

PERMANENT COURT OF ARBITRATION

Peace Palace, Carnegieplein 2,
2517 KJ The Hague, The Netherlands

Telephone : +31 70 302 4165
Facsimile : +31 70 302 4167
E-mail : bureau@pca-cpa.org
Website : www.pca-cpa.org



COUR PERMANENTE D'ARBITRAGE

Palais de la Paix, Carnegieplein 2,
2517 KJ La Haye, Pays-Bas

Téléphone : +31 70 302 4165
Télécopie : +31 70 302 4167
Courriel : bureau@pca-cpa.org
Site Internet : www.pca-cpa.org

PRESS RELEASE

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

THE HAGUE, 17 June 2014

A two-week hearing in the arbitration concerning a territorial and maritime dispute between the Republic of Croatia and the Republic of Slovenia was concluded on Friday, 13 June 2014. The hearing was held at the seat of the Permanent Court of Arbitration in the Peace Palace in The Hague, the Netherlands.

Each Party's delegation comprised some thirty attendees, including the agents of the two Governments, their ambassadors to the Kingdom of the Netherlands, legal counsel, advisors, technical experts and assistants. Croatia's delegation was led by H.E. Dr. Vesna Pusić, First Deputy Prime Minister and Minister of Foreign and European Affairs, who addressed the Tribunal on 2 June 2014. Slovenia's delegation was led by H.E. Mr. Karl Erjavec, Deputy Prime Minister and Minister of Foreign Affairs, who addressed the Tribunal on 6 June 2014.

The Arbitral Tribunal conducted the hearing in two rounds. Croatia and Slovenia raised their initial arguments on 2-3 and 5-6 June, respectively, and their responsive arguments on 9-10 and 12-13 June, respectively.

Summary of Croatia's Arguments

The pleadings of the Republic of Croatia were introduced by Croatia's Minister, H.E. Dr. Vesna Pusić, and Croatia's Agent, Professor Maja Seršić. Detailed arguments in respect of the land and maritime determinations to be made by the Tribunal were delivered by Professor James Crawford AC, SC, FBA; Professor Philippe Sands QC; Mr. Paul S. Reichler; Mr. Andrew B. Loewenstein; and Professor Zachary Douglas.

In her introductory speech, First Deputy Prime Minister and Minister of Foreign Affairs, Dr. Pusić, expressed the confidence of the Government of the Republic of Croatia in the Tribunal and the hope that the Award might be a beacon for international law, reinforcing "unity and certainty" whilst conserving "necessary flexibility". She emphasized the importance that Croatia and the Croatian people attach to these proceedings. She was followed by the Agent and Counsel for Croatia.

Croatia stressed that the Arbitration Agreement – and in particular the relationship between its Articles 3(1) and 4 – required "the course of the maritime and land boundary between the Republic of Croatia and Republic of Slovenia" to be determined first, and solely by applying "the rules and principles of international law". Only after the land and maritime boundary had been so determined could the Arbitral Tribunal turn its attention to items (b) and (c), regarding "Slovenia's junction to the High Sea" and the "regime for the use of the relevant maritime areas". These were to be determined by the application of international law and two further elements, namely equity and the principle of



good neighbourly relations. These were in addition to international law, but should not be contrary to it. In Croatia's view, the Agreement did not allow international law to be contravened, but only to be supplemented.

Croatia explained that the land boundary between Croatia and Slovenia existed on the critical date under the Arbitration Agreement, 25 June 1991. On that date it became, by application of the *uti possidetis juris* principle, the international boundary between the two States. It fell to be determined by reference to the respective legislation of Croatia and Slovenia on administrative-territorial organization in effect on the critical date. Since both Croatia and Slovenia, as constituent republics within the former Yugoslavia, defined their territory by reference to the territory of their respective municipalities, which were described most precisely in cadastral records (in Croatia) or even expressly defined by their cadastral districts (in Slovenia), the land boundary fell to be determined by reference to the outer limits of cadastral districts of bordering Croatian and Slovenian municipalities.

Further, in accordance with this land boundary, Croatia, *inter alia*, requested Slovenia to remove its forces from the military facility at Croatian Sveta Gera, and not to hinder communication with the Croatian area of Murišće in the Municipality of Sveti Martin na Muri.

