

W24



UTANRÍKISRÁÐUNEYTIÐ

HVERFISGÓTU 115 - 150-REYKJAVÍK

WRC 02/1

Hjálagt sendist greinargerð íslenskra stjórnvalda vegna sjálfstæðismáls Eystrasaltsríkjanna með sérstöku tilliti til Litháen, sem utanríkisráðherra afhenti Krasavin, sendiherra Sovétríkjanna föstudaginn 12. þ.m.

Þá skal skýrt frá því að Eystrasaltsríkin samþykktu s.l. laugardag 13. þ.m., að taka tilboði íslenskra stjórnvalda um að gegna sáttahlutverki í deilu Eystrasaltsríkjanna þriggja og Sovétstjórnarinnar um sjálfstæðismál Eystrasaltsríkjanna. Gert er ráð fyrir að Eystrasaltsríkin hvert um sig verði í beinu sambandi við íslensk stjórnvöld meðan á undirbúningi mögulegra samningaviðræðna, fyrir milligöngu íslenskra stjórnvalda, stendur.

Skrifstofustjóri afhenti sendiherrum Norðurlandanna greinargerðina í dag. Einnig verður hún afhent sendifulltrúum Póllands og Tékkóslóvakíu.

Utanríkisráðherra mun halda blaðamannafund um málið síðar í dag.

Utanríkisráðuneytið,
Reykjavík, 15. apríl 1991

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I

The Icelandic Government decided on 23 January 1991 to agree to the request by the Government of Lithuania to initiate talks concerning the possibility of strengthening their diplomatic relations. This decision was supported by the Althing in a resolution adopted on 11 February 1991. The resolution confirms that the recognition by the Government of Iceland in 1922 of the independence of the Republic of Lithuania is fully valid. It furthermore called upon the Government to formally establish diplomatic relations with Lithuania as soon as possible.

The Foreign Ministry of the Soviet Union has in statements delivered to the Ambassador of Iceland in Moscow on 5 and 13 February requested explanations regarding the statement to the press by the Icelandic Minister for Foreign Affairs on 23 January 1991 and the Althing resolution of 11 February 1991.

The Icelandic Government regrets that the Ministry for Foreign Affairs of the Soviet Union views the decisions of the Government and the resolution of the Althing as unfriendly steps and had deemed it necessary to demonstrate this by instructing the Ambassador of the Soviet Union in Reykjavik to remain in Moscow for consultations. The Icelandic Government values the longstanding relationship with the Soviet Union and fully expects that their mutually beneficial relations will continue in the future.

The Ambassador of Iceland in Moscow has on instructions requested a meeting between the Minister for Foreign Affairs of Iceland and the appropriate authorities in the Soviet Union in order to explain its policy towards the Baltics and Lithuania in particular.

The position of the Icelandic Government towards Lithuania is to be viewed in the context of the profound changes in European relations which have taken place in recent years. In particular it should be viewed in the context of the democratic revolution that the European political landscape has undergone, a revolution rendered possible primarily by the policies of the Soviet Union. As the division of Europe has been overcome, hopes for stability in relations between all nations of the continent have been raised.

These changed circumstances were reflected inter alia in the Charter of Paris for a new Europe of 21 November 1990. In the Paris Charter we expressed our common conviction that "in order to strengthen peace and security among our States, the advancement of democracy, and respect for and effective exercise of human rights are indispensable." Furthermore, we agreed that "democratic government is based on the will of the people, expressed regularly through free and fair elections."

The freely elected Government of Lithuania has made a determined effort to reclaim the independent status of Lithuania. The informal referendum of 9 February 1991 also demonstrates that

it is the will of the vast majority of Lithuanians to restore effective independence.

To heed such legitimate aspirations as have been expressed by the democratically elected Government and the people of Lithuania is consistent with the spirit of the Charter of Paris, which foresees a new quality in our security relations based on common adherence to democratic values and to human rights and fundamental freedoms. The declared policies to support the Lithuania cause of independence should not be viewed as an attempt to violate the principle of the territorial integrity of states but rather as a means of fulfilling that future vision.

The view expressed by the Soviet Foreign Ministry that Icelandic policies towards the Baltics are not compatible with obligations under the Charter of the United Nations, the Helsinki Final Act and other basic documents of the Conference on Security and Co-operation in Europe and are regarded as interference in the internal affairs of the Soviet Union is of course of particular concern to the Government of Iceland. The Government of Iceland cannot, however, accept these contentions. In response to the request of the Soviet Foreign Ministry for information the Ministry for Foreign Affairs wishes to give the following background to the decisions of the Icelandic Government.

II

Following the restoration of the independent State of Lithuania Iceland recognized the Republic of Lithuania de jure in 1922. Commercial relations were established between the two countries on the basis of trade agreements in 1923 and 1930.

In the view of the Icelandic authorities the occupation of Lithuania by the armed forces of the Soviet Union in 1940 and the subsequent incorporation of Lithuania into the Soviet Union did not affect the recognition by Iceland of the Republic of Lithuania.

The restoration of the independent state of Lithuania by the Supreme Council of the Republic of Lithuania on 11 March 1990 and the ratification of the Provisional Basic Law of the Republic of Lithuania on the same date revived the possibility of treating Lithuania as a full subject of international law.

The informal referendum in Lithuania on 9 February 1991 confirmed that these recent actions enjoy the support of the vast majority of Lithuanians.

III

Over the past year the Icelandic authorities have consistently supported Lithuania in its quest for recognition of its independent status. The Government of Iceland has raised the question in multilateral fora, such as the Conference on Security

and Co-operation in Europe, the General Assembly of the United Nations and the Council of Europe, as well as in bilateral contacts with many European countries.

On 23 March 1990 Mr. Jón Baldvin Hannibalsson, Minister for Foreign Affairs, wrote Foreign Minister Shevardnadze urging the Soviet Union to initiate talks with the democratically elected representatives of Lithuania without prior conditions. Prime Minister Steingrímur Hermannsson wrote a letter to President Mikhail Gorbachev on 13 January 1991, urging the Soviet President to put an end to acts of violence committed by Soviet special forces in Lithuania. Reference was made to the Charter of Paris and the Helsinki Final Act. Furthermore, on 23 January 1991 the Ambassador of Iceland in Moscow presented the Soviet authorities with a Note requesting information on certain acts of violence committed by the Soviet military in Lithuania and Latvia. Reference was made in this connection to the Human Dimension of the Conference on Security and Co-operation in Europe. Thus the position of the Icelandic Government should come as no surprise to the Soviet authorities.

In addition to the aforementioned resolution of 11 February 1991 the Althing had during this period passed three other resolutions relating to the Baltic States, on 13 March 1990, 18 December 1990 and 14 January 1991.

Following the outbreak of violence in the Baltic States in January 1990 Mr. Jón Baldvin Hannibalsson, Minister for Foreign Affairs, made an official visit to the capitals of the three Baltic countries.

Upon Foreign Minister Hannibalsson's return to Iceland the Government of Iceland took up the question of its relations with Lithuania, resulting in its decision of 23 January 1991 dealing with the question of diplomatic relations with Lithuania and also calling for renewed attention to the situation in Lithuania in multilateral fora.

IV

The Government of Iceland has carefully studied such rules as exist to determine whether, under international law, a given body is entitled to the status of a State. In this connection regard must be had to Iceland's recognition of Lithuania in 1922, the establishment of a legitimate constitutional authority in Lithuania in March 1990 and the clear demonstration in the informal referendum on 9 February 1991 of the will of the Lithuanian people. That Lithuania is restrained in its independence at the present time is a fact which cannot be denied; however, the circumstances which have led to that restriction dictate that they cannot be determinative of its international status. In support of this conclusion, reference can be made to a large body of international practice.

The question has been raised whether the actions

contemplated by the Government of Iceland can be seen as interference in the internal affairs of the Soviet Union. Iceland holds the view that it cannot be debarred from treating the Republic of Lithuania as a subject of international law. Original recognition of the Republic of Lithuania is regarded as still valid; the premises under which Lithuania was incorporated into the Soviet Union in 1940 cannot be accepted as altering that fact.

The position of the Icelandic Government is based on a careful evaluation of the sources of international law relating to statehood. While there would appear to be some common ground on the criteria which must exist in order for an entity to be regarded as a State, the application of the criteria to the facts of a situation is often difficult. In some aspects the question is one of fact, in others one of law and yet in others a matter of judgment of the State which is addressing the situation.

The Government of Iceland has studied the practice of States in this field which cannot always be easily reconciled with pure legal doctrine. Thus there are cases where an entity with all the earmarks of a State has been denied international recognition as such. There are other cases where an entity clearly lacking one or more of the acknowledged criteria for statehood is nonetheless recognized as a State.

In practice, there is no absolute characterization of a State; a given entity can be regarded as a State for certain purposes, for example in order to enjoy specified relations with another State, but not for other purposes such as admission to an international organization.

Thus the Government of Iceland would not generalize on the legal nature of statehood as such but has rather evaluated the question of whether Lithuania enjoys international legal personality for the purposes of the development of diplomatic relations.

The Government of Iceland attaches particular importance to the enactments of 11 March 1990, restoring the independence of Lithuania and laying down a Provisional Basic Law (Constitution). These pronouncements allow third States to regard the legal situation in Lithuania as one of continuity. Under this approach the enactments of 11 March 1990 and their subsequent implementation provide evidence of fulfilment of the classical criteria of territory and population and, on the face of it, an indication of effective Government.

The requirements of effective government and the capacity to conduct foreign relations are closely linked to the concept of independence, that is, the extent to which the entity exercises governmental authority and controls its external relations without dictation from another State.

It is necessary therefore to consider the legal consequences of the restraint by the Soviet Union on Lithuania's effective exercise of governmental functions and its capacity to conduct relations with other States.

In this connection two aspects of the capacity to enter into relations with other States can be identified, first whether the entity is subject to international responsibility for its actions and secondly whether other States are prepared to take on obligations with respect to it.

Many of the anomalies in the practice of States in these questions can be explained by some element of belligerent or illegal occupation. This has, for instance, provided the theoretical basis for relations with governments-in-exile.

In other cases the illegal origin of the circumstances involved has rebutted presumptions which might otherwise be valid.

The situation in Lithuania corresponds to the distinction made in legal doctrine between "formal" independence and "effective" or "actual" independence. Thus while Lithuania is hampered in its exercise of independence it must be evaluated whether this can be accepted as affecting the formal independence previously recognized by Iceland.

The legal effect to be given to the activities of the Government of the Soviet Union in 1940 is therefore crucial to a determination of the international status of Lithuania.

It is a well-recognized maxim of international law that no benefit shall be achieved through an illegal act. Refusal by the international community to recognize illegal occupation and annexation is based on the utter condemnation of the use of force in contravention of international law. Even recent history shows that the international community will not recognize claims that such questions following illegal annexation fall solely within the domestic jurisdiction of the annexing State.

Turning to the situation in Lithuania, it can first be noted that the view that the occupation of Lithuania in 1940 was illegal has been confirmed in a decision of the Congress of People's Deputies of the Soviet Union on 24 December 1989.

There is a well recognized presumption that acts of a regime constituted under belligerent occupation are not the acts of an independent entity. Beyond that, the legal effect turns on the assessment of the relevant facts. It is widely recognized that the annexation of Lithuania by the Soviet Union followed upon a great number of irregularities sponsored by the occupying

forces.' Iceland is not alone in characterizing this series of events as illegal use of force and illegal annexation. This view is shared by the vast majority of Western States. Thus any attempts to separate the conclusion that the Molotov-Ribbentrop Act was invalid from the legal situation following the occupation of Lithuania will not stand up to close analysis.

The question arises of how long the status of a person in international law can be protected against the effects of illegal occupation.

The effect of annexation following illegal occupation can be so pervasive, through suppression of the pre-existing society and its organs of authority, language and culture, that the political community no longer existed. Recent history has, however, shown in many parts of the world that despite longstanding deprivation societies have re-emerged in their near-original form.

Here again, the enactments of 11 March 1990 and the informal referendum of 9 February 1991 are relevant to show that the political community of Lithuania survived the passage of time and was preserved as a distinct legal personality.

One additional point can be made on the capacity to conduct relations which relates to the inherent nature of these relations. For such relations depend equally on the attitude of other States. Thus, in instances where other States are prepared

A report of a Committee of the Parliamentary Assembly of the Council of Europe states that following the invasion of the Baltic States in June 1940 the Soviet Union gave them ultimata to form governments friendly to the Soviet Union. Following compliance with the ultimata the Soviet Union agreed to defend the national independence of the three republics. The Report states:

However the Soviet Union did not adhere to this undertaking. After the country had been occupied, the interim phase of "people's democracy" was quickly terminated. After sham elections, held on 14 and 15 July 1940 in breach of the constitutions that were still in force and of the electoral laws, a dictatorial communist regime was installed, sovietisation was speeded up with the use of totalitarian methods and the principle of the territoriality of language was flouted. As early as 21 and 22 July 1940, the parliaments of the three Baltic Republics which were duly elected in these sham elections adopted a declaration on the accession of the Baltic states to the Soviet Union. As early as August 1940, the three Baltic Soviet republics were incorporated into the Soviet Union.

The incorporation of the Baltic states into the Soviet Union, which took place according to Soviet law at the beginning of August 1940, did not represent a voluntary association on a federal basis but the seizure by force of foreign territory, i.e. an unlawful annexation under modern international law.

to conduct relations with a given entity, their position has a constitutive effect on its status.

States which agree to enter into relations with a State with restricted capacity can be expected to structure their relations to take into account the circumstances prevailing in order not arbitrarily to introduce the prospect of international responsibility. Indeed, they would be precluded from availing themselves of legal remedies in instances where restrictions on the ability to conduct relations are objectively evident. In this connection doctrine must not be overbearing and many situations will arise which need be addressed with flexibility and equity.

