RIDEA Research Institute of Development and European Affairs

THE EVENTUAL MEMBERSHIP OF KOSOVO TO THE UNITED NATIONS (UN):

PROCEDURES AND PROSPECTS

November **2019**

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INPUT

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Abbreviations

UN	United Nations
CPA	Comprehensive Peace Agreement
ICJ	International Court of Justice

I. Introduction

This study/paper seeks to articulate a comprehensive vision of the legal and policy considerations that define the quest for membership in the United Nations. In doing so, the Paper identifies first the relevant provisions in the UN legal system that govern the process of admitting new members in the UN. The key or indeed requisite indispensable criterion for membership in the UN is that the candidate is a 'State'. What a State means in the traditional international law sense, but also in more operational, if not non-traditional terms, will form a crucial part of discussion offered in Section III of the Paper. At the end of the discussion about each composite criterion and relevant substance, there is an analysis as to the way Kosovo fulfills that.

Next, in Section IV, there is a detailed discussion about both the substantive law and substantive criteria for membership and procedural aspects of the process that characterizes the taking of the decision to admit a new member in the United Nations. Section V then offers a description of the practical process of application, by looking at the relevant provisions of the Rules of Procedure of both the Security Council and General Assembly. Section VI presents conclusions and recommendations.

II. Membership in the UN: Relevant Provisions

The two provisions of the Charter of the United Nations on membership in the UN are laid down in Articles 3 and 4 and have the following contents:

> *Article 3. The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.*[1]
>
> *Article 4 (1). Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.*[2]
>
> *Article 4(2). The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.*[3]

Article 3 speaks of the original members of the UN, whereas Article 4(1) of all other States that fulfill the criteria and wish to join. In each case, the requisite fundamental criterion is that the candidate is a State or that the organization is open to States.

However, the Charter does not define the term 'State' or 'States' nor do the two advisory opinions of the International Court of Justice concerning membership of the United Nations

[1] United Nations Charter, (1945) 'Art. 3.' Available at: https://www.un.org/en/sections/un-charter/chapter-ii/index.html [Accessed on: October 15, 2019].
[2] Ibid. art. 4, para. 1.
[3] Ibid. art. 4, para. 2.

(i.e., Conditions of Admission of a State to Membership in the United Nations of 1948 and *Competence of the General Assembly for the Admission of a State to the United Nations* of 1950). In practice, the decision-makers seem to have followed several criteria and have given a wide variety of meanings to the term.[4]

III. The 'State'

The traditional definition of states in international law regards an entity as a state if it possesses (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states.[5] These criteria are codified in what is known as the Montevideo Convention on the Rights and Duties of States.

However, the term state in the UN practice related to the admission of new members has not been given one uniform meaning but instead a number of plainly discordant meanings. An entity may appear to fall short of statehood in one or another essential respect, yet beheld a state eligible for membership. Conversely, an entity may appear to be well-qualified as a state yet be refused the status of statehood remaining ineligible for membership. Under this practice, states can mean a full-fledged independent sovereign entity, a political subdivision, an overseas possession of a state, a mandated territory, an entity with a dubious degree of independence, an entity with a government-controlled in varying degrees by another government, an entity without a government, an entity with a disputed territory, and so on.[6]

As early as 1948, a respected authority on international law and then Deputy Representative of the United States to the Security Council, Philip Jessup, made the following observation on uniformity:

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[4] Frederick Tse-shyang Chen (2001) 'The Meaning of "States" in the Membership Provisions of the United Nations Charter', *Indiana International & Comparative Law Review (Vol 12, No.1), pp.25*.
[5] Ibid.
[6] Ibid, pp.26

> *It is common knowledge that, while there are traditional definitions of a State in international law, the term has been used in many different ways. We are all aware that, under the traditional definition of a State in international law, all the great writers have pointed to four qualifications: first, there must be a people; second, there must be a territory; third, there must be a government; and, fourth, there must be capacity to enter into relations with other States of the world.*
>
> ***…** [But] the term 'State', as used and applied in Article 4 of the Charter of the United Nations, may not be wholly identical with the term 'State' as it is used and defined in classic textbooks of international law.*[7]

