

Conference on Yugoslavia Arbitration Commission - Opinion No 2  
Paris  
11 January 1992

On 20 November 1991 the Chairman of the Arbitration Commission received a letter from Lord Carrington, Chairman of the Conference in Yugoslavia, requesting the Commission's opinion on the following question put by the Republic of Serbia:

"Does the Serbian population in Croatia and Bosnia and Herzegovina, as one of the constituent peoples of Yugoslavia, have the rights to self-determination?"

The Commission took note of the aide-mémoires, observations and other materials submitted by the Republics of Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Slovenia and Serbia, by the Presidency of the Socialist Federal Republic of Yugoslavia (SFRY) and by the "Assembly of the Serbian People of Bosnia-Herzegovina".

1. The Commission considers that international law as it currently stands does not spell out all the implications of the right to self-determination.

However, it is well established that, whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the States concerned agree otherwise.

2. Where there are one or more groups within a State constituting one or more ethnic, religious or language communities, they have the right to recognition of their identity under international law.

As the Commission emphasized in its Opinion No 1 of 29 November 1991, published on 7 December, the - now peremptory - norms of international law require States to ensure respect for the rights of minorities. This requirement applies to all the republics vis-à-vis the minorities on their territory.

The Serbian population in Bosnia and Herzegovina and Croatia must therefore be afforded every right accorded to minorities under international conventions as well as national and international guarantees consistent with the principle of international law and the provisions of Chapter II of the draft Convention of 4 November 1991, which has been accepted by these Republics.

3. Article 1 of the two 1966 International Covenants on human rights establishes that the principles of the right to self-determination serves to safeguard human rights. By virtue of that right every individual may choose to belong to whatever ethnic, religious or language community he or she wishes.

In the Commission's view one possible consequence of this principle might be for the members of the Serbian population in Bosnia and Herzegovina and Croatia to be recognized under agreements between the Republics as having the nationality of their choice, with all the rights and obligations which that entails with respect to the States concerned.

4. The Arbitration Commission is therefore of the opinion:

(i) that the Serbian population in Bosnia-Herzegovina and Croatia is entitled to all the rights accorded to minorities and ethnic groups under international law and under the provisions of the draft Convention of the Conference on Yugoslavia of 4 November 1991, to which the Republics of Bosnia and Herzegovina and Croatia have undertaken to give effect; and

(ii) that the Republics must afford the members of those minorities and ethnic groups all the human rights and fundamental freedoms recognized in international law, including, where appropriate, the right to choose their nationality.

(signed)

R. Badinter