
The Boundaries of the Republic of Croatia

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Summary

The article treats various problems of boundaries between new states of former Yugoslavia. International law shows that boundaries are very important subject in political relationships between states. The disintegration of former Yugoslavia and the international recognition of new states on its territory has opened the question of boundaries the international community several times clearly defined its position, i.e. it laid down the criteria and manner in which these problems should be solved. Croatia accepted the method of resolving matters of external and internal boundaries of the former SFRY according to the principles of international law. The article shows process, principles and problems of definition and establishing boundary between two republics of ex-Yugoslavia: Croatia and Slovenia.

Boundaries are very important for every state. They define its authority over the people and area of a certain region. They encompass its territory. Boundaries should not be thought of as a line, because today they are no longer that. It is better to think of them as an interface dividing the territories of two states (on the surface of the ground, under the ground and in the air). The area of a state should be regarded as a "three-dimensional space extending above the surface of the Earth and below it into the depths".¹ Therefore, the surface of the Earth, the air above it and the underground, delineated by the boundary, are all part of a state's territory.²

¹ Andrassy, Juraj: *Međunarodno pravo* (International Law), tenth edition, Školska knjiga, Zagreb, 1990, pp. 141-142.

² There are some supplements to this view of boundaries. More recently there have been departures from the principle that boundaries determined on the surface stretch into the depths and heights. This concerns the rights of states in the epicontinental belt, the seabed and underground of the open sea that continues onto the territorial sea up to a certain depth. In that region the coastal state has sovereign rights of research and exploitation of natural resources. The principle of the epicontinental belt means the state onto whose boundaries that belt continues has sovereign rights to use the seabed and underground. The water column above that area remains in the regime of the open sea.

In international relations boundaries are among a group of concepts called *objects*. The study of objects of international law is in fact the study of three-dimensional state jurisdiction. Every part of the Earth's territory (land, sea, air, underground) is under the jurisdiction of some subject of international law. Some spaces are not under the jurisdiction of any specific subject, and ownership over them is divided (open sea, *terra nullius*, outer space, the regions under the seabed, polar regions).

The area encompassed by state boundaries is state territory and exclusively under the jurisdiction of the state. State territory includes the area within the land boundaries, the coastal sea and the air above them. The state is also sovereign over the expanse stretching into the underground delineated by the state boundaries.

International law and practice differentiate between natural boundaries³ and boundaries by treaty. A natural boundary is determined by the natural lie of the land through which the boundary passes⁴, and according to international rules for such cases. A boundary by treaty is established by an agreement determining the points on the surface of the ground along which the boundary passes.

The natural lie of the land is subject to changes. Accordingly, international law allows for methods of establishing boundaries after changes have occurred in the natural configuration of the ground along which a boundary ran. For example, common law demands that a state boundary follows changes in the course of a river if the change resulted from "the slow activities of natural forces"⁵. If there is a sudden change of the natural course, the boundary as

³ The points for determining boundaries are natural features, and the boundaries are in most cases defined by treaty. Therefore, natural boundaries stretch between such natural objects that the two sides have defined as points of division.

⁴ There are many examples in history of boundaries being determined by the natural configuration of the land. In that case state boundaries run along the peaks of mountains, along the basins of two watercourses, in rivers, lakes etc. In watercourses the border is determined in two ways: by the line of geometrical centre or the line of the main current (the thalweg border is determined on the navigable main current of a river). The Versailles Peace Treaty (cl. 30) says that the principle of geometrical centre is applied for unnavigable rivers, and the thalweg principle for navigable rivers by determining the central line as the main channel of navigation. But it must be said that the principles mentioned are not applied exclusively as proposed, because there is still discussion about which principle is more equitable. Some authors (Max Huber, Balladroe, Pallieri) consider that the principle of geometrical centre stems from common law and is used when neither side opens the question of boundaries. But today all states are advised to clearly state the principle they will use to determine boundaries. Even so, many new questions arise concerning the geometrical centre, stemming from different water level and the like. All issues in dispute should be foreseen by treaty.

⁵ *Ibidem*, p. 146.

a rule remains in the old bed unless the states decide differently by treaty.⁶ In cases of manmade changes in the course of a river or the position of a lake, through water regulation or other activities, the interested parties are advised to determine beforehand how the boundaries will be defined after the work is finished and the new state of affairs has been established.

State boundaries are thus determined according to various principles of common law and principles of other legal fields, and international law must foresee solutions for all potential situations. That is why the parties establishing a common boundary are advised to do so by treaty, regardless of how clear matters seem.

