

WORK IN PROGRESS SECTION

BORDERLINE DISPUTE BETWEEN SLOVENIA AND CROATIA IN THE POST YUGOSLAV ERA: SOLUTIONS, OBSTACLES AND POSSIBLE THERAPY

Mitja Durnik,
PhD Candidate SIDIP – Slovenian
Association of Innovative Political
Science, University of Ljubljana
mitja@sidip.org

Marjeta Zupan
BA Candidate, Faculty of Humanities,
University of Primorska,
marjeta.zupan@gmail.com

Abstract

The Slovenian and Croatian government do not have a strategy for bilateral relations in the near-term. From the moment when the two states became independent, a series of mistakes have been made that made foreign policy inconsistent. Conflicts are resolved, but politicians use political symbols (especially border) for short-term political goals. A solution for the borderline conflict is from the legal core quite simple but it seems that the long-term status quo is useful for both leading political parties (Croatian Democratic Union and Social Democratic Party of Slovenia). Both parties often use political discourse with elements of demagoguery and populism for the “purposes” of the internal political scene. At the international level political discourse

of leading parties and current prime ministers is much more diplomatic with some tremors in relations. The political history of current political elites in Croatia and Slovenia discovers politics which has had an extreme right and populist element. The main goal of the article is to present potential solutions of the borderline delimitation and to answer the question if politicians and their advocacy of the status quo are real obstacles to a better future in bilateral relations.

1. Diagnosis

Main bilateral problems between Slovenia and Croatia arise from the life in former Yugoslavia: the borderline definition problems, especially in the Piran Bay and the possible access of Slovenia to the open sea, the problem of Krško nuclear power plant and the question of residents of Ljubljanska banka.¹ Both states did not resolve these

¹ Piran Bay is a small bay between Slovenia and Croatia, situated in the south west of Slovenia and in the north west of Croatia. Borderline between countries in this part of the sea is not defined yet.

Ljubljanska banka has been the most important and the biggest bank in former Yugoslavia. It was reconstructed shortly after the break of Yugoslavia and a new

problems successfully in the past years and as a result of these unsuccessful negotiations the past good relationship became strained.

The Slovene-Croatian border was formed in 1991 and until that year was an internal border between two federal units, which has not operated as a demarcation line and later has become an external border separating two sovereign states. After 1991 the borderline has meant the formalization of life including the new “regime” as the most manifested thing in this changing process. Many specialists point out that the new boundary brought

bank called Nova Ljubljanska banka was set up. Management of Nova Ljubljanska banka defined that this is a completely new bank and does not have any connection with the previous. Consequently, it decided that money of Croatian and Bosnian citizens, which they had on accounts in the previous Ljubljanska banka, does not belong to the Nova Ljubljanska banka. Management of the new bank any many politicians in Slovenia advocated that money of Croatian and Bosnian citizens is a subject of negotiations between successors (republics) of former Yugoslavia.

Nuclear power plant Krško was built in the former Yugoslavia. Current and previous governments of Slovenia and Croatia cannot make an agreement how large ‘peace of a cake’ every state belong to. The problem is the price of electricity produced in a nuclear plant and Croatia often wanted to step out of the partnership and consequently the ‘exit price’ is still not defined. However, it is still not clear which country should keep a nuclear waste in the future.

a decline of most cross-border contacts in terms of both dynamics and structure.² Institutional contact lost its importance in the last decade, informal contacts – between friends, locals and families – has been frequent even after the construction of a new border:³

It seems that the main obstacle to the final solution of the border is politicians (members of a political elite) in both countries for whom the status quo is still a political strategy which keeps them at the “top of the water”. Even current prime ministers use very democratic and diplomatic political speech (rhetoric) for the international public and politicians; political elite in domestic political scenes perform quite radical positions one to another. Some social movements and extreme political parties are used as a mediator in what a way polite expressions of top politicians present in a more radical way.

To follow the red line of a subject we want to confirm or refuse the next hypothesis:

Current status quo in relations both political parties (Croatian Democratic Union and Democratic Party of Slovenia) uses for internal short political goals. Solution of a problem is from the legal point of view quite

² Simona Zavratnik-Zimic, “Constructing »New« Boundary: Slovenia and Croatia”, *Revija za sociologiju*. 34 3/4 (1986): 1-2.

³ Zavratnik-Zimic, “Constructing New Boundary”, *ibidem*.

simple to define. But an “unsolved problem of the border” is that kind of political symbolism which is strongly used for the internal mobilization of publics in both countries.

