

III. Recognition

Former Yugoslav Republic of Macedonia

Further to discussion of Australian recognition of the Former Yugoslav Republic of Macedonia (FYROM) in previous volumes of the *Aust YBIL* (for example, *Aust YBIL* 1994, vol 15, p 416), the Australian Government in February 1994 decided to extend recognition to the FYROM. (An article on FYROM and issues of statehood, by Matthew Craven, begins in this volume at p 199). The following is the full text of the statement issued by the Foreign Minister, Senator Gareth Evans, on 15 February 1994:

Australia has decided to recognise as an independent state, and to commence discussions on diplomatic relations with, the former Yugoslav Republic of Macedonia. Australia will refer to the Republic as The Former Yugoslav Republic of Macedonia (FYROM), the temporary name used in the UN and for membership of some international agencies.

The FYROM has been formally recognised by some 59 states (including, last week, the United States of America). Along with 62 other countries, including Greece, Australia co-sponsored the admission of the FYROM to the UN in April 1993. According to the practice of many of those co-sponsors, recognition of the FYROM flowed automatically from support for its admission to the UN; for Australia, recognition required a separate formal act, and that step has now been taken.

As I assured the Greek Government during my visit to Athens last month, in recognising the FYROM Australia makes no presumption as to the final outcome of the "name" issue, or any other issue involved in negotiations between Greece and the Republic.

We do believe those negotiations would be much assisted by the Government in Skopje ceasing to use the "Star of Vergina" symbol on the FYROM's flag; forbearing from using the name "Republic of Macedonia" until a mutually acceptable final resolution of the name issue is achieved; addressing the provisions of FYROM's Constitution which continue to cause concerns in Greece; and taking all possible steps to curb the proliferation, at home and abroad, of offensive irredentist propaganda. We urge the Government of the FYROM to act accordingly.

The Australian Government also stands ready to enter into diplomatic relations with the FYROM, joining, among many others in this respect, all of Greece's major European partners. We will consider a request from the authorities in Skopje to open a Consulate in Australia which will be able to provide a full range of needed consular services to the local community (some 75,000 people) in Australia.

I have instructed the Australian Embassy in Belgrade to pursue the necessary practical arrangements. Our agreement to the opening of a FYROM Consulate in Australia would be subject to the conditions that it describe itself appropriately (as the Consulate of the "Former Yugoslav Republic Of Macedonia", not as the

"Republic of Macedonia"), and that no contentious flag or other symbol be displayed pending final resolution of relevant outstanding issues. Our early agreement to the opening of a Consulate would be much assisted by a statement on the public record by the Government of the FYROM that it is prepared to act immediately, or at least as soon as the necessary legislative majority is achievable, to change the country's flag.

On 3 March 1992, Prime Minister Keating identified three matters about which Australia would need to be satisfied before proceeding to recognition. We believe, in the light of the course of events since then and our discussions with relevant governments, that these conditions are now met.

As to the first of these matters—"the use of the word 'Macedonia' being settled in the way that does not cause further tension with Greece"—the situation is that, while the name issue has still not been finally resolved, it has been satisfactorily settled for the time being by the international community (including Greece itself) accepting for various purposes the temporary name "Former Yugoslav Republic of Macedonia".

As to the second matter—"Greece's concern about possible territorial claims or aspirations being fully met"—the amendment to the FYROM's Constitution in July 1992 (spelling out that the country "has no territorial pretensions towards any neighbouring states"), together with President Gligorov's restatements (most recently on 10 February 1994) of Skopje's acceptance of existing boundaries between the two countries has reinforced the earlier conclusion of the Badinter Commission that FYROM had no territorial aspirations.

And as to the third matter—"the international community's concern about the protection of minorities being fully satisfied"—the recognition action now taken by so many European and other countries has signified acceptance of the Badinter Commission's findings that FYROM's constitutional guarantees on human rights are comparable with the rest of Europe and satisfy recognition standards.

