

**HRVATSKI SABOR****KLASA: 021-12/17-18/154****URBROJ: 65-17-02****Zagreb, 21. travnja 2017.**

50 — VLADA REPUBLIKE HRVATSKE	
25-06-2017	
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**VLADI REPUBLIKE HRVATSKE**

*U prilogu dostavljam zastupničko pitanje Peđe Grbina, Joška Klisovića i mr. sc. Orsata Miljenića, zastupnika u Hrvatskom saboru, postavljeno sukladno članku 140. Poslovnika Hrvatskoga sabora.*

*Molim odgovorite na postavljeno zastupničko pitanje, sukladno odredbi članka 142. stavka 1. Poslovnika Hrvatskoga sabora, u roku od 30 dana od dana kada je pitanje dostavljeno.*

**PREDsjEDNIK**

REPUBLIKA HRVATSKA  
65. HRVATSKI SABOR  
ZAGREB, Trg Sv. Marka 6

**Peđa Grbin  
Joško Klisović  
Orsat Miljenić  
Zastupnici u  
Hrvatskom saboru**

Priml. no.	21-04-2017
Klasifikacijska oznaka	
021-12/14-18/153	65
Uradzbeni broj	Urađ.
6531-17-01	Vrij.

**Predsjedniku  
Hrvatskog sabora**

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**Predmet: zastupničko pitanje predsjedniku Vlade Republike Hrvatske**

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Poštovani g. predsjedniče,

kao zastupnici u Hrvatskom saboru, molimo Vas da temeljem čl. 131. i 140. Poslovnika Hrvatskog sabora, uputite ovo pitanje predsjedniku Vlade Republike Hrvatske, g. Andreju Plenkoviću:

„Poštovani g. predsjedniče,

dana 29. srpnja 2015. godine, Hrvatski je sabor na svojoj 18., izvanrednoj, sjednici jednoglasno usvojio Zaključak o obvezi Vlade Republike Hrvatske na pokretanje postupka o prestanku Sporazuma o arbitraži između Vlade Republike Hrvatske i Vlade Republike Slovenije potписанog 4. studenoga 2009., temeljem kojeg je Vlada Republike Hrvatske, a temeljem kojeg je Vlada Republike Hrvatske, sukladno odredbama Bečke konvencije o pravu međunarodnih ugovora pokrenula postupak prestanka Sporazuma o arbitraži sa Republikom Slovenijom.

U svjetlu pritisaka koje Republika Slovenija svakodnevno vrši prema Republici Hrvatskoj, uključujući i potpuno nedopustivo ponašanje vezano uz provedbu Uredbe (EU) 2017/458, a koji su vezani uz pokušaj da se Republiku Hrvatsku prinudi na provođenje arbitražne odluke temeljem Sporazuma o arbitraži sa Republikom Slovenijom, aktualiziralo se pitanje provođenja postupka prestanka tog Sporazuma, kao i radnji koje je Vlada Republike Hrvatske bila dužna provoditi kako bi se taj prestanak ostvario.

Imajući navedeno u vidu te imajući u vidu odredbe članka 65. Bečke konvencije o pravu međunarodnih ugovora, rokove koji su u njemu navedeni, kao i članka 33. Povelje Ujedinjenih naroda, molimo Vas da nas u najkraćem mogućem roku izvijestite:

- o koracima koji su poduzeti kako bi se poštovali rokovi i radnje predviđene u članku 65. Bečke konvencije o pravu međunarodnih ugovora, radnjama koje je Vlada Republike Hrvatske poduzela i rokove u kojima su te radnje provedene,

- o notifikacijama koje je Vlada Republike Hrvatske uputila Vladi Republike Slovenije, eventualnim odgovorima koje je zaprimila te posebno molimo da nam se dostave njihovi preslici (ukoliko nisu klasificirani kao tajni),
- o obraćanju Vijeću sigurnosti Ujedinjenih naroda, sukladno članku 33. Povelje Ujedinjenih naroda, kao i preslik tog obraćanja (ukoliko nije klasificiran kao tajan),
- o pokretanju eventualnih daljnjih postupaka sukladno članku 66. Bečke konvencije o pravu međunarodnih ugovora ili dostavljanju isprava iz članka 67. iste Konvencije.“

