



**LEGAL ASPECTS OF MACEDONIA AND GREECE NAME DISPUTE IN
RELATION TO UN CHARTER, THE INTERIM ACCORD AND MACEDONIA'S
INTEGRATION TO NATO/EU**

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Abstract

The purpose of this paper is to analyze the legal aspects of the name dispute between Greece and Macedonia and to contribute to the discussion for resolving the dispute. I will examine Macedonia's admission to United Nations and argue that it was irregular and unlawful and as a result of which Macedonia enjoys some kind of a conditional-member status, which is not provided in the Charter. Then I will address the relatedness of this unlawful act with Macedonia's aspiration for Euro-Atlantic integration, and at the end I will suggest some legal actions that should be taken for the purpose of judicial redress.

Introduction

The aim of this paper is to examine the legal aspects of the ongoing Greco-Macedonian name dispute, bearing in mind all the relevant international agreements and conventions, in order to contribute for moving the situation from this deadlock, in which both sides are stuck for the last two decades, and finding a solution for the “problem”. The name dispute has been on the top of the agenda ever since the independence of Macedonia, and it created many difficulties and problems in its international recognition, accession in international organizations and in its international relations in general. It gained publicity in both countries especially during the NATO summit in 2008 at Bucharest, where Greece vetoed Macedonian accession¹.

In analyzing the legal aspects of the dispute I will concentrate on the Macedonian admission in UN and its status there, the Interim Accord signed in 1995 by Macedonia and Greece, and Macedonia’s accession to NATO and the EU. Macedonian admission in United Nations should be examined more closely because the name issue was taken into consideration in the Security Council resolution 817² and the General Assembly resolution 47/225³, and a never seen before precedent was made by these two organs. I will argue that these two legal documents are in clear breach of the most important UN document of constitutional value – the UN Charter. This issue has not been given great international importance and there are very few international

¹ See Bucharest Summit Declaration-issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Bucharest on 3 April 2008, http://www.nato.int/cps/en/SID-AB9C7467-799941BD/natolive/official_texts_8443.htm.

² Security Council Resolution 817, 7 April 1993.

³ General Assembly Resolution 47/225, 8 April 1993.

scholars who have researched this topic. However, there are some well known Macedonian and regional legal scholars who have analyzed the legal aspects of Macedonian admission to UN, of which the most important is Prof. d-r Igor Janev⁴.

Furthermore, I will analyze the Interim Accord, which is bilateral agreement between Macedonia and Greece and was signed in order to normalize the relations between the two, which were pretty intense during the years of the Greek economic embargo*. The Interim Accord is important because it was the basis for establishment of the bilateral relations between the two countries on political and economic level. Although with the agreement the name dispute was not solved, the two parties have agreed that it should not stand in the way of the cooperation between them. However, they have agreed to continue negotiating about the name under the supervision of the Secretary General of the UN in order solution to be found. The Interim Accord should be examined more closely because it contains some provisions that indirectly affect the name issue in certain situations, as it will be seen later.

Another aspect of the analysis will be the name dispute in relation to Macedonia's admission in North Atlantic Treaty Organization and the European Union. Macedonia since its independence has made clear its intention for joining the NATO alliance and the European Union, but during the years the name dispute has proven to create many difficulties in pursuing this aim. I will analyze the name dispute in relation to the founding documents of these organizations (North Atlantic Treaty and the Treaties of the European Union). Then I will focus on the analysis of the legal means available for resolving the dispute.

⁴ Prof. d-r Igor Janev is a member of the American Society of International Law and former advisor of the Macedonian Foreign Minister.

1. Macedonia's admission to UN

In chapter one I will examine Macedonia's admission to UN membership because since then the dispute over its name from purely political has also become a legal issue. That is because for the first time the name dispute was mentioned in a legally binding document, namely the Security Council (SC) resolution 817,⁵ which recommended Macedonia's admission, and General Assembly (GA) resolution 47/225,⁶ which accepted the recommendation from SC and admitted Macedonia into membership. I will later argue that these two resolutions are in a clear breach of the UN Charter and I will discuss the possibilities for judicial redress for these unlawful actions.

1.1 *The Political Context*

The first reaction of the international community (USA and EU) to the political and afterwards military crisis in Socialist Federal Republic of Yugoslavia (SFRY) was that they will not recognize any unilaterally proclaimed independence, and that they support the continuing territorial integrity of Yugoslavia. However, after the secessions of Slovenia and Croatia it become inevitably clear that these processes could not been stopped and USA and EU immediately changed their views on the issue, saying that they might recognize the new states

⁵ SC Resolution 817, 7 April 1993.

⁶ GA Resolution 47/225, 8 April 1993.

but only if they fulfill certain conditions.⁷ The EC imposed these additional conditions, besides the regular criteria for statehood, mainly because of Greece allegations that the name Macedonia implied territorial claims against Greece. Because the purpose of this paper is only the legal aspects of the dispute I will not go into deeper historical and political analysis of the rightness of these allegations. The EC, pressed of the Greek side, announced in the Declaration of Yugoslavia that the states seeking EC recognition had to fulfill the following conditions: (1) assurance that the republics would accept the UN Charter and the CSCE Helsinki Accords, (2) that they would guarantee the rights of ethnic minorities, (3) that they would respect internationally recognized borders, (4) that they would uphold arms control and disarmament treaties, and (5) that they would support the political resolution of disputes.⁸ For the purpose of determining the fulfillment of these conditions EU (EC) has established an Arbitration Commission⁹ composed of eminent European lawyers and scholars. In its opinion the Arbitration Commission stated that after the referendum held on September 8, 1991 on which the majority chose independence, and after the two amendments¹⁰ on the Constitution which explicitly precludes any territorial claims towards its neighbors, Macedonia fulfils the necessary conditions, and recommended recognition.¹¹

⁷ Peter Radan, *The break-up of Yugoslavia and International Law* (London: Routledge, 2002), 160-167.

⁸ Samantha Power, *“Breakdown in the Balkans: A Chronicle of Events, January 1989 to May 1992”* (Washington, DC: Carnegie Endowment for International Peace, 1993), 28.

