
CROATIA-SLOVENIA DISPUTES: AN EXAMPLE WORTHY OF CONSIDERATION

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Ever since they gained independence following the breakup of Yugoslavia, Croatia and Slovenia have locked horns over a wide range of disputes. The latest one to receive international media attention at the time of writing revolves around the question of how to settle the losses of Croatian deposits in Ljubljanska Banka (LB), a Yugoslav-era bank that abruptly pulled out of Croatia in the early nineties, leaving depositors there very little time to claim their cash. The Croatian government compensated many of its nationals at the time, and is now seeking reimbursement from Slovenian state-owned Nova Ljubljanska Banka (NLB), which was formed out of LB and is considered to be its successor. The amount concerned is in excess of €100 million.

Slovenia had proposed that the dispute be settled as part of the succession negotiations between the former Yugoslav republics under the supervision of the Bank of International Settlements (BIS). Croatia, on the other hand, has maintained that the issue is a bilateral one, both between the bank and the account holders concerned, and between Slovenia and Croatia, respectively.

In 2010, Croatia reluctantly agreed to the Slovenian proposal and participated in BIS-supervised negotiations. However, these negotiations have made markedly little progress, and the issue, which from the outset was a popular topic with the Croatian media, has become one of several caught up in the passions of domestic politics. As a result, the government of Croatia eventually pulled out of negotiations again and returned to its earlier position. In the eyes of Slovenia, this *volte-face* amounted to blatant renegeing on an agreement between the two, prompting it to retaliate by following through on an earlier threat to block Croatia's accession to the EU: it suspended its parliamentary ratification of the accession treaty.

In March 2013, with notable assistance from the European Commission, the two countries finally reached a deal on how to go forward – namely, by going *backwards* and returning to the *status quo ante*. The “deal” provides for Croatia's

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suspension of all legal action against Slovenia regarding the matter and resumption of its participation in the BIS-supervised negotiations, while Slovenia, as a *quid pro quo*, has agreed to expedite its parliamentary ratification procedure. Barring the unexpected, such ratification paves the way for Croatia's accession to the European Union on 1 July 2013, as scheduled.

In a written statement addressed to the two prime ministers upon their signing of the memorandum of understanding (MoU), the president of the European Council hailed the arrangement, describing the constructive approach towards the resolution of "bilateral issues like the maritime sea border dispute and now the Ljubljanska Banka as a sign of maturity", adding that the way in which the two governments have handled these issues "serves as an example for the whole region", and concluding that the signing ceremony sends a clear message that "...issues that seemed intractable for years can be addressed."¹

Time will tell, of course, whether these negotiations will yield mutually acceptable results or whether they will eventually stall, breakdown or otherwise fail. The choice of the parties to negotiate (if it was, indeed, a choice for *both* sides) should be respected. Even in the unfortunate event that the negotiations fail, all would not be lost. Other approaches are still open to the two countries for settling the dispute, one of which is third-party dispute resolution.

Such an approach was adopted by the two countries in their territorial and maritime dispute. This dispute involves a number of disparate land border issues, including several along the Dragonja River, and the better-known maritime dispute regarding the Bay of Piran that, among other things, includes a claim by Slovenia for access to the high seas by way of a "corridor" through Croatian waters (Figure 1).

The dispute has burdened relations between the two countries for over twenty years. It almost derailed Croatia's application to join NATO, and significantly complicated its accession to the EU. Slovenia, which was already an EU member state at the time, rejected certain documents that Croatia had submitted in the context of the accession procedure as being "prejudicial" to the outcome of any future bilateral negotiations or third-party settlement regarding their disputed border. The country imposed a blockade on Croatia's accession that lasted a full ten months before it was lifted in October 2008.

The case has witnessed many ups and downs: hopes would be high for an imminent breakthrough, only to be dashed again just moments later. The cause was

¹ European Council/President, *Written Statement*, Brussels: 11 March 2013 EUCO 63/13 (OR. en), Presse 106, PR PCE 55



Figure 1. Disputed maritime area and the “corridor” to the high seas.

