

Posebni sporazum

Vlada Republike Slovenije in Vlada Republike Hrvaške (v nadaljevanju posebnega sporazuma: pogodbenici),

izhajajoč iz dejstva, da sta pogodbenici sosednji državi, ki sta nastali z osamosvojitvijo ob razpadu nekdanje SFRJ na več novih držav,

izhajajoč iz dejstva, da sta pogodbenici samostojni in neodvisni državi ter skupaj z drugimi državami naslednicami enakopravni naslednici nekdanje SFRJ,

ugotavljajoč, da se je ob osamosvojitvi pogodbenic kot samostojnih in neodvisnih držav odprlo vprašanje določitve bočne meje morskih pasov med pogodbenicama, ki je med nekdanjima republikama v okviru enotnega teritorialnega morja in epikontinentalnega pasu SFRJ ni bilo, in natančnejše razmejitve poteka kopenske meje med pogodbenicama,

ugotavljajoč, da spora glede določitve bočne meje morskih pasov med pogodbenicama in natančnejše razmejitve poteka kopne meje med pogodbenicama, ki po nepotrebnem meče senco na sicer visoko razvite dobrososedske odnose in sodelovanje med pogodbenicama, pogodbenici doslej nista uspeli rešiti z diplomatskimi sredstvi in drugega reševanja mednarodnih sporov v skladu s tretjim odstavkom 2. člena in 33. členom Ustanovne listine OZN,

potrjuječ svojo privrženost načelu mirnega reševanja mednarodnih sporov in drugim načelom mednarodnega prava,

in v želji, da bi se ta spor dokončno razrešil v duhu prijateljskih odnosov in upoštevajoč dosedanje dogovore med pogodbenicama,

se pogodbenici dogovorita za predložitev spora glede določitve bočne meje morskih pasov med pogodbenicama in natančnejše razmejitve poteka kopne meje med pogodbenicama pred *Meddržavno sodišče v Haagu/Stalno arbitražno sodišče/ad-hoc arbitraža*, kot sledi

1. člen

Predložitev spora

varianta 1:

1. Pogodbenici se dogovorita, da bosta spor predložili Meddržavnemu sodišču v Haagu (v nadaljevanju sporazuma: Sodišče) v skladu s prvim odstavkom 36. člena Statuta Sodišča.

2. Pogodbenici se dogovorita, da v okviru Sodišča spor predložita senatu petih sodnikov na podlagi drugega odstavka 26. člena in 31. Statuta Sodišča. Z izrazom Sodišče se zato v nadaljevanju posebnega sporazuma razume (tudi) za senat.

varianta 2:

Pogodbenici se dogovorita, da bosta spor predložili v reševanje Stalnemu arbitražnemu sodišču.

varianta 3:

Pogodbenici se dogovorita, da bosta spor predložili v reševanje ad-hoc arbitraži.

2. člen

Predmet postopka

Pogodbenici pooblaščata *Sodišče/Stalno arbitražno sodišče/ad-hoc arbitražo*, da razsodi glede vsebinskih elementov spora v zvezi z določitvijo bočne meje morskih pasov med pogodbenicama in natančnejšo razmejitvijo poteka kopne meje med pogodbenicama, kot so opredeljeni v členu 3. posebnega sporazuma.

3. člen

Vsebinski elementi

Pogodbenici pooblaščata *Sodišče/Stalno arbitražno sodišče/ad-hoc arbitražo*, da za namen dokončne, pravno obvezujoče in celovite razrešitve spora:

1. na kopnem:

- odloči o suverenosti na območjih, ki so opredeljena v prilogi h posebnemu sporazumu;
- določi potek meddržavne meje med pogodbenicama na območjih, ki so opredeljena v prilogi h posebnemu sporazumu.

2. na morju:

- določi temeljno črto, od katere se meri širina morskih pasov;
- odloči o pravnem statusu voda Piranskega zaliva;
- določi bočno mejo teritorialnih morij pogodbenic;
- določi bočno mejo epikontinentalnih pasov pogodbenic;
- določi bočno mejo pasov izvajanja suverenih pravic pogodbenic.