Today most boundaries are defined by treaty, even in cases when boundaries have long existed "as the real and completely recognized state of affairs"⁷. In cases when it is not possible to determine a boundary immediately or in the near future, the principle of condominium⁸ is accepted as a temporary solution until the parties decide on which principle to use to establish the boundaries. As a rule the whole process of establishing boundaries has several phases. Professor Juraj Andrassy mentions three: "The first phase is the basic (e.g. peace) treaty, which lays down the main lines of the boundaries. Then boundaries are determined more exactly in the field by joint commissions, this task sometimes being given to international commissions. These are often empowered to allow small departures from the line established by treaty, bearing in mind local conditions and needs. After the commissions have determined the boundary on the site, a written agreement describes the boundaryline and boundary marks are placed."⁹ When the boundaries have been established agreements usually

⁶ Natural changes and their consequences should certainly be foreseen in a treaty, and so should the manner of solving individual situations. There have been many cases in history when states acknowledged slow, but not sudden changes in the course of rivers, regardless of the fact that such situations were not foreseen by treaty. As a rule they sent joint commissions into the field, which proposed solutions. Often one state, which "benefitted" by the acts of natural forces that had changed the course of a river, gave part of its territory in some other place (reciprocity) to the state that had "lost". But there have been cases where even treaties about boundaries on watercourses have not prevented disputes and conflict among states. The war between Iraq and Iran was mostly waged because of rights in the mouth of the river Sat-el Arab. In contracts from 1847 and 1911 the boundary between Iran and Turkey was placed on the left bank of the river - to the detriment of Iran. During the years Iran often brought the problem before international institutions. The dispute was temporarily solved by the treaty in Baghdad in 1975 according to which the border was to run along the thalweg line.

⁷ *Ibidem*, p. 149.

⁸ An area under the joint ownership of two or more states. Some authors call it camper. After the Second World War, Germany was a temporary condominium of four powers that took over supreme power in Germany (Declaration 5 June 1945). The USA, Great Britain, France and the USSR took over complete control in Germany, starting from the Government to all state, regional and local bodies of government. There was also a condominium in Žumberak and Marindol between Croatia and Carniola during Austria-Hungary.

⁹ *Ibidem*, p. 149.

follow about the use of objects along the boundary and mineral resources, about boundary-zone traffic, fishing, tourism and other matters. Very often the two states sign treaties about how to solve boundary incidents. Therefore, it is very important to establish by treaty all the essential issues concerning boundary determination, because "...the existence of precise boundaries established by treaty is a precondition for normal and correct inter-state relations. Only on that condition is it possible to permanently maintain conditions that concur with international law and good neighbourly relations. The same is true for arranging boundary-zone relations if specific conditions demand such arrangements. A wrong solution or no solution at all must, sooner or later, give bad results."¹⁰

The disintegration of former Yugoslavia and the international recognition of new states on its territory has opened the question of boundaries. In declarations and statements about boundaries the international community several times clearly defined its position, i.e. it laid down the criteria and manner in which these problems should be solved. The *Declaration on the Guidelines for Recognizing New States in East Europe and the Soviet Union*, of 16 December 1991, was accepted by all EC members and recognized new reality in the area of former communist and socialist states. Thus the EC and its members "...confirm their readiness to recognize, in accordance with the usual standards of international practice and depending on political conditions in each individual case, those new states that have due to historic changes been constituted in a certain region on a democratic basis, have accepted international obligations and have completely committed themselves to the establishment of peace and negotiations."¹¹ Besides general principles, the *Declaration* also contains some conditions that states must meet. These include "... observing the inviolability of all boundaries"¹², which may be changed only without the use of force and through agreement¹³. New states must also accept the obligation to solve all questions through agreement and without the use of force, in accordance with international law, "... including if necessary seeking arbitration"¹⁴, and certainly in the case of "...issues concerning state succession and regional disputes."¹⁵ In the *Declaration on Yugoslavia*, of 16 December 1991,

¹⁰ Ibler, Vladimir: "Državne granice FNR Jugoslavije" (The State Boundaries of the Federal National Republic of Yugoslavia), *Naša zakonitost*, no. 4/1954, p. 82.

¹¹ "Declaration on the Guidelines for the Recognition of New States in East Europe and the Soviet Union", of 16 December 1991, in: Milardović, Anđelko: "Dokumenti o državnosti Republike Hrvatske" (State Acts of the Republic of Croatia), *Alineja*, Zagreb, 1992, p. 136.

¹² In defining its attitude towards the dissolution of Yugoslavia, the EC and its member states started from some key points on which order and security in Europe are founded, like the Helsinki Declaration, the Paris Charter etc. *One of the bases of European order is the prohibition of one-sided and forcible changes of boundaries, which is expressly emphasized in all EC documents.*

¹³ *Ibidem*, p. 136.

