IDENTIFICATION OF STATE BORDER BETWEEN BiH AND THE REPUBLIC OF CROATIA AND OTHER TRANS-Boundary ISSUES

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Introduction

Treaty on the State Border between Bosnia and Herzegovina and the Republic of Croatia, signed on 30 July 1999, which has not yet been ratified by the Parties, often stirs media attention in both countries. For various reasons different people write and discuss about it, least those who have spent months and years, away from public eye, participating in the preparation of this Treaty and all the documents concerning the border, containing maps and detailed description of the border line. This text aims to present to the readers, as much as possible, the tremendous job that the representatives from the state institutions and experts from both countries have done to identify the boundary line, in order to prepare and conclude this Treaty and the relevant annexes as an integral part thereof. At the end of this text, the author will express his personal views on the necessary steps to be taken in order to continue and successfully bring to an end the “frozen” process of its ratification.

"AVNOJ" BORDERS AS THE BASIS FOR DEMARCATION

Based on the opinion of the International Arbitration Committee (Badinter Committee) of 11 January 1992 the demarcation line between "Croatia and Serbia or Serbia and Bosnia and Herzegovina, or, possibly, among other neighbouring countries may not be altered except by agreement freely and mutually arrived at." Except where otherwise agreed, "the former boundaries become frontiers protected by international law".

Although in some cases parts of the demarcation line between the former Yugoslav Republics were determined even after founding the Democratic Federal Yugoslavia, the above opinion of the Badinter Committee reaffirmed and upheld the AVNOJ borders of the former Yugoslav Republics as the basis for demarcation, or as a new state borders protected by international law.

Despite the fact that the former administrative borders between the Republics became state borders, in the process of the identification of the border line a number of open issues were encountered, so that even today, twenty years after the dissolution of the FR Yugoslavia and the formation of a new independent states, there is not a single ratified intergovernmental agreement governing the issues of identification of state borders between the states created by the dissolution of Yugoslavia.

With the independence gained in 1992 the former administrative border of Bosnia and Herzegovina with the neighbouring Yugoslav Republics became the state border with the neighbouring countries, namely the Republic of Croatia and the Federal Republic of Yugoslavia, or Serbia and Montenegro. Shortly after the armed conflict in BiH, already in 1996 the activities were initiated to identify the border line between Bosnia and Herzegovina and the Republic of Croatia, and a few years later, after the establishment of diplomatic relations with the Federal Republic of Yugoslavia, with that neighbouring country as well.

This text is an overview of the process of identifying the border between Bosnia and Herzegovina and the Republic of Croatia, the issue of demarcation on the sea and the free access of BiH to open sea, proposals and initiatives for the correction of the border in some areas, as well as the steps to be taken in order to successfully complete this work, and the ratification and entry into force of the signed Treaty on the State Border. All of these issues gain particular significance when the Republic of Croatia entered the EU on 1 July 2013 and with the fact that the state border of the Republic of Croatia with Bosnia and Herzegovina is at the same time the external border of the EU with our country.

IDENTIFICATION OF THE STATE BORDER BETWEEN BiH AND THE REPUBLIC OF CROATIA

At the level of the Interstate Diplomatic Committee for the Identification, Marking and Maintenance of the State Border between Bosnia and Herzegovina and the Republic of Croatia, the Draft Treaty on the State Border was agreed in June 1999. An integral part of this Draft consisted of a folder with 86 topographic maps 1: 25,000 in which identified boundary line was charted.

The Draft Treaty on the State Border together with the folder of graphic annexes were initialled by authorised representatives from both countries and, as witnesses, the Draft was initialled by representatives from the Office of the High Representative (OHR) who monitored the overall process. In early July 1999 the Commission on the Border of Bosnia and Herzegovina sent the Draft Treaty on the State Border into further procedure to the BiH Council of Ministers.

Alija Izetbegović, Chair of the BiH Presidency, and dr. Franjo Tuđman, President of the Republic of Croatia, signed the Treaty on the State Border between the Republic of Croatia and Bosnia and Herzegovina on 30 July 1999.