S poštovanjem,

u Zagrebu, dana 21. travnja 2017. godine

Pedja Grbin



Joško Klisović



Orsat Miljenić



**Klasa:**  
**Urbroj:**  
**Zagreb,**

**PREDsjEDNIKU HRVATSKOGA SABORA**

**Predmet:** Zastupničko pitanje Peđe Grbina, Joška Klisovića i mr. sc. Orsata Miljenića, u vezi s provođenjem postupka o prestanku Sporazuma o arbitraži između Vlade Republike Hrvatske i Vlade Republike Slovenije  
– odgovor Vlade

Zastupnici u Hrvatskome saboru, Peđa Grbin, Joško Klisović i mr. sc. Orsat Miljenić, postavili su, sukladno s člankom 140. Poslovnika Hrvatskoga sabora (Narodne novine, br. 81/13 i 113/16), zastupničko pitanje u vezi s provođenjem postupka o prestanku Sporazuma o arbitraži između Vlade Republike Hrvatske i Vlade Republike Slovenije.

Na navedeno zastupničko pitanje, Vlada Republike Hrvatske daje sljedeći odgovor:

U skladu s jednoglasnom odlukom Hrvatskoga sabora od 29. srpnja 2015. godine, 30. srpnja 2015. godine pokrenut je postupak prestanka Sporazuma o arbitraži između Vlade Republike Hrvatske i Vlade Republike Slovenije iz 2009. godine i suspendirana je njegova primjena. Razlozi za takvu odluku dobro su poznati: protupravnim djelovanjem Republike Slovenije arbitražni postupak koji se vodio pred Arbitražnim sudom nepopravljivo je kompromitiran i korumpiran, u potpunosti je izgubio vjerodostojnost te, kao takav, ne može rezultirati rješenjem graničnog spora. U tom se smislu, Republika Hrvatska neće smatrati vezanom arbitražnom odlukom donesenom u okviru takvog postupka te je neće niti prihvatiti niti primjeniti.

Nadalje, što se tiče mjera poduzetih s ciljem prestanka Sporazuma o arbitraži, Republika Hrvatska je u potpunosti slijedila postupak predviđen mjerodavnim odredbama Bečke konvencije o pravu međunarodnih ugovora u slučaju bitnih povreda dvostranog međunarodnog ugovora. Tako je, postupivši prema mjerodavnim odredbama Bečke konvencije o pravu međunarodnih ugovora, Ministarstvo vanjskih i europskih poslova u skladu s člankom 65. stavkom 1. Bečke konvencije o pravu međunarodnih ugovora, 30. srpnja 2015. godine uputilo slovenskoj strani diplomatsku obavijest (notu) kojom je notificiralo zahtjev za prestankom Sporazuma o arbitraži i izvijestilo o suspenziji njegove primjene (diplomska nota broj 3303/2015, od 30. srpnja 2015. godine, koja je priložena uz ovaj

odgovor). O navedenom je Republika Hrvatska izvijestila glavnog tajnika Ujedinjenih naroda u svojstvu depozitara Sporazuma o arbitraži (diplomatska nota broj 137/2015, od 30. srpnja 2015. godine, koja je priložena uz ovaj odgovor), te Arbitražni sud (pismo ministrici Vesne Pusić, od 31. srpnja 2015. godine tajniku Arbitražnog suda, koje je priloženo uz ovaj odgovor).