¹⁴ *Ibidem*, p. 136.

¹⁵ *Ibidem*, p. 136.

the EC demands that before recognition each republic of the former Yugoslavia that meets the conditions for recognition must "...offer constitutional and political guarantees to ensure it has no territorial pretensions towards a neighbouring state..."¹⁶

Besides political EC declarations, especially important for the boundaries of former Yugoslavia is the legal opinion of the Badinter Commission. The *Report of the Arbitration Commission of the Conference on Yugoslavia*, "Opinion no. 3 - changes of boundaries", of 15 January 1992, explicitly states that the SFRY is in a process of dissolution and that the problem of internal boundaries, in the context of an "unclear and unstable situation", must be solved according to "principles and rules of international public law".¹⁷ The Arbitration Commission considers that when one or more independent states are created on the territory of former Yugoslavia, the boundaries between them must be established according to the following criteria: "First - external boundaries must be honoured in all cases, in accordance with the principles of the UN Charter, General Assembly Resolution 2625 (XXV) and the Concluding Act of Helsinki, which inspired Article 11 of the Vienna Convention of 23 August 1978 on the succession of states based on treaty.

Second - the line of demarcation between Croatia and Serbia or between Serbia and Bosnia-Herzegovina or, possibly, between other neighbouring independent states, may be changed only by free and mutual agreement.

Third - unless the opposite is agreed on, the former boundaries take the character of boundaries protected by international law. This conclusion stems from the principle of honouring the territorial *status quo*, and especially the principle *uti possidetis juris qui* - although originally recognized when problems of decolonization in America and Africa were being solved, today it is a general principle, as the International Court of Justice proclaimed...¹⁸ Therefore, in the opinion and according to the explanation of the Arbitration Commission, the internal boundaries among former Yugoslav republics may be considered boundaries in the sense of international public law. This gives them the character of boundaries protected by international law and they can be changed only through mutual agreement. The Arbitration Commission also based its opinion on the 1974 Constitution of the SFRY, where Article 5, al. 2 and 4, treat territorial consistency and say that the boundaries between republics can only be changed through mutual agreement.

The Republic of Croatia accepted the method of resolving matters of external and internal boundaries of the former SFRY according to the principles of international law. The internal boundaries between the former republics of the SFRY, established by the 1974 Constitution of the SFRY, became the state boundaries of the Republic of Croatia. Article V of the *Constitutional Decision on the Sovereignty and Independence of the Republic of Croatia*, passed by

¹⁷ "Report of the Arbitration Commission of the Conference on Yugoslavia: Opinion no. 3 - changes of boundaries", of 15 January 1992, in: Milardović, Anđelko: *op.cit.*, p. 149.

¹⁸ *Ibidem*, p. 150.

the Sabor of the Republic of Croatia on 25 June 1991, says: "...The state boundaries of the Republic of Croatia are the internationally recognized state boundaries of the present-day SFRY in the part which relates to the Republic of Croatia, and the boundaries between the Republic of Croatia and the Republics of Slovenia, Bosnia-Herzegovina, Serbia and Montenegro within the framework of the present-day SFRY."¹⁹ In the *Declaration on the Establishment of the Sovereign and Independent Republic of Croatia* the boundaries of the Republic of Croatia in the SFRY become "state boundaries towards other republics and neighbouring states of the former SFRY."²⁰

In accepting all the declarations and opinions of the EC and its bodies, the Republic of Croatia opted for the recognition of boundaries between the republics of former SFRY as international boundaries of new states created in this region. She is trying to solve all disputes arising in the process of mutual recognition and the definition of boundaries in accordance with this, and in the manner foreseen by international law. This comes to expression in negotiations about defining the boundaries between the Republic of Croatia and the Republic of Slovenia, which also accepted all the EC decisions in connection with the dissolution of former Yugoslavia, and thus also the principles for solving problems which confront sovereign and independent states.