In the relevant practice of the United Nations, the traditional definition has been observed, albeit operationalized into a set of specific considerations. For example, it has been reported that the Security Council has taken the following factors into account when acting on membership applications:

> *In connection with the statehood of the applicant, reference has been made to such matters as the following: The possession or lack of settled frontiers; the mode of the establishment of the State; the bearing of a General Assembly decision; … relations with a former sovereign; … the necessity of ratification of peace treaties with ex-enemy applicants; disabilities resulting from the Second World War; the legitimacy of statehood obtained through aggression and conquest; defence arrangements with other powers; the de jure or de facto status of the applicant and its Government; recognition of the applicant by*

[7] Ibid, pp.28-29.

Members of the United Nations; the maintenance of diplomatic relations with other States.[8]

The previous statement points out to a number of factors that in essence, seek to measure and verify the presence or absence of the requisite statehood criteria.

In any event, it is noteworthy to explore each of the criteria used in the traditional conception of the term 'State'. The emphasis will be on the relatively flexible applications and diversity of meanings inherent in each of the criteria.

(1) Permanent Population

The first criterion listed in the Montevideo Convention is that of a permanent human population as a precondition for the existence of a State. Applications for admission into the UN have rarely been challenged for the lack of a permanent population.

However, the 'makeup' of an applicant's population has been raised to challenge its statehood, but the challenges did not seem to get anywhere. The question of makeup was probably raised on the thinking that foreigners residing in a claimant state, being there on sufferance, were not part of its permanent population. The decision implied that as long as an applicant had a permanent population, whether it constituted a minority or a majority of all those living in its territory, it satisfied the requirement of statehood. An illustration is the application of Kuwait. When Kuwait applied in 1961, the representative of Iraq discussed the issue of the constitution of the applicant's population in the Security Council as follows:

[8] U.N. Department of Political and Security Council Affairs, Repertoire of the Practice of the Security Council, 1946-1951, 272-73 (1954). Available at: https://www.un.org/en/sc/repertoire/46-51/46-51_07.pdf [Accessed on: October 15, 2019].

> *The whole territory has a population of approximately 250,000 inhabitants, of whom more than 60 percent live in the town of Kuwait itself. The population outside the town is composed mainly of nomads who habitually roam the extensive deserts stretching from the southernmost reaches of Iraq to the heart of the Arabian peninsula. In the town of Kuwait itself, which is the only center of population in the territory controlled by the Sheikh, the majority of the inhabitants are considered by the Sheikh himself to be foreigners, and are therefore denied the rights and privileges normally accorded to citizens.*[9]

The Soviet Union vetoed Kuwait's application on the ground of the latter's failure to meet the requirement of statehood. Kuwait reapplied two years later, and this time the Security Council voted unanimously to recommend admission. Since there was no indication in the record that the makeup of Kuwait's population had undergone any significant change since the first application, it must be the case that Kuwait could be held to have satisfied the requirement of a permanent population even though its nationals constituted only a minority of its residents. If Kuwait was a state in 1963, it must have been one in 1961. In sum, 'a permanent population' seems to mean a permanent population that may be no more than a minority of all those living in the territory of a claimant state.

There is no doubt, factual or otherwise, regarding this criterion that Kosovo fulfills it.

(2) Defined Territory

A notable example in connection with the formal requirement for a defined territory is the case of Israel. A resolution of the General Assembly proposed the establishment of an Arab state and a Jewish state in Palestine by partitioning the then-British mandate over the objection of Arab and other Islamic states on the ground of self-determination. At the time, the population of the mandated territory was two-thirds Arab and one-third Jewish. The

[9] See footnote 4, pp. 29.

