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**PCA PRESS RELEASE**

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**ARBITRATION BETWEEN THE REPUBLIC OF CROATIA AND THE REPUBLIC OF SLOVENIA**

**THE HAGUE, 29 June 2017**

**Tribunal Determines Land and Maritime Boundaries in Final Award**

In the arbitration concerning a territorial and maritime dispute between the Republic of Croatia and the Republic of Slovenia, the Tribunal issued a unanimous Final Award on 29 June 2017.

Pursuant to Article 3 of the [Arbitration Agreement](#), the Tribunal was to determine:

“(a) the course of the maritime and land boundary between the Republic of Croatia and the Republic of Slovenia, (b) Slovenia’s junction to the High Sea and (c) the regime for the use of the relevant maritime areas.”

**Determination in respect of the Land Boundary**

With respect to the land boundary, the Tribunal observes that it must fix that boundary in accordance with international law. Moreover, the Parties agree that the Tribunal shall apply the principle of *uti possidetis*, according to which the present boundary is identical to the previous boundaries between the Republics of Yugoslavia as on the date of independence.

The Tribunal notes that over 90 % of the boundary had already been agreed upon by the Parties. Those undisputed areas were identified by both Parties as those in which the cadastral limits of neighbouring Croatian and Slovenian districts coincided and were “aligned” at the time of independence in 1991. The Tribunal infers from this practice that the Parties were agreed that, in principle, the cadastral limits represented the boundaries of the Republics. Accordingly, the Tribunal considers those cadastral limits as a *prima facie* indication of the existing titles to the boundary.

However, the Tribunal examines in respect of each of the disputed areas whether there are reasons for applying other criteria. Finally, where no title could be established, the Tribunal bases its decision on the *effectivités* pleaded by the Parties—the conduct of administrative authorities as proof of effective exercise of territorial jurisdiction.

The details of the boundary thus fixed in more than 20 areas are explained in a more complete press release issued today.

In the Mura River region and the Central region, the Tribunal finds that in a number of cases the cadastral limits were aligned in 1991, and it fixes the boundary accordingly. In some cases of divergence, it gives preference to the limits recorded in either the Croatian or the Slovenian cadastre.

With respect to Brezovec-del/Murišće, reviewing the evidence on record, the Tribunal concludes that neither side has adduced conclusive proof of legal title. It thus turns to *effectivités* and notes that such *effectivités*, on the whole, support Slovenia's claim.

Similarly, with respect to Drage, the Tribunal notes that the disputed area was for more than 40 years part of a Slovenian cadastral district and that Slovenia acted *à titre de souverain* without Croatia's objection. The Tribunal further observes that Drage was not mentioned in the record of Croatian cadastral districts. Accordingly, it upholds Slovenia's submissions.

In the Istria region, the Tribunal considers in particular two disputed areas near Leskova Dolina and Snežnik/Prezid. As contended by Slovenia, it decides that in those areas, the boundary between the Parties is the former boundary between Italy and Yugoslavia as it stood from 1920 to 1947.

With respect to Merišće, Krkavče as well as the Lower Dragonja region, the Tribunal recalls that Slovenia requested in 1955 the formation of a special Border Commission to settle the disputes associated with the boundaries. It considers the significance of Slovenia's request and the subsequent proposal of the Border Commission. It notes that the Border Commission "unanimously concluded to propose to the Executive Council of Slovenia that the boundary be determined on the Dragonja River, that is according to the actual situation". The Executive Council of Slovenia accepted this proposal, as did the Executive Council of Croatia. Agreement was thus reached between the Parties. That agreement confirmed in law the boundary existing in fact. Therefore it was not subject to approval by the Federal Assembly. It fixed the boundary. Thus, as contended by Croatia, the boundary follows the Dragonja River, ending in the Bay in the middle of the St Odoric Canal.

### **Determination of the Boundary with respect to the Bay**

With respect to the Bay called "Bay of Piran" by Slovenia, and "Bay of Savudrija/Piran" by Croatia, the Tribunal considers that that Bay was comprised of internal waters prior to the dissolution of Yugoslavia and remained so after 1991. In the absence of any provision on the delimitation of internal waters in the United Nations Convention on the Law of the Sea, such delimitations are to be made on the basis of the principles applicable to the delimitation of land territories. In the present case, the delimitation must thus be made on the basis of *uti possidetis*.

The Parties agree that there had been no formal division of the Bay between the Republics prior to the dissolution of Yugoslavia and that no condominium had ever been established in the Bay. Delimitation must therefore be made on the basis of the *effectivités* at the date of independence. On that basis, Croatia asks the Tribunal to make the delimitation along a median line; Slovenia claims the whole of the Bay.