2. Radical Right Determinants of New Political Elites in Post-Communist States: Myth or Reality?

Radical groups or parties have numerous common determinants such as nationalism, racism, anti-Semitism and intolerance. Because of fundamental changes in the late 1980s, some scholars fulfilled mentioned terms with terms such as anti-communism, anti-pluralism, anti-Americanism and anti-democracy. Williams pointed out that we have two traditional explanations why radical politics often find a place in a society: psychological or socio-psychological approaches try to explain such a phenomenon in terms of personal characteristics of the individuals involved, on the contrary, sociological or socio-political theories point out that the radical right must be viewed as a special problem or a set of problems which could be managed and led by the political system.⁴

⁴ Christopher Williams, “Problems of Transition and the Rise of the Radical Right”. *The Radical Right in Central and Eastern Europe since 1989*, ed. Sabrina P. Ramet and George Griffin, (University Park: The Pennsylvania State University Press, 1999). 30.

Ramet differentiated between the term organized intolerance and radical right which are “*open to some dispute*”. The term “radical right” is usually connected with the terms “ultraright” or “extreme right” and is often applied with the organized-intolerance which has been invented as a political term in the twentieth century. Relating to Ramet organized intolerance is a

segment of a political landscape, which arose, historically, as a dimension of cultural “irrationalism”, and is inspired by intolerance (of any defined as “outsiders”), and hostility to notions of popular sovereignty or popular rule...It is also characterized by ideological and programmatic emphasis on “restoring” supposedly traditional values of Nation or community and imposing them to the entire Nation or Community.⁵

Markus Birzer⁶ has recognized a connection between the radical right and “irrational nationalism”,

⁵ Ramet, Sabrina P., “Values and Behaviours of Organized Intolerance in Post-Communist Central and Eastern Europe”. *The Radical Right in Central and Eastern Europe since 1989*, ed. Sabrina P. Ramet and George Griffin, (University Park: The Pennsylvania State University Press, 1999). 4.

⁶ In Ramet, »Values and Behaviours«, 5. Markus Birzer, “Rechtsextremismus – Definitionsmerkmale und Erklärungsansätze,” in Jens Mecklenburg, ed. *Handbuch Deutscher Rechtsextremismus* (Berlin: Elefant Press 1996).

consequently James Gregor⁷ pointed out that nationalism was irrelevant to Nazi ideology and inessential to fascist politics. Some scholars also talked about rationalist determinants of the radical right⁸, but Ost denied mentioned expression and said that radical right is irrational in

any meaningful sense, preferring to characterize it as “rational, through that raises the question as to whether the hatred of entire groups could be interpreted as a ‘rational’.”⁹

Linz specified conditions which were needed for the emergence of radical right and fascism: the existence of a sense of national betrayal or humiliation, the breakdown of state authority, a national “cultural crisis” and a complex mixture of random circumstances and deep-seated structural processes.¹⁰ In addition to the

mentioned, Stoss said that the radical behaviour has both individual and society determinants. According to him, individuals who develop a radical right point of view consequently act upon them.¹¹ Zimmerman and Saalfeld pointed out that a single political system has a power to fight against the radical right but several factors are important at the starting point: the nature and composition of a government, debates around the question of “issue space”, relating to immigration, language, law and order, national identity and unemployment and the way they are handled, and nevertheless, the level of economic recession and political chaos or turmoil.¹² What determinants are going with the term fascism? Specific ideology and goal, some anti-communist, anti-liberal and anti-conservative tendencies, fascist groups share some common features of style and organization such as mass mobilization via the political

⁷ In Ramet, »Values and Behaviours«, ibidem. A. James Gregor, »Fascism at the End of the Twentieth Century,« in *Society* 34, no. 5 (July and August 1997).

⁸ In Ramet, »Values and Behaviours«, ibidem.

⁹ In Ramet, »Values and Behaviours«, ibidem. David Ost, »The Radical Right in Poland: Rationality of the Irrational. *The Radical Right in Central and Eastern Europe since 1989*, ed. Sabrina P. Ramet and George Griffin, (University Park: The Pennsylvania State University Press, 1999).

¹⁰ In Williams, “Problems of Transition”, ibidem. See more in: Juan Linz, “Political Space and Fascism as a Latecomer”, in Stan Ugelvik Larsen, Bern Hagtvat and Jan Petter Mykebust, eds. *Who Were the Fascists?*

Social Roots of European Fascism (Bergen: Universitetsforlaget, 1980).

¹¹ In Williams, “Problems of Transition”, ibidem. See more in: Richard Stoss, *Politics Against Democracy: Right Wing Extremism in West Germany* (Oxford, Berg Publishers, 1991).

