



Europa-Kolleg Hamburg

Institute for European Integration

**Study Paper
No 1/10**

**Peaceful Dispute Settlement
in the Context of the Boundary Dispute
between Croatia and Slovenia**

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**Europa-Kolleg Hamburg
Institute for European Integration**

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Please quote as follows:

Europa-Kolleg Hamburg, Institute for European Integration, Study Paper No 1/10,
<http://www.europa-kolleg-hamburg.de>

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Maja Šimunić*

Abstract

This paper deals with one specific dispute which is analyzed through the lens of the various methods of peaceful dispute settlement. The dispute in question is the delimitation dispute between Croatia and Slovenia which has its roots in the dissolution of Yugoslavia in 1991. After the bilateral approach to solving the dispute has proven to be unsuccessful, the European Union became a very important player as far as new solutions and suggestions are concerned. After analyzing all stages of diplomatic dispute settlement in this particular dispute, including its EU dimension, we turn to the legal methods and their implications. The opinion purported in this paper is that adjudication or arbitration should be considered as the preferable methods to be used in this case, as they can produce a clear and final decision based on international law. It remains to be seen whether these States will refer the dispute to legal settlement, which is an issue the European Commission is as well dedicated to.

key words: maritime delimitation, diplomacy versus law, Croatia-EU, EU competencies

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This paper was submitted in June 2009 as a thesis for the degree "LL.M. European Studies" at the Europa-Kolleg Hamburg (supervisor: Prof. Dr. Thomas Bruha).

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List of abbreviations

CSCE	Conference on Security and Co-operation in Europe
DG	Directorate General
EC	European Community
ECJ	European Court of Justice
EEZ	Exclusive economic zone
EU	European Union
GATS	General Agreement on Trade in Services
ICJ	International Court of Justice
ITLOS	International Tribunal for the Law of the Sea
NATO	North Atlantic Treaty Organization
SFRY	Socialist Federal Republic of Yugoslavia
TEC	Treaty Establishing the European Community
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
WTO	World Trade Organization

A. Introduction

Territorial disputes between European states have not been very common after the middle of the 20th century, with the notable exception of issues arising from the break-up of communist regimes. With Europe growing ever closer together, boundaries between states do not anymore present physical obstacles to the free movement of goods as well as persons. Nevertheless, territorial sovereignty of nation-states is a concept which cannot lose on importance, regardless of the stage of European integration.

This study deals with the territorial dispute between Croatia and Slovenia, which has its roots in the dissolution of Yugoslavia in 1991. Although the dispute encompasses both land and maritime boundary, the focus here will be on maritime delimitation, since this has proven to be more problematic in nature.

We will approach this subject from the aspect of international law, or to be more specific from the aspect of peaceful dispute settlement. In the last 18 years several methods of peaceful settlement have been used while dealing with the dispute, which means that we can observe the various chronological stages through the lens of the methods applied.

With Slovenia being a Member State of the European Union since 2004, and Croatia being in the midst of accession negotiations which will probably make it the 28th Member State, this dispute has as well developed a pronounced European dimension. This means that at the later stage of dealing with this particular dispute, the European Union has taken on the role of a key player, thus advancing the idea of a peaceful solution to a conflict which was up to then confined solely to the national arenas of both countries.

In the study we will take into account the previous developments in the realm of diplomatic means of dispute settlement, as well as discuss the implications of legal methods in case those should be applied. Along with discussing the legal bases on which the case might be solved, we will try to propose certain alternative solutions based on good faith and good neighborly relations which have proven to be successful in similar cases.

B. Background

I. The concept of the territorial sea

The fact that a state cannot exist without territory is widely accepted in international law when discussing the mere existence of a state as a legal person. One of the preconditions for statehood is a government which is able to effectively exercise control over its territory. This implies that territorial sovereignty is to be understood in terms of the existence of rights over territory, i.e. the exclusivity of the state's competence regarding its own territory.¹

Territorial sovereignty manifests itself in the effective control over land, internal waters, territorial sea and the airspace above them.² Sovereignty at sea is incidental to the sovereignty over land, which means that it does not have to be established.³ Every coastal state is entitled to its territorial sea which forms an adjacent belt following the baselines (low water-lines) of the coast, as follows from Article 2(1) of the UNCLOS⁴:

The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.

Since the mere existence of the territorial sea in front of every coastal state is not put into question, the only issue states need to establish is the breadth of the territorial sea, which is as well regulated in the Convention⁵:

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

Most states have exercised their right to proclaim sovereignty over the territorial sea up to the limit prescribed by the UNCLOS, with some exceptions⁶ which have however remained internationally unacknowledged.

¹ Shaw, International Law, p. 490.

² Aust, Handbook of International Law, p. 33.

³ Shaw (fn.1), p. 302.

⁴ United Nations Convention on the Law of the Sea, 1982.

⁵ UNCLOS, Art.3.

⁶ States such as Benin, Congo, Equador, Liberia, Peru, Salvador and Somalia have proclaimed a territorial sea of 200 miles.

II. Conflict situations in maritime delimitation

Nowadays the majority of contested situations regarding territorial sovereignty result from delimitation issues, both on land and sea, however usually involving rather manageable disputes which can easily be solved via the methods of peaceful dispute settlement, mostly negotiation.

Nevertheless, since any given state attaches great political significance to its territory, even the least significant boundary disputes can lead to an escalation of cross-national animosity, worsening of bilateral relations and an ever decreasing willingness of the respective governments to solve their bilateral issues in good faith.

As far as maritime delimitation is concerned, one needs to distinguish between the various zones which might present themselves as problematic between States which are adjacent or opposite each other. The vast majority of disputes, as previously noted, can be solved by quiet diplomacy, negotiations being the most prevalent technique of dispute settlement, especially in territorial sea delimitation. In this case it is relatively easy to draw conclusions as to the lines delimiting the sovereign areas of two conflicting States, due to the customary law principles of the twelve mile width of the territorial sea as well as the equidistance line,⁷ which present the starting points in all cases regarding territorial sea delimitation.

Sharma mentions several types of situations which can lead to disputes in territorial sea delimitation.⁸ Adjacent states sharing a land boundary might be faced with the issue of continuing that boundary to delimit the territorial sea as well. The sea between two opposite states may be not wide enough for both of these states to claim a 12-mile territorial sea. The third type of contested situations might have characteristics of both previously mentioned geographical situations, as is the case in the boundary dispute between Croatia and Slovenia. Here we have a bay in which the states share a land boundary, but they lie opposite of each other, thus leaving no room for both to proclaim the full breadth of territorial sea they would otherwise be entitled to.

Disputes regarding the continental shelf and the exclusive economic zones (EEZ) have proven to be much more prominent in the past 30 years, and most of them have been solved by adjudication and arbitration. One of the reasons that disputes related to these maritime zones are highly contestable is the fact that the principle of equity plays a much more important role than in territorial sea disputes. Nevertheless, as will be argued later, states can invoke

⁷ Equidistance will be discussed in Chapter 3.

⁸ *Turkalj*, Razgraničenje teritorijalnog mora, p. 4.

equitable principles in territorial sea disputes, arguing that the equidistance line would not produce a fair delimitation award.

III. Roots of the dispute

1. Dissolving of Yugoslavia

After being part of the Socialist Federal Republic of Yugoslavia for almost 50 years, Slovenia and Croatia proclaimed their independence by a majority vote in their parliaments on June 26. and October 8. 1991 respectively. After the proclamation of independence Croatia was involved in the War for the Homeland lasting up to 1995 with other former Yugoslav Republics. Croatia and Slovenia never in their history waged war against each other.

Although Croatia and Slovenia emerged from Yugoslavia together, their paths soon parted. Croatian involvement in the war buried it into domestic difficulties and problems, whereas Slovenia dedicated itself to building its European political, economic and cultural structure.⁹ Although there is a significant amount of elements binding the two states, both were keen to demonstrate their sovereignty, which in the end led to the worsening of bilateral relations.

2. *Uti possidetis* principle

After the dissolution of the communist Yugoslavia the former boundaries of the Republics became international boundaries. The international community played a significant role in determining that the former boundaries cannot be altered by force, but should remain along the lines of the republics. The principle by which this idea was governed was the one of *uti possidetis juris*, in this case in its post-Cold War incarnation.¹⁰

The roots of the principle are to be found in the period of decolonization, where it largely governed the size and shape of newly emerged states in Africa, Latin America and Southeast Asia. According to the principle of *uti possidetis*, states emerging from decolonization simply inherit the colonial administrative boundaries which existed at the time of independence.¹¹ One needs to distinguish between *uti possidetis juris* and *uti possidetis facto*, whereby the former one takes into account only the legal documents determining the boundaries at the time of independence, and the latter focuses on effective possession of the land.

⁹ Staničić, Croatia on its Way towards the EU, p. 18.

¹⁰ Ratner, AJIL, 1996, p. 463.

¹¹ *Ibid.*, p. 457.

This principle has proven to be of importance in the post-colonial era as well, most of all regarding the dissolution of the communist regimes in Yugoslavia, Czechoslovakia and the Soviet Union. The fact that *uti possidetis* survived the period of decolonization and became a custom in international law derives from its capability to reduce the possibility of an armed conflict as it is the most straightforward method of converting administrative boundaries into international ones.¹²

As already noted, the international community practically insisted on transforming the inter-republic boundaries into international ones, most significantly within the Arbitration Commission of the EC Conference on Yugoslavia, chaired by Judge Robert Badinter in January 1992. It is highly debatable whether this principle needed to be insisted upon with such a level of rigidity, since there was never any mention of possible territorial adjustments. What the EC Conference, the CSCE (now OSCE), as well as the UN Security Council failed to take into account was that even though territory, as discussed above, most of all regards control over land, it also entails a human dimension. In the cases of dissolution and the strict adherence to the *uti possidetis juris* principle, there is always a possibility that ethnic groups might be left standing on the “wrong” side of the boundary, leading to a deterioration of human rights conditions.

