




## **Weekly Briefing**

**Croatia external relations briefing:  
Border disputes of Croatia with its neighbors  
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# **Border disputes of Croatia with its neighbors**

## **Summary**

*Bilateral disputes burden relations among states in Southeast Europe. The historical agreement between Greek and Macedonian prime ministers on the resolution of the name issue in 2018 represents a rare good example of resolving a long-standing bilateral dispute in this region. Croatia has ongoing bilateral disputes with the majority of its neighbors. In this brief, we will describe the status of border disputes that Croatia has with its neighbors.*

## **The background**

Croatia has ongoing border disputes with Slovenia, Bosnia and Herzegovina (BiH), Montenegro and Serbia. These disputes (Croatia prefers to call them open issues) are a result of the break-up of the former Yugoslavia. Croatia is bordering, in addition to the above countries, Italy and Hungary. However, Croatia has no border disputes with these countries because the former Yugoslavia settled borders with all its neighbors during its existence. Croatia thus inherited settled borders with Italy and Hungary.

Countries which emerged after the break-up of the former Yugoslav federation (Slovenia, Croatia, Serbia, Bosnia and Herzegovina, Kosovo, North Macedonia and Montenegro) were recognized on the basis of the decision of the Badinter<sup>1</sup> commission which, on the issue of borders, concluded that external borders of newly created countries would follow the former republican (internal) borders within Yugoslavia.<sup>2</sup>

Although borders among republics were defined within Yugoslavia, they were basically not revisited after Yugoslavia's creation. After all, these were internal borders among republics which were a part of a common federation. After new states gained independence, border demarcation came on the agenda of bilateral negotiations. For example, over time, natural borders, such as riverbeds, changed their course. In some cases, cadaster records were not

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<sup>1</sup> The Arbitration Commission of the Conference on Yugoslavia (known as Badinter Commission after its president, French Constitutional Court judge Robert Badinter). The Commission was set up by the Council of Ministers of the European Economic Community in 1991 to provide the Conference on Yugoslavia with legal advice on the dissolution of Yugoslavia. It delivered fifteen opinions, among them one concerning border demarcation among newly independent states.

<sup>2</sup> This opinion was later applied to Kosovo and its declaration of independence: the external borders of Kosovo follow borders of the province of Kosovo in the former Yugoslavia.

matching. In addition, land borders among former republics were defined, not maritime borders. In Yugoslavia, the Adriatic Sea was considered the federal waters with no demarcation among republics. This is why demarcation borders at sea has been one of the biggest challenges that successors states of the former Yugoslavia, which have access to the Adriatic Sea, face. These states are Slovenia, Croatia, Bosnia and Herzegovina and Montenegro.

## **Slovenia**

Slovenia and Croatia share about 670 km land border which is subject to settlement, as well as delimitation of the maritime border within the Bay of Piran/Savudrija Bay. Negotiations and efforts to settle this border have seen most action in comparison to remaining three border disputes that Croatia has.

Although the entire land border is open to delimitation, negotiations primarily focused on river Dragonja which had two riverbeds – a historical one and St Odorik channel built by Austrians in 1905. Croatia claims that the border follows the historical bed of river Dragonja, while Slovenia claims the basis for demarcation is St Odorik channel. The distance between two riverbeds is 2-3 km, but it is important, among else, because it marks the initial point for maritime delimitation. This is the main point of contest between the two states.

Since the creation of the two states, Slovenia had displayed more interest to have the border settled. Bilateral negotiations did not yield any result. The primary reason was that the two sides held different view on how the maritime border should be settled. Croatia's position is that the border in the Bay of Piran/Savudrijska vala should be established in accordance with the equidistance line on the basis of the United Nations Convention on the Law of the Sea (UNCLOS). Slovenia, on the other hand, claimed the integrity of the Piran Bay/Savudrijska vala under Slovenian sovereignty and requested access to high seas.

Unable to agree, in 2008 Slovenia blocked Croatia's EU accession negotiation, frustrated over a lack of progress in negotiations. The deadlock was resolved in 2009 by two sides agreeing to sign an agreement and submit their case to an arbitration tribunal.

Slovenia de-blocked Croatia's EU negotiations leading to Croatia officially joining the EU in 2013. The arbitration procedure was, however, compromised when in 2015 media published transcripts of a conversation between a Slovenian liason and a Slovenian judge in the arbitration tribunal discussing the case. Croatia proclaimed the arbitration irreparably compromised and withdrew from it.

Notwithstanding, the arbitration court (without Slovenian and Croatian judges who both resigned) decided to continue with its work under a new composition. The tribunal reached its final decision in 2017. Regarding the most sensitive part – delimitation in Piran Bay/Savudrijska vala, the tribunal awarded Slovenia  $\frac{3}{4}$  of the Bay with the right of junction to high seas through Croatia's territorial waters. The junction should be 2,5 nautical miles wide and be connected to the border. Slovenia, although it did not gain fully what it asked for, accepted the decision while Croatia rejected on the account that it was not a party to the arbitration since it officially left it in 2015.

Several meetings between prime ministers ever since the tribunal issued its opinion did not yield any result. Frustrated by what Slovenia says is Croatian disregard for the international law, Slovenia asked the European Commission to mediate. The Commission, however, rejected the request to mediate between the two member states. As a next step, Slovenia sued Croatia to the European Court of Justice in Luxembourg. Both sides gave their statements to the Court in 2018.