The Tribunal considers the *effectivités* of Croatia and Slovenia, in particular with respect to fisheries regulation and police patrols. On the basis of those *effectivités*, it decides to fix the boundary along a line situated between the lines advanced by the Parties. That line joins the end of the land boundary in the mouth of the Dragonja River to a point A on the closing line of the Bay, which is at a distance from Cape Madona that is three times the distance from point A to Cape Savudrija (see the attached map). Such delimitation leaves the larger part of the Bay to Slovenia.

### **Delimitation of the Territorial Sea**

The Tribunal was tasked to determine the maritime boundary between the two Republics in accordance with international law. It thus applies the rules contained in Article 15 of the United Nations Convention on the Law of the Sea and the settled jurisprudence of the International Court of Justice concerning the delimitation of territorial seas. It recalls that international law calls for the application of an equidistance line, unless another line is required by special circumstances.

The Tribunal thus considers whether, in the present case, the equidistance line should be adopted as the definitive maritime boundary, or whether "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" and to adjust the equidistance line accordingly. The Tribunal finds that the only feature to be taken into consideration

is the particular configuration of Cape Savudrija. This configuration produces a disproportionate adverse effect if the strict equidistance line is used. For that reason, the Tribunal determines that the equidistance line must be adjusted in favour of Slovenia. Accordingly, it fixes the maritime boundary along a line starting at Point A on the closing line of the Bay and following an azimuth parallel to the Osimo Treaty line, which establishes the north-east boundary between Slovenia and Italy (see the [attached](#) map).

### **Determination of Slovenia’s “junction to the High Sea”**

The Tribunal was also required, under the [Arbitration Agreement](#), to determine Slovenia’s “junction to the High Sea” in applying “international law, equity and the principle of good neighbourly relations in order to achieve a fair and just result by taking into account all relevant circumstances” for its determination.

The Tribunal first observes that there is no area anywhere in the Mediterranean Sea in which the “High Sea” regime *stricto sensu* would be applicable if every Mediterranean State claimed the Exclusive Economic Zone to which it is entitled. This point did not escape the attention of the Parties who invited the Tribunal to treat all maritime areas lying beyond territorial seas as “High Sea” for the purpose of the case. The characteristics of the “High Sea” on which the Parties focus are the freedoms of communication embodied both in Articles 58 and 87 of the United Nations Convention on the Law of the Sea. Therefore, the term “High Sea” can be understood to mean the area in which those freedoms are established. In other terms the words “High Sea” must in the present case be understood as referring to the areas lying beyond the territorial seas.

The Parties have been deeply divided with respect to the meaning of the word “junction”. The Tribunal considers that the core meaning of junction is the place where two or more things come together or join. Therefore, in the present case, the term junction signifies the physical location of a connection between the territorial sea of Slovenia and an area beyond the territorial seas of Croatia and Italy.

The Tribunal observes that no part of the boundary of the territorial sea of Slovenia directly abuts upon an area of “High Sea” as previously defined. The Tribunal therefore decides that the junction must be established by creating an area between the Slovenian territorial sea and the “High Sea” in which freedom of communications between those two zones is guaranteed.

For those reasons, the Tribunal creates a “Junction Area” in Croatia’s territorial sea immediately adjacent to the boundary laid down by the Treaty of Osimo. That Area is approximately 2.5 nautical miles wide, and its limits are reproduced on the [attached](#) map.

### **Determination of the Regime for the Use of the relevant Maritime Areas**

The Tribunal was finally asked to determine the regime for the use of the relevant maritime areas, applying “international law, equity and the principle of good neighbourly relations in order to achieve a fair and just result by taking into account all relevant circumstances” for its determination.

The Tribunal emphasizes the need to guarantee both the integrity of Croatia’s territorial sea and Slovenia’s uninterrupted and uninterruptible access from and to the “High Sea”. To that end, the Tribunal establishes in the Junction Area a special usage regime different from any regime established under the United Nations Convention on the Law of the Sea, whether in territorial seas or international straits. Under that regime:

- a. Freedom of communication shall apply 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;
- b. The freedom of communication shall consist in the freedoms of navigation and overflight 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;
- c. The freedom of communication shall not be conditioned upon any criterion of innocence, shall not be suspendable under any circumstances, and shall not 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 by the United Nations Convention on the Law of the Sea;

- d. The laying of submarine cables and pipelines shall be subject to the conditions set out in Article 79 of the United Nations Convention on the Law of the Sea;
- e. The freedom of communication shall 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;
- f. 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 the United Nations Convention on the Law of the Sea; and
- g. 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 certain exceptional rights embodied in the United Nations Convention on the Law of the Sea in respect of maritime casualties.

