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# THE ADMISSION OF NEWLY CREATED STATES TO THE MEMBERSHIP OF THE UNITED NATIONS: THE CASE OF REPUBLIC OF MACEDONIA

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*Abstract*

*The international law which regulates the formation, functioning and legal capacity of international organizations, and also the international law in the United Nations system, are always relevant and subject to progressive development, because the international relations are in constant dynamics. Each newly created state has one major foreign policy goal during its first years of formation or after obtaining independence – admission to the membership of the United Nations. That is because the decision of admission to the membership of the UN guarantees the country's statehood which can no longer be questioned. The country becomes part of a global community of nations – the international community. Therefore, the present paper is a qualitative research regarding the admission of new states to the international community, and the decision-making process concerning the admission of new Member States to the UN.*

*Key words: United Nations; Security Council; General Assembly; international law; Republic of Macedonia*

## INTRODUCTION

The international community (henceforth referred to as: the community) presents wide space for implementing the international legal norms and procedures, space for creating institutions and organizations such as the United Nations (henceforth referred to as: UN), NATO, OSCE, Council of Europe etc. Those institutions are directing and organizing the legal, political, economic, defense and security relations among states and other subjects in terms of the international relations. The community itself creates material conditions for the survival of the states. In that sense, the community creates a system of

legal norms, activities, and procedures, which are used by the states and international organizations for accomplishing their own goals and the goals of the community as a whole.

The subjects, that are part of the community, are: states, their alliances, international organizations, international political movements, the human beings, transatlantic corporations etc. They formulate their requests, proposals, initiatives, actions, and resolve their mutual disputes (Frckoski et al. 2012, 109). The everyday communication which takes place in international relations between subjects, communication which is guided by the rules of international law and diplomacy, communication which gives contribution to the development of the community as a whole, is defined as international policy.

The sovereign equality of states still represents a fundamental principle in modern international law. The sovereignty *per se* is expressed in several ways:

- Sovereign equality at international level;
- Political independence;
- Territorial integrity;
- Exclusive authority over its own territory and population;
- Protection from external interference in the internal affairs;
- Freedom in arranging the socio-political and economic system;
- Obligation to respect and implement the international *ius cogens* norms and those legal norms which the state freely agreed to respect and apply;
- Right of immunity for their diplomatic and consular representatives abroad;
- Right of immunity concerning decisions of foreign courts for civil legal disputes made by the capacity which the sovereign state possesses (Frckoski et al. 2012, 24-25).

However, this sovereign equality of states is more a *de iure* category, since there is a factual inequality between them. They are unequal in terms of the power they possess (diplomatic, military, economic, and cyber power). Precisely the role of power appears as final arbitrator in the relations between the states, or what even the Greek historian Thucydides said – "the strong ones do what they can, the weak ones accept what they must to" (Maleski 2000, 31).

The successful promotion of state interests in international context depends on the state's power. The horizontal structure of that context dictates the game rules. The first rule is a self-help game, in which increasing power and wealth are primary objectives pursued by the state. Also here is the rule that there is no common international interest capable of directing the various national interests of states. Here we could add the economic inequality, cultural differences and practices, the desire for domination between states, and the absence of effective mechanisms for conflict resolution.

Although the principle "everyone for themselves" dominates basically, there is continuous process of cooperation between states and also a certain degree of mutual trust. The collaboration creates space for establishing international organizations, so today we have the UN, NATO, OSCE, the Council of Europe, the World Bank, the International Monetary Fund, the European Union (henceforth referred to as: EU) as a *sui generis* community of sovereign states, etc.

The very existence of the state is firstly based on facts, and then on law. To be recognized as a full member of the community, the state must cumulatively meet several conditions according to Article 1, Montevideo Convention on the Rights and Duties of States. It is stated that "the state as a person of international law should possess the following qualifications: a) permanent population; b) defined territory; c) government; and d) capacity to enter into relations with the other states."