A) Determination, marking and description of the state border between BiH and RC

Article 2 of the Treaty states that the state border between Bosnia and Herzegovina and the Republic of Croatia is determined on the basis of the state of the borders at the time of the end of the Socialist Federal Republic of Yugoslavia in 1991 and the mutual recognition of the Republic of Croatia and Bosnia and Herzegovina in 1992, identified on the topographic map 1:25,000 and in practice on the basis of the borders between border land-registry municipalities, on the basis of the border towns and villages at the time of the 1991 Census and on the basis of the dividing line which divided the authorities of the Socialist Republic of Bosnia and Herzegovina and the Socialist Republic of Croatia.
According to the Republic of Croatia there are 181 land-registry municipalities on the side of Bosnia and Herzegovina. Land-registry along the border line with the Republic of Croatia was developed based on a new cadastral survey, except for the municipality of Bosansko Grahovo. The survey was made between 1952 to 1981, so that the cadastral maps are 32 to 60 years old. The survey was made using aerial photogrammetric method.1

608 geodetic control points from the Croatian side and 629 points from the BiH side have been stabilised in width of one kilometre on either side of the border zone.

The preparation of 16000 border signs are planned to mark the border between the two countries.

B) Preparation of border documents and submission of Treaty to the ratification procedure

Based on identified and defined border line entered to topographic maps TK.25, the Treaty on the Border created the obligation to carry out and elaborate a detailed description of the boundaries that, together with the Treaty itself, form a documentary unit and as such is to be submitted to the legislatures of both countries for the ratification. Detailed description of the border was a demanding and professional work performed by Joint Expert Working Group consisting of experts in geodesy from BiH and the Republic of Croatia. The work on the detailed description of the border was completed in May 2004, almost five years after the signing of the Treaty on the Border. Except for a one-year delay in the work of the Joint Expert Working Group, caused due to the change of the duties of the members from the Republic of Croatia, in the remaining four years a field tour was made of the border along its entire length (over 1000 km), special annexes were made in the areas with inhabited places and the drawing of border lines on large-scale geographic backgrounds, and the description of the coordinates of all the breaking points along the border.2

C) Identification of the state border between BiH and R Croatia at sea

The border at sea between Bosnia and Herzegovina and the Republic of Croatia stretches at halfway line of the sea area between the mainland of Bosnia and Herzegovina and the Republic of Croatia, in accordance with the United Nations Convention on the Law of the Sea of 1982. The border line at sea is shown on the topographic map 1:25.000 and the sea charts and plans (Article 4. paragraph (3) of the Treaty).

Prior to identifying the border at sea between Bosnia and Herzegovina and the Republic of Croatia, the Study on Demarcation was prepared by the Hydrographic Institute in Split.3

The sea border between the two countries is indicated in the detailed description of the border, which forms an integral part of the Treaty, and includes the first border strip of the corresponding internal coastal waters of Bosnia and Herzegovina, thus closing the land border between Bosnia and Herzegovina and the Republic of Croatia with the sea border, including internal coastal waters of BiH that in international law have the same status as the land territory of a state.

Regardless of the belief that the rights are guaranteed to BiH by the United Nations Convention on the Law of the Sea, subsequent events have shown the importance to reach an agreement with the Republic of Croatia to regulate the issues relating to the territorial sea, continental shelf and the sovereign access to the open sea; all this for reasons that Croatia in its Maritime Code of 1994 and subsequently of 2004, adopted the so-called “Straight baselines” at sea as they were at the time of the former SFRJ, determining its internal waters, which in international law have the same status as the land territory of a state.4

Since the Republic of Croatia by its national legislation, and contrary to the UN Convention on the Law of the Sea, prevented Bosnia and Herzegovina from exercising the right to access the open sea, the need to initiate and begin negotiations with the Republic of Croatia on the conclusion of a special agreement to regulate the enforcement of the above Convention seems as a logical conclusion.