⁹ The Arbitration Commission on former Yugoslavia was established by the EC Declaration on August 27, and had 5 members all of them presidents of Constitutional Courts in their respective countries, and was chaired by Robert Badinter. See Thomas D. Grant, *The Recognition of States: law and practice in debate and evolution*, (Praeger Publishers, USA, 1999), 153-159.

¹⁰ Amendment 1 reads as follows “The Republic of Macedonia has no territorial pretensions towards any neighboring state” (section 1) and “The borders of the Republic of Macedonia can only be changed in accordance with the Constitution and on the principle of free will, as well in accordance with generally accepted international norms” (section 2); while Amendment 2 “In the exercise of this concern the Republic will not interfere in the sovereign rights of other states or in their internal affairs” (this provision comes after last sentence of Article 49 section 1), *Official Gazette of the Republic of Macedonia*, no. 1/92

¹¹ Opinion 6 – On the Recognition of the Republic of Macedonia by the European Community and its Member States (January 11, 1992), Thomas D. Grant, *The Recognition of States: law and practice in debate and evolution*, (Praeger Publishers, USA, 1999), 161.

Moreover, it held that “the use of the name ‘Macedonia’ cannot ... imply any territorial claims against another State”.¹² However, the EC decided not to accept the recommendation from the Arbitration Commission, as a result of the consensual decision-making process, and issued a Declaration in which it reiterates its willingness to recognize the state within its existing borders, but “under a name that does not include the term Macedonia”.¹³ Meanwhile, Macedonia had been recognized by Russia, China and several European non-EC countries under its constitutional name and has filed an application for United Nations membership.¹⁴ Again Greece opposed to this application by filing a Memorandum concerning Macedonian application for UN membership, to all UN Member States, in which they used the same allegations as in the case of EC recognition concerning the name and the possible territorial claims of the new state. However, it should be noted that the decision for recognition of a state and the decision for the admission to the UN have completely different nature, with the former being purely political decision and the latter being legal, depending of fulfillment of specifically numerated criteria in the UN Charter. The difference between the two types of decisions was emphasized in the “Memorandum on legal aspects of representation in the United Nations”, prepared by UN Secretariat on the request of the Security Council in 1950. It stated that “recognition is essentially a political decision of individual states, whereas admission to membership is a collective act of the General Assembly based on the right to membership of any state that fulfills the prescribed criteria”, and therefore admission does not automatically imply recognition from

¹² Ibid.

¹³ EC Declaration on Former Yugoslavia, Lisbon, 27 June, 1992, taken from: S. Georgievski, S. Dodevski, Republic of Macedonia – Documents 1990-2005, (Skopje: Faculti of Law ‘Iustinianus Primus’, 2008), (orig. Republika Makedonija - Dokumenti, 1990-2005, S. Georgievski, S. Dodevski, Praven fakultet ‘Justinijan Prvi’, Skopje, 2008).

¹⁴ Up to now Macedonia has established full diplomatic relations with 161 countries (including USA, Russia, China), of which only EU Member States do not recognize it by its constitutional name and instead they have established diplomatic relations under the reference FYROM; See www.mfa.gov.mk (official website of Ministry of Foreign Affairs).

any government.¹⁵ Macedonian government has also emphasized these remarks in its Memorandum filed as a response to the Greek Memorandum. IN this response Macedonia's government reiterated that they fulfilled all the prescribed criteria in Article 4 of the UN Charter, and that there is no legal or procedural ground for the Greek opposition. Regarding the name issue they emphasized that Macedonia has no aspiration of monopolizing the use of the name whatsoever, nor it has any territorial pretensions towards the territories covered by the broader geographical term Macedonia. However these remarks have not been taken into consideration in the case of Macedonia's admission to membership, which is seen by the two political conditions that were imposed to the state, and therefore created huge precedent in the United Nations' history.

1.2 The Unlawful Character of the Additionally Imposed Conditions

This section would be devoted to deeper legal analysis of Macedonia's admission to UN membership in order to be able to understand its unlawful character. The UN Security Council recommended admission of Macedonia with its Resolution 817 from April 1993, which in the relevant part reads as:

“... noting that the applicant fulfils the criteria for membership in the United Nations laid down in Article 4 of the Chapter,

Noting however that a difference has arisen over the name of the State, which need to be resolved in the interest of the maintenance of peaceful and good neighborly relations in the region,

¹⁵ Igor Janev, “Legal Aspects of the use of a provisional name for Macedonia in the United Nations system”, AJIL, vol.93, 1999.

Welcoming the readiness of the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia, at the request of the Secretary General, to use their good offices to settle the above mentioned difference, and to promote confidence-building measures among the parties...,

Urges the parties to continue to cooperate with the Co-Chairmen of the Steering Committee of the International Conference on former Yugoslavia in order to arrive at a speedy settlement of their difference;

Recommends to the General Assembly that the State whose application is contained in document S/25147 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”¹⁶

From the first sentence of the cited part of the resolution we can see that the Security Council acknowledges that the applicant fulfils the criteria for membership prescribed in Article 4 of the UN Charter, which are: (1)to be a state (2)to be peace-loving, (3)to accept the UN Charter and its obligations, (4)to be able to carry out these obligations, and (5) willingness to do so.¹⁷ However, if we analyze the following sentence we can see that it is in contrast with the previous one. Namely, the SC notes that “a difference has arisen over the name of the State, which needs to be resolved in the interest of the maintenance of peaceful and good neighborly relations”, which means that the new country is a threat to the peace of the region. This is inconsistent with the first sentence where the SC stated that the applicant fulfils the criteria for membership, which as we have seen means that the applicant is a peace-loving state that is able and willing to carry out the obligations of the UN Charter, including Article 2(4)¹⁸, which forbids

¹⁶ SC Resolution, 7 April, 1993.

¹⁷ Article 4, Charter of the United Nations, 1945.

¹⁸ Article 2 (4) of UN Charter: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”.

threat or use of force against the territorial integrity of any state. Therefore this resolution is in itself contradictory.