The integration of a new state in the community is done by way of individual and collective recognition by existing states. At their own discretion and assessment they decide whether the new state is able and willing to perform all duties assigned to it as a subject in international law, and whether it will be a trusted and loyal member of the community or not. Consequently, the ability and willingness of the new state to respect the international law constitutes the main criterion of statehood in terms of international law. The existing states are decisive for granting *capacitas iuridica* in international law, based on the main criterion of statehood.

## THE ADMISSION OF NEW MEMBERS TO THE UNITED NATIONS

The admission of a new member to the UN assumes that the candidate for admission represents a state, or according to Article 4(1) of the UN Charter "membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and are able and willing to carry out these obligations." (Petreski 2014, 118).

Thus, following the decision of the General Assembly for admission of a candidate to the membership of the UN, based on an earlier recommendation by the Security Council (under Article 4 (2) of the Charter), a decision that is binding even for those states that voted against the admission, the legality of intergovernmental obligations, contained in the Charter, could no longer be contested by any member in their relations with the Member State which had just received admission to the UN.

The reliability of the new entity as a partner in international relations is the decisive criterion of statehood in the sense of international law. The existing states base their decision on whether to recognize the entity under international law on their assessment in this respect. Article 4, paragraph 1 of the UN Charter explicitly mentions "the ability and willingness, in the judgment of the Organization, to carry out international obligations as a criterion for admission of new members to the United Nations." All other requirements for statehood[1] according to international law, in particular the existence of effective power of control over a territory and its inhabitants, are derived from this one decisive criterion of the necessary ability and readiness to act in accordance with international law and, as such, take on the character of international standards.

On the one hand, the phrase "able and willing to carry out these obligations" (under Article 4 (1) of the Charter) reinforces international law's claim to being a *legal* system. In addition, it is orientated towards the requirements of international practice, in which legal personality is conferred according to the state's practical interests in international relations.

[1] Practically, the three marks that characterize the state are: defined territory, permanent population, sovereign and effective power and capacity to enter into relations with other states. All together they form the statehood.

In accordance with Article 4 (2) of the UN Charter, the final decision as to whether an applicant fulfills the substantive requirements for admission, as laid down in Article 4 (1) of the Charter – "whether it is a state [defined territory, permanent population, sovereign and effective power and capacity to enter into relations with other states] that is peace-loving, that accepts the obligations contained in the Charter and is able and willing to carry out these obligations" – is made by the General Assembly upon the recommendation of the Security Council. The UN intentionally decided against implementing a system of accession to the Organization under which all states can become members by way of unilateral declaration. The admission procedure contained in the Charter ensures that the principal organs of the United Nations retain absolute power in the procedure.

The UN organs that have power to make such a decision – admission of newly created states to the membership of the United Nations, and indirectly the Member States which are represented in these organs are the so called "kings" of the procedure for admission in accordance with Article 4 (2) of the Charter. So the claim that the admission to membership in the UN can be conducted in accordance with procedural law (the right to submit a lawsuit) against the will of the organs responsible for the decision-making process – or at least against the will of a permanent member state of the Security Council is not true. A state cannot even appeal the decision that will be taken in connection with its application for admission.

The International Court of Justice (ICJ) recognizes the power of final judgment of the Security Council and the General Assembly. Thus, the interlocutory judgment of the ICJ in the Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia-Herzegovina vs. Federal Republic of Yugoslavia) of 11 July 1996 is based on the assumption that a decision to admit a new state is binding on all members and cannot be contested under procedural law. It is stated:

> (…) According to Yugoslavia, Bosnia and Herzegovina was not qualified to become a party to the convention (…) The Court notes that Bosnia became a Member of the United Nations following the decisions adopted on 22 May 1992 by the Security Council and the General Assembly, bodies competent under the Charter. Article XI of the Genocide Convention opens it to "any Member of the United Nations"; from the time of its admission to the Organization, Bosnia-Herzegovina could thus become a party to the Convention (…) (ICJ Reports (1996) 596, at 611, para. 19).