The outbreak of the war between former Yugoslav republics (Bosnia-Herzegovina, Croatia and Serbia) cannot be directly linked to the application of the *uti possidetis juris principle*. Nevertheless, had the parties been willing to adjust their territories by taking the ethnic groups into account, the conflict might not have had ethnic cleansing as a result. To conclude, the application of the *uti possidetis* principle proved to be beneficial to avoid armed conflict over territory only as regards the land boundary between Croatia and Slovenia.

In addition to the problems of land boundaries resulting from the dissolution of Yugoslavia, many issues arose in determining the maritime boundaries since these were never established. The SFRY had an international boundary with Italy and Albania, but those between the Republics were never drawn. As far as Italy is concerned, the new states of Slovenia and Croatia took over the agreement which was concluded between Italy and SFRY in 1975,¹³ regulating the international recognition of the state boundary as well as cooperation in economic field. In accordance with international law, after the dissolution both states were

¹² *Ibid.*, p. 458.

¹³ The Osimo Agreements were signed in November 1975 and came into force in April 1977.

bound to respect the inherited maritime boundary, which was also the opinion of the Badinter commission.¹⁴

In the case of the inter-republic maritime boundaries, due to the fact that most of the control of the sea was exercised by the federal authorities, the government never found the issue important enough to carry out the delimitation at sea.¹⁵ This resulted in the fact that there have been three maritime boundary disputes resulting from the dissolution of Yugoslavia, demanding for drawing boundary lines *de novo*. All disputes included Croatia, with Bosnia, Slovenia and Serbia-Montenegro¹⁶ on the opposite side. Only the delimitation in the Bay of Piran has proven to be a controversial bilateral issue which still creates significant tensions and the solution of which is not in sight.

3. Geographical considerations

Shortly after proclaiming their independence in 1991, Croatia and Slovenia began boundary negotiations which were further intensified after the end of the war in Croatia in 1995. Although some parts of the land boundary needed to be adjusted due to ethnic considerations,¹⁷ both states were able to come to a broad agreement as far as their land boundaries were concerned, but the maritime delimitation presented (and still does) a stepping stone in their bilateral relations. The fact which purports this statement is that at the moment, when the maritime dispute between the two countries has reached its peak, not much attention is being given to the remaining disputed areas of the land boundary between the two neighboring countries. When compared to the issue of the delimitation in the Bay of Piran, unresolved boundaries which affect the lives of inhabitants of four small villages in the valley of the Dragonja river seem to lose any importance.

The area of dispute is located in the Adriatic Sea in its northernmost part, namely the Trieste Bay (see Map in the Annex). The bay as a whole consists of the territorial waters of Italy, Croatia and Slovenia. Following the Osimo Agreements, Italy and Yugoslavia established the international boundary between themselves, which was taken over by the two newly independent states in the 1990s. This former maritime boundary divides the Bay of Trieste into roughly two halves, in which there can be no claims regarding any maritime zones other

¹⁴ *Punda/Rudolf*, Pravo mora, p. 225.

¹⁵ *Arnaut*, in: *Caron/Scheiber* (eds.), *Bringing new Law to Ocean Waters*, p. 430.

¹⁶ After the proclamation of independence in May 2006 the territorial sea belongs to Montenegro alone.

¹⁷ *Arnaut* (fn.15), p. 429.

than the territorial sea since the Bay of Trieste is only 24 nautical miles wide at its widest point, leaving no room for the proclamation of e.g. an exclusive economic zone¹⁸.

Due to the fact that both Croatia and Slovenia acknowledge the boundary established by the Osimo Agreements, it is important to note that there is no conflict situation in the Bay of Trieste between Italy and the other two countries who share the coast of the bay. This means that the delimitation issue in the Bay of Trieste remains between the two former Yugoslav states and the inherited Italian-Yugoslav territorial sea boundary.¹⁹

Within the Bay of Trieste locked between the Peninsula of Savudrija (Croatian jurisdiction) and the Peninsula of the town of Piran (Slovenian jurisdiction) lies the Bay of Piran, which has been the main point of disagreement between the governments of Croatia and Slovenia for almost two decades. The coasts of the bay belong to both states, whereby the land boundary at the mouth of the Dragonja river cuts the bay roughly in two comparable parts.

It must be stated that the Bay of Piran's geographical characteristics, namely its depth of only 15 meters at the deepest point and the width of 5 kilometers at the entrance into the bay make it highly ecologically sensitive.²⁰

¹⁸ *Ibid.*, p. 432.

¹⁹ *Ibid.*, p. 430.

²⁰ *Turkalj* (fn. 8), p.20.

C. Peaceful dispute settlement

As early as 1945 the United Nations expressed their dedication to settling international disputes by peaceful means, as expressed in Article 2(3) UN Charter:²¹

All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

This provision was later elaborated within the 1982 Manila Declaration on the Peaceful Settlement of International Disputes²² which entailed a list of the available methods:

States shall seek in good faith and in a spirit of co-operation and early and equitable settlement of their international disputes by any of the following means: negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional arrangements or agencies or other peaceful means of their own choice, including good offices. In seeking such a settlement, the parties shall agree on such peaceful means as may be appropriate to the circumstances and the nature of the dispute.

These means of dispute settlement are usually divided into two subgroups, namely the diplomatic (negotiation, mediation, conciliation and inquiry) and legal means (arbitration and adjudication).

It goes beyond doubt that the peaceful settlement of disputes occupies a central place in international law and relations, along with the efforts to establish institutions and develop techniques with this objective.²³

I. Dispute

A dispute may be defined as a specific disagreement relating to a question of rights or interests in which the parties proceed by way of claims, counter-claims or denials.²⁴

An international dispute does not necessarily need to involve two sovereign states, but it always has consequences on the international plane. As Merrills broadly puts it,²⁵ the international scope of the dispute entails a disagreement between governments, institutions, legal persons or private individuals in different parts of the world.

²¹ www.un.org.

²² Resolution of the General Assembly 37/10 (1982), Article 5 of the Annex.

²³ Evans, International Law, p. 533.

²⁴ Collier/Lowe, Settlement of Disputes in International Law, p.1.

²⁵ Evans (fn. 23), p. 533.

II. Diplomatic means of peaceful dispute settlement

1. Negotiation

Although the Manila Declaration does not list the methods of peaceful dispute settlement according to their order of priority, negotiation is a method most commonly used in practice. To be exact, it is used more often in dealing with international disputes than all the others combined.²⁶

Negotiation can be viewed as fundamental to almost every dispute and can also be exercised along all the other methods being applied to come to an agreement. Needless to say, the most important condition which has to be fulfilled is the acceptance of both parties that there is a disputed issue and willingness to address it. In this case both parties need to be prepared to make concessions, but this can only be the case if they are of the opinion that the benefits of an agreement outweigh the losses.²⁷ It is therefore clear that negotiation might not be of much help to parties which have very conflicting views of the situation.

The involvement of the public in the dispute itself might produce a significant drawback for the continuation of negotiations, as well as influence the political elite, thus politicizing the dispute as such. Even though it might be considered as undemocratic and lacking transparency, silent diplomacy may have more positive effects on the dispute settlement, by excluding the public and avoiding broad coverage of the day-to-day developments. Negotiations have traditionally been conducted by diplomatic representatives, foreign offices, or, if appropriate, by competent authorities of each party, such as representatives of ministries responsible for the matter of the dispute.²⁸

On the other hand, this public dimension of diplomacy is relatively new in international dispute settlement.²⁹ The public can without a doubt play a very significant role in dispute settlement.³⁰ The attention of citizens can produce a (negative) effect on the outcome of the negotiations, or even bring them to an end in the case of issues which are delicate for the society as a whole. Since one of the main characteristics of negotiations is the willingness to lose something in order to gain something else, this public dimension is very often likely to

²⁶ *Ibid.*, p. 535.

²⁷ *Merrills*, *International Dispute Settlement*, p. 8.

²⁸ *Ibid.*, p. 8.

²⁹ *Ibid.*, p. 15.

³⁰ *Shaw* (fn. 1), p. 1015.

jeopardize all attempts at reaching any kind of agreement, for example due to some nationalistic ideas or a simple misunderstanding of what negotiation entails.

This aspect can very easily be observed in the dispute between Croatia and Slovenia, in which the inclusion of the public brought about various disadvantages for the respective governments in their efforts to reach a solution. The dispute has continuously been used by opposition parties and individual politicians as a platform for self-advancement, thereby also contributing to a growing animosity between the states themselves. It is a fact that the vast majority of the population of both countries has very passionate ideas about the dispute, although it is highly questionable in how far they are aware of the significant aspects regarding delimitation in the Bay of Piran itself.

Even though it is clear that disputes between two states have an international character, it can be stated that they are nevertheless confined to their respective national arenas. However, a dispute can as well be transposed to the international arena through summit diplomacy, thus conducting diplomatic exchange in the full attention of the international community.³¹

With the dispute at issue here this transposition happened when the bilateral dispute between Croatia and Slovenia became intertwined with the Croatian negotiations on the accession to the European Union. The EU, most of all the Directorate General for Enlargement, became the platform in which the conflicting parties place arguments which support their views. As Merrills puts it,³² the engagement of third parties within international organizations might contribute to the settlement of the dispute, but it might also have a negative side-effect if the conflicting parties raise stakes and produce unrealistic demands. It can be argued that this has also been the case in the Croatia-Slovenia maritime boundary dispute.

