Chapter 7

Consequences of Admission

As seen in the Chapters above, admission to the United Nations ceased to require that the applicant fulfill the substantive criteria set out in Charter Article 4 – save one. The exceptional criterion has been statehood: even as its conduct or the character of its internal institutions will not be scrutinized as part of the admission process, to be admitted the applicant still must be a State. This has made it possible in practice that nearly all entities that are States are UN members. The non-members today are entities which have not sought admission – the main example in 2008 was the Vatican City; have been subject to dispute as to their status – e.g., Kosovo and Taiwan; or as yet remain associated with another State by way of ties that it is acknowledged they are free to sever – e.g., the Cook Islands and Niue. Admission to the UN, then, or at least a presumption of admissibility attaching to States that seek it, would seem to be a modern incident of statehood in international law. Yet by no means is admission a criterion of statehood; a State remains a State whether or not it is a UN member. Creation of the State is not an effect of admission.

Admission is so closely bound now to statehood that it is natural nevertheless to look for some special aspect in the relation. This final Chapter starts by considering the relation between admission and statehood. We then turn to other effects that universal membership may have, both on legal relations and on the politics of international relations.

7.1 Legal Consequences of Admission as a Member State

The most obvious consequence of admission to the United Nations is that the State, upon admission, becomes a member of the United Nations. As we saw in Chapter 2, membership is automatic upon the vote of the General Assembly to admit an applicant as a member State; no further municipal or international step is required. Membership entails financial obligations to the Organization; it entails certain, at least minimal, rights of participation in UN organs. The
rights of participation can be generalized however only so far. The Charter expressly elevates the rights of the Permanent Five members of the Security Council above the rest in that principal organ, so it is not accurate to say that States have an absolutely equal right to participate in UN processes. The level field of rights in the General Assembly may be referred to the principle of sovereign equality; the more restricted membership in specialized organs like the Human Rights Council reflects various functional considerations.

To give substance to the rather general observation that admission confers membership, we have to ask, then, what legal consequences follow from membership. We may consider possible legal consequences under five rubrics: (i) the general international law concerning the creation of States; (ii) international responsibility; (iii) standing in the International Court of Justice; (iv) rights of participation in other UN processes; and (v) a presumption of continuity in international legal relations, manifested in the UN by continuity of membership.

7.1.1 Statehood and UN Membership

The admission of a State to the United Nations does not create the State. This point has been made elsewhere. For example, the International Court could say that ‘[t]here is no doubt that Serbia and Montenegro is a State for the purposes of Article 34, paragraph 1, of the Statute’ – before it said whether that State was a member of the United Nations and thus a Party to the Statute by virtue of Article 35(1).\(^1\) It follows from earlier practice as well: States existed before there was a United Nations. And it follows even more closely from the logic of the Charter: to be admitted, the applicant must already be a State.

Moreover, the rights and obligations of a State under general international law clearly do not begin with admission. It is central to an understanding of international law as guarantor of basic public order that any particular formal status – such as membership in an international organization – cannot be the prerequisite to protection from the use or threat of force: a State does not acquire license to use force at international level simply by denying the status of the target of its contemplated aggression. Admission of a State as a member of the United Nations is therefore clearly not the act creating the obligation to refrain from threat or use of force against the territorial integrity of the State. Nor is continued membership a requirement for continued statehood. Sean Murphy notes that suspension from an organization – from the OAS for example – by no means calls into question the existence of the State suspended.\(^2\)

\(^1\) *Case Concerning Legality of Use of Force (Serbia and Montenegro v Belgium)* Preliminary Objections, Judgment of 15 Dec 2004, ICJ Rep 2004 pp. 279, 298–9 ¶ 46.

\(^2\) Murphy ‘Democratic legitimacy and the recognition of States and governments’ in Fox & Roth eds *Democratic Governance and International Law* (2000) 123, 129.