The Australian Government is pleased to note the calmer and more constructive atmosphere that has been apparent, in recent times, in discussion of the issues which remain outstanding between Greece and the FYROM. The fact that the two States are geographical neighbours makes it necessary that they be able to deal with each other on a daily basis with mutual respect and confidence. We hope and expect that it will be possible for the outstanding issues to be amicably resolved in the not too distant future.

On the same day, Senator Evans wrote to the Foreign Minister of the FYROM as follows:

Your Excellency

It is my honour to inform you that the Australian Government has taken the decision today, 15 February 1994, to recognise the independence of the Former Yugoslav Republic of Macedonia (FYROM).

Australia also stands ready to commence discussions on diplomatic relations with the Former Yugoslav Republic of Macedonia, upon receipt of formal advice that the establishment of such relations continues to be the wish of the Government of the FYROM.

As a first step in this respect, we will consider a request from the FYROM to open a Consulate in Australia that will be able to provide the full range of consular services to the numerous members of the local community in Australia, a service which they and your Government in Skopje have long sought.

I attach for your information the terms of the statement in which these decisions were announced. You will note our strongly expressed hope that your Government and that of Greece should enter into substantive negotiations to resolve the issues which remain in contention between you. We do believe those negotiations would be much assisted by the Government in Skopje ceasing to use the "Star of Vergina" symbol on the FYROM's flag; forbearing from the use of the name "Republic of Macedonia" until a mutually acceptable final resolution of the name issue is achieved; addressing the provisions of the FYROM's constitution which continue to cause concern in Greece; and taking all possible steps to curb the proliferation, at home and abroad, of offensive irredentist propaganda. We urge the Government of the FYROM to act accordingly.

In respect to the opening of the Consulate, we have some specific concerns which we would like you to address. As a threshold matter, and having regard to the points made in the preceding paragraph, our early agreement to the opening of the Consulate would be much assisted by a statement on the public record by your Government that it is prepared to act immediately, or at least as soon as the necessary legislative majority is achievable, to change the country's flag.

A second group of concerns relate to the way in which any such Consulate would operate. As you know, Australia is very proud of its multicultural society and the contribution the communities of different backgrounds have made and continue to make to the development of Australia. The Australian Government remains ever alert to avoid provocative situations that could prompt a deterioration in the relations between the different ethnic communities in Australia. In this context, I must ask that, pending resolution of the name and associated issues, the Consulate be known as the "Consulate of the Former Yugoslav Republic of Macedonia", that no contentious symbols be displayed, and that in particular the current FYROM flag not be flown from its premises, offices, residences or its vehicles.

If arrangements can be made acceptable to both our Governments, agreement on the establishment of a Consulate can then be formalised by an exchange of notes between us. I have asked our Embassy in Belgrade to act as the channel for communication, and discussion in the first instance, of any matters you may wish to raise.

With my best wishes for your country's future,

Yours sincerely

GARETH EVANS

Following further public discussion of the issue, Senator Evans issued an expanded statement on 14 March 1994 which read in part as follows:

...The Australian Government's position has been from the outset, and remains, one of acknowledging that there *are* two sides to this argument, and trying to balance our policy accordingly. When passions run high, of course, as they have on this issue, the only reward for attempting balance is very often to be assaulted by both sides. But we have not been, and will not be, deterred from continuing to

call the balance as we think it should be called. Our responsibility, as the Government of Australia, is to conduct our foreign policy in Australia's national interests, not those of any other country; just as it is our responsibility to govern for the benefit of *all* Australians, whatever their sex, race, or ethnic origin.

Let me explain the basic elements in the balance we have struck.

The Act of Recognition. Australia moved to recognise the FYROM only after 58 other countries had done so, including every other member of the European Union and the United States. Moreover, we acted only after the state had been admitted to the UN, with Greece itself one of the 63 co-sponsors, and Greece itself prepared to accept the name "FYROM" as appropriate for this purpose.

