



# THE CHRONOLOGY OF THE BORDER DISPUTE BETWEEN CROATIA AND SLOVENIA

REPUBLIC OF CROATIA  
MINISTRY OF FOREIGN AFFAIRS AND EUROPEAN INTEGRATIONS

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## Socialist Federal Republic of Yugoslavia (SFRY)

- SFRY – SR of Croatia and SR of Slovenia are constituent parts of the SFRY, without international legal personality of its own (i.e. did not enjoy its own international rights and obligations)
- Slovenia, therefore, could not have had the right of free access to the high seas
- Slovenia did not exercise control over the entire Bay of Piran
- In the former SFRY – Bay of Piran/Savudrija had the status of Yugoslav internal waters (both its coast belonged to one state – SFRY). The respective municipal authorities of both Slovenia and Croatia exercised its authority in Piran/Savudrija Bay, prosecuted infringements of legal order etc.

## Proclamation of independence

- 25 June 1991 - Slovenia and Croatia - proclamation of independence, dissolution of the SFRY
- As of that date, Croatia and Slovenia have become independent states – with international legal personalities of their own
- As of that date, relations between Croatia and Slovenia has been governed by international law
- Arbitration Commission of the Peace Conference on the Former Yugoslavia (commonly known as Badinter Arbitration Committee): Former republican borders have become international borders of new states, protected by international law – *uti possidetis* principle of international law
- At land - where republican borders existed, the land border of the former republics has become international border between Croatia and Slovenia
- At sea – where there were no republican borders, international law of the sea has become applicable in relations between two States (1982 UN Convention on the Law of the Sea)

## LAND BORDER

The principle of the respect for the territorial *status quo* derives from several basic instruments of the Slovenian and Croatian statehood, for instance:

- **Declaration of Independence of the Republic of Slovenia** adopted by the Assembly of the Republic of Slovenia on 25 June 1991
  - **Declaration on Establishing the Independent and Sovereign Republic of Croatia** adopted by the Croatian *Sabor* on 25 June 1991
  - **Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia** adopted by the Assembly of the Republic of Slovenia on 25 June 1991
  - **Constitutional Decision on the Sovereignty and Independence of the Republic of Croatia** adopted by the Croatian *Sabor* on 25 June 1991.
  - **Joint Statement of the Government of the Republic of Slovenia and the Government of the Republic of Croatia on the Avoidance of Incidents** signed at a working meeting between the two governments on 10 June 2005
- IN ALL THOSE DOCUMENTS THERE IS A STATEMENT OR REFERRAL TO IT, THAT THE FORMER REPUBLICAN BORDERS (which existed at land) HAVE BECOME INTERNATIONAL BORDERS OF THE NEW STATES

## SEA BORDER

- CROATIA and SLOVENIA are both parties to the 1982 United Nations Convention on the Law of the Sea
- Slovenia as a Party to the UNCLOS is bound by all its provisions (including Articles 2 and 15)
- Slovenia has made a reservation to the extent that no issue of delimitation at sea can be submitted to the International Court of Justice, without its prior consent
- This reservation does not exclude Slovenia from the international obligation to act in conformity with the provisions of the UNCLOS and to respect it
- At the Bled meeting of two Prime Ministers in 2007 – Slovenia consented to submission of the respective border dispute at sea and certain points at land – to the International Court of Justice



## Some important steps in trying to resolve the border issue

### Land border:

- land border – was in principle bilaterally determined on the expert level throughout the work of the Mixed Border Commission and considered and confirmed at the subsequent meetings of the ministers of foreign affairs – until 1998
- Last points of disagreement have been agreed in the period until 2001
- The guiding principle was that minor adjustments were allowed – however, equally balanced in meter

## Maritime boundary:

- 1992 - maritime boundary was not regarded as problematic one (Slovene delegation even handed the map with equidistance line at sea on one of the meeting)
- 1991/92 The equidistance line in the Bay of Savudrija/Piran was not considered disputable  
Exhibit 1 – Slovenian source: Atlas of the World, Cankarjeva založba, 1991.
- 1993 – after adoption of the Memorandum of Piran Bay – in which Slovenia expressed the claim towards the entire Piran Bay and for “the territorial access” to the high seas (both in contravention with international law) – no meaningful progress in negotiation on the maritime boundary could have been achieved . Still, in 1993 Slovenia accepted the fact it could not proclaim exclusive economic zones.  
“Slovenia doubtlessly fulfils the conditions for using this institute and thus belongs to the group of the so-called geographically deprived countries which, due to geographic position, cannot proclaim their exclusive economic zones.”
- 1993 on (until today) further radical actions of the maritime claims of Slovenia (see reference to the Slovene legislation and maps)