Regarding maritime delimitation, Croatia considers that the relevant rule of international law in the matter was set forth in Article 15 of the 1982 United Nations Law of the Sea Convention (UNCLOS). The maritime boundary between Croatia and Slovenia was thus to be determined from the mouth of the Dragonja River, where the land boundary terminus was located, by application of an equidistance line through the Bay of Savudrija/Piran (which were territorial waters, not internal waters) and beyond until the Osimo Treaty territorial sea boundary line with Italy. Irrespective of their status, the waters of the Bay needed to be delimited between the Parties and the method of delimitation would be the same. There were no special circumstances that warranted a departure from the equidistance line in this case.

Croatia emphasized that international judicial and arbitral practice on maritime dispute settlement in the last two decades has greatly contributed to the interpretation and consolidation of rules and principles of international law concerning maritime delimitation. Croatia expressed concern as to the impact that Slovenia's novel approaches, if endorsed by the Arbitral Tribunal, might have for these hard-fought accomplishments.

Despite the desperate pressure of Slovenia's EU accession veto, Croatia pointed out that it had never resiled from the position that its maritime boundaries were to be determined solely by existing international law. Croatia had also maintained steadfastly throughout the negotiation of the Agreement its view that the term "junction" did not amount to territorial contact. This view was firmly maintained throughout the hearings. The vital interests of the Parties were mentioned in the Preamble, and clearly related to the overall commitment of the Parties to the peaceful settlement of disputes. Such vital interests were not part of the applicable law for the determination of "junction" and "regime". Croatia's vital interests in the negotiations of the Agreement were not limited to EU membership, as claimed by Slovenia, but primarily entailed the preservation of its territorial integrity (which included its territorial sea), and it had never consented to the notion that its territorial sea rights could be determined in any way by reference to equity, good neighbourliness or anything other than the strict application of Article 15 of UNCLOS.

Croatia stressed that "junction" and "regime" referred to in Article 3(1)(b) and (c) of the Arbitration Agreement could not affect (or in any way determine) the course of the boundary. "Junction", if any



existed at all (a point not pre-judged by the Arbitration Agreement), was limited exclusively to matters of maritime access and communications. On this basis, “junction” should be understood, *mutatis mutandis*, by reference to the established regime of passage through international straits under Part III of UNCLOS, subject to the existing International Maritime Organization (IMO) traffic separation scheme, established in 2004 upon a joint proposal by Italy, Croatia, Slovenia, Albania, and (then) Serbia and Montenegro in 2003, and relied on a previous, long-standing practice of navigation in the north Adriatic and on the real need to improve safety of navigation.

Croatia noted that, as a coastal state, it had legitimate interests, in particular with regard to navigational, security and defence concerns – the recognized primary purposes of the territorial sea. The area southwards of Point 5 (on the 1975 Osimo Treaty line) was not the “relevant area” under the Arbitration Agreement and was excluded from any determinations by the Tribunal, an area in which Croatia as the coastal state also continued to have all rights of maritime entitlements, such as the exclusive economic zone.

Summary of Slovenia’s Arguments

The pleadings of the Republic of Slovenia were introduced by Slovenia’s Agents, Professor Mirjam Šrk and Her Excellency Ms. Simona Drenik. Detailed arguments in respect of the land and maritime determinations to be made by the Tribunal were delivered by Professor Alain Pellet; Mr. Rodman R. Bundy; Sir Michael Wood KCMG; Professor Mirjam Šrk; Dr. Daniel Müller; Mr. Eran Sthoeger; Ms. Alina Miron and H.E. Ms. Simona Drenik. Slovenia’s Minister, H.E. Karl Erjavec, presented concluding observations at the end of the first round of oral arguments.

Slovenia considered that the Arbitration Agreement is a compromise, which takes into account the vital interests of both Slovenia and Croatia. Slovenia’s vital interest is its junction, i.e. direct geographical contact, to the High Sea, to be determined by applying equity and the principle of good neighbourly relations in addition to international law in accordance with Article 4(b) of the Agreement. Slovenia’s vital interest has been clearly expressed by Slovenia on numerous occasions since 1993, including during 2009 negotiations on the Arbitration Agreement, and was a *sine qua non* condition for Slovenia to sign and ratify the Agreement. On the other hand, Croatia’s principal vital interest was its accession to the European Union, which it achieved after the adoption of the Arbitration Agreement. Slovenia argued that this case is unique by virtue of the task of the Tribunal as well as of the law to be applied.