In strict Australian foreign policy terms, that recognition had already been too long delayed. Certainly the price of further delay would have been a significant loss of foreign policy consistency and credibility. Since 1988, Australia has recognised states, not governments, and has done so on the basis not of approval or disapproval, but of four essentially objective criteria: clearly defined territorial boundaries, a permanent population, an established government, and a capacity to conduct international relations. In the case of the FYROM, these objective conditions had been satisfied more or less from the outset. Now we have formally announced recognition, delayed though that decision may have been, that recognition is irreversible as long as the state exists in its current form.

Australia, like many other countries, delayed recognition primarily because it was thought this would encourage early resolution of the outstanding matters in dispute between the FYROM and Greece. But by 15 February this year so many countries had recognised the state—including effectively all those with any influence on the situation—that it was impossible to pretend that Australia's withholding of recognition could amount to any form of effective leverage.

Prime Minister Keating said on 3 March 1992 that Australia would not move to recognition until three further conditions—going to the issues of name, territorial aspirations and human rights—were satisfied. For all the reasons set out in detail in my statement of 15 February 1994...and repeated by me in the Senate on 28 February, and for all the same reasons stated by the Prime Minister in the House of Representatives on 21 February and 3 March 1994, we believe those conditions have been amply fulfilled.

On the question of territorial aspirations, we believe that arguments based on the language of the FYROM Constitution should reasonably have been put fully to rest by the amendment formally adopted in 1992, which proclaimed that the country had no territorial pretensions towards any neighbouring states. But to the extent that there are some continuing Greek concerns based on references in the Preamble to forebears of the present state, and references in Article 49 to dealings with people of FYROM origin living outside the state, the Australian Government does believe it would be helpful for the FYROM Government to address these concerns. Here as elsewhere, suspicions which might otherwise have been muted have been fuelled by the continued proliferation of offensive irredentist propaganda, especially maps of Greater Macedonia, and the most helpful step of all would be for the spreading of that propaganda to be curbed.

The Name Issue. Most of the criticism of the Australian Government has focused on our moving to recognition in circumstances where the name issue has manifestly not been resolved to Greece's current satisfaction. But it needs to be

remembered what the precise terms of the commitment made by the Prime Minister were: that Australia would not proceed to recognition without the use of the word "Macedonia" being settled in a way that does not cause further tension with Greece. When Greece itself had been prepared to accept the name "FYROM", at least for the purposes of admission to the United Nations, and when some 46 other countries had recognised the state using this name and without incurring more than purely formal expressions of displeasure from Athens, it was difficult to believe, in our judgment, that our act of recognition *would* cause further tension with Greece. I came away from my own Ministerial consultations in Athens in January reinforced in that belief, and nothing that has happened since has given me grounds to change it.

It is a logical consequence of recognising the state under the temporary name of the "Former Yugoslav Republic of Macedonia" or "FYROM" that Australian Government department and agencies should—until present circumstances change—use that name for the state, and we will so direct them. A slightly more difficult and sensitive problem arises when it comes to identifying an appropriate name for people who live in, or originate from, the FYROM. When the Australian Government does not accept the name "Republic of Macedonia" as an appropriate one for the country itself, it is simply not appropriate to refer to its people as "Macedonians", even though many of them would certainly much prefer this terminology. We propose, accordingly, that Australian Government departments and agencies use the description "Slav-Macedonians" when referring to people who live in, or originate from, the FYROM. "Slav-Macedonians" is in quite common descriptive usage, and should not have any offensive connotations—other than for those to whom *any* qualification of "Macedonian" is unacceptable. It is the case that some FYROM people—including the Albanian minority—are of non-Slavic ethnic origin, but "Slav" in the present context should be taken as not so much an ethnic reference, but as shorthand for the country's name, the "Former Yugoslav Republic of Macedonia".

It is not proposed that any legislation be enacted to compel any particular usage, by government departments and agencies or anyone else. How ordinary members of the respective communities choose to describe themselves, and in particular how they choose to describe their ethnicity, in the Census or anywhere else, will remain up to those individuals and communities themselves. We recognise, for example, that there are Australian citizens of Greek geographic origin, but not of Greek ethnic background, who may choose to identify themselves as Macedonians. But in relation to those departments and agencies which the Government has a capacity to direct, directions will be given to refer, for the time being, to the country as "the FYROM", and to people living in or originating from it as "Slav-Macedonians". In relation to the ABC and SBS, and other statutory authorities which the Government has little or no capacity to direct, we can only express the hope that, in the interests of balanced community relations, they will choose to apply the same guidelines. I emphasise that all these questions of nomenclature will, of course, have to be revisited when the name issue is finally resolved, as we all hope it soon will be, in negotiations between the FYROM and Greece.