### *The procedure for admission*

The political aspect of the procedure for admission derives from Article 4, para. 2. It requires recommendation from the Security Council (henceforth referred to as: SC), which is then effected (confirmed) by voting in the General Assembly (henceforth referred to as: GA) for the admission of new state in membership of the UN. The term "based on own judgment and discretion of the Organization", contained in Article 4, para. 1 of the Charter, reflects the political interests of certain Member States that come into play.

The UN practice shows that permanent members of the SC put (*liberum*) *veto*[2] or support requirements for membership in accordance with their political interests. The term "peace-loving state" has undergone various political interpretations. Thus, at the conference in San Francisco in 1945, the Soviet Union opposed the inclusion of Argentina as a founding state of the UN. It could not qualify as a peace-loving state, because of its relations with the Axis powers (Rome, Berlin, Tokyo) until the last days of World War II. In those days, Argentina shifted its support to the allies, because of the appa-rent victory of the anti-fascist coalition.

Argentina finally was recognized as a founding state of the UN, based on the compromise (mutually-acceptable solution) reached during the conference. In 1947, the Soviet Union vetoed (again) the admission of Ireland and Portugal to the membership of the UN. Its reasoning was that these two nations have remained neutral during the World War II, hence they could not be regarded as peace-loving states (Petreski 2014, 113). An attempt by the GA to bypass this power of the SC in determining the admission of new states to the membership of the UN was defeated in 1950. The International Court of Justice found that the GA can only receive a new state to the UN membership prior to "favorable recommendation" received by the SC (Competence of Assembly Regarding Admission to the United Nations, Advisory Opinion, ICJ Reports 1950, 10). However in a dissenting opinion, Judge Alvarez drew attention to the new international law and held:

> (…) Even if it is admitted that the right of veto may be exercised freely by the permanent Members of the Security Council in regard to the recommendation of new members, the General Assembly may still determine whether or not this right has been abused and, if the answer is in the affirmative, it can proceed with the admission without any recommendation by the Council (…) a State whose request for admission had been approved by all the Members of the Security Council except *one* and by all the Members of the General Assembly would be unable to obtain admission to the United Nations because of the opposition of a *single* state. In that way, one single vote would be able to frustrate the votes of all the other Members of the United Nations and that would be *ad absurdo*. (Dissenting Opinion by M. Alvarez 3 March 1950, 20).

The above dissenting opinion of Judge Alvarez says a lot about the bottleneck constituted by the use of vetoes in the admission process. The recent practice of the United Nations goes in favor of this claim. Notably, judging from the massive support and ovation that greeted the speech of the Palestinian Authority President Mahmoud Abbas at the 66th Session of the General Assembly, it will be correct to conclude that Palestine would have been admitted as a UN member if the General Assembly had the opportunity to vote. However, the issue regarding the Palestine membership has never come before the General Assembly, because the Security Council has not deliberated on it due to a US threat of veto. It can be concluded that the full procedure for admission of newly created states to the membership of the UN is full of political considerations and interests. Hence, the legal criteria enshrined in the UN Charter are not always followed during the admission process.

[2] *Liberum veto* means a *veto* exercised by a single member (as of a legislative body) under rules requi-ring unanimous consent.

## THE REPUBLIC OF MACEDONIA: MEMBERSHIP IN THE UNITED NATIONS AND THE NEGOTIATIONS ON THE "NAME ISSUE"

In the mid-1992, the Macedonian state leadership intensified the communication with the US administration at that time, and with the UN Secretary General Boutros Boutros-Ghali. The goal was to make an attempt for accession of Republic of Macedonia (henceforth referred to as: Macedonia), as newly created state, to the world organization after blocking the accession to the European Community – a blockade made by Greece (officially the Helenic Republic). The Macedonian president Kiro Gligorov, submitted a request for membership of Macedonia to the United Nations by the letter from 30 July 1992. Six months later, the Greek Minister of Foreign Affairs highlighted the position of his government, directing sharp objections to Macedonia's membership in the UN due to unresolved issues between the two countries. Greece in particular demanded abandonment of the denomination "Republic of Macedonia" as a name of the Macedonian state. The same is perceived from a conversation between the former Prime Minister of Greece, Constantine Mitsotakis, and the former US President, George H. W. Bush, held in the Oval Office of the White House on 17 November 1992. The Greek Prime Minister outlines:

> (…) An issue most close to our Greek hearts is the one of Skopje/Macedonia. We will be discussing this in Edinburgh. We want this republic to exist and we have taken several initiatives in this sense. What we cannot accept is their official name to include the term *Macedonia* (…) Another problem I ask for US to help to prevent the admission of this country in the UN because if they are admitted, this discussion is valueless. We will see what we can do – answers the former Secretary of State, Lawrence S. Eagleburger. It is very important. It would be a tragedy. I cannot afford it. I do not exaggerate, I try to compromise. But if this happens this would be a tragedy for Greece and for me – The Greek Prime Minister added. (Memorandum of Conversation 1992).

At this period, the Minister of Foreign Affairs of Great Britain informed the authorities in Skopje that his state along with France and Spain formally asked the UN admission of the newly created state to the membership of the Organization under the reference "Former Yugoslav Republic of Macedonia / FYROM". On 7 April 1993 the Security Council adopted the resolution 817 (1993). It notes that "the applicant fulfills the criteria for membership in the United Nations laid down in Article 4 of the Charter (peace-loving state which accepts the obligations contained in the Charter, also capable and willing to fulfill the obligations)." (Petreski 2014, 118). It also notes "the difference that has arisen over the name of the state, which needs to be resolved in the interest of the maintenance of peaceful and good-neighborly relations in the region." (Petreski 2014, 118). The resolution also:

> (…) Recommends to the General Assembly that the State be admitted to membership in the United Nations, this State being provisionally referred to for all purposes within the United Nations as "the former Yugoslav Republic of Macedonia" pending settlement of the difference that has arisen over the name of the state (…) (S/RES/817 1993).

So, on 8 April 1993 Republic of Macedonia became the 181th member state of the United Nations under the interim reference "FYROM". It was done most severe violation of international law, violation of the UN Charter and precedent in the UN legal system because the constitutional name of the state is not a (legal) requirement for membership in the UN or in any other international organization.

On 18 June 1993 the Security Council passed another resolution 845 (1993) calling on the two parties – Republic of Macedonia and Greece "to continue their efforts under the auspices of the Secretary-General to arrive at a speedy settlement of the remaining issues between them" (S/RES/845 1993).

In accordance with Resolution 845 (1993) of the Security Council, on 13 September 1995 in New York, the Interim Accord was signed, which came into force on 13 October 1995. This interim agreement constitutes legal framework for stabilizing the bilateral relations between Republic of Macedonia and Greece. The minister Karolos Papoulias was representing the Party of the First Part (Greece), the minister Stevo Crvenkovski was representing the Party of the Second Part (Republic of Macedonia) in witness whereof by Cyrus R. Vance (Special Envoy of the Secretary General of the United Nations). Vance was also UN Special Representative in the negotiations on the "name issue". According to Article 5, paragraph 1 of the Interim Accord:

> (…) The Parties agree to continue negotiations under the auspices of the Secretary-General of the United Nations pursuant to Security Council resolution 845 (1993) with a view to reaching agreement on the difference described in that resolution and in Security Council resolution 817 (1993).