¹² In Williams, “Problems of Transition”, ibidem, 34-35. See more in: Ekkart Zimmerman and Thomas Saalfeld, “The Three Waves of West German Right-wing Extremism,” in Peter H. Merkel and Leonard Weineberg, eds. *Encounters with the Contemporary Radical Right* (Boulder, Colo.: Westview Press, 1993).

militarization of political relationship, a stress on symbolism, male dominance and the use of an authoritarian, charismatic type of leadership.¹³

Throughout the post-communist transition, process change in political parties discourse has been in a large manner connected with ideological sources. The question is what has really been a 'change' in political parties of Central and Eastern European Countries? In the case of Slovenia and Croatia we could also make a generalization of the mentioned to the level of EEC countries, renovated political parties have chosen between two possible ways of political discourse: social-democratic or radical rhetoric. Buyukakinci added:

The liberalizing parties are slipping toward the centre during the post-ideological transformation, while the parties representing the orthodox leanings prefer to adopt the extremist perspectives.¹⁴

Newly formed countries were also called post-communist, post-socialist or states in transition. We could understand mentioned terms as a wide range of social changes that transcend

¹³ Stanley G. Payne, *A History of Fascism*. In Christopher Williams, "Problems of Transition". 35-36.

¹⁴ Erhan Buyukakinci, *The Neo-Communist Parties and Power in Central and Eastern Europe: Change in Political Discourses and Foreign Policy Position* (East European Quarterly, Vol. 39, 2005)

the understanding of the traditional political definition of a state in international community that brings together people, territory and power¹⁵. But the transition process brings a lot of unpopular and negative issues. The »new enemy on the edge« became migrants, refugees, asylum seekers and homeless people in urban areas. Zavratnik-Zimic¹⁶ points out that power players from the past have been replaced with mentioned "subjects" of the new political reality. It seems that states in transition cannot understand the loss of "big father" and it is quite clear that the "new substitute" is the focal point inside the Freudian replacement theory.

4. From Communism to Democracy: Neglected the Past?

Croatian Democratic Union (Sanader) and Social Democratic Party (Janša) are political parties which share some common historic components. Former President of Croatia and CDU Franjo Tudman was a member of Yugoslav army while, at the same time, Janša was an important young communist. The origins of both parties and leaders are the same. Also many members of both parties are nowadays completely neglecting their 'communist pedigree'. In Croatia, the CDU is now officially oriented to a kind of conservative

¹⁵ Zavratnik-Zimic, "Constructing New Boundary", *ibidem*.

¹⁶ Zavratnik-Zimic, "Constructing New Boundary", *ibidem*.

politics while Janša's party advocates that it is a modern social democracy, but relating to many authors (Rizman, Schelder, Kuzmanic) shares some common determinants which are similar to those of extreme right-wing parties.

The mentioned story of a big father was realized in the first year of Croatian independency. At the beginning of the collapse of Yugoslavia and when the war in Croatia began, Franjo Tudjman became a leader of the whole of the nation and before that won the elections with quite a big majority of voters. But his later politics flew into the water of populism; he led the party which had in their policy a lot of elements of radical politics. In Tudjman's political career we can observe one thing. He was a member of military elite in ex-Yugoslavia, the youngest army general, but even in that time became a dissident. Radical right determinants existed inside the ruling party Croatian Democratic union:

The block with stronger support among voters, organization and access to the power is the (radical) right wing within the Croatian Democratic Union (CDU). It controls several state ministers (ministry of defence being the most important). There were a substantial number of supporters among elected representatives in the national parliament who promote conservative and right-wing policies. Some of them control important parliamentary committees and have strong influence on the legislative process. The prominent politicians on the right side enjoy easy access to Croatian president Franjo Tudjman. Some of Tudjman's

political speeches and addresses have had a strong radical right accent.¹⁷

By the year 2003, the HDZ leaders understood that the party had to change a political strategy or it would be questionable in its existence as a key political actor in Croatia. The most important actor in this process of change was new party president Ivo Sanader, who at the beginning wanted to reconstruct HDZ into a conservative party in the European political tradition. Vlahutin continued:

Very few people in Croatia believed he would have had enough strength and could get enough support to reinvent the party for the winning on the next elections. Sanader cleansed the party of his notorious shady characters and disciplined others to support his European vision for Croatia.¹⁸

Sanader has been successful in restructuring the internal structure of a party at the beginning. Nowadays CDU is different than this political party was in Tudjman's political era. The party has lost a part of an ideological pedigree although it is still very nationalistic but

¹⁷ Grdešić, Ivan, "The radical right in Croatia in Its Constituency". *The Radical Right in Central and Eastern Europe since 1989*, ed. Sabrina P. Ramet and George Griffin, (University Park: The Pennsylvania State University Press, 1999). 171-189.