## CHRONOLOGY OF CHANGE IN SLOVENIAN POSITIONS ON DELIMITATION AT SEA

- *Summary. Since 1991 and the independence of the Republic of Croatia and the Republic of Slovenia, the Republic of Slovenia has changed its official position on the delimitation at sea between the two states a number of times. Over the years, its position has become increasingly radical. From the situation that to Slovenia the median line in the Bay of Piran was undisputable (1991) and that it considered itself a geographically disadvantaged state that cannot declare zones, to claiming the entire Bay of Piran and insisting on the alleged right to the access to high seas in the Adriatic, and to declaring its zones (ecological zone and continental shelf in front of the (Croatian) west coast of Istria), and to drawing its territorial sea (state territory at sea) on maps in front of the Croatian coast and unrelated to Slovenian land.*
- **1993 Memorandum on the Bay of Piran; change in the position: for the first time Slovenia **claims the entire Bay of Piran and the contact with high seas in the Adriatic**, justifying it by the fact that it is a **geographically disadvantaged state** that cannot declare its exclusive economic zones (i.e. economic, ecological...)**
- **1995 The declaration of Slovenia made to the UN Secretariat upon the notification of the succession to the Convention on the Law of the Sea (UNCLOS)** clearly indicates that Slovenia considers itself a geographically disadvantaged state
- **1998** Official Slovenian e-map draws the border at sea
- **2001** Slovenia passes its **first Maritime Code**; it does not include the provision on the right to declare maritime zones, and the justification of the bill maintains that Slovenia is a geographically disadvantaged state

- **2003** The second **Amendments to the Maritime Code**, a new change in the position: Slovenia „stipulates“ in the law the provision on its right to declare maritime zones (although this is not a right that can be acquired through the entry into the national legislation, but is derived from international law)
- **2005** **The Law on Declaration of Ecological Zone and Continental Shelf of the Republic of Slovenia**, a step further: the law defines the alleged Slovenian maritime zones (ecological zone and continental shelf on the seabed) that lie in front of the coast of the Republic of Croatia, far away from the Slovenian territorial sea, as far as 15 sea miles away from Slovenian land!<sup>[1]</sup>  
*Exhibit 2 – Presentation of the „virtual“ Slovenian ecological zone and continental shelf*
- **2006** **Decree on Fishing Areas of the Republic of Slovenia**, still new changes: now the territorial sea of the Republic of Slovenia is introduced in front of the Croatian coast and it stretches from Croatian land (B); the Decree also includes the maritime zones from the 2005 Law (C).
- **2007** Slovenian non-governmental organisation „Zavod 25. lipnja“ published a map with the Slovenian territorial sea drawn in front of the Croatian coast, and the **Cabinet of the then Prime Minister Janša distanced themselves saying that the map was made „independently of Government structures“**
- **2008** **The Plan for the management of sea fishing in the waters that fall within the jurisdiction of the Republic of Slovenia** contains a map and offers a precise calculation of the area of the alleged Slovenian territorial sea – identical with the „unofficial“ map of 2007
- **2009** The official **e-Atlas of the Environment of Slovenia** issued by the Environmental Agency of the Republic of Slovenia (a body within the Ministry for Environmental Protection and Physical Planning of the Republic of Slovenia) is now identical with the unofficial one of 2007, in which the Slovenian border at sea (territorial sea) was drawn in front of the coast of the Republic of Croatia
- Exhibit 3 – The official *Map of Slovenia from the e-Atlas of the Environment of Slovenia*



