

NON PAPER
CHRONOLOGY OF SLOVENIA–CROATIA BORDER ISSUE

1. Slovenia and Croatia are two neighbouring states that gained sovereignty and independence with the dissolution of the former SFRY. **Certain questions emanate from the common past, which have not been resolved so far. One of the core issues is the state border issue.** The land border between the former Yugoslav republics was established through the administration border between municipalities, however in many areas this border did not fully match or there was a divergence with the effective control over the territory. The maritime boundary between former republics was however not defined at all.
2. **In 1995 two sides mutually recognized the legitimacy of each other negotiating positions regarding the border.** Slovenia's negotiating positions were as follows: (1) balanced alignment of positions on land border and (2) integrity of the Bay of Piran, and the territorial access to the high seas (southern border of Sečovelje cadastral municipality in the Bay of Piran and point T5 on the maritime boundary under the Treaty of Osimo). Croatia's negotiating positions were as follows: (1) median (equidistance) line in the Bay of Piran and (2) its extension to the Osimo border, ensure the longest possible territorial (sea) connection with Italy, allow Slovenia harmless passage through Croatian territorial waters. Both sides agreed on the 5th negotiating position which was the respect of the rule *uti possidetis* as of 25 June 1991.
3. On Slovenia's initiative the two countries tried to resolve the border issue in the process of Slovenia's integration into the EU. Consequently based on the above mentioned mutuality recognized negotiating positions negotiations were successfully concluded **in 2001. The draft Treaty on the Common State Border was endorsed by the two governments and initialled.** This was noted in Regular Reports of the European Commission on Slovenia's Progress towards Accession where it was assessed that Slovenia had fulfilled its political criteria of resolving the border issue with Croatia.¹ Croatia, unfortunately, with no evident reason - unilaterally – refused to continue with the signing and ratification procedure. Despite that Slovenia joined the EU in good faith that the border issue had been resolved.
4. **Croatia has unresolved border issues with all neighbouring countries that used to be republics of the SFRY.** It had signed an agreement with Bosnia and Herzegovina, from which Croatia later withdrew. With Montenegro it has a temporary Agreement but Croatia now tries to reach a new permanent solution which would be of its benefit. With Serbia, no agreement on border was reached so far. Croatia's inconsistency in resolving the border issue with neighbouring countries raises serious doubts about its credibility. Such doubts have been corroborated by other examples of Croatia's selective implementation of bilateral and multilateral agreements between Slovenia and Croatia (Agreement on Border Traffic and Cooperation, Krško Nuclear Power Plant, Agreement on Succession Issues of the former SFRY etc.).

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

¹ <http://eur-lex.europa.eu/JOHtml.do?textfield2=26&year=2005&Submit=Search&serie=L>

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:042:0051:01:EN:HTML>

¹ http://ec.europa.eu/enlargement/pdf/st20004_05_hr_framedoc_en.pdf

5. Based on such experience, **Slovenia cannot further postpone the resolving of the border issue**; it wishes to resolve it or until Croatia's accession to the EU. In such a way the unresolved issue would not be introduced into the EU and cause unnecessary tension. Generally good bilateral relations between the two countries would no longer be burdened, which would have a positive effect on constructive cooperation between them within the EU.
6. Slovenia's expectations as to the resolution of the border issue prior to Croatia's accession to the EU also resulted from the developments in 2007. Slovenia proposed in July 2007 that the land and maritime border issue be resolved through conciliation of the **OSCE Court for Conciliation and Arbitration**. However, Croatia refused the proposal and proposed to refer the case to the **ITLOS**. This was not acceptable for Slovenia as Slovenia wishes to resolve both, land and maritime boundary. Following this exchange of positions the **Prime Ministers of the two countries met in Bled in August 2007**. At this meeting, **they reached an informal consensus that in principle the border issue could be resolved through the judicial settlement (ICJ) or arbitration**. The Mixed Commission of Legal Experts was requested to draft an agreement by the end of 2007. Slovenia based its consent on three conditions: firstly that the date of independence of both states (25 June 1991) is taken as the critical date; secondly that the entire border, i.e. land border and maritime boundary, be subject to such adjudication; and thirdly that adjudication would proceed by applying the principle of equity. The Mixed Commission has had the mandate to define the forum (ICJ, PCA arbitration or ad hoc arbitration) and other modalities of the agreement. However, after a year and a half it did not succeed in formulating the agreement on referring the case to judicial settlement or arbitration. During the negotiations Croatian side started to refuse the application of principles which Slovenia had set as a condition to refer the dispute to the ICJ. **No agreement regarding the subject of the dispute, forum and legal grounds was reached during the negotiations.**
7. In 2008 new circumstances also occurred. **Croatia introduced the border issue in the negotiation process through prejudices in its legislation**. Croatia's negotiating positions include references to Croatian acts defining and drawing the border with Slovenia contrary to the *status quo* on the day of independence and to Slovenia's detriment. Slovenia protested against such acts on a regular basis. Therefore Slovenia cannot endorse such negotiating positions of a candidate country, which violate Slovenian territorial integrity or presents the violation of the principle of preservation of the territorial status quo as of 25 June 1991. As no agreement on the means of the resolution of the border issue is reached so far, Slovenia cannot allow Croatia to gain advantage through negotiation process, in case the border issue would be submitted to a judicial authority.
8. Slovenia in principle accepted attempts by **the French Presidency to promote Croatia's progress despite the prejudices**. Unfortunately, the proposed letters provided only a vague guarantee for Slovenia. Croatia's assurance that it did not prejudice the border in the accession process is understandable from Croatia's point of view, as its documents are in compliance with the Croatian legislation, which, however, contains no reference to the effect that the border with Slovenia has not yet been finally defined. This is a selective approach, which is evident from the fact that the same documents refer to most border crossings on the border with Serbia as

temporary. This clearly shows that Croatia regards the border with Slovenia as final, whereas it would like to change that with Serbia. The French efforts foundered on the lack of readiness on the part of Croatia not to use disputed acts, which were all adopted after 1991, in the potential resolving of the dispute by a judicial authority. Why Croatia would require documents of a later date to prove the status in 1991, has not been explained at all.

9. Due to fundamental disagreements in the understanding of commitments and the respect for the “*status quo*” principle in dealing with this issue, Slovenia see as the only chance for Croatia to overcome the standstill and to successfully conclude the negotiations, to focus immediate on the final resolution of the core problem – border issue. Therefore Slovenia is supporting **the initiative of Enlargement Commissioner Olli Rehn, who proposed that efforts should focus on the resolving of the basic problem – border issue – through mediation.** Slovenia believes that given appropriate political will, the issue could be finally and durably resolved in 2009, which would also allow for the realisation of the timeline for Croatia’s negotiations.
10. **Slovenia stresses in conclusion that it has no territorial claims on the neighbouring Croatia. Slovenia believes that resolving the border issue would be of benefit to both sides.** In resolving the border issue, Slovenia only expects to retain the rights it enjoyed on the day of independence as a coastal republic of the former SFRY. A direct and territorial access to the high seas in the Adriatic is one of the crucial rights. This right is of exceptional strategic, economic and security significance to Slovenia and therefore cannot be relinquished. One example is the interest to keep the competitive position of the Port of Koper, which is of great strategic and economic importance for Slovenia and it is not possible for Slovenia to accept the possibility of having the access to the sole Slovenian port being potentially conditioned by another party. Other examples are traditional fisheries rights, ecological protection of the sea, marine scientific research etc.