



The Role of International Organizations in the Recognition and Non-recognition of States in International Law

Mentor Borovci¹

Abstract: The main objective of this article is to identify the role of international organizations in the process of recognition and non-recognition of states in international law. The integration of states in the international community is dependent on its position towards other states and international organizations. The decision of an international organization to admit a state in its membership is a factual recognition of that entity as a state, and it helps it to integrate as a legitimate actor of international relations. On the other hand, as international practice demonstrates, international organizations play an important role in the non-recognition of entities which claim to become states in contravention of *jus cogens* norms of international law. The role of international organizations in this context will be examined by using different methodological tools such as legal, analytical and comparative in order to obtain a better understanding of the issues involved.

Keywords: Recognition of states; non-recognition of states; international organizations; international law

1. Introduction

In addition to individual states, international intergovernmental organizations also play an important role in the recognition and non-recognition of certain entities as states.

The admission of states in the membership of international organizations is a good opportunity to strengthen the international legitimacy of states, but also to strengthen their ties and international communication. In the process of accepting new states in their membership, international intergovernmental organizations play an important role in acknowledging the fact that the applicant for membership is a “state” as full membership in international organizations is open only to states. In this aspect, this Article will examine the role and legal nature of the admission of

¹ PhD Student, Faculty of Law, University of Prishtina, Republic of Kosovo, Address: Prishtina, Kosovo, Corresponding author: mentorborovci@gmail.com.

new states in international organizations by trying to clarify if there are elements of state recognition in this process.

Moreover, this article will examine the direct role that international organizations have in recognizing states by laying down some fundamental considerations that the entity that claims to be a state must meet in addition to the traditional criteria of statehood, to gain international legitimacy as a state. In this regard, the article highlights the role played by the United Nations, the former European Community and now the European Union as well as other regional organizations around the world, in recognizing new states, but also in their non-recognition, by analyzing concrete cases and the position of these organizations vis-à-vis those entities.

In addition, international organizations with the policy of non-recognition of new entities that are created contrary to the *jus cogens* norms of international law, play an important role in preventing their integration in the international system of non-state entities.

Given this, the role of international organizations will be analyzed in the light of the practice built by them over the years.

2. Legal Nature of the Admission of New States in International Organizations

Membership of a state in international organizations is of fundamental interest in its legitimization as a state in the international arena. But there are different attitudes regarding the legal nature of the decision to admit a new member state from the relevant organs of the international organization, and whether this decision should be understood as the collective recognition of the new member state.

Admission of new states as members of the international community is made on the basis of an individual or collective recognition decision by existing states, and these countries base their decision on whether, in their opinion, the candidate is able and willing to comply with international law. (Hillgruber, 1998, p. 500)

Marcelo G. Kohen makes this decision as an indirect way of collective recognition. Furthermore, he points out that “collective recognition occurs when a group of states, such as the European Union or the United Nations, recognize the existence of a contending state directly, through an act of recognition or indirectly through the membership of the state in the organization” (Kohen, 2006, p. 97).

Shabtai Rosenne states that “The agreement on accepting an entity in the UN, either through a vote or by consensus, is a form of recognition of the state and its government by those who have favored its admission. Today, UN accession is in practice the last step in the international plan for the establishment of a new state, with the exception of rare cases in which the new state does not want to become a UN member” (Rosenne, 2004, p. 246).

Rebecca Wallace acknowledges the importance of a state's membership to the UN underlining that “UN membership is a recognition of citizenship for the purposes of the Organization” (Wallace, 2002, p. 88).

David Raič is skeptical of collective recognition through UN membership. According to him: “[...] there is not enough basis to conclude that the process of recognition has been collectivized with the United Nations accession procedure. There is no such thing as “collective recognition” if this term is used to describe (nearly) universal recognition. Such a notion, in particular, will require any member state of the United Nations to recognize an entity as a state under international law as the entity concerned is admitted to the United Nations” (Raič, 2002, p. 47). However, according to Shaw, “when a state has voted in favor of the UN membership of the designated entity, this leads to a natural conclusion that recognition has taken place.” (Shaw, 2008, p. 464.)