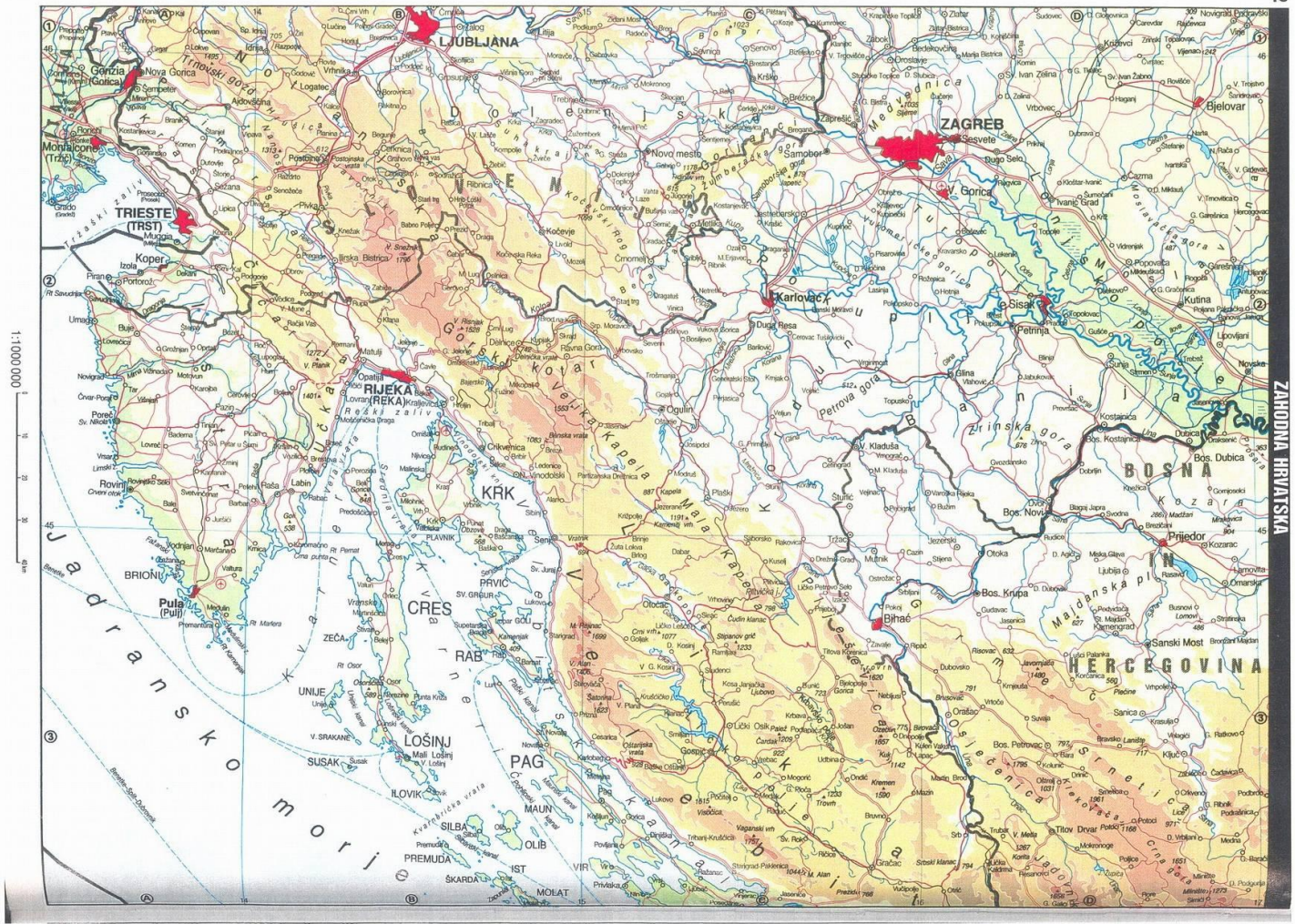


Exhibit 1.

