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Duško Dimitrijević

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Duško Dimitrijević, Professorial Fellow at the Institute of International Politics and Economics, Belgrade, Serbia.
PhD in International Law and International Relations

Abstract: The dissolution of the Socialist Federal Republic of Yugoslavia (SFRY) resulted in the transformation of the administrative republican borders into international borders through the application of the international legal principle of *uti possidetis.* Due to the absence of administrative borders between the Yugoslav republics in the Adriatic Sea, the principle could not be applied to maritime delimitation after the succession of the SFRY. Situation was complicated by the fact that administrative borders were not clearly defined in the hinterland of the Adriatic Sea, which is why it was not possible to apply the general legal principle according to which "the land dominates the sea". This led to a series of boundary disputes between the successor states, which have not been resolved to this day. Clear political will and consistent application of international law will be necessary to resolve them in the future.

Keywords: Adriatic Sea; maritime delimitation; successor states of SFRY; Montenegro; Bosnia and Herzegovina; Croatia; Slovenia; boundary disputes; international maritime boundaries with Italy and Albania; general international law; international law of the sea; UNCLOS III.

Introduction

International law is unique in that the problem of determining the borders of state territory opens up issues regarding the delimitation of different legal orders (Kelsen, 1966). The fundamental concept of state sovereignty is what drives it, and as a result of international legal changes, it has historically fluctuated with the processes of state creation and termination.

The determination of the borders of state sovereignty starts from material assumptions that include physical determinants, such as geographic longitude, latitude, and altitude, as the border of the space in which the state's legal order exists.

Positioning in these three dimensions derives from the knowledge derived from the natural sciences, which should enable the determination of the optimal legal dimensions of state sovereignty. Virtually presented in vertically placed planes, state borders cut through the interior of the Earth, its surface and airspace, thereby realistically determining the end points to

which the state's jurisdiction extends (Ancel, 1936; Lapradelle, 1928).

Borders have always been linked to the practice of delimitation and demarcation between states. The legal determination of state borders begins with delimitation. Delimitation is a sovereign state act in relation to the application of international law because it defines the border line *in abstracto.* International treaties on state borders are often the legal basis of it, and they are often accompanied by geographical maps with drawn border lines.

The linguistic description of border lines contained in international treaties is preferred because geographic maps are not sufficiently precise in international legal practice. The second stage in determining state borders is demarcation. Demarcation involves precisely determining and marking boundaries on the ground. Demarcation is a very precise question, because it is determined by mathematical, astronomical, geographical, geodetic, topographical, and physical knowledge about the world and nature. That is why the demarcation is done based on the description of the border and on the basis of geographical and other maps.

The demarcation of state borders mainly refers to land space, while for other areas (territorial waters, seabed, underground and airspace); this phase of border identification is in direct

correlation with physical laws and the degree of technological development of society (Al Sayel, Lohmann, Heipke, 2010; Clauseen, 2010; Cukwurah, 1967; Mac Mahon, 1935)[1].

It is quite clear that a legally and physically limited territory with a population and an effectively stable government can represent factors of primary importance for the state and its existence[2]. The creation of a state results in no automatic recognition of its borders. International legal delimitation on land, sea, and in the air follows the determination of the relevant legal title. Contemporary practice recognizes cases where certain states are recognized, but the issue of borders remains unresolved for a long time afterwards[3]. Since the recognition of states is a discretionary right, it is logical that the delimitation should be optional (Bernstein, 1974). Thus, if a state grants

1In this respect, in recent decades, a new methodology has been adopted in determining borders based on geodetic and astronomical surveys that are linked to dates, so that the "Global Positioning System" (GPS) has been accepted in the United States of America, while in Europe, on the other hand, the "Galileo system" was adopted. Both systems are applied to ensure data consistency across state borders. In some cases, in the process of demarcating state borders, mixed commissions made up of experts approach the so-called *delineation,* which is a graphical and mathematical representation of the state border. Different border demarcation practices can be brought together in accordance with the standards of the International Organization for Standardization (ISO).

2In the Jaworzina case between Czechoslovakia and Poland, the Permanent Court of International Justice explained that international recognition of states follows only after a clear delimitation has been made. This interpretation was an exception that needed to be narrowly interpreted (PCJI. Jaworzina Case, Advisory Opinion Regarding the Delimitation of the Polish-Czechoslovakian Frontier delivered on December 6, 1923. *PCIJ,* Series B, No. 5, 32).

3On 11th May 1949 the UN General Assembly has adopted Israel into membership in the UN by its Resolution No. 273 [III] without reaching a previous agreement on its' borders.

international recognition, either explicitly or tacitly, it implies, in a political sense, the declarative acceptance of rights and duties related to that territory (Jones, 1945).

In accordance with international law, states should ensure that any violation of the legal status of their territory, including violent changes to their borders, is sanctioned. The legal establishment of state borders ensures their certainty. Their security is based on a legal basis that enables states to invoke it in the event of a challenge. Consequently, the process of determining borders has a constitutive effect in international law.

Depending on the circumstances of the case, international legal definitions of borders are usually formulated in international treaties, general declarations and local customs or ex post, in decisions of international arbitrations or international courts. In the case of a lack of legal form when defining state borders, the starting point is the factual situation created by a certain state practice based on the real and unhindered exercise of effective state power (*ex facto jus oritur*).

In this sense, with the action of the so-called *principle of effectiveness*, which can be authoritative for determining the legal title of defining state borders, often requires an additional, subjective element - *opinio juris sive necessitates* (legal awareness of the obligation to respect them) (De Visscher,

1967).

With the succession of states, internationally recognized borders are not being questioned (O'Connell, 1967). International law, through the process of border delimitation, creates an objective state that imperatively binds the successor states in the case of state succession.

What's more, it is a general international rule that the obligations of new states in relation to the internationally recognized borders of the predecessor state do not derive only from the succession of the international treaty on state borders, but from the continuity of the exercise of state competences (ILA, 1965; Pereira, 1969).

Internationally recognized borders are inviolable, but they are not immutable under international law. Changes to state borders are possible on a consensual basis, by reaching a new international treaty on the delimitation of state borders (Rossene, 1970).

The creation of borders on the basis of administrative-territorial divisions of the former state can have a significant impact on the life of successor states. Traditional international law for such cases rejects the application of the general rule on state borders since new independent states are created within the internal borders of the predecessor state which was governed by its public law regime. With the termination of the validity of the

internal legal order in the territory affected by state succession, the internal administrative borders of the predecessor state are also terminated. The development of international law, and especially the law of state succession, which regulates the legal consequences of the transition of states in time and space, has brought about fundamental changes in relation to this traditional point of view (Prescott, 1965).

Initially, changes were initiated by the decolonization of Latin America in the 19th century and continued in the second half of the 20th century in the regions of Africa and Asia. The well-known principle of Roman law on the retention of territorial possession - *uti possidetis, ita posideatis,* which the colonial powers applied in a figurative sense to maintain their territorial divisions on these continents, significantly contributed to changes in the understanding of the delimitation between the newly independent states.

In Latin America, the principle was applied on the basis of vested 'historical rights' or on the basis of the establishment of 'constructive sovereignty' (Guani, 1925; Moore, 1898; Nelson, 1973; Scott, 1922; Woolsley, 1931)[4].

4In a conceptual sense, the principle of respecting the immutability of the boundaries of former colonial possessions in South and Central America *uti possidetis juris* was transferred by analogy from Roman private law, which forbade confusion of ownership (*interdictum uti possidetis*). In reality, the concept relied on vested rights of origin based on Pope Alexander VI Borgia's bulls *Inter Caetera* and *Dudum Siquidem* of 1493, which divided Spanish and Portuguese possessions in South America. Although the bull *Inter Caetera* was modified several times (in Tordesillas in 1494, in Madrid in 1750 and in San Ildefonso in 1777), it represents a kind of

In the area of legally heterogeneous Africa, the principle anticipated the formal requirement for effective occupation (*uti possidetis de facto*), which served to preserve the territorial integrity of the newly emancipated states after the end of the decolonization process (Allot, 1969; Brownlie, 1979; Dias Van Dunem, 1969; Wooldridge, 2000; Yakemtchouk, 1971)[5]. On the

source of reference to historical borders whose legal title remained incomplete, but served as an auxiliary tool for the delimitation of the state borders of the large administrative-territorial units of the Spanish crown, where the states were *in statu nascendi,* the peoples were regrouping, and the territories were often uninhabited (*terra nullius*). Formally and legally, the principle of *uti possidetis juris* was proclaimed by the National Congress in Lima in 1848, and in Article 7 of the Treaty of Confederation concluded the previous year, between Chile, New Grenada, Ecuador, Peru and Bolivia as *uti possidetis 1810* and *uti possidetis 1821*, where the mentioned years represented "critical dates" or the dates of independence of the countries in South and Central America. In the constitutional acts of Ecuador, Colombia, Venezuela, Costa Rica, Mexico, Peru, and other Latin American countries, an explicit provision was made that the borders between the new independent states follow the demarcation lines of the former administrative units of the Spanish crown. Brazil, which had been under Portugal's colonial rule until 1822, objected to the *uti possidetis juris* principle. After independence, Brazil came up with their own version of the principle of immutability of borders, which was a revision of the *uti possidetis juris* principle. According to the Brazilian concept, the physical occupation of the territory at the moment of independence is the basis for determining the state borders with the newly independent states, successors of the Spanish crown (*uti possidetis de facto*). The application of the principle was supposed to bring all territories over which Brazil exercised real and effective control on the date of independence under its sovereignty. However, this did not occur, and the aforementioned approach led to numerous disputes with neighbouring countries.

5The principle of *uti possidetis* played a generally positive role in the succession of states, as it contributed to the legitimization of the anti-colonial struggle for independence and then, it influenced to some extent the stabilization of states, since it was in the function of maintaining the territorial *status quo.* At the Summit of the OAU member states in Addis Ababa in 1963, in resolution 16/I it was accepted that the principle of *uti possidetis* has the sole purpose of preserving the territorial integrity of the newly independent states. A declaration that required the member states of the OAU to respect colonial borders after independence was adopted in Cairo in 1964 to implement the aforementioned principle. After the conference held in Lusaka in 1969, the OAU adopted a manifesto confirming the unity of the newly independent states respecting their existing borders. Therefore, it is not disputed that the main reason for accepting the mentioned principle was primarily political. Although the principle of uti possidetis was proven in practice to be a suitable mechanism for overcoming the

other hand, it is not disputed that in Asia the principle of *uti possidetis* contributed to the preservation of the territorial integrity of the newly independent states through the decisions of judicial bodies and arbitrations that dealt with delimitation (Kaikobad, 1938)[6]. Consequently, the principle of *uti possidetis* certainly played a positive historical role in the area of state succession, since it was instrumental in maintaining the territorial *status quo*. This principle gave legitimacy to the anti-colonial struggle for independence, and at the same time served as a good basis for the political stabilization of newly established states.

The process of transforming administrative borders into international borders has become a general legal principle since the end of the Cold War. With the disintegration processes in Eastern Europe, the principle of *uti possidetis* became the authoritative principle for delimitation of the former federal units of the USSR, Czechoslovakia, and Yugoslavia. The new states created by the dissolution of these federations had almost identical territorial frameworks bounded by administrative borders, whereas the principle of *uti possidetis juris* was applied

initial labor pains of newly formed states, it was not universally applicable when gaining independence. This conclusion is particularly indicated in situations in which the principle is directly confronted with the previously established principle of self-determination.

6Rann of Kutch Case (India v. Pakistan). 30 June 1965, *ILR*, *50(2),* 474–494; ICJ. Right of Passage over Indian Territory (Portugal v. India), April 12, 1960, *ICJ Reports,* 6; ICJ. Temple of Preah Vihear Case (Cambodia v. Thailand)*,* June15, 1962, *ICJ Reports,* 1962, 6, 34.

to transform them into international borders. By adopting this principle, the territorial *status quo* within the territorial-administrative divisions that existed in the predecessor states was 'frozen'. Although the principle had certain positive effects in terms of strengthening the international status of the new states, its application almost neglected the application of another important principle - the self-determination of peoples, which in some cases led to security problems and political instability after the declaration of independence. To fully demonstrate this thesis, it is necessary to make a brief comment on the example of the SFRY succession.

Dissolution of the SFRY and succession of borders

Since the end of the eighties of the 20th century, Yugoslavia has been characterized by ever-increasing disputes between the republic's elites about ways to solve the most important state and national problems (Dimitrijević, 1998). Internal antagonisms were greatly contributed to by republican legislation, which for years was in disagreement with federal legislation based on an asymmetric model of division of competences (Jovičić, 1992)[7]. Yugoslavia's constitutional practice has always worked in two

7According to the last Constitution of SFRY from 1974, a hybrid of federal and confederal organization was introduced. The status of republics is characterized by a number of elements of statehood, which are otherwise not characteristic of federal units in comparative federalism. Their constitutional and legal order is not hierarchically subordinated to the federal one, as is the case in other federations in the world. They actually, if not nominally, received *jus nullificationis*.

directions because it was entirely opportunistic. It formally declared the right to secession *(jus secessionis),* in line with the right to self-determination of peoples. Then, following the example of the Soviet theory of 'floating territory', it legislatively implemented decentralization by relativization the constitutional provision on the *suprema lex*, in order to preserve the territorial integrity and wholeness of the country (Buzadžić, 1994, Radan, 2001)[8].

The accepted asymmetric constitutional model served as an ideal mechanism for political revisionism in the 1990s. Namely, after a series of unsuccessful negotiations regarding the redefinition of relations in the Yugoslav Federation, Slovenia and Croatia, and then Macedonia and Bosnia and Herzegovina, seceded from the SFRY[9]. The state-legal subjectivity of SFR

8Since 1989, the former Yugoslav republics have rapidly started nullifying, that is, separating from the internal legal order. The Constitutional Court of Yugoslavia, in accordance with its powers, annulled and abolished the acts of Slovenia, Croatia, and Macedonia that were in conflict with the federal Constitution.

9On 25 June 1991, Slovenia and Croatia's parliaments declared independence from the SFRY. They were followed by Macedonia and Bosnia and Herzegovina, where referendums on independence were held (8 September 1991 in Macedonia and 29 February, i.e. 1 March 1992 in Bosnia and Herzegovina). On the other hand, Serbia and Montenegro reorganized into the Federal Republic of Yugoslavia (FRY) on 27 April 1992, in an effort to maintain international legal continuity of statehood with the SFRY. The aforementioned attempt was unsuccessful in the United Nations, which permanently sanctioned discontinuity of the FRY with the SFRY, Security Council resolutions 757, dated 30 May 1992, 777, dated 19 September 1992, and 821, dated 28 April 1993. The General Assembly decided that the FRY would not continue to participate in its work, in accordance with the Security Council's recommendation. In the resolution 47/1 of 22 September 1992, the General Assembly decided definitively that the FRY, as well as all other successor states of the former SFRY, submit an application for admission to its membership. The FRY was accepted into the membership of the United Nations on 1 November 2000, following the adoption of General Assembly Resolution 55/12.

Yugoslavia was dissolved after it was separated. The United Nations and the European Community responded by setting up monitoring mechanisms because the separation of the Yugoslav constituent republics from the SFRY did not take place in a peaceful manner (except for Macedonia).

The search for a peaceful solution to the resulting political crisis was particularly intense, because the Yugoslav constitutional model did not clearly foresee the way to realize the right to self-determination up to the right to secession, while the defenders of the federal constitutional order attached importance to the imperative norm of international law (*jus cogens*) to the preservation of the territorial integrity of the SFRY (Kreća, 1992).

On the other hand, the secessionist republics insisted on the imperative nature of the right to self-determination, the legality of which could not be called into question by the interpretation of internal law, since its generally binding force derives from international law and does not depend on the fact of the existence or non-existence of internal rules on its realization in practices through secession (Šahović, 1996a)[10].

10Thus, one point of view was taken towards secession as an "indifferent act" towards which international law takes neither a positive nor a negative position. The question of illegality and illegitimacy of the right to secession from the aspect of international law was not raised. The confusion that arose from this conflicting interpretation of the rules on respect for territorial integrity and the right to self-determination and secession in the Yugoslav crisis was obviously inspired by political reasons that cannot be considered a constructive contribution to the understanding of the relationship between these two rules of international law.

When the dissolution process reached a critical stage, the question of the succession of SFR Yugoslavia was raised on an international level. The first official negotiations regarding succession began under the auspices of the Peace Conference of the European Community, established on 27 August 1991, at an extraordinary meeting of foreign ministers in Brussels.

At the same meeting, the Arbitration Commission was constituted as an advisory body to present opinions to all interested parties in the Yugoslav process on the content and scope of rules of positive international law (ILM, 1992).

Faced with various aspects of the crisis that followed the breakup of former Yugoslavia, the Arbitration Commission resorted to solutions for which there were no legal precedents in earlier practice. Although it did not fundamentally strive to introduce any novelties, the Arbitration Commission "adjusted" the existing rules and principles to the conditions in which the process of the succession of the SFRY took place (Obradović, 1996; Račić, 2000)[11].

The findings and recommendations of the Arbitration

11 According to Professor Račić, the Arbitration Commission was created, before the independence of the states, without a valid compromise between the parties to the dispute regarding the composition of the arbitration, legal procedure and rights, which is unusual in international practice. Professor Obradović agrees with him to some extent, who believes that it was not about arbitration in the usual sense, but about a sui generis body that was created as an advisory body of the Conference on Yugoslavia, but with some powers that resemble those that are normally entrusted to arbitration bodies. This is because, from the very beginning, the so-called *Badinter's Arbitration Commission* did not act as arbitration, but primarily as an advisory body of the Peace Conference for the former Yugoslavia.

Commission often coincided with the official positions of the highest authorities of the United Nations and other international organizations, which should not be surprising since the Arbitration Commission was also part of the international mechanism for monitoring the dissolution of the Yugoslav Federation. The Arbitration Commission's opinion was influenced by the application of political criteria, which also had an impact on the solutions accepted in state practice (Kreća, 1993; Obradović 1996)[12].

Understanding the situation in which SFRY was then is greatly enhanced by its Opinion No. 1 on 29 November 1991. Thus, starting from the statement about the unrepresentativeness and ineffectiveness of the federal bodies, the Arbitration Commission expressed the view that SFRY is in the process of dissolution. This point of view further indicated the ultimate determination of the Arbitration Commission to bring the Yugoslav case under the rules of state succession when unilateral and successive secessions, *ex post facto*, lead to the

12The Arbitration Commission's jurisdiction was accepted by the Federal Republic of Yugoslavia (FRY) until Opinions No. 8, 9 and 10, on 4 July 1992. In Opinion No. 8 it can be seen that the FRY refused to accept jurisdiction of the Arbitration Commission on 8 June 1992. This has been confirmed multiple times and later. After 4 July 1992, the government of the FRY officially declared that the opinions of the Arbitration Commission do not bind it, that is, that they do not represent a legal basis for a meritorious decision, and that it therefore considers them doctrinal in the sense of Article 38(d) of the Statute of the International Court of Justice. Since the FRY was not consistent in its position, because it continued to engage in the activities of the Arbitration Commission, the Arbitration Commission declared itself competent considering the nature of the functions assigned to it. The most explicit example is represented by Opinions from No. 11. to No. 15.

total disappearance, that is, to the dissolution of the predecessor state. In this regard, this process of succession, according to the findings of the Arbitration Commission, should be evaluated in the light of the circumstances in which the new independent states were created (without entering into the evaluation of the legitimacy and legality of the secessions), so that the acquisition of independence of the former Yugoslav republics is a "legal fact" on which the succession of SFRY is based (Crawen, 1995; Pellet, 1991, 1992, 1993).

Consequently, it is up to the republics to resolve those problems of state succession that may arise from this process in accordance with the principles and rules of international law with special attention to the protection of human rights and the rights of peoples and minorities (ILM, 1992).

In Opinion No. 8 of 4 July 1992, the Arbitration Commission stated, *inter alia*, that "most of the new states, created from the former Yugoslav republics, have acceded to mutual recognition of independence", which made it clear that "all federal power in the territories of the newly founded states".

Then, starting from the principle of effectiveness, the Commission confirmed that "joint federal bodies, within which all Yugoslav republics are represented, no longer exist and since then, no body of this type has been functioning".

The former national territory and population of the SFRY

federation will in the future fall completely under the sovereign authority of the new states. Finally, the Arbitration Commission concluded that the process of dissolution has ended, so it should be stated that the SFRY no longer exists (ILM, 1992).

It is so in the Opinion No. 2, which followed the question of Lord Carrington, president of the Conference for the Implementation of Peace in Yugoslavia, about the right of the Serbian population to self-determination in Croatia and Bosnia and Herzegovina, the Arbitration Commission expressed the opinion that,

> "at the current stage of development, international law does not specify all the consequences of the right to self-determination. However, it was determined that whatever the circumstances, the right to self-determination cannot lead to changes in the borders that exist at the time of independence (*uti possidetis juris*), unless the interested states agree to the contrary" (ILM, 1992).

In accordance with the above-mentioned point of view, and with the aim of overcoming the Yugoslav crisis, the Arbitration Commission concluded in Opinion No. 3 that, "unless agreed to the contrary, the former borders take on the character of borders protected by international law" (ILM, 1992).

The conclusion derives from the principle of respect for the territorial *status quo* and in particular the principle of *uti possidetis juris qui,* which, although initially recognized when solving the problem of decolonization in America and Africa, today has a general character in accordance with the position of the International Court of Justice that was expressed in the

judgment of 22 December 1986, regarding the border dispute between Burkina Faso and the Republic of Mali[13].

The position on the acceptance of administrative borders between the former Yugoslav republics as interstate borders "protected by international law" derives from the opinion of the Commission according to which "demarcation lines will be able to be changed by free and mutual agreement". This approach was additionally confirmed through the interpretation of the principle of respect for the territorial status quo, which was prescribed by the last Yugoslav Constitution of 1974 (paragraphs 2 and 4 of article 5).

Without the freely expressed consent of the former Yugoslav republics, which were considered constituent parts of the

13In the aforementioned judgment, the International Court of Justice found that the principle "of the immutability of borders inherited from colonization" applies exclusively to the border dispute between two former colonies: Burkina Faso (former Upper Volta) and the Republic of Mali (former French Sudan), and which relies on the principle stated in the Cairo Resolution adopted by the Organization of African Unity in 1964. Considering that the principle of *uti possidetis* has a general scope, the International Court of Justice underlined that it overwhelmingly covers the legal gap until the establishment of effective authority as the basis of sovereignty. The primary objective is to ensure the territorial boundaries that existed at the time of independence. When the borders are delimited by the same sovereign between colonies or different administrative entities, then the application of the principle is reflected in the transformation of administrative borders into international borders, which is what happened in the specific case regarding the mentioned former French territories in West Africa. When conflicting with the right to self-determination, the International Court of Justice emphasized its role in ensuring stability. In its opinion, the application of this principle will be the wisest course that shows the deliberateness of African states in maintaining the territorial *status quo*. However, despite the above-mentioned position, the judgment of the International Court of Justice is based more on interpretations in accordance with the principle of equity *infra legem*. ICJ. Case Concerning the Frontier Dispute (Burkina Faso v. Republic of Mali), 22 December 1986, *ICJ Reports,* 469-565.

Yugoslav federation, internal borders cannot be changed due to the aforementioned constitutional provision. Since in the conditions of the armed conflict there was no agreement between the conflicting parties regarding the determination of interstate borders, the Arbitration Commission temporarily removed this issue from the agenda, trying to preserve the territorial status quo of the new states.

Although it tried to highlight the security function of the adopted principle in conditions where there could be a flare-up of armed conflicts that would threaten the newly acquired national independence, the Commission failed to stop the negative consequences of the worsening of the political crisis on the ground.

This was certainly contributed to by its uneven attitude towards the realization of the right to self-determination to which the Commission gave secondary importance in relation to the accepted principle of immutability of inter-republican borders (Šahović, 1996a).

