

MEMO 1 ON SLOVENIA-CROATIA

10 Arguments for drawing a line of separation between Accession Negotiations and the resolving of the Croatian-Slovenian border issue

1. Slovenia joined the EU with the same border issue unresolved. This fact alone confirms that bilateral border issues are not, nor should they be, part of accession negotiations. **/This is not true: Slovenia's mid-term priority in Accession Partnership (1999) was the "Continuation of efforts to resolve outstanding border issues with Croatia". After the initialling of the Drnovšek-Račan Agreement on 20 July 2001, the European Commission stated in the Regular Report on Slovenia's Progress towards Accession (13 November 2001¹) the following: Continuation of efforts to resolve outstanding border issues with Croatia is defined as a medium-term priority and has now been fulfilled./**
2. If Slovenia could join the EU under these circumstances, the same standard should now be applied to Croatia. **/item 1/**
3. In fact, for Europe, the resolution of this issue is less relevant now than at the moment of Slovenia's accession. In 2004, the Slovenian-Croatian border became the external border of the EU, and with Croatia's accession it will become an internal border./ **Slovenia believes that in the process of accession negotiations, Croatia should endeavour to establish good neighbourly relations and resolve border issues with all neighbouring countries, not only with third countries. The key accession documents – Stabilization and Association Agreement (2001)², Accession Partnership (2008)³, Negotiating Framework (2005)⁴ do not differentiate between good neighbourly relations with EU Member States and with non-EU Member States./**
4. Slovenia's attempt to use the accession negotiations as a lever to settle the border issue undermines the basic principles of the European Union – the rule of law, solidarity and tolerance. **/Slovenia would like to reiterate that Croatia itself introduced the prejudice to the border issue into the negotiation process, thus violating the principle of good neighbourly relations./**
5. Slovenia's blocking Croatia's accession negotiations because of a bilateral border issue is unparalleled in accession negotiations practice. A number of candidate countries joined the EU without solving open border issues with Member States. **/Slovenia agrees that other Member States also have unresolved border issues; however, in such cases, the arrangement to respect the status quo must be taken into account, which, in the case of the Republic of Slovenia-Republic of Croatia, is the situation as at 25 June 1991. The underlying problem in Croatia's accession negotiations is that Croatia has attempted, through its negotiation documents, to prejudice the course of the border, which is contrary to the principle of respect for the situation as at 25 June 1991./**

¹ http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/sl_en.pdf

² <http://eur-lex.europa.eu/JOHtml.do?textfield2=26&year=2005&Submit=Search&serie=L>

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:042:0051:01:EN:HTML>

⁴ http://ec.europa.eu/enlargement/pdf/st20004_05_hr_framedoc_en.pdf

6. Croatia stands ready to provide all guarantees that no document presented by Croatia in the EU negotiations prejudices the resolution of the border issue. *Croatia is willing to give an assurance that the presented legislation represents no prejudice within the EU accession negotiations. At the same time, Croatia refuses to give an assurance not to use these documents against Slovenia as evidence for the existence of the border as at 25 June 1991. It must also be pointed out that these documents include indications regarding the border that differ from those contained in the Croatian legislation prior to 25 June 1991 or agreed between the two countries. This clearly shows that Croatia would like to use these documents to unilaterally and arbitrarily change the situation as at 25 June 1991. Thus, the commitment that no document prejudices the border issue, which Croatia is willing to give at any time, would be misleading, as it provides no assurance to Slovenia that such documents would not worsen its position in the resolving of the border dispute.*
7. The Slovenian government justified the blocking (11 chapters so far) as a mechanism to avoid a referendum on Croatia's EU accession in Slovenia. However, the last poll (26 January 2009, Slovenian daily "Dnevnik") indicates that 71% of Slovenians do not favour a referendum, and 63% support Croatia's membership of the EU. **/At the accession conference on 19 December 2008, Slovenia refused to give its consent to opening/provisional closing of 10 (not 11) chapters due to the prejudices to the border. Slovenia has never substantiated the continuation of Croatia's negotiation process with public opinion polls. In addition, some other opinion polls show much lower support on the part of Slovenians for Croatia's membership of the EU (a poll by the Delo daily newspaper of 9 February 2009 shows that almost half of the people taking part in a referendum on Croatia's EU accession (49.7%) would vote against, and 32.2% would vote in favour)/. A poll carried out by RTV Slovenia as part of the talk show "Polemika" – 9 February 2009 – revealed a 90% support for the Slovenian government's position that the border issue between the two countries should be resolved before Croatia's EU accession./**
8. Slovenia's blocking based on an open bilateral issue alone sends a disturbing message: reforms and adoption of the *acquis* are not decisive and sufficient for EU accession. **/Slovenia believes that the duty to develop good neighbourly relations and resolve bilateral issues with the neighbouring countries is part of the EU *acquis* with regard to Chapter 31./**
9. The only feasible solution is to separate the accession negotiations from the resolution of the border issue. Neither of these two processes should burden the other. This is the only way to speed up both processes. **/Slovenia agrees that the border issue is a bilateral one; however, in the process of its EU accession, Croatia included prejudices to resolving the border in a number of documents used to prove the transposition of the *acquis*, which is contrary to the principle of respect for the status quo as at 25 June 1991/**
10. Negotiations should proceed based on the fulfillment of the *acquis communautaire* and meeting the closing benchmarks, without interference of bilateral border issues. **/Slovenia is an advocate of enlargement policy; however, the progress of candidate countries in accession negotiations depends on the fulfilment of membership criteria, which also includes developing good neighbourly relations/.**

