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THE RESOLUTION OF BOUNDARY DISPUTES IN INTERNATIONAL LAW, WITH SPECIAL EMPHASISON COUNTRIES OF THE EUROPEAN LEGAL SYSTEMS AND THE COUNTRIES IN TRANSITION

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STATES AS A SUBJECTS OF INTERNATIONAL LAW

International law defines the state as an entity that has a clearly defined territory, with the population of permanent settlements, which is under the control of the state being entered or has an option of entering into formal relations with other such entities.[1]

The size of territory or population who live there are factors that determine whether an area will become a state or not. Otherwise today would not include countries such as Vatican City /area:0,44 km, population 829/, Monaco /area 2 km, population 30.586/ and Andora /area:468 km, population 84.525/.[2] On the other hand, due to the failure criterian of the existence of permanently settled population , Antarctica could not become a [3]state. However, despite the fact that Anarctica has no government status , the signing of an agreement on Antarctica itself, it was able to secure some sort of independence at least when it comes to building military bases, carrying out military maneuvers, and testing weapons of any kind.[4]

International law defines the supreme authority as the state authority at the territory that belongs to it and excludes the power of other states. At the same time it is not subjected to any higher authority.

Sovereignity in relation to abroad shows to be independent.[5] In the verdict on arbitration of Palmes case, amang other things, the arbitrar Mr. Max Huber said:

Sovereignity in the relation betveen states signifies independence. Independence in realitions to a part of the Globe is the right to exercise the functions of the state in that part, to the exclusion of any state .

Entity's ability to establish international relations , ie. To enter into relations with other subjects of International Law (states) is reflected in the possibility that in framework of its constitutional system comes into contact with other countries, and that it has the appropriate political, technical and financial capability. Likewise, an entity that has the capability of entering into relations with other countries does not cease to exist as a State , if of voluntory transfer a part or full control over its foreihn affairs. Although, in accordance with the Statute od the International Court of Justice as a party may appear only state, in 1955 Liechtenstein was acceptedas a party to the conflict Nottebohm (Liechtein v. Guatemala), despite the fact that control over its external affairsat the time was tranferred to Switzerland.

A similar situation exists with the countries of the European Union, which did not lost their statehood, alhough a part of their powers being transferred to EU (unified tariff abroad)[6]

As we have already seen, in addition permanent settled population, the entity must also own the territory , if the government wants to achieve at the national level and to patricipate effectivelly at the international level. Thus, sovreignty in a territory is an essential element of statehood for each state.[7]

The concept of territory plays an important role in the developement of international law. International law regarded the possesion of the territory as an important foundation of state power. The size of the national territory and its natural resources determine to a large extant a state power in relation to other countries. [8]

Since the basic legal concept such as sovreignty and administration can comprehend in relation to the territory , it follows that the legal nature of the territory is of crucial importance for the study of the international law. Indeed, the principal according to which the state is the only one who has power in the territory may be treated as a fundamental axiom of clasical international law.

Central role of territory in the structure of international Law can be applied in the developement of legal norms in terms of its unpredictability. The principle of the inviolability of territory is considered as one of the most important link in the international system, given that the norm which prohibits interference in an internal affairs of other countries.[9]

National territory,ie. The territory in which a State exercises sovereignty to the extent to which its authority reaches is considered to be tje object of International Law. Pursuant to this Law each state enjoys the so-cold territorial sovereigty.A set of competences that a state , with the help of its authorities , carries on its territory, can also be understand territorial sovereignty.The territory of a country refers to the land area contained within national borders. Inland area includ rivers, lakes, islands, internal waters, arhipelagic waters (in case of so-cold arhipelagic states) and the territorial sea .

In addition, the national territory comprises the subsoil (including the sea bed), and the air over the entire land and space. However, all mentioned parts of the territory of a

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[1] International Law, Cases and Materials, third Edition, Louis Henkin,Richard Crawford Pugh, Oskar Schachter,Hans Smith, American Casebook Series, Westpublishing Co, pg. 242.

[2] These population refers to the assumptions of the CIA in July 2010. https:/www.cia.gov/library/publications/the world-factbook/geos/vt.htm/

3 The Antarctic Treaty, 1 December, 1959, http:/www.ats.aq/documents/ats/treaty_original.pdf

[4] International Law, V.Đ.Vegan, pg.228-229

[5]. Island of Palmas,United States v.Holland/carcass Palmas/

[6] International Law, Cases and Materials, Third Edition, Louis Henkin, Richard Crawford Pugh, Oscar Schachter, Hans Smith,; American Casebook Series, Westpublishing Co. Pg. 249.