Besides many other issues that have appeared between the two independent states of former Yugoslavia, Croatia and Slovenia also began talks²¹ about their common boundary which is 546 kilometres long (306 kilometres on land and 240 kilometres on rivers and the sea). It was confirmed on several occasions at the highest state level that international principles will be honoured in defining boundaries. In the *Memorandum on the State Boundary of the Government of the Republic of Croatia and the Government of the Republic of Slovenia*, of 30 September 1992, a joint approach on establishing the common boundary was defined: "The state boundary between the Republic of Croatia and the Republic of Slovenia is the former state boundary between the two Republics in the former Socialist Federal Republic of Yugoslavia, i.e. the boundaries of cadastral municipalities from the original land survey in the municipalities of Lendava, Ljutomer, Ormož, Pruj, Šmarje pri Jelšah, Brežice, Krško, Novo Mesto, Metlika, Črnomelj, Kočevje, Ribnica, Cerknica, Ilirska Bistrica, Sežana, Koper and Piran on the Slovenian, and Čakovec, Varaždin, Ivanec, Krapina, Pregrada, Klanjec, Zaprešić, Samobor, Jastrebarsko, Ozalj, Duga Resa, Vrbovsko, Delnice, Čabar, Rijeka, Zepka, Opatija, Buzet and Buje on the Croatian side, the boundaries on rivers and the boundary on the sea.

The boundaries on rivers and the sea shall be established and marked on the basis of international rules and criteria."²²

¹⁹ *Narodne novine*, no. 31, 25 June 1991.

²⁰ *Narodne novine*, no. 31, 25 June 1991.

²¹ Croatia and Slovenia opted for "direct negotiations", which is one of the ways to solve disputed issues between two sides. There are many different ways to solve disputes in international practice. Generally speaking, these are: mediation, investigation, reconciliation, adjustment, arbitration, international court.

²² *Memorandum of the Government of the Republic of Croatia and the Government of the Republic of Slovenia on the state border*, 30 September 1992.

The Croatian Prime Minister Hrvoje Šarinić, who signed the *Memorandum*, stated on several occasions that Croatia and Slovenia honour a boundary that has, in great measure, existed for centuries, and that there are no territorial pretensions or mutual territorial demands. All conditions exist for the boundary between Croatia and Slovenia to be determined by agreement according to international criteria. Some joint bodies were formed on that basis (Diplomatic Commission and Permanent Mixed Slovenian-Croatian Commission for Marking and Renewing the State Boundary). Many issues were resolved at several joint meetings to date, but some points of dispute emerged, which especially came to expression in the different points of origin used for their solution. At the meeting of the Expert Mixed Croatian-Slovenian Work Group for Establishing and Marking the Boundary²³, on 16 March 1993 in Zagreb, solutions were found for almost all boundary matters in the municipalities of Čakovec, Varaždin, Ivanec and Krapina. However, points of dispute arose along the whole boundary, which are at present mostly talked about only in principle. The most important of these are Piran Bay and the peak of Sveta Gera or Trdinov vrh.²⁴

Of all the issues under dispute, the most interesting is that of the boundary in Piran Bay. In principle, Slovenia considers that it should get the whole bay, whereas Croatia wants to divide it. Both states are in favour of drawing a lateral sea boundary according to the international principle about establishing sea boundaries from the last point of the land boundary, but there is contention concerning that last land point²⁵. Slovenia considers it is at the present mouth of the river Dragonja, i.e. a channel (Sv. Odorika) into which the course of

²³ The Croatian members of the Commission are: Academician Vladimir Ibler (president), Academician Ljubo Boban, Branimir Gojčeta, PhD, and Želimir Seissel, BSc. The Slovenian members of the Commission are: Borut Bohte, PhD (president), Mirjana Skrk, PhD, Academician Bogo Grafenauer, Božo Demšar, BSc and the secretary Goražd Gorenc.

²⁴ It was established at the highest level of the two states that Sveta Gera-Trdinov vrh was not a point (points) of dispute, although it appears in public as an issue that considerably complicates relations between the two states. Croatia demanded that Slovenia withdraw its soldiers, who had entered army barracks on the territory of the Republic of Croatia after the withdrawal of the YNA. The barracks in question were in an area under the military authorities and military region of Novo Mesto (Slovenia), although they were on the territory of the Republic of Croatia. During the seven-days war in Slovenia and after the agreement for the YNA to withdraw from Slovenia, units of the Territorial Defence of Slovenia entered all the facilities that had until then been held by the YNA, and which were under the command of YNA units situated on the territory of the Republic of Slovenia. According to statements by the highest state authorities of Slovenia, Slovenian soldiers should soon leave the barracks on Sveta Gera.