Finally, accepting that the principle of *uti possidetis juris* represents a general principle of international law applicable to the succession of the SFRY, the Commission did not provide a valid legal explanation for that thesis, but only contributed to the "freezing" of the existing territorial state of administrative inter-republican borders at the time of independence without

attempting to resolve all open delimitation issues (Antonopoulos, 1996).

On the other hand, one cannot deny the consistency of the Arbitration Commission regarding the position on the inviolability of the internationally recognized borders of SFRY, which the successor states inherited upon gaining independence. In particular, in Opinion No. 3, the Arbitration Commission pointed out that,

"external borders must be respected in all cases, in accordance with the principle recalled in the Charter of the United Nations and the Declaration from UN General Assembly Resolution 2625 (XXV) of 24 October 1970, on Principles of International Law concerning Friendly Relations and Co-operation among States, and also in accordance with the Final Act from Helsinki which reaffirms the rule contained in the Vienna Convention on the Succession of States in respect of Treaties of 23 August 1978" (ILM, 1992).

In this particular case, it is about the rule codified in Article 11 of the Vienna Convention according to which state succession does not encroach on the issues of borders determined by the treaty, or on the issues of rights and obligations in connection with the border regime determined by the treaty between states[14].

Derived from legal practice and international legal doctrine, the rule is essentially based on the principle of sovereign equality of states, according to which states are obliged to refrain from the

14The Convention was adopted on 22 August 1978 at the United Nations Conference on Treaty Succession and was open for signature in Vienna from 23 August 1978 to 28 February 1979, then at United Nations Headquarters in New York until 31 August 1979. The Vienna Convention entered into force on 6 November 1996. UN Doc. A/CONF.80/31.

threat and use of force in their mutual relations (rule contained in Art. 2 of the UN Charter).

The principle of inviolability of borders is enshrined in the Final Act, as well as in the Declaration of Principles Guiding Relations between Participating States of the Conference on European Security and Cooperation, adopted in Helsinki in 1975[15]. As the international community rests on the prohibition of interventionism directed against the territorial integrity of states, the rule is that internationally recognized borders can only be changed peacefully and by agreement.

The same point of view is mirrored by the Declaration of Principles of International Law on Friendly Relations and Cooperation among States in Regard to "demarcation lines" contained in General Assembly resolution 2625 (XXV). The rule on the inviolability of borders was also confirmed in the Charter for a New Europe from 1990, which was adopted at the summit of the heads of state or government of the Conference on European Security and Cooperation, held from 19 to 21 November 1990 in Paris.

Furthermore, the principle was in line with the collective consensus on the recognition of new states on SFRY's territory. By adopting the Declaration on the Guidelines on the

15The Helsinki Final Act is a document signed at the final meeting of the Conference on Security and Cooperation in Europe (CSCE) held in Helsinki on 1 August 1975, after two years of negotiations known as the Helsinki Process in which almost all European countries participated along with the US and Canada.

Recognition of New States in Eastern Europe and in the Soviet Union and the Declaration on Yugoslavia of 16 December 1991, the European Community conditioned the recognition of newly independent states on the acceptance of basic international legal standards, which included the obligation to respect territorial integrity and inviolability of international borders (ILM, 1992; Pellet, 2000; Rich, 1993; Šahović, 1996b).

To properly understand the international borders found towards Italy and Albania in the Adriatic Sea after the SFRY's succession, these rules are crucial. According to the Convention on the Law of the Sea from 1982 (UNCLOS III), the rights and obligations of member states arising from other international treaties are not called into question, if the provisions of those treaties are in accordance with its provisions (UN Treaty Series, 1994)[16].

Since UNCLOS III represents the most important codification of international maritime law as well as a legal instrument for solving the issue of international maritime delimitation, it will certainly, along with the rules of general international law, be an

16UNCLOS III represents the most significant codification in the matter of international law of the sea. It was adopted at the Third Conference on the Law of the Sea in 1982, and entered into force in 1994. UNCLOS III has priority over the application of the rules from the Geneva Conventions from 1958 (the Convention on the Territorial Sea and the Contiguous Zone, the Convention on the High Seas, the Convention on Fishing and Conservation of the Living Resources of the High Seas and the Convention on the Continental Shelf), due to the fact that the rules from these Conventions are mostly transferred, systematized and further elaborated in it, and that their individual application should ultimately lead to similar, if not identical, results of maritime delimitation.

authoritative legal source for the delimitation of the successor states of the SFRY in the Adriatic Sea, as well as for solving all open border issues of these countries with Italy and Albania as old Yugoslav neighbours. The treaties reached by SFRY with these two states can be used as a valid legal foundation to redefine mutual rights and obligations regarding their inherited maritime borders.

It should be pointed out that the international borders towards the former Yugoslav neighbours were confirmed in accordance with the rules of general international law, which in the case of the succession of the SFRY experienced a kind of political test. The confirmation pertains to the parts of the international borders that the successor states gained through the SFRY's succession. These inherited boundaries are still subject to the principle of immutability. On the other hand, the administrative borders between the former Yugoslav republics have actually been transformed into state borders, i.e. international, by the principle of *uti possidetis.*

From a legal and logical point of view, both of the above cases can hypothetically be treated as specific legal assumptions applicable to different legal situations that arose after the dissolution of the SFRY. Thus, in the case of international borders towards the old Yugoslav neighbours, this assumption is considered irrefutable because it rests on a valid legal basis such

as the border treaties concluded by the former Yugoslavia with neighbouring countries *(presumptio iuris et de iure).* On the other hand, in the case of the former administrative borders between the former Yugoslav republics, this assumption is considered rebuttable *(presumptio iuris tantum)* because, the inter-republican borders were not based on any valid formal legal basis, but on the effectiveness of the exercise of territorial competences derived from administrative republican acts or political decisions of the Yugoslav leadership.

Because of this shortcoming, after the SFRY took over, the administrative borders were transformed into state borders by applying the principle of *uti possidetis.* However, in those parts of the Yugoslav territory where inter-republican borders did not exist until the succession of the SFRY, as was the case in the Adriatic Sea, the application of the principle *uti possidetis* was not possible.

Hence, the question arose about the possibility of its extended effect *pro futuro*, considering the border lines that were *de facto* established on the date of succession on the land parts of the territories of the successor states of the SFRY in the hinterland of the Adriatic Sea[17].

This is because, according to the rule contained in Art. 2

17According to the last Yugoslav Law on the Coastal Sea and the Continental Shelf, the Adriatic Sea was a unique part of the territorial area of the SFRY so that: "The sovereignty of Yugoslavia at sea extends to the coastal sea, the air space above it, the seabed and subsoil of the sea". Official Gazette of the SFRY, 49/1987; 57/1989.

UNCLOS III, the sovereignty of the state over the land part of the territory also extends to internal sea waters, the territorial sea along the coast, and then to the airspace above it, as well as to the seabed and subsoil of the sea. In other words, this rule confirms that the sovereignty over the sea areas is dependent on the sovereignty over the land, on the basis of which the sea represents its accessory *(Mare est ejus, cujus est terra)*[18].

The absence of a delimitation agreement between the successor states prevented the implementation of this rule in the Adriatic Sea. The dispute between Montenegro and Croatia, Bosnia and Herzegovina and Croatia, and Slovenia and Croatia was a result of mutual territorial claims. Due to the lack of flexibility in mutual negotiations on delimitation, all attempts to resolve disputes peacefully in the previous three decades failed.

The SFRY's successor states cannot escape this vicious circle until they demonstrate the political will to resolve this issue in accordance with international law. Until then, however, the issue of delimitation in the Adriatic Sea remains open, which essentially does not contribute to solving this major political-legal problem that affects the security situation in the entire region of Southeast Europe.

18International Court of Justice has referred in the North Sea Continental Shelf cases to the principle that "the land dominates the sea", and affirmed that "land is the legal source of the power which a state may exercise over territorial extensions to seaward". ICJ. North Sea Continental Shelf (Federal Republic of Germany/Netherlands), Judgment, 20 February 1969, *ICJ Reports,* 51, para. 96.

The possibility of overcoming this problem exists because general international law and the law of the sea have rules and principles that could compensate for the shortcomings in the application of the principle of *uti possidetis.*

This is particularly significant for the case of delimitation in the Adriatic Sea, where before the succession of the SFRY there were no defined borders between the former Yugoslav republics, which is why the application of the principle was not possible except in a retrospective and historical sense, which enables the identification of all relevant legal facts necessary for mutual delimitation.

In the next part of the study, the facts related to mutual border disputes between the successor states of the SFRY on the Adriatic Sea will be analyzed. This section of the study will address open questions about the status of the inherited international maritime borders with Italy and Albania.

Map 1: Coastal states of the Adriatic Sea after the succession of the SFRY

Source: (Vidas, 2006)

Dispute between Montenegro and Croatia

After the succession of the SFRY, Montenegro and Croatia entered into a stormy period of mutual dispute over the ownership of the area of the Prevlaka peninsula (Cape Oštro), which covers an area of 5.24km^2, a length of about 2.5 km and a width of about 460 m, on the westernmost side[19].

With the succession of the SFRY, Croatia inherited Prevlaka and the entire Dubrovnik region, although the existing border line between it and Montenegro was not accompanied by the adoption of appropriate federal legislation within the former Yugoslavia.

This is due to the fact that the establishment of inter-republican borders in the former socialist Yugoslavia did not have a special significance, but was solely a function of the division of republican competences.

Namely, the inherited administrative border between Croatia and Montenegro after the succession of the SFRY coincides with the provisionally established demarcation line of the so-called *Banovina of Croatia*, which on the eve of the Second World War was proclaimed by a Decree by the Royal Viceroyalty as an administrative unit in the Kingdom of

19Serbia and Montenegro became part of the Federal Republic of Yugoslavia (FRY) on 27 April 1992 after the SFRY's succession. FRY changed its name to 'State Union of Serbia and Montenegro' on 4 February 2003. After the referendum held on 21 May 2006, and in accordance with the Law on the Implementation of the Constitutional Charter, Montenegro exercised the right to secede from the State Union.

Yugoslavia (Boban, 1993; Đorđević, 1967; Lukić, 1940; Kostić, 1939; Vladisavljević, 1940)[20].

With the automatic application of the *uti possidetis* principle after the succession of the SFRY, this line of demarcation was *via facti* turned into an interstate border, which was not legally acceptable for Montenegro. This is due to the fact that his military line was not established in a legal way in the predecessor state and also because of the specific legal status that Prevlaka had in SFRY. Due to its exceptional strategic position, Prevlaka was turned into an artillery station of the Yugoslav People's Army after the Second World War. After that, strategic military facilities and a radar centre were established on it. For defence and security reasons, the peninsula was nationalized and registered as state property under the direct administration of the Yugoslav People's Army at the District Court in Dubrovnik in 1969.

As according to the Yugoslav federal legislation, the Adriatic

20The Decree on Banovina Croatia was passed on 24 August 1939, on the basis of Article 116 of the Constitution of the Kingdom of Yugoslavia from 1931, which provided for this possibility only in exceptional situations such as the one before the outbreak of World War II. Decree on Banovina Croatia had a provisional character. It did not define the final territorial scope of this administrative unit. Also, it did not pass the prescribed constitutional procedure of parliamentary approval because the administrative-territorial division of the Kingdom of Yugoslavia could not produce legal effect. In the Second World War, the Kingdom of Yugoslavia was occupied by fascist forces, and on the territory of Banovina Croatia, a puppet fascist "Independent State of Croatia" was created under the divided administration of Italy and Germany. Considering that no legal consequences could follow from the illegal acts of the occupiers, after the Second World War (1946) all regulations passed before 6 April 1941 and during the enemy occupation, including those passed by the fascist puppet state, were abolished.

Sea was treated as part of a single state territory, the final delimitation between Montenegro and Croatia did not occur even after the succession of the SFRY.

However, this does not mean that there are no certain bases from which it would be possible to start in mutual delimitation, such as the republic's competences on the Adriatic Sea, the scope and content of which were more closely regulated by the by-laws of the federal authorities. Thus, the Government of the Federal People's Republic of Yugoslavia (FPRY) passed the Decree on the establishment of administrations of maritime areas on 1 January 1952. This Decree was confirmed by the latter Decision of the Ministry of Maritime Affairs of the FPRY No. 1724 of 14 April 1952 on the territorial jurisdiction of the administrations of maritime areas[21].

The issue of Prevlaka was opened after the outbreak of the Yugoslav crisis before the United Nations Security Council, where it was discussed every year under the item: "Situation in Croatia". In order to address security concerns, the Federal Republic of Yugoslavia (Serbia and Montenegro) and Croatia reached an agreement on the demilitarization of the area on 30

21 The Decision of the Ministry of Maritime Affairs stipulates that: "(...) the territorial jurisdiction of the Administration of the Maritime Area of the Southern Adriatic, with headquarters in Kotor, includes the area of the coast and the territorial sea of the FNRJ, which extends within the border that goes to the bay of Prevlaka, including the Prevlaka peninsula, along the sea coast and territorial waters up to the mouth of the Bojana river, and from there along the state border of the FNRJ along the Bojana river and Lake Skadar, including the rivers and canals navigable for seagoing vessels". Official Gazette of the FPRY, 28/1952.

September 1992. Resolution No. 779 was passed by the Security Council shortly after, on 6 October 1992, which confirmed the obligation of the parties to the dispute to leave the territory militarily, simultaneously placing Prevlaka under the supervision of the United Nations. The peninsula was demilitarized and placed under the control of the United Nations Protection Force (UNPROFOR) based on Security Council Resolution No. 743 of 21 February 1992.

After the expiration of UNPROFOR's mandate, the Security Council, with a new Resolution No. 981 of 31 March 1995, established a peacekeeping mission - United Nations Confidence Restoration Operation in Croatia (UNCRO), which supervised the demilitarization process. Finally, by Resolution No. 1038 of 15 January 1996, the Security Council approved the mandate of the new observation mission on Prevlaka (UNMOP).

The demilitarized zone in Prevlaka was divided into two areas. The yellow zone was occupied by the police forces of the parties involved in the dispute, while the blue zone was monitored by the observation missions of the United Nations. Since the nature of the dispute was extremely complicated from a military, political, historical and legal point of view — bearing in mind that borders on land are not de jure recognized as a starting point for demarcation at sea — after the conclusion of the Agreement on the Normalization of Relations, the parties undertook to

approach the regulation the dispute over Prevlaka "conducting mutual negotiations in the spirit of the Charter of the United Nations and good neighbourliness".

Despite the ratification of the Agreement on 23 August 1996 resulted in mutual recognition, the issue of Prevlaka still remained open. Within the Yugoslav delegation, Montenegro emphasized that it is a territorial dispute that inevitably raises security issues, while the Croatian side insisted only on the security aspect of the Prevlaka problem.

The negotiations could not progress due to those reasons. All the more so, since after gaining independence in 1992, Croatia passed the Law on the Coastal Sea and the Continental Shelf, which unilaterally delimited the disputed area with a line starting from the entrance to Boka Kotorska between the island of Mamula and Cape Oštro, 12 nautical miles long from the most prominent point of the dispute administrative border at Cape Kobila, which unilaterally closed the entrance to the Bay of Kotor.

With the adoption of the Maritime Code of 7 March 1994 (which was published in the Official Gazette 17/1994), this line of delimitation is not mentioned, so the question arises of abandoning the previous unilateral decision contained in the previous Law. Montenegro established an expert commission in 1998 to find an optimal solution to the regulation of the Prevlaka

issue through negotiations.

The legal affiliation of the peninsula was brought up during the negotiations between the parties. While Croatia stated that it claims territorial rights based on deeds and cadastral surveys, Montenegro argued that the deeds were issued by the municipal authorities of Montenegro in Herceg Novi and Kotor, which indicates the actual exercise of authority over the disputed area. At the same time, it also referred to the fact that this entire area was exempted from the jurisdiction of Croatia due to its security significance and that it was assigned to the jurisdiction of the Yugoslav People's Army.

During the SFRY, the Port Authorities of Montenegro in Zelenika and Herceg Novi were responsible for customs control in the Maritime Region of the South Adriatic. The jurisdiction of the Port Authority in Zelenika extended to the area bounded by the border that goes from Bay of Prevlaka to Cape Oštro, Herceg Novi Bay, the Kumbor Strait, along the coast to the lighthouse on Cape Turski, then the direction that forms the border of the Kotor Authority, through the middle of the Verige Strait to the village of Petrovići, and further along the coast to Cape Kočište and the line connecting that Cape with the village of Petrovići on the opposite side.

The jurisdiction of the Port Authority in Herceg Novi extended from the bay of Prevlaka to Cape Oštro, the Bay of Herceg Novi

to the border of the Port Authority of Zelenika, including Rose, further along the coast to Cape Kočište and further to the village of Petrovići (Perazić, 1996).

Given the conflicting viewpoints, the principle proposed by the Arbitration Commission for Yugoslavia to turn inter-republic borders into state borders could not be automatically implemented.

The dispute over Prevlaka continued to strain relations between Montenegro (in that period as a constituent federal unit of the Federal Republic of Yugoslavia (FRY)) and Croatia. Prevlaka negotiations were dragged out on multiple occasions. Thus, during the signing of the Dayton Peace Treaty, the proposal to exchange territories was rejected by the Croatian side. With the normalization of relations, on 15 June 1998, Croatia proposed a demarcation "based on the existing land border" (S/1998/533).

On 10th July of the same year, FRY proposed demarcation along the highway Herceg Novi - Sutorina - Dubrovnik (S/1998/632).

On 24 December 1998, the FRY submitted to the Security Council a Memorandum on the negotiating position on Prevlaka, in which it is confirmed that this area belongs to the FRY according to the principle of *uti possidetis de facto*, because historically "delimitation never happened." (S/1998/Annex II).

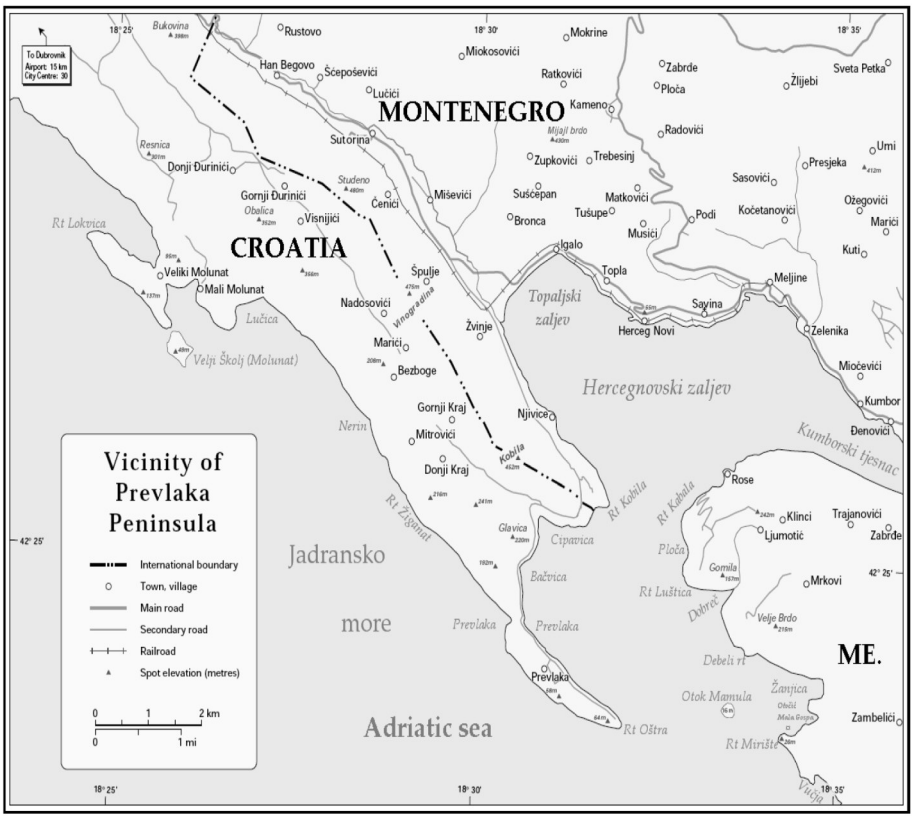
After a certain standstill in the negotiations, on the initiative of the representatives of Montenegro, on 13 November 2002, the

Assembly of the FRY adopted a Declaration proposing to the Federal Government to form an expert commission for negotiations that will prepare the text of the treaty on the delimitation of the Prevlaka area in accordance with the Yugoslav Constitution and international law.

Given that the mandate of the United Nations peacekeeping mission in Prevlaka expired at the end of 2002 and after that it was not known what its status would be, the parties in the negotiations are in accordance with the obligation to inform the Security Council from Resolution No. 1387, and with the desire to contribute to permanent peace and stability in the region, used an opportune moment to define the basic principles of identification of the inter-state border, thus simultaneously hinting that the future treaty on the delimitation will also include the regulation of the border regime on the Adriatic Sea.

After extending the mandate of the international peacekeeping mission on two occasions, the Security Council adopted Resolution No. 1437 on 11 November 2002, which ended the mandate of UNOMOP in Prevlaka.

Map 2: Disputed boundary line at Prevlaka Peninsula between Montenegro and Croatia



Based on the map by The Cartographic Section of the United Nations, No. 4106 / April 1999 (McKay)

Source: (The UN Cartographic Section, 1999)

Protocol on the temporary regime along the southern border

With the end of the observation mission of the United Nations in Prevlaka, the negotiation process within the work of the

interstate diplomatic commission was intensified. The Commission's efforts resulted in the signing of the Protocol on the temporary regime along the southern border on 10 December 2002 (Protocol).

The regime established by the Protocol has the purpose of facilitating the identification of the common state border at sea. Mutual rights are respected by the Protocol and the importance of implementing obligations based on mutual trust (bona fides). In addition to the above, it also confirms the principle of non-recognition of unilateral acts taken by anyone.

The Protocol stipulates that its legal regime is "only temporary until the conclusion of the final delimitation agreement" (article 1) and that "the drawing of the boundary line at sea provisions does not prejudge the final solution of the issue of mutual delimitation" (article 2). The temporary delimitation of the territorial sea is established from a point three cables (555.6 meters) away from Cape Oštro, at the junction of Cape Oštro - Cape Veslo, and continues in a straight line for 12 miles under azimuth 206˚, to the open sea (article 6). This specifically means that the entrance to the bay, as in the time of the former SFRY, is a straight baseline from Cape Oštro on the southernmost part of the Prevlaka peninsula to Cape Veslo in Montenegro.

The waters inside the Bay of Kotor thus acquire the status of "internal waters", and the width of the territorial sea is measured

from a straight baseline that closes the bay. The demarcation of land and sea is followed by certain topography and maritime maps (Annexes I, II, III, and V) (Official Gazette of the FRY, International agreements, 5/1996).

The Protocol resulted in the distribution of state competencies related to border crossing, border regime, police and customs administration and other issues. Yugoslavia is recognized as having jurisdiction in the area north of Konfin, while Croatia is granted the same right in its south-western part. The demilitarization of the land area is an obligation for both sides, from the Croatian side in a width of 5 km, and from the Montenegrin side in a width of 3 km, in depth from the mentioned line. Supervision of demilitarization is carried out in the manner provided for in Annex VI of the Protocol.