A corollary question is whether Lithuania can be denied the right to be treated as a State. In other words, can another State opt out of its obligations merely by refusing to characterize it as a State? In light of the foregoing functional analysis Iceland would not presume to impose its views on other States, leaving to them to compare their circumstances with those applying in Iceland. On the other hand it is submitted that the very core of the evaluation of the Government of Iceland, that is that the occupation and annexation of Lithuania in 1940 were illegal, debars the USSR from raising arguments which would otherwise be available to it.

V

The Government of Iceland has also studied the provisions of the Helsinki Final Act of the Conference on Security and Cooperation in Europe. Although the Final Act is not worded in terms of legal commitment, it is susceptible of evaluation in much the same way as legal instruments.

In general, it should be pointed out that the well-known positions of many Western States that they had not recognized de jure the incorporation of the Baltic States into the Soviet Union were reiterated in the course of negotiations leading up to the signature of the Final Act. The Soviet Union should therefore have been forewarned that these States would not subsequently accept that the Final Act could be interpreted as settling once and for all the question of the legal status of the Baltic States and preventing any of them from raising their status as an international issue. The views of these Western States on de jure recognition of the situation have been re-affirmed in connection with the recent developments in the Baltic States.

For the purposes of the study of the legal status of Lithuania, the Final Act contains relevant provisions in three of its Principles Guiding Relations between Participating States,

that is Principles I, III and IV.

The first relevant clause, in Principle I, on sovereign equality and respect for the rights inherent in sovereignty, follows a reference to the right of each participating State to define and conduct as it wishes its relations with other States in accordance with international law and in the spirit of the Principles in the Final Act, and reads as follows:

They consider that their frontiers can be changed, in accordance with international law, by peaceful means and by agreement.

This should dispel any doubt that the signatories of the Final Act were recognizing as immutable any existing borders of any other Participating State. Indeed the present situation in Germany is evidence of this fact.

The second relevant provision is Principle III on the inviolability of frontiers, reading as follows:

The participating States regard as inviolable all one another's frontiers as well as the frontiers of all States in Europe and therefore they will refrain now and in the future from assaulting these frontiers.

Accordingly, they will also refrain from any demand for, or act of, seizure and usurpation of part or all of the territory of any participating State.

It can be noted that this provision is placed within the framework of the condemnation of aggression and can be compared to similar wording 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.

In none of its statements or proposals on this question has the Government of Iceland condoned any act of aggression.

The third provision is Principle IV, on the territorial integrity of States, reading as follows:

The participating States will respect the territorial integrity of each of the participating States.

Accordingly, they will refrain from any action inconsistent with the purposes and principles of the Charter of the United Nations against the territorial integrity, political independence or the unity of any participating

State, and in particular from any such action constituting a threat or use of force.

The participating States will likewise refrain from making each other's territory the object of military occupation or other direct or indirect measures of force in contravention of international law, or the object of acquisition by means of such measures or the threat of them. No such occupation or acquisition will be recognized as legal.

For the purposes of the consideration by the Government of Iceland of the status of Lithuania particular importance is attached to the prohibition of illegal occupation and acquisition of territory in the third paragraph of the Principle. In this connection the clause in Principle I referred to above is particularly relevant. Thus the analysis set out above on the effect of illegal occupation and annexation on the legal status of Lithuania applies also to the construction of Principle IV.

VI

The considerations set out above on Iceland's policy towards Lithuania is presented in order to explain why Iceland cannot accept the contentions put forward by the Ministry for Foreign Affairs of the Soviet Union that Iceland's policies are incompatible with obligations under the Charter of the United Nations and the Helsinki Final Act. In this connection it should be emphasized that in many respects the present situation does not involve the assessment of present-day policies of the Soviet Union, or recent developments in the Soviet Union's constitutional structure, but rather of the residual legal effects of activities which took place over 50 years ago. The situation is one of the remaining elements of Europe's post-war legacy which has stubbornly resisted the forces of change which have been shaping a new order of Europe. Accordingly, in the relations between Iceland and the Soviet Union the position of the Baltic States and, specifically, Lithuania, must be regarded as unique, on the basis of the evaluation set out above on the historical and legal circumstances.

Iceland has consistently emphasized the need for a peaceful solution to the dispute between the Baltic States and the Soviet Union. Iceland has consequently, on many occasions, expressed the view that the dispute should be solved through negotiations. As a reflection of this policy, Iceland has agreed to act as a mediator in the relations between the Baltic States and the Soviet authorities.