

OPINION NO. 10

*Arbitration Commission, E.C. Conference on Yugoslavia: Badinter, Chairman;
Corosaniti, Herzog, Petry, Tomas y Valiente, members.
July 4, 1992. 92 I.L.R. 206.*

Opinion of the Commission

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:

In terms of international law, is the Federal Republic of Yugoslavia new State calling for recognition by the Member States of the European Community in accordance with the joint statement on Yugoslavia an the Guidelines on the Recognition of new States in Eastern Europe an in the Soviet Union adopted by the Council of the European Communities on 16 December 1991? . . .

1. As the Arbitration Commission found in Opinion No. 8, the answer to this question very much depends on that to Question No. 2 from the Chairman of the Conference. In Opinion No. 8, the Arbitration Commission concluded that the dissolution of the Socialist Federal Republic of Yugoslavia ("SFRY") was complete and that none of the resulting entities could claim to be the sole successor to the SFRY.
2. On 27 April this year Montenegro and Serbia decided to establish a new entity bearing the name "Federal Republic of Yugoslavia" and adopted its constitution. The Arbitration Commission feels that, within the frontiers constituted y the administrative boundaries of Montenegro and Serbia in the SFRY, a new entity meets the criteria of international public law for a State, which were listed in Opinion No. 1 of 29 November 1991. However, as Resolution 757 (1992) of the UN Security Council points out, "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". As the Arbitration Commission points out in its Ninth Opinion, the FRY is actually a new State and could not be the sole successor to the SFRY.
3. This means that the FRY (Serbia and Montenegro) does not ipso facto enjoy the recognition enjoyed by the SFRY under completely different circumstances. It is therefore for other States, where appropriate, to recognize the new State.
4. As, however, the Arbitration Commission pointed out in Opinion No. 1, while recognition is not a prerequisite for the foundation of a State and is purely declaratory in its impact, it is nonetheless a discretionary act that other States may perform when they choose and in a manner of their own choosing, subject only to compliance with the imperatives of general international law, and particularly those prohibiting the use of force in dealings with other States or guaranteeing the rights of ethnic, religious or linguistic minorities.

Furthermore, the Community and its Member States, in their joint statement of 16

December 1991 on Yugoslavia and the Guidelines, adopted the same day, on the recognition of new States in Eastern Europe and in the Soviet Union, has set out the conditions for the recognition of the Yugoslav republics.

5. Consequently, the opinion of the Arbitration Commission is that:

- the FRY (Serbia and Montenegro) is a new State which cannot be considered the sole successor to the SFRY;
- its recognition by the Member States of the European Community would be subject to its compliance with the conditions laid down by general international law for such an act and the joint statement and Guidelines of 16 December 1991.