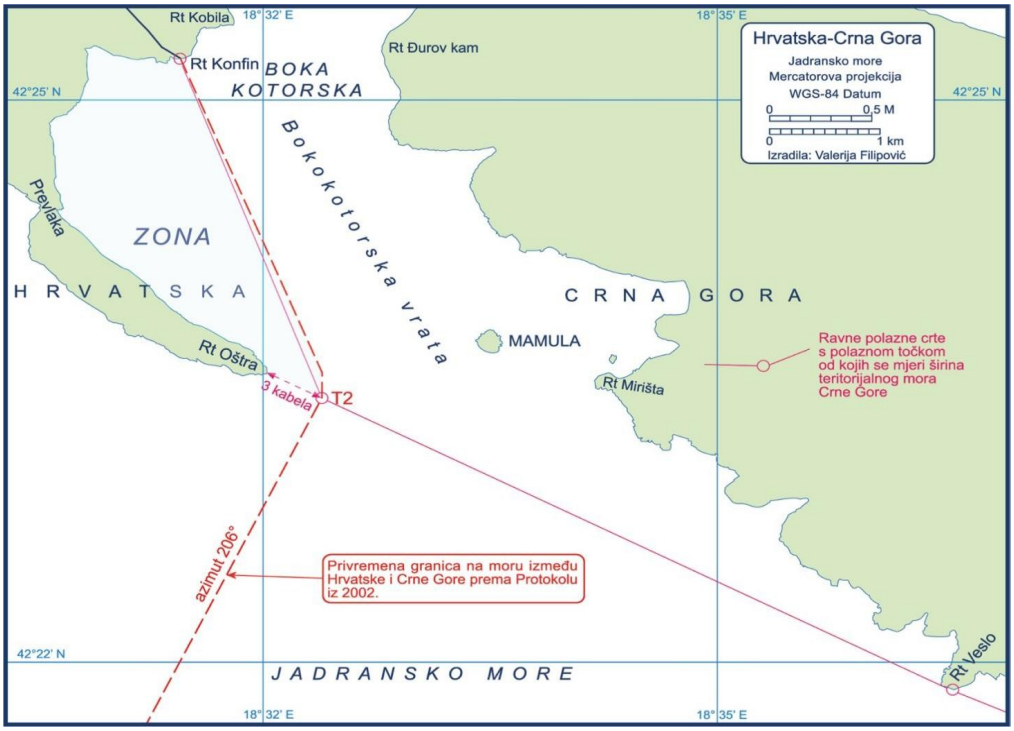
In the direction west of a straight line extending from Konfin on the mainland to a point three cables from Cape Oštro on the line connecting Cape Oštro - Cape Veslo, the presence of police and military forces of only one state is excluded (article 5).

In this zone, it is planned to form mixed police teams with regular and special powers that would have the task of protecting general security and preventing illegal activities in the area of the so-called Areas (Article 5 of the Protocol and Annex IV). With this decision, the parties have contractually introduced a kind of *co-imperium* over part of the sea (the so-

called *accumulation of sovereignty*) (Dimitrijević, 2008).

It is significant that the Protocol allows sport fishing, border traffic, as well as defining the Karasovići - Sutorina, Vitaljina - Njivice border crossings on land until the final settlement of these issues based on the annex to the Agreement on Border Crossings and Border Traffic from 1997. The parties also agreed on facilitating the transition of the population from the area of Dubrovnik County, Konavle and Dubrovnik, on the one hand, and the municipalities of Herceg Novi, Kotor and Tivat, on the other. Cooperation is expected in cases of sea pollution, search and rescue at sea, and in terms of tourism and air traffic.

Map 3: Provisional maritime border according to the 2002 Protocol on the temporary regime



Source: (Punda, Filipović, 2015)

Given that the FRY (Serbia and Montenegro) and Croatia, as the successor states of the SFRY, inherited membership in UNCLOS III, they were obliged, according to Article 15 of this Convention, not to extend their territorial sea beyond the median line, except if they would do it by agreement. In this regard, it follows that the Protocol does not follow the codified rule on

drawing the median line, which does not mean, per se, that it is not legally permissible considering the dispositive nature of the provisions of the UNCLOS III.

Determining the border line from Cape Kobila, a straight line of 555.6 meters from Prevlaka (Cape Oštro) and across the line connecting Cape Oštro - Cape Veslo, the two sides obviously used the right to temporarily regulate the border at sea in a different way than the conventionally accepted one.

This approach had a positive role in unblocking the dispute and funding regimes that will allow life in this part of the Adriatic Sea to be normalized after the war events. The Protocol's conclusion has helped to reduce political tensions, as Montenegro and Croatia's societies were unable to find lasting solutions. Temporary determination of the Adriatic Sea border also means that the Protocol does not prejudge the final decision on delimitation of sea borders.

Some international legal solutions for maritime delimitation

Maritime delimitation between Montenegro and Croatia is significantly complicated by the unresolved issue of delimitation in the area of the Prevlaka peninsula, the resolution of which is an essential prerequisite for defining the maritime border between the two countries in the Bay of Kotor.

In other words, in order to reach the final demarcation on the

Adriatic Sea between Montenegro and Croatia, it is necessary to first determine the terminus of the land border between the two countries, and then determine the starting point for determining the maritime delimitation. The Protocol concluded between the FRY and Croatia, which Montenegro applies on the basis of succession, refers only to the area of internal waters and territorial sea and does not apply to the continental shelf, exclusive economic zone or *sui generis* maritime zones (Caligiuri, 2016).

The Protocol, as previously mentioned, temporarily regulates the entrance to the Bay of Kotor, which, as in the time of the former SFRY, is closed by a straight baseline that connects Cape Oštro on the southernmost part of the Prevlaka peninsula with Cape Veslo in Montenegro, so that the waters inside the bay have the status of internal waters, while the width of the territorial sea is measured from the straight baseline that closes the Bay.

When considering possible solutions for maritime delimitation, it is necessary to take into account the fact that the entrance to the Bay of Kotor is the sea area between Prevlaka and Luštica, that is Cape Oštro and Cape Mirište, Cape Kobila and Cape Kabala (Đurov Kam), which are the most prominent points of these two neighbouring geographical formations. Hypothetically, if the coasts of these two continental areas would belong exclusively to Montenegro during the final

demarcation with Croatia, then the Bay of Kotor would meet all the conditions to be considered a sea bay in accordance with Art. 10(2) of UNCLOS III, which applies exclusively to bays whose shores, belong to only one state. According to this provision, bay represents:

"A well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation".

According to Art. 10(3) of UNCLOS III, for the purpose of measurement:

"The area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation".

When applying the mentioned provision of UNCLOS III, the presence of the island of Mamula, due to which the Bay of Kotor has two natural entrances, should be taken into account. At the mutual delimitation of Montenegro and Croatia, a semicircle could be drawn so that its diameter represents the sum of the lines closing these entrances, with the island's surface being included in the total surface of the Bay.

According to Art. 10(4) of UNCLOS III:

"If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 nautical miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters".

Given that the sea surface between the low-water marks at the natural entrances to the Bay of Kotor does not exceed 24 nautical miles, it would be possible to draw a boundary line that would encompass the sea surfaces between these lines in the direction of the coast, which would allow Montenegro to declare them as its own internal waters.

In this sense, such a solution would follow the one that already existed in the Law of the Coastal Sea of the FPRY from 1948, according to which the Bay of Kotor is covered by internal sea waters in such a way that the straight baseline connects Cape Oštro with Cape Veslo. This would be the most favourable variant of demarcation for Montenegro, which, in addition to referring to the provisions of UNCLOS III, could also refer to the retroactive effect of the principle of *uti possidetis* on the land area of Prevlaka, which presupposes the presentation of appropriate legal, geographical and historical arguments (Dimitrijević, 2004).

Given the current status of the border line provided by the temporary Protocol, the median line method could also be utilized for the final delimitation. Such a solution would enable Croatia to expand its territorial sea to the very entrance of the Bay of Kotor. Montenegro is not likely to benefit from the solution mentioned above.

In order to find balanced solutions that would contribute to the geostrategic security of the region, but also to the inviolability and stability of the state border (the part that is precluded by the principle of *uti possidetis*, but also the part that has not yet been defined), it is necessary to highlight other possibilities in addition to the above. If, on the other hand, the current status was to remain, then it would be possible to draw the borderline according to the general rule on the delimitation of the territorial sea of countries whose coasts border laterally, and whose state borders emerge at a sharp angle.

Practically, this would make it possible to draw a straight baseline, not in the direction of the land border, but from the end point where the land border of the neighbouring states breaks out on the coast (now it is Cape Kobila or Konfin) (Novaković, 1996). This would prevent the application of the median line for mutual delimitation and the possibility that the Croatian territorial sea extends in front of the Montenegrin coast, which would limit Montenegro in exercising its sovereign rights.

Since UNCLOS III does not stipulate an obligation for states to draw a straight baseline parallel to the line of the natural entrance to the bay, it allows lines to be drawn by connecting corresponding points on the coast and islands (for example, in the direction of Mamula - Cape Mirište). Article 15 of UNCLOS III refers to the delimitation of the territorial sea between states

with opposite or adjacent coasts.

"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".

Given that the current regime within the Bay of Kotor has "frozen" on the one hand, the so-called *Area*, that is formally under Croatian jurisdiction, but with shared executive powers with Montenegro, while the other part of the Bay of Kotor is under the exclusive jurisdiction of Montenegro, it is necessary to respect the rule from Art. 15 of UNCLOS III that, in the absence of a different agreement, the two parties do not have the right to expand its territorial sea outside the median line, which reflects the existing international customary rule. This specifically means that the end line, to which the state border should go, as a rule, is the median line where each point is equally distant from the nearest points of straight baselines from which the width of territorial seas is measured (principle of equidistance).

Hence, it is clear that the median line leads to the connection of the straight baselines which, due to the geographical configuration of the coast, can lead to changes in the direction of delimitation. In international practice, there are attempts to avoid such situations by reducing the number of points where the border changes or the number of points from which straight

baselines start, which are used to measure the width of the territorial sea (Birnie, 1987; Blake, 1987; Charney, 1994).

From the second part of the provision of Art. 15 of UNCLOS III, there is an exception to the application of the median line, which refers to the case of the existence of historical titles or other special circumstances, which allow the delimitation of the territorial sea of the two parties in a different way. In the first case, it would specifically mean the possibility of the parties to refer to historical rights that do not have any valid basis in law and that go deep into the past.

Each of the parties would first have to prove that in this part of the Adriatic Sea, in the time before the succession of the SFRY, there was its real and continuous sovereign authority that was not hindered, that is, regarding the effective exercise of which no other state raised objections, but that authority tacitly tolerated (which is unlikely since the Adriatic Sea is legally treated as part of the unified territory of the SFRY, and not as part of the territory of the former Yugoslav republics)[22]. Based on this, it is considered that the historical title could be transposed into an "acquired right" based on the principle of

22International jurisprudence does not exclude the possibility of proving the existence of effective state authority in the disputed part of the state territory. In this sense, it is possible for the parties involved in the dispute to emphasize various arguments that can confirm, deny, or supplement the legal basis (historical title). When analyzing the evidence *ratione temporis,* the effectiveness is evaluated at the moment of the creation of the state and after that, with a mandatory evaluation of the behaviour of the parties to the dispute. ICJ. Land, Island and Maritime Frontier Dispute Case (El Salvador v. Honduras), 11 September 1992, *ICJ Reports,* 388, 586-587.

facticity (*ex facto jus oritur*), which should lead to the transformation of the factual into a legal state (Jennings, 1963). On the other hand, the parties' reference to special circumstances would mean the possibility to refer, in accordance with the international practice, to some particularly unusual configurations of coasts, islands or waterways, the existence of which is in their favour (YILC, 1956).

From the international practice arises the possibility that two states in the case of lateral delimitation conclude a separate agreement by which they would regulate the extension of the border of their territorial seas. Montenegro and Croatia could do this through mutual negotiations by first using the equidistance method, and then, through consideration of all special circumstances, they could correct the direction of the interstate border in the direction that would be most optimal for both sides. Also, it is possible that the two sides use other methods for delimitation of their territorial seas.

Which method should be applied can only be assumed, but a definite drawing of the border that would follow the sharp angle at which the land border of the two countries exits to the shore of Boka Kotorska is not entirely excluded. Also, it is not impossible that some kind of combined method will be applied that would enable the application of a vertical line in relation to the general direction of the coast, which would be at an equal

distance from the most prominent points on the coast or islands (so-called *perpendicular method*) (Gidel, 1934; La Pradelle, 1928).

Finally, the possibility of concluding a multipurpose agreement on maritime borders, which would regulate the borders of the territorial seas of Montenegro and Croatia, as well as the borders of their continental shelves, exclusive economic zones or other sui generis zones, is not excluded.

Regarding the lateral delimitation of the continental shelf's and the exclusive economic zones of Montenegro and Croatia, it is important to note that from the period when the two countries were constituent republics of the former SFRY, the line delimiting the jurisdiction of Montenegro and Croatia followed the azimuth line of 231°. Croatia rejects this line, but asserts that the Protocol sets up a delimiting line along the 206° azimuth line.

In this sense, Croatia has undertaken or approved a number of unilateral acts and activities in the maritime area of the Adriatic Sea south of the azimuth line of 231°. In order to avoid the harmful consequences of such unilateral acts that do not contribute to the achievement of an effective and sustainable solution to maritime delimitation, the two sides would have to respect the provisions of Articles 74 and 83 of UNCLOS III, which provide for identical solutions for the delimitation of the

Exclusive Economic Zone and the continental shelf:

"1. The delimitation of the exclusive economic zone (continental shelf) between states with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
2. If no agreement can be reached within a reasonable period of time, the states concerned shall resort to the procedures provided for in Part XV.
3. Pending agreement as provided for in paragraph 1, the states concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.
4. Where there is an agreement in force between the states concerned, questions relating to the delimitation of the exclusive economic zone (continental shelf) shall be determined in accordance with the provisions of that agreement".

Since the final agreement on the delimitation of these maritime areas has not been reached (nor any provisional agreement that would regulate the direction of the boundary line), the delimitation will require the application of the rules and principles of general international law and the law of the sea. Given that the division of maritime space always has an international legal aspect, the delimitation between Montenegro and Croatia cannot depend solely on their will or on their internal law[23].

To achieve an equitable solution, the parties must use all

23 Third states are not bound by the unilateral delimitation of maritime spaces. In this respect the International Court of Justice declared that: "The delimitation of sea areas has always an international aspect; it cannot be dependent merely upon the will of the coastal state as expressed in its municipal law (...); the validity of the delimitation with regard to other states demands upon international law". ICJ. Fisheries case (United Kingdom v. Norway), 18 December 1951, *ICJ Reports*, 132.

relevant criteria, such as the principle of natural prolongation/non-encroachment, proportionality, etc. The opposite action would distance the two neighbouring states from achieving a fair solution on the Adriatic Sea, which would certainly affect their distance from the unique security interests included in their membership in NATO, and which, in the last case, leaves room for further mutual disagreements and political friction.

Consequences of unilateral delimitation acts

Croatia's Decision on expanding jurisdiction on the Adriatic Sea was adopted on 3 October 2003. The Decision declared its so-called *Ecological and Fisheries Protection* Zone (EFPZ), the border of which, in relation to the territorial sea of Montenegro, goes from the outer border of the territorial sea in the direction of the temporary delimitation line according to the Protocol whose border, in relation to the territorial sea of Montenegro, goes from the outer border line of the territorial sea in the direction of the temporary delimitation line according to the Protocol. Under the EFPZ, living natural resources in waters beyond the outer limit of the territorial sea can be explored, exploited, preserved, and managed.

The EU's objections have caused delays in the implementation of this Decision, which has been modified multiple times.

Montenegro did not accept the Decision of Croatia regarding the establishment of EFPZ. It submitted a note of protest to the Government of Croatia on 15 October 2003, expressing that the Republic of Croatia has no right to unilaterally define the outer border of its jurisdiction outside the territorial sea whose borders are determined by the Protocol.

In this sense, Montenegro believed that Croatia's unilateral declaration of the EFPZ represented a violation of international law, which prohibits the unilateral appropriation of the continental shelf, exclusive economic zone, or other functional competence zone. Montenegro passed the Law of the Sea on 21 May 2006, which lays out rules for territorial waters outside the temporary border line. It is interesting that with this Law, Montenegro defined its continental shelf, which, according to article 36, includes

> "the seabed and seabed beyond the outer border of the territorial sea of Montenegro in the direction of the open sea to the borders of the continental shelf with neighbouring countries, established by international agreements".

Montenegro planned to exercise its sovereign rights to explore and exploit its natural resources in that portion of the Adriatic Sea. As previously mentioned, at the time of the SFRY, the line that separated the jurisdictions of Croatia and Montenegro ran along the azimuth line of 231°, which is why Montenegro believes that the said line should be used for the lateral delimitation of their continental shelves. Also, in Article 26 of

the Law, it determined that the Parliament of Montenegro has the possibility of unilaterally declaring an Exclusive Economic Zone "appreciating cooperation with countries that have sovereignty over parts of the Adriatic Sea". At the same time, the Exclusive Economic Zone of Montenegro includes sea spaces "from the outer border of the territorial sea in the direction of the open sea to its outer border established by agreement, on the basis of international law, with the countries whose coasts are opposite or touch each other". In this zone, it claimed full sovereign rights to explore, exploit, preserve, and manage living and non-living natural resources, to produce energy using the sea, sea currents, and winds (article 27).

The aforementioned legal solutions were adopted unilaterally. Although they don't influence the final delimitation decisions, they have a negative impact on achieving solutions that comply with the international law of the sea. Moreover, they encourage additional friction between the two parties that cannot be compared to their obligations under UNCLOS III regarding the cooperation of states in semi-enclosed seas (article 103).

The relations between Montenegro and Croatia are significantly impacted by the absence of an agreement on the delimitation of the continental shelf. This issue became particularly acute after the Government of Montenegro, on 3 March 2011, passed the Decision on determining the blocks for exploration and

production of hydrocarbons, whose lateral borders towards the Republic of Croatia deviate significantly from the line delimiting the maritime areas of the two countries according to the provisions of the Protocol.

Croatia considers that Montenegro illegally moved the delimitation line established by the Protocol, which runs along azimuth 206°. Montenegro holds the belief that the line of demarcation was inherited from the SFRY era and that it extends along azimuth 231°. Since, with this action, Montenegro increased its maritime space by almost 2,020 km^2 (128 km^2 of territorial sea and 1,892 km^2 of sea space beyond the border of the territorial sea up to the delimitation line of the continental shelf according to the Agreement between the SFRY and Italy from 1968), Croatia in 2011 sent a protest note in which requested the correction of this irregularities. On October 30, 2014, the Government of Montenegro made a decision to amend the Decision on determining blocks for hydrocarbon exploration and production.

With that new Decision, Montenegro gave up the tender for the granting of a concession for the exploitation of gas and oil deposits, essentially remaining on the earlier demarcation line that stretches along the azimuth of 231°, but reducing the area of the territorial sea by 128 km^2 (Punda, Filipović, 2015).

On 27 March 2014, the Government of Croatia also announced a

public tender for the issuance of permits for the exploration and exploitation of hydrocarbons in the Adriatic, which it determined 29 investigation areas. Although Croatia proclaimed that the direction of the lateral border towards Montenegro remains the same as that from the Protocol, i.e. that stretches along the line of demarcation that goes along the azimuth of 206°, it gave to some foreign leaseholders the right to explore and exploit the hydrocarbons in blocks 23, 27, 28 and 29 of the Adriatic Sea, which are located in the maritime area claimed by Montenegro.

This made the situation between the parties even more difficult, and on 18 May 2015, Montenegro, through its Permanent Mission to the United Nations, sent a protest note to the UN Secretary General as the depository of the UN Convention on the Law of the Sea (Communication on exploration and exploitation of resources in the Adriatic Sea from side of the Republic of Croatia), warning that Croatia violated the Protocol and provisions of UNCLOS III by concluding a concession agreement for the exploration and exploitation of hydrocarbons over the disputed territories before the definitive delimitation and demarcation of the common state border.

Recalling that starting in 2003, it sent numerous notes to the Government of Croatia, then to the UN and finally to all involved and interested companies (among others, Marathon Oil

Netherlands/OMV, Marathon Oil Netherlands ONE.BV and OMV Croatia), Montenegro is expressed a sharp protest against the decision of the Croatian Parliament on the unilateral extension of jurisdiction to the area of the Adriatic Sea south of the azimuth line 231°, to which Montenegro has long-term sovereign rights since the time when it was the constituent federal republic of the SFRY. Recalling that the exploration blocks in the SFRY era were separated by that azimuth line, Montenegro insisted that it still respects this line since the successor states inherited it after the succession of the SFRY. As the two parties did not reach any subsequent agreement that would define this situation differently, Montenegro emphasized that the disputed issue should be resolved before the International Court of Justice, which was agreed upon in earlier negotiations between the two parties.

The prospect of resolving the territorial dispute between Montenegro and Croatia

From the analysis so far, it follows that despite the unilateral moves of Montenegro and Croatia, the two countries still confirmed their good will to resolve the border dispute on the Adriatic Sea peacefully. This circumstance is of great importance for preserving the security of this region, as indicated by the fact that in early 2008, Montenegro and Croatia

began negotiations on harmonizing the text of the agreement on referring the territorial dispute to the International Court of Justice in The Hague.

For this purpose, an intergovernmental Mixed Commission for Determining the Border was formed, chaired by the Ministries of Foreign Affairs of both countries. Although the Commission has met on multiple occasions, there has been a pause in its work in recent years.

The reason is that there are extremely opposing views on mutual delimitation on the Prevlaka peninsula, and then on the Adriatic Sea. In order to achieve some progress after the prolonged validity of the Protocol on the temporary regime along the southern border, the two states as parties to UNCLOS III would have to show more willingness to resolve the border dispute.

The pre-accession negotiations between Montenegro and the EU could be negatively impacted if there is more delay in regulating the issue of delimitation in the Adriatic Sea. Montenegro, as a candidate for EU accession, should therefore pay extra attention to this issue, and together with Croatia try to regulate all open border issues (on land and in the Adriatic Sea), in accordance with international law (Bickl, 2019).

This presupposes the possibility that the provisions of the Protocol on the temporary regime along the southern border will be transposed or to some extent modified through the conclusion

of a delimitation agreement in which the coordinates of the border lines that separate the sea belts and zones of the two states would be clearly specified. It would also be possible to regulate these and other specific issues related to certain parts of the Adriatic Sea through the conclusion of a multi-purpose agreement that would include issues of navigation, fishing rights, environmental protection, rights to research and exploitation of natural resources by introducing resource-deposit clauses, resource- unity clauses and other cooperative arrangements clauses (UN, 2000).

On the other hand, there is also the possibility that the two parties, invoking Chapter XV of UNCLOS III, may apply the peaceful means specified in Art. 33 of the UN Charter (such as negotiations, good offices, mediation, investigation, conciliation or recourse to arbitration or court proceedings before the International Tribunal for the Law of the Sea or the International Court of Justice), and what is otherwise referred to by Art. 279 UNCLOS III. Also, the two parties have the possibility to apply the rules of international law whose sources are listed in Art. 38 of the Statute of the International Court of Justice (international treaties, international customs, general principles, and subsidiary, court decisions and teachings of the most qualified lawyers), and in accordance with provisions of Arts. 74(1) and 83(1) of UNCLOS III.

Dispute between Slovenia and Croatia

After the dissolution of the SFRY, Slovenia and Croatia demanded delimitation of the Adriatic Sea. Slovenia was the first to submit a request for the entire Bay of Piran (that is, the area of Savudrijska Vala, as this bay is called in Croatia), as well as the right to access the open sea. On the other hand, Croatia presented a claim in which it claims a significant part of the Bay of Piran, in which the border between it and Slovenia, in its opinion, should go from the middle of the mouth of the Dragonja River across the seabed of the Bay of Piran to the outer border of Croatian and Slovenian territorial sea bordering the territorial sea of Italy.

In an attempt to resolve this issue peacefully, Slovenia subsequently presented a proposal for an Agreement on a Common Border on 29 October 1991, which defined the border as a line starting from the lower course of the Dragonja River, then continuing through the middle of the Bay of Piran to the Italian border. Slovenia referred to cadastral data from the time when the area of Piran was part of Italy.

For the Slovenian side, strengthening the line along the St. Odoric channel can lead to significant expansion at sea, and can even provide it with access to international waters.