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The Tribunal's Awards, further information regarding the proceedings, and photographs of the public sitting as well as the hearings held in 2014 and 2016 are available on the PCA Case Repository (<https://pcacases.com/web/view/3>).

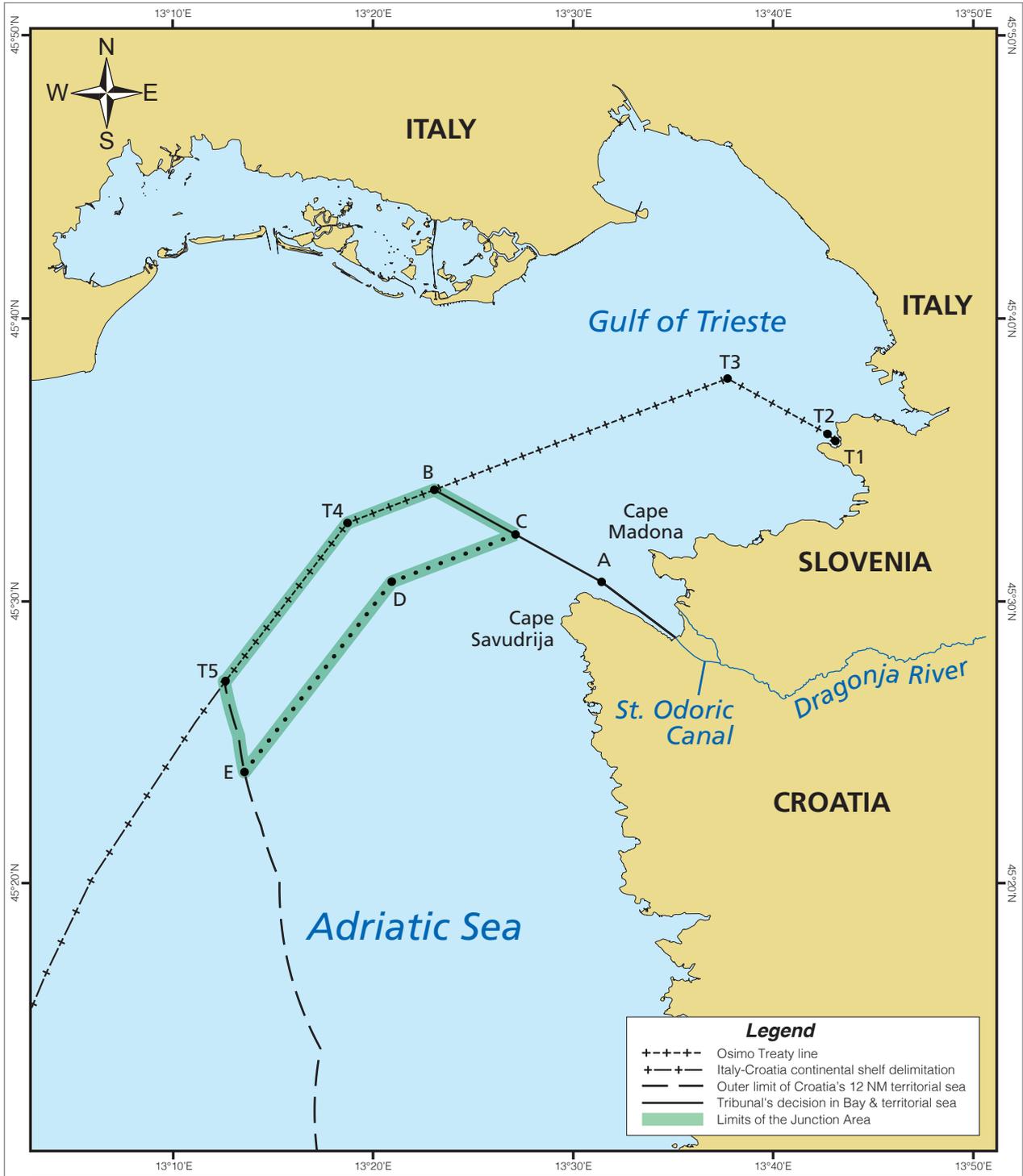
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Annex



<p><b>JUNCTION AREA</b></p> <p style="text-align: center;">Nautical Miles</p> <p style="text-align: center;">Kilometers</p> <p style="text-align: center;">Nominal Scale at Latitude 45°30'N - 1:400,000</p>	<p><b>Map VII</b></p>	<p>Projection / Datum: Mercator / ETRS89</p>
<p>Base map: © OpenStreetMap contributors. This map is for illustrative purposes only.</p>		