Even if some disadvantages of negotiation have been pointed out in this section, it still remains the most prominent method of dispute settlement. In case of inefficiency or inappropriateness other methods need to be applied, which still does not entail that in that case negotiation should be completely given up on.

a) The progress of negotiations between Croatia and Slovenia

As previously noted, the two former Yugoslav states started the process of land and maritime delimitation immediately after the dissolution of Yugoslavia, with an intensification of negotiations after the end of the war in Croatia in 1995.

³¹ Merrills (fn. 27), p. 10.

³² *Ibid.*, p. 10.

During these negotiations Croatia and Slovenia were able to reach an agreement as far as these aspects are concerned:

- the critical date of reference to the dispute is June 25th 1991
- no state has any territorial demands towards the other
- the maritime boundary has never been established
- the boundary must be drawn with regard to international law.³³

The last aspect has nevertheless proven to be highly problematic due to the differing perspectives of the Croatian and Slovenian governments as regards the “proper” way of drawing maritime boundaries. Both countries have drawn up documents in which they defined their demands regarding the boundary in the bay of Piran.

The Slovenian position³⁴ is most clearly stated in the Memorandum³⁵ on the Piran Bay which was adopted by the Slovenian Parliament on April 7th 1993.³⁶ The fact that the document was adopted by the national parliament as the highest legislative body speaks for its legal power. This is of special importance in the dispute since the Memorandum lays out a frame within which the negotiators have to place their demands to the Croatian side, which basically means that they are bound by the Memorandum.³⁷

Two basic demands have been interpreted as the core of the Memorandum, namely maintaining the unity of the Piran Bay under Slovenian sovereignty and direct access to the high seas.³⁸ These claims are based on the presumption that Slovenia is a geographically disadvantaged state, and that the boundary should be established by taking special circumstances and the principle of equity into account.

The arguments of the Croatian side have been outlined in the Position of the Republic of Croatia in the Delimitation of the Piran Bay and the Connected Issue of the Dragonja River Area in 1993, but more importantly in the Declaration on the Inter-State Relations between the Republic of Croatia and the Republic of Slovenia³⁹ from 1999 which has the same legal power as its Slovenian counterpart since it was adopted by the Croatian National Assembly.

³³ *Turkalj* (fn. 8), p. 3.

³⁴ The positions of the respective states will be considered in detail when discussing the legal aspects of the dispute.

³⁵ The Memorandum is impossible to obtain in its original form in the Slovenian language. The text used here is a translation from the Croatian version of the text found in *Turkalj* (fn. 8), p. 21.

³⁶ *Punda/Rudolf* (fn. 14), p. 252.

³⁷ *Turkalj* (fn. 8) p. 20.

³⁸ *Ibid.*, p. 23.

³⁹ *Avbelj/Černič*, U. PA. J. INT'L L, p. 9.

Three paragraphs of the Declaration deal with the maritime delimitation in the Piran Bay, stating that Croatian representatives are obliged to insist on the rule of equidistance expressed in Article 15 of the United Nations Convention on the Law of the Sea, since both countries are party to the Convention.

The Croatian Declaration explicitly states that the government is authorized to seek an advisory opinion “from the International Court for the Law of the Sea in Hamburg or another appropriate institution”.⁴⁰

A further statement is that as long the boundary is not ultimately settled, both countries should abstain from exercising sovereign authority beyond the equidistance line.

In the meantime, the Agreement on Trans-Border Commerce and Cooperation which was signed by the two countries in April 1997 should provide a good basis for an intense and constructive cooperation of all bodies of the neighboring countries, most of all taking into account the well-being of the population living in the disputed area.⁴¹

The negotiations which followed after the proclamation of the respective positions of the Croatian and Slovenian governments led to an agreement between the Prime Ministers Ivica Račan and Janez Drnovšek in July 2001. The delimitation agreement was much closer to Slovenia’s position, since about 80% of the Bay was to be proclaimed Slovenian territorial sea. One of the most important provisions in the agreement is the creation of a high seas corridor between Slovenia’s territorial sea and the currently established high seas, which would mean that between the territorial seas of Slovenia and Italy there would remain a triangle of Croatian territorial waters,⁴² thus enabling Croatia to maintain its boundary with Italy under the Osimo Agreements.

After the Agreement was signed by the Prime Ministers, consent by the national parliaments was needed in order to make it legally binding. The Slovenian Parliament ratified it in accordance with the constitutional requirements.⁴³ However, due to the fact that the Croatian parliament failed to ratify it, it did not gain formal legal status.

The reason for the failed ratification was most of all the predominant opinion of the public and the political elite that Croatia was ceding parts of its own territory in order to gain in some other political and economic aspects. Prime Minister Račan pointed out that Slovenia is

⁴⁰ *Punda/Rudolf* (fn. 14), p. 250.

⁴¹ *Sporazum o pograničnom prometu i suradnji*, in: *Turkalj* (fn. 8), p. 25.

⁴² *Arnaut* (fn. 15), p. 436.

⁴³ *Avbelj/Černič* (fn. 39), p. 12.

situated on the road from Croatia to Europe, literally and figuratively.⁴⁴ Solving the boundary dispute with Slovenia was presented as a necessary condition in order for Croatia to join NATO and the EU. It has however been shown that this was not a persuasive argument since Croatia joined the NATO in April 2009.

The Agreement provoked a wave of negative sentiments in the public, which is precisely one of the disadvantages of negotiations which are not conducted by way of silent diplomacy. The broad media coverage of the settlement and the reactions of the public ensured that the Agreement does not pass through ratification, and it was also reported that the Parliament does not even consider discussing the provisions of the Agreement.

The prevalent opinion in both countries, most of all due to the politization of the dispute and the ever-growing involvement of the citizens, was that each one of them is entitled to what it demands. Even today, eight years after the signing of the Agreement, both countries have not moved forward and they still persist on their original provisions.

It can be concluded that the positions of both governments have become so interconnected with party beliefs and the national sentiment as such that every government, regardless of which party or which country, would take serious political risk if it were to deviate from the provisions of the Slovenian Memorandum or the Croatian Declaration.

Even though it provoked such powerful reactions in both countries, and is still the stepping stone in the delimitation negotiations, the Agreement itself is very contestable in nature. Its written form was never officially presented to the public, and is today very hard to obtain.⁴⁵ Nevertheless, the content of the Agreement, as far as its main stipulations are concerned, are by now so well established that there is no doubt which specific provisions it entailed.

It is clear that the process of settling the boundary dispute should be based on the principles of mutual respect, mutual benefit and good faith.⁴⁶ The previous discussion of the different stages of the negotiations between Croatia and Slovenia has clearly shown that these principles have more than once been violated. Concluding a written agreement which was not likely to go through ratification is obviously disrespecting the principle of good faith. Using the dispute as a means of self-advancement in the political sphere entails putting one's own

⁴⁴ *Arnaut* (fn. 15), p. 439.

⁴⁵ *Arnaut* mentions that the Agreement is not to be found in any library or electronic source, but this author has been able to obtain a copy from the Ministry of Foreign Affairs of the Republic of Slovenia. *Arnaut* (fn. 15), p. 429.

⁴⁶ *Kunič*, Border Question, p. 2.

personal benefit in front of the benefit of the whole population. One additional by-product of the negotiations that we have witnessed is unfortunately the deterioration of the opinion of the citizens of one country about the citizens of the other, which was fueled by the negative and disrespectful statements of politicians on both sides of the boundary.

Given these facts, it becomes obvious that the only possible way to reach a solution to the boundary dispute, either through bilateral channels or through a decision to refer the case to an international judicial body, is to cleanse the dispute from its nationalist and party-political connotations and focus exclusively on the benefit of both countries.

2. Conciliation

The function of the commissions which are established by the conflicting parties with the intention of solving a dispute is to investigate the implications of the dispute and suggest a possible settlement, which does not have the binding character of an award or judgment.⁴⁷ The precise tasks that a conciliation commission is entrusted with depend on the agreement between the parties setting up the commission.

It can be said that conciliation is quite eclectic in nature, since it devises traits which are to be found in other methods of peaceful dispute settlement. The fact that this kind of intervention is to some extent institutionalized through the set up of a commission makes it comparable to arbitration, but it is nevertheless not considered to be a judicial method of dispute settlement.

One of the distinctive features of conciliation is that the commission established by the parties does not have the competence to produce a decision which would be binding on the parties, but is able to reach an agreement in the form of a proposal. This means that even in cases which are foremost legal in nature, the final report does not resemble an arbitral award as such.⁴⁸

a) Conciliation in the dispute between Croatia and Slovenia

Conciliation can be considered as a modest method of peaceful dispute settlement due to its relatively rare application.⁴⁹ It has been observed that most of the disputes in which conciliation commissions have been employed have had a strong legal aspect, which speaks

⁴⁷ *Collier/Lowe* (fn. 24), p. 29.

⁴⁸ *Merrills* (fn. 27), p. 73.

⁴⁹ *Merrills* mentions some 20 cases in the last 80 years. *Ibid.*, p. 84.

for the fact that most of these commissions have consisted of lawyers, rather than diplomats, which often play a key role in mediation.