We can also analyze the legality of these resolutions from the viewpoint of the Advisory Opinion given by ICJ¹⁹, as specific case of an established general rule. In this Advisory Opinion ICJ held that the conditions set forth in Article 4 of the UN Charter are exhaustive, and not only necessary but sufficient for admission. Moreover, it states that the political character of the organs of the UN dealing with admission (Security Council and General Assembly), “cannot release them from observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment”²⁰, and thus there is no conflict between the functions of the political organs and the exhaustive character of the prescribed conditions. The Court, however, acknowledges that the exhaustive character of prescribed conditions does not preclude the margin of appreciation that those organs have in verifying the existence of the prescribed conditions, but since they verify that existence the applicant state acquires a right of being admitted in to membership, and no additional conditions can be imposed. So if we analyze the admission of Macedonia in connection to this opinion by the ICJ, which was accepted as binding by GA,²¹ we can see that the two conditions (negotiating with another State over its name and provisionally referred to as “FYROM” within the UN) are not prescribed in Article 4 and their fulfillment is dependant on something beyond its own reach (the will of another country to consent to it name) and therefore undefined in time. This practically means that the State is conditionally admitted to UN, even though there is no such institute as “conditional membership” in the Charter.

¹⁹ “Admission of a State to the United Nations” (Chapter, Art. 4), Advisory Opinion: I.C.J. Reports 1948, p. 57.

²⁰ Ibid.

²¹ Resolution 197 (III, part A), General Assembly-hundred and seventy-seventh plenary meeting, 8th December 1948.

Another argument in support of my claim is that these conditions are also contrary to the general rules of international law, such as sovereign equality between states and the principles of representation in international organizations.²² The right of a state to freely choose its name derives from the right of self-determination and its purpose is for one legal subject, such as a state, to have a legal identity. If there is no such legal identity, the state could lose its capacity to conclude international agreements and to interact with other states, and thus its sovereignty would be put into question. Therefore this right is an inherent right of every state and can only be restricted for the reasons of legal certainty (e.g. if two or more states have same names it provides legal uncertainty in international relations, which is not the case with this dispute because Greece uses the name Macedonia for one of its provinces which does not have legal personality). These arguments support the claim that this right is an integral part of the right of self-determination and that it belongs to the domain of strictly domestic jurisdiction. If this right belongs to domestic jurisdiction then the two conditions imposed on Macedonia are in clear breach of Article 2(7)²³, which explicitly forbids the UN to interfere in matters of domestic jurisdiction of Member States. These conditions are also in violation of Article 2(1)²⁴ of the UN Charter, which provides the principle of sovereign equality of all Member States. This principle means that the States are considered equal in exercising their rights and performing their duties deriving from the Charter. Therefore conditioning one state to negotiate with another over its name, which as we have seen previously belongs to the domain of domestic jurisdiction, and

²² Also: Igor Janev, "Legal Aspects of the use of a provisional name for Macedonia in the United Nations system", *AJIL*, vol.93, 1999.

²³ Article 2 (7) of the UN Charter: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII".

²⁴ Article 2(1) of the UN Charter: "The Organization is based on the principle of the sovereign equality of all its Members".

making it possibly dependant for the fulfillment of this condition exclusively on the will of another state, is contrary to the principle of sovereign equality and non-interference in domestic matters.

From the viewpoint of representation in international organizations, the condition imposed on Macedonia – “to be provisionally referred as Former Yugoslav Republic of Macedonia”, instead its constitutional name – Republic of Macedonia, is contrary to Article 83 of the Vienna Convention on representation of states, which provides that “in the application of the present Convention no discrimination shall be made as between states”²⁵. The fact that Macedonia is going to be referred as “FYROM”, and not by its constitutional name, for all purposes within the United Nations, puts Macedonia in a discriminatory position. This principle of non-discrimination is one aspect of the broader principle of sovereign equality between states, which was discussed above. For these reasons the additional conditions imposed on Macedonia are in violation of Article 83 of the Vienna Convention.

1.3 Judicial Redress

We have seen from the previous section that UN’s legal documents that granted admission to Macedonia (SC Resolution 817 and GA Resolution 47/225) are unlawful and in violation to its constitutional provision (the UN Charter), and in this section we will examine whether there is a possibility for a judicial redress for these unlawful acts.

²⁵ Article 83 of the Vienna Convention on the Representation of States in their Relations with International Organizations of a Universal Character, UN Doc. A/CONF. 67/16 (March 14, 1975).

First of all, I will present some cases of the practice of the International Court of Justice that deal with similar matters or in other aspects are relevant to the case of Macedonia. First case of the discussion will be the IMCO case²⁶, in which ICJ was asked to give its opinion for a case involving a breach of the constitutional provisions of an organization (Inter-Government Maritime Consultative Organization) made by its plenary organ (the IMCO Assembly). In this case two IMCO Member States argued that during the election of the Maritime Safety Committee their rights to be automatically elected to the Committee if they fulfill certain criteria explicitly prescribed in Article 23 of the IMCO Convention, were violated. The Court held that “the Maritime Safety Committee of the IMCO which was elected on January 15, 1959, was not constituted in accordance with the Constitution for the establishment of the Organization”²⁷. The similarity of this case with the case of Macedonia’s admission to UN membership is obvious, namely in both cases the constitutional provision establishing the respective organizations was violated and the violation and also in both cases the violation was made by the plenary organ of the organizations (GA Resolution 47/225 that valorized the SC Resolution 817). Other relevant cases are the Certain expenses²⁸ case and the Reparation²⁹ case, with the former establishing that the binding acts of the General Assembly represent acts of the organization, and the latter stating that the UN possesses international legal personality, and that the Charter defines the relationship between the member states and the organization, and de facto establishes the liability of UN for its own actions (which is further elaborated in the Effects of Awards case³⁰). These briefly

²⁶ Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization, ICJ Reports (1960) 145.

²⁷ Ibid.

²⁸ Certain Expenses of the United Nations (Art. 17, paragraph 2, of the Charter), ICJ Reports (1962) 151

²⁹ Reparation for Injuries suffered in the Service of the United Nations, ICJ Reports (1949) 174.

³⁰ Effects of Awards of Compensation made by the United Nations Administrative Tribunal, ICJ Reports (1957) 47.

analyzed cases will be of good support for the analysis of the possibilities for judicial redress in the case of Macedonia's unlawful admission.