[7] Ibid, 309.

[8] Territorial acquision , Disputes and International Law, Sutya Prakash Sharma, pg.2

[9] International Law, Malcom N, Shaw, pg.9

country can not be called „ national territory". If we look at the meaning of the word, we can see that the air space is space rather than territory. In addition, air and marine areas are section of land, and may not be the subject of acquisition and disposal themselves, except in situation when it comes to acquiring of paricular land area.[10]

The territory of each state is limited by borders.

DEFINITION AND VIOLATION OF STATE BORDERS

Bearing in mind that national territory , except for areas of land and sea areas , also includes the air space over its territory, its subsoil beneath the mainland, and the seabed within the limits of the sea that belongs to it, we can say that the border is more than a line drawn on surface. It certainly marks the borders which, conditionally speaking, extends above and below the surfaceof the borders. The line which separates the territory of one state from the territory of another or other states is considered to be the boundary of that state. If it is a sea border, then it is outside the territorial sea of that state. This is a line that can be the boundary between two adjacent coastal states, in which case the line delinates territorial waters between the states. The line may also be the final boundaries of the territory that abuts the outer sea belt and economic zone of that coustal state. Such state can also be added by open sea area. [11]

State borders can be devided into „natural" and „artificial" boundaries. Natural bounaries follow the natural forms of soil (eg. River, river gorges, mountain ranges). Natural boundaries can often be a source of border disputes between states. The state borders between the two countries are determined by an act of adjusting position of the state border by both the states, ie by agreement or arbitration awards. If no agreement is reached on the basis of different rule, in the case of navigable river separates the two countries, the line running through the middle of navigate channel is taken as the boundary between the states. (In this way both countries are to sail on the river. Otherwise , this doctrine at which a line connecting the deepest point in the river is called the principle of *thalweg)*[12]. If the river or lake is not navigable , boundary line passes through the middle of the river or lake.

In the case where the mountain ranges lie between the two countries , special attention should be payed to refining a clear boundary line. Limit lines can be defined by connecting the peaks of mountains or simply followed their reefs. Limit lines can also follow the water shed.

Artificial boundaries are created especially in the period of colonialissm and after it, being mostly built on the unexplored and sparsely populated desert and other similar areas. It can be an imaginary line that follows some of the parallels and meridians, or the line drown in some other way , which will serve as the separation of the two countries.

On the other hand, there are such state borders which are not determined by some special agreement or other written docoment respectivelly, ie which were not the subject to arbitration or verdict of the International Court of Justice, and are not denied by any of the directly interested parties.

THE MAIN CHARACTERISTIC OF BORDER DISPUTE

The border dispute is any dispute in which two or more countries dispute about the border or a part of the state border between them, whether they are concerned about the border on land or sea. Basically the majority of border disputes be settled by peaceful means, particularly through arbitration or the International Court of Justice in the Houge.

The reasons that lead to border disputes are many and varied, and with them we will not deal in detail. However, it would be appropriate to draw attention to the difference between the *territorial* and *border disputes.*

Special Trial Chamber of the International Court of Justice, which decided on the border dispute in the case of Burkina Faso v. Republic of Mali, in assessing the demands submitted by the parties, claimed that the difference between a border dispute (Boundary) in relation to a territory that belongs to them, is reflected higher level of activities undertaken rather than their type. In the mentioned case, both parties expressed their opinion regarding the category into which the dispute belonged. Finally they agreed that the dispute should be treated as a border dispute that is the dispute over the demarcation.

On the other hand was known to happen that one of the parties viewed the dispute as a dispute over a piece of territory, and the other as the border dispute. This is for instance the case of a dispute between Libya and Chad. Libya has characterized the dispute as a territorial dispute, while Chad has advocated the view that it was a case which concerned the position of the border. Libya has denied the existence of territorial boundaries, and in its application before the International Court of Justice that is backed with the Treaty on friendship and good neighborly relations, signed between France and Libya, 10th August 1955th. Chad expressed no doubts about the merits of this agreement, but argued that the agreement did not set the boundaries that were the subject of a dispute.