The contracting parties recalled the principles of the inviolability of frontiers and the territorial integrity of the states incorporated in the Final Act of the Conference on Security and Cooperation in Europe, signed in Helsinki, bearing in mind the provisions of the UN Charter and, in particular, those referring to the obligation of the states to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state. The Republic of Macedonia and Greece agreed that their mutual interest is maintenance of international peace and security in their region, confirming the existing frontier between them as an enduring international border. Also recalled was obligation not to intervene, on any pretext or in any form, in the internal affairs of the other. Both parties agreed to respect very important obligation stipulated in Article 11, paragraph 1 of the Interim Accord (1995, No. 32193):

> (…) Upon entry into force of this Interim Accord the Party of the First Part (Greece) agrees not to object to the application by or the membership of the Party of the Second Part (Republic of Macedonia) in international, multilateral and regional organizations and institutions of which Greece is a member; however Greece reserves the right to object to any membership referred to in such organization or institution differently than the interim reference "the former Yugoslav Republic of Macedonia (FYROM)" in accordance with paragraph 2 of the United Nations Security Council resolution 817 (1993).

Taking into consideration the oldest legal principle that applies in international law of treaties – *pacta sunt servanda* (contracts must be fulfilled / agreements must be kept), according to the Article 26 of Vienna Convention on the law of treaties - "every treaty in force is binding upon the parties to it and must be performed by them in good faith". It means that Greece *must not object* the NATO membership of Republic of Macedonia under the interim reference. The same goes for Macedonia's accession to EU. However, that is exactly what happened. At the Summit of the North Atlantic Council of NATO which took place in Bucharest, Romania on 3 April 2008, Greece vetoed the invitation for Macedonia to begin accession talks to join the Alliance even though Republic of Macedonia has met the membership criteria (legal, political, and military), confirmed by an official statement made by the President of the United States, George W. Bush, two days after the Summit, "like Croatia and Albania, Macedonia has met all the criteria for NATO membership" (International Court of Justice, Case Concerning the Application of Article 11, paragraph 1, of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece), Memorial, Volume 1, 20 July 2009, page 53). In paragraph 20 of the Bucharest Summit Declaration (3 April 2008), the Heads of State and Government of the NATO Member States agreed on the following:

> (…) We recognize the hard work and the commitment demonstrated by the Former Yugoslav Republic of Macedonia to NATO values and Alliance operations. We commend them for their efforts to build a multiethnic society. Within the framework of the UN, many actors have worked hard to resolve the *name issue*, but the Alliance has noted with regret that these talks have not produced a successful outcome. Therefore *we agreed that an invitation to the Former Yugoslav Republic of Macedonia will be extended as soon as a mutually acceptable solution to the name issue has been reached*. We encourage the negotiations to be resumed without delay and expect them to be concluded as soon as possible (…).

### *The role of the International Court of Justice*

On 17 November 2008, Republic of Macedonia instituted proceedings before the International Court of Justice (henceforth referred to as: ICJ) against Greece for "a flagrant violation of its obligations under Article 11" of the Interim Accord. Macedonia seeks "to protect its rights under the Interim Accord and to ensure that it is allowed to exercise its rights as an independent State acting in accordance with international law, including the right to pursue membership of relevant international organizations". (ICJ, The former Yugoslav Republic of Macedonia institutes proceedings against Greece for a violation of Article 11 of the Interim Accord of 13 September 1995, No. 2008/40, 17 November 2008, page 1, para. 2). The Republic of Macedonia contends that the Hellenic Republic violated its rights under Article 11 by objecting, in April 2008, to its application to join NATO. The Republic of Macedonia contends, in particular, that Greece "vetoed" its application to join NATO because Greece desires "to resolve the difference between the Parties concerning the constitutional name of the Applicant as an essential precondition" for Macedonia's membership in the NATO. (2008, page 1, para. 4). The Applicant (Macedonia) argues that it has "met its obligations under the Interim Accord not to be designated as a member of

NATO with any designation other than the former Yugoslav Republic of Macedonia" and it affirms that "the subject of this dispute does not concern – either directly or indirectly – the difference that has arisen between Greece and itself over its name". (2008, page 1, para. 5). The Republic of Macedonia requests the Court to order Greece to:

> (…) Immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1 and to cease and desist from objecting in any way, whether directly or indirectly, to the Macedonia's membership of the North Atlantic Treaty Organization and/or of any other international, multilateral and regional organizations and institutions of which Greece is a member (…) (2008, page 1, para. 5).