Membership of an entity in international organizations, particularly at the UN, is a powerful testimony to the collective admittance of its statehood in the international arena. Taking into account that full membership in international organizations is open only to states, making a decision to join an entity in an international organization is a powerful proof that that entity meets the traditional statehood criteria set forth in the Montevideo Convention and the specific membership criteria in the relevant international organization.

In this context, the admission of a State to the membership of an international organization is a testimony to the collective recognition of the host country, at least from those countries that have voted in favor of the admission of such state.

Today, with the exception of Israel whose citizenship is still denied by some Arab states, all UN members have been accepted as states, despite the fact that some might not have received full recognition from individual states if they were left to make a determination of citizenship in accordance with the traditional criteria. Thus, it is fair to conclude that many states have achieved citizenship by admission

to the United Nations and that this recognition procedure co-exists along with the traditional method of unilateral recognition (Kohen, 2006, p. 99-100).

The decision to admit a new state to an international organization in terms of state creation is of a declarative character because such a decision does not create the state; the state exists even before the membership in the international organization. Such was the case of Switzerland's accession to the UN in 2002. It is clear that this Swiss membership in the UN did not create it as a state, but the UN has just stated that it recognizes it as a full-fledged state in the global organization.

But, in view of the creation of rights that comes from the international organization and the taking of the respective obligations, the decision to join an entity as a full member in an international organization is of a constitutive character, because through membership in it, the state creates the rights deriving from the constitutive document of the organization and becomes the bearer of the respective obligations.

Non-state entities generally have no access to such power and are not invited to participate in global affairs. Non-state entities are limited in their ability to influence the development of international law, to protest against the current rules of international law, or to lobby the empowered states to behave in a certain way on the international scene (Sterio, 2011. p. 6).

What is common to all international organizations is that they are founded on the basis of an international treaty and that membership in international organizations is made on a voluntary basis.

3. The role of International Organizations on Recognition of New States

Full membership in international organizations is open only to states. Thus, according to Article 4 of the United Nations Charter, "Membership in the United Nations is open to all peace-loving States which accept the obligations contained in the Charter, and in the judgment of the Organization, are able and willing to carry out these obligations." Hence, this provision makes it clear that membership in the UN is open only to states and that membership means that the UN is recognizing this entity as a "state".

Similarly, the Treaty on European Union in its Article 49 stipulates that "Any European country that respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union". According to this legal formulation, it turns out that only the states can be members of the

European Union, and on the occasion of accepting a state as a member of the Union, the fact that the applicant entity is a “state” from the European Union is not controversial. It turns out that membership of a state in the European Union is a kind of implicit collective recognition of that applying entity as a state.

Moreover, the Charter of the Association of Southeast Asian States in its Article 6 has determined that in addition to other criteria, membership of this regional organization is also depended on the recognition of the applicant by all member states of ASEAN.

In addition to the role played by the collective recognition of states in the process of accession to their membership, international organizations also play a role in defining obligations and criteria for recognizing of certain entities as states.

3.1. The Role of European Community and European Union

3.1.1 Guidelines for formal recognition of new states in Eastern Europe and the Soviet Union, December 16, 1991.

The developments in Eastern Europe, the Soviet Union, and the former Yugoslavia had forced the European Community and its member states to adopt a common stance on December 16, 1991, regarding the formal recognition of new states in these regions. In this regard, they have adopted the following guidelines for formal recognition of new states in Eastern Europe and the Soviet Union:

“The Community and the member states confirm their commitment to the principles of the Helsinki Final Act and the Paris Charter, in particular the principle of self-determination. They confirm their readiness to recognize, in accordance with the normal standards of international practice and political realities in each case, these new states which, after the historical changes in the region, have been established on a democratic basis, have accepted the appropriate international obligations and have engaged in good faith in a peaceful process and in negotiations”(Declaration of the European Council on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, issued on 16 December 1991).