The Court concluded that the boundary between the two countries was established under the Agreement, 1955. year, and that, if the agreement resulted in the boundary is sufficient for answering the questions raised by both sides. It would therefore also be a response to Libya's request to establish the territorial boundaries of both countries, and at the request of Chad to establish the position of the demarcation line. From these examples, especially the latter, is evident that the difference between the territorial and boundary dispute is not the clearest, but not negligible. However, what is important is that the classification of a dispute to one or another category can affect the determination of jurisdiction. In our example, the case which was treated as a territorial dispute was settled before the International Court of Justice in its full composition, while the border disputes were resolved before his special panel of judges.[13]

Basically, the border disputes usually occurs in cases of absence of agreements or other documents that accurately

[10] *International Law, V.Đ.Degan, pg. 555*
[11] *Ibid,pg.563*
[12] *Ibid.pg..564.*
[13] *Territorial Acquisition: Disputes and International Law, Surya P. Sharma, pg.21-22.*

define the territorial boundaries, that is, when interpreting the existing agreement in a different way.

In practice, the border dispute is often settled through negotiations between the parties in dispute, through mediation, arbitration, a request to seek clarification, or the International Court of Justice in a particular case. Various legal documents and principles are used as a basis.

Methods of dismissal of border disputes, through agreements between the neighbors

In solving border disputes, a very important role is played by the contracts signed by the neighboring countries. There are very few that contain precisely described the boundary line or a folder with clearly marked lines. Due to differences in their interpretation, even in such cases may lead to dispute.

In this regard, it is accepted view that agreement should be interpreted in the manner described in Articles 31 and 32 of the Vienna Convention on the Law of Treaties of 1969. year, alleging, inter alia, the following:

The contract must be interpreted in good faith in accordance with the common sense terms of the treaty in their context and in light of its object and purpose.

Neither the court nor any arbitration body has no authority to modify an existing contract, it is to change the territorial boundaries that are established by agreement, rather than offer a solution acceptable to all parties to the dispute. Only such a solution may lead to a permanent solution to the dispute.

The Charter of the United Nations[14] and the Declaration on Principles of International Law concerning friendly relations and cooperation between states in accordance with the Charter of the United Nations (2625)[15]

Both documents confirm the territorial integrity of member states of the United Nations, and bind them to enjoy that right without compromising the other Member States. In addition to confirming the right to territorial integrity, these documents also recognize the right of Member States to respect their territorial boundaries. Thus, in article 2, paragraph 4 of the Charter states:

All members, in their international relations, will refrain from the threat of force, or by use of force which would be directed against the territorial integrity or political independence of any State, as well as the forces that could in any way be contrary to the objectives of the United Nations.[16]

The preamble of the Declaration states, among other things:

Each state has a duty to refrain from the threat or use of force in order to breach the existing international boundaries of another state, or as a means of settling international disputes, including territorial disputes and problems concerning frontiers. Each state also has an obligation to refrain from the threat or use of force in order to force a violation of international lines of demarcation, such as armistice lines, established by or pursuant to an international agreement to which it is party or on any other grounds shall obey. None of the foregoing shall be construed as prejudicing the position of interested parties concerning the status of these lines in their own special regulations, or affect their provisional character

From the foregoing it follows that member states must respect the territorial boundaries of each other, otherwise, have the right to seek help from authorities.

3.3. Principle *uti possidetis*

Of special importance in the process of establishing boundaries in the 20th century, and the dismissal of border disputes, especially when it comes to states of the former colonies, as well as the state emerged from the dissolution of existing states (e.g. states of the former Yugoslavia, the former Soviet Union) has the principle of *uti possdetis* - you possess and will continue to own.[17]

It is this principle applied in cases of territorial changes that lead to a succession of states, and if the new countries have not concluded agreements which will define their boundaries. Boundary will, in the absence of special agreements, considered the demarcation line that was in force at the date of State succession. Under international law, this line is considered a state boundary. The same principle is applied to the outer limit of the new state from areas already existing states.

In resolving border dispute between Burkina Faso and Mali, The international Court in the Hague in 1996. declared the principle utipossidetis the principles of general international law. However, this principle is not binding in the sense that the Successor State may otherwise agree on its borders. In the event that agreement is not achieved, this principle is emerging as a must.

Among other things, the Arbitration Commission of the Peace Conference for the Former Yugoslavia[18] was requested, an opinion on the issue, whether the border between the Croatian, Serbian and Bosnia and Herzegovina (a republic) can be treated as an international border (after the dissolution of Yugoslavia)

In accordance with the principle *utipossidetis* Commission, along with other states:

.. previous internal boundaries become external borders, protected by international law, unless it is otherwise agreed, also, Article 5 of the SFRY Constitution provides that the borders of the Republic can not be changed without the consent (consent of the

Republic) [19]

3.4. Princip ex aqua Bono

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[14] Adopted at San Francisco 26th June 1945th years, entered into force on 24 October of that year

[15] Adopted 24.oktobra 1970th year.