The Croatia-Slovenia commission of legal experts was established in the end of 2007 after the Prime Ministers of both countries agreed in August of that year that the dispute over the maritime and land boundaries should be submitted for adjudication to the International Court of Justice in The Hague. The primary task of the commission was to establish which areas of land and sea boundaries were disputed in case the dispute were to be solved by judicial means.

The fourth meeting of the commission of legal experts which was held on January 28th 2009 would presumably be the last, but unfortunately not because its work has been very successful. It can rather be stated that the commission has not been able to depart from the views expressed by Croatia and Slovenia in the Declaration and the Memorandum respectively.

Even though the commission was established after both Prime Ministers expressed their readiness to refer the case to the ICJ, no judicial body has been specified, which means that the most important objective of the conciliation commission has failed to be fulfilled.

Legal experts from both states have once again confirmed that the critical date of reference for the dispute is June 25th 1991, which means that no documents or actions which followed after that date should be taken into account when deciding on the final form of the boundary. However, it would be an overstatement to attach much significance to this consensus since this has been agreed upon by the governments more than ten years ago.

In the most crucial issues which have not been solved during the negotiations the conciliation commission also failed to produce any results. Slovenia still insists on the application of the legal principle of *ex aequo et bono*, i.e. the inclusion of the notion of equity, whereas Croatia insists on a strict application of international law.

The legal experts have also not been able to establish the scope of the dispute in the case of referral to the ICJ. This means that questions remain as to whether the proceedings should include only the territorial sea boundary or the continental shelf and exclusive economic zones as well. A final opinion as to which land boundary areas are disputed and if they should as well be referred to a judicial body together with the maritime boundary dispute has as well not yet been given.

3. Mediation

The last diplomatic method of peaceful dispute settlement which can be put into context of solving the border dispute between Croatia and Slovenia is mediation. Mediation can be seen as a continuation of negotiation, however involving a third party. Its basic difference from other diplomatic methods is that the mediator usually makes informal proposals based on the input by the disputed parties, rather than perform independent investigations as is the case in inquiry⁵⁰ and conciliation.⁵¹

Before discussing mediation, we have to mention “good offices”. This refers to a third party intervention which however does not involve an authorized and active participant who is expected to develop his own proposals and transmit them to the disputed parties, which would be the description of the role of the mediator.⁵² If the third party is simply serving as a channel of communication, thus encouraging the parties not to give up on negotiations, then we can describe this role as one of “good offices”.

Mediation clearly devises some advantages with regard to negotiations. The inclusion of a third party provides a possibility of a clear and objective solution of the dispute, whereas the conflicted parties still retain control of the dispute by working closely together with the mediator. Another advantage for the parties is the fact that the mediator’s suggestions are not binding, which means that they can be rejected if the parties regard them as inappropriate.

Mediation can only be embarked on if the parties of the dispute give their consent, but the incentive to employ mediation can also come from the outside. This means that third parties can propose mediation, or propose to act as mediators, even though they are not actively involved.

It is clear that it is not only individuals who can act as mediators, but also international organizations or states.⁵³ A good example of this is the involvement of the international community after the dissolution of Yugoslavia, due to peace and security issues as well as humanitarian concerns. We have already mentioned that the European Community acted as a

⁵⁰ Inquiry is the last diplomatic method of peaceful dispute settlement, referring to a particular type of international tribunal known as the commission of inquiry and introduced by the 1899 Hague Convention. As the name itself explains, it focuses on fact-finding procedures.

⁵¹ *Merrills* (fn. 27), p. 27.

⁵² *Collier/Lowe* (fn. 24), p. 27.

⁵³ *Merrills* (fn. 27), p. 30.

mediator through the Badinter commission on the future borders of the Republics, but there have also been other mediators such as the United Nations and the United States.

All the advantages of mediation notwithstanding, it will not be successful if the parties are not dedicated to reaching a solution. In this case we can equate mediation with negotiation, given the fact that the prerequisite for successful mediation lies in the readiness of the parties to make concessions. If one or both parties are convinced that they have legal basis to win the dispute without making concessions, even a very respected and experienced international expert will not be able to put forward new proposals, which might satisfy both parties to some extent.

Needless to say, domestic politics can also influence the willingness to turn to mediation,⁵⁴ as was discussed in the chapter on negotiation. Deviating from a position which has become widely accepted in the population of a state in conflict can present a risk many governments would not be willing to take.

a) The course of mediation in the Croatia-Slovenia dispute

The stage in the boundary dispute between Croatia and Slovenia in which mediation was applied can be exclusively discussed with regard to the European Union. This is so because the dispute was transferred from the bilateral sphere to the EU level when the accession negotiations became intertwined with the status of the negotiations between the two conflicted countries. The Enlargement Commissioner Olli Rehn admitted that from initially being a bilateral issue, the boundary dispute has become a European problem.⁵⁵

In the past few years, Slovenia has been one of Croatia's biggest supporters on its way to the European Union, but was also clearly expressing that it might block the accession in case the boundary dispute does not reach its solution. These warnings remained unfulfilled until December 19th 2008, when Slovenia made a decisive move by blocking the opening of eleven chapters of the Croatian negotiating documents at the 7th Intergovernmental Conference on Accession in Brussels.

The reason for this act was the claim on the side of the Slovenian government that Croatia was taking steps which had the effect of altering the borders. The connection with the accession negotiations lay in the fact that Croatia presented documents which included

⁵⁴ *Ibid.*, p. 42.

⁵⁵ *EUobserver*, EU proposes mediation group for Croatia-Slovenia border dispute, 23.1.2009, <http://euobserver.com/9/27465>.

references to legal acts dating from after the critical date in 1991, which were in Slovenian view prejudging the border. Croatia still insists that this was not the case.

Following the blockade of the negotiations, the DG for Enlargement headed by Commissioner Rehn started putting enormous efforts into finding a solution which would be acceptable for both sides. Unfortunately, until this moment, these efforts have not been successful and there have been no developments in opening the accession negotiation chapters, since another Intergovernmental Conference which was due in April 2009 was cancelled.

One of the first proposals to solve the border dispute was presented during Rehn's visit to Croatia and Slovenia on January 22nd and 23rd 2009. The European Commission suggested forming a mediation group under the chairmanship of Marti Ahtisaari, the former President of Finland and Nobel Peace Prize winner. Along with the high-ranking diplomat dedicated to solving international conflicts over more than three decades, the mediation group was supposed to consist of another two members, namely judge Robert Badinter, who was already mentioned when we discussed the EC Conference on Yugoslavia, and another member whose identity has not been revealed.

As we have already noted, mediation can be employed only if the conflicting parties give their consent, which never happened. Slovenia was cautious from the very beginning and did not express either a positive or a negative opinion of the suggestion. Croatia, on the other hand, at first spoke out in favor of the move, seeing it as an initiative which would help unblock the accession negotiations. However, in the course of only a few days, the Prime Minister publicly stressed that he still insists on referring the dispute to the International Court of Justice.

After the failed attempt to settle the dispute through mediation, the Commission continued to work on other proposals. The most significant one was presented to both governments at the beginning of May 2009, and included an arbitration agreement⁵⁶ which was supposed to be signed by both countries, but this attempt failed as well. The Croatian government immediately expressed its willingness to refer the dispute to an arbitration committee, but a number of objections from the Slovenian side and the proposed amendments to the agreement will most likely demand the agreement to be drafted *de novo*.

⁵⁶ Arbitration and its implications in the given dispute will be discussed in the following chapter.

b) Is the EU playing the role of a mediator?

It can be argued here that the EU involvement in the Croatia-Slovenia border dispute started in the form of “good offices”, which means that it presented a platform or a channel which was supposed to mitigate negotiations. However, due to the fact that the dispute has been given ever more importance in EU affairs, the DG for enlargement has taken on a much bigger responsibility for reaching a solution to the dispute, since it directly affects the envisaged further enlargement of the Union.

Even though it has been stated that consent is necessary in order to conduct mediation, there is no neat dividing line between “good offices”, conciliation and mediation. There are indeed certain traits characterizing each of these methods of peaceful dispute settlement, but sometimes the borders between them can get blurred.

I would argue that the European Union has in this case surpassed its role of simply offering a channel of communication to the two conflicting countries and taken on a role of a key player. Even though the Commission proposed establishing a mediation group, it is actually precisely the Commission acting as a mediator. As we have seen, the mediator can put forward proposals, search for a solution acceptable for both parties, whereby its decisions are not binding. The previous discussion has pointed out that all of this stands true for the efforts of the Commission in solving the dispute, regardless of the fact that mediation in this case was not formally decided on.

Although the EU can be seen as a powerful player which can to some extent exert influence on the behavior of third parties, it has to be noted that this has not been the case in the Croatia-Slovenia issue. The EU can most certainly play a significant role on the international plane following the principle of good governance, but it has not been able to exploit its strength in this particular issue. The reason for this might be found in the fact that this is an issue which lies at the very core of national sovereignty, and cannot easily be put into the European perspective. Since the competences regarding accession are still exclusively within the realm of the Member States, the Commission can only be persistent in developing new proposals, one of which might actually bring the conflicting states to agree.

III. Legal means of peaceful dispute settlement

The methods of peaceful dispute settlement discussed in the previous chapters devise one distinctive feature which sets them apart from the legal methods, namely the nature of the final decision. As previously noted, parties using diplomatic means of settlement exercise a significant amount of control over their respective disputes and have the possibility to reject the decision if they deem it unacceptable. On the other hand, arbitration and judicial settlement imply the award of a decision which is legally binding on both parties.