Slovenia sees solution in both countries implementing the arbitration decision. Croatia suggests that both sides go back to bilateral talks and find a compromise that would be acceptable to both sides. There is no solution yet, but at some point it will have to be found. The decision of the arbitration tribunal, according to private statements of some Croatian officials, is not unacceptable to Croatia, but accepting it, in their view, carries a political risk than no prime minister so far was ready to take. However, political decisions that tackle sensitive issues are always risky and politicians, if their intention is to create breakthroughs and repair damaged relations with neighbors, as North Macedonia and Greece showed, need to demonstrate courage and vision.

## **Bosnia and Herzegovina, Serbia and Montenegro**

### **Bosnia and Herzegovina**

If in the case of Slovenian-Croatian border settlement there was the most activity, the case of Croatia and Bosnia and Herzegovina border settlement has been the most advanced. The two countries' border demarcation teams worked together in the late 1990s which included cartographers, lawyers and other experts. They produced a document with 86 maps and border demarcation in the length of 1001 km. The Treaty on the State Border between the Republic of Croatia and Bosnia and Herzegovina was signed in 1999 by former presidents of the two

countries, Franjo Tudjman and Alija Izetbegovic. However, the document was not ratified by the countries' parliaments although it is implemented and never violated by either of the two states.

After the signing of the Treaty, Croatia's local politicians in the south of the country, followed by some other experts, objected to the parts of the Treaty related to demarcation at the Klek peninsula and two islets which fell under Bosnian sovereignty. They complained that these localities belong to Croatia, that the border was erroneously drawn and that it should be corrected at these territorial points. From the Bosnian side also came complaints about the demarcation near Kostajnica where, according to these objections, Bosnia and Herzegovina is damaged.

The maritime demarcation is also a point of disagreement, creating tensions between the two countries when Croatia decided to build the Peljesac bridge. Although some in Bosnia and Herzegovina tried to block the construction of the bridge until the maritime border is settled, it is currently being built by a Chinese construction company and funded primarily by the EU.

The message from Bosnia and Herzegovina was not that it would want to interfere in Croatia realizing its interests, but it also wants to protect its interests. As long as the border remains unsettled, crisis such as this one regarding the Peljesac bridge has a potential of rising.

The worst outcome, according to some experts, would be to unpack the whole document. If this would happen, it would be almost impossible to come to an agreement as many would use the opportunity to maximize their claims or use this situation to gain political points. Experts suggest that the two parliaments should ratify the Treaty, saved for a few contested points.

## **Montenegro**

The border dispute with Montenegro relates to the identification of the border at land and at sea. In 2002 Croatia and Montenegro signed a Protocol on an interim regime provisionally settling the border. The controversial points were demarcation at the Prevlaka peninsula and in the Bay of Kotor. Prevlaka had strategic importance for Croatia during the war in the 1990s. In 1992 Croatia and then Federal Republic of Yugoslavia reached an agreement to demilitarize Prevlaka and put it under UN monitoring. The UN mission was effectively ended by the signing of the Protocol on the interim regime in 2002.

The peninsula is 2,5 km long with its width varying between 170 and 480 m. It partially closes the Bay of Kotor. As in the case of Piran Bay, Croatia's position that maritime delimitation would be based on the principle of equidistance, which Montenegro disagrees with. Bilateral negotiations did not produce any result, while the Protocol has been implemented without any disruption. The tentative agreement between the two countries is that they would submit the case to the International Court of Justice, but this has not yet been done. It has to be added that in the last several years, Montenegro managed to settle its borders with Bosnia and Herzegovina and Kosovo.

## **Serbia**

With Serbia Croatia shares border primarily along the river Danube and its position is that the border length is 325 km. Serbia, on the other hand, claims that the border is 262 km in length out of which 138 km is on the river Danube. Disagreement lies in the fact that cadastral municipalities were determined at the end of the 19<sup>th</sup> century and the beginning of the 20<sup>th</sup> and were not changed since then. However, the Danube riverbed changed over time as a result of natural and artificial interventions. This resulted in pockets of land and riverine islands ending on the "wrong" side of the Danube, i.e. a situation where both Serbia and Croatia exercise jurisdiction over land on the opposite sides of the river.

The territory that Croatia claims is larger and this accounts for the difference in the border length. The disputed land is some 115 km<sup>2</sup> on the eastern side of the Danube which, as Croatia claims, belong to her while some 10km<sup>2</sup> on the western side of the Danube belong to Serbia.

Bilateral negotiations did not produce any result. The two sides may opt for arbitration or seek a resolution in front of the International Court of Justice. No decision in this regards has been made.

## **Conclusion**

The EU has been trying to encourage countries in Southeast Europe to resolve bilateral disputes. North Macedonian-Greek resolution of the name issue has been welcomed as a step which brings reconciliation and stability in the region. However, when it comes to border disputes, Croatia stresses that these are not unique situations. There are a number of border disputes in Europe and elsewhere which do not prevent these countries from successfully cooperating. In this sense, Croatia sees no urgency in resolving border issues when temporary

ones are being implemented and are generally not a cause for clashes. Yet, unsettled borders continue to burden relations between neighbors while their resolution contributes to peace and stability. In this regards, every effort aimed at settling the borders should be sustained and supported.