Thus, the member states of the European Community at that time adopted a common approach to the process of recognizing these new states. This attitude requires:

- Respecting the provisions of the Charter of the United Nations and its commitment to the Helsinki Final Act and the Charter of Paris, particularly with regard to the rule of law, democracy and human rights;
- Ensuring the rights of ethnic and national groups and minorities in accordance with the commitments signed within the CSCE (now OSCE);
- Respecting the inviolability of all the borders that can only be changed by peaceful means and by mutual agreement;
- Accepting all important commitments regarding disarmament and non-proliferation of nuclear weapons as well as regional security and stability;
- The commitment to settle by agreement, including, where appropriate, even before arbitration, all matters relating to the succession of the state and regional disagreements (Declaration of the European Council on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, issued on 16 December 1991)

These guidelines, along with the traditional citizenship criteria set forth in the Montevideo Convention, represented important considerations which the new states created in Eastern Europe and the former Soviet Union had to meet in order to accept their formal recognition by member states of the European Community. With this, the European Community also sought to eliminate the potential sources of conflict by accommodating the common needs of new states.

Also, the Arbitration Committee in its fifteen opinions had developed a number of principles in the context of creating preconditions for the recognition of new states by the member states of the European Community in the context of the dissolution of the former Yugoslav federation.

3.1.2 The European Union's Approach to Kosovo

On the occasion of Kosovo's Declaration of Independence on February 17, 2008, the General Affairs and External Relations Council, in its meeting held on 18 February 2008, discussed the developments in Kosovo and adopted its conclusions on Kosovo. The Council stated that "On 17 February 2008, the Kosovo Assembly adopted a resolution declaring Kosovo independent". The Council took note of the fact that "the resolution engages Kosovo in the principles of democracy and equality of all its citizens, the protection of minorities of Serbia and other minorities, the protection of cultural and religious heritage and international oversight" while "welcoming continuation of the international community's

presence based on UN Security Council Resolution 1244". Because of the lack of consensus among the member states of the European Union, the Council had failed to have a common position regarding the recognition of Kosovo's independence; moreover, "the Council stated that, in relation to their relations with Kosovo, the member states will decide in accordance with national practice and international law." Despite this, the Council had a consensus on the need for the European Union to have "long-term commitment to stability in the Western Balkans region" and reiterated its readiness to "play a leading role in strengthening stability in the region" and "reaffirms the commitment of to fully and effectively support the European perspective of the Western Balkans". The Council also "reiterates the EU's respect for the principles of the Charter of the United Nations and the Helsinki Final Act, *inter alia*, the principles of sovereignty and territorial integrity and all UN Security Council resolutions". The Council underlined its conviction that "given the 1990s conflict and the prolonged period of international administration under SCR 1244, Kosovo constitutes a *sui generis* case which does not question these principles and resolutions." (Council of the European Union En 6496/08 (Presse 41) Press Release 2851st Council meeting General Affairs and External Relations External Relations Brussels, 18 February 2008, Kosovo - Council conclusions, p.7).

Unlike the Council, the European Parliament has maintained a more affirmative attitude with regard to Kosovo's independence. Putting emphasis on the fact that 23 of the 28 member states of the European Union recognize the independence of Kosovo, regarding the 5 states that have not recognized Kosovo's independence, the European Parliament states that "[...] recognition would be beneficial for the normalization of relations between Kosovo and Serbia and to enhance the EU's credibility in its foreign policy"; and "encourages a positive approach to Kosovo's participation in international organizations". (European Parliament resolution of 14 June 2017 on the 2016 Commission Report on Kosovo).