Ministarstvo vanjskih poslova Republike Slovenije je 5. kolovoza 2015. godine uputilo svoj prigovor toj hrvatskoj notifikaciji (diplomatska nota Ministarstva vanjskih poslova Republike Slovenije, od 5. kolovoza 2015. godine, koja je priložena uz ovaj odgovor), čime je aktiviran članak 65. stavak 3. Bečke konvencije o pravu međunarodnih ugovora koji Republiku Hrvatsku i Republiku Sloveniju upućuje da spor o prestanku Sporazuma o arbitraži rješavaju sredstvima mirnog rješavanja sporova određenim u članku 33. Povelje Ujedinjenih naroda (pregovorima, posredovanjem, mirenjem, (novom) arbitražom, postupkom pred Međunarodnim sudom u Haagu ili pomoću nekog drugog zajednički dogovorenog sredstva mirnog rješavanja spora). Treba napomenuti da članak 65. stavak 3. Bečke konvencije o pravu međunarodnih ugovora izrijekom ne određuje rokove za postupanje, odnosno pokretanje postupka mirnog rješenja spora. U tom kontekstu također valja napomenuti kako se slovenska strana u proteklom razdoblju nije odazivala na opetovane pozive hrvatske strane za započinjanjem dijaloga radi rješavanja nastale situacije.

Istodobno, u skladu s člankom 66. (1)(b) Bečke konvencije o pravu međunarodnih ugovora, protekom roka od jedne godine od obavijesti jedne stranke dvostranog sporazuma drugoj o zahtjevu za prestanak ili suspenziju međunarodnog ugovora, za stranke se otvara mogućnost upućivanja odgovarajućeg zahtjeva glavnom tajniku Ujedinjenih naroda za pokretanje postupka (obvezatnog) mirenja pod okriljem Ujedinjenih naroda, razrađenog u Prilogu Bečke konvencije o pravu međunarodnih ugovora. Za taj postupak vrijedi pravilo da ako stranke u sporu same ne postignu sporazum o tome, isti ne završava obvezujućom odlukom, nego neobvezujućim preporukama strankama. Mogućnost korištenja ovog mehanizma nije vremenski ograničena i hrvatska ga strana (za sada) nije pokrenula.

U međuvremenu je Republika Hrvatska, uz predstavljanje svojih stajališta vezano za kompromitirani arbitražni postupak u okviru redovitih diplomatskih aktivnosti, o svojim stajalištima izvijestila i sve članice Ujedinjenih naroda diplomatskom notom broj 55/2016, od 16. ožujka 2016. godine, a koja je priložena uz ovaj odgovor. Također, kako bi javnosti omogućila uvid u navedena stajališta te u faktografiju i kronologiju događaja, Ministarstvo vanjskih i europskih poslova izradilo je internetsku stranicu <http://www.mvep.hr/hr/ostalo/prestanak-arbitraznog-postupka/>.

Na kraju, vrijedi napomenuti kako je Arbitražni sud krajem ožujka 2017. godine najavio donošenje odluke i njezinu skoru objavu u nadolazećim mjesecima. Stajalište Republike Hrvatske u odnosu na takvu odluku je dobro poznato, štoviše određeno je u naprijed spomenutom Zaključku Hrvatskog sabora, od 29. srpnja 2015. godine i provedbenoj Odluci Vlade Republike Hrvatske, od 30. srpnja 2015. godine kako je to navedeno u stavku prvom ovoga odgovora. Konačno, treba naglasiti kako je, sukladno međunarodnom pravu, provedba neke arbitražne odluke u potpunosti prepuštena strankama u tom sporu, a moguća primjena sile ili prijetnja silom u provedbi te odluke, najstrože je zabranjena Poveljom Ujedinjenih naroda.

Eventualno potrebna dodatna obrazloženja u vezi s pitanjem zastupnika, dat će Davor Ivo Stier, potpredsjednik Vlade Republike Hrvatske i ministar vanjskih i europskih poslova.