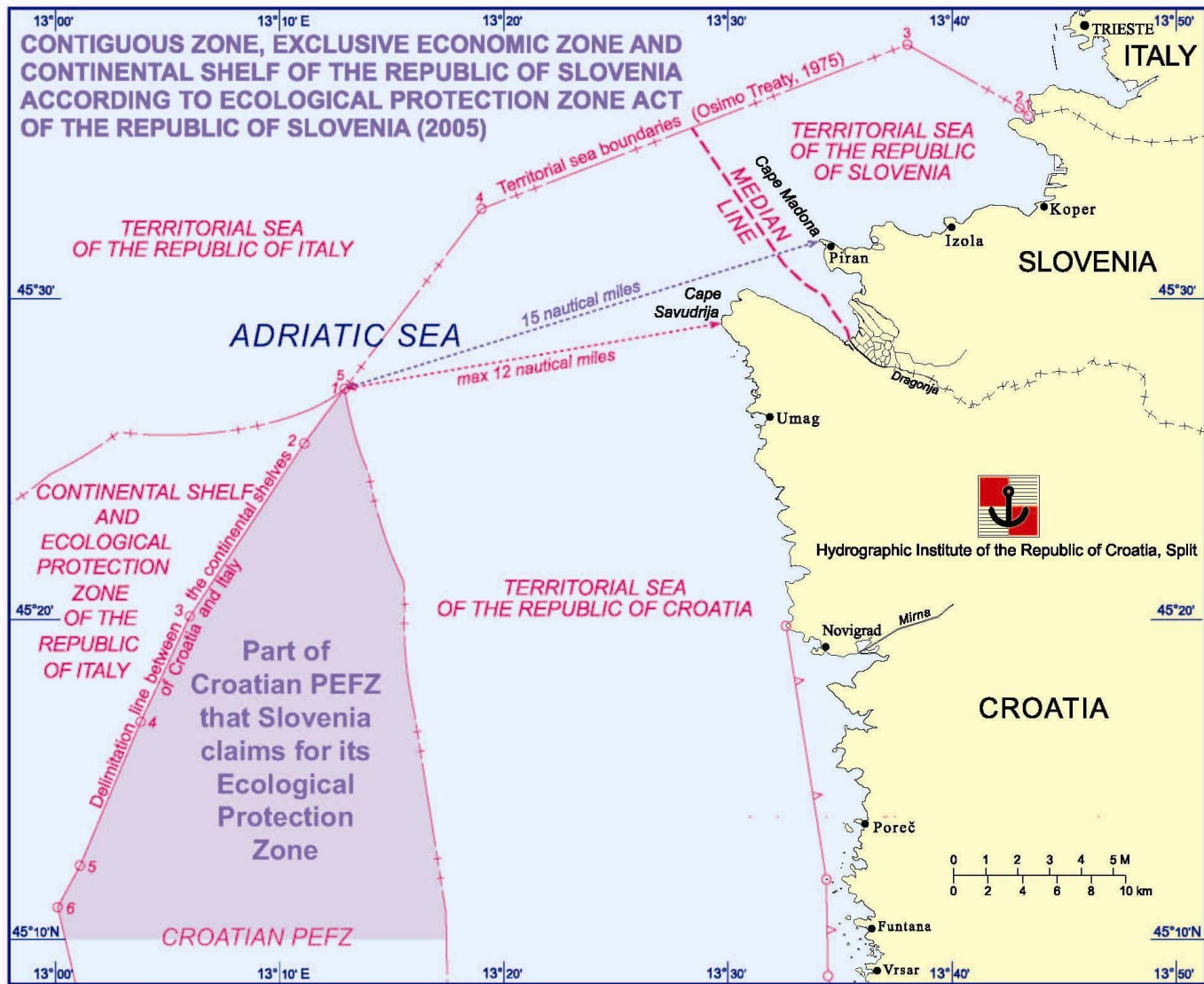


Exhibit 2.