¹⁸ Romana Vlahutin, "The Croatian Exception", *Western Balkans Moving On*, ed. Judy Blatt, (Paris: Institute for European Security Studies, Challiot Papers: number 70, 2004). 28-36.

at least the political rhetoric of Sanader is more sophisticated. Vlahutin stated that he had some political abilities for political survival:

In foreign affairs he has many qualities that former Croatian president Tudjman lacked: he was a talented communicator, well trained in international relations, capable of quickly responding to the challenges of negotiations and, above all, a realist. He dedicated the first six months of his government to securing EU candidate status for Croatia... it was clear that the EU goal would take precedence over all other matters. Whether this reflected a genuine pro-European vision or was a tactical move to gain enough political credit for the next term does not really matter because it has served the country well. Croatia has been accepted as an EU candidate.¹⁹

Janša is a demagogic populist and a political figure of the radical right-stage. Rizman says that he consists of a number of paradoxes, which do not pertain only to Slovenia but it is a characteristic of post-communist states:

former devoted communist and Marxist turned to extreme anticommunist and pacifist, who in the former regime struggled for legalization of conscientious objection and civilian control of the army, and against the sale of arms by the Yugoslav army around the world, later became defence minister.²⁰

¹⁹ Vlahutin, "The Croatian Exception", 31.

²⁰ Rudolf M. Rizman, "Radical Right Politics in Slovenia". *The Radical Right in*

Rizman said that maybe Spomenka Hribar's definition about Janša went too far with accusation. Hribar said it is very difficult to define a personality of a politician who applies

...a strange mixture of populism, egalitarianism, xenophobia, anti-intellectualism and intolerance toward marginal groups with a political discourse and iconography which reminds one at the same time of Nazism and Stalinism but who still tries to form his authoritarian posture inside the existing democratic order, and demagogically swearing to it.²¹

Craig Nation argues that Janša can be the representative of demagogic populism and compares him with Tudjman in Croatia, Sali Berisha in Albania or Vladimir Meciar in Slovakia²². Miheljak and Kurdija²³ emphasized that he has had the same problem like Bossi in Italy or Haider in

Central and Eastern Europe since 1989, ed. Sabrina P. Ramet and George Griffin, (University Park: The Pennsylvania State University Press, 1999). 147-170.

²¹ Rizman, »Radical Right Politics in Slovenia», 160. More see in Vlado Miheljak and Slavko Kurdija, "Preoblikovanje slovenskega volilnega telesa", *Meje demokracije*, ed. Darko Štrajn (Ljubljana: Liberalna akademija, 1995).

²² Rizman, »Radical Right Politics in Slovenia», *ibidem*.

²³ Rizman, »Radical Right Politics in Slovenia», *ibidem*. More see in Miheljak and Kurdija, "Preoblikovanje slovenskega volilnega telesa".

Austria: how to prove that his political party is “social democratic”.

In this context the distinction between populist and charismatic type of a politician can be very interesting. Schelder²⁴ defined that the populists are rather “chameleons” who have the ability to adapt to their environment. The charismatic type aims at transcending every day life and promises changes. Relating to Rizman's opinion Janša comes close to the first description, although he tries to build a kind of a political image on the latter, Schelder²⁵ calls this attitude “charismatic populism”. Janša paints himself as a victim in both – previous (authoritarian) and the present (democratic) system. His political rhetoric was also very interesting at that time. He always presented stereotypical theory of conspiracy that is of the existence of a secret organization “UDBO-MAFIJA”: a “hidden hand” of the communist nature, which is still dominating over the economy and politics.²⁶

5. Prime Ministers' Bilateral Meetings: Janša and Sanader

²⁴ Rizman, »Radical Right Politics in Slovenia”, *ibidem*. More see in Andreas Schedler, “Anti-Political Establishment Parties”, *Party Politics* 2, no. 3 (1996).

²⁵ Rizman, “Radical Right Politics in Slovenia”, *ibidem*. More see in Schelder, “Anti-Political Establishment Parties”.

²⁶ First syllable refers to the top secret police in the old-communist regime.

Understand the Main Principles of Diplomacy? “Selling the Fog” and Continuing Status Quo

It seems that the current Prime Ministers of both countries in political speeches (rhetoric) in bilateral issues do not use classical phrases of radical right wing parties. We could say that mentioned discourse is closer to that of Jurgen Habermas’ reasonable democracy. Habermas pointed out that discourse could become radical in a sense that no aspect of our life can have special immunity on potential devaluation. Relating to the latter, a discourse does not have any real potential to become something as a “revolutionary” thing. It is possible to re-evaluate some aspects of collective life. We can say that a social construction of our political and social world has had origins in:

... traditions that are handed down, the patterns of integration we have inherited, and the identities that have been conceptually opened up to us by our surroundings are our only building blocks in constructing our future.²⁷

The discourse of political parties in opposition is often more independent than that of ruling parties and could contain radical elements of criticism. A political discourse of a leading party does not reflect only the interests of the

²⁷ Simone Chambers, *Reasonable Democracy: Jurgen Habermas and the Politics of Discourse* (Cornell University Press, 1996): 164-165.