Priloga: 5

**PREDsjEDNIK**

mr. sc. Andrej Plenković

REPUBLIC OF CROATIA  
MINISTRY OF FOREIGN  
AND EUROPEAN AFFAIRS

**Note No. 3303/2015**

The Ministry of Foreign and European Affairs of the Republic of Croatia presents its compliments to the Ministry of Foreign Affairs of the Republic of Slovenia and has the honour to notify the following:

The Republic of Croatia considers that it is entitled to terminate the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia (signed on 4 November 2009 and entered into force on 29 November 2010). In accordance with Article 60, paragraph 1 of the Vienna Convention on the Law of Treaties, the Republic of Croatia considers that the Republic of Slovenia has engaged in one or more material breaches of the Arbitration Agreement. The Republic of Croatia hereby provides the notification pursuant to Article 65, paragraph 1 of the Vienna Convention that it proposes to terminate forthwith the Arbitration Agreement.

This notification is made pursuant to the *Ruling of the Croatian Parliament on the obligation of the Government of the Republic of Croatia to begin the procedure of termination of the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia signed on 4 November 2009*, of 29 July 2015 and in accordance with the *Decision of the Government of the Republic of Croatia to begin the procedure of termination of the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia because of its breach*, of 30 July 2015.

By violating one or more provisions that are “essential to the accomplishment of the object or purpose of the [Arbitration Agreement], the Republic of Slovenia has materially breached the Arbitration Agreement within the meaning of Article 60, paragraph 3 of the Vienna Convention. The acts giving rise to the violations are evidenced in the actions recorded in publicly available conversations between the Agent of Slovenia, for which the Republic of Slovenia is internationally responsible, and the arbitrator appointed by Slovenia. These conversations record blatant, systematic and repeated violations of the most fundamental principles of arbitral procedure, including procedural fairness, due process, equality of arms and independence. As a result of the actions of the Republic of Slovenia, the impartiality and integrity of the arbitral proceedings have been irrevocably damaged, giving rise to a manifest violation of the rights of Croatia.

The actions for which Slovenia is internationally responsible have violated *inter alia* Article 6 of the Arbitration Agreement, by violating the agreed procedure and rules of confidentiality and Article 10 of the Arbitration Agreement, which obliges the parties to “refrain from any action or statement which might .... jeopardize the work of the Arbitral Tribunal”.

MINISTRY OF FOREIGN AFFAIRS  
OF THE REPUBLIC OF SLOVENIA  
*Ljubljana*

These provisions are essential to the accomplishment of the object and purpose of the Arbitration Agreement. The illegal and unethical activities of the Agent of Slovenia and the arbitrator appointed by Slovenia have corrupted the entire procedure, by seeking to integrate additional “evidence” and “arguments” after the close of the written proceedings and hearings. Publicly available material establishes that documents were given to an arbitrator by the Agent of Slovenia after the closure of the public proceedings, and were presented by that arbitrator to other arbitrators and the secretariat of the PCA as his own, or were inserted into the official record as a result of these actions by the Tribunal's secretariat. Such actions violate the most fundamental and basic tenets of fairness and integrity in international legal proceedings of this kind. As a result of these acts it is no longer possible to distinguish between evidence and material which is properly part of the official record, and evidence introduced by illicit, unlawful and unethical means.

As a consequence, the entire arbitral process has been tainted and compromised, such that the mechanisms available within the Arbitration Agreement and means at the disposal of the Arbitration Tribunal cannot repair the far-reaching and irreversible damage that has been done. The irreparable harm that has been done to the factual record before the Arbitral Tribunal precludes the Tribunal from accomplishing its main tasks, as provided for in Articles 3 and 4 of the Arbitration Agreement.

Principles of fairness and integrity having been violated, irreparable harm has been done to the legitimacy and prospects of the process. In the absence of any possibility that the arbitral process will now be seen to be fair and proper, and to meet all applicable standards, the object and purpose of the Arbitration Agreement cannot be accomplished.

Taking all this in account, Ministry of Foreign and European Affairs of the Republic of Croatia has the honor to notify its entitlement to propose the termination of the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia, signed on 4 November 2009 and entered into force on 29 November 2010.

The Ministry of Foreign and European Affairs of the Republic of Croatia also notifies the Republic of Slovenia that from the date of this note the Republic of Croatia ceases to apply the Arbitration Agreement.