The delimitation line along this line moves to a point 18.5 km west

of the line connecting the outer coasts of the Croatian islands, thus including the maritime space of the former Yugoslav coastal sea. In July 1992, in the proposal of the Treaty on the Border with Croatia, Slovenia linked the delimitation line to the central channel of St. Jerome and the natural bed of the Dragonja River, which changed its course in 1952 by digging the artificial channel of St. Odoric. However, such a delimitation proposal with the proposed point of Slovenia's exit to the sea coast was absolutely unacceptable for Croatia (Klemenčić, Schofield, 1995).

In the Memorandum on the Bay of Piran of 7 April 1993, Slovenia expressed the position that its maritime border with Croatia had never been established before, and that in order to preserve the integrity of the Bay of Piran and Slovenian sovereignty, as well as to ensure access to the open sea, Slovenia accepts that in this case, it is a *sui generis* Bay, which dictates that the delimitation is done according to the usual rules that apply to historical titles and other special circumstances, but not according to the median line, which Croatia insists on (Degan, 1995).

Recognition of this "specific situation" includes Slovenia's request, which is based on the exercise of jurisdiction on the date of succession, 25 June 1991, in relation to which the principle of *uti possidetis* is applied. In other words, respect for historical titles and specific circumstances implies retention of

acquired rights that Slovenia had in its predecessor state, but also of territorial *status quo*, which is one of the basic principles on which the modern European system is based and whose use was confirmed by the Arbitration Commission of the Conference on the former Yugoslavia. Given that Slovenia belongs to a group of countries with an unfavourable geographical position, due to which it could not exercise the right of freedom of fishing in the open part of the Adriatic Sea, nor use the right of traffic with the rest of the world, it is its legitimate right to establish authority over the entire Bay of Piran in order to exercise the aforementioned rights "by going directly to the open sea".

By the way, according to Art. 70 of UNCLOS III, geographically disadvantaged states have the right to participate on an equitable basis in the exploitation of an appropriate part of the surplus living resources of the exclusive economic zones of maritime states in the same region or sub region, taking into account the relevant economic and geographical circumstances of all interested countries regarding the preservation and use of living resources.

In the document entitled: "Positions of the Republic of Croatia in relation to the determination of the state border in the Bay of Piran and in this connection in the area of the Dragonja River" dated 18 November 1993, Croatia rejected the stated position of

Slovenia (Celar, 2002). According to the Croatian point of view, the gulfs of the neighbouring states should be divided according to the international legal principle of equidistance, by the middle line, so that each side retains half of the gulf under its sovereign jurisdiction. Slovenia's claim for the entire Bay of Piran and "exit" to the open sea through the Croatian territorial sea and other Sea belts is contrary to the international law of the sea (Art. 12 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone and Art. 15 of UNCLOS III) (Ibler, 1994).

Given that Croatia has an obligation to respect the established border with Italy, the Agreement it concluded with Slovenia on cross-border cooperation and trade is a sufficient basis that ensures the interests of the population on both sides of the border line. Due to the unchanged position of the Slovenian side, in 1994 Croatia concluded that "all possibilities for any further harmonization of positions have been exhausted" in terms of delimitation at sea.

A turning point in the negotiations was made on 28 July 1997, when the representatives of the two parties in Ljubljana concluded the Agreement on border traffic and cooperation, which enabled Slovenia to fish in Croatian territorial waters along the west coast of Istria up to the Lim channel, which Slovenia gave up upon joining the EU in 2004 (National Gazette

of the Republic of Croatia, International Agreements, 15/1997).

For the purpose of harmonizing domestic legislation with EU legislation related to fishing, on 18 December 1998, Slovenia forwarded to Brussels an act entitled: "Fishing in Slovenia", in which it noted that one of the countries that owns the Adriatic coast in length of 45 km. Since 1991, when Slovenia gained independence, it has been limited to fishing in the territorial sea area of 12 nautical miles from the coast, which includes 180 km^2.

The demarcation line in the Bay of Piran that Slovenia has unilaterally established should move along two positions: from point A which is located at the mouth of the St. Cape Madona and Cape Savudrija, which closes the Bay of Piran. Outside the bay, the middle line should extend to point C, which represents the three borders between Italy, Croatia and Slovenia, and on the line between points 3 and 4 determined by the Treaty of Osimo between SFRY and Italy from 1975.

In the Declaration on the State of Interstate Relations between Croatia and Slovenia of 2 April 1999, Croatia reiterated its earlier request that the Bay of Piran be divided according to the principle of equidistance, with a point on land from which a boundary line should be drawn at sea to the very mouth of the St. Odoric Channel (National Gazette of the Republic of Croatia, 32/1999).

In 'Slovenia's response to Croatia's position on the determination of maritime borders' dated 8 November 1999, Slovenia reiterated its thesis on the acquired right to access the open sea. In March 2001, Slovenia adopted the Maritime Code, which establishes that its sovereignty extends over the land area, the territorial sea and internal waters, the airspace above it, the seabed and underground marine areas (which it later, in 2003, supplemented with the formulation according to which Slovenia can exercise its sovereign rights, jurisdiction and control over the sea surface, water column, seabed and subsoil outside the borders of state jurisdiction in accordance with international law) (Official Gazette of the Republic of Slovenia, 26/2001; 2/2004; Vidas, 2009).

The extremely opposing opinions regarding the delimitation of the Adriatic Sea were overcome to some extent on 20 July 2001, when the prime ministers of the two countries (Drnovšek and Račan) announced that the draft Agreement on State Borders had been initialled at the level of the Ministries of Foreign Affairs. With the draft of the Agreement, Croatia accepted to renounce the principle of equidistance and cede to Slovenia more than four fifths of the Bay of Piran together with the corridor (the so-called *Dimnik*, which translates as *Chimney*), that starts from Cape Savudrija along the coast of Istria and occupies an area of 166 km^2 of the Croatian territorial sea.

However, Croatia abandoned such a solution, because it realized that without direct contact with the land, it would create an unnatural triangular exclave of the territorial sea of 7 km^2, which would count as its maritime border with Italy (Lulić, Vio, 2001; Turkalj, 2001).

The establishment of a part of the territorial sea beyond the belt of the open sea represents *per se,* and a legal precedent, which is why Croatia, under pressure from the public and internal political reasons, withdrew its initials from the draft Agreement in 2002. However, Slovenia has been offered to use the right of innocent passage through the Croatian territorial sea in accordance with the provisions of UNCLOS III, which Slovenia has refused, letting Croatia know that it is only interested in the delimitation line represented by the dot 18.5 km west of the line that joins the outer edges of the coasts of the Croatian islands, including at the same time parts of the former coastal sea of the SFRY (which was repealed by amendments to the Act in 1979), i.e. according to international legal standards, that part of the sea space that includes internal sea waters and the territorial sea, the outer Sea belt and part of the open sea (Degan, 1989).

After the mentioned fiasco, on 1 December 2004, at the proposal of the coastal countries of the Adriatic Sea, the International Maritime Organization adopted a joint scheme for directed and separated navigation in the northern Adriatic, which, *inter alia,*

provides Slovenia with access to the open sea through the territorial sea of Italy.

This system also provided that all ships moving through the Croatian territorial sea enter the Bay of Kopar and the Bay of Trieste, and then depart *via* the Italian territorial sea *via* the open sea in accordance with the previously agreed routes from the Memorandum of Understanding concluded between Croatia, Slovenia and of Italy in Ancona on 19 May 2000 (National Gazette of the Republic of Croatia, International Agreements, 5/2001).

With the Act on the Proclamation of the Ecological Protection Zone and the Continental Shelf of 4 October 2005, Slovenia made Croatia unequivocally aware that it was not giving up on its earlier demands, since two years before its adoption, Croatia had unilaterally passed the Decision on the Extension of Jurisdiction to the Adriatic Sea declared an Ecological-Fishery Protected Zone (EFPZ) that extends from the outer edge of the territorial sea to the middle line of delimitation of the continental shelves of the former SFRY and Italy based on the Treaty concluded in 1968 (Klemenčić, Topalović, 2009; UN, 2006; National Gazette of the Republic of Croatia,157/2003).

Slovenia has located its Ecological Protection Zone and Continental Shelf, referring to the "acquired right of access to the open sea", right next to the coast of Istria, which is about

15.5 nautical miles from Cape Madona on the Slovenian part of the sea (Degan, Punda, 2008; Rutar, 2008; Official Gazette of the Republic of Slovenia, 93/2005).

In response to the mentioned act of Slovenia, on November 28, 2005, Croatia adopted the Rulebook on boundaries in the fishing sea, which determined the boundary line between different fishing zones and the internal and external fishing seas (National Gazette of the Republic of Croatia, 144/2005).

On 5 January 2006, Slovenia adopted, as a counter-measure, the Decree on Determining the Area of the Fishing Sea by which it divided the marine area into zone A, which includes internal sea waters from the coast to the line connecting Cape Madona and Cape Savudrija (the entire Bay of Piran), then zone B which consists of the territorial sea with the established northern and southern limits of the fishing zone (which directly provide "exit" to the open sea), and zone C which includes the protected ecological zone and part of the open sea in the Adriatic Sea (Official Gazette of the Republic of Slovenia, 2/2006).

On 19 August 2006, the White Paper on the border with Croatia was published by the Slovenian Ministry of Foreign Affairs (Turk, Zupančič, Žakelj-Cerovšek, 2006). It provides an overview of open border issues and presents data that should serve as a basis for Slovenian proposals to regulate the interstate border with Croatia. The main assumption behind this document

is to maintain the status quo of the borders that existed on 25 June 1991.

The White Paper states the point of view according to which Slovenia had “access to the open sea” while it was in the SFRY, and which Croatia expressly acknowledged in a note from the Ministry of Foreign Affairs dated 18 November 2003.

In the explanation, Slovenia also cites arguments related to its acquired rights arising from the succession of the 1975 Treaty of Osimo on Delimitation and the 1968 Treaty on the Delimitation of the Continental Shelf, concluded between the SFRY and Italy, according to which Slovenia is granted unconditional access to the open the sea.

A fair approach to delimitation, according to the Slovenian point of view, implies Croatia's acceptance that the Bay of Piran belongs to Slovenia. The stated position of Slovenia is justified by the fact that according to the Law on the Coastal Sea and the Continental Shelf of the SFRY (which was in force on the day of independence on 25 June 1991), the Bay of Piran had the status of internal water and as such remained under the jurisdiction of Slovenia in accordance with by the principle of territorial *status quo*, recognized in the Constitutional Charter on Independence of the Republic of Slovenia, in the Constitutional Decision on Sovereignty and Independence of the Republic of Croatia of 25 June 1991, in Opinion No. 3 of the Badinter

Arbitration Commission of the Conference on the Former Yugoslavia of 11 January 1992, and in the Joint Declaration on avoiding incidents signed by the ministers of foreign affairs of Slovenia and Croatia in Brioni on 19 June 2005.

Slovenia presented a series of examples from internal legal practice to reinforce the point of view mentioned earlier. It relied on legal-historical, economic and other data, not shying away from expressing a rather bold position that the Bay of Piran is a "historic bay" over which Slovenia claims sovereign rights[24].

Taking into account the current state of the borders after gaining independence, Slovenia claimed that it was impossible to accept the Croatian position that the Bay of Piran falls under the provisions of Art. 15 of UNCLOS III, because this provision refers exclusively to the delimitation of the territorial sea, and not to the internal sea waters to which the Bay of Piran really

24It is not entirely clear on what basis Slovenia claimed that the Bay of Piran is a historical bay, since it based its argumentation on the possession of the entire Bay on the assumption that its waters belong to the regime of internal waters pursuant to Article 7 of the 1958 Geneva Convention and Article 10 of UNCLOS III. Since the concept of "historic bay" is not defined by codifications on the law of the sea, the determination of the boundaries of historical bay is left to customary international law and international practice, which fluctuates particularly in this area. Thus, in the dispute over Gulf of Fonesca, which was previously determined before the Central American Court of Justice to represent the historic bay of Nicaragua, Salvador and Honduras with the character of a closed sea, the International Court of Justice later determined that it was a condominium of these three coastal states. ICJ. Land, Island and Maritime Frontier Case (El Salvador v. Honduras: Nicaragua intervening), 11 September 1992, *ICJ Reports,* 589-601. According to Slovenia, the notion of a *condominium* would be fundamentally incompatible with Slovenia's exercising full control over the Bay of Piran.

belongs. If, on the other hand, it were assumed that the Bay of Piran has the status of a territorial sea, it is quite clear that Art. 15 of UNCLOS III could not be applied because the provision on the median line does not apply in the case where, due to historical title or other special circumstances, the delimitation between neighbouring states must be done in a different way.

The arguments presented were not enough to resolve the dispute between Slovenia and Croatia amicably. The reason for this is that Croatia believed that Slovenia's unilateral legislative action was depriving it of its sovereign rights. According to the Croatian point of view, Slovenia illegally appropriated the area of the territorial sea of 233.8 square kilometres by unilateral acts, which is 130% larger than the area of the Slovenian territorial sea shown in the pre-accession document on fisheries sent to the EU first in 1998 and then in 2004 when Slovenia became its full member (Gržetić, Punda, Filipović, 2010).

Under the auspices of the EU, on 5 October 2005, a negotiation framework was established that border disputes between the two parties must be “resolved in accordance with the principle of peaceful settlement of disputes”.

Some progress followed the meeting of the prime ministers of the two countries in Bled on 26 August 2007, when an agreement was reached to bring the dispute over the delimitation in the Adriatic Sea to the International Court of Justice in The

Hague, and to resolve the remaining unresolved issues between the parties through negotiations.

In this sense, a Mixed Commission of legal experts was formed, which was entrusted with the task of preparing a proposal for an agreement on presenting a border dispute before the International Court of Justice. Due to the Slovenian blockade of accession negotiations for Croatia's membership in the EU, the Mixed Commission was dissolved, and on 21 January 2009, the parties in the dispute were offered mediation by a “Council of Sages” chaired by former Finnish president Martti Ahtisaari. However, due to the politicized position regarding the composition and working methods of this body, the aforementioned mediation was not accepted.

Then on 23 April 2009, the EU offered a new proposal in the form of a dispute settlement agreement and the text of a joint statement in which the parties undertake to establish an arbitral tribunal that will make a meritorious decision on delimitation at sea and on land and which will regulate the regime sea areas, as well as Slovenia's access to the open sea (Rudolf, Kardrum, 2010).

Finally, the Agreement on Arbitration between Croatia and Slovenia with a Joint Declaration, which raises the issue of delimitation as a precondition for Croatia's accession to the EU, was signed in Stockholm on 4 November 2009. After that, on 9

November 2009, Croatia issued a unilateral Declaration stating that:

"Nothing in the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia shall be understood as Croatia's consent to Slovenia's claim to its territorial contact with the high seas".

Slovenia rejected this unilateral Declaration with indignation and replied to Croatia through diplomatic channels that:

"(...) the Republic of Slovenia declares that in accordance with international law the unilateral statement given with respect to the said Arbitration Agreement cannot affect its substance and considers the Statement of the Republic of Croatia from 9 November 2009 as unacceptable and without any effect for the arbitral proceedings".

In addition, it added that:

"(...) the Republic of Slovenia also states that the said Arbitration Agreement shall be interpreted by the Arbitral Tribunal in accordance with the ordinary meaning to be given to the terms of the provisions of the Arbitration Agreement alone".

On 20 November 2009, the Croatian Parliament approved the Arbitration Agreement after the mediators (the USA and the EU Council chaired by Sweden) rejected the unilateral Declaration (National Gazette of the Republic of Croatia, 12/2009). Then the Slovenian government submitted a request to the Constitutional Court to determine the constitutionality of the Arbitration Agreement.

In an opinion of 18 March 2010, the Constitutional Court ruled that the Arbitration Agreement was not inconsistent with the Slovenian constitutional order. The ratification of the Arbitration Agreement in the Slovenian Parliament on 19 April 2010 was made possible by the Constitutional Court of

Slovenia's position (Official Gazette of the Republic of Slovenia, 11/2010; 25/2010).

In June of the same year, Slovenia held a referendum that resulted in 51.5% of voters supporting the conclusion of the Agreement. The Constitutional Court of Slovenia once again expressed an affirmative opinion in October 2010 regarding the act of ratification of the Agreement (Official Gazette of the Republic of Slovenia, 73/2010). Although they did not reach an agreement regarding unilateral Declarations on the scope of the Arbitration Agreement, the Governments of Slovenia and Croatia expressed their willingness to be bound by the provisions of the Agreement through the exchange of diplomatic notes. As a result, the Arbitration Agreement came into effect on 29 November 2010.

The Arbitration Agreement foresees that the Arbitration Tribunal will determine the course of the sea and land border between Slovenia and Croatia, then Slovenia's access to the open sea and the regime of use of the respective sea areas. When interpreting the Agreement, the Arbitration Tribunal is authorized to apply the rules and principles of international law, as well as the principles of fairness and good neighbourly relations in order to achieve a fair and just result, taking into account all relevant circumstances. On 25 May 2011, both parties forwarded joint submission to the Secretary-General of

the United Nations for the registration of the Arbitration Agreement pursuant to Art. 102 of the UN Charter.

Attempt to settle the dispute through arbitration

In accordance with Art. 2(1) of the Arbitration Agreement, the parties, with the assistance of the European Commission, on 17 January 2012, mutually appointed Judge Gilbert Guillaume as the presiding arbitrator, and Professor Vaughan Lowe and Judge Bruno Simma as arbitrators. Then Dr. Jernej Sekolec and Professor Budislav Vukas were appointed as arbitrators for Slovenia and Croatia. The registry in this arbitration was taken over by the Permanent Court of Arbitration (PCA).

Considering the specifics of the envisaged arbitration procedure, which is a combination of a simultaneous and consecutive system, the Tribunal first held a preparatory hearing in the Peace Palace in The Hague in April 2012. At that hearing, the Tribunal issued an order which, among other things, stipulated the deadlines for the submission of written submissions by the parties to the dispute and the modalities of presenting evidence.

At the start of February 2013, the Tribunal made changes to this order by issuing a new one that stipulated deadlines for submitting written submissions. Slovenia and Croatia submitted written submissions with claims (Memorials) shortly after.

The Tribunal was asked to determine the border between the

two states at sea and on land. Responses to the claims (Counter-Memorials) were filed by both parties in early November 2013. On 24 March 2014, the parties filed Replies after the Tribunal granted them permission. In the oral hearing that followed, the Tribunal heard the representatives of the parties. However, due to certain ambiguities, it requested the presentation of evidence through expert reports.

On 17 June 2014, the PCA, acting as the registrar of the proceedings, issued a press release on the conclusion of the oral hearing together with the key positions of the parties to the dispute. After that, Croatia sent a letter to Slovenia through the Tribunal on 30 April 2015, in which Slovenia is requested to clarify the statements of the Slovenian Minister of Foreign Affairs made on Slovenian television on 7 January, and on 22 April 2015, regarding the possible outcome arbitration. Slovenia responded to Croatia's request on 1 May 2015, claiming that:

> "Slovenia does not have any information regarding the outcome of the arbitration, or any informal channel of communication with the Tribunal."

As a result, it did not attempt to exert pressure on the Tribunal in any way. The Tribunal expressed concern about the claim that a party to the dispute had access to confidential information related to the arbitration proceedings in response to this correspondence. Given that both parties have accepted the obligations of Art. 10(1) of the Arbitration Agreement, the Tribunal requested that the arbitrators of the disputing parties

refrain from *ex parte* communications.

In a written statement dated 9 July 2015, the Tribunal informed the parties that the decision will be adopted on 17 December 2015. However, on July 22, of the same year, public media in Serbia and Croatia published two transcripts and an audio file of compromising telephone conversations between the arbitrator appointed by Slovenia - Dr. Jernej Sekolec and Simona Drenik, the then Slovenian agent in the proceedings. Although this was followed by the resignation of these representatives of Slovenia, on 24 July 2015, Croatia asked the Tribunal for a suspension due to

> "the great damage caused to the integrity of the entire procedure, as well as the public's perception of the legitimacy of the process."

Responding to Croatia's request, Slovenia expressed its 'deep regret' for the compromising content that had reached the public, rejecting Croatia's argument. Slovenia appointed Roni Abraham, President of the International Court of Justice, to be its arbitrator in the Tribunal on 28 July 2015. The Tribunal requested Slovenia to appoint a new arbitrator because he resigned at the beginning of August. During this time, Professor Budislav Vukas, a Croatian arbitrator, resigned (Dimitrijević, 2019).

In a note verbal dated 30 July 2015, Croatia stated that it considers Slovenia "involved in one or more significant violations of the Arbitration Agreement", which entitle Croatia to terminate it pursuant to Art. 60, paragraph 1 of the Vienna

Convention on the Law of Treaties. Croatia informed the Tribunal on the next day about the verbal note addressed to Slovenia, indicating that it was unable to continue the arbitration proceedings in good faith. In a written submission dated 31 July 2015, Slovenia informed Croatia that its possible withdrawal from the arbitration procedure has no basis in international law, and that the Agreement is the only valid legal basis for resolving the issue of delimitation between the two countries.

Slovenia then announced that on 13 August 2015, the Tribunal objected to Croatia's notification of the termination of the Agreement, and that, given its duties and powers, it must continue the arbitration proceedings.

At the same time, it announced that in order to preserve the integrity, independence and impartiality of the Tribunal, it asked its president, Gilbert Guillaume, to appoint arbitrators in the place of those who resigned in the meantime, in accordance with the Arbitration Agreement.

On 25 September 2015, the Tribunal notified the parties to the dispute that the President of the Tribunal appointed Ambassador Rolf Einar Fife of Norway to succeed Ronnie Abraham and Professor Nicolas Michel of Switzerland to succeed Professor Budislav Vukas. At the beginning of December 2015, the Tribunal determined the deadlines for submitting written submissions regarding the possible legal implications in relation

to the facts stated in Croatia's letters of 24 and 31 July 2015. It also submitted to the parties to the dispute two internal documents that it during 2014-2015 years, forwarded by the former Slovenian arbitrator Dr. Jernej Sekolec, which refer to the withdrawal of the border at Dragonja and Mura. Croatia did not respond to the Tribunal's request for a written submission, while Slovenia expressed its opinion in a submission dated on 26 February 2016, insisting that the Arbitration Agreement remains in force and produce legal effects between the parties to the dispute until the Tribunal issues a Final Award. Although Croatia has in the meantime confirmed through its Ministry of Foreign Affairs and the Permanent Mission to the United Nations that it will not participate in the hearing before the Tribunal, the oral hearing was held on 17 March 2016, and the Tribunal issued a partial Award on 30 June 2016 (Dimitrijević, 2019)[25].

In the Partial Award, the Tribunal expressed its regret that Croatia did not take the opportunity to answer the question it had previously asked. According to international procedural law, a unilateral decision to withdraw from a proceeding cannot affect its course, as noted by the Tribunal.

In the context of the current arbitration proceeding, the Tribunal noted that this principle is contained in Art. 28 of the Optional

25PCA Case no. 166428, 2016.

Rules for the arbitration of disputes between two countries of the PCA in The Hague. These Optional Rules, which are not mandatory under the law, are applied in the case in question in accordance with Art. 6(2) of the Arbitration Agreement. With regard to the competence to determine the existence and scope of its own competencies (*competence de la compétence*) in the case of a dispute between Slovenia and Croatia, the Arbitration Tribunal concluded that:

"it is competent based on the Agreement on Arbitration and Art. 21(1) of the Optional Rules".

Also, the Tribunal found that in accordance with Art. 65 of the Vienna Convention on the Law of Treaties, it is also competent to decide whether Croatia, acting on the basis of Article 60 of the Vienna Convention on the Law of Treaties, has legally correctly proposed to Slovenia to end the implementation of the Agreement on arbitration and whether it validly ceased to apply it.

