

Border Issue between Slovenia and Croatia (May 2010)

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Upon their declaration of independence on 25 June 1991, Slovenia and Croatia established the land border between their respective states on the basis of the former border between the two Yugoslav republics. Borders between the republics constituting the Socialist Federal Republic of Yugoslavia were defined not by a specific act but by reasonable interpretation of acts determining the division of administrative and judicial powers between the republics. There was no maritime border between the former SFRY republics. Incompatibility of various legal provisions and practices, indirectly defining the border between Slovenia and Croatia at the time of the SFRY, is the fundamental source of disagreement with regard to the state border.

Land border

Slovenia maintains the position that the land border exists, but its course has not been consensually established. The course of the border is in principle defined by the cadastre which was, however, not aligned in certain sections on the date of declaration of independence. There were also areas where the division of the exercise of powers did not follow the cadastral boundary because the latter was not compatible with real life situations. Such a situation prevails along the rivers the course of which changed following the basic surveying in the 19th century (e.g. the Mura River). In some cases, the new boundaries did not follow consistently the existing border, which resulted in differences (the case of the Dragonja: upon the division of the Istrian County into two judicial districts at the time of the Free Territory of Trieste (1947-1948), it was provided that the border should run along the natural boundary - the Dragonja River, which was contrary to the established division of other administrative powers and without any substantive reason.

The agreement on the land border would thus require objective consideration of the situation as at 25 June 1991, providing the basis for defining the line which would most comprehensively reflect the delimitation of that time.

Slovenia notes that after 1991, Croatia has tried by unilateral actions to create conditions, both formally and in practice that would corroborate its perception of the course of the border. In doing so, it selectively used different criteria for establishing the boundary in different sections depending on whether a certain criterion was to its benefit, while adapting other criteria to its needs.

Examples:

- It established the cadastre and land register for 113ha of land along the Dragonja which had been originally registered as part of the Sečovelje cadastral municipality, Republic of Slovenia;
- Despite Slovenia's protests, it constructed a facility at the provisional border crossing point 'Plovanija' on the disputed territory by the Dragonja;
- It established a cadastre for 207ha of land on the right bank of the Mura River which had originally been included in the Slovenian cadastre (different cadastral municipalities).

Maritime Border

In contrast to the land border (cadastre), the maritime boundary between the republics of the former SFRY had never been established. There was a single territorial sea of the

SFRY. Therefore Slovenia believes that the maritime boundary between Slovenia and Croatia has not yet been defined.

Slovenia is in favour of defining the maritime boundary taking into account administrative and other powers exercised by the respective authorities of the two former republics in individual marine zones. Slovenia insists on the fact that the defining of the border may not encroach upon its basic rights enjoyed at the time of the former SFRY, especially free access to international waters. Slovenia's demand is all the more justified since the preservation of its historic right in no way encroaches upon Croatia's rights. Croatia's unilateral defining of the border along the median line of the Bay of Piran prevents Slovenia from preserving the rights it had in the former SFRY, while bringing no added value to Croatia.

The historic attachment of the Bay of Piran and its coasts to the town of Piran, Slovenia, has been attested since the 13th century. At the time of the SFRY, the Bay of Piran had the status of internal waters and was fully managed by Slovenian authorities (administrative powers, police control). After 1991 Croatia has been trying to dispute this historic attachment. After 2000, it introduced a new name 'Savudrijska vala' for the Bay of Piran.

Slovenia's positions on the border issue with Croatia and Croatia's accession negotiations

In the process of Croatia's EU integration, Slovenia has noted that many documents which Croatia provides as a proof of the adoption of the EU acquis contain a unilaterally defined border. Slovenia reiterates that pursuant to international law, Slovenia and Croatia undertook in their constitutional documents to observe the border status as applicable at the date of their declaration of independence, i.e. on 25 June 1991 (the *uti possidetis* principle). The same commitment was reiterated in the Declaration on the Avoidance of Incidents, which the two countries signed in Brioni on 10 June 2005. In its accession process, Croatia did not respect this commitment. Slovenia could not allow Croatia to additionally consolidate, in the accession process, its position in respect of the course of the state border to Slovenia's detriment and contrary to the agreement to respect the status as at 25 June 1991.

Slovenia's positions on the border issue with Croatia

In their constitutional documents, Slovenia and Croatia undertook to observe the border status as at the date of their declaration of independence, i.e. 25 June 1991. The course of the border between the two states has not been consensually established or defined, either on land or at sea.

Slovenia has no territorial pretensions towards Croatia. It only wishes to retain the sovereign rights that it had as one of the coastal republics of the former SFRY on 25 June 1991, the date of its proclamation of independence. Direct territorial contact with the high seas in the Adriatic is one of its basic sovereign rights at sea.

After Croatia unilaterally introduced the border issue into the EU accession process Slovenia had to express reservations about the opening and provisional closing of negotiating chapters that contain Croatian prejudices to the border, i.e. prejudice the course of the border contrary to the principle of observing the status quo as at 25 June 1991, thus protecting its vital national interests.