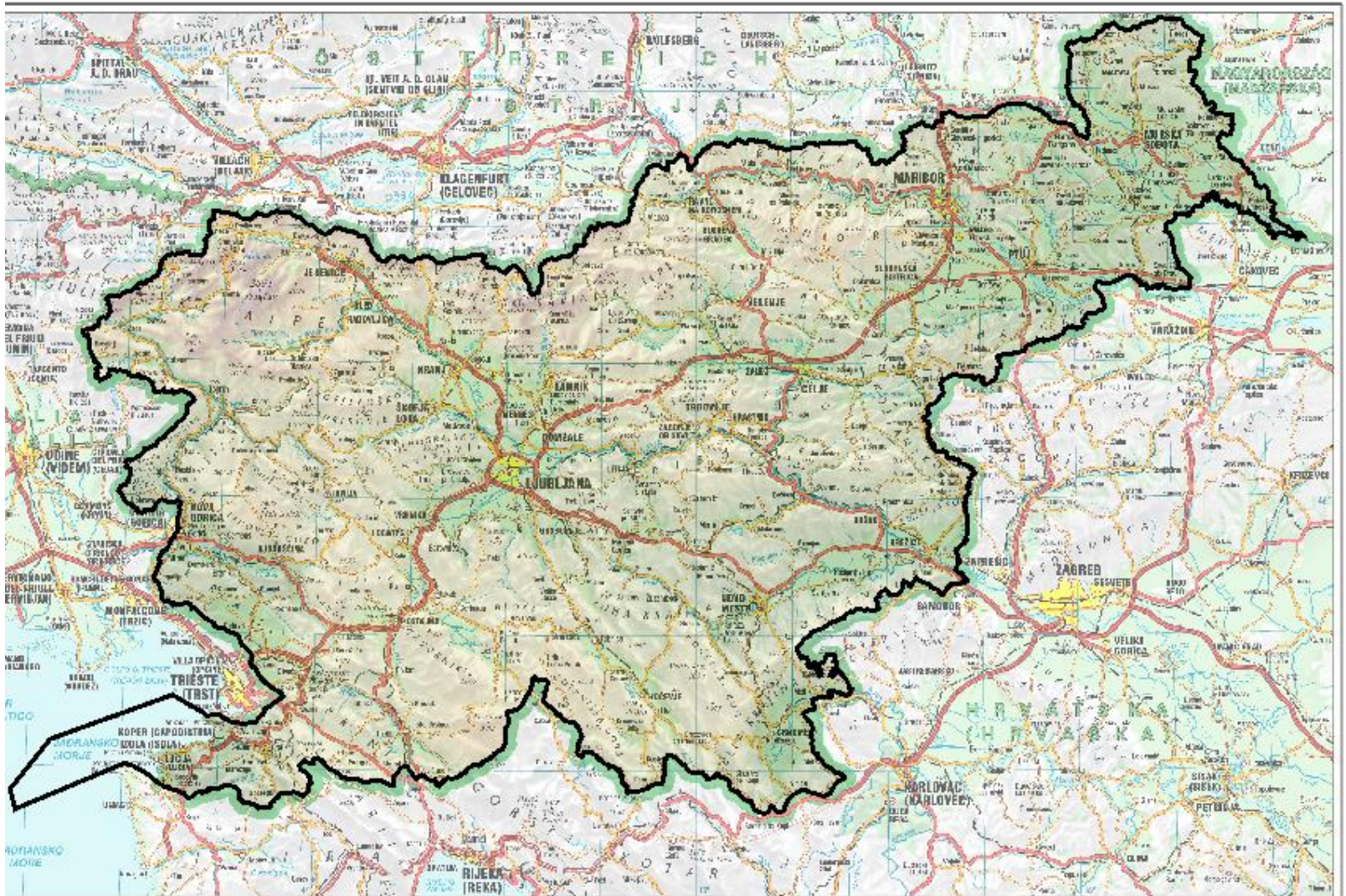


Exhibit 3.

## Some important steps in trying to resolve the issue:

- Since 1992 - bilateral negotiations which lasted for almost 17 years
- 1999 – Mediation of the former US Minister of Defense William Perry
- 2001 - draft text of the border agreement was initiated by the heads of delegations
- no text has ever been signed – no border agreement ever came into existence
- subject to the previous Parliamentary decision, Croatian Government was not entitled to decide and did not decide on signing of any border agreement before it received the Parliamentary opinion
- The draft text has been overwhelmingly rejected by the Parliament, by the legal experts and by the public opinion
- 2002 Croatian Prime Minister (Račan) in his letter to Slovene Prime Minister (Drnovšek) proposed the border dispute to be settled by the international judicial body

## Part of the package deal in 2001 – to resolve in parallel two other open issues between Croatia and Slovenia:

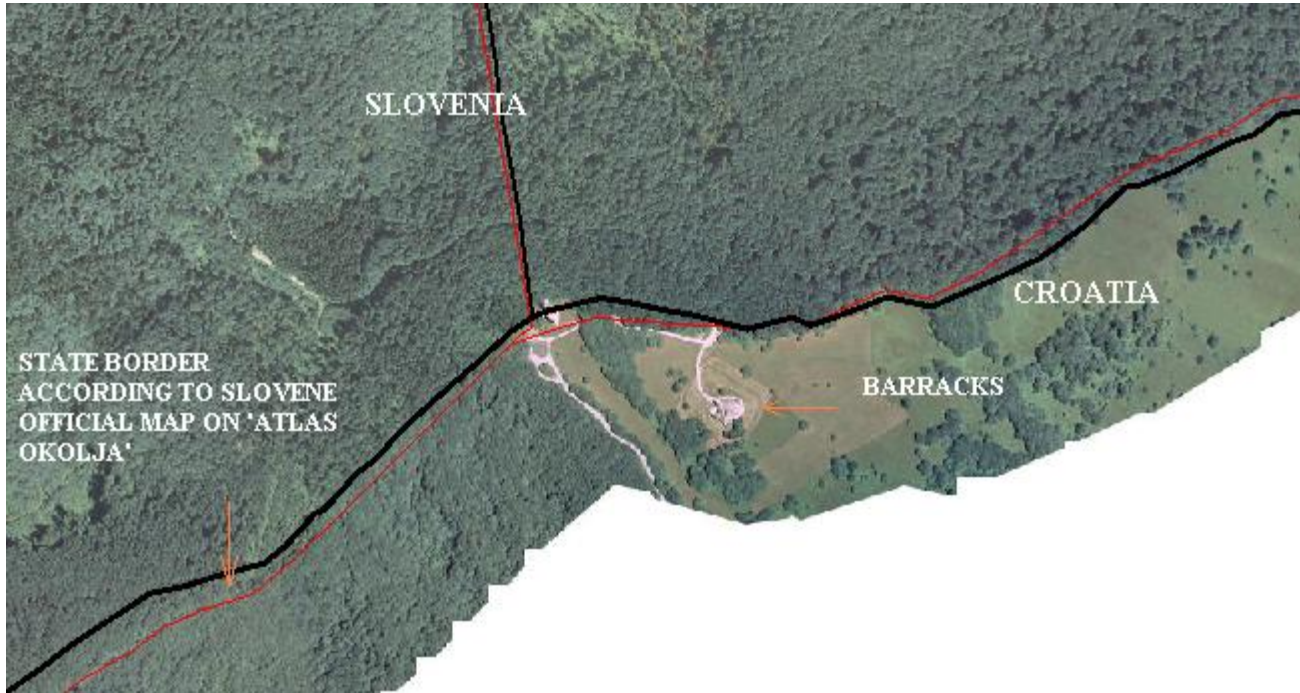
- Resolution of the 'Ljubljanska banka' issue – the debt of the 'Ljubljanska banka' towards the Croatian account holders (Slovenia intervened in private bank client relationship by its Constitutional Act in 1994). The negotiations on repayment of the Ljubljanska bank debt – either by the 'Ljubljanska banka' or by Slovenia – did not end successfully.
- Signing of the Treaty on the regulation of the status and other legal relations regarding investment, exploitation and decommissioning of the 'Krško' Nuclear Plant, 19 December 2001 (HEP as the investor initialized arbitration procedure against Slovenia with ICSID for indemnification for non-delivery of the electricity in certain period of time)

## Incidents concerning the border issue:

- Mutual sending of protest notes – due to the different legal position on the course of the land and maritime boundary

## Issue of Sv. Gera

- Although never disputed by Slovene side to be part of the Croatian territory, a small unit of Slovene soldier occupies the barracks situated on the Croatian territory, nearby the border
- The Slovene army occupied the barracks in 1991 – after the withdrawal of the Yugoslav National Army from that post
- The relevant documentation of both sides match perfectly in this area, and the course of the land border was determined without any disagreement
- In spite of being invited to leave these barracks on number occasions (including presenting of protest notes) – the Slovene side still occupies them
- Even in the most radical Slovene official map of 2009 published ever, this area is considered to be part of the Croatian territory (see the insert of the e-Atlas )