MEMO 2 ON SLOVENIA-CROATIA

10 Arguments for resolving the border issue before the International Court of Justice

1. The border issue between Croatia and Slovenia originates from the dissolution of the former Yugoslavia: boundaries between the former republics became international borders, but the maritime boundary in the Bay of Piran has never been defined. **/The entire maritime boundary has never been defined, as there was no delimitation at sea between republics at the time of the dissolution of the SFRY. On 25 June 1991 the legislation of the SFRY applied, which defined the common territorial sea and the internal waters of the SFRY. Individual coastal republics exercised sovereign powers at sea. Thus, the authorities of the Republic of Slovenia were present and exercised powers within the entire aquatorium of the Bay of Piran and up to point T5, which marks the beginning of the high seas, and lower. Consequently, the Republic of Slovenia had and still has direct territorial access to the high seas./**
2. However, both Slovenia and Croatia are parties to the UN Convention on the Law of the Sea (UNCLOS), which regulates such situations. Croatia's position has always been in line with the UNCLOS. **/item 3/**
3. In accordance with the above, Croatia considers the median line in the Bay of Piran as the boundary delimitation, while Slovenia claims sovereignty over the entire Bay, and proclaimed an ecological zone and continental shelf regardless of the Slovenian coastline. **/Slovenia also respects the UNCLOS; as regards the border in the Bay of Piran, it should be pointed out that Article 15 of the UNCLOS only applies to the delimitation of territorial seas. The Bay of Piran has the status of internal waters, just like at the time of the dissolution of the SFRY. As Slovenia has access to the high seas, it also has the right to declare an ecological protection zone and a continental shelf./**
4. Since the early nineties, all attempts to solve the issue through direct talks or mediation have failed. The political tensions in both countries only increased after each failure. After the Slovenian blocking of Croatia's EU accession negotiations, it became even more evident that an arbitrary determination of the border based on non-legal criteria will be neither politically viable nor sustainable. **/Ever since the two countries gained independence, Slovenia has strived to resolve the border issue with Croatia. The two countries came closest to an arrangement with the Drnovšek-Račan Agreement of 2001, which tried to reach a compromise on minimum demands of the two countries on the land border and the maritime boundary, in accordance with the principles of international law. Croatia withdrew from this agreement without providing any explanation. Thus, Croatia acted according to the "mala fide" principle, as the Vienna convention on contracts (1963) stipulates that parties entering into negotiations are obliged to act according to the "bona fide" principle. Croatia concluded negotiations, endorsed and initialled the agreement, but then withdrew from it without a clear reason. This casts doubt on the credibility of the Croatian side./**
5. Taking this into consideration, Prime Ministers Sanader and Janša, with the support of the opposition leaders in both countries (including Mr Pahor), agreed on 26 August 2007 in Bled to present the case to the International Court of Justice in The Hague.

/The agreement between prime ministers in Bled was informal and principled. The prime ministers agreed that a group of legal experts would draw up a binding agreement to be endorsed by the two parliaments. After a year and a half of negotiations, such an arrangement/consensus on a special agreement giving a mandate to a third party to decide in the matter has still not been reached./

6. This approach was confirmed by official decisions of both governments, and it was also welcomed by representatives of several EU institutions and the European Parliament's Resolution on Croatia of 2008. **/The Slovenian Government has not endorsed the agreement of prime ministers; however, it would endorse a draft agreement drawn up by the group of legal experts. The Slovenian government will shortly be acquainted with the report of the Slovenian part of the Commission./**
7. On the basis of the Bled agreement, the two countries established two Croatian-Slovenian commissions (to determine the points of dispute, and the legal framework for presenting the case to the ICJ). On 28 January 2009, the Legal Framework Commission brought the two positions closer to a common view on the legal premises for the ICJ. **/It was scheduled at the meeting in Bled that the group of legal experts would prepare a draft agreement by the end of the year. More than a year has passed since this deadline, which indicates the problems of the group of legal experts in harmonising all the issues./**
8. Croatia also defends the basic principle that both sides should be allowed to present all relevant documents to the International Court of Justice. In this sense, it cannot accept Slovenia's request to prohibit Croatia from presenting to the ICJ any documents used in the negotiations with the EU. This request cannot be a condition for EU accession. **/Slovenia cannot allow that Croatia, in its EU membership negotiations, prejudices the course of the border through its negotiation documents, which is contrary to the principle of respect for the territorial status quo as at 25 June 1991, and then use such documents against Slovenia in case of resolving the border issue by a third party/.**
9. Croatia welcomes all efforts undertaken by EU institutions aimed at unblocking the EU accession negotiations and contributing to the resolution of the border issue. **/Slovenia welcomes the efforts by Enlargement Commissioner Olli Rehn and the possibility of mediation. The issue of maritime boundary and land border could be resolved with sufficient political will in 2009, thus facilitating the conclusion of Croatia's negotiations in accordance with the envisaged EC timetable./**
10. Finally, it should be noted that the resolution of the border issue before the International Court of Justice in The Hague is highlighted in paragraph 13 of the Negotiating Framework of the EU for Croatia's Accession Negotiations. **/The Negotiating Framework makes no mention of the ICJ as the only possible forum for resolving border issues; the wording is more conditional, i.e.: "including if necessary compulsory jurisdiction of the ICJ". It is a fact that international law (Chapter VI of the United Nations Charter) knows no hierarchy of the means of peaceful settlement of disputes. All means – diplomatic, mediation, reconciliation or judicial settlement (arbitration and courts) – are equal. Therefore, it should be underlined that good neighbourly relations cannot be built in court, where it is very likely that one or both parties to the conflict will be dissatisfied with the**

court's decision. Good neighbourly relations are developed by resolving outstanding issues between the parties through agreement, in the European spirit, with mutual respect and so that the resolution generates new positive value between the two states. /