At the Pan-European Conference held in Sarajevo 18-20 May 2006, after the presentations and elaborations of experts on this issue, a conclusion was reached on the requirement of Bosnia and Herzegovina to regulate its rights at sea before ratifying the Treaty on the Border with the Republic of Croatia.

Formation of an interdepartmental team to negotiate with the Republic of Croatia on the enforcement of the UN Convention on the Law of the Sea was initiated by the BiH side, but no progress has been made since.

D) Changes in extension of the state border

Article 3. of the Treaty stipulates that the Parties can agree to change the state border in order to facilitate and improve the living conditions of people living close to the border, as well as for other reasons. Any changes of the state border shall be included in the documents on border issues mentioned in Article 2. paragraph 3 of the Treaty.

For effective implementation of the Treaty and to facilitate the living conditions of the population along the border and its efficient maintenance, marking and monitoring, the Interstate Diplomatic Committee prepared the Agreement on the Priorities in the Implementation of the Treaty on the State Border, relating to the application of Article 3. of the Treaty.

The signatories to the Agreement have agreed that, due to frequent border crossing from a river bank of one Party to the river bank of the other Party, which complicates the regulation of the Una river flow and the living conditions of the population along the border as well as its marking and maintenance, it is necessary to start the procedure to extend the state border between the Republic of Croatian and Bosnia and Herzegovina in the lower course of the Una River (downstream from the village of Ivanjske).

In addition to this, the signatories of this Agreement agreed that, to facilitate the living conditions of the population in the area of Begluk, Tiškovac and Unište (Bosansko Grahovo Municipality) it is necessary to initiate the procedure for changing the extension of the state border between the Republic of Croatian and Bosnia and Herzegovina in this area.

The Interstate Diplomatic Committee assumed the obligation to prepare the draft amendments to the extension of the border between Bosnia and Herzegovina and the Republic of Croatia in the above areas as soon as possible, and no later than by the end of 1999.5

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1 Aerial photogrammetric method is a survey method to identify a boundary line from air.

2 Based on data of surveying experts, obtained by measuring the agreed maps TK.25, the length of the border between the two countries is 1001 km, of which 602 km on land and 399 km on rivers (Sava: 302 km, Una: 58 km, Gilina: 21 km and Korana: 18 km). The length of the sea border is 18.2 km.

3 State Commission on the Border of BiH verified and adopted the detailed description of the border in July 2004, whereas the Republic of Croatia Commission did the same in April 2005. After that the Treaty on the Border between Bosnia and Herzegovina and the Republic of Croatia, together with the border documents referred to in Article 2. paragraph (3) of the Treaty, was submitted to ratification in both countries. Until today, none of the Parties, neither BiH nor Republic of Croatia, has ratified it.

4 In June 1999, in the Proceedings on the handover of the proposal for the construction of demarcation of 18 June 1999, which, apart from the experts from the two countries, was co-signed by Michael Hryshyshyn, OHR expert on the issues of borders, it notes that “in the construction of the border between the Republic of Croatia and Bosna and Herzegovina the international laws of the sea have been fully respected”.

5 Article 7. paragraph (6) of the UN Convention on the Law of the Sea of 1982 says: 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. Almost identical solution is stipulated in Article 47. paragraph (5) of the said Convention in which it states that the system of such baselines cannot be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.

6 This Agreement was signed by Željko Dobranović, president of the delegation of the Republic of Croatia in the Interstate Diplomatic Committee, Anto Valenta and Mugić Šukle, members of BiH delegation in the Committee,
There has been no implementation of the Agreement, because the work of the delegation of the Republic of Croatia in the Interstate Diplomatic Committee was at rest for more than two years, until July 2001, when the Croatian Government formed a new State Commission on the Border, creating the conditions for activation of the Interstate Diplomatic Committee.

At the first meeting of the new Interstate Diplomatic Committee held in Zagreb on 20 November 2001, both delegations expressed the common view that "the Treaty on the State Border shall be temporarily implemented as of its signing date", which is in accordance with Article 22. paragraph (1) of the Treaty.

