

THE BORDER AGREEMENT BETWEEN CROATIA AND BOSNIA-HERZEGOVINA:

THE FIRST BUT NOT THE LAST

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INTRODUCTION

Almost eight years after the Arbitration Commission of the International Conference on Yugoslavia, known as the Badinter Commission (after its President, French judge Robert Badinter) stated that Yugoslavia was “*in process of dissolution*”, the first boundary agreement between successor states has been reached. Its full title is: *Treaty on the State Border between the Republic of Croatia and Bosnia and Herzegovina*. The agreement was prepared by the joint boundary commission and was signed by the Croatian President Franjo Tudjman and Alija Izetbegovic, who is presently a member of the Presidency of Bosnia-Herzegovina. The agreement was signed on 30 July 1999 in Sarajevo, during the meeting of the Pact of Stability for Southeastern Europe.



INTER-STATE DIPLOMATIC COMMISSION

The agreement was prepared by the joint boundary commission, the *Inter-State Diplomatic Commission for Identification, Demarcation and Management of the State Border* (hereinafter Inter-State Diplomatic Commission), which started work in December 1998. The Commission's first meeting was held at Banja Luka, Bosnia-Herzegovina, with each country nominating six members. Bosnia-Herzegovina nominated its six members from their main body to deal with boundary related issues - the *Central Commission for Identification and Demarcation of the Border of Bosnia-Herzegovina*. Due to the multi-ethnic composition of the Bosnia-Herzegovina's population, each constitutive nation was represented by two members within the six-member delegation.

The delegation from the Republic of Croatia consisted of two representatives from the Ministry of Foreign Affairs, a representative from the Ministry of the Interior, a geodesist, a geographer, and a president, nominated by the Government as chief negotiator. The two presidents of the delegations became co-presidents of the Inter-State Diplomatic Commission.

By the end of July 1999, when the agreement was signed, the Inter-State Diplomatic Commission had held seven one-day meetings, in Zagreb and Sarajevo in rotation. Only the last meeting, when the agreement was finalised, consisted of several sessions and lasted for several days. Representatives from the *Office of the High Representative in Bosnia-Herzegovina*, an international body which looks after the implementation of the Dayton accords, participated regularly at the meetings and in the work of the Inter-State Diplomatic Commission and helped to reach the agreement, primarily by influencing the composite Bosnia-Herzegovina delegation to act as a homogenous body.

IDENTIFICATION OF THE BOUNDARY LINE

The work of the Inter-State Diplomatic Commission was regulated by the document, *Rules of the Procedure*, which was compiled and accepted at the beginning of negotiations. In order to resolve specific problems, the Inter-State Diplomatic Commission formed two expert groups which consisted partly of its members and partly of other experts for particular issues: the *Mixed Expert Group for Identification of the Border*, and the *Mixed Expert Group for Border Crossing Points*.

In Article 2 of the Treaty, it is stated that the agreement is:

...defined on the basis of the border situation at the time of the cessation of existence of SFR Yugoslavia in 1991 and, of the mutual recognition between Republic of Croatia and Republic of Bosnia-Herzegovina in 1992...

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The criteria by which the boundary is to be identified are also listed within the same article:

...as identified on the topographic map 1:25,000 and on the ground by means of the boundary between bordering cadastre municipalities, by means of the boundary between bordering settlements at the time of the 1991 census and by means of the division line which separated the exercise of authority in the Socialist Republic of Croatia and Socialist Republic of Bosnia and Herzegovina.

Those criteria were agreed upon at the beginning of the negotiations and were included in the Rules of Procedure. After agreeing on the criteria for the identification of the border line, the two sides exchanged maps with their interpretation of the delimitation, as seen from Croatia and Bosnia-Herzegovina respectively. Since they decided to work on topographic maps of a 1:25,000 scale, 86 sheets were needed to cover the entire border. The maps were exchanged in January 1999. A comparison between the border drawn initially by Croatia and Bosnia-Herzegovina was carried out by the Mixed Expert Group for Identification of the Border. This Expert Group held nine meetings and succeeded in eliminating all differences which had initially surfaced regarding the interpretation of the border line. For most of the border, no further discussion or insight into documentation was needed, and only a few border sections needed to be discussed in detail. The Expert Group also initiated and undertook joint one-day field work, with the goal of identifying precisely the position of the line at the top of the Pljesivica mountain near Bihac. There are military installations at the very top of the mountain, as part of the former Yugoslav Army airport system, as well as two television towers. Finally, the entire border was agreed upon and drawn on the 86 sheets of the 1:25,000

CONTENTS OF THE AGREEMENT

topographic map. The main source appeared to be cadastral documentation, which proved to be more precise and exact than either statistical sources (which were reliable for inhabited areas but almost useless where the boundary is located outside settlements), or any other evidence of state practice.

