

THE EASTERN FRONTIER OF THE EUROPEAN UNION. EXPRESSION OF THE PAST / FUTURE BINOME

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Abstract. The Study enounces first of all, the fundamental notions of international law concerning the frontier as limit of the State territory and of the exercise of sovereignty on this space. Then, it presents the evolution of the borders of Romania during the previous century – as a result of evolutions in Central and East Europe connected mainly, to the Second World War and the events preceding it. The author has clear and explicit considerations and opinions on these issues, as he attended some of the negotiations, personally.

Then the study insists on the situation of the external border of the European Union and on its significance for the Union and for the Romanian State. The author clarifies that participation to the Union does not change the nature of the external border, as each member State continues to exercise its essential functions for ensuring territorial integrity and defending national security. EU treaties have at the same time, to be applied on the territories of member States; that means that the external border is the limit of exercise of these competences, while remaining the frontier of the respective State.

Finally, the author underlines the need for an adequate treatment and support by the Union for a State that has to manage an external border of the prior.

Key words: frontier, State territory, territorial jurisdiction, external border, EU competences, the Treaty of Lisbon, the space of liberty, security and justice

1. Romania's Eastern frontier – as one of the 28 UE members State – is, in terms of alignment, substance, as well as regarding the functions it fulfils, the **Eastern frontier** of the Union¹. As alignment, the two frontier lines overlap; as a role to play, they are not absolutely identical, but they are nonetheless similar – with a series of additional responsibilities that Romania undertook as a member State of the Union.

The meaning of the word *frontier*, in terms of importance and implications it has or maybe hides, goes beyond what appears to be a simplistic term, a commonplace almost; in the past, the frontier used to be a reason for starting devastating wars, a reason for tearing apart civilizations and cultures – generator of history, with critical times and opposite aspiration instead of being a place of

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¹ The segment from the Eastern frontier of the EU which overlaps with the Romanian frontier, each of them having a completely different history and political/legal reasoning.

The role of the frontier is to confine this area – the state territory, in relation to the territories of the neighboring States or to areas which are not under state sovereignty (free seas or the cosmic space), to geographically determine the area in which a State lays and exercises its sovereignty; it appears to be the territorial limitation that States have. Respect for the territorial integrity of States and the intangibility of frontiers is a **fundamental obligation**, sanctioned according to international law. International law includes the rules according to which frontier lines are established, and these rules have been put into practice on numerous occasions; by means of bilateral treaties, States agree on the frontier regime (the management of the problems arising), the cooperation on the principle of good neighbors; neighboring States cooperate on the sustainable management of frontier waters, environmental issues etc. but especially peace, lack of conflicts or tension.

Within this area – its territory – the sovereign and independent State exercises **its territorial jurisdiction** (which is absolute and exclusive)⁴. The importance of **state territory**, just like the importance of state frontiers, is a consequence of the fact that even our **Constitution** states that Romania is a national, sovereign and independent State, unitary and indivisible, and that its **territory** cannot be alienated (Art. 1 and 3); it also States how the frontier is established.

2. EU's Eastern frontier (a segment thereof) overlaps with Romania's state frontier, and in order to better know the first, we must describe the second one (the original and fundamental one).

A. This current eastern frontier of Romania is the one that was imposed to us, by Tsarist Russia, then the former USSR and afterwards, perpetuated as a *fait accompli* - by abuse, but at the same time, favoured by hateful indifference and undignified resignation of our governors.

The **Paris Peace Treaty** (1947) states that “The Romanian borders ... will be those that were in place as at January 1st 1941... the Soviet – Romanian border is therefore established in accordance with the Soviet – Romanian Agreement of 1940 and with the Soviet – Czechoslovak Agreement of June 29th, 1945” (Art. 1). In other words, the Romanian – Russian frontier established through the **ultimatum** of 1940 and which had been based on the **Ribbentrop – Molotov Pact** of August 23rd 1939, was confirmed – sacred by means of the **Peace Treaty**; thus, the **ultimatum** brutally imposed in 1940 was taken as being a valid **Agreement** concluded between Romania and the USSR (legal documents

regarding the functions of the frontier, G. Schwarzenberger, *International Law*, third ed., Stevens, p. 310.

⁴ Territorial sovereignty – territorial competence – supposes necessarily, legal and operational prerogatives recognized within a State, as well as a type of exclusivism in relation to other states (Ch. Rousseau, *Droit international public*, 3eme ed., Dalloz, 1965, p. 138 and following); „territorial sovereignty implies the exclusive right of exercising state activities” – dec. C.P.A. in *The Island of Palmas Case* (1928); L.C. Green, *International Law through the Cases*, sec. ed. 1959, p. 349.

concluded in violation of international right regarding aggression and use of force).