There are two basic types of cases that the International Court of Justice is competent on deciding: (1) contentious cases and (2) advisory proceedings. In the first type of cases the Court decides on disputes between states³¹ concerning some of the enumerated legal questions (such as the interpretation of a treaty, any question of international law, the existence of any fact which, if established, would constitute a breach of an international obligation, and the nature or extent of the reparation to be made for the breach of an international obligation³²) or any other legal or even "political" question if the parties have mutually agreed on the competence of the Court.³³ Whilst, the competence of the Court for deciding the second type of case derives from Article 65 of the Statute, which provides that the Court "may give an advisory opinion on any legal question at the request whatever body may be authorized by or in accordance with the Charter of United Nations to make such a request".³⁴ Macedonia is restricted in using the first type of ECJ competence in a case against Greece by the Interim Accord³⁵, in which both parties have agreed to exclude ECJ competence from any disputes arising over the "differences" concerning the name Macedonia (this will be elaborated in the following Chapter), and thus the available solution is the advisory opinion cases.

³¹ Article 34 (1) of the Statute of the International Court of Justice: "Only states may be parties in cases before the Court".

³² Article 36 (2) of the Statute of ICJ.

³³ Article 38 of the Statute enumerates which are the sources that the Court may use in deciding cases and in section two it enables the Court to decide a case "ex aequo et bono, if the parties agree thereto" which practically means that political cases can be brought before the Court if the parties want so (which in practice has never happened). See: Ljubomir Frckoski, Vasil Tupurkovski, Vladimir Ortakovski, *International Public Law*, (Skopje: Tabernakul, 1995), 308, (original: Qubomir Fr~koski, Vasil Tupurkovski, Vladimir Ortakovski, Me|ynarodno javno pravo, Skopje: Tabernakul, 1995).

³⁴ Article 65 (1) of the Statute of ICJ.

³⁵ Article 21 (2) of the Interim Accord, (New York, 13 September, 1995).

As we have seen, the procedure for giving an advisory opinion can be initiated only by specifically authorized organs in the UN Charter (e.g. Security Council or General Assembly) or other authorized organs in a procedure in accordance to the Charter³⁶. This initiative has to be packed in a legal document, like resolution or decision. So in the case of Macedonia it should be Security Council or General Assembly resolution, the latter possibility being more likely to be real because of the voting procedures in these organs (in the SC a consensus is needed between the five permanent members, and in the GA simple majority is needed from the present members). Contrary to the contentious procedure, where the court is obliged to act in all cases for which it has jurisdiction according to the Statute and the Charter, and are binding for the parties, in the advisory proceedings the Court “may” give an advisory opinion, which means that if the Court considers the question to be unsuitable it can turn down the request, and the decisions are not binding for anyone.³⁷ However, in the case of Macedonia’s admission the odds the Court to deny the request for advisory opinion are very low. This is so because of two reasons: (1) the importance of the legal question and (2) the similarity with the IMCO case (analyzed above) which the Court has accepted. The importance of the legal question would have significance because the question in this case is a possible serious breach of the constitutional provisions of UN made by its two most important organs (Security Council and General

³⁶ Article 96 of the UN Charter: “1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question; 2. Other organs of the United Nations and specialized agencies, which may at the time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities”.

³⁷ Prof. d-r Tatjana Petrushevska, What is the function of UN in resolving the Greco-Macedonian dispute?, taken from: Prof. d-r Svetomir Skaric ed., Dimitar Apasiev ed., Vladimir Patcev ed., The Name Dispute between Greece and Macedonia – student’s project, (Skopje: Official Gazette of the Republic of Macedonia, 2008), (original: prof. d-r Tatjana Petrushevska, Kakva e ulogata na ON vo re{avaweto na gr~ko-makedonskiot spor?, prevzemenno od: prof. d-r Svetomir [kari] redactor, Dimitar Apasiev redactor, Vladimir Patcev redactor, Sporot za imeto me|u Grcija i Makedonija - studentski proekt, (Skopje: Slu`ben Vesnik na Republika Makedonija, 2008)).

Assembly), and the fact that these violations are also contrary to the Court's earlier decision (Admission case of 1948³⁸) would contribute to its eagerness once again to show its representativeness and authority. Whilst the similarity with the IMCO case is obvious and by analogy it is likely that the Court would accept a case with arising from similar circumstances, but by far more severe consequences. As for the non-binding nature of the Court's decisions, the Macedonian government should not have many concerns because the practice until now has proven the opposite – that even though these decisions are not binding in most of the cases they are respected and implemented voluntary. Now, assuming that the Court would take this case into consideration, next question is will the arguments would be sufficient for a favorable decision. As I have argued above (section 2), SC Resolution 817 and GA Resolution 47/225 have imposed additional admission conditions to Macedonia which are not prescribed in the Charter, and are contrary to established principles of jus cogens (self-determination, sovereign equality between states and non-interference in strictly domestic matters, and non-discrimination between states), and thus have violated Macedonia's right to UN membership albeit it fulfilled the prescribed conditions in Article 4 of the Charter. It should be noted that the consent given by the Macedonian government to the unlawful act is not legally relevant because a consent given to an unlawful act cannot eliminate its unlawfulness³⁹. Each one of these arguments should be a sufficient legal basis for a favorable decision, and bearing in mind the Court's decision in the Admission case⁴⁰, which was established as a general rule, and the relationship between the two cases (as special case of a general rule), there should be no doubt for what would be the Court's decision. After the Court's favorable decision, the Security Council should adopt new resolution

³⁸ "Admission of a State to the United Nations" (Chapter, Art. 4), Advisory Opinion: I.C.J. Reports 1948, p. 57.

³⁹ Above, fn. 37

⁴⁰ Above, fn.38

with which it will annul paragraph 2 of the SC Resolution 817, and proclaim that Macedonia will be referred under its constitutional name for all purposes within the UN, which however would not imply that automatically recognition by Greece under that name.

In this chapter we have seen that the two conditions (provisionally to be referred as “FYROM” for all purposes within UN and negotiating with Greece about the “differences” over its name), contained in Security Council’s Resolution 817 and General Assembly’s Resolution 47/225, concerning Macedonia’s admission to United Nations membership, are in violation of the Charter and contrary to the international legal norms *jus cogens*. Furthermore, we have examined the means for judicial redress and presented and analyzed the most suitable one. In the next chapter I will discuss about the negotiating process for finding a solution for the name dispute under the guidelines of UN.

2. The Negotiating process under the supervision of UN

In this chapter I will analyze the negotiating process conducted pursuant to Security Council’s resolutions 817 and 845, under the mediation of the Special Envoy of the Secretary General of the United Nations (first Cyrus Vance and then Matthew Nimitz), with emphasizes on the Interim Accord, which was signed as a result of the first round of the negotiations and its relation to the name dispute. Then I will analyze the legal aspects of the last official proposal for possible solution of the dispute given by Matthew Nimitz in 2008, and I will point out the problems of the proposal for resolving the name dispute.

2.1 The Interim Accord

Immediately after Macedonia was admitted in United Nations, the negotiating process for resolving the “differences” over the name has began in accordance with Security Council’s Resolutions 817⁴¹ and 845⁴². In the beginning of 1994 the Greek government, annoyed of the fact that several West-European States established full diplomatic relations with Macedonia (under the provisional name “FYROM”), and of the rumors for the establishment of such relations with USA, announced the establishment of an economic embargo towards Macedonia arguing that they had to do it because the neighboring country continuously refuses to change its name and constitution⁴³. During the embargo the relations between the two countries were very intense and massive demonstrations took place in both countries. The Greek embargo ended with the conclusion of the Interim Accord on 13th of September 1995, under the mediation of Cyrus R. Vance, Special Envoy of the Secretary General of the United Nations. With this agreement the bilateral relations between the countries were normalized on every level and according to Cyrus Vance it put an end to all aspects of the Greco-Macedonian dispute except the name issue⁴⁴. Namely, Greece has accepted to recognize the statehood and sovereignty of Macedonia, although under the provisional pending permanent agreement for the name issue, and both parties declared the existing borders to be permanent and inviolable, and they agreed to establish diplomatic relations (article 1 and 2)⁴⁵. Furthermore, both countries agreed in their bilateral relations to act in accordance of the most important international documents, specifically enumerated in the

⁴¹ Above, fn.2

⁴² Security Council Resolution S/RES/845 (1993), 18 June, 1993.

⁴³ John Shea, *Macedonia and Greece: The Struggle to Define a New Balkan Nation*, (Jefferson, North Carolina and London: Mc Farland & Company, Inc. Publishers, 1997), 286-320

⁴⁴ *Ibid.* p.313

⁴⁵ In the text of the agreement the names of both countries are deliberately omitted and they are referred as the Party of the First Part (Greece) and Party of the Second Part (Macedonia). Article 1 and 2 of the Interim Accord, 13 September, 1995, New York.

agreement (articles 9 to 14), and to cooperate in the field of economic, commercial, ecological and legal relations (articles 15 to 20). However, for the crucial aspect of the dispute the parties have agreed on the following: (1) that they will continue the negotiations concerning the name issue in accordance with the relevant Security Council resolutions (article 5); (2) that Greece will not object or obstruct the admission of Macedonia in any international organizations where Greece is a member if the former applies under the provisional name (article 11); and (3) that the International Court of Justice will have jurisdiction to decide for any disputes concerning the interpretation or implementation of this agreement, with the exception of article 5 section 1 (article 21).⁴⁶ So basically the name issue was still left open and the Interim Accord only enabled the normal functioning of the bilateral relations between the two countries and their relations with other countries, despite the problem with the name. I will analyze these provisions of the Interim Accord more closely in the next chapter in relation to the last NATO summit and the possibilities for judicial redress.

2.2 Legal analysis of the official proposal for resolving the name dispute

Because the Interim Accord left open the name dispute, the negotiations for finding appropriate solution continued under the mediation of the Special Envoy of the Secretary-General of the UN – Matthew Nimitz. During the last decade there were couple of official

⁴⁶ Interim Accord taken from: Prof. d-r Svetomir Skaric, Dimitar Apasiev, Vladimir Patcev, The Name Dispute between Greece and Macedonia – student's project, (Skopje: Official Gazette of the Republic of Macedonia, 2008), (original: prof. d-r Svetomir [kari] redactor, Dimitar Apasiev redactor, Vladimir Pat~ev redactor, Sporot za imeto me|u Grcija i Makedonija - studentski proekt, (Skopje: Slu`ben Vesnik na Republika Makedonija, 2008)).

proposals, but I will focus only on the last one dating from 26th of March 2008. I will argue that the aspects being negotiated are strictly in domestic jurisdiction and thus the United Nations and Greece do not have the right to interfere in such matters.

The official proposal of Mr. Nimitz is a short document constituted of 8 points, which provides one name to be for international exercise (Republic of Macedonia (Skopje)), and another for domestic usage (Republika Makedonija, in Cyrillic alphabet). In addition, it recommends the international name to be used in bilateral relations, but the states which are using the constitutional name of Macedonia in their bilateral relations may continue with that practice. The word “Macedonia” cannot be used as an official name of the second party, but the words “Macedonia” and “Macedonian” may be used by both parties in any other aspect under the international legal and commercial practice. The document also provides that the parties should negotiate for establishing a mutual commission for examining the questions of cultural and educational matters.⁴⁷ If one analyzes these provisions more closely in relation to the jus cogens principles of international law, couple of question would arise inevitably. Firstly, and the most obvious one, how can one interfere in the choice of one country’s name as a legal identity that every legal subject, such as a state, must have. That is in violation of various international principles, namely, the right of self-determination, the sovereign equality between states, etc. As I have argued in the previous chapter, the state’s right to identify itself with certain name is an integral part of the right of self-determination, which belongs in the domain of jus cogens norms and thus any interference in the exercise of this right is unlawful. Secondly, if we put aside this issue and assume that the countries are obliged to negotiate by the SC resolutions, even though they are unlawful, then it is questionable how can two states with a bilateral agreement (such

⁴⁷ Official proposal of Matthew Nimitz, taken from:” Utrinski vesnik” newspaper, no. 2 649, 28th of March 2008.