people that it represents electorally, but also the special interests of the public institutions and the bureaucracy.²⁸

In our case it is quite clear that the 'external discourse' of Janša and Sanader is quite different than the rhetoric they often use for internal purposes in the core of making home politics. Janša's discourse in the internal political arena is not that kind of direct attack towards Croatia. He often uses foreign minister Dimitrij Rupel about whom some international media say he is unable to use diplomatic principles in international diplomacy. Janša and Sanader have made many informal 'gentleman's agreement' on the bilateral level but in reality they were not able to execute any of them. Due to the mentioned, speaking solutions of bilateral problems (border, nuclear power plant Krško, Ljubljanska banka) is not an interest for political elites in both countries at the moment. Polite political speeches at bilateral conferences and meetings along with extreme and rude political discourse on the internal political scene seems to be quite a useful combination for the long-term status quo in bilateral relations.

It seems that Janša is learning from past mistakes: while the left (previous) government created the impression in Europe that Slovenia is a part of the

²⁸ James. N. Rosenau, *Scientific Study of Foreign Policy* (New York: Free Press, 1970).

neighbourly problem, the new cabinet refuses to acknowledge such a thing. Yet the harshness, if it exists, is restricted to the four walls behind closed doors. Janša thinks like a soldier and strategist; he uses "a fresh and interesting logic". In his opinion, conflicts can occur also in the future, but this is why the government is in favor of Croatia having a future in Europe. Relating to him, if Croatia implements more European standards, there will be more chances of holding talks and adhering to agreements. He regrets the postponement of the beginning of Croatia's [EU] negotiations.

The postponement is not tragic because a negotiations framework has been approved for Croatia ... Some states were against the beginning of negotiations with Croatia also due to a disappointment with The Hague's efficiency. The Hague's image is not completely ideal despite some moves. This has resulted in stricter criteria, especially in the case of those states where such criteria can be set. Croatia is partly a victim of this situation.²⁹

The Slovenian Prime Minister had to respond also to criticism from Slovenian opposition parties that the

²⁹ Report of the Slovenian National Television, March 16, 2005, *Pogajanja s Hrvaško preložena*. http://www.rtv slo.si/modload.php?&c_mod=rnews&op=sections&func=read&c_menu=16&c_id=70775, accessed on April 22, 2006.

government was too soft in relations with neighbouring countries.

The Slovene government's position on Croatia's European perspective is the same as the previous government's position, ever since Croatia expressed the wish to join the EU if it meets the conditions. This position changed only for a brief period at the time of [Anton] Rop's government, right before the elections, and that change did Slovenia no favours in the EU. Support for Croatia is not unconditional. Croatia must meet the same criteria as all the other (EU entry) candidates. It would nevertheless be unfair if Croatia was asked to meet conditions that the other candidates did not meet, or if some other concepts were hidden behind these conditions.³⁰

Sanader has used the similar approach of the "soft communication" when expressing his position about the relationship with Slovenia in an unofficial meeting in Portorož.

...Slovenia and Croatia will finalize a statement on avoidance of incidents, which has been largely harmonized, within ten days... Statement on avoiding incidents would not represent a final agreement on the border

³⁰.Report of the Slovenian National Television, May 14, 2005, *Janša in Sanader o incidentih*.

http://www.rtv slo.si/modload.php?&c_mod=rnews&op=sections&func=read&c_menu=1&c_id=69881, accessed on March 21, 2006.

between the two countries. No solution will prejudice the final border line.³¹

At an official meeting in Grad Mokrice, the Prime Ministers have confirmed the known fact that there are open issues between the two countries. Premiers also stressed that these problems could not overshadow their generally good relations. Sanader explained:

We have agreed to initiate work on an agreement on avoiding incidents in the Bay of Piran, i.e. the Cove of Savudrija. The other thing we agreed was to wind up work, as a lot has already been done, on an extremely important agreement which has not yet been finalized - the agreement on avoiding double taxation... It all looked like a new beginning... The two countries had not created these problems, but they have been inherited, i.e. they were rooted in the disintegration of the common state (Yugoslavia). This initiative is the continuation of a forgotten meeting between the two governments in the former Yugoslavia in 1990, when they were expected to draw up a joint strategy which never materialized.³²

³¹ Report of the Slovenian National Television, March 7, 2005, *Janša v Bovcu s Sanaderjem*.

http://www.rtv slo.si/modload.php?&c_mod=rnews&op=sections&func=read&c_menu=1&c_id=69881, accessed on March 22, 2006.