This frontier was described in the **Protocol** on February 4th 1948 and the **Minutes** of May 23rd 1948.

The **first** describes the Romanian – Soviet frontier, down to the Black Sea, as follows:

[...]

The **second** document stipulates the **return**(a kind of an *in integrum restitution*)of the **Snake Island** to the USSR and its inclusion in the Soviet territory; at the same time, the placement of the island is determined, in relation to which the establishment of the whole frontier line was carried out.

The **Treaty** concluded between the Government of the People’s Republic of Romania and the USSR Government regarding **the regime of the Romanian – Soviet state frontier, collaboration and mutual assistance regarding frontier issues** (Bucharest, 1961), takes the description above and carries out a series of amendments (subsequent to further actions).

[...]

In time, the description of the frontier suffered a series of adjustments subsequent to the changes in the route of border waters, which were described in periodical state territory verification minutes (the common verification of the state frontier was carried out every ten years, starting with 1961 – Art. 5).

In this form, the Romanian – Soviet frontier was maintained until the fall of the USSR – when Romania’s neighbors have become Ukraine and Moldova.

B. As far as **Ukraine** is concerned, the **Treaty between Romania and Ukraine regarding the regime of the Romanian – Ukrainian state frontier, collaboration and mutual assistance regarding frontier issues**⁵ stipulates that “the state frontier between Romania and Ukraine is as defined and described in the Treaty between the Government of the People’s Republic of Romania and the Government of the Union of the Socialist Soviet Republics regarding the regime of the Romanian – Soviet state frontier, collaboration and mutual assistance regarding frontier issues, signed in Bucharest, on February 27th 1961, as well as in all the afferent delimitation documents, maps of the state frontier between the former People’s Republic of Romania and the USSR, minutes of the frontier signs with attached sketches, annexes and addenda, as well as in the documents afferent to the checks of the state frontier line that were applicable between the former People’s Republic of Romania / the Socialist Republic of Romania and the USSR as at July 16th 1990 – the date of Ukraine’s Declaration of State Sovereignty, and in the annexes and addenda to the above-mentioned documents that may be

⁵ For a description of the regrettable, shameful way in which it was concluded, see Ion M. Anghel, *Treaties and... treaties*, in *Pages on Romanian diplomacy*, Volume II, Junimea Publishing, 2010, pp. 135-175.

concluded between the Contracting Parties during the validity of the Treaty herein, except for that sector of the above-mentioned frontier line that goes from the Northern meeting point of the state frontiers of Romania, Ukraine and Moldova down to the Southern meeting point of these states' frontiers, and continues, from frontier sign no. 1439 (beacon) on the exterior limit of the territorial sea of Ukraine around the Snake Island up to the point with the coordinates of northern latitude 45°05'21" and eastern longitude 30°02'27", which is the meeting point with Romania's state frontier that passes on the external limit of its territorial sea. The territorial sea of the Contracting Parties, measured from the base lines to the point of intersection of its exterior limits, will always have a width of 12 sea miles.

Should there occur any objective changes subsequent to natural phenomena which are not related to human activities and which render the change of these coordinates necessary, the mixed frontier Commission will draft new minutes.

The state line frontier, throughout its expansion, remains unchanged, unless the Contracting Parties agree otherwise.

Drafting new state frontier documents does not constitute a revision of the frontier that exists between Romania and Ukraine (art. 1)."

Negotiating down on its knees, although in times of peace, Romania accepted the Ribbentrop-Molotov Pact, to its disadvantage and Ukraine's benefit.

C. Regarding the frontier with **Moldova**, the existing line suffered no changes from the previous one; since no understanding has been concluded so far, the Romanian – Soviet frontier from this segment is currently kept on the same route (established two centuries ago by the eternal uncomfortable and unsatiableneighbor).

No frontier establishment treaties have been concluded between Romania and Moldova so far. The head of the Romanian State declared at January 27th 2001, on the occasion of his visit to Chisinau, that "Romania will never conclude a treaty redefining the frontier between Romania and Moldova. Romania recognized Moldova's state frontiers as they were inherited from the late USSR," and would only conclude a treaty establishing the frontier regime – stated the President.