The Ministry of Foreign and European Affairs of the Republic of Croatia shall communicate this notification to the Secretary – General of the United Nations in his capacity as the depositary of the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia, signed on 4 November 2009 and entered into force on 29 November 2010.

The Ministry of Foreign and European Affairs of the Republic of Croatia avails itself of this opportunity to renew to the Ministry of Foreign Affairs of the Republic of Slovenia the assurances of its highest consideration.





PERMANENT MISSION OF THE REPUBLIC OF CROATIA TO THE UNITED NATIONS

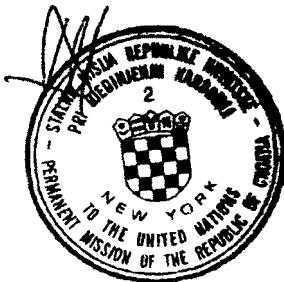
820 Second Avenue, 19<sup>th</sup> Floor  
New York, N.Y. 10017 USA

Tel: (212) 986-1585  
Fax: (212) 986-2011

No. 137/2015

The Permanent Mission of the Republic of Croatia to the United Nations presents its compliments to the Secretary-General of the United Nations in his capacity as the Depositary of the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia, signed on 4 November 2009 and entered into force on 29 November 2010, and has the honour to transmit herewith Note Verbale No. 3303/2015 of the Ministry of Foreign and European Affairs of the Republic of Croatia of 30 July 2015, by which the Government of the Republic of Croatia has notified the other Party of its intention to terminate the said Agreement in accordance with Article 65 paragraph 1 of the Vienna Convention on the Law of Treaties.

The Permanent Mission of the Republic of Croatia to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.



New York, 30 July 2015

**H.E. Mr Ban Ki-moon**  
**Secretary-General of the United Nations**  
**New York**



*Republic of Croatia  
Ministry of Foreign and European Affairs  
First Deputy Prime Minister and  
Minister*

Mr Dirk Pulkowski  
Registrar of the Arbitral Tribunal established  
between the Republic of Croatia and the Republic of Slovenia  
PCA, The Hague

Zagreb, 31 July 2015

Dear Mr Pulkowski

I write to you following my previous letter dated 24 July 2015, regarding the arbitration proceedings between the Republic of Croatia and the Republic of Slovenia, with respect to actions of the former Slovenian Agent and the former Member of the Tribunal appointed by Slovenia.

Since my previous letter, and upon thorough examination of the available evidence, the Government of the Republic of Croatia concluded that the arbitration process has been totally and irreversibly compromised. In the view of Croatia, arbitral proceedings cannot produce an impartial decision, notwithstanding the nomination of a replacement Member of the Tribunal. Croatia considers itself bound to express its surprise that the person appointed appears to be the “appointing authority” within the meaning of Article 12(1)(b) of the PCA Optional Rules for Arbitrating Disputes between Two States: see Article 2(1) of the Arbitration Agreement.

The official record of the entire arbitration has been contaminated, for reasons set out in my previous letter. There is no tool available for repairing the damage that has been occasioned to the proceedings and the Arbitration Agreement. The official records appear to have been corrupted by unlawful and unethical submissions by one of the Parties after the close of written proceedings and hearings, and no reasonable person would conclude that the actions that have occurred may not have influenced other actors in the arbitration process.

The arbitration process as a whole has been compromised to such an extent that Croatia is confident that the arbitration process cannot continue in this or any similar form. Croatia has entered into the arbitration process *bona fide* and with full confidence in the work of the Arbitral Tribunal, its Members and technical staff. This confidence was violated to the level that Croatia cannot further continue the process in good faith.

On 29 July 2015, the Croatian Parliament considered this situation and reached the conclusion that the arbitration process has been totally and irreversibly compromised. By its unanimous decision, it instructed the Government to initiate the termination of the Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia signed on 4 November 2009. Yesterday, the Government undertook several decisions to this end.