1. Arbitration

Arbitration as a method of peaceful dispute settlement has been developing for over 200 years,⁵⁷ and has had the development of permanent international judicial bodies as a result. The feature which distinguishes arbitration from judicial settlement is the fact that parties themselves establish a tribunal which is awarded with the competence to settle the dispute, usually on the basis of international law.

States can approach the setting up of an *ad hoc* tribunal in different ways. Two most common ways are the inclusion of provisions in existing treaties which entail referring future disputes to arbitration, or negotiating a *compromis* after the dispute has already arisen.⁵⁸ These procedures of referring disputes to be solved by legal methods of dispute settlement also stand when judicial settlement is in question.

Arbitration presents the parties with the possibility to obtain a decision based on legal considerations from an arbiter or arbiters of their own choice, thus taking into account the nominations of judges by the other party.⁵⁹ This aspect of selecting individuals who would be sitting in the arbitral tribunal is of significance for the parties, since it raises the level of confidence in the appropriateness of the award to be given by third parties.

The most common way of conducting arbitration is setting up a commission which consists of an equal number of national arbiters (usually two or four) and a neutral member which both parties agree on. The practice of referring the dispute to a head of a foreign state has been quite rare in modern times, and one further option is to refer the dispute to a qualified individual. In this case we need to mention the Permanent Court of Arbitration, an institution

⁵⁷ *Merrills* mentions The Jay Treaty between Great Britain and the United State sin 1794 as the first example of arbitration, in: *Evans* (fn. 23), p. 542.

⁵⁸ *Merrills* (fn. 27), p .88.

⁵⁹ *Jennings*, in: *Nisuke, McWhinney, Rüdiger* (eds.), *Liber Amicorum*, p. 895.

with its own staff and premises, established by the Hague Convention in 1899 in order to facilitate arbitration.⁶⁰

Another important advantage of arbitration is the fact that parties themselves decide on the scope of the dispute referred to the tribunal, as well as criteria on which the decision should be made. We can thus claim that *ad hoc* arbitration is a creature of the agreement between the parties and its existence is dependent upon that agreement.⁶¹ This entails that the parties can lay down principles, i.e. procedural arrangements to be applied when considering the dispute, such as adhering strictly to international law, municipal law or taking into account only the principle *ex aequo et bono*, which has for instance proved to be a technique used very often in arbitrations dealing with boundary and territorial disputes.⁶² In any case, an arbitration tribunal must always respect the wishes of the parties in question, i.e. not exceed the limits of authority it was entrusted with.

As previously noted, precisely the aspect of defining the scope and the basis on which to solve the dispute was one of the tasks which the Croatia-Slovenia commission of legal experts was entrusted with during the stage of conciliation, namely establishing the basis for future arbitration. Had the commission been able to come to an understanding in this issue, a provision would presumably have been incorporated into the *compromis* referring the dispute to an arbitral tribunal, thus specifying the grounds on which the solution of the dispute would have to be considered. The example of the boundary dispute between Croatia and Slovenia clearly shows why negotiating the framing of the question to be referred to the tribunal, thus arriving at a mutually acceptable formulation of the *compromis*, can be very difficult to achieve.

We have already stated that the legal methods of dispute settlement have binding decisions as a result. This however does not mean that they also have to be final, since a possibility always exists that the parties might take further proceedings in order to interpret or revise the decision.⁶³ The power to do so is predominantly established in a provision of the *compromis* itself, thus limiting the remedies which can be applied after the award has been given. In extreme cases, the parties can also resort to nullification of the award if they are in the position to prove that the conditions under which arbitration should have been conducted have

⁶⁰ *Merrills* (fn. 27), p. 90.

⁶¹ *Jennings* (fn. 59), p. 894.

⁶² *Merrills* (fn. 27), p. 101.

⁶³ *Ibid.*, p. 105.

not been met, such as failing to apply the relevant legal principles, or producing an inadequate and unreasoned award.

Although the enforcement of the decision might be seen as a limitation of arbitration, it does not happen very often that parties question the appropriateness of the decision or fail to apply it.⁶⁴ States as parties to arbitration are usually aware of the political consequences which their failure to implement an arbitral award would have on the international plane. The fact that the decisions of the tribunals are usually obeyed also has a lot to do with the willingness of states to finally end the dispute, which is being shown already by producing the *compromis*. One can thus claim that once states have agreed to refer the dispute to arbitration, it is not very likely that they will disregard the decision.

2. Judicial settlement

Under judicial peaceful dispute settlement we understand reference of disputes to permanent institutions which produce a legally binding decision. As already noted, judicial settlement developed from arbitration, thus devising many similarities with the latter method. Whereas there are many courts with specialized jurisdiction, such as the International Criminal Court, the European Court of Justice, the International Tribunal for the Law of the Sea or the European Court of Human Rights, the International Court of Justice in The Hague is the only court with general jurisdiction, which follows from Article 36(1) of its Statute:

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

a) The International Court of Justice

Brownlie mentions several reasons for referring disputes to the ICJ,⁶⁵ among others to assist negotiations, to obtain a final decision to solve the dispute, to remove a threat to public order or to gain international political advantage by avoiding being forced to compromise in the course of negotiations. However, it stands without doubt that the primary purpose of taking cases to the ICJ is to achieve closure of disputes, whereby it is most important to point to the principle of consent, which means that there is no jurisdiction unless all states parties to the dispute have agreed on the issue.⁶⁶ In this aspect there are no significant differences between arbitration and judicial settlement, since the agreement to refer the dispute to the ICJ can be

⁶⁴ *Ibid.*, p. 118.

⁶⁵ Brownlie, in: Nisuke, McWhinney, Rüdiger (eds.), *Liber Amicorum*, p. 831.

⁶⁶ Merrills (fn. 27), p. 122.

compared to the arbitral *compromis*, and it is the most commonly used method of consenting to the Court's jurisdiction.

If we were to compare the ICJ and *ad hoc* tribunals, the first aspects that come to mind are of technical nature, such as the number of judges, the costs, and organizational issues. Arbitral tribunals certainly prove more advantageous for states when it comes to choosing the arbiters, since this means they have the possibility to opt for those who might share their opinion, e.g. arbiters who are insisting on legal principles rather than taking equitable principles into account. On the other hand, the ICJ is a long-standing institution with highly developed machinery, which means that referring dispute to the ICJ rather than an arbitral tribunal definitely lessens the burden of the states, both regarding the organization of the proceedings as well as the costs, which are included in the budget of the United Nations.

It has been argued often in the literature that the ICJ, or any other permanently established court, would strictly adhere to applying the principles of international law, whereas *ad hoc* tribunals might be more inclined to be innovative and try to find a compromise, not necessarily on legal bases.⁶⁷ However, due to the fact that states produce an agreement prior to referral of the dispute to arbitration, these tribunals are very limited as to the principles that are to be applied. As discussed in the previous chapter, if the provisions of the agreement are not respected by the tribunal, the final decision may be nullified.

This kind of control is not present to such extent in permanent courts, and the ICJ has indeed showed that it can be capable of developing the law if an opportunity presented itself. This has certainly proven to be true for the European Court of Justice as well.

b) Specialized international courts

The methods of dispute settlement which have been discussed so far are accessible to all states regarding all types of disputes. Along with the development of international relations came as well the need to establish permanent courts which would deal with disputes in specific areas. Since we are discussing a maritime boundary dispute between Croatia and Slovenia, two courts may be of interest in this context, namely the International Tribunal for the Law of the Sea and the European Court of Justice.

⁶⁷ Jennings, in: Nisuke, McWhinney, Rüdiger (eds.), *Liber Amicorum*, p. 894.

aa) International Tribunal for the Law of the Sea

The tribunal with a seat in Hamburg was created by Annex VI of the Law of the Sea Convention in 1982, and embraces in its jurisdiction the whole Convention, thus encompassing the whole of the law of the sea.⁶⁸ The idea behind the establishment of the institution was that specialized judicial bodies can deal with particular disputes better than general courts.

The procedure of the Tribunal is very similar to that of the ICJ. Decisions of the ITLOS and its chambers are binding only on the parties to the case and only in respect of that dispute.⁶⁹

Since the ITLOS started exercising its jurisdiction in maritime issues on October 18 1996, there have been only 15 cases,⁷⁰ most of them dealing with the prompt release of vessels and crews, marine environment, freedom of navigation, conservation of fish stocks and coastal state jurisdiction in its maritime zones. No case concerning drawing maritime boundaries has been dealt with by the Tribunal until now.⁷¹

Articles 279-299 UNCLOS deal with dispute settlement, thus offering the parties various judicial bodies and methods on which to solve their disputes regarding the interpretation and the application of the Convention. Article 287 lists the ICJ, ITLOS, arbitral tribunal or specialized arbitral tribunal as appropriate for maritime disputes. This Article also provides that States may choose one or more means of dispute settlement by producing a written statement. This right of granting compulsory jurisdiction was exercised by Croatia on November 4th 1999, as the government deposited a notification that in cases dealing with interpretation and application of the Convention, the Tribunal in Hamburg is to be the first choice, followed by the Court of Justice in The Hague.⁷² In addition, similarly to the procedure of the ICJ, there is as well the possibility to sign a *compromis* once the dispute has arisen.

In the case that the States parties to the dispute have not made the same choice in their declarations, compulsory jurisdiction can be granted solely to an arbitral tribunal.⁷³ It also

⁶⁸ Treves, The law of the sea tribunal, p. 421.