³² Report of the Slovenian National Television, January 21, 2005. *Janša in Sanader tudi o arbitraži*.

http://www.rtv slo.si/modload.php?&c_mod

6. Possible Therapy and Potential Solutions of a Border Dispute: Using the "Ultimate Ratio"

The following question is important in this context: will Croatia and Slovenia have a clear version of the Schengen regime or will governments try to make a kind of »mixed version« between the Schengen principles and local border regime? To support the latter view, Zavrtnik-Zimic pointed out:

The Schengen regime, designed as a method of protection, introduces new dynamics into the social reality of two small European countries, which is a phenomenon that extends beyond the local Slovene-Croatian significance because it introduces the confrontation of the EU integrating models and the EU peripheral border regimes into this region ... Firstly, in the era of globalisation and 'network society' closed-type borders are a farce and can not be a real policy solution, and secondly, Slovenia has know-how and almost a half century of experience with the local border regime and local crossings.³³

The conflict between Zagreb and Ljubljana is to a large extent part of a populist debate which involves academic persons and other people, who are specialists for the "borderline

debate'. Devetak said that the mentioned conflict is from the legal practice point of view not as difficult as politicians try to show

...It is more a kind of reflection of spiritual crisis in collaboration between countries. Both states do not have any real strategy on how to resolve bilateral disputes. From the very beginning both governments have done big mistakes. Croatia was completely shocked when Slovenia began, very soon after the collapse of Yugoslavia, to build new border-crossings between countries. In Europe we do not have many border-crossings where you can find it kilometres separated one from each other. Besides this, Slovenia has occupied the hill Sveta Gera³⁴ which is evidently on Croatian territory.³⁵

Imaginary debate, where is an equitable border, is completely on the contrary with professional behaviour, which is common with modern diplomacy. Both countries operate similarly; this means both structures cannot develop such a cooperation which is common to European principles of collaboration between the two modern states.

=news&op=sections&func=read&c_menu=1&c_id=64450, accessed on January 22, 2006.

³³ Zavrtnik-Zimic, "Constructing New Boundary", *ibidem*.

³⁴ Trdinov vrh in Slovene language.

³⁵ Gorazd Utenkar, *Suho gašenje v vodi (intervju z dr. Silvom Devetekom)*. Delo. http://www.delo.si/index.php?sv_path=43,49&so=Sobotna+priloga&da=20051105&ed=&pa=8&ar=8d116e745cc423c1f84d511612b48a5c04&fromsearch=1, accessed on March 12, 2006.

After the decade of useless negotiations governments reached the agreement about the demarcation of Piran Bay and other controversial part of a border. Croatian government wanted to ... “eschew the equidistance principle of maritime delimitation and to reclassify a corridor of Croatian international waters as an open sea, creating the direct connection between Slovenian territory and the High Seas”.³⁶ The agreement was accepted in Slovenia, but in Croatia the general public, politicians and legal experts strongly criticized the proposed solution. The most important critics were related on the issue that the Croatian government left to Slovenia 20 km² of the territory in exchange to the support of Slovenian government to Croatian's integration to the West.³⁷

The Drnovšek - Racan agreement defined international border between Slovenia and Croatia as it took place in the core of ex-Yugoslavia. The border in the mainland would be separated into 11 sectors and besides this Slovenia would keep 80 percent of the whole Bay. Drnovšek and Racan made an agreement through which a special corridor would be formed. It would be two nautical miles long and would have the status of the High Seas. The idea

was also that the corridor would be “*a certain shape of a chimney*” and “water tower” could not be a subject of sovereign rights of the two states.³⁸

The Slovenian and Croatian government agreed that they would find a solution in a period of five years from the confirmation of the agreement. They also planned a “supervisor” as an intermediate body which would consist of experts from Slovenia and Croatia and its role would be to control the implementation of the agreement. If countries would not resolve a conflict in six months after the suggestion of one side, the case would immediately be put on the agenda of an international arbitration. The Drnovšek - Racan agreement determined in a special manner rights of frontier villages Mlini, Škrile, Buželin and Škudelin. Besides the rights people in mentioned villages had relating to other agreements, occupants could enter such amount of goods to Croatia, that life of one person and his family requires. The agreement foresaw also the possibility that people in these places would gain Slovene citizenship if they would want.

The opponents pointed out that Prime Minister Ivica Racan in this case exceeded his authority because he ceded the territory without the constitutionally required parliamentary super-majority vote. The opponents said that the only possible solution is

³⁶ Srečko Vidmar, “Compulsory inter-state arbitration of territorial disputes. (Slovenia-Croatia)”, *Denver Journal of International Law and Policy* (September 2002):123.

³⁷ Vidmar, »Compulsory inter-state arbitration”, *ibidem*.