Slovenia has been very cooperative in finding a solution regarding the border prejudices. In January 2009, Slovenia welcomed the initiative by the European Enlargement

Commissioner Olli Rehn to solve the border issue and allow Croatia's EU accession negotiations to continue. Regrettably, in June 2009 Croatia withdrew from the process led by Commissioner Rehn.

On 31 July 2009, Slovenian Prime Minister Borut Pahor and the new Croatian Prime Minister Jadranka Kosor met for the first time. They reached an agreement regarding the framework that could lead to the settlement of issues burdening both countries – the resumption of Croatia's EU accession negotiations through elimination of Croatia's prejudices and resolution of the border dispute. After the meeting, the dialogue continued between the foreign ministers with the aim of finding a win-win solution. Tacit diplomacy in an improved atmosphere was at work.

The new atmosphere and a newly regained thrust among two sides, and especially among the two Prime Ministers, led to the agreement of 11 September 2009 in Ljubljana.

Prime Ministers reached the agreement on two objectives. Firstly, on the accession negotiations with the EU by continuation of Croatia's solving the issue of prejudices, and secondly, on the resolution of the border dispute with the facilitation of the EU.

On that day, the Croatian Prime Minister declared in a letter sent to the Swedish Presidency that no document in Croatian accession negotiations with the EU can prejudice the final resolution of the border dispute between Croatia and Slovenia. This applies to all documents and positions, either written or submitted orally by the Republic of Croatia. Furthermore, no document or action undertaken after the date of 25 June 1991 shall be accorded legal significance for the task of any arbitral tribunal or any other procedure relating to the settlement of the border dispute, and cannot, in any way, prejudice the outcome of the process.

At the Inter-governmental Conference on accession to the EU with Croatia on 2 October 2009, Slovenia lifted its reservations on eleven negotiating chapters containing the prejudices, pursuing the agreement between Slovenian and Croatian Prime Minister from 11 September 2009.

Simultaneously, the negotiations on arbitration agreement continued on the basis of the last proposal by Commissioner Rehn of 15 June 2009 in presence of Swedish EU Presidency and Commissioner Rehn.

Slovenian and Croatian Prime Minister's signed the Arbitration agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on 4 November in Stockholm, witnessed by Swedish Prime Minister Reinfeldt as EU Presidency.

Governments made a decision to solve the border dispute with the involvement of the independent third party with an aim to reach a fair solution that would take into consideration vital interest of both countries.

The Slovenian government believes that Arbitration agreement is a good agreement, based on renewed trust between the two countries and negotiated in good faith.

Signing of the Arbitration agreement represents an important step towards the final resolution of long-lasting border dispute between two countries.

Given that an award of Arbitral Tribunal is binding for both parties, entry into force (ratification) of the Arbitration agreement would provide a final resolution of the border dispute and thus immediately have an important effect of unburdening bilateral relations.

Slovenia believes that resolving border issues between Slovenia and Croatia would send an important message to the Western Balkan countries that the pace of their EU accession process also depends on their efforts to solve open issues, including border issues.

On 17 November the Slovenian Government adopted the proposal for the Act ratifying the Arbitration agreement and submitted it to the Parliament. Simultaneously, the Government sent Arbitration Agreement, for constitutional review. Constitutional Court will consider the proposal with absolute priority.

In response to Croatia's unilateral declaration from 9 November, Slovenia on 20 November issued a unilateral declaration stating that in the process of the conclusion of the Arbitration agreement it has never agreed with the content of Croatia's unilateral declaration and that it considers the Croatian statement as unacceptable and without any effect for the Arbitration agreement. Declaration also includes a statement that the task of the Arbitral Tribunal shall be to determine the territorial contact of the Republic of Slovenia's territorial sea with the High Seas (Slovenia's junction to the High Sea).

The Slovenian Government, with the support of all the coalition parties, and the Prime Minister personally, is fully committed to continue to strongly support the Agreement. In the period up to the ratification, an intense discussion also involving general public is expected.

On 19 April, the National Assembly ratified the Arbitration Agreement with the votes of 48 present deputies of the Government coalition and national minority deputies, obstructed by the Opposition parties SDS, SLS and SNS. On 26 April, 86 National Assembly deputies submitted the request to call a subsequent legislative referendum on the Arbitration Agreement. On May 3, the National Assembly decided that the referendum would take place on 6 June 2010. The referendum question will be as follows: "Do you agree that the Act Ratifying the Arbitration Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia adopted by the National Assembly on 19 April 2010 should enter into force?"

A year after declaring the referendum results, the Parliament may not adopt a decision contrary to the voting results. This means that if the Agreement does not receive majority support on the referendum, the solution to the border issue will, in future, be moved for formal and particularly political reasons, indefinitely. If the citizens confirm the Agreement, the selection of five members of the Arbitration Tribunal and the preparation of a memorandum with all the arguments that Slovenia will submit as the defence of its interests in the Arbitration procedure will begin.

Source: Ministry of Foreign Affairs
(<http://www.mzz.gov.si/en>)