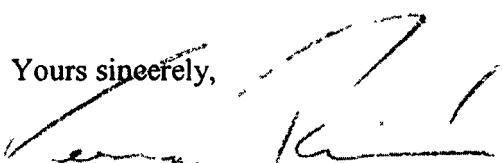
In accordance with the relevant provisions of the Vienna Convention on the Law of Treaties, the Government informed the other Signatory to the Agreement of its intention to terminate this Agreement, notifying at the same time that as of the date of the notification it ceased to apply the Arbitration Agreement. The Secretary-General of the United Nations, in his capacity of the depositary of the Agreement, has equally been informed.

Having acted to terminate the Arbitration Agreement, the procedure to be followed next will be governed by Article 65 of the Vienna Convention. In this regard, Croatia is bound to point out that the Arbitration Agreement contains no provision with regard to the settlement of disputes arising in relation to the validity and effect of the Arbitration Agreement and the Tribunal is without competence to express any views as to the requirements for the termination of the Arbitration Agreement. In the event that Slovenia objects to the termination, Article 65(3) of the Vienna Convention provides that the parties shall "seek a solution through the means indicated in article 33 of the Charter of the United Nations".

I would also like to take this opportunity to inform you that the Government of the Republic of Croatia relieved Maja Seršić and Andreja Metelko-Zgombić of their respective duties as Agent and Co-Agent of the Republic of Croatia in the arbitration proceedings before the Arbitral Tribunal. Counsels and assistants have also been relieved of their engagement in the case.

I would ask that further communication, if needed, is addressed by the Tribunal to the Ministry of Foreign and European Affairs of the Republic of Croatia.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Vesna Pusić'.

Vesna Pusić



REPUBLIC OF SLOVENIA  
MINISTRY OF FOREIGN AFFAIRS  
OF THE REPUBLIC OF SLOVENIA

No.: 170/09

The Ministry of Foreign Affairs of the Republic of Slovenia present its compliments to the Ministry of Foreign and European Affairs of the Republic of Croatia has the honour to refer to its Note No. 3303/2015 dated 30 July 2015 in which the latter Ministry purported to notify “its entitlement to propose the termination of the Arbitration Agreement”.

The Ministry of Foreign Affairs of the Republic of Slovenia hereby informs Croatia that it objects to this notification. The Arbitration Agreement remains in force between the two Parties.

The above is entirely without prejudice to Slovenia’s position on the correct procedures to be followed in the present circumstances. In that connection, the Ministry recalls the recent correspondence with the Permanent Court of Arbitration.

The Ministry of Foreign Affairs of the Republic of Slovenia avails itself of this opportunity to renew to the Ministry of Foreign and European Affairs of the Republic of Croatia the assurances of its highest consideration. 

Ljubljana, 5 August 2015



**Ministry of Foreign and European Affairs  
of the Republic of Croatia**

**Zagreb**



**PERMANENT MISSION OF THE REPUBLIC OF CROATIA TO THE UNITED NATIONS**

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No. 55/2016

The Permanent Mission of the Republic of Croatia to the United Nations presents its compliments to the Permanent Missions and Permanent Observer Missions accredited to the United Nations and with reference to the arbitration between Croatia and Slovenia to resolve the two states' territorial and maritime border dispute at an *ad hoc* Arbitral Tribunal, has the honour to state the following position of the Croatian Government:

By its actions, the Republic of Slovenia has caused irreparable harm to the arbitration process and the work of the Arbitral Tribunal, committing at the same time material breach of the Arbitration Agreement. The Republic of Croatia, in order to protect its legitimate interests and rights, reacted to the breach by ceasing to apply the Arbitration Agreement and initiating its termination. The Republic of Croatia expects that the Arbitral Tribunal terminates its work without delay and expresses its willingness to work with the Republic of Slovenia in the spirit of good neighbourly relations to resolve the matter in accordance with international law.