³⁸ Aleš Gaube and Meta Roglic, »Dogovor o meji pred vrati”, *Dnevnik* (Jun. 6, 2001).

submitting the conflict to international arbitration. The idea was that the Piran Bay would be divided in half and the Slovenian territorial waters would not have a direct connection to the High Seas. Slovenian politicians rejected the arbitration explaining that two involved countries should reach the solution without the intervention of an international body or an important person.³⁹ In this context, Slovenia and Croatia played the “zero sum game”, where one player loses as much as the second gains. Slovenian government “sacrificed” mentioned villages for the corridor to the High Seas, moreover, here it is pointed out that these places have not belonged to Slovenia before.

Slovenia has the status of being a geographically deprived state. It has the right of economic utilization of the zone that Croatia announced and government in Zagreb must arrange with special agreement. Devetak prejudices Croatian government will resolve the problem of utilization of the sea with the agreement with the European Union. Relating to Devetak, the connection between internal waters and High Seas is not relevant for the Adriatic Sea:

The latter is not an important question. After Croatia a kind of a zone will announce also Italy and because of this reason Adriatic Sea would not be the real High Sea. Besides this, it is important to

³⁹ Vidmar, “Compulsory inter-state arbitration”, *ibidem*.

announce, realization will not change rights of third states, which have the right to sail around the Adriatic sea. In this case the maritime convention equalizes the legal regime in the exclusive economic zone with that on the High Seas. Sailing to Slovene ports is arranged per manner that ships navigate into them through the Italian territorial waters and going out through the Slovenian. Italy and Croatia could theoretically block up Slovene ports with a certain common initiative, however, this looks more like an impossible mission in these days.⁴⁰

Slovenia actually made three mistakes with the announcement of the economic belt and epicontinental belt.⁴¹ Firstly, on the basis of the Drnovšek - Racan Agreement, it does not have the right to declare the zone or epicontinental belt, because Croatia changed a part of its territory into the international waters and with this decision allowed Slovenia to have a free access to the High Seas. The decision that Slovenia has got these two exclusive rights is basically a legal instrument with which the Slovene government gives up the agreement and

⁴⁰ Utenkar, “Suho gašenje v vodi”, *ibidem*.

⁴¹ Davor Gjenero, *Epikontinentalni pas in ekološka cona – tri nepopravljive napake v eni odločitvi*. Delo. http://www.delo.si/index.php?sv_path=43,49&so=Delo&da=20050903&ed=0&pa=7&ar=994d301ec28e7d763d0a5726a33958aa04&fromsearch=1, accessed on October 23, 2006.

is not just a political gesture. Secondly, Slovenia with the mentioned act legitimizes an action when Croatian government announced a similar decision in the year 2003, and against it Slovenia was leading an important diplomatic action. Thirdly, the Croatian government could in the future set up an idea of resolving conflict using an international court, rather than a kind of mediation setting up arbitration. That kind of conflict could not be resolved without the re-definition of borders; the next step is always the decision where the Court of Justice could competently set up the judicial procedure.

In the case of the mentioned conflict, experts point out that states can resolve the problem in two ways: firstly, they can decide whether the problem will be in the hands of international arbitration or they can put the conflict on the agenda of *International Court of Justice* in The Hague or the *International Tribunal of the Law of the Sea* in Hamburg. Devetak⁴² said it would be a better decision if the court would take over the case. In both examples the process would last two or more years, but in a case that the court would receive the subject, it is a better solution, because the judicial process will last less than in a case of arbitration. In cooperation with the latter, involved states must accept the decision who could be a member of a commission, but the real problem takes place in a moment when both sides

have to choose an independent member who is also the president of a commission. It is an important question if countries could confirm a candidate. In a case of a court, this is not an obstacle, because it chooses the members who will participate in the judicial process. Besides this, in case that arbitration would take the procedure, it means the problem would be resolved somewhere in the future.

Transfer of conflict to the court would be efficient because of more reasons. Yet the agreement, what is a *subject* of a trial, would affect on bilateral relations positively. Moreover, states in a time of a trial could at any moment resolve the conflict. Slovenia and Croatia would make an agreement and decide to immediately notify to the court, which can always break away the judicial procedure. Besides this, states can make a kind of »gentleman's agreement« where they can admit past mistakes and express a real desire for the reconstruction of bilateral relations.

Relating to Gjenero⁴³ a judicial process in The Hague Court of Justice is not a usual practice when member states and candidate members want to have resolved bilateral disputes. The arbitration also is not a productive activity, because it means just a postponement of the real problems to the future.

⁴² Utenkar, "Suho gašenje v vodi", ibidem.

⁴³ Gjenero, *Epikontinentalni pas in ekološka cona*, ibidem.

Populist pressures are still too large that states could contract some real agreement concerning to the border. We cannot expect they would adopt a real »gentleman's agreement« in the near future, certain »quasi status quo«, with periods of planned and unplanned incidents would be a consequence of undefined relationship.

