

Conference on Yugoslavia Arbitration Commission - Opinion No 3
Paris
11 January 1992

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

"Can the internal boundaries between Croatia and Serbia and between Bosnia and Herzegovina and Serbia be regarded as frontiers in terms of public international law?"

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 and Herzegovina".

1. In its Opinion No 1 of 29 November 1991, published on 7 December, the Commission found that "the Socialist Federal Republic of Yugoslavia is in the process of breaking up". Bearing in mind that the Republics of Croatia and Bosnia-Herzegovina, inter alia, have sought international recognition as independent States, the Commission is mindful of the fact that its answer to the question before it will necessarily be given in the context of a fluid and changing situation and must therefore be founded on the principles and rules of public international law.

2. The Commission therefore takes the view that once the process in the SFRY leads to the creation of one or more independent States, the issue of frontiers, in particular those of the Republics referred to in the question before it, must be resolved in accordance with the following principles:

First - All external frontiers must be respected in line with the principle stated in the United Nations Charter, in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)) and in the Helsinki Final Act, a principle which also underlies Article 11 of the Vienna Convention of 23 August 1978 on the Succession of States in Respect of Treaties.

Second - The boundaries between Croatia and Serbia, between Bosnia-Herzegovina and Serbia, and possibly between other adjacent independent States may not be altered except by agreement freely arrived at.

Third - Except where otherwise agreed, the former boundaries become frontiers protected by international law. This conclusion follows from the principles of respect for the territorial status quo and, in particular, from the principle of *uti possidetis*. *Uti possidetis* though initially applied in settling decolonization issues in America and Africa, is today recognized as a general principle, as stated by the International Court of Justice in its Judgment of 22 December 1986 in the case between Burkina Faso and Mali (Frontiers Dispute [1986] ICJ Reports 554 at 565): "Nevertheless the principle is not a special rule which pertains solely to one specific system of international law. It is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles ..."

The principle applies all the more readily to the Republics since the second and fourth paragraphs of Article 5 of the Constitution of the SFRY stipulated that the Republics' territories and boundaries could not be altered without their consent.

Fourth - According to a well-established principle of international law the alteration of existing frontiers or boundaries by force is not capable of producing any legal effect. This principle is to be found, for instance, in the Declaration on principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)) and in the Helsinki Final Act; it was cited by the Hague Conference on 7 September 1991 and is enshrined in the draft Convention of 4 November 1991

drawn up by the Conference on Yugoslavia.

(signed)

R. Badinter