## NEGOTIATIONS ON THE FORUM TO SETTLE THE BORDER DISPUTE

- 2005 Croatian Minister of Foreign Affairs (Grabar –Kitarović) formally reaffirmed the invitation to submit the border dispute to the international judicial body (after Slovenia adopted its act on proclamation of ecological zone and on continental shelf in front of Croatian coast)
- Negotiations on the forum to settle the border dispute started in 2006: Croatia proposed International Tribunal for the Law of the Sea (ITLOS), Slovenia replied by proposing OSCE Court for Conciliation and Arbitration (R. Badinter, president)
- Finally, at the meeting of Prime Ministers Janša and Sanader; Bled, 26 August 2007, **the agreement in principle was reached**
  - **to submit the border issue to the International Court of Justice (forum) and that**
  - **the issue to be decided by the Court was maritime boundary and certain points on the land border (subject of the dispute).**
- To this end two mixed commissions were established – one to prepare a special agreement the other to determine possible disputed points at land.
- Until February 2009, when Slovene government unilaterally decided to bring to an end the work of the Slovene part of the commission, two commissions managed to bring two positions closer to a common view.

## SLOVENE ACCESSION NEGOTIATIONS

- Slovenia entered EU with the same border (and its status) as is today
- Croatia has never presented this border issues as a problem to be resolved before Slovenia enters the EU
- Croatia always supported the Slovene accession process
- Slovenia finalized its accession negotiations and entered the EU although no border agreement had been signed
- Slovenia finalized its accession process and entered the EU in 2004 in spite of the fact that at that time it was refusing the Croatian proposal to submit the border dispute to the international judicial body



## ENLARGEMENT POLICY OF THE EU - PRINCIPLES

### **Presidency Conclusion of the European Council meeting in Luxembourg in 1997**

“The members of the Conference must share a common commitment to peace, security and good neighbourliness, respect for other countries’ sovereignty, the principles upon which the European Union is founded, the integrity and inviolability of external borders and the principles of international law and a commitment to the settlement of territorial disputes by peaceful means, in particular through the jurisdiction of the International Court of Justice in the Hague.”

### **The Helsinki European Council Conclusion in 1999**

The Helsinki European Council Conclusion in 1999 reaffirmed this principle and urged the candidate states to resolve any outstanding border dispute and other issues before the International Court of Justice.

“European Council stresses the principle of peaceful settlement of disputes in accordance with the United Nations Charter and urges candidate States to make every effort to resolve any outstanding border disputes and other related issues. Failing this they should within a reasonable time bring the dispute to the International Court of Justice.”

“... in order to promote their settlement through International Court of Justice, at the latest by the end of 2004.”

## CROATIAN ACCESSION PROCESS

### EU NEGOTIATING FRAMEWORK

#### Point 13:

- The advancement of the negotiations will be guided by Croatia's progress in preparing for accession, within a framework of economic and social convergence. This progress will be measured in particular against the following requirements:

...

- ***Croatia's undertaking to resolve any border disputes in conformity with the principle of peaceful settlement of disputes in accordance with the United Nations Charter, including if necessary compulsory jurisdiction of the International Court of Justice; ...***



## Letter of Javier Solana addressed to Croatian Minister for Foreign Affairs from 29. September 2006

...

- Candidate States are expected to share the values and objectives of the European Union as set out in the Treaties – exactly as Member States do. In this respect, the European Council has stressed several times the importance it attaches to the principle of peaceful settlement of disputes in accordance with the United Nation Charter, including, if necessary, compulsory jurisdiction of the International Court of Justice. As set out in the Negotiation Framework, Croatia should undertake to resolve any border disputes in conformity with this principle.

...

## NO PREJUDICE to the border in Croatian negotiating positions

- Croatia has never included the unresolved bilateral border issue in its EU negotiation process (as is not part of the *acquis*); in no Croatian negotiating positions, there is any reference to the course of the border.
- As harmonization of national legal acts with the *acquis* is the core of the accession process, Croatia has only made references to a number of its national acts.
- No Croatian national act “unnecessarily prejudices the course of the border between Slovenia and Croatia”; when the medium line in Piran Bay is mentioned – it is considered to be the provisional line – pending final delimitation at sea.
- The claim that Slovenian agreement to such negotiating positions could be understood as a tacit consent or confirmation, if the border issue is later submitted to third party, and that Slovenia would very likely be in disadvantaged position – is simply incorrect. The EU negotiation position expresses only its consent with the Croatian alignment with the *acquis*.