The full title of the agreement is the *Treaty on the State Border between the Republic of Croatia and Bosnia and Herzegovina*, consisting of a short preamble and 23 articles. In the preamble, the parties, besides sovereignty, territorial integrity and political independence, emphasised the “*provisions of the General Framework Agreement for Peace in Bosnia and Herzegovina, signed in Paris on 14 December 1995*”, (i.e. Dayton accords) as well as “*the Opinion no.3 of the Arbitration Commission of the Conference on Former Yugoslavia.*”

As referred to above, Article 2 defined the state border. 86 sheets of maps (1:25,000) were considered as an integral part of the agreement, because the course of that border was not described by the Treaty. It also stated that the Treaty should be supplemented by “*the List and Technical Background (situation plan, list of coordinates) of the changes in the course of the Border*”, and the “*List of coordinates of marked and designated turning points on the State Border.*” These two documents are yet to be prepared.

PROTESTS (1)

The border treaty caused protests in Republika Srpska. The objections related to a river island in the Una river lying between the towns of Hrvatska Kostajnica in Croatia and Bosanska Kostajnica in Bosnia-Herzegovina on opposite sides of the river. The island, including an old fortress sited on it, was confirmed as part of Croatia although it is divided from the Croatian bank by the main channel of the river. However, the island has in fact been effectively under the control of Republika Srpska since 1995.

During the negotiations, Bosnia-Herzegovina did not submit any evidence in support of a claim to the island and thus in legal terms throughout the course of the negotiations the island was not considered to be in dispute. Despite the fact that the island was accepted as Croatian at the negotiations stage, representatives of Republika Srpska objected to the treaty. It was claimed that the main channel of the Una should form the border on the grounds that in future the river may be used as a navigable waterway even though no such project has ever been seriously considered.

Taking into account the fact that a large portion of the border is on the Sava river, which is part of the Danube inland waterway, Article 4 proposed that:

...the State Border on the international navigable rivers with regulated navigable waterway shall extend along the cunette of the navigable waterway.

In the same article, the parties also agreed that the border line

...shall remain within the jointly defined coordinates, notwithstanding natural or artificial changes which may arise on the ground.

Consequently,

a change of the cunette of the waterway shall be approved by the authorised bodies of the Parties to the Treaty.

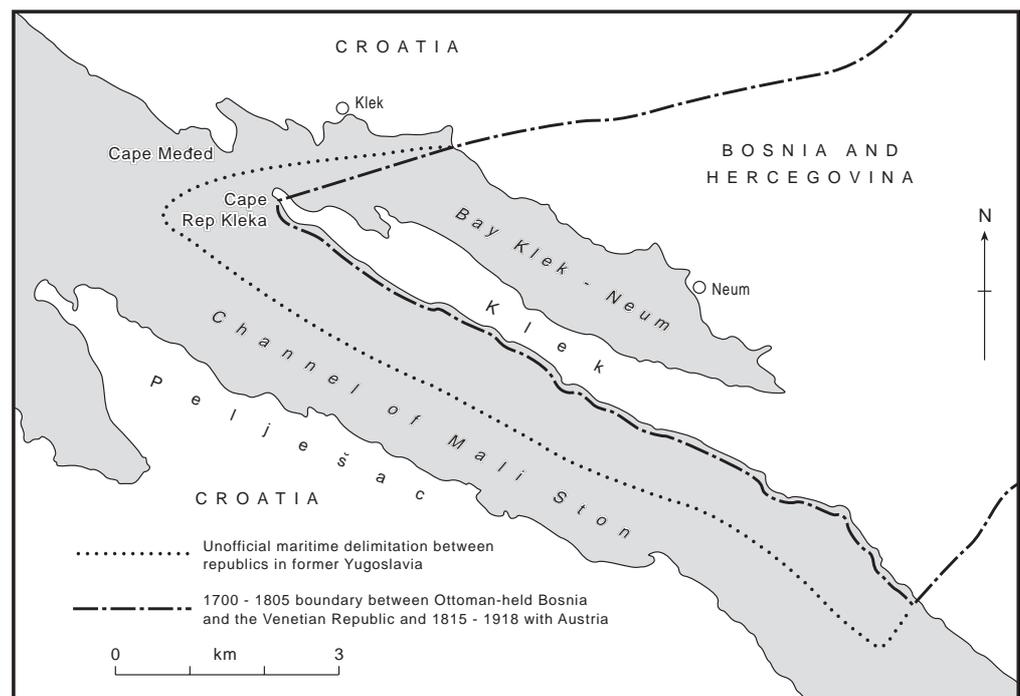
The same article also contains provisions regarding the maritime boundary which should divide a small portion of sea in front of the Bosnia-Herzegovina exit to the coast around the town of Neum. It states that:

...the State Border on the sea extends along median line between the land of the Republic of Croatia and of Bosnia and Herzegovina, in accordance with the 1982 UN Convention on the Law of the Sea.

