

PERMANENT COURT OF ARBITRATION

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PRESS RELEASE

**CONCLUSION OF HEARING IN THE ARBITRATION
BETWEEN THE REPUBLIC OF CROATIA AND THE REPUBLIC OF SLOVENIA**

THE HAGUE, 18 March 2016

In the arbitration concerning a territorial and maritime dispute between the Republic of Croatia and the Republic of Slovenia, a hearing was held on Thursday, 17 March 2016 at the seat of the Permanent Court of Arbitration at the Peace Place in The Hague, the Netherlands. The presentations at the hearing focused on the legal implications for the arbitration proceedings of events reported to have occurred in late-2014 and early-2015 that led Croatia to request the discontinuation of the present proceedings.

By letter of 1 December 2015, the Tribunal had invited further written and oral submissions from both sides “concerning the legal implications of the matters set out in Croatia’s letters of 24 July 2015 and 31 July 2015”. The Tribunal had directed Croatia and Slovenia to file their written submissions by 15 January 2016 (Croatia) and 26 February 2016 (Slovenia). In addition, the Tribunal had informed both sides of its intention to hold a hearing on these matters on 17 March 2016.

Croatia’s Position

Croatia did not file any written submission by 15 January 2016 and did not attend the hearing on 17 March 2016. However, Croatia had explained its position in two letters to the Tribunal dated 24 and 31 July 2015. In addition, the Tribunal was provided with a copy of a Note Verbale from the Ministry of Foreign and European Affairs of Croatia, dated 30 July 2015, which Croatia had addressed to the Ministry of Foreign Affairs of Slovenia.

In these documents, Croatia informed the Tribunal that it had notified Slovenia on 30 July 2015 of its intention to terminate the Arbitration Agreement, signed by the Prime Ministers of Croatia and Slovenia on 4 November 2009, and added that, as of the date of the notification, it ceased to apply the Arbitration Agreement.

In its Note Verbale to Slovenia dated 30 July 2015, Croatia specified that the Note constituted “the notification pursuant to Article 65, paragraph 1 of the Vienna Convention [on the Law of Treaties] that it proposes to terminate forthwith the Arbitration Agreement”. Croatia explained that “[i]n accordance with Article 60, paragraph 1 of the Vienna Convention on the Law of Treaties, the Republic of Croatia consider[ed] that the Republic of Slovenia ha[d] engaged in one or more material breaches of the Arbitration Agreement”, and argued that “the impartiality and integrity of the arbitral proceedings ha[d] been irrevocably damaged, giving rise to a manifest violation of the rights of Croatia”.

Croatia also conveyed to the Tribunal that Croatia could not “further continue the process [of the present arbitration] in good faith”. In particular, Croatia considered that “[t]he official record of the entire arbitration ha[d] been contaminated” and that “[t]here [was] no tool available for repairing the damage that ha[d] been occasioned on the proceedings and the Arbitration Agreement”.

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Croatia further argued that the Arbitration Agreement did not contain any provision concerning the settlement of disputes in respect of the validity and effect of the Agreement. According to Croatia, the Tribunal was hence without competence to express any views as to the conditions for the termination of the Arbitration Agreement. Rather, the procedure to be followed in the event that Slovenia raised objections to the termination of the Agreement was set out in Article 65, paragraph 3 of the Vienna Convention, which stipulates that the treaty parties shall “seek a solution through the means indicated in Article 33 of the Charter of the United Nations”.

Slovenia’s Position

Slovenia filed a written submission on 26 February 2016 and addressed the Tribunal at the hearing on 17 March 2016. The oral pleadings of the Republic of Slovenia were introduced by Slovenia’s Co-Agent, H.E. Ms. Nataša Šebenik. The Tribunal was then addressed by the Minister of Foreign Affairs of Slovenia, H.E. Mr. Karl Erjavec. Detailed arguments in respect of Croatia’s stated intention to terminate the Arbitration Agreement and the legal implications underlying its decision were delivered by H.E. Ms. Nataša Šebenik, Professor Alain Pellet, Sir Michael Wood KCMG and Mr. Rodman Bundy.