## ADDITIONAL GUARANTEES OFFERED

- Croatia has additionally been willing to offer any guarantee that the fact that some document has been used in the accession process is of no relevance to the border dispute, and that no such a document used had the intention to prejudice or could prejudice the final settlement of the border issue.
- The similar guarantees were proposed to be confirmed within the French Presidency Initiative by the end of 2008, but were declined by Slovenia.
- This reveals the fact that **the alleged border prejudice within the Croatian accession negotiations was not of the real concern of Slovenia and that there are other reasons behind.**
- Slovenia expressed its reservation about the opening of Chapters 4, 11, 12, 13, 16, 22, 24, 27, 31 and about the provisional closing of Chapters 21 and 29, but it does not exclude the possibility of blocking some other chapters – not related to the border issue. The recent case of the blockade refers to the alleged border prejudice in the chapter which has nothing to do with border issue – Chapter 6 “Company law”

## JUDICIAL SETTLEMENT – ADHERENCE TO THE INTERNATIONAL RULE OF LAW

- Slovenia uses this as a tool for political pressure to induce Croatia to make territorial concessions in the process of border settlement
- Such attitude both undermines the EU principle - rule of law, and represents the threat to the overall EU enlargement policy.
- Judicial settlement would ensure rule of international law in this legal issue and would serve as a model in future similar situation in South East Europe.
- The legal nature of this border issue is based on interpretation and implementation of the number of rules of international law relevant for delimitation at land (customary law – *uti possidetis*) and at sea (UNCLOS).

## UN Charter – peaceful settlement of disputes

the parties to any dispute shall seek a solution by means of peaceful settlement of disputes (Article 33, para 1):

- Negotiations
  - enquiry (dispute on facts)
  - mediation (assisted negotiations)
  - conciliation (recommendations to the parties to the dispute)
- non-legally binding means**
- arbitration and judicial settlement (in accordance with international law)

### **legally binding decision**

“legal disputes should as a general rule be referred by the parties to the International Court of Justice” (Article 36 of the UN Charter)

## International Court of Justice

- Principle judicial organ of the UN
- Both Croatia and Slovenia are Member States to the UN
- Border dispute is a legal dispute on interpretation of relevant rules of international law
- EU documents point out to the ICJ (1997 Presidency Conclusions of Luxembourg, 1999 Helsinki European Council conclusions), and when it comes to Croatia:
  - 2005 EU Negotiating Framework for Croatia
  - Bilaterally agreed on Bled meeting of Prime Ministers in 2007
  - Two bilateral mixed commissions were established under the Bled Agreement to prepare necessary documentations for approaching the ICJ
- ICJ judgment would provide for definitive resolution of the border dispute (which is not subject to any later approval by the parliaments or referendum)





## Initiative presented by the Commissioner Rehn


Croatia welcomed and accepted the Initiative presented by the Commissioner Rehn

The precise definition of the mandate of the Senior Expert Group is of the key importance for its successful work

Important part of the Initiative is to separate the process of dissolution of the bilateral border dispute from the EU accessions negotiations of Croatia

Croatia considers that any linkage between those two separate issues is unacceptable

Slovenia should fully, immediately and permanently lift its reservations to opening and closing of all negotiating chapters, and the EU accession negotiations of Croatia should continue efficiently according to the EU Negotiating Framework with Croatia



The Initiative should create conditions for resolution of the border dispute in accordance with international law – before the international judicial body, i.e. before the International Court of Justice as advocated by Croatia and as bilaterally agreed on Bled in 2007

Possible influence on the Initiative of the Enlargement Commissioner Olli Rehn on resolving the issue through mediation by the Slovene latest territorial claims against the neighbouring Croatia, expressed in the Parliament's conclusion of February 2009 – which list issues of the alleged vital importance for Slovenia to be included in any possible border resolution.

**The Initiative should therefore serve to facilitate the resolution of the border dispute by legally binding settlement – as the only effective way after years of negotiations and an attempt of mediation – which could provide for definitive resolution of the border dispute.**