3.2 The Role of the League of Arab States

Pact of the League of Arab States has granted direct recognition to the state of Palestine, which makes this specific legal instrument in relation to other instruments for the establishment of international organizations. The pact in its Annex to Palestine states that "its existence and its independence among the nations can not be *de jure* disputed as well as the independence of any of the Arab states". Moreover, in this Annex it is emphasized that "Even why the external signs of this independence have remained covered as a result of force majeure, it is not

appropriate for this to be an obstacle to Palestine's participation in the work of the League. Therefore, the signatory states of the Arab League Pact consider that, in view of the special circumstances of Palestine, the League Council should appoint an Arab delegate from Palestine to participate in its work until this country enjoys true independence” (ANNEX ON PALESTINE, Pact of the League of Arab States, Signed at Cairo, on 22 March 1945).

3.3 The Role of the Organization of Islamic Cooperation

The Islamic Cooperation Organization has exercised an open role in the process of collective recognition of the entity's right to be constituted as independent states. Thus in the case of Kosovo, the OIC has taken an open stand in support of the independence of the Republic of Kosovo. In its Resolution on the Situation in Kosovo issued at the Council of Foreign Ministers' Session held in Abidjan, Republic of Ivory Coast, on 10-11 July 2017, after “considering the fact that Kosovo was recognized by 114 States, including 38 Member States of the Organization for Islamic Cooperation”, and “admitted that the International Court of Justice's Advisory Opinion on the Unilateral Declaration of Independence of Kosovo, issued on July 22, 2010, stipulated that the Unilateral Declaration of Independence Kosovo did not violate international law, Security Council Resolution 1244 (1999), nor the Kosovo Constitutional Framework for Kosovo adopted by UNMIK, in these circumstances, “he called on the member states of the Organization for Islamic Co-operation community to review the recognition of Kosovo, based on their free and sovereign right and in their national practice”. (Resolutions No. 18/44-POL On The Situation in Kosovo, The Sixty Fourth Session of the Council of Foreign Ministers, held in Abidjan, Republic of Côte d ' Ivoire, from 16 to 17 Shawwal 1438H (10-11 July 2017).

4. The Role of International Organizations on Non recognition of States

4.1 The Role of United Nation Organization on Non recognition of States

The United Nations and its organs have clearly played an important role in not recognizing entities that are created in violation of international law.

Thus, the Security Council, by Resolution 284 (1970), decided to refer the following question to the International Court of Justice in accordance with Article 96, paragraph 1 of the United Nations Charter:

“What are the legal consequences for states, the continued presence of South Africa in Namibia, despite Security Council Resolution 276 (1970)?”

The International Court of Justice, responding to this question, in its 1971 Namibian Advisory Opinion, had clearly confirmed its important role in defining the obligations for non-recognition of situations created in contravention of international law.

In this context, the Court found that “South Africa was responsible for creating and maintaining a situation for which the Court has validly declared illegal” and that moreover “had the obligation to end this”. Also, South Africa “was under the obligation to withdraw its administration from the Namibia Territory”. Continuing this illegal occupation of the Namibian Territory, “South Africa caused international accountability resulting from the continued violation of international obligations”, while continuing to be responsible also for violating the “Namibian people's rights”.

The Court also clarified the obligations of other States in relation to such a situation by stating that “[...] Member States are under an obligation to abstain from entering into treaty relations with South Africa in all cases in which the African Government South intends to act on behalf of Namibia or Namibia” (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16, parag. 122).

The International Court of Justice had decided that as a consequence of such an unlawful situation, the obligation of denying extended the obligation not to enter into diplomatic and consular relations. According to the Court, “Member States, in accordance with the obligation of non-recognition imposed by paragraphs 2 and 5 of Resolution 276 (1970), were under an obligation to abstain from sending diplomatic or special missions to South Africa, including their jurisdiction in The Namibian Territory, abstaining from sending consular agents to Namibia, and attracting such agents who are already there. They should also make it clear to South African authorities that “maintaining diplomatic and consular relations with South Africa does not imply any recognition of its authority over Namibia”. (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16, parag. 123).