H.E. Mr. Karl Erjavec, Slovenia’s Deputy Prime Minister and Minister of Foreign Affairs, addressed the Tribunal at the end of Slovenia’s first round of oral pleadings. He emphasized Slovenia’s vital interest in its junction to the High Sea, which was the *quid pro quo* for the conclusion of the Arbitration Agreement. Mr. Erjavec also said that due consideration must be given to the interests of the population concerned in relation to the land boundary. Slovenia’s Agent, H.E. Ms. Simona Drenik, explained that Slovenia’s junction to the High Sea, meaning a direct territorial contact between Slovenia’s territorial sea and the high seas, is vital for Slovenia and the Slovenian people. Ms. Drenik highlighted the importance of considerations including security, navigation, economic interests, Slovenia’s historic rights, including fishing rights, and environmental protection. Slovenia’s junction to the High Sea is also a symbol of the freedom that Slovenia has sought for centuries, and a part of its identity as a European, maritime State.

Counsel for Slovenia, Dr. Daniel Müller, explained that the determination of the course of the land boundary must be based on the application of the principle of *uti possidetis juris*. This means that the



delimitation of the boundary should be based on the legal title as at 25 June 1991. Further, the Tribunal must determine the whole of the land boundary. Slovenia's counsel discussed the land boundary in three sectors: the Mura River sector, the Central sector and the Istria sector. In the Mura River (Mr. Eran Sthoeger) and the Central sectors (Dr. Daniel Müller), the course of the land boundary is based on existing historic legal titles, except where the land boundary was subsequently changed. However, in the Istria sector, including in the Snežnik area (Professor Mirjam Škrk) and in the Lower Dragonja Region (Ms. Alina Miron), the boundary follows the cadastre because there was no historical root of title. Slovenia also argued that the Sečovlje salt-pans were part of Slovenia in their entirety. Slovenia argued that additional requests, raised by Croatia regarding the activities in Trdinov vrha (Sveta Gera) and Sv. Martin na Muri, are *ultra vires*.

As regards the Bay of Piran, Slovenia's Counsel, Professor Alain Pellet, argued that the entire Bay is the internal waters of Slovenia. During the former Socialist Federal Republic of Yugoslavia, the Bay was a juridical and an historic bay. The status of the Bay as internal waters did not change after the dissolution of the former Yugoslavia. Therefore, the principle of *uti possidetis juris* applies and has the result that the whole Bay belongs to Slovenia because it was administered by, and dependent on, Piran (which is in Slovenia) for centuries. To the extent Croatia has occasionally patrolled a narrow strip along its coast, this could be dealt with by the regime.

For the delimitation of the maritime boundary, Slovenia's Counsel, Mr. Rodman Bundy argued on behalf of Slovenia that Article 15 of the 1982 Law of the Sea Convention applies. The second sentence of Article 15 requires a delimitation that takes account of the unique circumstances of this case, including: coastal concavity and the cut-off effect of the Istrian peninsula and Cape Savudrija, security, navigation, and Slovenia's enjoyment of territorial sea and continental shelf rights as a republic of the former Yugoslavia. Slovenia claims a 12 nautical mile territorial sea and an area of continental shelf starting at Slovenia's junction to the High Sea down to the 45°10' parallel of latitude.

Professor Alain Pellet argued that according to Article 3(1)(b) of the Arbitration Agreement, the Tribunal *shall determine* Slovenia's junction to the High Sea, which means a place where Slovenia's territorial sea joins the high seas. "Maritime delimitation", "junction" and "regime" referred to in Article 3(1)(a), (b) and (c) of the Arbitration Agreement are three distinct issues of one task of the Tribunal, which the Tribunal is obliged to comply with to its full extent. Slovenia's interpretation of the junction as a line joining Slovenia's territorial sea to the high seas is the only one consistent with its ordinary meaning and the drafting history of the Arbitration Agreement, as well as being compatible with international law, equity and the principle of good neighbourly relations in order to produce a fair and just result. Professor Pellet explained that the existence of such a junction would mean that Slovenia is not separated from the high seas by Croatia's territorial sea or by a future exclusive economic zone.

Lastly, Counsel for Slovenia, Sir Michael Wood explained that the regime for use of the relevant maritime areas proposed by Slovenia is consistent with the 1982 Law of the Sea Convention. It would involve confirmation that the maritime regime to the south of Slovenia's junction would remain high seas, a regime which is consistent with Slovenia's claim to a continental shelf. In addition, Slovenia's historic fishing rights in Croatia's territorial sea off the coast of Istria would be preserved.



The Tribunal's Task

The dispute was submitted to arbitration in accordance with an arbitration agreement between the Republic of Croatia and the Republic of Slovenia dated 4 November 2009. Article 3(1) of the Arbitration Agreement provides:

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 of the Arbitration Agreement provides:

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 arbitration has been in progress for two years. The Arbitral Tribunal held a First Procedural Meeting with the Parties on 13 April 2012. The Parties submitted their written Memorials on 11 February 2013, their Counter-Memorials on 11 November 2013, and their Replies on 26 March 2014. The Parties included with these pleadings nearly 1,500 documentary exhibits and legal authorities, as well as over 250 figures and maps.