7. Brussels' Non-Intervention?

European Union emphasizes specially regional and cross-border cooperation and regional development. Because of past disputes between these two states, the Slovenian frontier regions cannot effectively function and they are in the process of depopulation. Slovenia in its mostly two-year term of EU membership did not carry out any serious project relating to cross-border cooperation and besides this it was sceptical about proposal of Ricardo Illy which formed an idea of the European *Super-region* which in Croatia has really been accepted. The only real solution in this aspect is again establishing strong cross-border cooperation.

One of the main goals of the European Union is also to settle down tensions on the peripheral parts of the Union. Maybe an even more important goal is to restore "multi-applicative" determinants of the integration but the latter is possible only in a case that the Union abolishes a dispute between Croatia and Slovenia which are together a bridge between European Union and the West-Balkan Area. The mediation

in this case is maybe the best solution. The final agreement has to be that both countries accept a kind of a resolution about avoiding conflicts on the border – this means a long-term status quo – or final solution of a border between states which seems to be in these days just a long-term wish.

The European Union has a practice to help in bilateral conflicts in a way that gives standards to members and candidate states on how they can act in this kind of dispute and create harmonious economic and political systems. With harmony a number of problems disappear. It is very clear that the European Union cannot resolve all the mentioned problems automatically, but it has an infrastructure to help the states.

8. Prognosis and Possible Future Scenario

A way how to solve the crisis of frontier cooperation is SOPS (agreement about frontier cooperation) which both states do not carry out in the majority of paragraphs. Croatia avoids participating as a country which prefers principles of law and does not want to accept the principle "pacta sunt servanda".⁴⁴ If Zagreb has carried out

⁴⁴ Pacta sunt servanda (Latin for "pacts must be respected") is a basic principle of civil and international law. Pacts and clauses are law between the parties, and presuppose that the non-respecting of obligations is a breach of the pact.

the latter, the “question of war of fishermen’ in Piran Bay would not be a part of the policy agenda these days. Namely, with the SOPS agreement Croatia and Slovenia defined a much bigger fishing corridor than the Piran Bay is. Besides this, Croatia is avoiding to carry out principles of Banditer’s Commission, which has initiated the

principle *uti possidetis*⁴⁵. According to it, it means that until Slovenia and Croatia do not except an agreement, the situation on the border from 25th of June 1991, when Slovenia announced independence, is valid. Zagreb cannot accept that kind of explanation because at that time Slovenia had jurisdiction over the whole Piran Bay. On the other

⁴⁵ *Uti possidetis* (Latin for “as you possess”) is a principle in international law that territory and other property remains with its possessor at the end of a conflict, unless it is not resolved in different manner by treaty. Peter Radan pointed out: “The principle of *uti possidetis* has two variants. *uti possidetis juris* relates to borders based upon the new state's right of territorial possession as determined by the legal documents of the former colonial power. *Uti possidetis de facto* relates to borders based upon territory actually possessed and controlled by the colonial entity at the time of independence, irrespective of legal rights of possession. In the secessionist conflicts of the 1990s the international community asserted that where a federal unit of an internationally recognized state sought to secede, the borders of a future state would, on the principle of *uti possidetis juris*, correspond to the pre-existing borders of the federal unit. In the absence of agreement to the contrary between relevant federal units, these borders would be regarded as sacrosanct. Such an adaptation of the principle of *uti possidetis juris* complements the already noted adaptation of the territorial definition of a 'people' with respect to the right of peoples to self-determination” (Cited from the book of Peter Radan, *The Break-Up of Yugoslavia and International Law*, Routledge, 2001, 5).

side, Croatia Banditer's principle initiated on special places where central government wanted to prejudice the borderline. His commission opinion does not allow Slovenia to have access to the open sea. The compromise between Prime Ministers Drnovšek and Racan about "demarcation" has given Slovenia the majority of the Piran Bay and ensured opening access to the international seas. Croatia could get territorial border with Italy (territorial seas). This would be a kind of "European compromise" which nationalist publics in both countries did not accept.

Even the current government completely neglected and ignored the mentioned agreement; it seems to be mentioned especially because of ideological reasons. The Drnovšek-Racan agreement was really an optimum solution for the borderline conflict. It was a kind of the positive sum-game where one actor loses as much as another gets.

It is quite clear that the "ideological bridge" between both states it is still very long and we could not expect the solution in the near future. Despite the fact that both leading parties are members of the EPP party group, governments are still the main actors who are the responsible for the status quo. This political group in the European Parliament is the strongest in the Parliament and it also has a big influence on the European Commission. In the future we can expect that some influential politicians will use their

political reputation or image to help Slovenia in Croatia in bilateral disputes. In practice nothing can be done without serious involvement of governments. We cannot be very optimistic because ideology and irrational symbolism are unfortunately more important than an optimum consensus.

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