⁶⁹ Collier/Lowe (fn. 24), p. 88.

⁷⁰ www.itlos.org.

⁷¹ The International Court of Justice has adjudicated fifteen maritime boundary dispute cases.

⁷² <http://treaties.un.org/doc/Treaties/2005/10/20051007%2005-26%20AM/Related%20Documents/CN.1002.1999-Eng.pdf>.

⁷³ Treves (fn. 68), p. 430.

needs to be mentioned that Slovenia has so far not issued any declaration of the sort, which means that according to the UNCLOS, arbitration is the only possible method.

bb) European Court of Justice

The question whether the European Court of Justice has competence in a specific area has been one of the most debatable issues since the founding of the European Community. We can refer to this question for the purpose of our discussion as well, even though at present not both States are Members of the European Union. Thus we have to presuppose that the issue might arise once Croatia joins the EU, however without previously solving the boundary dispute with Slovenia. If this happens, one can imagine that there might be those who would raise their voice in favor of ECJ competence to deal with the dispute, rather than ICJ or ITLOS.

Before we proceed to discuss the implications of such a scenario, we have to take the EC maritime policy into account.

(1) EC maritime policy

When the European Economic Community was established, not much importance was given to the sea, apart from the conservation and management of sea fishing resources which belonged to the exclusive competences of the Community from the very beginning, since this was considered as a part of agriculture. In the following decades, we have witnessed many developments in the EC maritime policy, among others the introduction of environmental protection into the EC Treaty (Article 6), which led to shared competences in the fields of the protection and preservation of the marine environment as well.

The Community has shown its dedication to maritime issues through the adoption of a significant number of directives and regulations, but as well through becoming a member of several international conventions. Most importantly for the present discussion, the European Community signed the United Nations Convention on the Law of the Sea in 1984. Since Article 2 of Annex IX UNCLOS provides that international organizations need to produce a declaration specifying the matters governed by the Convention in respect of which competence has been transferred to the organization by its member states, the Community stated that it has exclusive competence regarding the conservation and management of sea fishing resources.⁷⁴

⁷⁴ *Treves*, The law of the Sea, p. 559.

In June 2006 the Commission published a Green Paper with the title: “Towards a future Maritime policy for the Union. A European Vision for the oceans and seas.”⁷⁵ The new maritime policy is supposed to incorporate not only strictly environmental considerations, but also social and economic ones.⁷⁶

The European Union is bound by the international public law of the sea, whereby the UNCLOS as the “Constitution for the seas” presents the most important frame. The Convention does not only establish a regime for the protection of the seas, but it also encompasses nearly all aspects of maritime law.⁷⁷

Due to the fact that Community law is to be seen as flowing from an autonomous source of law, which has been particularly established in the *Costa/ENEL* case (Case 6/64 [1964] ECR 585), it cannot be said that it embodies either national or international law. Because of this *sui generis* legal order, we can talk about European maritime law, which encompasses the entirety of primary and secondary EC norms dealing with legal aspects of the sea.⁷⁸

Since maritime issues are a matter of fundamental importance for the Community, it comes as a surprise that the primary law of the Community does not explicitly provide a central departure point for its maritime law orientation.⁷⁹ So far, the Community law has addressed the maritime challenges only partially and within the scope of various policy areas. Nevertheless, the EC Treaty has without doubt proven to be appropriate to deal with the increasing importance of maritime issues, most of all through the possibility of bringing regulations related to the seas under broad and unspecific norms of competence.⁸⁰ The EC is thus theoretically able to create appropriate legal regimes for all aspects of its sea.⁸¹

(2) ECJ competence in boundary disputes

As we have seen in the previous discussion, the EC devises a strong maritime component which we can expect to develop even further in the following years. By becoming a signatory to the UNCLOS in 1984 the EC accepted its provisions regulating all aspects of the sea, and is thus bound by it. Nevertheless, since it was necessary for the EC as an international

⁷⁵ Commission Green Paper: Towards a future Maritime Policy for the Union: a European vision for the oceans and seas , COM (2006) 275final.

⁷⁶ *Rudolph*, in: *Ehlers/Lagoni* (eds.), *Maritime Policy of the European Union*, p. 12.

⁷⁷ *Ibid.*, p. 19.

⁷⁸ *Vitzthum*, *Handbuch des Seerechts*, p. 8.

⁷⁹ *Ibid.*, p. 56.

⁸⁰ *Ibid.*, p. 57.

⁸¹ *Ibid.*, p. 43.

organization to deposit a declaration stating its competences, it was obliged to specify certain areas in which powers were transferred to it by the Member States.

It follows from this that there is still a relatively clear division as to the areas of competence in maritime issues between the EC and the Member States. The fact that the EC signed the Convention does not make it automatically competent of all aspects covered by the provisions of the UNCLOS.

Our statement can be brought into connection with other issues of EC competence. The opinion presented here was also purported by the ECJ itself in its opinion on the WTO Agreement.⁸² The Court held that the fact that the EC is a Member of the WTO does not imply that the Common Commercial Policy encompasses GATS and TRIPS as well and that these areas cannot be brought within the scope of Article 133 TEC. The fact that these areas are closely linked still does not entail that the competence can be considered to be exclusive to the Community.

We can therefore argue that, even in this theoretical case we have presented here, the ECJ would not be in the position to play the role of the ICJ or arbitral tribunal. Disputes in territorial and maritime delimitation have a very strong sovereignty component, and they undoubtedly still belong to the realm of Member States' competence which they are not very likely to confer to the Community.

Even though the European Union has proven to be a very important player in the dispute between Croatia and Slovenia, its influence is nevertheless confined to the diplomatic means of peaceful dispute settlement. When it comes to the legal means, disputes of this kind are to be solved elsewhere.

3. EU and the way to arbitration

As discussed above, dealing with the boundary dispute between Croatia and Slovenia on the European level has a strong diplomatic component, and although we have argued that it is not reasonable to say that it would have competence to provide a legal solution to the dispute, the Union can still act as a catalyst as far as legal settlement is concerned. By this we mean the efforts of the DG for Enlargement regarding the proposal for arbitration⁸³ put forward in the beginning of May 2009.

⁸² Opinion 1/94 [1994] ECR 5267.

⁸³ <http://www.vecernji.hr/newsroom/news/croatia/3288103/index.do>.

The proposal was not published by the Commission in its original form, but was nevertheless possible to obtain in Croatian and Slovenian media. It foresees an arbitration tribunal consisting of five members, which would decide on both the maritime and land boundary, as well as on the contact of the Slovenian territorial sea with the high seas. The first issue would be decided on solely on the basis of international law, whereas considerations of equity would be included when deciding on the second issue. As previously mentioned, no documents or legal acts after the critical date of June 25th 1991 would be taken into account. The agreement also indicates that by the establishment of the tribunal, all obstacles to the accession negotiations with Croatia shall be removed.

After government consultations, Croatia gave a positive answer to the Commission's proposal, whereas Slovenia expressed its dissatisfaction with the entirety of the provisions of the agreement. The fact that the principle of equity was disregarded in the provision on delimitation was deemed unacceptable, so that Slovenian legal experts proposed certain amendments, the details of which are not known.

One month after Commissioner Rehn presented his proposal regarding arbitration, there has still not been any progress as far as consent by both States is concerned. The Croatian Prime Minister Sanader expressed the view that an amended arbitration agreement would not be accepted, which might be taken as an indicator that this proposal will as well fail to provide a final settlement of the dispute.

4. The possible outcome of legal dispute settlement

We have already discussed the possible conflict situations regarding the delimitation of maritime boundaries. In order to avoid further disputes regarding the exercise of sovereignty, jurisdiction and the right to exploit resources, it is necessary to establish boundaries between various maritime zones in case they overlap.⁸⁴ Even after the comprehensive legal regime under the Convention on the Law of the Sea has been introduced, maritime boundary delimitation still remains one of the most prolific sources of international disputes.⁸⁵

In the maritime dispute between Croatia and Slovenia, the maritime zone in question is the territorial sea only, which has proven to be the less contentious case when compared to delimitation regarding exclusive economic zones or the continental shelf. Nevertheless, this

⁸⁴ *Churchill/Lowe*, *The Law of the Sea*, p. 181.

⁸⁵ *Alexiadis*, *The Search for a Panacea*, p. 1.

issue has shown that in some cases bilateral treaties cannot easily be concluded due to differing views as far as applicable legal principles are concerned.

In the following discussion we will try to focus on the dispute itself and its legal implications, based on legal provisions of the UNCLOS and customary law. Since there is a significant body of case law, predominantly stemming from the ICJ, it is not completely impossible to predict the possible outcome if the dispute were to be referred either to an arbitral tribunal or to the International Court of Justice.

If there are uniform patterns of treating certain features and problems, these could amount to at least indications of the solution that would be acceptable in the realm of international law, even if they obviously do not produce binding legal rules.⁸⁶

a) The principle of equidistance

Territorial sea delimitations between opposite states are predominantly conducted following the median line, which is equidistant from the nearest points of the opposing states' shores. If the dispute arises between states which are adjacent to each other, the median line is not a method being exclusively employed, so that we can also have boundaries drawn according to the line of latitude passing through the point where the land boundary meets the sea.⁸⁷

The principle of equidistance is explicitly mentioned in Article 15 UNCLOS:

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.

The ICJ itself produced an opinion regarding the relevance of the equidistance line by stating in the *North Sea Continental Shelf* case⁸⁸ that the equidistance method is by no means a mandatory rule of customary international law, but maintained that the principle is particularly convenient, especially in cases of delimitation between opposite states.⁸⁹ In any

⁸⁶ Mendelson, in: Nisuke, McWhinney, Rüdiger (eds.), *Liber Amicorum*, p. 1078.