²⁵ The last point of the land border is taken as the starting point for establishing the sea border. In cases of bays, the rule of geometrical centre can be used, according to which the border runs through the middle of the bay along points that are equidistant from both the shores.

the river Dragonja²⁶ was diverted, while Croatia demands the natural river course should be honoured, i.e. its former course and its old bed.²⁷ This difference was confirmed by Matija Malešič, Slovenian Ambassador to Croatia, in an interview for *Slobodna Dalmacija*: "... whereas the land boundary has been recognized, although not marked, the situation with the sea boundary is a little more difficult. Because internal sea boundaries between SR Slovenia and SR Croatia were never defined. That problem is augmented by the fact that the point of departure for marking a sea boundary is the last point on land, and as the problem of the river Dragonja is under dispute, it is not clear whether that last point is the old or the new river mouth."²⁸ The Academician Bogo Grafenauer, member of the Slovenian delegation in the Expert Mixed Slovenian-Croatian Commission, sent an open letter to Academician Davorin Rudolf, president of the State Commission for the Boundaries of the Republic of Croatia, saying that the course of the Dragonja had been regulated in 1946, and that the boundaries between Croatia and Slovenia had not been established until 1954. Therefore, there is no need to consider the old bed because the changes had taken place before the boundary (which had never existed there earlier) had been established.²⁹ In Slovenia public there is also a thesis that the river Mirna is the real boundary between Croatia and Slovenia. This river runs along the southern part of Savudrija Peninsula³⁰.

The president of the State Commission for the Boundaries of the Republic of Croatia, Academician Davorin Rudolf, replied to Bogo Grafenauer's letter saying that the boundary between Croatia and Slovenia "... was finally and clearly being marked on the spot for the first time in the history of Croatian-Slovenian relations..." and that it was normal for differences to arise in viewing

²⁶ The river Dragonja was artificially redirected into another course, mostly to protect salt flats from the fresh water of the river mouth. After the Second World War the Dragonja's change of course was completed, so that now the river flows into Piran Bay along a channel. The natural riverbed has been neglected, although it is marked on many maps and can be seen on the spot. The boundary of the Piran cadastral municipality coincides with the channel of Sv. Odorika.

²⁷ In international law there is a principle that has to date been used in many cases (the Guadalupe Hidalgo Treaty that ended the American-Mexican war in 1848; the dispute between the States of Arkansas and Tennessee; establishing the boundary on the Rio Bravo etc.), and which is used in cases if the river suddenly changes its course. In such cases the boundary as a rule remains in the old bed.

²⁸ *Slobodna Dalmacija*, 5 October 1992.

²⁹ *Delo*, 30 October 1992, "Prilog subotom", p. 21.

³⁰ The letter by Bogo Grafenauer mentioned, published in *Delo* of 30 October 1992 (p. 21) says: "...in all of its history until 1947 Croatia did not include any of Istria to the west of Mt. Učka and the river Raša... and the territory of the southern part of Zone B of the Free Territory of Trieste (to the north of the Mirna and to the west of Kuberton and Grožnjan) never until the London Memorandum of 1954. The border between the Republic of Slovenia and the Republic of Croatia was thus established for the first time in history in 1954 on the area of the former Free Territory of Trieste, and it always ran along the border of the cadastral municipalities Piran-environns and Kastel (or nearby in the south), along the new course of the Dragonja."

some point or some parts of the boundary. He said that the criteria for establishing the boundary should be "... (a) the boundaries of cadastral municipalities and (b) the natural boundaries, where they exist (rivers along the Croatian-Slovenian boundary). Sea boundaries should be drawn in accordance with international rules and criteria". At the beginning of talks between Croatia and Slovenia Davorin Rudolf proposed that Croatia and Slovenia should decide on a condominium (as a temporary solution) in Piran Bay, until the criteria and manner of determining boundaries in that region had clearly been defined. This means that both sides would jointly use, exploit and protect Piran Bay from devastation, and both Croatian and Slovenian bodies would administer the bay. Slovenia rejected this solution.

There is no doubt that the boundary between Croatia and Slovenia will be established according to the principles of international law, regardless of the, at present, conflicting starting points concerning some regions (Piran Bay). Much of it has already been defined along the boundaries of the Croatian municipalities of Čakovec, Varaždin, Ivanec and Krapina. That part is the clearest, which was probably the reason why it was decided to begin defining the boundary from that end.

Besides the boundary with Slovenia, Croatia borders with three other republics of ex-Yugoslavia: Bosnia-Herzegovina, Serbia and Montenegro. The Badinter Commission clearly stated that forcible changes of boundaries will not be recognized. Serbia and Montenegro began their aggression against the Republic of Croatia with the intention of conquering and occupying its territory. The Republic of Croatia was also attacked from parts of the territory of Bosnia-Herzegovina. Because of everything that has taken place in ex-Yugoslavia, Croatia's boundary with the republics mentioned will remain undefined for a long time.

The boundary situation should be the clearest between Croatia and Hungary and Croatia and Italy. However, whereas Croatia's northern boundary with Hungary is completely clear, the boundary with Italy was defined by the Osimo Accords signed by the former Yugoslavia. Croatia will negotiate to sign and confirm these accords between the two states.