



Weekly Briefing

Slovenia External Relations briefing:
The most important External Relations' developments in 2017
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Briefing on the most important External Relations developments in 2017

In 2017 the foreign affairs were marked by the long-awaited finalization of the arbitration court decision on the border dispute between Slovenia and Croatia. The arbitration decision was supposed to solve the several disputes over the Slovenian-Croatian border, but despite the initial expectation, the problem is not yet resolved.

1) History and background

The dispute about the sea and land borderline between Croatia and Slovenia remained problematic ever since the two countries proclaimed independence from the Socialist Federative Republic of Yugoslavia at the end of June 1991. Initially, the two new countries with their constitutional regulation followed the principle of *uti possidetis*, inheriting the previous borders between the two (in this case formerly federal) entities unless otherwise agreed. Already in the beginning of the armed conflict in former Yugoslavia in 1991, however, there was a Slovenian-Croatian disagreement over the jurisdiction in the former Yugoslav army station in Trdinov vrh/Sveta Gera hill. Other conflicts followed. The key issue was the sea border between Slovenia and Croatia, where the two former Yugoslav republics could not refer to the previous federal borders as was the case on land, because in the times of SFRY, the sea borders between federal states were not determined. Slovenia demanded the access to open sea by claiming the jurisdiction over the entire Bay of Piran, while Croatia demanded a half of the bay, which would cut Slovenia's access to the open sea.

As for the sea border demarcation the arguments of the two sides were based on different lines of argumentation. Croatia insisted on the principle of equidistance, where the border should be symmetrically drawn at an equal distance from both sides of the bay. According to the principle of inherited borders, *uti possidetis*, Slovenia also claimed that it has previously, in the time

of Yugoslavia, had an access to the open sea, and should therefore now as a successive political entity, not be deprived of that. Slovenian argument was also that the country was geographically handicapped by its position and should despite that be given an access from its national jurisdiction onto the international waters. Slovenia also relied on a historical argument that the Bay of Piran (“Savudrijska vala” as it was called by the Croatian side) was mostly used and administered by the people from Piran, which was the main town in the bay. The main claim in this regard was the fishing regulations in the former Yugoslavia, which, according to the statements by the Slovenian side, was administered by the institutions on the Slovenian side of the bay. Croatian side in the dispute, on the other hand, tried to impose jurisdiction over the area by administrative measures (new cadastre, placement of the border crossing buildings onto the disputed area etc.).

Other disputed territories between the two countries were:

- several villages and the land around them on the left bank of river Dragonja
- part of the forest on the eastern slope of Snežnik mountain
- south-eastern slope of Gorjanci hills
- Mura river area, where the old cadastre does not follow the altered stream of Mura river
- etc.

The first attempt to systematically solve the border dispute with a bilateral agreement was made in 2009 by the Slovenian Prime Minister Janez Drnovšek and the Croatian Prime Minister Ivica Račan. In the “Drnovšek-Račan agreement” Slovenia gave up the southern bank of Dragonja River, but got 80% of the Bay of Piran and a corridor (so-called “chimney”) to the international waters. The agreement was seen as a good compromise and was confirmed by both governments, but the Croatian parliament then refused the ratification, causing the Croatian government to withdraw their agreement in 2002.

2) Arbitration agreement of 2009

The next attempt was made by the Prime Ministers Borut Pahor of Slovenia and Jadranka Kosor of Croatia. After many rounds of negotiations, they signed the Arbitration agreement on November 4, 2009 in Stockholm, deciding that the solution for the border dispute(s) between the two countries will be decided on by the arbitration court. On the Slovenian side the Pahor-Kosor agreement was subsequently confirmed on a referendum on 6 June 2010 with a slim 51.54% support.

The two countries had to contribute to the process of selecting the five members of the tribunal. Each country contributed one judge into the tribunal and they both strive to agree on the other three which have to be selected from the list, composed by the president of European Commission and Commissioner for EU Enlargement. The three commonly selected members became Gilbert Guillaume, Vaughan Lowe and Bruno Simma, while the nationally chosen judges were Jernej Sekolec from Slovenia and Budislav Vukas for Croatia. The arbitration court officially started working after Croatia joined EU in July 2013.

In July 2015 a Croatian newspaper published a report about a phone communication between the Slovenian judge Sekolec and a representative of Slovenian Ministry of Foreign Affairs, Simona Drenik, where judge Sekolec allegedly disclosed classified information about the potential outcomes of the arbitration agreement. Upon this disclosure, the Croatian side claimed that the process was irretrievably contaminated by this affair and decided to unilaterally withdraw from the arbitration process. The Slovenian judge resigned and his resignation was followed by that of the Croatian judge after the withdrawal decision by Croatia. The court decided that the offence was not damaging to the process and that it continues, but Gilbert Guillaume replaced the two national commissioners that have stepped down with Rolf Einar Fife in Nicolas Michel.

The long-expected arbitration court decision was finally made on June 29, 2017. The court decision followed some of the main lines of the 2001 Drnovšek-Račan agreement.

- Slovenia got three fourths of the Bay of Piran and a corridor of contact to the open sea, a 2,5 nautical mile wide area.

- Croatia got a jurisdiction over the villages on the south side of Dragonja River, the border line follows Dragonja river and the canal of St. Odorik.

- The border along river Sotla follows the demarcations of cadastre, not the flow of the river.

- In Posavje and Obrežje, the demarcation follows the border lines of the cadastre municipalities.

- On Mura river the borderline follows cadastre demarcations.

- On Trdinov vrh/Sveta gera hill the line also follows the cadastre demarcation, which also means that Slovenian army barracks are on the Croatian side.

On December 29, 2017, the two countries' deadline for implementation of the agreement, Slovenia started putting in practice the regulations set forth by the arbitration. Slovenian side passed the legislation about the implementation of the agreement on several levels. Most commonly debated was the repatriation conditions (financial help for relocation etc.) for the Slovenian citizens, whose land and houses ended up on the Croatian side of the border. There were several small incidents on the sea between the Slovenian and Croatian fishermen and/or police that accompanies them. Currently a step to resolve the open dispute between the two countries and facilitate the implementation of the arbitration court decision was made by the President of the European Commission, Jean-Claude Juncker to appoint his first vice-president Frans Timmermans to help mediate the relation between the two countries, but as of now, not much diplomatic negotiations have been made publicly.