General Assembly's resolution had not been implemented. On May 14, 1948, one day before the announced termination of the mandate, a State of Israel was proclaimed. Later in the same year, Israel applied for admission. While the General Assembly's First Committee was discussing the future of Palestine, the Security Council acted on Israel's application.[10]

Questions were raised regarding Israel's territory. The representative of the United States characterized the issue as one of 'undefined frontiers' only, which would not violate the requirement of a defined territory, and not one of 'undefined territory', which would violate it, and explained:

> *One does not find in the general classic treatment of this subject any insistence that the territory of a State must be exactly fixed by definite frontiers.... The formulae in the classic treaties somewhat vary, one from the other, but both reason and history demonstrate that the concept of territory does not necessarily include precise delimitation of the boundaries of that territory. The reason for the rule that one of the necessary attributes of a State is that it shall possess territory is that one cannot contemplate a State as a kind of disembodied spirit. Historically, the concept is one of insistence that there must be some portion of the earth's surface which its people inhabit and over which its Government exercises authority. No one can deny that the State of Israel responds to this requirement.*[11]

The representative of the Soviet Union argued that it was incorrect to question Israel's territory as undefined, since 'its territory is clearly defined by an international decision of the United Nations, namely by the resolution adopted on 29 November 1947 by the General Assembly.'

[10] Ibid, pp.30-31.
[11] Ibid, pp.31.

On the other hand, the representative of the United Kingdom, the former mandatory of Palestine, clearly felt that Israel's situation raised an issue of undefined territory, stating: 'The ultimate fate or at least the ultimate shape of the State of Israel remains yet to be determined and is not yet known.' The representative of Syria felt the same way, stating: 'The State of Israel has no territory which is not contested. The Arab States and all the neighboring States of the Near East contest the existence of that State; it is not only its frontiers that they contest but the existence of the State itself.'[12]

In any event, Israel was admitted into the United Nations the following year, 1949, after it had declared its readiness to comply with a General Assembly resolution on the internationalization of Jerusalem and Arab refugees resulting from a war between Israel and five Arab states in 1948. Israel is certainly not the only example. [13]Taking the regional neighborhood, Albania, at the time of its declaration of independence, would represent another example.

In sum, a defined territory seems to mean an arguably undefined territory. However, when it comes to Kosovo, it is beyond question that possesses a defined territory. The most articulate and authoritative position is given in the UN Special Envoy Martti Ahtisaari's Plan. Annex VIII of the Ahtisaari Plan stipulates that 'the territory of Kosovo shall be defined by the frontiers of the Socialist Autonomous Province of Kosovo within the Socialist Federal Republic of Yugoslavia as these frontiers stood on 31 December 1988, except as amended by the border demarcation agreement between the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia on 23 February 2001.' Likewise, Kosovo's Declaration of Independence clarifies that 'Kosovo shall have its international borders as outlined in Annex VIII of the Ahtisaari Plan."

[12] Ibid, pp.31.
[13] Ibid, pp.31.

(3) Government

Similar to the 'defined territory', the criterion of 'government' has not been interpreted very strictly. An interesting illustration is the case of the application of the Principality of Monaco. The principality's territory totals 1.95 square kilometers. Of an estimated total population of 31,693, the ethnic composition was 40 percent French, 16 percent Monegasque, 16 percent Italian, and 21 percent other. Under a treaty with France in 1918, Monaco, in exchange for France's protection, undertook to limit both the constitution and the operation of its government.[14]

Monaco's measures concerning the exercise of a regency or succession to the throne are always the subject of prior consultation with France, and the throne can only pass to a person of French or Monegasque nationality. While the Prince is the Head of State, the head of government is the Minister of State, who is appointed by the Prince from a list of three French nationals selected by the French government. Among the three Councilors of Government, the Councilor of the Interior is required to be a French national. Regarding the operation of the government, Monaco is required to exercise its sovereignty in complete conformity with the political, military, naval, and economic interests of France. Monaco's measures concerning its international relations are always the subject of prior consultation with the French government. The French government may, on its motion, send military or naval forces into the territory of Monaco for the maintenance of the security of the two countries.[15]

Under the treaty regime, Monaco's government and governance are clearly subject to substantial control by France. Thus, the principality seems to enjoy a dubious degree of statehood. Yet, in 1993, while the 1918 treaty regime remained basically intact, Monaco's application for admission was recommended by the Security Council without a vote and

[14] Ibid, pp.32.
[15] Ibid.

approved by the General Assembly by acclamation. The official records indicate no discussions of the issue of statehood.

In sum, the government seems to mean government constituted with or without foreign influence and more or less self-governing. Now in its second decade since the declaration of independence, Kosovo has and is governed by a government and does certainly satisfy this criterion.

(4) Capacity to Enter into Relations with the Other States

In 1948, the representative of the United States remarked:

> *In so far as the question of capacity to enter into relations with other States of the world is concerned, learned academic arguments can be and have been made to the effect that we already have, among the Members of the United Nations, some political entities which do not possess full sovereign freedom to form their own international policy, which traditionally has been considered characteristic of a State. We know, however, that neither at San Francisco nor subsequently has the United Nations considered that complete freedom to frame and manage one's own foreign policy was an essential requisite of United Nations membership.*[16]

In light of the time at which this remark was made, the phrase 'some political entities' was probably in reference to some of the original members who were not sovereign states. Many subsequent members also show a lack of complete freedom in determining and implementing their foreign policies.[17]

[16] Ibid, pp.33.
[17] Ibid, pp.33.

For an illustration of the flexible application of this criterion to an applicant that is neither an original member nor a newly independent state, we may conveniently revert to the above-discussed case of Monaco. Under the same treaty regime established in 1918, it is plain that Monaco does not enjoy sovereign rights in both the making and the implementation of its foreign policies. This prompted an observation that if Monaco were to have applied for admission in 1961, its application would have failed on the ground of lack of statehood. However, Monaco was admitted without debate in 1993, although little had changed by way of Monaco's capacity to conduct its foreign affairs between 1961 and 1993.[18]

In sum, the capacity to enter into relations with other states seems to mean capacity, more or less limited, to enter into such relations. Kosovo has demonstrated its capacity to enter into relations with other States. It has done so in a number of ways: through the conclusion of countless international agreements, establishment of diplomatic relations and maintenance of around thirty (30) diplomatic missions abroad and similarly hosting such diplomatic missions at home, as well as through membership in international organizations, be it more narrowly-defined regional bodies, European-based such as the European Bank for Reconstruction and Development or the Venice Commission of the Council of Europe, or broader international organizations, such as the World Bank and International Monetary Fund, both of which are also UN specialized agencies.

IV. Criteria of Decision for the Admission of New Members: Substantive and Procedural Requirements

As stated out at the beginning of this study/paper, the relevant provision that governs the admission of new members to the United Nations is Article 4 of the UN Charter. It lists both the substantive requirements, laid down in paragraph 1, and requisite procedural steps, detailed in paragraph 2 of the same provision. In full, it reads:

[18] Ibid, pp. 34.

1. *Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.*

2. *The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.*

A. Substantive Requirements

The substantive requisite conditions are five in number: to be admitted to membership in the United Nations, an applicant must (1) be a State; (2) be peace-loving; (3) accept the obligations of the Charter; (4) be able to carry out these obligations; and (5) be willing to do so.

As the International Court of Justice put it is Advisory Opinion in the case of *Conditions of Admission of a State to Membership in the United Nations* (1948) [hereinafter 'Conditions of Admission'], all these five conditions are subject to the judgment of the Organization. [19] The judgment of the Organization means the judgment of the two organs authorized by, or mentioned in, paragraph 2 of Article 4, and, in the last analysis, that of its Members.

One of the fundamental tasks of the Court, in this case, has been to determine the character of these conditions; more precisely, whether this list of conditions is exhaustive or not.

The natural meaning of the words used in Article 4(1) led the Court to the conclusion that these conditions constitute an exhaustive enumeration and are not merely stated by way of guidance or example. The provision would lose its significance and weight, if other conditions, unconnected with those laid down, could be demanded. In the Court's final

[19] Admission of a State to the United Nations (Charter, Art. 4), Advisory Opinion: I. C. J.

analysis, the conditions stated in paragraph 1 of Article 4 must, therefore, be regarded not merely as the necessary conditions, but also as the conditions which suffice. [20]

The Court considered that the text is sufficiently clear, in that the list of conditions is exhaustive. However, in the Court's judgment, it does not follow from the exhaustive character of paragraph 1 of Article 4 that an appreciation is precluded of such circumstances of fact as would enable the existence of the requisite conditions to be verified.

Article 4 does not forbid the taking into account of any factor which it is possible reasonably and in good faith to connect with the conditions laid down in that Article. According to the Court, 'the taking into account of such factors is implied in the very wide and very elastic nature of the prescribed conditions; no relevant political factor-that is to say, none connected with the conditions of admission-is excluded.'

The Court has also reasoned that the political character of an organ that takes the decision (*i.e.,* Security Council or General Assembly) cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment. To ascertain whether an organ has freedom of choice for its decisions, reference must be made to the terms of its constitution. In this case, according to the Court, 'the limits of this freedom are fixed by Article 4 and allow for wide liberty of appreciation. There is, therefore, no conflict between the functions of the political organs, on the one hand, and the exhaustive character of the prescribed conditions, on the other.'

Ultimately, the Court is of the opinion that a Member of the United Nations which is called upon, in virtue of Article 4 of the Charter, 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

[20] Ibid.

the United Nations, is not juridically entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article.

In concluding on this point, while the Court's judgment about the exhaustive character of the conditions prescribed in Article 4 is welcome and would appear to discipline and make the decision more objective, yet the Court's recognition that States, in taking their decisions enjoy 'a wide liberty of appreciation' and that the prescribed conditions are defined by a 'very wide and very elastic nature,' make the process blurrier and prone to decisions conditioned by deep political considerations. As one authoritative scholar has phrased it:

> *In practical application, Article 4(1) really says little more than that those applicants will be admitted which the Security Council and the General Assembly (or in more political terms, the effective elites of the world) think ought to be admitted, a conclusion which the International Court appears to have obliquely and perhaps reluctantly reached ...*[21]

B. Procedural Requirements

As now indicated, paragraph 2 of Article 4 of the Charter is concerned with the procedure for admission, while the preceding paragraph lays down the substantive law.

When it comes to procedural requirements of admitting a new member to the UN, the decision-makers are the Security Council, whose recommendation is mandatory, and the General Assembly, whose decision effects an admission. Without the positive recommendation of the Security Council, because of either a negative vote or inaction by the Council, an application cannot go forward to the General Assembly and is rejected for all practical purposes until the Council again takes it up.

[21] W. Michael Reisman (1973), 'Puerto Rico and the International Process', pp.54.

Since a negative decision of the Security Council is not subject to review, it is in that sense 'final.' Thus, every time the Security Council declines recommendation to an applicant on the ground of lack of statehood, that decision officially gives ultimate meaning to the term 'states' in Article 4. But a positive decision of the Security Council to recommend, which necessarily includes a favorable finding on statehood, does not control the General Assembly, which is entitled to make its own 'decision' on the statehood of the applicant.[22]

Between the two organs, the General Assembly has shown itself to be more willing to admit an applicant for membership than the Security Council. The General Assembly has many times requested the Security Council to reconsider applications that the latter had refused to recommend and passed resolutions to express a favorable opinion on individual applicants prior to their consideration by the Security Council. It was the General Assembly's frustration over a deadlocked Security Council, which as a consequence, made no recommendations for admission that precipitated an attempt to bypass the latter and eventually an advisory opinion of the International Court of Justice. The Court, in its opinion in the case of *Competence of the General Assembly for the Admission of a State to the United Nations* (1950), stated clearly that:

> *the admission of a State to membership in the United Nations, pursuant to paragraph 2 of Article 4 of the Charter, cannot be effected by a decision of the General Assembly when the Security Council has made no recommendation for admission, by reason of the candidate failing to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend.*[23]

The Court had been asked the following question by the General Assembly: *Can the admission of a State to membership in the United Nations, pursuant to Article 4, paragraph 2, of the Charter, be effected by a decision of the General Assembly when the Security Council has*

[22] See footnote 4, pp.46.
[23] Ibid.

made no recommendation for admission by reason of the candidate fading to obtain the requisite majority or of the negative vote of a permanent Member upon a resolution so to recommend.[24]

In return, in the Court's view, the provision of Article 4(2) is explicit and that it has no doubt as to the meaning of this text. It requires two things: a 'recommendation' of the Security Council and a 'decision' of the General Assembly. In this connection, the Court reasoned that it is in the nature of things that the recommendation should come before the decision. It went further, stating that:

> *The word 'recommendation', and the word 'upon' preceding it, imply the idea that the recommendation is the foundation of the decision to admit, and that the latter rests upon the recommendation. Both these acts are indispensable to form the judgment of the Organization to which the previous paragraph of Article 4 refers. The text under consideration means that the General Assembly can only decide to admit upon the recommendation of the Security Council; it determines the respective roles of the two organs whose combined action is required before admission can be effected: in other words, the recommendation of the Security Council is the condition precedent to the decision of the Assembly by which the admission is effected.*

In other words, the actions of both organs are demanded, notwithstanding their different character: a recommendation by the Security Council and, subsequent to it only, a decision by the General Assembly.

Kosovo, when deciding to lodge its application, should thus keep in mind the fact that a positive recommendation from the Security Council is inescapable. Next and in connection

[24] Ibid.

to the procedural aspects of the process, it might be useful to review the relevant provisions of the Rules of Procedure of both the Security Council and General Assembly.

C. Recent Admissions to UN Membership and Kosovo

The last member to join the United Nations is South Sudan, which is admitted to UN membership in 2011. South Sudan's independence is the result of the January 2011 referendum held under the terms of the 2005 Comprehensive Peace Agreement (CPA) that ended the decades-long civil war between the North and the South. In the referendum, 98.83 percent of participants voted for independence. The result being clear and also based on a mutual agreement with the North, there were no international contestations of the new state. This could clearly be reflected in the processes characterizing its membership in the UN. On 13 July 2011, the UN Security Council recommended to the General Assembly that the Republic of South Sudan be admitted to membership in the UN through a resolution which it adopted unanimously.[25] The following day, on 14 July 2011, the General Assembly adopted a resolution, by acclamation, to admit South Sudan to the UN.

The state that acquired UN membership prior to South Sudan is Montenegro, a former Yugoslav republic and Kosovo's neighbor. Montenegro was admitted to the UN on 28 June 2006, becoming the 192nd UN Member State. It was thus admitted weeks after it gained its independence from Serbia based, as South Sudan, on a referendum, which had been foreseen in the constitutional document that government the Union of Serbia and Montenegro and hence also agreed to by the Republic of Serbia. Montenegro had also been admitted to the UN by a General Assembly resolution adopted by acclamation, upon recommendation by the Security Council.

[25] UN welcomes South Sudan as 193rd Member State (2011). Available at: https://news.un.org/en/story/2011/07/381552. (Accessed on: October 15, 2019).

East Timor, also under UN interim administration for some time, is a member of the UN, admitted to the organization as the 191st member state on 27 September 2002. East Timor's independence has also been a result of a previously agreed popular referendum, foreseen in a binding Security Council resolution. East Timor has thus been admitted to the UN free of any contestation, including from the former colonial power (Portugal) and occupying state (Indonesia).