As a basis for the jurisdiction of the Court, Republic of Macedonia invokes Article 21, paragraph 2, of the Interim Accord of 13 September 1995 which provides that:

> (…) Any difference or dispute that arises between the Parties concerning the interpretation or implementation of this Interim Accord may be submitted by either of them to the ICJ, except for the difference between them with respect to the name of the Party of the Second Part (Republic of Macedonia), referred to in Article 5, paragraph 1.

The ICJ made its judgment on 5 December 2011. The Judgment is legally binding on the parties and no *remedium iuris* is allowed against it (it is not allowed to file a lawsuit in order to appeal the judgment). The Court finds that:

- Opposing the accession of Macedonia to NATO in the period before the NATO Summit in Bucharest, 2008, Greece violated the Interim Accord of 1995:

  > (…) In the view of the Court, the evidence submitted to it demonstrates that through formal diplomatic correspondence and through statements of its senior officials, the Respondent (Greece) made clear before, during and after the Bucharest Summit that the resolution of the difference over the name was the "decisive criterion" for Greece to accept the Applicant's (Republic of Macedonia) admission to NATO. Greece manifested its objection to the Macedonia's admission to NATO at the Bucharest Summit, citing the fact that the difference regarding the Macedonia's name remained unresolved (…) The Court therefore concludes that the Respondent (Greece) objected to the Applicant's (Republic of Macedonia) admission to NATO, within the meaning of the first clause of Article 11, paragraph 1, of the Interim Accord (…) Thus, the Court concludes that the Respondent (Greece) failed to comply with its obligation under Article 11, paragraph 1, of the Interim Accord by objecting to the Applicant's (Republic of Macedonia) admission to NATO at the Bucharest Summit. (para. 81, 83, 113).

- It is expected from Greece not to violate international law again (it is assumed by definition of its "good faith"):

  > (…) The Court does not consider it necessary to order the Respondent (Greece), as the Applicant (Republic of Macedonia) requests, to refrain from any future conduct that violates its obligation under Article 11, paragraph 1,

> of the Interim Accord. As the Court previously explained, "[a]s a general rule, there is no reason to suppose that a State whose act or conduct has been declared wrongful by the Court will repeat that act or conduct in the future, since its good faith must be presumed. (para. 168).

- Macedonia can continue to use its constitutional name in relations with Greece and within international organizations:

> (…) Article 1, paragraph 1, of the Interim Accord, provides that the Respondent (Greece) will recognize the Applicant (Republic of Macedonia) as an "independent and sovereign state" and that the Respondent will refer to it by a provisional designation (as "the former Yugoslav Republic of Macedonia"). Nowhere, however, does the Interim Accord require the Applicant to use the provisional designation in its dealings with the Respondent. On the contrary, the "Memorandum on 'Practical Measures' Related to the Interim Accord", concluded by the Parties contemporaneously with the entry into force of the Interim Accord, expressly envisages that the Applicant will refer to itself as the "Republic of Macedonia" in its dealings with the Respondent. Thus, as of the entry into force of the Interim Accord, the Respondent did not insist that the Applicant forbear from the use of its constitutional name in all circumstances (…) If the Parties had wanted the Interim Accord to mandate a change in the Applicant's use of its constitutional name in international organizations, they could have included an explicit obligation to that effect as they did with the corresponding obligations in Article 6 and Article 7, paragraph 2 (…) Based on the foregoing analysis, the Court concludes that the practice of the Parties in implementing the Interim Accord supports the Court's prior conclusions and thus that the second clause of Article 11, paragraph 1, does not permit the Respondent (Greece) to object to the Applicant's (Republic of Macedonia) admission to an organization based on the prospect that the Applicant is to refer to itself in such organization with its constitutional name. (para. 95, 96, 101).