Given these findings, the Court said that “the continuation of South Africa's presence in Namibia was unlawful” that “South Africa was under an obligation to withdraw its Administration from Namibia immediately and thus to end the occupation of the Territory” that “United Nations member states were under a duty to recognize the illegality of the presence of South Africa in Namibia and the invalidity of its actions on behalf of Namibia and to refrain from any action, and in particular any relationship with the Government of South Africa, which can be understood as a recognition of the legitimacy of, or as a provision of, support or assistance to such presence or administration”. The Court also took the view that “it is incumbent on non-member states to provide assistance [...] to actions taken by the United Nations concerning Namibia”. (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ Reports 1971, p.16, paragraph 133).

Similarly, the Security Council in the case of opposing Katanga's attempt to become independent of Congo, violating the territorial integrity and political independence of the Congo, has clearly established the rule of non-recognition of entities that are inconsistent with international law. Thus, by Resolution 145 (1960) of 22 July 1960, the Security Council urged all states to “refrain from any action that could affect the territorial integrity and political independence of the Republic of Congo”.

On the occasion of the unilateral declaration of independence by the white minority of the British colony of Rhodesia in Resolution no. 216 of November 12, 1965, the Security Council had decided to “condemn the unilateral declaration of independence by a racist minority in South Rhodesia” and also decided to “urge all states not to recognize the illegal regime of a racist minority and refrain from providing any assistance to this illegal regime”.

Whereas, following the invasion of northern Cyprus by the Turkish forces in July 1974, the Security Council, examining the situation in Cyprus in response to a complaint submitted by the Government of the Republic of Cyprus, by its Resolution 367 of 12 March 1975, “Called upon all states to respect the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus and urgently urged them and the parties concerned to refrain from any action that might prejudice sovereignty, independence, territorial integrity and non-alignment as well as any attempt to divide the island or join it with any other state”.

4.2 The Role of Regional Organization in the Non Recognition of States

The practice of not recognizing the state of Israel, even boycotting this state for years, proves that the League of Arab States has exercised an active and collective role in the non-recognition of states. While in the case of non-recognition of the occupation of Nagorno-Karabakh region in the Republic of Azerbaijan by the Republic of Armenia, the Organization of Islamic Cooperation, in accordance with the principle *ex injuria jus non oritur*, has expressed its stance on the non-recognition of the entities created in contrary to the *jus cogens* norms of international law. Thus, by its Resolution on the Aggression of the Republic of Armenia against the Republic of Azerbaijan, issued at the Council of Foreign Ministers' Session held in Abidjan, Republic of Ivory Coast, on 10-11 July 2017, so required powerful “full, immediate and unconditional withdrawal of Armenian forces from Nagorno-Karabakh region and other occupied territories of Azerbaijan, and strongly encouraged Armenia to respect the sovereignty and territorial integrity of the Republic of Azerbaijan”. The resolution also “called on all states to refrain from supplying arms supplies or military supplies to Armenia and to not allow the use of their territory for the transit of such equipment” (Resolution No. 10/44-POL On the Fourth Session of the Council of Foreign Ministers, held in Abidjan, Republic of Côte d'Ivoire, of the Republic of Azerbaijan, of the Fourth Session of the Council of Foreign Ministers 16 to 17 Shawwal 1438H (10-11 July 2017)).

On non-recognition of the independence of Rhodesia, the Organization of African Unity played an important role, which, considering the situation in South Rhodesia after the unilateral declaration of its independence on 11 November 1965 as a “serious situation” resulted from the illegal seizure of power by the racist colonial white minority in that country” while also “calling on all member states of the United Nations and all peace-loving peoples of the world not to recognize the regime of a racist minority in Rhodesia” (VI) Resolution on Southern Rhodesia, Resolutions of the Sixth Ordinary Session of the Council of Ministers held in Addis Ababa, Ethiopia from 28 February to 6 March 1966).