⁸⁷ Churchill/Lowe (fn. 84), p. 182.

⁸⁸ ICJ judgment, 1969, Art. 85, p. 47.

⁸⁹ Kwiatkowska, in: *Caminos* (ed.), *Law of the Sea*, p. 254.

case, the equidistance principle has tended to predominate as the basis of delimitation in the case of territorial sea and continental shelf boundary agreements.⁹⁰

Croatia's position expressed in the Declaration maintains that the principle of equidistance should be applied, due to the fact that both states are parties to the Law of the Sea Convention. This would mean that the boundary would be drawn from the mouth of the river Dragonja in the Piran bay until the point where the boundary would meet the Italian territorial sea. In this case, by using the method of equidistance, Slovenian territorial sea would be completely surrounded by Italian and Croatian territorial seas.⁹¹

Slovenia, on the other hand, categorically rejects the application of the principle of equidistance, by relying on the formulation in Article 15 stating that special circumstances and historic title need to be considered. The introduction of the concept of special circumstances in both Articles 12 and 15 UNCLOS shows that considerations of equity are present in the conventional regime applicable to the delimitation of the territorial sea.⁹²

b) Historic title

The term "special circumstances" has never been precisely defined, other than mentioning issues such as coast configuration, archipelagos or historic title. The concept was included into Article 15 UNCLOS in order to avoid a mechanical application of the equidistance line which might lead to an unreasonable and unfair judicial award.⁹³

The Slovenian Memorandum considers the Bay to be a *sui generis* case, which calls for considerations regarding special circumstances. The historic title contention is based on the claim that Slovenia exercised jurisdiction in the Piran Bay prior and at the moment of the dissolution of Yugoslavia⁹⁴, that the Slovenian side of the Bay is heavily populated and that it has exercised economic rights in the Bay,⁹⁵ thus demanding maintaining the unity of the Piran bay under Slovenian jurisdiction.

Historic bays are bays of water which are treated by the coastal state as internal⁹⁶ due to historic rights supported by general acquiescence rather than any specific principle of

⁹⁰ *Churchill/Lowe* (fn. 84), p. 197.

⁹¹ *Arnaut*, (fn. 15), p. 432.

⁹² *UN*, Handbook on the Delimitation, p. 13.

⁹³ *Turkalj* (fn. 8), p. 12.

⁹⁴ *Avbelj/Černič* (fn. 39), p. 6.

⁹⁵ *Arnaut* (fn. 15), p. 433.

⁹⁶ This would mean that the breadth of the territorial sea is not measured from the coast inside of the bay, but from the line drawn at the entrance of the bay.

international law. This concept is not very problematic as far as single-state bays are concerned, but complications may arise in pluri-state bays, since there are no codified general rules for dealing with those.⁹⁷ In the ICJ case *Land, Island and Maritime Frontier Dispute*⁹⁸, three states shared a bay which constituted historic waters, but these were deemed subject to co-ownership or condominium of the three coastal states.⁹⁹ In addition to this judgment, we have to note here that there is no example of a plurinational bay whose entire sea surface belongs to one state only.¹⁰⁰

On the other hand, there is evidence that both states exercised their jurisdiction over the bay in the times of Yugoslavia, although it appears that Slovenian police exercised control over the entire Bay in the last years before the dissolution of the country.¹⁰¹ If we take the principle of *uti possidetis facto* into account, this argument on the Slovenian side might support the idea that the unity of the bay needs to be preserved. It is as well evident that the Slovenian side of the Bay has always been intensely populated, which cannot be said for the Croatian side.

The answers as to the validity of the claim to award the Bay of Piran with a historic title can also be found in the study on the juridical regime of historic waters, issued by the UN.¹⁰² As well as mentioning criteria according to which a state can claim title to a bay on historic grounds, the document deems it highly improbable that a historic title might be awarded to only one state in the case of plurinational bays.¹⁰³ The criteria mentioned above include proving that the state has effectively, openly and continuously exercised its authority over the bay for a significant amount of time, which led to acquiescence of other States.¹⁰⁴ The fact that not all conditions have been met in the case of this particular bay, we can maintain that it is not highly likely that any arbitration tribunal or judicial body would grant Slovenia the right to exercise sovereignty over the entire bay.

In addition, as we have already mentioned, Article 2 of the UNCLOS establishes the sovereignty of the state over the sea adjacent to its coast. If the Bay of Piran would be put exclusively under Slovenian jurisdiction, this would inevitably violate Article 2 and thus deny the right of a coastal state to its territorial sea.

⁹⁷ Bays bordered by more than one State are not dealt with by the Law of the Sea Convention.

⁹⁸ ICJ, 1992.

⁹⁹ *Shaw* (fn. 1), p. 563.

¹⁰⁰ *Turkalj* (fn. 8), p. 26.

¹⁰¹ *Arnaut* (fn. 15), p. 443.

¹⁰² Juridical regime of historic waters, including historic bays, Document A/CN.4/143.

¹⁰³ *Ibid.*, Art. 148.

¹⁰⁴ *Churchill/Lowe* (fn. 84), p. 44.

c) Equity

Even though it does not happen very often in territorial sea delimitations that the rule of equity supersedes the rule of equidistance,¹⁰⁵ it can be stated that the judgments of the ICJ which have been advancing the doctrine of equitable principles in maritime delimitation in general have proven to be most contentious in the history of the Court.¹⁰⁶ This doctrine speaks for taking into account all relevant circumstances in order to arrive at an equitable result and has become the fundamental norm of customary international law in cases of maritime boundary delimitation. It should not be identified with the principle *ex aequo et bono*, since it operates strictly within the law.¹⁰⁷

Schachter discusses the concern of courts and tribunals that the application of equitable principles might lead to subjective assessments, but it has been shown that the decisions are always taken on normative principles of international law, so that no case is settled by taking exclusively the political or economic needs of the states involved into account.¹⁰⁸

The Slovenian Memorandum explicitly states that one needs to respect the principle of equity in the delimitation dispute in the Piran bay, due to the specificity of the situation. By stating that it is a geographically disadvantaged state which relies on the sea for natural resources, Slovenia expressed its second demand, namely to have its territorial waters reach the high seas.

This solution to the dispute was encompassed in the 2001 Agreement. The Croatian Prime Minister agreed to establish some kind of a corridor which would connect Slovenian territorial seas with the high seas in the Adriatic. Between the Slovenian corridor and the Italian territorial seas there would remain a triangle of Croatian territorial waters which would enable Croatia to maintain its sea boundary with Italy.¹⁰⁹ Maintaining the boundary with Italy is important for Croatia because by ignoring one of the provisions (i.e. removing the boundary with Italy) Croatia would jeopardize its rights under the Osimo Agreements.¹¹⁰

Regardless of the fact that the Agreement was in the end not ratified, we need to discuss the legal implications of such a decision. Croatia relies on the application of Article 2, deeming the establishment of such a corridor to the high sea illegal, since this part of the Croatian

¹⁰⁵ Mendelson, in: Nisuke, McWhinney, Rüdiger (eds.), *Liber Amicorum*, p. 1080.

¹⁰⁶ Kwiatkowska (fn. 89), p. 287.

¹⁰⁷ *Ibid.*, p. 289.

¹⁰⁸ Schachter, in: Nisuke, McWhinney, Rüdiger (eds.), *Liber Amicorum*, p. 1167.

¹⁰⁹ Turkalj (fn. 8), p. 20.

¹¹⁰ Arnaut (fn. 15), p. 438.

territorial sea would not be adjacent to the coast. If this corridor had been accepted by the Croatian side, such a triangle of territorial sea would be a precedent in international law.

The Croatian side argued that Article 2 presents a norm of *ius cogens* nature,¹¹¹ which would mean that it is seen as a fundamental principle of international law from which no derogation is permitted. It is safe to say that even though the Slovenian corridor to the high seas would violate Article 2, it is most definitely an overstatement to claim this provision has become a peremptory norm. Given the developments in adjudication in maritime boundary disputes, it is not impossible that such a provision might be put aside in order to produce an equitable result.

Nevertheless, for the sake of our discussion, it still has to be noted that the reliance on Article 2 does present the strongest legal argument that Croatia has put forward. The fact that the land territory determines the sovereignty on the pertaining territorial waters has been widely accepted in international law.¹¹²

Furthermore, Article 3 of the UNCLOS determines that the breadth of territorial sea should not exceed 12 miles, whereby an establishment of a high seas corridor would extend the Slovenian territorial sea to over 14 miles, which would make it incompliant with the practices in international law.¹¹³

Although Slovenia based its claim for the establishment of the corridor on the fact that this would encompass “obtaining sufficient amounts of natural resources for the survival of the Slovenian people”¹¹⁴, economic factors have not played a significant role when deciding on maritime disputes, even if much weight is being given to equitable principles. The Court views economic factors as variables depending on unpredictable national fortune or calamity.¹¹⁵

Since equity is a rather abstract principle of justice and is highly situational due to the infinite number of idiosyncrasies of nation-states, it can be difficult for nations to ascribe the same meaning to the notion of equitable principles.¹¹⁶ A variety of factors ranging from the geographical to the political can be pointed to as relevant circumstances to be considered in

¹¹¹ *Avbelj/Černič* (fn. 39), p. 9.

¹¹² *Ibid.*, p. 13.

¹¹³ *Ibid.*, p. 14.

¹¹⁴ *Punda/Rudolf* (fn. 14), p. 254.

¹¹⁵ *Miyoshi*, in: *Nisuke, McWhinney, Rüdiger* (eds.), *Liber Amicorum*, p. 1095

¹¹⁶ *Alexiadis* (fn. 85), p. 4.

any maritime delimitation.¹¹⁷ It can therefore be argued that adhering strictly to legal principles might have a clearer outcome which would simultaneously be more acceptable for both parties.

d) Right of innocent passage

Croatia is under no obligation under international law to grant Slovenia a direct access to the high seas. Some precedents, such as the agreement between France and Monaco,¹¹⁸ cannot serve as models on which to solve the Croatian-Slovenian dispute.¹¹⁹

The demand on the side of Slovenia to establish a corridor connecting the territorial sea with the high seas in the Adriatic points to the fact that it does not consider Article 17 of the UNCLOS to be a satisfactory provision protecting their rights in Croatian territorial waters.¹²⁰

Article 17 provides:

Subject to this Convention, ships of all states, whether coastal or land-locked, enjoy the right of innocent passage through the territorial sea.

The right of foreign merchant ships to pass through the territorial sea of any given coastal state has become one of the widely accepted principles of international law.¹²¹ The same can be said for the freedom to fish on the open seas, which is guaranteed by Article 87 UNCLOS, both for coastal and land-locked states. Since these freedoms are provided for in the Convention, it does not seem sustainable to maintain that the freedom to fish and to navigate are to be considered as special circumstances which would justify the establishment of the corridor.

There is no reason to claim that the access to the high seas is crucial for the survival of the Slovenian people, since Croatia would most likely not have any interest to violate Article 17, thus endangering its political position on the international level. The Croatian side might also propose to conclude an easement agreement which would offer the Slovenian ships, both merchant and military, an unlimited right of passage through its territorial waters, thus almost equating it with the high seas.

¹¹⁷ *Ibid.*, p. 9.

¹¹⁸ This agreement was not made on the basis of international law, but was rather motivated by political and diplomatic considerations.

¹¹⁹ *Avbelj/Černič* (fn. 39), p. 14.

¹²⁰ *Turkalj* (fn. 8), p. 24.

¹²¹ *Shaw* (fn. 1), p. 570.

5. Perspectives and propositions

In the light of the possibilities which have been employed in delimitations of EEZs and continental shelves, i.e. establishing co-operative arrangements for the exploitation and management of the disputed areas,¹²² we have to pose the question why this could not be applicable to territorial sea delimitation.

Even though a coastal state does have the right to exclude foreign nationals and vessels from fishing or trading in its territorial seas, thus reserving these activities for its nationals only,¹²³ drawing the boundary which would divide the Piran bay into two equal parts does not mean that the two adjacent countries cannot make concessions in other aspects. In this case, the predominant principle of equidistance would be applied, but the unity of the bay would still be preserved. This is especially of importance due to the above-mentioned ecological characteristics of the bay.

There are of course many advantages to set up boundaries at sea as well as on land between even those states which maintain excellent neighborly relations, since this can present a final answer to disputes regarding entitlement. Nevertheless, some other arrangements, such as a joint management system or a sharing of state services in environmental issues, can prove to be much more beneficial for states with opposite or adjacent coasts.¹²⁴

In case one would depart from the equidistance line in the Bay of Piran, this would entail additional 3 km² of sea surface at the most which would be ascribed to Slovenia, which can hardly account for protection of vital interests.¹²⁵ Additionally, the Agreement on Trans-Border Commerce and Cooperation allows Slovenian fishermen to fish not only in the whole Bay, but also outside it in Croatian territorial waters.

In addition to this, due to the Croatian EU perspective, it seems unreasonable to give so much weight to an issue which will lose on relevance once both countries are members of the European Union. Due to the increasing number of areas under exclusive competence of the EU and the fact that European citizens enjoy the same benefits in all Member States, it should not be completely unimaginable to give up on boundary delimitation and adapt to the new reality brought about by Europe growing ever closer together.

¹²² *Churchill/Lowe* (fn. 84), p. 198.

¹²³ *Shaw* (fn. 1), p. 570.

¹²⁴ *Pinto*, in: *Nisuke, McWhinney, Rüdiger* (eds.), *Liber Amicorum*, p. 1120.

¹²⁵ *Turkalj* (fn. 8), p. 30.

In addition to these considerations, even though the principle of subsidiarity plays a very important role in EC maritime policy as well, thus rendering regions and States responsible for the problems which might arise in maritime issues, the development of policies through secondary law provides the EC with a powerful tool to control the actions of individual Member States. In this connection, the EC proves to be much more efficient than any sort of an international agreement, because of its sanction powers in case of treaty violations.¹²⁶

¹²⁶ *Rudolph* (fn. 76), p. 20.

D. Conclusion

The development of the boundary dispute between Croatia and Slovenia has been a rather complicated one, lasting for almost 20 years and including a range of parties. Here we have tried to make an outline of the chronological events from the perspective of the methods of peaceful dispute settlement by judging their merits and their deficiencies in dealing with this particular dispute.

The discussion has shown that territorial disputes are very contestable in nature, due to the fact that States often view these conflicts as arenas in which they try to prove their power and superiority. It may also not be forgotten that safeguarding territorial sovereignty is a concept which does not lose on importance, regardless of the principle of good neighborly relations within a Europe whose main guiding idea is the tearing down of physical boundaries.

In this particular case, the diplomatic means of peaceful dispute settlement have proven to be utterly unsuccessful, which predominantly lies in the fact that neither State was ready to make concessions of any kind. It can be maintained that the persistence on original demands on both sides might be linked to the fact that Croatia and Slovenia are newly independent States, making them not willing to give up on a few square kilometers of their territory. I would argue that the reason why this dispute has turned out to be unsolvable through bilateral means is to a great extent psychological in nature, since these countries have finally become able to demonstrate their sovereignty on the international plane after decades of submission.

All the advantages of negotiation, conciliation and mediation notwithstanding, it does not seem likely at the present that any means of diplomatic settlement will be able to produce a final conclusion to the dispute. In order for them to be successful, the principle of good faith and co-operation must be present with both parties. Even though these particular States have never waged war against each other, and even though they shared a big part of their history, these facts seem to have been forgotten. Instead of making bilateral relations even tighter, the gap between the two States seems to widen with every additional move and statement.

This is particularly surprising due to the EU dimension of the dispute. Croatia as a prospective Member State relies on the support of the States which have already joined the Union, whereby one would expect that its closest neighbor would prove to be its biggest supporter. Extending the Union to the Balkans would certainly increase the security of the EU as a whole, and would simultaneously decrease the burden of Slovenia being the outer boundary of the Schengen regime.

However, we have witnessed how bilateral issues can be transposed to the European level, thus becoming intertwined with accession negotiations, or to be more exact making these negotiations impossible. I would argue that this unprecedented situation in which a strictly bilateral issue has become a condition for joining the European Union marks a clear departure from the guiding principles of the Union as such. The fact that several other States have joined without solving similar boundary disputes (e.g. Denmark/Poland and Germany/the Czech Republic) purports our statement that such issues are to be solved either bilaterally or by referring the case to arbitration or the International Court of Justice.

We must not however undermine the role of the EU on the way to finding the solution to the dispute. The DG for Enlargement has proven to be the most significant party when it comes to forwarding new ideas and solutions in the last several months. We have presented the Commission's level of involvement in the dispute and the efforts made to reach a conclusion acceptable for both parties.

As discussed above, the last proposal included an arbitration agreement, which has not yet been accepted by both parties, and it still remains to be seen whether consensus will be reached as regards the specific provisions of the agreement. In any case, it is my firm belief that a legal settlement in any form is the best possible option for achieving the final resolution of the dispute, and it is without doubt in both States' interest to accept the arbitration agreement, thus providing a competent and neutral third party with the capacity to produce a final settlement.

The legal considerations have shown that Slovenia's claim to jurisdiction over the whole bay is most likely not justifiable under international law, although one has to admit that it is not completely without merit. Therefore we have to conclude that even though the provisions of the 2001 Agreement between the two countries proposing Slovenian sovereignty over 80% of the bay are somewhat exaggerated, Slovenia still might prove that it is entitled to a larger proportion of the waters in the bay.

On the other hand, provisions of international law make sure that Slovenia is in no aspect discriminated as far as access to the high seas is concerned, so that it can be argued here that it is superfluous to establish a corridor which would render a part of the Croatian territorial sea unsustainable under international law by making it non-attached to the coast.

Although we cannot claim with certainty what the arbitral or judicial award will comprise of, the discussion in this study has pointed to the most important provisions of international law

which will most likely be applied when dealing with the dispute. It follows that the principles guiding delimitation are relatively straightforward, which is as well one of the reasons to consider legal settlement as the preferable method.

It remains to be seen whether the Commission's proposal to refer the dispute to arbitration will be accepted by both parties in the following months. We can certainly hope that this will be the case, as we consider that it is superfluous to protract the dispute even further. The continuous persistence on original demands from both parties and the unwillingness to deviate from those seem like a play of power between both States. Nevertheless, if they want to assert themselves on the international plane and demonstrate their power, the right approach would be precisely the opposite; by showing readiness to co-operate and make concessions, both States would prove that they are powerful and mature sovereign States safeguarding the idea of European unity.

Annex

Map of the Bay of Trieste



http://www.javno.com/en-croatia/rudolf--middle-line-through-piran-bay-not-final_187688

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