A discussion springs here: I wonder whether avoiding such reinforcement of the division of the two States as formal acceptance – consecration of the tear – rape wouldn't be less toxic, than the acceptance – subsequent to the **Treaty concluded with Ukraine** – of the consequences of the dreadful **Ribbentrop-Molotov Pact**, which Romania fiercely denounced, and of the brutal ultimatum in Moscow, 1940. Perhaps – in my personal opinion – an official confirmation of Moldova's separation from the Romanian territory – repeating the offense brought by the Ribbentrop-Molotov Pact – should not have come from Romania, at least in order to avoid cutting the feeble wings of hope for national replenishment. But

kneeling yet again, in these new circumstances, before abuse, accepted due to cowardice and opportunism, does not pair well with the national dignity that we claim to have. After all, it is as correct, coherent and legitimate as it is compulsory to condemn this bandits' fair of the two aggressing States – **Hitlerist Germany** and **Soviet Russia** but, taking into consideration the context of the subsequent evolutions, it is rational, realistic, decent and wise for Romania to ascertain the existence of the second Romania State, to recognize it according to the rules of international law, and to conclude any kind of treaty with it, establishing the dialogue that would lead to the approach of the two and, finally, to our national replenishment; the evolution and the procedure of the two German States – East Germany and West Germany – could serve as inspiration.

3. The external frontiers of the member States of a federation are the grounds and point of departure for determining its own frontier, sketching its exterior line; using the frontier of the constituent States as a base, the federation as well as the member States are delimited from the neighboring States, which are not members of the federation; the statement is valid both for confederations and for federations, because the constituent States are sovereign and it is normal for them, to exercise jurisdiction and authority over their own territories, which are part of the (con)federation.

- “Frontier” is a concept that is related, by excellence, not to say necessarily – *strictim*, to the statehood institution⁶; being an entity provided with an international legal personality (subjected to international law), of a supra-state nature, but yet being comprised of segments which represent territories of States which continue never the less to be sovereign, the EU has its own frontiers. The territory of the EU and more precisely, the space within it has authority and exercises its functions, assuming at the same time responsibility just like any other international law subject, is, *grossomodo*, the sum of its member territories; therefore, its external frontiers are given just by the external frontiers of its States. We can largely, say that it is the same kind of legal situation, but not an identical one – a State frontier, consisting in the line that limits the sphere of competences between a union comprised of member States and a neighboring State of them or an area which is not under the jurisdiction of a State; we therefore, have in our case, a frontier between two States – a EU member State and another State which is not a member of the EU and which coincides at the same time, with the frontier of the union of States – EU. In the EU system, the terms *internal frontier* and *external frontier* are used. There is an area that encompasses the territories of all member states, in which **community order** reigns and which must be separated from the territory of other States. In the area comprised of the territories of member States, EU rules apply, since the EU has competences, and the existence of this entity – the EU, as well as the European integration process entail the

⁶ This is how we explain that the commonly used term is that of “state frontier”.

disappearance of frontiers between member States (internal frontiers), by removing customs barriers and allowing the circulation of goods, services, capitals and people on the internal market subsequent to the process of European integration.

The two concepts – **the frontier of a member State and the frontier of the EU** – correspond certainly, but they are not identical; they nonetheless, have a common outline; moreover, **the external frontier of the EU** overlaps with **the frontier of a State** – in relation to its geographical position, and is placed at the outer limit of its territory. **The external frontier** of the EU is the line that designates the limit of the geographic and legal territory of its member States – and where the Union rules apply – from the territories of other States which are not part of the EU.

- The idea of territory belonging to the EU – and which entails a delimitation of the **territories of member States** from the **territories of non-member States** is connected to, reflected in or included in the references in the **Lisbon Treaty**: the external action of the EU (the common external and security policy; the right to legation; the common security and defense policy; peace-keeping missions outside the Union; assistance given to a member State which would make the object of an armed aggression on its territory et al.).

- In international jurisprudence – said a specialist in the field – the more abstract the notion of territory becomes, the more we can admit that, in one way, international organizations have a territory, and that is why we encounter phrases such as “the territory of the UPU” – which is, according to the treaty, a “unique postal territory”; the same thing for the GATT or the CECO etc. In our opinion, this defines the **area** in which **the rules of certain** organizations apply, and are not **territories** thereof; it is pure and simple the space where the respective organization is exercising its competences. By nature, these structures, the organizations, cannot have a territory, because their purpose is limited and their competence is given by the States that established them; that is why they do not replace member States, on which their existence is based, thus being able to take over their territories; these territories belong to the States members of the UE.

- If, though, there occurs a State union (federation, confederation) – when there is a territory of this union, it differs from that of an international organization.