- All allegations of Greece that Republic of Macedonia had violated the Interim Accordwere rejected:

> (…) The Court finds no breach by the Applicant of the second clause of Article 11, paragraph 1 (...) the Court concludes that the Respondent (Greece) has not met its burden of demonstrating that the Applicant (Republic of Macedonia) breached its obligation to negotiate in good faith, according to Article 5, paragraph 1 of the Interim Accord "the Parties agree to continue negotiations under the auspices of the Secretary-General of the United Nations pursuant to Security Council resolution 845 (1993) with a view to reaching agreement on the difference described in that resolution and in Security Council resolution 817 (1993)." (…) the Court concludes that the Respondent (Greece) has not discharged its bur-den to demonstrate a breach of Article 7, paragraph 3, by the Applicant (Republic of Macedonia). Article 7, paragraph 3, provides: "if either Party believes one or more symbols constituting part of

> its historic or cultural patrimony is being used by the other Party, it shall bring such alleged use to the attention of the other Party, and the other Party shall take appropriate corrective action or indicate why it does not consider it necessary to do so. (para. 126, 138, 159, 154).

It means that Republic of Macedonia did not breach its obligations under Article 7, paragraph 3 of the Interim Accord by renaming the airport "Petrovec" after "Alexander the Great". It can be concluded that although the Court's judgment does not directly concern third countries or NATO or EU themselves, the Court found that the opposition of Greece before and during the NATO Summit in Bucharest constituted a violation of international public law. It would be appropriate for the NATO Member States to review their decision made at the Summit in Bucharest, but at the last NATO Summit held in Warsaw, Poland (8-9 July 2016) the decision from Bucharest Summit meeting was repeated:

> (…) We reiterate our decision made at the 2008 Bucharest Summit and reiterated at subsequent Summits that NATO will extend an invitation to the Former Yugoslav Republic of Macedonia to join the Alliance as soon as mutually acceptable solution to the name issue has been reached within the framework of the UN. Given concerns over political developments in the Former Yugoslav Republic of Macedonia, which have taken the country further away from NATO values, we urge all political leaders in the country to fully implement their commitments under the Przino Agreement of June/July 2015, as the framework for a sustainable solution to the political crisis (…) We appreciate the Former Yugoslav Republic of Macedonia's commitment to international security, as demonstrated by its steadfast contribution to our operations, and its commitment to the NATO accession process. (para. 114).

The implementation of the ICJ Judgments is left to the states to which they refer, on the basis of their democratic awareness of respect for international law and the implementation of international obligations. A key disadvantage of the International Court of Justice is the lack of appropriate enforcement mechanism for coercion upon states in order to bring into force its judgments when they are not implemented *bona fide,* based on the goodwill of the subjects in question.

## A DRAFT STRATEGY: WHAT SHOULD BE DONE IN THE FUTURE?

The denomination (interim reference) "FYROM" is one of the two illegal conditions for the Macedonian accession in the UN in 1993. The second illegal condition is the obligation for negotiations on its own legal identity (the name of the state is legal identity in international legal communication, as it is the case with personal name of the individuals as subjects of law). Namely, the International Covenant on Civil and Political Rights stipulates that "everyone shall have the right to recognition everywhere as a person before the law." (Article 16). These two conditions are contrary to the advisory opinion given by the ICJ in 1948, whether it may ask specific additional requirements for admission, beyond those prescribed in Article 4 of the Charter, and voting for them. The negative response of the Court was accepted by the UN General Assembly as an interpretation of Article 4.

Republic of Macedonia should initiate (draft) resolution of the General Assembly containing the following question – whether the specific conditions for admission and status of the state are in accordance with the UN Charter? (Petreski 2014, 123). There are no legal obstacles of any kind through the UN Assembly to seek an advisory opinion from the ICJ on the legality of the additional conditions that were required in the admission of Macedonia in the UN, out of Article 4, para. 1 of the Charter. The procedure for giving advisory opinions is set out in Article 65-68, Chapter 4 – Advisory opinions of the Statute of ICJ:

> (…) The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request (Article 65, para. 1) (…) Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question. (Article 65, para. 2).