The two Parties expressed different views as regards to signing the Agreement on the Priorities in the Implementation of the Treaty on the State Border.

For the Croatian delegation, the Agreement on the Priorities did not represent an interstate agreement, but only the statement of the former delegation that it was possible to start negotiations on certain corrections of the border line. The Croatian delegation was of the opinion that at that time (in 2001) it was not appropriate to deal with these issues, given that a good deal of work on the Agreement had not yet been completed.

The delegation of Bosnia and Herzegovina considered the Agreement on priorities to be a binding document that should be implemented regardless of the status of the document, the timeframe and the fact that certain annexes to the Agreement had not yet been prepared.

From the aforementioned it is clear that, by concluding the Treaty on the State Border, the Parties saw the need for corrections or changes of the border at certain points, creating the legal basis thereof in the Treaty (Article 3.) and expressing the intent by signing the Agreement on the Priorities in the Implementation of the Treaty on the State Border.

Today, 12 years after, when all border documents referred to in Article 2. paragraph (3) of the Treaty have long been completed, when the Treaty with all of its Annexes is collecting dust on the shelves of the Parliaments in both countries waiting for the uncertain ratification process to unfold, it is time to address, at the highest intergovernmental level the issues of possible changes of the at previously defined border locations and test the willingness of the Parties to take this leap forward.

E) Requests for the revision of determined border line as a precondition for the ratification of the Treaty on the State Border

1) Request of the Croatian Government in the area of Neum

In a Note of 3 May 2006 sent through diplomatic channels, the Republic of Croatia informed the Council of Ministers of BiH on their position with respect to the border in the Municipality of Neum, disputing parts of the territory of Bosnia and Herzegovina in the area of islands Veliki and Mali Školj in the area of the Klek peninsula - the Peak of Klek Cape (Ponta Kleka). Documentation explaining arguments for such views was delivered in the attachment to the note.

Accepting the arguments of the Croatian side would mean the loss of the status of a maritime state for Bosnia and Herzegovina, and thus the loss of all those guaranteed rights enjoyed under the UN Convention on the Law of the Sea. Equally, the reduction of established inland waters of Bosnia and Herzegovina into three small mutually separated sea surfaces would appear.

According to documents at disposal to the State Commission on the Border of BiH, agreed and verified by the competent Commission of the Republic of Croatia, and incorporated into the Treaty of the State Border, there is no doubt that parts of the territory in the area of Neum, subsequently requested by the Republic of Croatia, belong to Bosnia and Herzegovina.

Bosnia and Herzegovina, therefore, considers that the issues indicated in the note of the Republic of Croatia have already been discussed and that no new evidence were presented that would cast doubts on what the Parties have already agreed upon and accepted.

2) Border issues with the Republic of Croatia on the Una River

Serb members in the State Commission on the Border of BiH in the new convocation constituted in October 2005 expressed the view that the border between Bosnia and Herzegovina and the Republic of Croatia on the Una River from Ivanjska to the estuary of the Una River into the Sava River should be drawn through the midst of the Una River.

In a letter wrote to the highest state institutions of Bosnia and Herzegovina in March 2007, they pointed out to the fact that the border line in the lower course of the Una River was determined solely on the basis of cadastral boundaries between peripheral cadastral municipalities, and that other principles and elements of demarcation in the determination of the border were ignored:

- because no cadastral boundary along the Una River was an administrative boundary between the Republics, but for centuries that boundary has been the midst of the Una River;
- cadastral border between Bosnia and Herzegovina and the Republic of Croatia in the lower course of the Una River crosses to one or the other side in about 19 places, and in many more places it deviates from the middle of the Una riverbed, which undoubtedly indicates that it is not possible to determine the border along this line, and especially to maintain it without significant conflicts;
- on the right bank of the Una River, the Croatian authorities have never exercised any duties, while the authorities of Bosnia and Herzegovina, including its judicial authorities carried out all the tasks within their competence throughout the territory on the right bank of the Una River, as they do today;
- other reasons indicating the need for changes (corrections) of the border line in the lower course of the Una River and its demarcation in the midst of the river are also referred to in this letter.