4. člen

Presečni datum

1. Pogodbenici se dogovorita in pooblaščata *Sodišče/Stalno arbitražno sodišče/ad-hoc arbitražo*, da za ugotavljanje pravnega relevantnega dejanskega stanja glede obstoja in poteka meje ter izvrševanja državne suverenosti na kopnem in morju upošteva kritični datum 25. junij 1991.

2. Pogodbenici zato soglašata, da katerakoli kasnejša enostranska ravnanja ene ali druge pogodbenice na ali v zvezi z območji, ki so predmet spora, ne vplivajo na pravno relevantno dejansko stanje iz prvega odstavka tega člena.

5. člen

Postopek

varianta 1:

1. V okviru časovnih rokov določenih v drugem odstavku tega člena, postopek sestavljajo pisni memorandumi in ustne obravnave v skladu s 43. členom Statuta Sodišča.

2. Brez prejudica na kakršno koli vprašanje glede dokaznega bremena in upoštevajoč 46 člen Statuta Sodišča bodo pisne memoriale sestavljali:

(a) pisna memoriala, ki ju pogodbenici sočasno predložili najkasneje v 12 mesecih po notifikaciji tega posebnega sporazuma tajništvu Sodišča;

(b) pisni kontra-memorial, ki ga vsaka pogodbenica predloži najkasneje v 4 mesecih od dneva, ko prejme overjeno kopijo pisnega memoriala druge pogodbenice;

(c) pisni odgovor, ki ga vsaka pogodbenica predloži najkasneje v 4 mesecih od dneva, ko prejme overjeno kopijo pisnega kontra-memoriala druge pogodbenice;

(d) drugi pisni odgovori pogodbenic, če se pogodbenici tako sporazumeta ali če to zahteva Sodišče po uradni dolžnosti.

3. Pisne memoriale in druge dokumente pogodbenice iz drugega odstavka tega člena Registrar Sodišča posreduje drugi pogodbenici šele, ko je tudi z njene strani prejel odgovarjajoče dokumente.

4. Vrsti red ustnih nastopov pogodbenic na ustnih obravnavah določita pogodbenici sporazumno. V kolikor se pogodbenici o tem ne moreta sporazumeti, odloči o tem Sodišče. Vrstni red ustnih nastopov pogodbenic ne prejudicira katerega koli vprašanja glede dokaznega bremena.

varianta 2:

1. Postopek sestavljajo pisni memorandumi in ustne obravnave v skladu z dogovorom pogodbenic.
2. Vrstni red ustnih nastopov pogodbenic na ustnih obravnavah določita pogodbenici sporazumno. V kolikor se pogodbenici o tem ne moreta sporazumeti, odloči o tem Stalno arbitražno sodišče.

varianta 3:

1. Postopek sestavljajo pisni memorandumi in ustne obravnave v skladu z dogovorom pogodbenic.
2. Vrstni red ustnih nastopov pogodbenic na ustnih obravnavah določita pogodbenici sporazumno. V kolikor se pogodbenici o tem ne moreta sporazumeti, odloči o tem ad-hoc arbitražna.

6. člen

Materialna pravila

Pogodbenici pooblašata Sodišče/Stalno arbitražno sodišče/ad-hoc arbitražo, da o sporu razsodi prvenstveno na temelju drugega odstavka 38. člena Statuta Meddržavnega sodišča.

7. člen

Sodba

- (1) Pogodbenici bosta sprejeli sodbo, ki jo bo *Sodišče/Stalna arbitražno sodišče/ad-hoc arbitraža* izreklo v skladu s tem sporazumom, kot dokončno in pravno obvezujočo ter jo bosta izvršili v celoti in v dobri veri.
- (2) Pogodbenici bosta sprejeli ukrepe potrebne za izvršitev sodbe takoj po njeni razglasitvi.
- (3) V kolikor bi v zvezi z izvajanjem sodbe prišlo do nesporazuma med pogodbenicama, lahko vsaka od pogodbenic zaprosi *Sodišče/Stalna arbitražno sodišče/ad-hoc arbitražo* za dodatno odločbo glede modalitet izvajanja sodbe.

8. člen

Ratifikacija in uveljavitev posebnega sporazuma

1. Ta posebni sporazum pogodbenici ratificirata v skladu s svojima ustavnima redoma.
2. Posebni sporazum začne veljati z izmenjavo listin o ratifikaciji. Datum izmenjave listin bo določen po diplomatski poti.