Recalling the drafting history of the Arbitration Agreement and its object and purpose, Slovenia argued that the Arbitral Tribunal should complete its mandate and render an award. The adoption of Croatia’s position in respect of the effect of its purported termination of the Arbitration Agreement would frustrate the essential “*quid pro quo*” of the Agreement, which sought to ensure the realization of the respective vital interests of both sides: These were Croatia’s accession to the European Union, which it had achieved after the Arbitration Agreement had entered into force, and the determination by the Tribunal of Slovenia’s “junction to the High Sea”, which was yet outstanding.

Slovenia further explained that the Tribunal was endowed with the competence to determine the legal ramifications of Croatia’s unilateral declaration to terminate the Arbitration Agreement. This followed from the international-law principle of *Kompetenz-Kompetenz* and from the Arbitration Agreement itself.

On this basis, Slovenia elaborated that there was no impediment preventing the Tribunal from fulfilling its duty, and that the Tribunal possessed the tools to remedy the effects of any wrongdoing that may have occurred, in order to attain the object and purpose of the Arbitration Agreement. In particular, Slovenia suggested that the resignation of those involved in the events, the appointment of new arbitrators, and the critical inspection of the official record of the arbitration by the Tribunal constituted adequate means of redressing the purported breach of the Arbitration Agreement. If any additional reparation was sought, the only appropriate remedy for such non-material damages under international law would be a declaration of the wrongfulness of Slovenia’s conduct by the Tribunal.

Lastly, Slovenia contended that no material breach within the meaning of Article 60 of the Vienna Convention had occurred since the alleged misconduct did not call into question the object and purpose of the Arbitration Agreement. In any event, Slovenia argued that the Arbitration Agreement vested the Tribunal with the authority and the means to rectify any effects of such misconduct that may have occurred.

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Further Proceedings

The Tribunal will now begin its deliberations concerning the legal implications of the matters set out in Croatia's letters of 24 July 2015 and 31 July 2015. In the meantime, any consideration by the Tribunal regarding the merits of the underlying territorial and maritime dispute remains suspended.

The Arbitral Tribunal is chaired by Judge Gilbert Guillaume (France), former President of the International Court of Justice. The other members of the Arbitral Tribunal are H.E. Mr. Rolf Einar Fife (Norway), Professor Vaughan Lowe (United Kingdom), Professor Nicolas Michel (Switzerland), and Judge Bruno Simma (Germany). The Permanent Court of Arbitration acts as Registry in the arbitration.

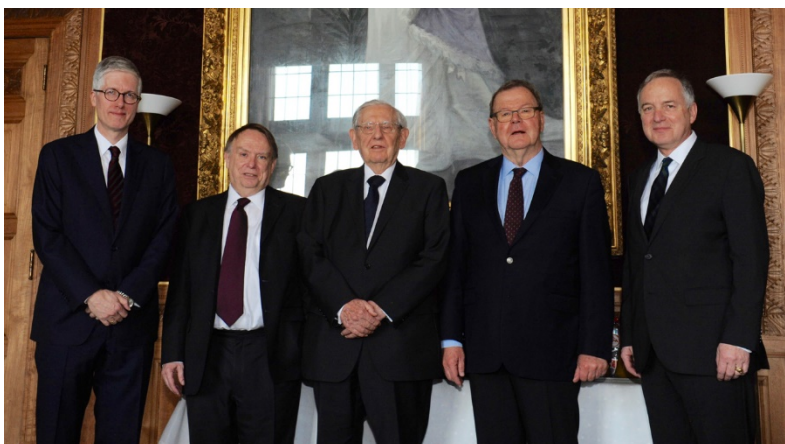
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HEARING, PEACE PALACE, THE HAGUE, 17 MARCH 2016

The following high-resolution pictures are available on the PCA Case Repository (<http://www.pcacases.com/web/view/3>). These photographs may be freely downloaded and reproduced (with appropriate credit).



Arbitral Tribunal



Arbitral Tribunal in session (1)



Arbitral Tribunal in session (2)



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