The Tribunal confirmed that it has the authority and duty to settle the land and maritime dispute brought before it during the proceedings. The Tribunal stressed that it is responsible for safeguarding the integrity of the arbitration proceedings. Recalling the resignations given during the procedure (Dr. Jernej Sekolec, Simona Drenik and Professor Budislav Vukas) and replacements made in accordance with the provisions of the Arbitration Agreement (with Ambassador Rolf Einar Fife and

Professor Nicolas Michel), the Tribunal confirmed that there can be no doubt regarding the impartiality or independence of the arbitration panel. Furthermore, the Tribunal determined that the opinions expressed by previous national arbitrators were not relevant to the work of the Tribunal in its current composition.

The parties in the proceedings received the two documents that Dr. Jernej Sekolec submitted to the Tribunal in a transparent manner. In this regard, the Tribunal noted that Dr. Jernej Sekolec, along with his documents, did not submit to the Tribunal any new arguments or facts that were not already contained in the official files of the Tribunal.

Finally, the Tribunal found that Dr. Jernej Sekolec and Simona Drenik acted contrary to the Arbitration Agreement and Terms of Appointment adopted by the parties to the dispute and the Tribunal.

However, regarding the possibility of Croatia unilaterally terminating the Arbitration Agreement due to the illegal actions of the representative of Slovenia, the Tribunal was of the opinion that the provision of Art. 60, paragraph 1 of the Vienna Convention on the Law of Treaties provides such a possibility, but only if such a violation would overcome the aim and purpose of the concluded Arbitration Agreement.

The Tribunal relied on the International Court of Justice's jurisprudence to establish that an arbitration agreement is an

international treaty of a specific type.

"When states sign an arbitration agreement, they are concluding an agreement with a very specific object and purpose: to entrust an arbitration tribunal with the task of settling a dispute in accordance with the terms agreed by the parties, who define in the agreement the jurisdiction of the tribunal and determine its limits"[26].

In the case in question, the Arbitration Agreement between Slovenia and Croatia states in the preamble that through numerous attempts, the parties have not resolved their territorial and maritime dispute in recent years. The Arbitration Agreement is designed to achieve a peaceful and final resolution of this dispute.

The Tribunal found that Croatia's argument that Slovenia violated the Arbitration Agreement was not of such a nature as to undermine its aim and purpose after examining it thoroughly. Given that the parties in the dispute were given the opportunity to present additional arguments in support of the violation of the confidentiality of the proceedings, and that neither party did so, nor did they raise further issues, the Tribunal concluded that the balance between the parties was fully ensured in the arbitration proceedings.

Accordingly, Slovenia's violation of the Agreement does not constitute a challenge to the subject matter and purpose of the arbitration procedure. As a result, Croatia was unable to unilaterally terminate the Agreement based on Art. 60, par. 1 of the Vienna Convention on the Law of Treaties.

26PCA Case no. 2012-04, 2017.

Finally, the Tribunal confirmed its jurisdiction and unanimously decided that Slovenia violated the provisions of the Arbitration Agreement dated 4 November 2009, but that the Arbitration Agreement remains in force. After an unsuccessful attempt to continue further discussion on this matter, the Tribunal, invoking Art. 29 of the Optional Rules of the PCA, declared the discussion closed. Then, on 29 June 2017, the Tribunal announced the Final Award for the border dispute between Slovenia and Croatia on both sea and land[27].

The Arbitration Tribunal's Final Award on Delimitation of the Bay of Piran

The Bay of Piran (Savadrijski Vala) is located in the southeastern part of the Bay of Trieste. Due to the fact that Slovenia and Croatia share the waters of this Bay and have territorial claims, the Arbitration Tribunal was tasked with delimiting it. In the lawsuit filed by Slovenia, it is stated that the Gulf of Piran before the dissolution of the SFRY had the status of internal waters as a "juridical bay" or alternatively, as a "historic bay". After the dissolution of the SFRY, the Bay of Piran retained that status, which is a consequence of the principle of automatic succession of borders, border regimes, and historical titles.

27PCA Case no. 2012-04, 2017.

According to UNCLOS III, the possibility of treating the Bay of Piran as a Slovenian 'juridical bay' bordering several states is not excluded. Determining the borders within the Bay of Piran implies the application of the *uti possidetis* principle, which according to the Slovenian point of view, gives Slovenia the right to the entire Bay of Piran since it

"has the status of Slovenian internal waters and is closed by a straight baseline connecting the most prominent points on the coasts of the Madonna and Savudrija promontories"[28].

On the other hand, Croatia contested this position of Slovenia, considering that the Bay of Piran was never in the regime of internal sea waters. Referring to the *travaux préparatoires* of the International Law Commission (ILC) during the adoption of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone (art.7), in connection with Art. 10 of UNCLOS III, which Slovenia claimed did not limit the status of internal waters of multinational bays, Croatia emphasized that such a position is not correct, but that the ILC took the exact opposite position according to which only a bays whose coasts belong to one state can be declared as internal waters.

Croatia did not accept that the Bay of Piran was ever a "juridical bay", and rejected Slovenia's alternative argument that it was a "historic bay" which it inherited through the succession of the SFRY. According to its understanding, the Bay of Piran was a part of the SFRY's territorial sea regime and remained so until

28PCA Case no. 2012-04, 2017.

its dissolution. In doing so, Croatia referred to the provision of Art. 15 of UNCLOS III, which establishes combined solutions for the delimitation of the territorial sea of states whose coasts are opposite or adjacent to each other. Given that there are no special circumstances that would allow a deviation from the general rule of delimitation based on the principle of equidistant, the end line to which the state border in the Bay of Piran should normally go, according to Croatia, is the median line where every point equidistant from the nearest points of the straight baselines from which the width of the territorial sea is measured. From the above, it is clear that the Croatian request is based on the principle of accessory which indicates that the delimitation could be carried out in accordance with the rule contained in Art. 2 UNCLOS III, which stipulates that the sovereignty of the state over the land part of the territory extends to the internal sea waters, the territorial sea along the coast, then to the air space above it, as well as to the seabed and subsoil of the sea. Consequently, it was clear that the Arbitral Tribunal should first determine the legal status of the Bay of Piran before dissolving the SFRY[29].

Assuming that the Bay of Piran really had the status of internal waters, this would mean that it belonged to the corpus of national waters within the mainland (*inter fauces terrarum*)

29PCA Case no. 2012-04, 2017.

(Colombos, 1959). Although they were not subject to comprehensive codification, internal waters have particular importance in determining the rules for the width of the territorial sea. This is confirmed by both conventions on the law of the sea - the 1958 Convention on the Territorial Sea and the Contiguous Zone and 1982 UNCLOS III.

The sovereignty of the coastal state extends beyond its land territory and internal waters to the adjacent Sea belt known as the territorial sea, as confirmed by both of these Conventions. Also, both of these Conventions define bays whose coasts belong to only one state. According to the definition in Art. 10(2) of the UNCLOS III, represent:

"A well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation".

For the purpose of measurement, Art. 10(3) UNCLOS III prescribes:

"The area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water mark of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum total of the lengths of the lines across the different mouths. Indentation islands must be included as if they were part of the indentation's water area".

In Art. 10 (4) UNCLOS III, further clarifies:

"If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 nautical miles, a closing line may be drawn between these two low-water marks, and the waters enclosed thereby shall be considered as internal waters".

A contrario, if the distance between low water marks on the natural entry of the bay exceeds 24 nautical miles, closing line pulls so that it closes the largest possible seawater surface. The aforementioned rules do not apply to the so-called historic bays and bays converted to internal waters by straight baselines under the Art. 7 of the 1958 Convention on the Territorial Sea and the Contiguous Zone. Since the SFRY Bay of Piran belongs to one state, the regulation of its status should take place in accordance with the provisions of the Conventions.

The former Yugoslavia declared the Bay of Piran a 'juridical bay' within its internal sea waters. Its area (approximately 18.2 square km) is larger than the area of a semicircle whose diameter is a line drawn from one end of the entrance to the bay to the other (approximately 9.5 square km).

The distance between the low water lines at the natural entrances of the Bay from Cape Madona in the north to Cape Savudrija in the south is 2.7 nautical miles, so it is not greater than 24 nautical miles, thus drawing the boundary line should include the sea surfaces between the low water lines that are considered internal sea waters. Croatia was unable to accept this approach. It was considered that the SFRY never defined the borderline that would cover the sea surface between the low water lines, which are considered internal sea waters. Therefore, the Bay of Piran cannot even be considered as internal sea

water.

Considering the legislative framework that existed in the Yugoslav federation before 1991, the Arbitration Tribunal found that the former Yugoslavia had enacted certain regulations regarding the status of internal waters, namely: the Coastal Sea Act of 1948, according to which, internal sea waters include bays and river estuaries whose width did not exceed 12 nautical miles (Official Gazette of FPRY, 106/1948). Then, the Coastal Sea Act of 1965 stipulated that inland waters consist of ports, bays, coasts, and islands.

The Law of the Coastal Sea and the Continental Shelf from 1987, reproduced the solutions from the previous Law (and its amendments), and according to which coves were formulated as bays that make up part of the internal waters of the SFRY (Official Gazette of SFRY 22/1965; 49/1987). Contrary to Croatia's claims, the Arbitration Tribunal found that there is no express obligation under the 1958 Convention on the Territorial Sea and the Contiguous Zone for states to publish maps indicating the boundary lines of the "juridical bay" but that such an obligation exists only in relation to the straight baselines from which the width of the territorial sea is measured (Sharma, 2000).

Therefore, despite the fact that UNCLOS III prescribed the obligation for states to publish their maritime charts and

regulations on geographic coordinates and to submit copies for safekeeping to the Secretary General of the United Nations, the status of the Bay of Piran as internal seawaters of the SFRY cannot be questioned, because that status was achieved before UNCLOS III entered into force in 1994. Although the boundary line that would encompass the sea surfaces between the low water lines, which are considered the internal sea waters of the Bay of Piran, is not depicted on the maps, according to the Tribunal's point of view, this does not allow a different conclusion to be reached.

The Arbitration Tribunal also noted that in the case in question there can be no doubt about the course of the border line because at one time during the negotiations between Italy and Yugoslavia on the delimitation of the Adriatic Sea, a map of the relevant maritime areas was made and where the border line of the Bay of Piran was clearly defined. It seems that this map was the starting point for the negotiations that ultimately resulted in the conclusion of the Treaty of Osimo a few years later.

The Tribunal therefore concluded that on 25 June 1991, the day of independence of Croatia and Slovenia, the Bay of Piran had the status of internal waters of the SFRY. Its closing line was a line joining the low-water marks of Cape Madona (Slovenia) and Cape Savudrija (Croatia). The Arbitration Tribunal has been determined by the precise coordinates of partial seawater parts

of the territorial sea from Cape Madona (45°31′49.3″N, 13°33′46.0″E) to Cape Savudrija (45°30′19.2″N, 13°30′39.0″E)[30].

In the continuation of the analysis, the Arbitration Tribunal had the task of solving the question of whether the Bay of Piran changed its status after the dissolution of the SFRY. The Tribunal's understanding in this sense remained undisturbed, because the Tribunal was firm in its position that even after the date of succession, the status of the Bay was not changed. In other words, the dissolution of the SFRY and the transfer of sovereignty to the successor states - Slovenia and Croatia, had no effect on the acquired status of the Bay of Piran.

The Bay of Piran has retained the status of a "juridical bay" with the character of internal waters, the shores of which now belong to a large number of countries, and that is why the provisions from Art. 7(1) of the 1958 Convention on the Territorial Sea and the Contiguous Zone and Art. 10(1) UNCLOS III can no longer be applied to its legal regulation. In the absence of any provision on the delimitation of internal waters in these Conventions, the Tribunal took the position that the same principle applies to delimitation of land territories should be applicable to the delimitation of the Bay.

In the present case, that delimitation must be made on the basis

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of principle *uti possidetis* which is applied between Slovenia and Croatia in the land part of the disputed area of the Bay of Piran[31].

Namely, an administrative-territorial division was established in that area as early as 1947, so it was considered that the principle of *uti possidetis juris* could be used as a starting point for mutual delimitation, which, according to the opinion of the Badinter Arbitration Commission, placed the borders of the former Yugoslav republics under the protection of international law on that date of succession.

Since there is an agreement between the parties in the dispute that before the dissolution of the SFRY there was no border in the Bay of Piran or some form of *condominium,* the Arbitration Tribunal concluded that the delimitation should be carried out on the basis of the effectiveness that existed on the date of their independence.

The Tribunal recited the ICJ judgment from December 22, 1986 in the Frontier Dispute Case (Burkina Faso v. Mali), which states, *inter alia:*

"(...) a distinction must be drawn among several eventualities. Where the act corresponds exactly to law (…) the only role of *effectivité* is to confirm the exercise of the right derived from a legal title. When the fact does not correspond to the law (…) preference should be given to the holder of the title. In the event that the *effectivité* does not correspond to any legal title, it must invariably be taken into consideration. Finally there are cases in which the legal title is not capable of showing exactly the territorial expanse to which it relates. The *effectivités* can then play an essential role in showing

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how the title is interpreted in practice"[32].

Justification in this sense implies the presentation of evidence of the exercise of real and undisturbed effective authority in the Bay of Piran[33]. On that occasion, Slovenia presented a mass of evidence that it exercised territorial authority *(effectivités)* in various areas in the entire Bay of Piran (from fishing and navigation, to sea research and performing police and sanitary surveillance). In contrast, Croatia argued that it had complete authority over the south-western portion of the Bay of Piran, while Slovenia had jurisdiction over the other portion. In the Croatian perspective, the Bay of Piran must be divided along the median line.

Presenting the evidence in the proceedings, the Tribunal reminded that in such and similar cases, international judicial practice requires that it be first established whether sovereignty is based on a specific legal basis, and then whether its exercise manifests a clear intention to exercise the *titre de souverain.* In this sense, the Arbitration Tribunal replicated the conclusion of the Permanent Court of International Justice contained in the judgment regarding the Legal Status of Eastern Greenland case between Denmark and Norway, where it was stated that:

"(...) a claim to sovereignty based not upon some particular act or title (...) but merely upon display of authority involves two elements (...) the intention

32ICJ. Frontier Dispute (Burkina Faso/Mali), 12 December 1986, *ICJ Reports*, 554; 586, para. 63.

33PCA. The Island of Palmas Case (or Miangas) (United States v. Netherlands), Award, 4 April 1928, *PCA*, 7-15.

and will to act as sovereign and some actual exercise or display of such authority"[34].

Comparing numerous demographic, economic and other indicators that show the effectiveness of state power in the area of the Bay of Piran before and after the dissolution of the SFRY, the Arbitration Tribunal expressed opinions that the delimitation will follow the line placed between the lines presented by the parties to the dispute. In conclusion, the Arbitration Tribunal noted that, on the occasion of the creation of a fishing reserve by Croatia, Slovenia recognized that it had no exclusive jurisdiction over the entire Bay.

The Arbitration Tribunal was also convinced that Croatia did not have jurisdiction over the entire area south of the median line. Hence, the Arbitration Tribunal noted that the delimitation line should go from the mouth of the Dragonja River to the point on the end line of the Bay of Piran that closes the stretch between Cape Madona and Cape Savudrija. It was determined that the distance to Cape Madona is three times longer than the same distance to the same point on Cape Savudrija.

In this sense, the Arbitration Tribunal expressed the opinion that this line of delimitation corresponded to the demonstrated effectiveness of the parties in the dispute, which is why the Tribunal will adopt it.

A fortiori, the Arbitration Tribunal established the border

34PCIJ. Legal Status of Eastern Greenland (Denmark v. Norway), 5 April 1933, PCIJ Series A/B, 53, 45-46.

between Croatia and Slovenia in the Bay of Piran as “a straight line joining a point in the middle of the channel of St. Odoric Canal with coordinates 45° 28′42.3″N, 13° 35′08.2″E, to Point A with coordinates 45° 30′41.7”N, 13° 31′25.7”E” on the closing line of the Bay. As a result of the aforementioned delimitation, the Arbitration Tribunal emphasized that there is no need to define a special regime for the use of the Bay of Piran except for the one provided for in the international law of the sea[35].

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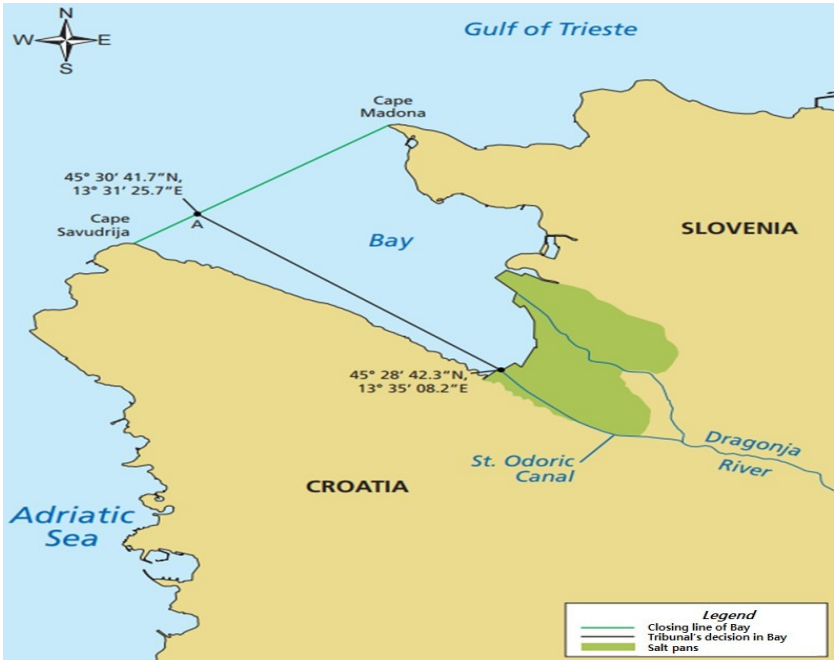
Map 4: The boundary between Slovenia and Croatia in the Bay of Piran



Source: (PCA Case no. 2012-04, 2017)

Determination of the boundaries of Slovenia's and Croatia's territorial seas

According to Art. 3 of UNCLOS III, each state has the right to determine the width of its territorial sea up to a limit not exceeding 12 nautical miles, starting from the baselines determined in accordance with this Convention.

In this respect, it is concluded that the determination of baselines

for determining the width of the territorial sea represents a preliminary legal issue for the international legal delimitation of the territorial seas of neighbouring states.

Recalling that it previously established that the Bay of Piran consists of internal waters and that the border line was determined in accordance with the earlier solution that existed in the legislation of the SFRY, and that the border intersects the line at Point A, whose coordinates are 45° 30′ 41.7″N, 13° 31′25.7″E, the Tribunal concluded that this is also the baseline for determining the border of their territorial seas.

During the proceedings, the Tribunal used the maps submitted by the parties to the dispute to delimit the territorial seas of Slovenia and Croatia. Taking into account the positions of the parties in the dispute (the position of Croatia, which advocated the application of the median line, and then the position of Slovenia, which considered that the principle of equidistance is not an absolute principle and that for the delimitation of the territorial seas of adjacent states the criteria of historic title and special circumstances should be used), the Arbitration Tribunal started from the provisions of Art. 15 UNCLOS III which provides for combined solutions for the delimitation of their territorial seas.

Interpreting the aforementioned provision, the Arbitration Tribunal confirmed that bordering states do not have the

authority to extend their territorial seas across the median line (equidistance), except in the case of a different agreement, i.e. in the case of the existence of historical titles or other special circumstances that allow a different delimitation.

In achieving just solutions, the Tribunal cited the methodology of the International Court of Justice, which established three stages. The first stage involves making a provisional decision on the border based on a provisional equidistance line. At the second stage, the Court considers whether there are relevant circumstances that may require an adjustment of that line to achieve an equitable result. At the third stage, the Court conducts a disproportionality test in which it assesses whether the effect of the line as adjusted, is such that the parties' respective shares of the relevant area are markedly disproportionate to the lengths of their relevant coasts[36].

Guided by the rich practice of the International Court of Justice which confirms the application of the principle of natural prolongation and special circumstances resulting from unusual geographical features or configurations of the coast that can produce an unjust delimitation, the Tribunal did not accept the Slovenian request regarding the historical title and special

36PCA Case no. 2012-04, 2017. ICJ. Maritime Dispute (Peru v. Chile), Judgment, 27 January 2014, *ICJ Reports,* 3; ICJ. Maritime Delimitation in the Black Sea (Romania v. Ukraine), Judgment, 3 February 2009, *ICJ Reports,* 61, 115; ICJ. Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, 12 November 2012, *ICJ Reports* 624, 69.

circumstances. The Tribunal rejected the Croatian delimitation request solely on the median line[37].

Considering the Slovenian request that the boundary should be drawn from the farthest point from Cape Savudrija to the point west of that cape where an arc of 12 nautical miles intersects the boundary line established by the Treaty of Osimo, as well as the Croatian request that the equidistance should run from the mouth of the Dragonja River, via Bay of Piran towards the Bay of Trieste, the Arbitration Tribunal came to the belief that in the case in question there is a certain discretionary right that enables the border to be drawn without violating the principles of international law of maritime delimitation. The Tribunal found that the difference in length of the coasts is not a special circumstance that necessitates a deviation from the median line. On the other hand, the Tribunal did not find any historical titles that would warrant a departure from this rule.

The Arbitration Tribunal concluded that certain aspects of the coastal configuration have a negative impact if the equidistance

37ICJ. Continental Shelf (Tunisia/Libyan Arab Jamahiriya), Judgment, 24 February 1982, *ICJ Reports,* 18, 73; ICJ. Continental Shelf (Libyan Arab Jamahiriya v. Malta), Judgment, 21 March 1985, *ICJ Reports,* 13, 47, etc; PCA. Abyei Arbitration (Government of Sudan v. Sudan People's Liberation Movement/Army), Final Award, 22 July 2009, *PCA* Case No. 2008-07, 260; ICJ.Western Sahara, Advisory Opinion, 16 October 1975, *ICJ Reports*, 12; PCA. Sovereignty and Maritime Delimitation in the Red Sea (Eritrea/Yemen), Award, 9 October 1998, *PCA* Case No. 1996-04, 146; RIAA. The Grisbådarna Case (Norway v. Sweden), Award, 23 October 1909, *RIAA 9,* 155, 161; ITLOS. Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal, Judgment, 14 March 2012, *ITLOS* Case No. 16, para. 150.

rule was applied. This circumstance, which the Tribunal considers to be a "special circumstance", is described in such a way that the Croatian coast is located near Point A and that it suddenly turns south around Cape Savudrija, so that the Croatian base points from which the median line starts are located is on a very small part of the coast, whose general (northern) direction is distinctly different from the south-western direction, which includes a much larger part of the Croatian coast.

According to the Tribunal's view, international law allows deviation from the middle line where there are excessive effects of exclusion, which is confined in the so-called boxes. In circumstances such as this, international law, but also international practice, requires mitigating the exaggerated effect of "boxing" or "cutting off" that the strict application of the equidistance principle would produce in relation to Slovenian waters[38]. Therefore, the Croatian request for equidistance cannot be taken into account, and the median line must be changed in order to mitigate these effects caused by the influence of the geographical configuration.

38PCA Case no. 2012-04, 2017. ICJ. North Sea Continental Shelf (Federal Republic of Germany/Netherlands), Judgment, 20 February 1969, *ICJ Reports*, 51, paras. 89-90; RIAA. Delimitation of the Maritime Boundary between Guinea and Guinea Bissau, Award, 14 February 1985, *RIAA 19*, 149-196*;* 187 paras. 103-104; ITLOS. Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal, Judgment, 14 March 2012, *ITLOS* Case No. 16, 292-297.

The Arbitral Tribunal finally issued a Final Award by which it determined that the border between the territorial seas of Croatia and Slovenia moves northwest from Point A in a direction approximately parallel to the line T2-T3 described in the Treaty of Osimo in order not to increase the "boxing" of the Slovenian maritime belt by narrowing territorial sea as it projects out into the Bay of Trieste.