would be the one resolving the name issue) impose obligations on third states, in the light that they should use this or that name in their relations with one of the contracting states. The states, in their interactions within the international community, cannot be bound by an agreement in which they are not signatories. One could argue that it can be done by adopting new resolution in the UN, which will amend the old one and admit Macedonia under the new name. However, it should be noted that the UN does not have mechanism for collective recognition of states, and that admission of one state does not automatically imply recognition, hence they are two different types of decisions, with the former being strictly legal and the latter being political one.⁴⁸ So, admitting Macedonia in UN under the new name would only mean that that name will be used only for the purposes within the UN, but can not in any way imply its use by the UN member states, in their respective bilateral relations with Macedonia. For these reasons it is clear that these negotiations cannot resolve the dispute in the light of SC Resolution 817 and 845, no matter what is the outcome from them. Legally it is impossible the outcome of the negotiations, in a form of a bilateral agreement, to resolve the problem of the international recognition of the statehood of Macedonia. Strictly legally speaking in the matters of recognition of states there are two different institutes – recognition of states and recognition of governments. The recognition of state usually implies and the recognition of the government, but it is not always the case, namely one state might recognize the statehood of the other but it might not recognize the legitimacy of its government from various political reasons. The other way around is not possible, in other words, the recognition of government always implies and recognition of state.⁴⁹ The recognition of states always implies the recognition of the state's name because it is an

⁴⁸ Above, fn. 22.

⁴⁹ Ljubomir Frckoski, Vasil Tupurkovski, Vladimir Ortakovski, *International Public Law* (Skopje: Tabernakul, 1995), 60-63, (original: Qubomir Fr~koski, Vasil Tupurkovski, Vladimir Ortakovski, *Me|ynarodno javno pravo*, Skopje: Tabernakul, 1995).

integral part of the legal personality of the state. In the case of Macedonia's recognition its admission to United Nations practically meant collective non-recognition of its constitutional name, even though it is an established principle that admission to UN does not automatically imply recognition of a state. Furthermore, Macedonia's consent to be referred with the provisional name does not affect its unlawfulness, because the states cannot consent not to implement or not to be bind by the norms of jus cogens. The international norms jus cogens are compulsory for every subject of international law. Accordingly with the negotiations Greece and Macedonia can only agree on the aspects of the bilateral usage of the name Macedonia, or they can agree on any other name but only for the purposes of their bilateral relations. The next question which naturally arises is whether there is a judicial redress for removing these unlawful consequences. Until the Interim Accord is in force both parties have restricted means for judicial redress concerning the name issue (article 21). However it does not mean that it is impossible to eliminate the consequences of the unlawful actions. One possibility is Macedonia to withdraw from the Interim Accord in accordance to article 23, and then to file a complaint to the ICJ, which is not likely to be successful because of the denunciation deadline of one year after the written notification give to the other side (article 23/2), which is enough time for Greece to withdraw its deposited consent for ICJ jurisdiction. Another possibility is Macedonia to use the ICJ's advisory opinion, as it was described in the previous chapter, and make an initiative in the General Assembly about the revision of the resolutions that imposed additional conditions, which are not prescribed in article 4 of the UN Charter.

All in all, in this chapter I have presented the course of the negotiations and through the analysis of the Interim Accord and the official proposals of the special representative of the United Nations, I argued that the core of the problem is that it is a bilateral political dispute and it

can be resolved only if it is treated as such with no implications on the international relations of either country.

3. The Name Dispute in relation to Macedonia's accession to NATO and EU

In the final chapter I will analyze the possible implications of the name dispute to Macedonia's aspirations for Euro-Atlantic integration, namely the North Atlantic Treaty Organization and the European Union. I decided to analyze the integration to both organizations at once because their decision making process is the same, with consensus. So if the name dispute proves to create problems for the accession in one organization it is highly likely that it would do the same in the other. Again, in this chapter I discuss the possibilities for judicial redress in relation specifically to the admission to NATO, and in general for the whole dispute.

3.1 The Greek veto at the NATO Summit in Bucharest

At the last NATO summit in Bucharest, Romania in the spring 2008 very similar situation happened as at the time of Macedonia's admission to United Nations. Namely, despite acknowledging Macedonia's readiness for membership, the North Atlantic Council stated that the negotiations for the differences concerning the name of the country were not successful and agreement could not be reached and therefore the invitation will be postponed for the time until

mutually accepted decision for the name issue is reached⁵⁰. However, unlike the UN, which is a universal organization and has specifically enumerated criteria for admission in its Charter, the NATO is a regional organization and in its founding treaty – the North Atlantic Treaty, there are not any provisions establishing such criteria for admission. The Treaty only states that the Member States may by unanimous agreement invite any other European State, which is capable to contribute to furthering the goals of the organization, to join the alliance (Article 10)⁵¹, which means that ultimately they will decide on case by case basis taking into consideration mainly political circumstances. So in the case of NATO no state can gain the right to membership, as it is the case with the UN, after the fulfillment of the prescribed conditions. Thus the decision not to accept Macedonia to membership does not violate any legal provisions from the North Atlantic Treaty. However, Macedonian government claims that the actions of Greece at this NATO Summit are in violation of article 11 of the Interim Accord and therefore instituted legal proceedings before International Court of Justice. Their claim is based on the fact that article 11 provide that Greece will not obstruct Macedonia's accession in international and regional organizations in which she is a member, except if Macedonia is referred pursuant to Security Council Resolution 817 (1993), and that they applied to NATO membership under the provisional name. This provision does not fail under the restrictions in article 21, so the jurisdiction of the Court is doubtless. The key aspect of the proceedings will be the interpretation of the Greek obligation not to object to the application by or the membership of Macedonia in

⁵⁰ See Bucharest Summit Declaration-issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Bucharest on 3 April 2008, http://www.nato.int/cps/en/SID-AB9C7467-799941BD/natolive/official_texts_8443.htm.

⁵¹ The North Atlantic Treaty – Washington D.C. 4 April 1949, <http://www.nato.int/docu/basicxt/treaty.htm>.

international, multilateral and regional organizations of which Greece is a member.⁵² However, the Court's judgment in this case will not directly affect the name dispute because if positive it will only enable Macedonia's admission to NATO under the provisional name. No matter what is the outcome of this proceeding it is sure that it will not solve the name dispute.