The Arbitral Tribunal will now begin its deliberation. By agreement between the Parties, the Arbitral Tribunal's award will be published on the PCA's website (www.pca-cpa.org).

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 Professor Vaughan Lowe (United Kingdom), Judge Bruno Simma (Germany), Professor Budislav Vukas (Croatia) and Dr. Jernej Sekolec (Slovenia). By agreement of the Parties, the Permanent Court of Arbitration acts as Registry in the arbitration.

Photographs of the hearing are available on the website of the PCA (<http://www.pca-cpa.org/>), in the sections entitled "News" and "Cases".

Annex: Overview of photographs available for download

Contact: Permanent Court of Arbitration
E-mail: bureau@pca-cpa.org



**THE REPUBLIC OF CROATIA
AND
THE REPUBLIC OF SLOVENIA**

HEARING, PEACE PALACE, THE HAGUE, 2-13 JUNE 2013

PHOTOGRAPHS TO ACCOMPANY POST-HEARING PRESS RELEASE

1. Hearing in session
2. Hearing in session
3. Statement by Minister of Foreign Affairs of the Republic of Croatia, H.E. Ms. Vesna Pusić
4. Statement by Minister of Foreign Affairs of the Republic of Slovenia, H.E. Mr. Karl Erjavec
5. Delegation of the Republic of Croatia
6. Delegation of the Republic of Slovenia
7. Republic of Croatia – Minister of Foreign Affairs with Members of the Delegation
L-R: Counsel Mr. Paul Reichler, Co-Agent H.E. Ms. Andreja Metelko-Zgombić, Member of the Delegation Prof. Vladimir Ibler, Minister of Foreign Affairs of the Republic of Croatia H.E. Ms. Vesna Pusić, Counsel Prof. Philippe Sands QC, Agent Prof. Maja Seršić
8. Republic of Slovenia – Minister of Foreign Affairs with Members of the Delegation
Front row, L-R: Minister of Foreign Affairs of the Republic of Slovenia H.E. Mr. Karl Erjavec, Agent H.E. Ms. Simona Drenik, Agent Prof. Mirjam Škrk, Ambassador of the Republic of Slovenia to the Kingdom of the Netherlands H.E. Mr. Roman Kirn
9. Tribunal
L-R: Dr. Jernej Sekolec, Judge Bruno Simma, Judge Gilbert Guillaume, Prof. Vaughan Lowe QC, Prof. Budislav Vukas
10. Tribunal with staff members of the PCA
L-R: PCA Legal Counsel Fedelma Smith, Tribunal members Dr. Jernej Sekolec, Judge Bruno Simma, Judge Gilbert Guillaume, Prof. Vaughan Lowe, and Prof. Budislav Vukas, PCA Legal Counsel and Tribunal Registrar Dirk Pulkowski
11. Tribunal (front row) with hearing participants
Tribunal, L-R: Dr. Jernej Sekolec, Judge Bruno Simma, Judge Gilbert Guillaume, Prof. Vaughan Lowe QC, Prof. Budislav Vukas
12. Tribunal and Party Agents (front row) with hearing participants
Front row, L-R: Tribunal members Dr. Jernej Sekole and Judge Bruno Simma, Agent for Croatia Prof. Maja Seršić, Agent for Slovenia H.E. Ms. Simona Drenik, Tribunal President Judge Gilbert Guillaume, Agent for Slovenia Prof. Mirjam Škrk, Co-Agent for Croatia H.E. Ms. Andreja Metelko-Zgombić, Tribunal members Prof. Vaughan Lowe QC and Prof. Budislav Vukas

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PHOTOGRAPHS



1. Hearing in session



2. Hearing in session



3. Statement by Minister of Foreign Affairs of the Republic of Croatia, H.E. Ms. Vesna Pusić



4. Statement by Minister of Foreign Affairs of the Republic of Slovenia, H.E. Mr. Karl Erjavec



6. Delegation of the Republic of Slovenia



5. Delegation of the Republic of Croatia



7. Republic of Croatia – Minister of Foreign Affairs with Members of the Delegation



8. Republic of Slovenia – Minister of Foreign Affairs with Members of the Delegation



9. Tribunal



10. Tribunal and staff members of the PCA



12. Tribunal and Party Agents (front row) with hearing participants



11. Tribunal (front row) with hearing participants