In concreto, the border is represented by a line from Point A on the line from the mouth of the Bay of Piran located at 45° 30'41.7″N, 13° 31′25.7″E, with an initial azimuth of 299° 04′45.2″, to Point B on the line between T3 and T4 established by the Treaty of Osimo, located at 45° 33'57.4″N, 13° 23′04.0″E[39].

39PCA Case no. 2012-04, 2017.

Map 5: Boundary between the territorial seas of Slovenia and Croatia

Source: (PCA Case no. 2012-04, 2017)

Establishment of the Junction Area connecting Slovenia with the High Sea

In addition to the delimitation of the Bay of Piran and the area of the territorial seas of Slovenia and Croatia, the Arbitration

Tribunal had the obligation to determine Slovenia's "connection" with the open sea, as well as the legal regime in that area. In the Arbitration Agreement between Croatia and Slovenia, the aforementioned determination referred to the binding of Slovenia to the so-called High Sea, which, according to the Tribunal's interpretation presented a synonym for the internationally recognized category of open sea, i.e. for the area outside the borders of internal waters, territorial seas and Exclusive Economic Zones of coastal states where there are freedoms guaranteed by Art. 87 UNCLOS III.

At the start of the proceedings, the Arbitration Tribunal confirmed that Croatia and Slovenia had no declared Exclusive Economic Zones in the Adriatic Sea. Thus, the Tribunal should have considered sea areas outside the territorial sea as High Seas for the purposes of this case.

When considering this problem, the Arbitral Tribunal stated that the parties to the dispute are deeply divided regarding the meaning of the term 'connection to the High Sea'. Although there is agreement that the meaning of "junction" should be interpreted in accordance with the Vienna Convention on the Law of Treaties, they emphasize different aspects of the "ordinary meaning" and *travaux préparatoires* of the Arbitration Agreement. Thus, for Croatia, the term 'junction' is outside the *travaux préparatoires* of the Arbitration Agreement. This term

is not covered by international law, and even international customary law.

According to Croatian point of view, there is no agreement between the parties to the dispute regarding the meaning of this term, even less Croatia can agree that the Arbitration Agreement represents its consent on the basis of which Slovenia would achieve territorial contact with the open sea.

Consequently, the Arbitral Tribunal is not authorized to make a decision contrary to international law, but precisely in accordance with international law and equity (which can be interpreted as equity *infra legem* or *paeter legem*), as well as in accordance with the principle of good neighbourly relations (Andrassy, 1951; 1990).

However, this does not mean that the Arbitral Tribunal has the right to deprive Croatia of its part of sovereign territory by narrowing the Croatian territorial sea while simultaneously expanding Slovenia's territorial sea contrary to UNCLOS III, in order to achieve territorial contact of Slovenia with the High Sea[1].

On the other hand, Slovenia pointed out that the ordinary meaning of the word “junction” is necessary in itself, since it always implies a connection. *In concreto,* that term signifies a link between two maritime areas. Referring to the interpretations

1PCA Case no. 2012-04, 2017.

of the Vienna Convention on the Law of Treaties, Slovenia pointed out that this term should ensure the junction of "Slovenia to the High Sea", which means "a direct junction without having to pass through the territorial sea of another state."

For Slovenia, the concept of 'junction' means a straight line between the Slovenian territorial sea and the High Seas. Slovenia has stressed that there must be a corridor between the High Seas and Slovenia's territorial sea, leading to a junction between the two. According to Slovenia, such concept is necessary in order to respect the *effet utile* principle of treaty interpretation, as the determination of the junction is to be distinguished from the determination of the maritime boundary and the regime for the use of the relevant maritime areas. Slovenia therefore concluded that the determination of a junction cannot be confused with, or assimilated to, the regime for the use of relevant areas. In this regard, it asserted that a mere right of innocent passage through the territorial sea of Croatia has never been acceptable to Slovenia. Finally, Slovenia concluded that a direct junction is necessary for its economic, security, and safety interests[2].

2PCA Case no. 2012-04, 2017. Slovenia referred to arguments related to negotiations with Croatia, in order to support its interpretation of the term "junction" (the unratified Agreement on the Slovenian-Croatian border from 2001, as well as the Protocol between Croatia and the FRY on the temporary regime along the southern border from 2002, in which this term is stated in the sense of direct geographical contact).

The parties in the dispute accepted that the Arbitration Tribunal, when establishing the Slovenian "junction to the High Sea", must be guided by the goal of "achieving a fair and just result". At the same time, Croatia was of the opinion that Slovenia has sufficient access to maritime communications and that it enjoys the right of innocent passage under UNCLOS and the IMO scheme, and therefore does not see why its junction to the High Sea must be justified by "direct territorial exits" and why not could be normatively regulated within the existing regulations on navigation as safe and uninterrupted access to this sea area.

In this sense, Croatia was consistent in asserting that Slovenia cannot have "territorial contact" with the open sea, because according to international law "such contact is only possible with the territorial sea, the width of which cannot exceed 12 nautical miles. Since the territorial sea of the parties to the dispute has already been delimited in accordance with international law, Croatia concluded that the Slovenian territorial sea cannot extend so far as to reach the High Sea. Croatia has stated that the current situation *de lege lata* will remain unchanged regardless of the final maritime delimitation. This means that Slovenia's territorial sea closed the territorial seas of Italy and Croatia from the moment of its independence. Consequently, according to the Croatian point of view, the Arbitration Tribunal could only ensure Slovenia's access to the

High Sea by adopting the appropriate navigation regime.

Slovenia stated in its response that Croatia ignores Art. 3(1) b of the Arbitration Agreement, which stipulates that the Arbitral Tribunal must determine the "junction" separately from the regime of use of the relevant maritime areas. In this sense, Slovenia warned that such an omission by the Tribunal would lead to an *infra-petita* award by which the Tribunal would not fully exercise its jurisdiction. Slovenia also pointed out that the Croatian interpretation ignores the reality of the relationship between the parties and

"does not give Slovenia the *res judicata* guarantee of access to the High Sea that is requested from this Arbitration Tribunal."

In this regard, it did not want to accept the Croatian position on the IMO traffic separation schemes in the Adriatic Sea. Replicating Art. 86 UNCLOS III, Slovenia also referred to the special circumstances that they represent

"the very *raison d'être* of both the reference to the junction in Article 3(1) (b) of the Arbitration Agreement, and the inclusion of equity and the principle of good neighbourly relations, in addition to international law",

in determination of junction of Slovenia's territorial sea to the High Sea (through a corridor approximately 3 nautical miles wide)[3].

Taking into account all the relevant circumstances important for achieving fair and just solutions, the Arbitration Tribunal concluded that the parties to the dispute accepted to treat the area outside the territorial seas as High Seas for the purposes of

3PCA Case no. 2012-04, 2017.

this case. The main task of the Tribunal was to determine Slovenia's right of access to the High Seas and vice versa, through the realization of freedoms of communication that is, through the realization of freedoms of navigation and over flight (with the right to lay submarine cables and pipelines and the long use of the sea in accordance with Art. 58(1) of UNCLOS III relating to the Exclusive Economic Zone).

The Tribunal was authorized to determine the rules for the use of the relevant maritime area, which should be considered a Junction Area. This task derives from Art. 4 of the Arbitration Agreement, by which the Tribunal is authorized to reach fair and just results on the basis of international law, equity and the principle of good neighbourly relations.

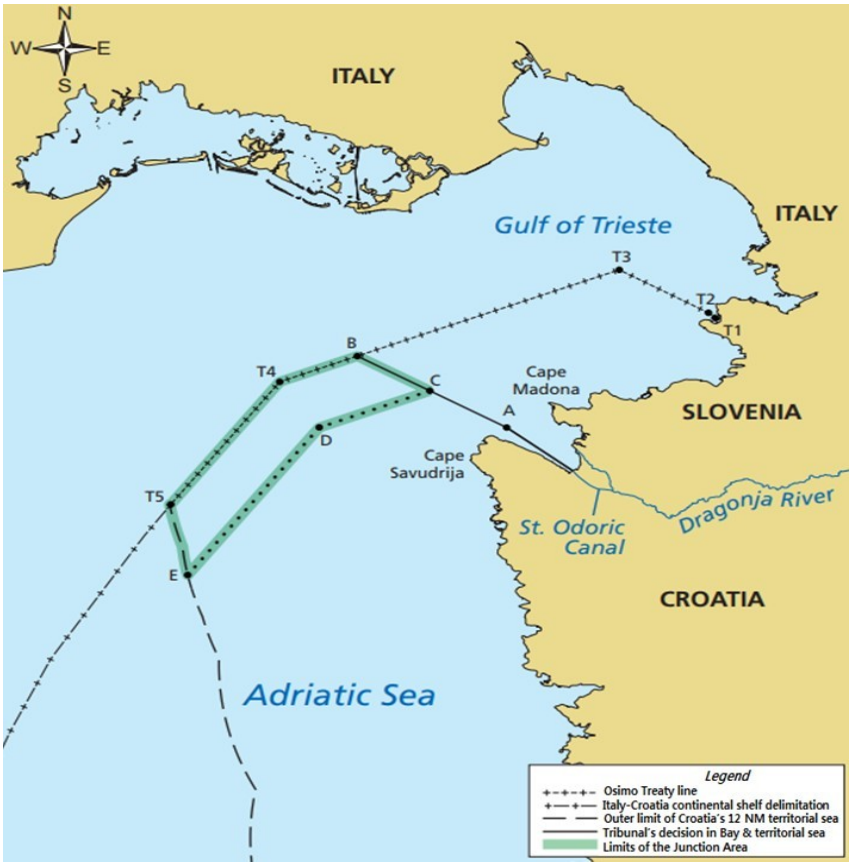
All relevant circumstances, including the vital interests of the parties involved in the dispute, had to be taken into account by the Tribunal when assigning the task. This included considering the geographical location of the Slovenian Junction Area to the High Seas. According to the Tribunal, this area connects the Slovenian territorial sea with the area outside Croatia and Italy's territorial sea. Such a connection arises from the identification of the area of the Croatian territorial sea along the border with Italy established by the Treaty of Osimo, within which a special legal regime is applied.

Recalling that it has already determined that the border between

the waters of Croatia and Slovenia is a geodetic line from Point A on the final line across the mouth of the Bay of Piran with an initial geodetic azimuth of 299°04′45.2” to Point B on the line between T3 and T4 established by the Treaty of Osimo, which continues northwest from Point A on the line that closes the Bay of Piran and parallel to the line T2-T3 from the Treaty of Osimo, the Arbitration Tribunal determined the coordinates of the Junction Area as a Slovenian maritime zone extending approximately 2.5 nautical miles to the boundary in Croatia's territorial sea laid down by the Treaty of Osimo. The limits of the Junction Area consist of the five geodetic lines joining the following six points in the order given: 1) Point T5, being a point on the boundary established by the Treaty of Osimo; 2) Point T4, being a point on the boundary established by the Treaty of Osimo; 3) Point B, being the tripoint on the boundary between the maritime zones of Croatia and Slovenia, and the boundary established by the Treaty of Osimo, at 45°33'57.4'N, 13°23'04.0'E; 4) Point C, being a point on the boundary between the maritime zones of Croatia and Slovenia, at 45°32'22.5'N, 13°27'07.7'E; 5) Point D, being a point landward of the turning point T4 on the Treaty of Osimo boundary, at 45°30'42.2'N, 13°20'56.3'E; 6) Point E, being a point on the outer limit of Croatia's territorial sea, lying 12 nautical miles from the coast of Croatia, at 45°23'56.6'N, 13°13'34.6'E, and the line from Point E

along the outer limit of Croatia's territorial sea to Point T5[4].

Map 6: Junction Area



Source: (PCA Case no. 2012-04, 2017)

The Final Award also determined that, in the Junction Area, the following regime should apply: First, freedom of

4PCA Case no. 2012-04, 2017.

communication is applied to all ships and aircraft, civil and military, of all flags or states of registration, equally and without discrimination on grounds of nationality, for the purposes of access to and from Slovenia, including its territorial sea and its airspace (Gojkošek, Moon-Soo, Chin-Sung, 2019).

Second, freedom of communication, which includes the freedoms of navigation and over flight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines are not subject to any criterion of innocence, nor shall they be suspend able under any circumstances, nor should they be subject to any duty of submarine vessels to navigate on the surface or to any coastal state controls or requirements other than those permitted under the legal regime of the Exclusive Economic Zone established on the basis of UNCLOS III which recognizes exclusive rights to the exploitation, exploration, conservation and management of the resources of the seabed and subsoil of the sea and the waters above them (Rudolf, 1988).

Third, the laying of submarine cables and pipelines shall be subject to the conditions set out in UNCLOS III (Article 79), including the right of Croatia to establish conditions for such cables and pipelines entering other parts of Croatia's territorial

sea according to Article 79 (4).

Fourth, freedom of communication does not include the freedom to explore, exploit, conserve or manage the natural resources, whether living or non-living, of the waters or the seabed or the subsoil in the Junction Area, nor shall it include the right to establish and use artificial islands, installations or structures, or the right to engage in marine scientific research, or the right to take measures for the protection or preservation of the marine environment.

Fifth, the established regime implies that ships and aircraft exercising the freedom of communication shall not be subject to boarding, arrest, detention, diversion or any other form of interference by Croatia while in the Junction Area, but Croatia shall remain entitled to adopt laws and regulations applicable to non-Croatian ships and aircraft in the Junction Area, giving effect to the generally accepted international standards in accordance with Art. 39(2) and (3) of the UNCLOS III.

Sixth, Croatia shall retain the right in the Junction Area to respond to a request made by the master of a ship or by a diplomatic agent or consular officer of the flag State for the assistance of the Croatian authorities and also the exceptional right to exercise in the Junction Area powers under Art. 221 of the UNCLOS III, in respect of maritime casualties. All the stated rights and obligations of the parties under the established

regime from the Final Award should be exercised in good faith and with due regard for the rights and obligations of other states. Finally, the Arbitral Tribunal noted in the Award that this regime is without prejudice to the IMO Traffic Separation Scheme in the Northern Adriatic Sea, or international rules applicable to air navigation, or any rights or obligations of the parties arising under EU law[5].

The Arbitration Tribunal specifically apostrophized that the established regime does not call into question any existing or future agreement regarding the use of the relevant maritime areas between the contracting parties. In this respect, the Tribunal confirms that the rights and obligations of Slovenia and Croatia aligned with the provisions of UNCLOS III in all their maritime areas remain unaffected, except in relation to the Junction Area to the extent required by the regime established by the Final Award. Taking into account all the above, the Arbitration Tribunal concluded that the delimitation of the Junction Area and the regime established there are legally valid until Slovenia and Croatia decide that it is necessary to make some changes by concluding an agreement (Degan, 2019)[6].

5PCA Case no. 2012-04, 2017.
6PCA Case no. 2012-04, 2017.

Slovenia's request for the delimitation of the continental shelf

In addition to the request for the delimitation of the territorial seas and the request for the establishment of a Junction Area connected to the High Seas, Slovenia requested the Arbitral Tribunal to delimit the continental shelf which is allegedly located at more than 12 nautical miles in the continuation of the open sea corridor 3 nautical miles wide from its territorial sea, which represents the area over which Slovenia has rights based on customary international law and Art. 76(1) of UNCLOS III which provides:

> "The continental shelf of a coastal state comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance".

According to the Slovenian understanding, sovereign rights over the continental shelf exist *ipso facto* and *ab initio,* and do not depend on any occupation or on any express proclamation, or actual exercise of the right.

Slovenia has admitted that it has overlapping continental shelf entitlements with Croatia beyond this 3 nautical mile corridor in the High Seas areas beyond point T5 under the 1975 Treaty of Osimo. According to its understanding, the Arbitration Tribunal is pursuant to Art. 3(1) (c) of the Arbitration Agreement was in charge of determining the boundaries of sea areas outside the

territorial sea. At the same time, Slovenia stated that its right to the continental shelf should not be blocked by Cape Savudrija, since that cape is an example of

"relevant circumstances that should be abated in order for the coasts of the parties to produce their effects in terms of maritime entitlements".

Slovenia provided an explanation for the request regarding the applicable law that should be applied in the case in question. The first point of reference was the application of Art. 83 of UNCLOS III, which stipulates:

"The delimitation of the continental shelf between states with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Art. 38 of the Statue of the International Court of Justice, in order to achieve an equitable solution".

In interpreting the provision, Slovenia stressed that it does not prioritize a particular method of delimitation, but rather is guided by the achievement of a fair solution. According to it, the equidistance method is not a mandatory rule of international law and has no a priori status in relation to other methods of delimitation that assume the achievement of consensual solutions involving fairness and relevant circumstances. Although such a conclusion derives from the jurisprudence of the International Court of Justice, which elaborates the application of the principle of fairness and relevant circumstances in three steps (first, by drawing a temporary equidistance line; secondly, by assessing the relevant circumstances that should serve to adjust the temporary line in order to achieve a fair solution, and thirdly, by testing the

achieved results in order to eliminate disproportionality), Slovenia considered that such an approach was not necessary in the case in question.

As the first argument against the application of the equidistance method, Slovenia stated that this method is contrary to the delimitation of the territorial sea due to its alleged historical rights and other special circumstances. As another argument against its application, Slovenia pointed out that it would lead to radical results, which would deprive Slovenia of the continental shelf to which it has historically had access. Slovenia argued that the equidistance method's non-use in the case in question wouldn't result in disproportionate results as a third argument against its application.

Due to all the above reasons, Slovenia expressed the view that the appropriate method of delimitation of continental shelves would be one that would take into account the relevant geographical, historical and economic circumstances. Consequently, it presented a proposal to carry out an equitable delimitation of its continental shelf in such a way as to extend a corridor with a width of 3 nautical miles from the junction of Slovenia to the High Sea towards the south-southwest until it intersects the parallel of 45°10′N latitude[7].

7PCA Case no. 2012-04, 2017. In the argumentation of the aforementioned proposal, Slovenia pointed out that the proposal corresponds to the temporary border of the Slovenian ecological protection zone, then to the area of fishing restrictions according to the SOPS Agreement from 1997, and finally to the fact that Slovenia

Croatia rejected the Slovenian request for the delimitation of continental shelf because it is contrary to international law. For it, the Treaty of Osimo that Yugoslavia concluded with Italy is an 'untouchable' agreement that established a regime under which Slovenia has no right to the continental shelf. Croatia reminded that in the proposal of its Maritime Code adopted on 23 March 2001, Slovenia stated that it "has the characteristics of a so-called 'geographically disadvantaged state', thus a state without the continental shelf of its own or sovereign rights in this maritime area, and that, given its geographical location, Slovenia does not have the possibility to proclaim other maritime zones beyond the area under its sovereignty and in the direction towards the High Seas (contiguous zone, Exclusive Economic Zone). In this sense, Croatia underlined that it does not present any detailed argument regarding the applicable law regarding the delimitation of the continental shelves or the delimitation of the Slovenian continental shelf[8].

Upon examining all the arguments of the parties in the dispute, the Tribunal determined that:

"(...)the maritime boundary between Slovenia and Croatia extending from Point A at the mouth of the Bay to Point B on the Treaty of Osimo line is the boundary for all purposes, and that Slovenia has no maritime zone extending

used to share rights to the continental shelf with Croatia when they were part of the SFRY. Thus, the Slovenian proposal for the delimitation of the continental shelf should produce a result that leaves each side with maritime areas that are not disproportionate compared to the lengths of their respective coasts (Slovenia about 555 km^2 and Croatia about 1040 km^2).

8PCA Case no. 2012-04, 2017.

west beyond that maritime boundary. Slovenia's claim to continental shelf rights is therefore incompatible with the Tribunal's determination of the entitlements of the two States in this area, and no question of continental shelf delimitation arises"[9].

Proceedings before the Court of Justice of the European Union (CJEU)

In the Agreement on Arbitration, Slovenia and Croatia undertook to respect the Final Award of the Arbitration Tribunal, and according to article 7(3), that they will undertake,

"all the necessary steps for its implementation, including, if necessary, the amendment of the national legislation, within six months after the adoption of the Award".

However, due to the previously explained reasons for which it refused to participate until the end of the arbitration proceedings, Croatia also refused to implement the Final Award of the Arbitration Tribunal.

Due to this, on 16 March 2018, Slovenia initiated proceedings before the EU Commission based on Art. 259 of the Treaty on the Functioning of the EU (TFEU). However, although the Commission accepted in principle that the border dispute between Slovenia and Croatia was resolved by the Final Award of the Arbitration Tribunal, it nevertheless refrained from giving a concrete opinion within the prescribed period of three months according to the provisions of Art. 259 TFEU, which is why Slovenia immediately filed a complaint with the CJEU on 13

9PCA Case no. 2012-04, 2017.

July 2018 (Mooth, 2019).

In it, Slovenia stated that by not implementing the Final Award of the Arbitration Tribunal, Croatia does not respect the rule of law, which is a fundamental value of the EU according to Art. 2 of the Treaty on European Union (TEU). Consequently, Croatia violated a number of obligations under primary and secondary EU law. As examples of violations of EU rights, Slovenia cited the following: By refusing to fulfil its obligations from the Final Award, Croatia prevented Slovenia from fully exercising its sovereignty over certain parts of the territory, which can be treated as a violation of its obligations regarding cooperation with Slovenia.

Preventing Slovenia from exercising its rights on its entire land and sea territory is contrary to Art. 4(3) of the TEU. Furthermore, Croatia violated Art. 5(2) of Regulation (EU) no. 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No. 1954/2003 and (EC) No. 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC in such a way as to prevent Slovenia from having free access to the Croatian territorial sea, which is an obligation determined by the Final Award.

In the complaint, Slovenia also stated that Croatia made it

impossible for Slovenian fishing inspectors to carry out regular inspections of Croatian fishing vessels in the Slovenian territorial waters, thereby violating the provisions of Council Regulation (EC) no. 1224/2009 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, and Implementing Regulation (EU) No 404/2011 of 8 April 2011.

In the complaint Slovenia also states that Croatia did not recognize the borders established by the Final Award as a common border with Slovenia. It did not cooperate with Slovenia in protecting the external border and did not guarantee adequate protection as required by the rules of international law. On that way, Croatia violated Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code). Finally, by including Slovenian waters in its own maritime spatial planning, Croatia continued to violate Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning.

On 21 December 2018, Croatia submitted a complaint to the CJEU in which it stated that the dispute on the delimitation with Slovenia does not fall within the domain of EU law, but rather within the domain of international law. In this sense, Croatia

requested the CJEU to reject Slovenia's lawsuit as inadmissible in the procedure provided for in Art. 259 of the TFEU and to declare it incompetent. In addition, Croatia expressed the view that the CJEU does not have jurisdiction to rule on the validity or legal effects of either the Arbitration Agreement or the Final Award of the Arbitration Tribunal.

The CJEU decided at the Grand Chamber session on 8 July 2019 on the admissibility of the lawsuits and its jurisdiction. Then, on 11 December 2019, the General Advocate of the Court expressed an opinion that the CJEU is not competent to decide on an international border dispute that does not fall within the scope of EU law. The Advocate General confirmed that the violations of EU rights that Slovenia accused Croatia of are subsidiary to the issue of delimitation between the two countries, which is a matter of public international law (CJEU Press Release, 2019). The CJEU held the same opinion on 31 January 2020, when it made its judgment[10].