9. člen

Notifikacija posebnega sporazuma

varianta 1:

V skladu s 40. členom Statuta Sodišča pogodbenici posebni sporazum po njegovi uveljavitvi sporočita Registrarju Sodišča s skupnim pismom.

varianta 2 in 3:

Člen se črta.

10. člen

Registracija posebnega sporazuma

Ta posebni sporazum bosta pogodbenici skupno ali vsaka posebej registrirali pri Sekretariatu Združenih narodov v skladu s 102. členom Ustanovne listine Združenih narodov.

11. člen

Priloga

Priloga h posebnemu sporazumu je neločljivi sestavni del sporazuma.

12. člen

Končne določbe

Posebni sporazum je sklenjen v štirih izvornikih v angleškem jeziku

Ta posebni sporazum podpišeta spodaj navedena pravilno pooblaščená predstavnika vlad obeh pogodbenic.

V/na.....dne2008.

za vlado Republike Slovenije

za vlado Republike Hrváške

.....
Minister za zunanje zadeve

.....
Minister za zunanje zadeve

Special Agreement

The Government of the Republic of Slovenia and the Government of the Republic of Croatia (hereinafter referred to as "the Parties"),

Deriving from the fact that the Parties are two neighbouring states that emerged as independent states following the dissolution of the former SFRY,

Deriving from the fact that the Parties are two independent and sovereign states and, together with other Successor States, equal successors to the former SFRY,

Noting that upon the Parties' independence and their becoming independent and sovereign states, the issue was raised of determining the lateral boundary between the maritime belts of the two Parties, which did not exist between the two former republics within the single territorial sea and continental shelf of the SFRY, and a more precise delimitation of the land border between the Parties,

Noting that the dispute regarding the determination of the lateral boundary between the maritime belts of the Parties and a more precise delimitation of the land border between them that unnecessarily discredits generally well-developed, good neighbourly relations and cooperation between the Parties could not be resolved by diplomatic means for a peaceful settlement of international disputes in compliance with Article 2, paragraph 3, and Article 33 of the Charter of the United Nations,

Affirming their commitment to a peaceful settlement of international disputes and other principles of international law,

Desirous of resolving this dispute in the spirit of friendly relations and considering the arrangements made so far between the Parties,

The Parties agree to submit the dispute regarding the determination of the lateral boundary between the maritime belts of the Parties and a more precise delimitation of the land border to

the *International Court of Justice in The Hague/Permanent Court of Arbitration/Ad-hoc Arbitration*, as follows:

Article 1

Submission of Dispute

Option 1:

1. The Parties agree to submit the dispute to the International Court of Justice in The Hague (hereinafter referred to as: the Court) under the provisions of Article 36, paragraph 1, of its Statute.

2. The Parties agree to submit the dispute to a Chamber of the Court, composed of five judges, pursuant to Article 26, paragraph 2, and Article 31 of the Statute of the Court. The term "the Court" hereinafter (also) refers to the Chamber.

Option 2:

The Parties agree to submit the dispute to the Permanent Court of Arbitration.

Option 3:

The Parties agree to submit the dispute to the Ad-hoc Arbitration.

Article 2

Subject of the Litigation

The Parties authorise the *Court/Permanent Court of Arbitration/Ad-hoc Arbitration* to adjudicate on the substantive elements of the dispute regarding the determination of the lateral boundary between the maritime belts of the two Parties and a more precise delimitation of the land border between the Parties, as defined in Article 3 of the Special Agreement.

Article 3

Substantive elements

For the purposes of a final, legally binding and comprehensive resolution of the dispute, the Parties authorise the *Court/Permanent Court of Arbitration/Ad-hoc Arbitration*:

1. On land:

- To decide on sovereignty in areas defined in the Annex to the Special Agreement;
- To decide on the course of the interstate border between the Parties in areas defined in the Annex to the Special Agreement;

2. At sea:

- To establish the baseline used for measuring the width of the maritime belts;
- To decide on the legal status of the Bay of Piran waters;
- To determine the lateral boundary of the respective territorial sea of either Party;
- To determine the lateral boundary of the respective continental shelf of either Party;
- To determine the lateral boundary of the belts within which sovereign rights of the Parties are exercised.