Source: *Wikimedia Commons*

http://en.wikipedia.org/wiki/File:Bay-of-Piran_maritime-boundary-dispute.SVG 14 Dec 2006

often interference by opposition parties or groups in one of the two countries intent on politically exploiting the dispute and, in particular, the government’s handling of it, typically appealing to nationalistic sentiments in the run-up to elections. As a result, a dispute that was already intractable would become totally insoluble – for the time being at least. Such a cycle, where emotion and passion replace reason, can perpetuate itself without end. Sadly, such situations are a familiar pattern in Europe and around the globe.

After years of missed opportunities, there must have been a deep sigh of universal relief when on 4 November 2009, the prime ministers of Croatia and Slovenia, Jadranka Kosor and Borut Pahor, in the presence of Fredrik Reinfeldt, the prime minister of Sweden, which was holding the rotating Presidency of the Council of the European Union at the time, signed an agreement in Stockholm to resolve the dispute through arbitration. The agreement has a number of salient features. Article 3(1) provides that the arbitral tribunal “shall determine (a) the

course of the maritime and land boundary between the Republic of Slovenia and the Republic of Croatia; (b) Slovenia's junction to the High Sea; (c) the regime for the use of the relevant maritime areas." Article 4, however, provides that "the arbitral tribunal shall apply (a) the rules and principles of international law for the determinations referred to in Article 3(1)(a); (b) international law, equity and the principle of good neighbourly relations in order to achieve a fair and just result by taking into account all relevant circumstances for the determinations referred to in Article 3(1)(b) and (c)."

The critical date is specified as 25 June 1991, meaning that no evidence with regard to the situation after that date (such as display of governmental authority) can be entertained. In addition, the agreement specifies that none of the material presented by either state in their accession negotiations with the EU, such as documents, reports or maps, can be used in support of their claims.²

The arbitral tribunal constituted for this case is chaired by Judge Gilbert Guillaume (France), former president of the International Court of Justice. The other members are Professor Vaughan Lowe QC (United Kingdom), Judge Bruno Simma (Germany), Dr Jernej Sekolec (Slovenia), and Professor Budislav Vukas (Croatia). The Permanent Court of Arbitration at The Hague acts as registry in the arbitration by agreement of the parties.

One of the questions currently capturing the imagination of interested parties is how the arbitral tribunal will apply article 15 of the UN Convention on the Law of the Sea (UNCLOS), in light of the different emphasis the two countries put on it. The article reads: "Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith."

Croatia favours the first sentence of the article while Slovenia emphasises the relevance of the second. With Slovenia's short coastline and the concave nature of the northeast corner of the Adriatic, Slovenia would only generate a relatively small maritime space beyond the Bay of Piran if equidistance were strictly applied in determining its maritime boundaries. Hence its request for a corridor of maritime

² Durham University/International Boundaries Research Unit (IBRU), *Boundary News: Voters in Slovenia approve boundary arbitration with Croatia*, 7 June 2010.

jurisdiction that would extend beyond the 12 nautical mile territorial sea allowing it access to areas of less restricted navigation.³

It will be interesting to see how far the arbitral tribunal is willing to go in applying principles of “equity” and “good neighbourliness”, in addition to international law, in its efforts to “achieve a fair and just result” as it has been asked to do as concerns Slovenia’s junction to the high seas and the regime for the use of the relevant maritime areas. This part of the decision in particular-based on *ex aequo et bono* – is awaited with great anticipation.

In February 2013, Croatia and Slovenia submitted their first written pleadings in the arbitration. The significance of the submissions “in accordance with the procedural calendar set at the [arbitral tribunal’s] first procedural meeting” was not lost on those who have been following this longstanding dispute along with the numerous well-intentioned but failed attempts at resolving it. The pleadings include multiple volumes of maps, documentary evidence, and legal authorisations. A second round of written pleadings is to be filed on 11 November 2013, and a hearing before the arbitral tribunal is expected in mid-2014.⁴

Whatever the eventual outcome of this case (which is not expected before 2015), the arbitration stands out as an example of third-party dispute resolution worthy of consideration by other states searching for a way out of deadlock as they, too, confront intractable and seemingly insoluble disputes with their neighbours.

³ Durham University/International Boundaries Research Unit (IBRU), Boundary News: *Croatia and Slovenia submit arbitration agreement to UN*, 2 June 2011.

⁴ Permanent Court of Arbitration, Press Release: *First Round of Written Submissions in Territorial and Maritime Arbitration between Croatia and Slovenia*, The Hague, 18 February 2013