- We cannot talk about the creation of a new situation in the matter we are considering, even when there is a supra-state organization, such as the EU, to which are transferred sovereignty attributes of the member States, because member States, continuing to be sovereign and exercising their jurisdiction, have their state territory as a constitutive element. Institutive treaties of the EU state that issues related to “territorial integrity” and “national security” lay with the member States; rigorously speaking, the territories of the member States remain their own – they are not amassed – mingled remaining the material grounds of their

existence and identifiable as State territory; the only thing that takes place is that in the areas where they continue to exercise their jurisdiction, the rules set up by the EU and its institutions should be applied; there has not been yet such immersion and dilution of the State so that state territory is assigned to the EU (which is not a State but an organization – international structure even if it is a supra-State one) and the only change occurring so far, is the application of EU rules on their territory. This conclusion can also be drawn from the fact that the **Lisbon Treaty** does not stipulate that its provisions apply to UE territories but to its States, as political and legal entities that are part of the EU and applicants of EU rules (because the participating States, on which the EU is formed, are the ones enforcing its rules).

The coexistence up to identification of the State frontier with the EU frontier is also certified by the fact that, establishing EU competences, the **Lisbon Treaty** provided that the EU observes **the essential functions of States** and especially those “whose object is to ensure territorial integrity and the defense of national security” (art. 4, paragraph 1).

It is also the reason why, due to rigor and circumspection, our opinion is that the correct phrase is “the territory of the EU member States.”

- The EU – just like any other international organization – **does not** have a territory (which is only a material premise of States); yet it has the authority to exercise competences and establish connections with the other subjects of international law et al.; the rules of those organizations, as well as the commitments taken by them are opposable to their member States and, therefore, apply or produce consequences on their territory. The case of EU is much more advanced in its evolution and complex. The quality of supra-State organization of the EU – through the comprehensiveness and diversity of its functions and the depth with which it operates and influences the governing in these countries makes it even more necessary, to delimit the area in which it exercises its competences (as it is not only about the delimitation of competences between the EU and its member States, but about the definition of its legal capacity in its relation to other States within the international community). There is an area in which community order has been installed and it is governed at an EU level, and it must be delimited as rigorously as possible.

- In EU documents, frontiers are neither nominated, nor mentioned *interminis*; they are still implicitly understood, guiding its activities and well observed. So its frontiers are not drawn out, as in the case of a State (with maps and lines); they simply, result from what was already established as the national frontier of States – to some extent, deductively – it takes as valid whatever already exists; it only uses the name territory under certain contexts.

- Regarding the rules on **the territorial enforcement of treaties**, they had to be and are provided by article 52 of the EUT (“treaties apply...”); “The scope of

territorial enforcement of the treaties is provided in article 355 of the EUFT.” As article 52 of the EUT includes a reference to article 355 of the EUFT, we can find there a detailed description; therefore, it is stated that, besides the provisions of art. 52 of the EUT, the statements regarding overseas territories, European territories that are not part of member States etc. will be applied. Art. 349 of the EUFT standardizes the situation of other territories. It is also worth noting that EU rules apply differently in their territory, which relates to its competences.

- The **EU Treaty**, as amended in Lisbon, observing the international practice regarding the scope of a treaty, states that “Treaties apply to the Kingdom of Belgium...” and then goes on to list all member States, including Romania (art. 52); this text indirectly meets the role of determining in what area the community order is applied and what is the limit of the community domain. As a general rule, we would like to draw attention to the fact that an international treaty has effects on the entire territory subjected to the sovereignty of the member States (“ties the parties (to the treaty – n.n.) on its entire territory”) (art. 29 of the **Convention for the codification of treaties law**); therefore, there is in the UET an overlap of the area of application of the treaties and the territorial expansion over which a State exercises its territorial sovereignty (jurisdiction)⁷; sometimes there are expansions, other times – restraints (they apply to other countries (Algeria) or European territories whose external relations a member State undertakes; it is mentioned which are the territories that they do not apply to).

Thus, article 355 (paragraph 1) provides that EUT provisions are applicable to overseas French territories, in Azores, Madeira and Canary Islands, stating that due to several reasons, included there, specific measures will be established in order to specify the conditions of enforcement, including the application of common policies; in other cases (entries 2-5), reserves are made in relation to territories with which Great Britain has relations, as well as the Danish, French or Dutch territories.

If in articles 352 and 349 of the EUFT, there is an expansion of the EU competence area, article 353 includes the cases in which EUT does not apply; same thing, for article 204 of the EUTF.

- Unfortunately, in the case of Romania, there are no provisions such as those for Algeria for the benefit of Moldova (that is how our representatives understand to negotiate these issues!).