For these reasons, Serb members in the State Commission on the Border of BiH have proposed to the Council of Ministers, the Parliamentary Assembly and the Presidency of BiH not to accept the ratification of the Treaty on the State Border between the Republic of Croatia and Bosnia and Herzegovina.

The fact is that the state border in the area of the Una River from Ivanjska to the estuary of the Una River into the Sava River has been identified, marked and accurately described in the Treaty on the Border between the two countries. The border was determined as such as it was on the day of the international recognition of Bosnia and Herzegovina.

Arguments suggested by Serb representatives in the State Commission on the Border of BiH were also presented in the course of the negotiations on the Treaty on the Border and later in the process of the preparation of the border documents.8

7 At the meeting of the Presidency of the State Commission on the Border of Bosnia and Herzegovina, held on 30 November 2001 in Sarajevo, the following position was taken: The conditions exist to initiate talks in accordance with Article 3. of the Treaty concerning the change of the extension of the border between Bosnia and Herzegovina and the Republic of Croatia. Any changes to the extension of the border should be done in accordance with the Treaty, including its Annex, which shall pass through the same legal adoption procedure as the Treaty itself.

8 At the session of the Interstate Diplomatic Committee held in Zagreb on 29 June 1999, a request was made to change the border on the Una River; on 2 July 1999 Joint Expert Working Group conducted an inspection tour of the Una River to gain direct insight; in the sequel session held on 7 July that year the text of the Treaty was initialed, with the exception of the representative of the Serb population in the BiH delegation, who required the translation of the Treaty into Serbian language and extra time to conduct consultations; on 12 July in Sarajevo a representative of the Serb population in the BiH delegation initialed the text of the Treaty translated into Serbian language; signing of maps and the discussion of the priorities and conditions for the
Identification of the border was carried out on the basis of valid documentation relevant for determining the position of the border line. Agreement on the Border and other border documents forwarded to and signed at the level of international commissions of the Parties have passed the verification procedures in accordance with the Regulations and Rules of Procedure of the State Commission on the Border of BiH, as well as in the established intergovernmental bodies, of which the proceedings were taken and documents were stored with the initials of the authorised members of the State Commissions.

Interpretation of the BiH position in connection with the identification and determination of its border was also presented in writing by OHR, whose representatives actively participated in the entire process of the negotiations, preparation and verification of the documents concerning the border line between Bosnia and Herzegovina and the Republic of Croatia.

Responding to the requests for revision of the border line in the area of Neum and the lower course of the Una River, the State Commission on the Border of BiH prepared a special elaboration of the documents on the basis of which the border was identified in these areas, including its verification in the official bodies established by the State Commissions on the Border of BiH and the Republic of Croatia, as well as in the bodies of organisational structure of the State Commission on the Border of BiH.

On the occasion of the above requirements for the revision of identified and agreed land border of Bosnia and Herzegovina, incorporated into the Treaty on the Border and described in detail, the State Commission on the Border of BiH has made a conclusion that it had no mandate to make any changes, neither it had had the mandate to cede parts of the BiH territory to the neighbouring state, nor it had requested that state to cede parts of its territory.

Therefore, only after the ratification of the Treaty on the Border a legal framework is provided for the possible correction of the border.

Given that the suggestions for the correction of the border in some areas have already been put forward during the negotiations on the conclusion of the Treaty, and in that respect the Agreement on the Priorities in the Implementation of the Treaty was signed, one could expect that the two countries, immediately after the ratification of the Treaty on the Border, in the spirit of friendly and good neighbourly relations, begin talks on the adjustments of the boundary line in some localities, including the area of the lower course of the Una River.

THE WAY FORWARD

Since the conclusion of the Treaty on the Border and its submission to the Parliaments of the Parties for the ratification, none of the states, neither the Republic of Croatia nor Bosnia and Herzegovina, has made any effort for the ratification to actually occur. On the contrary, individual politicians and their parties as well as certain interest groups in both countries challenging the Treaty and the rejection of its ratification served to gain cheap political points in the domestic scene, for the daily political media appearances against the background of the ‘defence of state and national interests’ and for settling accounts with political opponents.