Article 4

Reference date

1. The Parties agree and authorise the *Court/Permanent Court of Arbitration/Ad-hoc Arbitration* to take into account the reference date of 25 June 1991 for the purposes of establishing a legally relevant factual situation as to the existence and course of the border and the exercise of state sovereignty on land and at sea.
2. The Parties therefore agree that any subsequent unilateral actions of either Party in or relating to the areas constituting the subject of the dispute shall not affect the legally relevant factual situation under paragraph 1 hereof.

Article 5

Procedure

Option 1:

1. Within the time limits under paragraph 2 hereof, the procedure shall consist of written memorials and oral hearings in accordance with Article 43 of the Statute of the Court.
2. Without prejudice to any question which may arise relating to the burden of proof and taking into account Article 46 of the Statute of the Court, written memorials shall consist of the following documents:
 - (a) A written memorial submitted by the Parties concurrently, no later than 12 months after the notification of the Special Agreement to the Registry of the Court;
 - (b) A written counter-memorial submitted by either Party no later than 4 months after the date of receipt of a certified copy of a written memorial produced by the other Party;
 - (c) A written reply submitted by either Party no later than 4 months after the date of receipt of a certified copy of a written counter-memorial produced by the other Party;
 - (d) A rejoinder, if the Parties so agree, or if the Court so requests *ex officio*.
3. Written memorials and other documents produced by the Party under paragraph 2 hereof shall be submitted by the Registrar to the other Party only after he has received relevant documents from the latter.
4. The question of the order of speaking at oral hearings shall be decided by mutual agreement between the Parties or, in the absence of that agreement, by the Court. In all cases, however, the order of speaking adopted shall be without prejudice to any question regarding the burden of proof.

Option 2:

1. *The procedure shall consist of written memorials and oral hearings in accordance with the agreement of the Parties.*
2. *The question of the order of speaking at oral hearings shall be decided by mutual agreement between the Parties or, in the absence of that agreement, by the Permanent Court of Arbitration.*

Option 3:

1. *The procedure shall consist of written memorials and oral hearings in accordance with the agreement of the Parties.*
2. *The question of the order of speaking at oral hearings shall be decided by mutual agreement between the Parties or, in the absence of that agreement, by the Ad-hoc Arbitration.*

Article 6

Applicable law

The Parties authorise the *Court/Permanent Court of Arbitration/Ad-hoc Arbitration* to rule on the dispute primarily on the basis of Article 38, paragraph 2 of the Statute of the International Court of Justice.

Article 7

Judgement

1. The Parties shall accept the judgement of the *Court/Permanent Court of Arbitration/Ad-hoc Arbitration* under this Agreement as final and binding upon them and shall execute it in its entirety and in good faith.
2. As soon as possible after the delivery of the judgement, the Parties shall take steps necessary to execute it.
3. If the Parties are unable to reach agreement regarding the execution of the judgement, either Party may request the *Court/Permanent Court of Arbitration/Ad-hoc Arbitration* to render an additional decision on the modalities for its execution.

Article 8

Ratification and entry into force of the Special Agreement

1. The Special Agreement shall be ratified by the Parties in compliance with their respective constitutional orders.
2. The Special Agreement shall enter into force through the exchange of instruments of ratification. The date of the exchange of instruments of ratification shall be agreed through diplomatic channels.

Article 9

Notification of the Special Agreement

Option 1:

In accordance with Article 40 of the Statute of the Court, the Special Agreement shall be notified to the Registrar of the Court by a joint letter from the Parties after its entry into force.

Option 2 and 3:

Article is deleted.

Article 10

Registration of the Special Agreement

The Special Agreement shall be registered by the Parties, jointly or separately, with the Secretariat of the United Nations pursuant to Article 102 of the Charter of the United Nations.

Article 11

Annex

The Annex to the Special Agreement shall be an integral part thereof.

Article 12

Final provisions

The Special Agreement shall be concluded in four originals in the English language.

The Special Agreement shall be signed by the designated duly authorized representatives of the governments of the Parties.

Done at _____ on _____ 2008.

For the Government of the
Republic of Slovenia

Minister of Foreign Affairs

For the Government of the
Republic of Croatia

Minister of Foreign Affairs