The EU competence in its territorial dimension coincides, therefore, with the territory of the EU member States; in this area, the EU exercises the competences that are assigned to it⁸; in some cases, the area in which community regulations

⁷ Ion M. Anghel, *Dreptul tratatelor*, Ed. II rev and ad., vol. II, Bucharest, Lumina Lex Publishing, 2000, p. 721

⁸ Ion M. Anghel, *Personalitatea juridică și competențele Comunităților/Uniunii Europene*, Ed. II, Bucharest, Lumina Lex Publishing, 2007, p. 149.

apply exceeds the territory of member States; in others, member States are excluded.

4. Once we know what the Eastern frontier of the European Union is, we have a clear picture of the geographical area of its authority and in which the Union and its institutions exercise their competences; this is of capital importance and is a starting point in establishing any element related to its attributes.

- **The Eastern frontier of the EU** is one of the limits within which this subject of international law – the EU – unfolds its entire activity and to which its external action is reported to (its external and common security policy, the space for freedom, security and justice, the exercise of *ius legationis* and of *iustractum* et al.); the commitments undertaken by the EU refer to the entire community area (“the agreements concluded between the Union... are compulsory... for its member States” – art. 216, paragraph 2).

- But the fields in which there is frequent reference to **frontier** are those related to the areas for **freedom, security and justice**. Thus, the EU, being a space for freedom, security and justice, ensures the absence of private person controls when crossing internal borders; also, it develops a common policy regarding the right to asylum, to immigration and control at external frontiers, based on solidarity between member States (art. 67), notwithstanding the exercise of member States’ responsibilities for maintaining public order and defending internal security (art. 72); no member State will act outside the limitations agreed with or imposed by the EU. Member States organize forms of cooperation between them, there is an administrative cooperation between their constituent services. As a special position the limitrophe state is the one first called to meet such mission, and has need to enforce (perhaps with the aid neighboring State) a frontier regime that corresponds to its obligations; this last aspect is relevant regarding Romania’s responsibilities related to the problem management on the Eastern frontier, but also demonstrates the benefits it provides, especially to the benefit of states that do not have external frontiers with the EU, and especially in such a problematic area.

As about frontier control, it is provided that the EU has a policy that aims at the absence of any control of private individuals when passing internal frontiers - regardless of citizenship, to ensure efficient control and monitoring when passing external frontiers, the introduction of an integrated external frontier administration system, of a common visa policy and other short-stay permits, of controls that private individuals are subjected to when passing external frontiers etc. (art. 77). The EU develops a common policy in the field of the right to asylum (art. 78) – according to the **Geneva Convention** (1951) and to the **Protocol** (1967) regarding the status of refugees, immigration, admittance, clandestine immigration and expulsion, the fight against trafficking (art. 79) and may conclude agreements with third party States regarding readmission; these policies are regulated based

on the principle of solidarity and equitable distribution of responsibility among member States, including from a financial point of view (art. 80).

The few ideas presented above are far from giving a full picture of this complex and delicate issue, which is worth revisiting in greater depth.

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As about conclusions, we must state that Romania, with a territory that has been torn apart and eaten away by its neighbors, especially due to the permanent Russian threat – obsessive in its greed of taking territories by force, and with a people whose destiny was broken in its ascent, leading it to wander erratically, without a home – a country that accepted these sacrifices, the price of whom was paid by us – Romanians, came into EU, clean and purified, without any of this baggage of trauma and instability related to vicinity and conflict. Romania facilitated EU's policy of eastern expansion; but what it receives in exchange, does not come to par with the effort and sacrifice it has been through and with the positive contribution it brought to this "club."

Personally, I do not congratulate, but detest the political class –gouvernesrof the day, because they swallowed sacrifices that Romanians, not themselves, now have to live with; in their servility, wearing a mask of political wisdom, they were in seventh heaven when they had their shoulder patted for their vision ("good boy"). I am not a fan of resignation or defeat, nor do I condone the attitude of forgetting or denying the past, because it would not be wise, nor careful and grateful for those who spilled their blood for country; it would be an impiety and a blasphemy that we would join.

It would not be fair, nor would it be useful for the current "managers" of Europe to forget that Romania was the first eastern State to establish diplomatic relations with West Germany (its leaders were praising us and declaring their gratitude to us at that time) and that, through its continuous effort of stating its political independence and ardor for surviving as a nation in the suffocating block in which it was trapped, it contributed to the evolution of the East-West collaboration and understanding, despite of the risk that it was subjected to.

As a frontier State of the EU, Romania has the right to a treatment and a support that is on par with its sacrifice, as well as with its mission as holder of the external frontier in an area such as this one. Romanians reclaim – and have the right to – an attitude from Western partners for everything they do to the benefit of the EU and, even if there is no gratitude in politics, it is not right to forget what happened. Ingratitude dishonors !