The Arbitration Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia was signed on 4 November 2009. It entered into force on 29 November 2010. Following the appointment of the President of the Arbitral Tribunal and its members, the two States submitted three rounds of written pleadings – on 11 February 2013, 11 November 2013 and on 26 March 2014. Oral hearings were held in The Hague from 2 to 13 June 2014.

Throughout the proceedings Croatia has acted in good faith in carrying out and respecting all obligations under the Arbitration Agreement. Croatia invested significant resources to ensure that the proceedings would succeed and bring about a final determination of the state border between the two States. On the other hand, Slovenia has clearly breached the provisions of the Arbitration Agreement and undermined the role, the trustworthiness and the authority of the Arbitral Tribunal. Slovenia has irrevocably corrupted the proceedings and the sound administration of justice. As a result, the process has been fundamentally tainted and no award issued under these legally and ethically completely compromised proceedings could be considered as effective, authoritative or credible.

**Permanent Missions and Permanent Observer Missions  
to the United Nations  
New York**

This first indication of Slovenia's regrettable actions came as early as in February 2013, when the Slovenian Parliament, in authorising Slovenia's first written submission in the arbitration, adopted a public decision with the effect that Slovenia would not recognize an award that did not meet its expectations. (In express terms, Slovenia's parliamentary decision stated that Slovenia "will consider any decision of the (...) Tribunal that would not ensure [its] territorial contact (...) with the High Seas (...) as a decision ultra vires (in violation of the mandate of the Arbitral Tribunal).") This decision, while indicative of Slovenia's further intentions, was for all intents and purposes a negation of the Arbitration Agreement.

In April 2015, following reports throughout the Slovenian media that Slovenia had "unofficial" information about the Tribunal's award and that it had communicated certain messages to the Tribunal, which were not found in the official verbatim of the proceedings, Croatia approached the Arbitral Tribunal and informed it of its concerns that Slovenia might have a "separate channel" of communication with the Tribunal. The Tribunal investigated the matter and assured Croatia that there were no reasons for concern.

In July 2015, in manifest contradiction with those assurances, recordings of telephone conversations between a member of the Arbitral Tribunal and the Agent of Slovenia were made public. Transcripts of recordings plainly revealed that confidential information about the Tribunal's deliberations had been disclosed to Slovenia and that Slovenia had been continuously and meticulously informed about internal deliberations of the Arbitral Tribunal. Further, the transcripts and recordings demonstrated that the Member of the Tribunal had requested the production of additional arguments and evidence from the Agent of Slovenia, that Slovenia had provided such arguments and evidence, and that these were then made available to the Tribunal. In this way, the factual record of the case was changed well after the closing of the oral hearings. The Member of the Tribunal and the Agent of Slovenia also colluded to conceal the true source of these documents and the Member of the Tribunal presented to the Arbitral Tribunal these documents, prepared by the Slovenian side, as being produced by himself, thus including them into the official records of the proceedings.

Slovenia has neither denied, nor challenged acts revealed by these recordings.

These actions have irrevocably tainted and irreparably damaged the entire process. It is impossible to conclude that the arbitrators have not been influenced by Slovenia's actions and by materials made available to them through the actions of the arbitrator serving as a conduit for Slovenia. The grave wrong that has occurred cannot be repaired by tinkering with the procedure, or merely replacing one or two arbitrators. The entire process has been profoundly and irreversibly corrupted and stripped of basic credibility and integrity required for third party dispute settlement.

Such conduct amounts to a repudiation of the Arbitration Agreement, and a rejection of the most fundamental principles that govern the integrity of international proceedings such as this. Under international law, these acts, including those of the Agent of Slovenia, are directly attributable to Slovenia. In accordance with the Vienna Convention on the Law of Treaties, they constitute material breach of a treaty, entitling Croatia to seek its termination and suspend its operation.

