

EUROPEAN COMMUNITY: DECLARATION ON YUGOSLAVIA AND ON
THE GUIDELINES ON THE RECOGNITION OF NEW STATES*

[December 16, 1991]

+Cite as 31 I.L.M. 1485 (1992)+

I.L.M. Content Summary

TEXT OF DECLARATION - I.L.M. Page 1485

DECLARATION ON YUGOSLAVIA - I.L.M. Page 1485

[Offering to recognize Yugoslav republics that satisfy the conditions set forth]

DECLARATION ON THE "GUIDELINES ON THE RECOGNITION OF NEW STATES IN EASTERN
EUROPE AND IN THE SOVIET UNION" - I.L.M. Page 1486

[Requirements for process of recognition of these new states]

DECLARATION ON YUGOSLAVIA

(Extraordinary EPC Ministerial Meeting,
Brussels, 16 December 1991)

The European Community and its member States discussed the situation in Yugoslavia in the light of their guidelines on the recognition of new states in Eastern Europe and in the Soviet Union. They adopted a common position with regard to the recognition of Yugoslav Republics. In this connection they concluded the following:

The Community and its member States agree to recognise the independence of all the Yugoslav Republics fulfilling all the conditions set out below. The implementation of this decision will take place on January 15, 1992.

They are therefore inviting all Yugoslav Republics to state by 23 December whether:

- they wish to be recognised as independent States;
- they accept the commitments contained in the above-mentioned guidelines;

*[Reproduced from European Political Cooperation Press Release P. 129/91.

[The Introductory Note to the selection of documents regarding the situation in the former Yugoslavia appears at 31 I.L.M. 1421 (1992). The selection of documents includes U.N. Security Council Resolutions, 31 I.L.M. 1427 (1992); the Conference on Yugoslavia Arbitration Commission Opinions, with Introductory Note, 31 I.L.M. 1488 (1992); Documents adopted at the London Conference of the International Conference on the Former Yugoslavia, 31 I.L.M. 1527 (1992); and the U.N. Secretary-General Report on the International Conference on the Former Yugoslavia, 31 I.L.M. 1549 (1992).]

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 Cooperation 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 principle 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 (*Frontier 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 Cooperation 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.

Paris, 11 January 1992.

(signed)

R. Badinter

Convention drawn up by the Conference on 4 November 1991, notably those in Chapter II, Article 2(c), under the heading "Special status".

The Commission notes that in his reply dated 11 January the President of the Republic of Croatia confirmed that all the provisions contained in the draft Convention of the Conference on Yugoslavia had been accepted in principle by the Republic on 5 November 1991 and had been incorporated into the Constitutional Act of 4 December 1991.

3. The Arbitration Commission considers that:

- (i) the Constitutional Act of 4 December 1991 does not fully incorporate all the provisions of the draft Convention of 4 November 1991, notably those contained in Chapter II, Article 2(c), under the heading "Special status";
- (ii) the authorities of the Republic of Croatia should therefore supplement the Constitutional Act in such a way as to satisfy those provisions; and
- (iii) subject to this reservation, the Republic of Croatia meets the necessary conditions for its recognition by the Member States of the European Community in accordance with the Declaration on Yugoslavia and the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, adopted by the Council of the European Communities on 16 December 1991.

Paris, 11 January 1992

(signed)

R. Badinter

CONFERENCE FOR PEACE
IN YUGOSLAVIA

ARBITRATION COMMISSION

Comments on the Republic of Croatia's Constitutional Law of 4 December 1991, as last amended on 8 May 1992

In a letter dated 3 June 1992, the Chairman of the Yugoslav Peace Conference, Lord Carrington, transmitted to the Arbitration Commission for consideration the Constitutional Law of 4 December 1991, as last amended on 8 May 1992, on the human rights, freedoms and rights of national and ethnic groups or minorities in the Republic of Croatia.

For the purposes of the examination, the Arbitration Commission studied:

- the text of the Constitutional Law of 8 May 1992 in the English version transmitted by the Croatian authorities;

By the same token, while recognition of a state by other states has only declarative value, such recognition, along with membership of international organizations, bears witness to these states' conviction that the political entity so recognized is a reality and confers on it certain rights and obligations under international law.

3. The Arbitration Commission notes that since adopting Opinion No 1:

- the referendum proposed in Opinion No 4 was held in Bosnia-Herzegovina on 29 February and 1 March: a large majority of the population voted in favour of the Republic's independence;
- Serbia and Montenegro, as Republics with equal standing in law, have constituted a new state, the "Federal Republic of Yugoslavia", and on 27 April adopted a new constitution;
- most of the new states formed from the former Yugoslav Republics have recognized each other's independence, thus demonstrating that the authority of the federal state no longer held sway on the territory of the newly constituted states;
- the common federal bodies on which all the Yugoslav republics were represented no longer exist: no body of that type has functioned since;
- the former national territory and population of the SFRY are now entirely under the sovereign authority of the new states;
- Bosnia-Herzegovina, Croatia and Slovenia have been recognized by all the Member States of the European Community and by numerous other states, and were admitted to membership of the United Nations on 22 May 1992
- UN Security Council Resolutions Nos 752 and 757 (1992) contain a number of references to "the former SFRY";
- what is more, Resolution No 757 (1992) notes that "the claim by the Federal Republic of Yugoslavia (Serbia and Montenegro) to continue automatically (the membership) of the former Socialist Federal Republic of Yugoslavia (in the United Nations) has not been generally accepted";
- the declaration adopted by the Lisbon European Council on 27 June makes express reference to "the former Yugoslavia".

4. The Arbitration Commission is therefore of the opinion:

- that the process of dissolution of the SFRY referred to in Opinion No 1 of 29 November 1991 is now complete and that the SFRY no longer exists.

Paris, 4 July 1992

CONFERENCE FOR PEACE
IN YUGOSLAVIA

ARBITRATION COMMISSION

OPINION No 9

On 18 May 1992 the Chairman of the Arbitration Commission received a letter from Lord Carrington, Chairman of the Conference for Peace in Yugoslavia, asking for the Commission's opinion on the following question: