SCIREA Journal of Sociology
ISSN: 2994-9343
http://www.scirea.org/journal/Sociology
November 11, 2024
Volume 8, Issue 6, December 2024
https://doi.org/10.54647/sociology841354

The Controversial Legal Status of Macedonia in the United Nations under the provisional reference "the former Yugoslav Republic of Macedonia"

Igor Janev*
Institute for political science, Belgrade, Republic of Serbia
*Corresponding author

Abstract

The admission of Macedonia to UN membership in April 1993 by the UN General Assembly resolution 47/225 (1993), pursuant the Security Council resolution 817 (1993) that recommends such admission, was associated with imposing on the applicant two additional conditions with respect to those explicitly provided in Article 4(1) of the UN Charter, namely: acceptance by the applicant state (i) of "being provisionally referred to for all purposes within United Nations as 'the former Yugoslav Republic of Macedonia' pending settlement of the difference that has arisen over the name of the state", and (ii) of negotiating with a neighbouring country (Greece) over its name. The described situation regarding the admission of Macedonia to UN membership rises two major questions: (1) are the imposed conditions on Macedonia for its admission to UN membership in accordance with the provisions of UN Charter, and (2) what are the implications of imposed conditions for admission on the legal status of Macedonia in the UN Organization? A detailed analysis of the first question was given on the basis of advisory opinion of International Court of Justice (ICJ) of 1948. The conclusion of that analysis, derived directly from the mentioned ICJ advisory opinion (stating

that the conditions for admission of a state to UN membership laid down in Article 4(1) of the Charter are exhaustive, i.e. their fulfilment is necessary and sufficient for admission) and the character of conditions (i) and (ii) (which transcend in time the act of admission and are, therefore, obviously additional to those listed in Article 4(1) of the Charter), was that the resolutions GA Res. 47/225 (1993) and SC Res. 817 (1993) are in violation with Article 4 (1) of the Charter as a legal norm.

Keywords: United Nations, Law, conditions, reference, denomination, norm, International Court of Justice, Opinion

1. Introduction

The admission of Macedonia to UN membership in April 1993 by the UN General Assembly resolution 47/225 (1993) [1], pursuant the Security Council resolution 817 (1993) [2] that recommends such admission, was associated with imposing on the applicant two additional conditions with respect to those explicitly provided in Article 4(1) of the UN Charter, namely: acceptance by the applicant state (i) of "being provisionally referred to for all purposes within United Nations as 'the former Yugoslav Republic of Macedonia' pending settlement of the difference that has arisen over the name of the state", [3] and (ii) of negotiating with a neighbouring country (Greece) over its name. The condition (ii) is implied in the second part of above cited text, common to both GA Res. 47/225 (1993) and SC Res. 817 (1993), and more explicitly in the provision of the latter resolution by which Security Council "urges the parties to continue to cooperate with the Co-Chairmen of the Steering Committee of International Conference on Former Yugoslavia in order to arrive at a speedy settlement of the difference". [4] The reason for imposing these conditions was given in the preamble of SC Res. 817 (1993) in which the Security Council, after affirming that "the applicant fulfils the criteria for membership laid down in Article 4 of the Charter of the United Nations", observes that "a difference has arisen over the name of the State, which needs to be resolved in the interest of the maintenance of peaceful and good-neighbourly relations in the region". [5] This observation of the Security Council was apparently based on the Greek allegation that the name of the applicant "implies territorial claims" against Greece.[6] In order to complete the picture, it should be mentioned that despite the strong objection of Macedonian government [7] to the formulation of SC Res. 817 (1993), and the adoption by the Macedonian Parliament of

two amendments to the Constitution of Republic of Macedonia in 1992, [8] (affirming that Macedonia "has no territorial claims against any of neighbouring states", and that its borders can be changed in accordance with the Constitution and "generally accepted international norms"), the text of the SC Res. 817 (1993) remained unchanged.

The described situation regarding the admission of Macedonia to UN membership rises two major questions: (1) are the imposed conditions on Macedonia for its admission to UN membership in accordance with the provisions of UN Charter, and (2) what are the implications of imposed conditions for admission on the legal status of Macedonia in the UN Organization? A detailed analysis of the first question was given recently [9] on the basis of advisory opinion of International Court of Justice (ICJ) of 1948 [10] (related to the admission of states to UN membership) and adopted by the General Assembly .[11] The conclusion of that analysis, derived directly from the mentioned ICJ advisory opinion (stating that the conditions for admission of a state to UN membership laid down in Article 4(1) of the Charter are exhaustive, i.e. their fulfilment is necessary and sufficient for admission) and the character of conditions (i) and (ii) (which transcend in time the act of admission and are, therefore, obviously additional to those listed in Article 4(1) of the Charter), was that the resolutions GA Res. 47/225 (1993) and SC Res. 817 (1993) are in violation with Article 4 (1) of the Charter as a legal norm.

In the present article we shall examine the implications of the imposed admission conditions on the legal status of Macedonia in the UN Organization. The subject draws its importance from the fact that even after nine years of negotiations, the "difference over the name" between Macedonia and Greece still remains, and there are no signs that a "speedy settlement of the difference" will be achieved any time soon, if at all. Meanwhile, Macedonia continues to be referred by a provisional name within the UN system. Since the imposed admission conditions on Macedonia and its peculiar legal status in the UN are related to its name, it is appropriate first to examine the question of the right of a state to free choice of its own name.

2. Legal Freedom of a State in the Choice of its Own Name

The inherent right of a state to have a name can be derived from the necessity that a juridical personality must have a legal identity. In absence of such an identity, the juridical person, such as a state, could to a large extent (or even completely) loose its capacity to

interact with other such juridical persons (e.g. conclude agreements, etc.) and independently enter into and conduct its external relations. The name of a state is, thus, an essential element of its juridical personality and, consequently, of its statehood. The principles of sovereign equality of states [12] and the inviolability of their juridical personality [13], lead to the conclusion that the choice by a state of its own name is a basic, inherent right of the state. This right is not alienable, divisible or transferable, and is a part of the right to 'self-determination' (determination of one's own legal identity), i.e. it belongs to the domain of *jus cogens* norms. External interference with this basic right is inadmissible. It is also obvious that if such an external interference with the choice of the name of a state would be allowed, even through a negotiation process, it might easily become a legally endorsed mechanism for interference in the internal and external affairs of that state, i.e. a mechanism for degradation of its political independence. From these reasons, the choice by the state of its own name must be considered as an inherent right of the state that belongs *stricto sensu* to the domain of its domestic jurisdiction. In exercising this right, the states have, therefore, a complete legal freedom. This freedom may in practice be constrained only by considerations of avoidance the overlap of legal identities of two (or more) international juridical persons. (The province 'Macedonia' in Greece, however, is not an international juridical person.)

Based on the principle of separability of domestic and international jurisdiction, the name of a state, which is subject of that state's domestic jurisdiction, does not create international legal rights for that state, nor does it impose legal obligations on other states. Clearly, the name *per se* does not have a direct impact on the territorial rights of states. Therefore, the earlier mentioned Greek allegation that the name of the applicant implies "territorial claims" has no legal significance. The Arbitration Commission of European Communities on former Yugoslavia also took this position and did not link the name of the country (Republic of Macedonia) to the Greek territorial rights.[14] The same view is shared by prominent scholars of international law.[15] Interference with matters that are essentially within the domestic jurisdiction of a state, such as the choice of state's name, is also incompatible with the UN Charter.[16] Article 2 (7) of the Charter explicitly extends the validity of this legal norm to the United Nations themselves.[17] It appears, therefore, that neither the Greek opposition to the admission of Macedonia to UN membership under its constitutional

name, nor the intervention of the UN Security Council in the matters related to the name of the country, are consistent with the Charter.

3. Legal Status of a UN Member under Imposed Admission Conditions

According to the interpretation of Article 4(1) of the Charter given in 1948 [18] and accepted by the General Assembly, [19] the conditions laid down in that article are exhaustive (and "not merely stated by way of guidance or example" [20]), they must be fulfilled before admission is effected, and, once they are recognized as having been fulfilled by the Security Council, the applicant state acquires an *unconditional right* to UN membership. This right is enshrined in Article 4 itself and comports with the universal character of the UN Organization. At the same time, and for the same reasons, the Organization has a *duty* to *unconditionally* admit such a state to UN membership. The Security Council in the preamble of its resolution [21] recognizes that the applicant state fulfils the required criteria for admission and yet, contrary to the accepted interpretation of Article 4(1) of the Charter, recommends that the applicant be admitted to membership with a temporary reference label (to be used for all purposes within the UN), and imposes an obligation on the future UN member to negotiate with a neighbouring state about its own name. The fact that Security Council has ignored the strong objection [22] of Macedonian Government to such formulation of its resolution indicates that it considered the added conditions as necessary for giving the recommendation.

A specific feature of the additional conditions imposed on Macedonia for its admission to UN membership is that their effect begins with the act of admission. Their nature is quite different than that of the conditions laid down in Article 4(1) of the Charter: they need to be fulfilled not before the admission, but after it. These additional conditions transcend their cause; their nature is obviously not legal, but rather political. According to the ICJ advisory opinion of 1948 [23], no "political considerations" can be superimposed on, or added to, the conditions set forth in Article 4(1) that could prevent admission to membership. The broad nature of the prescribed admission criteria already provides space for appreciation of all political factors relevant for the judgement on the fulfilment of these criteria.

With its imposed provisional name (for use within the UN), i. e. with its derogated legal

personality, and its obligation to negotiate with a neighbouring country over its name, Macedonia has a legal status within UN which is obviously different from that of other member-states. Membership to the UN Organization, as a legal status, contains a standard set

of rights and duties that are equal for all members of the Organization ("sovereign equality of the Members" [24]). The admission of Macedonia to UN membership with additional, non-standard conditions (that impose on the member certain membership obligations) may be interpreted as "conditional admission", and, consequently, the resulting membership status as 'conditional'. The Charter, however, does not provide for conditional membership in the Organization. Suppose that Macedonia decides at one point in time not to comply anymore with its membership obligation to negotiate with Greece over its name. What could be the possible UN sanctions for such non-compliance? Expulsion from UN membership would only prove that its present membership status is conditional. Other forms of sanctions would also indicate, in less evident way, the conditional character of the membership status.

Obstruction of the "settlement of the difference" over the name during the negotiating

process may be another form of non-compliance with the membership obligation. Such obstruction in the negotiating process may be, however, introduced also by the other negotiating party (from political, economic or other reasons). The fulfilment of the imposed admission obligation may, therefore, depend not only on the good will of the party carrying the obligation, but also on a factor outside of its control. In fulfilling its membership obligations, Macedonia is, thus, not independent, which is another difference of its membership status with respect to the other UN member-states.

There is still another important feature of the legal status of Macedonia as a UN member. By imposing the additional condition for admission of using a provisional name for the state within the UN, the legal personality of the future member-state has been heavily derogated by the very act of admission. The derogated legal personality of Macedonia in the United Nations system is most clearly manifested in the area of representation. In all acts of representation within the UN system, and in the field of UN relations with other international subjects, the provisional, and not the constitutional, name of Macedonia is to be used. This is in violation with the right of states to non-discrimination in their representation in the organization of universal character, expressed in an unambiguous way in Article 83 of the Vienna Convention on representation of states.[25] The right to equal representation of states in their relations with the organizations of universal character (such as the UN family of organizations) is only a logical derivative of the principles of sovereign equality of states within the UN Organization and inviolability of their juridical personality.

4. Conclusions

The imposed additional conditions on Macedonia for its admission to UN membership, in direct violation of several Charter's provisions, has created an unusual legal status of Macedonia in its UN membership. This status is characterized by a drastically derogated legal personality of the member (through an imposed legal identity), enlarged membership obligations (the fulfillment of which depend on factors outside of its control), and unequal rights in the area of representation compared with other member-states. Even the very nature of membership status is not quite clear, in view of the imposed *sine qua non* condition by the act of admission. It is uncontestable that the principle of 'sovereign equality of the members' of the Organization is severely violated in the case Macedonia as UN member.

The absence of any progress in the negotiations with Greece over the name after nine years indicates that the problem is fundamental by its nature. In fact, the dispute over the name appears to be not between Macedonia and Greece, but rather, in an implicit form, between Macedonia and the UN. In this dispute Macedonia is defending its right to (self-) determination of its own legal identity (which is obviously taken as synonym, or an essential part, of its national identity). Macedonia obviously considers that right as being

sovereign and alienable, and well grounded in the principles of existing international law.

Notes

[1] GA Res. 47/225, 8 April 1993 [hereafter: GA Res.47/225 (1993)].

[2] SC Res. 817, 7 April 1993 [hereafter: SC Res.817 (1993)].

[3] See Supra note 1.

[4] See Supra note 2.

[5] Ibid.

[6] See UN SCOR, 48th Sess., Supp. Apr., May, June, at 36, UN Doc. S/25543 (1993).

[7] See UN SCOR, 48th Sess., Supp. Apr., May, June, at 35, UN Doc. S/25541 (1993).

[8] See 11 Constitutions of the Countries of the World, and Supp. 98-6, (A.P.Blaustein and G. H. Flanz, eds., 1994, 1998)

[9] I. Janev, 'Legal aspects of the use of provisional name for Macedonia in the Nations system', 93 AJIL 155 (1999).

[10] Admission of a State in the United Nations (Charter, Art. 4), ICJ Reports, 57 (1948).

[11] GA Res. 197 (III,A), 8 December 1948.

[12] UN Charter, Art. 2(1).

[13] Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, GA Res. 2625 (XXV), 24 October 1970.

[14] See 31 ILM 1507, 1511 (1992).

[15] L. Henkin, R.C. Pugh, O. Schachter and H. Smit, "International Law: Cases and Materials", p. 253 (3rd ed., 1993).

[16] See Supra note 13.

[17] UN Charter, Art. 2(7).

[18] See Supra note 10.

[19] See Supra note 11.

[20] See Supra note 10.

[21] See Supra note 2; Preamble.

[22] See Supra note 7.

[23] See Supra note 10.

[24] See Supra note 12.

[25] Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, UN Doc. A/CONF. 67/16 (March 14, 1975). [See also 69 AJIL 730 (1975)].