In the judgment, the CJEU *inter alia,* states, that it is not competent to interpret an international agreement concluded by member states in an area outside the competence of the EU referred to in Articles 3 to 6 TFEU. According to the Court's opinion, the final award made by the Arbitral Tribunal was governed by international law that was not within the

10CJEU, C-457/18, Slovenia v. Croatia of 31 January 2020, ECLI:EU:C:2020:65, published in the electronic Reports of the cases.

jurisdiction of the EU, and the EU was not a party to the matter in question despite its mediating role. Considering the connection that exists between the Arbitration Agreement, the arbitration procedure and Croatia's accession to the EU, the CJEU stated:

"It is true that the EU offered its good offices to both parties to the border dispute with a view to its resolution and that the Presidency of the Council signed the Arbitration Agreement on behalf of the EU, as a witness. Furthermore, there are links between, on the one hand, the conclusion of the Arbitration Agreement, and the arbitration proceedings conducted on the basis of that Agreement, and on the other, the process of negotiation and accession by the Republic of Croatia to the EU. Such circumstances are not, however, sufficient for the Arbitration Agreement and the arbitration Award to be considered an integral part of EU law"[11].

Consequently, the CJEU concluded that referring to the arbitration Award in the neutral sense of the provisions of the Croatian EU Accession Act cannot be interpreted as the incorporation into EU law of the international obligations that both member states undertook within the framework of the Arbitration Agreement. For example, this refers to obligations from Annex II of the Act on the Accession of Croatia to the EU, which apostrophizes the obligations from Regulation (EU) No. 1380/2013 on common fisheries policy, regarding mutual access to the territorial waters of Croatia and Slovenia. Thus, the CJEU concluded that:

"(...)the infringements of EU law pleaded are ancillary to the alleged failure by the Republic of Croatia to comply with the obligations arising from a bilateral international agreement to which the EU is not a party and whose subject matter falls outside the areas of EU competence. Since the subject

11CJEU, C-457/18, Slovenia v. Croatia of 31 January 2020, op. cit.

matter of an action for failure to fulfil obligations brought under Art. 259 TFEU can only be non-compliance with obligations arising from EU law, the Court, in accordance with what has been stated in paragraphs 91 and 92 of the present judgment, lacks jurisdiction to rule in the present action on an alleged failure to comply with the obligations arising from the Arbitration Agreement and the arbitration Award, which are the source of the Republic of Slovenia's complaints regarding alleged infringements of EU law"[12].

The CJEU has unequivocally confirmed that member states have the competence to determine the extent and limits of their own territory, in accordance with the rules of public international law. Articles 52 TEU and 355 TFEU contain this principle. In accordance with international law, Member States have jurisdiction over the geographical delimitation of their borders under Art. 77(4) TFEU, as per the opinion of the CJEU[13].

The CJEU also emphasized that there was a mutual obligation of Slovenia and Croatia according to the provision of Art. 7(3) of the Arbitration Agreement, to take all the necessary steps to implement the arbitration Award, including by revising national legislation, as necessary, within six months after the adoption of that award. Starting with the full implementation of the arbitration Award, the parties should also take the necessary

12CJEU, C-457/18, Slovenia v. Croatia of 31 January 2020, op. cit. In this regard, the CJEU stated in paragraph 91 of the Judgment that in the case: *Commission* v. *Belgium*, C-132/09, it had already decided on its lack of jurisdiction until it decided on the interpretation of an international agreement concluded by two EU member states in a matter outside the areas of EU competence and on the obligations arising under it for them. Also, the CJEU replicated paragraph 92 of the Judgment, referring to the earlier practice according to which it does not have jurisdiction to decide on a claim for failure to fulfil obligations, whether it was filed on the basis of Art. 258 TFEU or under Art. 259 TFEU, "where the infringement of provisions of EU law that is pleaded in support of the action is ancillary to the alleged failure to comply with obligations arising from such an agreement".

13CJEU, C-457/18, Slovenia v. Croatia of 31 January 2020, op. cit.

steps for the purpose of implementing the mutual access regime provided by Regulation (EU) No 1380/2013 on Common Fisheries Policy[14].

Finally, although the CJEU confirmed that it is beyond its jurisdiction to examine the scope and limits of the national borders of Slovenia and Croatia by direct application of the border determined by the arbitration Award in order to examine the existence of a violation of EU law, this does not call into question the obligations of the respective member states from Art. 4(3) TEU to sincerely strive to bring a definitive legal solution consistent with international law, as suggested in the Act on the Accession of Croatia to the EU.

This ensures the efficient and smooth application of EU law in the relevant areas, and at the same time enables the states to bring their dispute to an end by using one or another means of resolution where, depending on the case, they can bring their dispute to the CJEU for resolution on the basis of a special agreement harmonized with Art. 273 of the TFEU. The CJEU concluded that it is not competent to rule on the present action due to failure to fulfil obligations, based on all the above findings[15].

With the pronounced judgment of the CJEU, the territorial dispute on the Adriatic Sea between Slovenia and Croatia almost

14CJEU, C-457/18, Slovenia v. Croatia of 31 January 2020, op. cit.
15CJEU, C-457/18, Slovenia v. Croatia of 31 January 2020, op. cit.

returned to the initial track when it represented an insoluble political issue between the two states. With the pronounced judgment of the CJEU, the territorial dispute on the Adriatic Sea between Slovenia and Croatia almost returned to the initial track when it represented an insoluble political issue between the two states. With its superficial focus on the Final Decision of the Arbitration Tribunal and its legal force of *res judicata* within the EU legal order, the CJEU left a lot of room for different legal interpretations (Kassoti, 2020).

Finally, taking into account the nature of this territorial dispute and Croatia's refusal to accept the importance of the implementation of the Final Award of the Arbitration Tribunal, leads to the conclusion that the dispute will have to be resolved through new political negotiations and certainly with consistent respect for the rules and the principles of general international law and the law of the sea contained in the provisions of UNCLOS III. Otherwise, there may be new political frictions and a worsening of the political situation in this EU region where this border conflict is frozen (Bickl, 2023).

Dispute between Bosnia and Herzegovina and Croatia

A specific border problem exists between Bosnia and Herzegovina and Croatia in the area of the Klek peninsula near the Bay of Neum, where Bosnia and Herzegovina territorially

exits the Adriatic Sea. Since signing the so-called Washington Agreements on Confederal Relations of 18 March 1994, which contain the texts of the Agreement on Access of Bosnia and Herzegovina to the Adriatic Sea through Croatian Territory and Free Transit through the Territory of Bosnia and Herzegovina, both sides continuously work on the issue of territorial sea delimitation (Klemenčić, Schofield, 1996).

With the Agreement, Croatia undertook to lease to Bosnia and Herzegovina a part of the port of Ploče that would have the status of a free zone, while with another, collateral agreement, the Bosnia and Herzegovina undertook to recognize unlimited transit through Bay of Neum, between Neum's eastern and western borders with Croatia. Confirming their readiness to regulate their mutual relations by applying institutional models of cooperation, and in accordance with the obligations assumed in the Washington Agreements and Dayton Peace Agreement (Agreement for Peace in Bosnia and Herzegovina, signed in Paris on 14 December 1995), Croatia and Bosnia and Herzegovina signed the Agreement on Special Relations on 11 May 1996.

The agreements for the implementation of the aforementioned Washington agreements were signed on the same day as the Agreement on Special Relations. Given that the Agreements were of limited duration, the parties replaced them with the

Agreement on free transit through the territory of the Republic of Croatia to and from the port of Ploče and through the territory of Bosnia and Herzegovina in Neum, which was signed in Zagreb on 22 November 1998 (Official Gazette of Bosnia and Herzegovina, International Agreements 2/200).

Referring to the provisions of UNCLOS III, then the Convention and the Statute on the International Regime of Maritime Ports from 1923, Croatia granted Bosnia and Herzegovina free and unhindered traffic in transit in order to use the port of Ploče, while Bosnia and Herzegovina granted Croatia free and unhindered traffic in transit through the Neum corridor. The Protocol of 11 December 2001 was added to the Agreement concluded for 30 years, which regulates in detail the legal regime of transit and free foreign trade zones in the port of Ploče (Bolanča, 2001).

In the above-mentioned way, the two neighbouring states partially regulated the problem that existed due to the separation of the central part of the Croatian territory from the southern part and the absence of the economically profitable Bay of Neum hinterland, where the only Bosnian-Herzegovinian port in the Adriatic Sea is located. In order to fully resolve all open border issues (on land and on the Adriatic Sea), Croatia and Bosnia and Herzegovina signed the Treaty on State Border on 30 July 1999. The contracting parties have not yet ratified this

Treaty, but it is being applied provisionally.

Art. 4(3) of the Treaty stipulates that:

"The state border at sea extends along the central (median) line of the sea between the territories of the Republic of Croatia and Bosnia and Herzegovina in accordance with UNCLOS III" (DOALOS/OLA - United Nations, 2002).

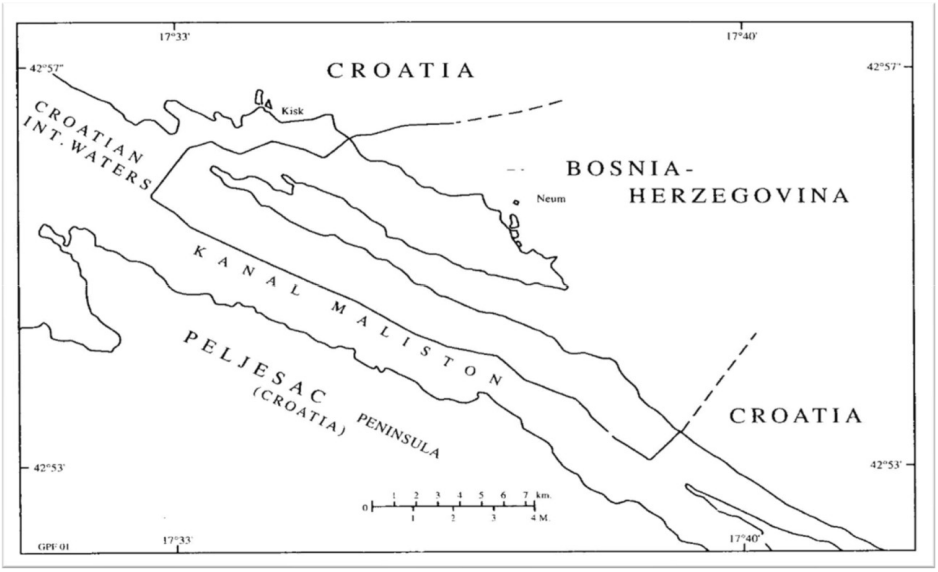
The boundary line at sea is represented on the 1:25,000 topographic maps as well as on marine charts and plans, which is an integral part of the Treaty. According to the demarcation line drawn on marine chart, the sea border between the two countries includes the first border strip of the corresponding internal waters of Bosnia and Herzegovina, which closes the land part of its territory in relation to the mainland part of Croatia. Part of Klek peninsula (Rep) and two small islands - Veliki and Mali Školj (Big and Small Island) are included in this geographic indication, in Bosnia and Herzegovina[16].

16 This approach is not contrary to the rule contained in Art. 8 of UNCLOS III, according to which: "(...) waters on the landward side of the baseline of the territorial sea form part of the internal waters of the state. Where the establishment of a straight baseline in accordance with the method set forth in article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such, a right of innocent passage as provided in this Convention shall exist in those waters".

Map 7: The border of Bosnia and Herzegovina and Croatia in the Adriatic Sea according to the 1999 Treaty on State Border

Source: (Sovereign limits: International Boundaries Database, 2024)

Map 8: Equidistant delimitation of territorial seas of Bosnia and Herzegovina and Croatia (1999)



Source: (Vukas, 2020)

The Treaty on the State Border does not regulate the legal regime of the waters in the Bay of Neum and around the Klek peninsula. This despite the fact that the coastal side of Bosnia and Herzegovina is relatively short (the length of the coast of Bosnia and Herzegovina is only 21.2 km, with the fact that its coastal front is only about 10 km due to its geographical configuration) (Blake, Topolovic, 1996). If it is assumed that the waters inside the Bay of Neum are internal sea waters *(inter fauces terrarum),* then it would be possible to determine the

outer limits of these internal waters, which are taken as starting lines for determining the widths of the territorial sea according to the Convention on the Territorial Sea and the Contiguous Zone from 1958 and UNCLOS III. On the other hand, the sea waters around the Klek peninsula have the potential to be considered as Bosnia and Herzegovina's territorial waters (Vukas, 2006).

Taking into account the characteristics related to the configuration of the coast was necessary since such a regime was not legally defined. In the specific case the coast of Bosnia and Herzegovina is cut into the mainland, which corresponds to the application of the rule from Art. 7(2) of UNCLOS III on straight baselines that connect the so-called appropriate points. According to Art. 7(3) of UNCLOS III, the coastal states by drawing straight baselines must not deviate from the general direction of the coast, and the parts of the sea located within those lines must be sufficiently connected to the land area to be subject to the regime of internal sea waters.

It seems that this rule was important when mapping the width of the territorial sea of Bosnia and Herzegovina, which remained completely enclaved in the internal waters of Croatia that is, closed in the Croatian system of straight baselines. This system is not in accordance with Art. 7(6) UNCLOS III, which stipulates:

"The system of straight baselines may not be applied by a state in such a manner as to cut off the territorial sea of another State from the High Seas or an Exclusive Economic Zone".

It's evident why Croatia rejected the border identification contained in the Treaty on State Border later. Further negotiations between the two parties did not lead to significant progress, and the Commissions in charge of delimitation did not do the technical part of the work related to a more precise description and demarcation of the state border.

Therefore, in 2001, new negotiations were initiated to conclude an Annex to the Treaty, which would meet the demands on the land part of the Klek Peninsula and, in principle, specify the criteria for drawing the border line, as well as the deadlines for its implementation. Neum was supposed to become Bosnia and Herzegovina's official seaport in certain proposed variants.

In practice, this solution would entail the application of the delimitation rules contained in UNCLOS III, according to which the baseline for determining the territorial sea could be the line enclosing the internal sea waters of the Bay of Neum including appropriate points on the most prominent Neum port structures or the most prominent points on coastal islands (Caminos, 1987).

The delimitation of the territorial sea between Bosnia and Herzegovina and Croatia should enable Bosnia and Herzegovina to obtain a certain corridor that will physically connect its waters with the open sea, since due to its closed coast it

represents a country in an unfavourable geographical position.

In this sense, Bosnia and Herzegovina does not exclude any of the already accepted solutions in international practice on the establishment of a special maritime corridor to the open sea (for example, the cases of Estonia and Finland in the Gulf of Finland in the Baltic Sea, France and Monaco in the Mediterranean sea, Gambia and Senegal in the North Atlantic Ocean or the latest, Croatia and Slovenia in the Adriatic Sea) (Bajrektarević, Oremović, Kulenović, 2018; Bickl, 2021).

Although the final delimitation did not take place, after lengthy negotiations, the two sides concluded the Agreement on the Designation of Border Crossings on 6 March 2001 and the Agreement on the Use of Common Locations at Border Crossings on 17 June 2002, with three additional annexes dated 5 March 2003. They agreed on the border regime and common crossings at the locations of Metković-Doljani, Klek-Neum and Zaton Doli-Neum.

In March 2006, Croatia submitted a written opinion on the withdrawal of the border line in the Neum area as part of the negotiations. According to this opinion, which essentially deviates from the Treaty on State Border, the territorial rights of Bosnia and Herzegovina to Veliki and Mali Školj and Cape Ponte Klek in the southern area of the Klek peninsula in the Maloston Bay are disputed, with regard to cadastral surveys and

historically acquired rights arising from administrative-territorial divisions in the former Yugoslavia. Given that in its Maritime Code from 1994, and then from 2004, it adopted the so-called system of straight baselines on the Adriatic Sea as they existed at the time of the SFRY, Croatia, with a new proposal, drew straight baselines on the stretch from the island of Vodnjak near Hvar to Cape Proizd on Korčula, defining its internal waters, which in international law have the same status as land part of the state territory. As previously stated, Croatia, by applying this system of cut off the territorial sea of Bosnia and Herzegovina from the High Sea, which was contrary to the provision of Art. 7(6) UNCLOS III (Vukas, 2008)[17].

Bosnia and Herzegovina has informed Croatia on several occasions since 2007 that it does not recognize the unilaterally drawn straight baselines between Vodnjak Island and Cape Proizd, or any internal waters that those baselines supposedly create. It has stated that it is willing to safeguard its maritime corridor of free navigation from its territorial sea to the High Seas and vice versa. Also, Bosnia and Herzegovina stated that

17Croatian professor Budislav Vukas expressed his opinion that this rule is completely clear and that "regardless of the complete geographical compatibility of our islands to be the basis for the straight baselines, regardless of the right of innocent passage that Croatia guarantees to all ships in its internal waters and territorial sea that sail towards the coasts of Bosnia and Herzegovina, regardless of the fact that the maritime connections of Bosnia and Herzegovina depend significantly on the use of the Croatian port of Ploče, Croatia would have to draw new baselines that would allow the territorial sea of Bosnia and Herzegovina, *via* the Croatian territorial sea, connect with the Adriatic waters outside the Croatian territorial sea".

according to Article 8(2) of UNCLOS III, which inter alia provides that,

> "innocent passage does exist when baselines with a cut-off effect have been newly drawn" (Bickl, 2021).

In this regard, it reminded that the Neretva and Korčula straits are used for international navigation, and the system of innocent passage applies to them in accordance with the provisions of Art. 45(2) of UNCLOS III, even though Croatia has declared them to be its internal waters (in which this system could not be applied) (Grbešić, 2021).

Given that the signed Treaty on the State Border of 1999 contains almost all generally applicable international legal principles on mutual delimitation, Bosnia and Herzegovina considered that there is no room for deviation regarding the drawing of the border line on the Klek and Pelješac peninsulas. In this sense, it puts forward a proposal to first ratify the signed Treaty on the State Border, which is based on the facts established by the Croatian Hydrographic Institute from Split (according to data from the cadastre), and then to proceed with a possible border corrections.

However, Croatia did not agree with this proposal because after signing the Treaty on the State Border, it changed its original position based on cadastral data and the findings of its Hydrographic Institute, so under pressure from the regional authorities in Dubrovnik, it expressed its disagreement with the

accepted method of delimitation according to which the Klek peninsula and two islets (Mali and Veliki Školj), fell under the sovereignty of Bosnia and Herzegovina (Šabić, Borić, 2016). For this reason, Bosnia and Herzegovina presented a new proposal which did not exclude the possibility of concluding a new delimitation agreement that would be treated as an Annex to the existing Treaty on the State Border. However, due to its own geopolitical interests, Croatia rejected this Bosnian-Herzegovinian proposal, so in order to connect the Croatian territory from the north to the south of the Adriatic; it launched an initiative to build a bridge from Komarne on the mainland to Brijeste on the Pelješac peninsula.

The construction of the Pelješac Bridge in Brijeste was officially started by Croatia on 24 October 2007. It explained this undertaking by the territorial affiliation of the waters over which the Pelješac Bridge will be built, and for the construction of which it did not need special consent from Bosnia and Herzegovina. Although the border line between Bosnia and Herzegovina and Croatia in the area of Neum has not been determined, Croatia stated a decisive position that its "sovereign right cannot be called into question". Such a rigid approach met with the opposition of Bosnia and Herzegovina, which is why Bosnia and Herzegovina insisted on the urgent achievement of an amicable solution on the disputed part of the border. If no

agreement is reached, the dispute should be submitted to international arbitration, since Bosnia and Herzegovina does not accept Croatia's argument, which claims the right to unilaterally close part of Bosnia and Herzegovina's coastal area on the Adriatic Sea. Given that there was no significant progress in the negotiations, and that further maintenance of the status quo burdened the regional stability and good neighbourly relations of the two countries, it was necessary to find a sustainable solution.

After Croatia's entry into the EU in 2013, its political elite managed to persuade decision-makers within this supranational organization to take part in the construction of the Pelješac Bridge. Croatia, which is a member of the EU, has received political support for this project over time. Thus, on 7 June 2017, the European Commission approved the 'Road to Southern Dalmatia', a project that aims to connect the Pelješac peninsula with the mainland of Croatia. Croatia has expressed its willingness to fully respect the international rights enjoyed by other countries on the Pelješac peninsula, including the right of innocent passage enjoyed by all countries under UNCLOS III, as well as the right of Bosnia and Herzegovina to have unrestricted access to the High Sea.

Croatia stated that the bridge's projected height of 55 m (180 feet) will permit all Bosnian shipping to utilize the current

navigation route to navigate under it. In the event that one of the ships is taller and should dock at a port in Bosnia and Herzegovina, it could instead dock at the Croatian port of Ploče, in accordance with the Free Transit Agreement from 1998.

In July 2019, the Presidency of Bosnia and Herzegovina expressed its opposition to the construction of the Pelješac Bridge, considering that there was no agreement between Croatia and Bosnia and Herzegovina before the construction of the Pelješac bridge began, which is why the construction should be stopped until the issue of maritime access to Bosnia and Herzegovina is resolved at the bilateral level.

The Presidency pointed out that Croatia did not comply with the obligations from UNCLOS III, and that Bosnia and Herzegovina retained the right to initiate the conciliation procedure prescribed by article 284 of this international legal instrument. It also noted that Bosnia and Herzegovina reserves the right to initiate proceedings before the International Tribunal for the Law of the Sea (ITLOS), if it does not receive an answer from Croatia within 30 days. A Serbian member of the Presidency prevented the implementation of the Presidency's decision.

In the meantime, Pelješac Bridge was built by the Chinese company China Road and Bridge Corporation, which is expected to be opened for traffic in 2022.

Despite the new situation, the issue of definitive delimitation

between Bosnia and Herzegovina and Croatia remains on the political agenda. The changed social circumstances that followed the construction of the Pelješac Bridge did not contribute much to the end of the mutual dispute over the drawing of borders not only on the Adriatic Sea, but also on the land areas of the two countries. The political future of the entire region is greatly impacted by the serious burden of border problems. Although the dispute could be resolved by ratifying the previously signed Treaty of State Border, and possible subsequent border corrections, this will probably not happen if there is no mediation by a third party. In the absence of political will to resolve the dispute in this way, there remains the possibility of applying some of the means of peaceful settlement of the dispute referred in UNCLOS III.

Resolving open border issues in the Adriatic Sea with Italy

After the dissolution of the SFRY, Slovenia, Croatia, and Montenegro, as coastal states, inherited the Yugoslav-Italian border on the Adriatic Sea. This border was partially established by the Treaty of Osimo from 10 November 1975, and as such was not foreseen by the Peace Treaty with Italy concluded on 10 February 1947 (Official Gazette of the FPRY, International Agreements 4/1947)[18].

18 Regarding the issue of the division of Istria, a well-known controversy arose regarding the project of creating a so-called *buffer state*, referred to as the 'Free

According to the Treaty of Osimo, the border line moves from the Gulf of Trieste starting from the main mark in the St. Jernej Bay, which is located on the right bank of the St. Jernej River, at its mouth, with flat coordinates in two systems on the Yugoslav and Italian sides determined by the arcs of the maximum circle that joins precisely determined points of latitude and longitude (Annex III and Annex IV).

With the succession of the SFRY, all rights and obligations under the Treaty of Osimo passed to Slovenia and Croatia as successor states. This confirmed the general principle from Art. 11 of the Vienna Convention on the Succession of States in respect of treaties from 1978 on the status quo of internationally recognized boundaries and obligations and rights in connection with regime of a boundaries established by international treaties (ILM, 1978).

It also confirmed the rule according to which even substantially changed circumstances that arise after the conclusion of the treaty on border delimitation (and in accordance with Art. 62(2) of the Convention on the Law of Treaties from 1969), cannot be cited as a reason for termination or withdrawal from that treaty

Territories of Trieste'. In the Memorandum of Understanding from 5 October 1954, the issue of the delimitation of the "Free Territory of Trieste" was regulated by compromise, so that zone A was placed under the administration of Italy, while the other zone B was assigned to Yugoslavia with slight border corrections (Official Gazette of the FNRJ, International Agreements, 6/1954). This led to a revision of the Peace Treaty with Italy, with the fact Italy kept Trieste and predominantly Slovenian areas such as the Kanalska dolina, Rezija, Beneška Slovenia, the areas of Gorica, Tržić, and north-western Istria.

(Rossene, 1970).