Opening of Consulate. As I have indicated, one of the considerations troubling the Government about our non-recognition of FYROM is that this made impossible the opening of a FYROM Consulate in Australia, and this

denial of access to consular services was causing real inconvenience, and occasionally real hardship, to those 75,000 Australians of FYROM origin who wanted to maintain direct human links with their original homeland. Recognition was necessary to clear the way for consular relations to be established.

We have, however, made it clear—both in my 15 February statement and in subsequent communications to Skopje—that the opening of a FYROM Consulate in Australia can only be contemplated if certain conditions are satisfied: viz. that it describe itself appropriately (as the Consulate of the “Former Yugoslav Republic of Macedonia”, not as the “Republic of Macedonia”) and that no contentious flag or other symbol be displayed pending the final resolution of outstanding issues. The imposition of conditions of this kind—which would enable the Consulate to operate without any practical difficulty, but not in a way which generated new flashpoints for reaction—is not inconsistent with international law governing consular practice. For the moment, however, the FYROM side has indicated that it has real difficulties in meeting the conditions we have set. Until it overcomes those difficulties, and meets the stated conditions, the matter can be taken no further.

Diplomatic Relations. Entering into diplomatic relations is a distinct further step that remains to be taken between Australia and the FYROM. Just as one country can recognise another without establishing any consular relations, so too can recognition and consular relations occur, but without formal diplomatic relations. Australia has no present intention to enter into diplomatic relations with FYROM: although (as made clear in my statement on 15 February) we have indicated our willingness to enter into discussions about such relations, it would be premature to address this issue until the consular question is resolved.

International Activity. It is in everyone’s interests that the matters which continue to be disputed between Greece and the FYROM be resolved as soon as possible, and by peaceful negotiation. Australia’s capacity to influence that process is necessarily limited, but we remain ready to assist in any way we can. Some two years ago we actively promoted, between the parties and in the United Nations, the idea that recognition of the FYROM proceed on the basis of a temporary formula for the name, leaving final resolution of the substantive issue for consideration at a later date. Some elements of that proposal are evident in the acceptance by the international community of “FYROM” as a temporary name. We remain in regular contact with the UN mediator, Cyrus Vance, and have made clear to him, and to Athens and Skopje, Australia’s willingness to make any diplomatic contribution that would help their mediation efforts. The fact that we (to my knowledge alone among the international community) have set such stringent conditions on the establishment of a Consulate is certainly seen in a number of quarters as applying a useful diplomatic discipline.

We have made it very clear in our public statements that we believe there is more the FYROM Government can do to advance the rapid peaceful settlement of this issue. The claim to the Star of Vergina as a national symbol is untenable and should be dropped. Some compromise should be accepted on the name issue: there are many potential formulae which would retain some reference to “Macedonia” without appropriating that name in its entirety. Action should be taken to halt the distribution, to the extent this is within the FYROM Government’s power, of offensive irredentist propaganda. Those provisions of the FYROM Constitution which continue to cause concern in Greece should be addressed again. While recognising all President Gligorov’s parliamentary

difficulties, at the very least it would be extremely helpful if the Government in Skopje were to announce, now, its intention to take steps to change the flag—and to make agreed Constitutional amendments on the name and related issues—as soon as the necessary two-thirds parliamentary majority was obtainable.

The Greek side has its own important contribution to make to the peaceful settlement of this dispute. The blockade it is presently applying on the movement of goods into the FYROM is untenable and unsustainable, and should be lifted immediately. The Government of Greece should expressly indicate its willingness to negotiate a compromise outcome on the name issue—one which includes some reference, albeit qualified by one or more other words, to “Macedonia”. And it should indicate its willingness to enter into serious and constructive negotiations on these and other outstanding issues immediately and without preconditions.