PROTESTS (2)

The border treaty was also criticised by the Dubrovnik county assembly in relation to the borderline at the peninsula of Klek. The peninsula forms part of Bosnia-Herzegovina's narrow exit to the Adriatic coast. The very tip of peninsula has historically been part of the Republic of Dubrovnik, and should consequently be allocated to Croatia. Additionally, two islets in front of peninsula, which have always been part of the Croatian cadastral, are, according to the agreement, allocated to Bosnia-Herzegovina because the maritime border is drawn as the median line between the Peljesac peninsula (Croatia) and the Klek peninsula (Bosnia-Herzegovina). Being close to the Klek peninsula, the islets fall on the Bosnian side of the line. Since the basis of the agreement was the territorial *status quo* in 1991, the Dubrovnik authorities protested that the joint Commission did not have right to delimit a border departing from the 1991 situation.

In October 1999, the County of Dubrovnik published a book *Hrvatska granica na Kleku* (Croatian border at Klek), written by a group of local historians, which included detailed arguments on the development of the borderline in relation to disputed points. Following the protests from Dubrovnik, the Croatian government announced that anyone who is in possession of evidence which had not been considered during the negotiations should deliver it to the Commission.



However, although described in relatively simplistic way, the maritime delimitation between Croatia and Bosnia-Herzegovina is a peculiar one, because the territorial sea of Bosnia-Herzegovina will be encircled by the internal waters of Croatia. This strange situation is unique. Moreover, since Bosnia-Herzegovina does not have any port facilities on its strip of coast, all transportation will be directed to the nearest Croatian port of Ploče.¹

Article 3 left the door open for minor future changes of the border line

due to the aggravating living conditions of the part of population along the State Border, because of the course of the existing roads...

The Inter-State Diplomatic Commission, which is to continue its existence, will consider any changes and propose them to the responsible bodies – i.e. the respective governments and parliaments. The parties also agreed that the border will be demarcated and that once delimited, they will maintain the border in good visible condition. The costs of demarcation will be shared between the two states.

FUTURE ACTIVITIES

Apart from demarcation which is obviously a task for the future, as well as the completion of the existing agreement with the supplements mentioned above, the Inter-State Diplomatic Commission tasked itself in Article 12 with several other activities, including:

to carry out survey of Croatian-Bosnia and Herzegovina State Border,...to plan, organise and direct border works.

The Survey of the borderline should end with the entire border illustrated on a set of 1:5,000 maps. Presently, the border and areas close by are surveyed equally in Croatia and Bosnia-Herzegovina. However, there are differences within each state - while some parts have been surveyed by modern equipment in the 1970s or 1980s, other parts still rely on old surveys carried out in the 19th century by Austria-Hungary. These huge differences in accuracy caused some problems during the identification of the border, and the parties to the Treaty decided to undertake a joint survey of the border areas. Once transformed onto 1:5,000 scale, the border line might be altered at some points, compared to what is currently shown on the 1:25,000 maps, due to such a large difference in scale.

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The parties are aware that a great deal of work is still in front of them. However, the first step, probably the most sensitive one, has been done and everything which follows should represent the easier part of the job. The treaty was the first post-Yugoslav boundary agreement and all other similar agreements which will sooner or later inevitably follow will have to take into account the contents and principles applied. The agreement which was signed in July 1999 is not the final border document, however, it was necessary first step in order to create a tolerant atmosphere for further talks and to decrease tensions which occasionally surfaced along the border because of the imprecise location of the crossing points, check points or illegal movement of people. Moreover, surprisingly slow progress in the Croatia-Slovenia boundary negotiations was another warning which parties had in mind. With the existing agreement as a framework and encouraging basis, the rest of the work can be carried out with more confidence and tolerance.

The agreement itself at the time of writing has been accepted on a preliminary basis, and should be ratified by the parliaments of both countries. However, in Bosnia-Herzegovina the procedure is more complicated since the agreement has to be accepted primarily by the parliaments of the two entities (the Federation of Bosnia-Herzegovina and Republika Srpska), and only after that by the central parliament. At

the moment it has not been clarified whether ratification should be postponed until the border line is completely presented on 1:5,000 maps, or if the agreement should be the subject of parliamentary discussion in its current shape. In case it is ratified immediately, it is very likely that following completion of the 1:5,000 maps, further parliamentary discussion may be needed.

Mladen Klemencic is a political geographer based in Zagreb, Croatia and former fellow with the International Boundaries Research Unit.

¹ For details regarding Bosnia's access to the sea see: Blake, G. H., and Topalovic, *Maritime Boundaries of the Adriatic Sea*, Maritime Briefings, 1, 8, Durham: International Boundaries Research Unit.

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