[16] http:/www.brand-co.net/zzrp/pdf/4documents, international/UN Charter.pdf.

[17] International Frontiers and Boundaries: Law, Politics and Geography, John Robert, Victor Šrescott, Gillian Doreen Triggs, pg.142

[18] Commission was established by the Ministerial Council of the European Economic Community, 27th August 1991. year, to provide the necessary legal advice to the Conference on Yugoslavia. Upon completion of the work, the Commission issued 15 opinions on the fundamental legal issues arising from the dissolution of former Yugoslavia.

[19] Opinion No. 3-ILI.M str.1499, http:/www.la.wayne.edu/polisci/dubrovnik/readings/badinter.pdf

. The principle of ex aqua Bono or the principle of fairness, which in international law means the law of international judicial bodies, in the case, and at the request of parties, if necessary impose a sentence, not by law but by what is in the given circumstances, equitable, fair and reasonable Regardless of the departure from existing rules and principles. Although the International Court supports the use of this principle, this principle has not been applied in decisions of this Court.

On the other hand, international arbitration courts did not hesitate to apply this principle. For example, the Arbitral Tribunal, being established in 1997, based on the Agreement for Peace in Bosnia and Herzegovina, Paris - Deiton, applying this principle, decided to inter-entity boundary, i.e. border between Bosnia and Herzegovina and the so-called Serbian Republic.[20]

3.5. The principle of *thalweg*

Deciding on the border dispute between Benin and Niger, the International Court cited its earlier decision taken on the case Kasikilil Sedudu (Botswana v. Namibia), which states:

Treaties or conventions that define the limits on water flows, now rely heavily on the thalweg as the boundary of navigable waterways, or the line between the two coasts in waters not navigable, although we can not say that in practice there is complete consistency[21].

In accordance with these and other reasons stated above, the Court ruled that, in the River Macro, the boundary between Benin and Niger is the central line of that river.

CONCLUSION

Border disputes in most cases arises in situations where state boundaries are not clearly defined by international agreements, as well as in cases where the parties to the contract in different ways interpret existing agreements. States are required to resolve all disputes in a peaceful manner. If the parties fail to reach self-acceptable solution, a solution is sought by the International Court in The Hague or other relevant institutions.

The cases in which the parties have refused to accept and abide by the decisions made by the court are also not uncommon. In solving border disputes authorities are invited to various international agreements, charters, conventions, declarations and principles. However, regardless of the means applied, it is important to find a solution acceptable to the parties, because it is the only way to reach a lasting solution that will be some kind of guarantee that there will not be repeated disputes over boundaries. In some cases, just the desire to achieve a lasting solution will dictate the use of certain legal system.

Today it is estimated that there are still thirty current and intractable cases that were never brought before the International Court of Justice because of legal ungrounded application of either party.

[20] *International Law: A dictionary Bolelaw A.Boczek, pg.7-8.*

[21] *The International Court of Justice, the boundary dispute case (Benin / Niger), Judgment of 12 July 2005. year, pp. 63-64, http:/www.icj-cij.org/docket/files/125/8228.pdf.*

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BIBLIOGRAPHY

International Frontiers and Boundaries: Law, Politics and Geography, John Robert Victor Prescott, Gillian Doreen Triggs, pp. 142. International Law, Cases and Materials.
International Law, Malcom N. Shaw
International Law, A dictionary, Boleslaw A. Boczek
International Law, Cases and Materials: Louis Henkin, Richard Crawford Pugh, Oscar Schachter, Hans Smith; American Casebook Series.
International Law, V.Đ. Vegan
Territorial Acquiring , Disputes and International Law, Sutra Parkas Sharma.

Online Sources

https:/www.cia.gov/library/publications/the-ward-factbook/geos/vt.html
http:/www.atsaq/documents/ats/treaty_original.pdf
http:/www.brand-co.net/zzrp/pdf/4_dokumenti/međunarodni/povelja_UN.pdf
http:/www.la.wayne.edu/polisci/dubrovnik/readings/badinter.pdf
http:/www.icj-cij.org/docket/files/125/8228.pdf