Organizations like NATO must not be the main battlefield for resolving these kinds of disputes, but the main battlefield should be the legal instruments available in the UN. This is so because of several reasons. First, NATO does not have strictly prescribed criteria for membership, and there are no legal grounds for claiming any kind of right to membership or for obtaining it by legal means. Therefore the battle for gaining membership in such organizations has to be a political one, not legal. On the other hand the United Nations, have clearly established conditions for membership and have developed independent judiciary and legal means for reviewing the legality of its document. Second, UN membership under the constitutional name would more likely contribute to such recognition by other states and to acceptance of that name in other international organizations, both governmental and non-governmental (e.g. WTO, IMF, FIFA, etc.).

The situation with the relationship between the name dispute and Macedonia's aspiration for EU membership is very similar to the one in NATO, because of the consensual decision-making process, with the exception that until now at least formally there was no final veto imposed by Greece. There is no unified EU accession procedure, but it was developed by the course of the various accession waives. Until now there were three major accession waives: (1)

⁵² Markos Karavias, Antonios Tzanakopoulos, "Legality of Veto to NATO Accession: Former Yugoslav Republic of Macedonia Sues Greece before the ICJ", *American Society of International Law*, Volume 12, Issue 26, December 2008.

the so called EFTA accession in 1973, which included EFTA members United Kingdom, Denmark, and Ireland; (2) the Mediterranean enlargement with Greece (1981), Spain and Portugal in 1986; (3) Sweden, Finland and Austria in 1995; and the last Eastern enlargement which includes 12 countries from Central and Eastern Europe in 2004 and 2007. There are couple of usual steps before one country can access to the Union, namely, the signing of the association (and stabilization) agreements, then the official membership application for which the Commission has to issue an opinion, accession negotiations, and finally accession. The accession agreement has to be ratified by a qualify majority in the European Parliament, and then to be adopted unanimously at the Council and ratified in all member states.⁵³ Another important remark is that the EU, like NATO, does not have any prescribed criteria the need to be fulfilled, and therefore its decision is completely political and dependant only of their willingness to admit one country or not. Because of the complicated admission process divided into various stages, it would be easier for Greece to make various obstacles and use the name dispute only as a formal reason for doing so, in the case of Macedonia's admission to UN.

3.2 Possibilities for judicial redress

After analyzing all aspects of the name dispute in relation to the UN Charter and Macedonia's admission to UN, the negotiating process and the signing of the Interim Accord as

⁵³ Ulrich Sedelmeier, "Enlargement: from procedures for accession to a policy towards Europe".

its result, and the possible implications of the dispute as an obstacle for Macedonia's integration to NATO and the EU, the question that arises is what are the legal means available for resolving the dispute. I have pointed out in short the possibilities for judicial redress concerning the various aspects of the dispute in each chapter respectively, but now it should be examined bearing in mind the broader picture. Until now Macedonian government has started only the proceeding before the ICJ concerning the alleged Greek violation of article 11 of the Interim Accord. According to them, Greece's actions at the NATO Summit in 2008 were contrary to what was stated in the agreement (Interim Accord), which is still binding for both sides because neither of them has denounced from it. The argument of the Greek side will most likely be that they were acting governed by the principles of the international law that allow them to act contrary to the agreement if the other party first started to breach the agreement, only to the extent necessary to remove the unlawful consequences from such an act. There are various actions taken by the Macedonian government, which they claim that have violated the Interim Accord earlier then the veto, such are: the denomination of the national airport as Alexander the Great is seen as a provocation towards Greece, the fact that they have used their constitutional name in the bilateral relations with various countries after the conclusion of the Interim Accord, etc. The validity of some of them is at least questionable, but let us wait and see how the Court will interpret them. However, Macedonia should take additional actions concerning the unlawfulness of their admission and status in the United Nations, no matter what is outcome from this proceeding. I have analyzed the possibility for initiating advisory opinion by the ICJ in the first chapter, but now I will analyze it in connection to article 21⁵⁴ of the Interim Accord, which explicitly forbids

⁵⁴ Article 21 of the Interim Accord: "(1) The Parties shall settle any disputes exclusively by peaceful means in accordance with the Charter of the United Nations. (2) 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 International Court of Justice, except for the difference referred to in Article 5, paragraph 1".

any issue in relation to article 5⁵⁵ to be referred to the ICJ. This provision should not be an obstacle for initiating advisory opinion by the Court, because of several reasons. First, the advisory opinions cannot be initiated by states, but only by certain UN organs provided for in the UN Charter or authorized by them (article 65 of the Statute of the ICJ). So the official request should come from the Security Council or the General Assembly in a form of a legal document containing a question that needs interpretation from the ICJ. In the history of the UN the Security Council only once has requested such opinion⁵⁶, so the most suitable option is the General Assembly. So Macedonia should make a strategic plan for lobbying within the General Assembly, which will enable Macedonia to get the advocacy from more than half of the members and then the General Assembly to adopt a resolution and refer the question to the Court. The question referred to the ICJ should be formulated as: “Is the Resolution 47/225 (1993) of the general Assembly, in its part relating to denomination ‘the Former Yugoslav Republic of Macedonia’, with the requirement for settlement of the ‘difference that has arisen over the name of the State’ legally in accordance with the Charter of the United Nations? (Particularly, is the Resolution 817 (1993) of the Security Council, in its parts relating to denomination ‘the Former Yugoslav Republic of Macedonia’, with requirement for settlement of

⁵⁵ Article 5 of the Interim Accord: “(1) *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).* (2). *Recognizing the difference between them with respect to the name of the Party of the Second Part, each Party reserves all of its rights consistent with the specific obligations undertaken in this Interim Accord. The Parties shall cooperate with a view to facilitating their mutual relations notwithstanding their respective positions as to the name of the Party of the Second Part. In this context, the Parties shall take practical measures, including dealing with the matter of documents, to carry out normal trade and commerce between them in a manner consistent with their respective positions in regard to the name of the Party of the Second Part. The Parties shall take practical measures so that the difference about the name of the Party of the Second Part will not obstruct or interfere with normal trade and commerce between the Party of the Second Part and third parties*”.