We in the Australian Government will continue to take every opportunity we can to urge both sides immediately down this path of reasoned, moderate discussion.

Community Relations Activity. We have, as a Government, exactly the same commitment when it comes to the domestic discussion of this issue. My colleague Senator Bolkus, Minister for Immigration and Ethnic Affairs, has been giving some close consideration to how the community relations resources of this country might be further mobilised, in a systematic and focused way, to try to reduce some of the tensions which are currently evident. He is in the process of developing some community relations initiatives aimed generally at getting a better understanding on all sides of the issues and principles involved, and in particular at getting the media and the relevant communities together to discuss the portrayal of the respective cultures and the scope for better appreciation of them. The Government will be discussing with community representatives—at both official and ministerial level—how these and other possible initiatives might be best progressed, and Senator Bolkus will make a further statement on these matters in due course.

At the end of the day, however, governments can only do so much on these issues. Citizens and residents of this country have a right to expect that governments will act in a balanced, thoughtful, and constructive way on matters which affect their interests, and touch their emotions. But governments, equally, have a right to expect that members of the wider community will themselves act in a way which looks to the larger interests of Australia, maintains its cohesion, and does not undermine its values of tolerance, decency, mutual respect and, above all else, non-violence.

Shortly thereafter, Senator Evans and the Minister for Immigration, Senator Bolkus, wrote to all Ministers as follows:

On 15 February 1994, the Government decided to recognise the Former Yugoslav Republic of Macedonia (FYROM) and on 14 March Senator Evans made a statement to Parliament (copy attached) which addressed the domestic consequences of that decision.

We now write to ask that you advise the Secretary of your Department that the Commonwealth has decided to refer temporarily to people who live in or originate from the FYROM as “Slav-Macedonians.” “Slav-Macedonian” is a temporary name and shorthand for people who live in or originate from the

FYROM: it is not meant to be considered as an ethnic identifier. It is to be used as a geographic descriptor where country of birth (COB) or nationality data is required for program administration or service delivery purposes. Nothing in the Commonwealth's decision affects the right of individuals or organisations to call themselves whatever they wish.

Where clients/customers indicate "Macedonian" in response to COB or nationality questions (and these responses are recorded) then officers are required to ascertain whether or not COB or nationality is FYROM and transcribe the data as "Slav-Macedonian" or "FYROM" as appropriate.

If it should become necessary for the Commonwealth to refer, for any purpose, to groups or individuals which do not live in or originate from the FYROM, but do identify with or associate with such groups or individuals, then the appropriate terminology is "organisations and individuals associated with Slav-Macedonians".

Similarly, if it becomes necessary for the Commonwealth to refer collectively to the following groups or individuals:

- (a) those living in or originating from the FYROM; together with
 - (b) those identifying with or otherwise associated with those referred to in (a);
- then the terminology which should be used is "Slav-Macedonians and associated organisations and individuals".

There may be instances, however, where the short-hand term "Slav-Macedonian" is not appropriate and the full term "citizens of the Former Yugoslav Republic of Macedonia" or just "the Former Yugoslav Republic of Macedonia" would be preferable. I expect that Departments are best left to use judgment and implement this decision sensitively. However, if further guidance is needed then [—] on [—] is the contact officer and should be consulted in the first instance.

I should be grateful if you would ensure that this nomenclature is used, if it is not already being used, by all Commonwealth agencies for which you have responsibility.

Finally, please note that, as indicated in Senator Evans' statement, the Commonwealth's decision is a temporary measure, pending Greece and the FYROM agreeing on a permanent name for the FYROM.

Yours sincerely

GARETH EVANS

NICK BOLKUS

Palestine Liberation Organisation

The following is the text of a press release issued by the Foreign Minister, Senator Gareth Evans, on 24 March 1994:

The story in today's *Canberra Times* about a Government proposal to "lift the status of" or "upgrade relations with" the PLO is misleading.