The fundamental difference between Kosovo and these, as well as other previously admitted UN member states from the former Yugoslavia, is the absence of an agreement with the former parent state that either provides for mutual recognition or recognizes the results of a referendum (such as in cases of Montenegro or South Sudan).

V. The Practical Process of Application: Rule of Procedure of Security Council and General Assembly

Chapter X of the Rule of Procedure of the Security Council outlines the framework that governs the consideration of an application for membership in the United Nations.

First, as an initial procedural step, any State which desires to become a Member of the UN should submit an application to the Secretary-General. Along with the application, the State should also append a declaration made in a formal instrument that it accepts the obligations contained in the Charter (Rule 58).[26]

Rule 69 of the Security Council's Rules of Procedure demand that once the Secretary-General receives the application for membership, this application would be immediately placed before the representatives on the Security Council. Unless the Security Council decides otherwise, the application is referred by the President of the Council to a

[26] See more: Provisional Rules of Procedure - Chapter X: Admission of New Members. Available at: https://www.un.org/securitycouncil/content/rop/chapter-10 (Accessed on: October 15, 2019).

committee of the Security Council upon which each member of the Security Council is represented. The committee then examines the application referred to it and report its conclusions thereon to the Council not less than thirty-five days in advance of a regular session of the General Assembly or, if a special session of the General Assembly is called, not less than fourteen days in advance of such session.

Subsequent to the consideration in the Council's Committee, the Security Council then decides whether in its judgment the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter and, accordingly, whether to recommend the applicant State for membership. If the Security Council recommends the applicant State for membership, it forwards to the General Assembly the recommendation with a complete record of the discussion. If the Security Council does not recommend the applicant State for membership or postpones the consideration of the application, it submits a special report to the General Assembly with a complete record of the discussion.

This matter is addressed, for its part, also in the Rules of Procedure of the General Assembly, more specifically in Chapter XIV of its Rules of Procedure. According to these Rules of Procedure (Rule 136), if the Security Council recommends the applicant State for membership, the General Assembly shall also consider whether the applicant is a peace-loving State and is able and willing to carry out the obligations contained in the Charter. The General Assembly is required to decide by a two-thirds majority of the members present and voting upon any application for membership in the United Nations.

In case the Security Council does not recommend the applicant State for membership or postpones the consideration of the application, the General Assembly may, after full consideration of the special report of the Security Council, send the application back to the Council, together with a complete record of the discussion in the Assembly, for further consideration and recommendation or report.

Rule 138 details that it is the Secretary-General of the UN who informs the applicant State of the decision of the General Assembly. If the application is approved, membership shall become effective on the date on which the General Assembly takes its decision on the application.[27]

VI. Conclusions and Recommendations

In passing on the statehood of applicants, the two organs of the United Nations (Security Council and General Assembly) appear to have honored a number of authoritative criteria of decision. Of course, the traditional definition of international law is one. Even when it was subjected to flexible applications, it was still formally followed. This is because the traditional definition, like all other rules of law, is not absolute and autonomous. The technical concepts that comprise that definition, including that of 'State,' are but words, and words do not have fixed meanings. They point to no absolute and constant referents and can take on variant meanings. The specific meaning a decision-maker may give on a particular occasion is a function of many variables.

However, it is clear and sound that Kosovo fulfills all requisite traditional criteria of statehood for purposes of membership in the United Nations, perhaps in some respects better or more effectively than some of the cases referred to in this study/paper and others that in different circumstances and points in time have materialized their quest for UN membership.