⁵⁶ Ljubomir Frckoski, Vasil Tupurkovski, Vladimir Ortakovski, *International Public Law*, (Skopje: Tabernakul, 1995),.60-63, (original: Qubomir Fr~koski, Vasil Tupurkovski, Vladimir Ortakovski, Me|ynarodno javno pravo, Skopje: Tabernakul, 1995).

the ‘difference that has arisen over the name of the State’ legally in accordance with the Charter of the United Nations?”.⁵⁷ The substance of this question is not really the name dispute but the legality of additionally imposed conditions for admission which are not prescribed in the Charter and thus article 21 of the Interim Accord is not a problem for referring the question to the ICJ. The result of a possible favorable decision would be Macedonia to be granted full membership instead of this “quasi membership”, and the name dispute would be back for resolving on the bilateral level as a political issue. At this level the parties could negotiate for a different name that they will use in their bilateral relations and the other related technical questions and sign an agreement which will put an end to the dispute.

Another possibility for Macedonia is to use Greek veto at the NATO Summit as an excuse and to inform Greece that they withdraw from the Interim Accord because it become useless and un-effective and that both parties should look for new mechanisms for resolving the dispute. After the withdrawal Macedonia may start contentious proceeding before the ICJ against Greece, with the claim that they have violated several international legal norms of the domain of jus cogens (self-determination, sovereign equality between states) by interfering within the domestic matters of Macedonia. The Court competence for deciding in these cases is based strictly on consent by the parties of the dispute. The consent for accepting the Court’s competence can be given in one of the following ways: (1) the parties conclude ad hoc compromise for the competence of the Court in that specific case, with which they practically define the material competence of the Court; (2) if one party files an application before the Court against a party which has not given previous consent to the Court’s competence, and the defendant party engages in the proceedings without making complaint for the jurisdiction of the

⁵⁷ Prof. d-r Igor Janev, “Proposal for Resolving the Dispute Over the Name of the Republic of Macedonia”, MakNews, July 2003.

court; (3) the Court competence may be explicitly provided in special clauses of bilateral or multilateral agreements, for any legal disputes arising from that agreements; and (4) by unilateral declarations for the acceptance of the Court's competence made in accordance with article 36 (2), deposited to the Secretary General of the UN, and by him to all the parties members of the Statute of the Court and to the Secretariat of the Court. Because the declarations for acceptance of the Court's competence are unilateral acts, they are legally binding only towards other states which have accepted the competence of the Court by unilateral declarations, or towards other states which have accepted the competence of the Court by any method described above. The declarations may contain some reservations for excluding the Court's competence for certain cases⁵⁸. The Greek government has deposited such declaration to the secretary General with two reservations. The first one excludes from the Court's jurisdiction all the disputes that would arise with countries that have not deposited declaration that is in substance equal with their declaration (the principle of reciprocity), and the second one excludes all the disputes related to defensive military operations for the purposes of national defense. Accordingly the name dispute cannot fail under those two reservations and thus it is eligible for referral to the ICJ. However, Macedonia until now hasn't submitted such a declaration to the Secretary General and will have to do it if she wants to institute contentious procedure before ICJ. Even if Macedonia does file a declaration, equal in substance with the Greek one, still Greece can prevent being sued by making additional reservation on the name dispute, during the withdrawal period of one year

⁵⁸ Prof. d-r Tatjana Petrushevska, What is the function of UN in resolving the Greco-Macedonian dispute?, taken from: Prof. d-r Svetomir Skaric ed., Dimitar Apasiev ed., Vladimir Patcev ed., The Name Dispute between Greece and Macedonia – student's project, (Skopje: Official Gazette of the Republic of Macedonia, 2008), (original: prof. d-r Tatjana Petru{evska, Kakva e ulogata na ON vo re{avaweto na gr~ko-makedonskiot spor?, prevzemeno od: prof. d-r Svetomir [kari} redactor, Dimitar Apasiev redactor, Vladimir Pat~ev redactor, Sporot za imeto me|u Grcija i Makedonija - studentski proekt, (Skopje: Slu`ben Vesnik na Republika Makedonija, 2008)).

provided in the Interim Accord. However, Macedonian government should not be discouraged from such a possibility because if Greece decides to not to engage in the proceedings it is likely that the in the eyes of the international community it will be seen as accepting the allegations of the other party, and Greece will be under great pressure to change its policy concerning the name issue. Contrary to the advisory proceedings, the Court's decisions in this kind of procedures are legally binding for the parties, and their implementation is guaranteed by the Security Council, and thus the Court's judgment would end the dispute between the parties.

Conclusion

Through the analysis of the legal aspects of the Greco-Macedonian name dispute I have presented what are the key aspects of the dispute and proposed two different possibilities for ending the dispute. In the first chapter I analyzed the legality of the two additional conditions (to be provisionally referred as “the Former Yugoslav Republic of Macedonia” for all purposes within the United Nations, and to negotiate with Greece for the “differences that has arisen over the name of the State”), imposed by General Assembly Resolution 47/225 (1993) pursuant to Security Council Resolution 817 (1993). These conditions are in clear breach of the Article 4 of the UN Charter and of the principles of sovereign equality between states, self-determination and non-discrimination in the representation in international organizations, which fail under the domain of jus cogens. In the second chapter I have argued that the negotiating process pursuant to Security Council Resolution 845 (1993), under the supervision of the Secretary General of the United Nations, is inadequate and endless because of the fact that the core of the problem is not

the name issue itself but very complex set of questions from historical, cultural, economic, and political context. This was partly proven by the signing of the Interim Accord because it showed that the parties only decided to regulate the other aspects of the normal functioning of their relations, leaving the name issue to be resolved by further negotiations, which haven't made any improvement in the position of both sides for 14 years now. In the third and final chapter I indicated the difficulties that Macedonia will have in its aspiration for Euro-Atlantic integration because of the name dispute, particularly because of the unlawfulness of the GE and SC resolutions which have made huge precedent, namely created the situation where one bilateral political dispute is a legal obstacle for the Macedonian normal functioning in the international community. In addition I have analyzed two different legal possibilities for redress for this situation – the ICJ's advisory opinion proceedings and the contentious procedure. Each option has its advantages and disadvantages, but I consider either one of them would prove to be sufficient.

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