Similarly, ASEAN, in the Joint Communiqué at the 33rd Ministerial Meeting held in Bangkok, Thailand on 24-25 July 2000, has taken a common stance on “the continued support of sovereignty, territorial integrity and national unity of Indonesia, which also includes the Aceh and Irian Provinces (Papua). The Foreign Ministers supported the efforts and measures taken by the Indonesian Government to restore peace and order”. Also, ASEAN Foreign Ministers in this meeting expressed “support over the case of China and Taiwan, Foreign Ministers have

reaffirmed their “One China” policy (Joint Communiqué of the 33rd ASEAN Ministerial Meeting in Bangkok, Thailand, 24-25 July 2000, para 22).

5. Conclusion

The full integration of states in the international community is possible through membership in international organizations. This process allows states not only to create globally accepted legitimacy, but also to establish relations and strengthen international communication. Starting from this, international organizations play an important role in accepting states in their membership, recognizing at the same time attribution of “state” as full membership in international organizations is open only to states.

In this context, in the framework of the founding treaties of the United Nations, the European Union, ASEAN, the African Union, the Arab League, the Organization of the Islamic Conference, etc., it is stipulated that only states can be full members in these organizations.

Based on this fact, it can be said that in the decision to accept a state in its membership, the international organization plays an important role in the collective recognition of the new member and in his collective legitimacy as a state along with other member states. In this sense, it can be clearly stated that the statehood of the member is accepted in the decision to accept the membership, at least from the states that have voted in favor of this membership.

In addition to the membership process, international organizations play an important role in creating obligations for the recognition and non-recognition of states. Indeed, the forerunner of the European Union, the European Community, has played a decisive role in recognizing the states that emerged from the process of dissolving the former Yugoslav federation by defining the rules and conditions for their recognition. The demand that the constitutional framework of these states, in particular, guarantee the rights of minorities, building a democratic order, and not having territorial claims against neighboring states, proves that in addition to the traditional criteria of statehood, the creation of new states in the European context, although based on international law is a factual issue, the process will require legitimization through complementary criteria. Such a practice at European level could serve as a basis for other regional practices or for its universalization through the United Nations.

Unfortunately, the European Union has not managed to build a common stand on the recognition of the independence of the Republic of Kosovo announced on 17 March 2008, as 5 of the 28 member states of the European Union did not recognize Kosovo as a state. In this sense, unlike the Council, the European Parliament has played a more direct role in recognizing the state of Kosovo by interconnecting this process with the normalization of relations between Kosovo and Serbia.

The League of Arab States in its Pact has recognized the state of Palestine, while the Islamic Cooperation Organization in the case of Kosovo has demonstrated a clear role to the recognition of the state of Kosovo by requesting member states to recognize the independence of Kosovo.

The United Nations has demonstrated a clear role in creating obligations for member states but also for non-member states for non-recognition of entities created in violation of international law. Such was the case with the non recognition of Namibia, Katanga, Rhodesia, Northern Cyprus, etc.

Regional organizations also play a role in not denying states and are not proven by the international practice they have created. This is the case of not recognizing the occupation of Nagorno Karabakh of the Republic of Azerbaijan by the Republic of Armenia, as well as the lack of recognition of the state of Israel by the League of Arab States and even the boycott of this state.

Rhodesian illicit independence was not recognized by the African Unity Organization, which has played a clear role in not recognizing this entity. Also, ASEAN has established a common position to support sovereignty, territorial integrity and national unity of Indonesia, including the Aceh and Irian provinces, while regarding the Taiwan case, ASEAN has created a "one China" political stance.

Admission to general international intergovernmental organizations of the kind of the United Nations serves as a collective legitimization of the new state, making any objection as to the statehood of the entity obsolete and irrelevant.

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