Accordingly, and to protect its rights under international law, subsequent to a unanimous decision of the Croatian Parliament, on 30 July 2015 Croatia initiated the procedure to terminate the Arbitration Agreement, ceased to apply it and withdrew from the arbitration process. Slovenia objected and the question of termination of the Arbitration Agreement is to be resolved bilaterally “through the means indicated in article 33 of the Charter of the United Nations”, as foreseen by the Vienna Convention on the Law of Treaties. The Convention also avails Croatia of another mechanism, i.e. conciliation, to resolve the question of termination of the Arbitration Agreement. Nevertheless, the Vienna Convention on the Law of Treaties does not provide a role for the Arbitral Tribunal in this process.

As for the arbitration process itself, Croatia submits that – to assure the sound administration of justice, and for legal and ethical reasons – the Arbitral Tribunal should terminate its work with immediate effect. An international adjudicatory process as tainted and compromised as this cannot reasonably continue in any form. Any award it might give would lack essential authority, and propel the parties to an interminable dispute. Such an award could never be implemented, or enforced. Consequently, any effort to continue this arbitration would be futile and counterproductive.

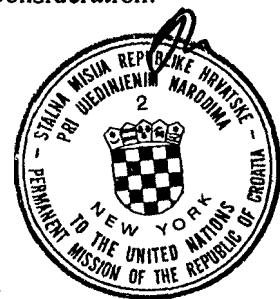
Immediate termination of these compromised proceedings is of paramount importance for peaceful settlement of disputes between states and the system of international adjudication as a whole, as it is for the bilateral relations between Croatia and Slovenia. It also has the potential of reassuring the many states with unresolved bilateral issues – in Southeast Europe and elsewhere – that their disputes shall indeed be resolved competently, independently and impartially, thus reaffirming their confidence in international adjudication that meets all appropriate legal and ethical standards. The adverse consequences of Slovenia’s actions are widely recognised. In this context, Croatia notes that the prompt resignation of the President of the International Court of Justice (ICJ) from this Arbitral Tribunal confirms its concerns. The President of the ICJ, after initially accepting appointment by Slovenia to replace the Member of the Tribunal directly involved in the wrongdoing with the Agent of Slovenia – resigned on 3 August 2015, having served on the Tribunal for just six days. In resigning, he stated that he “agreed to be appointed to the Arbitral Tribunal (...) in the hope that this appointment would help restore confidence between the Parties and the Arbitral Tribunal and to allow the process to continue normally, with the consent of both Parties”, but decided to resign when he came to appreciate that “the current situation cannot meet that expectation”.

In December 2015, the Arbitral Tribunal requested further written submissions from the two States on the most recent developments and scheduled an additional oral hearing for 17 March 2016. Since Croatia withdrew from the proceedings, it did not formally react to these communiqués: it will not do so, and will not participate in the oral hearing. The Arbitral Tribunal is aware of Croatia's position. At the time when it initiated the termination of the Arbitration Agreement and ceased to apply it, Croatia provided the Tribunal with all the relevant information on the recent events, allowing it to decide on the termination of its work.

This arbitration cannot resolve the outstanding border issue between the two States. Croatia has invited Slovenia to discuss other modalities to settle the outstanding border issues in accordance with international law and in the spirit of good neighbourly relations stands ready to resolve the matter bilaterally, as many states have done so far, or refer it to a different international judicial body.

In the meantime, the border between the two States has existed as an international border for twenty-five years and normal everyday life of people living on both sides of the border functions well, with full local border cooperation. At sea, pursuant to the International Maritime Organization's navigational routes in the Northern Adriatic, all vessels enjoy unimpeded access to and from Slovenian ports, which register continuous rise in passenger and cargo throughput. The two States are members of the European Union and NATO. Therefore, there exist no pressing obstacles which should prevent the two States from creating conditions for a constructive exchange on the way forward, leaving behind a failed arbitration process which endangers their bilateral relations and the confidence of States in international adjudication.

The Permanent Mission of the Republic of Croatia to the United Nations avails itself of this opportunity to renew to the Permanent Missions and Permanent Observer Missions accredited to the United Nations the assurances of its highest consideration.



New York, 16 March 2016