Finally, this confirms the rule of customary international law that localized, real, or dispositive treaties establishing different territorial regimes remain in force after territorial changes (Vali, 1958).

From 1942 to 1974, Italy had a territorial sea with a width of 6 nautical miles. Italy declared a territorial sea of 12 nautical miles in accordance with the Navigation Law of 14 August 1974 (Gazzetta Ufficiale della Republica Italiana, 218/1974). Despite its accession to UNCLOS III on 13 January 1995, this situation remained.

The former Yugoslavia had the same width of the territorial sea as Italy in the period from 1948 to 1965, when the Law on the Coastal Sea and the Continental Shelf extended that strip to 10 nautical miles. Only with its changes in 1979, the Yugoslav territorial sea was expanded to 12 nautical miles, which remained even after the dissolution of the SFRY, when the same width was taken over by all successor states (Official Gazette of the FPRY, 106/1948; Official Gazette of the SFRY, 22/1965; 13/1979).

The delimitation line between Italy and Slovenia, as one of the successor states of the SFRY, which Slovenia inherited with the Treaty of Osimo is based on a modified equidistance line. The border extends for 15 nautical miles and is entirely within the

territorial sea of both states. The ultimate border point was formally defined by the 2017 Arbitration Award of the Arbitration Tribunal in the case Croatia v. Slovenia regarding a land and maritime dispute. The Arbitration Tribunal has officially defined the tripoint between Croatia, Slovenia and Italy, which is located at point B of their boundary award line with coordinate values of 45° 33′ 57.4″ N, 13° 23′ 04.0″E.

Map 9:Slovenia and Italy's territorial sea border

Source: (Sovereign limits: International Boundaries Database, 2024)

The delimitation of the continental shelf of Italy with the successor states of the SFRY remained regulated by the Agreement between Italy and Yugoslavia concerning the

Delimitation of the Continental Shelf of 8 January 1968. That Agreement applies the median line of delimitation and the rule that each island has its own continental shelf (DOALOS/OLA - United Nations, 2002)[19].

In this sense, the delimitation line followed a modified equidistance line giving partial effect to four islands: Jabuka, Palagruža, and Galijula (Yugoslavia) and Pianosa (Italy) (Official Gazette of the SFRY, International Agreements, 28/1970)[20].

From there, the delimitation line connected the points determined by geographic coordinates that are connected to each other by arcs (meridians) and that are included in the nautical charts attached to this Agreement. The Point 1 from which the middle line starts is at the exit from the Gulf of Trieste, 12 miles from Cape Savudrija, which is now claimed by the Slovenian side, and Cape Tagliamento, which is on the Italian side (at the point where the territorial seas begin to overlap). Point 43, where the demarcation line ends, is equidistant from the nearest

19The Agreement establishes a boundary line with a length of 353 nautical miles, which connects 43 points across 40 longitudes and 2 arcs. In essence, the boundary line is the line of equal distance between the two coasts. Somewhat more complex delimitation was only in the central Adriatic, where the final solution went in favour of Italy in order to replace the natural advantage possessed by the Yugoslav islands.

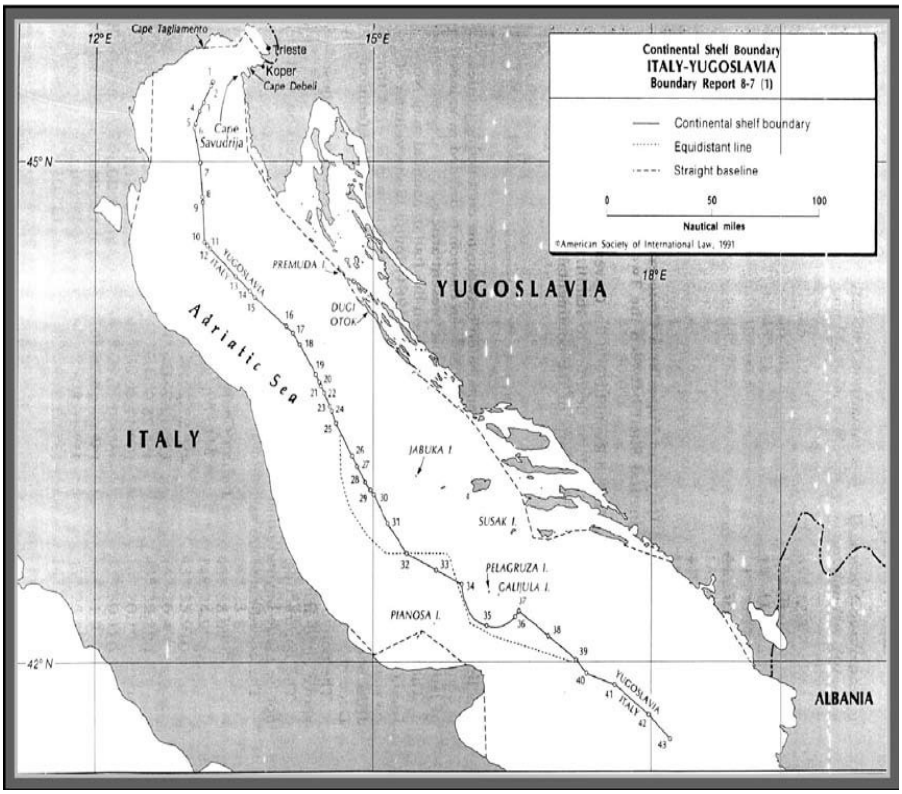
20Since the median line between the Yugoslav islands (Jabuka, Svetac, Biševo and Palagruža) and the Italian coast was unfavourable for Italy, and that during the delimitation of the continental shelves Yugoslavia and Italy wanted to avoid the so-called *pockets* caused by the median line between the Yugoslav islands of Jabuka, Palagruža and Svetac and the Italian island of Pianosa, territorial compensations were determined by agreement.

points on the Italian, Yugoslav (now Montenegrin) and Albanian coasts, where the boundary line crosses the isobaths of 1,200 meters (Rudolf, 1985).

The Agreement between Italy and Yugoslavia concerning the Delimitation of the Continental Shelf introduced the so-called *enclave boundaring* the islands of Palagruža and Galijula.

There is no middle line drawn between these islands and the Italian coast, but it is along the territorial sea of each of those two islands, a continental shelf zone 2 miles wide was established (considering that at the time of the delimitation, the Yugoslav territorial sea was 10 miles wide). Thus, the Points on the boundary line 34 and 35 are established 12 nautical miles from the island of Palgruža, and Point 36 is 12 nautical miles from the island of Galijula (the boundary line from Point 34 to Point 35 goes along the arc of a circle with a radius of 12 nautical miles, counting from the island of Palagruža, and from the Point 35 to Point 36 by an arc of a circle with a radius of 12 nautical miles from the island of Galijula) (Rudolf, 1985; Vokić Žužul, 2012).

Map 10: Delimitation of the Continental Shelves between Italy and Yugoslavia



Source: (Charney, Alexander, 1993)

By referring to the provisions of the Maritime Code from 1994, Croatia on 3 October 2003, unilaterally extended its jurisdiction to the Exclusive Economic Zone in the area of the Adriatic Sea up to the middle line of demarcation of the continental shelves

of the former SFRY and Italy (Lulić, Vio, 2001).

Simultaneously, Croatia established its Ecological Fishing Protected Zone (EFPZ). Such moves by Croatia caused disagreement in Italy.

In order to protect its underwater cultural heritage, Italy, by Decree no. 42 of 22 January 2004, declared the archaeological zone, a variant of the outer zone, with a width of up to 24 nautical miles, counting from the baseline from which the width of the territorial sea is measured.

In a note dated 16 April 2004, Italy clearly stated that it opposes a single border in the Adriatic Sea, noting that it is not possible to automatically extend the delimitation of the seabed, which was agreed in the Agreement with the SFRY from 1968, since that border was agreed on the basis of special circumstances which are different from the circumstances to be taken into account when determining superjacent water.

Italy clarified this further in a verbal note dated 15 March 2006 addressed to the UN Secretary General. Namely, condemning Croatia for a unilaterally adopted act that violates the provisions of Art. 74 UNCLOS III, Italy confirmed that the 1968 Agreement was concluded when the Italian system of baselines in the territorial sea was profoundly different from today, as it did not consider the then new method of straight baselines.

Italy also recalled that in the meantime the Italian coast was

extended due to detritus from the Po River, and that the International Court of Justice accepted in its decisions that when referring to special circumstances, cases of continental shelf delimitation must be distinguished from superjacent waters.

According to the Italian point of view, international jurisprudence has always considered the consent of the interested states to be necessary for the automatic extension of the delimitation line of the seabed to superjacent waters. The Law on the Ecological Protected Zone (EPZ) was adopted by Italy on 8 February 2006, which extends beyond the territorial sea's outer limit. Article 1 of this Law mandates the establishment of the EPZ's outer limits through agreements with states whose territory is adjacent to or facing Italian territory. Until the date when said agreements enter into effect, the outer limits of the EPZ follow the outline of the median line, each point of which is equidistant from the closest points on the baselines of the Italian territorial sea and of the states involved (Caligiuri, 2016).

The successor states of the SFRY (Slovenia and Montenegro) were also dissatisfied with the unilateral declaration of the EFPZ by Croatia, which is why they expressed protests, considering that this extension of jurisdiction and border determination on the Adriatic Sea is disputed under international law.

Slovenia responded to this unilateral Croatian act with its own

unilateral act when it declared its Ecological Protection Zone and Continental Shelf on 22 October 2005. With it, Slovenia drew the temporary outer border of the EPZ towards Italy following the delimitation line on the continental shelf as defined by the Agreement between the SFRY and Italy from 1968 (along the delimitation line on the continental shelf to the south of Point T5 and the temporary outer border of the EPZ to the south which runs along the parallel of 45°10'N latitude).

Slovenia aimed to reach amicable solutions with neighbouring countries for the final delimitation of its EPZ. In addition to the declaration of the EPZ, Slovenia also unilaterally determined the area of its sea fishing area based on the Marine Fisheries Act from 2006, which included the EPZ and parts of the open sea. Bosnia and Herzegovina expressed their dissatisfaction with the unilateral declaration of the Croatian EFPZ.

This is because there was no final delimitation between Bosnia and Herzegovina and Croatia and because Bosnia and Herzegovina was seeking access to the open sea through a special corridor through the Croatian straits.

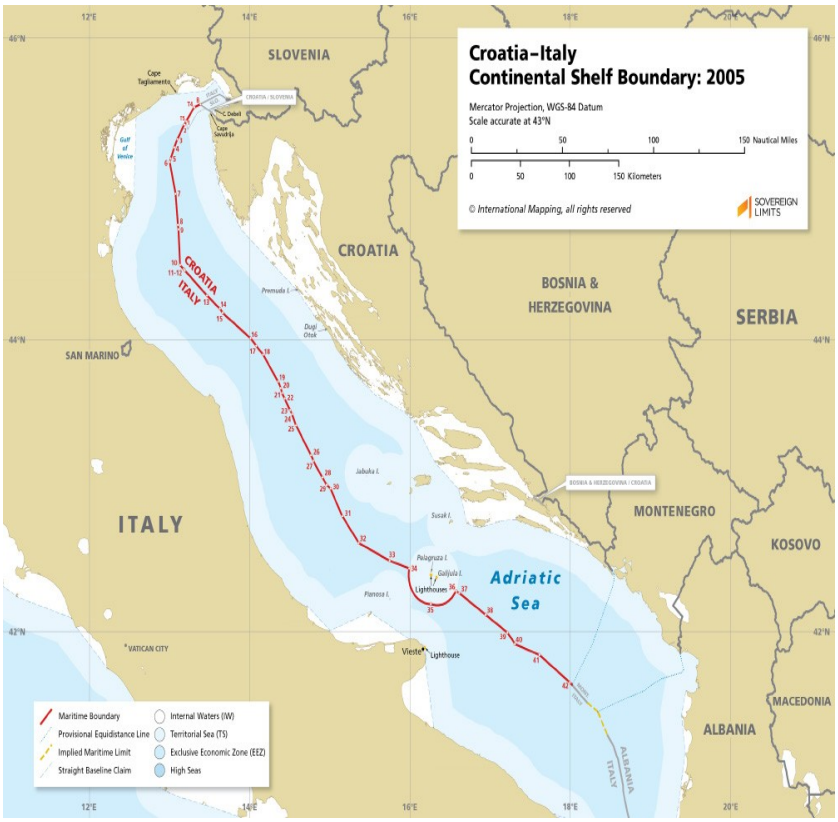
Croatia rejected that Bosnian-Herzegovinian request with indignation, although it did not completely deny the right of Bosnia and Herzegovina to have an innocent passage through the straits. Croatia believed that Bosnia and Herzegovina had no claim to its continental shelf due to the extent of its internal

waters and the size of the territorial sea (Rudolf, 2007).

It was evident that Croatia was inflexible about the possibility of other SFRY successor states redefining the sea border with Italy. Thus, in 2005, it concluded an Agreement with Italy on the technical adjustment of the list of coordinates specified in the Agreement on the Delimitation of the Continental Shelf between SFRY and Italy. Croatia has updated the original coordinate values for the points specified in this Agreement by referring to the date of VSG-84, which omitted the part of the border on the territorial sea established between Italy and the Yugoslavia. This update had a special importance in determining the borders of the Exclusive Economic Zones of Croatia and Italy.

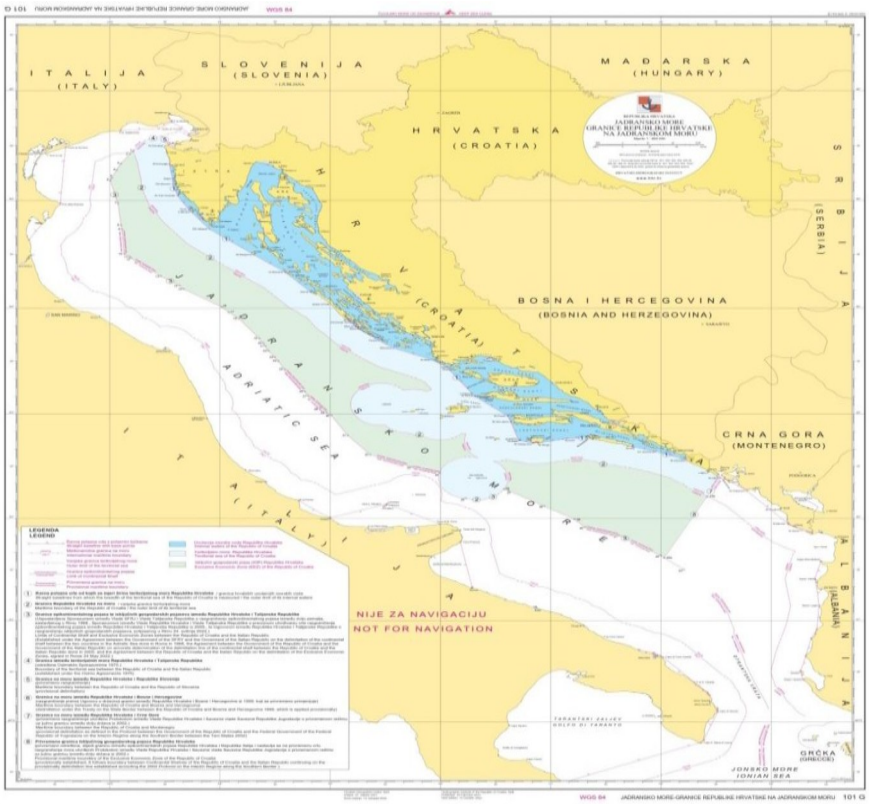
In 2021, Croatia adopted the Decision on the Proclamation of the Exclusive Economic Zone in the Adriatic Sea, simultaneously repealing the Decision on the Extension of Croatia's Jurisdiction in the Adriatic Sea (EFPZ) (Scovazzi, 2022). The Agreement on the Delimitation of Exclusive Economic Zones was concluded by the two sides on 24 May 2022 after intensive negotiations. The Agreement was ratified by Italy on 4 May 2023, and by Croatia on 14 March 2024. This Agreement's border line follows the current delimitation line of the continental shelves of the two countries.

Map 11: Delimitation of the continental shelves of Croatia and Italy



Source: (Sovereign limits: International Boundaries Database, 2024)

Map 12: Demarcation of Exclusive Economic Zone of Croatia with Italy



Source: (Croatian Hydrographic Institute, map 101 G - Adriatic Sea)

Resolving open border issues in the Adriatic Sea with Albania

The first border between Yugoslavia and Albania was established by the Conference of Ambassadors in London in 1913. On the basis of the Protocol of 17 December 1913, the State of Serbs, Croats and Slovenes (as the Kingdom of Yugoslavia was previously called) took over the administration of the border in the stretch from the Bojana River to Lake Skadar. It demanded from the great powers additional guarantees for taking over the border on the stretch from Lake Skadar to Mount Đeravica (while recognizing the easement right and navigation that Montenegro possessed in the earlier historical period). After the end of the First World War, at the Peace Conference in Paris in the period from 1919 to 1920, the prevailing opinion was to maintain the territorial status quo from 1913.

In November 1921, the Conference of Ambassadors made adjustments to the border line on the land portions of the territory of the two states. In 1922, the Conference of Ambassadors made a decision regarding the Slavic monastery of Saint Naum, which Albania filed a complaint with the League of Nations. Then, in 1924, the League of Nations requested an advisory opinion from the Permanent Court of International

Justice, which answered affirmatively in favour of the Kingdom of Serbs, Croats and Slovenes (Nikitović, 1927; Novaković, 1936).

The final delimitation between Yugoslavia and Albania was carried out on the basis of the Florence Protocol of 30 July 1926, which established that the state border starts from

> "the boundary line of territorial waters on the Adriatic Sea, in a straight line vertical to the general direction of the coast, exiting at the mouth of the main branch of the river Bojana (...), all the way to the triple border of Albania, Greece and Yugoslavia in Lake Prespa" (Commision Internationale de delimitation de frontiers d'Albanie, 1926; Stojković, 1998).

After the Second World War, the border line on the Adriatic Sea between Yugoslavia and Albania remained on a straight vertical line that goes from the direction of the main branch of the Bojana River (following the middle waterway or *thalweg*), towards the open sea at the very mouth of the Bojana River, between the islands Franz Josef on the Albanian side and Ada on the Montenegrin side (Perazić, 1981; Rudolf, 1985).

Albania's acceptance of a territorial sea width of 12 miles under UNCLOS III (which Albania acceded to in 2003) was based on Decree no. 7366 of 24 March 1990. With this decree, Albania has defined a straight baseline system. This led to a reduction in the territorial sea's width from 15 nautical miles declared by Decree no. 5384 of 23 February 1976. It's noteworthy that Decree no. 5384 modified Decree no. 4650 of 9 March 1970, which specified that Albania's territorial sea would have a width

of 12 nautical miles (UN Legislation Series, 1980)[21].

The borderline of the Albanian territorial sea moved from Cape Rodoni and further to the southeast, so that from the mouth of the Bojana River to Cape Rodoni, it reached the former Albanian-Yugoslav border, which after the succession of the SFRY represents the Albanian-Montenegrin border (Rudolf, 1985).

As one of the successor states of the SFRY, Montenegro inherited a very small part of the border of the continental shelf established by the Agreement between Italy and Yugoslavia from 1968. Assuming that the tripoint is equidistant from Croatia, the maritime border of Montenegro with Italy should go south of Point 42 of the former the Yugoslav-Italian border, and then to continue to its end at Point 43 between Italy and Montenegro as far as the tri-border with Albania where there is approximately 6 nautical miles of unrestricted maritime space.

From here, the border of the underwater area of Montenegro in the south would hypothetically be the equidistance line to Albania, and in the north it would represent the temporary border with Croatia determined by the Protocol on the

21According Decree No. 5384 from 1976, the territorial waters of the Republic of Albania occupy the waters between the straight baseline that goes from Cape Rodoni (Muzhi), across Cape Palit, Cape Lagit (Kala e Turres), Semani, the mouth of the Vijosa River, to the west coast of Sazan Island, Cape Gyuhezes and Grama Bay, and further extends between the Albanian coast and the Greek islands through the Corfu Strait. The territorial sea from the mouth of the Bojana River to Cape Rodoni reached the Albanian-Yugoslav border (which is now called Albanian-Montenegro border).

temporary regime along the southern border concluded in 2002. Consequently, the question arises of the delimitation of continental shelves and the Exclusive Economic Zones of Montenegro and Albania, as well as the issue of the transit passage that leads through the strategic waterway from the Ionian Sea to the Adriatic Sea *via* the Strait of Otranto. To address all of these issues, coastal states must reach appropriate agreements, which require consistent application of international law of the sea (Prescott, Schofield, 2005)[22].

Conclusions

Territorial disputes between the successor states of the SFRY in the Adriatic Sea make it difficult to achieve mutual cooperation and benefits. Cooperation between all coastal states is necessary due to its relative depth, geographical closure, and sensitivity to various types of external penetration. It follows from the study in question that the majority of territorial disputes between the successor states of the SFRY can be considered a particularly complex problem precisely because of the fact that inter-

22Although the sea border between the former Yugoslavia and Albania was not agreed even before 1990, it is estimated that there should not be major difficulties in determining the direction of the future line of delimitation of the sea and underwater areas of Montenegro and Albania. The Bojana River's mouth on the land border of both countries is where the border line should begin. From the mouth of that river the boundary line could extend to the trilateral junction with Italy in the vicinity of 41° 25' N and 18° 20' E, which is about 8 miles south of Point 43, that is, the southernmost point of the border that has been determined in the Agreement on the Delimitation of the Continental Shelf of SFRY and Italy from 1968.

republican borders in the hinterland of the Adriatic Sea, were insufficiently clearly established which is why it was impossible to apply the principle of *uti possidetis juris.* Since the same principle of delimitation could not be applied to the Adriatic Sea, which before the dissolution of the SFRY was part of a single Yugoslav territorial area where there were no exact inter-republican administrative borders, in order to solve the problem of delimitation in the Adriatic Sea, the issues of delimitation on the mainland part of the Adriatic coast must first be resolved, and then it would be possible to approach the delimitation in the Adriatic Sea by applying, in addition to the rules contained in UNCLOS III as the main codification of the law of the sea, also the rules and principles of general international law that have been verified in international jurisprudence and international practice.

The absence of an agreement between the successor states on land and sea delimitation or simply not accepting arbitral decisions on interstate delimitation has led to an even more complex situation that will have to be resolved by legal and political means in the future. At the same time, it should be taken into account that in the case of delimitation in the Adriatic Sea, there is a number of overlapping territorial claims of the successor states of the SFRY, which makes it impossible to draw a single border line.

This makes it impossible for states to exercise their jurisdiction and sovereign powers in the Adriatic Sea areas where they have rights under international law of the sea. The discovery of oil and gas deposits, which the coastal states of the Adriatic Sea are particularly interested in exploiting, made this situation especially noticeable. Also, this has become noticeable when it comes to environmental problems that affect the biodiversity of the Adriatic Sea and that make it particularly vulnerable in light of its semi-closed character and the geological and geomorphologic characteristics of the seabed and subsoil in which the coastal states have rights to research and exploit natural resources, which in the future can significantly affect its devastation, as well as the degradation of its coastal area.

All of this leads to the conclusion that the lack of readiness of the coastal states to cooperate with each other in exercising their rights and performing their duties in the Adriatic Sea in accordance with Art. 123 of UNCLOS III, distances these states from achieving optimal agreements on mutual delimitation, which can lead to further misunderstandings and friction that negatively affect the political stability of this region. The fact that most of the coastal states of the Adriatic Sea are involved in Euro-Atlantic integration requires a definitive solution in accordance with international law. Also, there are certain requirements of the competent EU authorities regarding the

arrangement of the inherited border lines with the old Yugoslav neighbours, Italy and Albania. All coastal states of the Adriatic Sea would benefit from more extensive economic development and cooperation thanks to their final regulation.

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