danube Commission is based on the rich historical experience of regulating navigation on the international rivers of Europe and the best traditions of the international river commissions, especially the European Danube Commission, established by the Paris Treaty of 1856.

The prospects for the activities of the Danube Commission are linked to the establishment of a single inland navigation system in Europe. In view of this, the priority activities of the Commission are the unification and mutual recognition of the basic normative documents necessary for navigation on the Danube and other parts of the unified shipping system, the promotion of improved navigation conditions and safety of navigation, the creation of other necessary conditions for the integration of the Danube into the European system as the most important transport artery.

In order to ensure such integration, the Commission actively cooperates with the competent international bodies dealing with various aspects of inland water

transport, such as the United Nations economic Commission for Europe, the Central Commission for the navigation of the Rhine, the European Commission, etc.

In order to enhance the role of the Danube Commission in international cooperation in the field of inland navigation, the States parties to the Belgrade Convention intend to modernize the Commission, giving it additional powers and new functions, as well as to expand its membership. France, Turkey and the European community have already expressed their desire to become members of the renewed Danube Commission. The way forward would be to complete the revision of the Convention, which was currently under way.

Over the years, significant geopolitical and economic changes have taken place. Nevertheless, the principles and norms of the Belgrade Convention signed 60 years ago have not lost their importance, and the Convention itself, updated by the Additional Protocol of 1998, has remained a reliable basis for Danube cooperation, the legal basis for ensuring freedom of navigation on the Danube.

Much of this vitality is due to the fact that the Convention is based on the principles and norms of international river law, established on the basis of international practice and regulating navigation on the international rivers of Europe – the Danube, the Rhine Scheldt, Moselle. This is the principle of freedom of navigation, the right of all coastal States to access the sea, the equal right to participate in the definition of the regime of navigation and in the international body established for the management of navigation.

These fundamental principles and norms are the basis of the work of the Danube Commission, which has made a worthy contribution to the expansion and deepening of the Danube cooperation in the past decades. Today, the States members of the Commission and a number of other European States share their expectations regarding the future development of international navigation on the Danube and the European inland waterway network. This is evidenced, in particular, by the planned expansion of the membership of the Commission. At the same time, it can be expected that the new Contracting parties to the revised Convention will be able to revitalize the economy of the Danube shipping with the potential of their industry and transport.

So, in recent years, Europe under the influence of the EU is preparing to establish a fundamentally new regime of river navigation through the creation of a single European river network, which will include not only international rivers, but also channels open to foreign swimming facilities. In this regard, the Danube cannot but

become a new European transport factor. It will no longer be the well-known :European Danube:, but the link of the United continental system :river – sea:. For European rivers will become part of an integrated steamship system that will link every coastal country to shipping on a global scale in the future. The new regional transport structures emerging in this regard appear to play an important role in the development of international economic relations.

For more than six decades, the Danube Commission, despite the vicissitudes of political situations, has largely carried out its mission. After the enlargement of the European Union and the strengthening of its role in integration processes, including the European joint transport system, the Danube Commission faces new challenges, new problems and new solutions. They highlight the need for significant changes in its functions, institutional reforms and renewal as an integral part of the European water transport system. The main direction of modernization of the shipping regime should be significant changes in the Belgrade Convention of 1948, which can be qualified as an audit of the Convention itself.

The prospects of the new Danube Convention are associated with the inclusion of the Danube as the most important transport artery in the single navigable inland waterway system of Europe. The Danube-Rhine connection via the canal «Europe» (Rhine – Main – Danube) not only links the Black Sea and the North Sea, but also turns this waterway into the transport axis of the European Union. Members of the Danube Convention intend to modernize the Commission, giving it additional functions and powers, significantly expand the range of its participants. Currently, France, Turkey, Italy, Belgium, Greece, the European Union have already expressed their desire to become members of the Danube Convention. And since of the 11 members of the Danube Convention 7 are members of the European Union and are ready to harmonize the rules of the Danube navigation with the European norms of navigation on inland waterways, in principle, the question of the membership of the Danube Convention to the category of Danube countries is removed.

The forthcoming revision of the Convention would undoubtedly mark a new and important stage in its history. At the same time, it is necessary to stress that the revision will not mean abandoning the main provisions of the Convention. Continuity in the international shipping regime will be maintained. At the same time, the Convention will be modernized, in particular, additional functions of the Danube Commission will be fixed, many of which in practice it carries out now.

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