The Government has had under consideration, and has now decided to approve, a request that the name of the "PLO Office" be changed to "General Palestinian Delegation".

This does not, however, involve any change whatever of diplomatic status for the PLO representation in Australia, and in particular does not involve the granting of any diplomatic privileges or immunities.

Australia's position, as often previously spelled out, is that we do not regard the conditions as having been satisfied to enable us to recognise Palestine as a sovereign state, or the PLO as the government of a state. The creation of an independent State of Palestine may well be the ultimate outcome of the peace process, but it is premature to anticipate that process at this stage.

Formal Domestic Certification

The following is an example of the form used when there is a requirement for formal certification of recognition by the Australian Government of a foreign state:

I, GARETH JOHN EVANS, Minister for Foreign Affairs, HEREBY CERTIFY that the Executive Government of Australia recognised the Republic of Bosnia and Herzegovina as an independent State on 1 May 1992.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal.

Done at Canberra this sixteenth day of May, 1995.

(Signed) Gareth Evans

Minister for Foreign Affairs

Process of Recognition—Effect of Official Action

During the course of hearings before the Senate Standing Committee on Regulations and Ordinances in February–May 1994, the question arose of the effect on non-recognition of a country by Australia of its inclusion in Government Regulations. The following are extracts from Committee documents on the point. The first is an extract from a letter of 22 March 1994 to the Chairman of the Committee, Senator Mal Colston, from the Attorney-General, Mr Michael Lavarch:

I refer to your letter of 24 February 1994 concerning the meeting of your Committee with officers of my Department to discuss the Family Law (Child Abduction Convention) Regulations (Amendment), Statutory Rules 1993 No 358. I understand that at that meeting, the Committee expressed concern at the omission of the Socialist Federal Republic of Yugoslavia from the Regulations and its replacement with Croatia, Bosnia and Herzegovina, and Macedonia. The Departmental officers undertook to make further inquiries to ascertain the status of the remaining Yugoslav republics of Serbia and Montenegro...in respect of the Convention...

The Attorney-General wrote again to the Chairman on 23 May 1994:

...Further regulations have been drafted to include the Federal Republic of Yugoslavia (Serbia and Montenegro) (FRY) in the schedule to the Regulations. However the Department of Foreign Affairs and Trade has expressed concern that the inclusion of FRY in the Family Law Regulations may imply Australian recognition of the FRY. As a matter of foreign policy Australia and many other countries are refusing to recognise the FRY because the FRY claims to continue the statehood of the former Socialist Federal Republic of Yugoslavia.

The question of the recognition of the FRY is within the portfolio responsibility of my colleague the Minister for Foreign Affairs, Senator Evans. I am advised that Senator Evans will be giving further consideration to the issue whether, as a matter of foreign policy, it is appropriate to include the FRY in the Family Law (Child Abduction) Regulations...

An officer of the Attorney-General's Department wrote a further letter to the Chairman on the following day as follows:

...We have been advised that the Minister for Foreign Affairs and Trade has agreed that Australia should accept that the Federal Republic of Yugoslavia (Serbia and Montenegro) has succeeded to the Hague Convention on Child Abduction. Furthermore, the Minister for Foreign Affairs and Trade agrees that the Family Law (Child Abduction Convention) Regulations should include a reference to the Federal Republic of Yugoslavia (Serbia and Montenegro) as the name used in UN sanctions resolutions, with an asterisk noting that "The Federal Republic of Yugoslavia (Serbia and Montenegro) has declared its intention to be bound by the obligations under the Convention. This reference does not amount to recognition of that entity by Australia."

I am currently preparing drafting instructions for an amendment to the Regulations which reflects the position agreed to by the Minister for Foreign Affairs and Trade. Draft Regulations for this purpose will be submitted to the Minister and Executive Council at the earliest possible time.

These Regulations were gazetted shortly afterwards, and the same procedure was followed also in amending the Mutual Assistance in Criminal Matters Regulations (see "Australian Legislation Concerning Matters of International Law 1994", above in this volume, Items B.9 and B.13).