Kosovo does likewise fulfill the five substantive requirements that are prescribed in and demanded by Article 4(1) of the UN Charter that requires an applicant to: (1) be a State; (2) be peace-loving; (3) accept the obligations of the Charter; (4) be able to carry out these obligations; and (5) be willing to do so. As the ICJ has clarified, this list of conditions is

[27] See more: 'Rules of procedure - XIV. Admission of New Members to the United Nations'. Available at: https://www.un.org/en/ga/about/ropga/adms.shtml. (Accessed on: October 15, 2019).

exhaustive. However, the critical challenge, in particular for Kosovo, could be—as recognized by the ICJ—the 'wide liberty of appreciation' and 'very wide and very elastic nature' of decision to be taken by Members of the United Nations, in particular, and in the first place, permanent members of the Security Council that have the right to veto any such decision. As a result of the foregoing discussion, there are some critical moments that ought to be taken into account are offered below by way of recommendations:

1. Kosovo authorities should, in their bilateral and multilateral dealings, maintain the line of argument—substantiated in law and fact—that the Republic of Kosovo fulfills the substantive requirements for membership imposed by the UN Charter.

2. Kosovo's UN membership should be on top of policy priorities of the Government and other key branches and institutions, not only on paper but also in action.

3. Prior to its decision to lodge an application, Kosovo's leadership is recommended to study the political climate surrounding the Security Council members, in particular, the permanent members that are might be opposing the recommendation of Kosovo's membership in the UN.

4. Once a positive recommendation for membership is potentially secured in the Security Council, Kosovo should keep in mind that the ultimate decision on membership is effected by a two-thirds majority of the UN General Assembly members present and voting in that particular session.

5. In the process and for purposes of argument, Kosovo's authorities are also recommended to study the types of factors that have been taken into account in the past by the Security Council with a view of convincing those hesitant or resistant members of the Council, as well as any such members in the General Assembly. Some of the factors that have been taken into account in the past and could potentially be again include: *the possession or lack of settled frontiers; the mode of the*

establishment of the State; the bearing of a General Assembly decision; relations with a former sovereign; the legitimacy of statehood; defence arrangements with other powers; the de jure or de facto status of the applicant and its Government; recognition of the applicant by Members of the United Nations; the maintenance of diplomatic relations with other States. [28]

6. As already noted, one of the criteria that has been examined in past membership processes relates to the question of the relationship with the former sovereign or former parent state. It is in this regard that the process of dialogue with the Republic of Serbia becomes of relevance.

7. It should be added that although Serbia is not a permanent member of the Security Council and cannot formally pose an obstacle, it is its historical ally, Russia that possesses such power and could use it on Serbia's behalf or independent of it, for the sake of its own interests. China might be a reserve candidate, though the expectation is that there are higher chances it will likely abstain, or more likely in comparison with Russia.

8. A comprehensive ultimate agreement between Kosovo and Serbia, inclusive of recognition of the former by the latter, should be used as a testament to the fact that any or all dilemmas concerning Kosovo's fulfillment of the requisite criteria for UN membership are removed.

9. Kosovo authorities should keep in mind that an agreement with Serbia does not automatically lead to Kosovo's membership in the UN. Although such a clause that prescribes Kosovo's right to UN membership could be inserted in the agreement, the ultimate decision is the members composing the UN Security Council, in particular,

[28] See footnote 4, pp. 28.

those with e veto power and, subsequent to it, those members of the more extensive General Assembly.

10. Parallel with the negotiating process with Serbia, and even after a potential agreement, Kosovo should pursue the quest for recognition and, in particular, membership with international organizations. The abundance of individual recognitions and membership with a potential wide array of global and regional institutions might at least diminish the strength of any opposing argument or discourage any possible resistance or hesitance on the side of states such as Russia or other like-minded opposing countries.

11. Finally, there is an alternative, which runs short of full membership in the UN, and that is the status of the non-member observer state. Clearly, this does not meet Kosovo's aspirations for full membership. Currently, there are only two such observer states: the Holy See and Palestine. Switzerland has maintained this status until it had decided to become a full member state in 2002. The status of non-member observer states (different from another category of the non-state observer) entitles the entity to participate in the work of the UN General Assembly, however, with limitations as determined by the General Assembly. The decision to grant the observer status is made by this organ only and is taken a majority of votes. There are no provisions in the Charter of the United Nations on the status of non-member observer states, it thus being based purely on the practice of the General Assembly.

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