Intoxicated by the echo of their own words and messages, politicians and parliamentarians in both countries forget that they were the ones who appointed the negotiators and experts who worked on the preparation of this Treaty, and that they were the ones who gave them the confidence and the mandate to determine the state border on the basis of expertise and available documentation, and that they have done this spending months and years of work, checking literally every meter of the border line. The proof that the job was well done is the fact that the Treaty on the Border has provisionally been applied from the date of its signing, that it is accepted by the population on both sides of the border and that it does not produce any negative and accidental effects for the Parties.

Interstate Diplomatic Committee, which in accordance with Article 21. paragraph (1) of the Treaty is competent to settle any disputes concerning its interpretation and implementation, has not received any complaints to this day.

In order to create a favourable climate for the ratification of the Treaty in both countries it would be very important that on the international level between the Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of Croatia a Letter of Intent or a similar document is signed, by which the Republic of Croatia and Bosnia and Herzegovina express their readiness, immediately after the ratification of the Treaty, to enter into negotiations on the correction of the border in some areas (lower course of the Una River, Unište, etc.), in accordance with the reasons provided in Article 3. paragraph (1) of the Treaty.

Initiating negotiations and the conclusion of an intergovernmental agreement between the two countries on the application of the UN Convention on the Law of the Sea would help creating a favourable climate for the ratification of the Treaty by the competent authorities in Bosnia and Herzegovina.

Unilateral or bilateral cancellation of the Treaty or rejection of its ratification by one or both Parties would return the whole process of identifying the border between Bosnia and Herzegovina and the Republic of Croatia to the very beginning. Months and years of work would have been thrown in the wind. Is this in anyone’s interests, and in whose interest? And could some new commissions or expert groups, formed by the Parties to begin new negotiations on identifying the border line, produce qualitatively better results for any of the Parties than those already achieved? I am convinced that more favourable results cannot be achieved. Therefore, in the event of cancellation of the Treaty or the rejection of its ratification, opening of new negotiations should not be accepted because they would only spend taxpayers’ money and time, and no valid results would be achieved.

In the event of cancellation or rejection of the ratification of the Treaty on the Border, one of the mentioned possible solutions is to seek international arbitration, to which the Parties would entrust consideration and the decision with respect to the identification of the border. Prior to addressing to the international arbitration, the Parties would have to agree on the dispute subject matter, which would probably require a great deal of time and new controversies. It is certain that the engagement of international arbitration would require extensive financial resources in both countries. It is equally certain that in the process of final decision-making, any arbitration would take into consideration the fact that the Treaty was prepared in accordance with the established procedure, that it was signed at the highest level by authorised representatives of the two countries, that the Parties have implemented it in a “good faith” for 14 years, that the Treaty has not led to any conflict situations, and works in the legal systems of both countries. It is not difficult to assume that the final arbitration award would be identical to that already contained in the Treaty.

Considering the above mentioned - the ratification of the Treaty on the State Border between Bosnia and Herzegovina and the Republic of Croatia and its entry into force is the best and most optimal solution both for Bosnia and Herzegovina and the Republic of Croatia.

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implementation of the Treaty continued on 26 July. The representative of the Serbian population could not sign eight maps relating to the lower course of the Una River without special consultations; after the consultations, on 27 July 1999 Ostoja Kremenović, the representative of the Serb population in the BiH delegation, co-signed the remaining eight maps relating to the area of the lower course of the Una River.

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About FPI BH: The Foreign Policy Initiative BH (FPI BH; www.vpi.ba) is a BiH, nongovernmental and non-profit organization founded in Sarajevo in 2004, which is dedicated to analysing international relations and Euro-Atlantic integration processes of BiH. The goal of the FPI BH is to offer assistance to state institutions in removing weaknesses and promoting values present in those processes in order to increase the efficiency of BiH institutions in fulfilling the upcoming obligations.