The procedure is initiated at the request of any UN body, but mostly is made by the GA. The ICJ Advisory opinion of 28 May 1948 will be used as an argument, enclosed in the written request. Upon request of the GA the ICJ gave its opinion and answer to the following question:

> (…) Is a Member State of the United Nations which is called upon to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the UN, juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1, Article 4 of the Charter? (Conditions of Admission of a State to membership in the United Nations (Article 4 of Charter), Advisory Opinion of 28 May 1948).

The ICJ answered this question in the negative by nine votes to six. It was nevertheless contended that the question was not legal, but political. It was argued that these conditions represented an indispensable minimum in the sense that political considerations could be superimposed on them, and forms an obstacle to admission. The conditions in Article 4 are exhaustive and no argument to the contrary can be drawn from paragraph 2 of the Article which is only concerned with the procedure for admission. For these reasons, the Court answered the question put to it in the negative. It means that in case of admission of a newly created state to the membership of the United Nations, additional conditions beyond the UN Charter must not be requested.

The United Nations practice shows that the most of the advisory opinions of the ICJ are accepted by the Organization, so once the advisory opinion in our case is accepted the GA would have to establish the constitutional name "Republic of Macedonia" for all purposes of the UN and our membership in this multilateral giant to be continued under the constitutional name of the state.

The following should be taken into account: the draft resolution should be prepared by co-sponsor states that will help Republic of Macedonia to put the resolution on the daily agenda of the General Assembly (with contained question to the ICJ, elaborated above in

the paper) and to be voted. According to the rules of procedure of the GA, the General Committee makes decisions on which items will be placed on the daily agenda of the GA:

> (…) The General Committee shall, at the beginning of each session, consider the provisional agenda, together with the supplementary list, and shall make recommendations to the General Assembly, with regard to each item proposed, concerning its inclusion in the agenda, the rejection of the request for inclusion or the inclusion of the item in the provisional agenda of a future session. (Rule 40 – Functions of the General Committee, Rules of Procedure of the General Assembly A/520/Rev. 17 2008).

Under procedural law, in the General Committee and in the GA, decisions are made by simple majority (of the members present and voting):

> (…) Decisions of the General Assembly on questions other than those who are considered as important, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting. (Rule 85 – Simple majority, A/520/Rev. 17)
> (…) For the purposes of these rules, the phrase "members present and voting" means members casting an affirmative or negative vote. Members which abstain from voting are considered as not voting. (Rule 86 – Meaning of the phrase "members present and voting", A/520/Rev. 17).

According to rule 125 [85] – Majority required, "decisions of committees shall be made by a majority of the members present and voting". With the full support of the co-sponsor states, taking into consideration the fact that Republic of Macedonia has been recognized under its constitutional name by 134 UN Member States, we will not have problems of any kind with passing the draft resolution in the GA. Despite the Greek abstaining from voting or casting a negative vote, we will have favorable outcome, even if only half of those 134 states cast an affirmative vote for passing the resolution. The resolution will be adopted. Co-sponsor states could be some of the states of former Yugoslavia, Turkey for example etc. It would be also favorable to gain the support of the five permanent Member States of the SC in order to obtain diplomatic weight of the resolution. This part of the strategy must be conducted in the strictest secrecy, and these co-sponsors will eventually be those states which maintain closest relations with Republic of Macedonia.

## CONCLUSION

The integration of a new state in the international community is done by way of individual and collective recognition by existing states. At their own discretion and assessment they decide whether the new state is able and willing to perform all duties that belong to it as a subject in international law, and whether it will be a trusted and loyal member of the community or not. Consequently, the ability and willingness of the new state to respect international law constitutes the main criterion of statehood in terms of international law. The existing states are decisive for granting *capacitas iuridica* in international law, based on the main criterion of statehood.

The full procedure for admission of newly created states to the membership of the UN is full of political considerations and interests. Hence, the legal criteria enshrined in the UN Charter are not always followed during the admission process. In case of admission of a newly created state to the membership of the United Nations, additional conditions beyond the UN Charter must not be requested. 

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